



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

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Consideration of reports submitted by States parties under article 9 of the Convention

Concluding observations of the Committee on the Elimination of Racial Discrimination

Denmark

1. The Committee considered the eighteenth and nineteenth periodic reports of Denmark (CERD/C/DNK/18-19), submitted in one document, at its 2034th and 2035th meetings (CERD/C/SR.2034 and CERD/C/SR.2035), held on 17 and 18 August 2010. At its 2047th meeting (CERD/C/SR 2047), held on 26 August 2010, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the combined eighteenth and nineteenth periodic reports of the State party, which included responses to the concerns raised in the Committee's previous concluding observations (CERD/DEN/CO/17), and the opportunity thus offered to resume the dialogue with the State party. It commends the State party for its punctuality and consistency in the submission of periodic reports since it became a party to the Convention, and the quality of the reports, which are in strict conformity with the Committee's guidelines. It also expresses appreciation for the frank and sincere dialogue held with the delegation as well as the oral responses provided to the list of themes and the wide range of questions posed by the Committee members. On this point, the Committee wishes to acknowledge the gender balance in the composition of the delegation and notes with appreciation the inclusion in the delegation of a representative from the Government of Greenland following the recent referendum that led to self-government of the Greenlandic people.

3. The Committee notes with appreciation the input to its proceedings by the Danish Institute for Human Rights (DIHR) and various non-governmental organizations (NGOs).

B. Positive aspects

4. The Committee welcomes the establishment of a Division for Democratic Cohesion and Prevention of Radicalization under the Ministry of Refugee, Immigration and Integration Affairs which is mandated to coordinate the implementation of the initiatives of the action plan titled A Common and Safe Future, for the prevention of radicalization and extremist views among young people.
5. The Committee welcomes the publication of the Action Plan on Ethnic Equal Treatment and Respect for the Individual in July 2010, which is a revision of the Action Plan to Promote Equal Treatment and Diversity and Combat Racism of 2003. The Committee notes that the revised action plan will entail a multi-faceted effort in combating racial discrimination, promoting diversity and equal opportunities.
6. The Committee also welcomes the publication of a guide based on the Act on Prohibition of Discrimination on the Labour Market, which seeks to help organizations, employers, employees and others to understand the rules of the labour market in this field.
7. The Committee notes with appreciation that the State party consulted with civil society organizations working in the area of human rights protection in connection with the preparation of its periodic report.

C. Concerns and recommendations

8. The Committee notes with regret that notwithstanding its previous concluding observations recommending the incorporation of the International Convention on the Elimination of All Forms of Racial Discrimination, the State party finds it unnecessary to do so because, arguably, the Convention is already a source of law in Danish courts. However, the non-incorporation of international treaties results in reluctance by lawyers and judges to invoke such treaties in Danish courts. (art. 2)

The Committee reiterates its position that the State party should incorporate the Convention into its legal system to ensure its direct application before Danish Courts in order to afford all individuals its full protection.

9. The Committee, while taking note of the State party's efforts to encourage reporting of hate crimes through the preparation of guidelines on the handling of cases under section 266 B of the Criminal Code, is concerned at the broad powers of the Director of Public Prosecutions to stop investigations, withdraw charges or discontinue cases, and at the large number of cases that have been discontinued by the Director of Public Prosecutions, which would discourage reporting by victims. The Committee is also concerned at the current proposals by various politicians to repeal section 266 B, but welcomes the assurances by the State party that the provision will not be repealed. In addition, the Committee is concerned at the large number of complaints it receives under its communications procedure provided for under article 14 of the Convention, mainly in relation to hate crimes (arts. 4 (a) and (6))

The Committee recommends that the State party should limit the powers of the Director of Public Prosecutions by establishing an independent and multicultural oversight body to assess and oversee the decisions taken by the Director of Public Prosecutions with regard to cases under section 266 B of the Criminal Code to ensure that discontinuance of cases does not discourage victims from lodging complaints or promote impunity for perpetrators of hate crimes. In line with its general recommendation No. 31 (2005), the Committee urges the State party to resist calls to repeal section 266 B, which would compromise the efforts and gains that the State party has made in combating racial discrimination and hate crimes.

10. The Committee regrets that the State party has neither provided satisfactory data on the numbers and legal status of the Roma generally nor accounted for the Roma from other European Union (EU) countries who settled in the State party during the post-1990 period (arts. 2 and 5).

The Committee recommends that the State party take appropriate measures to establish the numbers and legal status of the Roma in the country. The State party should also provide shelter to the Roma and Travellers in the country, afford them full protection from discrimination, racial profiling, hate crimes, and facilitate their access to public services.

11. The Committee notes with concern that applicants to the police service from ethnic backgrounds other than Danish fail the police recruitment test in disproportionate numbers, and also account for the high drop-out rates from police colleges. The Committee is also concerned at the higher rates of unemployment among immigrants and their descendants from countries outside the EU, North America and the Nordic countries (arts. 2, 5 and 6)

The Committee urges the State party to adopt specific measures to establish the main reasons why applicants from ethnic backgrounds other than Danish fail the police recruitment test and drop out of police colleges. The State party should strengthen its efforts in promoting people from ethnic backgrounds other than Danish to serve as police officers in order to achieve a racially balanced police service. The State party must also strengthen its efforts to remove all impediments for migrants in the labour market such as racial prejudices and stereotypes, by promoting a change of mindset amongst employers through awareness-raising campaigns.

12. The Committee notes the recent amendments to the Aliens Act, which introduce a new 100-point system for obtaining a permanent residence permit, aimed, on the one hand, at establishing a direct link between integration and obtaining a residence permit, and, on the other, at encouraging migrants to make an effort to obtain a residence permit. The Committee, however, regrets that this points-based system introduces onerous and stringent requirements that would virtually exclude beneficiaries of international protection (arts. 2, 5 and 6).

The Committee recommends that the State party take specific measures to assess the implementation of this new system to ensure that it does not exclude applicants on the basis of poverty, dependence on State resources, level of education, failure to penetrate the labour market and passing the Danish language test. Furthermore, the State party must ensure that the new system does not exclude beneficiaries of international protection who due to age, trauma or other vulnerabilities do not meet the criteria and therefore cannot complete the integration targets set out in the law.

13. The Committee notes with concern the legal requirement that foreign women who are victims of domestic violence must have lived continuously in the State party for at least

two (2) years before cessation of cohabitation due to their spouse's abuse in order to be eligible for a permanent residence permit (art. 5(b)).

The Committee recommends that the State party take measures to continuously and closely monitor the application of this legal requirement to ensure that women who are victims of domestic violence are not forced to cohabit with their abusive spouses so that they can complete the two (2) year eligibility period for a residence permit. The State party should adopt concrete measures to promote other options for eligibility for a residence permit after cessation of cohabitation for women who fall short of the two (2) year requirement.

14. The Committee reiterates its concern at the restrictive conditions under Danish law with regard to family reunification. This relates to the requirements that both spouses must have attained the age of 24, and that their aggregate ties with Denmark must be stronger than their ties with any other country unless the spouse living in Denmark has been a Danish national or has been residing in Denmark for more than 28 years. The Committee reiterates its concern that this may lead to a situation where persons belonging to ethnic and national backgrounds other than Danish are discriminated against in the enjoyment of their right to family life, marriage and choice of spouse (art. 5 (d)(iv))

The Committee urges the State party to adopt concrete measures to assess the racial impact of this legislation on the enjoyment of the right to family life, marriage and choice of spouse. Furthermore, the study must assess whether this law unduly restricts entry into marriage and whether this limitation on the rights affected outweighs the mischief it seeks to prevent, namely forced and early marriages. The State party should also evaluate whether this requirement unduly restricts those people who satisfy the minimum age requirement for contracting a lawful marriage in Denmark.

15. The Committee, while it appreciates that the State party's objective under the "anti-ghettoization" law is to prevent marginalized groupings and not ethnic groupings, it regrets the lack of data on the impact that the implementation of this law has on the affected people's rights to freedom of residence, the practice of their culture and preservation of their cultural identities (arts. 5 (d) (i) and (e) (iii) and (vi))

The Committee recommends that the State party assess the impact that the implementation of the anti-ghettoization law has on the rights of various ethnic groups to practise their culture, and ensure that it does not have an assimilationist effect that leads to the loss of cultural identities by those affected by this law.

16. The Committee, while noting that the government has conferred autonomy and discretion on municipalities and private institutions with regard to offering mother-tongue tuition, it regrets that it has failed to provide general policy direction on this matter to municipalities and other actors in the field. The Committee notes that mother-tongue teaching is only offered to children from EU and European Economic Area (EEA) countries and those from Faroes and Greenland in order to maintain their language proficiency should they subsequently return to these places. However, there is no explanation as to why people of other ethnic groups that seek to benefit from mother-tongue tuition have not been included in the programme (art. 5 (e) (v) and (vi))

The Committee recommends that the State party provide a general educational policy on this matter to cover all groups and take appropriate measures to assess whether people of other ethnic groups require mother-tongue teaching and that this be extended to their children who can then benefit on an equal footing with children from the EU, EEA countries, Faroes and Greenland.

17. The Committee reiterates its concern with regard to the decision of the Supreme Court handed down on 28 November 2003 relating to the Thule Tribe of Greenland. The decision failed to follow established international norms in the conceptualization of indigenous peoples. As a result, the Supreme Court rendered a decision which found that the Thule Tribe are not a distinct indigenous people notwithstanding their own perception as such. The Committee further notes the case of Greenlandic people considered to be “legally fatherless” because they were born out of wedlock to Danish men who were in Greenland in the 1950s and 1960s. This status has an impact on matters of family law, land ownership and inheritance (art. 5 (d) (vi))

The Committee reiterates that, pursuant to its general recommendation No. 8 (1990) and other United Nations instruments, the State party is urged to pay particular attention to self-identification as a critical factor in the identification and conceptualization of a people as indigenous. The Committee therefore recommends that, notwithstanding the decision of the Supreme Court, the State party adopt measures to ensure that self-identification is the primary means for determining whether a people are indigenous or not. In this regard, the Committee recommends that the State party adopt concrete measures to ensure that the status of the Thule Tribe reflects established international norms on indigenous peoples’ identification.

The Committee urges the State party to take measures to address the problems faced by the legally fatherless who, by virtue of having been born out of wedlock, are negatively affected by various laws including the laws governing family life, land ownership and inheritance.

18. The Committee, while welcoming the establishment of the Board of Equal Treatment to consider complaints alleging discrimination in all fields, notes that the prescribed procedure is very impersonal in that individuals can only lodge complaints in writing, including through letters and do not have to appear in person. The Committee further notes that the Board is not in a position to obtain evidence such as explanations or testimonies by the parties concerned, and that the secretariat of the Board can dismiss complaints found to be unsuitable for consideration by the Board (art. 6).

The Committee recommends that the State party strengthen the Board’s complaint-lodging procedure to enable complainants to provide oral testimony, which will also assist the panel of the Board to assess and appreciate the demeanour of the parties to the complaint. The Committee urges the State party to revise the procedure of the Board to ensure that the Secretariat does not usurp the powers of the Board by rejecting complaints before they are considered by the panel.

19. The Committee notes with concern the lack of data on the ethnic composition of prison populations which would assist it in understanding the nature of crimes perpetrated by various ethnic groups or nationals.

The Committee recalls its general recommendation No. 31 and urges the State party to compile data disaggregated by nationality and/or ethnic origin and nature of the offence for all prisons in the State party.

20. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not

yet ratified, in particular treaties whose provisions have a direct bearing on the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).

21. In light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

22. The Committee recommends that the State party continue consulting and expanding its dialogue with civil society organizations working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report.

23. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111 of 16 December 1992. In this connection, the Committee cites General Assembly resolution 61/148 and 63/243, in which the Assembly General strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

24. The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.

25. Noting that the State Party submitted its core document in 1995, the Committee encourages the State Party to submit an updated version in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3).

26. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 13, 15, 18 and 19 above.

27. The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 8, 9, 10, and 11, and request the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

28. The Committee recommends that the State party submit its 20th and 21st periodic reports in a single document, due on 8th January, 2013, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60-80 pages for the common core document (see harmonized guidelines for reporting contained in document HRI/GEN.2/Rev.6, para. 19).