

THE DANISH
INSTITUTE FOR
HUMAN RIGHTS

PARALLEL
REPORT TO
CESCR (2019)

6TH EXAMINATION
OF DENMARK



**PARALLEL REPORT CESCR (2019)
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ABBREVIATIONS

DIHR	Danish Institute for Human Rights
ECHR	European Convention on Human Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
CESCR	Committee on Economic, Social and Cultural Rights
NHRI	National Human Rights Institution
UPR	Universal Periodic Review

PREFACE

This parallel report is submitted by the Danish Institute for Human Rights (DIHR) for the 6th examination (2019) of the Kingdom of Denmark by the Committee on Economic, Social and Cultural Rights (CESCR).

The Institute is Denmark's national human rights institution. The Institute was established in 1987 and is regulated by act no. 553 of 18 June 2012 on the Institute for Human Rights – Denmark's National Human Rights Institution.

DIHR is an independent, self-governing institution within the public administration and is established in accordance with the UN Paris Principles. The Institute is accredited as an A-status NHRI.

The Institute monitors and publishes annual status reports as well as academic research, analyses and reports on human rights and equal treatment. Since the last examination of Denmark in 2013, DIHR has published a range of reports in the area of economic, social and cultural rights, including on access to health services, paternity leave, homeless persons' municipal rights, access to the labour market for the elderly and persons with a disability, and families on benefits.¹ The Council for Human Rights has also held two thematic meetings on the subject, where the Institute informed and enlightened the members about economic, social and cultural rights. The Council is composed of representatives of civil society organisations, ministries, political parties, and authorities.

The Institute is appointed as National Equality Body in Denmark in accordance with EU directives on equal treatment of all persons without discrimination on the grounds of gender and race or ethnic origin. Furthermore, DIHR is designated as the independent mechanism to promote, protect and monitor the implementation of the UN Convention on the Rights of Persons with Disabilities in Denmark and Greenland. The Institute participates in OPCAT inspections led by the Danish parliamentary ombudsman in Denmark, Greenland and the Faroe Islands.

Greenland is a self-governed part of the Kingdom of Denmark. DIHR is the national human rights institution of Greenland and works in close cooperation with the Human Rights Council of Greenland to monitor the promotion and protection of human rights. The Council is a politically independent council established by law with reference to the UN Paris Principles.² In areas under the responsibility of the Greenland Self-Government, the Institute participates in OP-CAT inspections together with the Greenlandic parliamentary ombudsman.

This report contains recommendations to the government of Denmark and the self-rule government of Greenland on promotion and protection of human rights in accordance with the ICESCR. The information and recommendations concerning Greenland has been produced in cooperation with the Human Rights Council of Greenland.

The Institute's mandate does not extend to the Faroe Islands.

CHAPTER 1

LIST OF RECOMMENDATIONS

STRUCTURAL ISSUES

- That Denmark ratifies the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.
- That Denmark consider withdrawing the reservation to ICESCR article 7 (d).
- That Denmark develop a second national action plan on business and human rights which articulates the needed outline of government priorities and policy coherence, focussing on developments in mandatory human rights due diligence, human rights and public procurement, development finance and sector specific initiatives.
- That Denmark and Greenland consider incorporating the ICESCR into Danish and Greenlandic law.
- That Denmark and Greenland adopt a comprehensive human rights action plan.
- That Denmark and Greenland establish a clear procedure for following up on treaty body recommendations through cooperation with civil society.
- That Denmark and the Faroe Islands consider establishing a functioning National Human Rights Institution in the Faroe Islands.

DENMARK – GENERAL PROVISIONS

Non-discrimination (art. 2)

- That Denmark take initiatives to amend the legislation in a way that ensures that persons with disabilities are effectively protected against discrimination by implementing a requirement of reasonable accommodation and accessibility in the ban on discrimination on the grounds of discrimination outside the labour market.
- That Denmark adopt a comprehensive equal treatment act protecting all groups against discrimination in all parts of Danish society, including prohibition of discrimination on the grounds of religion, sexual orientation, gender identity, gender expression and age outside of the labour market.

Equal rights of men and women (art. 3)

- That Denmark continuously publish data to assess the level of gender equality at management level, including at a board level, for each industry and sector.
- That Denmark revise the legislation on gender representation at management level in large-scale companies, so that the legislation operates with dynamic target figures. This would imply that companies must set a new and more ambitious target figure, when the original target figure has been met.

DENMARK – SPECIFIC PROVISIONS

Right to work (art. 6)

- That Denmark take measures to investigate the reasons for the inequality for persons with disabilities in terms of rates.
- That Denmark take measures to increase the percentage of persons with disabilities working in the open labour market.

Right to just and favourable conditions of work (art. 7)

- That Denmark, together with the parties to the collective agreements jointly establish an equal pay pool to address the historical salary lag in the women-dominated occupations.
- That social partners inform employees that according to the Equal Pay Law they have the right to disclose and exchange information on salary amongst themselves.

Protection of the family and children (art. 10)

- That Denmark secure subsistence income support for families with young children receiving integration benefits.

Adequate standard of living (art. 11)

- That Denmark examine the current levels of social benefits and secure subsistence income support for families with dependent children.

- That Denmark repeal legislation that prohibits homeless persons from establishing or residing in a camp which disrupts public order and legislation that prohibits begging.
- That Denmark take initiative to ensure clear appointment of responsibility in providing the necessary shelter capacity.
- That Denmark increase the supply of housing that is affordable for low-income groups in and around the main cities, including housing to which families with low incomes can be assigned, and that the developments in this area are monitored.
- That Denmark intensify steps to address the use of the Housing Regulation Law § 5.2 of 1996 and reviews how the Danish housing market has been affected by the acquisition of buildings by major investment companies.
- That Denmark ensure equal and non-discriminatory access to adequate housing for all citizens, regardless of race or ethnic origin.

Right to physical and mental health (art. 12)

- That Denmark take measures to limit the use of coercive measures in psychiatric institutions, including children.
- That Denmark take steps to avoid the use of forced physical restraints with belts lasting more than 48 hours.
- That Denmark take initiatives to amend the legislation on coercion in the psychiatric system in order to ensure children under the age of 15 procedural safeguards and standards.
- That Denmark amend the statutory order on access to hospital treatment to include the right to antenatal and postnatal treatment, including access to abortion, for all women.
- That Denmark ensure that pregnant unregistered women are offered screenings for, vaccination against and treatment for contagious diseases.
- That Denmark repeal legislation that warrants interpreter charge in the health sector.
- That Denmark take measures to investigate the causes of the higher mortality rate and worse overall health conditions for persons with learning disabilities.
- That Denmark take measures to investigate the causes of the decrease in number of persons with disabilities that experience having good health.
- That Denmark take measures to address the health inequality between persons with disabilities and persons without disabilities.

Right to education (art. 13)

- That Denmark take measures to investigate the reasons for the decreased accomplishment rates for persons with disabilities.

- That Denmark take measures to improve the level of education for persons with disabilities at all levels of education.
- That Denmark develop a National Action Plan for Human Rights Education and Training in keeping with the UN World Programme on Human Rights Education.

GREENLAND – GENERAL PROVISIONS

- That Denmark and Greenland take measures to strengthen statistical systems and analysis on the implementation of ICESCR in Greenland, and to ensure that data on housing, education, health, employment and disability is systematically collected and disseminated by the responsible authorities.
- That Greenland take initiative to draw up a bill on general protection against discrimination on all generally recognised grounds, including gender, race or ethnic origin, disability, age, sexual orientation and religion, both within and outside the labour market, and that the bill include establishing an independent appeals board.
- That Greenland take initiative to draw up a national action plan securing a progressive protection against discrimination.

GREENLAND – SPECIFIC PROVISIONS

Right to just and favourable conditions of work (art. 7)

- That Greenland take measures to strengthen data collection and analysis on gender equality in employment, including information on management patterns in different sectors.
- That the Department for Education, Culture and Church ensure that institutions that provide counselling on study options actively and systematically work with perceptions of traditional gender roles, in order for students to not be limited by gender stereotypes in their educational choices.

Protection of the family and children (art. 10)

- That Greenland strengthen local capacity responsible for dealing with cases of physical and mental violence, or the abuse or sexual exploitation of children and young persons.
- That Greenland in cooperation with local municipalities take initiatives to combat poverty by targeted actions aimed at vulnerable families with children across Greenland.

Adequate standard of living (art. 11)

- That Greenland ensure more affordable housing in and around the main cities.
- That Greenland initiate social and economic preventive measures which seek to assist marginalised citizens in managing economy and debt.

Right to education (art. 11)

- That Greenland take measures to increase the number of qualified teachers in small towns and settlements in Greenland, for instance by establishing partnerships or teacher exchanges between schools in towns and settlements to gain exchange of experience.
- That Greenland establish and strengthen the internet connection in educational institutions and take initiative to make internet connection financially accessible to all citizens to enable distance education for teachers and students.
- That Greenland take measures to ensure that teachers on all levels of the educational system have the qualifications needed to teach students with different kinds of disabilities.

Right to participate in cultural life (art. 15)

- That Greenland ensure that the local population is consulted in decision-making processes concerning tourist concessions of land and fishing sites, most notably by making it a condition for the concession.

CHAPTER 2

STRUCTURAL ISSUES

2.1 INCORPORATION

The European Convention on Human Rights is the only international human rights convention incorporated into Danish and Greenlandic law thus making it a part of national legislation. None of the core UN human rights conventions are incorporated into domestic law. During the Universal Periodic Review of Denmark in April 2016 and in CESCR's concluding observations on the fifth periodic report to CESCR, the Danish government was recommended to incorporate core UN human rights conventions into domestic legislation.³

In its 6th periodic report to CESCR Denmark stated that Danish courts and other authorities interprets the national rules that respects the provisions of the international conventions that Denmark has acceded to, such as ICESCR.⁴ However, Danish case law shows that Danish courts are reluctant to include human rights instruments in their judgments even if a case party bases an argument on human rights. In cases where human rights are considered, the court often solely refers to the ECHR. UN human rights conventions are rarely applied by Danish courts or individual parties to a case. Furthermore, the Danish Supreme Court has stated that non-incorporated conventions such as ICESCR must make way for conflicting Danish legal provisions.⁵

In 2014 an expert committee on incorporation within the human rights field issued a report to the Danish government.⁶ The committee advised against incorporating ICESCR. It believed ICESCR contained several vague and generic articles that were impossible to apply by courts and other authorities in specific cases. The committee also emphasized the limited number of sources of interpretation through general comments.

DIHR recommends that Denmark and Greenland:

- Consider incorporating the ICESCR into Danish and Greenlandic law.

2.2 RATIFICATION OF HUMAN RIGHTS INSTRUMENTS

Denmark has ratified the optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

During the Universal Periodic Review (UPR) of Denmark in May 2011 and in the CESCR's concluding observations on the 5th periodic report of Denmark in 2013, the Danish government was recommended to sign and ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.⁷ During UPR, the Danish government responded that a large part of the provisions of ICESCR are of a vague and imprecise nature. By accepting individual communications, CESCR may be forced to define the more specific content of these provisions and thus act as legislator and assess the state distribution of welfare resources. The Danish government believed such questions should be dealt with by the legislative power.⁸

In 2014 the expert committee on incorporation within the human rights field, mentioned above, advised against accepting the right of individual communications through ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. The committee found many of the articles in ICESCR to be vague and therefore difficult to communicate as an individual.⁹

DIHR recommends that Denmark:

- Ratifies the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

2.3 RESERVATIONS TO ICESCR

At the adoption of ICESCR the Danish government made a reservation concerning the Covenant's article 7 (d) pertaining to the right to remuneration for public holidays. At the time, Denmark stated that it was unable to comply entirely with the provision for the time being.

In its concluding observations on the 5th periodic report of Denmark in 2013, CESCR recommended the Danish government to review and withdraw its reservations to a number of international human rights instruments.¹⁰

To the knowledge of the Institute, an evaluation of the Danish reservations to core UN human rights conventions has not been carried out in recent years.

DIHR recommends that Denmark:

- Consider withdrawing the reservation to ICESCR article 7 (d).

2.4 NHRI MANDATE IN GREENLAND AND THE FAROE ISLANDS

The Institute is established as NHRI of Denmark and Greenland. The Institute shall promote and protect human rights in accordance with the UN Paris Principles relating to the status of national institutions.

Greenland is a self-rule governed part of the Kingdom of Denmark. DIHR works in close cooperation with the Human Rights Council of Greenland to monitor the promotion and protection of human rights in Greenland. The council is a politically independent council established by law with reference to the UN Paris Principles on National Human Rights Institutions.¹¹

The mandate of the Institute does not extend to cover the Faroe Islands.

DIHR recommend that Denmark and the Faroe Islands:

- Consider establishing a functioning National Human Rights Institution in the Faroe Islands.

2.5 NATIONAL HUMAN RIGHTS ACTION PLAN AND FOLLOW UP ON RECOMMENDATIONS

Denmark has adopted several action plans concerning various human rights issues. However, Denmark has never adopted a comprehensive action plan for human rights to ensure a proper identification of relevant human rights problems and implementation of human rights standards. Even though Denmark maintains a high level of human rights protection, the promotion and protection of human rights is not carried out in a fully systematic and strategic manner.

Greenland has also not adopted a comprehensive action plan for human rights. Furthermore, Denmark and Greenland lack a systematic approach to implement human rights recommendations. No systematic and public evaluation is carried out when Denmark receives concluding observations from UN treaty bodies, recommendations from special procedures or recommendations through individual communications. A cross-ministerial working group has been established by the Danish Government, but efforts to promote and protect human rights nationally could be strengthened by a more systematic follow up on recommendations at a cross-ministerial level.

DIHR recommends that Denmark and Greenland:

- Adopt a comprehensive human rights action plan.
- Establish a clear procedure for following up on treaty body recommendations through cooperation with civil society.

2.6 NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS

Denmark was the second state to adopt a national action plan on business and human rights in 2014. The action plan has been very impactful on specific areas, but its relevance now is questionable, given the developments at the national, regional and international level. Civil society, businesses, public institutions and other stakeholders are currently making their own path, without a document outlining government priorities and providing policy coherence. A number of states have developed or are now developing an update to their inaugural action plan. Denmark's action plan is the oldest currently active. In 2016, the Institute developed a report detailing recommendations for the Danish government on the development of a new national action plan.¹²

DIHR recommends that Denmark:

- Develop a second national action plan on business and human rights which articulates the needed outline of government priorities and policy coherence, focussing on developments in mandatory human rights due diligence, human rights and public procurement, development finance and sector specific initiatives.

CHAPTER 3

DENMARK – GENERAL PROVISIONS

3.1 NON-DISCRIMINATION (ART. 2)

3.1.1 LEGISLATION

Danish anti-discrimination legislation is influenced by EU legislation and consists of several acts that afford different levels of protection to different groups. The result is insufficient protection against discrimination targeted at certain groups, and unequal approach to combating discrimination in Danish society, a complex legal basis for practitioners of law to apply and lack of legal predictability for citizens.

On 1 July 2018, a general ban on discrimination on the grounds of disability outside the labour market came into force.¹³ The ban together with the ban on discrimination within the field of employment, that existed beforehand, provides a ban on discrimination on the grounds of disability in all areas of society. The new ban, however, does not include an obligation to provide reasonable accommodation nor an obligation to comply with existing accessibility standards.¹⁴

Hence, outside the labour market under Danish law there is still no effective legal protection against discrimination on the grounds of disability in the forms of denial of reasonable accommodation or lack of accessibility.

Denmark also lack national civil legislation explicitly prohibiting discrimination outside the labour market on grounds of political views, gender identity, gender expression and age.

DIHR recommends that Denmark:

- Take initiatives to amend the legislation in a way that ensures that persons with disabilities are effectively protected against discrimination by implementing a requirement of reasonable accommodation and accessibility in the ban on discrimination on the grounds of discrimination outside the labour market.

- Adopt a comprehensive equal treatment act protecting all groups against discrimination in all parts of Danish society, including prohibition of discrimination on the grounds of religion, sexual orientation, gender identity, gender expression and age outside of the labour market.

3.2 EQUAL RIGHTS OF MEN AND WOMEN (ART. 3)

3.2.1 ACCESS TO CORPORATE MANAGEMENT FOR WOMEN

Since 2013, in accordance with the Danish Equality Law, the largest companies have been obliged to set targets for a more balanced gender representation at management level. The law requires each large-scale company to set target figures and policies for the under-represented sex. The target figures and policies are reported as a part of the company's annual accounts.

In December 2017, the Danish Business Authority concluded in its evaluation, that the development is progressing slowly, and that "(..) there is a long way to equal representation of women and men in the management boards in Denmark."¹⁵

A DIHR analysis from 2018 showed that more than half of Denmark's 1,600 large-scale companies do not have a woman in their management board.¹⁶

In Denmark there is insufficient information and data on the development of the gender balance amongst managers in different industries and sectors, which makes it difficult to know exactly where efforts should be made.

DIHR recommends that Denmark:

- Continuously publish data to assess the level of gender equality at management level, including at a board level, for each industry and sector.
- Revise the legislation on gender representation at management level in large-scale companies, so that the legislation operates with dynamic target figures. This would imply that companies must set a new and more ambitious target figure, when the original target figure has been met.

CHAPTER 4

DENMARK SPECIFIC PROVISIONS

4.1 RIGHT TO WORK (ART. 6)

4.1.1 EMPLOYMENT RATE AMONGST PERSONS WITH DISABILITIES

Despite the fact that the Reform of the Disability Pension and Flexi-job Scheme from 2012 sought to increase the employment rate amongst persons with disabilities, the problem has not been solved yet. The employment rate amongst persons with disabilities has only increased marginally in the 2012-2016 period, from 54 percent in 2012 to 56 percent in 2016. The corresponding number for persons without disabilities was 77 percent.

DIHR recommends that Denmark:

- Take measures to investigate the reasons for the inequality for persons with disabilities in terms of rates.
- Take measures to increase the percentage of persons with disabilities working in the open labour market.

4.2 RIGHT TO JUST AND FAVOURABLE CONDITIONS OF WORK (ART. 7)

4.2.1 GENDER PAY GAP

The Danish Equal Pay Law from 1976 in combination with the Danish collective agreements with social partners aim at ensuring that employers pay women and men equally in all salary elements and all salary conditions for equal work or for work of equal value. The law also obligates the employer to compile gender-segregated pay statistics.

A report from the Danish Center for Social Science Research (VIVE) shows that the gross wage difference has declined significantly since 2007, with the gender pay gap reduced by up to 5 percentage points.¹⁷ According to Statistics Denmark however, the difference between the salary of men and women was 13 percent in 2013, calculated as the standard estimated hourly earnings.¹⁸

The right to equal pay for equal work is broadly acknowledged in Denmark, but there is still an unexplained salary difference between men and women, which leads to a considerable economic inequality between men and women during their work life.

DIHR recommends that:

- Denmark, together with the parties to the collective agreements jointly establish an equal pay pool to address the historical salary lag in the women-dominated occupations.
- Social partners inform employees that according to the Equal Pay Law they have the right to disclose and exchange information on salary amongst themselves.

4.3 PROTECTION OF THE FAMILY AND CHILDREN (ART. 10)

4.3.1 CHILDREN LIVING IN POVERTY

In recent years there has been a significant increase in the number of children living in poverty in Denmark. There are currently 64,500 children in Denmark living in families with an income lower than Statistics Denmark's indicator for relative poverty.¹⁹

Children with an ethnic minority background are affected the most. Children of non-western ethnic minorities make up 56 percent of all children living in poverty in Denmark.²⁰ The integration benefit, introduced by the government in September 2015, is the primary reason for this ethnic disproportion in child poverty. The reduced integration benefit is for persons who have not lived in Denmark for at least seven of the past eight years. Consequently, the primary recipients of the benefit are refugees or immigrants who have recently arrived in Denmark. In total, 98 percent of persons on integration benefit have an ethnic minority background. Families with more than one child do not receive a greater integration benefit than families with one child despite higher cost of living. As a result, the more children a family has, the more strained their financial situation is.²¹

DIHR recommends that Denmark:

- Secure subsistence income support for families with young children receiving integration benefits.

4.4 ADEQUATE STANDARD OF LIVING (ART. 11)

4.4.1 LOWERING OF SOCIAL BENEFITS

Since 2013 several reforms and changes in social benefits schemes have been implemented. This includes a reform on cash benefits, an introduction of lower integration benefits, a 225-hour work requirement described in the 6th periodic report, para. 140²², a gradual accumulation of the right to child benefits based on the length of residence, a “benefit ceiling” which introduce a limit on the total amount of benefits that a recipient can receive, and an introduction of a requirement for a person to have stayed in the Kingdom of Denmark or another EU or EEA country for 9 out of the last 10 years to receive unemployment benefits. A quarantine period for persons sentenced with an aggravated gang related criminal offence has also been introduced (for three years after served sentence a person cannot receive unemployment benefits but only a lowered cash benefit or early retirement pension).

Even though the different initiatives pursue a legitimate aim of increasing employment, the reduced social benefit levels have a negative impact on the living standard of some socially disadvantaged groups. The recipients worst affected can find it difficult to meet basic expenditures such as rent, food and medicine. Furthermore, residence requirements may result in indirect different treatment of ethnic minorities and foreign nationals. Based on the previous national poverty line, the economic poverty has increased in recent years.²³

DIHR recommends that Denmark:

- Examine the current levels of social benefits and secure subsistence income support for families with dependent children.

4.4.2 CRIMINALISATION OF HOMELESS PERSONS

In recent years, there has been a heated public debate in Denmark regarding homeless foreign nationals (mainly EU citizens) and the public order issues caused by their presence in public spaces. Homeless foreign nationals are largely excluded from public funded shelters. In 2017, there were 438 homeless unregistered migrants.²⁴ 198 of them were sleeping on the streets.

As a response to this public debate, Danish lawmakers adopted a range of legislative initiatives aimed specifically at homeless foreign nationals. A ban against establishing or residing in a camp which disrupts public order was introduced. Persons who, according to the police, have established or resided in a camp that disrupts public order, can be punished with a fine or imprisonment for up to 18 months.²⁵

Persons who contravene this ban, including first time offenders, can also receive a zonal ban on staying in an entire municipality for up to 2 years.²⁶ In addition, tougher sanctions for begging on pedestrian streets, outside railway stations, inside or outside supermarkets or on public transportation were introduced.²⁷ Persons convicted of begging at one of these locations now receive 14 days' imprisonment for a first time offence.

It is apparent from the various initiatives that the measures adopted are targeted at homeless foreign nationals.²⁸ Almost all persons that have received a zonal ban were foreigners.²⁹ However, all the measures are neutrally formulated and apply to any person who contravenes any of the various prohibitions. In the UN Guiding Principles on Extreme Poverty and Human Rights, para. 66(c) it is stated, that states should repeal or reform any laws that criminalize life-sustaining activities in public places, such as sleeping, begging, eating or performing personal hygiene activities.³⁰

Furthermore, the Special Rapporteur on extreme poverty and human rights has expressed concern about law enforcement officials' use of poverty, homelessness or disadvantage as an indicator of criminality.³¹ The Special Rapporteur on adequate housing also recommends states to immediately repeal any laws or measures that criminalize, impose fines on or restrict homeless persons or behaviour associated with being homeless, such as sleeping or eating in public space.³² This led to the UN Human Rights Council to call upon states to eliminate such legislation in 2016.³³

The mentioned initiatives have a grave impact on homeless persons and persons living in poverty and can be discriminatory – criminalizing their livelihoods, interfering in their privacy and family life and threatening their liberty and personal security.

The Institute has continuously warned against criminalising conduct associated with homelessness, as the criminalisation further marginalise a group of vulnerable and socially disadvantaged persons and makes it more difficult for them to satisfy their basic needs and fulfil their basic rights. Organisations for the homeless in Denmark have stated that the initiatives have led to homeless persons drifting away from the main cities and to feel more insecure.³⁴ Homeless persons are afraid to sleep in groups which makes them more exposed to become victims of crime.

Against the background of the heated debate concerning homeless migrants, which preceded the adoption of the new measures, and the fact that the bills and other documents state that the measures are targeted at homeless foreign

nationals, DIHR has further stressed that the measures must not result in a discriminatory investigative and prosecution process.

DIHR recommends that Denmark:

- Repeal legislation that prohibits homeless persons from establishing or residing in a camp which disrupts public order and legislation that prohibits begging.

4.4.3 ACCESS TO HOMELESS SHELTERS

Homelessness in Denmark has continuously increased from 2009 to 2017, which has proven to be a challenge when it comes to homeless shelter capacity – especially in and around main cities. In 2017, 6,635 homeless persons were registered.³⁵ Approximately 10 percent were sleeping in public spaces. By comparison, in 2015 Danish homeless shelters and care homes had a capacity of 2,159 in total.³⁶ In 2013, the Public Accounts Committee also pointed out that the number of homeless persons and homeless shelter capacity was disproportionate.³⁷

In 2017, DIHR conducted a study on possible barriers for homeless persons access to social services.³⁸ The study showed that the homeless shelters do not have the necessary capacity. However, there were geographical differences as to where in the country shelters experienced a lack of capacity. The study also showed that due to lack of clear appointment of responsibility as to whom are to ensure sufficient shelter capacity, homeless persons are left to their own avail when trying to find an available shelter.

The Institute's study showed, amongst other things, that the lack of affordable housing played a big part in the insufficient shelter capacity, as numerous of homeless persons stay in the shelters because there is no available housing.³⁹ In the study, the reduction of social benefits was also enhanced as making it more difficult for homeless persons to find housing when there, at the same time, is also a rise in housing prices.

DIHR recommends that Denmark:

- Take initiative to ensure clear appointment of responsibility in providing the necessary shelter capacity.

4.4.4 ACCESS TO AFFORDABLE HOUSING

There is an increasing demand for inexpensive and affordable housing – especially in and around the main cities. However, the demand exceeds the supply.

According to the Auditor General's Office, since 2007 the number of housing with a monthly rent of DKK 3,000 and under has fallen with 55 percent and housing with a monthly rent between DKK 3,000-4,000 with 27 percent.⁴⁰ A study conducted for the Danish Ministry of Transport, Building, and Housing from 2018 shows that since 2013 the price for owner-occupied housing in Copenhagen has risen with approximately 50 percent.⁴¹ Furthermore, there is a high demand for small and medium sized apartments in Copenhagen. The increasing housing prizes and rents may prompt low income-groups to move out of the main cities, which lead to segregation in the cities' resident make-up. For instance, numbers already show that numerous persons on social benefits have moved from main cities.⁴²

In March 2019, the Special Rapporteur on adequate housing and the working group on the issue of human rights and transnational corporations and other business enterprises expressed concern over the ⁴³ adoption of laws and policies that have allowed unprecedented amounts of global capital to be invested in housing as security for financial instruments that are traded on global markets, and as a means of accumulating wealth. This impairs access to affordable housing for many, as rent levels rise.

Under Danish law a landlord can increase rent levels with a new tenant. If a landlord renovates for more than DKK 250,000 the rent can be further raised as the Housing Regulation Law § 5.2 of 1996 allows the landlord to charge rent according to the "value of the rented dwelling" when renting to a new tenant. The Special Rapporteur has learned that the investor Blackstone Group L.P.'s Danish partner, North 360, is renovating apartments specifically for this purpose. If the renovations and threat of increased rental costs do not motivate a tenant to move, the Rapporteur was told that tenants in Copenhagen are offered money to vacate their homes. This can lead to a rise in rent of more than 100 percent.

In recent years the government has also presented several initiatives, covering various political and legislative areas, aimed at eliminating vulnerable residential areas. The initiatives contain proposals regarding physically changing vulnerable residential areas and controlled access to social housing in these areas. The initiatives involve new definitions on "vulnerable residential areas" and "ghettoes". New restrictions ensure that persons on social benefits are excluded from moving to such areas.

Initiatives to better the living conditions in vulnerable residential areas can be seen as part of a state's obligation to ensure the right to safe and adequate housing for residents living in such areas. However, some of the introduced

initiatives limit the access to affordable housing for persons on social benefits. Further, some of the initiatives may result in an indirect different treatment of ethnic minorities and foreign nationals.

DIHR recommends that Denmark:

- Increase the supply of housing that is affordable for low-income groups in and around the main cities, including housing to which families with low incomes can be assigned, and that the developments in this area are monitored.
- Intensify steps to address the use of the Housing Regulation Law § 5.2 of 1996 and reviews how the Danish housing market has been affected by the acquisition of buildings by major investment companies.
- Ensure equal and non-discriminatory access to adequate housing for all citizens, regardless of race or ethnic origin.

4.5 RIGHT TO PHYSICAL AND MENTAL HEALTH (ART. 12)

4.5.1 COERCIVE TREATMENT

In Denmark, there is a widespread use of coercion in the psychiatric system. Despite an official strategy to reduce coercion in the psychiatric system, the number of psychiatric patients subjected to coercive measures has increased by 73 persons between 2014 and 2017. In 2017 coercive measures were applied to 6,152 persons which corresponds to 23.2 percent of all persons admitted to psychiatric wards.⁴⁴

Forced physical restraint with belts is one of the most invasive measures available in the Danish psychiatric system. The use of forced physical restraint with belts amounted to 4,307 instances in 2017.⁴⁵ Of these restraints, 451 lasted more than 48 hours⁴⁶ – a decrease since 2014 when the use of forced physical restraint with belts lasting more than 48 hours was 808 instances.⁴⁷

Whereas, the use of long-term physical restraints has decreased, there has been an increase in the use of other coercive measures, including forced medication.⁴⁸ This might indicate that other coercive measures such as forced medication with tranquilizers merely replace long-term physical restraints with belts.

The number of children who have been subject to coercion in psychiatric treatment has increased since 2011. In the years 2011 to 2013, on average 243 children per year were exposed to coercive measures, corresponding to 16.6 percent of all children admitted to psychiatric wards. In 2017, the figures had risen to 340 children and 21.8 percent.⁴⁹

Furthermore, according to the Danish Psychiatric Act the use of forced admission to a hospital as well as forced treatment do not constitute “coercion” if the patient is under the age of 15 and the holder of custody has consented to the admission or the treatment.⁵⁰ This means that a child below the age of 15 does not enjoy the procedural safeguards and standards provided for in the Psychiatric Act contrary to what applies to children over the age of 15 and adults.

DIHR recommends that Denmark:

- Take measures to limit the use of coercive measures in psychiatric institutions, including children.
- Take steps to avoid the use of forced physical restraints with belts lasting more than 48 hours.
- Take initiatives to amend the legislation on coercion in the psychiatric system in order to ensure children under the age of 15 procedural safeguards and standards.

4.5.2 ACCESS FOR UNREGISTERED MIGRANTS TO HEALTH CARE SERVICES

The access to health care services beyond acute hospital treatment for undocumented migrants depends on their registration with the immigration authorities. However, since undocumented migrants deter from registering with the authorities because of the risk of detention and deportation, the access to “necessary health care services” for undocumented migrants is mainly theoretical.

In 2016, DIHR conducted a socio-legal study on the access to health care services for undocumented children and pregnant women.⁵¹ The study found that undocumented children and infants in practice do not have access to public primary health care services and standard childhood immunization programmes. The study further found that except for acute hospital treatment undocumented pregnant women do not have access to public antenatal and postnatal treatment, nor screenings for, vaccination against and treatment for contagious diseases. The Institute concluded that Danish health legislation and practise needed to be changed to comply with Denmark’s international obligations.

DIHR recommends that Denmark:

- Amend the statutory order on access to hospital treatment to include the right to antenatal and postnatal treatment, including access to abortion, for all women.
- Ensure that pregnant unregistered women are offered screenings for, vaccination against and treatment for contagious diseases.

4.5.3 INTERPRETER CHARGE IN THE HEALTH SECTOR

Proper communication between patients and health care professionals is crucial in order to obtain a suitable treatment of patients. Lack of proper communication can at worst be a contributory factor of fault diagnostics or mistreatment.

In 2018, the Danish government introduced an interpreter charge in the health sector aimed at persons who have resided in Denmark for more than 3 years. The limit had previously been 7 years. Amongst the persons in need of interpretation in health care, persons with non-Danish ethnic background are presumably overrepresented. Consequently, interpreter charge in the health sector can pose a barrier to equal access to physical and mental health for persons with an ethnic minority background with insufficient knowledge of Danish and a strained financial situation.

DIHR recommends that Denmark:

- Repeal legislation that warrants interpreter charge in the health sector.

4.5.4 LIFE EXPECTANCY AMONGST PERSONS WITH DISABILITIES

The number of persons with disabilities who experience that they have good health has decreased with 2-3 percentage points from 2012 to 2016, while the numbers for persons without disabilities are stable.⁵²

A report published in 2017 found that the health condition of persons with disabilities was generally worse than that of persons without disabilities in terms of them sleeping worse, experiencing more pain, smoking more, drinking more alcohol and more often being overweight.⁵³

Another report published in 2014 showed that the mortality rate for persons with learning disabilities is approximately 14.5 years shorter than for persons without learning disabilities.⁵⁴

DIHR recommends that Denmark:

- Take measures to investigate the causes of the higher mortality rate and worse overall health conditions for persons with learning disabilities.
- Take measures to investigate the causes of the decrease in number of persons with disabilities that experience having good health.
- Take measures to address the health inequality between persons with disabilities and persons without disabilities.

4.6 RIGHT TO EDUCATION (ART. 13)

4.6.1 EDUCATION RATE AMONGST PERSONS WITH DISABILITIES

The level of education for persons with disabilities has decreased from 2012 to 2016, whereas the level of education for persons without disabilities has increased. Hence, there has been an increase in the difference between the two groups.

The percentage of persons with disabilities in the age of 30-40 who had accomplished a vocational education or a short-, medium- or long cycle higher education was 74 percent in 2012 and 66 percent in 2016. The corresponding number for persons without disabilities was 84 percent in 2012 and 86 percent in 2016.⁵⁵

DIHR recommends that Denmark:

- Take measures to investigate the reasons for the decreased accomplishment rates for persons with disabilities.
- Take measures to improve the level of education for persons with disabilities at all levels of education.

4.6.2 HUMAN RIGHTS EDUCATION

The Danish Public Schools Act includes an aim to “prepare the students for participation, co-responsibility, rights and duties in a free and democratic society” and the Common Goals for the Danish Public School make some references to human rights and children’s rights as guiding knowledge and skill objectives in some mandatory courses. However, a recent study carried out by the Institute and UNICEF during the May-June 2019 period amongst 1,088 Danish pupils showed that 63 percent of the participating students reported either having no knowledge or little knowledge of the UN Universal Declaration of Human Rights.⁵⁶

A possible cause for this learning outcome gap may be the lack of adequate teacher training. Analyses carried out by DIHR have shown some inconsistency between the content of specific subjects in the school curriculum and elements in the teacher education programmes for the corresponding subjects. For example, teachers are advised to teach human rights as an element in History and Social Studies according to the Common Goals of the Danish Public-School Act, but human rights are not represented in the corresponding subjects in their own teacher education.⁵⁷

DIHR recommends that Denmark:

- Develop a National Action Plan for Human Rights Education and Training in keeping with the UN World Programme on Human Rights Education.

CHAPTER 5

GREENLAND GENERAL PROVISIONS

5.1 DATA AND STATISTICS

Little updated knowledge, research and baseline data is available relating to e.g. housing, education, health, employment and disability. Additionally, the available data is not systematically disaggregated by disability, gender, age and other relevant characteristics which is key for identifying and understanding inequalities.

The available data is not regularly and systematically analysed. For instance, the latest available official statistics on housing are from 2009⁵⁸, and there is no total number on how many persons live with no fixed abode. Furthermore, estimates of how many homeless persons there are in Greenland are inaccurate, as the municipalities have different definitions of homelessness.⁵⁹ The lack of data and statistics that show the progress over time results in information gaps and uncertainty on whether a progressive realization of the rights of the Covenant is taking place.

DIHR and the Human Rights Council of Greenland recommend that Denmark and Greenland:

- Take measures to strengthen statistical systems and analysis on the implementation of ICESCR in Greenland, and to ensure that data on housing, education, health, employment and disability is systematically collected and disseminated by the responsible authorities.

5.2 NON-DISCRIMINATION (ART. 2)

5.2.1 REMEDIES AND LEGISLATION

The legislation on equal treatment in Greenland does not protect different groups equally, since it only prohibits gender-based discrimination through the Gender Equality Act (Inatsisartut Act No. 3 of 29 November 2013 on equality

between men and women), which mainly protects against discrimination within the labour market.

In accordance with County Council Act no. 5 of 20 May 1998 on the Greenland Equality Council, Greenland has set up a politically independent Equality Council. However, the mandate of the Council is restricted to gender equality, and the Council “is not obliged to work at the request of citizens but can assess whether an issue requires its attention”⁶⁰.

Citizens in Greenland who feel discriminated against cannot complain to an independent appeals board but must bring their case to court. If a complaint concerns discrimination by a public authority, citizens can complain to the Ombudsman for Inatsisartut.

DIHR and the Human Rights Council of Greenland recommend that Greenland:

- Take initiative to draw up a bill on general protection against discrimination on all generally recognised grounds, including gender, race or ethnic origin, disability, age, sexual orientation and religion, both within and outside the labour market, and that the bill include establishing an independent appeals board.
- Take initiative to draw up a national action plan securing a progressive protection against discrimination.

CHAPTER 6

GREENLAND SPECIFIC PROVISIONS

6.1 RIGHT TO JUST AND FAVOURABLE CONDITIONS OF WORK (ART. 7)

6.2 GENDER PAY GAP

According to Statistics Greenland, the average gross income for men was DKK 277,000 in 2017, whereas it was DKK 209,000 for women.⁶¹ This is a substantial difference of around 25 percent.

One perspective on the gender pay gap is the gendered employment patterns. According to Statistics Greenland, more than 70 percent of the employed women are employed in the public sector, while this applies to 24 percent of the employed men. Furthermore, there is an overrepresentation of men in sectors such as fishing, hunting and agriculture.⁶²

However, the available information and knowledge on the gap and on concrete measures to overcome the gap is insufficient. This was highlighted by the UN Human Rights Committee in 2016. In its concluding observations the Committee noted a concern about the lack of information on concrete measures to overcome the gender wage gap and their results in Denmark and Greenland.⁶³

DIHR and the Human Rights Council of Greenland recommend that:

- Greenland take measures to strengthen data collection and analysis on gender equality in employment, including information on management patterns in different sectors.
- The Department for Education, Culture and Church ensure that institutions that provide counselling on study options actively and systematically work with perceptions of traditional gender roles, in order for students to not be limited by gender stereotypes in their educational choices.

6.3 PROTECTION OF THE FAMILY AND CHILDREN (ART. 10)

6.3.1 VULNERABLE FAMILIES AND PROTECTION AGAINST CHILD ABUSE

Despite progress in some areas, Greenland continues to face significant challenges in relation to children's rights and welfare⁶⁴. Poverty, various forms of physical abuse, and mental maltreatment are significant societal problems. Poverty affects children and their future ability to participate in society on equal footing with others. According to a study from 2013, 11.7 percent of Greenlandic children lived in relative poverty in 2010.⁶⁵ In another study from 2015, 12 percent of the children responded that they always or often went hungry to bed or to school. Children living in remote settlements are in particular vulnerable to poverty.

While 8 percent of the children in Nuuk responded that they either always or often went hungry to bed or school, the share of children from the settlements was 17 percent.⁶⁶ The unequal distribution of poverty in Greenland is also reflected in the general distribution of the most financially vulnerable. According to a study from 2018, 8 percent of the persons living in settlements can be described as financially vulnerable (measured as persons with an income below 50 percent of the median income), whereas the number is 3 percent in towns.⁶⁷ Furthermore, the study shows the children living with one adult are particularly vulnerable, as 10 percent can be described as financially vulnerable, compared to 2 percent of the children living with two adults.⁶⁸

A problematic tendency that has been steady in Greenland since the 1970s is the suicide rate which is exceptionally high, approximately 80 per 100,000 citizen, compared to the Faroe Islands (approximately 5 per 100,000 citizens) and Denmark (approximately 10 per 100,000 citizens) and the rest of the North.⁶⁹ According to a study from 2018, a particularly vulnerable group in this regard is young women between 15-24 years old, whereof 22 percent responded that they had thought of suicide during the last year and 13 percent had attempted suicide during the last year.⁷⁰ Additionally, a significant number of Greenlandic children and youth have had sexual experiences without their consent. In a study from 2018, 24 percent of the 15-29-year-olds responded that they had experienced 'forced or attempted forced sexual activity before they turned 18.'⁷¹

According to a study from 2018, the conditions for children and youth have improved in some areas. The percentage of children who have been exposed to domestic violence is substantially lower for the youngest group of children (born in 1995 or later), compared to children born before 1995. However, the problem is still substantial with 28 percent of the youngest group of children responding that they have been exposed to domestic violence.⁷² This tendency is also

reflected in the study in relation to children who grow up in families characterized by alcohol abuse. Where more than 50 percent of the children born before 1995 respond that they grew up in families characterized by alcohol abuse, the same apply to 37 percent of the youngest children in the study.⁷³ However, this is still more than one third and thus points to a substantial problem.

In June 2019, the Greenlandic Parliament, Inatsisartut, decided that the Greenlandic government, Naalakkersuisut, should ask the Danish government for help with improving the conditions for the children and families in Greenland. The request was officially delivered in July 2019.⁷⁴

DIHR and the Human Rights Council of Greenland recommend that Denmark and Greenland:

- Strengthen local capacity responsible for dealing with cases of physical and mental violence, or the abuse or sexual exploitation of children and young persons.
- In cooperation with local municipalities take initiatives to combat poverty by targeted actions aimed at vulnerable families with children across Greenland.

6.4 ADEQUATE STANDARD OF LIVING (ART. 11)

6.4.1 ACCESS TO AFFORDABLE HOUSING

There is a severe lack of available housing in main cities, where there for several years have been long waiting-lists for public housing. For instance, in average there is a waiting period of 7.5 years for rented housing in Nuuk.⁷⁵ The long waiting-lists especially affect citizens that do not have the income to find a suitable home on the private market.

A portion of public housing stand empty even though there is a shortage. In June 2015, 399 of the home rules' public housing stood empty because of abrade and 300 because of mould.⁷⁶ However, Naalakkersuisut has implemented various initiatives such as disinfecting homes with mould.⁷⁷

The number of forced evictions in Greenland is high. Between 2005 and 2013, the bailiff received 1,264 motions of eviction in average – mainly because of a resident's failure to pay rent.⁷⁸ In average approximately 13 households per 1,000 housing were evicted. In comparison, the number was 5.5 per 1,000 social housing and 3.2 per 1000 rented housing in Denmark.⁷⁹ It is especially worrying that the number of evicted families has been increasing in recent years.⁸⁰

DIHR and the Human Rights Council of Greenland recommend that Greenland:

- Ensure more affordable housing in and around the main cities.

- Initiate social and economic preventive measures which seek to assist marginalised citizens in managing economy and debt.

6.5 RIGHT TO EDUCATION (ART. 13)

6.5.1 HIGHER EDUCATION AND ACCESS TO PRIMARY SCHOOL TEACHING

According to a study from 2018, around 50 percent of the Greenlandic population lack higher education than primary education. This especially applies to persons living in settlements. The study shows that 79 percent of the persons living in settlements lack higher education than primary education. The same applies to 32 percent of the Nuuk population.⁸¹

Lack of educated and professional teachers is one of the main challenges, which Greenland's primary schools face. This was recognised by the Committee on the Rights of the Child in its Concluding observations on the 5th periodic report of Denmark in 2017.⁸² Lack of professional teachers is the main reason for the considerable educational difference between children from towns and children from settlements. Children from towns do better in scholastic aptitude and they seek secondary education more often than their peers from smaller towns and settlements.⁸³ While 80 percent of the teachers in towns are professionals, this goes for 40 percent of the teachers in settlements.⁸⁴ Although there is internet-access all over in Greenland, the capacity of the connection and the associated price depends on whether it is possible to connect via sea cable, radio chain or satellite, which makes it difficult to provide distance education.⁸⁵

Greenland lacks teachers with expertise for special education classes.⁸⁶ Teachers with expertise in special education are only in charge of 2 percent of the regular special education and 9 percent of the extensive special education in the primary schools.⁸⁷

The schools in towns and settlements cannot always offer special education or support for children with disabilities. If a school cannot accommodate a child's needs, the municipality has to offer education and housing at another school.⁸⁸ This often leads to children having to stay far away from their parents and well-known settings.

DIHR and the Human Rights Council of Greenland recommend that Greenland:

- Take measures to increase the number of qualified teachers in small towns and settlements in Greenland, for instance by establishing partnerships or teacher exchanges between schools in towns and settlements to gain exchange of experience.

- Establish and strengthen the internet connection in educational institutions and take initiative to make internet connection financially accessible to all citizens to enable distance education for teachers and students.
- Take measures to ensure that teachers on all levels of the educational system have the qualifications needed to teach students with different kinds of disabilities.

6.6 RIGHT TO PARTICIPATE IN CULTURAL LIFE (ART. 15)

6.6.1 INVOLVEMENT OF THE LOCAL POPULATION

In order for Greenland to promote and protect the right of its people to exercise traditional practices, the importance of consultation of the local population must be stressed.

In November 2016, The Human Rights Council of Greenland and DIHR published a status report on the human rights situation in Greenland, which included a chapter on natural resources.⁸⁹ Amongst other topics, the report focused on how the local population is consulted in the preparation phase of mining projects and in decisions on tourist concessions of land and fishing sites and whether there is sufficient means of redress/access to remedy for the local population in these respects.

Concerning public consultation, the report recommended, amongst other items, that Naalakkersuisut ensure that the local population is consulted in the decision-making processes concerning tourist concessions of land and fishing sites, most notably by making it a condition for the concession.

The Institute also recommended that Naalakkersuisut, together with the Danish government, consider letting the “Aarhus convention” – the UN Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters - enter into force in Greenland (by repealing a territorial reservation to Denmark’s ratification).

DIHR and the Human Rights Council of Greenland recommend that Greenland:

- Ensure that the local population is consulted in decision-making processes concerning tourist concessions of land and fishing sites, most notably by making it a condition for the concession.

END NOTES

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