

**THIRD-PARTY INTERVENTION OF 22 APRIL 2022 BY THE U.N. SPECIAL
RAPPOREUR ON CONTEMPORARY FORMS OF RACISM, RACIAL
DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE AND THE U.N.
SPECIAL RAPPOREUR 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**

1. INTRODUCTION AND REASON FOR THE THIRD PARTY INTERVENTION

1. This case raises the question of whether the Government’s legal distinction between “Westerners” and “non-Westerners” for purposes of housing redevelopment policy—and resulting evictions mandated by that policy—constitutes prohibited discrimination in the enjoyment of the right to adequate housing based on race, ethnic or national origin, or descent.¹ The intervenors are the United Nations (‘U.N.’) Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the 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 (‘the Special Rapporteurs’). The Special Rapporteurs 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 a legal question at the core of the present case—that is, whether distinction based on “non-Western” background constitutes discrimination on the grounds of racial or ethnic origin under international, regional, and domestic law.
2. 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”² and may not invoke “the provisions of its internal law as justification for its failure to perform a treaty.”³ In its latest review⁴ of Denmark, the Committee on the Elimination of Racial Discrimination noted that, while noting the position of the State that the Convention is a relevant and valid source of law in Denmark despite not being incorporated into the domestic legal order, the Committee was concerned by the very limited number of examples that demonstrate the application of the Convention by domestic courts. Similarly, in its latest review⁵ of Denmark, the Committee on Economic, Social and Cultural Rights (‘CESCR’) – the authoritative body interpreting the provisions of the ICESCR – expressed concern that the ICESCR has not been incorporated into Denmark’s domestic legal order and noted the statement by the State party that its courts and authorities interpret the national rules in such a way as to avoid conflict with the State party’s international obligations. CESCR reiterated its recommendation that the State party take necessary measures to give full effect to economic,

¹ The case involves the approval of a redevelopment plan under Section 168(a) of the Common Housing Act by the Ministry of Interior and Housing. The relevant provisions of the Common Housing Act, alongside other laws, were passed under the “Ghetto Package”, also referred to as “One Denmark without Parallel Societies – No Ghettos in 2030” plan. See UA DNK 3/2020, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25636>.

² Vienna Convention on the Law of Treaties, art. 26.

³ Ibid, art. 27.

⁴ CERD/C/DNK/CO/22-24.

⁵ E/C.12/DNK/CO/6.

social and cultural rights, as enshrined in the Covenant, in its domestic legislation and to ensure their justiciability.

3. The Special Rapporteurs are independent human rights experts appointed by the U.N. Human Rights Council to guide the implementation of these treaties and other international human rights law, bring attention to human rights violations, and examine State practice. The Special Rapporteurs may also intervene in judicial proceedings involving violations of international human rights standards to clarify the meaning and application of those standards. The Special Rapporteurs have been involved in this case since 2020, when they issued a joint communication to the Danish government on the human rights implications of the so-called “Ghetto Package” laws.⁶ They have a special interest in this case because the category of “non-Western immigrants and descendants” and its analogues have been used or proposed in multiple national contexts in Europe. Although governments—including the Danish government—have justified the “non-Western” category as a neutral category, this category is based on descent, racial, ethnic, and national origin and results in prohibited direct and indirect racial discrimination. The category “non-Western” in Denmark has also been shaped by harmful racial, ethnic and national stereotypes and reinforces stigmatization on the basis of race, descent, and national or ethnic origin. The Special Rapporteurs intervene to explain how the use of the “non-Western” category and the so-called “Ghetto Package” laws violate the prohibition against racial discrimination, the human right to adequate housing, and other applicable international human rights law.
4. This third party intervention is submitted 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, to which Denmark has been a party since 10 June 1948. 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.

2. THE CATEGORY “NON-WESTERN” IS BASED ON DESCENT, NATIONAL OR ETHNIC ORIGIN, AND IS A RACIAL CATEGORY, AND ITS USE ENACTS DIRECT AND INDIRECT RACIAL DISCRIMINATION PROHIBITED UNDER INTERNATIONAL HUMAN RIGHTS LAW.

- a. **International Human Rights Law’s Prohibition of Racial Discrimination Includes Direct and Indirect Discrimination on the Basis of Race, Descent, or National or Ethnic Origin.**

⁶ UA DNK 3/2020, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25636>.

5. International human rights law broadly defines prohibited racial discrimination. According to Article 1(1) of 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.*⁷

The grounds for prohibited racial discrimination thus include “race, colour, descent, or national or ethnic origin.” 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.

6. Many of the groups most impacted by racism, xenophobia, and related intolerance⁸ 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.⁹
7. Subsections of Article 1 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”.¹⁰ These carveouts are not applicable in the current case because, as elaborated below, the “non-Western” category targets persons of specific ethnic and national origin, and the category includes both Danish citizens and non-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.
8. 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

⁷ International Convention on the Elimination of All Forms of Racial Discrimination, art. 1(1).

⁸ U.N. Doc. No. A/76/434, para 28, listing the groups enumerated in the Durban Declaration and Programme of Action.

⁹ 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.”

¹⁰ ICERD, arts. 1(2)–(3). *See also* Committee on the Elimination of Racial Discrimination, General Recommendation No. 30, paras 2–4.

¹¹ *L.R. v Slovakia*, CERD/C/66/D/31/2003, para 10.4.

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. The European Union’s own legal framework similarly prohibits direct and indirect discrimination, which it defines as follows:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin;

*(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.*¹⁴

10. Finally, 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.*¹⁵

b. The Category “Non-Western” Is Based on Descent, National or Ethnic Origin, and Is a Racial Category, and Its Use Enacts Prohibited Direct and Indirect Discrimination.

11. 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”.¹⁶ 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.
12. The use of the “non-Western” category to mandate housing redevelopment and distinguish between “vulnerable estates”, “ghettos” and “tough ghettos” constitutes prohibited direct discrimination on the grounds of descent and national or ethnic origin. The Danish government

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.” CERD General Recommendation No. 14, para 2.

¹³ Ibid.

¹⁴ Racial Equality Directive, Directive 2000/43/EC of 29 June 2000, art. 2.

¹⁵ ICERD art. 1(4) (emphasis added).

¹⁶ ICERD art. 2(1).

has created two categories—“Western” and “non-Western”—and divided the world’s population into these two categories on the basis of descent, national and 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.”¹⁷ 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.”

13. 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 a national or 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,¹⁸ and ethnic or national origin are the features captured by the “non-Western” designation.¹⁹ Indeed, the assortment of countries that constitute the “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. To reiterate, the designations “Western” and “non-Western” are not arbitrary nationality or geographic categories but are inextricably linked to and defined by descent, and national and ethnic origin. Importantly, “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. The explicit distinction between “vulnerable estates” and “ghettos” shows a purposeful legal distinction based on the supposed ethnic character of certain areas.
14. The fact that the “non-Western” category includes people of multiple national or ethnic origins does not preclude racial discrimination. Indeed, in a petition brought against Denmark, CERD decided that a measure targeting non-ethnic Danish students, generally, violated the prohibition on

¹⁷ 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>.

¹⁸ 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.

¹⁹ 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).

[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. Where women are seen as less worth than men. Where social control and a lack of gender equality set narrow boundaries for the free development of the individual. 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”.

racial discrimination.²⁰ There is no requirement under ICERD that differential treatment only affect a single ethnic or national origin group in order to qualify as prohibited racial discrimination. It requires, instead, showing that a “distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin” has nullified or impaired enjoyment of a human right, irrespective of whether it is a single national or ethnic origin group or multiple such groups that are affected. The categories “Western” and “non-Western” are ethnic and national origin categories that in the context of the “Ghetto Package” laws result in preferential treatment of individuals of “Western” ethnic and national origin, and place restrictions on individuals of “non-Western” ethnic and national origin.

15. Accordingly, mandating housing demolitions and redevelopment in predominantly “non-Western” communities constitutes direct racial discrimination on the grounds of descent and national or ethnic origin. This state of affairs amounts to racial discrimination on the grounds of descent, ethnicity, and national origin. As discussed below, 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.
16. As CERD 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.”²¹ In light of the current population and demography of Denmark, the “non-Western” category in effect disparately and unjustifiably impacts specific national and 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 national and 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.
17. 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.²² It is important to note that the category

²⁰ *Murat Er v Denmark*, CERD/C/71/D/40/2007.

²¹ *L.R. v Slovakia*, CERD/C/66/D/31/2003, para 10.4.

²² 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)

“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.

3. LABELLING MAJORITY “NON-WESTERN” AREAS AS “GHETTOS” VIOLATES ARTICLE 4 OF ICERD BECAUSE IT PROMOTES OR INCITES RACIAL DISCRIMINATION.

18. The Special Rapporteurs share the view articulated by the Committee on the Elimination of Racial Discrimination that reserving the pejorative terms “ghettos” and “tough ghettos” for majority non-Western neighborhoods “promote[s] or incite[s] racial discrimination” within the meaning of Article 4(c) of ICERD.²³ In other words, referring to areas where large proportions of people from majority non-white countries live as “ghettos” stigmatizes individuals belonging to—or perceived to belong to—Denmark’s racial, ethnic, and religious minorities. Regardless of a resident’s racial or ethnic self-identification, the use of “non-Western” as a proxy for race and ethnicity perpetuates racial discrimination against all residents of so-called “ghettos”.²⁴ It exposes members of these communities to the risk of higher rates of violence and hate crimes. Societal adoption of language that tends to stigmatize minorities correlates with excessive policing and enables discriminatory efforts to entrench ethnic inequalities through law and policy. Furthermore, to the degree that the “non-Western” immigrant or descendant designation suggests that only certain national, ethnic and religious groups are compatible with Danish national identity, the designation is incompatible with Denmark’s international legal commitments to racial and ethnic equality.²⁵ As such, using the

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.” ECRJ Report on Denmark, Fifth Monitoring Cycle (16 May 2017), para 22, available at <https://rm.coe.int/fifth-report-on-denmark/16808b56a4>. ECRJ 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>.

²³ ICERD, art. 4(c). “States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, ... [s]hall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination”.

²⁴ In its most recent Concluding Observations on Denmark, published February 2022, CERD noted *that the terms “Western” and “non-Western” as used in the legislation and policies of the State party without any reasonable grounds may lead to marginalization and stigmatization of those classified as “non-Western”, and that it could create a distinction between those considered to be “real Danes” and the “others” (art. 2). CERD/C/DNK/CO/22-24, para 10.*

²⁵ Specifically, in regards to the Parallel Society laws, the Committee noted that *the additional criterion of having at least 50 per cent of “non-Western” residents leads to such vulnerable areas being classified as “parallel societies” and to the application of more restrictive rules, thus adding a discriminatory ethnic and racial element to these laws, which can result in stigmatization in various areas of life, such as employment, housing and access to services (arts. 3 and 5). ... The Committee recommends*

concentration of individuals of “non-Western” origin as the basis for determining “ghettos” and “tough ghettos” risks inciting racial discrimination, promotes ideologies of racial or ethnic superiority, and remains fundamentally inconsistent with human rights law.

19. The Special Rapporteurs agree with CERD’s analysis that discrimination on the basis of “non-Western” background can lead to the violation of the international prohibition against racial discrimination, increasing stigmatization and promoting or inciting racial discrimination against certain ethnic or racial groups.

4. THE GOVERNMENT’S APPROVAL OF THE REDEVELOPMENT PLAN VIOLATES THE APPLICANTS’ RIGHT TO ADEQUATE HOUSING ON RACIALLY DISCRIMINATORY GROUNDS.

20. 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.” Article 5(e)(iii) of ICERD also 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.
21. 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”.
22. 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.”
23. 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]”.²⁶ Relevant authorities must ensure that evictions are carried out in a

that the State party: (a) Refrain from using the percentage of immigrants and their descendants from “non-Western” countries in a particular area as a basis for applying stricter laws and measures; ... Ibid, paras 12–13.

²⁶ Committee on Economic, Social and Cultural Rights, General Comment No. 7, para 1.

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 affected.²⁷ 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.

24. 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 made that case.
25. 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.”²⁸ The way housing is 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.
26. In a recent report to the UN Human Rights Council,²⁹ 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

²⁷ Ibid, paras 11, 14.

²⁸ See CESCR, General Comment No. 4, para 8(g).

²⁹ U.N. Doc. A/HRC/49/48.

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.³⁰

27. 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”,³¹ especially if it takes the form of racial quotas.³² Inclusionary, voluntary housing clustering should not be confused with exclusionary segregation, which is involuntary and denies the equal enjoyment of human rights. Therefore,

*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.*³³

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.

CONCLUSION

In conclusion, it is submitted:

- that* the use and effect of the category “non-Western migrants and descendants” in the context of the “Ghetto Package” laws constitute prohibited racial discrimination and are incompatible with Denmark’s obligations under international human rights law, including Articles 2 and 4 of ICERD; and
- that* the Applicants are harmed by the violation of their right to adequate housing without discrimination under Article 5(e)(iii) of ICERD and Article 11 of the ICESCR, most notably in the legal security of their tenure, and their right to choose the location of housing and access culturally adequate housing; and
- that* the ambiguities surrounding the definition of “racial or ethnic origin” should be resolved via reference to the complex, pre-existing, and comprehensive legal practice surrounding the International Convention on the Elimination of All Forms of Racial Discrimination and additional human rights treaties.

³⁰ Ibid. para 18.

³¹ Ibid, para 20.

³² Ibid, para 65.

³³ Ibid, para 20.