



## Submission to the United Nations Human Rights Council for its Universal Periodic Review of Denmark

This information is submitted on behalf of

- **LGBT Denmark** – The Danish National Organisation for Gay Men, Lesbians, Bisexuals and Transgendered Persons<sup>1</sup>
- **Trans-Danmark** – Danish National Association of Transvestites and Transsexuals

in the framework of the Universal Periodic Review<sup>2</sup>.

We note,

**That** the Yogyakarta Principles<sup>3</sup> identifies the right to non-discrimination regardless of gender identity and sexual orientation:

”Everyone has the right to recognition everywhere as a person before the law. Persons of diverse sexual orientations and gender identities shall enjoy legal capacity in all aspects of life. Each person’s self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom. No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity. [...]” (Principle 3)

**That** the statement on human rights in regards to sexual orientation and gender identity in the UN General Assembly<sup>4</sup> was signed by 66 states including Denmark.

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<sup>1</sup> LGBT Denmark is an LGBT Denmark is an NGO in special consultative status with the economic and social council of the United Nations

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<sup>3</sup> Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity ([http://www.yogyakartaprinciples.org/principles\\_en.htm](http://www.yogyakartaprinciples.org/principles_en.htm))



**That** Denmark has ratified the Convention on the Rights of the Child.

**That** Council of Europe Commissioner for Human Rights has criticized member countries<sup>5</sup> for insufficient procedures for legal recognition of preferred gender: "Despite ample case law from the European Court of Human Rights in favour of recognition, legal recognition remains a challenging process for many transgender persons in the Council of Europe member states".

**That** the CEDAW committee similarly has recognized the rights and criticized the conditions for legal recognition of preferred gender<sup>6</sup>.

## **Children of same-sex couples**

### *Citizenship*

We find it problematic that the gender of the parents determines, if a child gets Danish citizenship or not. If a foreign woman gives birth to a child in Denmark, then if her partner is a Danish man the child gets Danish citizenship but not if her partner is a Danish woman. In the latter case the child can get Danish citizenship only by naturalisation.

The reason is that the legal status of children of heterosexual couples is determined in the Children's Act whereas the parenthood of the co-parenthood in a same-sex couple is established by means of second-parent adoption, i.e. in the Adoption Act. Thus, although the recognition of parenting of same-sex couples has improved over the years there is still a significant distinction in family law between children of same-sex couples and other children.

We consider it not being in the best interests of the child, that its Danish citizenship is not recognized from the birth as for other children.

### *Non-discrimination*

Furthermore there is a thorough lack of recognition of same-sex couples with children in the administrative practices in all areas concerning children, e.g. registration systems for pregnant women, registration forms for childbirth, and application forms for child care.

Ignoring the diversity of families with children results in discrimination of children of same-sex parents.

## **Recognition of gender identity**

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<sup>4</sup> UN General Assembly, Annex 2008, A/63/635 (<http://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/63/635&Lang=E>)

<sup>5</sup> Strasbourg, 29 July 2009, CommDH/IssuePaper(2009)2: *Human Rights and Gender Identity*, Issue Paper by Thomas Hammarberg, Council of Europe Commissioner for Human Rights (sec. 3.2) (<https://wcd.coe.int/ViewDoc.jsp?id=1476365>)

<sup>6</sup> United Nations, Forty-fifth session, 18 January-5 February 2010, Concluding observations of the Committee on the Elimination of Discrimination against Women, The Netherlands (<http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-NLD-CO-5.pdf>)



### *Legal recognition of gender identity*

Denmark requires hormonal or surgical sex reassignment before legal recognition of gender identity is possible. This is not compatible with human rights provisions on recognition before the law.

Furthermore the access to choose ones name is restricted in regard to the gender the name specifies<sup>7</sup>. To get access to a name of the gender opposite to ones biological sex one has to submit to an assessment at Sexological Clinic, Rigshospitalet University Hospital, and only when diagnosed at the clinic (as transsexual or completely comparable to transsexual) a name change is possible.

The same rules apply for having an 'X' as the gender designation in ones passport<sup>8</sup>.

### *Right to privacy*

All persons living in Denmark are registered in the Danish Civil Registration System. Each individual has an identification number, the cpr number. The number uniquely identifies a person, but at the same time it shows the date of birth and the gender: Even numbers for women, odd numbers for men. As the number is used throughout public administration and even private companies, this is a severe breach of the right to privacy in regard to gender identity. Furthermore the registration system actually contains information on gender separately. There is no justification for exposing the gender in the identification number<sup>9</sup>.

### *Non-discrimination*

It should be mentioned, that Danish law and administration suffer from lack of precision and consistency by not recognising gender identity as a ground for discrimination. Rather cases concerning gender identity are treated in scope of either sexual orientation or gender, which is wrong<sup>10</sup>. Considering that discrimination on grounds of gender identity is eminent<sup>11</sup> it is highly problematic it is not directly addressed in the legislation and administrative practice.

## **Recommendations**

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<sup>7</sup> Name law, Law no. 524 of 24/06/2005, amended by Law no. 350 af 06/05/2009

<sup>8</sup> Pasbekendtgørelse (executive order) no. 1003 of 06/10/2006, and no. 931 of 15/07/2010

<sup>9</sup> See 2007-08 (II) B65, annex 5 and 10, Parliamentary Decision on transgender rights (in Danish)

<sup>10</sup> LGBT Denmark, *The Little Green Book on LGBT*

([http://www.lgbt.dk/fileadmin/site/om\\_foreningen/TheLittleGreenBookOnLGBT.pdf](http://www.lgbt.dk/fileadmin/site/om_foreningen/TheLittleGreenBookOnLGBT.pdf))

<sup>11</sup> Equal and Unequal, The living conditions and wellbeing of gay and lesbian people, bisexuals and transgenders in Denmark, CASA ([http://casa-analyse.dk/files/rapporter-social-arbejdsmarked/2009/equal\\_and\\_unequal.pdf](http://casa-analyse.dk/files/rapporter-social-arbejdsmarked/2009/equal_and_unequal.pdf))



We recommend

**That** all necessary legislative, administrative and other measures are taken to ensure that no person is discriminated on the basis of gender identity or sexual orientation.

Specifically

**That** Denmark amends the Children's Act to reflect the diversity of families and thus to ensure equal rights to all children born in Denmark.

**That** Denmark adjusts the laws regarding legal recognition of preferred gender to comply with recommendations from human rights bodies. This includes legal recognition of gender without sex reassignment, freedom to take a name of own choice regardless of gender indicated by the name, and freedom to decide to have an 'X' as gender specification in the passport.

**That** Denmark ends the use of gender identifying person numbers.

**That** Denmark recognises gender identity as a ground for discrimination.

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**LGBT Denmark**

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