



**MINISTRY OF FOREIGN AFFAIRS
OF DENMARK**

Response by the Government of the Kingdom of Denmark to communication of the Special Rapporteur on extrajudicial, summary or arbitrary executions, reference AL DNK 3/2019

In response to the communication, the Danish Government has the honour to provide the following information.

The Danish Government is of the opinion that foreign terrorist fighters should be prosecuted where they have committed their crimes. The Danish Government would welcome options for local prosecution that respect the fundamental principles concerning legal guarantees and death penalty. It is a longstanding policy of Danish Governments to oppose the death penalty in all circumstances as a matter of principle. The Danish Government and the EU both raise this issue regularly in bilateral as well as in multilateral discussions.

1. Please provide any information and/or comment(s) you may have on the above-mentioned allegations.

At the outset, the Danish Government wishes to reiterate its principled legal position that a State Party's obligations under the International Covenant on Civil and Political Rights is limited through Article 2 to "individuals within its territory and subject to its jurisdiction". The Danish Government notes that individuals situated in third countries in e.g. refugee camps or held in detention in general do not fall under the jurisdiction of Denmark in the sense of ICCPR article 2.

Also, the Danish Government notes that consular assistance under the Vienna Convention on Consular Relations (VCCR) is a right of the sending State under international law, and not a duty under international law towards its own nationals. It falls under the discretion of a State whether it wishes to extend consular services to its own nationals.

2. Please provide detailed information on the legislation reportedly adopted by Denmark allowing for the stripping of the Danish nationality in cases of dual-citizens accused of having joined armed groups in Syria or Iraq. Please explain how is that consistent with Denmark's international obligations, particularly in terms of respect for the right to life and the principle of non-discrimination.

Please see the attached Appendix A for the Danish Government's response to question two.

3. Please provide detailed information about the procedure envisaged with regard to the implementation of that legislation.

Please see the attached Appendix A for the Danish Government's response to question three.

4. Please provide detailed information about measures thus far taken by Denmark to provide consular assistance to Danish nationals in Iraq, accused of membership to ISIL, or other similar groups, and please explain how would they be consistent with Denmark's international human rights obligations to protect the right to life and the principle of non-discrimination are concerned.

In order to ensure the best possible conditions for the handling of consular cases and due to national security grounds, the Danish Government cannot provide details regarding consular assistance in specific cases of Danish nationals accused of membership to ISIL, or other similar groups in other countries.

Generally, based on the Act on the Foreign Service, the Danish Foreign Service provides consular assistance to a detained foreign terrorist fighter on an equal footing with other Danish citizens. However, the possibility of providing consular assistance may be limited due to security, logistical and practical concerns. This applies to all cases concerning citizens in need of consular assistance.

The Danish Government has established a Joint Forum consisting of relevant Danish authorities, including the Ministry of Justice, the Ministry of Foreign Affairs and the Ministry of Immigration and Integration. The Forum deals with the challenges relating to foreign terrorist fighters who have travelled from Denmark. The Forum exchanges information on cases on an individual basis, taking into consideration aspects related to security, humanitarian issues and possible legal obligations of Denmark. In cases regarding particularly vulnerable children, such as orphaned minors or children that suffer from health-threatening conditions, which cannot be treated locally, evacuation of a child may be found to be the best solution.

Information related to cases which are dealt with by the Joint Forum are subject to confidentiality.

5. Please provide detailed information about the measures announced by the Government that Danish ISIL fighters would have no right to obtain consular assistance, how these measures will be practically implemented, and on the basis of what criteria.

On 12 December 2019, the Danish Government introduced a Bill to Parliament with the aim of enabling the Danish Foreign Service to refuse or limit its consular assistance to foreign terrorist fighters.

The Bill introduces a new provision to the current Act on the Foreign Service stipulating that the Foreign Service can refuse or limit its consular assistance to a person if there is reason to believe that the person concerned has stayed in a conflict zone or has participated in activities abroad, which may pose or increase a threat to national security of Denmark or other states. A “conflict zone” is defined in Danish criminal law.

More specifically the new provision will enable the Foreign Service to either refuse or limit its consular assistance to a person, if:

- a person has been in a conflict zone without prior permission or creditable purpose,
- a person has been denied a (renewal of) passport by Danish authorities, e.g. if there is reason to believe that the person concerned intends to travel to a conflict zone to join a terrorist movement,
- a person has been convicted or detained in custody in absentia (by a Danish court) for *i.a.* acts of terrorism or treason,

- information from *i.a.* the Danish Security and Intelligence Agency, or other relevant Danish or foreign authorities, gives reason to believe that a person meets the criteria.

In cases concerning foreign terrorist fighters, the Danish Foreign Service will conduct a comprehensive assessment of the specific case in question to see if the person in question meets the criteria set out in the provision. When conducting this assessment, the Danish Foreign Service will also take into consideration if there are specific concerns calling for issuing consular assistance such as humanitarian aspects.

The current Act specifies that the Danish Foreign Service provides consular assistance to Danish citizens, foreigners with a fixed abode in Denmark, non-represented Nordic and non-represented EU citizens in third countries. The Bill applies to the entire group.

The Danish Foreign Service will conduct its case-by-case assessment on a non-discriminatory basis and in line with national legislation.

In accordance with the Bill, the Danish Foreign Service will be able to refuse or limit its consular assistance, such as prison visits or participation in court hearings, to foreign terrorist fighters. The Foreign Service will, however, still continue to provide assistance covered by other legislation, such as issuing of passports or providing assistance in extradition cases.

Children of foreign terrorist fighters are exempt from the Bill. Hence, under-aged children of foreign terrorist fighters will not be subject to the limitations in consular assistance. However, in exceptional circumstances, the bill can apply to a person under the age of 18 if there is reason to believe that the person concerned meets the criteria. This could be the case if there is clear evidence that a person under the age of 18 has received training in the use of weapons. The Danish Foreign Service will conduct a comprehensive assessment of the case in question to see if the person under the age of 18 meets the criteria set out in the provision.

It is the assessment of the Danish Government that the Bill is consistent with Denmark's international obligations.

6. Please provide information, disaggregated to the extent possible by age and sex or gender, on Danish nationals currently known to be in Iraq and/or Syria. Please explain whether they are held in situations of deprivation of liberty, or are awaiting trial, and if so for what charges, or have been sentenced to death. Please indicate whether these information were ever officially sought from the relevant authorities in Iraq and/or Syria.

The Danish Government emphasizes that the below figures are indicative and cannot be confirmed with certainty as they are based on intelligence from areas of armed conflict.

The Danish Security and Intelligence Service assesses that 34 persons (above the age of 18), out of the total of at least 159 persons who have travelled from Denmark and who are believed to have stayed with militant Islamist groups in Syria and Iraq, continue to be in the conflict zone or surrounding countries. Out of these 34 persons, 21 are Danish nationals of which 12 are detained or imprisoned. The Danish Security and Intelligence Service assesses that approximately 40 children (under the age of

18) of Danish nationals are currently present in the conflict zone, while 10 children of persons, who previously had a permanent residence in Denmark, are in the conflict zone. Of the approximately 50 children, approximately 30 children are in Northern Syria.

For further information, reference is made to the response of the Danish Government to question 4.

7. Please explain whether consular protection was thus far extended to any national of Denmark allegedly associated to ISIL, or other similar groups in Iraq and/or Syria, and provide information on the steps taken to ensure full respect of their human rights. If no action was undertaken, please explain why and how this was consistent with Denmark's international human rights obligations. Please explain whether Denmark has ever tried to seek the extradition of Danish nationals allegedly associated to ISIL or other similar groups in Iraq and/or Syria, or whether any step was ever taken to facilitate their repatriation.

The Danish Government has conducted a medical evacuation from Syria of a seriously injured boy with Danish nationality in June 2019 and evacuated an orphaned minor of 11 months of age in November 2019. Two orphaned children with French and Danish backgrounds have been evacuated from Syria to France in June 2019. The evacuation of the two orphaned children involved cooperation between relevant French and Danish authorities.

For further information, reference is made to the response of the Danish Government to question 4.

8. Please provide information as to whether your Excellency's Government may be aware of an alleged agreement or practice, aiming at facilitating the transfer of foreign nationals, held in Northern Syria, to Iraq.

The Danish Government is not aware of an alleged agreement or practice, aiming at facilitating the transfer of foreign nationals, held in Northern Syria, to Iraq.

9. Please indicate whether Your Excellency's Government has provided the families of Danish nationals facing trial or execution, or sentenced to death for terrorism in Iraq or Syria, with any information related to their conditions of detention, the trial or the execution.

If a Danish national faces trial or execution abroad, the Danish Government may, upon request of the person concerned, provide information to a Danish national's next of kin e.g. regarding the conditions of detention, the trial or execution.

Please refer to the response of the Danish Government to question 4 regarding consular assistance to Danish nationals accused of membership to ISIL or other similar groups.

10. Please explain what is the position of Your Excellency's Government on the administration and functioning of the justice system in Iraq, particularly in terrorism cases.

In relation to the administration and the functioning of the justice system in Iraq, Denmark shares the concerns raised by United Nations Assistance Mission for Iraq, the Office of the United Nations High Commissioner for Human Rights and NGOs regarding the lack of due process and fair trial guarantees affecting the Iraqi criminal justice system. During the Universal Periodic Review of Iraq on 11

November 2019, Denmark emphasized the importance of ensuring the rule of law and due process in all trials. Denmark recommended the Government of Iraq to reintroduce a moratorium on the use of the death penalty as a first step towards its abolition, as well as to ratify the Optional Protocol of the Convention Against Torture. These matters are also raised in the dialogue between the EU and Iraq in the framework of the EU-Iraq Partnership and Cooperation Agreement from 4 July 2019. Within the framework of the Global Coalition against Da'esh, Denmark supports the Iraqi authorities in addressing the continued threat from Da'esh. Denmark, with the EU, also supports the Iraqi authorities in strengthening the justice sector, the respect for the rule of law, due process, and for human rights, as noted in the EU Council conclusions on Iraq from 15 July 2019. Through Danish support to both the United Nations Development Programme and the EU Advisory Mission to Iraq, Denmark also supports civilian security sector reform. Denmark is also planning to fund the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh to ensure accountability with due process and respect for human rights for crimes committed by Da'esh.

11. Please explain what is the position of Your Excellency's Government on the possibility of setting up an ad hoc or hybrid international tribunal to prosecute alleged ISIL fighters for their crimes.

It is the position of the Danish Government that foreign terrorist fighters should be prosecuted where their actions have been committed. Whether it is by a national court in the region or e.g. a hybrid international tribunal is not decisive. The Danish Government has, however, intensified its efforts, together with other countries, to strengthen the possibility of prosecution by a local court in the region.