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Enclosure(s)	Case/ID No.	Department	Date
1	2021-4836		31-03-2021

Please find attached the response to your letter dated 26 January 2021 (AL/DNK 1/2021) from the Government of the Kingdom of Denmark.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M. Jespersen'.

Morten Jespersen
Ambassador
Permanent Representative

OHCHR mandate holders: The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the right to food; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on minority issues; the Special Rapporteur on the right to privacy; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on trafficking in persons, especially women and children; the Special Rapporteur on violence against women, its causes and consequences; the Special Rapporteur on the human rights to safe drinking water and sanitation; and the Working Group on discrimination against women and girls.



Response by the Government of the Kingdom of Denmark to joint communication from special procedures AL DNK 1/2021

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

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

At the outset, The Danish Government recalls that it is a fundamental condition for a state's human rights obligations to apply that the state exercises jurisdiction.

Thus, the Danish Government wishes to reiterate that a State Party's obligations under both the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC) are limited through Article 2 in both instruments to "individuals within its territory and subject to its jurisdiction". Hence, "jurisdiction" is a threshold criterion. Exercise of jurisdiction is a necessary precondition for a State Party to be held responsible for acts or omissions imputable to it.

Further, The Danish Government stresses that a State Party's obligations under the European Convention on Human Rights (hereinafter ECHR) is limited through Article 1 of the ECHR. It follows from Article 1 that the High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of the ECHR. The European Court of Human Rights (hereinafter ECtHR) has stated that the exercise of jurisdiction is a necessary condition for a State Party to be held responsible for acts or omissions imputable to it, which give rise to an allegation of the infringement of rights and freedoms set forth in the ECHR. Jurisdiction under Article 1 is a threshold criterion.¹

According to the case law of the ECtHR, the concept of "jurisdiction" within the meaning of Article 1 of the ECHR is primarily territorial.² Accordingly, the overriding rule is that the ECHR applies only to acts performed within the territorial boundaries of the Contracting State in question.

The ECtHR has consistently held that only in exceptional cases may acts of Contracting States performed outside their territory – or producing effects outside their territory – amount to an exercise by them of their jurisdiction within the meaning of Article 1 of the ECHR.

The ECtHR has recognised two overall exceptions to the overriding principle of territoriality. First, according to case law of the ECtHR, an exception occurs where a State Party exerts effective control over an area outside its national territory ("effective control over an area"). Secondly, a State Party's

¹ See *Al-Skeini and Others v. the United Kingdom* [GC], No. 55721/07 7 July 2011, at § 130, and more recently *M.N. and Others v. Belgium* [GC], No. 3599/18, 5 March 2020, at § 97.

² See *Al-Skeini and Others v. the United Kingdom* [GC], No. 55721/07 7 July 2011, at § 131, and more recently *M.N. and Others v. Belgium* [GC], No. 3599/18, 5 March 2020, at § 98.

jurisdiction under Article 1 may extend to acts of its authorities which produce effects outside its own territory (“state agent authority and control”).³

The ECtHR has also recognised that jurisdiction may arise under other extraordinary circumstances. For instance, the decision by a State Party to extradite an alien may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if extradited, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the requesting country.⁴

Neither of the exceptions from the principle of territoriality can lead to the conclusion that Denmark exercises extraterritorial jurisdiction over individuals situated in third countries in e.g. refugee camps or held in detention in general.

In the view of the Danish Government, none of the situations or events described in the Communication by the Special Rapporteurs falls within the scope of Danish jurisdiction as defined above.

The Danish Government is aware that the Committee on the Rights of the Child in its communication of 2 November 2020⁵ found that French children situated in Al-Hol and Roj are under French jurisdiction in terms of the CRC. The Committee stated that the French Government in that particular case had capability and the power to protect the rights of the children in question through repatriation or other consular assistance.

The Danish Government notes that opinions from UN treaty body committees are not legally binding on the State Parties, but serve as interpretative guidance regarding States’ international obligations. Furthermore, the Danish Government observes that the opinion in question concerned the matter of admissibility, thus the case regarding the merits is still pending.

Furthermore, the Danish Government is of the opinion that the Committee’s interpretation of “jurisdiction” is significantly broader than jurisprudence of the ECtHR or other UN treaty bodies, including the Human Rights Committee. The Danish Government finds that this new and far-reaching interpretation may have very extensive and unpredictable consequences for States.

It is the position of the Danish Government that foreign terrorist fighters – both women and men who have left Denmark in order to join the Islamic State – are not welcome in Denmark and will not be evacuated. The children of foreign terrorist fighters are facing difficult conditions due solely to the actions of the parents and under their responsibility. In total, four children with Danish nationality or family ties to Denmark have been evacuated from Northeast Syria. Denmark has conducted medical and humanitarian evacuations from the camps in Northeast Syria. One Danish child was evacuated due to his serious medical condition and with the mother’s consent to her child being evacuated without her. Furthermore, one orphan with family ties to Denmark was evacuated in November 2019. Two orphans with Danish/French background were evacuated to France in June 2019.

³ See *Al-Skeini and Others v. the United Kingdom* [GC], No. 55721/07 7 July 2011, at § 133-140, and more recently *M.N. and Others v. Belgium* [GC], No. 3599/18, 5 March 2020, at § 101-109.

⁴ See *Soering v. The United Kingdom*, No. 14038/88, 7 July 1989, at § 91.

⁵ *L.H. et. Al v France*.

The Danish Government has information that a number of children holding Danish citizenship or presumably holding Danish citizenship and women holding Danish citizenship are detained in the al Hol camp and in the Roj camp.

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.

In January 2020, the Danish parliament passed a bill with the aim of enabling the Danish Foreign Service to refuse or limit its consular assistance to foreign terrorist fighters.

Thus, in accordance with the Act on the Foreign Service, the Danish Foreign Service can refuse or limit its consular assistance to foreign terrorist fighters. Consequently, Denmark does not currently provide any consular assistance to Danish foreign terrorist fighters in Northeast Syria, including women detained in the camps. However, their children continue to receive consular assistance from Denmark as children of foreign terrorist fighters are exempted from the provision regarding the refusal or limitation of consular assistance to foreign terrorist fighters in the Act on the Foreign Service.

The Danish Government seeks to follow the humanitarian situation in Northeast Syria and in the camps as closely as the situation and circumstances allow. Since the Danish Government does not have a diplomatic or consular presence in Northeast Syria and given that it is an area with an unstable security situation, it is difficult to follow the situation. Only on a case-by-case basis, a humanitarian dialogue is conducted with the Autonomous Administration of North and East Syria.

If a family member or lawyer representing the Danish children/children presumably holding Danish citizenship contacts the Danish Ministry of Foreign Affairs when a child is in need of medical assistance for instance, the Danish Ministry of Foreign Affairs will seek to facilitate relevant assistance to the child via humanitarian organizations present in the camps.

2. Please provide any additional information and/or comment(s) you may have on the above-mentioned transfer of families to the newly-extended camp in Roj and on the legal basis for their transfer and detention. Please provide any information you may have on the measures your Government has taken to maintain contact and ensure their well-being since the transfer.

The Danish Government is not aware of any transfer of Danish children/children presumably holding Danish citizenships to the newly-extended camp in Roj as a result of the verification and registration exercise.

Please refer to the answer to question 1 above regarding the Danish Government's position regarding jurisdiction.

The transfer and detention occurred in the territory of the Syrian Arab Republic, and the Danish Government does not have any knowledge of the legal basis for the transfer and detention. The Danish Government has not received any information on the legal basis for the transfer or detention of citizens in Roj or Al-Hol.

3. Please clarify whether your Government was informed about the registration, data-collection and relocation exercise and its purpose.

The Danish Government was aware – through open source information – of a general intent to collect information on the individuals, primarily the women, detained in Al-Hol. However, the Danish Government was not aware of the purpose nor of its specific nature prior to the data being collected.

The Danish Government was informed ex post-facto of the registration and data-collection exercise, including the collection of biometric data. The Danish Government was informed that the data could potentially be of use in the event of trials with the goal of upholding accountability for alleged crimes committed by the detainees in and around Syria.

4. Please explain whether your Government has been informed by the authorities carrying out this exercise about the next step following their relocation to the other camp.

The Danish Government has not been informed about any potential next steps.

5. Please explain whether your Government was in any way involved in requesting this exercise, or if the data collected or assessments made were communicated to your government.

The Danish Government was not involved in requesting this exercise and the Danish Government has not received neither the raw data collected nor possible assessments made.

6. Please explain what data-protection measures are available in your national legal system to protect against the exploitation and the use of such data collected, stored, and used by other State actors with whom data was shared as well as non-state actors against your nationals.

Please refer to the answer to question 1 above regarding the Danish Government's position regarding jurisdiction.

In terms of data protection measures available to individuals subject to Danish jurisdiction, the Danish Government notes that the Danish legislation on data protection (which *prima facie* applies to e.g. Danish Authorities' processing of personal data by automated means etc.) comprises *i.a.* the European General Data Protection Regulation (GDPR) and the Danish Law Enforcement Act which implements the European Law Enforcement Directive (LED).

7. Kindly also explain how the collection of biometric data has complied with medical ethics, the adequate provision of information and people's right to informed consent.

Please refer to the answer to question 1 above regarding the Danish Government's position regarding jurisdiction.

8. Please provide information on the actions taken by your Government to protect the rights of children from your country being held in Al-Hol and Roj camps to prevent irreparable harm to the lives, health and security.

If a family member or lawyer representing the Danish children/children presumably holding Danish citizenship contacts the Danish Ministry of Foreign Affairs, e.g. when a child is in need of medical

assistance, the Danish Ministry of Foreign Affairs will seek to facilitate relevant assistance to the child via humanitarian organizations present in the camps. 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 considered.

Danish humanitarian assistance to Syria is channeled as softly earmarked contributions to partners, including the UN, the ICRC and Danish NGOs. The partners address protection needs in their engagements, and a range of partners specifically target children's needs and rights. Some partners have engagements in and around Al-Hol and Roj camps, targeting the most vulnerable and those with the greatest needs, including among children.

Danish humanitarian assistance is not in any way earmarked to specific societal groups, nationalities or geographies, but based on the humanitarian principles of impartiality, neutrality and independence.

The Danish Government has established an inter-ministerial task force, which should explore whether evacuation of Danish children/children presumably holding Danish citizenship without their parents on the basis of an individual assessment can be carried out in a safe manner and within the boundaries of Denmark's international obligations, prepare concrete models for this, and take relevant steps to prepare for evacuations.

9. Please provide any information available on specific measures taken to protect women and girls against acts of gender-based violence they may face within the detention facilities and in the camps and to ensure their access to health services, specifically in relation to their reproductive health.

Denmark supports the International Committee of the Red Cross (ICRC) work in Syria, which includes activities in and around the Al-Hol camp, where a field hospital has been set up. The hospital attends to patients from the camp, including women and girls in need of reproductive health care services.

10. Please indicate the steps that your Excellency's Government has taken or is considering to take to ensure access to an effective remedy, including through domestic, judicial mechanisms, for your nationals being held in Al-Hol and Roj camps who may be victims of human rights abuses, including trafficking in persons.

Please refer to the answer to question 1 above regarding the Danish Government's position regarding jurisdiction.

11. Please provide any information you may have about the basis for the transfer of families from Al-Hol to Roj, and the measures your Government has taken to maintain contact and ensure their well-being since the transfer.

The Danish Government has not been involved in the transfer of families from Al-Hol to Roj.

12. Please explain the measures that your Government might have taken to ensure that the rights of your citizens mentioned in this communication were respected in this exercise.

Please refer to the answer to question 1 above regarding the Danish Government's position regarding jurisdiction.