

# TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

## HUMAN RIGHTS COMMITTEE 94<sup>TH</sup> SESSION DENMARK, 5<sup>TH</sup> REPORT 13 – 14 OCTOBER 2008

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### Key facts<sup>1</sup>

Ratification	Reservations	Party to optional protocols?	Other core treaties ratified
1972	Articles 10, 14 and 20	Yes	ICERD, ICESCR, CEDAW, CAT, CRC

### Information submitted to the Committee

#### State report

Denmark submitted its 5<sup>th</sup> report to the Human Rights Committee (the Committee) on 20 November 2007.<sup>2</sup> The report should have been submitted by 31 October 2005. Denmark last appeared before the Committee in October 2000 and had submitted their previous report in February 1999.<sup>3</sup>

<sup>1</sup> The information in this table is sourced from the Office of the High Commissioner for Human Rights (OHCHR), and is available at [www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx](http://www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx).

<sup>2</sup> CCPR/C/DNK/5, available at [www2.ohchr.org/english/bodies/hrc/hrcs94.htm](http://www2.ohchr.org/english/bodies/hrc/hrcs94.htm).

<sup>3</sup> Available at <http://www2.ohchr.org/english/bodies/hrc/sessions.htm>

In the concluding statements from 2000 the Committee asked for information in the next State report on the results of the new complaints procedure concerning the police; resolving the issue of displacement of the Thule population and the general financial independence of Greenland; the implementation of the right to self-determination for the population of the Faeroe Islands; discrimination against women in respect to employment and in application for asylum; racial discrimination in restaurants and nightclubs; and on the equality between national church members and members of other religions or non-believers in relation to financial support, educational costs and special taxes.

The State report submitted to the Committee is thorough and self-critical on several points, which the Committee commended as being informative. However, it did not follow the Committee's reporting guidelines as Denmark decided to give this report a more thematic structure. The Committee found this remarkable though unconventional. The delegation explained that the structure of the report was an experiment only because of the many changes recently because of the court reform in the State and promised to follow the guidelines in future reports.

In the State report's general observations and information relating to specific provisions under article one of the Covenant it mentions possibilities for the further transfer of power to the public authorities of Greenland and the Faroe Islands and foreign relations with regard to the two. The report contains several follow-up paragraphs to the Committee's previous concluding observations on incorporation of the Covenant in domestic law, effective remedies, review of bills by the Ministry of Justice, the guide on United Nations complaint procedures, protection against discrimination in the grounds of race and ethnic origin (follow up on the forth periodic report) were the Committee raised concern about racial discrimination in the, Discrimination against women in applications of asylum, and the State now ensures that female interpreters are always provided to women refugees. Also the complaint procedure against the police is mentioned because The Committee commended Denmark for its new complaint procedure and asked for further information in the next report. The assessment is that the new procedure is working very well and 187 have lead to prosecution against the police (most of them traffic related cases). It also covers differential treatment in the labour market, integration of aliens in Denmark, efforts to further combat violence against women, amending laws to help measures to combat trafficking of women, and to implement equal access to the labour market for women of non-ethnic Danish women. custody on remand, and solitary confinement; constitutional provisions concerning the State church and freedom of religion, and refugee status; and other issues concerning refugees and asylum seekers including freedom of movement and DNA testing of applicants for family reunion. The report also mentions the third visit by the Committee for the Prevention of Torture of the Council of Europe which described the cooperation from the Danish authorities as excellent.

The State report covers in its annexes the arrangements for Home Rule in Greenland and the Faroe Islands; the decision on possible criminal proceedings in the case of *Jyllands-Posten's* article 'The Face of Muhammad'; and appendices on a declaration by the Government of the Faroe islands

### **List of issues**

After having studied the report, the Committee provided its list of issues to the State on 7 August 2008.<sup>4</sup>

The list of issues concerns the constitutional and legal framework in implementing the Covenant and Optional Protocol. Specifically the Committee asked why the State had not incorporated the Covenant into domestic law and if the State plans to withdraw its reservations to the Covenant; the right to effective remedies with regards to the new complaint procedure against police officers, principles of non-discrimination, particularly with regards to gender equality and measures taken to enhance senior positions in the private sector and equality between national church members and members of other religions, if the State plans to incorporate a

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<sup>4</sup> CCPR/C/DNK/Q/5/Add.1, available at [www2.ohchr.org/english/bodies/hrc/hrcs94.htm](http://www2.ohchr.org/english/bodies/hrc/hrcs94.htm).

specific torture offence in the penal code and information on the issue of non-refoulement, liberty and security for prisoners, freedom of movement of aliens and arbitrary expulsion, right to fair trial; right to family life; and rights of minorities. The committee also asked for preliminary information on the investigation of alleged rendition flights operating through Denmark and Greenland.

The State submitted its written response to the list of issues on 25 September 2008.<sup>5</sup> The State answered all the questions in the list of issues, however in the pursuant examination of the State the Committee asked for clarification on answers it found to be too brief, including why Denmark did not intend to withdraw its reservations to the Covenant, the new complaint procedure against police officers, and the investigation of alleged renditions flights.

### NGO information

Only one coalition of NGOs<sup>6</sup> submitted two **written reports** to the Committee.<sup>7</sup> These concerned the situation of the indigenous population of the Thule district and the ongoing battle for compensation for displacement from their land on account of the construction of the military base in 1953. This is an issue that the Committee have dealt with many times before and the Danish Government was asked to provide further information on this issue in the list of issues.

### Themes and issues

The delegation of Denmark was led by Mr Allan Rahbøl Jacobsen, Head of Human Rights Unit for the Ministry of Foreign Affairs, and consisted of a wide range of public officials. The most active members of the delegation were Mr Jens Færkel, Minister Counsellor from the Ministry of Foreign Affairs, Mr Kertilbjørn Hertz, Legal Advisor from the Ministry of Justice, Ms Vibeke Henriette Hauberg, Head of Division at Immigration and Integration Affairs under the Ministry of Refugees, Ms Trine Lund Niegel, Head of Section for Department of Gender Equality, and Ms Marianne Lykke Thomsen from the Department of Foreign Affairs of Greenland Home Rule. Also present was Ms Paolo Perotti, Head of Department at the Ministry of Ecclesiastical Affairs, Mr Jonas Barlyng from the Ministry of Refugees, and Ms Marianne Ulrik Mertens Special Advisor. First Secretary Lars Volck Madsen and Ms Sara Petrycher Hansen, Attaché from the Danish Permanent Mission in Geneva were also present.

The head of the delegation gave a brief opening statement emphasising that lasting peace, development and stability can only be achieved through human rights. He named particular issues of importance to Denmark, such as strengthening the monitoring of international human right obligations, actively fighting torture, promoting freedom of expression, the rights of indigenous peoples, and generally enhancing cooperation with civil society. Denmark also repeated its open invitation to visits from all UN special rapporteurs. Other issues highlighted were the newly implemented police and court reform in Denmark; the work on the new Constitution of the self-government of Greenland; and the work done on the legislative framework in Greenland.

After this opening statement the delegation spend the majority of the session reading out the replies to the list of issues.

### The Covenant in domestic law

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<sup>5</sup> CCPR/C/DNK/Q/5/Add.1, available at <http://www2.ohchr.org/english/bodies/hrc/hrcs94.htm>.

<sup>6</sup> INUIT CIRCUMPOLAR COUNCIL and Hingitaq-53.

<sup>7</sup> The NGO reports are available at [www2.ohchr.org/english/bodies/hrc/hrcs94.htm](http://www2.ohchr.org/english/bodies/hrc/hrcs94.htm).

The Committee asked the delegation to clarify the constitutional and legislative framework for implementation of the Covenant in the domestic law of Greenland and the Faroe islands. In the dialogue with the Committee the delegation elaborated further on this and explained that the legislation in the Faroe Islands is in compliance with the Covenant and that the Faroese Parliament is finalising its work on a constitution, on which it will hold a referendum in 2010. The legal system in Greenland is presently undergoing a review, and is being renewed and reformulated with the current structure in Denmark in mind. The Committee commended Denmark for the reform of the judicial system put into force in 2007 aimed at reducing the processing time of criminal and civil cases done in .With regard to the incorporation of the Covenant in domestic law, the delegation stated that there are no legal obstacles and the Covenant can be invoked in all cases. The State therefore does not deem it legally necessary to incorporate it specifically into the legislation. It was stated that the Convention has been invoked in Danish courts, although in fewer cases than the *European Convention on Human Rights*, which the delegation considered was because of more awareness of this Convention.

### **Freedom of religion**

The Committee questioned the relationship between Church and State in Denmark, particularly the fact that the Danish State church<sup>8</sup> enjoyed privileges like direct tax substitutes and a monopoly over all birth registration in the country. Mr Glèlè-Ahanhanzo was particularly interested in this issue and questioned not only the non-separation of State and Church in Denmark and noted that it is discriminatory because of how it forces people of different or non-faith to go to the State church for birth registration and additional burial costs for non-members of the State church. He also criticised the fact that the official State marriage certificate states whether the marriage was undertaken by the State church and asked if the national identification papers also listed a person's religion. The delegation answered that the national identification papers do not reflect people's religion and that according to the Danish High Court's ruling even though the registration of births is handled by a minister or sacristan of the State church the registration has a non-religious character and the informer does not, at the registration of births, come into contact with the Evangelical-Lutheran faith. Therefore, the delegation insisted that the State church serves a purely administrative function in birth registrations. With regard to financial support, the delegation claimed that all religions are treated equally and the State does not intend to change the current structure. The Committee urged the State to reconsider this view during the dialogue, and also in its concluding observations it asks the state to ensure freedom of religion or belief by reviewing its financial support to the State church and relay all administrative functions relating to civil registration and management of burial grounds to State authorities.

### **Treatment of detainees**

The Committee asked questions regarding to the conditions for prisoners, especially juvenile prisoners, and the use of pre-trial solitary confinement in general. The delegation explained that the State has very few cases of juveniles in prison as other facilities are provided for them. The Committee underlined the need for juveniles to always be kept separate from adult prisoners. The delegation explained that a facility is under construction for six juvenile prisoners, but in principle it cannot guarantee that juveniles will not be kept in ordinary prisons if the amount exceeds six people. Currently there is one juvenile person in prison in Denmark.

The Committee asked the delegation to clarify the use of pre- and post-trial solitary confinement. The delegation explained the details of the use of solitary confinement and how it is never used as a sanction on convicted prisoners but mostly as a pre-trial measure to protect the investigation. The delegation explained that the State had no intention of introducing a maximum limit for solitary confinement. This could sometimes stretch over a long period of time under current review by the courts. In the end, the Committee

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<sup>8</sup> *Folkekirken*, is a State church and the largest Christian Church in Denmark. It is a Lutheran body, officially supported by the government, and the Minister for Ecclesiastical Affairs is the highest administrative authority. Membership is voluntary

still expressed concern about the use of solitary confinement and in its concluding observations recommended that Denmark review its legislation in an effort to limit the time period.

### Aliens and asylum seekers

Several Committee members asked questions on the issue of non-refoulement and the use of diplomatic assurances when extraditing rejected asylum seekers or people who have been deemed a threat to the national security or. The Committee strongly advised against this practice. The delegation explained that it is looking into the hard law on the subject and that the Danish Government does not yet have an official stand on the issue. In its concluding observations the Committee urged the State to take the utmost care in relying on diplomatic assurances when extraditing foreign nationals.

The Committee had several questions regarding the detention limit for asylum seekers as Denmark has cases of illegal immigrants being detained for up to 2 years.<sup>9</sup> The delegation was asked for examples of detentions under terrorism legislation and why it is not possible to provide for trials in Denmark? The delegation answered that in the few examples of cases where terrorism legislation has been applied the intelligence information behind the allegations was of a nature that the protection of the national security prevented it from being disclosed in courts of law. After the session, however, this has again come under debate in Denmark and the State is again looking into the issue of giving the accused a trial in Denmark. Concerning setting a limit for detention of asylum seekers, the State agreed that this needs to be looked into and it is being worked on.<sup>10</sup>

### Other issues

The Committee commended Denmark for its efforts in combating **violence against women** in regard to prevention and awareness rising in the public, and among police officials and social workers. This extended to its efforts in Greenland in particular. The Committee raised concern about the lack of recognition of **minorities** in Denmark. The State adheres to the EU definition of minorities and as such the only officially recognised minority is the German national minority. In its concluding observations the Committee urged the State to acknowledge persons self-identification as belonging to minorities or indigenous groups and to make more of an effort to distribute information in minority languages. This led to another issue of **the difference between the Covenant and the European Convention on Human Rights**. Mr Lallah suggested that there be a structured analysis of the differences and similarities as this is often a matter of confusion for EU member States.

### Conclusions and next steps

In its final remarks the head of the delegation stressed Denmark's commitment to its human rights obligations. The Government viewed the task of creating a State report to the Committee as an opportunity to take stock and reflect on the implementation on its human rights obligations. The State welcomed the opportunity to discuss the issues and thanked the Committee for a very fruitful dialogue and many tough and thought-provoking questions. All though the Government could not promise to agree with all the issues the Committee mentioned, it promised to take it into serious consideration.

In its written concluding observations the Committee commended Denmark for its efforts to ensure equal treatment and combat racism, the measures taken to combat violence against women and the reform of the

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<sup>9</sup> A directive from the European Union (EU) sets the limit to 180 days. [www.europarl.europa.eu/news/expert/infopress\\_page/018-31787-168-06-25-902-20080616IPR31785-16-06-2008-2008-true/default\\_en.htm](http://www.europarl.europa.eu/news/expert/infopress_page/018-31787-168-06-25-902-20080616IPR31785-16-06-2008-2008-true/default_en.htm)

<sup>10</sup> The government set up a committee to look at the law on administrative extraditions. [//www.information.dk/157712](http://www.information.dk/157712)

judicial system aimed at reducing the processing time of criminal and civil cases. However, the Committee recommended that Denmark review its practice of pre-trial solitary confinement, rescind its reservations to the Covenant, and fully incorporate it into domestic law; strengthen efforts to promote the participation of women in high positions in the private sector and continue its efforts toward eliminating violence against women, ‘exercise the utmost care in relying on diplomatic assurances’; and review the legislation and administrative practice with regard to the State Church.

Denmark’s next periodic report is due by 31 October 2013.

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