

**The National Council for Children's  
Presentation at the Pre-session  
of the Committee on the Rights of the Child  
Geneva 8 June, 2005**

On behalf of the National Council for Children I am honoured to be given this opportunity to present and submit to the committee, both our supplementary report and our special children's report, called "Children's Vision".

In particular these two reports expose the areas where the Convention has not been implemented in Danish legislation and practice. There is an urgent need to hear especially vulnerable children's voices and the National Council has suggested the Danish government to allow the Council to deal with children's complaints, which isn't possible today. We are inspired by the concluding Observations from the Committee to the Danish government, from 8. June 2001, you wrote:

Paragraph 23. "The Committee suggests that the State party take all effective measures to ensure that its independent complaint mechanisms are easily accessible to, and user-friendly for all children to deal complaints of violations of their rights and to provide remedies for such violations."

And the Committee continues and suggested the Danish state party, to strengthen the mandate for the National Council for Children.

But instead of this discussion, the Danish Government has reduced my budget with more than 25 %, in order to reduce the influence of independent experts. I will give you an account of selected problems in relation to Article 12 and later my colleague will present some serious issues concerning young people in conflict with the law.

**Article 12**

As far as implementation of Article 12 goes, we have observed progress in Denmark. But I will point out some serious loopholes in the legislation.

*Firstly* – The social legislation has with effect from the 1<sup>st</sup> of January 2006, given vulnerable children who are removed from their parents, a better legal position. These children will be able to complain about their alternative living conditions when they have reached the age of 12 years, but at the same time most children still don't have influence on the decisions made about their future. Even though legislation requires the authorities to hear from the children concerned before decision making it only happens in less than 50 % of the cases. The National Council for Children recommends that all children past the age of 12 are given full legal rights, and access to choose a reliable person and eventually get legal aid.

*Secondly* – In the legislation for parent custody, Denmark has a limitation at the age of 12 years for when a child is heard, when the authorities have been given the responsibility to decide the parent custodianship of the child. This is taken into effect when the parents are not in agreement, and in such situations, the children are often overlooked as well as neglected. Many parents are too focused on their own conflicts and often the authorities aren't able to take the children's perspective in the decision making process. That is why the National Council for Children recommends that a new legislation be drawn up making it compulsory to hear all children irrespective of their age with any decisions involving divorce and child custody cases, and furthermore offering all children from broken families comprehensive advice.

Last but not least, the Danish legislation on basic schooling is in many ways unique. In formality the school system should be able to prepare pupils to make decisions, take responsibility and have obligations in a society with freedom and democracy. The school's teaching system should therefore be built upon democracy, but the law is still lacking the rights of every pupil in primary school. The pupils can choose to elect a school council, but they have no rights to complain over unjust actions, the physical environment in school, bullying or bad behaviour from other students or teachers. The National Council recommends that pupils are given their legal rights to be heard and to put forward complaints as well.

*To summarise.* I would like to add that these 3 examples clearly show that Article 12 is far from being properly implemented and it should be a requirement that all children are taken into consideration, heard and be given opportunity to voice their opinions. This in turn will lend support to vulnerable children who are often taken for granted (failed) by both parents and authorities. The National Council has recommended a change of law, to give the council it self the right to receive children's complaints. The Council does not want to pass judgement but to play an active advisory role to children and help them in answering their concerns, all in accordance with the Committee's recommendation from 2001. Furthermore we have suggested that DK follow Norway's example and incorporate the Convention.

I will pass you on to my colleague, Mater of Law Susanne Glending, who will present some serious issues concerning young people in conflict with the law.

## **Children in Conflict with the Law**

In the concluding observations of June 2001, the Committee recommended that Denmark should ensure that legislation and policies relating to young offenders would be brought in line with the CRC and other relevant international standards.

However, during the past five years the tone dominating the debate on the youngest offenders has been implacable. Likewise, the initiatives taken by the government reflect an unprecedented harshness towards young offenders, completely void of basic humanistic views and long term prevention considerations. The Council fears we might end up with a de facto age of criminal responsibility of 12 years of age even though the wording of the Danish Criminal Code is unchanged in fixing the age of criminal responsibility at 15 years of age.

The Government talks about "no tolerance" and putting force against force – ignoring the existing knowledge about crime prevention. Children in conflict with the law are often children who are very vulnerable, who were neglected at an early age, that have been given very little care and love

and who have severe social problems – and a disproportional high number of these children suffer from psychiatric illnesses. Imprisonment and force will not prevent them from committing crime. Instead, a group of mentally impaired children with a long criminal career ahead of them will be created.

A recent study of reports for the court from 1977-1997 analysed the background, educational level, psychiatric diagnoses, criminal records and sentences of 91 young offenders. The study showed that most of the young offenders had been placed outside their families (80%), more than half of them had not completed primary school (65%) and many of them were found to be mentally sick (five youngsters) or suffering from other severe mental illnesses (eight youngsters). Most of these young offenders had committed violent acts (homicide or attempted homicide, robbery, violence or rape). In spite of the fact that these youngsters had had severe problems all during their childhood and adolescence only half had been in contact with a psychologist or psychiatrist. In spite of their young age half of these young offenders were imprisoned. (22% were convicted to psychiatric treatment, and the remaining 28% were convicted a provision under the social welfare system.)

According to current Danish law, youth offenders committed for trial are to be placed in closed residential centres under the social service. However, the most recent figures from the Danish Prison and Probation Service show that in 2004 an average of 16.6 young offenders aged 15 to 17 were imprisoned in the institutions of the Prison and Probation Service every day. (Of which 3.9 were in a closed prison, 1.4 were in an open prison, 11.3 were in a Copenhagen prison or lockup. 6.9 were sentenced to imprisonment, 8.4 were remanded and 1.3 was arrested.)

The Ministry of Social Affairs explains that it is unavoidable that young offenders are remanded or imprisoned on special occasions, during investigations or when the young offender is waiting for an institution to accept him. In order to separate the young offenders from the adult prisoners the youngster is often subjected to solitary confinement. However, the lack of capacity can never be a valid reason for imprisonment of young offenders. And it is a fact that Denmark lacks suitable institutions for the treatment of young offenders with severe criminal records.

The latest statistics show an overrepresentation of 49% regarding criminal offenders from ethnic minorities. However, if you compensate for age, urbanisation, income differences and socioeconomic status the overrepresentation is only 8%. It is known, that many of the young offenders from ethnic minorities have traumatized parents, are neglected and that they often experience differential treatment because of their name and culture when it comes to getting an apprenticeship, a job etc. Many schools complain that the social system is hesitant to interfere - and that the social system even turns a blind eye to the maltreatment of children from ethnic minorities. Furthermore, the waiting lists for psychological treatment within the school system are very long.

As can be read in the Danish third report to this Committee the Danish government believes in “law and order” and an immediate and harsh response to youth delinquency. However, according to the National Council the way for the future is to work with the long term prevention efforts regarding youth in general, and children from traumatized or broken ethnic families in particular – and to intervene early and with prevention rather than punishment.

*To summarize the National Council finds that:*

- The imprisonment of young offenders is unacceptable. When a child has committed a criminal act the need is for socio-educational treatment and not for imprisonment.

Furthermore, the treatment at secure wards should be investigated, as the quality differs greatly from ward to ward. New thinking and the development of relevant measures and suitable institutions for young offenders – also those with severe criminal records - are needed.

- Suitable institutions for the treatment of young offenders who suffer from a psychiatric illness must be established and the capacity within the youth psychiatry system must be strengthened.
- Children or youngsters should never be subjected to solitary confinement.
- It is detrimental to intervene with prevention efforts earlier – already when a child is identified in kindergarten or school to be mistreated or neglected.
- Especially, when it comes to children from ethnic minorities, the social system has proven to be hesitant to interfere. This misunderstood acceptance of cultural differences has to change.
- Resources must be allocated to reducing the long waiting lists for psychological treatment within the school system.