Denmark's new externalisation law: motives and consequences

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A new law in Denmark, which could ultimately end the integration of refugees on Danish territory, offers important lessons about contemporary externalisation policies and the political motives behind them.

On 4th February 2021, the Danish Social Democratic government sent out a legislative proposal (known as L226) for civil society consultations. L226 proposed shutting down all processing of asylum claims and granting of residence to refugees on Danish territory, barring a few exceptions. People filing asylum applications in Denmark, including unaccompanied minors, would instead undergo an accelerated procedure assessing their 'transferability' to extra-territorial facilities or camps in an unspecified country outside Europe. Should they be recognised as refugees there, they would not be granted access to Denmark but instead would be sent to an unnamed host country, which would be responsible for them. Given Denmark's uncertain commitment to resettling refugees (they accepted 200 quota refugees in 2020 after having refused any during the preceding four years), this could effectively end the reception of refugees on Danish territory.

Two models were proposed: one where the facilities are placed under the authority of Denmark and a second where the facilities are under the authority of the host country. According to the proposal, the processing facilities are to be constructed after an "agreement or equivalent arrangement with a third country" requiring that country to act in accordance with certain obligations.[1] Notably, however, the government did not provide any details about potential host countries, as none had agreed to the plans before the legislative proposal came out. As a result of this, even if passed into law L226 would not have any immediate effects, but its emergence in the Danish political context reflects wider trends in international asylum politics, and in particular an urge to externalise.

L226: criticism and background

As part of public consultations, a significant number of national civil society actors and international organisations spoke out strongly against the government's plans. Among the criticisms of the proposal were: a lack of clarity about legal standards; worries about increased incarceration, deportations and use of force; the lack of realism given multiple countries' refusal to host such extraterritorial facilities; the risk of encouraging (rather than discouraging) the use of irregular smuggling networks; and the risk of undermining international solidarity and collaboration on protection. Several organisations, including UNHCR, Amnesty International and the Danish Refugee Council, recommended that the proposed legislation be withdrawn. Disregarding such criticisms, the proposal was reissued in April 2021 without any substantial changes, and then passed into law on 3rd June 2021 (70 votes for, 24 against). Prime Minister Frederiksen has repeatedly claimed that externalisation is the only possible solution to the challenges that Denmark feels it faces in accommodating asylum seekers and integrating refugees. This problematisation is questionable, however, not least since Denmark currently receives the lowest number of asylum seekers since the country's current registration system was introduced in 1998.

Communication about the exact nature of the proposed policy has been beset by difficulties. Danish politicians named a variety of actors as potential partners, including UNHCR, the EU, Morocco, Tunisia, Algeria, Jordan, Libya and Egypt, but these all rejected involvement in the Danish plans once they were made aware of having been named as potential partners. Moreover,

the envisioned format of the extraterritorial facilities themselves has shrunk dramatically over the last five years. In 2016, Social Democrats imagined "enormous refugee cities with hospitals, schools, universities, farms and companies". This was, however, quickly replaced by the label of "asylum camps", which was then reframed once more in 2018 as "reception centres", before Minister Tesfaye in 2021 began talking about an "experimental mini-centre".[2]

Externalisation and limiting access to asylum on 'humanitarian' grounds

Externalisation can be defined as a series of steps whereby State actors couple policies to control migration across their territorial boundaries with initiatives for extraterritorial migration management through other public, private or non-State agencies.[3] From the perspective of the externalising actor, the policy works by pre-empting people's ability to exercise their right to apply for asylum on that State's territory. Externalisation is not a new phenomenon but use of it has gained pace in the last four decades. While academic studies of externalisation have typically focused on relations between countries from the so-called Global North and South, with cases including Spain–Morocco, US–Mexico, Italy–Libya and EU–Turkey, such policies are also pursued in South–South and North–North relations, with the EU's Dublin Regulation being an example of the latter. This also indicates that externalisation policies may take several different forms, ranging from Libya's European-funded pull-back practices against migrants travelling by sea to the UK's proposals for detaining asylum seekers offshore in the British Channel, and then the Danish L226.

The Social Democratic government has couched their proposal in humanitarian terms: an intervention against smugglers operating in the Mediterranean. By deterring migrants from crossing into Europe, they argue, they are saving lives and cutting off a flow of money for unscrupulous criminals. Yet the focus on the Mediterranean disregards the fact that the land journey across the Sahara is far more dangerous than the Mediterranean, leading to

at least twice as many fatalities.[4] Furthermore, the one-sided focus on smugglers overshadows how migrants can use smugglers to avoid abuse and violence by local authorities.[5]

Externalisation as a foreign policy priority

Externalisation policies depend on externalising States reaching (or trying to reach) an agreement with prospective partners in migration control. This can place the latter in an advantageous position in negotiations. Talk of 'loss of control' of Europe's borders dominated debates in the Danish parliament leading up to the passing of L226, and while the law does not name any countries, the Social Democrats have regularly used the shorthand of 'North Africa' in referring to prospective partners. The possibility of such partnerships has been rejected by North African States but the process has also coincided with other European States trying to get Algeria, Morocco and Tunisia labelled as 'safe third countries'. This has been attempted by European States in order to allow them to deport asylum seekers to these countries, and to make possible expedited asylum processing or pre-screening of asylum claims. By this logic, European States would then seek to declare asylum applications on European territory inadmissible. However, reports by the UN and human rights organisations indicate mass arrests and desert pushbacks of migrants in several of the States identified as potential hosts by Denmark, as well as a range of violence and rights abuses in the region both by State and non-State actors.

These are all issues that the Danish government might be expected to strongly condemn. And yet, repressive regimes are being actively sought out as partners and not only in North Africa. In May 2021, Danish media reported that two Danish Ministers had signed a Memorandum of Understanding (MoU) on asylum issues with Rwanda, although, later on, the Danish Minister of Immigration, and later the Rwandan Ministry of Foreign Affairs and International Cooperation, both acknowledged that neither an agreement nor even negotiations concerning the topic of externalising the Danish asylum system to Rwanda had in

fact taken place. This was in stark contrast to rumours in the Danish media in the run-up to the vote on L226 that the government had already reached a 'Rwandan deal'.

Externalisation and signalling deterrence
Externalisation has often been portrayed as the exporting of border policing away from a State's territorial boundaries. However, L226 involves a) creating an initial processing system to determine whether or not a person seeking asylum on Danish territory can be placed in a 'transfer position' ready for deportation, and b) a dramatic upscaling of Denmark's incarceration and forced deportation mechanisms, as well as of those of any potential host State. So, rather than a decoupling or exporting of border control, the Danish government's externalisation law in reality represents a doubling – or even greater – of territorial migration controls.

The current Danish deportation system with the punitive conditions of its detention and 'departure' centres has resulted in increasing numbers of people going underground in order to avoid the trauma of extended detention and of deportation. L226 seems likely to accelerate this trend – nationally and internationally – as asylum seekers are not likely to willingly comply with the new categorisation for removal to extraterritorial facilities, the Danish term for which (*ledsaget tvangsmæssig overførsel*) translates as accompanied forced transfers.

Denmark has also engaged in the increased use of 'signalling' to appear as restrictive as possible on asylum issues. These measures include: advertisements in Middle Eastern newspapers to emphasise the cold welcome awaiting anyone seeking asylum in Denmark; the notorious 'jewellery law' mandating the seizure of assets from asylum seekers in Denmark; the proposal to place a departure centre on the isolated island of Lindholm; and the tent camps set up in 2016 to offer lower standards of care to asylum seekers.[6] Not all of these measures were carried through, and some were quickly terminated, but the controversy they engendered was part of their purpose, that is, to discourage displaced people from coming to the country and

to communicate resolute action to certain segments of national voters. It is worth noting that, by this logic, the chorus of debate and criticism of these measures by Danish and international NGOs (despite being important responses) also served to amplify the coverage of controversy and polarisation, something its proponents actively sought.

Conclusion
The case of L226 provides important lessons about contemporary externalisation policies, not despite the difficulties in its implementation but because of them. Reaching an agreement with a non-European host country in order to implement L226 is not likely in the immediate future, and the law may therefore not have any immediate policy impact; nevertheless, it is worth considering its vision and potential repercussions across various contexts.

Thus, the debate about L226 has involved criticism and challenges to the policy as endangering rights and being based on paradoxical appeals to humanitarianism. It actively draws on criticism of the current refugee regime to bolster its claims and feeds a perception that it is access to asylum in Europe, rather than States' criminalisation and deterrence measures, that causes harm to migrants. Moreover, for several years, the Danish government has communicated to the public that diplomatic agreements offering development aid to autocratic regimes in exchange for externalisation partnerships were imminent, when in fact they were not. Danish government claims of dialogues with a handful of African countries were countered in August 2021, when the African Union issued a strong condemnation of the Danish desire for externalisation to African territory. This further suggests a move towards letting the desire for externalisation guide foreign policy. Finally, the controversy it has engendered has cemented the Social Democratic government's hardline position on asylum migration in a domestic political context, sending a message about the lengths to which the Danish State is willing to go in order to deter asylum seekers, whether or not the measures can be carried through. In this sense, even a 'failed'

policy may be politically 'successful', where such success is measured not as sustainable international solutions to displacement that respect human rights, but in terms of attracting domestic anti-immigration votes.

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