Roskilde University

“Stop Killing us Slowly”

A research report on the motivation enhancement measures and criminalization of rejected asylum seekers in Denmark

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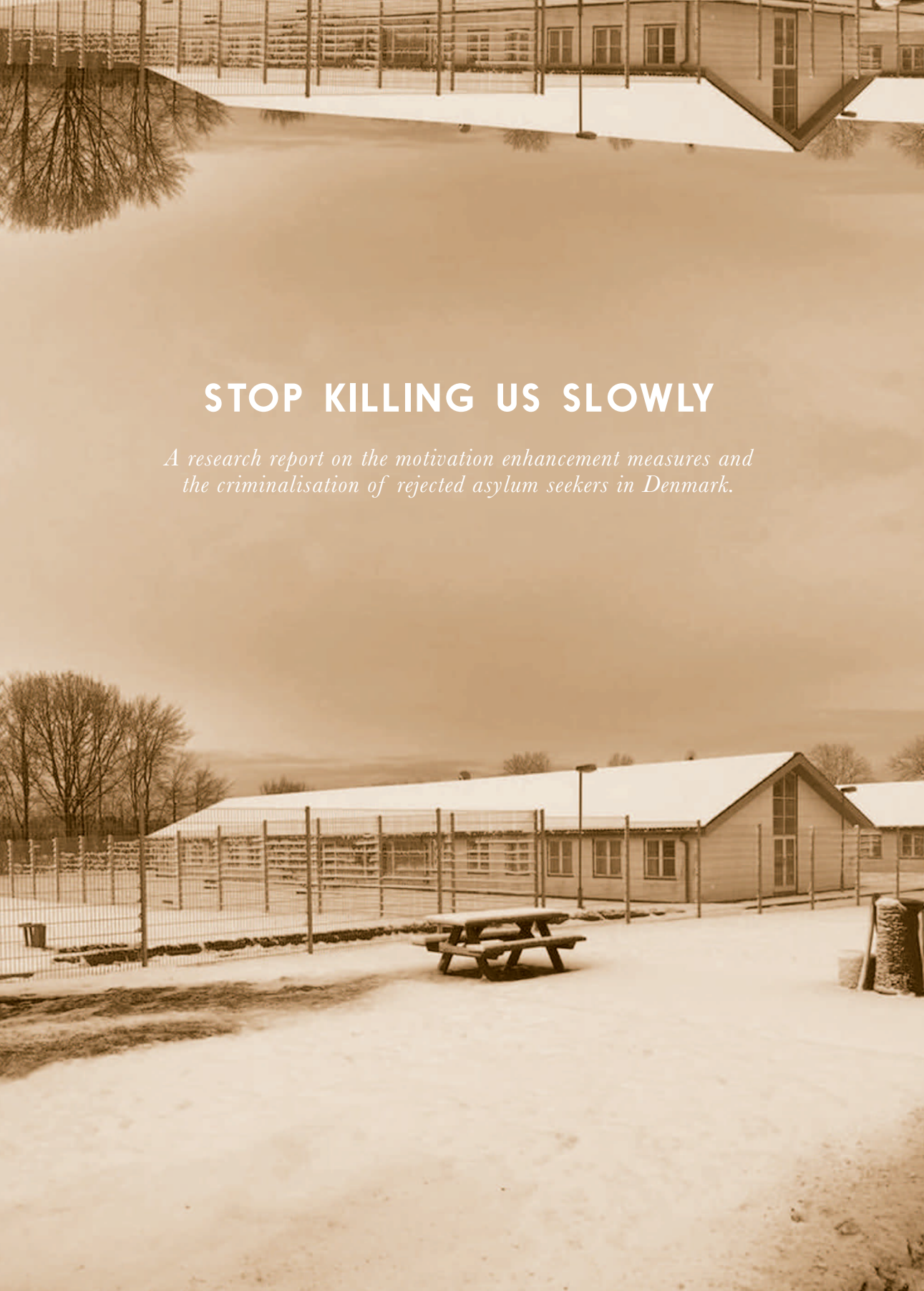
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STOP KILLING US SLOWLY

A research report on the motivation enhancement measures and the criminalisation of rejected asylum seekers in Denmark.

The Freedom of Movements Research Collective

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STOP KILLING US SLOWLY

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KJÆRSHOVEDGAARD

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PREFACE BY THE AUTHORS

Denmark is not a democracy. It is for Danish citizens, but not for us. They put people in the camps, and for us, there is no democracy. Nobody listens to us. We fled from death in a totalitarian country, but at least there, death is fast. Here it is slow instead. (...) We don't know how long we will stay here. They are killing us mentally, slowly.

This is how Hassan,[1] a rejected asylum seeker and resident of deportation centre[2] Kærshovedgård, explained his situation to us. Together with 25 fellow residents, Hassan initiated a hunger strike in October 2017 to protest the conditions in the centre what they perceived as a political strategy of the Danish state to leave them there to 'die slowly'. The hunger strike was the latest in a series of self-organised protests among asylum-seekers in Denmark that called attention to the conditions in deportation and detention centres. The deportation or 'departure centres' Sjælsmark and Kærshovedgård have been hotly debated ever since they opened in 2015 and 2016 respectively. They have become one among many hallmarks of the Danish government's efforts to deter and expel unwanted migrants, and have received harsh criticism from human rights organisations.

Building on this critique, but also trying to understand how the centres are set up and operate beyond the heated and often misinformed political debate, the report has a twofold aim, addressed in two distinct parts:

The first part gives an overview of how the motivation enhancement measures in the Danish Aliens Act are translated into practice with particular focus on the deportation centres, their structural setup, and their observable effects. To date, the only existing report mapping the situation of non-deportable rejected asylum seekers in Denmark was published by Clante Bendixen in 2011, before the deportation centres were established.

The second part of the report takes the form of an analytical intervention based on the research findings. As researchers and observant participants in and of the Danish and European migration control apparatus, we take the call of deportation centre inhabitants to 'stop killing us slowly' as an invitation to critically analyse the Danish deportation centres and their 'surplus' functions. We understand

the Danish deportation centres as one of many instruments of the European deportation regime, designed to punish and expel non-white immigrants at serious human and societal costs.

The report addresses asylum-seekers and their support networks, practitioners, and the Danish public, and hopes to contribute to nuance the public debate on the setup and effects of deportation centres. It has been collaboratively written by researchers within the Freedom of Movements Research Collective. As researchers, we work in the tradition of socio-legal scholarship and decolonial and critical border and migration studies and draw on these perspectives to understand issues of migration, citizenship, race, and exclusion. The focus of our inquiry lies on instances where human rights are suspended or made inapplicable, and what then happens: to those confined in the legal grey zones, and to society at large.

Several people and collectives have volunteered to help with different tasks connected with the report, and we express our deep gratitude for their involvement and assistance: to Ida Lerato Sekamane, Marie Louise Takibo Kaspersen and Rita Mourched, students at Cultural Encounters, Roskilde University, who carried out core tasks that were pivotal in the initial phases of this research; to the voluntary translation team who helped us turn the original text written in a mixture of Swedish, Danish and English into Danish and English: Ditte Holm, Freddie Ray, Peter Voss, Nanna Dahler, Eva Aabel, Katrine Brædder Andersen and Maria Cariola; to our critical readers and their valuable input and suggestions: Maria Cariola, Nicholas De Genova, Martin Bak-Jørgensen, Kirsten Hvenegård-Lassen, Susi Meret, Sunniva Weschke, Victoria Canning, Kirstine Nordentoft Mose, and Martin Lemberg-Pedersen; Lesley-Ann Brown for English proofreading; Katrine Meyer Sørensen, Laura Na and Trampoline House for assistance with dissemination; to Thomas Elsted, Rasmus Preston and Amin Zeneyedpoor for allowing us to use their photographs; to Albert Scherfig for helping with setup and publication; and to Marronage for their constant support throughout the process. We also wish to thank the residents of Sjælsmark and Kærshovedgård who have shared their stories and insights with us for their commitment to shed light on and challenge the rationale of deportation centres. Above all, we thank our Castaway Souls and Freedom of Movements who are our teachers of borders and camps – and the struggle against them.

The report has been published with the support from the Department of Communication and Arts, Roskilde University.

EXECUTIVE SUMMARY

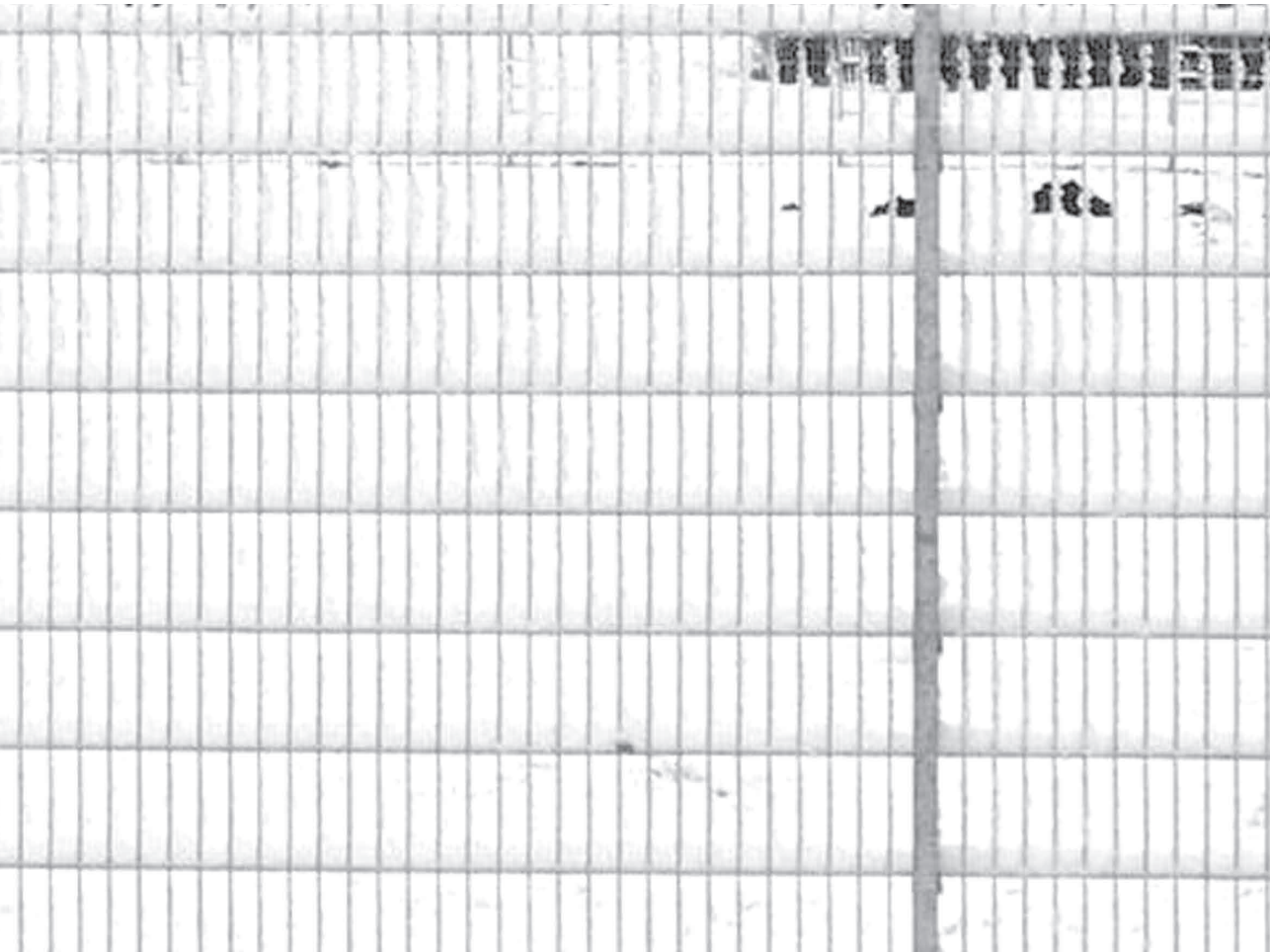
According to the Danish Minister of Immigration and Integration, the Danish deportation centres Sjælsmark and Kærshovedgård are set up to 'make life intolerable'[3] for those rejected asylum-seekers who cannot immediately be detained or deported, thereby pressuring them into leaving Denmark 'voluntarily'. As part of the *motivation enhancement measures* introduced into the Danish Aliens Act in 1997 the deportation centres confine asylum seekers in geographically isolated 'open' institutions with low living standards and minimum welfare provisions. However, these measures have not fulfilled their official function. Instead of making more people return 'voluntarily', they have pushed rejected asylum seekers into illegality, while others remain stuck and de facto confined in deportation centres for a potentially indefinite time period. This report gives an overview of the setup of the deportation centres and analyses how the discrepancy between the intended and real effects may be interpreted. It asks: what are the functions of deportation centres based on their real, rather than politically declared effects? Addressing this question, the report finds the following:

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- The deportation centres in particular and the motivation enhancement measures in general, do not fulfil their declared function of increasing 'voluntary' returns, nor do they address the issue of migrants who are legally stranded for lengthy periods of time with very circumscribed rights.
- The legal frameworks regulating detention or prisons in Denmark (i.e. time limits, access to legal advice, rights guarantees) do not apply to deportation centres. Deportation centres can therefore be compared to indefinite detention.
- The deportation centres result in the drastic deterioration of the mental and physical health of the men, women, and children accommodated there.
- The political framework, the juridical setup and the daily rules and practices in deportation centres contribute to the criminalisation of migrants and refugees.
- By running these practices in a legal grey zone, the Danish government circumvents – and overtly breaches – human rights regulations at the same time locking residents in a situation with very limited possibilities to contest these conditions and claim their human rights.
- While failing to achieve their own stated goals, the motivation enhancement measures and the deportation centres do achieve making peoples' lives intolerable: they break people's spirits and minds and force them to live a life in illegality, outside of the justice- and rights system.



PART I



INTRODUCTION

"These people are unwanted in Denmark […]
It should be as intolerable as possible to be on tolerated stay."[4]

In 2013, the Danish government announced that two 'departure centres', Sjælsmark and Kærshovedgård, would be established in order to house rejected asylum-seekers with the aim to pressure them into returning 'voluntarily' to their assumed countries of origin. The centres would also house people on tolerated stay and those who received an expulsion order following a criminal conviction.[5] The centres are part and parcel of the 'motivation enhancement measures' which were introduced 1997, allegedly to encourage asylum seekers and migrants to leave Denmark or cooperate in their own removal from the country. These measures are found in the Danish Aliens Act, among others in §§ 34, 36, 40, 41, and 42a, and include:

- Forced relocation to deportation centres that are geographically isolated with poor transport connections. The Danish Prison and Probation Service have operated these centres since 2015. The Danish Helsinki Committee for Human Rights has described the conditions in the centres as being 'worse than Danish prisons' in several ways.[6]
- No food allowance. This forces the centres' inhabitants to eat the catered food offered in the centres' cafeteria at specific times of the day. The food served does not take into account the person's age, health or religion.
- No right to work.
- Limited access to other meaningful activities, such as education. The activities offered are aimed at preparing the inhabitants for going back to their country of origin. Children are, however, allowed to go to regular school.
- Duty to register with the police up to several times a week.
- Constant risk of being detained or deported, with some being subjected to repetitive detention. Detention is used as a 'motivational' measure, i.e. as a strategy to pressure people into leaving.
- Limited access to healthcare and treatment: same as for asylum-seekers, with the notable difference that people can remain in deportation centres for several years with limited access to healthcare.
- No legal assistance during the asylum procedure. It is only when the person has had his or her case rejected by Immigration Service that he/she is appointed a lawyer.

Deportation centres follow a trend among European states where governments gradually step up their efforts to detain and deport rejected asylum seekers and other 'undesired' migrants.[7] This trend additionally includes investments in 'voluntary return programs', expanded immigration detention facilities, withdrawal of social support for rejected asylum seekers or even complete exclusion from social welfare services (a model practiced in the Netherlands and Sweden). Geographically isolated in old military and prison facilities respectively, surrounded by fences, and operated by the Danish Prison and Probation Service, the Danish deportation centres are intended to 'make life intolerable' for residents, thereby 'motivating' them to leave Denmark. The placement of the centres is intended to make deportation logistically easier; yet their geographical isolation, coupled with the duties of registration and residence, is problematic as residents' freedom of movement is extremely circumscribed. The following *table 1* and *figure 1* give an overview of the setup and location of the two Danish deportation centres.

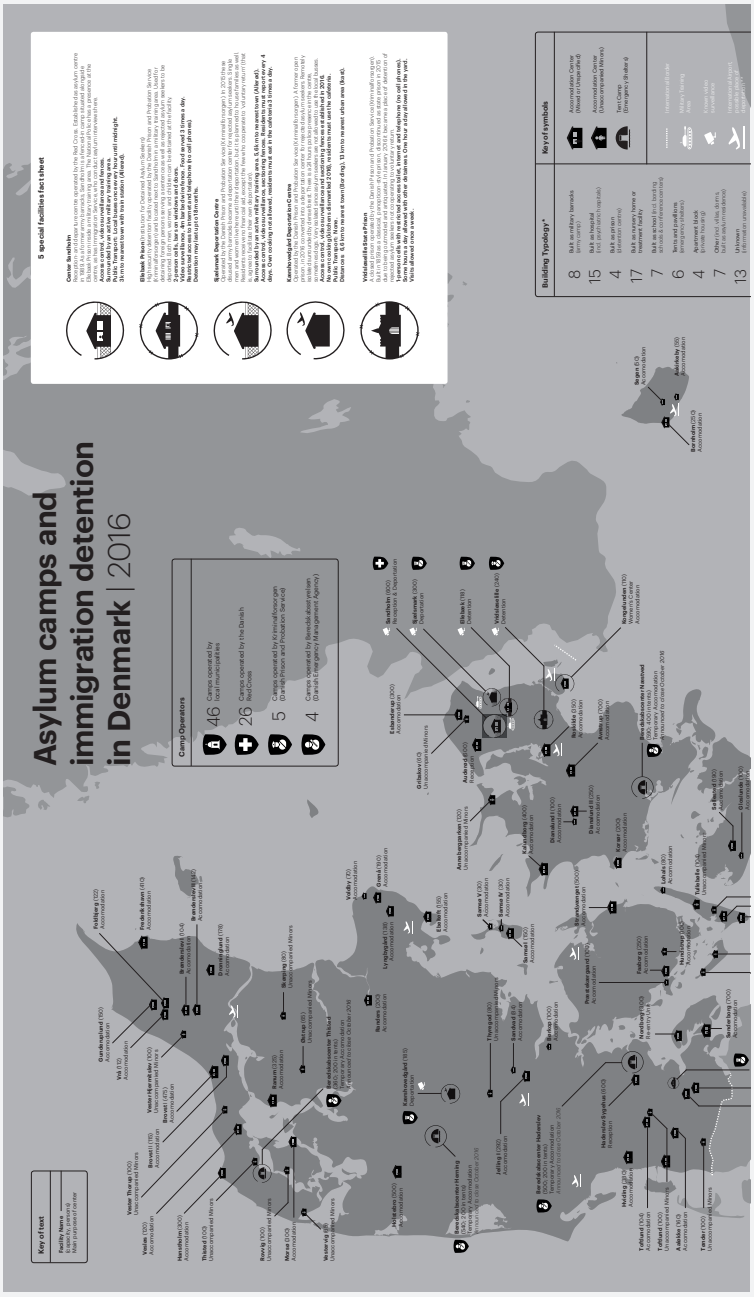
Table 1: Overview of deportation centres

Deportation centre Sjælsmark Hørsholm municipality	***Deportation centre Kærshovedgård Ikast-Brande municipality***
Opened in 2015. Intended to house 6-700 people, but today houses 100-150 rejected asylum-seekers, including 70 children.	*Opened in 2016. Intended to house 600 residents but currently houses 189 people. The majority are rejected asylum-seekers, people on tolerated stay, and individuals with a criminal conviction awaiting deportation.*
~	~
Sjælsmark accommodates asylum-seekers awaiting deportation according to the Dublin Regulation; rejected asylum-seekers whose applications have been found 'manifestly unfounded' (åbenbart grundløs), and couples and families with children who had their asylum applications rejected.[8] Families are housed in a special section of the centre.	*Kærshovedgård accommodates single men and women who are rejected asylum-seekers, and asylum-seekers who are charged with misdemeanours and whose cases are still under consideration with the Danish authorities ('phase two'). Women, individuals on tolerated stay and people with special psycho-social needs are housed in different separate sections, surrounded by an extra layer of fences.*
~	~
The facilities are military barracks in a still active military training area, where shooting exercises take place on a regular basis, and where it is not unusual to see military tanks passing by. This creates stress for the people living there, some of whom suffer from posttraumatic stress disorder.	*Kærshovedgård is a former open prison building. It is located in Ikast-Brande municipality in Jutland, around 9 kilometres from the nearest town. It cannot be reached by public transport, which makes it extraordinarily difficult to leave the centre and to maintain a social life outside: isolated in the forest, conditions amount to confinement.*

The centres are surrounded by fences and accessed through electronic gates. In Kærshovedgård, the gates have biometrical controls, which makes it possible for authorities to monitor residents' movements in and out of the centre. Similar controls are going to be installed in Sjælsmark.

Figure 1. The location of deportation centres.

Map by Thomas Elsted, Beata Hemer and Kirstine Nordentoft Mose (2016). The location of the centres is intended make deportations logistically easier; however, their geographical isolation, combined with the duties of residence and reporting is problematic as it drastically limits residents' freedom of movement.



The motivation enhancement measures, of which the deportation centres are the latest policy development, have been in place for 20 years and have continuously been expanded, despite the fact that they do not seem to have fulfilled their declared function.[9] This observation mirrors evaluations from other European countries where similar deterrence and 'minimum rights'-approaches have failed to increase deportation rates.[10] This attests to the gap between, on one hand, the formal and intended aims of the motivation enhancement measures, and the actual function and effects of these measures on the other. In face of this policy failure, this first part of the report addresses the following question: what are the observable effects and functions of the motivation enhancement measures and the deportation centres?

The report shows that among the effects of these measures is the fact that more people are pushed into illegality and lose contact with state authorities.[11] Other consequences are that individuals remain locked in a legal no man's land for long periods of time, at high human and economic costs.[12] The motivation enhancement measures have also resulted in the collective criminalisation of hundreds of people, including children, the vast majority of whom have never been suspected or convicted of any crime. Finally, the report shows that, while failing to achieve their own stated goals, the motivation enhancement measures and the deportation centres indeed render peoples' lives intolerable and pushes some of them into a life in illegality, rightlessness, and exploitation.

The report builds on qualitative data, gathered by the authors in our capacity as researchers of the European migration regime. The qualitative approach was chosen as it enables a 'thick description' of the setup, experiences, and effects of deportation centres. Moreover, secondary literature has been used in the analysis and to contextualise the report's findings more widely. The following empirical sources provide the basis for the report:

- Testimonies from residents of deportation centres, collected through interviews, discussions, and activist participation with residents of the centres during 2016 and 2017
- Secondary sources, including reports by the Danish immigration service and police authorities, parliamentary hearings, and reports by human rights and non-governmental organisations, legal advisors, and media
- Academic research and reports in the field of immigration control, detention, and deportation
- A paradigmatic example

A paradigmatic example is a case that highlights general characteristics of the phenomenon under investigation.[13] One may generalise from a paradigmatic example precisely because the focus is not on the unique features of the case, but rather on the features that resonate with other, similar cases, and in this way enables us to draw general conclusions regarding the system at hand.

DEPORTATION CENTRES & LEGALLY STRANDED MIGRANTS

People confined in deportation centres are 'legally stranded migrants', that is, non-citizens who "are caught between removal from the State in which they are physically present, inability to return to their State of nationality or former residence, and refusal by any other State to grant entry."[14] To be legally stranded is to be locked in a grey zone between legality and illegality where one's human rights – indeed, the very right to have rights – is severely circumscribed.[15] In order to prevent people from remaining legally stranded for longer periods of time, states are supposed to immediately deport rejected asylum seekers upon termination of their case. In reality, however, many people remain in this situation for extensive periods of time – sometimes for years.[16] This section explains why and how some asylum-seekers end up as legally stranded migrants in Denmark and subsequently become targeted by the motivation enhancement measures.

Among the legally stranded migrants are both those who are not considered 'cooperative' in their own deportation and those who cannot be deported for reasons outside of their control. In Denmark, the police use the term 'locked departure position' to describe the situation of these individuals. These are also the people who are placed in deportation centres. The following *figure 2* gives an overview of the legal statuses represented in the deportation centres. The following *table 2* shows an overview of the observable effects that the deportation centres have had on the legal situation of residents.

Table 2: Effects of deportation centres

Effects of the deportation centres in light of their intended aims	*4-5 residents of Kærshovedgård are reported to have returned to country of origin* *Unknown number of individuals went underground in Denmark or elsewhere in Europe* *Between March 2016 and December 2017 44 residents of Kærshovedgård have had their asylum cases reopened; 22 were granted protection status.*[18] *It is not possible to obtain corresponding statistics for residents of Sjælsmark.* *50 of 70 children in Sjælsmark in locked departure position.*[19]

Figure 2: Who is confined in the deportation centres?

1. Asylum seekers

Positive (asylum) → Moves to municipality

Negative (rejection) → 'Cooperates' with authorities and leaves 'voluntarily'

Does not 'cooperate': is subjected to the motivation enhancement measures →

If deportation can be enforced without consent of the asylum seeker: Detention according to § 36 of the Danish Aliens Act, max 18 months) and/or deportation

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Deportation cannot be enforced without consent of the asylum-seeker: Moved to deportation centre Sjælsmark or Kærshovedgård, no time limit

2. Criminalised non-citizens

Residence status → Criminal conviction: loss of residence status and expulsion order, but cannot be deported.

Non-residence status/ in asylum procedure (phase two) → Criminal conviction includes expulsion, but cannot be deported.

3. Individuals 'disqualified' from obtaining protection

Cannot be deported due to the principle of non-refoulement in the Refugee Convention[17]

WHY DO PEOPLE BECOME LEGALLY STRANDED IN DENMARK?

Unable to return

> We don't know how long we will stay here. They say: we don't care, you can stay here until you die. But do they really think I came all this way to sit on my ass and eat, get money, do nothing? No. I'd leave if I could, but I have nowhere to go.[20]

Kaywan, a resident of Kærshovedgård, shares his frustration of being stuck in such limbo. He also indicates that he 'would go back if he could'. So, why can't he?

In order to answer this question on a more general level, we will summarise the existing critique of the Danish asylum system. The most common reason for becoming stuck in Denmark as rejected asylum-seeker is that people refuse to 'cooperate' with Danish authorities in their own deportation procedure. Some have built new lives in Denmark; and some are still afraid of returning, even though Danish authorities have decided that it is not dangerous for them to return. However, although authorities often blame legal strandedness on the asylum-seekers, who either 'fail to comply' or are 'lying', this is far from always the case.[21] Moreover, the ways authorities handle cases suffer from shortcomings.

Between March 2016 and December 2017, 44 residents of Kærshovedgård have had their

asylum cases reopened and 22 of them subsequently were granted protection status. 20 of them were Iranian citizens.[22] The prevailing fear among rejected asylum-seekers to return to their assumed countries of origin, and the relatively high number of cases that have been reopened after an initial deportation order, calls attention to the concerns raised by legal advisors and experts regarding shortcomings in the processing of asylum applications.

According to lawyers from the independent Legal Advisory Council, the Danish constitutional state has been "forced down on its knees" because "almost none of the principles of administrative law are observed by Immigration Service, unfortunately often supported by statements of (the Minister for Immigration and Integration) Inger Støjberg."[23] These concerns reverberate in analyses prepared by other experts regarding the asylum process.[24] The criticism can be summarized as follows:

- Decisions regarding the cases made by Immigration Service have been found to be arbitrary and failing to protect the rights of individuals. Therefore, valid asylum claims risk being rejected.[25]
- In some cases, the Immigration Service makes decisions without complying with the legal requirement that such decisions must be made on the basis of the 'best possible' examination of the individual case. This means that many asylum seekers are rejected because they have not had the possibility to present their claims and/or have them adequately assessed.[26]
- The Immigration Service make their discretionary decisions based on so called Country of Origin Information Reports. These reports assess the security conditions in the so-called home countries of asylum-seekers, they must in theory be prepared on a solid basis. Nevertheless, attention has been drawn to the fact that the quality and credibility of these reports differ a lot from one report to the other.[27]
- The decisions made by the Immigration Service can be appealed to the Refugee Appeals Board, but its decisions in this regard seem to occur with a similar arbitrariness to the Immigration Service's. There is no way to appeal the decisions made by the Refugee Appeals Board.[28]
- The Immigration Service reportedly writes the wrong names and nationalities in the cases. In some cases, this complicates the communication with the applicant and his/her case, and his or her possibility to obtain asylum or apply for family reunification. It is difficult to get Immigration Service to correct these mistakes.[29]
- Asylum-seekers and their lawyers also point out problems with inadequate competence of interpreters, which also harms their asylum procedure.[30]

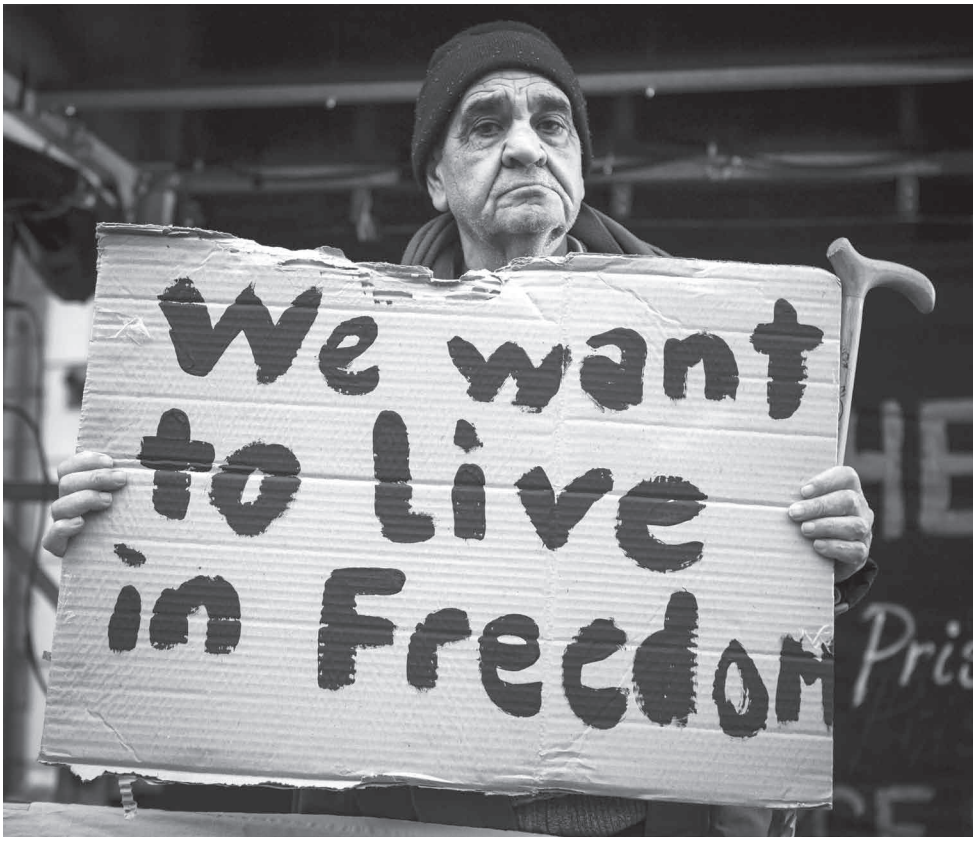
Many rejected asylum-seekers in the deportation centres experience that their asylum claims have been discarded on false grounds, or because their countries have been declared as safe by Danish authorities. For those who fear persecution based on their religion, gender, sexuality, or political activity, moreover, their fears of persecution are difficult to 'prove' to authorities.[32] Many rejected asylum-seekers indeed hold genuine fear of returning to their assumed countries of origin *even though* their asylum cases have been rejected, and are unlikely to be 'motivated' to do so because they are confined in deportation centres.

Yet others cannot be deported *despite* their own efforts to leave (political or practical impediments to deportation). The reasons hereto may include (but are not limited to):

- de jure or de facto statelessness: the individual has no legal status in any country.
- it is practically impossible to travel to the country of origin.
- the country in question refuses to accept an individual back due to political reasons.
- there are no state authorities in charge of the country in question (as in cases of civil wars, like Somalia. Since Denmark started revoking their residence permits, 800 out of 1600 Somali nationals have been placed in a legal no-man's-land and risk ending up in deportation centres for an indefinite time period.).[33]
- the person in question and/or state authorities are unable to prove his or her citizenship because of a lack of valid identity documents.[34]

According to § 9 c of the Danish Aliens Act, a residence permit may be issued in some cases if:

1. it has not been possible to deport the foreigner according to § 30 for at least 18 months,
2. the foreigner has 'cooperated' in the deportation efforts for 18 months consecutively, and
3. his/her return must be considered futile according to the information available at the time.



According to legal advisors, however, it is very rare that residence permit is granted on these grounds,[35] and since 2012, no single residence permit has been granted according to § 9 c.

Unable to move on

If legally stranded migrants cannot return to their assumed countries of origin, another strategy could be for them to leave Denmark for another European country. Yet their possibilities of moving on are also limited by European regulations, notably the Dublin Regulation. The Dublin Regulation is enforced through EURODAC, VIS, and SIS; Europe-wide fingerprint databases that are supposed to prevent people from seeking asylum in multiple member states, and, enable control of the movement of migrants and refugees within Europe. Through these databases, authorities can identify in which country was the person's first point of entry, whether for the purpose of seeking asylum or not.[36]

While the Dublin Regulation was intended to prevent onward mobility of migrants and refugees in Europe, numerous reports have shown that it has often failed to do so.[37] Many residents of the deportation centres in Denmark have been deported back and forth between different European countries - sometimes several times over several years. This is a costly and unsustainable procedure, both for asylum-seekers and for states. Moreover, recently compiled statistics reveal significant differences in asylum assessments both *between* European states and *within* states from one year to the next. The only commonality is that they all point in more restrictive directions. An example of the differences in asylum assessments between states is that in 2015, 69% of Afghan nationals were rejected in Denmark, while only 27% were rejected in Germany. As noted by Clante Bendixen, this is particularly alarming because there is no agreement "on a more uniform assessment of asylum cases."[38] Many asylum-seekers testify to feeling caught in a European asylum system that is both confusing and arbitrary. As a resident of Kærshovedgård explained:

> The system is like this: you are in a room trying to get out, and it's like a labyrinth to get out of there, with lots of different corridors to take and you don't know which one. I don't understand how the system works, I don't understand. And I even worked in a camp before and I know them well there – they don't understand the system either! There is no way to understand. Asylum is like a lottery: sometimes there are a lot of papers in there and sometimes nothing.[39]

According to *Rigspolitiets Nationale Udlændingecenter*, there are currently 956 individuals in a 'departure position' in Denmark. 512 of them are in a 'locked' departure position (that is, legally stranded), and for an additional 246 people, the police see 'limited possibilities' to enforce deportation.[40] This means that at least 758 of the 956 persons in departure position risk ending up in deportation centres for an indefinite amount of time and with severely limited alternative prospects. In the following section, the setup of the deportation centres and the motivation enhancement measures which aim to pressure legally stranded migrants to leave will be detailed.

POLICY & STRUCTURE IN DEPORTATION CENTRES

The deportation centres are part and parcel of the 'deportation turn' of European migration policy, where states devote increasing resources and efforts to detaining, deterring, and deporting 'unwanted' foreigners.[41] To this end, they use a variety of criminalising, coercive and deterrence strategies. While detention and forced deportations are costly to enforce, investments in 'voluntary' return measures in theory provide a relatively financially and legally 'cheap' way for European states to push people into leaving. Among these investments are 'open' deportation centres like Sjælsmark and Kærshovedgård in Denmark.

The motivation enhancement measures and their enforcement in the deportation centres operate according to a political "deterrence" logic.[42] Deterrence policies consist of deliberately worsening the material and psychological conditions for asylum-seekers and 'unwanted' migrants. They have two aims: to pressure individuals into leaving, and to discourage future asylum-seekers from coming. However, international studies show that these strategies rarely work: instead, they only serve to aggravate the situation for people who are already in a very precarious position.[43]

Similar dynamics are observable in the case of the Danish deportation centres. This section focuses on the legal and structural setup of the deportation centres and the motivation enhancement measures. The following *table 3* provides an overview of the actors involved in operating deportation centres, and hence also of translating the motivation enhancement measures into practice.

In the deportation centres, the motivation enhancement measures come into effect through the everyday activities of officials and employees who interpret, translate, and enforce the legal framework and the political instruction 'to make life intolerable for those unwanted in Denmark' into practice. Individual representatives of the Prison Union and Red Cross workers have voiced critique of their assigned duties to enforce 'symbolic' power[44] and maintain 'intolerable' conditions for residents respectively.[45]

Table 3: The institutions operating deportation centres

Immigration Service *The Immigration Service's Centre for Administration and Asylum Accommodation is responsible for the control, economy and accommodation of asylum-seekers, and decides whether a rejected asylum-seeker is to be accommodated in a deportation centre. They also determine the conditions for residents' duty to register and duty to reside on the basis of the recommendations made by the National Foreigner's Police.*

The Danish Police *The Foreigner's Police are responsible for the deportation cases of residents. The Foreigner's Police interview rejected asylum-seekers and decide whether they are considered 'cooperative' in the deportation process and whether and how the deportation order can be enforced. Nordsjællands Politi and Midt- og Vestjyllands politikreds oversee the everyday 'safety and security' in the deportation centres.*

The Prison and Probation Service *The Prison and Probation Service operate migration-related detention centre Ellebæk, and the deportation centres Sjælsmark and Kærshovedgård. As the deportation centres are not prisons in the legal sense, prison officers lack the authority to use coercive force or sanction residents; instead, the role of the trained uniformed prison officers and civilian 'institutional staff' there is primarily symbolic.*

The Danish Red Cross *The Red Cross offers very limited emergency health care and treatment in the deportation centres. All additional treatment beyond emergency healthcare has to be approved by the Immigration Service. The Red Cross also offer limited daily activities in the deportation centres, including for children.*



THE CONTESTED NATURE OF DEPORTATION CENTRES

> Here is worse than prison, they treat us worse than prisoners and we haven't even committed any crime. Here there is no time limit. That's the difference, if you've got a prison sentence you know for how long you will be there but here we don't know. We don't know how long we will stay here.[46]

The deportation centres Sjælsmark and Kærshovedgård and the detention centres Vridsløselille and Ellebæk are all examples of the merging of criminal institutions and regulations and immigration-related law. International research has warned that this merging minimises the rights of the non-citizens targeted.[47] As the above quote by Naim, a resident of Kærshovedgård, illustrates, there are some aspects of the setup of deportation centres that are particularly worrying in this regard:

- the lack of time limit;
- severe restrictions to residents' freedom of movement;
- and the lack of regulations and judicial safeguards for residents confined there.

In order to understand the legally unclear nature of deportation centres, including why they are problematic from a human rights perspective yet so difficult to contest, it is useful to compare them to a) migration-related detention and b) Danish prisons.

Deportation centres vs. Migration related detention

There are important differences in the judicial safeguards for people who are detained under the Danish Aliens Act, and residents of the deportation centres: residents of deportation centres are not considered to be detained and are, in theory, free to leave the centres at any time. Moreover, residents are only 'supposed to' spend a few weeks in deportation centres before they are deported. This is true for those who await deportation to another European country under Dublin procedures, which usually does not take long; however, many residents remain in the centres for substantially longer.

Some have, prior to arriving there, spent over a decade in the Danish asylum system and have awaited deportation for several years. This is important to stress, because their situation is not likely to change when they are moved to deportation centres.[48] The Immigration Service has acknowledged that it is 'very difficult to assess' how long residents will remain in the centres, as it depends on the practical, political, and juridical possibilities of enforcing the deportation.[49]

In practice, then, residents' situations resemble that of being detained, but without legal basis and with no time limit. Yet the residents of Kærshovedgård and Sjælsmark can also be detained in Denmark's migration related detention centre: Ellebæk. Ellebæk is a closed institution where the following persons may be detained under § 36 of the Aliens Act:

- Persons facing forced deportation
- Persons who have failed to show up for questioning by the police
- Persons whose deportation is to be determined
- Persons whom the police judges to be 'non-cooperative' in the investigation and processing of their case
- Persons resisting deportation

§ 35 of the Aliens Act regulates immigration detention and criminal cases involving non-citizens. The rules spelled out under § 36 imply that some of the persons affected by the motivation enhancement measures in Sjælsmark or Kærshovedgård have been or risk being imprisoned for shorter or longer periods of time. While the police generally avoid detention if there are no prospects of deporting a person within the foreseeable future, deportation centre residents still remain under constant risk of being detained.

Indeed, there is no way for residents of deportation centres to know when or why they might be subjected to detention. For instance, the unclear criteria pertaining especially to what constitutes 'cooperation' with authorities induces a sense of arbitrariness and unpredictability. According to § 36 section 4, a person may be detained during the processing of their asylum case if "the alien, by his or her actions, prevents the disclosure of information in the asylum case", for instance by "withholding information about his identity, nationality, or travel route" or "in other ways fails to cooperate in providing information to the case" (Danish Aliens Act § 36, 4, points 2 and 3).

Discretionary decisions on whether a person is cooperating are taken by the individual police officer handling the case. The executive power, in this case the Danish National Police, thereby take on a role that can be compared to that of the judiciary power in relation to the individual case.[50] Prior findings of cases regarding "non-cooperation" that have been scrutinised by researchers and lawyers show that these decisions are often made on arbitrary and unclear grounds.[51] Moreover, legal advisors report that there has been an increase in the use of detention by the Danish police in the past years.[52]

Deportation centres vs. prisons in Denmark

The unclear nature of deportation centres is further highlighted by the fact that, while they are not imprisonment in the legal sense, in practice they drastically restrict the freedom of movement for residents. Additionally, as illustrated in *table 4* below,[53] the conditions in deportation centres are remarkably different from those in Danish prisons, especially with regard to transparency, clarity as to the purpose, operation, and termination of residency, and the possibility to appeal authorities' decisions.

Both Amnesty International and the Danish Helsinki Committee have warned that conditions in deportation centres are "worse than prisons".[57] This is not to say that the conditions in Danish prisons are unproblematic; the problems of the prison system are beyond the scope of this report. It is however important to highlight the unclear and ambiguous legal status of deportation centres - they are neither prisons, nor are they regulated by the (limited) judicial framework for migration-related detention. This makes it very difficult for residents of the centres to protest conditions and claims their rights, exactly because they are not detained in the legal sense and therefore theoretically "free to leave Denmark, if they don't like it there".[58]

Deportation centres as indefinite detention?

The 'freedom' to leave of people in deportation centres is highly circumscribed in practice. Indeed, according to residents, several NGOs, and the Danish Supreme Court, the conditions of deportation centres resemble those of indefinite detention. While residents are not detained in the legal sense, they must:

- spend every night at the centre (duty of residence, '*opholdspligt*'). This means that residents have to be back in the centre by 10 pm every evening;
- regularly register with the police (registration duty, '*meldepligt*'): 5-7 times a week for residents on tolerated stay and those convicted to expulsion by a criminal court; 3 times a week for rejected asylum-seekers);
- ask authorities for permission if they want to spend the night outside the centres ('*underretningspligt*').[59] Failure to register with authorities can amount to a criminal offense, punishable by a fine (which they are unlikely to be able to pay as they have no right to any income) or up to 1,5 years of provisional detention, served either in Kærshovedgård or by electronic ankle bracelet.

Legally, it makes an important difference that these conditions are not considered to amount to detention, as such deprivation of liberty would be unlawful if it does not fall under § 35 or § 36 of the Danish Aliens Act.[60] Moreover, detention without time limit would breach art. 5 of the European Convention of Human Rights, and violate the standards set out in the EU Return Directive (which stipulates a time limit of 12 months).[61] While a decision on detention can be appealed, and detainees are assigned a lawyer to help them in this endeavour, the administrative decision by Immigration Service on 'duty of residence' (*opholdspligt*) cannot be appealed (see Danish Aliens Act § 46a, stk 1).[62] Instead, the conditions of deportation centres fall within the legal grey zone of "restricted freedom of movement", for which there are no procedural guarantees.[63]

In a court ruling from January 2017 regarding a Kærshovedgård resident's violation of the duty to reside and register (*opholds- og meldepligt*), the Danish Supreme Court declared that conditions amounted to disproportionate infringements to his freedom of movement, and thereby in violation with human rights law. The man was on tolerated stay and had been subjected to these control measures since 2009.[64] This is by no means the first time that the court deems government policies targeting legally stranded migrants unlawful; nor is it the last. Already in 2012, the government chose to ignore the verdict of the so-called Karkavandi case and subsequent critique from the Ombudsman.[65] The legal representative of Karkavandi, Christian Dahlager, remarked that the government's response "undermines the judicial system."[66] Since then, his critique has been repeated by the Danish Supreme Court, Amnesty International, the Danish Refugee Council, the Danish Institute for Human Rights, Dignity, Retspolitisk Forening, and Foreningen af Udlændingeretsadvokater, who all highlight that the situation for those forced to reside and regularly register at Kærshovedgård under the strictest conditions risks (and in individual cases, does) amount to disproportionate and illegal detention..

However, this has not prevented politicians from continuing adopting more restrictive policies targeting primarily individuals on tolerated stay: the latest changes entered into force in March 2017.[67] The government has introduced a scheme that details how the court should judge violations of the duty to reside and register in the deportation centres, which de facto removes the discretion of courts to take individual considerations into account when issuing verdicts.[68] The National Association of Defence Attorneys has criticised the government for politicising their work and undermining the separation of legislative and judicial powers.[69] As of March 2018, 243 deportation centre residents have reportedly been charged with violating the duty of residence in Kærshovedgård. Lawyers estimate that this form of punishment, much like other restrictions, will not have the intended effect of making more people 'give up' Denmark.[70]

Despite politicians' efforts to pressure courts in a more restrictive direction, however, their new law has been challenged: in January 2018, the district court (*byretten*) in Herning freed Sharvin Shojaie, who is on tolerated stay, from the charges of having violated the duty to reside and register in Kærshovedgård. What is more, the court suspended his duty to live in Kærshovedgård, as the court found that he had been subjected to these control measures for too long already.[71] This means that more people, whose cases have not been taken to court, might find themselves being subjected to control measures that amount to disproportionate infringements of their freedom of movement in the deportation centres.

The Danish Minister of Integration has continuously defended the "need" to "go to the very edge of the conventions"[72], suggesting that human rights is a luxury rather than an absolute bottom line. However, the conventions have indeed been written as bottom-lines. If crossed, this will by definition result in the violations of human rights. The conclusion of courts and human rights organisations[73] that conditions in deportation centres amount to (unlawful) detention for those on tolerated stay, can and should also be taken seriously for *all* residents held in the legal grey zone of deportation centres.

Moreover, as pointed out by Mohamed, a resident of Sjælsmark: "They do anything to make us go away… they are pushing us away but we have nowhere to go. Dublin procedures will just bring us back here again."[74] In a way, then, residents who are legally stranded in Denmark, are also physically stranded there. Even if they leave the deportation centres, they risk detention for failure to register with authorities; and should they cross its borders, they risk being deported back, and Denmark effectively becomes their 'open prison'.

Table 4: Deportation centres vs. prisons in Denmark

Deportation centres	*Prisons*
Limited activities are offered that serve to "prepare" residents to leave Denmark.[54]	*Prisoners are prepared in the best way possible to return into Danish society once they have finished their prison sentence.*
~	~
The centres are isolated from society. Transportation is provided for only in direct connection to residents' deportation cases or acute healthcare.	*Some prisons are located in isolated places, others not.*
~	~
Residents may leave the centre on the condition that they fulfil the registration duty. In practice, however, it is difficult for residents to leave the centres as they are located in isolated places and public transport is inaccessible and/or unaffordable for residents.	*In principle, residents are not allowed to leave the prison facilities. In practice, however, depending on whether it is an open or closed prison, residents may be permitted to leave the prison facilities.*
~	~
Residents do not have the right to work, but they are offered limited activities, such as English classes (but not Danish classes). The decision on which activities are to be offered are made by the operators of the centres. Activities are not supposed to create 'routines' that would contradict the 'motivating' purpose of the centres.	*Residents can work, study, and are offered various activities inside the prison.*
~	~
Human rights (including the right to liberty and protection against arbitrary arrest or detention[55]*) are not protected as deportation centres are not considered as detention in the 'legal' sense.*	*Legal requirements fulfilled; human rights (including the right to liberty and protection against arbitrary arrest or detention) are generally respected in cases of lawful detention.*
~	~
Rejected asylum seekers who have not committed any crime have not had a trial, and they have no access to legal advice after the final rejection. Among foreign national offenders who received a deportation order following the termination of their prison sentence and/or asylum-seekers awaiting trial before a court for a criminal offense, most criminal offenses share the following characteristics: a) Misdemeanours, which for Danish citizens would be punishable by a fine; b) Criminal offenses that have been directly provoked by the conditions in asylum or deportation centres, and/	*Prison sentence served after criminal offense, judicial procedures, and sentence by court. Prison sentences are given in relation to the character and gravity of the criminal offense, and the conviction or sentence takes the mental state of the offender into consideration.*

or interactions with migration authorities, centre staff, police, or politicians; c) Legal offenses that are the consequence of the psychological pressure that residents are subjected to.	
~	~
Uncertainty in relation to the length of stay in the centres: no time limit.	*Generally clear and predetermined length of the penalty and thereby length of imprisonment. Possibility to apply for reduced prison sentence.*
~	~
Residents are not allowed to cook their own food. Special dietary needs are not taken into consideration.	*Residents may be allowed to cook their own food. Special dietary needs covered.*
~	~
Access to healthcare and treatment is restricted to 'emergencies', hence very limited.	*Normal access to healthcare and treatment.*
~	~
Fences may be erected or changed inside and around the centres without any clear purpose, other than serving a symbolic function of making conditions 'intolerable'.	*Fences and/or walls are supposed to serve a clearly defined purpose.*
~	~
The centres are operated by the Prison and Probation Service, but officers' role is civilian. This means that they are not allowed to use coercive force. Prison officers carry uniform (without truncheon and handcuffs) in spite of the civilian role.	*Prisons are operated by the Prison and Probation Service, and officers' role is not civilian. This means that they have the authority to use coercive force. Prison officers carry full uniform.*
~	~
The role of the Prison and Probation Service is unclear, as is the basis of the 'house rules' of deportation centres.[56] The general logic of the centres is to make life intolerable for residents.	*The role of the Prison and Probation Service is clear and unambiguous: their role is to maintain the prison order while also 'normalising' life in the prison to the greatest extent possible: that is, to make it as tolerable as possible.*
~	~
Residents are subjected to a sentence-like decision to residence in deportation centres without time limit. It is unclear which instance makes these decisions: formally, the Immigration Service decides on where asylum-seekers are housed, based on recommendations by the individual police officer in charge of the deportation case. The decision to move people to deportation centres is made without legal supervision and cannot be appealed.	*Imprisonment is preceded by a court sentence, and the length of imprisonment is determined by the judicial power.*

EVERYDAY LIFE IN THE DEPORTATION CENTRES

Written and unwritten rules

The everyday lives of legally stranded migrants are framed by a set of written and unwritten rules that affect every aspect of their lives. This section describes the life conditions for people subjected to the motivation enhancement measures in the deportation centres, building on the official, written rules of the centres, residents' experiences of these rules, and the centres' 'unwritten rules'. In interviews and conversations with residents of deportation centres, three themes were recurrent: Feelings of being put in a state of permanent anxiety, loss of dignity and humanity, and the experience of being criminalised.

The written house rules for Sjælsmark and Kærshovedgård can be found on the centres' websites. Some of the written rules are general for all state institutions; others are translations of the motivation enhancement measures found in the Danish Aliens Act, and yet others are motivation enhancement strategies, that is, *interpretations* not directly derivable from the law.

The rules that can be said to apply *generally* to public institutions are the following:[75]

- Residents should follow the instructions given by centre staff and keep themselves up to date with important information from the centre.
- Residents should behave respectfully.
- Children and minors are subordinate to their parents and parents are responsible for the actions of their children.
- Any crime committed in the centre will be reported to the police.

Since residents are put under significant physical and psychological pressure, these general rules subject them to additional pressure. In particular, the rules on "respectful behaviour" and report of any misdemeanour to the police subject them to psychological pressure, especially when the residents' concerns and reported conflicts among co-residents or with the staff are not taken seriously or addressed by the management.[76] Similarly, keeping 'up to date' with news from the centre can be associated with grave anxiety: Adama, who lives in Sjælsmark, describes his daily visit to the reception, where residents should pick up their mail from the police or immigration service, as a nerve-wrecking exercise: "no news is the news, it means I'm not deported today".[77]

Rules that are direct *translations* of the motivation enhancement measures found in the Danish Aliens Act include the following:

- Residents should be ready to identify themselves by displaying their asylum card and keys upon staff's demand (rules on identification). This rule applies to all asylum centres, not only deportation centres.
- Residents are offered three meals a day at fixed hours. Meals can only be consumed in the cafeteria, in accordance with the rule on no daily allowance and catering arrangement.
- According to the recent report by the Helsinki Committee, the staff in Sjælsmark may conduct body searches in cases where there is a suspicion of stolen goods, while in Kærshovedgård, it "is quite permissible to search the premises, but not known what should be searched for. There are no guidelines. Apart from illegal items such as knives and weapons, it is not clear what is permitted (...) body searches of residents are not permitted."[79]
- Residents must apply to Immigration Service to spend the night outside the centre (duty to report).
- Residents must participate in activities and sleep at the centre. In Kærshovedgård, residents must also activate their key card every 24 hours (duty of residence).

While the above rules derived from the Danish Aliens Act are not technically in direct violation of human rights regulations, they infringe upon the rights and freedoms of deportation centre residents: their purpose to put pressure on residents subjects them to constant surveillance and restrain their freedom in a way that is highly tangible for residents and visitors. However, they operate in a legal grey zone that makes it difficult to contest legally.

Finally, besides the ordinary rules and those rules that can be directly traced to the Danish Aliens Act, there is an additional set of rules that do not have any apparent basis in the law. This set of rules can be understood as *interpretations* of the political instruction of making life intolerable for people in the deportation centres. These are:

- Fences and surveillance are monitored by the staff. Residents are not allowed to touch or climb over the fence that surrounds the centres.
- Residents are not allowed to "linger just outside the centre for any length of time".
- Residents are not allowed to personalise their rooms, and the staff have free access to them at all times.
- Residents are not allowed to cook food in their rooms.
- The centres do not offer any areas designed for religious practice, nor are residents allowed to design such areas themselves.
- Residents may receive visitors, and they have to be reported to staff.

These rules demonstrate the differences between regular asylum centres and deportation centres, where the latter have rules that resemble those of prisons (such as surveillance, fences, and highly regulated access). Furthermore, some rules are more restrictive than those in prisons (such as the prohibition on personalising one's room, lack of opportunities to cook food, earn money, and arrange for spiritual practices).

The unwritten rules in the deportation centres are vague and changeable agreements made by the staff, individually or together, regarding the daily operation of the centres. This is normal for any institution. Where it may be problematic – and of particular interest to this report – are the conditions under which such vague and unwritten rules contribute to the deliberate generation of uncertain, uncomfortable and indeed, intolerable conditions for residents.



The intolerable everyday

The combination of control and surveillance measures with no clear purpose causes stress and uncertainty among residents, and a constant feeling of being surveilled without them knowing why or for what.[80] Bashir, a resident of Kærshovedgård, explained:

> The surveillance is everywhere. What do they monitor? I don't know, but I think it's just for us to feel uncomfortable. We have to pass seven locked doors to go out and then get back in to our rooms. The biometrical keys often don't work and I can be locked out for an hour. They know everywhere I go, every movement.[81]

Kaywan in Kærshovedgård additionally noted that: "They waste money on creating inhuman conditions; they make a business out of us. But it's a waste of money for them. They could use this money for good things, to help people."[82] The sense of the Danish state directly investing in their effective confinement and dehumanisation is recurrent in testimonies from deportation centre residents. Moreover, the duty to reside and regularly register in the centre severely restricts residents' possibilities of having a life outside the centre:

> It's the everyday things. That someone else knows exactly how many times a day you walked out of your room, that when I go to the shower will my door be locked, that I wonder will my keys still work if I go to the cafeteria… you shouldn't worry about those things, they are just little things but they affect your everyday life; especially when you don't know how long they will continue for…[83]

As residents are neither allowed to work nor study, everyday life in the centres is characterised by idleness, restlessness, and protracted waiting. Issa, who lived for two years in Sjælsmark, describes this the following way:

> Even though you are allowed to leave the camp, there are certain regulations which make it very difficult for you to live. You can't have any activities that keep you going. It's like a border between you and the rest of society, one that you can't see… As a normal person you choose to do things when you want to do them. You can eat when you want, exercise whenever you want, decide how you want to live your life. In the camp, we are deprived of all choices. And you can't make any plans for your life.[84]

Indeed, in the centres, residents are forced into passivity, which both deprives them of their dignity and come at great economic and human costs:[85]

> When you're in the system, time pauses. It's all they have: you just walk around in the different camps you have been sent to, and that's it. You sit in your room, you go for food, come back. That's it. There is internet but as long as you can't work, you can't afford a computer or a smartphone… unless you steal, or become a beggar. These are one of the things the system makes to you. (...) and this situation could go on forever. Many of those who are there have to stay there for the rest of their lives… and bearing this in mind is a burden you carry. And it creates craziness. When life doesn't have a purpose, when it's made not to have a purpose… it makes you go crazy. Knowing you have potentials, dreams. And this is just to make you sign a paper. And to you this might well be a death trap you are signing.[86]

The law constrains residents' freedom to go about their daily lives in ways that often appear as arbitrary to them. If they react to or challenge these rules (for instance, the duty to report and register), they risk criminalisation, "namely, imprisonment for up to 1-3 years".[87] It is important again to underline that the explicit purpose of these rules to motivate residents to leave Denmark translates in practice into making life intolerable for them.

Residents' complaints on badly prepared food, together with the recent hunger strike, have been mediatised in a way that, for the most part, frames residents as 'undeserving' and 'ungrateful' welfare abusers.[88] However, it is pivotal to bear in mind that the catering arrangement is part of the motivation enhancement measures, and it is intended to put additional pressure on residents by minimising their freedom. Protests and 'complaints' should therefore be understood as ways of protesting the deprivation of agency and control over one's everyday life.[89]

Living in deportation centres also means living with a stigma, which is aggravated by the framing of residents as 'criminals' in media and public discourse. As Hassan told us:

> I'm afraid to go out. (...). The Danish people outside look at you differently because of your skin and hair colour - like they expect us to do something. I want to just take off my jacket, show the pockets: Look I have no bomb, no knife, no nothing! I'm not a criminal! The other week when I took the train, the conductor saw the ID card (where it says "Udrejsecenter Kærshovedgård" in capital letters above the name and photo). What are you doing here? he told me, aren't you supposed to be locked up? I told him no, I can leave the centre – and he said, you want me to call the police?[90]

Taken together, the rules and governing practices of the deportation centres serve to make the life of their residents 'intolerable', by depriving them of the possibility to make their own decisions over their daily life as well as to plan for the future. The unpredictable rules and the ever-present risk of detention and deportation further creates substantial anxiety among residents. Last but not least, this condition is aggravated by the social stigma attached to their legal status, the experience of being surveilled and suspected, and the fear that any misdemeanour will result in their criminalisation and deportation. Considering these substantial costs the following question emerges: what concrete effects and purposes do deportation centres fulfil? The following section revolves around this question.

THE INTENDED VS. REAL EFFECTS OF DEPORTATION CENTRES

There is no comprehensive statistics that systematically assesses the effects of both deportation centres on deportation rates, and it is additionally difficult to isolate their influence on rejected asylum-seekers' decisions to stay in Denmark or move on. Nevertheless, available numbers indicate that the centres have so far not fulfilled their declared political function. As of November 2017, only 4-5 residents of Kærshovedgård were reported to have returned to their countries of origin since the centre opened in early 2016.[91] Instead of increasing deportation rates, the centres generate more of what they are supposed to prevent: reportedly, they have contributed to more people being pushed into illegality or leaving for another European country.[92]

This section outlines how the centres have instead deteriorated the mental and physical health among residents, including children. They have also fuelled the criminalisation of legally stranded migrants. It concludes that current practices fails to offer a sustainable solution to people who are legally stranded in Denmark but instead leave them in a limbo situation with very circumscribed rights for a potentially indefinite period of time. In face of this situation, the rejected asylum seekers can either stay and be broken down mentally, or they can enter a life in illegality, among others by becoming cheap labour force in an increasingly unequal system with no access to justice.

The effect of deportation centres on residents' health

> This place is inhuman. It's a factory, designed to make people give up hope. Every month we watch people going mad here. There's nothing else to do here than to go crazy.[93]

This remark by a long-term resident of deportation centre Sjælsmark is by no means unique. It testifies to the detrimental effects of the motivation enhancement measures on the mental health of people targeted by them. The negative effects of the long-term waiting, idleness, and isolation in asylum and deportation centres on people's mental and physical health is well documented, in Denmark as well as in other countries.[94] Many asylum-seekers suffer from traumas already when

they arrive in Denmark, and the protracted waiting in asylum centres aggravate this stress.[95] The system also generates new traumas: there are examples of people whose mental health was so negatively affected by their time in Danish asylum centres that they were eventually granted residence permit on humanitarian grounds for this reason.[96]

A comprehensive report on the connection between the length of stay in asylum centres and the mental health among asylum-seekers written by several medical researchers, shows that psychological problems increased with the time spent in asylum centres. This was the case for all forms of mental illness.[97] Forced immobility, idleness, social isolation, stigmatisation, and the lack of time limit and of possibilities to influence one's daily routines are reported to have particularly serious effects on the mental health of people spending longer time periods in asylum centres. Staff of deportation centres have also noted that the system increases diseases, anxiety, self-harm and suicide attempts, and aggression among residents.[98] Adama, a resident of Sjælsmark testified:

> We see here how people gradually become crazy. They withdraw, become paranoid, and start talking to themselves. They start using drugs, some start to harm themselves or others. They die on the inside. Slowly, they are killing us, but the state doesn't understand its own role in this.[99]

Residents of both Sjælsmark and Kærshovedgård similarly testify that they have experienced and/or witnessed co-residents becoming depressed, suffering from chronic headache, sleep deprivation, and anxiety, and they have engaged with thoughts or acts of self-harm. Anxiety is further aggravated by fears of being subjected to detention or deportation at any time (for instance, in so-called dawn raids).[100] John in Sjælsmark explains:

> To live constantly in this uncertainty, where the prison officers can knock on your door anytime and say that now you're going to Kærshovedgård, or now you're going to be deported… what that does to people, they don't understand. Many people get traumatised by this waiting.[101]

Legally stranded migrants have the same access to healthcare as asylum-seekers. According to the Danish law on reception conditions for asylum seekers, medical healthcare screenings should be offered in asylum centres either by the Red Cross or the municipalities. For specialist healthcare, Immigration Service must screen and accept a special application. In the deportation centres, the Red Cross should offer "emergency healthcare and pain relief".[102] Authorities are also obliged to offer "healthcare that cannot be postponed (...) which otherwise run a risk of resulting in permanent injuries or in the condition deteriorating or becoming chronic".[103]

A major problem with this system is that it assumes that people only stay for short time periods in asylum or deportation centres. In reality, however, many risk remaining there for years, with very limited access to treatment, which risks aggravating their mental and physical condition. Importantly, rather than merely a side-effect of the motivation enhancement measures, the mental and physical illness among deportation centre residents is a direct and foreseeable consequence of a system designed to make their life intolerable.

In a recent interview with DR P1, a Red Cross doctor working in Kærshovedgård highlighted the ethical problems arising from working with 'humanitarian' services in the deportation centres. The doctor pointed out that it was ethically problematic for him to work in the deportation centre, for two reasons: first, doctors must not contribute to human rights breaches, and second, according to the Torture convention, public employees must not use degrading

and inhuman treatment to pressure people into complying with the state's orders, in this case the deportation order.[104]

It is again worth restating that the pressure put on residents has *not* resulted in more people 'cooperating' in their own deportation process. This is in line with international research and has been confirmed by police officers working directly with deportations and by Red Cross staff and researchers who are in direct contact with residents.[105] Protests including self-harm, such as the recent hunger strike staged in Kærshovedgård,[106] should be understood in light of the substantial pressure exerted on residents, as a reaction and a means to reclaim control over their own life and death.[107]

Children in deportation centres

The motivation enhancement measures are not designed to target children, but in practice, their effects are severe for children who have become legally stranded together with their families. 70 children currently reside in Sjælsmark, and 21 of them are born in Denmark. 50 of them are in a 'locked departure position',[108] which means that they might be held there for a long period of time. In addition, before arriving in the 'family unit' in Sjælsmark, they have often spent years in different asylum centres. As of today, more than 120 children have spent more than four years of their lives in asylum centres.[109]

We know from earlier reports that, "most children are psychologically damaged after a few years in the Danish asylum system".[110] They have additionally spent their childhood in a "state of exception".[111] Refugees Welcome share the following story of Taufiki, a 9-year old who spent 7 years in Danish asylum centres, from which he suffers from developmental issues. .

> Since the small family was moved to Sjælsmark, his condition has worsened dramatically. Several years ago, he and his mother were imprisoned by the police and the next day, put on a plane to Congo. However, the authorities there rejected them, so the police were forced to take them back to Denmark. He fears that this could happen again at any time and therefore refuses to eat in the cafeteria, where the police are present. His mother recently found a knife, which he kept under his pillow at night. He wets himself several times a day and every night, the bed.[112]

The Red Cross runs a kindergarten in Sjælsmark and older children can go to school outside the centre. Yet aside from sharing the anxiety and uncertainty of their parents, children are also deeply affected by the social isolation, stigmatisation, and lack of freedom in the centre, where the everyday is also marked by forced deportations, and by the destructive or desperate outbursts of other fellow residents. Children's rights advocates and psychologists warn that long-term residence in Sjælsmark will have a lasting, traumatising effect on children, calling this policy 'unacceptable'.[113] Children are, in other words, bereft of a sound and healthy future.

Moreover, deportation centres split families. Forced residence in Kaershovedgård makes it impossible to sustain a family life outside the centres: travelling to see their families can take hours and are often unaffordable for residents. Indeed, the Danish Helsinki Committee concluded that in practice, residents are not guaranteed the possibility of maintaining regular contact with their families, as required by the European Convention on Human Rights and the respect for family life.[114]

Criminalisation

> We see people go mad from waiting, but when people shout, play loud music and drink at night, they tell us they can do whatever they want, it's a free country. But then, when they start harming themselves, smashing windows and damaging the place, are they still free to do that? When they don't listen to us when we speak up, what's that freedom worth?[115]

Hussain, a resident of Sjælsmark, expressed his frustration with the plights of residents not being listened to - at least not until they risk resulting in a criminal conviction. A common misconception among politicians and the public is that deportation centres in particular, and motivation enhancement measures in general, are designed for 'criminal aliens'. In fact, the vast majority of rejected asylum-seekers have never been suspected or convicted of a crime: this is true both for the families and couples in Sjælsmark and for single men and women in Kærshovedgård.[116]

Yet the police presence and daily patrols around and in the deportation centres reinforce the impression among local communities that residents are criminals who need to be closely monitored. This idea has become rooted among neighbours of the two deportation centres, who fear increasing crime rates and a decreased property value as a result of the deportation centres being placed in their neighbourhoods.[117] However, the police have not reported any substantive increase in criminal incidents involving residents in the deportation centres.[118]

Importantly, moreover, while the government and most of the media make it seem as if most convicted foreign nationals are charged with severe crimes, many of those who have been convicted have in fact been charged with petty crimes such as vandalism, shoplifting, or human smuggling when they have helped relatives to cross the border to Denmark to apply for asylum. There is a second important element to understand this criminalisation: residents risk being criminalised for their reactions to – or resistance against - the psychological, physical, and social pressure they are subjected to in the deportation centres. These reactions include acts of self-harm, occasional free riding on the bus, or cooking food for themselves and their children in violation of house rules of the deportation centres.

When minor misdemeanours are reported to the police, it has potentially severe implications for the outcome of asylum procedures and the right to remain in Denmark. Asylum-seekers whose cases have not yet been determined by the Immigration Service (so-called phase two asylum-seekers) and who have committed a minor misdemeanour, have been moved to deportation centres since 2017. Importantly, people in 'phase two' have not yet had their cases before the court; but the Immigration Service has still (pre)judged that they are unlikely to obtain residence permit. Their cases can then be used as deterrence, and to discipline other asylum-seekers.

Some concrete examples of the minor misdemeanours that count as 'crime' and can result in rejection and deportation orders include:

- persons who have been involved in some shoplifting at the supermarket (like in one case, a bottle of water)
- persons who got into a minor fight with others at the asylum or deportation centre (thereby being considered as violating the rule of 'respectful behaviour')
- persons who had a small amount of hash in the centre (a joint butt can do it)

While the consumption of any drugs is forbidden in the centres, some residents use alcohol and drugs to cope with the psychological pressure they are subjected to.[119] Bashir, a resident of Kærshovedgård, noted the following: "They don't care if we use drugs like heroin in the camps, because they can use that to criminalise us".

In some cases, then, criminalisation results in people being denied residence permit even if they have valid asylum claims. They become stuck in Denmark, as they cannot obtain residence permit, nor be deported, as that would constitute a violation of international human rights law and the Danish Aliens Act (§ 31). This is the case for some of those on 'tolerated stay', who remain in an 'unregulated, legal no man's land',[120] potentially for the rest of their lives.

Once asylum seekers have been pushed into committing a crime, the very same policies that generated their desperate situation will punish them by rejecting their asylum claims and ensure their deportation or indefinite confinement in deportation centres. The next section shows in detail how such a process of criminalisation can take place via a paradigmatic example.

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A PARADIGMATIC EXAMPLE

The paradigmatic example concerns the case of Emmanuel, who arrived in Denmark as a trafficked person from Nigeria, and who received a final rejection on his application for asylum in 2013. The example includes a conflict that took place in Sjælsmark in February 2016, and illustrates how an everyday situation such as a meal in the cafeteria becomes part of a criminalisation practice. The situation is presented on the basis of the following sources: The testimony of the resident in question and the testimony of the involved prison officers, all presented under oath in court.[121]

Emmanuel was charged for threats of violence towards public officials according to § 119 of the Danish Criminal Code. The demand from the prosecutor was at least three month's imprisonment and expulsion according to § 49 in the Danish Aliens Act, including a six-years long re-entry ban to the Schengen area. The trial took place on two separate occasions: in the spring of 2017, and in the summer 2017 when the sentence was declared. Emmanuel received an unconditional punishment of three months' imprisonment and subsequent expulsion with a re-entry ban of six years.

Although the focus on the report is not on the asylum system as such, it is important to bear in mind the important critique voiced against the current functioning of this system as presented in the section *Why do people become legally stranded in Denmark?* Hence, problematic aspects of the asylum procedure in the paradigmatic case are included to the extent these are relevant to understanding the case as a whole.

The incident that evolved into a criminal case

> Motivational measures in the departure centres are killing us slowly. I think you can call it mental warfare. The centres that the state puts into practice every day in the centres do not motivate people to go home. Instead, they create mental illness and suicidal non-citizens.[122]

Upon rejection of his asylum case, Emmanuel was placed in a 'departure position', awaiting deportation. According to § 9c section 2, the Danish Aliens Act a rejected asylum-seeker can be granted a residence permit if his or her deportation has not been possible to enforce after 18 months. Emmanuel was in a 'departure position' for substantially longer than 18 months: for over four years. Even

though he had signed the police's deportation order, thereby stating that he agreed to cooperate in his own deportation, he was not considered as sufficiently 'cooperative' to qualify for temporary residence permit under § 9c section 2. He was moved to Sjælsmark when the centre opened in 2015. In the early months of 2017, Emmanuel received the letter which said he was charged for threats of violence towards public officials. In this case, the public officials are some of the prison officers in Sjælsmark. The situation that the charges are based on took place in early 2016, in the cafeteria of Sjælsmark, where Emmanuel was going to have his dinner.

According to Emmanuel, he had arrived in the cafeteria between 15 and five minutes before the end of the designated dinner time. He was the last person who came to eat his dinner in the cafeteria that day, and since he knew that the rest of the food would be thrown out, he asked for an extra piece of chicken. The prison officer who served him the food declined his request. The situation developed into a discussion between Emmanuel and the officers who were present. Surprised by the guard's refusal to give him another piece of chicken, Emmanuel drew attention to his surprise at this decision, and to his experience of arbitrariness. The officer then threw away the food. Upon seeing this, Emmanuel told the officer that he would help him throw out the food and subsequently threw his tray with food on the floor and left the cafeteria in an agitated state of mind.

Three other officers and one of the kitchen staff were in the cafeteria at the time. According to the officers, Emmanuel aimed a fork at one of them and threatened them verbally after having thrown the tray with food on the floor. According to one of the officers, Emmanuel had said "something along the lines of" "I know who you are, I know where to find you and I will kill you". Emmanuel claims that he told the officers that their behaviour was inhumane, that they knew what an impossible situation people were faced with, and that their behaviour made matters worse for no reason. Emmanuel then said that given this situation, the officers should not be surprised if one of the residents at some point explodes and tries to hurt them.

It appears from the officers' testimonies that as Emmanuel is threatening them with a fork, they are walking towards him – not the other way around. The officers surround Emmanuel before he reaches the door because "it is a question of a potential situation". It is unclear what happens next but according to the officers "after some time", Emmanuel throws the fork on the floor and walks out of the cafeteria. The officers further claim that Emmanuel then takes a handful of forks in one hand on the way out and then throws them on the ground outside of the door of the cafeteria. According to Emmanuel, none of the above is true.

In the court hearing, pictures taken by one of the officers are presented as evidence. Two out of six pictures had been taken some hours after the episode. The audience in court does not get to see the pictures, however we are explained that they show the meat on the floor and a gravy dish that has been tipped over. No pictures of the actual tool that allegedly had been used to threaten the officers are available as evidence, nor are there any pictures of the forks outside of the cafeteria. Answering to the defence lawyer's questions to why no picture had been taken of the fork that the officer had been threatened with, an officer explains that he "doesn't know where it went".

Besides the officers and Emmanuel, there is one witness to the situation at the cafeteria: an employee affiliated with 'Forenede Service', the company responsible for catering to Sjælsmark. Her testimony was presented in the second part of the court trial that took place during the summer of 2017. The witness explained that she was present in the cafeteria in Sjælsmark at the time of the incident at approximately six pm. The cafeteria serves meals until 6:15 pm and the dining

room closes at 6:30 pm. In the evening of the incident she remembers that they served chicken fillets with curry sauce. According to her, Emmanuel did not want the other food that day, only the chicken. When she is handing the food to Emmanuel, he becomes "angry at the situation, not at me". An officer is standing close to her and the rest of the officers are standing in the hall and have listened to what happened. The cafeteria employee affirms that she was not threatened. Neither did she hear Emmanuel make threats against others and has not heard shouting or noise.

The motivation enhancement measures in the case

In this context, it is worth revisiting the different aspects of the motivation enhancement measures, which become relevant in this case: the incident takes place in the cafeteria, where residents must eat their meals at given times. This is directly derived from the Danish Aliens Act. In addition, the officers and perhaps also the cafeteria employee seem to work by an unwritten rule according to which residents cannot receive extra food, although it will otherwise be thrown out. The uncertainty regarding the role and mandate of prison officers in the centres and as enforcers of the motivation enhancement measures is also at play: as their role in the centres is civil, they cannot use force or sanction residents. This generates uncertainty also among them. During the court trial, the officers indeed stated that they do not know what their role entails. In another context, one of these state employees has expressed following:

> Our role here is not, as in imprisonment, to minimise the negative consequences of imprisonment. On the contrary, the negative consequences are an implicit part of the construction of these centres.[123]

The officers are seemingly thrown into a work situation that moves in a legal grey zone, as the status of residents of deportation centres does not fall neatly under any national or international rules. Being used to work in so-called 'welfare prisons', they are now put in charge of 'managing the unwanted', and their regular professional codes and norms do not fully apply.[124] Additionally, their highest administrative authority – the Ministry of Integration – persistently announces that the purpose of the centres is to make life as intolerable as possible for residents.[125] This politically promoted idea gives rise to concern and insecurity among the executing authorities: for how does one avoid minimising the negative consequences of the deportation centres without making matters worse? In a press statement released in August 2013, the head of the Prison Union, Kim Østerbye, for instance writes the following: "I do not hope that the idea is *only* for prison guards in uniforms to scare asylum seekers".[126] By this, he is simultaneously expressing discontent with the lack of guidelines to the Prison and Probation Service regarding their role in the centres, and with the fact that the only guideline seems to give concrete expression to this 'rule of intolerability'.

The fact that the rule of intolerability was a significant contributing factor in the conflict in the cafeteria is irrelevant from the point of view of criminal law. The discrepancies between the different testimonies were seemingly also deemed irrelevant - notable in this context is the testimony of the cafeteria employee, which, together with the testimony of a female prison officer, call into question the "threatening" nature of Emmanuel's actions. These statements could perhaps have been relevant in the application of the principle of proportionality, but they were not considered in the verdict. Additionally, the prison officers are public servants, there are four of them, and the law lends more weight to their statements. The reason why there were no pictures of the elements Emmanuel allegedly used to threaten the guards appears in this light also

to be deemed irrelevant. Finally, in the ruling, the court emphasised the fact that the guards felt threatened – and it is their experience that is given the most weight.

The making of a deportable subject

In between the first part of the court trial in spring, and the second part in the summer of 2017, Emmanuel was questioned by the police regarding the question of deportation, specifically about matters that are relevant according to § 26 in the Danish Aliens Act, which states that in cases that may include deportation as part of the punishment, it must be considered whether the deportation can be presumed to have a particularly burdensome effects, for one or several of the following reasons

1. the foreigner's attachment to the Danish society,
2. the foreigner's age, state of health and other personal circumstances,
3. the foreigner's attachment to residents of this country,
4. the consequences of the deportation for the foreigner's close family members living in Denmark, among these the consideration for the unity of the family,
5. the foreigner's lack of or poor attachment to the native country or other countries where the foreigner can be expected to take residence, and
6. the risk that the foreigner, with exception of the mentioned instances in § 7, section 1 and 2, or § 8, section 1 and 2, will suffer harm in the native country or other countries where the foreigner can be expected to take residence. Section 2. A foreigner shall be deported following §§ 22-24 and § 25, unless this will conflict with the international commitments of Denmark.

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The use of deportation as punishment is part of a contemporary trend where criminal law is used to serve migration-related ends. This merging of criminal law and migration law is usually referred to as the 'crimmigration' paradigm.[127] Under this regime, *who* the offender is becomes more important than the seriousness of their offense. The case of Emmanuel illustrates well this complex logic, both in terms of how the immigration control system effectively criminalises asylum-seekers, and how immigration control mechanisms are then used to punish and expel a criminalised migrant, whose offense was a direct effect of an immigration control system designed to render him deportable. In the summer of 2017, Emmanuel was found guilty of having assaulted four prison officers, and hence of having committed acts of violence and pronounced threats of violence against public servants. He was sentenced to three months of unconditional imprisonment and expulsion from Denmark with a six-year re-entry ban. Shortly after the conviction, Emmanuel was transferred to Kærshovedgård, where he was to await being summoned to serve the sentence.

Lessons from the paradigmatic case

Emmanuel's case allows us to follow in detail how the criminalisation of a legally stranded person takes place in practice. In it, we can observe several aspects of the crimmigration logic at play. *First*, the deportation centres' setup, their institutional environment, and the presence of uniformed prison officers and police frames and constructs residents as criminals. This is true not only in Emmanuel's case but is also visible in the criminalisation of hundreds of individuals who have been found guilty of violating the rules of confinement in the deportation centres. *Second*,

the control and surveillance measures that circumscribe residents' everyday lives put significant pressure on them. These measures range from the ban on working to earn their own money and the isolation they are subjected to, to the regulation of everyday routines through the catering arrangement and the duty to register. Given the political promise to make life 'intolerable' for residents and thereby pressure them into leaving Denmark, it is unsurprising that they resort to destructive actions, either targeting themselves, things or others.[128] The case of Emmanuel is paradigmatic as it mirrors the situation for many other deportation and asylum centre residents– who are charged with minor crimes resulting from the pressure are subjected to, notably poverty, mental illness, and in the case of deportation centres, the deprivation of dignity and life prospects. *Finally*, we see how a criminal conviction is used instrumentally to legitimise the deportation of an 'unwanted other', and especially to strengthen the legitimation of these practices in the eyes of the public.[129] Once having received a deportation order resulting from a criminal conviction, Emmanuel, and many with him, have extremely limited possibilities to ever obtain residency in Denmark - despite the fact that there may be no prospects for the Danish state to deport them. This, in turn, allows for the state to denounce responsibility for their well-being, subject them to 'intolerable' life conditions and 'solve' the issue by pressuring them into a life in illegality, in Denmark or elsewhere in Europe. Those who have nowhere to go, are likely to end up as legally stranded residents indefinitely confined in a legal grey zone.

Concluding remarks

This part of the report contributes to answering the following question: in face of the fact that the motivation enhancement measures and the deportation centres have not fulfilled their declared function, what are their 'real' functions and effects? In brief, our answer is the following:

The deportation centres have resulted in drastic deterioration of the living conditions and the mental and physical health of rejected asylum-seekers (men, women, and children alike), and in more persons being pushed into illegality or criminalisation. This can potentially produce a precarious class of submissive, continuously exploited, and cheap labour force who, from the outset, will not have the chance to do anything about this situation. Instead of listening to the criticism voiced by numerous legal experts, human rights organisations, research reports, civil society, and importantly, the migrants themselves, the government keeps expanding the motivation enhancement measures; most recently with the announcement of a new so-called 'return centre' (*hjemrejsecenter*), which is supposed to house rejected asylum-seekers prior to their relocation to deportation centres.[130] Current policies, then, come at significant human, societal and economic costs. In order to understand why governments continue to use these policies in spite of their seeming 'failure' to obtain their intended function and the adverse effects they produce for rejected asylum-seekers and for society at large, we find it necessary to push the analysis further. In the next part of this report, therefore, we assume our role as critical migration scholars, and provide an analysis of the underlying logic and the 'surplus' effects of the deportation centres.



PART II

STOP KILLING US SLOWLY: AN ANALYTICAL INTERVENTION

By focusing on the practice and effects of the motivation enhancement measures targeting legally stranded migrants, this report has shown how specific groups of people are systematically criminalised through legislative, executive and judiciary practices, and via regulations that govern their everyday lives, which take place in a legal grey zone. The grey zone applies both to the legal 'non-status' of the residents of deportation centres, and to the rules and logics of these centres: since the deportation centres are not considered as locked institutions, and residents are placed there based on administrative rather than judicial orders, the legal frameworks regulating detention or prisons (i.e. time limits, access to legal advice, guarantee against rights violations) do not apply. Court rulings and reports from human rights organisations point out that the conditions in deportation centres are comparable with indefinite detention. Indeed, the centres are situated somewhere between indefinite detention and the states' production of stateless people, as they have resulted in a growing number of rejected asylum-seekers being pushed into illegality. Residents are therefore left with very limited possibilities to contest their situation and claim their rights.

The protests, hunger strikes, and demonstrations staged by residents of deportation centres, which have taken place under the slogan 'stop killing us slowly', should be understood in this light as an act of reclaiming their right to have rights. We take the concerns raised by these protest movements as an invitation to critically discuss the deportation centres, their logic and 'surplus effects', as part of the European deportation regime. This calls for a note on our po-

sitionality. As researchers working in the tradition of socio-legal scholarship, critical migration and border studies, and decolonial studies, we understand the deportation centres as critical sites for struggles over citizenship and belonging. These struggles are profoundly *political*, in contrast to the state's framing of detention and deportation practices as neutral responses to a perceived problem of unwanted migrants. Our approach, in contrast, reverses this more or less common perspective, and focuses on the role of the state and the law in producing categories of undesired racialized populations that can legitimately be 'left to die, slowly' at the margins of the state and society. We therefore situate the observations of this report within the ongoing debates about the racial and spatial politics of the European migration and border regime.[131] This also enables us to analyse how the struggles of refugees in Denmark resonate with research in the field that highlights the interconnections between border controls, the criminalisation of immigrants and refugees, and institutional racism. We draw three main analytical conclusions regarding the real functions and effects of the Danish deportation centres:

First, the European system of borders and refugee and deportation centres has become a prominent site for struggles over life and death, belonging and exclusion. We need to observe the continuity between migrant deaths in the Mediterranean Sea, which are a direct effect of EU's violent tightening of its border regime, and the 'slow death' and systematic deprivation of dignity, humanity, and life prospects that take place in Europe's internal, parallel system of formal and informal camps, where the undesired populations are confined.[132] Here, refugees and migrants deemed undesired are kept isolated in facilities with humanitarian minimum standards and constrained in their freedom of movement. As we have seen in the case of the Danish deportation centres, the deliberate production of intolerable conditions have severe effects on residents' mental and physical well-being. The concept of 'necropolitics' captures this state, whereby certain racialized groups of people are exposed to conditions where they are "kept alive, but in a state of injury".[133] From this perspective, 'stop killing us slowly' is not only a slogan, but a lived reality.

Second, the understanding of institutional racism as group-differentiated exposure to premature death is useful for conceptualising this condition.[134] *Refugee, rejected asylum seeker* and *irregular migrant* are not only legal, seemingly 'neutral' categories: they are racial categories to the extent that they are ascribed to people marked as non-white and as non-belonging to 'Europe'. Recognising that border regimes are structured by racist logics is crucial for understanding how exposure to group-differentiated social, physical and psychological harms can take place and is justified in the deportation centres. Building on a neo-colonial logic, European states deny the rights, citizenship or humanity status, and political and social membership of racialized migrants much in the same way as they did to the people in the colonies. The same racist logic that prevailed in the colonies is deployed within the 'metropolis'.[135] This allows European states to legitimise and normalise that racialized migrants are deprived of their basic rights, that significant state resources are devoted to constricting their freedoms and render their lives 'intolerable', and that their political agency is denied them in a way that would ignite considerable protest, should similar conditions apply to Europe's white citizens. Inasmuch as this system also pushes people into illegality, it forces them to enter the informal, rightless and precarious labour market where they are vulnerable to exploitation.

Third, the administrative processes through which institutional racism is implemented includes confinement in detention and deportation centres, stigmatisation, criminalisation, and delegitimisation of rights' claims. Politicians present the deportation centres as the possible only solution to *extrasystemic* problems, for which the blame lies with refugees and migrants themselves.



Yet the setup of the deportation centres, and the fact that refugees are held without time limit in a legal grey zone where normal judicial safeguards do not apply, point to systemic shortcomings *within* the current border and migration system. Crimmigration,[136] the merging of immigration law and criminal law, is pivotal to understanding how institutional racism is implemented. Two aspects of crimmigration are particularly important in the Danish context: the first concerns how criminal law is used instrumentally as a means of immigration control to legitimise and legalise the expulsion of unwanted racialized groups of people. As outlined in Part I of this report, legally stranded migrants are put in a situation where they are at high risk of criminalisation. This happens for instance through the fact that their reactions to the constraints imposed on their everyday lives and the significant psychological pressure they are subjected to might result in criminal charges. The second important element to crimmigration in Denmark regards how facilities and technologies associated with punishment, such as imprisonment, security, and surveillance, are used to target migrants. This happens mainly through the implementation of an opaque administrative apparatus, which effectively erodes the fundamental legal protection of migrants[137] – and potentially also the constitutional state. This development goes hand in hand with the global expansion of the security, surveillance and prison industry reported in research.[138] The criminalisation and resulting stigmatisation of migrants held in the deportation centres (which also affects those who have never been suspected or convicted of a crime) legitimises human rights breaches, especially when people in the centres speak up and react to their situation and challenge the practices of the state and its officials.[139]

We argue, then, that deportation centres in Denmark should be understood as an expression of state-sanctioned racism implemented by law: they produce the slow death of rejected asylum seekers. Additionally, the Danish legislation is increasingly being used to deprive specific groups of citizens and non-citizens of their basic rights, or to establish hierarchical differences between Danish first and second-class citizens by law. In light of this, and of the worrying situation exposed by this report on the setup and effects of deportation centres, we may observe that the juridical system is once again facing a historical period in which it proves to be insufficient: instead of protecting the rights of all, it is being used to circumvent human rights and legally implement racism. The struggles of refugees in Denmark and Europe can in this sense be compared to the struggles and instances of resistance against racism and oppression of previous historical times, including the struggles of the suffragettes, and against apartheid. In these historical struggles, new rights were forged, implying changes on both state and interstate levels.

Indeed, the struggles of residents in the Danish deportation centres challenge the conditions set up to deprive legally stranded migrants of their political subjectivity.[140] In 2016, a series of protests had been initiated by the self-organised movement 'Castaway Souls of Denmark' in deportation centre Sjælsmark, demanding an end to the 'politics of killing slowly' that they were subjected to. As one member of the movement remarked: "In Somalia, death would be quick. But here they are killing you slowly, mentally."[141] The protesters then also highlighted the 'surplus' effects of the motivation enhancement measures and the deportation centres: namely, how the Danish state is slowly killing specific groups of people psychologically (as in acquiring permanent psychological disorders), socially and politically (as in being criminalised and stigmatised by society and having their human rights severely circumscribed) and existentially (as in being bereft of a present and a future). The refugees had become involuntarily - and potentially indefinitely - stuck in Denmark. They feared returning to their countries of origin and could not apply for asylum in another European country, nor leave Europe and try to start a life elsewhere

in the world. This condition leaves them de facto stateless; what Hannah Arendt termed 'outlaws by definition'. Their situation highlights not only the shortcomings of Danish asylum procedures, and how the deportation centres have resulted in physical and legal stuckedness. By closing legalisation opportunities and pushing regularised residents into illegality, the restrictive policies effectively produce more of what they were supposed to curtail: that is, illegality and precarity.[142]

Figure 3: How does the Danish state produce the premature death of rejected asylum seekers in deportation centres?

Politisk / juridisk
Stigmatisation, illegalisation, criminalisation, Confinement/ geographic isolation, no possibilities of rights' claims, no institutional support

Socially
No leisure, no future, no routines, no place for religious practice, no work, no possibilities of education, no possibility to learn Danish, stigmatisation, criminalisation

Existentially
No leisure, no future, no routines, no place for religious practice

Mentally
Posttraumatic stress, Self harm/ suicide attempts, depression, anxiety

Physically
Fences, biometric control, geographic isolation, food, healthcare

The struggles of legally stranded migrants in Denmark echo the protests staged by refugees and migrants elsewhere in Europe, notably in the wake of 2015, when the systemic flaws of the current asylum and migration system and their harmful and lethal consequences were rendered visible. Just like control practices at Europe's external borders are lethal, the deportation centres – or the placement of refugee camps outside of Europe – are unlikely to produce any sustainable solution: not for the migrants held there, nor for the state. Many of the non-deportable rejected asylum seekers in Denmark are not going to return to their countries of origin; some of them will never be able to. We share the concerns voiced by refugee solidarity networks, friends, lawyers, civil society actors and even by some state agents regarding the consequences of indefinitely subjecting people to the deliberately 'intolerable' condition of being legally stranded,[144] deprived



of a dignified present and of a future. Maintaining this condition not only has severe implications for the people affected, but also for our society. We believe that it is possible and necessary to find solutions that enable the inclusion of non-deportable rejected asylum seekers in law and society, instead of suspending their rights and confining them indefinitely to a legal grey zone. A starting point is to listen to the demands put forward by the rejected asylum-seekers themselves. The demands of the protesters from Castaway Souls of Denmark, and later the hunger strikers in Kærshovedgård, were the following: the right to have rights, freedom to move, freedom to stay, the closure of asylum centres and prisons, and an end to the criminalisation of migrants and refugees. Listening to these demands entails placing them in their right context: as one of many human rights' struggles that proved to be necessary for the rights' regime to be corrected and that offer inspiration for new political projects for inclusive social change. With this report, we also hope to have made yet another contribution such debates.

NOTES

1) *Interviewed by the authors, 2017. In order to ensure the anonymity of our informants, fictive names are used throughout the report. The person whose case constitutes the 'paradigmatic case' of this report has given his consent to share his case files with the authors. However, names and dates have been changed in order to protect his identity.*
2) *The centres are officially called "udrejsecenter" in Danish, which translates into 'departure centre'. In this report, we will refer to them as deportation centres, e.g. "udvisningscentre", as their purpose is to hold individuals in detention-like conditions before a deportation that takes place against their will can be carried out. 'Deportation centre' is also the term used by residents of the centres.*
3) *Inger Støjberg in Politiken 01/06/2016*
4) *Inger Støjberg in Politiken 01/06/2016*
5) *Ministry of Justice, 16. August 2013*
6) *Helsinki-Komité 2017*
7) *EU Commission Report, COM, 2014.*
8) *The intention is that Sjælsmark will also house Somali families, who had their residence permits revoked, until they are deported; see Clante Bendixen 2017.*
9) *Rigspolitiet 2015, Garly Andersen et al 2009, Juul 2011, Garly Andersen 2011, Kjær 2003a, b.*
10) *Clante Bendixen 2011; COM 2014; Gibney 2008; Kalir & van Schendel 2017.Lundberg 2017; Rosenberger & Küffner 2017; Valenta & Thorshaug 2011.*
11) *Rigspolitiet 2015; Helsinki-Komité 2017*
12) *Cf. Clante Bendixen 2011; 2017*
13) *Flyvbjerg 2006*
14) *Grant 2007: 30.*
15) *COM 2014; British Red Cross 2017; Lundberg 2017*
16) *Clante Bendixen 2011; 2017*
17) *Art. 33 in the Refugee Convention; see also Ny i Danmark 2009. This principle prohibits states from "returning a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion"*
18) *Ministersvar 21/12/2017*
19) *Ministersvar 10/01/2018*
20) *Interview with resident of Kærshovedgård, 2017*
21) *Clante Bendixen, 2011*
22) *Ministersvar, 21/12/2017*
23) *Groth & Saxtorp, 2017.*
24) *This criticism can be found fully or partially reflected in the following texts: Clante Bendixen 2009, 2011 og 2016, Gammeltoft-Hansen and Whyte 2011, Justesen 2003, Juul 2011, Kjær 1999, 2003a, 2003b, Knudsen 2009, Larsen 2017, Suárez-Krabbe (forthcoming), Syppli Kohl 2015, Vedsted-Hansen 2009, 2017, Weschke 2017, Whyte 2011.*
25) *Vedsted-Hansen 2009, Clante Bendixen 2011, Kjær 2003a, 2003b*
26) *Vedsted-Hansen 2009, Clante Bendixen 2011, Kjær 1999, 2003a, 2003b*
27) *See Weschke 2017, Information 2017; Politiken 2014a, b, c, d, e og 2017b.*
28) *Clante Bendixen 2011, 2016; Gammeltoft-Hansen & Whyte 2011, Vedsted-Hansen 2009*
29) *Groth & Saxtorp 2017, Clante-Bendixen 2011: 34, Ali Jaber Rasheed Al-Jarrah case.*
30) *Clante-Bendixen 2017.*
31) *See Amnesty International 2017 for critique of deportations to Afghanistan. The Danish 'fact-finding mission' to Somalia, which now serves as the basis for withdrawing Somali nationals' residence permits, never even entered Somalia, as this was considered to be too dangerous. See Clante Bendixen 2017.*
32) *See for instance CREDO 2013; Dahlvik 2017*
33) *Clante-Bendixen 11/03/2018 http://refugees.dk/aktuelt/2018/marts/status-paa-somalia-sagerne/*
34) *See Lundberg 2017 for overview.*
35) *Interview with legal advisor 2016; Clante Bendixen 2011*
36) *ECHR 2016; Migrant Voices, 2017: 4-6.*
37) *Belloni 2016; Brekke & Brochmann 2014*
38) *Clante Bendixen 2017*
39) *In conversation with authors, 2017.*
40) *Rigspolitiet statistik Februar 2018*
41) *De Genova & Peutz 2010; Gibney 2008*
42) *Gammeltoft-Hansen & Tan 2017*
43) *Lemberg-Pedersen, M. 2016; Andreas og Snyder. 2000; Thielemann 2004; Webber, F. 2006.*
44) *Information 31/05/2016*
45) *DR 23/02/2017*
46) *Interviewed by authors 2017*
47) *Boswworth et al 2018; Sklansky 2012*
48) *Clante-Bendixen 2016*
49) *See Information on Udrejsecenter Sjælsmarks hjemmeside: Udrejsecenter.dk*
50) *Clante Bendixen 2011: 22. For a critique of administrative detention without judicial oversight see Majcher 2013*
51) *Clante Bendixen 2011: 22-26, Kjær 1990, Vedsted-Hansen 2009*
52) *Interview with JuraRådgivningen & Refugees Welcome 2016.*
53) *An earlier version of this table has been published in Marronage #3*
54) *Udlændingestyrelsen 09/02/2016*
55) *Cf Art. 5 of the European Convention on Human Rights*
56) *See Ombudsmanden 2017; Helsinki-Komité 2017*
57) *Amnesty International 21/09/2017; Helsinki Komité 2017*
58) *Lindberg 2017*
59) *Udrejsecenter Kærshovedgård 2017*
60) *See Juul 2011; DIHR 29.08.2016; Amnesty International 21/09/2017*
61) *EU LEX 2014*
62) *Cf. Vedel Kessing 2014*
63) *DIHR 29.08.2016: 7*
64) *Højesteret sag 216/2017*
65) *Justitsministeriet 2012 http://www.justitsministeriet.dk/nyt-og-presse/pressemeddelelser/2012/hoejesterets-dom-aendrer-ikke-reglerne-udlaendinge-paa-taalt*
66) *Amnesty International, September 2016; November 2016*
67) *Udlændinge-, Integrations- og Boligministeriets 06/2016; Udlændinge-, Integrations- og Boligudvalget. 2016-17*
68) *See Udlændinge-, Integrations- og Boligministeriets "Skema over forhøjelse af strafniveau for overtrædelse af opholds- og meldepligten"*

69) DR 10/01/2018
70) Berlingske 13/03/2018
71) DR 11(01/2018
72) OHCHR 2017
73) Amnesty International 2016; Institut for menneskerettigheder 2013, 2016; Danske Helsinki Komité 2017; Ombudsmanden 2016; Vedel Kessing 2014.
74) Interview with resident of Sjælsmark 2016
75) See web pages of Udrejsecenter Kærshovedgård; Udrejsecenter Sjælsmark
76) Helsinki Komité 2017
77) Interview with resident of Sjælsmark 2016
78) Helsinki-Komité 2017: 9
79) Helsinki-Komité 2017: 29
80) Whyte has named this form of surveillance a 'myopticon'; see Whyte 2011.
81) Interview with resident of Kaershovedgard 2017
82) Interview with resident of Kærshovedgård 2017
83) Resident of Sjælsmark 2016
84) Interview with resident of Sjælsmark 2016
85) See also Clante Bendixen 2011
86) Interview with resident of Sjælsmark 2016
87) "The assigned duties (including the new duty to report) have to be respected. Authorities' possibilities to make discretionary decisions to ease the restrictions in individual cases is further restricted. Violations of the duties shall be promptly reported and sanctioned; a legal basis for custody is introduced in case of violation; and there is a significant tightening of the penalties: namely, imprisonment for up to 1-3 years." Danish Institute for Human Rights 2016: 11).
88) F. ex. Nyheder TV2 22/06/2016
89) Fiske 2016
90) Interview with resident of Kærshovedgård 2017
91) DR 29/11/2017
92) DR 10/04/2017. "Udrejsecenter: Afviste asylansøgere forsvinder hver uge. See also Andersson 2016; Valenta & Thorshaug 2011.
93) Residents of Sjælsmark, Vice 29/01/2016.
94) Griffiths, 2013, 2014; Khosravi 2014
95) Amnesty International & Røde kors 2008
96) Clante-Bendixen 2011: 10
97) Hallas, et. al 2007
98) DR 29/02/2017; Information 31/05/2016.
99) Resident of Sjælsmark in conversation with the authors, 2016.
100) Griffiths 2014
101) Resident of Sjælsmark in conversation with the authors, 2016.
102) Nyidanmark 2018: Healthcare
103) Ibid.
104) DR 23/02/2017. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment can be accessed here: http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx
105) Pedersen & Jakobsen 2012
106) See press release of the hunger strike at Trampolinehouse.dk 20/10/2017; The Local 21/10/2017.
107) Mbembe 2003; Olivarius 2013
108) Ministersvar 10/01/2018
109) Politiken 09/07/2017.
110) Clante-Bendixen 2011: 10
111) Asylbørn i Danmark 2011
112) Clante Bendixen 2017
113) Incl. Børns vilkår, Røde kors: see DR 06/11/2017; Politiken 09/07/2017; 29/10/2017. See also Folkebevægelsen for asylbørns fremtid.
114) Helsinki-Komité 2017: 11.
115) Resident of Sjælsmark, 2016.
116) Helsinki Komité 2017
117) DR Baglandet 31/03/2016
118) Udrejsecenter Sjælsmark 2016
119) Helsinki Komitén 2017
120) Vedel Kessing 2014
121) This presentation differs significantly in several regards from the presentation of the case in the records of the court. This is due to the fact that the records of the court only include what is relevant for the case at the judge's discretion. As such, it is the judge's summary of the different testimonies, and not the testimonies themselves, which are included in the records of the court. The records of the court have also been used as a source, but the following presentation also draws upon detailed notes taken under both trial hearings.
122) Stanley 2017
123) Lindberg 2017
124) Ugelvik 2013
125) Cf. Helsinki-Komité 2017
126) Østerbye 2013, authors' emphasis.
127) Stumpf 2006; Sklansly 2012; Bosworth et al 2018
128) Self-destructive behavior and violence have been reported from asylum and detention centers across Denmark, where residents are also subjected to significant stress and pressure, aggravated by their uncertain situation and the limitations imposed upon them in their everyday lives. See for instance Information 14/05/2016 and Global Detention Project 2017 for other examples.
129) Cf. De Genova & Peutz (eds) 2010, in particular Barthia, p. 336
130) Folketinget 14/12/2017
131) De Genova 2016; Ehrkamp 2017; Global Detention Project 2017
132) De Genova 2016; Davies, Isakjee and Dhesi 2017; Walters 2011
133) Mbembe 2003: 21; see also Castro 2015
134) The report uses Ruth Gilmore's definition of racism as "the state-sanctioned and/or legal production and exploitation of group-differentiated vulnerabilities to premature death, in distinct yet densely interconnected political geographies" (Gilmore, 2007: 28).
135) Balibar 1991; De Genova 2010; Kalir 2017
136) Stumpf 2006; Sklansky 2012; Bosworth et al 2018
137) Barker 2017; Bosworth et al 2017.
138) Davis 2003; Flynn & Cannon 2009; Flynn 2013, Flynn 2015; Gilmore 2009; Golash-Boza, 2009a, 2009b; Rembis 2014; Ryan 2010; Suárez-Krabbe (forthcoming).
139) Amnesty International 2016; Institut for menneskerettigheder 2013, 2016; Danske Helsinki Komité 2017; Ombudsmanden 2016; Vedel Kessing 2014.
140) Kalir & van Schendel 2017; Mbembe 2003; Olivarius 2013
141) Interview with resident of Sjælsmark 2016
142) Andersson 2014, 2016
143) Casas Cortes et al 2016; Davies et al 2017; De Genova et al 2010; Tazzioli & De Genova 2016
144) Grant 2007

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