

The Rights of LGBTI Children in Denmark

A shadow report to the UN Committee on the Rights of the Child

Submitted by: LGBT Denmark - The Danish National Organization for Gay Men, Lesbians, Bisexuals and Transgender persons



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Introduction

The present submission is prepared by LGBT Denmark - The Danish National Organization for Gay Men, Lesbians, Bisexuals and Transgender persons (hereafter LGBT Denmark), as a shadow report for the consideration of the UN Committee on the Rights of the Child.

While Danish authorities have taken commendable steps to enhance the protection of LGBTI persons and -children against discrimination, certain inexpedient formal structures remain in place. This report will look further into the challenges faced by LGBTI children and children and LGBT parents, focusing particularly on the following issues: **1) challenges in regard to access to healthcare, 2) inhuman treatment on intersex children and infants, and 3) discrimination in the school system and lack of representation in educational material and the media.**

LGBT Denmark is a non-profit NGO, working for gay, lesbian, bisexual and trans* people's political, social, cultural and workplace equality at every level of society. We seek to work against discrimination on the basis of sexual orientation, gender identity and gender expression, and to function as a dedicated lobby for the purpose of influencing lawmakers, for example in areas such as marriage, parenting rights, medically assisted reproduction for LGBTI persons, and rights for trans* persons.

LGBTI-children, children of LGBTI-parents, and the International Declaration on the Rights of the Child (Article 2)

The rights of and non-discrimination of LGBTI people have been increasingly addressed within UN bodies, and included in various recommendations from treaty bodies, such as the Committee on the Rights of the Child. As civil society organisations and the committee have proven, violations of the rights of LGBTI people and discrimination on the basis of sexual orientation, gender identity and expression, as well as sex characteristics, target children as well as adults¹.

According to the provisions of the Convention on the Rights of the Child, "States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status" (art. 2). The list of the protected grounds, therefore, is not closed. According to several general comments from the Committee on the Rights of the Child, discrimination on grounds of sexual orientation and gender identity should not be allowed by the States Parties in relation to the rights of the child.²

LGBTI children and the health system (Article 24 & 37)

Some formal obstacles remain in the health system resulting in serious mental and physical health issues particularly for trans* and intersex persons, which may raise concerns under article 24.

A recent report released (2015) concluded that particularly trans* persons under the age of 35, have poorer mental health³. The same report showed, that as a consequence of the unresponsive health system, there was a significant level of self-medication without the consultation of medical professionals. LGBT Denmark has knowledge of trans children below the age of 15 who do self-medication. For trans* children the teenage years can be unbearable. Trans boys struggle with growing breast that are not wanted, as well as broader hips and lower end-height than the average boys. Trans girls struggle with unwanted body hair as well as the Adam's apple, a dark voice and a taller end-height than the average girls.⁴ In order to meet the physical and psychological needs of particularly young trans* persons, the government ought to address the lack of recourses.

When treated for gender incongruence, Danish trans* children are subjected to a slow and complicated path in the health system. As the treatment of gender incongruence is regarded as a

¹ International Lesbian, Gay, Bisexual, Trans and Intersex Association: Nolan H (2014), *United Nations Treaty Bodies: References to sexual orientation, gender identity, gender expression and sex characteristics* (Geneva: ILGA, September 2016), page 55-64, available at http://ilga.org/downloads/2014_UN_Treaty_Bodies_SOGIEI_References_clean.pdf

² See Convention on the Rights of the Child: *General comment No. 20 on the implementation on the rights of the child during adolescence*, Committee on the Rights of the Child, December 2016, CRC/G/CG/20. See also Convention on the Rights of the Child: *General comment No. 21 on children in street situations*, Committee on the Rights of the Child, June 2017, CRC/G/CG/21.

³ Holm Johansen, K.B.; Laursen, B.; Juel, K. (2015), *LGBT Sundhed: Helbred og Trivsel blandt lesbiske, bøsser, biseksuelle og transpersoner*, Statens Institut for Folkesundhed, Syddansk Universitet, Københavns Kommune, available at <http://www.kk.dk/sites/default/files/LGBT-sundhed%20%28si-folkesundhed%29%20%282015%29.pdf>, and <http://www.kk.dk/nyheder/lgbt-personer-k%C3%A6mper-med-d%C3%A5rligt-helbred>

⁴ LGBT Denmark (2015), Open letter to the Minister of Health, LGBT Denmark <http://lgbt.dk/wp-content/uploads/Aabent-brev-LGBT-Danmark-til-Sundheds-og-aeldreminister.pdf>

highly specialized field⁵, the resources in the field are scarce, resulting in bottlenecks. As hormone blockers are not an irreversible intervention to the development of the child's physical gender, LGBT Denmark does not recognize the need for all trans* children to be subjected to psychological evaluation and multidisciplinary teams. This only enforces a long period of pain and suffering for many trans* children, and increases the risk that the child will develop unwanted gender characteristics before it is supplied with hormone blockers. Thus, in order for trans* children to have access to "necessary medical assistance and health care"⁶, the government should decentralize treatment, such as the measuring of height and weight, blood tests as well as injections of hormone blockers.

We therefore **suggest that the Committee recommends the State party to decentralize treatment of trans* children, which do not demand high specialization in trans* issues.**

While we commend that the government by January 2017, removed gender incongruence from the list of mental illness, psychological examinations are still widely used in the evaluation and treatment of trans* children. This can be highly degrading of trans* children and reproduces stigma regarding trans* children and gender incongruence. Psychological examinations are only to be used when this is reasoned and should not be regarded as a standard procedure in the examination and treatment of trans* children.

Intersex persons are subjected to inhuman or degrading treatment, which contradicts article 37 CRC, stating: "No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment". This is particularly the case when intersex children as infants are subject to so called "normalising" corrections of the infants' genitalia⁷. In a recent report by Amnesty International, it is pointed out that these are irreversible surgeries that can affect the personal development of the individual, including trauma^{8,9}.

Both the medical intervention on intersex children and the lack of medical help to trans* children, prove that the Danish government does not "ensure the provision of necessary medical assistance and health care to all children", and thus violates article 24 paragraph 2,b¹⁰.

The above might also involve a violation of Denmark's positive obligations towards protecting the rights of intersex persons. Reference is made to the recent recommendation by the UN Committee against Torture that in order to fulfil the obligations in Article 14 and 16 of UNCAT Denmark should¹¹:

(a) *Take the necessary legislative, administrative and other measures to guarantee the respect for the physical integrity and autonomy of intersex persons and ensure that no one is subjected during infancy or childhood to unnecessary medical or surgical procedures;*

(b) *Guarantee counselling services for all intersex children and their parents, so as to inform them of the consequences of unnecessary surgery and other medical treatment;*

(c) *Ensure that full, free and informed consent is respected in connection with medical and surgical treatments for intersex persons and that non-urgent, irreversible medical interventions are postponed until a child is sufficiently mature to participate in decision-making and give full, free and informed consent;*

⁵ Sundheds- og ældreministeriet (2014), *Vejledning om udredning og behandling af transkønnede*, VEJ 10353 af 19/12/2014, §3, available at < <https://www.retsinformation.dk/pdfPrint.aspx?id=167172>>

⁶ Article 24 paragraph 2b CRC

⁷ Region Midtjylland (no year), *Intersex – Usikkert køn*, from < <https://pri.rn.dk/Sider/11732.aspx>>. See also Amnesty International (2017) "First, do no harm" p. 10-11, available at < <https://amnesty.dk/media/3078/first-do-no-harm.pdf>>

⁸ Amnesty International (2017) "First, do no harm" p. 45-46, available at < <https://amnesty.dk/media/3078/first-do-no-harm.pdf>>

⁹ As pointed out in the UN's fact sheet on "The Right to Health", the right to health includes "the freedom to be free from non-consensual medical treatment", see Office of the High Commissioner on Human Rights & World Health Organization (2008), *The Right to Health, Fact Sheet nr. 31*, p. 3, available at <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf>.

¹⁰ See Article 24 paragraph 2,b CRC

¹¹ Concluding Observations, paragraph 43.

(d) Provide adequate redress for the physical and psychological suffering caused by such practices to intersex persons.

We therefore **suggest that the Committee recommends the State party to ensure that procedures and practices within the public health care systems take into account the particular needs and vulnerabilities of LGBTI persons in order to prevent inhuman or degrading treatment, and to ensure the highest attainable standard of health to all children.**

LGBTI Children and Danish Law (Article 2)

The Danish legislation is inadequate with regard to protection of LGBTI (lesbian, gay, bisexual, trans*, intersex) children. By way of example, the legislation does not specify that it is illegal to discriminate on the basis of sexual orientation, gender identity and expression or sex characteristics in all contexts (see further below). While the law includes the prohibition to discriminate in the workplace, this does in many cases not adequately protect specifically trans* or intersex children.

Furthermore, as the illegality of discrimination on the basis of sexual orientation is limited to the work place, organisations and individuals cannot report other cases regarding discrimination that is taking place in the public sphere to the Danish Board of Equal Treatment.

We suggest more focus on cases of discrimination with more thorough investigations and access to justice before the courts. It should be easier to bring claims in cases related to discrimination on the basis of gender identity, gender expression or sex characteristics. Likewise, to include the prohibition to discriminate on the basis of sexual orientation, gender identity and expression or sex characteristics in non-discrimination and equal treatment legislation, would enhance the legal protection of LGBTI children in the public sphere and simplify the process of reporting cases to the Danish Board of Equal Treatment.

We therefore **suggest that the Committee recommends the State party to adopt necessary changes or additions to the legislation, in order for it to sufficiently protect LGBTI children from discrimination or inhuman treatment.**

Trans* children and legal gender (article 3 & 12)

Furthermore, The Danish government does not recognize the true gender identity of trans* children. The Danish health insurance card is normally used as method for identification of children, e.g. when going to the library or at the hospital. As the Danish government does not allow trans* children to change the gender marker in their birth certificate, such everyday situations can create stigmatisation for trans* children as they are identifying themselves. Most trans* children have experienced situations where a medical secretary or librarian have expressed that they must have received the wrong health insurance card, as they could not understand the discrepancy between the child's legal gender and gender expression. Likewise, as the legal gender is stated in the passport, trans* children also experience uncomfortable situations in passport control.

We therefore **suggest that the Committee recommends the State party to make it possible for trans* children, with parental consent, to change the gender marker in their passport and health insurance card. This should be possible without interference from a judge, medical criteria or third party intervention.**

LGBTI children, children of LGBT parents and the school system (Article 13, 17 & 19)

According to a report from the European Union Agency for Fundamental Rights (2013) on the situation for LGBT persons in Europe, 84% of all Danish respondents had heard negative comments or seen negative conduct due to a schoolmate's perceived LGBT status during their schooling before the age of 18. 63% of the Danish respondent answered that they often or always disguised or hid that they were LGBT during their schooling until the age of 18¹². While 74% of LGBT children of Danish ethnicity are open about their sexual orientation or gender identity to one or more schoolmates, this only apply to 56% of LGBT children with other ethnic backgrounds than Danish¹³.

This shows a tendency of bullying of LGBT children and that Danish LGBT children do not experience that they can express their sexual orientation or gender identity in their school environment. This may be seen as a violation on article 19 and article 13 paragraph 1.

Negative and degrading language based on sexual orientation and gender identity, gender expression and sex characteristics cannot only harm the mental health of LGBT children, but also that of children of LGBT parents. In order to prevent LGBT children from falling behind, school dropouts and increase LGBTI children and children of LGBT parents' mental health, it is important to ensure school environments where LGBTI children feel included, and not framed as abnormal.

Some of the discrimination based on sexual orientation and gender identity, can be due to a lack of representation of LGBT persons in school material as well as in the media. Article 17 states that the State party shall ensure diversity in the information and material that children access. For LGBTI children and children of LGBTI parents shall have access to a diversity of information that promotes their social and moral well-being, school material ought to include more diversity in regard to sexual orientation, gender identity and expression, and sex characteristics. Also LGBTI families need better and more frequent representation in school material.

As gender norms also reflect on how children understand sexual orientation, gender identity, gender expression and sex characteristics, it is also important that the media and school material do not reproduce traditional gender stereotypes, on how people are supposed to act and interact based on their gender.

We therefore suggest that the Committee recommends the State party to ensure greater representation of LGBTI characters and include more and better information on sexual orientation, gender identity and expression, and sex characteristic in school material and education.

We furthermore suggest that the Committee recommends the State party to ensure that all schools have access to education facilitated by LGBTI organisations, which has a critical stand towards society's standard norms, and educate about sexual orientation, gender identity and expression, and sex characteristics.

¹² FRA (2013), *EU LGBT survey, Results at a glance*, p. 19, available at < <http://fra.europa.eu/en/publication/2013/eu-lgbt-survey-european-union-lesbian-gay-bisexual-and-transgender-survey-results>>

¹³ Følner, Dehlholm & Christiansen (2015), *Nydanske LGBT-personers levevilkår*, p. 66, available at < http://www.alsresearch.dk/uploads/Publikationer/Nydanske_LGBT-personers_levevilkkaar.pdf>