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Submission to the United Nations Committee against Torture  
in relation to the Committee's adoption of LOIPR concerning eighth periodic report of Denmark

DENMARK  
29 January 2018

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RETSPOLITISK  
FORENING  
Danish Law Association

HELSINKI COMMITTEE

ANTI TORTURE  
SUPPORT FOUNDATION (ATSF)



International  
Rehabilitation  
Council for  
Torture Victims



kvinderådet



## Introduction

The Coalition of NGOs in Denmark (the Coalition) is making this submission prior to the Committee's adoption of List-of-Issues prior to reporting (LOIPR) for Denmark during its upcoming session.

The Coalition is composed of the following 18 organisations:

- Anti-Torture Support Foundation (ATSF)
- Association of Aliens Law Lawyers
- Better Psychiatry – National Association of Relatives
- Danish Law Association
- The Danish Refugee Council
- Disabled People's Organisations Denmark (DPOD)
- DIGNITY – Danish Institute Against Torture
- The Danish Helsinki Committee for Human Rights
- International Rehabilitation Council for Torture Victims
- Joint Council for Child Issues
- KRIM – National Association
- Intersex Denmark
- LGBT Denmark
- OASIS – Treatment and Counselling of Refugees
- Rehabilitation Centre for Torture Victims – Jutland
- Refugees Welcome
- United Nations Association Denmark
- Women's Council in Denmark

In advance of the Committee's examination of Denmark in November 2015, we submitted a report to this Committee (Alternative Report) expressing concerns that in many areas, improvements were lacking and the recommendations of the Committee, other UN treaty bodies and the European Committee for the Prevention of Torture (CPT)<sup>1</sup> had not been implemented. The Committee published its Concluding Observations on 4 February 2016<sup>2</sup> (COs) with 30 specific recommendations to Denmark – of which four principal subjects of concerns were identified in relation to which implementation was a priority and in relation to which implementation should occur within a year. In response to Denmark's follow-up report of 9 December 2016, the Coalition submitted its follow-up report in March 2017.

In addition, since the last examination in November 2015, Denmark has received several decisions in individual cases in which the Committee concluded that Denmark did not fully

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<sup>1</sup> Last visit to Denmark was undertaken from 4 to 13 February 2014, see Report of 17 September 2014 (CPT/Inf (2014)).

<sup>2</sup> CAT/C/DNK/CO/6-7.

implement Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture) – most recently decision of 21 September 2017.<sup>3</sup> The lack of implementation of some individual decisions by the Committee related to Article 3 of the Convention against Torture is of concern for the Coalition.

We reiterate our concern of lack of progress in legislation and/or practice in various areas and even further restrictions of the rights of persons who may fall within the scope of the Convention against Torture, notably within the following areas (see further below):

- The lack of effective protection of the rights included in the Convention against Torture due to Denmark's lack of incorporation of the Convention into Danish legislation.
- The rights of asylum seekers and refugees have been further restricted, including for those living on "tolerated stay" indefinitely.
- The use of solitary confinement as a disciplinary measure has increased significantly in the last two years (2016-2017) - even when used for more than 14 days. This is contrary to international standards and the Committee's recommendation to abolish such use of solitary confinement.
- The use of coercive treatment for psychiatric patients, including children, is maintained on a high level – and has increased during the last years - despite the recognition that the use is far too frequent and widespread.

We welcome that Denmark has followed up on its commitment to register cases submitted to the Independent Police Complaint Authority that fall within the scope of the Convention against Torture (see below).

We would also like to express our concern that Denmark has not yet indicated which of the Committee's recommendations that will be implemented and no plan of implementation has been submitted by the Danish government to the Committee, as recommended in the Committee's follow-up Guidelines.

Please find below pertinent issues within our areas of expertise that raise concerns in relation to the full implementation of various provisions of the Convention against Torture.

We would like to emphasize that the Coalition highly appreciates the on-going dialogue with the Ministry of Foreign Affairs and the moral and financial support provided to civil society in Denmark.

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<sup>3</sup> CAT/6/61/D/625/2014.

## Articles 1 and 4

### 1.Lack of Incorporation of the Convention

There have been no changes in Denmark's position on incorporating the Convention against Torture into Danish law. In 1987 when Denmark ratified the Convention against Torture, it was concluded that Danish legislation and practice was in accordance with the Convention. However, the context has changed over the last 30 years, and Denmark is required continuously to assess whether its international legal obligations *effectively* are implemented in practice and whether an incorporation of the Convention into Danish law would be required today. We have attached a legal analysis on the consequences of the lack of incorporation of the Convention into Danish law (Annex 1).

Suggested issues:

- Will the State Party reconsider its position on incorporation?
- Can the State Party explain whether the key assumption regarding compliance at the time of ratification is still valid and whether its international legal obligations under the Convention against Torture are *effectively* implemented in practice and in all areas mentioned in this report?

### 2.No Criminalization of Torture

In its previous Concluding Observations, the Committee again expressed its concern about the absence of a specific crime of torture in the Danish Criminal Code and the Military Criminal Code (COs para. 11). There have been no changes in Denmark's position on this issue. However, in the view of the Coalition, the absence of a definition of torture and a criminalization of torture remains a violation of Denmark's legal obligations under the Convention against Torture (Article 4).

Suggested issue:

- Will the State Party reconsider its position on lack of criminalization of torture?

### 3.Lack of legislative clarity about Statute of Limitation in Civil Cases regarding Torture

On 22 August 2016, the Eastern High Court concluded that a case brought by 23 Iraqis from Basra against the Danish Ministry of Defence related to alleged torture in Iraq in November 2014 should not be barred by the statute of limitation included in Danish legislation – *inter alia* with reference to the standards of the Convention against Torture (see Annex 2). The Danish Ministry of Defence had argued for the use of the statute of limitation regulation in this case. On 14 June 2017, the Eastern High Court concluded that the normal statute of limitation rules should not be applied in a case related to the due diligence obligations of a local council (Slagelse) in relation to sexual abuse of some juveniles<sup>4</sup>. As a result of this judgement, the government prepared legislative proposal of 13 June 2017 amending the statute of limitation in cases of sexual abuse. The law is expected to be adopted shortly<sup>5</sup>.

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<sup>4</sup> Reference is also made to the judgement of the Eastern High Court of 11 December 2015 regarding children at the institution Godhavn who were subjected to ill-treatment - in which the court concluded that the case was barred by statute of limitation.

<sup>5</sup> L 31 that will apply as of 1 January 2018.

Suggested issue:

- Will the State Party take the necessary legal measures to ensure that civil proceedings related to torture and ill-treatment are not subject to statutes of limitations, as recommended by the Committee in its previous Concluding Observations, para. 17?

## Article 2

### 1.Fundamental safeguards

In its previous Concluding Observations, the Committee expressed its concern about the implementation of fundamental legal safeguards in all cases upon arrest and during detention and about the lack of a mechanism for monitoring and keeping records of compliance with the relevant regulations (para. 15) (see below regarding asylum seekers).

Suggested issue:

- Which measures has the State Party taken to implement this recommendation?

### 2.The use of restrictions on remand prisoners' contacts with the outside world

This issue was raised by the Coalition in its Alternative Report and we remain concerned about the situation for pre-trial detainees who - despite not being sentenced - enjoy less protection in various areas than inmates serving sentences, as recently documented by professor Peter Scharff Smith and Janne Jacobsen.<sup>6</sup> Especially we highlight the severe restrictions on remand prisoners' contacts with the outside world (e.g., visits, letters, and telephone calls) and refer to examples of pre-trial detainees who have been in detention for a year without the right to a telephone call and who are entitled to a short visit of only 30 min pr. week monitored by a police officer. These restrictions make it difficult for pre-trial detainees to maintain contact with their children and other family members.

Suggested issues:

- Will the State Party explain whether initiatives will be taken to ensure that the above-mentioned restrictions are used only as an exceptional measure based on concrete grounds and only when strictly necessary in the interest of criminal investigation?
- How will the State Party ensure that the use of restrictions on remand prisoners' contact with the outside world is not in violation with the state's obligations under Article 2 and 16 of the Convention against Torture?

### 3.Use of Pre-trial Detention

Pre-trial detention is regulated in the Danish Administration of Justice Act (Chapter 70). Denmark has traditionally used pre-trial detention more extensively than neighbouring countries, including Sweden and Norway. The proportion of pre-trial detainees continues to be around 30% of the total prison population.<sup>7</sup> Pre-trial detention can have severe

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<sup>6</sup> Varetægtsfængsling: Danmarks Hårdeste Straf (2017).

<sup>7</sup> Ib.

psychological consequences for the detainees, including children. In particular the first weeks of pre-trial detention entails increased vulnerability, as identified in studies establishing evidence for a relatively high number of suicides during pre-trial detention. The uncertainty about the length of the pre-trial detention period is another important factor.

Suggested issues:

- Will the State Party provide information on the use of pretrial detention and efforts to ensure that pre-trial detention is used as a measure of last resort, in particular for minors?
- Will the State Party explain the procedure for alternative measures to pretrial detention and how it is ensured that the decisions imposing pretrial detention are based on objective criteria and supporting facts?

## Article 3

### 1. Asylum seekers and refugees

#### *Implementation of the principle of non-refoulement by Denmark*

The Committee has repeatedly called on the State Party to bring its legislation and practice relating to deportation of immigrants and asylum seekers in line with the principle of non-refoulement. The Coalition remains concerned about the implementation of the principle in practice, including in relation to vulnerable individuals (see COs para 21).

In addition, the Committee's request for interim measures is not always followed by the Danish Refugee Appeals Board and we refer to a recent decision by the Danish Supreme Court not to grant interim measures to a petition about this issue (see Annex 3).

Moreover, the Coalition would like to highlight the change of practice of the Refugee Appeals Board in the past year in following up on cases in which the Committee or one of the other UN Committees have concluded that deportation would constitute a breach of the principle of non-refoulement. Previously, standard procedure was for the Refugee Appeals Board to reopen the case, and until a few years ago the Board would normally in these cases grant asylum. However, according to our information, the Board has since December 2016 in at least seven cases (including two decided by the Committee against Torture) decided to reject asylum - after reopening the case - and to decide that the person could forcefully be deported.<sup>8</sup> The Refugee Appeals Board has on several occasions in the past year stated that decisions by UN committees while not being legally binding are taken very seriously. The Coalition is concerned that the lack of implementation of UN decisions will result in violation of the principle of non-refoulement.

Finally, we refer to Denmark's lack of implementation of the judgement by the European Court of Human Rights, *Paposhvili v. Belgium*<sup>9</sup>, and raise concern that deportation of rejected asylum

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<sup>8</sup> Refugee Board decision of 14 March 2017 (<http://www.fln.dk/da/GlobalMenu/Nyheder/Nyhedsarkiv/2017/04042017.aspx>) and decision of 23 August 2017 (<http://www.fln.dk/da/GlobalMenu/Nyheder/Nyhedsarkiv/2017/29092017.aspx>)  
<sup>9</sup> Judgement of 13 December 2016 in case no. 41738/10.

seekers who are seriously ill, including severely traumatised victims of torture, may raise an issue in relation to Article 2, 3 and 16 of the Convention against Torture. It should be mentioned that the Ministry of Immigration and Integration is currently reopening cases and attempting to locate the seriously ill individuals who since December 2016 were deported after rejection of humanitarian residence permits.

Suggested issues:

- Will Denmark provide information on the implementation of the principle of non-refoulement in practice by Danish authorities?
- How will Denmark ensure that the best practice regarding Article 3, as outlined in the Committee's forthcoming General Comment No. 3, will be implemented by Danish authorities ?
- Will Denmark confirm its intention to implement current best practice in relation to rejected asylum seekers who are seriously ill ?
- Will Denmark explain its position regarding interim measures and individual cases decided by the Committee ?

#### *Screening of and assistance to asylum seekers who are victims of torture*

This issue also relates to article 13 and 14, as noted by the Committee in its previous COs (para 22-23). The Coalition remains concerned about the lack of a procedure for the systematic screening and medical examination of alleged torture victims by qualified personnel throughout the asylum process. This may affect the services provided to asylum seekers during the asylum procedure and the authorities' determination of asylum.

Suggested issues:

- Will the State Party explain whether the above-mentioned recommendation by the Committee against Torture will be implemented?
- Will the State Party provide statistics on the number of medical examination of alleged torture victims requested by the Immigration Service and the Refugee Appeals' Board in the last decade ?
- Will the State Party explain when it consider a medical examination of alleged torture victims necessary for the determination of credibility of the asylum seeker and the merits of a case?

#### *Deportation of vulnerable individuals*

There have been a number of cases where extremely vulnerable asylum seekers have been deported without further examination or consideration to previous experiences of torture or ill-treatment. By way of example, a young man from Afghanistan had during imprisonment as an asylum seeker in Bulgaria experienced severe violence which caused him to lose his hearing on one ear and made him show signs of PTSD. He tried to commit suicide several times in Denmark. The Danish Refugee Appeals Board did not find that he was particularly vulnerable and did not seek to clarify his health further before deciding to deport him. Another example related to an Iraqi national who had severe head damage due to a suicide bomb attack in Iraq. Therefore, he had problems remembering details and specific time of various incidents when explaining his asylum motive. He was rejected asylum due to lack of credibility and

subsequently deported to Baghdad. It is worth noting that he was never examined by a doctor or a psychiatrist in relation to his head damage.

Suggested issues:

- Will the State Party explain the practice for deportations of rejected asylum seekers, including vulnerable persons, and how the State Party ensures that its obligations under the Convention against Torture, including Article 3 and 16, are fully implemented ?
- Will the State Party take steps to put in place a mechanism to monitor the situation of vulnerable individuals and groups in receiving countries after their deportation (para 21) ?

## 2. Diplomatic Assurances

A decade ago, Denmark used a diplomatic assurance in the case regarding deportation of the Danish citizen Niels Holck who was charged with terror in India. However, the decision was overruled by the Eastern High Court (ruling of 30 June 2011) and Niels Holck was not deported to India. The current government has mentioned that it will attempt to use diplomatic assurances in relation to persons on tolerated stay. The media has reported negotiations with Morocco and Turkey.<sup>10</sup> During the discussions of the forthcoming General Comment No. 1, Denmark made the argument that diplomatic assurances could be used. In light of this latest development, the Coalition remains concerned that Denmark will attempt to use diplomatic assurances in the future.

Specific issue:

- Will Denmark clarify that it will respect its non-refoulement obligations and not use diplomatic assurances as an instrument to modify the determination of the Convention ?

## 3. Transfer of detainees in armed operations abroad

Regrettably, the Danish government decided in July 2015 to end the Commission of Inquiry on Denmark's participation in the armed conflicts in Iraq and Afghanistan whose mandate was amongst others to assess if Denmark had adhered to its international obligations concerning the handling of persons who had been captured and detained by Danish troops and later transferred to Iraqi or Afghan jurisdiction. The total number of persons that Denmark had transferred to local or international forces during the two conflicts never became known.

Denmark has now published the Danish Military Manual. However, the Coalition is of the opinion that this Manual does not provide concrete guidance on how Denmark will ensure *in practice* the full compliance with article 3 of the Convention with regard to the transfer of detainees, including detainees in custody of the State party's military forces, wherever situated, even if the State party's forces are subjected to operational command of another State. We also refer to the Committee's recommendation para. 19 of COs.

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<sup>10</sup> Article in the Danish newspaper Jyllandsposten: <https://jyllands-posten.dk/politik/ECE9442403/danmark-forhandler-i-hemmelighed-om-udlevering-af-terrordemt/> Article in Danish newspaper Politiken regarding Musa Dorgan: <https://politiken.dk/indland/art6015969/Danmark-vil-udlevere-tidligere-d%C3%B8dsfange-til-Tyrkiet>



Suggested issues:

- How will the State Party ensure that the standards of Article 3 of the Convention against Torture is implemented in current and future military operations ?
- How many detainees has Denmark transferred to local or international forces during recent military operations?

## **Article 10**

### 1. Training on how to identify signs of torture and ill-treatment

We remain concerned about the lack of specific education and training on how to identify signs of torture and ill-treatment among relevant personnel, including personnel working with asylum seekers and refugees, health professionals and students of medicine.

Suggested issues:

- How will the State Party strengthen the relevant education and training programmes?
- Has the Istanbul Protocol of 1999 effectively become an integral part of the training provided to physicians and all other professionals involved in the investigation and documentation of torture?

### 2. Training/educational programmes related to the Convention against Torture

There is no data on who receive training related to the Convention against Torture, including staff within the Prison Administration, and which training/educational programmes that contain the Convention. Such data is important in order to ensure the effective implementation of Article 10 in Denmark.

Suggested issue:

- Will the State Party provide information on training related to the Convention against Torture and to whom such training is provided – and whether it is planning to develop and implement a methodology to evaluate the implementation of its training/educational programmes and its effectiveness and impact on the reduction of cases of torture and ill-treatment?

### 3. Training of medical professionals and personal in psychiatric hospitals and care institutions

We are concerned about the lack of education in alternatives to coercive and involuntary treatment. The number of such treatment is maintained on a high level (see further below).

Suggested issue:

- Will the State Party explain whether it will take steps to establish educational initiatives with the specific purpose to implement alternatives to coercive and involuntary treatment?

## Article 11

### 1. Investigative interviewing and audio-visual recording of police investigations

A number of European countries, including Norway and the United Kingdom, use investigative interviewing. However, as far as the Coalition is aware, Denmark has not taken any steps to review its interrogation rules and to consider implementing this internationally recognized best practice.

Suggested issue:

- Will the State Party explain its procedure for reviewing police investigations and whether it will consider implementing the above-mentioned best practice?

### 2. Solitary Confinement

This issue also relates to article 2 and 16 of the Convention. Various forms of solitary confinement are used in Denmark, as explained in our Alternative Report<sup>11</sup>: Exclusion from association; voluntary exclusion from association; isolation in a security cell (*sikringscelle*), possibly under forced physical restraint; solitary confinement as a disciplinary sanction; and solitary confinement of minors.

Solitary confinement is increasingly being used as a disciplinary measure in Danish prisons. This is documented in official statistics and was discussed at the Conference on the Use of Solitary Confinement held in Copenhagen in April 2017 (see Annex 4). Moreover, DIGNITY presented its concerns to the Legal Committee in the Parliament in April 2017 (see Annex 5).

It is worth noting the Danish Sentence Enforcement Act has been amended so that solitary confinement as a disciplinary measure is mandatory whereas before the prison authority had the discretion to use the measure. Moreover, the use of such measures is now applicable in relation to the possession and use of mobile phone (since August 2016), smoking in the cell (since April 2017) and use of offensive language (since September 2017). In light of these developments and the policy of the current Minister of Justice, it is of no surprise that the use of solitary confinement increased to 2995 cases in 2016 (unconditional use of the measure) and to 2468 in the first eight months of 2017 (until 1 September 2017)<sup>12</sup> and that the use of long term (more than 14 days) solitary confinement increased significantly to 236 cases in the first eight months of 2017 (only 8 cases in 2015).

Suggested issues:

- How will the State Party implement the recommendations of the Committee against Torture - and other UN Committees – to abolish the use of solitary confinement as a disciplinary measure, including in relation to minors?

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<sup>11</sup> See Alternative Report page 32-42.

<sup>12</sup> Annual Report 2016 by the Danish Prison Authority.

- How will the State Party success in reducing the use of other forms of solitary confinement to a measure of last resort, for as short a time as possible under strict supervision and with a possibility of judicial review?

## **Articles 12 and 13**

### 1. Obligation to report torture

In its previous COs, the Committee recommended Denmark to establish an obligation for medical professionals to report torture and ill-treatment (COs para 39).

Suggested issue:

- What steps has Denmark taken to implement this recommendation?

### 2. Data Collection

This issue also relates to article 2, 14 and 16. The Danish Independent Police Authority has begun to register the number of submitted complaints related to torture and ill-treatment (4 cases in 2016 and 1 case in 2017 mentioned to DIGNITY).

Suggested issue:

- Will Denmark take steps to make such information publicly available?

## **Article 14**

### Redress and reparation for victims of torture and other forms of ill-treatment

#### *Victims during armed conflicts*

Denmark's participation in the armed conflicts in Iraq and Afghanistan has illustrated that it is cumbersome for victims of torture to have access to justice before Danish courts. Since 2011, a court case has been pending at the Danish Eastern High Court in which 23 Iraqi Sunni Muslims from Basra, who in November 2004 were transferred from Danish troops to Iraqi forces, claim that they were tortured by the Shia Iraqi forces after the transfer. They now request compensation from the Danish Ministry of Defence. In each case, an examination in accordance with the Istanbul Protocol was undertaken by independent experts. After a lengthy process of procedural hurdles, including in relation to statute of limitations (see above) and request for financial guarantee of 8.000 US for each detainee, the court hearings in the case is now taking place in the Eastern High Court (see further Alternative Report, page 20). The plaintiffs have further noted the challenges in obtaining documentation from the Ministry of Defence and the lack of equality of arms between the plaintiffs' lawyer and the lawyer representing the state.<sup>13</sup>

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<sup>13</sup>See further [www.iraktortursagen.dk](http://www.iraktortursagen.dk)

Suggested issue:

- The State Party should explain how it will ensure that the effectiveness of rights of victims of torture and ill-treatment, as stipulated in Article 14, are fulfilled in law and in practice when acting extraterritorially.

#### *Statistics on victims of torture in Denmark*

There are no official data on the total number of victims of torture living in Denmark. It is estimated that approximately 30% of asylum seekers are victims of torture. Various centers in Denmark, including three members of the Coalition (RCT Jylland, Oasis and DIGNITY), provide treatment and rehabilitation to victims of torture who live in Denmark. DIGNITY has assessed that victims who are referred to DIGNITY have waited in average 15,7 years before they receive treatment. A recent legislative proposal of 18 January 2018 suggests that refugees would have to pay for interpretation when accessing health services.<sup>14</sup> This may in practice affect their access to such services.

Suggested issue:

- Will the State Party provide information on the number of victims of torture living in Denmark and their situation, including the total number of victims receiving treatment and rehabilitation each year; what are their residence status; what is the average time from arrival in Denmark until victims access services and at what point in the asylum process victims can access services?

## **Article 16 – and other provisions of the Convention against Torture**

### 1 : Asylum seekers and refugees

#### *Administrative Detention*

Administrative detention of foreigners by the police continues to be permitted under the Danish Aliens Act and it is for example being used against rejected asylum seekers awaiting deportation. Lengthy administrative detention without basic safeguards would present a severe risk of arbitrary deprivation of liberty, and may also raise concerns in relation to the Convention.<sup>15</sup> Despite the Committee's recommendation to Denmark to use administrative detention as a measure of last resort and if used to reduce the length of such detention of asylum seekers, the measures continue to be used, including against rejected asylum-seekers who are detained at Ellebæk (as of 1 February no longer at Vridsløselille prison). We are also concerned about the detention of alleged victims of torture among asylum seekers at the prison-liked structure of Ellebæk.

Suggested issues:

- Will the State Party provide statistics on the use of administrative detention?

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<sup>14</sup> See [www.hoeringsportal.dk](http://www.hoeringsportal.dk)

<sup>15</sup> Human Rights Committee, General Comment No. 35, CCPR/C/GC/35, para 56. The link between article 9 and the standards of the UNCAT was further elaborated in the comments submitted by DIGNITY and other anti-torture organisations prior to the adoption of the General Comment No. 35, available at <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/DGCArticle9.aspx>.

- How will the State Party ensure that detention of asylum seekers is used as a measure of last resort and, where necessary, for as short a period as possible without excessive restrictions and in compliance with Article 2, 11 and 16 of the Convention against Torture, including with regard to the procedure for legal challenges of deprivation of liberty?
- Will the State Party explain its position regarding administrative detention of victims of torture and how such a procedure is in compliance with its obligations under Article 2, 11, 14 and 16 of the Convention against Torture?

#### *Tolerated stay*

The tolerated stay regime is governed by the Aliens Act and common for all persons on tolerated stay is that they have no residency permit in Denmark. There are three categories of persons placed on tolerated stay (see further Alternative Report, page 68). According to statistics from the Ministry of Immigration and Integration, some 67 persons were on tolerated stay in early 2016<sup>16</sup> - an increase from 9 in 2000. From March 2016, Kærshovedgård has been used for persons on tolerated stay who are not married. The stay at Kærshovedgård, which previously functioned as an open prison, has many similarities with being an inmate in a prison – and may even be considered more severe than serving a sentence (see attached report by the Danish Helsinki Committee Annex 6). Kærshovedgård is located in the country side in mid-Jylland with no public transportation to and from the place. The residents have the obligation to report to the authorities daily and it is criminalized not to do so. They have no access to individual kitchens and are obliged to eat in the canteen at 7, 12 and 17 hrs.

When the immigration authorities administratively decide to assign residence for a person at Kærshovedgård, no lawyer is offered to the person, and the decision is not referred to the courts, as it is the case for rejected asylum seekers detained pursuant to article 31 of the Aliens Act. There is no upper time limit to the stay – despite two decisions by the Danish Supreme Court in 2014 and 2017 concluding that the continuous use of tolerated stay under the specific circumstances was a violation of the person’s right to freedom of movement.

The coalition is concerned about the conditions for persons on tolerated stay and the increasing number of people on this regime.

#### Suggested issues:

- Will the State Party clarify whether it may consider introducing an upper time limit in the legislation on tolerated stay?
- Will the State Party elaborate on whether the cumulative effect of the conditions for persons on tolerated stay may raise an issue in relation to the State Party’s obligation under Article 16 of the Convention?

#### *Conditions at centers for rejected asylum seekers*

Families who have been rejected asylum in Denmark live at Sjælsmark that is administered by the Prison Administration - with the assistance of Red Cross with regard to education for children and health services. Families do not have access to individual kitchens and are obliged to eat in the canteen. This situation - together with the pressure imposed on the parents to

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<sup>16</sup> Statistics from 28. February 2016.

leave the country voluntarily – is extremely stressful for the children. Moreover, these children do not enjoy access to the same social protection as children legally residing in Denmark as they no longer fall within the scope of the Law on Social Service as other children.<sup>17</sup>

Suggested issue:

- How will the State Party ensure the implementation of the standards under Article 16 of the Convention against Torture with regard to rejected asylum seekers, including children?

#### *No benefit from family reunification within the first three years*

In early 2016, Denmark introduced further restrictions in the Aliens Act with regard to family reunification for refugees on temporary residence permit who no longer would be entitled to family reunification within the first three years of their stay in Denmark.

Suggested issue<sup>18</sup>:

- Will the State Party elaborate on the restrictions on family reunification and whether the most recent amendments may raise issues in relation to the State's obligations under Article 16 of the Convention against Torture?

## 2: Coercive measures in psychiatric institutions

The Committee noted in its previous COs (para 40-41) that it remained concerned about the frequent recourse to coercive measures in Danish psychiatric institutions despite the amendments to the Psychiatric Act in 2015 stipulating that such measures should be used as a last resort.<sup>19</sup> The Committee recommended that Denmark should “revise and tighten regulations with clear and detailed guidance on the exceptional circumstances where the use of restraints may be allowed, with a view to considerably decreasing the recourse thereto in mental health care”. However, the recommendation has not been implemented and we have even seen an increase in the use of coercive measures since 2015. According to government data the use of force has become more frequent in recent years.<sup>20</sup> We continue to note significant differences between various regions of Denmark both in terms of scope of the problem and the methods used.

The Committee on the Convention of the Rights of Persons with Disabilities has also expressed its deep concern and recommended extensive action. The Committee especially focuses on the long periods of use of straps and belts, chemical restraints and involuntary electroconvulsive therapy.<sup>21</sup> In addition, the Human Rights Committee has also raised concerns on the issue.<sup>22</sup> Despite these recommendations, the Danish government has not yet taken substantial initiatives.

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<sup>17</sup> See also the Committee on the Rights of the Child Concluding Observations 2017, para 39-40 (CRC/C/DNK/CO/5).

<sup>18</sup> See also the Human Rights Committee Concluding Observations, para 35-36 (CCPR/C/DNK/CO/6).

<sup>19</sup> LBK 1160 of 29 September 2015, see <https://www.retsinformation.dk/pdfPrint.aspx?id=174248>

<sup>20</sup> See the website of the Danish Health Authority: <https://www.sst.dk/da/udgivelser/2017/monitorering-af-tvang-i-psykiatrien-juli-2016-juni-2017> and the Danish Health Data Authority: <http://esundhed.dk/sundhedsregistre/tip/Sider/tip01.aspx>

<sup>21</sup> [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fDNK%2fCO%2f1%2fAdd.1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fDNK%2fCO%2f1%2fAdd.1&Lang=en) para 38 and 39

<sup>22</sup> CCPR/C/DNK/CO/6 Para 24-25: “The State party should step up its efforts to reduce the recourse to coercive measures in psychiatric institutions, in particular by effectively applying the legal regime set up under Consolidated Act No. 1106 of 25 September 2015 and making sure that coercive measures are necessary and proportionate, and are used as a measure of last resort only. The State party should develop alternatives to coercive measures and ensure that recourse to immobilization measures that last more than 48 hours are closely monitored.

Suggested issues:

- How will the State Party ensure that the use of coercive measures in psychiatric institutions is limited to exceptional cases?
- Will the State Party provide information on how it will end the use of immobilization with belt exceeding 24 hours?
- Will the State Party provide information on whether coercion in psychiatric establishment is used more widely vis-à-vis minority groups?
- Will the State Party explain how to ensure the required staffing levels and staff competencies in psychiatric institutions in order to reduce the recourse to coercion in the psychiatric hospitals?
- Will the State Party explain its position on the implementation of the standards of Article 16 of the Convention against Torture in this area?

### 3. Use of coercive psychiatric treatment for children below 15 years of age

On several occasions, Denmark has stated that improvements should be made in the psychiatric system with regards to the use of coercive psychiatric treatment for children. However, data shows that incidents of coercive treatment used against children continues to increase.<sup>23</sup> The Danish Ombudsperson has been very critical towards the use of belt and straps for children below 15 years of age. Especially when belt and straps have been used for more than 8 hours.<sup>24</sup>

Children below 15 years of age now have the right to council after an incident of coercive treatment, if the coercive treatment has been carried out with parental consent. Before, this right only applied to persons above 15 years of age. How relevant this safeguard may be, it has not led to fewer occurrences of coercive treatment, and the number of cases has continued to increase.<sup>25</sup>

The Committee on the Rights of Persons with Disabilities expressed concern about the coercive treatment towards children in its latest conclusive observations to Denmark<sup>26</sup> and called for further information within 12 months of the examination. The information provided by Denmark in its Follow-up Report of 23 November 2017<sup>27</sup> only reiterated the content of existing legislation while adding the right to access to council. The Committee on the Rights of the Child has also expressed its concern on the matter and recommended Denmark to ensure that “children with disabilities, including with psychosocial and/or intellectual disabilities are under no circumstances forcibly hospitalized or institutionalized but provided with assistance in a community care environment, and ensure that until this aim is achieved, those children who are residing in an institution or psychiatric hospital are under no circumstances subjected to excessive restraint”.<sup>28</sup>

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The State party should make every effort to ensure that all mental health patients are fully informed about the treatment to be prescribed, and given the opportunity to refuse treatment or any other medical intervention”

23 [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolNo=CRPD%2fC%2fDNK%2fCO%2f1%2fAdd.1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CRPD%2fC%2fDNK%2fCO%2f1%2fAdd.1&Lang=en)

24 [http://www.ombudsmanden.dk/find/nyheder/alle/psykisk\\_syge\\_born\\_og\\_unge\\_fastspaendes/pdf](http://www.ombudsmanden.dk/find/nyheder/alle/psykisk_syge_born_og_unge_fastspaendes/pdf)

25 [https://www.sst.dk/da/Feeds/~/\\_media/EDF675AA1672438C82306D363EA54A48.ashx](https://www.sst.dk/da/Feeds/~/_media/EDF675AA1672438C82306D363EA54A48.ashx)

26 [https://www.sst.dk/da/Feeds/~/\\_media/EDF675AA1672438C82306D363EA54A48.ashx](https://www.sst.dk/da/Feeds/~/_media/EDF675AA1672438C82306D363EA54A48.ashx) para 21, 22 and 68

27 CRPD/C/DNK/CO/1/Add.1.

28 CRC/C/DNK/CO/5, para 29.

Suggested issue:

- When will Denmark take steps to reduce the use of coercive measures against children?

#### 4: Violence against women

The Committee has previously asked Denmark to provide information on violence against women and the Coalition remains concerned about various issues, including the number of women rejected at shelters. The National Board of Social Services has estimated that 4561 women were rejected at shelters in 2016.<sup>29</sup> In its 2017 (Baseline) Evaluation Report GREVIO (Group of Experts on Action against Violence against Women and domestic Violence)<sup>30</sup> noted: "Experts within the shelter movement thus advocate for higher numbers of shelter places to ensure all women are accommodated in domestic violence shelters". Although rejected women can be assigned another shelter in Denmark, in practice often the women turn down the help when assigned a shelter in another part of the country. GREVIO strongly encourages "the Danish authorities to expand the services currently provided to women victims of violence against women by offering more services such as counseling, advocacy, psycho-social support (including empowerment) and trauma care in- and outside of shelters and hospitals. The aim should be to ensure that existing immediate support, for example the support offered by domestic violence shelters, is complemented by adequate mid- and long-term support offered by specialist women's support services in a non-residential setting."<sup>31</sup> Thus, the Coalition remains concerned that women victims of violence do not receive appropriate support due to lack of shelter places.

Moreover, the Coalition would like to highlight the issue that in relation to female asylum seekers who may have been victims of gender-based violence, gender-sensitive asylum procedures have to be given special attention. In its 2017 (Baseline) Evaluation Report on Denmark,<sup>32</sup> GREVIO concluded: "In terms of gender-sensitive asylum procedures, GREVIO notes that female applicants may ask for a female care-worker as well as for a female interpreter ... However, on the basis of the information GREVIO has received, it appears that several obstacles exist for female asylum-seekers to disclose experiences of gender-based violence in a way that would support their application".

Suggested issues:

- Will the State Party provide information on how it will ensure that all women victims of violence can be accommodated and receive professional help in a shelter relatively close to their home?

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<sup>29</sup> Danish newspaper Politiken 20 January 2018.

<sup>30</sup> The report is available at [www.coe.int](http://www.coe.int) (see para 116, p. 34).

<sup>31</sup> Ib 119, p. 34.

<sup>32</sup> Para. 234, p. 57. GREVIO also mentioned "...information about the possibility of requesting a female interviewer and interpreter is not widely spread among asylum-seekers. While most interviewers are female, interpreters are not, which means that, in practice, most female asylum-seekers will have to tell their story through male interpreters. Concerns have been raised around the qualifications and professionalism of some interpreters, and about the reluctance women feel in disclosing sensitive information about their experiences of violence in the presence of a male interpreter from the same cultural or religious background (235, p. 58). Moreover, GREVIO also stressed "no information is offered to asylum-seekers about the importance of the first interview, nor on what constitutes relevant information in the eyes of a case worker/interviewer. Most female asylum-seekers in Denmark come from cultural backgrounds in which men take priority and, as a consequence, are not used to putting forward their own experiences. Although separate interviews exist, married women will often produce information in support of their husband's claim instead of telling their own story of persecution and abuse (para. 236, p. 58)".



- Will the State Party provide data on cases related to violence against women in Denmark and explain the implementation of its due diligence obligations related to Article 16 of the Convention against Torture?
- Will the State Party provide information on whether all female asylum seekers are informed that they may request female interpreters and female case workers for the asylum interview, and how it will better accommodate for female asylum seekers to tell about violence and abuse they may have suffered?

## 5: LGBTI persons

### *Access to health care*

The Coalition continues to be concerned about trans\* persons' access to timely and appropriate health care (see Alternative Report p. 76). The *de facto* monopoly by two institutions, which have the authorization to help trans\* persons accessing hormones and receiving gender re-assignment surgery, creates an unnecessary and unhealthy slow process of treatment of these persons. As the lack of access to proper and timely healthcare is pushing trans\* persons into an unsecure and dangerous process of self-medication, this may raise concerns under article 16. Furthermore, the lack of access to proper and timely healthcare leaves trans\* persons in a situation of stress and discomfort, which can have a serious effect on the reported high levels of poor mental health.

### Suggested issue:

- Will the State Party provide information on its position on the implementation of its Article 16 obligations regarding trans\* persons and whether it plans to decentralize the treatment of trans\* persons so adults and young will have access to timely and appropriate health care?

## 6. Intersex persons

The Committee issued a number of recommendations regarding the rights of intersex persons during the previous examination of Denmark (para 43) that related to Denmark's obligations under the Convention against Torture, especially Article 14 and 16. The Danish organization Intersex Denmark has provided detailed explanation of the current situation for intersex persons in Denmark, see Annex 7, and we maintain that no steps have been taken by Denmark to implement the important recommendations.

### Suggested issues:

- Will Denmark explain what steps have been taken to implement the Committee's recommendations, including to "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" and to "ensure that full, free and informed consent" is provided in all cases where surgical interventions on an intersex individual is considered?

- Please provide information on what steps, if any, are being taken by government bodies to undertake investigation of incidents of surgical and other medical treatment of intersex children without their informed consent.
- Please provide information on what steps, if any, are being taken to address the need for data collection and independent monitoring of births of intersex children and their medical treatment.
- Please provide information on what steps, if any, are being taken to address the need for disinterested research on long term patient satisfaction of surgical and other procedures on intersex children, in consultation with intersex individuals and their organizations.
- Please provide information on what steps, if any, are being taken to ensure that intersex individuals who do not identify with the legal sex they were assigned at birth, are not mistakenly classified as transgender, if they disagree with the sex, they were legally assigned at birth.
- Please provide information on what steps, if any, are being taken to ensure that intersex individuals, who does not agree with the sex they were assigned at birth or shortly thereafter (in cases where the legal sex is assigned after surgical alteration of the intersex individuals genitalia), have access to medical and/or surgical treatment aligned with their gender identity, without having to be diagnosed as transgender, equally to intersex individuals who agree with the sex assigned at birth.
- Please provide information on what steps, if any, are being taken to ensure adequate redress for the physical and psychological suffering caused by such practices is being provided to intersex persons.
- Please provide information on what steps, if any, are being taken to educate and train medical and psychological professionals on the range of sexual and related biological and physical diversity and on the consequences of unnecessary surgical and other medical interventions for intersex children.
- Please provide information on what steps, if any, are being taken to implement the Committee’s recommendation to “guarantee counselling services for all intersex children and their parents, in order to inform them of the consequences of unnecessary surgery and other medical treatment”.

### 7: Use of pepper spray

Prison guards in Danish closed prisons are entitled to be equipped with pepper spray as part of their uniform.<sup>33</sup>

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<sup>33</sup> Magtanvendelsesbekendtgørelsen of 28 March 2017, para 4.

Suggested issues:

- Will the State Party explain whether the use of pepper spray has had the desired preventative effect and minimized the need for further use of force?
- Will the State Party provide data on how often pepper spray has been used in Danish prisons and when prison guards are entitled to use pepper spray?

## Other issues

### 1. Prisons in Greenland

A new prison is planned to open in Nuuk in 2019. This means that persons who according to the Criminal Act for Greenland are sentenced to serve their sentence in Denmark (Herstedvester) can choose whether to stay at Nuuk prison or to go to Herstedvester. According to the recent political agreement regarding the Danish Prison Authorities 2018-2021, the previous regime of paid transportation between Denmark and Greenland to maintain contact with families will be abolished for Greenlanders who decide to go to Herstedvester. Moreover, the special regime for Greenlanders at Herstedvester, including special education, food, religious service etc., will be abolished when the new prison in Nuuk opens.

Inmates in Greenland shall be placed as close to their home town if practically possible (Kriminalloven para 196). However, in practice that does not always happen and several inmates are placed far from their family. Often a visit to and by family members would require a flight journey. Prisons in Greenland are considered “open prisons”. However, many of the prisons have similarities with closed regimes. The Institut of Human Rights and a working group within the Council for Lawyers have noted this issue and recommended a solution in accordance with a plan prepared by the Danish Prison Administration.<sup>34</sup> Two replies from the Minister of Justice to the Danish Law Committee indicate, however, that the only change will be fewer security measures (i.e., removing barbed wires and bars).

Suggested issues:

- Will the State Party consider providing inmates in Greenland who serve longer sentences with the entitlement of flight journeys home in order to maintain the contact with families?
- Will the State Party explain the regime for prisons in Greenland and whether the intention is to establish a regime of “open prisons”?
- Will the State Party explain how it will ensure the rights of Greenlanders who continue to serve their sentence at Herstedvester?

### 2. Terrorism

In our Alternative Report, the Coalition raised the issue of anti-terror measures and how they have affected human rights safeguards in law and practice and how it has ensured that those

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<sup>34</sup> See IMR Report on Status on Human Rights 2015-16, available at [menneskeret.dk](http://advokatsamfundet.dk/Service/Nyheder/2016/Serviceeftersyn.aspx) and <http://advokatsamfundet.dk/Service/Nyheder/2016/Serviceeftersyn.aspx>.

measures taken to combat terrorism comply with all its obligations under the Convention against Torture.

Suggested issue:

- Will the State party consider reviewing Danish anti-terror legislation with a view to determining whether it is in accordance with its obligations under the Convention?

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Annex 1	Legal Analysis of the Consequences of Lack of Incorporation of the Convention against Torture into Danish Law, prepared by Justitia and DIGNITY
Annex 2	Excerpts from Eastern High Court judgement of 22 August 2016
Annex 3	Danish Supreme Court judgement of 15 November 2017
Annex 4	Conference Report Solitary Confinement, April 2017 Copenhagen
Annex 5	DIGNITY's presentation to the Danish Legal Committee, April 2017
Annex 6	Helsinki Committee's Report on Tolerated Stay at Kærshovedgård
Annex 7	Letter by Intersex Denmark