
Advance Unedited Version

Human Rights Committee

117th session

20 June to 15 July 2016

Agenda item 5

Consideration of reports submitted by States parties under article 40 of the Covenant

Concluding observations on the sixth periodic report of Denmark

Draft prepared by the Committee*

1. The Committee considered the sixth periodic report of Denmark (CCPR/C/DKN/6) at its 3267th and 3268th meetings (CCPR/C/SR 3267 and 3268), held on 20 and 21 June 2016. At its 3293th meeting, held on 7 July 2016, it adopted the following concluding observations.

A. Introduction

2. The Committee commends the State party for having accepted the new optional procedure for submission of reports and for submitting its sixth periodic report in response to the list of issues prior to reporting (CCPR/C/DNK/Q//7). It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's high-level delegation. The Committee thanks the State party for the oral and written responses provided by the delegation.

B. Positive aspects

3. The Committee welcomes the following legislative and other measures taken by the State party since it submitted its previous report:

- (a) The entry into force of the Act on Greenland Self-Government, in 2009;
- (b) The adoption of Act No. 752 of 25 June 2014 concerning trans-persons seeking gender-identity recognition;
- (c) The adoption of a legislation on same-sex marriage in 2012 and extended to Greenland in April 2016;

* The present document is being issued without formal editing.

- (d) The adoption of amendments to the Criminal Code and the Military Criminal Code lifting the statute of limitations on violations committed by the use of torture, including attempts and complicity, in criminal cases;
- (e) The establishment of the Greenland Human Rights Council, in 2013;
- (f) The strengthening of the capacity of the Danish Institute for Human Rights in 2012 and the extension of its mandate to cover Greenland, in 2014;
- (g) The strengthening of the mandate of the Danish Equality Body on Gender, in 2011;
- (h) The setting up of the Independent Police Complaints Authority, in 2012;
- (i) The adoption of the Action Plan to Combat Trafficking in Human Beings 2015-2018
- (j) The National Strategy and Action Plan against Violence 2014-2017, adopted in Greenland, in 2013;
- (k) The Action Plan to Prevent Violence in permanent and Close Relationships, adopted in the Faroe Islands, in 2011.

4. The Committee welcomes the ratification of, or accession to, the following international instruments by the State party:

- (a) The Convention on the Rights of Persons with Disabilities and its Optional Protocol, on 24 July 2009 and 23 September 2014, respectively;
- (b) The Optional Protocol to the Convention on the Rights of the Child on a communications procedure, on 7 October 2015.

C. Principal matters of concern and recommendations

Incorporation of the Covenant in the domestic legal order

5. The Committee notes the position of the State party not to incorporate the Covenant in the domestic legal order, which results in a situation where the legislation may not be fully aligned with the Covenant (art. 2).

6. The Committee calls upon the State party to review its position and consider incorporating the provisions of the Covenant to give full effect to it in its domestic legislation. It should also pursue its efforts to raise awareness about the Covenant among judges, lawyers, prosecutors and public officials in order to ensure that its provisions can be invoked before, and given effect by domestic courts. The State party should also continue to raise awareness of its population on the provisions of the Covenant.

Reservations to the Covenant

7. While noting that the State party has narrowed its reservations to article 14, paragraph 5 of the Covenant, the Committee regrets that the State party maintains its reservations to articles 10, paragraphs 3, second sentence; 14, paragraphs 1, 5 and 7; and 20, paragraph 1, of the Covenant (art. 2).

8. The State party should continue to review the justifications for, and the necessity of maintaining, its reservations to the provisions of the Covenant with a view to withdrawing them.

Absence of a national human rights institution in Faroe Islands

9. The Committee is concerned at the absence of a national human rights institution to monitor the implementation of human rights in the Faroe Islands (art. 2).

10. The State party should ensure that a national human rights institution compliant with the Paris Principles is established in the Faroe Islands with a view to monitoring the implementation of human rights in the territory.

Committee's Views

11. While the Committee welcomes the fact that the State party has implemented the majority of the Committee's Views under the Optional Protocol, it notes that it has not yet implemented all recent Views adopted by the Committee, more especially in deportation cases. (art. 2).

12. The State party should give due consideration to recent Views adopted by the Committee under the first Optional Protocol so as to ensure access to an effective remedy in the event of a violation of the Covenant, in accordance with article 2, paragraph 3, more especially in deportation cases. It should also disseminate the Committee's Views widely.

Anti-discrimination legislation

13. The Committee is concerned that the State party's anti-discrimination legislation does not cover discrimination on all grounds set forth in the Covenant, thus preventing some individuals or groups from fully exercising their rights. In particular, the Committee is concerned that LGBT persons and persons with disabilities cannot report to, or lodge complaints before the Board of Equal Treatment in matters not related to the labour market. The Committee is further concerned at the lack of comprehensive anti-discrimination legislation in the Faroe Islands (arts. 2 and 26).

14. The State party should revise its anti-discrimination legislation to ensure that it covers all grounds set forth in the Covenant and all areas of life. The State party should also improve the accessibility of effective remedies against any form of discrimination, including by considering expanding the mandate of the Board of Equal Treatment to all forms of discrimination and to all groups and individuals, in particular LGBT persons and persons with disabilities, for matters not related to the labour market. The State party should expand the anti-discrimination legislation in the Faroe Islands.

Gender equality

15. While noting measures taken by the State party to improve gender equality, the Committee remains concerned at the underrepresentation of women in political and public life, in particular in locally elected and executive bodies, including in Greenland and in the Faroe Islands. The Committee is also concerned that, despite the adoption of new rules governing gender representation on company boards of the largest limited liability companies and State-owned companies, the representation of women in management and boards remains low (arts. 2, 3 and 26).

16. The State party should step up its efforts with a view to promoting equal access of women and men in public and political life at all levels, in particular in locally elected and executive bodies in Greenland and the Faroe Islands. It should also ensure gender equality on the boards of the largest limited liability companies and State-owned companies.

17. The Committee is concerned about the persistence of a gender wage gap in the State party, which mostly affects women with an immigration background. The Committee is

also concerned about obstacles faced by women in accessing full-time employment, which negatively results in lowering their wages, including in Greenland and in the Faroe Islands. The Committee regrets the lack of information on concrete measures to overcome the gender wage gap and their results (art. 2, 3 and 26).

18. The State party should continue its efforts to promote women's equal access to full-time employment in all parts of its territory and to eliminate the gender wage gap and address differences in pay between men and women for work of equal value. It should pay particular attention to the situation of women with an immigration background.

Domestic violence

19. While noting the various action plans adopted and implemented to combat domestic violence, in particular violence against women, as well as the amendments to the Criminal Code on sexual crimes adopted by the State party, the Committee remains concerned that a high number of women continue to experience violence in the State party. The Committee regrets the lack of statistical data relating to complaints received on domestic violence, investigations, prosecutions and sanctions against perpetrators including in Greenland and the Faroe Islands. The Committee is also concerned about information on inconsistencies in the application of the legislation against domestic violence in different police districts (arts. 3, 7 and 26).

20. The State party should continue its efforts to effectively combat domestic violence, in particular violence against women, by ensuring effective reporting on acts of domestic violence, investigations, prosecutions and sanctions of perpetrators. The State party should ensure that guidelines on the application of its legislation are enforced by all police districts in a uniform manner. The State party should continue to provide training to all professionals involved in preventing and combatting domestic violence.

Prohibition of torture

21. While noting the position of the State party as well as the incorporation of the definition of torture in Section 157a of the Criminal Code and Section 27A of the Military Criminal Code, the Committee notes that the State party has not enacted torture as a separate offence in its Criminal Code, but continues to qualify it as an aggravating circumstance for the determination of a sentence (art. 7).

22. The State party should consider reviewing its position and enacting torture as a distinct offence in its Criminal Code, in order to ensure a stronger prevention from, protection against and prosecution of torture.

Solitary confinement

23. While noting efforts to reduce recourse to solitary confinement during pre-trial detention, including the amendments to the Administration of Justice Act by the Act No. 1561 of 20 December 2006, the Committee is concerned at the possible placement of remand detainees in solitary confinement for up to eight weeks for adults if the charges can lead to imprisonment for more than 6 years, and four weeks for minors. The Committee is also concerned at the use of solitary confinement as a disciplinary measure for convicts, which may be enforced for a continued period of up to 28 days (art. 7, 9 and 10).

24. The State party should bring its legislation and practice on solitary confinement in line with international standards as reflected in the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), by abolishing solitary confinement of minors and reducing the total length of permissible solitary confinement for remand detainees even if it is used as a measure

of last resort. The State party should regularly evaluate the effects of solitary confinement in order to continue to reduce it and to develop alternative measures where necessary.

Coercive measures in psychiatric institutions

25. The Committee notes the State party's efforts to reduce the recourse to coercive measures in psychiatric institutions, in particular through the Consolidated Act No. 1106 of 29 September 2015 on the use of coercion in psychiatry. However, it remains concerned at the recourse to such measures, often accompanied by immobilization of patients, for more than 48 hours, despite the law stipulating that it should be applied only as a measure of a last resort (art. 7, 9 and 10).

26. The State party should step up its efforts to reduce the recourse to coercive measures in psychiatric institutions, in particular by effectively applying the legal regime set up under the Consolidated Act No. 1106 of 29 September 2015 on the use of coercion in psychiatry and making sure that coercive measures are necessary and proportionate, and are only used as a measure of last resort. The State party should also develop alternatives to coercive measures and ensure that recourse to immobilization measures that last more than 48 hours are closely monitored. The State party should make all efforts to ensure that every mental health patient is fully informed about the treatment to be prescribed, and given the opportunity to refuse treatment or any other medical intervention.

Counterterrorism and surveillance activities

27. The Committee is concerned that the application of some of the measures to combat terrorism may infringe the rights set forth in the Covenant. In particular, the Committee is concerned about: a) the use, in article 114 of the Criminal Code, of vague terms criminalizing and defining actions constituting acts of terrorism; b) section 780 of the Administration of Justice Act which allows interception of communication by the police domestically and which may result in mass surveillance, despite legal guarantees provided in section 781 and 783 of the same Act; and c) the possibility of revoking the citizenship of persons with double nationality (arts. 2, 9, 13, 17 and 26).

28. The State party should pursue its plans to review comprehensively counterterrorism legislation and ensure that it is in full conformity with the State party's obligations under the Covenant. The State party should also clearly define the acts that constitute terrorism in order to avoid abuses. The State party should further ensure that the application of such legislation is compliant with the Covenant and that the principles of necessity, proportionality and non-discrimination are strictly observed. It should establish a clear procedure that enables persons who may be expelled under national security grounds to be promptly informed to allow them to have their case reviewed by the competent authority, and ensure that their rights are fully protected, including with the legal assistance of counsel.

Trafficking

29. While welcoming legislative, institutional and other measures adopted to combat trafficking in human beings, in particular the National Plan to Combat Human Trafficking 2015-2018, the Committee is concerned that trafficking in human beings, including for sexual exploitation, continues to be a problem (art. 8)

30. The State party should strengthen its efforts to effectively prevent and combat trafficking in persons, including for purposes of sexual exploitation, inter alia, by:

(a) monitoring the impact of the application of its legislation on the fight against trafficking, and strengthening its cooperation with neighbouring countries;

(b) ensuring that cases of trafficking are promptly and thoroughly investigated, that perpetrators are brought to justice and that victims continue to have access to effective means of protection and assistance services as well as remedies for full reparation, including rehabilitation and adequate compensation. The State party should consider revising conditions of granting residence permits to victims of trafficking.

Rights of aliens, including migrants, refugees and asylum seekers

31. While acknowledging that a large number of migrants have arrived in the territory of the State party, the challenges thereof and the great efforts made by the State party to accommodate their needs as well as the high number of asylum applications granted, the Committee is concerned that some measures to address the influx of migrants may infringe the rights protected under the Covenant. The Committee is particularly concerned about: a) the fact that the 2011 amendment to the Aliens Act sets out the duration of detention of migrants awaiting deportation to an initial period of 6 months which may be extended by a further 12 months under certain conditions which may be excessive; b) reports of unsatisfactory detention conditions of migrants, including asylum-seekers in the detention facility of Vridsløselille in the Albertslund municipality; c) the amendment to the Aliens Act adopted in November 2015, which allows the temporary suspension of legal fundamental safeguards in situations of a high influx of migrants qualified as “special circumstances”; d) the amendment to the Aliens Act adopted in 2016 which introduces the possibility of confiscating asylum seekers’ assets in order to compensate for the costs of their reception without adequate safeguards (arts. 6, 7, 9 and 13).

32. The State party should, while taking measures to control immigration, ensure their full compliance with the rights of migrants, including asylum seekers as protected under the Covenant. In particular, the State party should:

(a) Ensure that its policies and practices related to the return and expulsion of migrants and asylum seekers afford sufficient guarantees of respect for the principle of non-refoulement under the Covenant;

(b) The State party should ensure that the detention of migrants and asylum seekers is reasonable, necessary and proportionate in the light of the circumstances in line with the Committee’s General Comment No. 35 (2014) on liberty and security of person, and that alternatives to detention are resorted to, in practice.

(c) Consider reducing the length of detention for migrants and asylum-seekers who are awaiting deportation and improve the detention conditions of such persons, in particular at the detention facility of Vridsløselille;

(d) Repeal the amendment introduced in the Aliens Act in November 2015 in order to ensure that, in all cases of detention of migrants, they have full access to legal fundamental safeguards in particular to judicial review of the legality of their detention;

(e) Repeal the amendment to the Aliens Act relating to the confiscation of asylum seekers’ assets.

33. The Committee is concerned at reports that Danish immigration authorities do not often request medical examination of asylum seekers alleging that they have undergone torture in their country of origin in order to ascertain the veracity of their allegations (art. 7).

34. The State party should, in all appropriate cases order a specialised medical examination as early as possible in the asylum procedure, in order to determine whether an asylum seeker claiming that he has undergone torture in his country of origin has in fact been tortured.

Family reunification

35. The Committee is concerned at the amendment to the Aliens Act adopted by the Parliament in January 2016, which introduces restrictions for family reunification of persons under temporary protection status by requiring a residence permit for more than the last 3 years, unless warranted by Denmark's international obligations. (art. 23).

36. The State party should consider reducing the duration of residence required of persons under temporary protection status, to obtain family reunification, in compliance with the Covenant.

Discrimination on the basis of religion

37. While noting information provided, the Committee remains concerned at the differential treatment by the State party that exists between the Evangelical Lutheran Church and other religious communities. The Committee notes that the Evangelical Lutheran Church is authorized, inter alia, to register births and to perform legally binding marriages according to the Danish Act of Marriage, without conditions (art. 2 and 26).

38. The State party should take appropriate measures to ensure non-discriminatory treatment of all religious communities within its territory.

D. Dissemination of information relating to the Covenant

39. The State party should widely disseminate the Covenant, the two Optional Protocols to the Covenant, its seventh periodic report and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and non-governmental organizations and the general public. The State party should ensure that the report and the present concluding observations are translated into its official language.

40. Pursuant to rule 71, paragraph 5, of the rules of procedure of the Committee, the State party should provide, within one year, relevant information on the implementation of the recommendations made by the Committee in paragraphs 20 on domestic violence, 24 on solitary confinement and 32 on the rights of aliens, including migrants, refugees and asylum seekers above.

41. The Committee requests the State party to submit its next periodic report by 15 July 2021 and to include in that report specific up-to-date information on the implementation of the recommendations made in the present concluding observations. The Committee also requests the State party, in preparing the report, to broadly consult civil society and non-governmental organizations.

42. Given that the State party has accepted the simplified reporting procedure, the Committee will transmit to it a list of issues prior to the submission of the report in due course, and its replies to it will constitute the eighth periodic report of the State party. The word limit for the report is 21,200 words, in accordance with General Assembly resolution 68/268.