

THE DANISH
INSTITUTE FOR
HUMAN RIGHTS

PARALLEL REPORT TO
THE UN COMMITTEE
ON THE RIGHTS OF
PERSONS WITH
DISABILITIES

DENMARK 2014

**PARALLEL REPORT TO THE UN COMMITTEE ON THE RIGHTS OF PERSONS WITH
DISABILITIES**

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PREFACE

This parallel report to the UN Committee on the Rights of Persons with Disabilities 1st examination of the Government of Denmark is compiled by the Danish Institute for Human Rights (DIHR). The report contains recommendations to the Danish Government and the Greenlandic Government on the strengthening of the national human rights protection within the scope of the Convention on the Rights of Persons with Disabilities (CRPD).

The parallel report is built on the recommendations for the Committee's list of issues for Denmark, which DIHR compiled prior to the publication of the final list of issues from the Committee. Nevertheless, it does not pretend to give answers to the questions in the final list of issues by explaining what the Danish Government already has done to implement the CRPD in Denmark. On the contrary, it focuses on selected issues and on what needs to be done to strengthen the national human rights protection within the scope of the CRPD.

The report is divided into two main sections. The first section concerns the implementation of the CRPD in Denmark. The second section focuses on the implementation of the CRPD in Greenland. Each section is structured according to the final list of issues, though it only contains selected issues from the list. Furthermore, the parallel report contains issues, which are not recorded on the list of issues but according to DIHR still needs to be addressed.

THE DANISH INSTITUTE FOR HUMAN RIGHTS

The Danish Institute for Human Rights (DIHR) was established in 1987 and is regulated by act no. 553 of 18 June 2012 on the Institute for Human Rights – Denmark's National Human Rights Institution. DIHR is an independent, self-governing institution within the public administration. DIHR is established and functions in accordance with the UN Paris Principles and DIHR has been accredited as an A-status National Human Rights Institution by the International Coordinating Committee of National Human Rights Institutions.

Since 2011 DIHR has been appointed as the independent mechanism for monitoring, promoting, and protecting the implementation of the CRPD in Denmark in accordance with Article 33(2) of the CRPD.

DIHR monitors the human rights situation in Denmark and publishes an annual status report as well as academic research, analyses and reports on human rights issues. In general, the monitoring work of DIHR relies on surveys and statistics provided by DIHR as well as other organisations or institutions, including ministries, other government agencies, universities and civil society organisations. In 2013 DIHR published a new status report concerning the human rights situation in Denmark within several different areas, among these the disability area. A summary of the report is available in English at www.humanrights.dk.

DIHR also interacts with the UN treaty body system and the Universal Periodic Review by submitting parallel reports and contributing to list of issues as well as being present during the examination of Denmark.

The core funding of DIHR is based on the Danish Finance Act and covers activities within monitoring, research and education. In addition DIHR receives separate funding for equal treatment work within the field of gender, ethnic origin and rights of persons with disabilities.

In 2014, DIHR was appointed as the national human rights institution of Greenland. The mandate of DIHR thus extends to Denmark and Greenland. DIHR is not the national human rights institution of the Faroe Islands, the other self-governed part of the Kingdom of Denmark. As a result this report does not contain topics concerning the implementation of specific rights of the CRPD in the Faroe Islands.

COOPERATION WITH THE HUMAN RIGHTS COUNCIL OF GREENLAND

Greenland is a self-governed part of the Kingdom of Denmark. Greenland has agreed to be bound by the CRPD. DIHR cooperates with the Human Rights Council of Greenland in carrying out the monitoring function in Greenland.

The council is established by Inatsisartut Act no. 23 of 3rd of December 2012 on the Human Rights Council of Greenland and consists of 15 representatives reflecting the views of civil society organisations working with human rights as well as 3 representatives from the Greenlandic government, the national association of local authorities in Greenland and the parliamentary ombudsman of Greenland. The council is commissioned to participate in the strengthening and consolidation of human rights knowledge and competence in Greenland. Unfortunately, representative organisations of persons with disabilities are

almost non-existent in Greenland and no organisation of persons with disabilities is member of the Council of Greenland.

In 2014 DIHR and the Human Rights Council of Greenland jointly published a status report on the human rights situation in Greenland, including the rights of persons with disabilities. The report is available in Danish and Greenlandic at www.humanrights.dk.

The second section of the present report deals with the implementation of the CRPD in Greenland.

IMPLEMENTATION OF THE CRPD IN DENMARK

ARTICLE 1-4 – PURPOSE AND GENERAL OBLIGATIONS

- Regarding list of issues no. 3

ACTION PLAN

In 2013 the Danish Government adopted a national disability policy action plan. The action plan presents the Danish Government's visions and goals for disability policy in Denmark. However, the action plan does not cover all substantive areas of the CRPD. Furthermore, the action plan is for the most part relatively general and does not consistently provide concrete and measurable targets for Danish disability policy.

DIHR recommends that Denmark:

- Develops and adopts a comprehensive follow-up action plan with concrete and measurable targets for the implementation of the CRPD in Denmark.

INCORPORATION

The European Convention on Human Rights is the only international human rights convention incorporated into Danish law thus making it a part of Danish legislation. None of the core UN human rights conventions are incorporated into Danish law. During the Universal Periodic Review of Denmark in May 2011, the Danish Government was recommended to incorporate into domestic law international human rights conventions to which Denmark is party.

According to Denmark's report to the UN Committee on the Rights of Persons with Disabilities, the CRPD is an element of Danish law and must, as such, be observed by all authorities applying its legislative provisions, including state, regional and municipal authorities. Danish case law, however, shows reluctance by courts to take account of the CRPD in Danish judgments. Furthermore, it is

doubtful whether officials in the state, regional and municipal authorities are sufficiently aware and willing to promote the implementation of the CRPD in practice.

DIHR recommends that Denmark:

- Incorporates the CRPD into Danish law.
- Develops and adopts an action plan to promote the active use of the CRPD by central and local authorities.



ARTICLE 5 – EQUALITY AND NON-DISCRIMINATION

- Regarding list of issues no. 4

According to a study by the Danish National Centre for Social Research (SFI) 13% of the Danish population have experienced discrimination on the ground of disability. Of those with major physical disabilities around 25% have experienced discrimination on the ground of disability.

In Denmark discrimination in the labour market on the basis of disability is illegal due to the implementation of the EU Framework Directive 2000/78 on Equal Treatment in Employment and Occupation. According to Denmark's report to the UN Committee on the Rights of Persons with Disabilities public authorities are also bound by the general fundamental principles of administrative law, which entails that equal situations must be equally treated in a judicial context, requiring that public authorities do not negatively discriminate against persons for reasons such as disabilities.

Outside the labour market, however, persons with disabilities do not enjoy full legal protection against discrimination. There is no express ban on discrimination of persons with disabilities and no duty on service providers to make reasonable adjustments for persons with disabilities. When it comes to persons with disabilities the Danish Board of Equal Treatment therefore only decides on complaints of discrimination based on disabilities in the labour market or closely attached to the labour market.

In 1993 the Danish parliament adopted motion B 43 on equal treatment and equality between person with disabilities and persons without disabilities, recommending that all central and local government authorities and private companies observe the principle of equality and equal treatment among persons

with disabilities and other citizens. The motion is not binding and does not provide any legal remedy for persons with disabilities against discrimination outside the labour market.

DIHR recommends that Denmark:

- Adopts new legislation providing an express ban on discrimination of persons with disabilities outside the labour market, imposing also a duty on i.a. service providers to make reasonable adjustments for persons with disabilities in relation to access to services.



ARTICLE 8 – AWARENESS-RAISING

- **Regarding list of issues no. 8**

A study by the Danish National Centre for Social Research (SFI) shows that more than 55% of the Danish population will not or have concerns about working together with someone with a psycho-social disability.

In the disability policy action plan from 2013 the Danish Government has outlined initiatives to strengthen the recognition of and respect for persons with disabilities, however, no systematic effort which involves the different sectors of the Danish society has been initiated.

DIHR recommends that Denmark:

- Develops and adopts a comprehensive follow-up action plan with concrete and measurable targets to raise awareness throughout society about the rights and dignity of persons with disabilities.



ARTICLE 9 – ACCESSIBILITY

- **Regarding list of issues no. 9**

Surveys show that accessibility requirements in the Danish building regulations are often not complied with. Other surveys show that public websites are still not fully accessible to persons with disabilities. Lack of accessibility continues to

hinder full inclusion of persons with disabilities in education, the labour market, the housing market, cultural life, political life etc.

In the recent disability policy action plan from the Danish Government accessibility is highlighted as a specific focus area. Nevertheless, the Danish Government has not yet launched any systematic effort which involves the different sectors of the Danish society to fulfil the obligation to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public. Persons with disabilities should have equal access to all goods, products and services that are open or provided to the public in a manner which ensures their effective and equal access and respects their dignity.

DIHR recommends that Denmark:

- Adopts new legislation providing an express ban on discrimination of persons with disabilities outside of the labour market, which will also protect against denial of access to goods and services on the grounds of disability.
- Takes measures to counter the fact that the Danish building regulations concerning accessibility in buildings are often not complied with.
- Adopts a right of accessibility to public websites based on the international standard for accessibility to websites WCAG 2.0.



ARTICLE 12 – EQUAL RECOGNITION BEFORE THE LAW

- Regarding list of issues no. 11

Under Danish law there is the possibility to offer various forms of support measures to persons needing assistance to execute their legal capacity to act. The Guardianship Act allows for support in the form of less intrusive assisted guardianship, as well as for traditional financial and personal guardianship provisions. Deprivation of financial responsibility and deprivation of the legal capacity to act are the most intrusive measures in the Guardianship Act, which also entail that the person loses his right to vote. The various provisions of the

Guardianship Act must be specifically adapted to the individual, and the law also allows that the provisions can be implemented for a specified time period.

However, the Danish Guardianship Act does not require the guardian to try to promote the person's legal capacity to act, nor does it require periodic reassessments of guardianship arrangements.

The Danish Guardianship Act should be reformed to strengthen the protection of the right to self-determination of persons with disabilities.

DIHR recommends that Denmark:

- Amends the Guardianship Act and other relevant legislation to strengthen the protection of the right to self-determination and supported decision-making of persons with disabilities.



ARTICLE 13 – ACCESS TO JUSTICE

- **Regarding list of issues no. 12**

According to the Danish Criminal Code persons, who at the time of the act were irresponsible on account of mental illness or low intelligence, are exempted from punishment, but may be sentenced to treatment instead. The length of a sentence to treatment ranges from five years to indeterminate.

The number of persons with psycho-social disabilities who are sentenced to treatment has increased significantly since the 1980s, when there were about 300 court-ordered psychiatric patients per year, to over 9,000 patients in 2011. The length of the treatment sentences can be problematic in relation to the obligation of equal treatment when persons with disabilities are sentenced to treatment for five years or indeterminately for crimes that would have deprived them their liberty in a much shorter timespan if they had been given a prison sentence.

DIHR recommends that Denmark:

- Amends the legislation on forced treatment in the penal system to ensure proportionality between offenses and length of treatment sentences.



ARTICLE 17 – PROTECTING THE INTEGRITY OF THE PERSON

Coercion in mental health treatment affects some of the most fundamental human rights: the right to personal freedom and respect for physical and psychological integrity.

According to the Danish Health and Medicines Authority, coercive measures were applied towards 21% of the approximately 26,000 persons admitted to psychiatric wards in 2012. Approximately 12% were subjected to physical restraints and physical force, a proportion that has been fairly stable since 2005. More than 350 persons have been subjected to forced physical restraints (tied to a bed with belts around legs and stomach and in some cases hands) lasting longer than three days, every year since 2005.

According to the European Committee for the Prevention of Torture there can be no medical justification for forced physical restraints lasting several days, and the Committee has deemed this type of mistreatment to be a violation of the European Convention on Human Rights.

DIHR recommends that Denmark:

- Amends legislation and guidelines on the use of coercive measures in order to limit the use of coercive measures in psychiatric institutions.
- Abolishes the use of forced physical restraints lasting more than 48 hours.



ARTICLE 19 – LIVING INDEPENDENTLY AND BEING INCLUDED IN THE COMMUNITY

- **Regarding list of issues no. 21-22**

The Danish legislation on social services contains a number of service options that support the possibility for persons with disabilities in choosing to live more independent lives included in the community.


According to Denmark's report to the UN Committee on the Rights of Persons with Disabilities the Danish Act on Social Housing allows a wide variety of housing to be established for rental to persons with disabilities. For instance, social disabled-friendly accommodation can be provided as shared housing arrangements or as individual independent accommodation with own kitchen, bath and toilet.

However, in recent years there has been a tendency towards offering these service options in large institution-like residences with 30-60 residents, often placed outside of the city centres. These buildings are often built by municipal authorities with State-guaranteed loans. The large institution-like residences limit the inclusion and participation in the community of the persons living there.

A study by the National Federation of Social Educators also shows that in fact persons with disabilities have limited possibilities of choosing where and with whom they wish to live.

DIHR recommends that Denmark:

- Ends the use of State-guaranteed loans to build institution-like residences for persons with disabilities.
- Amends the Danish legislation on social services to ensure that persons with disabilities may choose freely where and how to live and still receive the service options he or she is entitled to.



ARTICLE 24 – EDUCATION

- Regarding list of issues no. 23 and 28-31

In Denmark inclusion of children with disabilities in the general education system is a political priority and the Danish Government has recently launched a reform of the public education system aiming at increased inclusion. Nevertheless, it is still unclear in which ways and to what extent the pupils with disabilities receive adequate support and accommodation required to facilitate their effective education.

Denmark also lacks information concerning the performance of children with disabilities in Danish elementary schools. A survey from 2009 shows that approximately 64% of pupils with disabilities passed the final exam before

completing grade school (municipal primary and lower-secondary school) while 91% of pupils without disabilities passed the exam. The survey does not include children with cognitive disabilities.

Children in need of more than 9 hours of special education per week, may complain to the Special Education Board. However, this right to complain does not apply to children who need less than 9 hours of special education per week.

According to a study by the Danish National Centre for Social Research (SFI) from 2013 only 14% of persons with an extensive physical disability have a middle or higher education degree as opposed to 25% of persons without disabilities.

DIHR recommends that Denmark:

- Carries out more studies on the performance of children with disabilities in Danish elementary schools.
- Amends the legislation in order to ensure that increased inclusion is followed by adequate support and accommodation in order to facilitate effective education.
- Amends the legislation to ensure that all children with disabilities can complain to an independent authority if they do not receive adequate educational support.



ARTICLE 25 – HEALTH

Under Danish law, persons with disabilities are offered no specific protection from discrimination on the ground of disability in the area of health care. Moreover, it is uncertain to what extent persons with disabilities actually have equal access to health services.

According to studies from 2012, persons with psycho-social disabilities have a life expectancy which is 15 to 20 years shorter than persons without psycho-social disabilities. This is partly due to a less efficient treatment of persons with psycho-social disabilities whose symptoms of somatic illness might go unnoticed or be neglected by the health care system.

The European Commission report on health inequalities in the European Union from 2013 also stresses that persons with disabilities may have limitations in access to health services for reasons unrelated to their disability. The European Commission pointed out that the reasons for this are complex but may include

difficulties experienced by less advantaged persons in navigating the health system and in articulating their needs as well as a lack of accessibility of health care services.

The WHO world report on disability from 2011 furthermore shows that worldwide many persons with disabilities have unequal access to health care services and therefore have unmet health care needs compared with the general population.

DIHR recommends that Denmark:

- Takes initiatives to ensure that persons with disabilities have equal access to the highest attainable standard of health, e.g. by training of health professionals making those directly in contact with patients and those responsible for management more aware of the needs of persons with disabilities.



ARTICLE 27 – WORK AND EMPLOYMENT

- Regarding list of issues no. 32

In Denmark only about 44% of all persons with disabilities of working age are employed, compared to nearly 78% of all persons without disabilities. For persons with both disabilities and reduced work capacity, the proportion of those employed is only 25%.

The Danish Act on Prohibition against Differential Treatment on the Labour Market forbids direct and indirect differential treatment on grounds of disability. The Danish courts have also begun to impose obligations on employers to provide reasonable accommodation to meet the specific needs of their employees with disabilities based on the Act on Prohibition Against Differential Treatment on the Labour Market. However, the general legislation and collective labour agreements still do not impose clear obligations on employers in relation to their employees with disabilities. The lack of clear obligations in the general legislation limits in effect the applicability of the obligation to provide reasonable accommodation on the labour market.

DIHR recommends that Denmark:

- Amends the general labour market legislation so that it imposes

clear obligations on employers to make reasonable accommodation for employees with disabilities.

ARTICLE 29 – PARTICIPATION IN POLITICAL AND PUBLIC LIFE

- Regarding list of issues no. 34

In Denmark, election materials are rarely accessible to blind persons or to persons with learning and intellectual disabilities, the polling stations are often not physically accessible, and ballots may not be accessible to blind persons.

Moreover, it follows from the legislation on parliamentary, municipal and regional elections, referendums and EU Parliament elections that persons under legal guardianship under Section 6 of the Danish Guardianship Act are not allowed to vote or to stand for election.

DIHR recommends that Denmark:

- Amends the Parliamentary Elections Act and other laws governing municipal and regional elections and election of Danish members to the European Parliament so that persons under legal guardianship under Section 6 of the Danish Guardianship Act are not deprived of their right to vote.
 - Ensures, e.g. by legislation, that election materials are accessible to persons with disabilities, that the polling stations are physically accessible, and that ballots are accessible to blind persons.
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IMPLEMENTATION OF THE CRPD IN GREENLAND

ARTICLE 1-4 – PURPOSE AND GENERAL OBLIGATIONS

- Regarding list of issues no. 3

Greenland is a self-governed part of the Kingdom of Denmark. Greenland has in 2012 approved that Greenland is legally bound by the Danish ratification of the CRPD. DIHR has consulted the Human Rights Council of Greenland during the contribution of the previously forwarded selected list of issues, which also forms the basis for this parallel report.

Implementation of the CRPD in Greenland entails some challenges due to the special characteristics of Greenlandic society. Greenland is a geographically large area with a very low population density and a scattered population. As a result, it is difficult to ensure accessibility for persons with disabilities and difficult to ensure access to specialised services for persons with disabilities. For instance, municipal funds could be allocated for personal assistance or foster families for children with disabilities, but in practice the aid may not be allocated due to lack of qualified staff or foster families.

The implementation of Article 33 has not yet been decided by the Greenlandic Parliament. A national action plan for the implementation of the CRPD has not yet been adopted for Greenland.

The Greenlandic government has not carried out a study of compliance of Greenlandic law with the CRPD. Nor has the government adopted an action on the implementation of the CRPD. The CRPD has not been incorporated into Greenlandic law.

In addition, very few representative organisations of persons with disabilities exist in Greenland and they have little resources and knowledge of the CRPD.

DIHR recommends that Greenland:

- Prepares a plan of action on how the convention can be implemented in Greenland, including appointing a framework to promote, protect and monitor the implementation of the CRPD in

Greenland.

- Takes measures to systematically collect data and statistics relating to the situation of persons with disabilities in Greenland.
- Takes measures to support the creation of representative organisations of persons with disabilities in Greenland.
- Incorporates the CRPD into Greenlandic law.



ARTICLE 5 – EQUALITY AND NON-DISCRIMINATION

- Regarding list of issues no. 4

A general prohibition on discrimination on the ground of disability has not been introduced in Greenland. Therefore, contrary to Denmark, discrimination in the labour market on the ground of disability is not prohibited. Especially women and children with disabilities are in great risk of discrimination and are subject to multiple discrimination.

DIHR recommends that Greenland:

- Adopts new legislation providing an express ban on discrimination of persons with disabilities inside as well as outside the labour market, imposing also a duty on employers and service providers to make reasonable accommodation for persons with disabilities in relation to access to employment and services.
- Places emphasis on discrimination against women and children with disabilities.



ARTICLE 6 – WOMEN WITH DISABILITIES AND

ARTICLE 7 – CHILDREN WITH DISABILITIES

- Regarding list of issues no. 5-7

Children with disabilities have limited access to support, including physical aids, counselling, educated professionals and appropriate housing. Some children with severe disabilities are placed in foster homes far away from their parents, some even in Denmark because of lack of possibilities in Greenland.

Girls and women in Greenland are often, in and away from home, exposed to a greater risk of violence, physical harm or assault, neglect, maltreatment or exploitation.

DIHR recommends that Greenland:

- Takes measures to protect women and children with disabilities from violence.



ARTICLE 8 – AWARENESS-RAISING

- **Regarding list of issues no. 8**

There is a lack of awareness and recognition of persons with disabilities in Greenland, which further increases their exclusion from society. This has the consequence that their potential is not seen or met.

The Human Rights Council of Greenland is developing information to children with disabilities on their rights.

DIHR recommends that Greenland:

- Takes measures to raise awareness throughout society about the rights and dignity of persons with disabilities.



ARTICLE 9 – ACCESSIBILITY

- **Regarding list of issues no. 9**

There is a need for a focus on access to information in Greenlandic as well as in Danish. This concerns accessible information and communication services, including information in situations of natural disasters. Furthermore, accessible

information should be developed for persons who only speak Greenlandic and persons in need of adapted and compensatory communication forms, including persons who are deaf, blind, visually impaired, or persons with greater or smaller forms of dyslexia.

The building regulations create general standards on accessibility in new buildings and in renovation of existing buildings and some courses on this topic have been conducted. However, many public institutions are still not accessible for persons with disabilities.

DIHR recommends that Greenland:

- Takes measures to promote greater accessibility within physical environment and to provide information in both Greenlandic and Danish.



ARTICLE 24 – EDUCATION

– **Regarding list of issues no. 28-31**

The Greenlandic legislation entails no provisions regarding access to education for persons with disabilities. There is a need for a greater focus on the cooperation between social services and the education system in order to promote the understanding for persons with disabilities in the education system and ensure access to special support for children with disabilities.

Furthermore, there is a need for alternative education adjusted to persons with disabilities and planned with a focus on the individual development of the person.

In particular, there is no real opportunity to pursue further education for persons with special needs.

In a society which in reality is bilingual and where there is limited access to education in Greenlandic, persons with disabilities can be especially challenged, not only because of their disability, but also because their primary language is Greenlandic. Their access to the fulfilment of their right to education is thus further restricted.

DIHR recommends that Greenland:

- Takes measures to collect data on pupils and students with disabilities and work towards inclusive education and effective support measures in the ordinary education system, including special support during class.
- Ensures that teachers/instructors are qualified for instructing pupils/students with different kinds of disabilities.



ARTICLE 27 – WORK AND EMPLOYMENT

- Regarding list of issues no. 32

There is a need to promote work and employment of persons with disabilities in the labour market in general. An increased effort is needed in the social area as well as in cooperation with the labour market in order to prepare persons with disabilities to participate actively in the labour market.

There is a need for a more coherent coordination of the legislation concerning persons with disabilities in the labour market including coordination of issues of employment and accompanying social services in order to ensure that people find it worthwhile to undertake paid employment.

DIHR recommends that Greenland:

- Takes initiative to prepare persons with disabilities to participate actively in the labour market.
- Coordinates legislation concerning employment and accompanying social services concerning persons with disabilities.

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