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## Comments on the Draft General Comment on children in street situations

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### Submission of the Danish Government

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The Danish Government welcomes this opportunity to submit comments on the Draft General Comment on children in street situations. The Danish Government commends the Committee for its initiative in drafting the General Comment and considers that the General Comment will provide valuable guidance to State Parties in the implementation of the Convention.

The Danish Government hereby submits its written submission on the draft General Comment. Where no specific comments are provided on issues discussed in the draft General Comment, this should not be interpreted as either agreement or disagreement with the substance of the draft General Comment.

Furthermore, the Danish Government would first like to underline the importance that it attaches to the Convention and reaffirm its commitment to comply with Denmark's obligations under the Convention.

As a general remark, Denmark strongly urges the Committee to revise the description of the situations children in streets faces in order for the General Comment to accurately reflect the disparities among Member States. In that context the Danish Government would like to suggest that it appears from para. 1 *Rationale for the general comment*, that children in street situations *may* experience violations of a large majority of the Conventions' articles.

Furthermore, the Danish Government would like to suggest the following clarification with regard to para. 2 *Terminology*: "... and a wider population of children who have formed strong connections with public spaces and for whom the street due to a specific vulnerability plays a vital role in their everyday lives and identities".

With regard to para. 8 *Legislative and policy review*, the Danish Government would like to suggest an alteration in the second sentence concerning the recommendation for immediate abolishment of the criminalization of certain behaviors. It is suggested that the wording "abolish offences that criminalize and disproportionately affect children in street situations such as begging, breach of curfews, loitering, vagrancy, running away, being a victim of commercial sexual exploitation, and so-called moral offences such as having sex outside of marriage" is further differentiated as the current wording covers types of behavior of very different nature. Whereas "being a victim of commercial sexual exploitation" and "so-called moral offences such as having sex outside the marriage" concern respectively abusive actions towards a child or the



criminalization of actions within the private sphere, acts such as begging, loitering and vagrancy typically take place in the public sphere and as such they are often considered minor offences. As regards the latter, it should be noted that States may have legitimate reasons to criminalize such types of activities out of consideration for public order.

In the view of the Danish Government, the General Comment should allow for a more differentiated view on country situations and that of children in street situations in any given country by suggesting the abolishment of criminalization of begging, breach of curfews, loitering and vagrancy where appropriate.

A more specific focus and the insertion of the wording "where appropriate" is therefore suggested following which the relevant subordinate clause would read as follows: "States should immediately: ...; *where appropriate* abolish offences that criminalize and disproportionately affect children in street situations such as begging, breach of curfews, loitering and vagrancy; ...".

In the view of the Danish Government, the aim of the draft General Comment on children in street situations must be to address the particular situation and vulnerabilities of such children. The draft General Comment goes beyond this scope when recommending the general decriminalization of behavior, which by States may be deemed appropriate and necessary to criminalize for reasons of i.a. public order as well as consistent with international obligations. It is thus the prerogative of any State to criminalize i.a. begging or loitering. In that context, it is recalled that Article 40 concerning the rights of every child alleged as, accused of, or recognized as having infringed penal law should be respected.

Under Danish law, begging or permitting someone from one's household under the age of 18 to beg despite being cautioned by the police, is criminalized. However, it is a general principle under the Danish Criminal Act that acts committed by children under the age of 15 years are not punished. Furthermore, when determining a sentence for a young person at the age of 15-18 years, it must normally be considered a mitigating circumstance that the offender had not attained the age of 18 years when the act was committed; or that the act was committed as a consequence of coercion, fraud or exploitation of the offender's tender age or substantial financial or personal problems, lack of insight, rashness or an existing dependency relationship. It is noted that the Danish Criminal Code also protects children from being pressured into begging by criminalizing the person who permits such behavior of a child belonging to the household, inter alia a parent or other person responsible for the child, and as such protects the child from abuse.

An obligation for States to decriminalize the types of behavior relating to public order mentioned in para. 8 can in the view of the Danish Government not be derived from the wording of the Convention. Such an obligation would not allow sufficient margin of appreciation for States to consider the best interest of children in street situations, including the appropriateness and proportionality of applying the criminalization of the mentioned types of behavior to children in street situations.

The General Comment should allow for the differentiation between situations where begging is the only means of livelihood for children in street situations and where such children are entitled to receive social protection from respective authorities depending on their specific circumstances.

It should also be considered that in the case of children in street situations, contact with the police will often lead to the situation of the child being brought to the attention of the proper authorities, including those responsible for the social protection of children.



As a result of the above, it is suggested that the Committee addresses decriminalization of being a victim of commercial sexual exploitation, and so-called moral offences such as having sex outside of marriage in a separate sentence. Finally, the Committee is encouraged to consider specifying the wording “running away”, as it is unclear whether this refers to the running away from home or from authorities, including the police.

Finally, with regard to para. 21 *Eliminating discrimination*, the Danish Government suggests that the last sentence in the paragraph is changed to the following: “upon request from the media the state authorities should provide sufficient and correct data on children in street situations”.

*Final remarks*

The Danish Government would in general and in light of the abovementioned like to invite the Committee to clarify the parts of the draft General Comments which set out the scope of the legal obligations of the State Parties under the Convention. The clarification should be made with due regard to the states' margin of appreciation.

Denmark reiterates its firm support for the work of the Committee and avails itself of this opportunity to renew to the Committee the assurances of its highest consideration.