



# Proposed new rules for detainees in international military operations fall far short of human rights standards

## Amnesty International Public Statement on 16 October 2012 “Copenhagen Process” meeting

On 16 October 2012, Amnesty International attended a meeting at the Ministry of Foreign Affairs of Denmark concerning the “Copenhagen Process on the Handling of Detainees in International Military Operations”. Led by Denmark, a number of states have for some five years held closed discussions and negotiations, keeping both the specific content and the identities of the participating states secret. After five years of being completely shut out of the process, human rights NGOs were provided only some 90 minutes to provide input.

The meeting was the first, and will seemingly be the only, opportunity for such civil society actors to know and respond to the specific proposals. The meeting comes a mere 48 hours before a final closed meeting of states in Copenhagen on 18-19 October, which Denmark hopes will adopt its proposed “Rules and Principles” for the treatment of all detainees in such military operations.

That it comes only so late in the day, and so shortly before any final text is adopted, suggests that even this brief meeting may be more a public relations exercise than a genuine effort to solicit and consider the views of human rights organisations.

Having now learned what is specifically being proposed, Amnesty International is deeply concerned by the lack of ambition and commitment to human rights by the states involved, as reflected in the proposal.

By trying to set a common set of standards that are based in the laws of war but would apply regardless whether the situation is one of full-blown armed conflict, or peacekeeping, or law enforcement, the proposed Rules and Principles will likely be taken to endorse conduct falling far short of applicable international human rights standards.

Amnesty International further believes, based on its experience from decades of research and advocacy, that the proposed Rules and Principles would be exploited by some states in an effort to reinterpret or otherwise avoid their obligations under international humanitarian and human rights law, in ways that could fundamentally undermine the effective protection of human rights in practice.

### **Background**

Announced by Denmark in 2007, the stated aim of the Copenhagen Process has been “to establish a common platform for the handling of detainees” in “international military operations outside the scope of international armed conflicts.”

It appears the intention that the Rules and Principles now being proposed would apply a common set of standards to a very wide range of situations: everything from raging battlefield hostilities in a situation of non-international armed conflict such as has been the case in Iraq or Afghanistan; through to peacekeeping missions under the United Nations or regional organisations such as in the Democratic Republic of Congo; through to situations explicitly outside of any armed conflict, such anti-piracy operations and indeed virtually any situation in which states offer military assistance to other states for domestic or international law enforcement purposes.

In an attempt to accommodate all possible such situations and all states (some of whom may not have ratified as many human rights or humanitarian treaties as others, and regardless whether they have a history of widespread or systematic violation of human rights or humanitarian law) the proposed Rules and Principles fall far short of established international human rights standards.

Amnesty International recognises the operational challenges faced where states with differing sets of treaty obligations, or differing understandings of their obligations under international law, engage in joint military operations. However, the organisation believes that an approach to resolving those challenges that relies on the lowest common denominator, or a muddled compromise of standards, would be fundamentally flawed. Instead, states that wish to engage in joint military operations should harmonize their relevant operating rules for the mission to the highest set of standards applicable among them in order to ensure maximum operational efficiency and full compliance of the operation with all states' obligations.

It was publicly known that inter-state conferences were convened by Denmark in 2007 and 2009, but the content of discussions and the identities of participating states were kept secret, including from Amnesty International, until October 2012. This was despite repeated requests by Amnesty International and others for Denmark to provide a more open and transparent process. Amnesty International understands that one reason the discussions were held outside of any established international organisation, such as the United Nations, was to retain for Denmark greater discretion to exclude civil society and certain states from the discussions.

Denmark had promised that a period for civil society review and consultation would be provided once specific proposals were on the table. Amnesty International does not however consider a 90 minute 'dialogue' so shortly before a final concluding inter-state conference to fulfil the promise of a meaningful opportunity for civil society, including non-governmental organisations concerned with human rights, to participate in the process. Amnesty International understands that the October 18-19 final conference will again be closed to the public and to civil society.

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