

# OPEN SOCIETY JUSTICE INITIATIVE

## REQUEST TO THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

FOR

THE EARLY WARNING AND URGENT ACTION PROCEDURE

IN RESPECT OF

A PROPOSED EXPANSION OF DENMARK'S "GHETTO PACKAGE"

JULY 2021

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### INTRODUCTION

1. The Open Society Justice Initiative ("OSJI") respectfully requests the Committee on the Elimination of Racial Discrimination ("CERD") to invoke its Early Warning and Urgent Action Procedure ("Procedure") in relation to Denmark's proposed adoption of new discriminatory legislation expanding its "Ghetto Package" of laws ("Proposal").

2. The Proposal builds upon a significant and persistent pattern of racial discrimination within Denmark which also constitutes a segregation policy or de facto exclusion of members of a group from political, economic, social and cultural life.
3. In particular, the Proposal seeks to expand the usage of a racialised classification known as “non-Western” background as the decisive basis for the introduction and implementation of extraordinary laws. Such laws are already resulting in (*inter alia*) evictions, stigmatisation and marginalisation.
4. We submit that action under the Procedure in an urgent manner is necessary to address serious violations of the International Convention on the Elimination of All Forms of Racial Discrimination (“Convention”) and to prevent further irreparable harm to victims of discrimination on the grounds of race, colour, descent or national or ethnic origin.

## **BACKGROUND**

### **The “Ghetto Package”**

5. In March 2018, the Danish government introduced the “Ghetto Package” in the policy paper *Ét Danmark uden parallelsamfund – Ingen ghettos i 2030* [English: “One Denmark Without Parallel Societies – No Ghettos by 2030”] (“Policy Paper”).<sup>1</sup> The Policy Paper set out a bundle of over 20 different legislative proposals affecting numerous spheres of life as diverse as childcare, housing, criminal justice and education. Nearly all of these proposals became law in 2018 and 2019.<sup>2</sup>
6. The stated aim of the “Ghetto Package” is to “eradicate” by the year 2030 areas which are designated under the law as “ghettos.”<sup>3</sup> The determining factor in the designation of an area as a “ghetto” is whether the majority of residents are classed as being of “non-Western” background.<sup>4</sup>
7. A key provision introduced by the housing element of the “Ghetto Package” is a requirement for “common family housing” in “tough ghettos” to be reduced to a maximum 40% by the year 2030.<sup>5</sup> Such a reduction can be made through means such as sale or demolition. This has led to the threat of evictions across Denmark including in

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<sup>1</sup> Danish Ministry of Economic Affairs and the Interior, *Ét Danmark uden parallelsamfund – Ingen ghettos i 2030* [English: “One Denmark Without Parallel Societies – No Ghettos by 2030”], March 2018.

<sup>2</sup> A proposal concerning cash benefits to municipalities in relation to integration was withdrawn by the government during its negotiations with other parties.

<sup>3</sup> See page 6 of the Policy Paper.

<sup>4</sup> The “Ghetto Package” introduced amendments to the Common Housing Act (“CHA”). Section 61(a)(1) of the CHA (as amended) defines a “vulnerable housing estate” as an area of “common housing” inhabited by over 1000 residents where at least two of four socio-economic criteria are met. Section 61(a)(2) of the CHA (as amended) provides that an area that would otherwise be a “vulnerable housing estate” is defined as a “ghetto” where the share of residents of “non-Western background” exceeds 50%.

<sup>5</sup> “Common family housing” is a form of non-profit housing run by housing associations that are intended to be self-governing and independent. Residents pay rent to the housing associations, which in turn pay annual contributions to the National Building Foundation. The funds are used for matters such as the construction, renovation or demolition of buildings, as well as social projects such as activities for children and crime prevention programmes. “Tough ghetto” areas are defined in Section 61(a)(4) of the CHA (as amended) as areas which have already satisfied the above “ghetto” criteria for four or more years. Section 61(a)(5) of the CHA (as amended) provides for a transitional period in the years 2018 to 2020. During this time, “tough ghettos” are defined as areas which have fulfilled the criteria for being a “ghetto” for the previous five years. Under the Proposal, this transition provision will become permanent.

Mjølnerparken, Copenhagen, where residents face the sale of two buildings containing over 200 homes – some of which have been family homes for decades.<sup>6</sup>

8. Significant measures introduced by other parts of the “Ghetto Package” include:
  - a) powers for the police to define geographical zones in which punishments for particular crimes can be doubled;
  - b) provisions criminalizing parents whose children make certain trips abroad, and/or restricting passports for children; and
  - c) a mandatory daycare “offer” requiring that parents in certain areas send their children from the age of one, for 25 hours a week, to daycare for instruction on matters such as “Danish values,” or else risk losing child benefit payments.<sup>7</sup>

#### **“Non-Western” background**

9. “Non-Western” background is a categorisation which has been used by Statistics Denmark since 2002. The category comprises “immigrants” and “descendants” in respect of all countries other than those defined as “Western.”
10. “Western” countries are: member states of the European Union (“EU”) (and former EU member state, the United Kingdom of Great Britain and Northern Ireland), Andorra, Australia, Canada, Iceland, Lichtenstein, Monaco, New Zealand, Norway, San Marino, Switzerland, the USA, and the Vatican State.<sup>8</sup>
11. An “immigrant” is defined as a person born abroad, whose parents were foreign citizens or born abroad.<sup>9</sup> A “descendant” is defined as a person born in Denmark, whose parents were immigrants or descendants with foreign citizenship.<sup>10</sup>
12. The above definitions do not apply to an individual categorised as being of “Danish origin” however this designation is only applied if at least one parent was born in Denmark and has

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<sup>6</sup> The Ministry of the Interior and Housing’s approval of the development plan for the area is being challenged in ongoing litigation. For further details, please see OSJI’s casepage, accessible at: <https://www.justiceinitiative.org/litigation/tenants-of-mjolnerparken-v-danish-ministry-of-transport-and-housing>

<sup>7</sup> See page 8 of the Policy Paper. These proposals subsequently became law through Act No. 1543 of 18 December 2018 amending the Criminal Code and the Police Act (Increased-penalty-zones and increased penalty for dereliction of duty by senior employees performing a public function or duty); Act No. 1542 of 18 December 2018 amending the Criminal Code and the Passport Act (Criminalisation of stays abroad that seriously endanger a child’s health or development); Act No. 1529 of 18 December 2028 amending the Day-care Act and the Child Benefits Act (Mandatory day-care offer to 1-year-old children in vulnerable housing estates).

<sup>8</sup> Statistics Denmark, “Statistikdokumentation for Indvandrere og efterkommere 2017,” page 3, accessible at: <https://www.dst.dk/da/Statistik/dokumentation/statistikdokumentation/indvandrerere-og-efterkommere/indhold> (“Indvandrere og efterkommere 2017”).

<sup>9</sup> Where there is information on one parent only, an individual is classed as an immigrant if they were born abroad and the known parent was a foreign citizen or born abroad. Where there is no information on either parent, an individual is classed as an immigrant if they were born abroad. See page 3 of Indvandrere og efterkommere 2017.

<sup>10</sup> Where there is information on one parent only, an individual is classed as a descendant if the known parent was an immigrant or descendant with foreign citizenship. If there is no available information on either parent, an individual who is born in Denmark but is a foreign citizen is defined as a descendant. See page 3 of Indvandrere og efterkommere 2017.

Danish citizenship. Being born in Denmark does not automatically lead to Danish citizenship. “Non-Western” background is therefore a label that can last for generations.<sup>11</sup>

### **The Proposal**

13. In March 2021, the Danish Ministry of the Interior and Housing announced a new legislative proposal that seeks to expand the housing element of the “Ghetto Package,” with the stated aim of reducing the percentage of residents of “non-Western” background in any “housing estate” in Denmark to a maximum of 30% within the next ten years.<sup>12</sup>
14. Entitled [English:] “Mixed housing estates – next steps in the fight against parallel societies,” the Proposal sets out plans to add a new category of designated areas known as “prevention areas,” again using “non-Western background” as the determining criterion. Specifically, the Proposal states that “prevention areas” are “[c]ommon housing estates with at least 1,000 residents *where the share of immigrants and descendants of non-Western origin exceeds 30 %*. Moreover, the area must fulfil at least two out of the following four criteria concerning education, employment, income, and crime.”<sup>13</sup> (emphasis added)
15. As such, areas with the same socio-economic factors as “prevention areas” but which have fewer residents labelled as being of “non-Western” background are not targeted by the extraordinary measures set out in the Proposal.
16. The measures set out in the Proposal in respect of “prevention areas” include:
  - a) Mandatory use of “flexible housing allocation,” in order to give priority to applicants who fulfil employment and education criteria;
  - b) Prohibitions on the allocation of housing by municipalities to those who are not citizens of the EU, EEA or Switzerland, who receive a number of benefits, or who have been convicted of crimes;
  - c) The option of demolishing common family housing;
  - d) The right of municipalities to access and allocate private rental homes to, for example, those seeking access to common housing.<sup>14</sup>

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<sup>11</sup> For example, a Danish-born child of two Danish-born descendants (who have not gained Danish citizenship) of immigrant parents. An application for Danish citizenship involves strict application of a number of criteria including the passing of a citizenship test.

<sup>12</sup> Danish Ministry of the Interior and Housing, *Blandede boligområder -næste skridt i kampen mod parallelsamfund* [English: Mixed Housing Estates – next steps in the fight against parallel societies], March 2021.

<sup>13</sup> See Box 1: Definition of prevention areas in Danish Ministry of the Interior and Housing, *Blandede boligområder -næste skridt i kampen mod parallelsamfund* [English: Mixed Housing Estates – next steps in the fight against parallel societies], March 2021. The socio-economic criteria are: the share of residents outside the labour market is 30%; the share of people convicted of certain forms of crime is twice the national average; a minimum of 60 % of the residents only have primary education; and the average income is less than 65 % of the regional average.

<sup>14</sup> See Box 2: Measures and Box 3: Municipal allocation of private rental units in Danish Ministry of the Interior and Housing, *Blandede boligområder -næste skridt i kampen mod parallelsamfund* [English: Mixed Housing Estates – next steps in the fight against parallel societies], March 2021. The demolition options will be the same as in “vulnerable housing estates,” including where there are significant “social challenges” (see section 28(3) of the CHA for details of the existing provisions).

17. On 15 June 2021, a number of political parties endorsed the Proposal, with some minor amendments, in a “voting agreement” with the Social Democrat government.<sup>15</sup> The effect of this agreement is that the Proposal is likely to pass when it is formally tabled as a Bill in Parliament. Parliament is currently in summer recess but will reconvene on 5 October 2021.
18. The voting agreement also signals the possibility of further such measures in the future. For example, the parties have stated that the “agreement rests on the premise that the immigration from non-Western countries remains low” and that if it rises then the agreement may be renegotiated. It also states that:
- “all parties agree that the Ministry of Interior and Housing will report annually on the resident composition in vulnerable housing estates and prevention areas, including in relation to the share of residents with origins in non-Western countries and MENAPT countries, the level of education and employment as well as the utilisation of the existing housing stock. The report will form the basis for discussions and possible renegotiations of further measures among the parties to the agreement.”<sup>16</sup>

#### **INDICATORS FOR THE PROCEDURE**

19. At least three of the relevant indicators are present in relation to the above situation, mandating the use of the Procedure:
- a) Presence of a significant and persistent pattern of racial discrimination, as evidenced in social and economic indicators;<sup>17</sup>
  - b) Segregation policies or de facto exclusion of members of a group from political, economic, social and cultural life;<sup>18</sup> and

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<sup>15</sup> For example, with regard to the proposed tightened rules in respect of municipal housing allocation, the agreement (The Government of Denmark et al., *Blandede boligområder – næste skridt i kampen mod parallelsamfund* [English: “Mixed Housing Estates – Next Steps in the Fight Against Parallel Societies”], 15 June 2021) states that municipalities will no longer be allowed to allocate homes in prevention areas to applicants who are not citizens in the EU, the EEA, or Switzerland; who have been convicted of a crime and released from prison within the last 6 months; or who have had their tenancy terminated due to serious house rules violations as described in Section 59(6)(1-4) of the CHA. The municipality is also prevented from allocating housing to applicants who for the last six consecutive months have received “integration benefits” or an equivalent future benefit or who have received “cash benefits” for the past two years. “Integration benefits” are unemployment welfare benefits for those who have lived in Denmark for nine or fewer years over the past ten years. The reference in the agreement is confusing, as the benefits were renamed in 2018 as “self-support and repatriation benefits.” The agreement also states that the new housing allocation restrictions would apply to a disproportionately large share of common family housing stock in a few municipalities and refers to a cap of 30% of such stock being subject to the rules. The political parties that entered into the agreement with the Social Democrat government are: Venstre [English: “Left”], Dansk Folkeparti [English: “Danish People’s Party”], Socialistisk Folkeparti [English: “Socialist People’s Party”], Konservativt Folkeparti [English: Conservative People’s Party], and the Liberal Alliance.

<sup>16</sup> Please see “Other laws/policies,” later in this document, for more details on “MENAPT.”

<sup>17</sup> CERD, Guidelines for the Early Warning and Urgent Action Procedures, Annual report A/62/18, Annexes, Chapter III, revised guidelines adopted at the CERD’s 71st session in August 2007, para. 12(a).

<sup>18</sup> CERD, Guidelines for the Early Warning and Urgent Action Procedures, Annual report A/62/18, Annexes, Chapter III, revised guidelines adopted at the CERD’s 71st session in August 2007, para. 12(d).

c) Adoption of new discriminatory legislation.<sup>19</sup>

### **Significant and persistent pattern of racial discrimination**

20. The Proposal builds upon a significant and persistent pattern of racial discrimination within Denmark.<sup>20</sup> This is demonstrated by existing legislation and policies based on the country's racialized categorization of background, as well as other measures targeting minorities, particularly Muslims.<sup>21</sup>

#### The link between "non-Western" background and protected characteristics

21. "Non-Western" background as constructed by Denmark is inextricably linked to race, colour, descent and national or ethnic origin.
22. Firstly, the criterion "non-Western immigrants and descendants" is based on a clear distinction between "Western" origin/background and "non-Western" origin/background as defined earlier in this submission. This is pertinent not only to national origin but also race, colour, descent and ethnic origin. The inclusion of Australia and New Zealand within the Danish definition of "Western" underlines that Denmark's categorization is not based on the geographical location of countries.<sup>22</sup> Although the countries included within the definition of "Western" lack geographical coherence, they do share one common characteristic: all have majority populations which are perceived to be white. In addition, the "non-Western" label affects not only Danish citizens who were born outside of the artificial grouping of countries considered to be "Western" but also those born and raised in Denmark, demonstrating an emphasis on inherited characteristics.
23. Secondly, Danish governments have explicitly referred to ethnicity on a number of occasions in connection with the "Ghetto Package" and the Proposal, using the concept interchangeably with the term "non-Western." This includes as follows:
- a) Page 14 of the Policy Paper states:
- "The efforts up until now have primarily focused on social initiatives, which have turned out to be inadequate to significantly changing the characteristics of the resident composition. It has not changed the area sufficiently in relation to the criteria of the

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<sup>19</sup> CERD, Guidelines for the Early Warning and Urgent Action Procedures, Annual report A/62/18, Annexes, Chapter III, revised guidelines adopted at the CERD's 71st session in August 2007, para. 12(c).

<sup>20</sup> Article 1(1) of the Convention defines "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."

<sup>21</sup> As acknowledged in the EU's anti-racism action plan: "Racism comes in different forms. Overt expressions of individual racism and racial discrimination are the most obvious. All too often, racial or ethnic origin is used as a ground to discriminate – the COVID-19 pandemic and the aftermath of terrorist attacks are just the most recent cases where blame has been unjustly directed at people with a minority racial or ethnic background. People of Asian and African descent, **Muslims**, Jewish and Roma people have all suffered from intolerance" (emphasis added): EU Commission, *A Union of Equality: EU anti-racism action plan 2020-2025*, 18 September 2020, on page 1.

<sup>22</sup> Contrast, for example, with the definition set out in The Cambridge Dictionary, which includes the following within its definitions of "Western:" "relating to countries in the west part of the world, especially North America and countries in the west of Europe." Online version available at: <https://dictionary.cambridge.org/dictionary/english/western>

ghetto list concerning connection to the labour market, education, *ethnic origin*, or income level.” (emphasis added)

- b) During a radio show following the filing of litigation in Mjølnerparken, the Minister for the Interior and Housing referred to ethnicity as a “social problem:”

[English translation:] “Well, my party has been of the opinion, since we made the first Clearance Act in 1938, that it is a problem if you place all the social problems – whether they are ethnic, social or crime-related – in the same neighbourhood in the city. And that’s why *Adelgade* and *Borbergade* [streets in central Copenhagen] were cleared, that’s why *Den Sorte Firkant* [area in Nørrebro, Copenhagen] was cleared back then. In Copenhagen, in Randers, in Horsens and other places, neighbourhoods were cleared, because large social problems were concentrated. Now we take a step further and say: since 1993, we’ve discussed how to stop that an ethnic and a social concentration forms in certain areas. Since 1993, we haven’t been able to solve it in some areas. So now we have passed a piece of legislation, where we get the opportunity to fundamentally change among other places Tingbjerg and Vollsmose, and Mjølnerparken for that matter.”<sup>23</sup>

- c) The Proposal makes reference to “*ethnic* and social separation” that must be “combated” to “create mixed cities where people live together across economic, social, and *ethnic* divides.”<sup>24</sup> (emphasis added)

24. Thirdly, those classed as being of “non-Western” background are a racialised group, with various Danish governments attributing to them particular characteristics/traits including in relation to lifestyle, culture, values, language and religion and making statements based on generalisations, stereotypes, unfavourable connotations and negative assumptions. For instance:

- a) page 7 of the Policy Paper states that:

“The strong population growth of citizens of non-Western origin has provided a breeding ground for parallel societies where Danish values and norms are not the primary ones. It is impossible to give a precise figure for how many persons with non-Western background who, in reality, live their lives with other values and norms. By contrast, it is possible to establish a number of facts about persons and families with non-Western background, which suggest that large parts live relatively isolated from the surrounding society. An analysis from the Ministry of Economy and Interior shows that 28,000 families with non-Western background can be said to live in parallel societies. It concerns the ethnic composition in housing estates, schools and day-care institutions, participation in education or employment, crime rate etc.” (note that ethnicity is once again mentioned also)

- b) in the explanatory memorandum to the housing law amendments introduced by the “Ghetto Package,” it is stated that:

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<sup>23</sup> Danish Broadcasting Corporation, *P1 Debat “Parallelsamfund eller politiske spøgelser?”* (28 May 2020). The Ministry of the Interior and Housing was known as the Ministry for Transport and Housing at the time.

<sup>24</sup> Danish Ministry of the Interior and Housing, *Blandede boligområder -næste skridt i kampen mod parallelsamfund* [English: Mixed Housing Estates – next steps in the fight against parallel societies], March 2021, section 1.1.

“It is here in particular that many 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.”<sup>25</sup>

c) In the Proposal, the Ministry states:

“When non-Western immigrants are concentrated in specific housing estates and the nearby schools and day care institutions, it hampers integration and increases the risk of religious and cultural parallel societies springing up.

This is one of the largest structural challenges to the community that forms the basis for the Danish welfare society. For that reason, ethnic and social separation must be combated.”<sup>26</sup> (note again the reference to ethnicity)

d) “Parallel societies” are said to arise as a result of those who have “norms” and religious values that are different from those of the majority.<sup>27</sup> In Denmark, the majority population is white and Christian.<sup>28</sup>

#### Findings on the use of “non-Western” background in the “Ghetto Package”

25. In its Concluding Observations following its latest periodic review of Denmark, the UN Committee on Economic, Social and Cultural Rights (“CESCR”) found that the categorization of “ghettos,” “defined by the proportion of residents from ‘non-Western’ countries...not only results in discrimination based on ethnic origin and nationality, but also further marginalizes those residents.” Its recommendations included that Denmark 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.”<sup>29</sup>
26. Similarly, as a recommendation for immediate action, the Council of Europe’s Advisory Committee on the Framework Convention for the Protection of National Minorities (“Advisory Committee”) urged Denmark to reconsider the concepts of immigrants and descendants of “Western” and “non-Western” origin and their usage in the “Ghetto Package.”<sup>30</sup> The Committee stated that the concepts are based on “the arbitrary aggregation of statistics related to place of birth or citizenship” and lead to possible “discrimination on the grounds of citizenship, ethnic affiliation and place of residence.”

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<sup>25</sup> Bill No. L38 of 3 October 2018, para. 2.6.2.

<sup>26</sup> Danish Ministry of the Interior and Housing, *Blandede boligområder -næste skridt i kampen mod parallelsamfund* [English: Mixed Housing Estates – next steps in the fight against parallel societies], March 2021, section 1.1.

<sup>27</sup> The Danish Government, *Parallel Societies in Denmark*, Economic Analysis No. 30, February 2018, p. 3.

<sup>28</sup> Amani Hassani, “Islamophobia in Denmark National Report 2019,” in Enes Bayrakli and Farid Hafez (eds.), “European Islamophobia Report 2019” at page 230, listing Denmark’s major religions as follows: “Protestant Christians (74.7%), Islam (est. 5.5%), Catholics (0.6%).”

<sup>29</sup> Committee on Economic, Social and Cultural Rights, *Concluding observations on sixth periodic report of Denmark*, UN Doc. E/C.12/DNK/CO/6, 12 November 2019, paras. 51 and 52.

<sup>30</sup> Secretariat of the Framework Convention for the Protection of National Minorities, Fifth Opinion on Denmark, Advisory Committee on the Framework Convention for the Protection of National Minorities, ACFC/OP/V(2019)003, 29 January 2020, paras. 14 and 44.



27. In October 2020, three UN Special Rapporteurs lodged an urgent appeal to Denmark to halt the sale of the buildings in Mjølnerparken pending the resolution of ongoing litigation.<sup>31</sup> In particular, they highlight that:

“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... The amendments [introduced by the “Ghetto Package”] 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.”<sup>32</sup> 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,” with these laws “reinforcing a racially discriminatory concept of who is and who is not ‘truly’ Danish.”<sup>33</sup>

#### Other laws/policies

28. The “Ghetto Package” is a series of laws, policies and practices and can therefore be considered a significant and persistent pattern of racial discrimination of itself. The UN Special Rapporteurs stated that they were concerned that these laws disproportionately affect majority “non-Western” resident and immigrant communities, including communities that are predominantly Muslim, and expressed concern that they discriminate against such populations in a number of different contexts.<sup>34</sup> However, the “Ghetto Package” is not unique. Rather, it forms part of an even broader series of similar measures, constituting a greater, ongoing pattern of racial discrimination which is certainly “significant” and “persistent.”

29. For example, as noted in 2019:

“Following their electoral win, the Social Democrats implemented an audit of 17 independent schools out of which 7 schools were Muslim schools. With only 25 Muslim schools out of 558 independent schools in Denmark, there is a significant overrepresentation of Muslim schools in this audit. One can wonder why this overrepresentation exists; egregiously, one of the selection criteria for the audit is that a school has at least 50% non-Western students. This demonstrates the legal loophole the state has created with the category of ‘non-Western’ to be able to target Muslim citizens. The majority of these students are presumably Danish citizens, but... ‘non-Western immigrants and descendants’ is a category often used as a placeholder for Muslim.”<sup>35</sup>

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<sup>31</sup> 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, UA DNK 3/2020, 16 October 2020 (“Urgent Appeal”).

<sup>32</sup> Urgent Appeal, page 5.

<sup>33</sup> Urgent Appeal, pages 5 and 7.

<sup>34</sup> Urgent Appeal, pages 7-8.

<sup>35</sup> Amani Hassani, “Islamophobia in Denmark National Report 2019,” in Enes Bayrakli and Farid Hafez (eds.), “European Islamophobia Report 2019,” at page 235.

30. More broadly:

“Several bills have been implemented in 2019 that target Muslim and/or non-Western citizens: e.g. forced handshake during citizenship ceremonies; a ‘paradigm-shift’ in immigration/asylum procedures focused on repatriation rather than settlement; and citizenship deprivation of dual citizenship.”<sup>36</sup>

“In the case of jobcentres, unemployed ethnic minorities discovered that their online profile included the categorisation of non-Western immigrant/descendant with no easy recourse to delete the designation.”<sup>37</sup>

31. In a Parliamentary speech delivered on 6 October 2020 to introduce the controversial “Security for All Danes Act,” the Danish Prime Minister drew a direct link between boys of “non-Western” background and criminality, further demonstrating the racialization and profiling of this group.<sup>38</sup>

32. It is also worth noting that, in December 2020, the Danish Minister for Immigration and Integration introduced a further statistical distinction between 24 “MENAPT” countries (not geographically coherent but all with Muslim majorities) and the 166 other “non-Western” countries.<sup>39</sup> He stated that:

“Fundamentally they [the statistics] show that we in Denmark don't really have problems with people from Latin America and the Far East. We have problems with people from the Middle East and North Africa.”<sup>40</sup>

33. All of these measures build upon years of political rhetoric and a steady progression of laws and policies targeting immigrants, refugees and minorities, including a “face-veil ban” introduced in 2018, with the former Integration Minister celebrating the passing of the 50th regulation against immigration by cutting a cake and adding a counter to the Ministry’s website to commemorate each further measure. By the time the former government came to an end there had been 114 such measures.<sup>41</sup>

### **Segregation policies and de facto exclusion**

34. In the name of advancing integration and addressing segregation, Denmark has introduced the “Ghetto Package” and the Proposal based on the premise that those of “non-Western” background form a problematic group which must be specially regulated. The State has thereby created and/or reinforced systemic domination of a racialized group in a manner

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<sup>36</sup> Amani Hassani, “Islamophobia in Denmark National Report 2019,” in Enes Bayrakli and Farid Hafez (eds.), “European Islamophobia Report 2019,” at page 240.

<sup>37</sup> Amani Hassani, “Islamophobia in Denmark National Report 2019,” in Enes Bayrakli and Farid Hafez (eds.), “European Islamophobia Report 2019,” at page 234.

<sup>38</sup> European Center for Not-for-Profit Law, “Comments on the Draft Act amending the Danish Penal Code, the Act on the Activities of the Police, and the Judicial Care Act (“Security for all Danes” Act),” page 12, quoting the Danish Prime Minister stating that “one in five young men with a non-Western background, born in 1997, had violated the Danish criminal code before his 21st birthday.”

<sup>39</sup> European Commission, European Web Site on Integration, “Denmark: New statistics category for migrants from Muslim countries,” 11 December 2020, accessible at: <https://ec.europa.eu/migrant-integration/news/denmark-new-statistics-category-for-migrants-from-muslim-countries>

<sup>40</sup> European Commission, European Web Site on Integration, “Denmark: New statistics category for migrants from Muslim countries,” 11 December 2020, accessible at: <https://ec.europa.eu/migrant-integration/news/denmark-new-statistics-category-for-migrants-from-muslim-countries>

<sup>41</sup> Ministry of Immigration and Integration, accessible at: <https://uim.dk/gennemforte-stramninger-pa-udlaendingeomradet> [last updated on 30 April 2019]

that amounts to segregation policies and/or de facto exclusion from political, economic, social and cultural life.

35. The stated aim of the Proposal is to ensure that resident compositions of housing estates do not exceed 30% “non-Western” background. Such aims are not applied to members of any other social group and no other group is scrutinized for residential concentration of “ethnic origin.”
36. On the basis of the determining factor of the proportion of “non-Western” residents, the provisions introduced by the “Ghetto Package” and the Proposal exclude (*inter alia*) residents of designated areas from equal access to affordable housing, including security of tenure. Rather than promoting cohesion and tolerance, the State has already acted to rend the social fabric of tight-knit communities, with residents facing imminent eviction from homes they have often occupied for many years.<sup>42</sup> In addition, the stigmatization and marginalization arising from the characterization of “non-Western” background clearly impacts the ability of affected individuals to participate in political, economic, social and cultural life.

#### **Adoption of new discriminatory legislation**

37. As set out more fully above, the Proposal seeks to extend the discriminatory legislation already in place under the “Ghetto Package.” Focusing once again on “non-Western” background as the determining criterion for the introduction of extraordinary laws, the Proposal’s explicit aim is to regulate resident composition in relation to ethnicity.<sup>43</sup>

#### **VIOLATIONS OF THE CONVENTION**

38. As set out by the UN Special Rapporteurs, the amendments introduced by the “Ghetto Package” 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, including under the Convention.<sup>44</sup> The Proposal expands upon the usage and impact of these distinctions, in further serious violation of the Convention.
39. We submit that Denmark’s serious violations of the Convention include transgressions of the following provisions:
  - a) Articles 2(1)(a) and (c) (obligations not to engage in any act or practice of racial discrimination and to amend, rescind or nullify any laws which have the effect of creating or perpetuating racial discrimination);
  - b) Article 3 (prevention, prohibition and eradication of all practices of the nature of racial segregation);

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<sup>42</sup> OSJI, “Q+A: My Fight to Save My Home Under Denmark’s Harsh ‘Ghetto Plan,’” 27 May 2020, accessible at: <https://www.justiceinitiative.org/voices/q-and-a-my-fight-to-save-my-home-under-denmarks-harsh-ghetto-plan>

<sup>43</sup> Page 1 of the Proposal states: “...[E]thnic and social separation must be combatted. [new para.] Within the next 10 years, the government will work towards the aim that there will be no more than 30% non-Western immigrants and descendants in housing estates in Denmark. This will require a targeted transformation of the current resident composition in a number of housing estates. At the same time, it is necessary to regulate the resident composition actively in order to ensure a better distribution.”

<sup>44</sup> Urgent Appeal, page 5.

- c) Article 5 (prohibition and elimination of racial discrimination and guarantee of equality before the law in the enjoyment of civil rights including the right to freedom of thought, conscience and religion) (on the basis that the “Ghetto Package” “appears to assume that some cultures are incompatible with Danish culture”<sup>45</sup>) and economic, social and cultural rights including the right to housing.

#### **NEED FOR URGENT ACTION**

40. The measures introduced by Denmark’s “Ghetto Package” have a number of grave consequences that we submit are not only unlawful under domestic, regional and international law but also run counter to the purported justifications for the legislation such as better integration, the protection of “Danish values” and better socio-economic conditions.<sup>46</sup> The additional category of “prevention areas” under the Proposal threatens to significantly increase the scope of the legislation on the basis of the discriminatory use of “non-Western” background.
41. The Ministry of Interior and Housing estimates that the new category of “prevention areas” would apply to 58 common housing areas with a total of 110,000 residents.<sup>47</sup> To put this in perspective, Denmark has a population of approximately 5.8 million people.<sup>48</sup> If implemented, the Proposal would thus have an effect on nearly 2% of the population. This will almost double the number of persons impacted by the measures implemented as part of the existing “Ghetto Package”.<sup>49</sup> It is expected that the Proposal will be passed by the Danish Parliament, most likely at the start of the parliamentary year in October 2021.<sup>50</sup>
42. OSJI submits that the serious violations of the Convention are sufficiently grave to require urgent action from the CERD, given the scale of the situation including the further irreparable harm that may be caused to victims of discrimination on the grounds of race, colour, descent or national or ethnic origin as a result of the Proposal. This harm includes the risk of further evictions as well as escalated stigmatisation and exclusion.

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<sup>45</sup> Urgent Appeal, page 9.

<sup>46</sup> See, for example, page 6 of the Policy Paper stating that “once and for all, the very large task of integration must be addressed, where a group of immigrants and descendants have not taken Danish values to heart and isolate themselves in parallel societies” and section 2.3.2 of the explanatory memorandum to Bill L38, which introduced the amendments to the CHA: “certain ghetto areas have so great problems that a total dismantling of the area as a common housing estate may be necessary to solve the problems. That would be the case for areas with massive problems in the shape of an interplay of challenges concerning unemployment, crime, social problems, and a high share of residents from non-Western countries.”

<sup>47</sup> Figure 1 “Number of areas and units in the categories among larger common housing estates (as of 1 December 2020)” in Danish Ministry of the Interior and Housing, *Blandede boligområder - næste skridt i kampen mod parallelsamfund* [English: Mixed Housing Estates – next steps in the fight against parallel societies], March 2021.

<sup>48</sup> Statistics Denmark, “Population in Denmark,” 2021, available at <https://www.dst.dk/en/Statistik/emner/befolkning-og-valg/befolkning-og-befolkningsfremskrivning/folketal>

<sup>49</sup> There are currently 127,000 residents in vulnerable housing estates, “ghettos” and “tough ghettos” according to Figure 1 “Number of areas and units in the categories among larger common housing estates (as of 1 December 2020)” in Danish Ministry of the Interior and Housing, *Blandede boligområder - næste skridt i kampen mod parallelsamfund* [English: Mixed Housing Estates – next steps in the fight against parallel societies], March 2021.

<sup>50</sup> The Guardian, “Denmark plans to limit ‘non-Western’ residents in disadvantaged areas,” 17 March 2021. The Danish government announced the “Ghetto Package” in March 2018. The legislative amendments to the CHA were adopted within seven months.

## Housing security

43. In their urgent appeal, the UN Special Rapporteurs describe at length the impact of the existing legislation in Mjølnerparken, including the high risk of imminent forced eviction.<sup>51</sup> This includes an explanation that forced evictions are a gross violation of the right to adequate housing, which is intrinsically linked to the inherent dignity of the human person and the right to life 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.<sup>52</sup>
44. The UN Special Rapporteurs further note that 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, and potential buyers are moving forward with the sale of buildings in Mjølnerparken notwithstanding.<sup>53</sup>
45. We submit that the Ministry’s decision to introduce the Proposal is similarly extremely troubling, given that it has been introduced despite:
- a) the findings of CESCR and the Advisory Committee and their calls for immediate remedial action (as outlined above in the section entitled “Findings on the use of ‘non-Western’ background in the ‘Ghetto Package’”);
  - b) the warnings of the UN Special Rapporteurs in their ongoing urgent appeal;
  - c) a Parliamentary petition signed by over 50,000 citizens seeking repeal of the relevant housing provisions in the existing legislation and the abolition of the annual “ghetto” lists (which garnered the support of the Social Liberal Party, the Red-Green Alliance, the Christian Democrats, the Alternative Party and an independent Member of Parliament);<sup>54</sup> and
  - d) ongoing litigation resulting not just from evictions directly related to the requirement to reduce common family housing to 40% but also the indirect effects of the “Ghetto Package.” This includes litigation in Helsingør which has been brought by residents on the basis that their blocks of homes were targeted for eviction in order to reduce the number of residents of “non-Western” background and thus prevent the area from becoming a “tough ghetto.”
46. It is also worth noting that, in 2019, CESCR highlighted Denmark’s lack of affordable housing and rising rents exacerbated by private investment and recommended that Denmark increase its stock of affordable housing.<sup>55</sup> “Common family housing” is a particularly Danish form of housing based on principles of democracy, egalitarianism and affordable housing for all. Demolishing it goes against both the recommendation of

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<sup>51</sup> Urgent Appeal, page 6.

<sup>52</sup> Urgent Appeal, pages 6-7.

<sup>53</sup> Urgent Appeal, page 6.

<sup>54</sup> The title of the petition is “B 137 Forslag til folketingsbeslutning om at ophæve loven om nedrivning og salg af almene boliger og afskaffe de såkaldte »ghettolister« (borgerforslag)” [English: B 137 Proposal for parliamentary resolution to repeal the law about demolition and sale of common housing and to abolish the so-called ghetto lists (citizens’ petition)]. The full transcript of a Parliamentary debate on the petition on 6 April 2021 is available at: <https://www.ft.dk/samling/20201/beslutningsforslag/B137/BEH1-88/forhandling.htm>

<sup>55</sup> Committee on Economic, Social and Cultural Rights, *Concluding observations on sixth periodic report of Denmark*, UN Doc. E/C.12/DNK/CO/6, 12 November 2019, paras. 49 and 50.

CESCR and the purported justifications for the legislation, including the protection of Danish values and better socio-economic conditions.

47. The coronavirus pandemic has further highlighted the need for housing security. As noted by the former UN Special Rapporteur on Adequate Housing, it “has laid bare the pre-existing and vast structural inequalities in housing systems all over the world, characterized globally by rising housing unaffordability and the lack of available public housing stock. Actions taken now can help to address these deficiencies, while also serving to protect the right to housing of residents during the pandemic.”<sup>56</sup>
48. Instead of repealing the “Ghetto Package,” however, the current government has reaffirmed its commitment to it throughout the ongoing pandemic and is now proposing expanding it. The Proposal both restricts the allocation of housing and threatens the housing security of existing residents. In addition to the Proposal, legislation has been passed to ensure that development plans in “tough ghettos” continue to be implemented even where they no longer meet the relevant criteria.<sup>57</sup>

### **Impact of stigmatization**

49. As set out in the section on “Background” above, there has been much rhetoric in connection with the introduction and implementation of the “Ghetto Package” around residents of “ghettos.” This includes allegations that they tend to hold values (including religious values) and norms that differ from those of the majority and associated negative generalizations about lifestyles.
50. Whilst the current Ministry of Interior and Housing has indicated in the Proposal a desire to finally stop using the term “ghetto,” the voting agreement of 15 June 2021 states that “each party can hold its own opinion on this freely. It is not a political ambition among the parties to influence the usage in general.”<sup>58</sup> Even if the term is repealed, this would simply be a cosmetic change.<sup>59</sup> The grave stigmatization issues arising from the policy remain, with the Proposal further entrenching the supposed problematic nature of “non-Western” background.
51. In their urgent appeal, the UN Special Rapporteurs made it clear that the language used in the “Ghetto Package” tends to stigmatize individuals belonging to or perceived to belong to Denmark’s racial, ethnic, and religious minorities, increasing the risk of higher rates of *violence* and hate crimes, excessive policing and the entrenching of ethnic inequalities

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<sup>56</sup> Farha, Leilani, UN Special Rapporteur on the right to adequate housing, “COVID-19 Guidance Note: 1 Protecting renters and mortgage payers,” 8 April 2020.

<sup>57</sup> This can include circumstances where, for example, the area no longer has a minimum of 1000 residents or meets the socio-economic criteria set out in the housing element of the “Ghetto Package.” Act No. 1167 of 8 June 2021 amending the Common Housing Act, the Common Housing Rent Act, and the Rent Act (Previous tough ghetto areas covered by a development plan). The law takes effect on 1 July 2021.

<sup>58</sup> The Government of Denmark et al., *Blandede boligområder – næste skridt i kampen mod parallelsamfund* [English: “Mixed Housing Estates – Next Steps in the Fight Against Parallel Societies”], 15 June 2021, p. 4.

<sup>59</sup> The Ministry has chosen to replace the terms “ghetto” and “tough ghetto” with “parallel society” and “transformation areas.” The Proposal comes over a year after an admission by the current Minister that “ghetto” is derogatory: DR (Danish Broadcasting Corporation), “Ny boligminister vil undgå ordet 'ghetto,’” 8 July 2019, available at <https://www.dr.dk/nyheder/politik/ny-boligminister-vil-undga-ordet-ghetto>

through law and policy.<sup>60</sup> (emphasis added) In particular “such stigmatizing laws risk intensifying and entrenching xenophobia and racial discrimination against residents in Denmark who are perceived as ‘non-Western.’”<sup>61</sup>

### **Marginalization**

52. As has been noted by the Advisory Committee, Denmark’s inclusion of ‘descendants’ in the existing legislation sends a message that may have a counter-effect on their feeling of belonging and forming an integral part of Danish society.”<sup>62</sup>
53. Rather than achieving integration and bringing people together, the existing legislation and Proposal are thus alienating, resulting in a group of people being treated as second class citizens because of a state-made, arbitrary classification. This is supported by CESCR’s unambiguous conclusion that the categorization of “ghettos” based on “non-Western” background results not only in discrimination based on ethnic origin and nationality but also in further marginalization. CESCR’s recommendations also make it clear that any measures which purport to promote integration must be consultative and not coercive or punitive.<sup>63</sup>

### **NEXT STEPS AND RECOMMENDATIONS**

54. For all of the reasons set out above, we respectfully request CERD to invoke the Procedure and take the following steps:
  - a) Request from Denmark the urgent submission of information on the situation, including:
    - i) the planned timescale for implementation of the Proposal and the rationale for its introduction, in light of the ongoing urgent appeal and recommendations from monitoring bodies including CESCR;
    - ii) the reason(s) for Denmark’s decision not to implement the recommendations of CESCR and other monitoring bodies;
    - iii) the methods Denmark plans to use to measure the change of resident populations in fulfilment of the goals of the “Ghetto Package” and Proposal including in relation to “ethnic origin” as stated in policy papers, given the State’s official position that:
      - a) “non-Western” background is not linked to race or ethnic origin; and
      - b) although the State collects and uses data on “non-Western” background, it does not collect ethnic data;

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<sup>60</sup> Urgent Appeal, page 5. The escalation of violence is a factor to be taken into account in the CERD’s assessment of the significance of the violations of the Convention in light of the gravity and scale of the situation (para. 12 of CERD, Guidelines for the Early Warning and Urgent Action Procedures, Annual report A/62/18, Annexes, Chapter III, revised guidelines adopted at the CERD’s 71st session in August 2007).

<sup>61</sup> Urgent Appeal, page 7.

<sup>62</sup> Secretariat of the Framework Convention for the Protection of National Minorities, Fifth Opinion on Denmark, Advisory Committee on the Framework Convention for the Protection of National Minorities, ACFC/OP/V(2019)003, 29 January 2020, para. 43.

<sup>63</sup> Committee on Economic, Social and Cultural Rights, *Concluding observations on sixth periodic report of Denmark*, UN Doc. E/C.12/DNK/CO/6, 12 November 2019, para. 52.

- iv) details of all laws, policies and proposals including the term “non-Western” background; and
- v) details of the further potential measures referenced in the political voting agreement of 15 June 2021.
- b) Request the Secretariat to collect information from Denmark’s national human rights institution, the Danish Institute of Human Rights;
- c) Adopt a decision including the expression of specific concerns of violations, including as summarized in this submission, along with recommendations for action including:
  - i) The implementation of the recommendations set out by CESCR, including the removal of the definitional element of a “ghetto” with reference to residents from “non-Western” countries and repeal of all provisions that have a direct or indirect discriminatory effect on refugees, migrants, persons belonging to minorities and residents of the “ghettos;”
  - ii) Co-operation and compliance with the UN Special Rapporteurs’ urgent appeal including halting the sale of buildings in Mjølnerparken, at least pending a final judicial determination;
  - iii) Immediate and permanent withdrawal of the Proposal; and
  - iv) A commitment not to introduce any further laws, policies or practices targeting those of “non-Western” or MENAPT background.