

Submission by the Danish Institute for Human Rights to the Universal Periodic Review of Denmark 2nd May 2011, 11th session of the Working Group under the UN Human Rights Council.

THE NORMATIVE AND INSTITUTIONAL HUMAN RIGHTS FRAMEWORK OF DENMARK

1. The Danish Institute for Human Rights (DIHR) welcomes the opportunity to contribute to the Universal Periodic Review (UPR) process on Denmark. DIHR is an independent public body appointed as National Human Rights Institution (NHRI) of Denmark and is accredited with A-status in accordance with the UN Paris Principles. DIHR carries two EU mandates as Specialised Equality Body on Race or Ethnic Origin and Gender¹ and monitors the Danish implementation of the Convention on Rights of Persons with Disabilities.² DIHR is supporting the Danish government in carrying out public hearings as a part of the preparation of the Danish national report to the UPR as well as civil society in their development of stakeholder reports.
2. DIHR focuses in the following on the human rights framework of Denmark and highlights areas where the DIHR recommends improvements of the Danish human rights framework. The report contains five sections focusing on Policy, Regulation, Implementation, Monitoring and Evaluation.

1. Policy

3. Denmark is an active participant in the international human rights system and generally maintains high human rights standards. Denmark has ratified most core UN human rights instruments, systematically reports to the UN treaty bodies, and has extended a standing invitation to UN Special Procedures.
4. Hearings by DIHR shows that several Danish public authorities and private actors work with human rights promotion and protection, as for instance The Parliamentary Ombudsman, The Danish data Protection Agency, The National Council for Children, The Board of Equal Treatment, The Danish Bar and Law Society and several ministries and other key stakeholders.
5. Denmark also has a wide range of nongovernmental organisations working with the promotion of human rights within specific areas. Denmark, however, lacks a national action plan for human rights and thus does not have a systematic approach to the promotion and protection of human rights or the implementation of recommendations from UN monitoring bodies.

DIHR recommends that a national action plan for human rights be developed and implemented.

2. Regulation

2.1 Ratification, reservations and incorporation of human rights instruments

6. DIHR finds it important that Denmark maintains the role as a leading human rights actor by actively supporting all core international human rights instruments. Denmark has however not ratified:
 - The International Convention for the Protection of All Persons from Enforced Disappearance,

¹ Specialized Equality Body on Gender: The act is not yet adopted by Parliament as of November 2010.

² Monitoring mandate on the implementation of the Convention on Rights of Persons with Disabilities: The decision is not yet adopted by Parliament as of November 2010.

- The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, and
 - Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which concerns a general prohibition of discrimination.
7. Furthermore, Denmark has not accepted the right of individual communications in respect of:
- The Optional Protocol to the Convention on the Rights of Persons with Disabilities
 - The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.
8. ECHR is the only international human rights convention which is both ratified and incorporated into Danish law. None of the UN core human rights conventions ratified by Denmark have been incorporated. International obligations are often fulfilled through amendments to the existing legislation but incorporation makes the conventions themselves a part of Danish law thus ensuring full implementation.

DIHR recommends that Denmark ratifies and incorporates all core regional and international human rights treaties and protocols, recognises the competence of the committees to receive and consider individual communications where available and that Denmark works to lift its existing reservations to ratified core conventions. The same steps should be taken in Greenland and The Faroe Island in cooperation with their governments and legislatures.

2.2. Constitutional revision and legislative process

9. The constitution of Denmark was adopted in 1849 and has only been amended a few times since it was passed, namely in 1866, 1915 and 1953. The Constitution contains a catalogue of human rights which guarantees freedom of religion, personal liberty, protection of the home, right to property, equal access to trade, guarantee of work, free education in primary schools and freedom of expression, assembly and association. The level of protection of fundamental freedoms in the constitution is not adequate seen in the light of the development of modern international human rights standards. The result is that the constitution rarely is applied by Danish authorities and that a lack of domestic ownership dominates the notion of human rights and fundamental freedoms.
10. The status of non-incorporated human rights conventions in Danish law is uncertain and has often been debated among Danish constitutional scholars. The constitution gives no clear guidance and there is a lack of case law from Danish courts concerning this issue.
11. Cases concerning violations of the constitution can be tried by the Danish courts but they have traditionally been very reluctant to declare a passed bill unconstitutional. Only in one case in 1999 has a Danish act been declared unconstitutional. The Danish Constitution allows for subsequent judicial review by the courts, but does not allow prior judicial review of acts adopted by parliament.
12. The Danish legislative process involves a broad hearing process where relevant public and private organisations are in general given sufficient time to comment on draft legislation. There is however a growing tendency to shorten the hearing period thus undermining the system of human rights reviews prior to adopting legislation, by way of conducting public hearings.

DIHR recommends that a revision of the Danish constitution be carried out. As a part of the revision the catalogue of human rights should be updated, the status of ratified but non-incorporated

human rights conventions be defined. In addition, adequate time should be given for preparing comments to draft legislation in order to secure thorough review of bills presented to Parliament.

2.3. Non-discrimination reform

13. The Danish legislation prohibiting discrimination consists of several acts which offer different degrees of protection depending on the discrimination ground in question. The result is insufficient protection against discrimination targeted at certain groups, an unequal approach to combating discrimination, a complex legal basis for practitioners of law to apply and lack of predictability for ordinary citizens.
14. For example, it is both illegal and criminalised for restaurants to refuse admittance based on the ethnic origin of a person. It is however not a violation of Danish law to refuse admittance because of a person's disability or age since these two discrimination grounds are not protected outside the labour market. Furthermore discrimination of homosexuals within commercial or non-profit services is criminalised, but homosexuals are unable to bring such a complaint to the Board of Equal Treatment which is an administrative organ dealing with discrimination cases.

DIHR recommends that the Danish legislation on discrimination be revised and compiled into one act on equal treatment which is transparent and covers all discrimination grounds and areas of society.

3. Implementation

3.1 Human Rights and Business

15. The Danish government issued an action plan on Corporate Social Responsibility (CSR) in 2008. Furthermore a bill was adopted in 2008 which obliges the 1100 largest corporations in Denmark to report on their CSR policies and initiatives or, where they do not have a CSR policy, to report this. In 2009 a CSR Council was established by the Minister of Economic and Business Affairs.
16. Denmark has established a National Contact Point (NCP) in accordance with the OECD Guidelines for Multinational Enterprises, to promote the OECD Guidelines and handle complaints of non-conformance by companies, located under the Ministry of Employment. The NCP is inadequately resourced, has a low public profile, and has not been efficient in handling cases. Of three cases received, two were never initiated and the third concluded without the NCP either reaching a settlement or making a decision on compliance with the Guidelines.
17. The UN Special Representative on human rights and transnational corporations and other business enterprises has recommended that non-judicial grievance mechanisms for corporate human rights abuses should be legitimate, accessible, predictable, equitable, rights-compatible and transparent. OECD Watch has recommended that NCPs should possess fact-finding capacities to conduct impartial assessments of complaints, be able to impose sanctions against companies found in breach of the OECD Guidelines, and be subject to parliamentary scrutiny and an appeals mechanism.
18. A national complaints mechanism should apply to all third countries and be aligned with the normative and procedural guidelines of the UN Special Representative and the recommendations of OECD Watch. The complaints mechanism should be able to define good practice for multinational enterprises and criticize non-conformity with this standard. Case-handling by the complaints mechanism should always be subsidiary to effective case-handling in the country in question.

DIHR recommends that Denmark review the function of the OECD National Contact Point and establish an effective, independent and properly-resourced mechanism for dealing with complaints concerning actions in third countries by multinational corporations headquartered in Denmark.

3.2 The use of international instruments and jurisprudence in Danish court judgments

19. International human rights instruments ratified by Denmark are enforceable at national courts. Case law however shows a reluctance to include human rights instruments in Danish judgments even if a case party bases an argument on human rights. Most often the court decides the case in accordance with Danish law and merely concludes that the human rights instrument would lead to no other result. Individuals bringing a human rights claim hence often experience that human rights are not in reality being considered in the outcome of the case. In cases where human rights are taken into account, the court most often refers to the ECHR which has been incorporated. UN human rights treaties are rarely applied by courts.
20. The hearing of independent institutions carried out by DIHR further shows that the state-mandated institutions working in fields related to human rights would benefit from further education on human rights in order to ensure that human rights aspects of their work are sufficiently covered.

DIHR recommends that measures are adopted to enhance the use of human rights instruments in Danish court decisions, e.g. through increased human rights education and training of judges and lawyers and staff at relevant public institutions.

4. Monitoring

4.1 Access to case law

21. Monitoring case law of Danish courts is severely hindered due to lack of free public access to case law. All Judgments from the Supreme Court and selected cases from the High Courts and City Courts are posted on the internet. Cases not posted can be obtained by paying a fee. Case law in the Court systems is however sorted without reference to the legislation applied. A complete list of case law concerning specific legislation is not available through public registers. It is possible to subscribe to a private database which contains all Supreme Court cases and selected High Court cases. City Court cases are only rarely published

DIHR recommends that all case law from Danish courts and administrative organs is made publicly available on the internet through an online and free database. The database should enable efficient monitoring of the case law.

4.2 Systematic national monitoring

22. Hearings carried out by DIHR show that a number of institutions are engaged in human rights monitoring. There is however no systematised data on the human rights situation in Denmark, which makes it difficult to carry out human rights monitoring for public authorities as well as civil society actors. Strengthening data collection would contribute to improving the advice with regards to policy, regulation and implementation as well as the basis for monitoring and evaluation.
23. The Danish Data Protection Agency, which is an independent public authority, is by law entitled to receive any information of importance to its activities. DIHR does not possess a special legal guaranteed right to receive human rights information apart from the provision in the UN Paris

Principles. The role of DIHR as a NHRI would be strengthened if DIHR were given access to receive all information of relevance to effective human rights monitoring.

DIHR recommends that systematic monitoring of human rights be carried out by Danish authorities on basis of a mapping of current monitoring initiatives. The monitoring should include relevant administrative decisions as well as statistical material. Furthermore DIHR's mandate to undertake effective human rights monitoring as a NHRI should be clarified.

4.3 NHRI – adequate funding and independence

24. In 2007 DIHR was reaccredited pursuant to the UN Paris Principles. The Sub-committee on accreditation under the International Coordinating Committee of National Human Rights Institutions stressed the importance of ensuring adequate funding in a sustainable manner to address core domestic responsibilities and activities. Since then, the DIHR core mandate as NHRI has been further cut, based on the development of salaries and consumer prices, by 11 Percentage points. This development should be seen in the light of a cut since 2004 by 26 percentage points. In 2011, DIHR will receive additional funding to exercise its extended mandate in the field of gender and disability discrimination. This development is positive, but the new funding is earmarked and the core function of DIHR as Denmark's NHRI is affected significantly by yearly budget cuts.
25. The independence of DIHR remains a concern. The current Danish Institute for Human Rights was established in 2002 as the former Danish Centre for Human Rights was reorganised following criticism by Parliament. DIHR has several times experienced that debates following DIHR criticism of the human rights situation in Denmark result in inappropriate verbal attacks on DIHR and its independence.

DIHR recommends that adequate funding be provided specifically targeted at strengthening the monitoring and advisory role of DIHR as a NHRI in accordance with the UN Paris Principles and that the independence of DIHR is at all times respected.

5. Evaluation

26. No systematic and public evaluation of human rights is carried out in Denmark. No public evaluation is carried out when UN treaty bodies and special procedures give recommendations or when international bodies make decisions concerning human rights which may be of relevance to Denmark. Furthermore Denmark has no governmental focal point ensuring systematic and coordinated implementation of human rights obligations. It is therefore the task of the individual ministries to implement human rights obligations within their field.

DIHR recommends that domestic human rights indicators be developed and an annual human rights evaluation be carried out in the Parliament in which the government explains measures planned to be imposed in order to improve compliance with international recommendations and decisions of relevance to Denmark. The evaluation can feed into a human rights national action plan. DIHR can act as secretariat to the process and promote annual national human rights dialogues.