



DENMARK: HUMAN RIGHTS MUST BE ENSURED FOR ALL

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC
REVIEW, 38TH SESSION OF THE UPR WORKING GROUP, 3-14 MAY 2021

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INTERNATIONAL**



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INTRODUCTION

This submission was prepared for the Universal Periodic Review (UPR) of Denmark in May 2021. In it, Amnesty International evaluates the implementation of recommendations made to Denmark in its previous UPR, including in relation to the international human rights framework, racial discrimination, refugees and asylum seekers, and violence against women.

It also assesses the national human rights framework with regard to the incorporation of the full spectrum of international human rights obligations into national legislation and the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance.

With regard to the human rights situation on the ground, Amnesty International raises concern about discrimination on the basis of ethnicity or religion, violence against women and girls, rights of lesbian, gay, bisexual, transgender and intersex persons, business and human rights, and climate and human rights.

FOLLOW UP TO THE PREVIOUS REVIEW

During the last review of Denmark in 2016, reviewing states made recommendations relating to, amongst others, the international human rights framework, racial discrimination, refugees and asylum seekers, and violence against women.¹ Amnesty International welcomes that the government accepted most recommendations but notes that many have not been adequately fulfilled and several of the human rights concerns raised during the last review remain relevant.

For example, Denmark accepted the recommendations from several states² to ratify the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), but this has not been implemented.

Denmark accepted to guarantee “war refugees” the right to family reunification³, but this group of refugees do not have access to family reunification for the first three years in Denmark.⁴

¹ Denmark received 199 recommendations of which it accepted 120 recommendations and partially accepted 14; 44 recommendations were noted. *Report of the Human Rights Council on its 32nd session*, UN Doc A/HRC/32/2, para 771

² *Report of the Working Group on the Universal Periodic Review: Denmark*, UN Doc A/HRC/32/10, Recommendations 120.11 –120.14 (Panama, Tunisia, Uruguay, Portugal, Montenegro, Slovakia; Germany, France, Ghana);

³ A/HRC/32/10, Recommendation 120.190 Give importance to guaranteeing that refugees who fall into the category of “war refugees” are given the right to family reunification (Bahrain).

⁴ “War refugees” are protected under section 7, subsection 3, of the Aliens Act. In 2015, the Parliament adopted an amendment (L87) to the Aliens Act to introduce a postponement of the right to family reunification for people with temporary protection status in Denmark – the so-called war-refugees.

Amnesty also regrets that there has been no progress with regard to tackling discrimination of intersex persons.⁵

THE NATIONAL HUMAN RIGHTS FRAMEWORK

Amnesty International regrets that the full spectrum of international human rights obligations is not incorporated into national legislation.

Disappointingly, the government has not yet ratified the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED).

THE HUMAN RIGHTS SITUATION ON THE GROUND

DISCRIMINATION ON THE BASIS OF ETHNICITY OR RELIGION

In 2018, the Danish Parliament adopted a law amending the Act on Social Housing, the Act on Renting Social Housing, and the Act on Rent - named L38 or the “ghetto package”. The law was intended to change the composition of residents in areas divided into three broad categories: “vulnerable areas”, “ghettos” or “hard ghettos”.⁶

A so-called “vulnerable area” meets two of the following four criteria: higher than average rates of unemployment, criminal convictions, low education, and low incomes.⁷ A so-called “ghetto” is defined as a housing area where the proportion of immigrants and descendants from “non-Western countries” exceeds 50 percent and where at least two of the four criteria for “vulnerable areas” are met.⁸ A so-called “hard ghetto” is defined as a housing area that has met the criteria for the “ghetto area” designation for four consecutive years.⁹

⁵ A/HRC/32/10, Recommendation 120.100 Implement support services and ensure non-discrimination against the lesbian, gay, bisexual, transgender and intersex community (South Africa).

⁶ “Composition” is used by the Danish government to describe a range of parameters – social background, national or ethnic origin, etc.

⁷ Act on Social Housing, section 61a, www.retsinformation.dk/Forms/R0710.aspx?id=206725.

⁸ Act on Social Housing, section 61a, subsection 2, www.retsinformation.dk/Forms/R0710.aspx?id=206725

⁹ Act on Social Housing, section 61a, subsection 4. According to the explanatory notes to the Law, its main purpose is to enable the government, the regional and the municipal authorities to take steps to dismantle social housing areas by selling social housing building complexes to private investors, for them to turn them into owner-occupied flats or demolish them and build new housing. The private investor/landlord is obliged to give the original tenants their notice of eviction and to subsequently rehouse them.

The categorization of neighbourhoods as outlined above and the application of special regulatory measures to residents living in areas with higher than average rates of unemployment, low income families, low education and families of “non-Western backgrounds” clearly discriminates against certain people on grounds of their race and ethnicity, as well as due to their socially disadvantaged status.

The stated “regeneration” goals of L38 are to be achieved through the privatization and/or demolition of social housing, both of which will lead to evictions of the original tenants.¹⁰ According to the explanatory remarks, the implementation of L38 will entail privatization or demolition of approximately 11,000 social welfare flats meant for families. Several social housing associations stated that it is highly unlikely that it will be possible to procure the necessary, affordable housing for the people evicted from their original housing.¹¹

Amnesty International is deeply concerned that the privatization or demolition will result in people being made homeless and others living in inadequate housing.

In addition to racial discrimination with regard to the right to housing, such areas can be temporarily classified as “increased punishment zones” by the police meaning that residents and others going about the area may face double criminal penalties if found to have committed certain offences, for example vandalism, assault, public order offences, arson, threats and extortion.¹²

In November 2019, following its most recent examination of Denmark, the United Nations Committee on Economic, Social and Cultural Rights recommended Denmark to “remove the definitional element of a ‘ghetto’ with reference to residents from ‘non-Western’ countries, a discriminator on the basis of ethnic origin and nationality” and “repeal all provisions that have a direct or indirect discriminatory effect on refugees, migrants and residents of the ‘ghettos’”.¹³

A criminal offence banning the wearing of face coverings in public¹⁴ which came into force on 1 August 2018, carries a fine of 1,000 Danish krone (approx. 132 euros) for a first offence, rising to double that amount for a second and 5,000 Danish krone for a third (658 euros), with fines for subsequent offences starting at 10,000 krone (1,319 euros).¹⁵ The law has a negative and discriminatory impact on Muslim women who choose to wear the niqab or the burka.

Despite the fact that such face coverings were only mentioned twice in the Comments to the Bill, the explicit targeting of Muslim women wearing the niqab or the burka was made clear during the parliamentary debate preceding its adoption, where MPs from the supporting political parties clarified that the law did not intend to prevent people from dressing up for carnivals, but to prevent the use of the niqab or the burka.¹⁶

People who have had their asylum claim rejected and do not cooperate in carrying out their departure from Denmark¹⁷ may be remanded in Ellebæk, a prison-like detention centre. Ellebæk was visited by The Council of Europe’s Committee on the Prevention of Torture, which found the prison-like conditions, the poor

¹⁰ Law L38, p. 7, p. 11-12 para 2.2.2, p. 17, para 2.6.2, p. 24, para 2.11, p. 27, para 4.1., p.35, para 4, p. 40, no. 23, p. 42, no. 28, p. 44.

¹¹ Some of the housing associations critical of the bill: Lejerbo, AKB, Øst-jysk Bolig, AAB, Civica, FAB. Danmarks almene Boliger. See e.g. article in ‘Information’ of 6 May 2020: <https://www.information.dk/indland/2020/05/almene-boligselskaber-opraab-suspender-ghettokrav-corona>.

¹² Danish Criminal Code, art 81(c); Act on Policing, section 6(a).

¹³ UN Committee on Economic, Social and Cultural Rights, *Concluding observations on sixth periodic report of Denmark*, UN Doc. E/C.12/DNK/CO/6 (2019), para 52 (a) and (d).

¹⁴ Law 219 amending the Criminal Code.

¹⁵ Danish Criminal Code, Article 134(c), Comments to Law 219, para 3.2.6, www.ft.dk/ripdf/samling/20171/lovforslag/l219/20171_l219_som_fremsat.pdf.

¹⁶ Transcript of parliamentary debate on Law 219 of 14 April 2018, www.ft.dk/samling/20171/lovforslag/L219/BEH1-85/forhandling.htm.

¹⁷ Aliens Act, section 35 and 36.

standard of the facilities and the ban on cell phones amongst other concerns, to be unacceptable. The Committee called on the Danish government to take steps to improve the conditions.¹⁸

VIOLENCE AGAINST WOMEN AND GIRLS

Despite Denmark's reputation for gender equality, a European Union-wide survey in 2014 found that 46% of women in Denmark had experienced some form of physical, sexual or psychological violence, and ranked Denmark highest in terms of the prevalence of rape among women and girls aged 15 and over (19% of women and girls interviewed).¹⁹ On average, 6,700 women experience rape or attempted rape every year according to the Ministry of Justice.²⁰ In 2019, only 79 rape cases resulted in a conviction. In a report from 2019, Amnesty International documented that while some welcome efforts have been made in recent years, Denmark's legislation and practice in relation to sexual violence continue to fall short of international human rights law and standards in a number of ways with serious consequences for survivors, including due to the prevalence of gender stereotypes and rape myths in Danish society.²¹

Denmark was one of the first states to ratify the Istanbul Convention in 2014.²² By 29 September 2020, the government presented a proposal for a consent-based law and opened it to consultation²³ and it is expected to go through Parliament in 2020.²⁴ The implementation of the new legislation must focus on increasing the reporting of rape cases and subsequent response to survivors by the justice system, as well as on increasing public awareness of sexual violence, all of which are key aspects of overcoming impunity for these crimes and preventing them from happening.

Sexuality education is a compulsory subject in Denmark, although the amount of time to be allocated to it is not stipulated.²⁵ A study commissioned by the Ministry of Education in 2018 showed that only 36% of the 741 seventh grade students in state primary schools interviewed received sexuality education and linked identified deficits in the pupils' knowledge and/or competencies to insufficient and inadequate teaching.²⁶

The Istanbul Convention obliges states to take "necessary steps to include teaching material on issues such as equality between women and men, non-stereotyped gender roles, mutual respect, non-violent conflict resolution in interpersonal relationships, gender-based violence against women and the rights to sexual

¹⁸ Report to the Danish Government on the visit to Denmark carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 3 to 12 April 2019.

¹⁹ Fundamental Rights Agency, *Violence against women: an EU-wide survey*. Main results report, 2014, <https://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report>.

²⁰ Danish Ministry of Justice: *Udsathed for vold og andre former for kriminalitet, Offerundersøgelserne 2005-1019, Justitsministeriets forskningskontor, 2019*; https://www.justitsministeriet.dk/sites/default/files/media/Arbejdsomraader/pdf/offerundersogelsen_2005-2019_hovedtal.pdf.

²¹ Amnesty International, "Give us respect and justice!" *Overcoming barriers for women rape survivors in Denmark* (Index: EUR 18/9784/2019), www.amnesty.org/en/documents/eur18/9784/2019/en/.

²² Chart of signatures and ratifications of Treaty 210, Istanbul Convention, https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures?p_auth=839zJa5n.

²³ Proposal for a consent-based definition of rape: <https://hoeringsportalen.dk/Hearing/Details/64367>, Amnesty International, *Denmark: Cross-party agreement to amend rape law puts historic victory within reach*, 2 September 2020, <https://www.amnesty.org/en/latest/news/2020/09/denmark-cross-party-agreement-to-amend-rape-law-puts-historic-victory-within-reach/>.

²⁴ Before the upcoming amendment the law fell short of international standards because it did not have a consent-based definition of rape, but focused instead on sexual intercourse "with a person who is in a state or situation in which the person is incapable of resisting the act", and on force and violence. Danish Criminal Code, Consolidated Act No. 977 (2017), Article 216.

²⁵ Ministry of Children and Education 2019: Sundheds- og seksualundervisning og familiekundskab Fælles Mål, https://emu.dk/sites/default/files/2020-09/GSK_F%C3%A6llesM%C3%A5l_SSF.pdf

²⁶ Als Research, *Evaluation of Family skills, health education and sex education*, January 2019, p. 10, www.stukuvn.dk/aktuelt/uvn/2019/jan/190118-sundheds-og-seksualundervisningen-halter-efter-i-grundskolen.

autonomy and bodily integrity, adapted to the evolving capacities of pupils and students, in formal curricula and at all levels of education.”²⁷

However, in the experience of the women and girls interviewed by Amnesty International, sexuality education in Denmark does not cover topics such as relationships, sexual autonomy or consent, but focuses on biology and sexual and reproductive health, contraception and preventing sexually transmitted infections. Both survivors and representatives of organizations working with them strongly believed that sexuality education should not be limited to biology but include behaviours and relationships.²⁸

RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PERSONS

In the report “First, do no harm”, Amnesty International examined the human rights violations experienced by people born with variations of sex characteristics in Denmark. The right of the child to the highest attainable standard of health, and the prohibition of discrimination on the grounds of sex is not being met by the current Danish medical practice of people born with variations of sex characteristics.²⁹ The medical standards and decision-making processes in Denmark lead to non-emergency, irreversible medical interventions being carried out on young children, and constitute a violation of the child’s right to express their views and to participate in decisions which affect them.³⁰ The healthcare system and its staff are failing to provide information to enable parents and guardians to make informed decisions about medical interventions.³¹

Non-emergency, invasive and irreversible medical interventions, both surgical and hormonal, on infants and children can have extremely harmful and long-lasting consequences.³² This practice constitutes a violation of their right to private life and bodily integrity, and the highest attainable standard of health. Despite specific recommendations from the UN Committee on Economic, Social and Cultural Rights in 2019, the authorities have not taken steps to protect the rights of children born intersex.³³ This inaction leaves infants and children at continued risk of non-emergency, invasive and irreversible genital surgery or hormone treatment.

²⁷ Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) was adopted by the Council of Europe in 2011 and came into force on 1 August 2014; Article 14(1).

²⁸ Amnesty International, “Give us respect and justice!” *Overcoming barriers for women rape survivors in Denmark*, (Index: EUR 18/9784/2019, www.amnesty.org/en/documents/eur18/9784/2019/en/) p. 50.

²⁹ The Committee on Economic, Social and Cultural Rights has specifically noted in its General Comment 14 that this right confers obligations on States to respect the right to health, by, among other things, abstaining from enforcing discriminatory practices as well as obligations to protect the right to health, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2000%2f4&Lang=en. The UN Special Rapporteur on the Right to Health has explicitly stated that “Health-care providers should strive to postpone non-emergency invasive and irreversible interventions until the child is sufficiently mature to provide informed consent”, noting that “This is particularly problematic in the case irreversible medical procedures such as genital surgery, which is a painful and high-risk procedure with no proven medical benefits”. *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, UN Doc A/64/272, 10 August 2009

³⁰ Amnesty International, *First, do no harm: Ensuring the rights of children with variations of sex characteristics in Denmark and Germany*, 9 May 2017, (Index: EUR 01/6086/2017) p. 11, <https://www.amnesty.org/en/documents/eur01/6086/2017/en/>. The right to respect for physical and mental integrity is also protected by Article 3.1 of the Charter of Fundamental Rights of the European Union; Article 3.2 stipulates the respect for free and informed consent in medicine.

³¹ Amnesty International, *First, do no harm: Ensuring the rights of children with variations of sex characteristics in Denmark and Germany*, 9 May 2017, (Index: EUR 01/6086/2017) p. 11, <https://www.amnesty.org/en/documents/eur01/6086/2017/en/>

³² Amnesty International, *First, do no harm: Ensuring the rights of children with variations of sex characteristics in Denmark and Germany*, 9 May 2017, (Index: EUR 01/6086/2017) p. 13, <https://www.amnesty.org/en/documents/eur01/6086/2017/en/>

³³ UN Committee on Economic, Social and Cultural Rights, *Concluding observations on sixth periodic report of Denmark*, UN Doc. E/C.12/DNK/CO/6 (2019), paras 64, 65.

Denmark does not explicitly include sex characteristics as protected grounds in anti-discrimination provisions.³⁴

BUSINESS AND HUMAN RIGHTS

The general reliance on voluntary and incentive-driven measures to promote businesses' respect for human rights has proven insufficient in the EU, including in Denmark.³⁵ In 2019 the UN Committee on Economic, Social and Cultural Rights recommended that Denmark adopts a legal framework which would require business entities to exercise human rights due diligence in their operations and in their business relationships, at home and abroad. Such a framework would also hold businesses liable for violations of economic, social and cultural rights and enable victims to seek remedies through judicial and non-judicial mechanisms.³⁶

CLIMATE AND HUMAN RIGHTS

Amnesty International has welcomed the Danish climate law adopted in 2020 that requires a 70 percent reduction of CO₂-emissions in 2030 compared to 1990. Denmark, however, does not fully comply with its obligation to provide adequate funds to the poorest countries to support them protecting human rights from the harmful effects of climate change. This obligation is enshrined in the UN Framework Convention on Climate Change and the Paris Agreement and is reflected in human rights law.³⁷ This duty includes the provision of adequate funding, technology transfer and capacity-building to support developing countries to undertake human rights-compliant climate change mitigation and adaptation initiatives.

In accordance with the Paris Agreement, Denmark (among other developed countries) is committed to a goal of mobilizing jointly USD 100 billion per year (2020) to address the needs of developing countries in relation to climate issues. The fair share for Denmark would be around 5 billion Danish kroner (DKR) per year (2020); however, Denmark donated 1.5 billion DKR in 2018 to climate issues. Denmark's donation is neither new nor additional to meet the Paris Agreement commitment, as it is included in Denmark's development assistance of 0.7 percent of GNI.³⁸

³⁴ Amnesty International, *First, do no harm: Ensuring the rights of children with variations of sex characteristics in Denmark and Germany*, 9 May 2017, (Index: EUR 01/6086/2017) p. 10, <https://www.amnesty.org/en/documents/eur01/6086/2017/en/>.

³⁵ Publications Office of the EU, *Study on due diligence requirements through the supply chain*, January 2020, <https://op.europa.eu/da/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en>.

³⁶ UN Committee on Economic, Social and Cultural Rights, *Concluding observations on sixth periodic report of Denmark*, UN Doc. E/C.12/DNK/CO/6 (2019), paras 18-20.

³⁷ Particularly under Article 2.1 of the ICESCR.

³⁸ Joint NGO-submission, signed by Amnesty International amongst others, on 29 May 2020 to the Minister of Climate, Dan Jørgensen.

RECOMMENDATION FOR ACTION BY THE STATE UNDER REVIEW

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF DENMARK TO:

THE NATIONAL HUMAN RIGHTS FRAMEWORK

- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

DISCRIMINATION ON THE BASIS OF ETHNICITY OR RELIGION

- Repeal L38 and engage with affected people and residents to devise plans and policies to address concerns around unemployment and high levels of crime, in a manner that is non-discriminatory and compliant with Denmark's human rights obligations.
- Ensure that any urban regeneration and other programmes that impact housing are non-discriminatory, uphold the right to adequate housing and do not result in forced evictions, homelessness and situations where people are forced to live in inadequate housing.
- Repeal the Act on Policing section 6(a), which authorizes the police, prosecution and the judiciary to impose different criminal penalties on residents of different housing areas and others going about the area.
- Repeal L219 and amend the Criminal Code lifting the ban on wearing face coverings in public.
- Include ethnicity in data collection systems to ensure adequate monitoring and evaluation of the impact of laws and policies on people of different ethnicities, disaggregated by gender, and facilitate appropriate measures aiming at equal enjoyment of all human rights.
- Ensure that rejected asylum seekers are detained in Ellebæk only when it is strictly necessary to achieve a legitimate aim and when it has been established that no alternative will be effective; and only for as limited a time as possible. In considering detention, Denmark must take account of individual circumstances and those with particular vulnerabilities, including pregnant women, victims of trafficking, the elderly, victims of torture or those with serious medical or psychological conditions.
- Any form of immigration detention should be implemented in centres with adequate facilities, adjusted to the nature of the detention and in conformity with the Council of Europe's Committee on the Prevention of Torture standards. The issues of well-being, hygiene and sanitation must be addressed, and the action taken should also meet the requirement that the design and layout of the premises should, as far as possible, avoid giving any impression of a prison environment such as that currently found in Ellebæk.

VIOLENCE AGAINST WOMEN AND GIRLS

- Provide regular communication and training to police officers throughout the country on the National Police Guidelines and their revisions and independently monitor compliance to ensure the rights of survivors of sexual violence are protected and that they are consistently treated with respect and care when reporting rape and during the investigation stage.
- Provide appropriate, systematic, mandatory training for the relevant professionals (police and other law enforcement officials, prosecutors, judges and victim's counsel lawyers) working with sexual violence survivors in prevention and detection of sexual violence, gender equality and

intersectional discrimination, rape myths and stereotypes, with a view to preventing secondary victimization, and eradicating discriminatory practices and the application of gender stereotypes at all stages of the legal process.

- Provide mandatory, comprehensive, age-appropriate, gender-sensitive, evidence-based, and grounded in human rights, sexuality and relationships education to pupils and students of all genders at all levels of education and outside the education system. It should include education about consent, and the rights to sexual autonomy and bodily integrity.
- Introduce a compulsory module on teaching sexuality education as part of all teachers' training.

RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTER-SEX PERSONS

- Put forward a proposal to introduce sex characteristics, gender identity and gender expression as a ground of discrimination in the Danish Act on Non-discrimination, the Danish Act on Equal Treatment and relevant anti-discrimination provisions within legislation in the areas of health, housing, education and employment, as well as hate crime legislation.
- Develop – in consultation with rightsholders – guidelines at the national level for responding to people with variations in sex characteristics that are human rights-focused and include an emphasis on postponing non-emergency, invasive and irreversible genital surgery or hormone treatment on infants and children with variations in sex characteristics until they are able to meaningfully participate in decision making and give their informed consent, in line with the principle of evolving capacities of children and adolescents.
- In consultation with individuals with variations in sex characteristics and activists working on these issues, develop and provide mandatory training to medical and healthcare professionals on gender and bodily diversity, focusing on individuals with variations in sex characteristics.

BUSINESS AND HUMAN RIGHTS

- Adopt legislation which requires businesses to respect human rights and prevent environmental harm across their value chains and business relationships. This legislation should:
- Apply to business enterprises of all sizes, independent of sector or location within the value chain, domiciled, operating, or offering a product or service in Denmark;
- Impose an enforceable obligation on business enterprises to respect human rights and the environment, including the obligation to carry out due diligence to prevent any harm. This includes the duty for business enterprises to take all appropriate measures to ensure respect for human rights and the environment within their global value chains and by their business relationships;
- Establish corporate liability for human rights and environmental harm;
- Ensure access to remedy, and provide authorities with effective instruments to ensure enforcement, including sanctions.

CLIMATE AND HUMAN RIGHTS

- Substantially increase Denmark's funding and support for human rights-compliant measures to tackle the climate crisis in less wealthy countries. In particular, ensure that its contribution to international climate finance is additional to the Danish development aid and reflects Denmark's fair share and its obligations under the Paris Agreement and human rights law.

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TO ONE PERSON, IT
MATTERS TO US ALL.**

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