

Supplementary NHRI Report to the Fifth Periodic Report of Denmark

Convention on the Rights of the Child
Session number 76



The Danish National Council for Children

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1.A. Introduction

In this supplementary report, the National Council for Children presents a broad overview of the status of children's rights in Denmark.

The National Council for Children was established by Parliament in 1994 for a trial period and has since 1997 been founded in legislation and funded by the Finance Act.¹ The Council is politically independent, but administratively it falls under the auspices of the Ministry of Social Affairs and the Interior. The Council's legal mandate is to advocate for the promotion and protection of children's rights in Denmark. We advise Parliament, the Government and other public authorities. Our tasks include securing the rights of children, evaluating the development and informing authorities and the public of children's rights in Denmark.

The Council conducts research on a range of issues of relevance to children and youth in order to obtain the views of children. We apply various methods of child participation, including qualitative and quantitative methods such as interviews, workshops and questionnaires, and we involve children as young as four years in our studies. As far as possible, our recommendations and advocacy are founded on children's opinions combined with the Council's expert knowledge of children. The present report is based on our many studies. Between 2011 and 2016, we have included more than 15,000 children. We refer to Annex II for a list of our projects and studies using methods of child participation.

Naturally, the Council is unable to cover all areas of relevance to children in Denmark. The fact that the present report does not address all issues covered in Denmark's official report should not be construed as agreement with the Government's opinion on those issues.

The National Council for Children does not have a mandate to cover Greenland and the Faroe Islands. Therefore, the report only covers Denmark.

The National Council for Children would like to emphasise the importance of the two additional reports by the Danish Institute for Human Rights and the NGO reporting group consisting of the Association for Greenlandic Children, Children's Welfare in Denmark, DIGNITY, Disabled Peoples' Organisation Denmark, the Joint Council for Child Issues, Save the Children Denmark, Save the Children Youth Denmark and the Danish UNICEF National Committee. The three reports should be seen as complementary. Moreover, we also refer to the report by the Children's Office at the Parliamentary Ombudsman. The Council collaborates with the above-mentioned institutions and NGOs on matters concerning children's rights.

Titles of reports, books and studies that are available in Danish only have been translated into English in the footnotes.

1.B. Overview

A child rights-based approach

In general, children and youth in Denmark have a high standard of living with all of their basic needs covered. Since the Committee's last examination of Denmark, the protection and legal standing of children have improved within a number of areas. For example, a Children's Office with a sole focus on children has

¹ Act on Rule of Law and Administration in the Social Sphere, § 88.

been established at the Parliamentary Ombudsman, and specialised Children's Houses providing care to children who have been abused have been set up.

However, as this supplementary report to the Convention on the Rights of the Child shows, there are still numerous areas where the rights of the child can and should be strengthened. Policymaking is rarely guided by a child rights-based approach, and as the sections below on cooperation between authorities and respect for the views of the child show, authorities often forget to place the child at the centre of decision-making and social measures aimed at helping children in need. Moreover, a child rights perspective rarely guides the adoption and implementation of reforms, even though they have a direct or indirect impact on children. The section on poverty and deprivation elaborates on this point. Moreover, Denmark has purposefully refrained from incorporating the Convention into Danish law, even though it would strengthen the legal standing of children and use of the Convention on the ground.

Full implementation of the Convention requires that the rights contained herein are constantly developed and applied to the changing realities. Children's online life is one area in which the Convention can promote increased focus on ensuring both children's freedom of expression and protection from harmful content.

In a number of areas children's rights are increasingly under pressure. Nowhere is this as evident as in the refugee and asylum system, where policy risks infringing on rights, including children's rights. The National Council for Children would like to stress the importance of bearing in mind the universal, interdependent and indivisible nature of human – including children's – rights. Children, including refugee children, are entitled to all the rights under the UN and European Conventions ratified by Denmark. Children, moreover, have additional rights and are subject to protection as guaranteed in the Convention on the Rights of the Child.

Increased child participation

In 2007, a comprehensive reform of the public sector in Denmark was implemented, which meant bigger and fewer municipalities and regions. Municipal authorities and regions are now responsible for areas of law such as schools, day care, social services and the health care system. Children live their lives in the municipalities, and the municipalities' knowledge and implementation of the Convention are therefore essential to ensure that Denmark fully implements the rights contained in the Convention.

In 2014, the National Council for Children held a conference on child participation in local decision-making. The aim was to increase awareness of why and how to include the voice of children in policy development in municipalities. In 2016, we published a handbook on child participation. The aim of both initiatives has been to increase public authorities' awareness of why and how to involve children as well as to give them concrete tools.

I. General measures of implementation

I.A. Measures to implement the provisions of the Convention

Incorporation of the Convention and mainstreaming of principles

The articles and principles of the Convention must be implemented into legislation to carry the same weight as other Danish laws. This can be done either through incorporation or by passing corresponding

domestic legislation affording the same rights. In its Concluding Observations to Denmark in 2005, the Committee recommended that the Convention prevail if in conflict with provisions in domestic laws.²

In its Concluding Observations to Denmark in 2011, the Committee recommended incorporating the Convention into Danish legislation.³ However, as stated in the national report the Convention has not been incorporated, and the Government currently has no intention of doing so.⁴

In 2014, the majority of expert members on the governmental committee on incorporation recommended incorporating the Convention into Danish law. Incorporation would send a strong message that the Convention should be fully applied in all settings relevant to children. Comparable countries have incorporated the Convention, including Norway, Finland and Iceland. Sweden is taking steps towards incorporation.⁵

A consequence of the lack of incorporation of the Convention is that it only carries moderate weight as a source of law, and public authorities and courts are hesitant to use the Convention in their practice.⁶ It also means that the Government has not sent a strong message of support for the principles of the Convention to authorities and the public.

A strong message of support for the principles of the Convention could also be sent by passing domestic legislation mainstreaming the principles of the Convention. However, articles 3 and 12, among others, have not been systematically implemented, and the rights afforded to children in relation to the child's best interests and right to be heard vary according to sector. This is one of the downsides to the principle of sector accountability, which is a fundamental organisational principle in the public administration.

For example, the 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 have the right to complain.⁷ However, within many sectors, such as health, education and immigration, the scope of child participation in decision-making is limited, and inadequate weight is given to the best interests of the child.

The National Council for Children recommends that:

- *The Convention on the Rights of the Child is incorporated into Danish legislation.*

² Concluding Observations to Denmark (2005), CRC/C15/Add.273, para. 10.

³ Concluding Observations to Denmark (2011), CRC/C/DNK/CO/4, para. 11.

⁴ The primary argument against incorporation by the Government has been that it would shift power from the legislative to the judicial branch of government (in Danish only):

<https://www.information.dk/indland/2014/11/regeringen-konventioner-del-dansk-lov>.

⁵ Danish Ministry of Justice: Report on incorporation, etc. within the field of human rights, Report No. 1546 (2014), chapter 5.

⁶ 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.

⁷ The act is available on a website administered by the Justice Department (in Danish only):

<https://www.retsinformation.dk/forms/r0710.aspx?id=175036>

- *The legal status of children is systematically strengthened in Danish legislation, for example by inserting the principles of the Convention on the Rights of the Child regarding the right to be heard and the best interests of the child into all legislation affecting children.*

Children's ombudsinstitution

Since Denmark's fourth periodic report, a new ombudsinstitution concerning children has been established. The ombudsinstitution is a formalised collaboration between the Parliamentary Ombudsman, the NGO Children's Welfare and the National Council for Children, each of which have a separate mandate to fulfil. The current model builds on existing specialised skills in the three institutions.

The overall purpose of the ombudsinstitution is to strengthen the promotion and protection of children's rights by strengthening and clarifying each institution's mandate towards children:

- a) A dedicated Office for Children was established at the Parliamentary Ombudsman specialising in cases involving children.
- b) The advocacy function of the National Council for Children was strengthened. Among other things, a website for children was created focussing on children's rights and where they can seek help (Børneportalen).
- c) Children's Welfare's helpline for children (Børnetelefonen) was strengthened to ensure adequate and specific advice to children seeking help.

In 2015, the Ministry of Social Affairs and the Interior followed up on the children's ombudsinstitution.⁸ The follow-up showed that the model functions as intended and remains relevant. In 2016, the children's ombudsinstitution has begun to invite all relevant partners to regular meetings about the functioning of the institution in order to increase transparency.

The National Council for Children recommends that:

- *The children's ombudsinstitution is maintained, and efforts to increase awareness hereof are increased.*

Cooperation and coordination between authorities

In Denmark, children come into contact with many different authorities depending on their needs: the State Administration's nine departments, social services in the 98 municipalities, health care systems in the five regions and the Police, schools and day care institutions in many districts. Every type of authority has its own system, which often differs from the systems and work methods of other types of authorities.

The Council's studies often show that children are left dissatisfied or in limbo when transitioning between sectors and authorities, either because one authority fails to obtain or pass information onto another authority, or because authorities fail to coordinate the measures toward the child.

When an effort involves two or more authorities or sectors, no case manager is appointed, as there is no legal requirement for this. When a child transitions from the psychiatric system or the Prison and Probation Service to the social services, for example, it is highly important that the two sectors coordinate the work and involve the child in the process to give the child a relatively smooth transition, while protecting the

⁸ The follow-up is available here: http://sim.dk/media/1015933/opf_lgning_p_styrkelse_af_b_rns_rettigheder.pdf

child's personal data in accordance with the relevant legislation. This can be achieved by appointing a case manager who coordinates the work and is responsible for ensuring that efforts are holistic and unified, based on the child's needs and, when applicable, involves the child's family. It is of great importance that the measures are implemented throughout the process. Otherwise, there is a risk that these measures have little or no effect.

On a ministerial level the Council recommends that the inter-ministerial committee for children be restored. The committee was disbanded in 2001 by the Government at the time. A restoration could potentially secure a centralisation and coordination of legislation concerning children. This is essential when safeguarding children's rights. In its Concluding Observations to Denmark in 2011, the Committee recommended a full, comprehensive, coherent and consistent implementation of the Convention throughout the country and at all government levels.⁹

The National Council for Children recommends that:

- *The inter-ministerial committee for children is restored.*
- *Municipalities are made responsible for appointing a case manager that follows the child through the systems.*

I.B. Dissemination of knowledge of the Convention

A prerequisite for respecting children's rights is that children are aware of their rights and are able to claim them. In general, there is a low level of awareness of human rights and the Convention in Denmark. A survey from 2014 shows that few Danish children and youth are aware of the Convention and their own rights: 46 % knew nothing about the Convention.¹⁰ A recent survey in the Council's Children and Youth Panel shows that most children believe that their level of knowledge about their rights is moderate.¹¹

Children's knowledge about their rights in specific situations is also lacking. The children and youth who participate in our studies express this regularly when we talk to them about their rights. For example, this was the case in our studies on youth deprived of their liberty, children in the psychiatric system and children in alternative care.¹² This is worrying, especially since these children are in a difficult situation and may lack the strength and resources to determine their rights. In such cases, authorities have a duty to ensure that children are informed about their rights. As a follow-up on the study of children in alternative care, the Council developed and distributed easily accessible pamphlets about children's rights during placement, tailored to different age groups.

⁹ Concluding Observations to Denmark (2011), CRC/C/DNK/CO/4, para. 15.

¹⁰ 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 were aged 12-16.

¹¹ National Council for Children: Children's View 1/2016.

http://www.boerneraadet.dk/media/164802/BRD_Boerneindblik_Nr116_Rettigheder_i_familien_090316.pdf

¹² National Council for Children: 'Once I was actually a good boy' – young people share their experiences of being deprived of liberty (2015). National Council for Children: 'It is just normal people with a vulnerability' – children tell their stories about being hospitalised in the psychiatric system (2014). National Council for Children: 'They try to make it as normal as possible' – a look into the lives of 113 children placed in alternative care (2012).

As part of our mandate, we host and maintain the website Børneportalen, which provides general information to children and youth about their rights concerning a range of topics. The website also has information on how and where children can seek help if their rights have been violated.

The educational system is an obvious place to disseminate knowledge of the Convention. In its Concluding Observations to Denmark in 2005 and 2011, the Committee recommended that Denmark incorporate the teaching of the Convention into the curricula of both primary and secondary schools.¹³

As a result of the 2013 primary and lower secondary school reform, teaching of the Convention is now mentioned in the guidelines and syllabus for the subject Social Sciences, while children's rights is mentioned in the Common Objectives for the subject Health and Sex Education and Family Studies.¹⁴ Teaching in human rights is mentioned in the Common Objectives for History.¹⁵ Common Objectives here are measures for the targeted competence level of all pupils. Additional measures should be undertaken to ensure that children and youth in Denmark are aware of their rights and how to claim them.

The National Council for Children recommends that:

- *Efforts to raise awareness of children's rights, the Convention on the Rights of the Child and the children's ombudsinstitution are increased, for example by increasing funding for the website Børneportalen and by ensuring that children learn about their rights in primary and lower secondary school.*
- *Efforts to inform children in specific situations about their rights in a manner and language they understand are increased.*

III. General principles

III.A. Non-discrimination

In Denmark, children with legal residence have until recently had a right to public education under the Act on Public Schools.¹⁶ The Act on Public Schools stipulates a certain number of lessons, range of subjects, specific teacher qualifications and sets a maximum on the number of pupils allowed per class. These minimum requirements ensure a certain level of quality in Danish public schools. However, Parliament recently adopted a law enabling municipal authorities to establish educational institutions that fall outside the Act on Public Schools for certain children of foreign nationality, including refugee children with residence status.¹⁷ The children can be taught in these educational institutions for a maximum of two years. After two years, the children must be included in the standard public school system.

¹³ Concluding Observations to Denmark (2011), CRC/C/DNK/CO/4, para. 26. Concluding Observations to Denmark (2005), CRC/C15/Add.273, para. 22(a).

¹⁴ Common Objectives for the subject Health and Sex Education and Family Studies are available here (in Danish only): <http://www.emu.dk/sites/default/files/SSF%20-%20januar%202016.pdf>

¹⁵ Common Objectives for History are available here (in Danish only): <http://www.emu.dk/sites/default/files/Historie%20-%20januar%202016.pdf>

¹⁶ Children in asylum proceedings are given a targeted educational offer in accordance with section 42 (g) of the Aliens Act.

¹⁷ The act is accessible on the Parliament's website (in Danish only): http://www.ft.dk/RIpdf/samling/20151/lovforslag/L190/20151_L190_som_vedtaget.pdf.

The Act on Special Education Institutions for Certain Children of Foreign Nationality does not set the same minimum requirements as the Act on Public Schools; it is left for the municipal authorities to decide on these matters. The National Council for Children, along with a number of other public and private institutions, has voiced concern that this may lead to a situation where some children of foreign nationality are offered education of a lower quality than that offered to Danish children, which would amount to discrimination.¹⁸ Providing all children in Denmark with an educational offer that falls within the Act on Public Schools guarantees that all children in Denmark are given equal opportunities to education. In its Concluding Observations to Denmark in 2011, the Committee recommended that Denmark ensure that asylum-seeking and refugee children receive education of the same quality as children in Danish schools.¹⁹

Since the law was only recently passed, no firm conclusions can be drawn about its effects in practice.

The National Council for Children recommends that:

- *All children are entitled to an educational offer within the scope of the Act on Public Schools.*

III.B. Best interest of the child

In Denmark, persons must be 18 years old to enter into marriage. Authorities can dispense from the rule when one part is between 15-17 years old and certain requirements are met. In late 2016, the Government proposes to amend the legislation, making the 18-year rule absolute.²⁰ The authorities must always consider whether the marriage is forced, as forced marriage is prohibited under Danish law.²¹ The age of sexual consent is 15.

With regard to marriages that have taken place outside of Denmark, similar rules apply for the marriage to have legal effect domestically. If the proposed amendment is passed, marriages that have taken place outside of Denmark where one part is younger than 18 years will not be recognised.

In early 2016, the Minister for Foreigners, Integration and Housing required of the asylum centres that they separate married couples housed at the centre if one part is below 18 years. This is also the case if the couple is expecting a child or have children. Up until this change of practice the asylum centres undertook individual assessments of whether couples should live together based on the minor's best interests. Cases where one part is below 18 years are rare, though.

The Council is of the view that the rules forcing couples to live apart are unnecessarily rigid and do not allow authorities to make assessments based on the couple's individual circumstances. Forcing a couple to live apart in asylum centres can be traumatising to already vulnerable persons, particularly girls. The decision on whether to separate a couple or allow them to remain together should be based on an assessment of the best interests of the minor and, if the couple has children together, on the best interests

¹⁸ Legal briefs are available on Parliament's website (in Danish only):

<http://www.ft.dk/samling/20151/lovforslag/1190/bilag/1/index.htm#nav>.

¹⁹ Concluding Observations to Denmark (2011), CRC/C/DNK/CO/4, para. 58 (e).

²⁰ The proposed amendment is available here (in Danish only): <https://hoeringsportalen.dk/Hearing/Details/59778>

²¹ Instruction to the act is available here (in Danish only):

<https://www.retsinformation.dk/forms/R0710.aspx?id=179365>

of the children. In the attendant instructions to the law, the interests of children of such couples do not appear as a factor that must be taken into consideration.

Due to complaints from separated couples, the case is now under investigation by the Parliamentary Ombudsman.²²

The National Council for Children recommends that:

- *Authorities always base their decision on whether a couple in the asylum system should be separated or kept together on an individual assessment of the best interests of the minor and the couple's children, if applicable.*

III.C. Respect for the views of the child

Child participation in policy development and in collective decision-making should be strengthened. The National Council for Children promotes child participation in much of our work by asking children and youth about their view of or experience with a particular topic. In general, we experience a positive interest in our inputs. Sometimes we bring children and youth together with decision-makers in the central administration, including ministers, to discuss a relevant topic.

Moreover, we also promote the agenda at the local level: As mentioned earlier, we held a conference for local decision-makers focussing on child participation in policy development in 2014, and in 2016 we published a handbook on how to involve children.

Current participation of children in policy development is unsystematic, however, and much legislation is passed and collective decisions are made without consideration of how it affects children or how children view the topic, even if the decisions have a direct or indirect impact on their lives. In its Concluding Observations to Denmark in 2005, the Committee recommended that Denmark ensure that municipalities actively involve children and take their views into consideration in relevant policies and programmes.²³

The National Council for Children recommends that:

- *Child participation in policy development and collective decision-making is promoted systematically at national, regional and municipal levels of government.*

IV. Civil rights and freedoms

IV.F. Protection of privacy

Media literacy

Danish children spend a considerable amount of time on the Internet and social media every day. Children's online opportunities to access information and take part in online debates and communities have grown exponentially. However, children's online life also poses new problems which must be addressed.

²² Available on the Parliamentary Ombudsman's website (in Danish only):

http://www.ombudsmanden.dk/find/nyheder/alle/adskillelse_af_asylpar/

²³ Concluding Observations to Denmark (2005), CRC/C15/Add.273, para. 12(b).

Studies show that Danish children are technically skilled media users, but they often experience unpleasant episodes and content or even bullying online. Studies also show that children neither have the skills to limit the risk of nor to handle unpleasant episodes.²⁴

One aspect of improving the protection of children online is to focus on their media literacy – that is, their skills in protecting themselves and their privacy, avoiding unpleasant episodes and behaving ethically correct online.

Denmark currently does not have a systematic policy for increasing the media literacy of children and is not allocating adequate resources to this task. The Media Council for Children and Young People in Denmark is the designated local Danish Safer Internet Centre under the EU programme for Safer Internet. They have expertise in raising awareness and providing parents, teachers, educators, children and youth with tools to develop safer use of the Internet.

Children themselves are also asking for more guidance on how to use the Internet safely. This includes being taught how to use the Internet in schools.²⁵ New digital media have been integrated into classroom education as part of the modern educational system. However, there has been insufficient focus on enabling teachers to live up to the demands of developing the media literacy of pupils.

The National Council for Children recommends that:

- *A systematic policy for the development of media literacy among children is developed.*
- *Measures to increase children's media literacy are implemented, e.g. by capacity-building teachers and parents and ensuring that a national resource centre (e.g. the Media Council for Children and Young People) can guide adults on children's use of digital media.*

V. Violence against children

V.A. Abuse and neglect

Municipal authorities' liability in cases where a child is the victim of abuse and neglect

If a child suffers neglect or abuse by caregivers, for example parents, close relatives or a foster family, the municipal social services are obliged to step in to protect the child. According to current law, if authorities are notified of abuse or neglect of a child, they have 24 hours to decide whether the notification requires them to act promptly.²⁶ However, throughout the years there have been numerous cases where the authorities have failed to protect a child from repeated abuse or neglect. The extent of such omissions by the authorities is unknown.

Children's Welfare has received financial support from the Ministry of Social Affairs and the Interior to look into the possibilities of holding municipal authorities liable for such omissions. The cases are thus an addition to criminal charges against the perpetrators of the abuse and civil cases seeking redress. The main reason for promoting such court cases is twofold: to ensure that municipal authorities take their responsibility seriously to avoid such cases in the future, and to give the victim redress for past neglect and

²⁴ National Council for Children: Children's View 4/2014 and 7/2014.

²⁵ National Council for Children: Children's View 4/2014 and 7/2014.

²⁶ Act on Social Services (in Danish only): <https://www.retsinformation.dk/Forms/R0710.aspx?id=175036>

recognition of the failure of the authorities. Public liability is just one aspect of the effort to ensure that such cases of neglect cease to occur; preventive measures are also required.

There is no immediate legal basis in domestic legislation for bringing such cases to court. However, as the European Convention on Human Rights is incorporated into Danish law, Denmark has a positive obligation to ensure the protection of the child in cases where the parents or other close caregivers fail to protect the child from harm or are the cause of mistreatment or neglect. Therefore, the Council believes that cases can be brought against municipal authorities for their failure to live up to their legal responsibility.

Two main problems with taking these cases to court are that the statute of limitations has often expired, and that court cases are a prolonged affair. The general statute of limitations is three years, and most victims are well into adulthood before they are ready to come forward with their case. Moreover, it often takes years and considerable resources to bring such cases to court, resources that the victim may not possess. Currently the Government is looking into making legislative amendments enabling such cases to be tried.

The National Council for Children recommends that:

- *The statute of limitations runs from the victim's 21st birthday and is set at 10-15 years depending on when the abuse or neglect took place and the character and consequences thereof.*
- *A board for public liability in cases involving children is established.*
- *It is permanently prohibited to destroy files concerning social cases involving children.*

Violence against children

Since 1997, parents are no longer allowed to use physical or mental punishment as a part of the upbringing of their children. Nevertheless, violence against children in the family setting is quite common. In its Concluding Observations to Denmark in 2011, the Committee noted with concern that municipal efforts in relation to children living with domestic violence were inadequate.²⁷

17 % of children in the eighth grade have experienced physical abuse once or more by one or both parents during the past year. That is three to four pupils in a class consisting of 24. 7 % of pupils in the eighth grade are currently experiencing physical abuse and have been since the sixth grade or earlier, which means that it is a condition of their upbringing. 8 % of the youth have experienced psychological maltreatment. Moreover, 10 % have witnessed violence against siblings, and 4 % have witnessed violence against a parent.²⁸

Many children in Denmark thus experience physical and mental abuse in their family, either on their own body or by witnessing it on family members. The consequences for the children are severe, since it affects their well-being. These children rate their physical and mental well-being as well as school capacity/skills lower than other children.

²⁷ Concluding Observations to Denmark (2011), CRC/C/DNK/CO/4, para. 41.

²⁸ Danish National Centre for Social Science: Violence and Sexual Abuse Against Children and Young People In Denmark (2016). In sixth grade, children are 12-13 years and in eighth grade 14-15 years.

Violence occurs in all kinds of families, although families with fewer socioeconomic resources and families where the parents are substance abusers or mentally ill are overrepresented in the statistics.²⁹ It is of great importance that the needs of these families are first uncovered and then dealt with in a manner that protects the child. In its Concluding Observations to Denmark in 2005, the Committee recommended that Denmark provide specific parenting programmes for families at risk of abusing children.³⁰

The National Council for Children recommends that:

- *Further measures to prevent violence and abuse of children are undertaken, especially by providing tools for parents who have fewer socioeconomic resources, are substance abusers or mentally ill, including refugee families where there is a risk of mental illnesses.*

V.B. Harmful practices

Intersex children

It is unknown how many intersex children are born annually in Denmark. Some of the children are treated shortly after birth to 'normalise' the child's genitalia and assign a gender to the child. Treatments consist either of surgery or hormone treatment. The necessary clinical tests are described in an instruction to hospitals,³¹ and the appointed medical team is to work closely with the parents to determine the child's gender. However, the treatment takes place without the child's consent, as the child is clearly too young to voice an opinion.

Very little is known about the physical and psychological long-term effects of intersex treatment as well as of the consequences when infants are not treated, because very little research is conducted in the field. The Danish practice includes no systematic follow-up on these children, which could shed light on their development, well-being and the effects of the treatment. The National Council for Children is worried that the medical practice allows for irreversible gender-normalising treatments which are not based on medical grounds. Such a practice may be disproportionate to the child's right to physical integrity and to be heard in all matters affecting the child. More information is necessary about the number of intersex births and the effects of treatments (surgical or hormonal) performed on infants as well as the effects of postponing the treatment until the child is older and can be heard in the matter.

The National Council for Children recommends that:

- *Systematic data collection and follow-up on intersex children during childhood are conducted.*
- *Families with intersex children are provided with adequate counselling and support.*

Infant male circumcision

Episodes of male circumcision are not registered in Denmark, and the extent of the practice is therefore unknown. The Danish Health Authority estimates that between 1,000-2,000 infants are circumcised every year, a figure which is based on the number of infants born to Muslim and Jewish minorities.³²

²⁹ Danish National Centre for Social Science: Violence and Sexual Abuse Against Children and Young People In Denmark (2016) pp. 88-92.

³⁰ Concluding Observations to Denmark (2005), CRC/C15/Add.273, para. 35(c).

³¹ Birkebæk, Niels H., Jørgensen, Troels M., Olsen, Henning and Hertz, Jens M.: DSD instruction 2008, Aarhus Universitetshospital Skejby (2008). Available here (in Danish only): <http://dspace.ruc.dk/bitstream/1800/7249/3/DSD%20instruks.pdf>

³² Danish Health Authority: Brief on circumcision of boys (2013).

It is disputed how often medical complications from circumcision arise. For Europe it is estimated that 2 % experience complications following the procedure, whereas a study by the Copenhagen-based hospital Rigshospitalet between 1996-2003 showed that 5 % experience complications.³³ The Danish Health Authority are of the opinion that there are no medical benefits to being circumcised in the Danish context, whereas this may be the case in other countries and settings.

Danish authorities neither recommend nor deter circumcision. They are of the opinion that it can be in the interests of the patient's safety that circumcision is performed as early as possible, as the procedure is smaller and there are fewer complications when it is performed in the first few weeks after birth.³⁴

The general rule is not to perform unnecessary medical procedures. The National Council for Children is of the opinion that medical procedures that are not necessary from a strictly medical point of view should only be performed with the expressed free and informed consent of the person in question. This view is based on the principles of right to bodily integrity and the child's right to be heard in all matters affecting the child. The child's right to be heard is relevant in relation to all issues – medical or otherwise – relating to the child.

The National Council for Children is well aware of the heated debate on the issue among the public, religious leaders and medical experts. We recognise that parents have a great degree of freedom of choice in relation to the upbringing of their children, and that the Convention recognises freedom of religion, including the child's freedom of religion.

However, the Council believes that it is in the best interests of the child that the consent of the child is obtained before this irreversible medical procedure is performed. The best interests of the child overrides the other considerations in this matter, as the procedure is irreversible, and unnecessary complications can arise.

The National Council for Children recommends that:

- *The child is required to consent to circumcision when he is mature enough to understand the implications of the procedure.*

V.E. Physical and social recovery and social reintegration of child victims

Children's Houses

Five so-called Children's Houses were established in 2013, one in each region.³⁵ The Children's Houses target children who have been sexually or physically abused, provide the appropriate care and investigation and consist of health care personnel, social workers and police investigators who attend to the child at the House. This means that the care and investigation are centralised, so the child does not have to visit various locations.

³³ Thorup et al.: Complication rate after circumcision in a pediatric surgical setting should not be neglected, Danish Medical Journal (2013).

³⁴ Danish Health Authority: Brief on circumcision of boys (2013).

³⁵ The legal amendment can be found on the Parliament's website (in Danish only): http://www.ft.dk/RI/pdf/samling/20121/lovforslag/L181/20121_L181_som_vedtaget.pdf

In the 2015 review of the Houses, children who have left the Houses ask for the opportunity to return to have sessions with the psychologist they know from the House. This would serve as a type of follow-up opportunity.³⁶

Statistics from the Children's Houses show that the majority of the children who come into contact with the Houses report being victims of physical abuse by a family member.³⁷

Currently, mental abuse is not included in the mission of the Children's Houses, as stated in the legal framework. However, both physical and mental violence should be recognised as abuse, so that children who have suffered mental abuse can also receive help in the Children's Houses.

The National Council for Children recommends that:

- *The Children's Houses are granted the opportunity to include children who are victims of mental abuse by adding mental abuse to the criminal justice law and to the Children's Houses' mission to secure justice and proper care for all children who are victims of abuse.*
- *Children may return to the House for further sessions with the psychologist they know.*

VI. Family environment and alternative care

VI.A. Family environment

Children affected by divorce: agreement between parents

In Denmark, the parents of about every third child are divorced. In divorce cases the child is not heard if the parents reach an agreement about parental custody, residence and/or companionship. According to the Convention on the Rights of the Child, children have a right to be heard in all matters affecting the child. In order to ensure that the child's best interests are taken into consideration, parents in divorce cases should make sure that the opinion of the child is taken into account in their agreement.

In a recent study conducted by the Council among children in the ninth grade (15-16 years old) 69 % of the children whose parents are divorced expressed that they miss the parent they do not live with. Three out of four children who live with another parent than their siblings do miss their siblings during the time they are apart. 34 % of the children who have contact with the parent they do not live with are dissatisfied with the amount of contact. This dissatisfaction leads to an increase in loneliness and to a lower level of well-being.³⁸

The study also showed that 79 % of the children who have been involved in the decision about which parent they should live with are satisfied with the decided arrangement. Only 51 % of the children who have not been involved in the decision are satisfied with it. This shows the importance of involving children and youth when their parents divorce: both because the child has a stake in the decision and wishes to

³⁶ National Council for Children: Children's Brief 1/2016. Available here (in Danish only):

http://www.boerneraadet.dk/media/166117/BRD-Boernenotat_116_Boernehusene.pdf

³⁷ Statistics available on the website of the National Board of Social Services (in Danish only):

<http://socialstyrelsen.dk/nyheder/2016/ny-statistik-om-overgreb-mod-born>. In 2014, the Children's Houses treated 867 children. In 2015, the number had risen to 1,097.

³⁸ National Council for Children: Children's View 3/2016.

influence it, and because it is important to give the child the opportunity to understand and ask about the reasons for the outcome.

Children affected by divorce: cases dealt with by the State Administration

If parents cannot reach an agreement about parental custody, residence and/or companionship, the case is dealt with by the State Administration. The child usually comes into contact with the State Administration if the State Administration assesses that the child should be heard.

In 2015, the National Council for Children completed a study among 41 children aged seven to 16 years, who were in contact with the State Administration either by participating in a children's group³⁹ or by participating in a child interview as part of the case management.⁴⁰

The children in the study recommended informing children about their rights, adopting a more child-friendly environment, giving all children access to children's groups and making the child interviews more flexible.

The child's right of initiative is the right to contact the State Administration, asking them to invite the child's parents to a meeting to discuss the agreement made about the child concerning companionship and residence rights.⁴¹ Even though all children from the age of 10 have a right to call their parents to a meeting, the parents are not obligated to take the child's best interests into account. If the parents find the current agreement satisfactory, they are under no obligation to reconsider the child's arguments, thus eroding the right of the child. In the study by the Council, the parents of the two children who had used their right of initiative changed the agreement after the meeting. In high conflict cases this may not be the case, as the parents will have a tendency to avoid contact with each other and to maintain previous agreements.

Two out of the State Administration's nine units are conducting trials teaching divorced parents how to cooperate. In Norway, conflict resolution is an obligatory part of the procedure in the early process of divorce when children are involved.

The Council recommends that:

- *Children affected by divorce are always heard and involved in matters that concern them.*
- *Schools and day care institutions are given tools to deal with the great number of children whose parents divorce.*
- *Children's groups are made accessible to all children.*
- *Interviews with children should be flexible in number based on the needs of the individual child.*

³⁹ Children's groups are a voluntary offer to children whose parents are divorced. The groups consist of 4-12 children and two child experts from the State Administration. The groups' aim is to provide tools for the children to help them handle their parents' divorce and to meet other children who are in the same situation so they can share experiences in a confidential setting.

⁴⁰ National Council for Children: 'It is about the children. Their opinion is actually quite important' – children and youth tell of their encounter with the State Administration (2015).

http://www.boerneraadet.dk/media/138283/BRD_Tema_Statsforvaltningen_Web.pdf

⁴¹ The right is founded in the Act on Parental Responsibility, section 35:

<https://www.retsinformation.dk/Forms/R0710.aspx?id=173278#id9a791dbe-dd58-44c6-96f8-d58879e55986>

- *The effort to supply children with information about their rights in a child-friendly language and the right of initiative is strengthened.*
- *Courses in joint parental responsibility (and coping with conflicts) are offered to all parents at an early stage in the process of divorce.*

VI.D. Family reunification

Since Denmark's fourth periodic report to the Committee on the Rights of the Child the Aliens Act has been amended on a number of occasions. Some recent amendments to the Aliens Act directly concerning or affecting children are:

- a) The possibility of granting family reunification with children between the age of 15 and 17 living outside of Denmark in exceptional circumstances (from 2012).
- b) Postponement of the right to family reunification for three years for refugees with temporary subsidiary protection (from 2014 and 2015).
- c) The child's integration potential must be assessed in cases concerning family reunification of children above the age of eight (from 2016).⁴²

In general, exceptions can be made if warranted by Denmark's international commitments. However, such exceptions are granted on a case-by-case basis and as such are left to the discretion of the Danish Immigration Service with administrative appeal to the Immigration Appeals Board.

It seems arbitrary that the right to family reunification depends on the legal status of the refugee in Denmark, as the child outside of Denmark presumably has the same need of protection irrespective of the legal status of the parent. Restricting the right to family reunification can lead to an increased number of children making the hazardous journey to Denmark, since legal avenues are restricted or cut off. The principle of protection of family unity implies that reunification should not depend on refugee status, as refugees in general face major insurmountable obstacles to developing family life in their home country.

The postponement of the right to family reunification for three years affects some unaccompanied refugee children whose parents live abroad. If, for example, the immigration authorities decide that the minor was not part of the family in the home country or has close relatives in Denmark that can substitute the role of the parents, the child will have to wait three years to reunite with his or her parents. In general, the younger the child is, the more likely it is that Denmark's international obligations requires Denmark to grant family reunification.

The National Council for Children is concerned that the administrative practice in family reunification cases is too restrictive, and that insufficient weight is afforded to the best interests of the child. Especially in cases concerning refugees, family reunification is essential to ensure family unity and to enable the family to integrate into the host society.

The National Council for Children recommends that:

- *Children have a general legal right to family reunification until they reach majority, if it is in the child's best interests.*

⁴² Aliens Act: <https://www.retsinformation.dk/forms/R0710.aspx?id=180093>

- *Refugee children can be unified immediately with their family in Denmark, irrespective of the parent's refugee status.*
- *The Aliens Act is amended so all refugee children are excluded from having their integration potential assessed.*

VI.F. Children deprived of a family environment

Children in alternative care

In 2014, 13,379 children and youth were placed in alternative care or receiving after care.⁴³ In August 2016, the Auditor General's stated in their report that they are very critical of the fact that the Ministry of Social Affairs and the Interior after 10 years of legislating, starting with the Care Placement Reform Act in 2006, has no documentation of the municipalities improving their case management or the effects of measures given to the children.⁴⁴ They also found that the Ministry of Social Affairs and the Interior has given insufficient support to the municipalities in their work on implementing the Care Placement Reform Act. Finally, they criticise the fact that in many cases the municipalities' case management does not comply with the legal requirements of conducting child interviews, making action plans and performing child examinations.⁴⁵

After care

If a child has been placed in alternative care before turning 18, he or she has the right to be offered after care at the age of 17½ and until he or she turns 23, if it is believed that after care is essential to the young person's needs and can contribute to his or her development towards adulthood. Not all youth placed in alternative care are offered after care, and studies show that the ones who receive after care are the most resourceful. This means that the youth who are most in need may not receive measures they are entitled to. These youth have poor social relations and poor social and personal skills, which means that they have greater needs than youth who are not forced to be independent at 18. In 2014, 2,167 youth from the age of 18 to 22 years were receiving after care. Placing children in alternative care requires many resources from authorities, and investing in after care to secure the young person's transition to adulthood is wise. For young people not receiving after care, there is a risk that the measures given through childhood are wasted, and that the person will need massive support in adulthood due to lack of education, social network and increasing mental issues.

The National Council for Children recommends that:

- *Legislation is amended making the right to after care unconditional.*

Use of force

Currently, the use of force towards children placed in alternative care is regulated in an administrative order under the Act on Social Services and is only granted to personnel in institutions working with children

⁴³ Statistics Denmark: www.danmarksstatistik.dk

⁴⁴ Report of the Auditor General's: Measures toward children placed in alternative care (2016).
<http://www.rigsrevisionen.dk/media/2104317/sr2115.pdf>

⁴⁵ A child examination is a thorough and holistic examination of the child and the child's perspective. It is regulated in article 50 of the Act on Social Services.

who live there.⁴⁶ When use of force falls under this administrative order, a child who disagrees with the use of force has a right to make a statement, but not to remedy. The right to remedy only applies to the holder of custody. From January 2017, a new Act on Adult Responsibility applies in which children from the age of 12 have access to remedy. It is of great importance that the authorities consider the use of force and take action if the use is not allowed.

After the Child's Reform in 2011, it is now mandatory for municipalities to first explore the possibility of placing a child in a foster home before placing it in alternative care. No study has documented the use of foster homes as a more appropriate form of placement. The primary considerations when deciding between different forms of placement must be the child's individual need of support and whether the chosen type of placement corresponds to this need.

A consequence of the Child's Reform has been an increased rate of placement in foster homes, while placement in institutions has decreased. Therefore, children in foster homes are considered to have a greater need of support now than was the case before 2011. Furthermore, the municipalities now have so-called municipal foster homes, which consist of foster parents with an education in pedagogy or a similar field. In foster homes, there is no legal access to use of force, except for what falls under the Act on Parental Responsibility. Therefore, a child placed in a foster home has no right to make a statement when force is used against the child.

The National Council for Children recommends that:

- *It is possible to include a child in foster care within the rules on the use of force by specific assessment by the social services.*

Continuity

Children placed outside the home often face changing systems and authorities. The consequence is often that children and youth with special needs receive incomplete solutions or a lack of measures when they transition from one system to another. It is of crucial importance that different authorities are able to work together by exchanging information and by assigning only one cross-sectorial caseworker to each child. The cross-sectorial caseworker should be responsible for ensuring sufficient and holistic measures toward the child.

The National Council for Children recommends that:

- *Municipalities are required to assign a cross-sectorial caseworker to each child, who is responsible for the measures for that child.*

VI.H. Adoption

Adoption without parental consent

Parents are very rarely forced by the social services to give up their child for adoption without consent due to lack of ability to care for the child on a long-term basis.⁴⁷ The social services must demonstrate that it is unlikely that the parents will be able to care for the child on a long-term basis, and the decision of forced

⁴⁶ Administrative Order on the Use of Force Toward Children and Youth in Alternative Care, available here (in Danish only): <https://www.retsinformation.dk/Forms/R0710.aspx?id=168154>

⁴⁷ By ruling of each municipalities' Committee for Children and Youth.

adoption must be in the child's best interests.⁴⁸ Current legislation entails that the child has no right to keep in contact with its biological family.

The Council believes that every child is entitled to know its background and to retain the possibility of contact with its biological parents as long as the contact is not harmful to the child and as long as the child according to its age and maturity expresses a wish to have contact. The biological parents are a part of the child's history, and knowing this history can be crucial to the child's self-perception and possibilities of developing a harmonic life.

The National Council for Children recommends that:

- *The child is given the right to have contact with its biological parents.*
- *The child, according to age and maturity, is given access to its case files, and the social services are obliged to support the child in this request.*

VII. Disability, basic health and welfare

VII.A. Children with disabilities

Education for children with disabilities

The regulation on inclusion was first introduced in Danish schools as a target in 2012.⁴⁹ Inclusion concerns all children in Danish schools and aims at facilitating an inclusive learning environment. Inclusion of children with disabilities must support their well-being and full academic and personal development.

If persons with disabilities are to participate fully in society an inclusive educational system and greater accessibility is required.⁵⁰ Chances of getting an education increase if measures ensuring that the child can maintain ties to the standard educational system are introduced. Inclusion can also promote greater social coherence and understanding of diversity among children.

Denmark is still in the process of including a greater proportion of children with disabilities in the standard educational system. The original target was the inclusion of 96 % of all pupils.⁵¹ This target is no longer a part of the decree and will in the future be substituted by an increased focus on every child and the schools' learning environment. This was recommended by an inclusion inspection made by an expert group on inclusion established by the Government.⁵²

An inclusive educational system must prioritise both social coherence and physical accessibility. Inclusion means that the child thrives and develops in a community of peers with emphasis on academic, social and personal development. For this to be achieved, schools must disassemble the learning objectives (Common Objectives) into sub-elements, placing the individual child's development level at the centre of attention.

⁴⁸ The amendment is available here (in Danish only): <https://www.retsinformation.dk/Forms/R0710.aspx?id=169834>

⁴⁹ The regulation is available on the website of The Danish Parliament (in Danish only): http://www.ft.dk/Rl/pdf/samling/2011/lovforslag/L103/2011_L103_som_vedtaget.pdf

⁵⁰ Cf. Convention on the Rights of Persons with Disabilities, articles 3, 9 and 24.

⁵¹ Danish Ministry of Education: 'Transition to more inclusion' (2012): <https://www.uvm.dk/Uddannelser/Folkeskolen/Laering-og-laeringsmiljoe/Inklusion/Bagom-inklusion>

⁵² A summary of the inspection is available here (in Danish only): <http://www.uvm.dk/Aktuelt/~UVM-DK/Content/News/Udd/Folke/2016/Maj/160511-Inklusionseftersyn-96-procents-maalsaetningen-droppes>

The physical environment must provide adequate teaching space and playing facilities to ensure the participation of all children in social interaction.

The National Council for Children recommends that:

- *It is monitored how the student learning objectives (Common Objectives) are adapted to pupils with disabilities.*
- *The quality of the physical environment's suitability for supporting inclusion is in focus.*
- *The individual child with disabilities is placed at the centre of decisions on whether the child should be placed in a standard or specialised school, and the necessary support is ensured.*

VII.B. Survival and development

Self-harm, eating disorders and well-being

The National Council for Children conducts regular research in our Children and Youth Panel, which consists of approximately 2,500 children in the seventh to ninth grade. In 2015, one of our questionnaires concerned self-harm and eating disorders. The study shows that both eating disorders and self-harm are common among young people in Denmark, and the findings are supported by other studies in the field.⁵³

Our findings show that 22 % of the 15-16-year-olds have practised self-harm, the majority of these being girls (girls account for 68 % and boys for 32 %). 23 % of girls and 9 % of boys exhibit risk behaviour in relation to eating disorders. Eating disorders and self-harm appear related, as 43 % of girls who have practised self-harm appear at risk of developing an eating disorder. In general, eating disorders and self-harm are related to low levels of well-being and self-esteem.⁵⁴

Our findings also show that young people seldom seek out an adult if they learn of a friend's self-harm. They believe that adults are frightened by these issues and do not know how to deal with them. This indicates a need for more information to parents, teachers and nursery teachers.

Currently, it seems that children suffering from these risk behaviours do not always receive the help they need. The least intrusive measure possible should be applied, whether preventive, therapeutic, pedagogical or psychiatric. The help should always be based on an assessment of the individual child's needs. The National Council for Children believes that a diagnosis should not be a prerequisite for receiving the necessary help.

It is the responsibility of the municipal authorities to offer help, but the initiatives offered vary, and some municipalities have no initiatives in relation to self-harm. Efforts should be undertaken by the social services in municipalities to ensure prevention and adequate measures before the risk behaviour escalates for the individual child.

Within the health care system, a child who practises self-harm and seeks help from the family doctor can only be referred to a psychologist if the doctor considers the eating disorder or self-harm to be severely disabling. With a referral to a psychologist, the public health insurance covers most of the costs of the

⁵³ Vammen, Katrine and Nygaard Christoffersen, Mogens: Self-harm and eating disorders among youth. Can social measures make a difference? SFI – Danish National Centre for Social Research (2013).

⁵⁴ National Council for Children: Children's View 4/2016 and Children's View 5/2016.

treatment. If the child is not referred to a psychologist, the only available means of help is if the family itself pays for a psychologist. Access to help, then, depends on the doctor's view of the seriousness of the harmful behaviour or the family's financial resources. This can potentially lead to inequality in the help afforded these children, as far from all families have such resources.

Denmark applies the WHO's International Classification of Diseases in which self-harm is not categorised as a diagnosis. This limits the help and support these children can get in the psychiatric system. It is only possible to get help within this system if a recognised diagnosis develops, e.g. OCD or borderline, or if the child becomes suicidal. This can lead to a vicious cycle where the self-harm and/or eating disorder may escalate before the child receives the help he or she needs.

The National Council for Children recommends that:

- *National guidelines are developed that ensure equal access to help, prevention initiatives that address children's mental health and more systematic treatment of self-harm in the psychiatric system.*
- *More research into self-harm and risk behaviour in relation to eating disorders among children and youth is conducted, and knowledge of the issue and prevention is distributed to relevant professionals.*
- *Self-harm and risk behaviour in relation to eating disorders is included in the education of teachers, nursery teachers and social workers.*
- *The family doctor is able to refer a child to a psychologist due to self-harming behaviour and eating disorders.*

VII.C. Health and health services

Children in psychiatric care

A significant number of children in Denmark suffer from mental health problems and receive treatment in the psychiatric system. Studies show that 10-15 % have had mental health issues at some point during childhood.⁵⁵ In 2014, 28,718 children were examined in the psychiatric system, and 1,265 children were hospitalised once or more.⁵⁶ 291 of the children were subjected to coercive treatment.⁵⁷ Statistics indicate that the use of coercion in the psychiatric system is rising.

In 2013, the National Council for Children conducted a qualitative study on children in the psychiatric system. The study showed that these children were particularly concerned with being subjected to coercive treatment, that they viewed coercion as quite invasive and that witnessing coercion was also unpleasant. In addition, the children did not feel well informed about their rights as patients.⁵⁸

Since Denmark's fourth periodic report, the Act on Coercion in Psychiatric Treatment has been amended. Unfortunately, the amendments have not improved the legal standing of children, as children below the

⁵⁵ Jørgensen, Per, Nordentoft, Merete, and Videbech, Poul: Prevention of psychological illnesses (2010), chapter 7. See also The Psychiatry Fund: Numbers on the psyche – facts on mental health and illness (2015).

⁵⁶ Danish Regions: Benchmarking Psychiatry (2014).

⁵⁷ Danish Health Authority: Monitoring coercion in psychiatry, yearly statement 2014 (May 2015).

⁵⁸ National Council for Children: 'It is just normal people with a vulnerability' – children tell their stories about being hospitalised in the psychiatric system (2014).

age of 15 have no access to remedy if they have been subjected to coercive treatment to which their parents have consented.

The National Council for Children believes that all coercion should be based on a medical assessment of its necessity. Involving parents in the decision by asking them to consent can potentially strain the relationship between the parents and the child in instances where the child has resisted the treatment. Moreover, if the parents consent to the coercion, the coercion is not categorised as such. Instead, it is reported to the authorities as use of force, a concept which has not previously existed in the psychiatric system, and of which the National Council for Children is critical, as it implies that coercion of children is less serious than coercion of adults. Moreover, in areas of the social services use of force is well defined and the attendant rights are well described, for example in relation to placement in alternative care. Introducing the concept into the psychiatric system without introducing the same definitions and rights risks blurring the meaning of the concept.

The National Council for Children recommends that:

- *The use of coercion of children is reduced.*
- *Children are given the same legal standing as adults, meaning the right to a patient counsellor and access to remedy depending on their maturity if they are subjected to coercive treatment.*
- *All instances of coercion are reported to the authorities.*
- *Children are provided with information about their rights as patients in a child-friendly language.*

VII.F. Measures to protect children from substance abuse

Prenatal substance abuse

Every year children are born with serious impairments and health issues because the mother has used or abused drugs or alcohol during her pregnancy. According to the Danish Health Authority, the number of children born with alcohol- or drug-related problems is around 50-100 annually. Out of these children 11 are diagnosed with Fetal Alcohol Syndrome (FAS) annually.⁵⁹ Fetal Alcohol Spectrum Disorder (FASD) describes the group of conditions that can occur in children whose mother drank alcohol during pregnancy. However, FASD is not recognised as a diagnosis and is therefore not registered as an alcohol-related issue.

As systematic data collection is not undertaken, the precise number of children born annually in Denmark with issues related to drug use and abuse is uncertain. As a result, the precise short- and long-term effects of drug and alcohol use and abuse on the individual child have not been established.

In 2011, the Government established an interdepartmental working group on pregnant women with drug and alcohol use and abuse issues. The working group published its report and recommendations in 2015. The working group suggested three models for the treatment of women with substance abuse issues. The most intrusive model presented is the possibility to retain pregnant women in an inpatient treatment

⁵⁹ Report of the interdepartmental working group on pregnant women with drug use and drug abuse issues, published by the Ministry of Social Affairs and the Interior and the Ministry of Health (2015), pp. 27-31 (in Danish only).

programme without their consent.⁶⁰ However, the recently amended legislation in the field does not include this option.⁶¹

In Norway, it is possible to retain a pregnant woman with substance abuse issues without her consent. The consent of the pregnant woman is always sought, as it is always preferred that such treatment is voluntary. A study into the effects on the child shows that it has a more positive effect on the child's weight at birth if the woman has consented to the treatment.⁶² Birth weight is an indicator of health in general.

The National Council for Children is of the opinion that the rights of the child is of paramount importance in these issues, as the child suffers the consequences of the mother's substance abuse throughout life. In addition, mothers who have caused harm to their children due to substance abuse often experience psychological difficulty. The mother also risks removal of the child from her care shortly after birth by the social services, which can cause traumatisation. Forced placement of the child in alternative care is also an intrusive measure limiting the mother's autonomy.

The chosen intervention in relation to the mother and the family should always be the least intrusive and should be proportional to the potential harm to the child. In cases where the least intrusive measures are inadequate, it should be possible to retain the mother without her consent. Moreover, early intervention is preferred in order to give the family the best possible chance to remain together.

The National Council for Children recommends that:

- *Legislation is amended to enable the forced treatment of a pregnant woman with substance abuse issues.*
- *Additional funds are provided to family outpatient centres to enable them to systematically collect data, to ensure that their expertise is available to all municipalities and to ensure that they can follow up on and support the whole family until the child is seven years old.*

VII.H. Standard of living

Poverty and deprivation

In its Concluding Observations to Denmark from 2005 and 2011, the Committee recommended that Denmark ensure that no child lives in poverty.⁶³

Growing up in poverty has negative effects on children in both the short and long term. A study conducted by the Council in 2015 showed that children from economically disadvantaged families experience reduced well-being, and that they participate in fewer recreational activities compared to their peers.⁶⁴

⁶⁰ Report of the interdepartmental working group on pregnant women with drug use and drug abuse issues, published by the Ministry of Social Affairs and the Interior and the Ministry of Health (2015) (in Danish only).

⁶¹ The act is available on the Parliament's website (in Danish only):

http://www.ft.dk/Rlpdf/samling/20151/lovforslag/L165/20151_L165_som_vedtaget.pdf

⁶² Report of the interdepartmental working group on pregnant women with drug use and drug abuse issues, published by the Ministry of Social Affairs and the Interior and the Ministry of Health (2015), pp. 98-104 (in Danish only).

⁶³ Concluding Observations to Denmark (2005), CRC/C15/Add.273, para. 46. Concluding Observations to Denmark (2011), CRC/C/DNK/CO/4, para. 54.

⁶⁴ National Council for Children: Children's View 6/2015 and Children's View 6/2016.

A poverty line was introduced in 2013 by the Government at the time, but abolished in 2015 by the present Government. However, abolishing the poverty line does not eliminate poverty. It becomes more difficult to conduct substantial political discussions about the consequences of legislative amendments when poverty is not officially recognised.

Legislation limiting welfare benefits for adults is currently being passed, increasing the number of children growing up in poverty. The stated purpose of the legislative amendments is to increase the employment level. However, the number of people who gain employment is minimal; instead, many families in need will receive less financial support.

The recently passed welfare benefit reform reduces the state's financial support of the unemployed.⁶⁵ The monthly support provided to unemployed people with children living in a rented residence is reduced by up to a third, as their residence support will also be reduced or annulled. Moreover, people who have resided in Denmark for less than seven out of the past eight years do not qualify for welfare benefits. Instead, they will receive a lower integration benefit,⁶⁶ which means that parents with one child or more will receive slightly more than half of the amount they received earlier from the state.

There is a need for increased attention towards children who grow up in families facing economic difficulties. A childhood in poverty has consequences during childhood in the form of loneliness, participation in fewer leisure activities and sports, and in a general decrease in physical and mental well-being.⁶⁷ In the long run, childhood poverty has negative consequences on the chance of completing school and getting an education.⁶⁸ Prevention of decrease in well-being is essential when securing the children's opportunities in education and in life as a whole.

The National Council for Children recommends that:

- *The poverty line is reinstated.*
- *Compensating initiatives are introduced as a supplement to the welfare benefit reform and the integration benefit to ensure that children are not affected as severely.*

VIII. Education, leisure and cultural activities

VIII.A. The right to education

Anti-bullying efforts and access to remedy

Bullying in childhood can have major negative consequences throughout a person's life. Bullying is closely related to well-being, and studies show that bullying can negatively affect a person's self-esteem. Bullying can constitute physical violence and can negatively impact learning and, in the long run, the opportunity to get an education.⁶⁹

⁶⁵ The act is available here (in Danish only): <https://www.retsinformation.dk/Forms/R0710.aspx?id=179257>

⁶⁶ The current rules appear in chapter four of the Act on Social Benefits (in Danish only):

<https://www.retsinformation.dk/Forms/r0710.aspx?id=180043>

⁶⁷ National Council for Children: Children's View 6/2015.

⁶⁸ Economic Council of the Labour Movement: Poverty affects children's future (2014). Available here (in Danish only): http://www.ae.dk/sites/www.ae.dk/files/dokumenter/publikation/ae_fl-14.pdf

⁶⁹ UN Committee on the Rights of the Child, General Comment No. 13.

In its Concluding Observations to Denmark from 2011, the Committee recommended that Denmark intensify its efforts to prevent bullying in schools.⁷⁰

Depending on the age group in question, between one in five and one in nine pupils still experience bullying in school.⁷¹ Bullying begins in day care and can continue into adulthood. Studies show that children whose parents' are divorced are at greater risk of being bullied.⁷² A recent study shows that 36 % of schools do not have an anti-bullying strategy, and that 6 % do not know whether they have one.⁷³ This is the case even though it is mandatory for all schools and secondary education institutions to develop an anti-bullying strategy.

In other Nordic countries legislation has been introduced to provide children with increased protection in relation to bullying in schools. In Norway, legislation applies to both schools and day care centres and covers the physical and mental working environment.⁷⁴ Swedish legislation allows for legal action to be brought against municipal authorities for failure to act on discrimination, harassment or other forms of abusive treatment.⁷⁵

It is necessary to promote the development of an inclusive environment in all institutions where children spend a considerable amount of time. In 2016, the National Council for Children participated in the Ministry for Children, Education and Gender Equality's working group on anti-bullying measures together with Save the Children, Denmark and Children's Welfare. The working group has launched a joint action plan on how to combat and prevent bullying. The action plan contains recommendations for various sectors where children and youth spend time, including day care centres, schools and secondary education institutions. It is the opinion of the Council that it is of paramount importance that the action plan is followed up with legislative amendments to mark the seriousness of the issue and enable firm action.

The National Council for Children recommends that:

- *Legislation is introduced that places the responsibility to prevent and combat bullying in day care, schools and secondary education institutions.*
- *Legislation is introduced that ensures all children and youth the right to complain about the lack of action by the responsible adults in schools and secondary education institutions.*

Children's learning environment

⁷⁰ Concluding Observations to Denmark (2011), CRC/C/DNK/CO/4, para. 56.

⁷¹ Danish Centre of Educational Environment: Pupils' view of the educational environment in primary and lower secondary school (2014). According to the latest figures, more than one in five pupils in the fourth-sixth form and one in nine pupils in the sixth-ninth form feel bullied.

⁷² Koefoed, Jette and Søndergaard, Dorte Marie: Bullying (2009), p. 208.

⁷³ Oxford Research: Mapping of anti-bullying strategies (2015). Available here (in Danish only): [http://www.emu.dk/sites/default/files/Kortl%C3%A6gning%20af%20antimobbestrategier%20\(2\).pdf](http://www.emu.dk/sites/default/files/Kortl%C3%A6gning%20af%20antimobbestrategier%20(2).pdf)

⁷⁴ Regulations on environmental health in kindergartens and schools, etc. Available here (in Danish only): <https://lovdata.no/dokument/SF/forskrift/2003-04-25-486>.

⁷⁵ Swedish Education Act 2010: 800.

Available here (in Swedish): http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Skollag-2010800_sfs-2010-800/.

An appropriate physical and psychological environment is a precondition for the child's well-being, learning and development and thus ability to take advantage of the right to education. Bullying can result in massive failure to thrive and has negative psychological effects.

Danish children spend a considerable amount of time outside the home in a day care centre or school, corresponding to the working week of an adult.⁷⁶ A number of acts regulate the physical and learning environment of infants and children in schools and day care centres.⁷⁷

Studies show that the physical environment in day care centres and schools suffers from lack of maintenance, and that the toilet facilities in schools are perceived by many as unhygienic.⁷⁸ In day care, 41 % think the noise level is too high.⁷⁹ In schools, between one in five and one in nine pupils still experience bullying.⁸⁰ These conditions can be stressful to children.

Other Nordic countries have introduced legislation which provides children with better protection in a number of areas within school and day care provision. In Norway, the legislation applies to both schools and day care centres and covers the physical and psychological working environment.⁸¹ Swedish legislation allows legal proceedings to be brought against school owners if they have knowledge of discrimination, harassment or other forms of abusive treatment and fail to take action.⁸²

The National Council for Children recommends that:

- *Legislation is introduced regarding the physical and psychological learning environment and regarding complaint mechanisms for children in day care centres and schools that aligns with the protection of adults in the Danish Working Environment Act.*

Education for children placed in alternative care

Children placed in alternative care must attend school for the mandatory ten school years. Education is necessary to gain equal opportunity.

⁷⁶ Approx. 90 % of one- to two-year-olds and 97 % of three- to five-year-olds spend an average of seven and a half hours per day in day care centres, according to figures published by the Ministry of Social Affairs and the Interior. Figures and statistics on day care provision are available at (in Danish only): <http://sm.dk/arbejdsomrader/dagtilbud/Tal%20og%20statistik/Tal%20og%20statistik>. National Council for Children: Mini-Children's Panel – 'Between home and kindergarten' (2011). In primary and lower secondary school pupils in the first-third form attend school for 30 hours per week, pupils in the fourth-sixth form attend school for 33 hours per week, and pupils in the seventh-ninth form attend school for 35 hours per week.

⁷⁷ Act on Daycare, After-School and Club Facilities for Young People and Children and the Educational Environment Act of Pupils and Students.

⁷⁸ COWI: Analysis of the maintenance backlog of Danish municipalities (2009). Danish Ministry of Education: Well-being survey 2015 (2015), p. 5 and 19.

⁷⁹ National Council for Children: Mini-Children's Panel – 'Indoor climate from the child's perspective' (2012).

⁸⁰ Danish Centre of Educational Environment: Pupils' view of the educational environment in primary and lower secondary school (2014). According to the latest figures, more than one in five pupils in the fourth to sixth grade and one in nine pupils in the sixth to ninth grade feel bullied.

⁸¹ Regulations on environmental health in kindergartens and schools, etc. Available here (in Norwegian only): <https://lovdata.no/dokument/SF/forskrift/2003-04-25-486>.

⁸² Swedish Education Act 2010: 800 – available here (in Swedish only): http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Skollag-2010800_sfs-2010-800/

In 2014, 13,379 children and youth in Denmark were placed in alternative care.⁸³ These children have often experienced a long lead-up with a steady decline in development and well-being. Some vulnerable children have not received education for a period of time, while 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 school. 40 % of children placed in alternative care at some point have not taken the lower secondary school exam when they are 16-17 years of age. For other children, the figure is 6 %.⁸⁴ Children placed in alternative care generally perform worse in the long run on parameters such as education and employment than others.⁸⁵ Furthermore, inspection visits by the Ombudsman's Children's Office show that several internal schools at institutions for children in alternative care still do not offer teaching in all the subjects required by Danish law.⁸⁶

Studies show that if these children are to have better future prospects, they need support in school.⁸⁷ Children should therefore remain in their current school or be ensured education in other ways while alternative care is being prepared. Particular attention should be given to education as a part of the placement process; this includes that the child receives the necessary support and the required subjects at school based on an assessment of the individual child's needs and capabilities.

The National Council for Children recommends that:

- *The importance of early tracing of children who experience challenges in school is emphasised.*
- *Once the decision has been made to place a child in alternative care, a plan is prepared for the child's schooling and implemented after the placement.*
- *The required school subjects are available for children in alternative care based on the individual child's needs and capabilities.*

VIII.D. Rest, play, leisure, recreation and cultural and artistic activities

Children's work environment

A number of children work for or participate in cultural productions. The Working Environment Act ensures that employees are protected by certain rules regarding working conditions and safety.⁸⁸ According to the Working Environment Act, children below the age of 13 are as a general rule not allowed to work.⁸⁹ However, there are exceptions to this, as the Police can allow that children below the age of 13 may

⁸³ Statistics Denmark.

⁸⁴ Local Government Denmark: Analysis of schooling and development in adult life among persons placed in alternative care as a child (2015), p. 1.

⁸⁵ SFI – Danish National Centre for Social Research: Children in foster care as young adults (2011).

⁸⁶ The Danish Ombudsman: reports on internal schools (2016).

⁸⁷ Bo Vinnerljung: Social rapport (2010); Mortensen, M. and Neerbæk, M.: Focus on schooling during assessment SFI – Danish National Centre for Social Research (2008), pp. 15-16; and Rambøll: Analysis of the economic consequences in the area for vulnerable children and young people (2012), p. 6.

⁸⁸ Working Environment Act is available here (in Danish only):

<https://www.retsinformation.dk/forms/r0710.aspx?id=133159>

⁸⁹ According to chapter 10 of the Working Environment Act youth aged 13 to 14 years are allowed to work with tasks of an easier/milder nature for up to two hours on school days and seven hours on non-school days. Youth aged 15 years or older are allowed to work for the same number of hours, but also with heavier tasks, which are not considered dangerous. If they are no longer in school, they can work for up to eight hours a day.

participate in cultural productions on the basis of a production plan provided by the employer. This exception covers children who participate in theatre productions, as ballet dancers, or as actors in films and on TV, but not children who participate in talent shows.

Children under the age of 13 working in the entertainment industry have no access to remedy concerning working conditions. When it comes to work covered by the Working Environment Act, the Labour Inspectorate can inspect the working conditions at any given time to ensure that the employer complies with the rules. However, the Police has few means and qualifications to control whether the employers comply with the production plan on which the permit is based. Therefore, the children cannot be ensured safe working conditions.

There are no rules to protect children under the age of 13 who participate in talent shows, because such activities are not considered work and they therefore do not require permission by the Police. However, the conditions of talent shows are similar to participating in the production of other cultural shows. In 2016, the National Council for Children interviewed seven children who work in the entertainment industry. Among other things, the children who participated in talent shows explained that they often practise for many hours during the competition, and that they may be a long way from home and away from school.⁹⁰

The National Council for Children recommends that:

- *Children below 13 years are covered by the Working Environment Act under the auspices of the Labour Inspectorate.*
- *Child participants in talent shows are covered by the Working Environment Act regardless of age, enabling the Labour Inspectorate to conduct independent inspections.*

IX. Special protection measures

IX.A. Children outside their country of origin seeking refugee protection and unaccompanied asylum-seeking children

Children in asylum procedures

The number of asylum seekers has grown since Denmark's fourth periodic report, and children – both accompanied and unaccompanied – make up around 30 % of asylum seekers at EU level.⁹¹ In 2015, 21,316 persons applied for asylum in Denmark, and 2,144 of the asylum seekers were unaccompanied children.⁹² By comparison, 6,184 persons applied for asylum in 2012. Moreover, a number of children arrive with a relative whom the immigration authorities assess take on the role of a parent, but is unable to care for the child.

Living arrangements of children in asylum procedures

⁹⁰ National Council for Children: 'There should be an adult who takes care of the children' – children talk about working in the entertainment industry (2016).

⁹¹ ENOC Taskforce Children on the move: Safety and fundamental rights at stake for children on the move (2016). The report is available here: <http://enoc.eu/wp-content/uploads/2016/01/ENOC-Task-Force-Children-on-the-Move-1st-report-25Jan2016.pdf>

⁹² Immigration Service: Numbers and facts about foreigners 2015 (2016). The publicly available statistics do not show if asylum-seekers are children or adults.

An amendment to the 2012 Aliens Act entails that children who arrive in Denmark unaccompanied but have family or close relatives already living here have to wait for six months before they can live with them outside of the asylum centre.⁹³ The practice is contrary to General Comment no. 6, and it is unclear how this general rule takes the child's best interests into consideration.

The National Council for Children recommends that:

- *The Aliens Act is amended enabling unaccompanied children to live with family or relatives immediately after their arrival provided that it is in their best interests.*

The child's asylum claim

When families apply for asylum the normal practice of the Immigration Service is to consider the asylum claim of the parents, but rarely of the child. Moreover, children are rarely, if ever, interviewed in relation to the family's asylum claim. The practice is presumably in place to protect the child. However, the National Council for Children is of the opinion that children should have a general right to be heard, depending on their maturity. The right to be heard contains a right to waive the request for an interview from the asylum authorities, which would protect children who do not want to be heard.

The National Council for Children recommends that:

- *The asylum claim is considered from the child's perspective, and children have a right to be heard in their family's asylum claim.*

Special measures for asylum-seeking children

In the event that an asylum-seeking child needs special measures, the authorities have an obligation to act. The Act on Social Services regulates the social support to which persons with legal residence are entitled.⁹⁴ However, the Act does not apply directly to asylum seekers. It is the responsibility of the municipal social services to live up to the requirements in the Act on Social Services, for example if they are notified of children who are being harmed or mistreated. However, with regard to asylum-seekers the immigration authorities must approve of the measures which the municipal social services consider appropriate.

The Parliamentary Ombudsman recently decided to look into the legal issues, as the legal framework is unclear and has led to confusion among municipal authorities in relation to the placement of asylum-seeking children in alternative care.⁹⁵ The National Council for Children is of the opinion that the child should always be at the centre of decisions about social measures. It is our experience that children are often in limbo when multiple authorities are involved in their case.⁹⁶ The current legal situation creates confusion and involves multiple authorities that do not necessarily have the skills to make informed decisions about the needs of the children. By giving asylum-seeking children a right to special measures under the Act on Social Services, the Immigration Service becomes redundant in such decisions to the benefit of the child.

The National Council for Children recommends that:

⁹³ Section 42 I of the Aliens Act.

⁹⁴ Section 2 of the Act on Social Services.

⁹⁵ See the Parliamentary Ombudsman's website (in Danish only):

http://www.ombudsmanden.dk/find/nyheder/alle/tvangsanbringelse_af_asylborn/

⁹⁶ Section on cooperation and collaboration between authorities.

- *Children in the asylum system are given a legal right to special measures under the Act on Social Services.*

Disappearances of unaccompanied refugees

Unaccompanied children live in special asylum centres for children while the authorities process their application. It is not uncommon for unaccompanied asylum seekers to disappear from asylum centres. In its Concluding Observations to Denmark from 2005 and 2011, the Committee recommended that the Government conduct a study on unaccompanied children who disappear from asylum centres and prevent such disappearances.⁹⁷ However, there is still no systematic follow-up on these disappearances. Given the rise in the number of unaccompanied children applying for asylum this is highly worrying, as the children are particularly vulnerable to trafficking and exploitation.⁹⁸ The Danish strategy on anti-trafficking from 2015 does not have children as a particular focus area.

The National Council for Children recommends that:

- *The Danish strategy on anti-trafficking includes a special focus on children.*

Residence permits

According to the Aliens Act, unaccompanied asylum seekers who do not qualify for asylum can instead acquire a residence permit as an unaccompanied minor.⁹⁹ The residence permit must be renewed once a year when the child turns 15, and it expires when the child turns 18. At that time the person can apply for asylum or for a permit due to other reasons, for example having no family network in the home country and being well integrated in Danish society. The requirements that have to be met for a person to stay in Denmark for other reasons than gaining refugee status are quite strict in relation to education and Danish language proficiency, among other things.

In 2015 the National Council for Children undertook a study on how unaccompanied refugees viewed their situation and prospects for a future in Denmark.¹⁰⁰ Both the formal requirements and the short length of the residence permit put a great strain on the young people. It makes it difficult especially for the most vulnerable to treat possible traumas and to establish a form of normal life, which includes going to school and spending time with friends. In its Concluding Observations to Denmark from 2011, the Committee recommended that Denmark ensure that the best interests of the child are taken into consideration in refugee determination procedures.¹⁰¹

The National Council for Children recommends that:

- *The length of residence permits is extended, lasting until the child turns 18 and for a minimum of two years.*

⁹⁷ Concluding Observations to Denmark (2011), CRC/C/DNK/CO/4, para. 58 (a) and (b). Concluding Observations to Denmark (2005), CRC/C15/Add.273, para. 52.

⁹⁸ ENOC Taskforce Children on the move: Safety and fundamental rights at stake for children on the move (2016). The report is available here: <http://enoc.eu/wp-content/uploads/2016/01/ENOC-Task-Force-Children-on-the-Move-1st-report-25Jan2016.pdf>.

⁹⁹ Section 9c, 3 (1-2) of the Aliens Act.

¹⁰⁰ National Council for Children: 'You need both help and luck' – young unaccompanied refugees share their experiences (2015).

¹⁰¹ Concluding Observations to Denmark (2011), CRC/C/DNK/CO/4, para. 35.

Local integration

When an unaccompanied child gets a residence permit, the Immigration Service decides where in Denmark the minor is to reside.¹⁰² The care and integration of the minor then becomes the responsibility of the municipal authority. A legal guardian is also assigned to the unaccompanied minor. Our study highlighted a need for a more systematic approach towards unaccompanied refugees by municipalities.¹⁰³

As more unaccompanied refugees come to Denmark due to the refugee crisis, a wider range of municipalities receive unaccompanied refugees. Some municipal authorities have received unaccompanied refugees for many years and have developed a solid practice. Other municipal authorities have little experience with unaccompanied refugees and cannot simply draw on their experience with other groups – for example, children placed in alternative care. The National Council for Children believes that guidelines should be developed to ensure a systematic approach and appropriate care of unaccompanied minors regardless of which municipal authority is responsible for the child. Moreover, the situation and needs of unaccompanied minors differ, and as the child settles into a more regular and safe daily routine, issues that were suppressed may develop and manifest themselves. Therefore, ongoing hearing of the child and adjustment of the measures are crucial.

The National Council for Children recommends that:

- *Measures on care and integration are always based on an assessment of the child's best interests and include ongoing hearing of the child.*
- *Guidelines and best practice on care and integration of unaccompanied refugees are developed and shared among municipalities.*

IX.E. Children in conflict with the law, child victims and witnesses of crimes and juvenile justice

Juvenile justice

When they come into contact with the Danish criminal justice system, juveniles between the age of 15 and 17 are deprived of their liberty either in so-called secure institutions within the social system or in special sections separated from adults in some of the regular adult prisons. The secure institutions are under the auspices of the five regions, and the prisons are under the auspices of the Danish Prison and Probation Service. In most cases juveniles are held at secure institutions in the social system. In 2015, 532 juveniles were held at secure institutions in the social system, and in an average week in 2015 11.1 prison cells were occupied by minors.¹⁰⁴

According to article 37 (c) of the Convention, children who are deprived of their liberty must as a general rule be kept separate from adults. Under Danish legislation minors who are deprived of their liberty should, in general, not be held in a prison or remand centre together with adults.¹⁰⁵ When a child serves a sentence with adults, it has a damaging effect on the child, and the risk of reoffending increases. In its Concluding

¹⁰² Section 10 of the Act on Integration.

¹⁰³ National Council for Children: 'You need both help and luck' – young unaccompanied refugees share their experiences (2015).

¹⁰⁴ Department of the Prison and Probation Service: Statistics on juvenile inmates 2015 (2016).

¹⁰⁵ Danish Corrections Act, section 78.

Observations to Denmark from 2011, the Committee recommended that Denmark ensure that children are not imprisoned in ordinary prisons together with adults.¹⁰⁶

The National Council for Children recommends that:

- *The incarceration of minors together with adults is prohibited.*

Length of pre-trial detention

Almost 30 % of pre-trial detentions last more than three months. From 2013 to 2014, use of pre-trial detention lasting more than three months increased. From our study among young people deprived of their liberty we know that the time spent in pre-trial detention is particularly difficult and straining. Time spent in pre-trial detention should be as short as possible, as minors are kept in limbo and prevented from moving on.

Moreover, the waiting time for victims can also be particularly difficult. Our 2014 study of children who testify in court in cases of sexual abuse showed that the often prolonged waiting period of up to almost two years is straining, and that being reminded of the abuse repeatedly in order to recollect it in court can cause re-traumatisation.¹⁰⁷ As a measure to reduce this burden on victims, the legislation has been amended to allow for video recordings of statements by child victims. However, it is evident that it is in the child's best interests that the case is handled in the shortest possible amount of time, regardless of whether the child is the perpetrator or the victim.

The National Council for Children recommends that:

- *Cases involving minors are prioritised in the court system.*

Use of solitary confinement

Solitary confinement of minors is still legal in Denmark, and the rules depend on the type of institution in which the minor is held. 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.¹⁰⁸ In practice, however, solitary confinement still occurs in the form of disciplinary or administrative segregation (exclusion from association) – either due to disobedience or because the minors are at risk of harming themselves or others or of being harmed by others.¹⁰⁹ Both types of measures entail isolating the minor from social contact for 22-24 hours a day. Solitary confinement of minors was used as a disciplinary measure on 23 occasions in 2015 and 29 in 2014 within the prison system. Some of the young people were isolated for 10-14 days; and one young person was isolated for up to 15-28 days.¹¹⁰

¹⁰⁶ Concluding Observations to Denmark (2011), CRC/C/DNK/CO/4, para. 66 (d).

¹⁰⁷ National Council for Children: 'Court is not a place for children' – children who testify in cases of sexual abuse (2014).

¹⁰⁸ According to the Attorney General, no minor was isolated in 2011-2014 (in Danish only):

<http://justitsministeriet.dk/sites/default/files/media/Pressemeddelelser/pdf/2015/Isolation%20bilag%20C.pdf>. In 2016, so far one minor has been isolated in pre-trial detention for three weeks. Danish Institute for Human Rights: Deprivation of Liberty – Status Report 2015-16 (2016), p. 21.

¹⁰⁹ Danish Institute for Human Rights: Deprivation of Liberty - Status Report 2014-15 (2015), p. 29.

¹¹⁰ Figures provided by the Danish Prison and Probation Service via email.

Lengthy confinement only occurs within the prison system, as the use of isolation is more strictly regulated within the secure institutions. The regular secure institutions are only allowed to use confinement as a last resort and for a maximum of two hours, and in sections of secure institutions with strict security measures a minor can be isolated for up to four hours.¹¹¹

Solitary confinement can cause substantial and potentially long-lasting harm to the incarcerated, manifested, for example, in hallucinations, anxiety, depression, self-harm and suicidal thoughts. The harmful effects can be especially devastating for minors. In its Concluding Observations to Denmark in 2005 and 2011, the Committee recommended that Denmark prohibit isolation of minors.¹¹² Moreover, the UN Special Rapporteur on torture and other cruel, inhumane or degrading treatment and punishment as well as other UN committees recommend that solitary confinement of minors be abolished.¹¹³ The Prison and Probation Service is currently considering how the use of solitary confinement can be further reduced.

The National Council for Children recommends that:

- *The rules on solitary confinement are harmonised to ensure that minors are never placed in solitary confinement (including segregation and exclusion from association) for more than four hours at a time, irrespective of the type of institution in which they are held.*

Prevention of juvenile crime

Denmark has experienced a significant reduction in juvenile crime in the past decade. Between 2005 and 2011 the crime rate for 15-17-year-olds decreased by 35 %.¹¹⁴ However, among young people who have received help from the social services the crime rate has not dropped. Moreover, the rate of relapse has not improved, as the relapse rate was relatively stable at around 36 % between 2006 and 2012.¹¹⁵

In 2015, the National Council for Children undertook a qualitative study on juveniles in detention accused of a crime or serving a sentence.¹¹⁶ The study led us to conclude that young people at risk of delinquency or relapse are best dealt with within the social system by applying a targeted, individualised pedagogical approach. This is supported by a meta-study by the Department of Justice, which shows that in general it has a negative effect on the relapse rate when juveniles are dealt with in the traditional justice system.¹¹⁷

¹¹¹ A regular secure institution can be approved for a section with strict security measures.

¹¹² Concluding Observations to Denmark (2011), CRC/C/DNK/CO/4, para. 36 (b) ii. Concluding Observations to Denmark (2005), CRC/C15/Add.273, para. 58 (a).

¹¹³ 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.

¹¹⁴ Ministry of Justice: Development in juvenile crime (2015).

<http://justitsministeriet.dk/sites/default/files/media/Arbejdsomraader/Forskning/Forskningsrapporter/2015/B%C3%B8rn%20og%20unge%202014.pdf>

¹¹⁵ Research Office of the Justice Department: Report on The Development of Juvenile Crime between 2006-2015 (2015), p. 13. Among juveniles aged 10 to 15 years who are registered by the authorities for a criminal offence relapse after two years varies between 34.3 and 38.6%.

¹¹⁶ National Council for Children: 'Once I was actually a good boy' – young people share their experiences of being deprived of liberty (2015).

¹¹⁷ Research Office of the Justice Department: Preventive effects of punishment and other measures toward criminals – a research review (2015).

This indicates that the policy on prevention of juvenile crime is effective when it comes to general crime prevention among youth, but ineffective at reducing the crime rate among youth with severe social issues and among juveniles who have already committed an offence. The reasons for this is that the social measures are inadequate or overdue, and that greater weight should be placed on early social prevention.

Moreover, the young people in our study found that they were often left without adequate support from the municipalities after serving a sentence, which increases the risk of relapse. This implies a need for greater coordination between the regions, the Prison and Probation Service and the municipalities, so that young people are supported in their efforts to live a life without crime. This is particularly important immediately after the young people are discharged, as shown by our study.

Whether or not the age of criminal responsibility should be lowered from 15 years is a regular topic in political debate, and recently it has been suggested that Denmark establishes juvenile courts. The Government will launch a new policy on juvenile justice in the autumn 2016, which will address these matters. It is paramount that the policy focusses on early prevention within the social system, and that juvenile offenders and children at risk are dealt with using a pedagogical approach.

The National Council for Children recommends that:

- *Juveniles at risk of delinquency are dealt with by the social services using a pedagogical approach.*
- *Increased cooperation between relevant authorities is promoted, for example by appointing a responsible cross-sectorial case manager, so young people receive adequate support to avoid relapse.*

Annex I: List of recommendations

- The Convention on the Rights of the Child is incorporated into Danish legislation (section I.A.).
- The legal status of children is systematically strengthened in Danish legislation, for example by inserting the principles of the Convention on the Rights of the Child regarding the right to be heard and the best interests of the child into all legislation affecting children (section I.A.).
- The children's ombudsinstitution is maintained, and efforts to increase awareness hereof are increased (section I.A.).
- The inter-ministerial committee for children is restored (section I.A.).
- Municipalities are made responsible for appointing a case manager that follows the child through the systems (section I.A.).
- Efforts to raise awareness of children's rights, the Convention on the Rights of the Child and the children's ombudsinstitution are increased, for example by increasing funding for the website Børneportalen and by ensuring that children learn about their rights in primary and lower secondary school (section I.B.).
- Efforts to inform children in specific situations about their rights in a manner and language they understand are increased (section I.B.).
- All children are entitled to an educational offer within the scope of the Act on Public Schools (section III.A.).
- Authorities always base their decision on whether a couple in the asylum system should be separated or kept together on an individual assessment of the best interests of the minor and the couple's children, if applicable (section III.B.).
- Child participation in policy development and collective decision-making is promoted systematically at national, regional and municipal levels of government (section III.C.).
- A systematic policy for the development of media literacy among children is developed (section IV.F.).
- Measures to increase children's media literacy are implemented, e.g. by capacity-building teachers and parents and ensuring that a national resource centre (e.g. the Media Council for Children and Young People) can guide adults on children's use of digital media (section IV.F.).
- The statute of limitations runs from the victim's 21st birthday and is set at 10-15 years depending on when the abuse or neglect took place and the character and consequences thereof (section V.A.).
- A board for public liability in cases involving children is established (section V.A.).
- It is permanently prohibited to destroy files concerning social cases involving children (section V.A.).
- Further measures to prevent violence and abuse of children are undertaken, especially by providing tools for parents who have fewer socioeconomic resources, are substance abusers or mentally ill, including refugee families where there is a risk of mental illnesses (section V.A.).
- Systematic data collection and follow-up on intersex children during childhood are conducted (section V.B.).
- Families with intersex children are provided with adequate counselling and support (section V.B.).
- The child is required to consent to circumcision when he is mature enough to understand the implications of the procedure (section V.B.).

- The Children's Houses are granted the opportunity to include children who are victims of mental abuse by adding mental abuse to the criminal justice law and to the Children's Houses' mission to secure justice and proper care for all children who are victims of abuse (section V.E.).
- Children may return to the House for further sessions with the psychologist they know (section V.E.).
- Children affected by divorce are always heard and involved in matters that concern them (section VI.A.).
- Schools and day care institutions are given tools to deal with the great number of children whose parents divorce (section VI.A.).
- Children's groups are made accessible to all children (section VI.A.).
- Interviews with children should be flexible in number based on the needs of the individual child (section VI.A.).
- The effort to supply children with information about their rights in a child-friendly language and the right of initiative is strengthened (section VI.A.).
- Courses in joint parental responsibility (and coping with conflicts) are offered to all parents at an early stage in the process of divorce (section VI.A.).
- Children have a general legal right to family reunification until they reach majority, if it is in the child's best interests (section VI.D.).
- Refugee children can be unified immediately with their family in Denmark, irrespective of the parent's refugee status (section VI.D.).
- The Aliens Act is amended so refugee children are excluded from having their integration potential assessed (section VI.D.).
- Legislation is amended making the right to after care unconditional (section VI.F.).
- It is possible to include a child in foster care within the rules on the use of force by specific assessment by the social services (section VI.F.).
- Municipalities are required to assign a cross-sectorial caseworker to each child, who is responsible for the measures for that child (section VI.F.).
- The child is given the right to have contact with its biological parents (section VI.H.).
- The child, according to age and maturity, is given access to its case files, and the social services are obliged to support the child in this request (section VI.F.).
- It is monitored how the student learning objectives (Common Objectives) are adapted to pupils with disabilities (section VII.A.).
- The quality of the physical environment's suitability for supporting inclusion is in focus (section VII.A.).
- The individual child with disabilities is placed at the centre of decisions on whether the child should be placed in a standard or specialised school, and the necessary support is ensured (section VII.A.).
- National guidelines are developed that ensure equal access to help, prevention initiatives that address children's mental health and more systematic treatment of self-harm in the psychiatric system (section VII.B.).
- More research into self-harm and risk behaviour in relation to eating disorders among children and youth is conducted, and knowledge of the issue and prevention is distributed to relevant professionals (section VII.B.).
- Self-harm and risk behaviour in relation to eating disorders is included in the education of teachers, nursery teachers and social workers (section VII.B.).

- The family doctor is able to refer a child to a psychologist due to self-harming behaviour and eating disorders (section VII.B.).
- The use of coercion of children is reduced (section VII.C.).
- Children are given the same legal standing as adults, meaning the right to a patient counsellor and access to remedy depending on their maturity if they are subjected to coercive treatment (section VII.C.).
- All instances of coercion are reported to the authorities (section VII.C.).
- Children are provided with information about their rights as patients in a child-friendly language (section VII.C.).
- Legislation is amended to enable the forced treatment of a pregnant woman with substance abuse issues (section VII.F.).
- Additional funds are provided to family outpatient centres to enable them to systematically collect data, to ensure that their expertise is available to all municipalities and to ensure that they can follow up on and support the whole family until the child is seven years old (section VII.F.).
- The poverty line is reinstated (section VII.H.).
- Compensating initiatives are introduced as a supplement to the welfare benefit reform and the integration benefit to ensure that children are not affected as severely (section VII.H.).
- Legislation is introduced that places the responsibility to prevent and combat bullying in day care, schools and secondary education institutions (section VIII.A.).
- Legislation is introduced that ensures all children and youth the right to complain about the lack of action by the responsible adults in schools and secondary education institutions (section VIII.A.).
- Legislation is introduced regarding the physical and psychological learning environment and regarding complaint mechanisms for children in day care centres and schools that aligns with the protection of adults in the Danish Working Environment Act (section VIII.A.).
- The importance of early tracing of children who experience challenges in school is emphasised (section VIII.A.).
- Once the decision has been made to place a child in alternative care, a plan is prepared for the child's schooling and implemented after the placement (section VIII.A.).
- The required school subjects are available for children in alternative care based on the individual child's needs and capabilities (section VIII.A.).
- Children below 13 years are covered by the Working Environment Act under the auspices of the Labour Inspectorate (section VIII.D.).
- Child participants in talent shows are covered by the Working Environment Act regardless of age, enabling the Labour Inspectorate to conduct independent inspections (section VIII.D.).
- The Aliens Act is amended enabling unaccompanied children to live with family or relatives immediately after their arrival provided that it is in their best interests (section IX.A.).
- The asylum claim is considered from the child's perspective, and children have a right to be heard in their family's asylum claim (section IX.A.).
- Children in the asylum system are given a legal right to special measures under the Act on Social Services (section IX.A.).
- The Danish strategy on anti-trafficking includes a special focus on children (section IX.A.).
- The length of residence permits is extended, lasting until the child turns 18 and for a minimum of two years (section IX.A.).

- Measures on care and integration are always based on an assessment of the child's best interests and include ongoing hearing of the child (section IX.A.).
- Guidelines and best practice on care and integration of unaccompanied refugees are developed and shared among municipalities (section IX.A.).
- The incarceration of minors together with adults is prohibited (section IX.E.).
- Cases involving minors are prioritised in the court system (section IX.E.).
- The rules on solitary confinement are harmonised to ensure that minors are never placed in solitary confinement (including segregation and exclusion from association) for more than four hours at a time, irrespective of the type of institution in which they are held (section IX.E.).
- Juveniles at risk of delinquency are dealt with by the social services using a pedagogical approach (section IX.E.).
- Increased cooperation between relevant authorities is promoted, for example by appointing a responsible cross-sectorial case manager, so young people receive adequate support to avoid relapse (section IX.E.).

Annex II: List of projects and studies by the National Council for Children using methods of child participation

Between 2011-2016:

- Mini-Children Panel consisting of 149 children aged 4-6 who completed a 'talking questionnaire' about rules and influence on decisions in kindergarten (2011).
- Interviews with 8 children aged 5-6 about rules and influence on decisions in kindergarten (2011).
- Children and Youth Panel consisting of 1,873 children aged 9-13 who completed five questionnaires about economy and the financial crisis, life in the 4th grade, indoor climate and child participation, family life and broken families and the good life for children (2009-2012).
- Interviews with 11 children on family life and broken families (2011).
- Brainstorms with 2 7th grade classes (approx. 40 children) about the good life for children (2011).
- Mini-Children Panel consisting of 260 children aged 4-7 who completed a 'talking questionnaire' about daily life in kindergarten (2011).
- Interviews with 8 children aged 5-6 about daily life in kindergarten (2011).
- Expert group on violence against children based on three workshops with 4 children (2011).
- Brainstorm with three 6th grade classes (approx. 60 children) on violence against children (2011).
- Interviews with 15 children aged 11-13 about indoor climate (2012).
- Thematic study on children in alternative care based on interviews and workshops with 113 children and youth in alternative care (2012).
- Mini-Children Panel consisting of 1,143 children aged 4-7 who completed a 'talking questionnaire' about indoor climate (2012).
- Interviews with 18 children aged 5-6 about indoor climate (2012).
- Youth Panel consisting of 4,477 youth in Roskilde Municipality who answered a questionnaire about secondary education, bullying and learning and three two-day workshops with 11 14-16 year olds boys and 25 15-17 year old boys (2013).
- Mini-Children Panel consisting of 966 children aged 5-7 who completed a 'talking questionnaire' on expectations about starting at school (2013).
- Interviews with 27 children aged 5-6 on expectations about starting at school (2013).
- Workshops with approx. 7 children aged 12-15 in order to develop the website Børneportalen (2013).
- Expert group of children who have been hospitalised in the psychiatric system based on three workshops with 6 children and youth (2013).
- Workshops with 5 children aged 10-15 and 5 young adults to develop pamphlets to children and youth on rights during alternative care (2013).
- Children and Youth Panel consisting of 2,055 children and youth aged 12-16 who completed five questionnaires about life in the 7th grade, use of digital media, family life and broken families,¹¹⁸ social and material deprivation and risk behaviour (2013-2016).
- Group interviews with 17 children aged 12-14 on life in the 7th grade: body, boyfriends- and girlfriends (2014).
- Group interviews with 20 children aged 12-14 on use of social media (2014).
- Group interviews with 15 youth aged 13-15 on parents' who are stressed and use of digital media (2014).

¹¹⁸ Funded by private funding.

- Group interviews with 20 youth aged 13-15 on use of digital media and recreational activities (2014).
- Thematic study on children hospitalised in the psychiatric system based on interviews with 56 children (2014).
- Expert group of children in foster care based on three workshops with 10 children and youth (2014).¹¹⁹
- Expert group of children who have testified in cases of sexual abuse based on four workshops with 6 girls (2014).
- Workshops with approx. 20 children aged 4-6 and 20 children aged 12-14 in order to develop a new IT-platform for the two panels (2014).
- Workshops with 33 children and youth from a housing project with severe social issues (2014).¹²⁰
- Group interviews with 8 boys aged 15-18 placed in a secure institution (2014).
- Mini-Children Panel consisting of approx. 1,000 children aged 4-6 who completed a 'talking questionnaire' on the good daily life in kindergarten (2015).
- Workshops with 9 children on the good daily life in kindergarten (2015).
- Mini-Children Panel consisting of 844 children aged 4-6 who completed a 'talking questionnaire' on their use of digital media (2015).
- Group interviews with 59 children aged 4-6 on their use of digital media (2015).
- Group interviews with 22 children and youth aged 13-15 on media use and well-being (2015).
- Group interviews with 12 children and youth and individual interviews with 8 children and youth aged 13-15 on family life (2015).
- Interviews with 6 youth aged 13-15 on family life and broken families (2015).¹²¹
- Workshops with 6 children aged 12-13 in order to further develop the website Børneportalen (2015).
- Thematic study on children in the State Administration due to the parent's divorce based on interviews with 41 children and youth (2015).¹²²
- Expert group of young unaccompanied refugees based on four workshops with 6 youth (2015).¹²³
- Thematic study on young people deprived of liberty based on interviews with 53 youth (2015).¹²⁴
- Children Panel consisting of 1,616 children aged 9-11 who completed a questionnaire on social and material deprivation (2016).
- Group interviews with 35 children on social and material deprivation (2016).
- Interviews with 6 children who have been treated at a Children's House (2016).
- Individual and group interviews with 10 youth aged 14-16 and 2 girls aged 18 and 19 on risk behaviour, eating disorders and self-harm (2016).
- Expert group of children as a media case based on three workshops with 6 children and youth (2016).
- Expert group of children in the entertainment industry based on three workshops with 7 children and youth (2016).

¹¹⁹ Funded by private funding.

¹²⁰ Funded by private funding.

¹²¹ Funded by private funding.

¹²² Funded by private funding.

¹²³ Funded by private funding.

¹²⁴ Funded by private funding.

About our methods of child participation

The Children and Youth Panel and the Mini-Children Panel are both randomly selected. The Children and Youth Panel is a three-year standing panel. During that time, the children answer four to six questionnaires. In 2009-2012, the panel consisted of children in the fourth to sixth grade, in 2012 of children in the seventh to eleventh grade, in 2013-2016 of children in the seventh to ninth form. Since 2015, the questionnaires can be read aloud to the children enabling more children with disabilities to participate.

The Mini-Children Panel is not a standing panel, but is recruited for each survey. The children in this panel are aged four to six years. The questionnaire consists of fewer questions, and the questions are read aloud. In the new version of the panel the children answer the questionnaire using a tablet.

The IT-platform for both panels on which the children answer the questionnaires has been developed together with children.

Questionnaires for both panels are developed using inputs from children to ensure that the answers are relevant and understood. The panels are followed up with a number of qualitative interviews, either in groups or individually, to nuance the quantitative results.

Expert groups are a method where children and youth in similar life situations are brought together with for the purpose of sharing experiences and views in three to four workshops. The expert groups end up by making a series of recommendations for changes in law or practice and they often meet with the relevant minister.

In thematic studies, we conduct in-depth interviews with children about their experiences with a particular situation they are or have been in. The studies often focus on a specific public authority that handles certain aspects of the child's life, for example divorce or alternative care.

We have involved children in both the initial and ongoing development of our website Børneportalen to ensure that the content is relevant and captures children's attention.