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NEGATIVE EFFECTS OF TERRORISM ON THE ENJOYMENT OF ALL HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

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By e-mail of 25 July 2016, the OHCHR, Rule of Law and Democracy Section, has requested information from all national human rights institutions concerning best practices and major challenges in addressing the negative effects of terrorism on the enjoyment of all human rights and fundamental freedoms, particularly the right to life, liberty and security of person.

The Danish Institute for Human Rights can provide the following information:

1. BEST PRACTICES

PRACTICAL GUIDANCE PAPER

The institute has published a *Practical Guidance Paper on Counter-Terrorism and Human Rights, 2012* (hereinafter the Guidance Paper).

The **objective** of the Guidance Paper is, first, to introduce an assessment tool to be used at the national level. The assessment tool can assist in identifying and addressing possible weaknesses or shortcomings in relation to fighting terrorism and complying with human rights obligations at the domestic level. Second, to provide input to easily accessible, practical and operational human rights guidelines concerning counter-terrorism measures.

SYSTEMATIC ASSESSMENT TOOL

The systematic assessment tool briefly introduced above is named **PRIME** and breaks the human rights assessment of counter-terrorism initiatives down into five different levels:

P stands for 'policy' and underscores the need for clear policies whilst ensuring respect for human rights. This policy must be transformed into

‘regulation’, which is what **R** stands for. Next, the **I**, which stands for ‘implementation’, describes *how* the policy and the following regulation are implemented at a practical, everyday level in a given state; and *which* practical and operational principles and procedures are established by executive authorities in order to ensure that human rights requirements are taken into consideration and implemented in concrete practical counterterrorism decisions. **M** stands for ‘monitoring’, which provides for a preferably independent mechanism for oversight of conduct performed at the implementing level. Finally, **E** stands for ‘evaluation’ and concludes the process by seeking possibilities of improvement on the preceding levels, ‘P’, ‘R’, ‘I’ and ‘M’.

2. CHALLENGES

IMPLEMENTATION

Overall, the greatest challenge within the field of counter-terrorism and human rights in Denmark concerns implementation of policies and regulation. Today, a very large number of laws include counter-terrorism aspects, which, *inter alia*, broaden the scope of the laws and/or the powers of security agencies, including the police and intelligence services. Very often new legislation confers a broad discretion to security agencies to provide security.

When new counter-terrorism measures are introduced, it must be ensured that such new laws and programmes are implemented with respect for human rights and monitored by independent agencies.

NEW COUNTER-TERRORISM MEASURES INTRODUCED IN 2015

A package of new legislation was introduced in Denmark in 2015 with a view to counter foreign fighters.

By way of an example, it can be mentioned that the Danish Defence Intelligence Service in 2015 was granted access to monitor Danish citizens or Danish residents abroad if there are specific reasons to believe that a citizen or a resident has engaged in activities that may involve or increase a terror threat against Denmark or Danish interests.

The Danish Defence Intelligence Service has until now not been authorised to process information about residents in Denmark, but with this new measure it is authorised to do so now. The problem is that the Defence Intelligence Service can interfere in the secrecy of communications of individuals with a lower requirement of suspicion than Danish Security and Intelligence Service (of the National Police) can do within the criminal justice system. As information can be shared between the Defence Intelligence Service and the Danish Security and Intelligence Service, information on monitoring of individuals may be shared with the Danish Security and Intelligence Service at an earlier

stage than was the case if processed through the criminal justice system.

Another example of introduced counter-terrorism legislation in 2015 concerns Danish prisons and how to prevent and counter radicalisation in Danish prisons. The Danish Institute for Human Rights is currently carrying out a larger study on how the new legislation affects inmates in Danish prisons, including their human rights, e.g. the right to exercise religion, the right to freedom of expression and the right to privacy.

LACK OF EVALUATION OF DANISH COUNTER-TERRORISM MEASURES

The Danish Government decided in October 2015 to close a committee of independent experts that was mandated to scrutinise the Danish counter-terror legislation introduced since 2001 and potential human rights implications.

The Danish Institute for Human Rights has criticised this decision and encouraged the Danish Government and Parliament to undertake a broader evaluation of the counter-terrorism and human rights area based on the PRIME model described above.

Yours sincerely,

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DEPARTMENT DIRECTOR (ACTING)