**Questionnaire of the Special Rapporteur on the human rights of migrants: Ending immigration detention of children and seeking adequate reception and care for them**

Pursuant to Human Rights Council Resolution 34/21, the Special Rapporteur on the Human Rights of Migrants is mandated “to examine ways and means to overcome the obstacles existing to the full and effective protection of the human rights of migrants, recognizing the particular vulnerability of women, children and those undocumented or in an irregular situation” (para. 1 (a) [A/HRC/RES/34/21](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/34/21)). In carrying out his mandate, the Special Rapporteur dedicates his forthcoming report to the 75th session of the General Assembly to explore ways and means towards ending immigration detention of children and seeking adequate reception and care for them.

Children should never be detained for reasons related to their or their parents’ migration status. This applies to unaccompanied and separated children, as well as to children with their families. Detention of children in the context of migration is never in the best interests of the child. States should cease immigration detention of children and explore alternatives by developing and implementing rights-based non-custodial reception alternatives that fulfil the best interests of the child, and respect their rights to liberty, family life, and providing the conditions necessary to ensure the comprehensive protection of the rights of the child.

Through compiling and analysing information on legislative measures, policies, practices, and initiatives concerning rights-based non-custodial alternatives to immigration detention of children and their adequate reception and care, the Special Rapporteur intends to identify good practices and initiatives that demonstrate detention can be avoided. The Special Rapporteur wishes to provide recommendations to States on how to better protect the rights of migrant children and their families, based on existing reception solutions that do not involve deprivation of liberty. He is also interested in learning from States any challenges or obstacles they face in eliminating immigration detention of children; as well as views on how States’ efforts can be better supported by other stakeholders to ensure that their operationalisation respects and protects the rights of migrant children and their families.

**Questions:**

1. Please provide information on any legislation or policy that prohibits or restricts the use of immigration detention of children and their families in your country. Grateful if you could kindly submit the original text of the legislation or policy, accompanied by an English translation if it is in a language other than English, French or Spanish.

Section 36 of the Danish Aliens Act provides the legal basis for administrative detention of migrants. According to section 36 of the Danish Aliens Act, detention can be used in a number of specified situations, including risk of absconding in cases of return, to secure identification or due to lack of cooperation during the processing of an application for asylum or in regards to return.

The legality of administrative detention is to be assessed by a court of law within 72 hours and a lawyer is to be appointed to the migrants in line with section 37 of the Danish Aliens Act. Additionally, any detention can only be extended four weeks at a time and detention in connection to return procedures can never exceed 18 months in total. Administrative detention may, in general, only be used if less coercive measures are not deemed sufficient.

The Aliens Act implicitly allows minors to be administrative detained as there is no distinction between adults and minors in the wording of the law. However, as a general rule, children and their families are accommodated in special parts of asylum centres and as such the police do not detain minors after the provisions in the Aliens Act. Hence, since 2016, detention of unaccompanied children and separated children has as a rule not been applied.

Furthermore, Denmark has special procedures in place for unaccompanied minors, separated children (without legal guardian) or other accompanied minors. In these cases, a representative from the Danish Red Cross is present to ensure that the questioning of the minor is conducted in consideration of the case at hand and the minor’s age.

The Danish policy towards immigration detention of children in general is that detention of children should only be used in exceptional cases, as a measure of last resort and for the shortest time possible.

The current version of the Aliens Act in Danish is attached together with the latest version in English.

1. Please provide information on existing non-custodial alternatives to immigration detention of children in your country (e.g. community-based reception solutions) and elaborate how these alternatives effectively enhance the protection of the rights of migrant children and their families.

The Danish Immigration Service is responsible for providing accommodation for asylum seekers and third country nationals who have no legal right to stay in Denmark.

The Danish accommodation system is organised in such a way that the asylum seekers’ accommodation is determined on the basis of the phase in which their asylum application is being processed.

In practice, the Danish Immigration Service operates a number of different centre types, including reception centres, accommodation centres as well as so-called return centres. This in itself results in asylum seekers having to relocate to other centres as the processing of their application progresses.

On behalf of the Danish Immigration Service the daily operation of the reception and accommodation centres is under the responsibility of the Red Cross, the Danish Prison and Probation Service (kriminalforsorgen), Tønder Municipality or Vesthimmerlands Municipality. This is regulated through yearly contracts between the Danish Immigration Service and the accommodation operators.

Unaccompanied minors are considered a particularly vulnerable group. The best interest of the child is considered in cases concerning reception and accommodation of children. Unaccompanied minors are accommodated in special reception and accommodation centers staffed with specially trained personnel. The unaccompanied minors stay at these specialised centres throughout the asylum procedure - until they have been granted residence permit in Denmark or until they return to their countries of origin. In regard of the asylum procedure they will get appointed a personal representative, and their applications for asylum are handled in a fast-track procedure.

The Danish Immigration Service does not detain children within the context of the asylum procedure. Children are as a main rule accommodated with their families at accommodation centres and they are transferred together to a return centre, if their asylum application has been rejected.

It is important to notice, that all the reception centres and accommodation centres under the responsibility of the Danish Immigration Service do not involve any constraints to the accommodated persons’ freedom of movement.

The persons accommodated at the return centres are also free to leave the centres. Adults who received a final refusal on their application for  asylum, who do not participate in the return to their country of origin, will as a starting point have a duty of residence at the return centre as well as a duty to report to the Danish Police several times a week. Some persons also have a duty to notify the Prison and Probation Service, if they do not intend to stay at the return centre overnight. These obligations are not imposed on minors.

1. Please provide information on any existing good practices or measures taken in your country to protect the human rights of migrant children and their families while their migration status is being resolved, including inter alia their rights to liberty, family life, health and education(e.g. by ensuring effective access to *inter alia* adequate reception, healthcare, education, legal advice, family reunion).

As a main rule children are accommodated with their parents or close family members at reception, accommodation and return centres. The families either live together in rooms within the building of the centre or in separate apartments at the various centres.

At the accommodation centres it is possible for the families to cook their own meals, for this purpose they receive a food allowance twice a month. The families at reception centres and return centres receive three prepared meals a day, which is served in an in-house cafeteria. Besides hereof, children are offered additional meals. Thus, these families do not receive a food allowance.

Children aged 3-6 are offered to attend kindergarten located at the asylum centre. Children aged 6-16 receive education at a school operated by the Danish Red Cross or at a local school in a municipality. The children aged 17 as well as the adults receive education and are assigned household tasks and can also attend other forms of activities.

Children are offered different spare time activities, such as sport, club and summer holiday activities. The activities are arranged by the personnel at the centre or by volunteers.

The Danish Immigration service covers the expenses for necessary health treatments. All children accommodated at both reception, accommodation and return centres receive the same health treatment as Danish children.

1. Please indicate any challenges and/or obstacles in the development and/or implementation of non-custodial alternatives to immigration detention of children and their families.
* Not relevant.

1. What support could other stakeholders (other than your Government) provide to strengthen the development and/or implementation of non-custodial alternatives to immigration detention of children and their families that enhance the protection of their rights?
* Not relevant.