

Joint Stakeholder Submission
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Danish Association of Legal Affairs; Danish Helsinki Committee for Human Rights; Danish Red Cross; Danish Refugee Council; Danish-Russian Association; DIGNITY – Danish Institute Against Torture; Disabled Peoples Organization Denmark; European Anti-Poverty Network; European Network Against Racism; Joint Council for Child Issues; LGBT Denmark; Oasis, Refugees Welcome; Save the Children Denmark, United Nations Association Denmark, Women’s Council in Denmark and the Youth for Human Rights.

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Contents

A. Background and framework..... 2

 1. Scope of international obligations 2

 2. Institutional and human rights infrastructure and policy measures 2

B. Implementation of international human rights obligations..... 2

 1. Equality and non-discrimination 2

 2. Right to life, liberty and security of the person..... 3

 3. Administration of justice, including impunity, and the rule of law 6

 4. Right to privacy, marriage and family life..... 7

 5. Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life 8

 6. Right to work and to just and favourable conditions of work..... 8

 7. Right to social security and to an adequate standard of living 8

 8. Right to health..... 9

 9. Right to education and cultural rights..... 11

 10. Migrants, refugees and asylum-seekers..... 12

 11. Human rights and counter-terrorism 14

A. Background and framework

1. Scope of international obligations

1) Lack of incorporation of UN human rights treaties into national law

Recommendations 106.26, 106.28, 106.29, and 106.33. Not accepted.

In Denmark's mid-term UPR report of 2014, the responses were changed to '*Under consideration*'. The grounds for this were that in 2012 the Government had appointed a Committee of Experts with the task of considering the positive and negative implications of incorporating human rights instruments into Danish law and formulating recommendations.

The Expert Committee concluded its work in 2014. The majority of the non-governmental members and independent experts of the committee were in favour of incorporation. However, the only result of the Committee's work was that the Government decided to accede to the Optional Protocol of the CRC.

Recommendation:

- *Incorporate the core UN human rights instruments into national legislation.*

2. Institutional and human rights infrastructure and policy measures

2) Establishment of a Children's Ombudsman

Recommendation 40. Accepted in 2012. CRC Art. 3 and 12.

Denmark has implemented the recommendation. As of 1 November 2012 the government established a National Children's Office as part of the Danish Parliamentary Ombudsman. The Children's Office has a specific mandate to deal with individual complaints from children. However, the office is only authorized to deal with cases after all other relevant means have been exhausted, and it does not have the mandate to give legal assistance to the child in meetings with other bodies. Therefore, many complaints from children are rejected and returned to other authorities. Thus, children are not guaranteed a single channel dedicated to them to assist with their complaints.

Recommendations:

- *Guarantee children a single mechanism to deal with their individual complaints.*
- *Guarantee independent legal assistance to children who want to complain about decisions taken by local, regional or national bodies.*

B. Implementation of international human rights obligations

1. Equality and non-discrimination

3) Review the body of legislation prohibiting discrimination

Recommendation 106.31. Not accepted. CCPR, Art. 2(1) and Art. 4(1), CEDAW, Art. (2), CERD Art. 1(1), CESC Art. 2(2), CRC Art. 2 and CRPD Art. 5(2).

Discrimination is prohibited for all reasons on the labour market. However, in all other sectors of society, discrimination is only prohibited for a few reasons, while some reasons are not covered in any way, e.g., age, disability, gender identity and gender expression. Access to complaint mechanisms (such as the courts

and the Board of Equal Treatment) therefore varies from reason to reason. It is the experience of the civil society that instead of tailor-fit protection, we face confusion, inconsistency and inequality in access to complaint mechanisms; we experience an inability to handle multiple discrimination properly; and we meet a lack of protection for some of the most vulnerable persons in the Danish society.

Recommendation:

- *Adopt legislation on a coherent and general prohibition of discrimination to give equal access to protection.*

4) Gender mainstreaming

CEDAW COR 2015, No. 13-14.

Public authorities, such as ministries and municipalities, to a large extent neglect their obligation for gender mainstreaming. As a result, very few laws are gender mainstreamed, the majority of municipalities have no gender mainstreaming activities, and only few use the gender mainstreaming tools offered by the Ministry of Gender Equality.

Recommendation:

- *Monitor effectively and react promptly to public authorities' non-compliance with the mainstreaming obligation. This should be done by writing deadlines for gender mainstreaming into laws and by imposing deadlines on municipalities for their mainstreaming activities.*

5) Discrimination on grounds of gender identity and gender expression

Gender identity (i.e., gender felt by a person) and gender expression (i.e., gender shown by a person outwardly) are currently not explicitly protected by the law. Legal decisions thus cannot refer to gender identity or gender expression. In one case¹ a transvestite was discriminated in a shop for his gender expression, while the manager of the shop accepted a penalty notice, and the company accepted a fine for discrimination on grounds of sexual orientation, which relates to the attraction between two people.

Recommendation:

- *Explicitly prohibit discrimination on grounds of gender identity and gender expression.*

2. Right to life, liberty and security of the person

6) Incarceration of children together with adults

Recommendation 106.100. Not accepted

The government's non-compliance of this recommendation contradicts Denmark's international obligations, cf. CRC Art. 37(c) and CRC General comment No. 10 (2007), Paragraph 85. The main rule is that children aged 15-17 years who have committed an offence are confined outside of prisons.² In 2013, the average number of children confined in prisons was twelve children per day, including three placed in pre-trial detention.³

Recommendation:

- *Prohibit incarceration of minors together with adults*

¹ <http://www.thranesen.dk/category/artikler/ulovlig/kjole-ole-sagen/>

² Code of Enforcement of Sentence section 78 part. 2.

³ Code of Enforcement of Sentence section 78 part. 2.

7) Solitary confinement

Recommendation 106.100. Not accepted

Isolation as a disciplinary sanction is allowed by the rules on solitary confinement. This is also allowed for children, contrary to CRC Art. 37, General Comment No. 10, para. 89.⁴ Between 2009 and 2013 the Prison and Probation Service registered 158 incidents of children in isolation as a disciplinary sanction or in “exclusion from association” for durations of 24 hours to 14 days. For both children and adults, isolation as a disciplinary sanction has risen from 2,023 in 2004 to 2,959 in 2013.

Recommendation:

- *Amend the time limit for all placements of children in solitary confinement, so the limits follow the Ministry of Social Affairs' executive order on use of force, i.e. a maximum of four hours, regardless of whether the child is isolated as a disciplinary sanction, exclusion from association, under pre-trial detention or any other type of solitary confinement.*
- *Abolish the use of solitary confinement as a disciplinary sanction.*

8) Security cell

ICCPR Art. 7 and 10

When an inmate is considered a danger to himself or others, Danish law allows isolation of him in a security cell, often enforced with physical immobilization to a bed. There is no legal upper time limit for isolation in security cells.

From 2004 to 2013 there was an increase in the number of security cell isolations, from 224 to 252. The number of cases where immobilization also was applied also increased from 156 to 213. In a verdict in June 2014, the Danish High Court found that the Prison and Probation Service had violated a mentally ill person's rights under Art. 3 of the ECHR. In four cases, the placement in security cells was unjustified, and in eight cases the duration of placement with immobilizations was unjustified.

Recommendation:

- *Abandon the use of security cells and immobilization of children.*
- *Introduce a time limit of 5 hours, after which prisons have to inform the Prison and Probation Service of the placement in security cell, and adopt an absolute time limit of 24 hours for placement in security cells.*

9) Nervous and mental disorders among prisoners and detainees

Mentally ill persons in prison are not always given the treatment necessary to alleviate their suffering. This neglect may violate ICCPR Art. 7, CRC Art. 37(c), CRC General comment No. 10 (2007), Paragraph 89 and CRPD ar. 14 (2). Several studies have established that there is a high percentage of people in Denmark suffering from mental illness among those in places of detention. They are sometimes detained for long periods of time within remand institutions and prisons due to lack of capacity in psychiatric institutions.

Recommendation:

- *Integrate the prison health service (MOJ) into the public health system (MOH).*
- *Introduce a screening process to identify mentally ill detainees, chaired by psychologists, and introduce mechanisms to transfer severely mentally ill and suicidal persons to the psychiatric system.*

⁴ Code of Enforcement of Sentence section 63.

10) Pre-emptive mass arrests

There have been cases where pre-emptive arrest violated ICCPR Art. 7, and these rules raise a general concern under ICCPR Art. 9(1). In 2012, the Eastern High Court of Denmark ruled that the pre-emptive mass arrests of 1,900 demonstrators (250 plaintiffs), attending the COP15 2009 in Copenhagen, were unlawful under the Police Act, and that the circumstances under which 178 of these pre-emptive arrests took place constituted a violation of ECHR Art. 3.

Recommendation:

- *Repeal the amendment⁵ of the Police Act § 9 and § 8, so that the upper time limit for pre-emptive arrest during public gatherings and crowds is 6 hours instead of 12 hours.*
- *Pre-emptive arrest pursuant to the Police Act should not be enforced on children.*

11) Safety for victims of trafficking

106.124. Not accepted.

Denmark still offers no long-term alternatives that allow victims of trafficking to stay in the country on a work or residency permit, but solely offers repatriation or, in exceptional cases, asylum. Victims of trafficking are still treated primarily as irregular migrants, and policies and practices still emphasize return of victims to their home countries rather than ensuring redress and protection. This practice has resulted in a growing number of identified re-trafficked victims (9 out of 76 in 2013), and the largest group of identified victims still rejects repatriation from the Danish government.

Recommendation:

- *Prevent re-trafficking by ensuring usable possibilities for identified victims of trafficking.*
- *Ensure access to residence permits if needed to secure personal safety beyond the asylum rules.*

12) Identifying victims of trafficking

In 2013 only 16% of persons identified as victims of trafficking were men, and the majority of identified female victims were identified in the sex industry. From 2009-2013 only 8 minors were identified as trafficking victims.

Recommendation:

- *Adopt strategies to identify victims of trafficking amongst arrested foreigners, in the agricultural sector, in the construction industry and amongst domestic workers.*

13) National Rapporteur on Human Trafficking

The need for an independent rapporteur to closely monitor human trafficking is evident. A rapporteur can keep a continuous focus on and highlight problematic issues such as some potential victims of trafficking still being sent to detention/prison and not to a safe house while being identified. A rapporteur can also monitor and disseminate information on emerging issues as re-trafficking and can analyse investigations and prosecution. From 2007-13 courts have only made 14 convictions in cases of trafficking related to prostitution/sex work (COWI 2014).

⁵ Law 2009 1107

One demand made at the Nordic Forum 2014 was the establishment of national rapporteurs in all Nordic countries. This has been the case in Sweden since 1997.

Recommendation:

- *Establish an independent National Rapporteur on Human Trafficking.*

14) Trafficking – reflection period

106.89 accepted in 2014 mid-term report.

Victims of trafficking are offered a reflection period of 120 days. In this period, victims may remain in the country and receive some medical and psychological support. However, the victim must agree to a voluntary return to their home country.

Recommendation:

- *Grant the 120 days reflection period to all victims of trafficking regardless of willingness to return to the home country.*
- *Grant additional education to these victims in order to make transition to a life without trafficking more sustainable.*

3. Administration of justice, including impunity, and the rule of law

15) The age of criminal responsibility and life-sentencing of juveniles

CRC Art. 37b and 40.

The age of criminal responsibility was raised by Danish law from 14 to 15 years as of 1 March 2012. Some political parties currently argue that the age of criminal responsibility should be lowered to 12 years. According to the penal code, juvenile criminals (aged 15-18) may be sentenced to prison for 20 years. From 1930 to 2010 the maximum penalty for this group was 8 years in prison.

Recommendation:

- *Maintain the minimum age of criminal responsibility at 15 years.*
- *Re-introduce a maximal prison sentence of 8 years for juveniles.*

16) Identification of law enforcement officials

Recommendation 106.76. Accepted

For purposes of accountability of the police, it was recommended that Denmark introduce an individual identification of its law enforcement officers. The Ministry of Justice has asked the National Police and their labour union to propose a model for this by summer 2014. As of May 2015, this has not happened.

Recommendation:

- *Introduce visible individual identification marks on uniforms of law enforcement officials.*

17) Tolerated stay

ICCPR Art. 7 and 12

Denmark has legislation on tolerated stay. According to this, persons are "tolerated" if they are not eligible for residency or asylum but cannot be expelled due to the risk of torture or death penalty upon expulsion. Some of these persons have committed crime in Denmark and been sentenced to prison and subsequent

expulsion. Until expulsion can be effectuated, these persons remain on tolerated stay indefinitely and may not work. The main rule is that one must live at a deportation centre, either Centre Sandholm or Centre Sjaelsmark, and must report to the police usually every day so that expulsion can be carried out promptly when the opportunity arises. Rights to family life and rights to health care are restricted.

In recent years more and more individuals have been placed on tolerated stay, but since 2007 not a single one has been expelled. In 2015, there were 67 persons on tolerated stay. Following an NPM inspection of Center Sandholm in 2014, the Ombudsman stated that the overall conditions for persons on tolerated stay is a huge personal burden and restricts the conduct of one's life. The Ombudsman recommended that the entire tolerated stay legislation be re-considered.

Recommendation:

- *Introduce an upper time limit in the tolerated stay legislation, if possible as a part of the judgement on expulsion.*
- *Amend the Aliens Act, section 26, so that the proportionality of the sanction and the time spent on tolerated stay is taken into consideration when deciding if the sanction should be lifted.*

4. Right to privacy, marriage and family life

18) Lack of right to family reunification

Recommendation 106.116. and 106.130. Not accepted. CRC Art. 3; 6(2); 9(1) and Art. 10(1). ICCPR Art. 23-24

An amendment to the Aliens Act from February 2015 limits the opportunities for family reunification for persons granted temporary protection status. This status is granted to asylum-seekers who need protection due to a particularly serious situation in their home country, characterized by indiscriminate violence and attacks on civilians. Persons granted this status are usually only allowed family reunification after one year and then only if their temporary protection status will be extended. In some cases, however, family reunification will be possible sooner if, for example, the person was responsible for the care of a handicapped spouse in their home country, or if the individual now in Denmark has children in the home country who are have serious health conditions. General access to family reunification with children is currently only available for children under the age of 15.⁶

Denmark should assume responsibility for spouses and children in serious situations where they currently are forced to live in the neighbouring regions or left behind in home countries marked by violence and attacks. This way, family life can be maintained and children and spouses protected.

Recommendation:

- *Amend the Aliens Act so that all of the refugees who flee to Denmark from a particularly serious situation in their home country have the right to family reunification immediately after receiving a residence permit.*
- *In the Aliens Act section 9, no. 2, raise the age limit for family reunification for children to 18.*

19) Gender identity of children and young people

The quality of life of both children and youth would be better safeguarded if their self-experienced gender were recognized as authentic and legitimate.

⁶ The Danish Aliens Act section 9, no. 2.

Recommendation:

- *Lift the requirement of 18-years-of-age for legal gender change by allowing the person exercising parental authority over the minor to file an application. While processing the request, one must (a) ensure that the best interests of the child as expressed in the CRC be the paramount consideration; and (b) give due weight to the views of the minor having regard to the minor's age and maturity.*
- *To ensure the right to bodily integrity of intersex person, coerced surgical gendering must be outlawed.*

5. Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life

20) Right to vote and political participation

ICCPR Art. 25, CRPD Art. 29

The Danish Constitution states that persons under the extensive form of guardianship do not have the right to vote. Thereby, an unknown but limited number of persons do not have the right to participate in elections and referenda.

Persons who are blind or who due to physical disabilities are unable to put their mark on the ballot paper themselves are obliged to be attended by an official who cannot be chosen freely. Furthermore, the polling booths are not soundproof. Their right to vote in secrecy is hereby compromised.

Recommendation:

- *Amend the Constitution as well as legislation on elections and on guardianship to ensure that all Danish citizens above 18 years of age have the right to vote and to be assisted by a person of their own choice if needed.*

6. Right to work and to just and favourable conditions of work

21) Equal pay

CEDAW COR 2014, 29a and 30a

The first Danish Equal Pay Act came in 1976. Today, Danish women are still underpaid due to gender, cf. CEDAW Art. 11 (1.d). The principle of equal pay applies both to equal work and to work of equal value. However, work of equal value is neither described nor defined in the Act.

Recommendation:

- *Define jobs of equal value in an operational way for all who are involved in setting and negotiating wages.*

7. Right to social security and to an adequate standard of living

22) Child Poverty

CRC Art. 26-27

The government introduced an official poverty limit in June 2013. This limit is based on 50% of the median income of a given household for three consecutive years. However, there is no specific focus on child poverty; the poverty limit is only determined by the number of members in the household and not their age.

Recommendation:

- *The government should develop an action plan for combating child poverty and should also include families who have lived in poverty for just one or two years.*

23) Right to adequate housing

UDHR Article 25; ICESCR Article 11.

One of the key structural challenges in alleviating homelessness is the lack of affordable housing. The number of dwellings that homeless and especially young homeless can afford has dropped by 55% from the year 2007 to 2013, according to a report from the Danish Supreme Audit Institution. For poor and excluded groups this drop constitutes a structural discrimination on the housing market.

Recommendation:

- *Set concrete objectives for the supply of affordable and healthy public housing and monitor development continuously. For instance, establish a fixed percentage of municipal housing for homeless.*

8. Right to health

24) Use of immobilization in psychiatric treatment

CESCR, art 12(1), CRPD art 14, 15 and 22.

The use of belts, wrist and ankle straps, involuntary medication and electroconvulsive therapy is widespread and has been criticised for its extent and frequency by the UN CRPD-Committee.⁷ Cases of immobilisation for more than 48 hours reached all-time highs in 2012 and 2013. In several cases patients were immobilized for periods of 1 to 3 months.

Recommendation:

- *Amend laws in order to significantly limit the use of physical, chemical and other non-consensual measures. Provide training of professionals in prevention of torture, cruel, inhumane or degrading treatment or punishment.*
- *Reduce the use of physical immobilization of patients.*
- *Reduce force in psychiatric treatment of children.*

25) The right to protection from psychological violence and bullying in schools

CRC Art. 19.

Bullying is harmful to a child's development and well-being. Both for the child being bullied and those who are engaged in bullying – or just acting as passive spectators – bullying can have a detrimental impact on the mental health and social development of children. The most recent statistics indicate that 7% of Danish children aged 11-15 years are bullied. Unfortunately, there is no law that gives children the right to attend school without being bullied, and therefore no sanctions exist towards schools who do too little to prevent bullying.

Recommendation:

- *Adopt legislation which clearly places a responsibility to stopping bullying on the schools.*

⁷ CRPD-Committee, Concluding observations on the initial report of Denmark, CRPD/C/DNK/CO/1 3 October 2014

26) Reduce inequality in health (EAPN)

CESCR, Art. 12, CRC Art. 24, CRPD Art. 25

Life expectancy is 14 years below average for persons with learning disabilities and mental health problems, while it is 22 years below average for socially excluded persons. For persons who are addicted to drugs, the risk of early death is 48 times higher than for the general population. The health care system does not adapt to vulnerable persons, including in its communication, nor does it provide reasonable accommodation for them. The consequence is that many vulnerable persons turn their back on the health care system, even though they are in need of treatment. Consequently, less serious diseases are often aggravated and worsen.

Recommendation:

- *The government should take targeted initiatives to systematically and regularly reach out to vulnerable persons and groups as a structural element of health care services. These initiatives should be monitored to ensure that they are sufficient and appropriate.*

27) Sexual violence – action plan

CEDAW and the Istanbul Convention art 4 and 36

Prevalence rates for sexual violence vary according to study design, methods and sample. However, it is well documented that reports of rape have been stable the past 30 years between 400 and 600 a year (Balvig 2013)⁸. The number of reports is very low compared to e.g. Sweden, where around 6,000 rapes are reported yearly. A Danish report from 2010 showed that only 30% of reported rapes come to trial, and less than one in five results in a conviction (The Danish Crime Prevention Council, 2010). With this we risk that perpetrators continue to commit sexual violence.

Recommendation:

- *Adopt a national plan of action for the prevention of sexual violence and for ensuring the legal rights of victims of sexual violence.*

28) Violence against women – treatment

Recommendation 106.81. Accepted and 106.82. Accepted. CEDAW and the Istanbul Convention

In cases of violence in intimate relations, neither victims, their children nor the perpetrators are provided the necessary support and treatment by the social and health systems. This reflects the very limited legislation on domestic violence (Section 109, Act on Social Services, obliging municipalities to provide battered women and their children with shelter).

Recommendation:

- *Adopt specific legislation on the rights of citizens in battered families (battered adults, the children and perpetrators) to receive counselling and long-term psychological treatment.*

29) Barriers in health care for LGBT persons

LGBT persons do not have equal access to health care. For instance, all women except for trans persons may legally receive cosmetic breast surgery. Before breast surgery, however, trans persons must first subject themselves to a lengthy evaluation and a decision from the Sexological Clinic and then receive

⁸ Balvig, 2013: *Offerundersoegelsen 2012*

official permission from the Danish Health and Medicines Authority. Also, hormone treatment of trans persons is classified as a "highly specialised" treatment and thus, as a prerequisite, requires the completely superfluous involvement of e.g. a surgeon, resulting in long waiting lists and postponing of necessary treatments. Furthermore, it is common in Denmark that a gay man and single woman have a child together, thus becoming joint parents. However, for fertility treatment, an HIV-positive man can only receive treatment if he is not gay, because the authorities only allow treatment of a man who has a sexual relationship with a woman.

Recommendation:

- *Document and stop unequal treatment of LGBT persons in health care.*

9. Right to education and cultural rights

30) Fewer Danish school children know human rights

Recommendation 106.46. Accepted but ineffective.

A 2014 survey showed that 77% of Danish school children aged 12-16 had little or no knowledge of the UDHR. Concerning the CRC, the situation has worsened since 2009, when 61% of the children had little or no knowledge; in 2014 this had increased to 79%.

Recommendation:

- *Implement mandatory human rights education by incorporating them, including the CRC, in the Public School Act and by specifying explicit human rights learning objectives in the Common Objectives and in the curriculum for the Bachelor of Education*

31) The right to maintain one's mother tongue

CRC Art. 6; 8; 14 (2); 20 (3).

In Denmark only children of EU or EEA citizens are entitled to language lessons in their mother language.⁹ For other children from families in which Danish is not the first language, it is up to the individual municipality to determine if mother-tongue language lessons are offered. This is a concern, since children of third-country nationals are more likely to be raised in socio-economically disadvantaged homes. This lack of mother-tongue fluency can be detrimental to the general development of these children and can be counter-productive if the family returns to the country of origin.

Recommendation:

- *Introduce mother tongue language lessons free of charge to all children, including children of third-country nationals. Assure that all asylum-seeking children receive sufficient mother-tongue lessons.*

32) Gender identity, gender expression and sexual orientation in education (LGBT Denmark)

In the general population, knowledge and awareness of the conditions of LGBT people is appallingly small. Teaching about these conditions is not obligatory at the universities or professional schools. This means that none of the personnel groups that work professionally with people have actual knowledge about these conditions, unless by self-study or if their teachers or managers provide knowledge of their own accord.

Recommendation:

⁹ The Primary and Secondary School Act, section 5(7).

- *Add gender identity, gender expression and sexual orientation to the curriculum of professions concerning people, e.g. medical professionals, health care workers, teachers, lawyers, judges, police, and social workers.*

10. Migrants, refugees and asylum-seekers

33) Non-Refoulement

Recommendations 106.117 and 106.126. Not accepted.

Denmark's asylum system does not identify all asylum-seekers who have the right to residence permits, as stipulated by the principle of non-refoulement (ICCPR Art. 7 and UNCAT Art. 3¹⁰). In the two CAT communications CAT/C/45/D/339/2008 and CAT/C/49/D/464/2011, the Committee ruled in favour of the complainants in cases concerning non-refoulement. A central element in both decisions is the specialized medical examination, which was missing in CAT/C/49/D/464/2011 and given little weight in CAT/C/45/D/339/2008. The lack of consistency in the use of specialized medical examination is of concern.

Recommendation:

- *Systematic medical examinations should be carried out on all asylum-seekers upon arrival to Denmark, so as to identify victims of torture.*

34) Protecting the needs of unaccompanied minors

Recommendation 106.119. Partly accepted. CRC, Art. 3.

According to the Aliens Act §9c, 3.1 and §9c, 3.1 (amendment, of 1 January 2011), the residence permit of an unaccompanied minor asylum-seeker with no access to a social network in the country of origin is withdrawn when he turns 18. The uncertain future experienced during the waiting time of asylum can be traumatizing in itself, with grave consequences for the well-being of the child. The child's personal development and integration into the Danish society (e.g., education, personal ties) are hampered by the continuous fear of the future in the home country and by anticipated deportation. The receiving municipality can also find it difficult to implement an integration programme for the child. The consequences can be greater isolation and traumatization.

Recommendation:

- *Ensure durable solutions to unaccompanied minors by ensuring that their residence permits are automatically renewed when turning 18*

35) Unaccompanied minor asylum-seekers in prison

Recommendation 106.100. Not accepted. CRC Art. 3.

Unaccompanied minor asylum-seekers should not be imprisoned during the asylum procedure cf. Danish Aliens Act § 36 (administrative detention). Currently, they are detained in secured youth institutions or detention centres with children that have been convicted of criminal acts. Furthermore, often no staff or inmates at these institutions speak the child's native language, which results in isolation.

Recommendation:

- *Asylum-seeking children should not be administratively imprisoned, rather accommodated in asylum centres their meet their specific needs.*

¹⁰ Alien Act § 7(2) and § 31.

36) Arbitrary detention of asylum-seekers and migrants

Recommendation 106.131. Accepted.

Asylum-seekers and migrants are frequently detained during return procedures even when there is no specific, individual reason to believe that the person will actually abscond or resist deportation. This is probably contrary to ICCPR Art. 9. Long detention of asylum-seekers and migrants also sometimes occurs and is contrary to the principle of proportionality.

Recommendation:

- *Disclose data on the detention of asylum-seekers and migrants in order to ensure that detention is administered in accordance with the law, and only when justified as reasonable, necessary and proportionate.*

37) Expulsion to inhuman and degrading treatment

Vulnerable persons are at times expelled under the Dublin Regulation to European countries such as Italy and Bulgaria, where they can be exposed to inhuman and degrading treatment, contrary to ICCPR, Art. 7.

Recommendation:

- *Ensure a thorough investigation of the situation of returnees to other EU countries, and apply the discretionary clauses (Dublin Regulation 604/2013, Art. 17) in cases where the background information and decisions from the Human Rights Committee point to significant deficiencies in reception conditions in the respective countries.*

38) Rejected asylum-seekers

Cases concerning rejection of asylum can only be re-opened if there is new evidence, which is often difficult for asylum-seekers to obtain. Even though applications are rejected, sometimes repatriation cannot be implemented either due to the situation in the home country or to doubt about the asylum seeker's identity. As a consequence, many rejected asylum-seekers await deportation from Denmark for several years. This has a profoundly negative effect especially on a child's development.

If a rejected asylum-seeker does not cooperate with preparations for return, the authorities can introduce "motivational measures", meaning that asylum-seekers only receive meals, but are not paid basic allowance, supplementary allowance or care-giver allowance. This situation may last for many years and may be in violation of ICCPR Art. 7, as inhuman or degrading treatment.

Recommendation:

- *Introduce an upper time limit for how long rejected asylum-seekers can await expulsion, pending response from the Dublin recipient country or from the country of origin.*
- *Abolish the cooperation requirement for rejected asylum-seekers and carry out individual assessments of the need for motivational measures.*

39) Torture survivors in detention

Of people in detention, there is a high proportion of torture survivors who await deportation. This may violate ICCPR Art. 7, CRC Art. 37(c), CRC General comment No. 10 (2007), Paragraph 89 and CRPD Art. 14 (2). Amnesty International's Danish Medical Group did a survey in Ellebæk Prison in 2012. This showed that

of the 22 detained asylum-seekers that were examined, 6 (27%) were torture survivors. This indicates that current legislation and guidelines do not protect vulnerable groups against detention in Ellebæk Prison.

Recommendation:

- *Until systematic medical examination is introduced, a formal screening of all asylum-seekers, incl. those rejected, should be initiated in order to avoid detention of torture survivors and mentally ill persons.*

11. Human rights and counter-terrorism

40) Counter-terrorism regulations

ICCPR Art. 12 and 17

Though ill-defined legally, acts of terrorism since 2001 have led to legislation and administrative practises that marginalize civil and political rights, in particular the right of privacy. Prompted by the recent acts of terrorism in Paris and Copenhagen, the government has taken further counter-terrorism initiatives. These include increased surveillance of Danish citizens abroad and of people with legal residence in Denmark but currently abroad, reintroduction of session logging, revoking of passports, and access to airline passenger lists, all due to fear of so-called foreign fighters.

Recommendation:

- *The grounds for enacting counter-terrorism laws should be aligned with the general rule of the Administration of Justice Act, Section 78.*

41) Evidence-based evaluation of the Danish anti-terrorism legislation

ICCPR Art. 14 and 17

The government has not yet carried out an evidence-based evaluation of the Danish anti-terrorism legislation. We welcome the mentioned plans to this effect and ask the government to provide more details about the mandate of this committee and the time frame for its work. Anti-terrorism measures can endanger the right to privacy and can foster racial, ethnic and religious profiling. Such an evaluation must consider these possible effects.

Recommendation:

- *Undertake an evidence-based evaluation of the Danish anti-terrorism legislation and its implementation*

42) Solitary confinement of suspected terrorists

ICCPR Art. 7 and 10

For persons suspected of offences against the independence and safety of the State or against the Constitution or against the supreme authorities of the State (Chapters 12 and 13 of the Criminal Code), indefinite solitary confinement is legal during the pre-trial detention.¹¹ This rule also applies to children. From 2007 to 2012 there were 15 pre-trial detainees held in solitary confinement for over 3 months; 60% of these were terror suspects, held under Chapter 12 or 13 of the Criminal Code.

Recommendation:

Abolish special rules for solitary confinement of terror suspects, suspected of crimes under Chapter 12 or 13 of the Criminal Code.

¹¹ Code of Criminal Procedure § 770(c) para. 4 and 5.