



THE DANISH
INSTITUTE FOR
HUMAN RIGHTS

**SUBMISSION TO THE UN COMMITTEE
AGAINST TORTURE**

OCTOBER 2023

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ISBN: 978-87-7570-211-4
e-ISBN: 978-87-7570-212-1

Photo: Amir Esrafil, unsplash.com
Layout: Michael Länger

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Denmark's National Human Rights Institution
Wilders Plads 8K, DK-1403 Copenhagen K
Phone +45 3269 8888
www.humanrights.dk

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PREFACE

This submission by the Danish Institute for Human Rights (the Institute) contains information relevant to the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (the Convention against Torture). The report aims to assist the Committee against Torture (the Committee) in its assessment of the implementation of the Convention against Torture in Denmark at its 78th session, from 30 October to 24 November 2023. The submission provides an update on key developments and identifies main areas where rights under the Convention against Torture could be strengthened. The themes and recommendations presented are not ranked in a prioritized order.

The submission relates to the Convention against Torture, the latest Concluding Observations (CO) of the Committee¹, its list of issues prior to reporting (LOIPR)² as well as the State report under the LOIPR and its annex³.

THE DANISH INSTITUTE FOR HUMAN RIGHTS

The Institute is established by law⁴ and in accordance with the UN Paris Principles and accredited as an A-status National Human Rights Institution (NHRI).⁵ It is also the national equality body in relation to race and ethnicity and gender. Furthermore, the Institute has special mandates to promote and monitor the LGBT+ area as well as the disability area through the promotion and monitoring of the implementation of the UN Convention on the Rights of Persons with Disabilities.

While the Danish Parliamentary Ombudsman is designated as the national preventive mechanism (NPM) under the Optional Protocol to the Convention against Torture (OPCAT), in Denmark; the Institute, conducts visits to places of detention pursuant to the Optional Protocol to the Convention against Torture (OPCAT) together with the Parliamentary Ombudsman and the Danish Institute Against Torture (Dignity).

Greenland is a self-governing part of the Kingdom of Denmark. The Institute is the NHRI of Greenland and cooperates closely with the Human Rights Council of Greenland (HRCG) on promoting and protecting human rights and monitoring human rights challenges in Greenland. The HRCG is a politically independent council established by law with reference to the UN Paris Principles.⁶ The information and recommendations concerning Greenland have been produced in cooperation with the HRCG. The Institute's mandate does not extend to the Faroe Islands.

DEVELOPMENTS AND OBSERVATIONS

There has been no change in the Danish position on incorporation of the Convention against Torture.

The Prison and Probation Service in Denmark is under severe pressure which affects the conditions and rights of detainees in its the institutions. The average occupancy

rate in 2022 was 99.6 percent,⁷ while the number of prison officers in Denmark is low in a European context, with a ratio in 2022 of 0.45 officers per inmate compared to the European median of 1.4 officers per inmate.⁸

Many remand prisoners are held in conditions whereby they are kept in **de facto** solitary confinement, as they can spend up to 23 hours a day in their cells, often without access to meaningful activities, such as visits or work.

Several initiatives in the multiannual agreement for the Danish Prison and Probation Service's finances in 2022-2025,⁹ have not yet been implemented. This includes the creation of 300 prison places in Kosovo and the envisioned expansion of 400 remand places in Slagelse, Denmark.¹⁰ Moreover, the Danish government has been working on the establishment of a reception centre outside of Denmark to transfer asylum seekers.¹¹ While no agreement with a country has been signed yet, the relevant legislation has been adopted in Denmark.¹²

Positive aspects since last review

The Institute welcomes the following policy and legislative developments, some of which the report will elaborate further upon in the submission:

- The ratification of the International Convention for the Protection of All Persons from Enforced Disappearance, on 13 January 2022;
- The establishment of the Committee on international crimes to criminalise crimes against humanity, war crimes and torture as a distinct offence in Danish law;
- The strengthening of the capacity of the Danish Institute for Human Rights on trafficking and an extension of its mandate to specifically cover LGBT+;
- The opening of the high-security facility (Anstalten) in Greenland;
- The reopening of Jyderup prison as a 'women only' facility;
- The consent-based rape provision and a provision related to psychological violence in the Penal Code;
- Bringing its legislative framework on solitary confinement as a disciplinary measure further in line with international standards; and
- Improvement of the material conditions at Ellebæk Prison for Asylum Seekers and Others Deprived of their Liberty.

RECOMMENDATIONS

In the report the Institute recommends that Denmark:

Criminalisation of Torture

- Provides information to the Committee on the practical use of the sections on aggravated circumstances in the Danish Penal Code and the Danish Military Criminal Code; and
- Introduces the act of torture as a separate criminal offence so that it reflects the definition in the Convention. Furthermore, torture as a war crime and as a crime against humanity should also be separately criminalized in the Danish Penal Code and the Danish Military Criminal Code.

Violence against women

- Expands access to abortion later in the pregnancy when the woman is particularly vulnerable, for instance due to age or disability, and when the pregnancy is a result of sexual assault; and
- Eases the burden of proof requirements in article 19(7) of the Danish Aliens Act to ensure that a credible explanation can be applied as the basis for a decision.

Trafficking

- Ensures that the increased funding and resources designated to combat human trafficking leads to the prioritisation by the police in their performance and target plan for 2024 and beyond; and
- Prioritizes the funding and resourcing designated to specialized police forces with a focus on addressing / alleviating the vulnerable situation of victims of human trafficking.

Pretrial detainees

- Reduces the use of remand detention; and
- Introduces legislation that determine the conditions and rights of persons in remand and that remand prisoners as a point of departure are ensured the same rights in relation to e.g. visits and telephone conversation as convicted prisoners serving sentence in an ordinary prison.

Solitary confinement

(1) Solitary confinement as a disciplinary measure

- Completely abolishes solitary confinement as a disciplinary measure for more than 15 days.

(2) Voluntary exclusion from association

- Ensures the Prison and Probation Service monitors the individual length of solitary confinement of voluntary exclusion from association; and
- Develops instructions on voluntary exclusion from association – in line with the existing concerning forced exclusion - with guidelines on the prevention, end and early intervention of psychological harm and follow-up.

Coercive measures in psychiatric institutions

- Limits the use of coercion by ensuring that the 10-year plan is carried out effectively and commits to implementing all 37 initiatives proposed by the Danish Health Authority and by enshrining the aims outlined in Section 2 of the Psychiatry Act as legal rights for the patients to ensure that they are protected and can be defended; and
- Ensures that the legal safeguards in the Psychiatry Act also apply to children under 15 years of age.

Independent Police Complaints Authority

- Introduces an explicit legal basis for the Independent Police Complaints Authority in its case handling to always investigate whether there are reasonable grounds to believe that an act of torture or inhuman, or degrading treatment has occurred.

Redress, incl. compensation

- Changes the statute of limitations, so that civil claims for damages resulting from serious human rights violations, including rights protected under the Convention against Torture, are no longer subject to the statute of limitations.

Conditions in detention

- Ensures the necessary correlation between prison capacity, the number of inmates, the number of prison officers and the tasks of prison officers to limit the risk of human rights violations.

Protection of LGBT+ within prisons and detention facilities

- Ensures that the upcoming guidelines provide effective protection for transgender and other gender minority prisoners, including by ensuring them a real possibility to serve their sentence in a prison reflecting their gender if it based on a concrete individual assessment is deemed necessary and appropriate by the prison authorities;
- Launches additional initiatives to further protect and promote LGBT+ prisoners' rights, such as educating staff and informing prisoners about their rights; and
- Reintroduces the annual surveys among prisoners in Danish detention facilities with additional questions targeted at LGBT+ prisoners.

GREENLAND

In the report the HRCG and the Institute recommends that Denmark in collaboration with Naalakkersuisut:

Lack of data

- Ensure that Greenland's Prison and Probation Service and Greenland's Police have a case handling system which allow systematic and reliable extraction of data that is comprehensive, disaggregated and comparable along with the necessary financial and human resources, including competencies to manage the systems.

Safety for persons deprived of liberty

- Ensure adequate facilities for the deprivation of liberty in all smaller towns and settlements in Greenland.

Facilities and conditions for persons deprived of liberty and personnel

- Ensure, at all times, a correlation between capacity, number of inmates, number of officers and the scope of tasks; and
- Ensure improvement of employment facilities in prison institutions, including the provision of adequate resources and competencies to manage employment facilities.

Women subjected to IUD and historical investigations

- The ongoing investigations into the "IUD campaign" and into the historical relationship between Greenland and Denmark, includes a human rights focus, including of violations of the Convention; Cases after 1991 related to historical decisions are included in the investigation of the "IUD campaign"; and ensure that victims hereof receive recognition of the violation of their human rights and reparations, including fair and adequate compensation, including the means to as full rehabilitation as possible.

Criminalisation of torture

- Propose amendments to Greenland's Penal Code so that it includes torture as a specific offence.

1 CRIMINALISATION OF TORTURE

Relates to the Convention against Torture Articles 1 and 4, Concluding Observations (CO) paragraphs 10 and 11, and list of issues prior to reporting paragraph 2 (LOIPR).

While torture is an aggravating circumstance that is considered when determining a sentence under Danish criminal law,¹³ it is not yet included as a distinct offence in the Penal or in the Military Criminal Code. The Institute is not aware of any court decisions where the sections on aggravating circumstances have been used by Danish courts.

In 2023, a parliamentary resolution on the independent criminalisation of international crimes in Danish law, including torture, war crimes and crimes against humanity was proposed in parliament.¹⁴ In August 2023, the government established an expert committee to prepare a proposal, including for the criminalization of torture as a separate offence. The committee must strive to complete its work before the end of 2023. The Institute, along with Dignity/The Danish Institute Against Torture and Amnesty, are members of the Committee.¹⁵

The Institute welcomes the establishment of the expert committee, including its mandate to criminalize torture as a separate offence as it will highlight the special gravity of the crime of torture nationally and strengthen Denmark's effort to combat torture internationally.

RECOMMENDATION

The Institute recommends that Denmark:

- Provides information to the Committee on the practical use of the sections on aggravated circumstances in the Danish Penal Code and the Danish Military Criminal Code; and
- Introduces the act of torture as a separate criminal offence so that it reflects the definition in the Convention against Torture. Furthermore, torture as a war crime and as a crime against humanity should also be separately criminalized in the Danish Penal Code and the Danish Military Criminal Code.

2 VIOLENCE AGAINST WOMEN

Relates to the Convention against Torture article 2 (and 16), CO paragraph 44 and 45, and LOIPR paragraph 6.

While Denmark has taken several positive steps, including the criminalization of psychological violence¹⁶, challenges remain.

On 26 September 2023, the Danish National Center for Ethics released its opinion on the limit for abortion.¹⁷ The council is divided in its opinion, however a small majority is in favour of a new limit to week 18.

Currently, access to abortion is freely available until the end of the 12th week of pregnancy. Afterwards, access to abortion is permitted only in cases where specific conditions are met, and with the permission of an abortion council.

Research has shown that these councils refuse applications for abortion permissions based on social circumstances if the pregnancy has passed the 22nd week, even in cases of pregnancies resulting from sexual assault or where the woman is particularly vulnerable. In a specific case, a 16-year-old asylum seeker in Denmark with an intellectual disability, pregnant as a result of a rape, was refused abortion, because she was 23 weeks pregnant, despite her vulnerable situation.¹⁸ Like the Committee on the Elimination of Discrimination against Women (CEDAW)¹⁹, the Institute is concerned about the restrictions on access to abortion especially in cases regarding sexual assault or other cases, where the woman is particularly vulnerable, such as due to disability or age. Forcing a woman to endure a pregnancy may amount to cruel and inhumane treatment.²⁰ Under these circumstances there needs to be access to abortion later in the pregnancy, for instance in cases of late-detected pregnancies due to trauma reactions following sexual assault or for individuals with intellectual disabilities.²¹

The Institute is also concerned of cases where a woman has been granted family reunification based on her husband or partner in Denmark.

A woman with a derivative right of residence will generally lose her residence permit if her marriage or cohabitation with her partner is terminated, as the grounds for her right to reside in Denmark will no longer exist. A marriage or cohabitation can be terminated due to violence, cf. article 19(7) of the Danish Aliens Act whereby women in some cases do not lose their residence permit.

The Institute has documented that it can be difficult for women to find an alternative to staying in a violent relationship, given the risk of losing their residence permit.²² Consequently, they choose to live with the violence as many do not have the option to return their country of origin as divorcees. Moreover, the Institute notes that female victims of domestic violence in these cases face challenges meeting the burden of proof. A woman who is isolated, fearful or even trapped due to the violence committed against her, will have difficulties producing evidence of the violence in the form of a

report from an emergency admissions department, a medical statement, police report or similar. In addition, the victim may be subjected to psychological forms of domestic violence, which is often hard to document.

RECOMMENDATION

The Institute recommends that Denmark:

- Expands access to abortion later in the pregnancy when the woman is particularly vulnerable, for instance due to age or disability, and when the pregnancy is a result of sexual assault; and
- Eases the burden of proof requirements in article 19(7) of the Danish Aliens Act to ensure that a credible explanation can be applied as the basis for a decision.

3 TRAFFICKING

Relates to the Convention against Torture article 2 (and 16), CO paragraph 5(c) and 7(a), and LOIPR paragraph 7.

Denmark has adopted several measures to address human trafficking and forced labour, including its sixth Action Plan to Combat Trafficking of Human Beings, 2022-25.²³ In 2020, the area was strengthened financially with an allocation of 118.2 million DKK which is an increase of 7 million a year from the years before.²⁴ Moreover, the Danish National Police (Rigspolitiet) has changed its structure and established a new unit to focus on forced labour such as human trafficking.²⁵

However, in March 2021, The Group of Experts on Action against Trafficking in Human Beings (GRETA) urged Denmark to allocate necessary resources.²⁶

The Institute is concerned by the low number of investigations and few convictions of human trafficking in Denmark. In the years 2019, 2020 and 2021, there were a total of 22 charges, six people indicted and no convictions while 221 people were identified as victims of trafficking in the same period.²⁷ In 2022 two exploiters were convicted while 73 people were identified as victims.²⁸

At the same time, human trafficking is almost impossible to prove for the victims as the criminal offence requires proving the element of coercion.

However, in 2022 the Danish Parliament introduced human exploitation in the Danish Criminal Code,²⁹ as an addition to the existing criminalization of human trafficking. The change in the legislation will hopefully contribute to a stronger focus on the victim and ultimately more convictions of the exploiters.

While the area of trafficking has been strengthened legally and financially the Institute remains concerned as to whether resources and funding will be used effectively. In particular, vis-à-vis, the specialization of police units and thus, the investigation of trafficking.

RECOMMENDATION

The Institute recommends that Denmark:

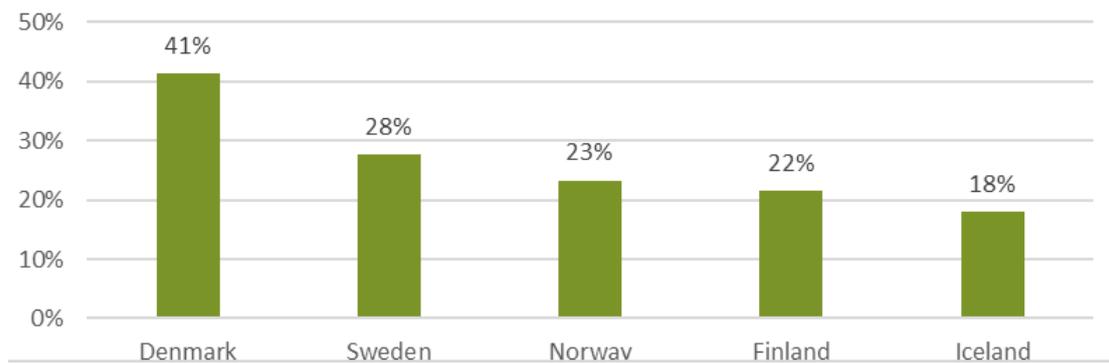
- Ensures that the increased funding and resources designated to combat human trafficking leads to this area of work being prioritised by the police in their performance and target plan for 2024 and beyond; and
- Prioritizes the funding and resourcing designated to specialized police forces with a focus on addressing / alleviating the vulnerable situation of victims of human trafficking.

4 PRETRIAL DETAINEES

Relates to the Convention against Torture article 11 (and 2), CO paragraph 32 and 37, and LOIPR paragraph 18.

The extensive use of pre-trial detention in Denmark – compared to the other Nordic countries – has been criticized by international human rights mechanisms.³⁰ Most recently, and within this reporting period, the Council of Europe’s Committee against Torture (CPT) has raised concern about the overuse of the practice of pretrial detention could be a contributing factor to overcrowding in the institutions of the Prison and Probation Service.³¹

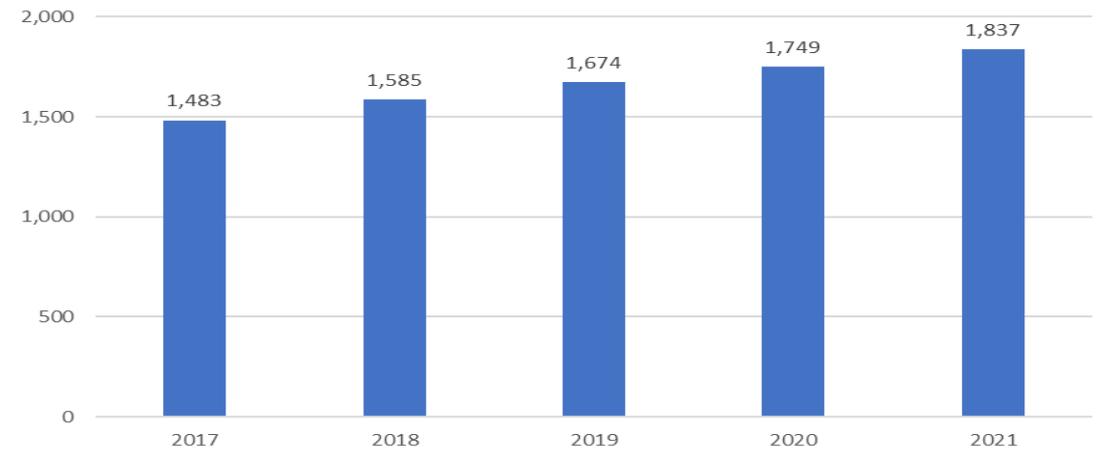
FIGURE 1: PERCENTAGE OF REMANDS IN CUSTODY OF THE TOTAL NUMBER OF INCARCERATIONS



Source: Council of Europe Annual Penal Statistics – SPACE 2021.

As mentioned, Denmark detains significantly more people in pretrial detention compared to other Nordic countries. In 2021, 41 percent of all inmates in Danish prisons and detention centres were remanded prisoners with the European median at 21.7 percent. Likewise, persons on remand in Denmark spend significantly more time in remand compared to other Nordic countries.³² In 2021, a remand in detention lasted on average 4.9 months, in Denmark.³³ This despite the fact that time limits were introduced in 2008, under section 768a of the Danish Administration of Justice Act, with the specific purpose of limiting the length of detention in remand in Denmark.³⁴ The average length of prolonged remand in Denmark was 8.2 months.³⁵

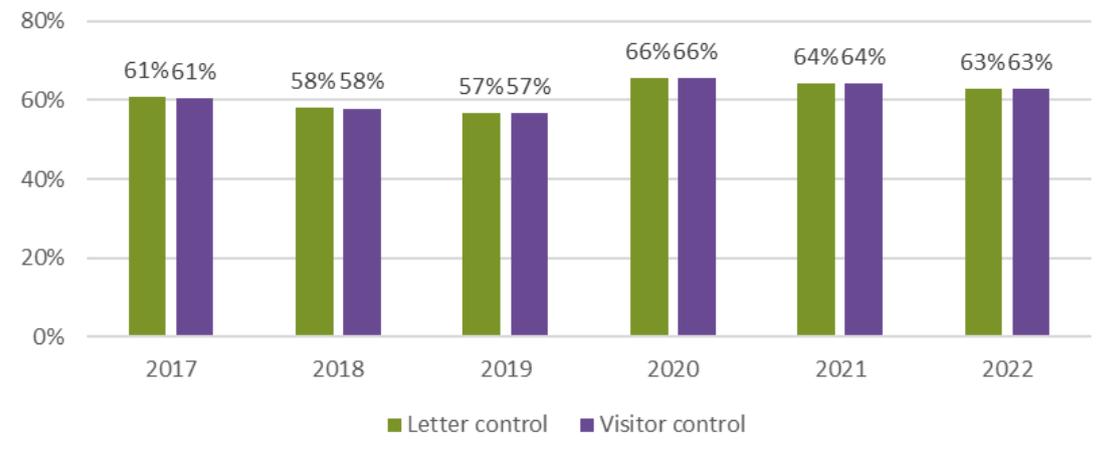
FIGURE 2: NO. OF TIMES PROLONGED REMAND IN CUSTODY HAS BEEN USED



Prolonged remand in custody covers a period of time above 3 months before the first instance court hearing. Source: Public Prosecutor’s Office, provided on request.

Furthermore, many remand prisoners are placed in harsh conditions in comparison to convicted prisoners.³⁶ Considering that remand prisoners are in principle innocent, they can spend up to 23 hours a day in their cells, often without access to meaningful activities such as work or visits.³⁷ Many are thus, in practice, deprived of their liberty under conditions that by international standards resemble solitary confinement, i.e. confinement for 22 hours or more in a cell without meaningful human contact.³⁸ In addition, many remand prisoners are subject to severe restrictions regarding contact with the outside world, known as letter and visit or control, enforced by police and prosecutors as not to interfere with the criminal investigation. This means they have very limited access to family and children.

FIGURE 3: PERCENTAGE OF INITIATED REMAND IN CUSTODY WITH IMPOSED LETTER CONTROL AND VISITOR CONTROL



Source: National Commission of the Danish Police, provided on request.

Finally, even in situations where there are no security considerations or considerations in relation to the ongoing police investigation remand prisoners have, in comparison to convicted prisoners, reduced rights e.g. in relation to visits, telephone conversations, education, activities, etc. The reduced rights are justified by the old and outdated conditions in the remand prisons which leaves limited opportunities for visits, telephone conversations, socializing and activities, among other things.³⁹ However, “structural” conditions and old, outdated detention centres hardly constitutes an objective and proportional justification for the observed discrimination between remand prisoners and prisoners serving sentences.

Considering that approximately 40 percent of all inmates in Danish prisons and detention centres are on remand, it is concerning that the use of prolonged detention on remand, in combination with the poor conditions means that many remand prisoners are in de facto solitary confinement. Further, it is concerning that the most important conditions, terms and rights of remand prisoners are regulated by administrative orders and not regulated distinctly by law in Denmark – as it is the case for convicted prisoners in ordinary prisons.⁴⁰

RECOMMENDATION

The Institute recommends that Denmark:

- Reduces the use of remand detention; and
- Introduces legislation that determine the conditions and rights of persons in remand and that remand prisoners as a point of departure are ensured the same rights in relation to e.g. visits and telephone conversation as convicted prisoners serving sentence in an ordinary prison.

5 SOLITARY CONFINEMENT

Relates to the Convention against Torture articles 2, 11 and 16, CO paragraph 32 and 33, and LOIPR paragraph 20.

5.1 SOLITARY CONFINEMENT AS A DISCIPLINARY MEASURE

In recent years there has been an explosive rise in the use of solitary confinement as a disciplinary measure for periods of more than 15 days. However, in 2021, the Danish parliament adopted a revision of the disciplinary sanctions system in Denmark⁴¹ which entered into force on 4 September 2023.⁴²

The Institute is concerned the revision may lead to a harsher disciplinary sanction system for inmates as the combination of the new disciplinary sanctions, which includes limitations on visits, higher fines etc., could reach a level of intensity that if used in combination would constitute a criminal sanction which in turn must be imposed by the courts.⁴³ At the same time and contrary to the revised European Prison Rules, the revision of the disciplinary sanction system is not backed by measures ensuring inmates can access complaints mechanisms.⁴⁴

While it is a positive development that the revision includes the reduction of the length of solitary confinement to a maximum of 14 days.⁴⁵ However, and contrary to international standards,⁴⁶ it is still possible in exceptional situations to place inmates in solitary confinement for up to four weeks, for example for serious repeat offenders or inmates who are particularly challenging.⁴⁷

RECOMMENDATION

The Institute recommends that Denmark:

- Completely abolishes solitary confinement as a disciplinary measure for more than 15 days.

5.2 VOLUNTARY EXCLUSION FROM ASSOCIATION

While the Committee has recommended Denmark abolishes voluntary exclusion from association, it is still a common practice among inmates in Denmark.⁴⁸ In accordance with section 33(3) of the Sentence Enforcement Act, a person on remand or inmate may voluntarily choose to be excluded from association⁴⁹ for instance, if they feel threatened.

Inmates, who choose voluntarily excluded from association, will often stay up to 23 hours on their cell – and thereby in practice in solitary confinement. There are no time limits on how long time an inmate can chose to be voluntary excluded, and many are excluded for very long time - some for more than a year. Furthermore, there are

no rules or instructions to ensure mitigating measures after a certain time period in isolation e.g. more visits or telephone contacts, visits by medical doctors, psychological treatment, etc.

This is contrary to the situation for inmates who are forcefully excluded from association by a decision from the prison authorities e.g. to maintain security or good order. Here there are time limits on the length of exclusion from association, the prison authorities have to monitor the inmate and on a regular basis assess when the inmate can be brought into normal association with other inmates, and the prison authorities have to take a number of mitigating measures to reduce the risk of harm to the inmate.

There is a risk that especially vulnerable inmates who are voluntarily excluded from association in longer time with limited access to human contact will be exposed to inhumane or degrading treatment.

If an inmate willingly chooses to exclude himself from association, there is no avenue for appeal, no set termination date as the inmate, in principle, has the option to rejoin other inmates at any time. However, the Institute questions whether the act of excluding themselves from association in reality is truly 'voluntary' given it is usually under circumstances where the inmate feels they are at risk of harm from other inmates.

In a thematic report from 2019,⁵⁰ the Parliamentary Ombudsman noted that the Prison and Probation Service generally has relevant knowledge about the psychological effects that result from the practice of voluntary exclusion by association and knows how to mitigate them. However, there is a great variation in practice depending on the regime followed by individual institutions of the Prison and Probation Service.⁵¹

At the same time, data on this group of inmates is limited. While the Prison and Probation Service registers the number of isolations that occur. Data is not aggregated to show the length of isolation (including cumulative periods) which would enable the authorities to keep track of the total time an individual inmate spends in solitary confinement.⁵²

Moreover, and compared with other groups in solitary confinement, this group of inmates is as described afforded less legal protection as legal guarantees pertaining to e.g. forced exclusion of association, such as monitoring by prison staff through their reporting and follow up memos or the possibility to complain exist do not exist as a protection for these inmates.⁵³

RECOMMENDATION

The Danish Institute for Human Rights recommends that Denmark:

- Ensures the Prison and Probation Service monitors the individual length of solitary confinement of voluntary exclusion from association; and
- Develops instructions on voluntary exclusion from association – in line with the existing ones concerning forced exclusion - with guidelines on the prevention, end and early intervention of psychological harm and follow-up.

6 COERCIVE MEASURES IN PSYCHIATRIC INSTITUTIONS

Relates to the Convention against Torture articles 16, Concluding Observations (CO) paragraph 40 and 41, and list of issues prior to reporting paragraph 25.

The Committee has recommended a revision and tightening of the regulations regarding coercive measures in psychiatric institutions to include clear and detailed guidance on the exceptional circumstances where the use of restraints may be allowed, with a view to significantly decreasing the recourse thereto in mental health care.

Similarly, the European Court of Human Rights found a violation of Article 3 of the European Convention on Human Rights in its judgment *Aggerholm v. Denmark*.⁵⁴ Since that judgment, Denmark has agreed to friendly settlements in an additional two cases before the Court, thereby acknowledging the human rights violations,⁵⁵ while two cases are currently pending.⁵⁶

Minor amendments were made to the Psychiatry Act. Namely to ensure patients restrained by belt must constantly be supervised by staff and that medical supervision of the patients must be carried out at specific intervals.⁵⁷ However, in the Institute's opinion, these new measures are insufficient in and of themselves to significantly reduce the amount of coercion used within psychiatric institutions as the total number of coercive measures has started to increase significantly for adult patients in the last three to four years. This means that the patients subjected to coercion are subjected to more coercion today than ten years ago.⁵⁸

Within the last four years there has been a significant increase in the use of coercive measures against children and youth under 18 years of age. At the same time children are not protected by the legal safeguards in the Psychiatry Act, such as the right to a patient advisor⁵⁹ and the right to complain⁶⁰ and have their case tried in court,⁶¹ if their parents consented to the use of the coercive measure.

In September 2022, a broad political agreement was reached on the issue of psychiatry in Denmark. The agreement forms the initial foundation for the Government's implementation of its 10-year plan for the Danish psychiatric sector. The 10-year plan is supposed to deal with several challenges within the psychiatric sector, including the extensive use of coercive measures, in a long-term and sustainable manner.⁶² However, the political agreement only covers ten of the 37 initiatives proposed by the Danish Health Authority⁶³ and further political agreement is still pending vis-a-vis the remaining 27 initiatives.

In addition, in August 2023, the Government proposed to allocate an additional 467 million DKK (approximately 68 million USD) to the psychiatric sector in 2024.⁶⁴ The allocation is supposed to steadily increase every year, so that by 2030 an additional 3,165 million DKK (approximately 461 million USD) should be allocated to the psychiatric sector.

While the 10-year plan and additional allocation of resources warrant cautious optimism for the possibility of lasting change, there are still considerable human rights challenges regarding the use of coercive measures within psychiatric institutions.

RECOMMENDATIONS

The Institute recommends that Denmark:

- Limits the use of coercion by ensuring that the 10-year plan is carried out effectively and commits to implementing all 37 initiatives proposed by the Danish Health Authority and by Enshrining the aims outlined in Section 2 of the Psychiatry Act (e.g., that coercive measures should never replace care, treatment, and nursing) as legal rights for the patients to ensure that they are protected and can be defended; and
- Ensures that the legal safeguards in the Psychiatry Act also apply to children under 15 years of age.

7 INDEPENDENT POLICE COMPLAINTS AUTHORITY

Relates to the Convention against Torture articles 12 and 13, COs paragraph 48 and 49, and LOIPR 26.

In Denmark, the Independent Police Complaints Authority investigates criminal cases and complaints of misconduct against police personnel.

The law and preparatory work that led to the establishment of the authority in 2012 does not state that the authority in its decisions must consider a potential human rights violation when handling cases. Nor does it state that such an assessment must or should always be made when a complaint is made, including in cases regarding degrading treatment.⁶⁵ The Institute is concerned about the lack of an explicit legal basis for the Independent Police Complaints Authority to investigate cases of torture or inhuman, or degrading treatment in its case handling.

The Independent Police Complaints Authority has stated that the European Convention on Human Rights is incorporated into the provisions of Danish legislation and, thus, used in the assessment and as the basis for its decisions.⁶⁶ The Institute has received 30 decisions of the authority on complaints regarding excessive use of force. The Institute notes that none of those decisions contain a human rights assessment, even in cases explicitly claiming the occurrence of degrading treatment.⁶⁷ The Institute is concerned about the absence of transparency and thus the effectiveness of the authority's human rights assessment.

RECOMMENDATION

The Institute recommends that Denmark:

- Introduces an explicit legal basis for the Independent Police Complaints Authority in its case handling to always investigate whether there are reasonable grounds to believe that an act of torture or inhuman, or degrading treatment has occurred.

8 REDRESS, INCL. COMPENSATION

Relates to the Convention against Torture articles 14, CO paragraph 16 and 17, and LOIPR paragraph 29.

Torture as a criminal offence is not subject to statute of limitations in Danish law.

On the contrary, claims for damages related to human rights violations in civil proceedings, including torture or ill-treatment, are subject to a general three-year limitation period.⁶⁸

In 2018, an exception to the general rule was introduced. Thus, abuses suffered by children as a result of a dereliction of duty on the part of the administrative authorities, are no longer subject to limitations.⁶⁹ The Institute welcomes this as an improvement in securing the right to redress but notes that civil claims not covered by the exception, for example cases where the victim was not a minor, remain subject to the general three-year limitation period.

The Institute is concerned about the applicability of the statute of limitations to claims related to serious human rights violations, more so, when there has been a breach of the Convention against Torture.⁷⁰

RECOMMENDATION

The Institute recommends Denmark:

- Changes the statute of limitations, so that civil claims for damages resulting from serious human rights violations, including rights protected under the Convention against Torture, are no longer subject to the statute of limitations.

9 CONDITIONS IN DETENTION

Relates to the Convention against Torture articles 11 and 16, COs paragraph 34 and 35, and LOIPR paragraph 19.

In recent years, the number of inmates has increased, while prison and detention capacity has not kept pace. In 2022, the Danish Prison and Probation Service had to manage an average occupancy rate of 99.6 percent.⁷¹ This puts pressure on the physical environment, with common rooms being taken over and double-bunked cells being established.⁷²

Despite a small influx of prison staff,⁷³ the need for more prison staff also leaves little or no time to build good relationships between staff and inmates, so that conflicts can be averted, and prison staff can work towards the resocialisation of inmates.⁷⁴ In 2021, the Institute documented some of the human rights challenges caused as a result of the lack of capacity in the institutions of the Prison and Probation Service, leading to an increased risk of human rights violations.⁷⁵ These challenges include, an increasing number of inmates, insufficient prison capacity and overcrowding; pressure on the physical environment, taking up common rooms and double occupancy of cells; more brutalized and violent inmates with longer sentences; less time out and parole; few and worn-out prison officers; little or no time for resocialization work, relationship work and dynamic security; a significant increase in the use of disciplinary punishment, including an explosive increase in prolonged solitary confinement over 15 days; a high number of incidents involving use of force; a high level of violence and threats against prison staff and a high level of unreported violence and threats between inmates. In sum, the Institute considers these factors make it difficult for the Danish Prison and Probation Service to live up to human rights recommendations and standards, while conditions and rights of inmates are under pressure.

The situation is so dire that inmates who have received a final judgment have to wait in remand facilities – under bad and outdated conditions often in de facto solitary confinement on their cell with limited rights e.g. in relation to visits, telephone conversations and activities – for several months before they can be transferred to a free cell in an ordinary prison to serve their sentence – with much better conditions and rights.

RECOMMENDATION

The Institute recommends that Denmark:

- Ensures the necessary correlation between prison capacity, the number of inmates, the number of prison officers and the tasks of prison officers to limit the risk of human rights violations.

10 PROTECTION OF LGBT+ WITHIN PRISONS AND DETENTION FACILITIES

Relates to the Convention against Torture articles 16, COs paragraph 34 and 35, and LOIPR paragraph 19.

As recognised by international human rights mechanisms LGBT+ persons are a particularly vulnerable group within prisons and other detention facilities,⁷⁶ for a number of reasons. These include the increased risk of sexual assault against LGBT+ prisoners, the use of prolonged periods of voluntary exclusion from association, the risk of grave health consequences for transgender prisoners due to lack of proper treatment and the lack of institutional policies and methods in relation to, inter alia, risk assessment and placement.⁷⁷

In recent years, several transgender prisoners have brought charges of human rights abuses before the Danish courts.⁷⁸ These alleged abuses have concerned transgender women, who against their will have been placed in male prison wards, subjected to strip search, had to give urine samples in the presence of male guards and subjected to verbal abuse by guards. However, so far, the courts have ruled in favour of the Government in these cases.

Furthermore, there is a lack of knowledge regarding LGBT+ prisoners' living conditions and experiences in a Danish context. This is further hampered by the Prison and Probation Service's discontinuation of its annual surveys among prisoners, which used to provide valuable insights into the prisoners' living conditions and experiences, including in relation to harassment, threats, violence and sexual abuse.

While guidelines and policies for LGBT+ prisoners are increasingly common among European countries and have been adopted in Norway, Sweden, Finland, the United Kingdom and Malta,⁷⁹ Denmark still lacks guidelines or policy. In December 2021, the Prison and Probation Service informed the Institute that it had begun preparing guidelines for transgender and other gender minority prisoners based on the Institute's recommendations.⁸⁰

However, these guidelines are still underway. Based on an early draft as well as a High Court judgment,⁸¹ the Institute is concerned whether these guidelines will provide sufficient protection for transgender and other gender minority prisoners. Specifically, the Institute is concerned that the guidelines will only allow for body searches to be conducted based on the inmates' birth assigned gender.⁸²

RECOMMENDATIONS

The Institute recommends that Denmark:

- Ensures that the upcoming guidelines provide effective protection for transgender and other gender minority prisoners, including by ensuring them a real possibility to serve their sentence in a prison reflecting their gender if it based on a concrete individual assessment is deemed necessary and appropriate by the prison authorities;
- Launches additional initiatives to further protect and promote LGBT+ prisoners' rights, such as educating staff and informing prisoners about their rights; and
- Reintroduces the annual surveys among prisoners in Danish detention facilities with additional questions targeted at LGBT+ prisoners.

GREENLAND

11 LACK OF DATA

Relates to CAT Article 11, COs paragraphs 34 and 35, and LOIPR paragraph 19.

Issues pertaining to access to justice and deprivation of liberty in Greenland fall primarily under the responsibility of the Danish Government. Thus, it is the responsibility of the Danish Government to ensure an acceptable level of protection of the rights of inmates in Greenland and the effective implementation of the Convention against Torture.

However, there is a lack of systematic collection of data on the conditions for inmates inside the prison institutions (“anstalter”) in Greenland. The lack of aggregated and comparable data is a fundamental challenge, which impacts the ability to monitor the progress or regression in the implementation of the Convention against Torture.

For example, it is not possible for the Prison and Probation Service in Greenland or Greenland’s Police for example to systematically extract data on solitary confinement of inmates from a case handling system. Instead, the authorities do a manual count.⁸³ However, efforts are on-going to implement the Danish case handling system (POLSAS) in Greenland’s Police.⁸⁴

The challenges caused by the lack of adequate systems for data collection were emphasized by the Danish Parliamentary Ombudsman who stressed the need to intensify focus to ensure correct and comprehensive documentation and to strengthen attention on documentation regarding observation and security cells and the maintenance needs in this regard.⁸⁵

The persistent data gap is further highlighted by the divergent publication of the annual report by the Prison and Probation Service in Greenland. Between the years 2014 – 2019, the annual report was not published due to a lack of resources and time pressure.⁸⁶ However, an annual report was published in 2020, while no further reports have been published.

To identify and monitor developments and challenges of the rights of inmates in Greenland, it is necessary to publish a report annually and to ensure systematic collection of data, including on disciplinary measures, waiting time for serving of sentences, deaths in custody, and the use of isolation, including amount and duration and disaggregated by gender, age and other essential characteristics. Moreover, to obtain accurate and reliable data, the systems must take the Greenlandic context and language into account.

Further, a lack of data and statistics can present challenges for individuals wanting to bring a complaint regarding conditions inside the prison facilities, since it is difficult to document and substantiate fact-based claims concerning the conditions.⁸⁷

RECOMMENDATIONS

The HRCG and the Institute recommend that:

- The Danish Ministry of Justice – in collaboration with Naalakkersuisut – ensure that Greenland's Prison and Probation Service and Greenland's Police have a case handling system which allow systematic and reliable extraction of data that is comprehensive, disaggregated and comparable along with the necessary financial and human resources, including competencies to manage the systems.

12 SAFETY FOR PERSONS DEPRIVED OF LIBERTY

Relates to CAT Article 11, COs paragraphs 34 and 35, and LOIPR paragraph 19.

The safety of persons who are deprived of their liberty in Greenland has been criticized on different occasions following inspection visits at both local authorities (“kommunefogeder”) and in police detention facilities.⁸⁸

The police detention facilities can be used for short detentions and, in exceptional cases, for convicted.⁸⁹ Following a visit in 2021, the Danish Parliamentary Ombudsman found that the police fundamentally treat persons in their custody with consideration and dignity.⁹⁰ However, challenges about the security of persons in police custody, including the lack of police staff after 4 p.m. at some facilities while communication devices and surveillance devices were not functional, was also highlighted.⁹¹ A similar concern about the conditions of holding places is mirrored in the visions and priorities for the justice area in 2022 of Naalakkersuisut’s which states that the only possible option for the local authorities (“kommunefogeder”) is to use their own facilities for the deprivation of liberty until the police arrives.⁹² The Institute is concerned about the safety of persons deprived of their liberty at these holding facilities.

RECOMMENDATION

The HRCG and the Institute recommend that:

- The Danish Ministry of Justice – in collaboration with Naalakkersuisut – ensure adequate facilities for the deprivation of liberty also in smaller towns and settlements in Greenland.

13 FACILITIES AND CONDITIONS FOR PERSONS DEPRIVED OF LIBERTY AND PERSONNEL

Relates to CAT Article 11, COs paragraphs 34 and 35, and LOIPR paragraph 19

The Prison and Probation Service in Greenland manages institutions for holding approximately 153 individuals.⁹³ The institutions are divided into 96 open and 57 closed places and placed in: Ilulissat, Aasiaat, Sisimiut, Nuuk, Tasiilaq and Qaqortoq. Facilities are in principle, open, except for the facility in Nuuk, which has an open and a closed part.⁹⁴

The predominantly open nature of the institutions of the Prison and Probation Service in Greenland relates to the principle of reintegration of criminal offenders.⁹⁵ Thus, convicted inmates should 'as far as possible' not be prevented from participating in society outside of the institution.⁹⁶ However, the open prison institutions are increasingly closed off by having locked doors, secured windows etc.⁹⁷ Contrary to the legislative framework, there is a risk that the open institutions are de facto not open.

Moreover, since 2009, detainees ("tilbageholdte") have been directed to these facilities, while the institutions are suited for convicts.⁹⁸ The HRCG and the Institute are concerned of the lack of separation of convicts and detainees. Concern has also been raised of poor and dilapidated conditions in the prison institutions.⁹⁹ Likewise has the need to improve employment facilities in institutions,¹⁰⁰ as well as prison staff suffering from high levels of mental distress, such as PTSD symptoms, stress and anxiety been raised.¹⁰¹

RECOMMENDATIONS

The HRCG and the Institute recommend that:

- The Danish Ministry of Justice – in collaboration with Naalakkersuisut – ensure, at all times, a correlation between capacity, number of inmates, number of officers and the scope of tasks; and
- The Danish Ministry of Justice – in collaboration with Naalakkersuisut – ensure improvement of employment facilities in prison institutions, including the provision of adequate resources and competencies to manage employment facilities.

14 WOMEN SUBJECTED TO IUD AND HISTORICAL INVESTIGATIONS

Relates to CAT Articles 12, 13 and 14, COs paragraphs 16 and 17, and LOIPR 29 and 34.

In 2022, a large group of Greenlandic women reported that they had been fitted with intrauterine devices (IUD) by Danish healthcare providers without their or their parents' clear and unequivocal consent between 1966 and 1975. The campaign led to a dramatic reduction in the birth rate among Inuit women leading to a drastic change in the composition of the Inuit society, and many women are still traumatized. More recent cases, from the 1990s and up until today, have been reported since.¹⁰²

In May 2023 an investigation into the so-called "IUD campaign" was initiated by the Danish Government upon request from the Greenlandic authorities.¹⁰³ Notably, the terms of reference for the investigation do not include the human rights implications, and the investigation is limited to covering the period from 1960 to 1991. The Special Rapporteur on the Rights of Indigenous Peoples has called upon the governments of Denmark and Greenland to extend the scope of the inquiry into more recent cases and to include the oral testimonies of Inuit women as part of the investigation process.¹⁰⁴ Currently, some of the women are in the process of instituting legal proceedings against the Government of Denmark.¹⁰⁵

Additionally, an investigation of the historical relationship between Greenland and Denmark from the Second World War until today was initiated by Naalakkersuisut and the Danish Government. However, the terms of reference for the investigation do not include human rights.¹⁰⁶

Human rights implications should be an important focus area in the ongoing and future historical investigations, for example by including expertise on human rights and Indigenous Peoples' rights in the preparation and conducts of the investigations. It is the responsibility of the state to 1) ensure that human rights violations are thoroughly covered and examined, 2) recognise potential violations, 3) ensure inclusion of the groups that the investigations cover, and 4) ensure reparations, including compensation and rehabilitation to the victims.

RECOMMENDATIONS

The HRCG and the Institute recommend that:

The Danish government and Naalakkersuisut ensure that:

- The ongoing investigations into the "IUD campaign" and into the historical relationship between Greenland and Denmark, includes a human rights focus, including potential violations of the Convention against Torture; and
- Cases after 1991 related to historical decisions are included in the investigation of the "IUD campaign"; and ensure that victims of the hereof receive recognition of the violation of their human rights and reparations, including fair and adequate compensation, including the means to as full rehabilitation as possible.

15 CRIMINALISATION OF TORTURE

Relates to the Convention against Torture Articles 1 and 4, Concluding Observations (CO) paragraphs 10 and 11, and list of issues prior to reporting paragraph 2.

While torture is expected to be criminalised as a distinct offence in Denmark, the Institute notes that the work of the expert committee does not extend to Greenland. Thus, torture as an offence under Greenland's Penal Code ("kriminalloven"), is not explicitly defined as a punishable act. The prohibition of torture is implemented as different 'ordinary' criminal acts e.g. violence or coercion.¹⁰⁷

RECOMMENDATIONS

The HRCG and the Institute recommend that:
The Danish government and Naalakkersuisut:

- Propose amendments to Greenland's Penal Code so that it includes torture as a specific criminal offence.

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