

Copenhagen 23 January 2006  
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**Response by the Danish Government to letter of 24 November 2005 from UN Special Rapporteur on freedom of religion or belief, Ms. Asma Jahangir, and UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Doudou Diène, regarding cartoons representing the Prophet Mohammed published in a newspaper**

1. The Danish Government can confirm that 12 cartoons representing the Prophet Mohammed were published in the Danish newspaper Jyllandsposten on 30 September 2005.

A number of cases concerning threats against the cartoonists made in Denmark are currently being investigated. One person has been indicted due to the fact that on 30 September 2005 he told a receptionist at Jyllandsposten that he had the names and addresses of all the cartoonists and that within 14 days the first one would die. The case will come before the court on 4 April 2006. In addition, the police is investigating four cases concerning e-mail and telephone threats in relation to the article in Jyllandsposten. The offender has not yet been identified. Among other reactions following the publication, a reward was reported to have been offered by a private organisation in Islamabad, Pakistan for killing the cartoonists.

2. The publication of the drawings caused a number of private associations to file a report with the police claiming that Jyllandsposten had committed an offence under section 140 and 266b of the Danish Criminal Code.

The report was filed on 27 October 2005, and on 6 January 2006 the Regional Public Prosecutor in Viborg referring to section 749, subsection 2 of the Administration of Justice Act decided to discontinue the investigation. According to section 749, subsection 2, it may be decided to discontinue an investigation, if there is not a reasonable suspicion that a criminal offence indictable by the state has been committed.

According to section 140 of the Criminal Code any person, who, in public, ridicules or insults the dogmas of worship of any lawfully existing religious community in Denmark shall be liable to imprisonment for any term not exceeding four months or, in mitigating circumstances, to a fine. Section 266b of the Criminal Code criminalizes the dissemination of statements or other information by which a group of people are threatened, insulted or degraded on account of e.g. their religion.

In his decision the Regional Public Prosecutor states that the term "other information" in section 266b includes cartoons, just as cartoons must be considered covered by

section 140 considering that the object of the criminalisation is the insult and not the form, which the insult takes.

In his decision the Regional Public Prosecutor also states, that when assessing what constitutes an offence under section 140 and section 266b the right to freedom of speech must be taken into consideration and that the right to freedom of speech must be exercised with the necessary respect for other human rights, including the right to protection against discrimination, insult and degradation.

Based on an overall assessment of the article in Jyllandsposten, including the twelve cartoons, the Regional Public Prosecutor does not find that there is a reasonable suspicion that a criminal offence indictable by the state has been committed. In his decision the Regional Public Prosecutor states that he attaches importance to the fact that the article in question concerns a subject of public interest, which means that there is an extended access to make statements without these statements constituting a criminal offence. Furthermore, according to the Danish case law f.i. journalists have extended editorial freedom, when it comes to subjects of public interest. For these reasons the Regional Public Prosecutor finds no basis for concluding that the content of the article constitutes an offence under section 140 or section 266b of the Criminal Code.

A possible complaint against the decision can be lodged with the office of the Director of Public Prosecutions.

3. The Government is focusing strongly on ensuring a society with mutual respect and shared democratic values. The Danish democracy is by its very nature inclusive to all cultures and religions.

The Danish Prime Minister Anders Fogh Rasmussen touched upon religious tolerance in his New Year's address of 1 January 2006:

*“During the past year, we have witnessed a heated debate about freedom of speech, and limits to freedom of speech. There are some who find that the tone of the debate has become too shrill and unpleasant. I wish to state this very clearly: I condemn any expression, action or indication that attempts to demonise groups of people on the basis of their religion or ethnic background. It is the sort of thing that does not belong in a society that is based on respect for the individual human being. We have a long history of extensive freedom of speech in Denmark. We are to speak freely and present our views to each other in a straightforward manner. However, it must be done in mutual respect and understanding. And in a civilised tone of voice. And fortunately, the tone of the Danish debate is in general both civilized and fair. There have been a few examples of unacceptably offensive expressions. And as a matter of fact, they have come from more than one party to the debate. We must strongly repudiate those expressions. However, the few instances of offensive behaviour must not be allowed to overshadow the fact that the debate and the general situation in Denmark is much more quiet and peaceful than in many other countries.*

*In Denmark, we have a healthy tradition of putting critical questions to all authorities, be they of a political or religious nature. We use humour. We use satire. Our approach to authorities is actually rather relaxed. And to put it bluntly: it is this unorthodox approach to authorities, it is this urge to question the established order, it is this inclination to subject everything to critical debate that has led to progress in our society. For it is in this process that new horizons open, new discoveries are made, new ideas see the light of day. While old systems and outdated ideas and views fade and disappear. That is why freedom of speech is so vital. And freedom of speech is absolute. It is not negotiable. However, we are all responsible for administering freedom of speech in such a manner that we do not incite to hatred and do not cause fragmentation of the community that is one of Denmark's strengths. Danish society is very strong in the sense that usually we are rather good at achieving results through dialogue. And the reason is that in general we treat others with consideration and we have confidence in each other, confidence in the institutions of society, confidence in a set of principles that are fundamental to our society. We have based our society on respect for the individual person's life and freedom, freedom of speech, equality between men and women, a distinction between politics and religion. Our point of departure is that as human beings we are free, independent, equal and responsible. We must safeguard these principles. For they are some of the ties that produce cohesion. That is why we find it easy to cooperate, easy to perform common tasks, and that is why we also find it easier to address new challenges. Let us stand united to protect a society that allows us freedom to differ. And a society in which there is a strong sense of community based on fundamental values. A Denmark that has not only strong competitive power, but also a strong sense of cohesion."*

In an Op Ed on 4 January 2006 in a Danish national newspaper, the Danish Minister of Foreign Affairs Per Stig Møller warned against disrespect among religions. He stated inter alia that:

*"The objective is not to blame through intolerance all Muslims for supporting al-Qaeda, but ...to contribute to the development and reform that the Muslim world is actually engaged in." Without "mutual tolerance ...there can be no true dialogue or real cooperation."*

At a conference with Danish Muslims, cultural and political personalities, journalists etc. on 7 September 2005 the Danish Minister of Refugee, Immigration and Integration Affairs Rikke Hvilshøj stated that:

*"Polarization and conflicts based on false arguments and false divisions must be stopped. Therefore, dialogue across cultures and religions in order to find common ground seems more necessary in today's globalized world than ever before. (...) Muslims, Christians, Jews and Atheists are all free to practice their beliefs. And as long as they respect the rights and freedoms of others, they earn the right to receive the same respect in return. (...) The fabric of our society is the freedom we all have as well as the responsibility we all have to one another. (...) We have all seen and heard about radical and antidemocratic movements, who want to destroy all this. We all know that these movements do not represent Islam or any other important religion. (...) Here in Denmark many of our Muslim citizens are hard working and well integrated. In fact the Danish society could hardly function without the contribution of citizens of immigrant and Muslim origin. (...) We [i.e. the Danish Government] are in continuous dialogue with Muslim representatives about our common challenge of protecting democracy – and hence also protecting the place of Islam, Christianity and other convictions in our society. (...) We*

*will repeat again and again, that democracy is there to give freedom to all of us – also to have the religion of our choice and to dress the way we want.”*

## **Dialogue with the Islamic community**

Working to ensure that religious leaders become co-players rather than opponents vis á vis society is one of many roads the Government pursues to achieve mutual respect and understanding.

The Danish Prime Minister has held dialogue meetings with representatives of minorities in the Danish society on two occasions; the latter in September 2005 was held solely with representatives from the Muslim communities in Denmark.

The Minister of Refugee, Immigration and Integration Affairs has also had meetings with imams of the Islamic society in Denmark in April and September 2005.

The dialogue meetings are characterized by the Government's respect towards Muslims in Denmark as well as its wish for stronger community participation, active citizenship, freedom and equality, better opportunities for the young and prevention of radicalization.

## **The national Council for Ethnic Minorities and the Local Integration Councils**

The Government is engaged in continuous dialogue with ethnic minorities through the national Council for Ethnic Minorities and the Local Integration Councils.

The Council for Ethnic Minorities was established in 1999 by a comprehensive integration law, The Integration Act, aiming to promote the participation of new citizens in all areas of society. The Council advises the Minister of Refugee, Immigrant and Integration affairs on issues of importance to immigrants and refugees. The Council furthermore comments on new initiatives and has the right to comment on general issues relating to ethnic minorities but can not deal with individual cases, complaints or the like.

The Council consists of 14 members who are elected among representatives from the local integration councils in the municipalities. The Ministry of Refugee, Immigration and Integration Affairs provides secretarial assistance to the Council for Ethnic Minorities.

The Council meets with the Minister of Refugee, Immigrant and Integration affairs every three months to discuss current problems, new initiatives and legislation. In addition to these meetings, the Minister of Refugee, Immigrant and Integration affairs can ask the Council to comment on specific issues and action plans whenever necessary.

The Council is also taking part in various working groups that has been set up by the Government to deal with problems of importance to immigrants and refugees.

The local integration councils consist partly of members representing local associations of ethnic minorities, so as to ensure that the interests of immigrants and refugees are taken care of at the local as well as at the national level. The local integration councils advise the local authorities on issues related to the local integration policies and assist the politicians and the local authorities to ensure an effective and coherent effort to integrate ethnic minorities in local society.

The majority of the local integration councils either have a formal right to be heard in matters concerning the local integration policies or are consulted by the local authorities on such issues. The local integration councils therefore have a rather close dialogue with the local politicians and authorities.

### **Action Plan to Promote Equal Treatment and Diversity and Combat Racism**

At the World Conference against Racism in South Africa in 2001, the international community affirmed the need for resolute action to combat all forms of racism, racial discrimination, racial hatred and related intolerance. The World Conference was concluded by the adoption of a declaration and programme of action to combat racism. The programme of action urges states to establish national policies and action plans to fight racism.

In November 2003, the Government issued its Action Plan to promote Equal treatment and Diversity and combat Racism. The Action Plan is appended to the enclosed sixteenth and seventeenth periodic report of Denmark to the UN Committee on Racial Discrimination.

#### *Research on educational barriers*

One serious problem today is the excessively high drop-out rate among young immigrants and descendants who fail to complete courses of education. Therefore The Danish Think Tank on Integration - an expert committee set up by the Danish Government - has, as part of the implementation of the Action Plan, conducted a survey to investigate reasons for the non-completion of studies among ethnic minority youth – and whether the dropout rate might be due to discrimination or intolerance at educational facilities. One of the conclusions is that lack of Danish language skills among ethnic minority youths forms part of the problem.

The government has furthermore initiated a survey into the transition from Danish language teaching for foreigners to the rest of the educational system to give persons with an ethnic minority background easier access to education.

#### *Diversity and tolerance through dialogue and debate*

Freedom to differ can only thrive if there is a broad support in society for common fundamental democratic values of freedom, equality, responsibility, duty and active participation.

People can meet in open democratic dialogue in a variety of ways: by active political participation, in the public sphere, in local neighbourhoods, at work and through cultural activities and participation in voluntary organisations of different kinds.

Several of the initiatives in the Action Plan are aimed at dialogue and debate in civic society to promote equal treatment and diversity and combat racism through improving perceptions of and communication between citizens regardless of ethnicity and at building mutual understanding. Dialogue encourages acceptance of differences and counteracts the development of a divided society.

### *Tolerance*

To further the process towards support in society for common values, the Action Plan includes an initiative to launch a process aimed at stimulating dialogue about democracy, citizenship and diversity. It is important that this process is not only going on between central-level politicians, civil servants and experts, but takes place at all levels of society, including in local communities.

As part of the initiative, the Government in cooperation with national youth organisations seeks to develop ethnic minority organisations' work with themes of democracy, citizenship etc. The ethnic minority organisations are furthermore increasingly included in the general cooperation between voluntary organisations in Denmark. An important aim is to involve more people of ethnic origin in voluntary organisations.

### *Public debate*

The Action Plan furthermore contains an initiative to support smaller local - often cultural – events on advantages of, and potential barriers to, a tolerant society with room for diversity.

These events – which are often organised at schools, in local associations, at theatres, in residential areas - bring people together, help eliminate prejudice and create mutual understanding of similarities and differences.

### *Active participation in political life*

Another initiative is directed towards the participation of ethnic minorities in political activities. Political participation strengthens the community as well as tolerance and respect for other people. As part of the initiative, Local Integration Councils and

educational institutions have held local meetings and seminars on democracy, elections and political participation.

### *Sharing responsibility for a nuanced debate*

A further aim of the Action Plan is to facilitate a nuanced debate. In this respect the government believes in highlighting good examples, including in the media, of integration and diversity where respect for other people and equal citizenship comes first.

One example is the campaign “All Young People are Needed”, which is aimed at helping ethnic minority youth break the patterns of negative stigma and eliminate the differences of levels of education and employment existing between ethnic minority youth and the general population. One of the aims is to get young people with ethnic minority background to choose from a wider range of educational possibilities than what has traditionally been the case, promote the completion of studies or vocational training among ethnic minority youths.

As part of the campaign, role models – who are themselves youths with ethnic minority background that have chosen occupations not traditionally chosen by immigrants and their descendants - visit schools in selected regions in Denmark, thereby motivating and helping young people to choose and complete a relevant education.

The Government will furthermore launch a campaign on diversity and equal treatment and against racism to create awareness of the principles of equality and diversity.

### **International conventions on the protection against discrimination**

Denmark has ratified several international conventions, which prohibit certain forms of discrimination, including discrimination on the grounds of religion.

These include the European Convention on Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination and ILO convention no. 111 on discrimination in regards of employment and occupation.

Denmark attaches utmost importance to compliance with its international commitments and no law is passed and no policy adopted without due consideration to Denmark’s international obligations.

### **Legal safeguards against discrimination**

The Government has continuously sought to strengthen legal safeguards against discrimination.

Thus, in May 2003 the Danish Parliament adopted the Act on Equal Ethnic Treatment. The Act aims to ensure a high level of protection against racial discrimination and to implement into Danish law the non-employment aspects of the EU Racial Equality Directive.

The Act includes a prohibition of discrimination on the grounds of racial and ethnic origin as regards access to social protection, including social security and health care, social advantages, education, access to and supply of goods and services, including housing, and membership of and access to services from organisations, whose members carry out a particular profession. The Act also includes a prohibition of harassment on the grounds of race and ethnic origin.

Furthermore, the Act includes a prohibition of victimisation, thus protecting individuals from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment.

The Act includes provisions on shared burden of proof, ensuring that the principle of equal treatment is applied effectively. The shared burden of proof implies that when there is a *prima facie* case of discrimination, the burden of proof in court cases shifts back to the respondent when evidence of such discrimination is brought.

The Act also implies that victims of discrimination are entitled to compensation for non-pecuniary damage in case of breach of the prohibition of racial discrimination. The Act implies that any breach of the prohibition of discrimination should normally trigger compensation for non-pecuniary damages.

Finally, by the Act the Danish Institute for Human Rights was given the power to handle individual complaints on discrimination on the grounds of race and ethnic origin outside the labour market, cf. below.

In the following year, by Act No. 253 of 7 April 2004 amending the Act on Prohibition of Discrimination on the Labour Market, by which the employment aspects of the Directive was implemented, the authority of the Institute was further extended to embrace individual complaints concerning discrimination in the labour market.

The prohibition against discrimination in the labour market is not limited to discrimination on the grounds of race or ethnic origin but also prohibits discrimination on the grounds of colour of skin, religion or faith, political observation, sexual preference, age, disability, national or social origin. Complaints of discrimination on any of the grounds prohibited by the act, including discrimination on the grounds of ethnic origin, race, religion or faith, can be lodged through unions or at the courts.

The prohibition of discrimination in the labour market covers the whole period of employment, including hiring, dismissal, transfer, pay, conditions of work and further training.

## **Specialised bodies and other institutions**

The Danish Government has established the Danish Centre for International Studies and Human Rights, cf. Act No. 411 of 6 June 2002, as a successor to the former Danish Centre for Human Rights established in 1987.

The Centre, which started its work on 1 January 2003, includes an Institute for International Studies and an Institute for Human Rights.

The Institute for Human Rights is established and works in accordance with the UN Paris Principles adopted by the UN General Assembly on 20 December 1993. It is vested with competences to promote human rights as recognized by the international community at any given time, including the Universal Declaration of Human Rights, United Nations conventions and conventions of the Council of Europe on human rights and the fundamental freedoms recognised in the Danish Constitution.

The mandate of the Institute covers a wide range of activities, including research, counselling of the Parliament and the Government on human rights obligations, education on human rights, promotion of equal treatment regardless of race or ethnic origin, provision of information and documentation on human rights, support to non-governmental organisations (NGO's) in collecting documentation on human rights, coordination among NGO's, Nordic and international cooperation within the field of human rights and contribution to the implementation of human rights in Denmark as well as internationally.

The Institute monitors whether the Government observes its human rights obligations pursuant to the Constitution and international treaties, including the freedom of religion and belief.

In spring 2003, the Institute for Human Rights set up the Committee on Equal Treatment (Ligebehandlingsudvalget), which is composed of persons having knowledge and experience within the fields of ethnicity, disability, gender, religion and faith and sexual inclination. The Committee aims to formulate a national strategy for equal treatment. In 2004, the Committee's work concentrated on illustrating activities to further equal treatment and to combat discrimination. A report on equal treatment – about status and future perspectives – is intended to be the basis for further work on and for equal treatment.

Specific powers have been assigned to the Institute for Human Rights and specific funding has been allocated to the Institute for the protection of ethnic minorities. Thus, with the establishment of the Danish Centre for International Studies and Human Rights the Institute for Human Rights was established as the Danish body for the promotion of equal treatment as required by Article 13 in the EU-directive on Racial Equality (2000/43/EU). The Institute has in accordance with the requirements of

Article 13 in the Directive been given the power to assist victims of discrimination, to conduct surveys concerning discrimination and to publish reports and make recommendations on discrimination, cf. Act no. 374 of 28 May 2003.

The Danish Parliament has subsequently decided to further expand the powers of the Institute for Human Rights within the field of ethnic equality by granting the Institute the power to handle individual complaints on racial discrimination both on and outside the labour market, cf. Act no. 253 of 7 April 2004. The EU Racial Equality Directive does not require the establishment of an administrative complaints body, and the Danish Parliament has, thus, moved beyond what was required by the Directive.

The Institute may review complaints and express its opinion as to whether the prohibition of discrimination and the prohibition of victimisation have been violated. The Institute may furthermore recommend that complainants be granted free legal aid in accordance with the Danish Administration of Justice Act. There are no fees for bringing a case before the Institute.

A victim of discrimination may freely decide whether he or she wants to bring the case directly before the courts or to complain to the Institute for Human Rights. However, the main rationale behind the establishment of a complaints body is to provide victims of discrimination with a flexible, inexpensive and swift alternative to the ordinary courts. On the basis of a decision from the Institute, the victim of discrimination may decide whether or not to bring the case before the courts.

The Institute has been allocated 6.0 mill. DKR on a yearly basis (approx. 0.8 mill. Euros) to perform the above mentioned tasks.

For further information reference is made to Denmark's sixteenth and seventeenth periodic report concerning the International Convention on the Elimination of all forms of Racial Discrimination submitted in pursuance of article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination to the Committee on the Elimination of Racial Discrimination in June 2005 (annex).