Submission of the United Nations Special Rapporteur on Contemporary forms of Racism, Xenophobia and Related Intolerance and the United Nations 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, to the Court of Justice of the European Union (CJEU) in Case C-417/23

Questions before the CJEU:

(1) Must the term 'ethnic origin' in Article 2(2)(a) and (b) of Directive 2000/43 be interpreted as meaning that that term, in circumstances such as those in the present case – where, under the Danish Law on social housing, there must be a reduction in the proportion of social family housing in 'transformation areas', and where it is a condition for categorisation as a transformation area that more than 50% of residents in a housing area are 'immigrants and their descendants from non-Western countries' – covers a group of persons defined as 'immigrants and their descendants from non-Western countries'?

(2) If the answer to the first question is wholly or partly in the affirmative, must Article 2(2)(a) and (b) be interpreted as meaning that the scheme described in this case constitutes direct or indirect discrimination?

Statement of Purpose

The United Nations Special Rapporteur on Contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the United Nations 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 intervene to clarify the applicable international human rights law prohibiting racial discrimination and protecting the right to adequate housing without discrimination. The Special Rapporteurs offer these clarifications to resolve two legal questions at the core of the present case—that is, whether the category "immigrants and their descendants from non-Western countries" qualifies as ethnic origin; and whether distinction on the basis of this category constitutes prohibited direct or indirect discrimination in access to housing under international human rights law.

This submission is provided in the intervenors' capacities as U.N. Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and U.N. 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. In the performance of their mandates, the Special Rapporteurs are accorded certain privileges and immunities as experts on mission for the United Nations pursuant to the Convention on the Privileges and Immunities of the United Nations, adopted by the United Nations General Assembly on 13 February 1946. This submission is provided on a voluntary basis without prejudice to, and should not be considered as a waiver, express or implied, of the privileges and immunities of the United Nations, its officials and experts on missions, pursuant to the 1946 Convention on the Privileges and Immunities of the United Nations. Authorization for the positions and views expressed by the Special Rapporteurs, in full accordance with their independence, was neither sought nor given by the United Nations, the Human Rights Council, the Office of the High Commissioner for Human Rights, or any of the officials associated with those bodies.

I. THE CATEGORY "IMMIGRANTS AND THEIR DESCENDANTS FROM NON-WESTERN COUNTRIES" QUALIFIES AS "ETHNIC ORIGIN" UNDER INTERNATIONAL HUMAN RIGHTS LAW.

a. International Human Rights Law's Prohibition on Racial Discrimination Includes Discrimination on the Basis of Ethnic Origin.

1. International human rights law prohibits racial discrimination, which it defines broadly to include discrimination on the basis of ethnic origin. According to Article 1(1) of the International Convention on the Elimination of Racial Discrimination (ICERD), "racial discrimination" is:

> *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.*[1] *(emphasis added)*

Through Article 1(1) of ICERD, U.N. Member States have established an understanding of racial discrimination that reflects the complex relationship among race, colour, descent, and national or ethnic origin in shaping marginalized groups' enjoyment of fundamental human rights.

2. Many of the groups most impacted by racism, xenophobia, and related intolerance[2] experience complex, intersectional forms of racial discrimination. International law does not require that an individual or a group identify themselves with only one of the restricted grounds in order to meet the definition of prohibited racial discrimination. Furthermore, in recognition of the fact that in practice it can often be difficult to disentangle or isolate a single ground as the basis for difference in treatment or outcomes, prohibited racial discrimination may result from the interaction of grounds listed in Article 1(1) with other grounds such as gender or religion.[3] For this reason, the Special Rapporteurs caution against an overly formal approach that ignores the frequent interaction of race, colour, descent, national origin and ethnic origin in lived experiences of prohibited discrimination.

3. Subsections of Article 1 of ICERD create carveouts in the definition of prohibited discrimination for certain legal distinctions between citizens and non-citizens, and for citizenship and naturalization laws that do not discriminate against "any particular nationality".[4] These carveouts are not applicable in the current case because, as elaborated below, the "non-Western" category targets persons of specific ethnic origin, and the category includes both Danish citizens and non-

[1] International Convention on the Elimination of All Forms of Racial Discrimination, art. 1(1).
[2] U.N. Doc. No. A/76/434, para 28, listing the groups enumerated in the Durban Declaration and Programme of Action.
[3] Committee on the Elimination of Racial Discrimination General Recommendation No. 32, para 7. "The 'grounds' of discrimination are extended in practice by the notion of 'intersectionality' whereby the Committee addresses situations of double or multiple discrimination – such as discrimination on grounds of gender or religion – when discrimination on such a ground appears to exist in combination with a ground or grounds listed in article 1 of the Convention."
[4] ICERD, arts. 1(2)–(3). *See also* Committee on the Elimination of Racial Discrimination, General Recommendation No. 30, paras 2–4.

citizens. Furthermore, the discrimination at issue extends beyond citizenship and naturalization laws, and instead relates to the "Ghetto Package" laws, including their effect on the right to adequate housing.

b. The Category "immigrants and their descendants from non-Western countries" qualifies as "ethnic origin" under international human rights law.

4. The Special Rapporteurs wish to bring to the attention of the Court that the Committee on Economic Social and Cultural Rights, in its review of Denmark's compliance with the International Covenant on Economic, Social and Cultural Rights, has found that the "non-Western" migrant category is a "a discriminator on the basis of **ethnic origin** and nationality."[5] We agree with this finding.

5. The Danish government has created two categories—"Western" and "non-Western"—and divided the world's population into these two categories on the basis of, among others, ethnic origin. "Western" applies to "all 27 EU countries and United Kingdom, Andorra, Iceland, Liechtenstein, Monaco, Norway, San Marino, Switzerland, Vatican State, Canada, USA, Australia and New Zealand."[6] It is immediately clear that "Western" is not a purely or even largely geographic designation because this list includes countries that occupy disparate locations on a map. The rest of the world falls under the designation "non-Western."

6. Any person born in a "non-Western "country to parents who are neither Danish citizens nor born in Denmark is a "non-Western immigrant", and any person born in Denmark to "non-Western" parents who are neither Danish citizens nor born in Denmark, is a "non-Western" descendant. In other words, under these designations, even a person with Danish citizenship or nationality may still be categorized as "non-Western" on the basis of descent and national origin. Furthermore, Denmark's use of the "non-Western" category within the "Ghetto Package" framework clearly designates that category as an ethnic origin category. The legislative debates that led to the adoption of the "Ghetto Package" laws reveal openly stated concerns with the norms, values, religion, and culture of persons from "non-Western" countries indicating that religion,[7] and ethnic origin are the features captured by the "non-Western" designation.[8] Indeed, the assortment of countries that constitute the

[5] Committee on Economic Social and Cultural Rights Concluding observations on sixth periodic report of Denmark (E/C.12/DNK/CO/6), para. 52 (emphasis added).

[6] In the Danish Government's official 2021 response to our concerns regarding the Ghetto Package, it provided this list as the list of "Western countries."
Response available at https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gId=35885.

[7] Note that although religious discrimination does not fall under the definition of prohibited racial discrimination under ICERD, CERD has stated that claims of "double" discrimination on the basis of religion and another protected ground can be considered under ICERD. *A.W.R.A.P. v Denmark*, CERD/C/71/D/37/2006, para 6.3.

[8] For example, comments made during the legislative process include the following

> *The integration of immigrants and descendants from non-Western countries in vulnerable housing estates is a focal point. It is important that residents in housing estates socialize* ***across ethnic origin*** *… Thus, a high concentration of citizens of a different* ***ethnic extraction*** *is a sign that focus on the area is needed.* General remarks on Act No. 45 of 31 October 2013, para. 3.1.2 of L 45 (emphasis added).

"Western" category are not an arbitrary assortment of countries, but by implication are countries that the Danish governments deem to be more ethnically aligned with Denmark. According to the Danish Law on Social Housing, "vulnerable estates" with socioeconomic indicators identical to the "ghettos", under this package of laws, will not be subjected to the enhanced redevelopment mandates under the "Ghetto Package" if—and only if—they are majority "Western"-communities. As such, the Danish governments concerns with non-Western migrants cannot be reduced to concerns with socio-economic indicators such as employment and education levels. Absent socio-economic indicators, the differences between Western and non-Western countries relate to language, cultural background, religion and other features that define ethnic origin. The explicit distinction between "vulnerable estates" and "ghettos" suggests a purposeful legal distinction based on the supposed ethnic character of certain areas.

7. The fact that the "non-Western" category includes people of multiple ethnic origins does not preclude prohibited racial discrimination under international human rights law. Indeed, in a petition brought against Denmark, CERD decided that a measure targeting non-ethnic Danish students *generally*, violated the prohibition on racial discrimination.[9] There is no requirement under ICERD that differential treatment only affect a single ethnic origin group in order to qualify as prohibited racial discrimination.[10] It requires, instead, showing that a "distinction, exclusion, restriction or preference based on . . . ethnic origin" has nullified or impaired enjoyment of a human right, irrespective of whether it is a single ethnic origin group or multiple such groups that are affected. The categories "Western" and "non-Western" are ethnic origin categories that in the context of the "Ghetto Package" laws result in preferential treatment of individuals of "Western" ethnic origin, and place restrictions on individuals of "non-Western" ethnic origin.

II. THE DANISH LAW ON SOCIAL HOUSING SCHEME'S USE OF THE CATEGORY "IMMIGRANTS AND THEIR DESCENDANTS FROM NON-WESTERN COUNTRIES" ENACTS PROHIBITED DIRECT AND INDIRECT DISCRIMINATION IN ACCESS TO HOUSING UNDER INTERNATIONAL HUMAN RIGHTS LAW.

a. International Human Rights Law Prohibits Direct and Indirect Discrimination in Access to Housing.

[M]any residents – often immigrants from non-Western countries and descendants of immigrants – live in isolated enclaves and do not adopt Danish norms and values to a sufficient extent […] General remarks on Bill No. 38 of 3 October 2018, para. 2.6.2

We have a group of citizens who do not adopt Danish norms and values. One Denmark without Parallel Societies – No Ghettos by 2030, March 2018, p. 5

These comments and other legislative history indicate that the purpose of the act was to target certain groups which do not share "Danish norms and values" and force socialization "across ethnic origin".

[9] *Murat Er v Denmark*, CERD/C/71/D/40/2007.

[10] For example, in *L.G. v. Republic of Korea*, found a measure targeting "foreign teachers of English who are not ethnic Koreans"—a category comprising multiple ethnicities—to be in violation of ICERD. *L.G. v. Republic of Korea*, CERD/C/86/D/51/2012, para 7.4.

8. Under ICERD, prohibited racial discrimination has the "purpose or effect" of nullifying or impairing the recognition, enjoyment, or exercise of human rights. In other words, ICERD prohibits both direct, purposive, or *de jure* discrimination and indirect, effective, or *de facto* discrimination. The Committee on the Elimination of Racial Discrimination ('CERD'), the authoritative interpreter of ICERD's provisions, has explained that the definition of racial discrimination:

> *expressly extends beyond measures which are explicitly discriminatory, to encompass measures which are not discriminatory at face value but are discriminatory in fact and effect, that is, if they amount to indirect discrimination.*[11]

Direct racial discrimination, which entails differential treatment that undercuts the human rights of individuals or groups on the basis of race, colour, descent, or national or ethnic origin, is prohibited.[12] With respect to indirect racial discrimination, CERD has noted that "[i]n seeking to determine whether an action has an effect contrary to the Convention, [CERD] will look to see whether that action has an unjustifiable disparate impact upon a group distinguished by race, colour, descent, or national or ethnic origin."[13]

9. Article 1(4) of ICERD permits

> *Special measures taken for the* ***sole*** *purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination,* ***provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups*** *and that they shall not be continued after the objectives for which they were taken have been achieved.*[14]

10. Non-discrimination and equality are fundamental principles of the right to adequate housing, contained in article 11 of the International Covenant on Economic, Social and Cultural Rights ('ICESCR'). Article 2.2 of ICESCR additionally obliges all States parties to guarantee this right without discrimination as to race, colour, national or social origin or "other status." General Comment 20 of the Committee for Economic Social and Cultural Rights explains that ICESCR does not permit discrimination based on "an individual's ethnic origin."[15] It also notes that discrimination based on "social origin" can include discrimination based on descent.[16] General Comment 20 also defines prohibited direct discrimination and

[11] *L.R. v Slovakia*, CERD/C/66/D/31/2003, para 10.4.
[12] According to CERD, any differential treatment will constitute prohibited discrimination unless "the criteria for such differentiation, judged against the objectives and purposes of the Convention, are legitimate or fall within the scope of article 1, paragraph 4, of the Convention." Committee on the Elimination of Racial Discrimination General Recommendation No. 14, para 2.
[13] Ibid.
[14] ICERD art. 1(4) (emphasis added).
[15] Committee on Economic Social and Cultural Rights General Comment No. 20, "Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the
International Covenant on Economic, Social and Cultural Rights," para. 19.
[16] Ibid. at paras. 24, 26.

indirect discrimination under ICESCR. Direct discrimination is "when an individual is treated less favourably than another person in a similar situation for a reason related to a prohibited ground" and indirect discrimination refers to "laws, policies or practices which appear neutral at face value, but have a disproportionate impact on the exercise of Covenant rights as distinguished by prohibited grounds of discrimination."[17]

11. Article 5(e)(iii) of ICERD guarantees the right to housing with equality before the law and without distinction as to race, colour, or national or ethnic origin. In addition to the racial stigmatization of their community, the violation of their right to housing is the primary avenue through which the Applicants are experiencing racial discrimination in this case.

12. The marginalization and exclusion of people on the basis of race, colour, descent or national or ethnic origin is a primary driver of housing discrimination. As authoritatively outlined in General Comment No. 4 of the Committee on Economic, Social and Cultural Rights ('CESCR'), there are seven core components of the right to adequate housing: (a) legal security of tenure, including legal protection against forced evictions; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility for disadvantaged groups; (f) location; and (g) cultural adequacy. In the present case, the applicants' security of tenure, location, and the cultural adequacy of their housing are threatened solely because they are—or live alongside—"non-Western" residents in "tough ghettos".

13. Equality and non-discrimination in security of tenure are fundamental to the right to adequate housing under international law. As such, Denmark and other States parties to the ICESCR must ensure security of tenure for all persons, guaranteeing legal protection against forced eviction, harassment or other threats. In the present case, the applicants' security of tenure has been placed under the constant, looming threat of a sale mandated by the Ministry-approved redevelopment plan and evictions resulting from it—a threat which would not have materialized if the applicants did not live in a majority "non-Western"-populated "tough ghetto."

14. Evictions and threats to security of tenure have long been recognized as serious violations of international law. In CESCR's General Comment No. 7, it recognized that "all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats" and "forced evictions are prima facie incompatible with the requirements of [ICESCR]".[18] Relevant authorities must ensure that evictions are carried out in a manner warranted by a law "compatible with the [ICESCR]" and other international human rights law, guided by the general principles of reasonableness and proportionality, and ensuring that all legal recourses and remedies are made available to those

[17] Committee on Economic Social and Cultural Rights General Comment No. 20, "Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the
International Covenant on Economic, Social and Cultural Rights," para. 10; *see also Trujillo Calero v. Ecuador* (E/C.12/63/D/10/2015), para 13.2.
[18] Committee on Economic, Social and Cultural Rights, General Comment No. 7, para 1.

affected.[19] Discrimination in the application of measures that affect security of tenure, when it affects an entire community as in this instance, is a *per se* violation of the right to adequate housing under the ICESCR.

15. Location of housing must result from the free choices of individuals and communities and must not be arbitrarily constrained, especially if there is evidence of racial animus as in this case. Location is critical to ensure the right to cultural identity and can be a primary determinant of employment and livelihood opportunities, as well as access to services and facilities, as noted by the Special Rapporteur on the right to adequate housing in his recent report to the General Assembly (A/76/408). Denying the right to choose a location of housing is allowed under Article 4 solely for the purpose of promoting the general welfare in a democratic society. The measures in question in this case have not met that threshold.

b. <u>The Danish Law on Social Housing Scheme's Use of the Category "immigrants and their descendants from non-Western countries" Enacts prohibited Direct Discrimination Under International Human Rights Law.</u>

16. Pursuant to its obligations under ICERD, Denmark has committed to "engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation".[20] However, utilizing the "non-Western immigrants and descendants" category to determine housing redevelopment policy and expose residents to housing displacement constitutes racial discrimination and a violation of Denmark's legal obligations under ICERD and ICESCR. In the view of the Special Rapporteurs, this distinction is neither necessary nor justifiable. In its review of the Danish Law on Social Housing Scheme, the Committee on Economic, Social and Cultural Rights has concluded and made clear that Denmark's enforcement of its "Ghetto Package" legislation "results in discrimination based on ethnic origin and nationality"[21] We agree with this finding.

17. The right to housing includes respect for the expression of cultural identity. The right to adequate housing includes cultural adequacy and respect for the expression of cultural identity as a core element of the right to adequate housing. The CESCR has specified that cultural adequacy requires that "the way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, inter alia, modern technological facilities, as appropriate are also ensured."[22] The way housing is

[19] Ibid, paras 11, 14.
[20] ICERD art. 2(1).
[21] Committee on Economic Social and Cultural Rights Concluding observations on sixth periodic report of Denmark (E/C.12/DNK/CO/6), para. 51.
[22] See Committee on Economic Social and Cultural Rights General Comment No. 4, para 8(g).

constructed, located, and housing policies are implemented, have direct bearing on minority groups' ethnic, cultural and linguistic expression and their continued existence. When such considerations are dismissed, this can result in discriminatory outcomes for vulnerable individuals and groups. In the present case, the targeting of "tough ghettos" is a purposeful attempt to weaken the cultural and ethnic communal ties between non-Western migrants and descendants, the vast majority of whom will be necessarily non-white, non-Christian, and non-European due to how the "Western" and "non-Western" worlds are carved up under the Government's definition.

18. In a recent report to the UN Human Rights Council,[23] the Special Rapporteur on the right to adequate housing has highlighted positive integration measures and steps to counter racial or ethnic segregation. However, such measures must comply with international human rights law, including the right to liberty of movement, the freedom to choose residence, and the protections for ethnic, national or linguistic minorities found in Articles 12 and 27 of the ICCPR. Laws and regulations that require individuals to live in or vacate a particular area are incompatible with the liberty of movement and freedom to choose one's residence as enshrined in Article 12.1 of the ICCPR. Restrictions on choosing one's residence may only be permissible if they are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with other rights, per Article 12.3 of the ICCPR. The Human Rights Committee explained in its General Comment No. 27 that restrictions on freedom of movement must be based on clear legal grounds and meet the test of necessity and the requirements of proportionality. As such, "voluntary clustering" (which occurs when people from a same group decide to live together in a community) is not *per se* incompatible with international human rights law, as long as "voluntary clustering" does not have the purpose or effect of the discriminatory exclusion of all members of other groups or results in unequal and discriminatory living conditions. Such clustering only perpetuates racial segregation when communities with a common race, ethnicity, caste or other characteristics become subject to unequal enjoyment of the right to adequate housing as well as related human rights. [24]

19. The Special Rapporteurs note that while States should encourage policies aimed at dismantling segregation, "prohibiting access to housing in particular areas on the basis of race, nationality, religion, descent or any other prohibited grounds with the view to changing the composition of the residential population in a particular neighbourhood, would be incompatible with international human rights law",[25] especially if it takes the form of racial quotas.[26] Inclusionary, voluntary housing clustering should not be confused with exclusionary segregation, which is involuntary and denies the equal enjoyment of human rights. Therefore,

[23] U.N. Doc. A/HRC/49/48.
[24] Ibid. para 18.
[25] Ibid, para 20.
[26] Ibid, para 65.

limitations to the freedom of choice of residency to protect minorities [cannot] justify discriminatory exclusion of members of such minorities from the equal enjoyment of the right to housing and other human rights, for example, by discriminatory provision of public services, water and sanitation, health care or education to areas predominantly inhabited by members of such minorities.[27]

In the expert opinions of the Special Rapporteurs, the facts presented in this case do not indicate that the mandatory redevelopment policy approved by the Ministry of Interior is necessary, appropriate, or compatible with international human rights law, and the Danish Government needs to rather encourage other voluntary, inclusive, non-coercive, non-discriminatory, and non-stigmatizing methods for addressing housing segregation.

20. The use of the "non-Western immigrants and descendants" category is the use of ethnic origin to mandate housing redevelopment and distinguish between "vulnerable estates", "ghettos" and "tough ghettos." Accordingly, mandating housing demolitions, evictions and redevelopment in predominantly "non-Western" communities constitutes prohibited direct racial discrimination on the grounds of ethnic origin. As discussed above, the detrimental human rights impact of the "Ghetto Packages" laws on those individuals designated "non-Western" means these laws cannot be justified as special measures under the meaning of Article 1(4) of ICERD.

c. <u>The Danish Law on Social Housing Scheme's Use of the Category "immigrants and their descendants from non-Western countries" Enacts prohibited Indirect Discrimination Under International Human Rights Law.</u>

21. As the Committee on the Elimination of Racial Discrimination notes, indirect discrimination must be considered within the "particular context and circumstances of the [controversy], as by definition indirect discrimination can only be demonstrated circumstantially."[28] In light of the current population and demography of Denmark, the "non-Western" category in effect disparately and unjustifiably impacts specific ethnic origin groups, and individuals descended from these groups. As the Applicants noted in their First Reply to the Ministry of Transport and Housing, 44 % of the Mjølnerparken residents originate from Lebanon and Somalia alone. The application of the "non-Western" category within the "Ghetto Packages" laws to the Mjølnerparken case will cause immigrants and descendants of immigrants who are of Lebanese and Somali ethnic origin to be disparately impacted by these provisions, particularly through the use of the "non-Western" category. Ultimately, the mandatory redevelopment of "tough ghettos" and the housing displacement experienced by some of their residents will be discriminatory in effect, because of the current population and demography of Denmark and its "non-Western" communities.

[27] Ibid, para 20.
[28] *L.R. v Slovakia*, CERD/C/66/D/31/2003, para 10.4.

22. Although the category of countries that constitute "Western" countries is geographically incoherent, it is comprised principally of European nations, and European settler colonial nations that eventually gained their independent status but whose citizens remained predominantly or majority White. Countries on the "non-Western" list conversely comprise predominantly non-White nations, including all of the world's Muslim-majority nations. At the same time, contemporary public discourse in Denmark, including as reflected in the legislative debates regarding the "Ghetto Package" laws, involves stereotypes that inextricably tie religious, ethnic, and physical attributes such as skin color to "non-Western" immigrants and descendants, while also associating these groups with inherent criminality.[29] It is important to note that the category "non-Western" as deployed within the "Ghetto Package" framework also has a racializing effect in that it designates a diverse group of people as essentially bound together by their status as dangerous "others" who threaten the security, prosperity, and cultural unity of Denmark. For these reasons, the categories "non-Western" and "Western" also operate as racial categories and enact direct and indirect racial discrimination on the basis of race.

III. THE CJEU SHOULD ALIGN THE INTERPRETATION OF DIRECTIVE 2000/43 WITH INTERNATIONAL HUMAN RIGHTS LAW.

23. The Special Rapporteurs urge the Court to align its jurisprudence on Directive 2000/43 with the applicable international human rights law detailed above. In particular, the Special Rapporteurs respectfully urge the Court to align the meaning of ethnic origin, direct discrimination and indirect discrimination under Directive 2000/43, with their meaning under international human rights law.

24. Indeed, the preamble to Directive 2000/43, the Council of the European Union highlights the foundations of the Directive's rights to equality and non-discrimination in international human rights law, including ICERD, the ICCPR and ICESCR, on which the analysis above is based:

[29] The Parallel Report of the Danish Institute for Human Rights to the UN Committee on the Elimination of Racial Discrimination, submitted in 2021, details how a wide array of policies and practices target foreigners, persons from a "non-Western" background, and persons from a "non-Danish" ethnic background for criminalization, regulation, and ethnic discrimination. Parallel Report available at https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/DNK/INT_CERD_IFN_DNK_47004_E.pdf. In its fifth report on Denmark published in 2017, the European Commission against Racism and Intolerance (ECRI) concluded "the situation is still problematic and hate speech against different groups, especially Muslims and refugees, is becoming even more widespread in Danish society in general and political discourse in particular." ECRI Report on Denmark, Fifth Monitoring Cycle (16 May 2017), para 22, available at https://rm.coe.int/fifth-report-on-denmark/16808b56a4. ECRI also noted that "[i]n 2014, the Commissioner for Human Rights of the Council of Europe … expressed his concern about the growing trend of hate speech and negative stereotypes in Danish politics. In 2015, the UN Committee on the Elimination of Racial Discrimination (CERD) noted an increase in xenophobia and political statements targeting non-citizens, especially before general elections." Ibid. The Advisory Committee on the Framework Convention for the Protection of National Minorities observed in 2019 "clear negative change in [Danish] political rhetoric towards refugees, migrants and, subsequently, minorities." Advisory Committee on the Framework Convention for the Protection of National Minorities, Fifth Opinion on Denmark (29 January 2020), para 1, available at https://rm.coe.int/5th-op-denmark-en/1680996202.

> *The right to equality before the law and protection against discrimination for all persons constitutes a universal right recognised by the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of all forms of Discrimination Against Women, the International Convention on the Elimination of all forms of Racial Discrimination and the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which all Member States are signatories.*

The preamble goes on to state that "It is important to respect such fundamental rights and freedoms," within the European Union, signalling the relevance of universal or international human rights law to the development and implementation of regional human rights law. The universality of the rights to equality and non-discrimination would be greatly threatened by fragmented and irreconcilable interpretations of ethnic origin, direct discrimination and indirect discrimination at the regional and international levels.

25. On 9 December 1971, the Kingdom of Denmark ratified the International Convention on the Elimination of All Forms of Racial Discrimination ('ICERD'). On 6 January 1972, Denmark ratified the International Covenant on Economic, Social and Cultural Rights ('ICESCR') and the International Covenant on Civil and Political Rights ('ICCPR'). As a State party to these conventions, Denmark has committed to uphold its human rights obligations under ICERD, ICCPR, ICESCR, and other international human rights treaties "in good faith"[30] and may not invoke "the provisions of its internal law as justification for its failure to perform a treaty."[31]

26. Denmark is by no means the only European Union member state that has ratified these treaties. In fact *all* twenty-seven members of the European Union have ratified all three of the international human rights treaties whose standards this submission relies upon, namely ICERD,[32] ICESCR,[33] and the ICCPR.[34] To promote legal coherence and ensure the promotion and protection of equality and non-discrimination norms within the European Union in line with the obligations that European Union member states have assumed under international law, the Special Rapporteurs urge the Court to align its interpretation of Directive 2000/43 with applicable international human rights law.

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[30] Vienna Convention on the Law of Treaties, art. 26.
[31] Ibid, art. 27.
[32] Ratification Status, *International Convention on the Elimination of All Forms of Racial Discrimination*, UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&clang=_en (last accessed Oct. 22, 2023).
[33] Ratification Status, *International Covenant on Economic, Social and Cultural Rights*, UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=_en (last accessed Oct. 22, 2023).
[34] Ratification Status, *International Covenant on Civil and Political Rights*, UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en (last accessed Oct. 22, 2023).

CONCLUSION

In conclusion, it is submitted:

that the category "immigrants and their descendants from non-Western countries" is an ethnic origin category under international human rights law;

that The Danish Law on Social Housing's use of the category "immigrants and their descendants from non-Western countries" enacts prohibited direct and indirect discrimination in access to housing under international human rights law;

that the ambiguities surrounding the definition of "ethnic origin" in Directive 2000/43 should be resolved in accordance with international human rights law, which currently binds all twenty-seven member states of the European Union.