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SUBMISSION TO GA REPORT

The Danish Institute for Human Rights welcomes the call for submissions communicated by email of 23 March 2020 by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in relation to the next thematic report by the Special Rapporteur on the human rights of migrants on ending immigration detention of children and seeking adequate reception and care for them.

Legislation or policy that prohibits or restricts the use of immigration detention of children and their families

There is no legislation which explicitly prohibits the use of immigration detention of children and their families in Denmark. However, it is explicitly stated in section 37(10) of the Aliens Act that unaccompanied children may not be detained in prisons.¹

Upon arrival in Denmark, both children and adults seeking asylum will usually be required to live at an asylum centre while their application is being processed (see article 42 a subsection 5 and 7 of the Danish Aliens Act). The average maximum processing time is 120 days.²

Families with children who have been rejected asylum in Denmark live at the departure centre 'Sjælsmark' which is administered by the Prison Administration ('Kriminalforsorgen') with assistance of Red Cross who provides education for children and health services. Families with children live at departure centre 'Sjælsmark' as they do not cooperate

¹ Aliens Act(Consolidation), no. 239 of 10 March 2019, (*Udlændingeloven*), available in English at,

<https://www.nyidanmark.dk/en-GB/Legislation/Legislation>.

² Danish Immigration Service, available in English at,

https://www.nyidanmark.dk/en-GB/Words%20and%20Concepts%20Front%20Page/US/Diverse%20US/Application_processing_times_at_the_Immigration_services

with the police on their return. It has been decided to move families with children to a different centre in Spring 2020.³ Residents at the departure centre will often be living there for an indefinite period of time, as Denmark cannot force a rejected asylum seeker to leave the country if he or she is unwilling to cooperate on their return, especially not if Denmark does not have a deportation agreement with their state or if they are stateless. Residents of a departure centre will normally be required to stay in the centre from evening until morning ('opholdspligt'). Failing to abide by an order to stay at a departure centre is a violation of article 60 of the Danish Aliens Act and subject to applicable sanctions.

Unaccompanied minors

As unaccompanied minor asylum seekers are an especially vulnerable group; their asylum applications are processed through a fast track procedure and they are housed in special centres with specially trained staff. Unaccompanied minor asylum seekers are assigned a personal representative to support and counsel them according to the Aliens act article 56a, subsection 1.⁴

Part 9a of the Danish Aliens Act describes the framework for the accommodation and the allowed use of force (and other types of intervention in the right of self-determination etc.) in relation to unaccompanied minor. Part 9b of the Danish Aliens Act concerns placement of unaccompanied minor at partly locked, secure and especially secure residential facilities.

Non-custodial alternatives to immigration detention of children in Denmark

In case a minor asylum seeker has relatives in Denmark, the child may be allowed to stay with them while their asylum case is being processed, though typically only after six months at a children's asylum centre, cf. article 42 I, subsection 1 and 5 of the Aliens Act.

After the asylum case of an unaccompanied minor has been processed, and he or she has received a residence permit, the child is placed in a

³ Ministry of Immigration and Integration, available in Danish at, <https://uim.dk/nyheder/2019/2019-12/bornefamilier-fra-sjaelsmark-skal-til-avnstrup>

⁴ Immigration Service, available in English at, <https://www.nyidanmark.dk/en-GB/Applying/Asylum/Unaccompanied%20minor>

municipality according to the rules of the Integration Act.⁵ The municipality is given the integration responsibility for the child and decides how to accommodate the child, e.g. in foster care, in an institution or home for children with special needs, or (for those who are very independent upon arrival) in their own apartment or dorm room.

Similarly, asylum seeking families with children, who have received residence permits, will also be assigned housing according to the rules of the Integration Act.

Good practices or measures taken in Denmark to protect the human rights of migrant children and their families while their migration status is being resolved

All children who are in the mandatory school age and have resided in Denmark for at least 6 months must be offered education cf. article 32 of the Education Act. It is the duty of the Immigration Service to make sure that children who reside at asylum or departure centres receive schooling.⁶ The education in the centres corresponds to the education offered to bilingual pupils attending the Danish primary and lower-secondary school (*folkeskole*). The Red Cross is responsible for the majority of the schooling the children receive in the centres.

The children living in asylum centres and departure centres are entitled to receive the same healthcare as children who are residents of Denmark.⁷

⁵ The Integration Act: <https://www.nyidanmark.dk/en-GB/Words%20and%20Concepts%20Front%20Page/Shared/Integration%20act>

⁶ Immigration Service, available in Danish at, <https://www.nyidanmark.dk/en-GB/Words%20and%20Concepts%20Front%20Page/US/Diverse%20US/Skolegang%20for%20boern%20uden%20opholdstilladelse>

⁷ Immigration Service on conditions for asylum seekers, available in English at, <https://www.nyidanmark.dk/en-GB/You-are-waiting-for-an-answer/Asylum/Conditions-for-asylum-seekers?anchor=9791A15AE95F439085E3E53B50339E3D> and information from the Red Cross: <https://www.rodekors.dk/vores-arbejde/roede-kors-asy/asylcentre/sjaelsmark>

Free legal advice is offered both by the Danish Immigration Service⁸ and by the Danish Refugee Council.⁹

In relation to family life, it has been reported that many of the families living in departure centre 'Sjælsmark' have been asking for kitchen facilities to eat together as a family (and not in the common cafeteria). It has been decided that at the new departure centre (Avnstrup) the families will be able to cook themselves. The new centre will also not be surrounded by a fence.¹⁰

Challenges and/or obstacles in the development and/or implementation of non-custodial alternatives to immigration detention

As mentioned, children seeking asylum who have relatives in Denmark, will usually not get to stay with them while their case is being processed. The reason for this is that the relatives must apply for dispensation, and they will also have to cover all the child's expenses. Allegedly, this is often not possible, as the relative will often be receiving the low integration benefit.¹¹

In relation to children who are to be deported, their chances of a non-custodial alternative to immigration detention has decreased in the last couple of years. Until 2015, rejected families were able to live by themselves outside of the departure centres.

Yours sincerely,

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LEGAL ADVISER

⁸ Immigration Service, available in English at, <https://www.nyidanmark.dk/en-GB/Contact-us/Contact-the-Danish-Immigration-Service/Before-you-contact-us?anchor=8A885ADB1DE64917A2FD50BB2C076291>

⁹ Information from the Refugee Council, available in English at, <https://flygtning.dk/danmark/asyl/asylum-seekerrejected-asylum-seeker>

¹⁰ Ministry of Immigration and Integration in Danish about centre Avnstrup (only in Danish): <https://uim.dk/nyheder/2019/2019-12/bornefamilier-fra-sjaelsmark-skal-til-avnstrup>

¹¹Information, 29 March 2016, available in Danish at, <https://www.information.dk/indland/2016/03/flygtningeboern-kaemper-bo-slaegtninge-danmark>