

UPR / Additional comments on the subject **Migrants, refugees and asylum-seekers** Refugees Welcome, DRC Danish Refugee Council)

Family reunifications from Eritrea¹

Denmark saw a sudden increase in Eritrean refugees from 2014 to 2016, resulting in a large number of applications for family reunification.² The typical situation is a man arriving alone to Denmark, informing the authorities on interview that he is married, with or without children. When he is granted asylum, he will apply for family reunification. The wife and maybe children will try to flee illegally across the border into Ethiopia or Sudan, at the risk of being imprisoned, and wait for the decision there.

The Danish authorities demand two kinds of marriage certificates from Eritrea: the one from the church (which almost everybody has and presents) and a civil registration from the local council (which is extremely rare and can't be obtained after having left the country).

When a couple can't present the civil certificate, they are not regarded as married, and can only obtain the permit if they have been living together as a nuclear family for 18-24 months. This is the next problem for the Eritrean couples: they are often young, and the husband has often been forced to live far away from his wife because of military or national service, only being allowed a few visits per year.

These factors can lead to rejection, even when the couple has one or more children together, and even though the family has been keeping in touch as much as possible. In some cases, a rejection amounts to violation of the right to a family life.

There are several cases where the children get a permission to come and live with their father in Denmark, based on a DNA test, but the mother gets rejected and must stay as a refugee in Ethiopia or Sudan.

The demand to present a civil marriage certificate is unfair, as this originates from the Eritrea constitution stating it as mandatory to register a marriage this way – but in fact, church weddings are legally binding, and it's a fact that very few have ever obtained a civil registration. The court of Amsterdam ruled in 2017 against this, stating that the demand was unfair based on an expert hearing.

Recommendation:

- 1) *The Danish authorities should consider the church certificate, often supported by pictures and videos and witness statements from the wedding, as enough proof for a marriage.*
- 2) *Having a child together, proven by DNA test, should be enough to be under the protection of article 8 in ECHR.*

Counseling and supporting unaccompanied minors in family reunification cases³

CRC Art. 3

Unaccompanied minors too often do not receive proper counseling from Danish local authorities regarding family reunification and the means of support which they are entitled to according to The Danish Social

¹ This issue relates to ECHR Art. 8, CRC, Art. 3, 9, 10. Previous UPR-recommendations during 2nd Cycle: Recommendation 120.186, noted, 120.185, noted

² Tal og fakta på udlændingeområdet 2015, p. 29 file:///C:/Users/lboc/Downloads/tal_og_fakta_2015.pdf, Tal og fakta på udlændingeområdet 2016, p. 28, file:///C:/Users/lboc/Downloads/TalFakta_2016_LOW.pdf

³ This issue relates to CRC Art. 3. Previous UPR-recommendations during 2nd Cycle: Recommendation 120.189, supported

Service Law §1.⁴ In order to make sure that the applications contain all the information needed and are filed as soon as possible, and to prevent an array of problems when family reunification is granted, proper counseling and support is needed. Far too many children assume responsibility for the family, put aside their own needs and are often left alone with a heavy burden, like that of “an adult family burden”.

Recommendation:

- 1) *Ensure that local authorities are made aware of their responsibility regarding the unaccompanied minors, which they and their families are entitled to according to The Danish Social Service Law.*

Legal guardian⁵

Unaccompanied minors wait too long before they are appointed a legal guardian as required by law.⁶ after they have received their residence permit. Currently we see minors waiting more than 6 months, which means that many unaccompanied minors start their life in Denmark without enough safeguarding of their rights and the necessary care which an independent legal guardian provides. Moreover, several unaccompanied minors risk turning 18 years old without having been appointed a legal guardian. This is a concern, as the transition to the 18th year involves many new and demanding challenges, such as becoming a subject of a new legislation for adults, new economic structures, and new living arrangements, just to name a few of the changes.

Recommendations:

- 1) *Ensure that appointment of a legal guardian is prioritized by all authorities.*
- 2) *Ensure that unaccompanied minors are placed in municipalities which are used to working with this target group. In this way the municipalities have more and better possibilities of providing needed support for the child, including finding a legal guardian with assistance from the Danish Red Cross.*

Help beyond the age of 18

Section 68 no 12 of The Danish Social Service Law⁷ states that the municipal council must decide at least six months prior to the age of 18, whether the young person needs further means of support, such as an appointed social mentor or additional housing arrangements. The legislation (section 48) furthermore states that the child and legal guardian must be consulted before any such decisions are made. However, too often it happens that social caseworkers lack the knowledge of the obligations of the municipalities in this regard, hence leaving the now young adults in a very vulnerable situation and in an even harder transition to adult life.

Recommendations:

- 1) *Ensure that social workers are aware of their obligations in relation to a child becoming 18-years-old according to The Danish Social Service Law.*
- 2) *Adopt strategies to ensure that the municipalities retain and share knowledge regarding best practices and adequate knowledge regarding the needs of unaccompanied minors.*

⁴ Bekendtgørelse af lov om social service (Danish Social Service Law), <https://www.retsinformation.dk/eli/lta/2019/798>

⁵ This issue relates to CRC Art. 19, 20

⁶ Law on Parental Responsibility § 28, <https://www.retsinformation.dk/eli/lta/2019/776> , The Danish Social Service Law § 57, <https://www.retsinformation.dk/eli/lta/2019/798>

⁷ The Danish Social Service Law, <https://www.retsinformation.dk/eli/lta/2019/798>

Tolerated stay⁸

According to the legislation on tolerated stay, persons are "tolerated" if they are not eligible for residency or asylum but cannot be expelled due to the risk of torture or death penalty upon expulsion. The main rule is that one must live at a deportation center and must report to the police usually every day so that expulsion can be carried out promptly when the opportunity arises.⁹ Rights to family life and rights to health care and to work and study are restricted.

In recent years more and more individuals have been placed on tolerated stay, but since 2007 not even one has been expelled. From June 1st, 2019 the penalty for not staying at the ordered center and reporting to the police was increased. According to the Ministry of Foreigners and Integration there were 94 persons on tolerated stay (January 1st, 2020). 61 of these have been ordered to stay at a deportation center and report to the police. 234 convictions for not staying at the center or reporting to the police were handed out in 2019 with on average 54 days of prison.¹⁰ There seems to be a lack of proportion between the penalties and the violation and little or no regard is taken to ECHR Art. 8 in assessing the necessity of ordering the stay at the deportation center.

Recommendations:

- 1) *Introduce an upper time limit in the tolerated stay legislation, if possible as a part of the judgement on expulsion.*
- 2) *Secure that a proper assessment of the proportionality of the sanction and the time spent on tolerated stay is taken into consideration when deciding if the sanction should be lifted.*
- 3) *Change the legislation to stop the increased use of prison for violation of ordered staying at a deportation center and reporting to the police*

Access to education for young asylum seekers¹¹

Asylum seeking children in Denmark are guaranteed access to primary school, but especially for children who for different reasons are facing longer stay in the asylum system, it can be a problem that they are no longer eligible for youth education when they turn 17. Also, they are not guaranteed access to secondary education, for example high school, and there is no budget to finance the fee if they are accepted. In practice this means that young asylum seekers at the age of 17-21 are offered to join education for adult asylum seekers, but this does not provide them with any formal qualifications.

Recommendation:

- 1) *Ensure that asylum seekers at the age of 17-21 are guaranteed access to education equal to Danish youth.*

⁸ This issue relates to ICCPR Art. 7 and 12, Previous UPR-recommendations during 2nd Cycle: Recommendation 120.174, noted

⁹ Danish Alien Law, § 42 a, stk. 8, 1.pkt., Danish Alien Law § 34,stk.4.<https://www.retsinformation.dk/eli/lta/2014/1021>

¹⁰ <https://www.ft.dk/samling/20191/almdelel/UUI/bilag/69/2151068.pdf>

¹¹ This issue relates to CRC Art. 6(2)