

Mandates of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; and the Special Rapporteur on minority issues

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 34/35, 43/14 and 43/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of the sale of the buildings associated to the Mjølnerparken common housing branch, putting its residents at a great risk of a forced eviction, on the basis of a set of laws and policies that may be racially discriminatory. We have also received information concerning series of amendments introduced to various laws, including the Penal Code; the Passport Act; and the Police Act, that also comprise the so-called "Ghetto Package". These amendments are part of your Excellency's Government policy "One Denmark without Parallel Societies – No Ghettos in 2030" which target "non-Western" immigrant neighbourhoods.

According to the information received:

Concerns Regarding the Sale of Mjølnerparken

The recent "Ghetto package" laws described below allow non-profit housing associations in so-called "ghetto" areas to redevelop housing units. Non-profit housing associations in all "tough ghetto" areas are required to submit plans to reduce non-profit family housing to 40% by 2030. Should redevelopment be impracticable, housing units in "ghetto" areas may be demolished and their residents may be forcibly relocated. Mjølnerparken, a common housing branch since 1986, is one such so-called "tough ghetto" located in Copenhagen, with 528 family units and 32 student units spread across four blocks.

In May 2019, Mjølnerparken's housing association Bo-Vita submitted a redevelopment plan to the Ministry of Transport and Housing, proposing to reduce family units by selling entire blocks. The Municipal Council of Copenhagen and the Ministry subsequently approved the plan, under which approximately 260 units in two blocks have been earmarked for sale. While the sale was planned to close at the end of March 2020, it has been delayed

due to the pandemic. In the meantime, residents of Mjølnerparken's for-sale blocks have taken legal action against the Ministry of Transport and Housing, and in May 2020 filed a law suit alleging that the sale and underlying policy constitute prohibited discrimination.

In August 2020, Bo-Vita informed the Ministry that the sale was expected to close in September 2020, and the latest information received is that this sale will proceed any day now. According to the timeline in Bo-Vita's April 2020 newsletter, one of the blocks will be vacated and renovated starting September 2022, and the other block, March 2023. According to the information received, the residents at risk of eviction have neither been consulted nor provided with alternative accommodation.

Concerns on the Ghetto Package:

On 22 November 2018, Parliament adopted a series of amendments to the Common Housing Act, the Common Housing Rent Act, and the Rent Act ("L38"). These new housing laws, comprising the "Ghetto Package", affect neighbourhoods designated as "vulnerable estates" and "ghettos."

Discriminatory Definition of "Ghetto" Areas

According to the updated law, the term "vulnerable housing estate" is a designation applied to certain neighbourhoods with more than 1,000 residents that meet two of four employment, education, income, and/or criminality criteria. A vulnerable housing estate receives the "ghetto" designation if over 50 percent of residents in that area are immigrants and descendants of "non-Western" countries. Neighbourhoods qualifying as a "ghetto" for at least four years are designated as "tough ghettos". As of December 2019, there are 28 ghettos designated by the Ministry of Transport and Housing, including 15 areas considered as "tough ghettos". The updated law fails to define the term "non-Western" with any specificity. Statistics Denmark defines the term "non-Western" as any country outside the EU, with the exception of Andorra, Australia, Canada, Iceland, Liechtenstein, Monaco, New Zealand, Norway, San Marino, Switzerland, the USA, and the Vatican State. In effect, "non-Western" is a term that disproportionately attaches to Denmark's mainly non-European racial, ethnic, religious and non-White populations, including persons descended or originating from Muslim-majority countries.

The updated law applies stricter rules to housing assignments and require social housing branches to reject applicants or evict tenants on the basis of socio-economic factors and perceived criminality. A social housing branch located in a "tough ghetto" area is required to reject applicants on the waiting list if the applicant or applicant's spouse receives certain social welfare benefits. Social welfare benefits that disqualify applicants from social housing in a "tough ghetto" include integration benefits (now known as "repatriation benefits"), educational benefits, or cash benefits pursuant to the Active Social

Policy Act. Notably, repatriation benefits are only available to immigrant populations or citizens who have returned to Denmark after living abroad.

Dismantling of “Ghettos”

With the stated aim of reducing the share of non-profit family housing, Danish law allows non-profit housing associations in so-called “ghetto” areas to redevelop housing. Non-profit housing associations in all “tough ghetto” areas are required to submit plans to reduce non-profit family housing to 40% by 2030. Should redevelopment be impracticable, housing in “ghetto” areas may be demolished and their residents may be forcibly relocated.

This policy of redevelopment, demolition, and forcible relocation affecting social housing gives rise to concerns regarding rights to non-discrimination, equality, and adequate housing. Forcible relocation and demolitions are per se gross violations of the human right to adequate housing. Because Danish law’s definition of “ghettos” relies on a concentration of ethnic, national origin and racial minorities, policies supporting and enabling redevelopment of “ghetto” areas necessarily will affect ethnic and racial, ethnic and religious minorities at a disproportionately high rate. As such, this legal reform furthers racial and other forms of inequality in security of tenure and enjoyment of the right to adequate housing. Furthermore, the ability for common housing associations in “ghetto” areas to pursue redevelopment raises concerns about the ability of racial, ethnic and religious minorities to participate in decisions that may affect them.

Concerns Regarding Initiatives Contained in the Bill to Amend the Day Offers Act and the Act on Child and Youth Benefits (Law No. 1529)

On 18 December 2018, amendments to the Day Offers Act and the Act on Child and Youth Benefits introduced a mandatory daycare program for children living in “ghetto” and “vulnerable estates” housing areas. This law requires certain parents to put their children into daycare for 25 hours a week from the age of one in order to receive education in Danish language and “Danish values”. However, this law does not apply equally to all populations living within “ghetto” and vulnerable housing areas. The law exempts native Danish parents from the obligation to enroll their children in this mandatory daycare programs. Therefore, only non-Danish parents in “ghetto” and vulnerable housing areas must participate in this daycare and educational program. According to the information receive these amendments only apply to areas that disproportionately house ethnic minority and migrant populations. Furthermore, the law penalizes parents and students who resist complying with this obligation by ceasing their child benefit payments. For parents who live in “ghetto” and vulnerable housing areas, choosing not to participate in the program can have devastating effects.

Concerns Regarding the Bill to Amend the Danish Penal Code, the Danish Passport Act, and the Danish Police Act

Criminalization of Travel Abroad

On 19 December 2018, Parliament amended the Danish Passport Act. As amended, the Act now criminalizes parents whose children make “forced” re-acculturation trips to their “countries of origin.” Parents who take their children on such trips face risk of imprisonment and reductions to child-care benefits. The law also permits authorities to refuse to issue a passport to a child or to withdraw the child’s passport if they believe that the child will be sent on such a trip. In theory, the amendment to the Danish Passport Act should apply only when such trips abroad seriously endanger the child’s health or personal development. Unfortunately, the law appears to be overly broad, incentivizing criminal enforcement of the law even in cases when trips are unlikely to expose children to neglect or violence.

Doubling Criminal Sentences in “Ghettos”

In January 2019, a series of amendments to the Danish Penal Code entered into force. These amendments include provisions enabling police to designate areas with high crime rates as “enhanced punishment zones”. The designation of “enhanced punishment zones” disproportionately applies to “ghettos,” with the strictest of these laws applying to “tough ghettos” neighbourhoods. Those alleged to have committed certain crimes in these areas generally face sentences twice as long as those individuals committing the same crimes outside of these zones. For crimes already punished by a long sentence of imprisonment, the enhanced punishment zone increases the sentence by one-third.

Concerns Regarding Ministry of Immigration and Integration Regulation 1767

In December 2018, the Danish government updated its ordinance on ceremonies for naturalized citizens. According to the updated ordinance, new citizens must participate in a ceremony during which they will, without gloves, shake the hand of a municipal official. This hand-shaking provision appears to target Muslims, forcing them to choose between relinquishing their beliefs about physical contact with members of the opposite sex or forfeiting their Danish passport. Coupled with the handshake requirement, COVID-19 has suspended naturalisation ceremonies since March 2020, delaying Danish citizenship for hundreds of people.

Although we do not wish to prejudge the accuracy of the above information, we would like to express serious concern regarding Denmark’s legislation and policies that specifically target and otherwise discriminate against “non-Western” residents. Labelling areas as “ghettos” and “tough ghettos” on the basis of the

percentage of “non-Western” immigrants and descendants raises several concerns about discrimination based on race, descent, national or ethnic origin, religion or belief and other protected grounds. Such language tends to stigmatize individuals belonging to or perceived to belong to Denmark’s racial, ethnic, and religious minorities. Applying stigmatizing language to minorities can expose individuals belonging to and perceived to belong to these communities to higher rates of violence and hate crimes. Societal adoption of language that tends to stigmatize minorities correlates with excessive policing and enables discriminatory efforts to entrench ethnic inequalities through law and policy. Furthermore, to the degree that the “non-Western” immigrant or descendant designation suggests that only certain national, ethnic and religious backgrounds are compatible with Danish national identity, the designation is incompatible with Denmark’s commitments to equality, inclusivity, and tolerance. Using the concentration of individuals of “non-Western” nationality or heritage as the basis for determining “ghettos” and “tough ghettos” is inconsistent with human rights law.

We are concerned that the above mentioned legislative and policy initiatives negatively affect persons belonging to minorities in many aspects of life and their human rights, including their rights to equality before the law, adequate housing, education, equal treatment before the tribunals; freedom of movement, and their cultural rights. The amendments introduce distinctions based on ethnicity, descent and national origin and are therefore inconsistent with Denmark’s international human rights obligations, particularly to combat racial discrimination.

In this regard we would like to recall that article 1 of the International Convention on the Elimination of Racial Discrimination, to which Denmark is party since 1971, defines prohibited racial discrimination as “any distinction, exclusion, restriction or preference based on **race, colour, descent, or national or ethnic origin** which has the **purpose or effect** of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” (emphasis added). The Convention therefore requires States to ensure non-discrimination and implement policies to ensure substantive equality. Furthermore, State obligations to prevent, eliminate, and remedy racial discrimination extends to populations who face discrimination on the basis of race and other status, including, among others, religion, citizenship status, sexual orientation, and gender identity.

International human rights law is based on the premise that all persons, by virtue of their humanity, should enjoy all human rights without discrimination on any grounds. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Denmark on 6 January 1972, require States to respect and ensure non-discrimination and equality in the enjoyment of human rights, prohibiting distinctions “of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹ Article 26 of ICCPR

¹ ICESCR art. 2; ICCPR arts. 2, 26.

contains a general right to equality without discrimination on grounds such as religion, language or ethnicity, in fact or in practice, and stresses that all persons are equal before the law and entitled without discrimination to the equal protection of the law. Moreover, article 27 protects persons who belong to ethnic, linguistic and religious minorities to enjoy their own culture, use their own language, and practice their own religion with other members of their group. This right imposes positive obligations on states not to deny the exercise of these rights among themselves.

Moreover, the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt the measures to that end (article 1) as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination and in full equality before the law (article 4).

In light of the issues we raise above regarding the “Ghetto Package”, we are also seriously concerned about the seemingly imminent sale of Mjølnerparken, in spite of the pending litigation by its residents challenging the legality of the sale and policies underlying it. The plans to redevelop housing units under the “Ghetto Package”, including the sale of four blocks of the Mjølnerparken common housing branch and the risk of home demolitions that these plans entail, without the provision of housing alternatives, may leave people homeless. The targeting of individuals of “non-western” nationality or heritage is also a violation of the norm of non-discrimination which is at the core of the right to adequate housing. We are also concerned that the people affected may not have been given the opportunity to participate in the design of the redevelopment plans affecting them.

It is especially troubling that while the legality of the “Ghetto Package” is being litigated in the Danish high court, housing association Bo-Vita, under the auspices of the Ministry of Transport and Housing, and potential buyers are moving forward with the sale of Mjølnerparken notwithstanding. All of the plaintiffs in the pending litigation are Mjølnerparken residents renting the for-sale family units on permanent leases. The sale of buildings of Mjølnerparken puts its residents in a high risk of an imminent forced eviction, which may constitute a violation of their right to an adequate housing recognized in article 11 of ICESCR. We would like to recall that, as clarified by the Committee on Economic, Social and Cultural Rights (CESCR) in its general comment No. 4, security of tenure constitutes a fundamental aspect of the right to an adequate housing and requires the legal protection against forced eviction, harassment and other threats. In the present case, should the sale of buildings of Mjølnerparken proceed, it will constitute a violation of such right.

The Committee on Economic, Social and Cultural Rights, in its General Comment No. 7, has clarified that forced evictions are a gross violation of the right to adequate housing and may also result in violations of other human rights, such as the right to life, the right to security of the person, the right to non-interference with

privacy, family and home and the right to the peaceful enjoyment of possessions.² If an eviction is to take place, procedural protections are essential, including, among others, genuine consultation, adequate and reasonable notice, alternative accommodation made available in a reasonable time, and provision of legal remedies and legal aid. Under no circumstances, evictions should result in homelessness, and the State party must take all appropriate measures to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available to affected individuals, where they are unable to provide for themselves. We wish to underscore that, notwithstanding the type of tenure, all persons should possess a degree of security of tenure, which guarantees legal protection against forced eviction, harassment and other threats.³

We wish to emphasize that the right to adequate housing is intrinsically linked to the inherent dignity of the human person and the right to life. We recall that the Committee on Economic, Social and Cultural Rights has indicated that States must allocate sufficient resources to the realization of the right to adequate housing and prioritize the needs of disadvantaged and marginalized individuals or groups. Housing strategies should be developed in consultation with affected groups, include clearly defined goals, identify the resources to be allocated and clarify responsibilities and a time frame for implementation.

Furthermore, we also would like to draw the attention of your Excellency's Government to the Guidelines for the Implementation of the Right to Adequate Housing (A/HRC/43/43), notably guideline No. 6 on forced evictions, as well as guideline No. 12 on ensuring the regulation of businesses in a manner consistent with State obligations and address the financialization of housing – which addresses the issue of institutional investors buying massive amounts of affordable and social housing (sometimes entire neighbourhoods), displacing lower-income families and communities and calls upon States, among other things, to prevent any privatization of public or social housing that would reduce the capacity of the State to ensure the right to adequate housing.

We are also concerned that Denmark's policy "One Denmark without Parallel Societies – No Ghettos in 2030" and its associated laws negatively impact Denmark's "non-Western" and Muslim residents' enjoyment of numerous rights, including rights to non-discrimination, to freedom of movement, and to freely practice their religion or belief. These laws appear to stereotype and stigmatize certain populations as non-Danish, reinforcing a racially discriminatory concept of who is and who is not "truly" Danish. Such stigmatizing laws risk intensifying and entrenching xenophobia and racial discrimination against residents in Denmark who are perceived as "non-Western". We are concerned that these laws disproportionately affect majority "non-Western" resident and immigrant communities, including communities that are predominantly Muslim. Furthermore, we are concerned that these laws, on the grounds of national and ethnic origin, discriminates against these populations in their

² The Committee on Economic, Social and Cultural Rights (CESCR) General comment No. 7, para. 4.

³ CESCR, General Comment No. 4, para. 8.

enjoyment of equality before the law, education, social security, and adequate housing.

Although human rights law generally encourages the creation of programs that narrow social cleavages and aid integration of marginalized communities, the amendments to the Day Offers Act and the Act on Child and Youth Benefits introducing mandatory daycare provisions stoke concern over Denmark's human rights law commitments to equality, non-discrimination, rights of linguistic minorities, cultural rights, and socioeconomic rights. Mandated instruction of only some in "Danish values" and the Danish language appears incompatible with equality and non-discrimination principles in the enjoyment of cultural and linguistic rights. In particular, it can involve breaches of the rights of members of linguistic minorities to use their own language, and can be discriminatory. As far as these requirements, through intent or as a result, prohibit or prevent children from speaking languages other than Danish and discourage cultural practices of their heritage, these amended laws may also be inconsistent with Denmark's international human rights law obligations to ensure racial, ethnic, linguistic and other forms of equality without discrimination. Article 15, paragraph 1 (a) of ICESCR states the right of everyone to take part in cultural life, which includes the right of minorities and of persons belonging to minorities to conserve, promote and develop their own culture.

The disproportionate application of "enhanced punishment zones" to residents in "ghettos" who commit a crime or offence, likely discriminates against "non-Western" and immigrant communities. Requiring enhanced punishments in areas where racial, religious, national or ethnic minorities and other marginalized groups reside increases the likelihood that individuals belonging to racial and other marginalized groups will face harsher punishment than ethnic Danish or individuals of a "Western" background. Unequal criminal punishment, especially for racial, ethnic, and religious minorities, is inconsistent with Denmark's international human rights law obligations.⁴ Furthermore, we are concerned that this approach to punishment may increase deportations of non-citizens, including those born and raised in Denmark.

We would like to draw the attention of your Excellency's Government to its obligations under article 5 (a) and (b) of ICERD to ensure equal treatment before tribunals and all other organs administering justice, and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law. The application of these amendments, which target racial, ethnic, and religious minorities is a clear violation of the right of equality before the law and equal treatment, and does not respect the principle of proportionality. As explained in its General Recommendation N° 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee on the Elimination of Racial Discrimination has recommended States Parties to ensure equality before the law requires them to refrain from engaging in forms of racial or ethnic stereotyping or profiling.

⁴ CERD general recommendation 31.

The amendments to the Passport Act raises concerns over freedom of movement, right to identity and to documents proving that identity. Furthermore, the law appears to assume that some cultures are incompatible with Danish culture. In this way, the law likely entrenches racial discrimination and xenophobia. Article 5 (d) of ICERD requires State Parties to ensure equality in the enjoyment of, *inter alia*, the right to freedom of thought, conscience and religion; the right to freedom of movement and residence within the border of the State as well as the right to leave any country, including one's own, and to return to one's country.

Lastly, in relation to the concerns expressed above, we would also like to recall your Excellency's Government that, based on articles 2 (2), 10 and 11 of the International Covenant on Economic, Social and Cultural Rights, the Committee on Economic, Social and Cultural Rights expressed similar concerns in its concluding observations to Denmark (E/C.12/DNK/CO/6, paragraphs 51 and 52). In this regard, the Committee recommended your Excellency's Government to:

- a) Adopt a rights-based approach to its efforts to address residential segregation and to enhance social cohesion;
- b) Remove the definitional element of a "ghetto" with reference to residents from "non-Western" countries, a discriminator on the basis of ethnic origin and nationality;
- c) Assess the impact of the "ghetto package" on affected communities;
- d) Remove the coercive and punitive elements of the L38 law;
- e) Repeal all provisions that have a direct or indirect discriminatory effect on refugees, migrants, persons belonging to minorities and residents of the "ghettos";
- f) Identify, in meaningful consultation with the concerned communities, the support needed to facilitate their integration; and
- g) Ensure that evictions and rehousing respect human rights standards.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on what steps have been taken to ensure that initiatives to redevelop or dismantle housing in “ghetto” areas comply with international human rights obligations to respect, protect, and ensure rights to adequate housing and non-discrimination and include information on the measures taken to ensure the participation of the people affected in the development of such plans and in any relocation involved.
3. Please provide detailed information concerning alternative accommodations for those individuals residing in “ghetto” areas subject to demolition.
4. Please provide detailed information that justifies defining “ghettos” as areas with over 50 percent of residents with “non-Western” nationality or heritage.
5. Please provide detailed information justifying the establishment of different mandatory education standards for minority children of non-Danish origin than children of Danish origin. Furthermore, please provide detailed information to explain how punishment for parents’ non-compliance with these standards do not result in racial discrimination.
6. Please provide information on what steps have been taken to ensure, in line with all relevant international human rights standards, equal protection of the right to freedom of movement for children traveling to their countries of ethnic or national origin or descent.
7. Please provide information regarding how many individuals have been subject to enhanced criminal or other punishments as a result of the laws referenced above.
8. Please provide information on what steps the government has taken on the Committee on Economic, Social and Cultural Rights’ recommendations relevant to this communication, including its paragraph 52 recommendations on L38 and the “ghetto package.”

While awaiting a reply, we urge that your Government halt the sale of Mjølnerparken, at least pending a final judicial determination for the legality of the sale and its underlying policies, and ensure that residents of Mjølnerparken face no risk of eviction.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

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