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DENMARK

Submission by:

ADF International
Rue du Pré-de-la-Bichette 1
1202 Geneva, Switzerland

Web: www.ADFinternational.org
Email: UN@ADFinternational.org

Introduction

1. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people before national and international institutions. As well as having ECOSOC consultative status with the United Nations (registered name “Alliance Defending Freedom”), ADF International has accreditation with the European Commission and Parliament, and the Organization of American States. ADF International is also a participant in the FRA Fundamental Rights Platform.
2. This report focuses on the government of Denmark’s shortcomings in guaranteeing freedom of expression and freedom of religion or belief. It calls out legislation criminalizing offensive language and the lack of accommodation for religious practice in immigration and education.

(a) Freedom of Expression

3. The Constitution of Denmark guarantees in its Article 77 that “[a]ny person shall be at liberty to publish his ideas in print, in writing, and in speech, subject to his being held responsible in a court of law. Censorship and other preventive measures shall never again be introduced.”¹
4. In June 2017, Denmark took an encouraging step to protect freedom of expression by repealing Section 140 of the Penal Code on blasphemy.² Such a move looked to facilitate an open debate in society, including between people of different faith groups and people of none.³
5. However, undue restrictions on freedom of speech remain. For example, Section 267 of the Penal Code states that “Any person who violates the personal honour of another by offensive words or conduct or by making or spreading allegations of an act likely to disparage him in the esteem of his fellow citizens, shall be liable to a fine or to imprisonment for any term not exceeding four months.”⁴
6. While speech that incites violence can be easily defined and identified, the determination as to what “offensive words” violate “personal honour” can be subjective and abstract. It is patently disproportionate to take away someone’s liberty in reprisal for words that violate feelings of any sort, however insensitive they might be. Moreover, central to both freedom of expression and freedom of religion is the liberty to openly and candidly debate ideas and belief systems of all varieties. Though Denmark made positive progress towards free expression by removing restrictions on

¹ The Constitutional Act of the Constitution of Denmark, §77, 5 June 1953, (translation), available at: <http://www.stm.dk/_p_10992.html>.

² “Denmark upholds freedom of speech, repeals blasphemy provision,” *Atlas Network*, 8 June 2017, available at <<https://www.atlasnetwork.org/news/article/denmark-upholds-freedom-of-speech-repeals-blasphemy-provision>>. Up to its repeal, Article 140 criminalised blasphemy as follows: “Whoever, in public, mocks or scorns the religious doctrines or acts of worship of any lawfully existing religious community in this country, shall be liable to a fine or imprisonment for a term not exceeding 4 months.” See Lars Grassmé Binderup & Eva Maria Lassen, “The Blasphemy Ban in Denmark,” in András Koltay and Jeroen Temperman eds., *Blasphemy and Freedom of Expression, Comparative, Theoretical and Historical Reflections after the Charlie Hebdo Massacre*, (Cambridge University Press, 2017), pp. 431-56, available at: <<https://portal.findresearcher.sdu.dk/en/publications/blasfemiforbuddet-i-danmark>>.

³ <https://www.theguardian.com/world/2017/jun/02/denmark-scraps-334-year-old-blasphemy-law>

⁴ *Ibid.* Art 267.

“blasphemy”, the remaining threat of prison sentences or fines for saying things that might be interpreted as “offensive” directly flouts the possibility of honest debate, and, in so doing, undermines the pursuit of a vibrant and diverse public square and risks contravening Denmark’s obligation to guarantee freedom of expression under international law.

7. Concerningly, a December 2016 law further allows authorities to place foreign religious leaders on the “national sanction list” (*nationale sanktionsliste*) and ban them from entering the country if their actions, including statements alone, “pose concern for public order.”⁵
8. As of January 2020, Denmark’s national sanction list had 13 foreign religious preachers who are banned from entering the country “in consideration of the public order in Denmark.”⁶ These banned individuals are foreign nationals from Australia, Canada, Iran, Pakistan, Turkey, Saudi Arabia, Syria and the United States of America; they are all Muslim.⁷
9. It is not only people of religion who have found themselves targeted by a culture of censorship, but also secular news outlets. In April 2019, the state-owned and taxpayer-funded Danish media station, which includes radio, television and internet, DR (formerly Danmarks Radio), also known as dr.dk., complained to Facebook about a small, independent Danish internet media site, 24nyt.dk. The site has been critical of the EU, the Danish government and particularly of Denmark’s immigration policy. After DR lodged its complaint with Facebook, Facebook deleted 24nyt.dk’s Facebook page.⁸
10. Studies⁹ have established a link between state-sponsored suppression of speech and religious freedom, and increases in violent extremism.¹⁰ Scholars have questioned whether the successful repeal of anti-blasphemy laws in 2017 actually expanded free speech, or simply made way for the expansion of another form of speech restriction through the over-expanding clamp-down on “hate speech.”¹¹

Freedom of expression in international law

15. There is certainly a need to regulate forms of communication that can credibly and reasonably be said to constitute incitement to violence, whether against an individual

⁵ See *Lov om ændring af udlændingeloven*, Law No. 1743, 27 December 2016, available at <https://www.retsinformation.dk/Forms/R0710.aspx?id=186015>; See also Danish Immigration Service, “National sanction list,” 17 July 2019, available at <<https://www.nyidanmark.dk/en-GB/Words-and-concepts/US/Religious-workers/National-sanction-list/?anchor=C0848E0180C34017BFB14DC9BC116572&callbackItem=7C5D2D143D284E4EB2829BA5F0F04837&callbackAnchor=B758A980A5554BD194437B85368D84D0>>.

⁶ The Danish Immigration Service, 8 January 2020, available at: <<https://www.nyidanmark.dk/en-GB/Words-and-concepts/US/Religious-workers/Religious-preachers-with-entry-ban/?anchor=7C5D2D143D284E4EB2829BA5F0F04837&callbackItem=C0848E0180C34017BFB14DC9BC116572&callbackAnchor=608DF21DB20C40B68646A6B6804E595D>>.

⁷ *Ibid.*

⁸ Judith Bergman, ‘Free Speech in Denmark’ *Gatestone Institute* (25 April 2019) <<https://www.gatestoneinstitute.org/14136/free-speech-denmark>>.

⁹ See, e.g. Eric Rosand and Emily Winterbotham, “Do counter narratives actually reduce violent extremism,” *The Brookings Institute*, (20 March 2019) <<https://www.brookings.edu/blog/order-from-chaos/2019/03/20/do-counter-narratives-actually-reduce-violent-extremism/>>.

¹⁰ OSCE *Hate Crime Reporting*, available at <<http://hatecrime.osce.org/denmark>>.

¹¹ Kahn, *Five Thoughts*, p. 6.

or a group. The concern, however, is that laws that criminalize “offensive words”, such as the provisions of Section 267 of the Penal Code, are largely subjective, do not necessarily require falsehood, rarely require a victim, often only protect certain people, and are arbitrarily enforced.¹²

11. It is on these grounds that legitimate speech involving no actual incitement to violence could be silenced, in violation of the right protected under Article 19 of both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, as well Article 10 of the European Convention on Human Rights.
12. The human right to freedom of expression is affirmed in Article 19 of the Universal Declaration of Human Rights (UDHR).¹³ Article 19 of the International Covenant on Civil and Political Rights (ICCPR) – which Denmark ratified in 1972 – also protects this right.¹⁴
13. While there are clear limitations placed on free expression within the ICCPR (Articles 19(3) and 20)¹⁵ and Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)¹⁶, there is still a high threshold as to the legality of relevant restrictions.¹⁷
14. General Comment No. 34 of the Human Rights Committee (CCPR) makes it clear that restrictions on the right to freedom of expression “should not go beyond what is permitted in paragraph 3 [of Article 19] or required under article 20,” and that relevant laws “must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not.”¹⁸ Similarly, with regard to freedom of movement, CCPR General Comment 27 asserts that “restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected.”¹⁹
15. Moreover, former Special Rapporteur on freedom of religion or belief Asma Jahangir has noted that “any attempt to lower the threshold of Article 20 of the Covenant would not only shrink the frontiers of free expression, but also limit freedom of religion or belief itself. Such an attempt could be counterproductive and may promote an atmosphere of religious intolerance.”²⁰

(b) Freedom of Religion or Belief

¹² Paul Coleman, *Censored: How European “Hate Speech” Laws are Threatening Freedom of Speech*, Kairos Publications, 2016, 8-10.

¹³ Universal Declaration on Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) Art 19.

¹⁴ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Art 19.

¹⁵ *Ibid.* Art 19-20.

¹⁶ Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195 (CERD) Art 4.

¹⁷ Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, further to Human Rights Council decision 1/107 on incitement to racial and religious hatred and the promotion of tolerance, A/HRC/2/3, 20 September 2006, Art 47.

¹⁸ UN Human Rights Committee, General Comment No. 34 (2011), CCPR/C/GC/34, 25.

¹⁹ UN Human Rights Committee, General Comment No. 27 (1999) CCPR/C/21/Rev.1/Add.9, 14.

²⁰ *Ibid.*, Art 50.

16. The Constitution of Denmark, in its Article 67, guarantees that “[c]itizens shall be at liberty to form congregations for the worship of God in a manner according with their convictions, provided that nothing contrary to good morals or public order shall be taught or done.”²¹ In his 2016 report on his visit to Denmark, the former Special Rapporteur on Freedom of Religion or Belief, Heiner Bielefeldt, noted that this formulation is problematic in two dimensions. First, “worship of God” reflects a too narrow scope of protection for practice. Secondly, “nothing at variance with good morals or public order,” establishes an overly far-reaching scope of restrictions. A generous interpretation in favor of greater freedom is required in order to be in compliance with the ICCPR.²²
17. In response to the increase in immigration over the last five years,²³ recent amendments to Danish law have directly intruded upon freedom of religion with laws, including a ban on face coverings, a handshake requirement for citizenship, and mandatory “Danish-value” daycare for children in ‘ghetto’ neighbourhoods.
18. It is a criminal offense to wear the Islamic niqab or burqa in public.²⁴ Denmark’s criminal ban on full-face coverings in public makes no mention of any specific religion. In practice, this law is a thinly veiled prohibition against the non-verbal expression of the Islamic faith, and is commonly referred to as the “burqa ban.”²⁵ Effectively, the law bans women from wearing Islamic clothing.²⁶ Punishments include a fine of 1,000 kroner for first-time offenders and increase tenfold for repeated offenses.²⁷
19. The law does not ban other religious attire such as turbans, headscarves or the traditional Jewish skull cap.²⁸ Facial coverings are also allowed where there is a “recognisable purpose”²⁹ for it, such as cold weather or superseding law, as with motorcycle helmets. The determination of whether a facial covering has a “recognisable purpose” is, according to Denmark’s Minister of Justice, Søren Pape Poulsen, up to police officers’ individual discretion.³⁰ The standard for enforcement is

²¹ The Constitutional Act of the Constitution of Denmark, Art. 67, 5 June 1953, (translation), available at: <http://www.stm.dk/_p_10992.html>.

²² OHCHR, Preliminary findings of Country Visit to Denmark by Heiner Bielefeldt Special Rapporteur on freedom of religion or belief,” 22 March 2016, available at:

<<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=18500&LangID=E>>.

²³ Stine Jacobsen, “Danish Muslims feel backlash as immigration becomes election issue,” *Reuters*, 31 May 2019, <<https://www.reuters.com/article/us-denmark-election-immigration/danish-muslims-feel-backlash-as-immigration-becomes-election-issue-idUSKCN1T111M>>. See also, David Zucchino, “‘I’ve Become a Racist’: Migrant Wave Unleashes Danish Tensions Over Identity,” *The New York Times*, 5 September 2016, available at: <<https://www.nytimes.com/2016/09/06/world/europe/denmark-migrants-refugees-racism.html>>.

²⁴ Folketinget, “L219 Forslag til lov om ændring af straffeloven (tildækningsforbud),” Folketinget, 31 May 2018, available at: <https://www.ft.dk/samling/20171/lovforslag/l219/20171_l219_som_vedtaget.htm 152>.

²⁵ “Denmark passes law banning burqa and niqab,” *The Guardian*, 31 May 2018, available at <<https://www.theguardian.com/world/2018/may/31/denmark-passes-law-banning-burqa-and-niqab>>.

²⁶ Hansen, *We MUST talk*, pp. 55-57, available at:

<<https://repository.gchumanrights.org/bitstream/handle/20.500.11825/1101/Hansen.pdf?sequence=1&isAllowed=y>>.

²⁷ “Denmark passes ban on niqabs and burkas,” *BBC*, 31 May 2018, available at

<<https://www.bbc.com/news/world-europe-44319921>>.

²⁸ Sigal, “Banning Muslim Veils,” available at:

<<https://www.theatlantic.com/international/archive/2018/08/denmark-burqa-veil-ban/566630/>>.

²⁹ Hansen, *We MUST talk*, p. 57 (“With this law, the act of covering up will be unconstitutional, unless there is a “praiseworthy/creditable purpose” (*anerkendelsesværdigt formål*) to cover up the face.”).

³⁰ “Denmark passes law banning burqa and niqab,” *The Guardian*, 31 May 2018, available at <<https://www.theguardian.com/world/2018/may/31/denmark-passes-law-banning-burqa-and-niqab>>.

subjective, but has been enforced nonetheless, and sometimes by forceful means.³¹ Such restrictions on the right to freedom of religion can in no way be justified under the parameters defined by ICCPR Article 18(3).

20. According to a law approved by the Danish Parliament in December 2018, all citizenship applicants are required to shake hands with the government official presiding over the naturalisation ceremony.³² There is no religious accommodation or exception provided for in the law, and wearing gloves is prohibited.³³ Indeed, the handshake requirement applies to all ceremony participants, including certain Muslim and Jewish groups that discourage or refuse to touch members of the opposite sex for religious reasons.³⁴ Inger Stojberg, Denmark's Integration Minister, declared that a handshake was a "visible sign that you've taken Denmark to heart."³⁵
21. Article 18(2) of the ICCPR, with respect to freedom from coercion of belief, requires that: "No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice." The freedom is limited only to the extent that "such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others." The handshake requirement for citizenship, as enacted in Denmark, is therefore incompatible with this international legal provision.
22. In Denmark, "ghettos" are legally defined as areas where 50+ per cent of residents are immigrants from non-Western countries. In 28 May 2018, Denmark passed a law requiring children over age one in qualifying "ghetto" communities to attend day-care centres provided by the government.³⁶ For a minimum of twenty-five hours each week children at these centres are to learn "Danish values," including language, culture and Christian religious holidays such as Christmas and Easter.³⁷
23. Under typical circumstances, children in Denmark receive ten years of free, state-sponsored education beginning at age six, although attendance is not compulsory.³⁸ The Danish minister of social affairs and children, Mai Mercado, stated that "It's important that if you grow up in a parallel society and you don't know Danish values

³¹ Harriet Agerholm, "Burqa ban: First woman charged in Denmark under new law banning full-face veil," *The Independent*, 4 August 2018, available at <<https://www.independent.co.uk/news/world/europe/burqa-ban-denmark-first-woman-charged-islamophobia-face-covering-a8477196.html>>.

³² "Handshakes high on the agenda as Denmark's immigration minister awards nine citizenships," *The Local*, 18 January 2019, available at: <<https://www.thelocal.dk/20190912/danish-mayors-call-for-scrapping-of-citizens-handshake-law>>.

³³ Sorensen, "Denmark, With an Eye on Muslims," available at: <<https://www.nytimes.com/2018/12/20/world/europe/denmark-muslims-handshake-law.html>>.

³⁴ Ibid. See also, "Danish mayors call for scrapping of citizenship handshake law," *The Local*, 12 September 2019, available at: <<https://www.thelocal.dk/20190912/danish-mayors-call-for-scrapping-of-citizens-handshake-law>>.

³⁵ Ibid.

³⁶ Adam Sage, "Danes set to force 'ghetto children' into nurseries," *The Times*, 3 July 2018, available at <<https://www.thetimes.co.uk/article/danes-set-to-force-migrant-ghetto-children-into-nurseries-xdng59z86>>.

³⁷ Tom Barnes, "Denmark to give children in migrant neighbourhoods compulsory lessons on democracy and equality," *Independent*, 28 May 2018, available at: <<https://www.independent.co.uk/news/world/europe/denmark-migrant-children-ghettos-new-policy-language-skills-a8373261.html>>.

³⁸ Emil Gjerding Nielson, "Denmark to school 'ghetto' kids in democracy and Christmas", *Reuters*, 28 May 2018, available at <<https://www.reuters.com/article/us-denmark-immigration/denmark-to-school-ghetto-kids-in-democracy-and-christmas-idUSKCN1IT1EO>>.

you should learn them.”³⁹ While there are exceptions to compulsory attendance for children in legally-designated “ghettos,” there is no religious accommodation or exception provided for in the law, in violation of Denmark’s human rights obligations.

(c) Recommendations

24. In view of the above, ADF International suggests the following recommendations be made to Denmark:

- (a) Review all legislation restricting freedom of expression in such a way that legitimate debate on policy issues is silenced and shut down, and ensure that such restrictions are necessary and proportional in accordance with international human rights law;
- (b) Amend Section 267 of the Penal Code to safeguard the legitimate exercise of freedom of expression;
- (c) Strengthen protections for freedom of expression by unambiguously reformulating ‘hate speech’ and ‘anti-terrorism’ laws in accordance with international human rights law, to avoid their vague, arbitrary or discriminatory application;
- (d) End the sanctioning of foreign religious leaders for speech that does not entail “incitement to violence” or other proportional restriction corresponding to international law;
- (e) Ensure that the right to freedom of religion, belief and conscience is duly recognized and respected in accordance with Article 18 of the ICCPR;
- (f) Eliminate religious discrimination, including by revising laws that prohibit certain religious attire, and ensuring reasonable religious accommodations;
- (g) Ensure that the mandatory teaching of Danish values in schools is sensitive to the moral, religious, philosophical values and beliefs of children and their families.

³⁹ Sage, “Danes set to force ‘ghetto children’,” available at <<https://www.thetimes.co.uk/article/danes-set-to-force-migrant-ghetto-children-into-nurseries-xdng59z86>>.



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