Universal Periodic Review of Denmark 2011

Selected human rights concerns and suggestions for recommendations

Danish Institute for Human Rights
April 2011
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Preface

Purpose of the publication
This report contains an overview of selected recommendations concerning various human rights issues. The recommendations in this publication are supplied with brief explanations. This publication should be read in connection with the two compilations from the Office of the High Commissioner for Human Rights and the national report from Denmark. Further explanation of given subject can be obtained in the original reports or by contacting DIHR.

The purpose of this collection of issues is to give an overview of selected concerns, to enlighten the dialogue surrounding the Danish UPR process and to include recommendations which have not been addressed by others. The publication follows the structure of the two compilations prepared by the Office of the High Commissioner for Human Rights on stakeholder recommendations and official UN documents. Each section in this publication contains a prioritised list of recommendations that, in the opinion of DIHR, are most vital to address for Denmark. The recommendations that have been addressed in reports from UN bodies or in stakeholder reports have a reference to the relevant documents. The recommendations from DIHR that are not addressed in the other reports for the Danish UPR are highlighted as new recommendations.

After the Universal Periodic Review of Denmark DIHR plans to produce a thorough baseline report on human rights structures in Denmark, drawing on all available and updated human rights documentation.

The national UPR-process
DIHR has participated in the national UPR-process in several ways including cooperation with the Ministry of Foreign Affairs, assisting national NGO’s and through submission of an individual stakeholder report.

The Ministry of Foreign Affairs has coordinated the national hearing process and drafting of the national report with the involvement of relevant ministries. National hearings were carried out in the cities of Copenhagen and Århus, and in Greenland and the Faroe Islands, through which individuals were given the opportunity to suggest topics for the national report of Denmark. The hearings in Copenhagen and Århus were co-hosted by the Ministry of Foreign Affairs and DIHR while the hearings in Greenland and the Faroe Islands were hosted by the Self-Government of Greenland and the Home Government of the Faroe Islands, respectively.

The Ministry of Foreign Affairs also launched a website where all interested parties could submit suggestions on areas to be covered by the report. A draft report in Danish was also released for public comment on the website. Civil society organisations were furthermore invited to comment on the final draft of the national report.

DIHR has advised the Ministry of Foreign Affairs on the drafting process of the national report and DIHR has commented on a draft version of the national report. The final content of the national report has been decided solely by the Ministry of Foreign Affairs and relevant ministries.
DIHR has acted as secretariat for a group of Danish NGO’s and has assisted in the compilation a joint stakeholder report for the Danish UPR process. DIHR has advised on the general UPR process and in the compilation of the joint stakeholder report while the content of the report was decided by the participating NGO’s. Furthermore DIHR has hosted follow up initiatives among the participating NGO’s.

DIHR has drafted an independent stakeholder report focusing on human rights structures in Denmark. In connection with the drafting of the report DIHR undertook – in agreement with the ministry of Foreign Affairs – the task of hearing several Danish public authorities, including the parliament and the judiciary. For instance the Parliamentary Ombudsman in Denmark and Greenland, the Danish Data Protection Agency, the National Council for Children, the Board of Equal Treatment, the Danish Bar and Law Society and other key stakeholders were heard. Input from the hearing was used in the drafting of the DIHR stakeholder report and will be included in follow up procedures after the Universal Periodic Review of Denmark.

About the Danish Institute for Human Rights (DIHR)

DIHR is Denmark’s national human rights institution, established and functioning in accordance with the Paris Principles. DIHR is the principal organisation in Denmark for promoting, monitoring and advising on human rights. DIHR was in 2007 re-accredited as an (A) National Human Rights Institution (NHRI) by the International Co-ordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC).

DIHR was established in 1987 as the Danish Centre for Human Rights by Parliamentary decision and its status as national human rights institution was acknowledged and confirmed by the adoption of the Act governing the Establishment of the Danish Centre for International Studies and Human Rights of 6 June 2002.

DIHR is since 2003 the designated body for the promotion of equal treatment and effective protection against discrimination on grounds of racial or ethnic origin as set out in Article 13 of the EU Council Directive 2000/43/EC on Equal Treatment Irrespective of Race and Ethnic Origin.

Since January 2011 DIHR has acted as independent mechanism to promote, protect and monitor the implementation of the UN Convention on the Rights of Persons with Disabilities in accordance with article 33 in the convention.

In 2011 DIHR was designated as equality body for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of gender in accordance with Article 20 in EU Directive 2006/54 and article 12 in EU Directive 2004/113/EC.

On the website of DIHR (www.humanrights.dk) an overview on the human rights situation in Denmark is provided. Thus, DIHR legal briefs, country reports, concluding observations, individual decisions and judgements from regional and international monitoring bodies are made accessible for a broader audience. The website provides the public with news and comments on national day by day development on the human rights situation in Denmark.
Contacts and additional information
For further information please contact:

Dr. Jonas Christoffersen
Director
Pho.: +45 32 69 88 61
Email: jch@humanrights.dk

Christoffer Badse
Special Consultant
Pho.: +45 32 69 88 03
Email: cba@humanrights.dk

Anders Folmer Buhelt
Department Director
Pho.: +45 32 69 88 82
Email: afb@humanrights.dk

Representatives from the Danish Institute for Human Rights will be in Geneva 18-19 April 2011 and during the Danish review 2-4 May 2011. Feel free to contact us for further meetings, inquiries or clarifications.
I. BACKGROUND AND FRAMEWORK

A. Scope of international obligations

**Ratification and reservations**

DIHR finds it important that Denmark maintains the role as a leading human rights actor by actively supporting all core international and regional human rights instruments. The same steps should be taken in Greenland and The Faroe Islands in cooperation with their governments and legislatures.

Denmark has not ratified:

- The International Convention for the Protection of All Persons from Enforced Disappearance,
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, and

Furthermore, Denmark has not accepted the right of individual communications in respect of:

- The Optional Protocol to the Convention on the Rights of Persons with Disabilities
- The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

Greenland and the Faroe Islands have not ratified:

- The optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and
- The protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

**Recommendation:** Ratify and incorporate core instruments and work to lift reservations. Accede to optional protocols allowing for individual communications.

**Incorporation**

ECHR is the only international human rights convention which is both ratified and incorporated into Danish law. None of the UN core human rights conventions ratified by Denmark have been incorporated.

**Recommendation:** Incorporate UN core human rights conventions and protocols into Danish law.
B. Constitutional and legislative framework

Constitutional revision
The catalogue of human rights in the Danish constitution is inadequate seen in the light of the development of modern international human rights standards. Furthermore the constitution gives no clear guidance on the status of non-incorporated human rights conventions in Danish law.\(^6\)

**Recommendation:** Strengthen the human rights protection through a revision of the Danish constitution

Public hearing periods for draft legislation
The Danish legislative process involves a broad hearing process where relevant organisations in general are invited to comment on draft legislation. There is however a growing tendency to shorten the hearing period.\(^7\)

**Recommendation:** Ensure an adequate public hearing period in the draft legislation process

Human rights obligations on draft legislation
Guidelines from the Ministry of Justice recommend inclusion of a reasonable description of international obligations in draft legislation. In several cases this recommendation has not been followed. Moreover, draft legislation contains a standard section on consequences concerning gender equality introduces in the bill. This should be broadened to concern equal treatment based on all grounds as well as human rights obligations in general.

**Recommendation:** Ensure that proposed bills always contain a section assessing the consequences in relation to international human rights obligations, including the consequences concerning equal treatment

Revised legislation on equal treatment
The Danish legislation prohibiting discrimination consists of several acts which offer different degrees of protection depending on the discrimination ground in question and depending of the area of societal life. The result is insufficient protection against discrimination targeted at certain groups i.e. persons with disabilities.\(^8\)

**Recommendation:** Revise legislation on equal treatment and introduce a single act on equal treatment covering all discrimination grounds and all areas of society
Access to case law
Monitoring case law of Danish courts is hindered due to lack of free public access to case law. DIHR recommends that Denmark establish a searchable and public data base of Danish judgments. The data base should contain all judgments and administrative decisions. Judgments and other decisions should be searchable by various relevant criteria. Use of the data base should be free of charge.³⁹

Recommendation: Make all case law from all courts and administrative organs publicly available and free of charge
C. Institutional and human rights infrastructure

**Ombudsperson for Children**
The UN Committee on the Rights of the Child, the Danish National Council for Children and several Danish children’s rights organisations have recommended the establishment of an independent ombudsperson for children. The ombudsperson should monitor and promote the rights of children, offer assistance in individual cases and possess a clear public profile.\(^{10}\)

**Recommendation:** Establish an Ombudsperson for Children

<table>
<thead>
<tr>
<th>Adequate funding and independence of DIHR</th>
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<tr>
<td>In 2007 the Sub-committee on accreditation under the International Coordinating Committee of NHRI’s stressed the importance of ensuring adequate funding to address core domestic responsibilities and activities. Since then, the funding of DIHR has been further cut, based on the development of salaries and consumer prices, by 11 Percentage points. This development should be seen in the light of a cut since 2004 by 26 percentage points.(^{11})</td>
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**Recommendation:** Provide adequate funding specifically targeted at strengthening the national monitoring and advisory role of DIHR as a NHRI in accordance with the UN Paris Principles and ensure the respect for the independence of DIHR

<table>
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<th>Funding for OPCAT</th>
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<td>The Parliamentary Ombudsman has in cooperation with the DIHR and the Rehabilitation and Research Centre for Torture Victims been designated as the National Preventive Mechanism in accordance with the Optional Protocol to the Convention against Torture (OPCAT).(^{12})</td>
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**Recommendation:** Adequate resources should be allocated for DIHR’s participation in the work of National Preventive Mechanism
**NHRI for Greenland and the Faroe Islands (New recommendation)**

The act establishing the DIHR entered into force in Greenland in 2005. DIHR was however not given any funding to act as a NHRI in Greenland or to set up a Greenlandic office or otherwise cooperate with Greenlandic authorities. The mandate of DIHR does not cover the Faroe Islands. A NHRI for the Faroe Islands could be established by either broadening the mandate of DIHR or by establishing a new institution. Funding should be provided to carry out the functions of a NHRI both in Greenland and the Faroe Islands.

**Recommendation:** Establish and provide funding for NHRIIs in Greenland and the Faroe Islands.

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**Human Rights and Business Complaints Mechanism**

Denmark has a National Contact Point (NCP) in line with the OECD Guidelines for Multinational Enterprises. The role of NCPs is to promote implementation of the OECD Guidelines by multinational enterprises, including by processing communications on alleged non-compliances with the Guidelines. Under the OECD Guidelines, NCPs are required to be visible, accessible, transparent and accountable. After criticisms by civil society, in 2010, Denmark initiated a review of its NCP to bring it more into line with these criteria. ¹³

**Recommendation:** Ensure that the Danish NCP meets all core criteria for NCPs under OECD Guidelines, and all criteria for non-judicial grievance mechanisms under UN Draft Guiding Principles on Business and Human Rights.
D. Policy measures

**National Action Plan for Human Rights**
Denmark generally maintains high human rights standards but lacks a national action plan for human rights to ensure a systematic approach to the promotion and protection of human rights and to the implementation of recommendations from UN monitoring bodies.¹⁴

**Recommendation:** Develop and implement a national action plan for human rights

**Systematic monitoring of human rights**
Data on the human rights situation in Denmark is not systematically collected, making it difficult to carry out human rights monitoring.¹⁵

**Recommendation:** Carry out a systematic monitoring of human rights and collect human rights data

**Access to information of relevance to human rights monitoring**
DIHR does not possess a right to receive all information of relevance to effective human rights monitoring.¹⁶

**Recommendation:** Ensure that DIHR has access to all information of relevance for an effective human rights monitoring

**Human rights indicators and evaluation**
No systematic and public evaluation of human rights is carried out in Denmark. Furthermore, Denmark has no governmental focal point ensuring systematic and coordinated implementation of human rights obligations. It is therefore the task of the individual ministries to implement human rights obligations within their field.¹⁷

**Recommendation:** Develop human rights indicators and carry out annual human rights evaluations in Parliament
Draft UN Guiding Principles on Business and Human Rights *(New recommendation)*

The UN Special Representative on Business and Human Rights has submitted Draft Guiding Principles on Business and Human Rights for consideration by the UN Human Rights Council in May 2011. The Draft Guiding Principles comprise three pillars: the state duty to protect against human rights abuses by business, the corporate responsibility to respect human rights and access to remedy for corporate human rights abuses.

**Recommendation:** Carry out a review of law and policy in Denmark and Greenland with a view to promoting policy coherence in line with the UN Guiding Principles on Business and Human Rights. Such a review should consider issues such as:

1. state procurement
2. ensuring human rights protection in contracting out of public services delivery
3. strengthening incentives for adoption of CSR policies and CSR reporting
4. consistency with human rights of development assistance policies and programmes.
E. Human Rights Education

Translation of human rights recommendations
All UN treaty bodies recommend that concluding observations are widely disseminated and translated into Danish and other commonly used languages. Denmark does not translate concluding observations and other human rights recommendations. 18

Recommendation: Translation and dissemination of concluding observations and other recommendations from international and regional bodies.

Education and training of judges, lawyers and other professionals
The hearing of independent institutions carried out by DIHR shows that state-mandated institutions working with human rights would benefit from further education on human rights. Additional human rights education of judges, lawyers and other legal professionals could enhance the use of human rights instruments. 19

Recommendation: Increase human rights education and training of judges, lawyers and other professionals

Human rights training of police officers
Training of law enforcement officials includes a limited focus on human rights. Enhanced human rights education is recommended to ensure greater compliance, especially concerning discrimination, hate crimes, ethnic profiling, proportional use of force, as well as dealing with victims of domestic violence, trafficking and other vulnerable groups. 20

Recommendation: Increase human rights education and training of police officers

Human rights education in schools
A limited number of school children have knowledge of the UN Convention on the Rights of the Child and other fundamental and Constitutional rights. Human Rights education in schools should be strengthened. 21

Recommendation: Increased human rights education in schools

Ethnic minority youth drop out of schools (New recommendation)
Surveys have shown that there is an overrepresentation of especially male ethnic minority youngsters who drop out of the educational system and miss out on apprenticeships.

Recommendation: Conduct research and introduce measures to increase the percentage of male ethnic minority youngsters who complete a youth education and apprenticeships.
II. Promotion and protection of human rights on the ground

1. Equality and non-discrimination

Revised legislation on equal treatment
The Danish legislation prohibiting discrimination consists of several acts which offer different degrees of protection depending on the discrimination ground in question. The result is insufficient protection against discrimination targeted at certain groups, i.e. persons with disabilities outside the labour market.\(^{22}\)

**Recommendation:** Revise legislation on equal treatment and introduce a single act on equal treatment covering all discrimination grounds and all areas of society
1.1 Women

**Equality**
CEDAW recommends that Denmark, including the Faroe Islands and Greenland, take concrete measures, including temporary special measures, to accelerate the practical realization of women’s de facto equality with men.²³

**Recommendation:** Take measures to ensure de facto equality between men and women

**Domestic violence**

**Protection of victims**
The CEDAW committee expresses concern about lack of legislation providing for effective protection of victims of domestic violence in Greenland and the Faroe Islands. The committee recommends that Denmark adopt a coordination policy on violence against women that would ensure that victims of domestic violence have access to immediate means of redress and protection, including protection orders, access to a sufficient number of State-funded safe shelters and to legal aid.²⁴

**Recommendation:** Ensure a more effective protection of victims of domestic violence

**Foreign victims of domestic violence**
Foreign married women who have lived in Denmark for less than two years and who are victims of domestic violence may be prevented from leaving their abusive partner and seeking assistance due to strict requirements for obtaining a permanent residence permit.²⁵

**Recommendation:** Provide flexible resident permit solutions for foreign married women victims of domestic violence

**Equal pay**
Danish companies with more than 35 employees must issue wage statistics making it possible to monitor wage gap between men and women. The CEDAW committee urged Denmark to close the wage gap between women and men and to extend the equal pay monitoring and reporting obligations to companies with fewer than 35 employees.²⁶

**Recommendation:** Increase equal pay monitoring and close wage gap between men and women
1.2 Race and ethnic origin

Hate crimes
A study carried out by DIHR shows that a limited number of hate crimes are reported and prosecuted. Measures against hate crimes can be strengthened through increased knowledge of hate crimes among police officers, prosecutors and the public in general. Furthermore data concerning hate crimes should systematically be registered among police, prosecution and courts.27

Recommendation: Strengthen measures against hate crimes

Ethnic profiling
A legal study carried out by DIHR shows that legal safeguards against ethnic profiling can be strengthened for instance through development of national guidelines for law enforcement officials concerning ethnic profiling and registration of police stop and searches.28

Recommendation: Strengthen legal safeguards against ethnic profiling

Police recruitment
The CERD committee noted that applicants to the Police Service from non-Danish backgrounds fail the police recruitment test and drop out of police training in disproportionate numbers.29

Recommendation: Conduct research into why applicants with other ethnic backgrounds other than Danish to a larger extend fail the police recruitment and promote inclusion in the Police Service of other ethnic backgrounds other than Danish
1.3 Disability

**National action plan on human rights of persons with disabilities (New recommendation)**

Denmark does not have a national action plan on human rights of persons with disability. The adoption of a national action plan is necessary to ensure an effective implementation of the CRPD in Denmark.

**Recommendation:** Adopt a national action plan on human rights of persons with disabilities

**Non-discrimination**

There is a need of a legal framework to combat disability discrimination outside the labour market. For example in the fields of education, health, housing and goods and services, persons with disabilities do not enjoy protection against discrimination under a Danish legal act.\(^{30}\)

**Recommendation:** Provide legal protection against discrimination on the ground of disability outside of the labour market.

**Inclusion (New recommendation)**

Under the CRPD Denmark is obligated to ensure that the educational system, the labour market as well as general social structures become inclusive to persons with disabilities.

**Recommendation:** Ensure inclusion in educational system, at the labour market and in society in general

**Universal design (New recommendation)**

Denmark needs to work with the new concept universal design according to the convention instead of accessibility. In Denmark many buildings are old and therefore very inaccessible for instance public buildings and schools. But also public transportation has limited access for persons with disabilities.

**Recommendation:** Ensure universal design in Denmark

**Individual communications**

Denmark has not accepted the right of individual communications in respect of the Optional Protocol to the Convention on the Rights of Persons with Disabilities

**Recommendation:** Accede to the Optional Protocol to the Convention on the Rights of Persons with Disabilities allowing for individual communications.
2. Right to life, liberty and security of the person

2.1 Torture and other cruel, inhuman or degrading treatment or punishment

**Solitary confinement**
Danmark has reduced the use of solitary confinement during the last years. Several international experts have expressed concern and recommended that the use of solitary confinement is reduced further and used as a measure of last resort, for as short a time as possible under strict supervision and with a possibility of judicial review. Solitary confinement of persons under the age of 18 should be limited to very exceptional cases. Furthermore the negative effects of being placed in solitary confinement should be counteracted with increased staff contact and access to tuition, work and other activities. 31

**Recommendation:** Further reduce the use of solitary confinement and counteract negative effects and research into other measures that might replace solitary confinement, while accommodating the investigative interest of the police.

**Introduction of pepper spray as a non-lethal weapon (New recommendation)**
Danmark has introduced pepper spray as measure by authorities to reduce the use of lethal force in use-of-force encounters and for riot and crowd control. Pepper spray causes painful and swollen eyes, breathing difficulties and a sensation of burning skin. Long term effect on the vision of the person targeted with pepper spray has not been completely uncovered.

**Recommendation:** Conduct research into the application and side effects (especially on people with breathing difficulties or persons intoxicated by drugs or alcohol) of pepper spray used by authorities, since the tool based on the relatively ease of use carries and inherent risk of abuse.

**Rendition flights**
A documentary “CIA’s Danish connection” (2008) alleged that Danish and Greenlandic airports and airspace were used for so-called rendition flights of persons from third countries to countries where they risk being subjected to torture or ill-treatment. A governmental task force investigated alleged rendition flights but was unable to confirm or rule out that extraordinary renditions had been carried out in Danish, Greenlandic or Faroese airspace. In 2011 the Greenlandic parliament requested that an independent investigation into alleged rendition flights. The request has however been denied by the Danish government. 32

**Recommendation:** Carry out an independent investigation on rendition flights
2.2 Police conduct

**Identification of law enforcement officials (New recommendation)**
Danish police officers carry no visible identification number or name tag. The possibility of holding individual police officers accountable will be improved by introducing visible ID numbers on uniforms.

**Recommendations:** Introduce ID numbers for law enforcement officials

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**Administrative detention**
Danish Police are allowed to administratively detain a person posing a threat to public order or the safety of individuals for up until 12 hours. This authority was used during the COP 15 Climate Summit in Copenhagen to administratively detain more than 1900 individuals. In 2010 the City Court of Copenhagen found that several of the administrative arrests during COP 15 were in violation of human rights. The NPM established under OPCAT also found the treatment of some detainees degrading.\(^{33}\)

**Recommendation:** Ensure that legislation on administrative detention fully respects personal liberty and freedom of assembly, especially should measures taken by police be necessary and proportionate.
2.3 Human Trafficking

**Identification of victims of trafficking**
Identification of victims of trafficking is essential to ensure a person’s fundamental rights and to combat trafficking. Identifying victims of trafficking requires that the actors who potentially will come into contact with victims of trafficking are well educated in how to identify them. Furthermore it requires that the identification process is not rushed and that it does not have a deadline. Additionally it is of the utmost importance that the victims or potential victims of trafficking feel safe when going through this process.

**Recommendation:** Strengthen the area of identification of victims of trafficking

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**Imprisonment of victims of trafficking**
The Aliens Act gives the police authority to administratively detain a person who is an illegal immigrant for up to 72 hours. A victims of trafficking is a victim of a human rights violation and should as such not be detained but instead be taken to a shelter. This should apply to potential victims of trafficking as well, since detention does not reflect the status of the person as a victim.

**Recommendation:** Ensure that victims of trafficking are not imprisoned

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**Reflection period**
Illegal immigrants that are victims of human trafficking are awarded a reflection period of 30 days before they are sent out of Denmark. The period can be prolonged for up until 100 days provided that the victim of trafficking cooperates with the authorities on her/his return to the country of origin. 30 days is however not a long time for a victim of trafficking to come to terms with her/his situation and to make a decision on whether to cooperate with the authorities.

**Recommendations:** Expand the reflection period and make it completely unconditional
3. Administration of justice, including impunity, and the rule of law

3.1 Juvenile Justice

Age of criminal responsibility
In June 2010 the minimum age of criminal responsibility was reduced from 15 to 14 years. The decision to lower the minimum age of criminal responsibility is contrary to the recommendations made in 2009 by the Commission on Juvenile Delinquency, appointed by the Ministry of Justice, as well as numerous other organizations. In February 2011 the Committee on the Rights of the Child expressed its deep concern regarding the lowering of the age of criminal responsibility. 34

Recommendation: Reintroduce a minimum age of criminal responsibility of 15 years

Maximum prison sentence to persons under 18
Until June 2010 a provision in the Danish criminal code stated that the maximum prison sentence for persons below the age of 18 was 8 years. This means that persons below the age of 18 can now receive prison sentence for 16 and in some instances 20 years. 35

Recommendation: Reintroduce an upper limit of e.g. 8 years for prison sentences issued to persons below the age of 18

3.2 Access to Justice

Legal Aid (New recommendation)
Legal representation is a costly affair in Denmark. The Council of the Danish Bar and Law society has issued the following recommendation in the “The Rule of Law Programme 2009”

Recommendation: Denmark should appoint a broad Legal Aid Commission as soon as possible with the task of analysing and assessing the form and substance of the existing legal aid schemes. In so far as the commission finds the present schemes insufficient or inappropriate, the commission shall suggest changes in the present regulation of these schemes.
4. Right to marriage and family life

Family-reunification

28-year rule
It is a requirement in order to obtain family reunification in Denmark that spouses must have attained the age of 24, and that their aggregate ties with Denmark must be stronger than their ties with any other country. The attachment requirement does however not apply if the spouse living in Denmark has held Danish citizenship for at least 28 years.\(^{36}\)

**Recommendation:** Keep the discriminatory effect of the 28-year rule under review

Family reunification of 15-18 year olds
Children under 15 years can be family reunified in Denmark if a various requirements are met. Children between 15 and 18 years have no statutory right to family reunification unless denial of family reunification would violate international obligations.

**Recommendation:** Allow for family reunification of all children and ensure that the Danish jurisprudence on family reunification is in accordance with human rights obligations.\(^{37}\)
5. Freedom of religion or belief, expression, and right to participate in public and political life

Hate speech
The CERD committee is concerned with the large number of hate speech cases that have been discontinued by the Director of Public Prosecution. DIHR therefore recommends that an independent investigation is carried out to evaluate the practice of the Director of Public Prosecutions concerning hate speech cases. Furthermore it should be established what criteria are applied when deciding to discontinue a reported hate speech case.\(^{38}\)

**Recommendation:** Evaluate the practice of the Director of Public Prosecutions concerning hate speech cases and the criteria applied when deciding to discontinue a reported hate speech case.

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

Dismissal of persons on Parental leave
The Danish Board of Equal Treatment continues to receive cases concerning dismissal of persons on parental leave. The complainants are awarded compensation. DIHR recommends that specific measures are taken to prevent dismissal of persons taking parental leave.\(^{39}\)

**Recommendation:** Take measures to prevent dismissal of persons taking parental leave
7. Right to social security and to an adequate standard of living

**Poverty level**
Denmark has not adopted official poverty indicators, which would enable the government to define a poverty level and to monitor and evaluate the extent of poverty and progress in alleviating poverty.\(^{40}\)

**Recommendation:** Develop mechanism to measure poverty levels

**Mental health care**
The European Committee on Prevention of Torture calls upon the Danish authorities to review the legislation and practice of immobilising psychiatric patients as a matter of urgency. The Committee recommends that patients should only be restrained as a measure of last resort and for the shortest amount of time possible. CRC recommends that Denmark continues to develop a comprehensive mental health care system for children and young people and carefully monitor the prescription of psycho-stimulants to children.\(^{41}\)

**Recommendation:** Explore possible alternatives to restraining as well as drug treatment for psychiatric patients

**Health services for asylum seekers**
Asylum seekers and rejected asylum seekers do not have access to regular health care in Denmark. A particular health care system is available in the asylum centres only for emergencies or relief of pain.\(^{42}\)

**Recommendation:** Ensure adequate health care for persons living in asylum centres
8. Right to education

**Education of asylum seekers**
Asylum seekers are offered educational courses that are limited with regard to choice, quality and learning facilities. They also have access to training which offers recognized qualifications but administrative, organizational and budgetary barriers means that very few actually receives such training.\(^43\)

**Recommendation:** Improve the access to education for asylum seekers.

**Disability**
Danish teachers lack in-service training concerning education of children with disabilities.\(^44\)

**Recommendation:** Provide mandatory in-service training on inclusive education and review curriculum related to inclusive education in teachers’ basic education.

**Mother tongue teaching**
Mother tongue teaching is only offered to children from European Union, European Economic Area countries and those from Faroe Islands and Greenland. CERD recommends that Denmark take appropriate measures to assess whether people of other ethnic groups require mother tongue teaching so that this is extended to their children.\(^45\)

**Recommendation:** Offer mother tongue teaching to all ethnic minorities
9. Minorities and indigenous peoples

**Numerical and legal status of the Roma in Denmark**
CERD noted that Denmark was unable to provide data on the numbers and legal status of the Roma living in Denmark. The committee recommended that Denmark establish the numerical and legal status of the Roma people and afford them full protection from discrimination, racial profiling, hate crimes, and facilitate their access to public facilities. 46

**Recommendation:** Establish the numerical and legal status of the Roma in Denmark
10. Migrants, refugees and asylum-seekers

### Refugees and asylum seekers

#### Expulsion of refugees
UNHCR considered the amendments to the Aliens Act problematic, insofar as the expulsion of a refugee entails that she/he loses his/her refugee status. UNHCR recommended Denmark to ensure that acts which may lead to expulsion are in line with international refugee and human rights law, in order to avoid disproportionate measures being imposed on persons in need of international protection.\(^{47}\)

In UNHCR’s view, the Danish legislation on expulsion of refugees is problematic, insofar as the expulsion of a refugee entails loss of refugee status. Article 1C of the 1951 Convention, does not allow for cessation of refugee status on the ground that a refugee has committed common crimes.

**Recommendation:** Ensure that expulsions are in line with international refugee and human rights law

#### Detention of irregular migrants and asylum seekers
Under Danish law, irregular migrants and asylum seekers can be detained to ensure the presence of asylum applicants while their claims are being considered by the authorities and to effect their removal from Denmark if their claims are unsuccessful. There is no maximum length of detention. Within three days of detention a court must rule on the lawfulness of the deprivation of liberty and to set a time limit for the detention. This time limit may however be extended repeatedly every four weeks.\(^{48}\)

**Recommendation:** Ensure that detention of refugees, migrants and asylum-seekers be a measure of last resort

### Diplomatic assurances
The Danish government has stated that it may be willing to rely on diplomatic assurances to return foreign nationals to countries where torture or other cruel, inhuman or degrading treatment or punishment is believed to occur. Denmark should monitor treatment returned persons and take appropriate action when diplomatic assurances are not fulfilled.\(^{49}\)

**Recommendation:** Ensure that reliance on diplomatic assurances does not lead to human rights violations
Permanent residence permit
The earlier seven years period for obtaining a permanent residence permit has been replaced by a point system containing a number of criteria. Persons with a strong academic background may be capable of obtaining the required points already after four years of legal residence. It will however be difficult for many refugees, especially those with specific protection needs, to obtain the required points. Exemption from these requirements can only be obtained based on the Convention on the Rights of Persons with Disabilities (CRPD) or with reference to Denmark’s international obligations in general.50

Recommendation: Allow for dispensation when applying for permanent residence for beneficiaries of international protection, who, due to age, trauma or other vulnerabilities, cannot be expected to meet the integration targets.

Citizenship for person suffering from PTSD
Access to Danish citizenship is subject to strict requirements concerning among other things language skill. Refugees who are unable to fulfill these requirements due to Posttraumatic Stress Disorder (PTSD) have no possibility of seeking dispensation from these requirements. They will therefore be unable to acquire a Danish citizenship.51

Recommendation: Allow for dispensation when persons suffering from PTSD or other vulnerable groups apply for citizenship
## 11. Human rights and counter-terrorism

**Evaluation of anti-terrorism legislation**

Denmark has several times since 2001 increased police powers to investigate and prevent terrorism. The Danish anti-terrorism legislation was recently evaluated by the Ministry of Justice in cooperation with the Danish Police, The Danish Security and Intelligence Service and the Director of Public Prosecutions. Several legal experts have however criticized that the evaluation did not involve civil society and relevant non-state actors.

**Recommendation:** Carry out broad evidence based evaluation of Danish anti-terrorism legislation
Notes

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12 See also Joint stakeholder submission to the Universal Periodic Review of Denmark, page 9
13 Submission by the Danish Institute for Human Rights to the Universal Periodic Review of Denmark 2nd May 2011, 11th session of the Working Group under the UN Human Rights Council para 15-18
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