



European Anti-Poverty Network

European Network against Racism



Joint NGO submission

in connection with Denmark's mid-term reporting on the implementation of
the 2016 UPR recommendations (second cycle), July 2018

National Council for
Children in Denmark

OXFAM-IBIS



RETSPOLITISK
FORENING
Danish Law Association

HELSINKI COMMITTEE

DANISH RED CROSS



kvinderådet



LGBT DEN MARK



Joint NGO submission in connection with Denmark's mid-term reporting on the implementation of the 2016 UPR recommendations (second cycle)

The author of this report is the Danish UPR Committee composed of the following 20 organisations¹:

- Amnesty International
- Better Psychiatry – National Association of Relatives
- Danish Association of Legal Affairs
- Danish Helsinki Committee for Human Rights
- Danish Red Cross
- Danish Refugee Council (DRC)
- Disabled People's Organisations Denmark (DH)
- DIGNITY – Danish Institute Against Torture
- European Anti-Poverty Network
- European Network Against Racism
- International Media Support
- International Rehabilitation Council for Torture Victims
- Joint Council for Child Issues
- KVINFO
- LGBT Denmark
- National Council for Children
- OASIS – Treatment and Counselling of Refugees
- Oxfam-IBIS
- United Nations Association Denmark
- Women's Council in Denmark

We would like to thank the Danish government for involving civil society organisations in the preparation of its national mid-term report and for considering some of our concerns reported in our comments to the first draft of the mid-term report.

Our answers are divided into (Part A) recommendations accepted by Denmark fully or partly and (Part B) recommendations not accepted or only noted by Denmark. The report is prepared in consultation with the Danish Institute for Human Rights.

¹ The UPR-Committee consists of organisations who are member of the Danish Human Rights Council.

A: Recommendations accepted by Denmark:

121.15 (Brazil); 121.20 (Azerbaijan) and 121.21 (Egypt): Lack of incorporation of core human rights treaties into Danish law

These recommendations, which were accepted in part, have not been implemented.

Denmark noted in its own midterm-report (July 2018) that the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) would be ratified when the necessary legislative amendments were passed. Denmark provided the same answer during the previous UPR-process in 2011. However, the Danish Government have not yet forwarded such a proposal to the Parliament, even though Denmark signed ICPPED in 2007.

We urge the Government to ratify ICPPED without delay, to accept the competence of its Committee under Articles 31-32 of the ICPPED and provide information as to when this will happen.

There have been no changes in Denmark's position on not incorporating core UN human rights treaties into Danish law. This includes the Convention against Torture and Inhuman and Degrading Treatment or Punishment (CAT), the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of Racial Discrimination (CERD). In August 2014, the Committee of Experts issued its 527-page white paper (no. 1546/2014).² When it came to the final vote on incorporation, the Committee of Experts was split. As a result, no political initiatives have been taken regarding incorporation, neither by former governments nor by the present government. The current situation is that there is no majority in Parliament for an incorporation of any of the UN human rights treaties.

We would like to point out that in Danish law, non-incorporated conventions do not enjoy the same legal status ("retskildeværdi" in Danish) as incorporated conventions, such that court decisions cannot be based directly on non-incorporated conventions.

Moreover, we wish to note that Denmark is required continuously to assess whether its international legal obligations are effectively implemented in practice and whether an incorporation of core human rights conventions into Danish law would be required. Therefore, we recommend that Denmark share its assessment of the situation and note whether it considers that its previous assumptions on this matter still are valid.

² Report ("Betænkning" in Danish) no 1546/2014 on incorporation etc. in the human rights field, 14 August 2014, available in Danish at: http://justitsministeriet.dk/sites/default/files/media/Pressemeddelelser/pdf/2014/Betaenkning_1546.pdf

121.25; (Maldives) 121.37 (Lebanon); 121.64 (Bulgaria) and 121.66 (Canada): Lack of clear anti-discrimination legislation

Recently, the Danish government adopted legislation that prohibits discrimination due to disability outside the labour market.³ However, the lack of clear anti-discrimination legislation outside the labour market has not yet been corrected.⁴

We urge the Government to review Danish anti-discrimination legislation in general; to adopt a comprehensive national anti-discrimination policy; and to include a clear prohibition against direct and indirect discrimination for any reason outside the labour market.

We are concerned about recent legislation and political initiatives aimed at persons who live in so-called "ghetto areas". The term "ghetto" was introduced in 2010 for designated neighbourhoods that fulfilled certain criteria related *inter alia* to percentage of population with non-Western backgrounds, unemployment rate and levels of education and income. Currently (July 2018), some 30 streets in the three largest cities in Denmark (Copenhagen, Aarhus and Odense) have been included in the so-called ghetto list. In March 2018 the current government proposed a list of specific measures to apply to people living in these neighbourhoods. Some of these measures were later adopted by a majority in the Danish Parliament whereas others will be presented for a vote in the Parliament in autumn. These measures include compulsory day-care for 1-year-old children (a minimum of 25 hours per week), a ban on family reunification for immigrants who live in these areas, and significant increases in sentences for gang-related activities and crimes committed geographically close to "ghetto areas". In our view, such measures would entail a risk of indirect discrimination against immigrants and ethnic minorities who live in these areas.

121.40 (Hungary): Review of counter-terrorism legislation

Denmark has not implemented this recommendation and reviewed its counter-terrorism measures, but noted in its mid-term report that it would conduct an evaluation "once the effects of these are known".

We have received the same reply previously and therefore maintain our criticism of the lack of initiatives to conduct such a review; the effects of the various counter-terrorism laws adopted since 2002 must be clear now 16 years later. We therefore urge the government to promptly review this legislation, *inter alia* with a view to conclude whether the legislation complies with international human rights standards.

We note that Danish legislation is similar to the practice in Sweden and Ireland regarding data retention, which was struck down by the European Court of Justice in 2016.⁵ However, Denmark has changed neither legislation nor practice.

³ L 221 Forslag til lov om forbud mod forskelsbehandling på grund af handicap, adopted 31 May 2018.

⁴ Recommendation 121.37 was accepted while the three other recommendations were "accepted in principle". See also recommendation 121.100.

⁵ Cases C-203/15 and C-698/15 against Sweden and Ireland (21 December 2016).

121.56 (Canada): Public awareness campaigns and education programmes promoting diversity and tolerance, while condemning racism and xenophobia

We appreciate that the Danish Government has accepted this recommendation, and these intentions are clearly reflected in the Government's LGBTI Action Plan.

The need for public awareness campaigns and education programmes is unfortunately, growing quickly in Denmark because polarization in the society is rapidly sharpening and tolerance, decreasing. Therefore, we encourage the Danish Government as soon as possible to include knowledge of sexual orientation, of gender identity and expression, and of sexual characteristics in its efforts to promote acceptance of diversity and tolerance.

In particular, we recommend the Government implement awareness programmes on sexual orientation, gender identity, gender expression, and aspects of other minority groups. Such programmes should be directed towards medical professionals, health care workers, teachers, lawyers, judges, police, social workers, and the immigration services. We recommend that the awareness programmes are part both of the obligatory basic education and of advanced training.

We also refer to the accepted recommendations concerning promotion of tolerance (see 121.57 and 121.58) and recommend the Danish Government to take more initiatives to promote intercultural dialogue.

121.100 (South Africa): Implement support services and ensure non-discrimination against the LGBTI community

See our response regarding non-discrimination in general (Recommendation 121.25 (Maldives); 121:37 (Lebanon); 121.64 (Bulgaria) and 121.66 (Canada): Lack of clear anti-discrimination legislation).

We commend the Danish Government for formulating and presenting its LGBTI Action Plan.

However, public financial support for Danish organizations that work for non-discrimination of the LGBT+ community remains limited. ⁶ We would like to encourage the Danish Government to increase long-term funding for such relevant organizations.

121.101 (Uruguay): Ensure equal access to public health for LGBT persons, removing existing legislative barriers for access to gender reassignment-related treatments

⁶ In June 2018, LGBT Denmark noted to the Danish Parliament's Committee on Equality that major LGBT organisations in seven other European countries have received public funding the past several years whereas LGBT Denmark has received none.

We acknowledge that Denmark is the first country in the world to stop using the transgender diagnosis code "F64 Gender identity disorders". This is an important move towards shaping a society that is more inclusive of persons who are not cis-gendered.

However, minors still do not have access to legal change of gender. We therefore urge the Government to make it possible also for minors to proceed with legal change of gender with acceptance from the legal guardian (see also Recommendation 121.141).

In addition, despite advances, LGBT+ people in Denmark still experience difficulties in equal access to public health. This is largely due to lack of knowledge about LGBT+ persons' particular health needs. In many cases this results in LGBT+ people avoiding seeking medical treatment or receiving inadequate medical care if they do access medical care.

We therefore recommend that the Danish Government implements awareness programs for medical professionals and health care workers about sexual orientation, gender identity, gender expression and sexual characteristics (see also Recommendation 121.56).

121.129 (Mexico); 121.133 (Namibia); 121.136 (Thailand): Prohibition of the use of solitary confinement of minors⁷

Denmark accepted these recommendations in part while maintaining its position that solitary confinement of children should continue to be allowed according to the Danish Administration of Justice Act (Retsplejeloven) and the Criminal Enforcement Act (Straffuldbyrdelesloven).

While the number of children in isolation as pre-trial detainees has been limited and only amounted to a single person since 2011, the number of children in isolation under the Criminal Enforcement Act remains high.

With regards to pre-trial detention, in early 2016, solitary confinement was used against a minor who was suspected of preparing explosives. The period of isolation was more than two weeks. We would like to note that the combination of being detained in pre-trial detention and being isolated, which is known to be mentally harmful in general, is particularly worrying when applied to children.

With regards to solitary confinement during sentence enforcement, some 25 to 30 juveniles (aged 15 to 17 years) were held in various forms of solitary confinement in 2014 and 2015.⁸ This is a decline from 40 cases in 2012 and an even greater decline relative to previous years. The maximum length of solitary confinement has been 10 days. The rules on isolation under the Criminal Enforcement Act allow isolation for several offences.

The practice of isolation in prisons was established for adult detainees as the target group. However, current practice with very few exceptions is equal use on juveniles who serve their sentences in prison. In 2014, the European Committee for the Prevention of Torture (CPT) expressed very strong concerns about any form of solitary confinement for juveniles, as this can compromise their physical

⁷ Denmark "noted" the related recommendation 121.135 (Slovenia).

⁸ See further Discussion Paper for the International Conference on Solitary Confinement (April 2017), available at stoptortur.dk

and/or mental integrity. The CPT also noted that juveniles should not be placed in solitary confinement for disciplinary purposes for more than 3 days.

Denmark has been urged to abolish solitary confinement of children by the UN Committee against Torture, by the UN Human Rights Committee and by the UN Committee on the Rights of the Child. As well, the Danish Ombudsman within his OPCAT mandate has issued criticism of the use of various forms of isolation of minors.⁹

In light of the international standards and the severe health consequences of solitary confinement¹⁰, we again recommend Denmark to abolish the use of isolation of children, to change legislation accordingly and to introduce alternative measures.

As a minimum, we urge Denmark immediately to alter the current regime to avoid that a minor in isolation can spend all the time alone. The minor should have access to company of the staff. Focus should be on potential negative consequences of the regime for the minor.

121.132 (Honduras): Prevent the detention of minors in adult prisons¹¹

This recommendation, which was accepted in part, has not been implemented.

From 2015 to 2016, there was an increase in the total number of minors held in prisons.¹² We maintain our position that within the ordinary criminal system, minors should never be detained in adult prisons.

In 2017, the Danish OPCAT-monitoring institution¹³ focused on the issue of detention of minors and analyzed the situation in the few prisons and detention facilities that can accommodate minors and young adults in separate wings.¹⁴ Criticism was voiced of several particular cases of minor in adult prisons. Reference is made to a case of a young asylum seeker who during pre-trial detention spent 45 days alone in his cell (except for 4 days in the company of another inmate).¹⁵ Another example from Nyborg prison related to a young inmate who was the only minor in the entire prison.¹⁶

⁹ Denmark, Danish Ombudsman (*Folketinget Ombudsmanden*), Temarapport 2017: "Unge i sikrede døgninstitutioner, arrester og fængsler", only available in Danish at

http://www.ombudsmanden.dk/ombudsmandensarbejde/ombudsmandens_sagstyper/tilsyn/temaer/temarapport_om_unge_i_sikrede_doegninstitutioner_arrester_og_faengsler/

¹⁰ In April 2017, the Danish NGO, DIGNITY, organized an international conference on the use of solitary confinement. The experts concluded that isolation has very severe consequences for children, even after a few days in isolation, and that in accordance with the Mandela Rules (2015), such measures should be prohibited. Conference Paper is available at stoptortur.dk

¹¹ The same issue was included in recommendation 121.129.

¹² See *Kriminalforsorgen Statistik 2016*, page 14. An increase from 7,9 (2015) to 8,9 (2016) minors in average held in prisons (an increase in cases under the Danish Aliens Act and under the Danish Administration of Justice Act).

¹³ The Danish OPCAT-monitoring institution consists of the Danish Parliamentary Ombudsman, Danish Institute for Human Rights and DIGNITY - Danish Institute against Torture.

¹⁴ Temarapport 2017: "Unge i sikrede døgninstitutioner, arrester og fængsler", only available in Danish at http://www.ombudsmanden.dk/ombudsmandensarbejde/ombudsmandens_sagstyper/tilsyn/temaer/temarapport_om_unge_i_sikrede_doegninstitutioner_arrester_og_faengsler/

¹⁵ *Ib.* Page 26.

¹⁶ *Ib.* page 27.

In addition, we would like to note the issue of unaccompanied minor asylum seekers who are detained either with adults in Ellebæk (secured detention institution) or in criminal institutions that are not suitable for young adults and children. When considering detention, we urge the Government to take sufficient consideration of the vulnerability of unaccompanied minors.

121.177 (Namibia); 121.183 (Austria) and 121.184 (Iceland): Ensure that the best interest of the child is fully considered when deciding on asylum cases

Denmark accepted these recommendations and answered in its mid-term report (July 2018) that “the best interest of the child is always taken into account when deciding on asylum cases”. We maintain, however, for the reasons mentioned below that the recommendations have not been fully implemented.

This issue would arise at different stages of the asylum phase, including the following:

First, with regards to the accommodation of children in asylum centers, the Danish Refugee Council and others have documented that the conditions for asylum children are not in accordance with the best interests of the child.¹⁷ Some of the shortcomings relate to long periods of waiting, to the many transfers within the asylum system and to lack of ordinary, everyday life and family life. Moreover, we wish to highlight specifically the situation for children at Sjælsmark (asylum center for rejected asylum seekers who await deportation), who risk spending years in the asylum center.

Second, with regard to the asylum application, in cases involving a family with children, the immigration authorities do not always organize separate hearings for the children even if they could have their own asylum motive. We, therefore, urge the Danish Government to ensure such separate hearings to ensure an accurate assessment of the best interest of the child and to uncover any individual asylum motive for the child that may be different from its parents’ motive.

Thirdly, with respect to detention of asylum children, we urge the Government to explain why such detention still take place, for example at Ellebæk or in criminal institutions after a court decision (see also above regarding recommendation 121.132).

Finally, with regard to the principle of non-refoulement, the UN Human Rights Committee and the UN Committee against Torture have criticized the Danish Refugee Appeals Board in a number of cases for not implementing this principle and a high number of cases are pending against Denmark with the two committees. Specifically, the UN Committee against Torture expressed concern in its last examination of Denmark due to a case involving a child who was deported from Denmark to Afghanistan in December 2014 and who reportedly was killed upon return to Afghanistan. The Committee recommended Denmark to “put into place mechanisms to monitor the situation of vulnerable individuals and groups in receiving countries after their deportation”.¹⁸ Moreover, in

¹⁷ Reference is made to DRC’s report “Trivsel og udvikling hos børn på asylcentre” (April 2018) (available at <https://flygtning.dk/media/4413364/trivsel-og-udvikling-hos-boern-paa-asylcentre.pdf>) and UNICEF’s report “Protected on Paper an analysis of asylum seeking children in Nordic countries (March 2018).

¹⁸ Concluding Observations to Denmark, 6 February 2016.

specific decisions by the Immigration Authorities, we are concerned that the best interests of the child are not taken into consideration. Reference is made to the decision by the Refugee Appeals Board of 6 July 2018 concerning a Syrian man, who suffered from severe psychological problems and torture related trauma, his wife and their children who suffered from psychological problems. The family is to be deported to Greece.¹⁹ We doubt that the Danish authorities will put in place a mechanism to monitor the situation of these two children in Greece.

With regard to girls at risk of Female Genital Mutilation (FGM), we would like to highlight that we share the view of the Committee on the Rights of the Child on this harmful practice. The Danish asylum practice on non-refoulement of girls at risk of FGM is not fully effective and does not provide the safeguards to ensure that children are being properly identified as being at risk. The lack of identification is partly because children's asylum cases normally follow their parents', which especially put the children of parents who are supportive of FGM in a vulnerable position. In addition to the lack of identification, one could also question if rejections of asylum are being issued on a substantiated basis. Two decisions from the Danish Refugee Appeals Board in 2016 regarding deportation of girls at risk of FGM in Somalia expressed different conclusions.²⁰ The reason for this is the assumption that in some parts of Somalia parents will be able to protect their child from FGM.

In March 2018, the UN Committee on the Rights of the Child found Denmark in violation of the non-refoulement principle with regard to deportation of girls in risk of FGM to Somalia noting that:

*"The evaluation of the risk that a child may be subjected to an irreversible harmful practice such as female genital mutilation in the country to which he or she is being deported should be carried out following the principle of precaution and, where reasonable doubts exist that the receiving State cannot protect the child against such practices, State parties should refrain from deporting the child."*²¹

121.179 (Portugal): Exempt all asylum-seeking and migrant children from detention and grant them access to education through integration into mainstream public schools

This recommendation, which was accepted in part, has not been fully implemented with regard to the issue of detention. See our response above related to 121.132 and 121.177/183/184.

121.182 (Austria): Ensure that the treatment of asylum seekers remains in accordance with the international conventions and protocols that Denmark has signed up to

We maintain that this recommendation, which was accepted by Denmark, is not fully implemented.

¹⁹ Case no. 17/041200, 17/041212, 17/041216, 17/041219. Reference is also made to the decision by the Refugee Appeal's Board of 25 May 2018 in case 17/013176, 17/013702, 17/013704, 17/013706, 17/013708.

²⁰ Danish Refugee Council, case no. Soma/2016/81/MVI and in a not publish case from the 2. February 2016.

²¹ Decision CRC/C/77/D/2/2016 published on 8 March 2018.

While referring to our response to Recommendations 121.177, 121.183 and 121.184, we would like to add that asylum seekers, who are traumatized because of torture, are not provided with full protection of their rights. This was concluded by the Committee against Torture after its last examination of Denmark.²² This conclusion relates *inter alia* to the lack of a systematic approach to the examination of victims of torture during the asylum procedure.

With regard to rejected asylum seekers, we maintain our criticism of the so-called “tolerated stay” regime at Return Centre Kærshovedgård. First, the condition for persons on tolerated stay may cumulatively amount to degrading or inhuman treatment in violation of the European Convention on Human Rights, Article 3; the UN CAT, Article 16; and ICCPR, Article 7. Second, the Danish Supreme Court has in two cases concluded that Denmark violates the European Convention on Human Rights with regard to the rights to freedom of movement.²³

121.189 (Argentina): Take the necessary legal measures to ensure the right to family reunification of children aged over 15 years

Denmark has not implemented this recommendation, as children between the age of 15 and 18 are not legally entitled to family reunification. The general right for children to be reunited with their family only applies to children below the age of 15. Thus, children older than 15 are only granted family reunification if this is warranted by special circumstances, such as the best interests of the child.

We, therefore, disagree with the Government’s reply in its mid-term report (June 2018) that “the necessary legal measures to ensure the right to family reunification of children aged over 15 years are being taken”. We also disagree because the exemption mentioned above (i.e., the best interests of the child) does not always lead to family reunification.

121.198 (China) and 121.199 (Nepal): Honor the Commitment to Development Aid

We would like to add to Denmark’s explanation that since 2015, 20 % or more of the total development assistance has been used to finance expenses within the asylum system in Denmark proper. The Parliament’s Board of Auditors (Statsrevisorerne) has highlighted the importance of ensuring transparency about the total amount of Danish development aid , including the amount used within the Danish asylum system.²⁴

²² Concluding Observations 9 December 2015. See also individual decisions against Denmark.

²³ U 2012.2874 H and U2017.1228 H.

²⁴ Reference is made to the report by the Parliament’s Board of Auditors (Statsrevisorerne), June 2017, available at <http://www.rigsrevisionen.dk/publikationer/2017/202016/>

B: Recommendations not accepted or noted by Denmark

121.19 (Uruguay): Accede to Protocol 12 of the European Convention on Human Rights and Fundamental Freedoms and ensure implementation of concrete measures against all forms of discrimination

The Danish Government has objected to accession to Protocol No. 12 of the European Convention on Human Rights and Fundamental Freedoms because of expected shifts in the balance of power between the legislative and the courts.

However, the Danish UPR Committee urges the Government to accept this recommendation, because Protocol No. 12 is important to ensuring general protection against discrimination, such as on grounds not yet covered or not adequately covered by Danish law, such as age, sexual orientation, gender identity, or gender expression. Danish legislation is, indeed, inadequate here, especially with respect to protecting against discrimination outside the labour market. Consequently, if the Government is reluctant to implement Protocol No. 12 due to changes in power balances, the Danish UPR Committee would like to advise the Government to take other measures that ensure protection against discrimination on these grounds.

121.46 (Georgia) and 121.47 (Indonesia): Develop a National Action Plan for Human Rights

In line with the Danish Institute for Human Rights, we urge the Government to consider developing a national policy and strategy on human rights. In our view this will be crucial for the effective protection of human rights in the future, especially in the current context where human rights more and more are being challenged by various groups in society.

121.130 (Mexico): Repeal the provisions that allow persons with disabilities to be subject to medication and psychiatric treatment without their consent

Regrettably, Denmark only “noted” this recommendation, which relates to the use of coercion in psychiatric institutions. Here we witness a lack of protection of basic human rights. In June 2018, the Danish Health Authority published its assessment of the efforts to reduce the use of coercion in psychiatric institutions since 2014. The Authority concluded that no improvement can be noted, and a high number of persons are still placed under coercion.²⁵ As the issue remains of concern for us and others, we urge Denmark to provide an explanation for its reluctance to accept this issue and then to improve the protection of human rights.

²⁵ The report is available in Danish at <https://www.sst.dk/da/udgivelser/2018/monitorering-af-tvang-i-psykiatrien-januar-december-2017>

121.134 (Poland): Adopt legislation to limit the use of solitary confinement and abolish solitary confinement of children

Regrettably, Denmark only “noted” this recommendation. See our responses regarding solitary confinement of children (Partly accepted Recommendations 121.129; 121.133; 121.136). With regard to adults, we witness a significant increase in the use of isolation as a disciplinary measure in prisons, even for longer periods (the Criminal Enforcement Act). In light of international standards, including the Mandela Rules, we urge Denmark to reconsider its position or at least to provide an explanation for the high use of isolation in prisons.

121.141 (The Netherlands): Allow minors to change their legal gender by allowing the person exercising parental authority over the minor to file an application

Denmark noted this recommendation.

We applaud that the Danish Government is currently considering lowering the age limit for legal gender change. For young people who feel their gender does not correspond to the gender assigned at birth, the mental pain and social dysfunction they experience can be overwhelming and, in some circumstances, lead to psychological problems. The period of reflection and assistance by a parental authority ensure a very thorough consideration before the legal change is effectuated. We urge the Government to soon make this opportunity also available to minors.

121.185 (Greece); 121.187 (Portugal); 121.188 (Turkey); 121.191 (Brazil) and 121.192 (Ireland): Family reunification for refugees

Denmark has noted these recommendations.

In the light of international standards and UN recommendations to Denmark regarding refugees’ right to family reunification, we urge Denmark to reconsider its position on family reunification, including for refugees with temporary status in Denmark who have to wait 3 years before they are entitled to family reunification.