



# Convention on the Elimination of All Forms of Discrimination against Women

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## Committee on the Elimination of Discrimination against Women

Fiftieth session

3 – 21 October 2011

### **Response to the follow-up recommendations contained in the concluding observations of the Committee pursuant to the examination of the seventh periodic report of the State party on 22 July 2009.**

#### **Denmark**

##### **Response to recommendations contained in paragraph 15**

*“The Committee calls on the State party to reconsider its decision not to incorporate the Convention into its domestic legal order, with a view to ensuring that all rights protected under the Convention are given full effect in domestic law. It recalls the State party’s obligation, as stated in article 2 (a) of the Convention, to embody the principle of the equality of men and women in its national Constitution or other appropriate legislation. The Committee recommends that the State party ensure that full implementation of the Convention is achieved throughout the State party’s entire territory, including the Faroe Islands and Greenland. It also requests that an efficient division of responsibilities and reporting under the Convention is guaranteed through the establishment of effective coordination and reporting mechanisms.”*

##### Response from the Ministry of Justice

(i) Denmark has decided not to incorporate the Convention into national law. This decision is based on several considerations.

Firstly, the Convention does not place any obligation on the participating states to incorporate the Convention into national law. When Denmark ratified the Convention, it assessed whether its national law was in conformity with the Convention or whether any changes were necessary prior to the ratification. After the ratification, Denmark has also continuously taken steps to ensure that its national law is in conformity with the Convention, for instance when drafting new legislation. Hence, Denmark is of the opinion that it fully respects the Convention, even though it has not been incorporated into national law.

Secondly, the Convention is considered a relevant source of law in Denmark. Conventions that have not been specifically implemented, because harmony of norms has been ascertained, can be and are indeed invoked before and applied by the Danish authorities.

Against this background, Denmark finds that it is neither legally necessary, nor politically desirable to incorporate the Convention into national law.

(ii) Danish authorities apply two unwritten rules in order to ensure that national law is interpreted in accordance with the Convention.

The first one is known as the ‘rule of interpretation’. It follows from this rule that, whenever there is doubt about the interpretation of a legal provision, the authorities shall prefer the interpretation that will best comply with existing treaty obligations.

The second rule is referred to as the ‘rule of presumption’ and implies that the authorities shall presume that the Parliament has not intended to pass legislation contrary to Denmark’s international obligations. Thus, in the absence of any specific indications to the contrary, a conflict between a treaty obligation that has previously been observed in Denmark and a new provision of national law shall be solved by applying the new provision in a manner that will respect the treaty obligation. This is so, even if the new provision is clearly at variance with the treaty obligation.

These rules are used to ensure that Danish legislation is interpreted in accordance with the Convention and other international instruments, which Denmark has ratified and which are therefore relevant sources of law in Denmark.

That the Convention is in fact a relevant source of law in Denmark even though it has not been incorporated is also shown by the fact that case law where the Convention has been invoked has evolved before the national courts.

*“...It recalls the State party’s obligation, as stated in article 2 (a) of the Convention, to embody the principle of the equality of men and women in its national Constitution or other appropriate legislation...”*

The Danish Constitution of 1953 contains no provisions dealing specifically with equality of women and men, but it embodies the principle of equal treatment of men and woman.

A number of laws, however, deal with gender equality, for example:

- Act on Equal Pay (Consolidating Act. no. 899 of 5 September 2008).
- Equal Treatment Act (Consolidating Act. no. 734 of 28 June 2006).
- Act on Gender Equality (Consolidating Act no. 1095 of 19 September 2007)

Furthermore, Danish law applies an unwritten, but legally binding, administrative equality principle prohibiting unequal treatment because of gender, ethnic origin, etc. This principle is binding on public employers, public employment services and all other public bodies.

Gender equality between women and men is a general principle and objective of Danish policy and women and men in Denmark share the same formal rights, obligations and opportunities in society. This of course includes that women and men are equally protected by the laws of Denmark.

#### Response from the Government of Greenland

Gender equality is under the jurisdiction of the Government of Greenland. Thus, the incorporation of the Convention into Greenlandic legislation is a Greenlandic affair.

Legislation passed by the Parliament of Greenland must correspond with all international conventions adopted by Greenland as well as with the Danish Constitutional Act and the Act on Greenland Self-Governance. Thus, international human rights conventions adopted by Greenland must correspond with the state of the law in Greenland.

Gender equality is a principle and objective of Greenlandic policy and legislation. Consequently, the Government of Greenland aims to ensure that common practice and

legislation that relate to equality between women and men meets the provisions of the Convention.

Today, women and men in Greenland share equal rights, obligations and opportunities in society. However, this is not the same as de facto equality. It is still necessary to further promote gender equality in Greenland. This includes continuous revisions of practice and legislation. The Convention represents an important framework to progress Greenlandic legislation in a gender equality perspective.

Greenlandic legislation includes two acts aimed to promote equality between women and men:

- Act no. 5 of May 20, 1998 on the Greenland Gender Equality Council
- Act no. 8 of April 11, 2003 on change of Act on the Greenland Gender Equality Council
- Act no. 7 of April 11, 2003 on equality between women and men

Act no. 7 of April 11, 2003 on equality between women and men point out the principles and provisions of the Convention.

The Government of Greenland aims to ensure that Greenlandic legislation promotes equality between women and men. This is also a stated objective in the coalition agreement.

Today, most areas of responsibility related to gender equality issues are under the jurisdiction of the Government of Greenland (e.g. health policy, social policy, education policy and labour market policy). Although some relevant areas of responsibility are still under the competence of the Kingdom of Denmark, the promotion of gender equality should mainly be considered a Greenlandic affair.

The Government of Greenland is convinced that Greenlandic legislation essentially corresponds with the Convention. Still, in connection with revisions of legislation, the implementation of the Convention in Greenland will be evaluated.

It has to be emphasised that the Convention is a relevant source of law in Greenland, which can be called on and used in the legal system. Thus, the Government of Greenland fully acknowledges the Convention, which is legally binding in Greenland.

### **Response to recommendations contained in paragraph 31**

*“The Committee calls upon the State party, including the Faroe Islands and Greenland, to pursue their efforts to prevent and combat violence against women and to adopt a coordination policy on violence against women that would ensure that victims of domestic violence have access to immediate means of redress and protection, including protection orders, access to a sufficient number of State-funded safe shelters and to legal aid. It further recommends that the State party consider adopting a specific law on violence against women, including domestic violence, in line with the Committee’s general recommendation No. 19. The Committee calls on the State party to ensure that foreign married women victims of domestic violence are provided with flexible solutions with regard to their resident permits and recommends that clear legal guarantees and administrative guidelines for their protection are set. The Committee encourages the State party to draw on other Nordic countries’ good practices regarding the introduction of gender-based persecution as a ground for refugee status determination.”*

### **Response from the Department of Gender Equality**

It is essential for the Danish Government to fight violence in intimate relations. Since 2002 the Government has waged – in two separate action plans – a determined fight to combat domestic violence. These efforts have had an effect, but we have not yet achieved our goal and will continue working towards it.

The Government in 2010 launched the National Strategy to Prevent Violence in Intimate relations addressing outstanding problems. Prevention is a top priority in this Strategy. It is not enough to offer support once violence has already occurred. Focus must be on ensuring that violence never occurs in the first place. In addition, in the coming years the Government will evaluate the various efforts to prevent violence in order to discover and disseminate which are the most effective methods for preventing domestic violence and supporting victims in both the short and the long run.

The National Strategy is inter-ministerial and involves the Minister for Gender Equality, the Ministry for Refugee, Immigration and Integrations Affairs, the Ministry of Justice, the Ministry of Social Affairs, the Ministry of Interior Affairs and the Ministries of Health and Education. The Strategy has over 30 specific initiatives that are designed to target violence in intimate relations, including physical, mental, sexual and material violence.

A large part of the activities outlined in the two previous action plans will be continued. For instance, it is crucial that support to women in the form of safe shelters and expanded capacity in these is continued. These shelters are run by LOKK (the National Organisation of Shelters for Battered Women and their Children) and provide legal aid and support. Also, capacity building and training of the shelter personnel continues to be an important focus area i.e. through the development of professional handbooks, giving legal advice to professionals, providing training for shelter employees on ethnic-minority women and their children and the continuing training of local authority employees.

The new efforts foreseen for 2010 – 2012 are aimed at three specific areas:

- Prevention and early intervention;
- Short – and long-term support for victims of intimate partner violence;
- Knowledge, public support and cross-disciplinary cooperation.

The National Strategy aims to strengthen the broad efforts to help men and women who have been battered by a current or former partner. Children who live with domestic violence in the home are another important target group.

It's crucial that the focus is not only on short-term support but particularly also on giving long-term support for victims of intimate partner violence. I.e. when women break out of a long history of domestic violence, serious psychological and physical effects are often still present – even after the violence has stopped. To learn more about this the Government will commission a study of the current experiences focusing on follow-up efforts, transitioning to life beyond the shelter, and mediation. The study will include women of both Danish descent and women with other cultural backgrounds. Moreover, the survey will include both domestic violence and 'honour-related' crimes and conflict.

Current experiences will with a view to the international perspective in order to ensure that future efforts are as effective as possible. The goal is to evaluate how and whether an effective recovery and transition program can ensure that battered women do not relapse into a life with violence.

#### Response from the Ministry of Justice

##### *Redress*

According to the Act on State Compensation to Victims of Crime (Consolidation Act no. 688 of 28 June 2004) the State awards compensation and damages for personal injury inflicted by violation of the Criminal Code if a number of conditions are fulfilled.

Compensation is also awarded for damage to clothing and other usual personal property, including minor amounts in cash that the victim was carrying when the personal injury was inflicted.

Any decision on compensation pursuant to the Act on State Compensation to Victims of Crime is made by the Criminal Injuries Compensation Board, set up by the Minister of Justice.

A person may obtain compensation even though the offender is unknown or cannot be found. A person may also obtain compensation even though the offender cannot be punished because he or she is less than 14 years of age or of unsound mind.

#### *Protection orders*

Section 265 in the Criminal Code reads as follows: “Any person who violates the peace of some other person by intruding on him or her, pursuing him or her with letters or inconveniencing him or her in other similar ways, despite warnings by the police, shall be liable to a fine or to imprisonment for any term not exceeding two years. A warning under this provision shall be valid for five years.”

A caution in relation to Section 265 is issued at the discretion of the police in accordance with the normal procedures for administrative decisions laid down in the Danish Public Administration Act. The decision to issue a caution can be appealed to the State Prosecutor and to the courts.

The accused has to have recently committed one or more violations of the peace of another person, but it is not a condition that the violations constitute criminal offences. For instance repeated phone calls, letters, presents, flowers etc. can constitute a violation of the peace under Section 265 even if these approaches are not of a threatening character.

It is not a condition that previous incidents have been reported to the police.

A caution under Section 265 imposes an obligation not to intrude on a person, pursue the person in writing or inconveniencing the person in other similar ways.

If a person violates a caution under Section 265 it constitutes a criminal offence that is punishable by the courts with a fine or imprisonment for any term not exceeding two years.

#### *Expulsion*

Furthermore, the police can – according to Act no. 449 of 9 June 2004 – expel a person from his or her home under the following conditions:

1. There are reasonable grounds to believe that the person has committed an act against a member of the household, which constitutes a violation of the provisions of the Danish Criminal Code on sexual offences, violence, deprivation of liberty or threats and this offence is punishable by 1½ year of imprisonment,
2. According to the available information there are reasonable grounds to believe, that the person by staying in the home will commit an offence as mentioned under no. 1,
3. And the expulsion is not unproportional.

A decision of expulsion is issued by the prosecuting authority in accordance with the normal procedures for administrative decisions laid down in the Danish Public Administration Act. The decision can be appealed to the courts.

A person can be expelled from his or her home for up to 4 weeks. The length of the expulsion period must be decided at the time of expulsion. An expulsion can be extended, but by no more than 4 weeks at a time.

According to the act it is possible to impose an obligation not to enter certain localities, places or defined areas by the home or by a member of the household's place of work or study.

According to the act, the police can detain a person for up to 24 hours, where there are reasonable grounds for assuming that the person has behaved in a manner, which implies a threat to another member of the person's household.

*Legal aid*

According to Section 741a of the Danish Administration of Justice Act the court must assign a victim advocate in cases of violence and the like if so requested by the victim. In cases of sexual offences the court must assign a victim advocate unless the victim does not want to have a victim advocate. However, in certain cases assignment of a victim advocate can be refused if the offence is minor and assistance by a victim advocate must be considered obviously unnecessary.

The victim advocate is to assist and guide the victim during the proceedings. The victim advocate is entitled to attend interviews of the victim both by the police and in court and also has the right to ask additional questions of the victim. The victim advocate is also entitled to familiarize him-/herself with the case documents.

The police have to guide the victim on the rules on assignment of a victim advocate. Such guidance must be given before the first police interview of the victim and repeated in connection with the second interview of the victim.

Moreover, the police/prosecution service must also make sure that a request for assignment of a victim advocate is brought before the court.

According to section 995a(1) of the Administration of Justice Act, the court may further assign a victim advocate to the victim when assistance from a victim advocate is deemed necessary for the calculation of a claim for compensation and the victim satisfies the conditions of free legal aid.

*"...It further recommends that the State party consider adopting a specific law on violence against women, including domestic violence, in line with the Committee's general recommendation No. 19..."*

Women and men are equally protected by the laws of Denmark. This, of course, includes violation of the Danish Criminal Code, in which violence is criminalized, and other culpable offences.

All forms of psychological violence are covered by provisions in the Danish Criminal Code and the provisions apply irrespectively of the gender of the victim. Also provisions on sexual violence and abuse, deprivation of liberty, trafficking in human beings and other things are covered by provisions in the Danish Criminal Code and apply irrespectively of the gender of the victim.

Response from the Ministry of Refugee, Immigration and Integration Affairs

With regards to the third sentence in paragraph 31, Denmark considers that this is already directly stipulated in the Danish Aliens Act (cf. section 19 (8) of the Danish Aliens Act), which states that if the residence permit has been granted on the basis of marriage or marital cohabitation, and this basis is no longer present, the authorities must pay special attention to whether the marriage or co-habitation has ended as a consequence of the alien concerned having been exposed to outrages, abuse or ill-treatment, etc. by the spouse.

All victims of domestic violence have access to support, legal aid and shelters.

Furthermore, Denmark's written answer to the CEDAW Committee of April 2009 includes a description of the guidelines/practices concerning the use of section 19 (8).

The Danish immigration authorities follow this particular topic very closely and keep an eye on any need for adjustments. The Government of Denmark does not believe that there

is a further need for legal guarantees and administrative guidelines for the protection of foreign married female victims of domestic violence with regard to their resident permits.

In regard of the fourth sentence in paragraph 31, Denmark wishes to inform the Committee that asylum applications based on gender-related persecution are – as any other application for asylum – considered under section 7 of the Danish Aliens Act. It is generally accepted that women can be exposed to specific types of harm resulting in a need for protection. As in all asylum cases the Refugee Appeals Board makes an assessment of whether the application falls within the scope of section 7 of the Aliens Act based on the specific and individual circumstances of each application and the available information about the applicant's country of origin. The question of whether the applicant has been exposed to gender-based persecution is a part of this assessment. The practice of the Refugee Appeals Board includes numerous examples of cases in which the Board has granted a residence permit on the basis of the applicant having been exposed to gender-related harm or persecution.

#### Response from the Government of Greenland

Combating violence against women is a matter of the highest priority for the Government of Greenland. Domestic violence is an extensive issue in Greenland with far-reaching human and economic consequences. One of the first actions by the new Government was to set up a national conference on domestic violence in November 2009. The main target was to improve the qualifications of professionals and volunteers in Greenlandic shelters for battered women. Subsequently the Government has published a catalogue with recommendations, which has been distributed to relevant organisations and public authorities. In addition, the Government has initiated extensive courses for personnel in shelters for battered women in 2010 and 2011. Also, courses have been arranged to reinforce coordination strategies between the relevant jurisdictions in Greenland.

The Government wished to further involve the civil society in promotion of gender equality. Consequently, the Government encourages NGO's such as the Gender Equality Council to initiate campaigns, public meetings etc. to extend public awareness on violence against women. In September 2010, NGO's from Iceland, The Faroe Islands and Greenland participated in a conference on gender equality in the Western Nordic Region hosted by the Government of Greenland and the Nordic Council of Ministers. The conference included an NGO meeting on domestic violence in the Western Nordic region to facilitate a stronger cooperation between local NGO's. A web portal on gender equality in the region will communicate the results of the conference and establish a platform for further exchange of knowledge, experiences etc.

The Greenland Self-Governance is responsible for national strategies to prevent and combat domestic violence. Designs for improved strategies were prepared in 2009/2010 and will be included in impending interdisciplinary, long-term strategies.

Greenlandic administration is highly decentralised, which means that municipalities must maintain the direct assistance and care for citizens that experience domestic violence (in cooperation with police departments, the administration of justice, the health services etc.). A catalogue on municipal procedures to handle cases of sexual assaults and violence professionally has been distributed to all municipalities. Also, the municipalities participate in the preparation of national plans and strategies.

All citizens in Greenland have an obligation to report to the public authorities, if they have a substantiated suspicion or knowledge about cases of violence that involve children or adolescents. Public and private professionals working with children and adolescents have a stronger obligation to report on any sort of neglect.

Cases on violence against women are treated pursuant to the Greenlandic criminal code. The criminal code which entered into force on 1 January 2010 does not include specific provisions on domestic violence. Given that the administration of justice is still under the jurisdiction of the State of Denmark, specific provisions on domestic violence in relation to the criminal code has to be settled with the Danish authorities. Conversely, legal practice is decided in Greenland and provisions on specific aid to battered women can be implemented in jurisdictions placed under the Greenland Self-Governance.

At present, there are no plans to prepare specific legislation on violence against women in Greenland. Still, the Government acknowledges that there is a need to enhance help measures in this area. This mainly entails improved psychosocial assistance to violence-affected women and children and establishment of new shelters for battered women. The Greenland Self-Governance gives grants to the Consolidation of Shelters for Battered Women and finances 50 percent of the running expenses of the shelters. Furthermore, the Self-Governance offers financial support for the management group to participate in e.g. Nordic conferences.

Since 2010 the new criminal code has opened up improved possibilities for treatment of e.g. violent offenders and sex offenders in the Prison Service.

#### Response from the Government of the Faroe Islands

The Government of the Faroe Islands is firmly committed in its efforts to prevent and combat violence against women. The Government has therefore appointed a cross-departmental working group to develop a coordinated policy on preventing and combating domestic violence. This is the first ever coordinated policy to address domestic violence on the Faroe Islands, and the working group has taken into due consideration the recommendations of the CEDAW Committee in the development of the policy.

Domestic violence is defined as physical, psychological, sexual, financial and social violence. The working group is composed of representatives from the Ministry of Social Affairs, the Ministry of Health, the Ministry of Industry and Trade, and the Ministry of the Interior. The coordinated policy will encompass all measures necessary to prevent and combat domestic violence and offer victims of domestic violence ample access to means of protection and redress. Women are the primary victims of domestic violence, but the coordinated policy also involves men and children victims.

The working group will complete its recommendations on the 8<sup>th</sup> of March 2011 and will thereafter be charged with the task of ensuring that the measures are implemented.

#### **Recommendations**

As the working group had not presented its recommendations to the Government of the Faroe Islands at the time writing the reply at hand (31<sup>st</sup> of February 2011), the Government of the Faroe Islands is only in the position to describe potential measures that the working group will recommend for implementation. The coordinated policy of the working group will *inter alia* include:

- 1) Measures to prevent and combat domestic violence;
- 2) Increased protection and support for the victims of domestic violence;
- 3) Measures directed at professionals dealing with domestic violence;
- 4) Measures directed at the perpetrators of domestic violence.

#### **Ad 1) *Preventing and combating domestic violence:***

– Information campaign utilising educational material, events, and contests. The aim is to increase the awareness and knowledge of domestic violence amongst children and youth

and to inform them of their rights and the possibilities to alert authorities should they or others they know suffer from violence – or if they themselves are the perpetrators of violence.

- Information campaign for the general public. The aim is to increase knowledge and awareness of domestic violence, to break down the taboos associated with it, and to alter the general perceptions of the issues involved.
- Provide informational material to be given to foreign women upon registering for residence at the municipalities. The aim is to ensure that foreign women are informed of their rights and of the relevant authorities that will provide help and guidance should they be in need of assistance, e.g. due to domestic violence.

**Ad 2) *Increased protection and support for the victims of domestic violence:***

- To strengthen the services provided for women at the Crisis Centre (government-funded safe shelter), e.g. through a translator service for foreign women; improved administrative and cooperative procedures between the Department of Social Services, doctors and the Crisis Centre in such a way as to ensure that victims of domestic violence have access to immediate financial, psychological and legal assistance.
- Recommendations on a piece of legislation that will allow for the eviction of the perpetrator from the home (and other designated locations) for a set time period. The aim is to allow the victim and children to remain in the home – and to make choices on the future within the security of the home.
- Form a coordination network for victims of domestic violence with the support of psychiatrists and self-help groups.

**Ad 3) *Measures directed at professionals dealing with domestic violence:***

- Develop a manual for authorities and agencies that describes the responsibilities, legal scope and tasks of relevant stakeholders. The aim is to provide authorities and agencies with a clear and practical description of the relevant stakeholders involved in dealing with matters of domestic violence and of the responsibilities and tasks, that the stakeholders have in that relation. This will also allow for improved assistance and counselling for victims.
- Mandate that all involved authorities and agencies develop procedures and guidelines for dealing with cases of domestic violence to ensure that victims are provided the best possible help and support.
- Increased focus on building the competences of the professionals that are in contact with child and youth victims of domestic violence.
- Improve the teacher and childcare education so that this group of professionals become better at dealing with such difficult matters and better at recognizing child neglect, also with regards to children that are victims – or witnesses – to domestic violence.
- Employ a coordinator to oversee the implementation of the coordinated policy and to further develop efforts to prevent and combat domestic violence. This coordinator will facilitate inter-disciplinary cooperation between the relevant stakeholders, and amongst other things develop procedures and guidelines, initiate competence building programmes, and offer public authorities counselling on circumstances which warrant improvements, such as changes to legislation.

**Ad 4) *Measures directed at the perpetrators of domestic violence:***

- To develop a concerted treatment option for perpetrators of domestic violence, which will offer them help and tools to stop their violent behaviour.

- Inform authorities and the general public that such a treatment option for perpetrators of domestic violence exists.
- Enter into cooperation with agencies and professionals involved in treating substance abuse, which will allow perpetrators of domestic violence that are in treatment for substance abuse to simultaneously address their violent behaviour.

In relation to the Committee's recommendation in paragraph 31, it should also be mentioned that according to the Faroe Islands legislation, women of foreign nationality married to Faroe Islands nationals are awarded a residence permit after only three years in the Faroe Islands, as opposed to e.g. seven years in Denmark. Thus they are granted the same rights as Faroe Islands nationals and this protection should reduce the risks of foreign married women victims of domestic violence being trapped in a violent marriage on the grounds of loss of residence permits or rights.

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