



**Børnerådet**

## Submission by the National Council for Children for the Office of the High Commissioner for Human Rights' summary report of information provided by stakeholders: Denmark

This stakeholder submission to the Universal Periodic Review of Denmark focuses on the rights of the child.

### **Institutional and child's rights infrastructure and policy measures**

#### *Incorporating the Convention on the Rights of the Child and strengthening the legal status of children*

The core principles of the Convention on the Rights of the Child (CRC) are not mainstreamed in Danish legislation.

Articles 3 and 12 constitute two of the fundamental principles of the CRC. They enshrine the principle of the best interests of the child and the right to be heard in all proceedings and decisions affecting the child. Article 4 stipulates that States Parties shall take all necessary measures to ensure realisation of these rights. Furthermore, the Committee on the Rights of the Child (The Committee) emphasises the importance of consistent implementation of the CRC at national level.

These fundamental principles must be implemented into legislation in order to carry the same weight as other Danish laws. Articles 3 and 12 have not been systematically implemented into Danish legislation and vary across sectors. The Danish Act on Social Services affords children the right to be heard in their case depending on their age and maturity and children as young as 12 years of age the right to complain. However, within many sectors, such as health, education and immigration, the scope of child participation is poor, and inadequate weight is placed on the best interests of the child. Consequently, the legal status of children must systematically be strengthened in Danish legislation.

Denmark has ratified the CRC and has an international obligation to comply, yet the CRC is not incorporated into Danish law. Therefore, the CRC carries only moderate weight as a source of law, and public authorities and courts are hesitant to use the CRC in their practice.<sup>1</sup>

In 2014, the majority of members on the government's expert committee on incorporation recommended that the CRC be incorporated into Danish law. Incorporation would send a strong message that the CRC is to be fully applied in all settings relevant to children. Comparable countries have incorporated the CRC, including Norway, Finland and Iceland. Sweden is taking steps towards an incorporation.<sup>2</sup> In this regard, Denmark lags behind the other Nordic countries.

Recommendation:

- *that Denmark insert the principles of the Convention on the Rights of the Child regarding the right to be heard and the best interests of the child in all legislation concerning children.*
- *that Denmark incorporate the Convention on the Rights of the Child into Danish legislation.*

#### Access to remedies in the psychiatric system

Children subjected to coercive treatment in the psychiatric system have limited access to remedies.

For rights to have substance, access to remedy for violations is essential. Denmark will ratify the Third Optional Protocol to the CRC on a Communications Procedure and thus strengthen the legal status of Danish children internationally. However, international and national measures to reinforce the legal status of children should go hand in hand, both in relation to rights enacted in legislation and in relation to access to remedies for violation of rights.

Access to remedies for children varies according to sector and legislation. In matters relating to the placement of a child in alternative care, the Danish Act on Social Services stipulates that children have the right to complain from the age of 12. In other areas, children still have no avenue for complaint, for example in the psychiatric system. The new international Communications Procedure for children cannot rectify this inadequacy. Within the psychiatric system, children under 15 years of age do not have access to remedies if they have been subjected to coercive treatment to which their parents have consented. An amendment of the legislation in spring 2015 has unfortunately not rectified the inadequate legal protection of children.

Recommendation:

- *that children from 12 years of age have access to remedy if they are subjected to coercive treatment in the psychiatric system.*

#### Physical and mental learning environment in day care and schools

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<sup>1</sup> Danish Ministry of Justice – Report on incorporation, etc. within the field of human rights, Report No. 1546 (2014), chapter 4 and The Danish Institute for Human Rights – Implementation of Human Rights, status 2014-15 (2015), section 5.2.

<sup>2</sup> Danish Ministry of Justice – Report on incorporation, etc. within the field of human rights, Report No. 1546 (2014), chapter 5.

The physical and mental learning environment of children and their access to remedy are inadequately regulated in Danish law.

According to CRC article 28, children have the right to education and States are required to take appropriate measures to ensure regular class attendance. The Committee recognises that bullying can constitute physical violence and can negatively impact on the child's learning and opportunity for education.<sup>3</sup> An appropriate physical and mental environment is a precondition for the child's well-being, learning and development and thus ability to enjoy the right to education.

Danish children spend a considerable amount of time outside the home in day care or school, corresponding to an adult's working week.<sup>4</sup> Legislation currently does not provide adequate protection.

Studies show that the physical environment in day care centres and schools suffers from a lack of maintenance, and that toilet facilities in schools are perceived as unhygienic by many.<sup>5</sup> In day care centres, 41 % think the noise level is too high.<sup>6</sup> In schools, between one in five and one in nine still experience bullying.<sup>7</sup>

The right to education is to be progressively realised, which means that States are required to fulfil the right within the constraints of available resources and strive to make regular improvements.

In other Nordic countries, legislation has been introduced providing children better protection in a number of areas within school and day care. In Norway, legislation applies to both schools and day care centres and covers the physical and mental working environment.<sup>8</sup> Swedish legislation allows for legal action to be brought against municipal authorities if they have knowledge of discrimination, harassment or other forms of abusive treatment and fail to take action.<sup>9</sup>

Recommendation:

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<sup>3</sup> UN Committee on the Rights of the Child, General Comment No. 13.

<sup>4</sup> Approx. 90% of 1-2 year-olds and 97% of 3-5 year-olds spend an average of 7½ hours per day in day care centres according to figures published by the Danish Ministry of Social Affairs: figures and statistics on day care provision available at <http://sm.dk/arbejdsomrader/dagtilbud/Tal%20og%20statistik/Tal%20og%20statistik> and the National Council for Children's Small-child Panel – Between home and kindergarten (2011).

In primary and lower secondary school, 1<sup>st</sup> -3<sup>rd</sup> grade pupils attend school for 30 hours per week, 4<sup>th</sup>-6<sup>th</sup> grade pupils for 33 hours per week, and 7<sup>th</sup>-9<sup>th</sup> grade pupils for 35 hours per week.

<sup>5</sup> COWI – Analysis of the maintenance backlog of Danish municipalities (2009). Danish Ministry of Education – Well-being survey 2015 (2015), p.5 and p.19.

<sup>6</sup> National Council for Children, Small-child Panel – Indoor climate from the child's perspective (2012).

<sup>7</sup> According to the latest figures published by the Danish Centre of Educational Environment (DCUM) in 2014, more than one in five 4<sup>th</sup>-6<sup>th</sup> grade pupils in and one in nine 6<sup>th</sup>-9<sup>th</sup> grade pupils feel bullied – Danish Centre of Educational Environment – Pupils' view of the educational environment in primary and lower secondary school (2014).

<sup>8</sup> Regulations on environmental health in kindergartens and schools, etc. – accessible at <https://lovdata.no/dokument/SF/forskrift/2003-04-25-486>.

<sup>9</sup> Swedish Education Act 2010: 800 - accessible at [http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Skollag-2010800\\_sfs-2010-800/](http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Skollag-2010800_sfs-2010-800/).

- *that Denmark introduce legislation regarding the physical and mental learning environment and a complaint mechanism for children in day care centres and schools with the same level of protection afforded to adults in the Danish Working Environment Act.*

### Awareness of rights

Danish children lack awareness of their human rights.

According to Article 42 of the CRC, States Parties are required to spread awareness of the CRC among children and adults. A prerequisite for respecting children's rights is that the rights-holders are aware of their rights and can claim them. The Committee emphasizes this in General Comment No. 1.

There is a low level of awareness of human rights and the CRC in Denmark. A survey from 2014 shows that still far too few Danish children and youth are aware of the CRC and their own rights. 46 % knew nothing about the CRC.<sup>10</sup>

Knowledge and information about the CRC and children's rights should be disseminated, among others in the education system. As a result of the primary and lower secondary school reform, education about the CRC is mentioned in the guidelines and syllabus for the subject Social Sciences, whilst children's rights is mentioned in the Common Objectives for the two subjects Health & Sex Education and Family Studies, as well as History. The Common Objectives constitute targeted competence level for all pupils. Additional measures should be undertaken to ensure that children and youth in Denmark are aware of their rights.

Recommendation:

- *that children be educated about human rights throughout Danish primary and lower secondary school, specifically about the Convention on the Rights of the Child.*

## **Administration of juvenile justice**

### The minimum age of criminal responsibility

The government is planning to lower the age of criminal responsibility from 15 to 12 years of age.

The minimum age of criminal responsibility in Denmark is 15. People under the age of 15 who commit crimes are dealt with according to the Danish Act on Social Services. This Act focuses on preventing crime and supporting the young people and their families in order to avoid reoffending. Since 2006, the crime rate for children has decreased.<sup>11</sup>

In its report from 2009, the Commission on Youth Crime<sup>12</sup> unanimously advised against lowering the age of criminal responsibility. Nevertheless, on 1 July 2010 the age of criminal responsibility was lowered to 14 years, where it remained until the previous government raised it again to 15 years in March 2012. Parties

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<sup>10</sup> The Danish Institute for Human Rights and UNICEF – Survey of Danish schoolchildren's knowledge of human rights and the Convention on the Rights of the Child (2014). The children in the survey are aged 12-16.

<sup>11</sup> Danish Ministry of Justice, Research Office – Trends in juvenile delinquency and youth crime 2001-2013.

<sup>12</sup> The Commission on Youth Crime was an expert committee appointed by the government.

currently in government have announced their intention to lower the age of criminal responsibility to 12 years.

However, children do not have the required maturity to understand the consequences of their criminal actions and to be punished for them. Research also shows that labelling a child a criminal increases the risk of reoffending.<sup>13</sup> The Committee expressed deep concern over the lowering of the age of criminal responsibility to 14 years back in 2010.<sup>14</sup> In general, the Committee recommends that states not lower the age of criminal responsibility, advocating instead that States should strive to raise it.<sup>15</sup>

Recommendation:

- *that Denmark maintain the age of criminal responsibility at 15 years.*

#### Solitary confinement of minors

Present legislation in Denmark permits solitary confinement of minors.

Solitary confinement can cause substantial and potentially long-lasting harm to the incarcerated, manifested, for example, in the form of hallucinations, anxiety, depression, self-harm and suicidal thoughts. The harmful effects can be devastating for minors. The UN Special Rapporteur on torture and other cruel, inhumane or degrading treatment and punishment, the Committee and other UN Committees recommend that solitary confinement of minors be abolished.<sup>16</sup>

The use of solitary confinement during pre-trial detention under the provisions of the Danish Administration of Justice Act has been reduced, and the level of use against minors is low. In practice, however, solitary confinement still occurs in the form of disciplinary or administrative segregation ('exclusion from the community') – either due to disobedience or to being at risk of harming themselves/others or being harmed.<sup>17</sup> Both entail isolating the minor from social contact for 22-24 hours a day.

Recommendation:

- *that Denmark prohibit the use of solitary confinement against persons under the age of 18 years within criminal justice procedures, including segregation and exclusion from the community.*

#### Incarcerating juvenile offenders together with adults

Juvenile offenders are sometimes incarcerated together with adults.

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<sup>13</sup> Danish Ministry of Justice, Research Office – Preventive effects of punishment and other measures against offenders – a research overview (2015).

<sup>14</sup> UN Committee on the Rights of the Child (2011), Concluding Observations, para. 65 (b).

<sup>15</sup> UN Committee on the Rights of the Child, General Comment No. 10.

<sup>16</sup> Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment', A/66/268, August 2011, para. 68, and the UN Committee on the Rights of the Child, General Comment No. 10.

<sup>17</sup> The Danish Institute for Human Rights – Deprivation of Liberty - Status 2014-15 (2015), p. 29.

According to Article 37 (c) of the CRC, children who are deprived of liberty as a general rule are to be kept separate from adults. When a child serves a sentence with adults, it has a damaging effect on the child and the risk of reoffending increases.

Under Danish legislation, minors who are deprived of liberty are, in general, not to be held in prison or a remand centre together with adults.<sup>18</sup> Figures from the Danish Prison and Probation Service show, however, that minors in 510 cases were deprived of liberty in adult prisons in 2013.<sup>19</sup> Juveniles still come into contact with adult prisons despite the government's recognition that juvenile offenders deprived of liberty should be separated from adults.<sup>20</sup>

Recommendation:

- *that Denmark prohibit the incarceration of minors in institutions together with adults.*

## **Right to education**

### *Vulnerable children must receive education*

Children placed in alternative care need education to have equal opportunity.

According to Article 28 (e), States Parties are required to take measures to encourage regular attendance at schools and reduce drop-out.

In 2013, 13,719 children in Denmark were placed in alternative care.<sup>21</sup> These children have often experienced a long lead-up, in which their development steadily has declined. Some vulnerable children have not received education for a period of time, whilst others have not benefited from the education due to a variety of social problems, leading to waning academic performance. The children are therefore at risk of not completing primary and lower secondary education. 40 % of children placed in alternative care at some point have not taken the lower secondary school examination when they are 16-17 years of age. For other children, the figure is 6 %.<sup>22</sup> Children, who have been placed in alternative care, generally perform worse on parameters such as education and employment than others.<sup>23</sup>

Studies show that if these children are to have better future prospects, they need support in school.<sup>24</sup> Children should therefore remain in their current school while alternative care is being prepared. Particular

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<sup>18</sup> Danish Corrections Act, section 78.

<sup>19</sup> Danish Prison and Probation Service, Statistics Report 2013, p. 12. The figure covers arrests, custodial detentions and served sentences.

<sup>20</sup> Danish UPR mid-term progress report 2014, follow-up on Recommendation No. 100.

<sup>21</sup> Statistics Denmark

<sup>22</sup> Local Government Denmark – Analysis of schooling and development in adult life among persons placed in alternative care as a child (2015), p. 1.

<sup>23</sup> SFI – Children in foster care as young adults (2011).

<sup>24</sup> Bo Vinnerljung – Social rapport (2010); Mortensøn, SFI – The Danish National Centre for Social Research, M & Neerbæk, M – Focus on schooling during assessment (2008), p. 15-16; and Rambøll – Analysis of the economic consequences in the area for vulnerable children and young people (2012), p. 6.

attention should be afforded to education as part of the placement process, including that the child receives the necessary support at school.

Recommendation:

- *that once the decision has been made to place a child in alternative care, a plan should be prepared for the child's schooling and implemented after the placement.*

## **Children with disabilities**

### *Inclusion of children with disabilities*

Inclusion of children with disabilities must support their well-being and full academic and personal development.

States must work to provide an inclusive education system and greater accessibility, in order to enable persons with disabilities to participate in society on an equal footing with others.<sup>25</sup> According to Article 23 of the CRC, a disabled child is entitled to the best form of assistance, care, education and training available to maximize the child's self-confidence and ability to lead a full and active life. The rights are to be progressively realised, and their fulfilment must be considered in light of the State's available resources.

Denmark is in the process of including a greater proportion of children with disabilities in the standard education system. The target is for the inclusion of 96 % of all pupils.<sup>26</sup>

An inclusive education system must prioritise both social coherence and physical accessibility. Inclusion means that the child thrives and develops in a community with emphasis on academic, social and personal development. For this to be achieved, schools must disassemble the learning objectives (Common Objectives) into sub-elements, so that the individual child's development level is the centre of attention. The physical environment must provide adequate teaching space and playing facilities to ensure the participation of all children in the social community. Inclusion can also promote greater social coherence and understanding of diversity among children.

Recommendation:

- *that Denmark monitor the implementation of how the student learning objectives (Common Objectives) are adapted to pupils with special needs.*
- *that Denmark focus on the quality of the physical environment's suitability for supporting inclusion.*

## **Migrants, refugees and asylum-seekers**

### *Family reunification of children*

Family reunification of foreign children between 15 and 18 years is limited.

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<sup>25</sup> Cf. Convention on the Rights of Persons with Disabilities, articles 3, 9 and 24.

<sup>26</sup> Danish Ministry of Education – Transition to greater inclusion – accessible at <http://www.uvm.dk/Uddannelser/Folkeskolen/Inklusion-og-specialundervisning/Inklusion/Omstilling-til-oeget-inklusion>.

According to Article 1 of the CRC, all persons under the age of 18 are to be treated as children and are entitled to special protection. Children over 15 years with foreign parents residing in Denmark are generally not eligible for reunification with their parents.<sup>27</sup> In 2012, the Aliens Act was amended to allow for family reunification of children aged 15-18 under special circumstances. This represents an improvement, but falls short of ensuring the best interest of the child.

Recommendation:

- *that the Aliens Act be revised to afford all persons under 18 years of age with foreign parents residing in Denmark a general right to family reunification.*

### Mother tongue education

Refugee children have limited access to mother tongue education in Denmark.

According to Article 28 and 2 of the CRC, all children have the right to education without discrimination. In addition, children have the right to preserve their cultural identity, which also includes the right to preserve and acquire their mother tongue.<sup>28</sup>

Research shows that learning the mother tongue has a positive bearing on socialisation and identity creation, as well as the potential for learning new languages and other forms of learning. Mother tongue education is important for being able to preserve one's cultural identity and crucial for the cognitive learning of bilingual children.<sup>29</sup>

Since 2002, only children from EU/EEA countries as well as the Faroe Islands and Greenland have been entitled to mother tongue education. It is up to the discretion of each municipal authority whether to offer mother tongue education to other nationalities.

Recommendation:

- *that refugee children of school-age have the right to free mother tongue education, including in the asylum system.*

### Unaccompanied asylum-seekers

The fate of unaccompanied minors is unknown.

Every child has the right to protection against trafficking, exploitation, violence and sexual assault, etc. cf. Articles 34, 35 and 36 of the CRC. In addition, states have a particular responsibility to protect children who do not have access to their normal family network, including unaccompanied asylum-seekers.<sup>30</sup>

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<sup>27</sup> Cf. Danish Aliens Act, section 9 (1) (ii) and section 9 (17).

<sup>28</sup> UN Committee on the Rights of the Child, General Comment No. 6, para. 42.

<sup>29</sup> Swedish Research Council – New pupils and learning – a research overview of new pupils in Swedish schools, Swedish Research Council report series no. 6. (2010).

<sup>30</sup> Cf. Convention on the Rights of the Child, Articles 20, 34, 35 and 36, as well as UN Committee on the Rights of the Child, General Comment No. 6, para. 50-51.

In the period 2009-2014, between 282 and 818 unaccompanied minors yearly sought asylum in Denmark.<sup>31</sup> Many disappear from the special accommodation centres for children before their asylum cases have been processed. The assumption is that they flee onwards to other countries in order to be reunited with family or relatives who can help them seek asylum. However, this cannot be documented.

In its concluding observations from 2005 and 2011, the Committee recommended that Denmark launch a study of the high number of refugee children disappearing from asylum centres. The European Council also recommends that EU Member States study and prevent the disappearances of children who are held in care of the State.<sup>32</sup>

Recommendation:

- *that Denmark examine the causes behind the disappearance of refugee children from asylum centres.*
- *that Denmark implement specific initiatives to prevent disappearances from asylum centres.*

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<sup>31</sup> Danish Immigration Service – Facts and Figures on Immigration 2014.

<sup>32</sup> Council of the European Union ‘Council conclusions on unaccompanied minors’ para. 17.