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To the Embassies of the Member States of the Council of Europe

11th February 2019

Dear Sirs,

SOS Racisme Denmark urges the member states of the Council of Europe not to return asylum seekers or refugees to Denmark if they have been rejected there or had their Danish residence permit revoked.

Refoulement to Countries with Civil War

In violation of Article 3 of the European Convention on Human Rights refugees and others from war-torn countries risk being forcibly deported by Denmark to their country of origin, which is unable to protect them.

In spite of warnings from the UNHCR^{1 2} Denmark uses both Kabul and Mogadishu as Internal Flight Alternatives. The Danish government keeps everything under wraps concerning forced deportations to Somalia, but it is estimated that 14-16 Somalis were forcibly returned in 2016-2017. Around 1000 Somali refugees and their relatives have had their residence permits revoked and are to leave Denmark as soon as possible. Denmark has forcibly returned deportees to Afghanistan as well as Somalia by attempting to deliver them to the immigration authorities in the airport. According to *acleddata.com*³ at least 1079 civilians were killed in Mogadishu in 2017, 587 of them in the terror attack of 14 October 2017; and in all of Somalia 1843 civilians were killed that year. The number of civilians killed in Mogadishu was higher in 2017 and there were more internally displaced persons (IDPs) in the city than in 2011, the year the European Court of Human Rights ECtHR ruled that the return of anybody might violate Article 3 of

¹ UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, 30 August 2018 <https://www.refworld.org/docid/5b8900109.html> [accessed 9 February 2019]
"UNHCR considers that given the current security, human rights and humanitarian situation in Kabul, an IFA/IRA is generally not available in the city."

² UNHCR Position on Returns to Southern and Central Somalia (Update I), May 2016
<https://www.refworld.org/docid/573de9fe4.html> [accessed 9 February 2019]
"UNHCR Positions Concerning Forced Returns

Under the present circumstances, UNHCR continues to urge States to refrain from forcibly returning any persons to areas of southern and central Somalia that are affected by military action and/or ensuing displacement, remain fragile and insecure after recent military action, or remain under full or partial control of non-State armed groups. General non-refoulement obligations under international human rights law may be engaged in the context of forcible return of Somalis to southern and central Somalia."

³ Armed Conflict Location & Event Data Project: www.acleddata.com/ data is open for public use. Counts of deaths stems from ACLED's database on Civilians, with counts for Somalia and from Mogadishu (Banadir).

ECHR (SUFU & ELMU vs the United Kingdom, para 248). Like in 2011 attacks on civilians by all parties to the conflict took place and the future was then – as now – totally unpredictable in Somalia with conflicts in most parts of the country.

We expect more deportees than today to flee to other European countries when a new law L 140⁴ has been passed by Parliament – according to schedule the Bill will be passed on 21 February 2019.

Subsequently all refugees will be given temporary residence permits and the need for protection will be reevaluated at short intervals. Denmark will deport refugees to the country they fled from as quickly as possible. Only refugees with Convention status will not be returned until there are fundamental, stable and lasting changes in the country of origin. Refugees who have managed to acquire permanent residence permits or Danish citizenship will of course be exempt.

In asylum cases the first authority is the Immigration Service and the next is the three-member Refugee Appeals Board, which is the highest authority. Its decisions cannot be appealed to a Danish court of law. Refugees with protective asylum status must be returned as soon as Denmark's international obligations are not violated by doing so. The decision may read as follows: *However, having evaluated all background material, the majority of the Refugee Appeals Board holds that the general conditions in Mogadishu have improved – although the conditions are still serious and must be characterized as fragile and unpredictable – and the changes are not considered purely temporary.* Furthermore, the Refugee Appeals Board refers to two majority decisions from the European Court of Human Rights in 2013 and 2015, where deportation to Mogadishu was not held to be refoulement. However, on the one hand conditions were not quite as violent as in 2011 and there were less IDPs in Mogadishu, on the other hand the two deportees had relatives in the city, which is not always the case in deportations from Denmark.

According to L 140 the authorities must go to the limits of the conventions, and revoking the residence permits of refugees and reunified relatives must *only be omitted if it violates Denmark's international obligations*, and conditions like work, education, health, language, integration, citizenship and the circumstances of children must be given the least possible consideration. In spite of protests from the UNHCR, also refugees resettled from UN refugee camps must be returned to their country of origin if possible. **Thus Denmark will no longer be a safe haven to them. Therefore asylum in a third country may be relevant since returning people to Denmark could end in refoulement.**

L 140 also intends to stress out deportees as much as possible in order to induce them to leave Denmark. The following persons **must** reside in deportation centres: Persons who do not contribute to their return and who are on tolerated stay⁵ or have fought for foreign militias or are expelled convicted foreigners who have served their sentences or rejected asylum seekers, all of whom cannot be returned to their country of origin because of non-refoulement or because the country concerned refuses to accept them. Here they live isolated from the rest of Denmark, under cramped conditions, with very little pocket money, no possibility of working, studying, shopping, doing leisure activities requiring space, or cooking. Deportees with children must – regardless of the children's schooling – move to Sjælsmark Deportation Centre. In Sjælsmark there are around 100 children. In some cases, children attend government schools - but they have no right to do so. Only parents of toddlers may have a refrigerator, so they can feed the children or give them milk in between meals⁶. Conditions are even

⁴ <https://www.ft.dk/samling/20181/lovforslag/l140/index.htm> (in Danish)

⁵ Tolerated stay is used for an asylum seeker excluded from international protection because she/he is suspected of having committed a crime against humanity, but who cannot be returned because he or she might be subjected to torture or to inhuman or degrading treatment or punishment.

⁶ A mobile phone video showing a conflict in Sjælsmark's canteen of a 5-year-old being denied a piece of potato and broccoli: <https://www.facebook.com/politiken/videos/909833045878260/>

worse at Kærshovedgård Deportation Centre, which is isolated with 7 km to the closest village and no public transport.

According to L 140 another deportation centre is to be built in the desert 7-hectare island of Lindholm. Lindholm will hold 100–125 deportees. The island will be inhabited by foreigners on tolerated stay, criminal foreigners or expelled convicted foreigners who have served their sentences, and rejected asylum seekers convicted of petty crime such as possession of less than 10 g hashish, the usual triviality limit. There will be a ferry, but the possibilities of getting away from the prison island will be few. The costs of rendering the island habitable are immense.

The Danish politicians do not regard the deportation centres as prisons, but in reality they are worse than open prisons. They are run by the Danish Prison Service and the staff are prison guards. Kærshovedgård is fenced and has an electronic entry control system and Sjælsmark is in the process of getting one. The inmates have duties of residence, of reporting, and of notification: They must notify the staff if they leave the centre between 11 p.m. and 6 a.m. or will not return by 11 p.m. The Immigration and Integration Minister has repeatedly stated that conditions must be “as intolerable as possible” so the duties and the isolation only function as harassment and even today the inmates are given harsh sentences if they do not fulfil their duties. However, L 140 will multiply these sentences so that omission of the three duties for 2-3 days will lead to 2 months’ imprisonment with a maximum penalty of two years in case of repetition. Furthermore, a special prison at Ringe in Funen is planned for the punishment of expelled foreigners. Like the duties mentioned above the punishment has no other purpose than inflicting suffering.

In 2012 the Supreme Court ruled in a case where a deportee had been submitted to reporting and residence duties in an asylum centre for almost 4 years. The Court cancelled the reporting and residence duties since such a long period of time at an asylum centre was held to violate Article 3 of the European Convention on Human Rights. Today conditions in deportation centres are worse than conditions were in asylum centres in 2012. A supreme court decision of 2017 held that just under 4 years’ residence, reporting and notification duties for a person on tolerated stay violated Protocol No. 4 Article 2. A prolonged stay will also violate the right to freedom and security of the person and the right to privacy and family life, cf. ECHR Articles 5 and 8.

In spite of the meaninglessness and the degrading treatment in the deportation centres almost nobody wants to return to the country of origin, and many do not even have that option because they are stateless, or because the country of origin will not accept them. The intention is to make life as intolerable as possible for the inmates, so they eventually disappear from Denmark. Forty-seven of the inmates of Kærshovedgård have subsequently been granted asylum under the 1951 Convention. Almost nobody can be returned voluntarily, but many experience psychological issues, and many go underground. Many have disappeared into a subsistence as undocumented migrants in Denmark or abroad.

L 140 is the result of an agreement between the Liberal-Conservative minority coalition government and the anti-immigrant Nationalist Danish People’s Party, and the Social Democrats intend to vote for it as well. The politicians’ scramble for the swing voters is more heated than ever because of the upcoming general election and they are desperately trying to outdo one another in being tough on foreigners - from non-Western cultures in general and Muslim cultures in particular.

The Bill was prematurely introduced to the Folketing three days before the deadline of the hearing⁷ presumably because the general election is expected to be called soon and not later than mid-June 2019.

The most important feature about L 140 is that focus will switch from integration of refugees to repatriation. Even UN resettled refugees/quota refugees will be returned to their country of origin at the earliest possible opportunity. Following a report from the Danish Institute for Human Rights concluding that especially children's families living on integration benefits live in poverty, which may be against the Danish constitution, the "integration benefits" will now be called "self-supporting & repatriation benefits" and lowered by 2,000 DKK per month after three years for families with children.

Since the last election in 2015 Denmark has constantly tightened the immigration and asylum legislation. Apparently, the goal of the Government is to stay in power through tough immigration and asylum restrictions with the objective of scaring refugees away from Denmark and trying to get rid of rejected asylum seekers as quickly as possible, if need be by forcing them underground.

The Immigration and Integration Minister has placed a digital tally counter on the Ministry's website to display the Government's tough immigration and asylum restrictions. At present 100 restrictions have been passed since 2015, but with the passage of L 140 the number of restrictions will escalate. We therefore urge your country not to return asylum seekers to Denmark.

Yours faithfully

On behalf of SOS Racisme Danmark

Jette Møller, President

Anne Nielsen, Vice-president

SOS Racisme is an anti-racist NGO, which was founded in 1988 inspired by SOS Racisme in France. In 1991 the organisation merged with "The People's Movement against Xenophobia", established in 1985 and inspired by SOS Racisme France as well. The aims of the organisation are to combat racism and discrimination and work for intercultural understanding by non-violent means. The organisation is non-political and non-religious.

⁷ Hearing statement from the UNHCR in English: <https://www.unhcr.org/neu/wp-content/uploads/sites/15/2019/01/UNHCR-prel.-Observations-on-the-law-proposal-2018-20161-akt-nr.-598518.pdf>

Hearing statements in Danish: <https://www.ft.dk/samling/20181/lovforslag/L140/bilag.htm>

Hearing statements: bilag 1, bilag 2, bilag 5, bilag 6, bilag 10, bilag 11, bilag 12, bilag 15

The Ministry's comments to the statements: bilag 4, bilag 7, bilag 8, bilag 13,

Report from the Committee for foreigners and integration: bilag 18: Betænkning