



ALTERNATIVE REPORT

to the list of issues (CAT/C/DNK/Q/6-7) dated 19 January 2010
to be considered by the UN Committee against Torture
during the examination of the 6th and 7th periodic report of

DENMARK

54th Session, November 2015



RETSPOLITISK
FORENING
Danish Law Association

ANTI TORTURE
SUPPORT FOUNDATION



International
Rehabilitation
Council for
Torture Victims



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Introduction

Since Denmark's ratification of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) in 1987, the UN Committee against Torture has undertaken five examinations of Denmark. In relation to the upcoming review of Denmark on 16-17 November 2015, this report is submitted to the Committee against Torture as an alternative report to Denmark's report of 6 January 2015 that replies to the questions in the list of issues prior to reporting dated 19 January 2010 regarding progress made with respect to treaty implementation and compliance.

This report is written by a Coalition of NGOs in Denmark composed of the following organisations:

- Anti-Torture Support Foundation
- Association of Aliens Law Lawyers
- Better Psychiatry – National Association of Relatives (Part B, issue 5-6)
- Danish Association of Legal Affairs
- Danish Refugee Council
- DIGNITY – Danish Institute Against Torture
- International Rehabilitation Council for Torture Victims
- Joint Council for Child Issues
- KRIM – National Association
- LGBT Denmark
- OASIS – Treatment and Counselling of Refugees
- Rehabilitation Centre for Torture Victims - Jutland
- United Nations Association Denmark
- Women's Council in Denmark

Positive developments

Since Denmark underwent its last review by the Committee in 2007, it has made progress in a number of areas, notably with regard to the establishment of an Independent Police Complaints Authority (IPCA); reduction of solitary confinement during pre-trial detention; repealing of the statute of limitation for acts of torture with regard to criminal cases and the parliamentary decision to introduce number-tags on police uniforms so as to ensure proper identification of police officials and hereby enhance accountability.

Issues of concern

However, in other areas improvements are lacking and the recommendations of CAT, other UN treaty bodies and the European Committee for the Prevention of Torture (CPT) have not been implemented.

Notably, Denmark maintains its position **not to incorporate the UNCAT into Danish law**, despite the clear recommendation to the contrary by members of two Expert Committees in 2001 and 2014, respectively (National Report, paragraph 2). Moreover, in spite of the long-standing criticism of Denmark's use of solitary confinement as a disciplinary sanction and despite the authorities' pledge to work on reducing such measures, the numbers indicate that such **solitary confinement is still used extensively** and its use has increased dramatically over the past decade.

Similarly, **the use of pre-trial detention** continues to be extensive and respect for the legal safeguards of pre-trial detainees is at times lacking. In addition, **coercive measures in psychiatric institutions continue to be practiced excessively in Denmark.**

Furthermore, over the last years, and especially since the election of the current government in June of this year, we have witnessed **further restrictions on the protection granted to asylum seekers and refugees** that would also raise concerns under the UNCAT. In fact, The UN Human Rights Committee has found that **Denmark has violated art. 7 of the International Covenant on Civil and Political Rights (ICCPR) in 4 cases** concerning deportation of asylum seekers in the period of August-September 2015.¹

Moreover, Denmark's participation in the armed conflicts in Iraq and Afghanistan has illustrated that it is **cumbersome for victims of torture to have access to justice** before Danish courts. Regrettably, the current government decided in July 2015 to end the Commission of Inquiry on Denmark's participation in these two armed conflicts (National Report, paragraph 20); whose mandate was amongst others to assess if Denmark had adhered to its international obligations concerning the handling of persons who had been captured and detained by Danish troops and later transferred to Iraqi or Afghan jurisdiction.

In addition, specifically with regard to **the prohibition of non-refoulement**, the Committee has found that **Denmark has violated article 3 of the UNCAT in two cases** since its last review of Denmark². Finally, with regard to statistical data, it continues to pose a challenge to obtain accurate information on key issues, such as the exact number of complaints specifically regarding the use of torture or ill-treatment by police officers and prison staff; their investigation and prosecution, as requested by the Committee, but not fully provided by Denmark.³ The alternative report falls into two parts:

- **Part A** provides alternative replies to some of the questions raised in the list of issues. Each issue is addressed through the following sub-sections:; A) CAT position; B) The State part response; C) Issue summary; D) Recommendations and jurisprudence of other UN and Regional Human Rights bodies; and E) Suggested recommendations.
- **Part B** addresses new and important issues that have emerged over the past five years since the adoption of the list of issues. The Coalition has chosen to do so, because some of these issues give rise to concern regarding Denmark's fulfilment of its international obligations under the UNCAT.

The documentation presented in this report primarily derives from the NGOs' ongoing monitoring of Danish law and practice within the areas of the UNCAT, including advocacy activities carried out vis-à-vis the Danish government, parliament and relevant public institutions. DIGNITY participates in the National Preventive Mechanism (NPM) under the Danish Ombudsman.⁴

¹ Two of the four cases are publicly available at the webpage of the UN Human Rights Committee, notably Communication No. 2370/2014, CCPR/C/114/D/2370/2014, 7 September 2015; and Communication No. 2343/2014, CCPR/C/114/D/2343/2014, 24 September 2015. The other two cases are Communication No. 2360/2014; and Communication No. 2288/2013.

² Communication No. 464/2011 and Communication No. 339/2008.

³ National Report, para. 116-120.

⁴ No confidential information from the NPM is included in this report.

Promoting ratification and implementation of the UNCAT at the inter-governmental level

Commendably, Denmark has for decades assumed a leadership role at the inter-governmental level in the efforts to eradicate and prevent torture. Within the **UN General Assembly**, Denmark continues to spearhead the process of drafting and promoting the annual omnibus resolutions on the issue of torture. Similarly, Denmark has been playing a pioneer role within the **UN Human Rights Council** being the lead author and promoter of thematic resolutions on issues as diverse as torture and the role and responsibility of judges, prosecutors and lawyers; torture and the role and responsibility of medical and other health personnel; the rehabilitation of torture victims; and the mandate of the Special Rapporteur.

Most recently, Denmark and four other States parties (Chile, Ghana, Indonesia and Morocco) have launched the so-called **Convention against Torture Initiative** (CTI), a campaign that aims for universal ratification and implementation of the Convention by 2024.⁵ Since its adoption in 2002, Denmark has also assumed an active role in promoting States' accession to and subsequent implementation of the OPCAT, inter alia by posing questions and making recommendations under the **UPR-procedure**.

Within the **European Union**, Denmark has also had a long tradition of playing a key role, notably within the Council's Working Group of Human Rights Aspects of EU external Relations (COHOM), which develops EU human rights policy instruments, such as the EU guidelines on torture.

Denmark's foreign and development policy priorities

Combating and preventing torture have been a long-standing priority of Danish **foreign policy**, and it has also been incorporated into Denmark's **development policy and strategies** for bilateral assistance. Most recently, it has been made a key priority within the government's "Danish Arab Initiative Programme".

The Danish government has also continued its financial support of projects on the prevention of torture and the rehabilitation of torture victims in Africa, Asia, Latin America and the Middle East. Through its financial assistance to the DIGNITY and other rehabilitation centres for torture victims, the Danish state also contributes to the rehabilitation of torture survivors residing in Denmark.

Finally, it should be emphasized that the present government – like its predecessors – has continued to provide moral and financial support to NGOs engaged in the struggle against torture, including DIGNITY and the International Rehabilitation Council for Torture Victims (IRCT). Danish authorities maintain a good and constructive dialogue and cooperation with NGOs. At their invitation, the DIGNITY thus continues to be able to contribute to Denmark's fulfilment of its obligation under the UNCAT Article 10.

Yours sincerely,

Dr. Karin Verland
Director General
DIGNITY – Danish Institute Against Torture

⁵ For more details, please refer to: <http://fngeneve.um.dk/en/human-rights/cti>

PART A. Suggested recommendations to the list of issues

I. Specific information on the implementation of articles 1 to 16

Articles 1 and 4

LOI para 1- Incorporation of the Convention

1. Please provide updated information on any changes in the State party's position on incorporating the Convention into Danish law, as recommended by the Committee in its previous concluding observations (para. 9).

A) CAT position

In its Concluding Observations concerning Denmark (2007), it was stated that:

The Committee recommends that the State party incorporate the Convention into Danish law in order to allow persons to invoke it directly in courts, to give prominence to the Convention as well as to raise awareness of its provisions among members of the judiciary and the public at large.⁶

B) State party response

In December 2012, the Danish Government established a committee of experts on incorporation etc. within the human rights field. This Committee has among other issues been asked to consider whether Denmark should incorporate additional human rights instruments, including the Convention against Torture, into Danish law. The Committee concluded its work in August 2014, and the Danish Government will now consider its findings.

C) Issue summary

In August 2014, the Committee of Experts issued its 527-page report report (*betænkning*) no. 1546/2014.⁷ After its thorough assessment of the legal, judicial, and practical implications of incorporation of the UN convention against Torture (UNCAT) into Danish law, the Committee noted:

The mentioned considerations all entail a strengthening of the legal position of the citizens in the legal areas covered by the Convention; This speaks in favour of incorporation.⁸

However, when it came to the final vote on incorporation, the Committee of Experts was split:

⁶ CAT/C/DNK/CO/5, 16 July 2007, para. 9.

⁷ Report no 1546/2014 on incorporation etc. in the human rights field, 14 August 2014, available at: http://justitsministeriet.dk/sites/default/files/media/Pressemeddelelser/pdf/2014/Betaenkning_1546.pdf

⁸ Ibid, page 189.

- Six members recommended that UNCAT be incorporated into Danish law.
- Four members abstained from pronouncing themselves about incorporation, noting however that incorporation may entail a shift in the balance of power from the Legislative to the Judiciary.
- Five members – all government representatives - concluded that they would not take a stand on the issue of incorporation until the Committee of Experts had concluded its work.

As a result, no political initiatives have been taken regarding incorporation - neither by the former government nor by the present government, which came into office in 2015. As it stands currently, there is no majority in parliament for an incorporation of the UNCAT or any of the other UN human rights treaties.

D) Suggested recommendation

It is recommended to repeat CAT's 2007 recommendation to Denmark (para. 9) cited above.

LOI para 2- Criminalisation of torture and statute of limitation

2. In its previous concluding observations, the Committee expressed its concern about the absence of a specific crime of torture, consistent with articles 1 and 4, paragraph 2, of the Convention, in the Danish Criminal Code and the Military Criminal Code (para. 10). Please elaborate on the State party's decision to refer to torture merely as aggravating circumstances in relation to existing crimes in the Criminal Code, instead of introducing a specific crime of torture. Please indicate whether, despite this change in legislation, acts of torture as well as attempts and complicity or participation to commit torture can still be subject to the statute of limitations.

A) CAT Position

The Committee stated in its Concluding Observations concerning Denmark in 2007 that:

The Committee calls upon the State party to incorporate a specific offence of torture, as defined in article 1 of the Convention, in its Criminal Code as well as in the Military Criminal Code making it a punishable offence as set out in article 4, paragraph 2, of the Convention.

B) State party response

The Danish Government considers the current legislation to be a sufficient and adequate implementation of the obligation to criminalize torture (State party report, para. 208-211).

C) Issue Summary

Criminalisation of torture

The question whether article 4 of the UNCAT entails a legal obligation to introduce a specific crime of torture in national legislation has been challenged by successive Danish governments. Denmark has repeatedly insisted on interpreting article 4 literally, i.e. as *not* implying such legal obligation.

According to Denmark's Committee on Criminal Law's report no. 1494/2008 on 'a torture provision in the criminal code'⁹ Denmark is not under any international legal obligation to introduce a definition of torture or the crime of torture in Danish criminal law. The international legal obligation is interpreted as exclusively consisting of an obligation to ensure that all acts of torture are punishable by appropriate penalties.

Furthermore, the Committee on Criminal Law found that the introduction of a specific offence of torture in the Criminal Code would be difficult to reconcile with the current structure of the law. It should be noted that the Criminal Code does not have a distinct chapter on crimes under international law. The reasoning was that acts of torture may have very different forms and purposes, and a specific torture offence could lead to problems regarding delimitation and collision, and possibly 'double criminalisation'.

The Danish government concurs with this assessment and considers that it fulfills its obligation under article 4, since all acts of torture are punishable under national criminal law, notably as assault; unlawful coercion, threats, unlawful deprivation of liberty and crimes committed in public service or office.

Several other European states have adopted a specific provision in their national criminal legislation defining and prohibiting torture in accordance with article 1 and 4 of the UNCAT.¹⁰ Some of these states have underlined the important symbolic value of such criminalisation. For instance, Norway decided to introduce a specific torture provision in 2004, although the crime of torture was already covered by existing provisions, and Sweden has most recently decided to follow suit.

Denmark has so far rejected to introduce a torture provision in the Criminal Code solely for its symbolic value. Nevertheless, Denmark has on other occasions introduced provisions in the Criminal Code exclusively to mark the society's rejection of a particular crime. A case in point is the introduction in 2003 of a specific provision on female circumcision in the Criminal Code. In the comments to the draft law it is stated that:

*Female circumcision is presently punishable pursuant to the ordinary provisions on violence, but it is proposed to introduce a new, specific provision in the Criminal Code on female circumcision in order to mark more strongly the society's rejection of such mutilating and purely tradition-bound operations and to state in the law that under no circumstances can consent be given to female circumcision [...] with the effect at such operation is unpunished.*¹¹

Nonetheless, following the recommendation of the UN Committee against Torture to Denmark in 2007, the Danish parliament amended national criminal legislation in 2008 and introduced torture as an aggravating circumstance in section 157a of the Criminal Code and section 27a of the Military Criminal Code.¹² It is noteworthy that while torture is considered as one of the most serious crimes under international law and

⁹ Committee on Criminal Law, Report 1494/2008, 25 January 2008, available at: http://www.statensnet.dk/betaenkninger/1401-1600/1494-2008/1494-2008_pdf/printversion_1494-2008.pdf

¹⁰ Torture is criminalized in several European states, including the Germany (Article 340 and 223a, 224-25), Great Britain (Article 134), France (Article 222), Spain (Article 173-77) and Norway (§ 117a).

¹¹ Comments to the proposed law amending the Criminal Code and the Aliens Act, Parliamentary Session 2002-03 Law 183, presented by the Minister of Justice on 12 March 2003. <http://www.ft.dk/?samling/20061/MENU/00000002.htm>

¹² Law no. 494 on the amendment of the Criminal Code and the Military Criminal Code, 17 June 2008, available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=120191>

a peremptory norm (*jus cogens*), the very same acts of torture are merely considered as an aggravating circumstance under Danish law.¹³

Statute of limitation

Positively, following the above mentioned legislative amendment in 2008, acts of torture are no longer subject to any statute of limitation, cf. section 93b of the Criminal Code and section 10a of the Military Criminal Code. However, this legislative amendment took place with a delay of several years. Already in 2003, the Committee Against Torture had established that States parties should repeal the statute of limitation for crimes of torture.¹⁴ This had also been established by the European Court of Human Rights in 2004.¹⁵

The fact that Denmark only brought its criminal legislation in accordance with its international obligations in 2008 has prevented Denmark from fulfilling another obligation under the UNCAT, namely to ensure that there are no safe havens from where perpetrators of torture can escape individual criminal responsibility (universal jurisdiction regime).

In January 2014, Mr Carmi Gillon, a former head of the Israeli intelligence service Shin Bet, visited Denmark. He is known to have been responsible for Shin Bet's use of torture and 'moderate physical pressure' under his leadership in 1994-95. A complaint of torture was filed to the Danish police during Gillon's stay in Denmark. Prior to the 2008-amendment of the Criminal Code, acts of torture were subject to a 10 year statute of limitation. As the torture in the present case took place in 1994-95, the Danish Prosecution concluded its preliminary investigation into the Gillon case. Denmark could not pursue the case, because criminal responsibility for acts of torture, which have taken place before 1998, are time barred under Danish law. In conclusion, Denmark's delayed implementation of its international obligation – to repeal the statute of limitation - has effectively shielded alleged perpetrators/accomplices from responsibility.¹⁶

D) Suggested Recommendation

The Committee reiterates its previous recommendation (CAT/C/DNK/CO/5, para. 10) and urges the State party, as a matter of priority, to define and criminalize torture in domestic law, in full compliance with articles 1 and 4 of the Convention. Recalling its general comment No. 2 (2007) on the implementation of article 2 by States parties, the Committee considers that by naming and defining the offence of torture in accordance with the terms of the Convention, as distinct from other crimes, States parties will directly advance the overarching aim of the Convention to prevent torture, inter alia, by alerting everyone, including perpetrators, victims and the public, to the special gravity of the crime of torture, and by improving the deterrent effect of the prohibition itself.

¹³ Law no. 494 on the amendment of the Criminal Code and the Military Criminal Code (torture as an aggravating circumstance), 16 June 2008, available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=120191>

¹⁴ Conclusions and Recommendations of the Committee against Torture, Turkey, CAT/C/CR/30/5 (2003), para. 7(c)

¹⁵ European Court of Human Rights, *Abdulsamet Yaman v Turkey*, 2/11 2004, para. 55

¹⁶ See further Denmark's national report, para 208-2011.

Article 2

This section will address concerns regarding Denmark's fulfilment of its obligations in article 2 of UNCAT read in conjunction with article 16 of the UNCAT. Administrative detention of foreigners might raise concerns regarding Denmark's fulfilment of its obligations in Article 16 to prevent other acts of cruel, inhuman or degrading treatment or punishment. This issue was addressed by the Committee in its decision of 6 February 2013 submitted by A.A.¹⁷

LOI para 3- Administrative detention of foreigners

3. In light of the recommendation of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment and punishment ("the Special Rapporteur") in his report on the visit to Denmark in May 2008¹⁸, please provide information on measures that have been taken to set an absolute limit to the length of administrative detention of foreigners pending deportation (A/HRC/10/44/Add.2, paras. 47, 75 and 78(c)). Please provide information on any steps taken to review the procedure of legal challenges of deprivation of liberty under article 37 of the Aliens Act to ensure its effectiveness in practice.

A) CAT Position

The Committee against Torture highlighted in its General Comment No. 2 the States' obligation to prevent cruel, inhuman, or degrading treatment or punishment, and that this obligation is indivisible, interrelated and interdependent with the obligation to prevent torture because conditions that give rise to ill-treatment frequently facilitate torture.¹⁹ The Committee has also stressed that detaining persons indefinitely without charge "constitutes *per se* a violation of the Convention [against Torture]".²⁰

The Committee raised concerns about the long waiting periods at asylum centres in its previous Concluding Observations concerning Denmark (2007). In its decision of 6 February 2013 to Denmark, the Committee noted that;

*when detention of refused asylum seekers is applied, as a last resort, its duration should be limited, medical checks upon arrival in detention facilities should be ensured, and a medical and psychological follow-up by a specially trained independent health expert should be provided when signs of torture or traumatization have been detected during the asylum proceedings.*²¹

¹⁷ Communication No. 412/2010.

¹⁸ The Special Rapporteur noted that: "With regard to detention of foreigners and asylum-seekers the Special Rapporteur, while being encouraged by the low number of asylum-seekers in detention as compared with some other European countries, is concerned by the fact that there is no maximum period for such administrative detention. Prolonged deprivation of liberty for administrative reasons without knowing the length of the detention may amount to inhuman and degrading treatment. Furthermore, although mandatory habeas corpus proceedings exist, the Special Rapporteur received information indicating that legal challenges to administrative deprivation of liberty of foreigners are not effective in practice".

¹⁹ Committee against Torture, General Comment No. 2, CAT/C/GC/2, para. 3: Article 16, identifying the means of prevention of ill-treatment, emphasizes "in particular" the measures outlined in articles 10- 13, but does not limit effective prevention to these articles, as the Committee has explained, for example, with respect to compensation in article 14.

²⁰ CAT Concluding Observations on USA, CAT/C/USA/CO/2 (2006), para. 22.

²¹ Communication No. 412/2010, para 7.3.

The Committee has taken a stand on the issue of administrative detention of foreigners in relation to a number of States parties. By way of example, in its Concluding observations concerning **Liechtenstein** (2010), the Committee noted with concern that the period of administrative detention to prepare or ensure deportation may be extended up to nine months and, in the case of minors between 15 and 18, up to six months (arts. 3, 11 and 16). Consequently, the Committee recommended the State party to ‘consider reducing the permissible length of administrative detention in preparation for deportation, in particular for children under the age of 18 years.’²²

In the Concluding observations concerning **Sweden** (2014), the Committee expressed concerned that (a) the time limit is for a maximum of 12 months under the Aliens Act; (b) there are reports that the detention of asylum seekers is not always used only as a measure of last resort and that the limitations are not always only for the shortest possible time; (c) the use of detention is, in practice, much more common than supervision; and (d) some asylum seekers are still placed in remand prisons for security or other exceptional reasons.²³

B) State party response

Denmark noted in its State Party response that the 2011 amendments to article 36 and 37 of the Aliens Act (see further below) were adopted as a consequence of the incorporation into Danish law of the European Union Directive on common standards and procedures in member States for returning illegally staying third-country nationals. Denmark also provided details on the exceptional reasons when the maximum of six months can be extended, for example when the detainees refuse to cooperate concerning the removal arrangements or when the process for obtaining the necessary travel documents is delayed.

C) Issue Summary

The Danish Aliens Act

Deprivation of liberty, including administrative detention, should respect the protection provided by article 9 of the International Covenant on Civil and Political Rights (ICCPR) and article 1, 2 and 16 of the UNCAT. Lengthy administrative detention without basic safeguards would present a severe risk of arbitrary deprivation of liberty, and might also raise concerns in relation to the UNCAT.²⁴

The Danish Aliens Act (*udlændingeloven*) provides for the possibility for the police to *administratively* – thus not in contemplation of prosecution on criminal charges - detain foreigners, including asylum seekers, pursuant to article 35 and article 36 of the Aliens Act.²⁵ The former relates, for example, to foreigners who have been criminally convicted and received a deportation order.

²² CAT/C/LIE/CO/3 (CAT, 2010), para. 17.

²³ CAT/C/SWE/CO/6-7, para 10.

²⁴ Human Rights Committee, General Comment No. 35, CCPR/C/GC/35, para 56. The link between article 9 and the standards of the UNCAT was further elaborated in the comments submitted by DIGNITY and other anti-torture organisations prior to the adoption of the General Comment No. 35, available at <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/DGCArticle9.aspx>.

²⁵ See further strategy of the Prosecution Office of 25 August 2009, amended as of 4 January 2011 (*Strategi for anvendelse af varetægtsfængsling og frihedsberøvelse efter udlændingeloven*).

The Aliens Act provides that the police should first consider less restrictive measures against foreigners, including for example requesting the person to leave his/her passport with the police or give notice at a specific location (article 34 of the Aliens Act). As an exemption to this main rule, the police might decide – if these less restrictive measures are insufficient - to detain foreigners and deprive them of their liberty pursuant to article 36 of the Aliens Act. Thus, detention should be the exception to the main rule of using less restrictive measures. After a maximum of three days, the court will consider the detention (article 37 of the Aliens Act). During the initial max 3-day period, there is no review of the decision by the police.

In 2011, the authorities introduced a maximum limit of six months for administrative detention pursuant to article 36 (article 37 (8) of the Aliens Act) that can in exceptional cases be extended by 12 months (hence a total of 18 months). There is no maximum to the detention pursuant to article 35 of the Aliens Act.

It is our experience that in practice, the rules in article 36 (with reference to article 34) and 37 of the Aliens Act are not administered in accordance with the intention that administrative detention and extension beyond six months should be the exception. By way of example, it seems that at the review by the courts after 3 days, most judges decide to uphold the initial detention by the police, and that many decisions about detention are extended beyond 6 months.

Basic safeguards and legal challenge of the decision to detain

It seems in practice that the procedure outlined in article 37 of the Aliens Act to challenge a detention order is not effective, as previously criticized by the UN Special Rapporteur on Torture.²⁶ By way of example, in a decision involving a man from Nigeria who in July 2013 was arrested in Copenhagen and subsequently detained prior to deportation to Spain, the Supreme Court overruled on 17 February 2015²⁷ decisions by the First Instance Court and the High Court and concluded that the detention pursuant to article 36 of the Aliens Act had been illegal as the less restrictive measures in article 34 of the Aliens Act would have been sufficient.

In its State Party response, Denmark did not provide information on a review of the procedure of legal challenges of deprivation of liberty under article 37 of the Aliens Act, as requested by the Committee, or information on whether the procedure is considered effective in practice.

Consequences of imprisonment

This section will address the issue of the application of these rules specifically with regard to *foreigners who are awaiting deportation*, as mentioned in LOI para 3, but it should be noted that the application of article 36 of the Aliens Act in relation to other groups (for example asylum seekers who are awaiting a decision about asylum and who are deemed not to be cooperative during the asylum process) may raise other concerns regarding Denmark's implementation of the UNCAT.

²⁶ *Ib*, at para 47: However, according to information received, in the past five years, on only two occasions did the court not confirm the prolongation of detention when requested by the police. Furthermore the Special Rapporteur was informed that about 50% of the inmates of Ellebæk accept an automatic prolongation of their detention by signing a document to that effect in advance. To the Special Rapporteur, these are signs that de facto the procedure of legal challenge of deprivation of liberty under article 37 of the Aliens Act is not as effective as one might expect.

²⁷ Case 300/2013.

This group of foreigners, who are awaiting deportation either following a judgement or an administrative decision, is diverse and would include, for example, foreigners who have been illegally in Denmark; asylum seekers who have been rejected; or foreigners who have been convicted of a crime. The group would generally include many less resourceful people and various vulnerable groups, including victims of torture and children.

Imprisonment can be particularly damaging to those who are already psychologically vulnerable because of past trauma, such as torture²⁸, and may violate their rights under the UNCAT (see further below). The UN Special Rapporteur on the human rights of migrants has pointed out that “[detention can be particularly damaging to vulnerable categories of migrants, including victims of torture, unaccompanied older persons, persons with a mental or physical disability, and persons living with HIV/AIDS.”²⁹ Research also shows that detention of specifically asylum seekers has widespread and seriously damaging effects on the mental (and sometimes physical) health of those incarcerated.³⁰

D) Other UN and Regional Human Rights Bodies Recommendations

International human rights bodies have recognised that the additional trauma caused to a torture survivor by imprisonment or detention can be of such gravity that it may amount to inhuman or degrading treatment. In *A v. The Netherlands* the Committee against Torture expressed its concern that

*the author has been held in detention since his arrival in the Netherlands on 24 November 1988, i.e. only two months after he was allegedly tortured. The Committee considers that if torture did indeed take place, the fact of keeping him in detention for such a prolonged period could have an aggravating effect on his mental health and ultimately amount to cruel or inhuman treatment.*³¹

The potential for additional trauma, and the steps that must be taken to prevent this by ensuring that torture survivors are identified and only detained in exceptional circumstances, has been recognised both by international human rights bodies, and by national governments.³² For example, the Inter-American Court of Human Rights and Inter-American Commission on Human Rights have recognised that special measures must be taken to protect vulnerable people when their liberty is at stake.³³ Similarly, Guideline 9

²⁸ Zachary Steel and Derrick M Silove (2001), ‘The mental health implications of detaining asylum seekers’, (2001) MJA 2001 175: 596-599 (footnotes omitted), http://www.mja.com.au/public/issues/175_12_171201/steel/steel.html.

²⁹ Report of the Special Rapporteur on the Human Rights of Migrants: Detention of Migrants in an Irregular Situation, *supra* n. 23, para. 43.

³⁰ See, e.g. Coffey et al. (2010), ‘The Meaning and Mental Health Consequences of Long-Term Immigration Detention for People Seeking Asylum’, 70 *Social Science & Medicine* 2070-2079. See also Newman, Dudley and Steel (2008), ‘Asylum, Detention and Mental Health in Australia’, 27(3) *Refugee Survey Quarterly* 110-127.

³¹ CAT, *A v. The Netherlands*, Comm. No. 124/1998, in particular paras 6.3 and 9. See also an analogous interpretation of the European Court of Human Rights in *Price v United Kingdom* (2002), Application No. 33394/96 (2001), paras. 29-30 (in relation to the detention of a person with physical disabilities). See also comments submitted by DIGNITY and other anti-torture organisations prior to the adoption of the General Comment No. 35, available at: <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/DGCArticle9.aspx>.

³² For example, in the United Kingdom, government policy is that people in immigration detention must be screened to identify those for whom there is evidence of torture, and that such people should be detained only “*in very exceptional circumstances*”. The policy towards the detention of persons who claim to have been victims of torture is covered by a number of over-lapping policy and instruction documents: Chapter 55 of the Enforcement Instructions and Guidance (EIG), Detention Centre Rules 2001, Detention Services Order 03/2008, Asylum Process Instruction (Rule 35).

³³ IACtHR, Advisory Opinion on the Juridical Condition and Rights of Undocumented Migrants, OC-18, 17 September 2003, Ser. A

of the UNHCR 2012 Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum-seekers provides that:

*[v]ictims of torture and other serious physical, psychological or sexual violence also need special attention and should generally not be detained.... Detention can and has been shown to aggravate and even cause the aforementioned illnesses and symptoms.*³⁴

The UN Special Rapporteur on the human rights of migrants has also recognised that

*[v]ictims of torture are already psychologically vulnerable due to the trauma they have experienced and detention of victims of torture may in itself amount to inhuman and degrading treatment.*³⁵

The Special Rapporteur has suggested that the same principles apply to the detention of any person with pre-existing mental illness, holding that “serious consideration must be given to alternatives to detention or other arrangements that meet their treatment needs, ensuring their protection from cruel, inhuman or degrading treatment or punishment, and the right to humane conditions of detention”.³⁶

The Special Rapporteur on Torture has recently highlighted the effects for children of deprivation of liberty:

*Children deprived of their liberty are at a heightened risk of violence, abuse and acts of torture or cruel, inhuman or degrading treatment or punishment. Even very short periods of detention can undermine a child’s psychological and physical well-being and compromise cognitive development. Children deprived of liberty are at a heightened risk of suffering depression and anxiety, and frequently exhibit symptoms consistent with post-traumatic stress disorder. Reports on the effects of depriving children of liberty have found higher rates of suicide and self-harm, mental disorder and developmental problems.*³⁷

In the opinion of the Special Rapporteur on Torture, deprivation of liberty for administrative reasons for a prolonged period without knowing the length of the detention may amount to inhuman and degrading treatment.³⁸

The CPT stressed, in its report to the Danish Government on its visit to Denmark in 2014, that asylum seekers should only be detained as a last resort, for the shortest possible duration, and after other, less coercive measures have proven insufficient to ensure the presence of the persons.³⁹

Specifically with regard to minors, CPT noted after its visit to Ellebæk, (formerly “Sandholm”) Prison and Probation Establishment for Asylum-seekers and Others Deprived of their Liberty⁴⁰:

No. 18/03, para. 121.

³⁴ Office of the United Nations High Commissioner for Refugees, UNHCR’s Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-seekers and Alternatives to Detention (2012), <http://www.unhcr.org/505b10ee9.html>.

³⁵ Report of the Special Rapporteur on Migrants: Detention of Migrants in an Irregular Situation, *supra* n. 23, para. 44.

³⁶ *Ibid.* para. 46.

³⁷ Report of 5 March 2015, A/HRC/28/68, para 16. See also comments submitted by DIGNITY and other anti-torture organisations to the UN Human Rights Commission prior to the adoption of the General Comment No. 35 on article 9 of the ICCPR, available at: <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/DGCArticle9.aspx>.

³⁸ Report to Denmark, A/HRC/10/44/Add. 2. Para 47.

³⁹ Report to the Danish Government on the visit to Denmark from 4 to 13 February 2014, CPT/inf (2014) 25, para. 75.

The CPT wishes to recall its position that every effort should be made to avoid resorting to the deprivation of liberty of an irregular migrant who is a minor. Following the principle of the “best interests of the child”, as formulated in Article 3 of the United Nations Convention on the Rights of the Child, detention of children, including unaccompanied children, is rarely justified and, in the Committee’s view, can certainly not be motivated solely by the absence of residence status.⁴¹

In conclusion, the CPT recommended the Danish authorities to put an end to the detention of children at Ellebæk.⁴² In its response to CPT⁴³, Denmark noted with regard to minors that unaccompanied children are only detained under exceptional circumstances.

E) Suggested Recommendation

The Committee recommends that the State Party take all necessary measures to ensure that the detention of foreigners is used only as a last resort and, where necessary, for as short a period as possible and without excessive restrictions, while taking into consideration the standards of the Convention against Torture. The Committee further recommends that the State party reviews the law and practice, including the implementation of the exceptional reasons for administrative detention under the Aliens Act and eventual extension of such detention, and how these rules are applied to victims of torture, as well as the procedure of legal challenges of deprivation of liberty to ensure its effectiveness and compliance with international human rights standards.

LOI para 4 – Police-imposed restrictions on remand prisoners’ contact with the outside world

4. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) stressed, in its report to the Danish Government on its visit to Denmark in February 2008, that the use of police-imposed restrictions on remand prisoners’ contacts with the outside world should be limited to the strict minimum necessary for investigation purposes (CPT/Inf (2008) 26, para. 44). Please provide details about steps taken by the State party in response to this recommendation.

A) CAT Position

The Committee against Torture has on several occasions criticized unnecessary restrictions for pre-trial detainees. The specific issue of police-imposed restrictions on remand prisoners’ contact with the outside world was not addressed in the previous Concluding Observations concerning Denmark.

B) State party response

⁴⁰ At the time of the 2014 visit, Ellebæk was holding 87 asylum seekers of whom three were women and, in a separate section, 18 detainees (including one juvenile) awaiting deportation.

⁴¹ *Ib*, at para. 76.

⁴² *Ib*, at para. 77. See also position of the European Court of Human Rights regarding administrative detention of children in an adult detention centre with a view to their deportation amounting to inhuman treatment (reference made to relevant judgements in CPT 2014 Report, footnote 37).

⁴³ Response of the Danish Government to the report of the CPT, CPT/Inf (2015) 16, 3 March 2015.

In the State Party response, Denmark noted one measure taken immediately following the visit of the CPT to Denmark in 2008: the office of the Director of Public Prosecutions brought up the question of the use of restrictions of remand prisoners' right to receive letters and visits in the Committee on Criminal Procedural Law (*Rigsadvokatens Fagudvalg for Straffeproses*). However, this Committee was subsequently disbanded.

C) Issue Summary

During the investigation, restrictions might be imposed on the pre-trial detainee's contact with the outside world (e.g., visits, letters, and telephone calls). The CPT criticized again during its visit to Denmark in 2014 the high proportion of remand prisoners with restrictions on visits and letters (so-called "B&B" restrictions, *kontrol med brev og besøg*).⁴⁴ Denmark replied to the CPT in March 2014 that the Ministry of Justice had taken steps to examine the use of "B&B" judicial restrictions in Denmark.⁴⁵

In practice, it seems that when a person is detained prior to trial, with the justification that it is necessary for the sake of the investigation, pursuant to Article 762 in the Criminal Procedure Code, the restrictions on B&B are almost automatically imposed without a consideration of the specific circumstances, as required in article 770 of the Administration of Justice Act.⁴⁶ (See further Remand Custody Order (*varetægtsfængslingsbekendtgørelsen*)).

These restrictions could be applied throughout the remand period, including during any appeal and while awaiting sentence. This effectively means that they could continue for many months and up to a year or more entailing restrictions on the pre-trial detainees' right to contact with the outside world.

D) Human stories

In several cases visits to the pre-trial detainees are strictly limited – for example to one hour a week monitored by a police officer. In one case, a 30-year-old hospital nurse, suspected of having killed patients in her care⁴⁷, has until now been in pre-trial detention for 8 months. Her contact with her 8-year-old daughter is limited to one hour a week, monitored by a police officer. Such a limitation - for such a long period of time – may be seriously harmful to the woman and the mother-daughter relation.⁴⁸

In a case documented by the CPT, a 17 year-old remand prisoner, who had been in detention for more than two months and was scheduled to be sentenced three weeks later, claimed that the judge upheld the "B&B" measure on the grounds that the police stated there was a risk he would threaten witnesses. Contact with his family was severely restricted as he was prohibited from making phone calls and his

⁴⁴ CPT/Inf (2014) 25, para 36.

⁴⁵ CPT/Inf (2015) 16, page 18 re para 36.

⁴⁶ A remand prisoner always has the right to unsupervised exchanges of letters with the court, the defence attorney, the Minister for Justice, the Director of the Prison and Probation Service and with the Parliamentary Ombudsman.

⁴⁷ See daily newspaper Politiken: <http://politiken.dk/indland/ECE2789358/anklager-sygeplejerske-begik-drab-allerede-i-2012/>

⁴⁸ Another case related to a woman who was in pre-trial detention for 325 days, see <http://politiken.dk/indland/ECE2150364/dyrlaege-frikendt-for-drab-kraever-millionerstatning/>

mother had only been able to visit him twice in two months – and both visits had taken place in the presence of a police officer.⁴⁹

E) Other UN and Regional Human Rights Bodies Recommendations

The CPT noted in its report to Denmark (2014) that many remand prisoners subject to “B&B” claimed that once the restrictions were imposed there was no point in challenging them in court because they were always upheld. The CPT concluded that it was not convinced that the safeguards in place are sufficient.

The CPT recommended that the use of judicial restrictions on remand prisoners’ contacts with the outside world be limited to the strict minimum necessary for investigation purposes and that there should be a more rigorous supervision of their application. Indeed, every effort should be made to promote contact with the outside world. Moreover, the longer the measure of “B&B” is imposed on a remand prisoner, the more rigorous should be the tests as to whether such a measure remains necessary and proportionate.

With regard to juveniles, the Committee remained concerned that the majority of juveniles on remand had restrictions placed on their contacts with the outside world, often for extensive periods. The Committee reiterated its recommendation that the imposition of such limitations should be the exception, not the rule. The CPT reiterated its recommendation that the Danish authorities reinforce the safeguards surrounding the application of restrictions on remand prisoners’ contacts with the outside world, namely:

- that the police be given detailed instructions as regards recourse to prohibitions/restrictions concerning prisoners’ correspondence and visits;
- that there be an obligation to state the reasons in writing for any such measure; and
- that, in the context of each periodic review by a court of the necessity to continue remand in custody, the question of the necessity for the police to continue to impose particular restrictions upon a remand prisoner’s visits, telephone calls and letters be considered as a separate issue.

F) Suggested Recommendation

The Committee urges the State party to:

- (a) Amend national legislation in order to ensure that B&B restrictions are used only as an exceptional measure based on concrete grounds, in accordance with international standards and only when strictly necessary in the interest of criminal investigation.
- (b) Reinforce the safeguards surrounding the application of restrictions on remand prisoners’ contacts with the outside world (including through an obligation to state the reasons in writing for any such measure) and make statistics on the use of such restrictive measures available for the public.

⁴⁹ CPT/Inf (2014) 25.

Article 3

This section will specifically address LOI para 5 -7 related to the principle of non-refoulement in Article 3. Please note that other concerns related to Denmark's implementation of Article 3 will be addressed under section B of this report. Moreover, please note that the issue of transfer of detainees during military operations may also raise concerns in relation to Denmark's fulfilment of its obligation to prevent torture and other ill-treatment (Article 2) by for example investigate allegations (Article 12 and 16).

LOI para 5 – Transfer of detainees

5. With reference to the previous concluding observations of the Committee, please provide information on any steps taken by the State party to ensure that it complies fully with article 3 of the Convention with regard to the transfer of detainees, including detainees in custody of the State party's military forces, wherever situated, even if the State party's forces are subjected to operational command of another State (para. 13).

A) CAT position

The Committee stated in its Concluding Observations concerning Denmark (2007):

*With regard to the transfer of detainees within a State party's effective custody to the custody of any other State, the State party should ensure that it complies fully with article 3 of the Convention in all circumstances.*⁵⁰

B) State party response

In its State party report, Denmark referred to the Directive on the prohibition of torture and other forms of ill-treatment; a forthcoming new directive on detainees; the Commission of Inquiry and two cases in which transfers of detainees had been suspended.⁵¹ Although future measures, which will assist in ensuring fulfilment of Denmark's responsibilities under Article 3, are commendable, the answers by the Danish government are inadequate and do not address the numerous transfers in Iraq and Afghanistan that have taken place since the last examination of Denmark by the Committee.

C) Issue summary

Lack of statistics and information about Denmark's monitoring of transferred detainees

Since the Committee's previous examination of Denmark, Danish forces continued the involvement in military operations in Afghanistan (until 2014) and in Iraq (until 2008) during which Danish soldiers transferred detainees, who were in their custody, to Afghani and Iraqi forces respectively. The total number of such transfers is unknown.⁵²

⁵⁰ CAT/C/DKK/CO/5, 16 July 2007, para. 13.

⁵¹ Para 18 – 21 of the State Party Response.

⁵² One case is mentioned in the State Party response, i.e., the Supreme Court judgement in Tarin case in which a detainee was transferred by the Danish forces to the United States detention centre Camp Khandhar (para 194 in the report).

As mentioned by Denmark⁵³, the previous government established a Commission of Inquiry on the Danish participation in the Iraq and Afghan wars (*Undersøgelseskommissionen for den danske krigsdeltagelse i Irak og Afghanistan*) that was given the mandate, *inter alia*, to examine the extent to which Danish forces had transferred detained persons to other nations' forces, and what knowledge about the treatment of detainees by such nations' forces that relevant Danish authorities possessed at the time of such transfer. The new government elected in June this year decided to close down the Commission of Inquiry. At the time of writing, it seems unlikely that the authorities' knowledge about the number of transfers and the treatment of the detainees will be made public.

Although the pending internal investigation by the Military Prosecution Service (*Auditørkorps*) may shed some light on the matter, it is regrettable that Denmark has refrained from investigating and publicising the number of persons who was detained and transferred during the latest military operations and how their conditions were subsequently monitored.

Afghanistan

In 2005, Denmark signed a Memorandum of Understanding with the Ministry of Defence of Afghanistan concerning the transfer of persons between the Danish contingent of the International Security Assistance Force (ISAF) and the Afghan authorities.⁵⁴ During its presence in Afghanistan, Danish troops transferred Afghani persons to the Afghan authorities on at least three occasions.⁵⁵ The Danish government underlined that it continues to monitor – though the cooperation with the Afghan Human Rights Commission - the situation regarding detainees transferred by Danish forces to Afghan authorities on a regular basis.⁵⁶

Iraq

Since 2011, a court case has been pending at the Danish Eastern High Court in which 23 Iraqi Sunni Muslims from Basra, who in November 2004 were transferred from Danish troops to Iraqi forces, claim that they were tortured by the Shia Iraqi forces (in some cases up to 70 days) after the transfer. They now request compensation from the Danish Ministry of Defence. In each case, an examination in accordance with the Istanbul Protocol was undertaken by independent experts. The case was initiated four years ago and after a lengthy process of procedural hurdles, the first court hearing in the case is scheduled for 9 November 2015 in the Eastern High Court.⁵⁷

In our opinion the Danish authorities have used various strategies to avoid state responsibility for transferred detainees in Iraq by, for example, the following measures:

- Danish authorities tried to avoid responsibility over detainees in Iraq by using the so-called “Brite-trick” (*Britefinten*) that entailed that soldiers of other nationality acting under Danish command

⁵³ State Party response, para. 20.

⁵⁴ See further para. 27-30 of the State Party Report.

⁵⁵ <http://cphpost.dk/news/risk-of-abuse-delayed-prisoner-transfer.5807.html>

⁵⁶ Para. 30 in the State Party Report.

⁵⁷ Previous decision by the Supreme Court is attached as annex A. Further information about the case is available at <http://www.harlanglaw.dk/principielle-sager/verserende-sager.html>

would carry out the arrest and transfer - leaving the Danish soldiers not having had any physical contact with the detainees.⁵⁸

- A measure called “passive-chain” that entailed that Danish soldiers would encircle Iraqi detainees and wait for Iraqi authorities to arrive to do the actual arrest – again aiming at Danish soldiers not having had any physical contact with the detainees
- Danish authorities have not *ex officio* initiated an investigation of the cases in Iraq - despite being in possession of allegations that should have triggered a suspicion regarding abuses and violations of the standards in UNCAT. Instead, Danish authorities have decided to wait and only initiated an internal investigation recently by the Military Prosecution Authority (*Auditørkorpset*) after pressure from the media following the closure of the Inquiry Commission. The inaction of the Danish authorities might entail that Danish courts will dismiss the pending claims and eventual subsequent claims due to statute of limitation rules.
- In 2004, the Danish military stopped monitoring the detainees that had been transferred to Iraqi authorities.⁵⁹
- The authorities have on several occasions provided wrong information about the number of transfers in Iraq.⁶⁰

D) Suggested recommendation

It is recommended to repeat the Committee’s previous recommendation to Denmark (see above) while highlighting the obligation regarding monitoring, investigation and provision of redress to victims of torture and ill-treatment. With regard to the transfer of detainees within a State party’s effective custody to the custody of any other State, the State party should ensure that it complies fully with article 3 of the Convention in all circumstances when the decision is made and subsequently during monitoring. The State Party should ensure that the rights of victims of torture and ill-treatment stipulated in Article 14 are fulfilled.

⁵⁸ See further Feature Article by Director of DIGNITY, Karin Verland and Ole Espersen: Der følger ansvar med britefinten. Politiken [daily newspaper], 2012, April 19 [section 2]: 9-10.

⁵⁹ Information leaked from the Commission of Inquiry, see newspaper Politiken Sunday 4 October 2015.

⁶⁰ Information of 12 October 2015 in the Danish newspaper *Politiken*: <http://politiken.dk/indland/ECE2880366/kaos-foerte-til-ulovlige-fangeoverfoersler/> Moreover, the Danish newspaper *Information* (<http://www.information.dk/248544>) has found evidence that in 2004 and 2005, the Danish Iraq Force participated in the capture of at least 84 people, of whom 53 were referred to the Iraqi authorities. This figure is significantly higher than what the Ministry of Defense mentioned to the Danish parliament in August 2006 when the Ministry stated that from January 2004 to June 2006, the Danish battalion detained no more than 24 people.

LOI para 6 – Diplomatic assurances

6. In particular, the Special Rapporteur and the Human Rights Committee expressed their concern that the State party had recently considered relying on “diplomatic assurances to return suspected terrorists to countries known for practicing torture” (A/HRC/10/44/Add.2, paras. 67-69, 77 and 78(f) and CCPR/C/DNK/CO/5, para. 10). Please provide detailed information on the steps taken by the State party to address this concern. Please indicate whether the State Party monitors the treatment of such persons after their return and takes appropriate action when the assurances are not fulfilled.

A) CAT Position

The Committee against Torture has addressed the issue of diplomatic assurances on numerous occasions, although not directly in the previous Concluding Observations concerning Denmark. In the Concluding Observation concerning Sweden last year, the Committee urged Sweden to “refrain from the use of diplomatic assurances as a means of returning a person to another country where the person would face a risk of torture.”⁶¹

B) State Party response

In its State party response, Denmark referred to the amendment of the Aliens Act in 2009 that introduced judicial review of certain decisions on administrative expulsion, and to the explanatory note to the bill setting out the limits and conditions for Denmark to rely on diplomatic assurances (State party report, para 22-25). Denmark underlined that the principle of *refoulement* (Article 31 of the Aliens Act) will be upheld in all cases in which Denmark considers relying on diplomatic assurances.⁶²

C) Issue Summary

The Danish Aliens Act stipulates the principle of non-*refoulement* in article 31.

Denmark has used a diplomatic assurance in the case regarding deportation of the Danish citizen Niels Holck who was charged with terror in India. The Danish Ministry of Justice received a diplomatic assurance from India that Niels Holck was not at risk of being subjected to torture or ill-treatment in India. However, the Danish Eastern High Court ruled on 30 June 2011 that despite the diplomatic assurance there was a risk that Niels Holck would be subjected to treatment in violation of Artikel 3 of the European Convention on Human Rights.⁶³

In its State Party response, Denmark noted that it has not used diplomatic assurances in cases in which there was a risk of death penalty or torture (para 26 of the report).

In light of the current context of anti-terrorism policies, it can be expected that Denmark will use diplomatic assurances in the future. The recognition of this is also implicit in the amendment to the Aliens Act in 2009, and reflects the conclusion by a working group established by the Ministry of Integration in 2009 who

⁶¹ CAT/C/SWE/CO/6-7, para 11.

⁶² Para 25. Similar explanation is included in Denmark’s State Party response to UN Human Rights Committee, 29 September 2015, para 163-166.

⁶³ See further State Party response, at para 202-207.

stated that there is a possibility to use diplomatic assurances without violating international legal standards if certain conditions are fulfilled.⁶⁴

It is important to underline that the use of diplomatic assurances would entail an obligation to monitor whether the assurance is respected and to react if that is not the case.

D) Other UN and Regional Human Rights Bodies Recommendations

The UN Human Rights Committee noted in its previous Concluding Observations to Denmark its concerns that Denmark may be willing to rely on diplomatic assurances to return foreign nationals to countries where treatment contrary to article 7 of the Covenant is believed to occur.⁶⁵

The former and the current UN Special Rapporteur on Torture, as well as the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, have on numerous occasions stressed that diplomatic assurances with regard to torture are nothing but attempts to circumvent the absolute prohibition of torture and non-refoulement.⁶⁶

The European Court of Human Rights has in its jurisprudence accepted the use of diplomatic assurances under certain conditions and it has developed specific criteria for assessing diplomatic assurances.⁶⁷

D) Suggested Recommendation

The Committee calls on the State Party to respect, in law and practice, its non-refoulement obligations under article 3 of the Convention and to refrain from seeking or relying on diplomatic assurances 'where there are substantial grounds for believing that [the person] would be in danger of being subjected to torture' (article 3). The Committee considers that diplomatic assurances are unreliable and ineffective and should not be used as an instrument to modify the determination of the Convention.

⁶⁴ Report concerning administrative deportation of foreigners (betænkning om administrativ udvisning af udlændinge) page 266: "Sammenfattende er det vurderingen, at det ikke kan afvises, at der er mulighed for at anvende diplomatiske forsikringer uden at krænke folkeretten, men at mulighederne er begrænsede."

⁶⁵ Report CCPR/C/DNK/CO/5, at para 10.

⁶⁶ Report submitted by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, 3 February 201, A/HRC/16/52 (Section D, page 14): "Indeed, diplomatic assurance has been proven to be unreliable, and cannot be considered an effective safeguard against torture and ill-treatment, particularly in States where there are reasonable grounds to believe that a person would face the danger of being subjected to torture or ill-treatment." See also joint statement with the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14084>

⁶⁷ See further Fact Sheet regarding Expulsions and Extraditions (available at: http://www.echr.coe.int/Documents/FS_Expulsions_Extraditions_ENG.pdf)

LOI para 7 – CIA rendition flights and inspection system

7. Please elaborate on the status and possible outcome of the investigation by an inter-ministerial working group into alleged CIA rendition flights through Denmark and Greenland. Please provide information on steps taken by the State party to establish an inspection system to ensure that its airspace and airports are not used for such purposes, as recommended by the Human Rights Committee (para. 9).

A) CAT Position

The Committee against Torture addressed the issue of rendition in its Concluding Observations to Ireland (2011) and recommended that the State party provide clarification on the outcome of the investigations, and take steps to ensure that such cases are prevented. The matter was not directly addressed in the previous concluding observations concerning Denmark.

B) State Party response

In its State Party response, Denmark explained the work of the inter-ministerial working group regarding alleged CIA rendition flights through Denmark and Greenland and its conclusions (para 31-35), as well as the investigation by the Danish Institute for International Studies (DIIS) and its conclusions (para 36-37). Denmark noted that based on these two reports and the guarantees provided by the US, Denmark considered the case settled in a “suitable manner” (para 38).⁶⁸ The guarantee given by the US consisted of a political declaration which states that the US will only conduct “rendition” in Danish, Greenlandic and Faroese airspace with explicit permission from the Danish authorities.

C) Issue summary

As Danish airspace has been used by CIA rendition flights (more specifically allegedly 100 flights passed through Danish airspace and 45 stopovers were done at Danish airports by planes allegedly used by the CIA⁶⁹), this raises concerns about Denmark’s fulfilment of its obligations under Article 3 of UNCAT and about eventual complicity liability pursuant to article 4 of UNCAT.

Denmark has initiated two inquiries about the CIA rendition flights, i.e, by an Inter-ministerial Working Group and the Danish Institute for International Studies (DIIS). However, both inquiries concluded that that it was not possible to determine whether or not CIA flights had occurred in Danish, Greenlandic or Faroese airspace.

Denmark has not clarified, as asked by the Committee, how it will establish an inspection system to ensure that its airspace and airports are not used for rendition flights in the future.

⁶⁸ Similar explanation is included in Denmark’s State Party response to UN Human Rights Committee, 29 September 2015, para 61-65.

⁶⁹ See letter to the European Parliament’s Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners.

D) Other UN and Regional Human Rights Bodies Recommendations lets discuss

In its Concluding Observations to Denmark (2008), The UN Human Rights Committee noted its concern at allegations that the airspace and airports of Denmark had been used for rendition flights of persons from third countries to countries where they risk being subjected to torture or ill-treatment. The Committee recommended Denmark to establish an inspection system to ensure that its airspace and airports are not used for such purposes.⁷⁰

The European Court of Human Rights has addressed the issue of rendition and responsibility for complicity in a number of judgements⁷¹, notably the two landmark rulings of 24 July 2014: *al-Nashiri v. Poland*, and *Hasayn (Abu Zubaydah) v. Poland*.⁷²

E) Suggested recommendations

The Committee urges the State Party to take steps to ensure that cases of rendition are prevented in the future and that Danish, Greenlandic or Faroese airspace is used in accordance with the principle stipulated in Article 3 of the Convention. Furthermore, the Committee recommends the establishment of an inspection system so as to ensure that Danish airspace and airports are not used for purposes that run contrary to article 3 of the Convention.

⁷⁰ CCPR/C/DNK/CO/5, 16 December 2008, para. 9.

⁷¹ See further fact sheet available at http://www.echr.coe.int/Documents/FS_Secret_detention_ENG.PDF

⁷² Application no. 28761/11 and 7511/13, decision of 27 July 2014.

Article 10

This section addresses LOI para 9(b). Please note that other concerns related to Denmark's identification of signs of torture and ill-treatment, which impact on its obligations under article 3 of the Convention, are addressed under section B of this report, issue 2 on the principle of non-refoulement.

LOI para 9(b) – Training on how to identify signs of torture and ill-treatment

9. Please provide information on:

(b) Measures undertaken to ensure that all relevant personnel receive specific training on how to identify signs of torture and ill-treatment. Please indicate whether the Istanbul Protocol of 1999 effectively has become an integral part of the training provided to physicians and all other professionals involved in the investigation and documentation of torture? How many physicians have received such training?

A) CAT Position

The Committee against Torture addressed the issue of training of in its Concluding Observations to Sweden (2014) where it recommended that the State party provide (a) training programmes on the prohibition of torture and the obligations of the State party under the Convention, for all officials; and (b) systematic and practical training on the Istanbul Protocol to medical personnel who are in direct contact with persons deprived of their liberty [...].⁷³

B) State party response

All newly arrived asylum seekers are offered a medical screening by a nurse. Vulnerable groups who have stated that they have been tortured will be offered a consultation with a doctor.

Danish Red Cross is running multidisciplinary courses for personnel twice a year called "Stress and Trauma", including issues of general stress symptoms, torture methods, the Istanbul Protocol, secondary traumas in family and PTSD. Red Cross in Denmark and the Danish Immigration Service have set up a committee to treat reception of asylum seekers with psychological traumas and sequelae after torture.

In addition, the postgraduate medical education curriculum and specialist training program in forensic medicine describes specifically requirements for obtaining skills in examining victims of torture. Competences in identification of torture lesions, examination of victims, and reporting must be achieved during training. The authorized medical specialty *Forensic Medicine* was established in 2008.

C) Issue summary

Training of relevant personnel on how to identify signs of torture and ill-treatment

At Copenhagen University, the medical students receive one lecture on torture where the Istanbul Protocol is touched upon briefly. There is no systematic training of physicians in identifying signs of torture or ill-treatment, except for forensic doctors who have compulsory courses on the Istanbul Protocol as part of

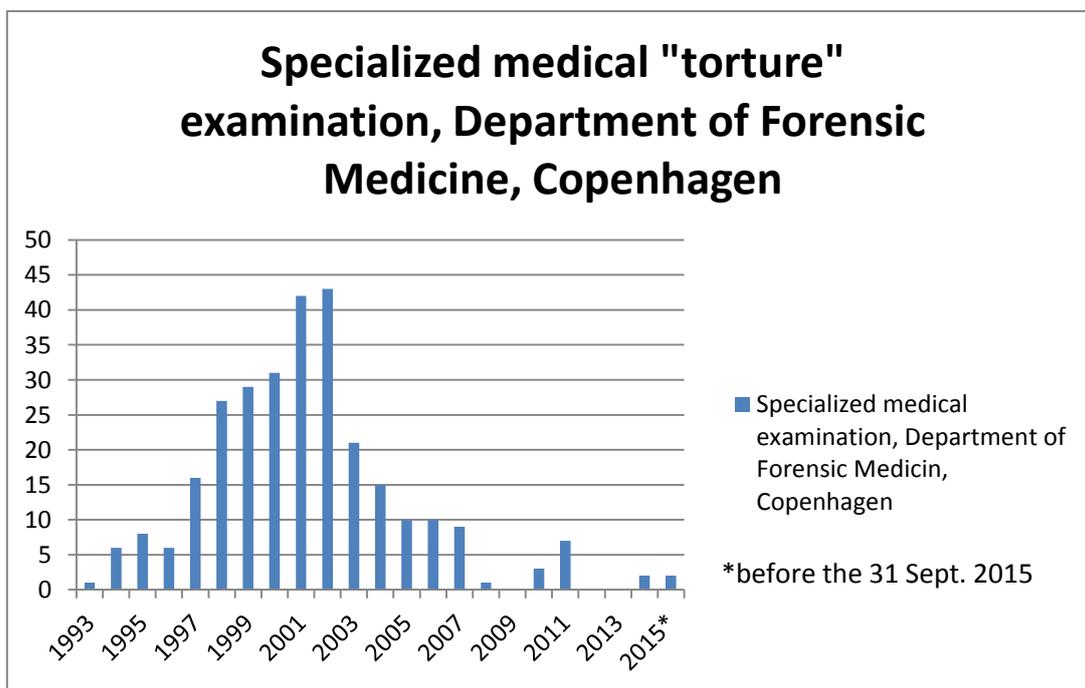
⁷³ CAT/C/SWE/CO/6-7, para. 18.

their specialization and public health students who receive a few lectures on the issue. Furthermore, some rehabilitation centres for torture survivors, notably RCT Jutland, OASIS and DIGNITY, offer specialized training and professional supervision to physicians, nurses and other health professionals within the public health care system with the aim of qualifying the identification of signs of torture or ill-treatment. Similar training is offered in other public service domains, such as at schools (teachers) and social service providers.

Identification of signs of torture in the asylum procedure

The Immigration Service (1st instance) and Refugee Appeals Board (2nd instance) may request a specialised medical ‘torture’ examination to be conducted according to the Istanbul Protocol by the Department of Forensic Medicine in Copenhagen. Such specialised examinations are not (yet) offered by the other departments of Forensic Medicine in Denmark (Århus or Odense). A specialised ‘torture’ examination includes a review of the file of the requesting Immigration authority, an oral narrative by the torture victim, and a physical examination. Additionally, a psychiatric assessment is made, and in some cases further specialized medical examinations may be conducted by e.g., dermatologists or rheumatologists. Finally, all assessments are compiled and the Dept. of Forensic Medicine drafts an overall declaration that is sent to the immigration authority.

In practice, there has been a significant downward trend as regards the number of requests made by the immigration authorities for specialized medical torture examinations, as illustrated in the table below⁷⁴:



⁷⁴ See also Denmark’s comment in the previous National Report, CAT/C/81/Add. 2, para 17: The total number of requests for torture examinations made by the Danish asylum authorities varies, but has since 2000 typically been between 20 and 50 a year. However, in recent years the number of examinations has decreased along with the decreasing number of asylum applicants.

The precise number of specialised 'torture' examinations in the period 2009-15 was 14 (2009: 0; 2010: 3; 2011: 7; 2012: 0; 2013: 0; 2014: 2 and until 31 Sept. 2015:2).

According to the earlier mentioned survey of Amnesty International's medical group (2012), some 27% of the 22 examined asylum seekers (detained at Ellebæk center) had been subjected to torture. In the same year, over 5.500 persons applied for asylum and 2.279 persons were granted asylum in Denmark.

While the mere fact that a person is a victim of torture does not provide sufficient grounds for granting him asylum, the 'torture history' is nevertheless one among several factors that has to be taken into account when determining whether a person is entitled to asylum under Danish law. However, with an annual average of only two specialised 'torture' examinations, the immigration authorities have almost no evidence-based information about the prevalence of torture among asylum seekers. Consequently, decisions on asylum are largely taken without expert opinions about the asylum seeker's torture history.

As rehabilitation centres for traumatized refugees and torture victims, we know from our clinical work that this group has an overrepresentation of mental disorders. As is well-documented, many of them suffer from post-traumatic stress disorder (PTSD) and common symptoms are lack of concentration and memory loss. When they appear before the immigration authorities in order to recount their history of flight and other traumatic events, they often forget certain events and confuse times and places. Consequently, they may appear trust-worthy. As the asylum system is primarily built on the reliability and consistency of the asylum seeker's explanation, the fact that s/he is untrustworthy due to the traumatisation may prompt the authorities not to grant the person asylum. For this reason the specialized medical 'torture' examination is crucial in order to identify torture victims in the asylum process, and contribute to the understanding of the asylum seeker's explanation and grounds for believing whether the asylum seeker is in danger of being subject to torture or inhumane treatment, if returned.

NPM findings

As part of the cooperation with the National Preventive Mechanism (NPM), DIGNITY – Danish Institute against Torture participated in an NPM visit to Ellebæk, Prison and Probation establishment for asylum seekers and other deprived of their liberty, in August 2015 together with the Parliamentary Ombudsman and the Institute of Human Rights. Interviews were conducted with nine residents of which two persons had clear signs of traumatization, which had not been identified in connection with the health screening. At Ellebæk, there was no systematic documentation of torture, cf. the Istanbul Protocol, or referral to specialized treatment for torture sequels. In conclusion, the NPM recommended Ellebæk to undertake a compulsory screening of asylum seekers upon arrival in order to identify signs of torture at this early stage. For further details, please refer to the submission to CAT of Denmark's Parliamentary Ombudsman.

Identification of signs of torture once residency permit has been granted

Shortly after having been granted residence permit in Denmark, the municipality shall offer asylum seekers a medical examination so as to ensure an early identification of any physical and mental health problems, cf. the Law on Integration.⁷⁵ This also includes signs of torture and ill-treatment.

While this legal provision has been in force since 1 July 2013, the guidelines on 'Health assessment of newly arrived refugees [...]'⁷⁶ are still not being used by the majority of the municipalities in Denmark. Consequently, signs of torture and ill-treatment are often not identified until a much later state, whereby the possibility of initiating early intervention in order to ease and relieve effects of torture and PTSD is lost.

D) Other UN and Regional Human Rights Bodies Recommendations

The judgement from the European Court of Human Rights, *R.C v. Sweden* (2010), underlines the importance of the states undertaking specialized medical examination, when there is doubt about the asylum seeker's reliability. The ECtHR states:

"...In the Court's view, the Migration Board ought to have directed that an expert opinion be obtained as to the probable cause of the applicant's scars in circumstances where he had made out a prima facie case as to their origin. It did not do so and neither did the appellate courts. While the burden of proof, in principle, rests on the applicant, the Court disagrees with the Government's view that it was incumbent upon him to produce such expert opinion. In cases such as the present one, the State has a duty to ascertain all relevant facts, particularly in circumstances where there is a strong indication that an applicant's injuries may have been caused by torture [...]"⁷⁷

E) Suggested Recommendation

The Committee recommends the State party to:

- (a) Intensity its education and training on how to identify signs of torture and ill-treatment – pursuant to the Istanbul protocol - among students of medicine, and particularly among physicians who are involved in the screening, diagnosis and/or treatment of asylum seekers.
- (b) Introduce a systematic screening procedure at the asylum centres, with the intention of identifying every torture victim and undertaking a specialized medical examination of persons who claim or appear to have been tortured, before a decision is reached by the Immigration Service.
- (c) Establish clear guidelines on the identification of torture victims among asylum seekers.

⁷⁵ Law No. 1497 on Integration, 7 October 2014, section 15 d.

⁷⁶ Intermediary information about the health assessment of newly arrived refugees and family re-unificated relatives of refugees, http://dengodemodtagelse.dk/filmappe/midlertidig-information-om-helbredsmassig-vurdering-af-nyankomne-flygtninge-og-familiesammenfarte-til-flygtninge_august2013.pdf

⁷⁷ *R.C v. Sweden*, Application no. 41827/07, pr. 53

Article 11

LOI para 10 – New interrogation rules and practices, and custody arrangements

10. Please provide information on any new interrogation rules, instructions, methods and practices as well as arrangements for custody that may have been introduced since the consideration of the last periodic report. Please also indicate the frequency with which these are reviewed.

A) CAT position

The issue of custody arrangements vis-à-vis drug users, which may result in opioid withdrawal, has to the best of our knowledge not (yet) been addressed by the Committee against Torture.

B) State party response

The Danish government does not address the police custody arrangement in which opioid dependent persons under arrest undergo abrupt opioid withdrawal during their initial 24 hours in police custody, because they are not given medication to treat opioid withdrawal symptoms, such as methadone..

C) Issue summary.

Police custody arrangements that may cause drug users to undergo opioid withdrawal

In the initial 24-hour period from arrest and until the arrested person is presented before a judge (preliminary hearing), many opioid-dependent persons are forced to undergo abrupt opioid withdrawal (both from legally prescribed agonist therapy, such as methadone, as well as illicit opioids, such as heroine). The physical and psychological withdrawal symptoms may impair the detainee's capacity to make informed decisions, and heighten vulnerability to succumb to police pressure to admit to false charges or confess guilt before having had access to legal counsel, been before a judge, or been able to digest and understand the potential criminal charges and consequences, in order to avoid detention or to secure release.⁷⁸

Although detainees are entitled to a medical examination as promptly as possible after admission to the place of detention, there are cases where the opioid-dependent detainees are being told that they are not entitled to a medical doctor until they have been presented in court.

State failure to provide available and necessary medical attention to opioid-dependent detainees raises the question whether the detainees are 'fit for interviewing' and whether interviews under such circumstances are compatible with the absolute prohibition of torture and inhuman treatment. Similarly, the false information provided by the police about detainees' right to the medical doctor, is contrary to international standards, notably principle 24 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

⁷⁸ For more information on this problem, we refer you to R.D. Bruce, R.A. Schleifer, *Ethical and Human Rights Imperatives to Ensure Medication-Assisted Treatment for Opioid Dependence in Prisons and Pre-trial Detention*, International Journal of Drug Policy 19 (2008) 17-23, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2366202/>

During pre-trial detention in the so-called ‘arrest houses’, treatment is not afforded for opioid-dependency. The only intervention that is undertaken is ‘motivational therapy’. Actual treatment for opioid-dependency may only begin once the person is transferred to a prison.

D) Other UN Regional Human Rights Bodies Recommendations

Recommendations in this area are extremely scarce, possibly because this is an underreported problem.

However, the UN Human Rights Committee has addressed the issue once in its Concluding Observations on Georgia (2014). The Committee recommended the State party to reform the current plea bargaining system and zero tolerance drug policy and address past cases of coercion of defendants to enter into plea-bargaining arrangements. More specifically, the Human Rights Committee recommended Georgia to:

- Provide adequate legal safeguards to defendants in the context of plea bargaining, including against abuse and coercion to enter plea-bargaining arrangements, in line with the defendants’ covenant rights;
- Adopt a human rights-based approach in addressing the problem of drug use, with a focus on appropriate health care, [...] such as opioid substitution therapy and harm reduction programmes.

The European Committee for the Prevention of Torture has addressed the issue in the context of prison health care. Although this cannot be equated with police custody, the overall considerations may be generally applicable. The CPT considers that the practice of stopping methadone maintenance from one day to the other is neither human nor best medical practice. At a minimum, there should be a gradual decrease in the provision of methadone to avoid the painful symptoms associated with an abrupt cessation of the treatment. In light of these remarks, the CPT reiterates its recommendation that a comprehensive strategy be drawn up for the provision of assistance to all prisoners with drug-related problems.⁷⁹

E) Suggested Recommendation

The Committee recommends the State party to ensure that opioid-dependent persons are given the necessary medication during the initial 24-hour period of arrest, so as to prevent abrupt withdrawal, which may impair the detainee’s capacity to make informed decisions, and heighten vulnerability to succumb to police pressure to admit to false charges or confess guilt before having had access to legal counsel.

⁷⁹ CPT visit to Bosnia and Herzegovina, 2009, CPT/Inf (2010) 10, 21 July 2009, para. 31.

LOI para 11 (a) – Efforts made to limit the use of solitary confinement

11. Following the Committee’s previous concluding observations regarding the use of solitary confinement (para. 14), please provide information on:

(a) The continued efforts made by the State party to limit the use of solitary confinement, particularly during pre-trial detention, as a measure of last resort, for as short a time as possible under strict supervision and with a possibility of judicial review

A) CAT Position

In its Concluding Observations concerning Denmark (2007), the Committee stated:

*The State party should limit the use of solitary confinement as a measure of last resort, for as short a time as possible under strict supervision and with a possibility of judicial review.*⁸⁰

B) State party response

The state party response primarily addresses the successful amendment to Administration of Justice Act (2007) and the guidelines of the Director of Public Prosecution, which had the aim of reducing solitary confinement in pre-trial detention, and the reporting system. Please refer to the State party report for further details, para. 60-67.

C) Issue Summary

The use of isolation in pre-trial detention, on the basis of the Danish Administration of Justice Act⁸¹, is at a historically low level. The annual report of the Director of Public Prosecution shows that the number of pre-trial detainees in solitary confinement was: 132 persons in 2012, 55 persons 2013 and 36 persons in 2014. This development is very positive. However, these statistics do not cover the use of solitary confinement as a disciplinary sanction under the Sentence Enforcement Act, which also applies to pre-trial detainees to some degree.

While the state has made noticeable progress in implementing effective changes to limit the use of solitary confinement in pre-trial detention on the basis of the Administration of Justice Act, it is important to acknowledge that there are still significant challenges in the following areas, as discussed below:

1. Exclusion from association (LOI para. 11b)
2. Voluntary exclusion from association (LOI para. 11b)
3. Isolation in a security cell (*sikringscelle*), possibly under forced physical restraint (LOI para. 11b)
4. Solitary confinement as a disciplinary sanction (LOI para. 11b)
5. Solitary confinement of minors (LOI para. 11c)
6. Indefinite solitary confinement in state security related (LOI para. 12)

⁸⁰ CAT/C/DNK/5, 16 July 2007, para. 14.

⁸¹ Cf. Act No. 1561 of 20 December 2006, entering into force on 1 January 2007.

LOI para 11 (b) – The use of solitary confinement

11. Following the Committee’s previous concluding observations regarding the use of solitary confinement (para. 14), please provide information on:

(b) The steps taken by the State party to address the concern expressed by the Committee over the use of prolonged solitary confinement in pre-trial detention, as a form of punishment for disciplinary infractions or in order to manage certain categories of convicted prisoners, which had also been voiced by the Human Rights Committee (CCPR/C/DNK/CO/5, para. 11), CPT (CPT/inf (2008) 26, paras. 41-42) and the Special Rapporteur (A/HRC/10/44/Add.2, paras. 44-45, 74 and 78(b)).

A) CAT Position

In its Concluding Observations concerning Denmark (2007), the Committee stated:

*The State party should limit the use of solitary confinement as a measure of last resort, for as short a time as possible under strict supervision and with a possibility of judicial review.*⁸²

In its decision of 6 February 2013 to Denmark, the Committee concluded that the decision to exclude the person from association did not violate article 16 of the Convention. The Committee noted that;

*particular conditions of solitary confinement, the stringency of the measure, its duration, the objective pursued and its effect on the person concerned must all be taken into account when determining whether or not it amounts to a violation of article 16 of the Convention. The Committee notes that the complainant’s exclusion from association did not exceed four days; that during that period of time he was visited by his girlfriend, his lawyer, a psychologist and a medical doctor; and that he had a television in his cell. In the circumstances, the Committee concludes that the complainant’s detention in exclusion from association did not amount to a separate violation of article 16 of the Convention.*⁸³

B) State party response

The state party reports elaborates on the legislative amendment of the Sentence Enforcement Act (2012), whereby an upper limit of 3 months was introduced for persons who are excluded from association, which may however be extended by a decision of the prison and probation Service. For further details, please refer to the state party report, para. 68-71.

C) Issue summary

The use of solitary confinement as a form of punishment or disciplinary sanction is a problem related to both pre-trial detention and sentence enforcement.

There are four types of placements in the Sentence Enforcement Act, which constitute or may amount to solitary confinement;

⁸² CAT/C/DNK/5, 16 July 2007, para. 14.

⁸³ Para 7.4 of the decision 412/2010.

1. Exclusion from association, cf. the Sentence Enforcement Act § 63
2. Voluntary exclusion from association, cf. the Sentence Enforcement Act § 33
3. Isolation in a security cell (*sikringscelle*), possibly under forced physical restraint, cf. the Sentence Enforcement Act § 66
4. Isolation as a disciplinary sanction (*strafcelle*), cf. the Sentence Enforcement Act § 68.

The boundaries for solitary confinement in the Sentence Enforcement Act, are rather broad and result in types of isolation with fewer safeguards for the detainees, compared to isolation under the Administration of Justice Act.

Isolation in a security cell and as a disciplinary sanction, can both be used under pre-trial detention cf. the Administration of Justice Act § 775 and is a parallel system of isolation to the system established under the Administration of Justice Act § 770, which only concerns isolation of pre-trial detainees.

Exclusion from association

Such exclusion is a preventive measure that cannot be used only as sanction for previous (mis)behaviour. This measure is applied to prevent future violent behaviour, criminal activity, escape, etc. Although it has to be preventive, the exclusion can be based on the detainee's behaviour, which is not compatible with the continued stay in association with other inmates. The time limit is 3 months and the Prison and Probation Service has the authority to extend the three months' limit under extraordinary circumstances. The prison concerned has to reconsider, if the exclusion from association can be lifted, once a week (as a minimum).

Following a legislative amendment in 2012, detainees can be excluded from association for up to 5 days, in exceptional cases, if the exclusion is necessary for the protection of the detainee, cf. the Sentence Enforcement Act § 62, stk. 2. Before this 5 day-deadline, the prison authorities shall take steps to protect the inmate, notably by re-locating him/her to a safe department. This development is very positive.

Voluntary exclusion from association

It is the main rule that detainees should have access to association with other detainees. As an exception to this principle, a detainee may serve time without association with other inmates in voluntary exclusion from association cf. the Sentence Enforcement Act § 33. In practice, this measure is used by persons who feel that their safety in association with other prisoners cannot be safeguarded by the prison, such as gang members serving on wings with rivaling gangs, pedophiles and certain vulnerable groups that rank at the low end of the informal prisoner hierarchy. This vulnerable group lacks legal safeguards, and statistics from the Department of Prisons and Probation show that the practice of using voluntary isolation in detention centres and in the closed prisons, is relatively common and often used for several weeks.

Table from the Prison and Probation Service:⁸⁴ Voluntary exclusion from association. Closed prisons and gaols. Number and duration

	Duration of exclusion					total
	1-3 days	4-7 days	8-14 days	15-28 days	> 28 days	
Closed prisons	86	36	38	43	98	301
Copenhagen prisons	25	27	21	15	44	132
2013	111	63	59	58	142	433
2012	99	69	50	48	137	403
2011	111	74	61	58	143	447
2010	130	79	86	86	178	559
2009	116	69	65	55	179	484
2008	106	65	72	53	143	439
2007	71	50	78	51	140	390
2006	57	54	43	46	177	377
2005	59	39	52	62	180	392
2004	67	54	47	58	156	382

Table from the Prison and Probation Service:⁸⁵ Voluntary exclusion from association. Closed prisons and gaols. Degree of exclusion

	Degree of exclusion		
	With access to contact with other detainees	Without access to contact with other detainees	Total
Closed prisons	220	81	301
The prisons of Copenhagen and gaols	76	56	132
2013	296	137	433
2012	260	143	403
2011	276	171	447
2010	353	206	559
2009	312	172	484
2008	259	180	439
2007	259	131	390
2006	272	105	377
2005	246	146	392
2004	184	198	382

⁸⁴ "Statistic 2013", Prison and Probation Service Table 5.5

⁸⁵ "Statistic 2013", Prison and Probation Service Table 5.6

Isolation in protection cell (sikringscelle), possibly under forced physical restraint

This measure is used when an inmate poses a danger to himself (to prevent suicide or other self-harm) or to others (to prevent/overcome violent resistance).

Isolation and the additional possibility of forced physical restraint (fixation), does not have any upper time limit. However, the prison is obliged to report instances of isolation to the Prison and Probation Service, if they extend beyond 24 hours in the case of children aged 14-17 years and beyond 3 days for adults.⁸⁶

As the table below shows, there has been an increase in the total number of isolations under this provision, in the period from 2004 - 2013.

Table from the Prison and Probation Service:⁸⁷ Isolation in protection cell. Number and duration

	Less than 6 hours	6 – 12 hours	12 – 24 hours	1 – 3 days	More than 3 days	Total	- Here of fixation
Closed prisons	45	9	20	9	-	83	63
Open prisons	8	3	10	1	2	24	22
Copenhagen prisons and gaols	70	21	45	9	0	145	129
2013	123	33	75	19	2	252	213
2012	113	47	64	14	1	239	204
2011	121	31	55	9	2	218	193
2010	90	45	58	13	5	211	157
2009	97	42	43	13	2	197	179
2008	98	34	46	12	2	192	185
2007	122	40	30	12	2	206	187
2006	89	33	50	17	2	191	140
2005	105	39	60	18	4	226	177
2004	100	38	69	16	1	224	156

As the government has reported under the respond to LOI para 26, a High Court judgment of 4 June 2014 found that an inmate had been treated inhumanely in breach of article 3 of the European Convention on Human Rights. The inmate had on several occasions been placed in a security cell and fixated to a restraint bed. The High Court found that four of the fixations were wrongful, and that eight of the fixations lasted longer than necessary.

⁸⁶ Regulation (bekendtgørelse) No. 791 of 25 June 2010, § 14 (3).

⁸⁷ "Statistic 2013", Prison and Probation Service, Table 5.7.

Solitary confinement as a disciplinary sanction (punishment cell)

Solitary confinement as a disciplinary sanction may be imposed for the following offences: failure to return from leave, escape, smuggling or possession of alcohol, drugs, weapons, etc., refusal to provide urine samples, violence or threats of violence against fellow inmates or staff, gross vandalism or other gross or frequently repeated offenses.

The absolute time limit is 4 weeks⁸⁸, except for pre-trial detainees held in isolation for whom the absolute time limit is 2 weeks.⁸⁹ In the latter case, the pre-trial detainee has an extended access to a judicial review, after seven days of isolation.⁹⁰

As appears from the table below there has been a steady increase from 2004 to 2013.

Table from the Prison and Probation Service:⁹¹ Disciplinary sanctions. Number and character

	Unconditional isolation	Suspended isolation	fine	Total
Closed prisons	897	389	2.229	2.515
Open prisons	1.012	1.318	6.391	8.721
Copenhagen prisons and gaols	1.050	710	1.561	4.321
2013	2.959	2.417	11.181	16.557
2012	2.892	2.261	11.353	16.506
2011	3.044	2.445	12.963	18.452
2010	2.849	2.323	12.270	17.422
2009	2.677	2.351	11.993	17.021
2008	2.421	2.088	10.777	15.286
2007	2.569	2.048	19.240	14.857
2006	2.574	2.113	10.710	15.397
2005	2.667	2.297	11.205	16.169
2004	2.023	1.003	8.935	11.961

D) Other UN and Regional Human Rights Bodies Recommendations

In its 2014 report to the Danish government, CPT stated that a continued period of up to 28 days of solitary confinement as punishment is excessive. The Committee considers that the maximum length of solitary confinement as punishment should be no more than 14 days for a given offense, and preferably lower. In conclusion, the CPT recommended that the Sentence Enforcement Act be revised accordingly.⁹² As follow-

⁸⁸ Sentence Enforcement Act §70.

⁸⁹ Administration of Justice Avt § 775 (1).

⁹⁰ Sentence Enforcement Act § 122 (1) No. 3.

⁹¹ "Statistic 2013", Prison and Probation Service, Table 5.1

⁹² CPT report to the Danish government on the visit to Denmark in 2014, CPT/Inf (2014)25, para. 61.

up to its 2008 visit to Denmark, the CPT recommended that the Danish authorities develop a national approach to address the issue of prisoners seeking isolation for their own protection.

In his 2009 report on Denmark, the UN Special Rapporteur stated:

“The Special Rapporteur, echoing the findings of the Council of Europe’s Committee on the Prevention of Torture, considers that the use of solitary confinement should be kept to a minimum; used in very exceptional cases, for as short a time as possible and only as a measure of last resort. Whereas solitary confinement for a maximum limit of just a few days may be necessary as a last resort for grievous breaches of prison discipline, its use in pretrial cases may amount to a form of coercion, and as such could constitute ill-treatment or torture. Furthermore, prisoners with known mental disorders are at increased risk of harm from solitary confinement and should never be held in these conditions.”⁹³

E) Suggested Recommendation

The Committee recommends the State party to:

1. Abolish the use of solitary confinement as a disciplinary sanction.
2. Ensure that all persons in solitary confinement have sufficient opportunity for access to psychologically meaningful social contact.
3. Develop legal safeguards for prisoners choosing to go into voluntary isolation, and offer this group the level of protection that applies for inmates who are placed in isolation for their own safety, hence by re-locating him/her in a safe department, in a timeframe on maximum 5 days.
4. Shorten the time limits of lawful isolation under the Sentence Enforcement Act.

LOI para 11 (c) – Solitary confinement of minors

11. Following the Committee’s previous concluding observations regarding the use of solitary confinement (para. 14), please provide information on:

(c) The steps taken to ensure that solitary confinement of persons under the age of 18 is limited to only very exceptional cases.

A) CAT Position

In its Concluding Observations on Denmark (2007), the Committee recommended (para. 14):

The State party should limit the use of solitary confinement as a measure of last resort, for as short a time as possible under strict supervision and with a possibility of judicial review. Solitary confinement of persons under the age of 18 should be limited to very exceptional cases. The State party should aim at its eventual abolition (CRC/C/DNK/CO/3, paras. 58-59).

⁹³ UNSRT, Mission to Denmark, A/HRC/10/44/Add.2, 18 February 2009, para. 45.

B) State part response

The Administration of Justice Act regulates the use of solitary confinement on children, and it is required that exceptional circumstances shall be present before such measure can be taken. In practice, between 0 and 5 juveniles have been held in solitary confinement annually in the period 2001-12. Please refer to the State party report, para. 72-74.

C) Issue summary

It is the main rule that children aged 15-17 years, who have committed an offence, are placed outside prisons. This main rule is derogated from, if the Ministry of Justice decides that the law enforcement requirement, speaks against a placement outside the prison, cf. the Sentence Enforcement Act § 78 part. 2.

In 2013, the average number of children placed in prison each day was twelve (three of these children were in pre-trial detention).⁹⁴ As described above (paragraph 11 (b)) the rules on isolation under the Sentence Enforcement Act allow isolation for different offences and for rather long time periods. The system of isolation of detainees in prisons is established for adult detainees as the target group, but the reality is that this system is (with very few exceptions) equally enforced on juveniles who serve their sentences in prison. The Prison and Probation Service registered 158 placements of children in 'Isolation as a disciplinary sanction' or in 'Exclusion from association' of a duration of 24 hours to 14 days, between 2009 and 2013⁹⁵.

While the number of child pre-trial detainees in isolation has been limited and only amounted to a single person in the period of 2009-2012, the number of children in isolation under the Sentence Enforcement Act is still a serious problem. The Danish state does not address this problem in the state report.

Even though our primary focus is on isolation of children under sentence enforcement, which is an area that has not received the necessary attention from the state, we continue to look very seriously at isolation of juvenile pre-trial detainees (held under the Administration of Justice Act). The combination of being detained in pre-trial detention and being isolated, which is known to be mentally harmful in general, is particularly worrying when applied to children. From 2007 to 2012, eleven children aged 15-17 years have been held in isolation under their pre-trial detention of a duration between 2 and 17 days.⁹⁶

It is our view that children should not be placed in isolation. If the Danish state chooses to continue such placements, as it currently does, it should only be done in exceptionally cases, out of consideration for the safety of the child or fellow inmates, and for as short time as possible.

D) Other UN and Regional Human Rights Bodies Recommendations

The UN Committee on the Rights of the Child stated in the Concluding Observations (2011) that Denmark should:

⁹⁴ the Prison and Probation Service, yearly statistic(2003), page 15;

[file:///C:/Users/nnb/Downloads/Kriminalforsorgens+Statistik+2013+juli+2014%20\(1\).pdf](file:///C:/Users/nnb/Downloads/Kriminalforsorgens+Statistik+2013+juli+2014%20(1).pdf)

⁹⁵ According to the National Council for Children;

<http://www.boereraadet.dk/media/77586/Brev20til20justitsministeren20vedr20isolationsfc3a6ngsling20af20unge2007101420underskrevet.pdf>

⁹⁶ Annual reports from the Director of Public Prosecution, concerning the use of solitary confinement during pre-trial detention in 2007, 2008, 2009, 2010, 2011 and 2012.

- “[...] take measures to ensure that no child, regardless of circumstance, is subjected to imprisonment in the ordinary prison system with adults.”⁹⁷
- “[...] prohibit the placement of persons under the age of 18 in solitary confinement”⁹⁸

In its 2014 report on Denmark, the CPT expresses very strong reservations about any form of solitary confinement of juveniles as this can compromise their physical and/or mental integrity. It considers that a juvenile should not be placed in solitary confinement for disciplinary purposes more than three days.⁹⁹

E) Suggested Recommendation

The state party is recommended to ensure that no child, regardless of the circumstances, is imprisoned in the ordinary prison system with adults. Furthermore, the Committee recommends that any placement of persons under the age of 18 years in solitary confinement be prohibited.

LOI para 12 – Indefinite solitary confinement

12. With regard to persons suspected of offences against the independence and security of the State (chapter 12 of the Criminal Code) or against the Constitution and the supreme authorities of the State (chapter 13 of the Criminal Code) who may be held indefinitely in solitary confinement during their pretrial detention, the Committee recommended that the State party should ensure respect for the principle of proportionality and establish strict limits in its use (para. 14). Please indicate the steps taken by the State party in response to the Committee’s recommendation.

A) CAT Position

In its concluding observations to Denmark (2007), the Committee expressed particular concern about persons, including persons under the age of 18, suspected of offences against the independence and security of the State, who may be held indefinitely in solitary confinement during their pre-trial detention. The Committee recommended the State party to ensure respect for the principle of proportionality and establish strict limits on its use. In addition, the State party should increase the level of psychologically meaningful social contact for detainees while in solitary confinement (para. 14).

In its concluding observations to the USA (2014), the Committee went one step further by stating that the State party should prohibit the use of solitary confinement for juveniles.¹⁰⁰

B) State party response

The government outlines the three types of offences, under which one may be held in isolation under pre-trial detention for more than the usual maximum limit of 6 months:

⁹⁷ CRC/C/DKN/CO/4 2011, para. 66(d)

⁹⁸ CRC/C/DKN/CO/4 2011, para. 66(b)

⁹⁹ CPT report to the Danish government on the visit to Denmark in 2014, CPT/Inf(2014)25, para. 61.

¹⁰⁰ CAT/C/USA/CO/3-5, 19 December 2014, para. 20.

- Persons suspected of offences against the independence and security of the State or against the Constitution and the supreme authorities of the State.
- Persons suspected of violations of sections 191 (serious drugs offence) of the Criminal Code.
- Persons suspected of violations of sections 237 (manslaughter) of the Criminal Code.

The government informs that in 2012, no one was held in solitary confinement for more than six months under section 770c (4) of the Danish Administration of Justice Act. In addition it is stated that the Danish Administration of Justice Act in general sets out strict limits for the use of solitary confinement. Furthermore, section 770b (1) (1-3) of the Danish Administration of Justice Act, contains a special principle of proportionality that must be fulfilled when using solitary confinement. Solitary confinement on this basis can only be applied if the purpose cannot be achieved by applying less intensive measures, if the application is proportional to the specific circumstances of the case and if the case is being processed without undue delay. This special principle supplements the normal principle of proportionality applying to pre-trial detention in section 762(3) of the Danish Administrative of Justice Act.

C) Issue Summary

As described in the state report, the legal framework for pre-trial detention in isolation for over 6 months and with no absolute time limit, is not only limited to suspects of offences under chapter 12 and 13 of the criminal code, but also includes suspects of serious drug crimes and manslaughter cf. Section 770c(4) of the Administration of Justice Act. For children aged 15-17 years, the legal framework that allows indefinitely isolation, only concerns suspects under chapter 12 and 13 of the Criminal Code.

The statistics show that no suspects of serious drug crimes or manslaughter have been held in pre-trial isolation for over three months from 2007 to 2012. Unfortunately, it is another story when it comes to pre-trial detainees held in solitary confinement, if suspected of offences under chapter 12 and 13 of the Criminal Code. We do not consider that the state has provided sufficient information on this matter, as it only refers to the circumstance that no one was held in solitary confinement in 2012 for more than 6 months, under section 770c(4) of the Administration of Justice Act.

From 2007 to 2014 the number of pre-trial detainees held in solitary confinement over 3 months was 15 persons; 60 % (9 persons) were terrorist suspects, held under chapter 12 or 13 of the Criminal Code.¹⁰¹

- In 2011, three terrorist suspects were held in solitary confinement for over 3 months, the average duration was 107 days.¹⁰²
- In 2008, two terrorist suspects were held in solitary confinement for over 3 months, the average duration was 136 days, even though this average includes one terrorist subject held between 57 days and 3 months.¹⁰³

¹⁰¹ Annual reports from the Director of Public Prosecution, concerning the use of solitary confinement during pre-trial detention in 2007, 2008, 2009, 2010, 2011 and 2012.

¹⁰² Report from the Director of Public Prosecution, concerning the use of solitary confinement during pre-trial detention in 2011, table 4.

¹⁰³ Report from the Director of Public Prosecution, concerning the use of solitary confinement during pre-trial detention in 2008, table 4.

- In 2007, four terrorist suspects were held in solitary confinement for over 3 months, the average duration was 126 days.¹⁰⁴

The annual reports of the Director of Public Prosecution ‘concerning the use of solitary confinement during pre-trial detention’ do not refer to whether any of the detainees were held in more than 6 months under section 770c(4) of the Administration of Justice Act. The statistics provided, only show an average duration in days, of all detainees suspected of a specific type of crime.

D) Suggested Recommendation

The Committee recommends the State party to prohibit the use of solitary confinement for juveniles, and to introduce an absolute upper time limit for solitary confinement in pre-trial detention for adults suspected of having committed crimes against state security, serious drug crime and manslaughter. In addition, the State party should increase the level of psychological meaningful social contact for detainees while in solitary confinement.

LOI para 15 – Non-separation of men and women in prisons

15. The Special Rapporteur remained concerned about the practice of non-separation of men and women in prisons and in this respect urged the State party to ensure that communal living arrangements are always voluntary and that appropriate safeguards protecting women are put in place and continuously monitored (A/HRC/10/44/Add.2, paras. 58-63, 73 and 78(e)). Please provide information on the measures taken in response to these recommendations.

A) CAT position

The Committee has maintained the position in several concluding observations that the States parties shall ensure separation in all places of detention of men from women.¹⁰⁵

B) State party response

The state party outlines that there is no prison solely for women in Denmark, but four correctional institutions where female inmates are typically placed. Pursuant to section 33(4) of the Sentence Enforcement Act, the prison sentence is enforced without association with inmates of the opposite sex. In practice, when placing inmates the decisive factor becomes whether inmates wish to serve their sentence together with inmates in a mixed unit. Following criticism from academic circles, the Prison and Probation service set up a committee to consider the issue. In 2011, the committee recommended that Denmark abandon the current practice of mixed gender populations and instead establish a women’s prison. This recommendation has not been implemented, but improved facilities have been established.

¹⁰⁴ Report from the Director of Public Prosecution, concerning the use of solitary confinement during pre-trial detention in 2007, table 3.

¹⁰⁵ CAT, Concluding observations to Honduras, CAT/C/HND/CO/1, 2009, and CAT, Concluding observations to Guinea, CAT/C/GIN/CO/1, 2014.

C) Issue summary

Permitting male and female prisoners to share an accommodation unit represents the goal of the 'normalcy' concept in promoting conditions of living that approximate as far as possible those in the community. While some women may chose voluntarily to serve their prison sentence in mixed units, other women may feel forced to accept or even actively pursue such placement, for instance because they are dependent on being able to provide sexual service to male inmates in return for drugs. Allegations of this kind have been received, amongst others by the CPT during their recent visit to Denmark in 2014.

D) Other UN and Regional Human Rights Bodies Recommendations

The principle of separating men and women in prison has been emphasised by the UN Subcommittee on Prevention of Torture (SPT)¹⁰⁶ and the European Committee for the Prevention of Torture (CPT).

E) Suggested recommendation

The Committee recommends the State party to take pro-active measures to prevent sexual exploitation of female prisoners in mixed units, and to put in place more rigorous supervision of relations between female and male inmates living in mixed wings.

LOI para 16 – Conditions in asylum centres

16. With reference to the Committee's previous concluding observations, please indicate steps taken to address the concern of unduly long waiting periods in the asylum centres (para. 17). Please inform the Committee if there are, inter alia, educational and recreational activities as well as adequate social and health services provided for both children and adults living in asylum centres?

A) CAT Position

In its Concluding Observations to Denmark (2007), the Committee acknowledged the measures taken to improve the living conditions and activities in asylum centres, notably the conditions for asylum-seeking families with children. However, it also expressed concern at unduly long waiting periods in asylum centres and the negative psychological effects of long term waiting and of the uncertainty of daily life on asylum-seekers.¹⁰⁷ Consequently, the Committee recommended that Denmark should take the effects of long waiting periods in account and provide both children and adults living in asylum centres with educational and recreational activities and adequate social and health services.

B) State party response

In recent years, additional resources have been allocated to reducing the processing time for examination of asylum applications. Thus, asylum applications are in most cases finalized in less than one year in both the Imitation Service and the Refugee Appeal Board.

¹⁰⁶ See for instance, SPT, CA//OP/HND/1, 2010.

¹⁰⁷ CAT/C/DNK/CO/5, 16 July 2007, para. 17.

As a result of a political agreement concluded in 2012 between the government and two political parties, conditions for asylum seekers have improved in certain respects, e.g. as regards education, work, access to health care, as well as accommodation and employment opportunity outside the centres.¹⁰⁸

C) Issue summary

The Danish Refugee Council is deeply concerned about the long waiting periods for families with small children who are caught in the Dublin procedure awaiting return to Italy. The Danish authorities are awaiting guarantees from Italy in compliance with the *Tarakhel* judgment of the European Court of Human Rights. However, it is uncertain if Italy will provide such guarantees and the Danish authorities are unwilling to process the asylum cases in Denmark. Some families arrived in Denmark at the end of 2011 and have not yet had their application for asylum examined in substance. The long waiting periods have significant adverse consequences on the families and the children.

The Dublin Regulation determines the EU Member State responsible for examining an application from asylum seekers seeking international protection within the European Union. Only one Member State can be responsible. EU Member States or associated States are obliged to return asylum seekers, if their asylum case is the responsibility of another State. However, the *Tarakhel* judgment stated that the lack of suitable family reception facilities in Italy prevents the return of families unless the Italian authorities provide an individual guarantee of minimum standard of accommodation.

Especially for the children in the relevant families the waiting time is most stressful and burdening. The uncertainty and waiting time does not only have a general accumulating negative effect on the wellbeing of the family life and the parents' ability to care for their children, but it also has a direct negative effect on the children's life as the uncertainty and unclear legal status affects possibilities for education, establishing relations, etc.

Many of the affected children are reported by staff and teachers to be undergoing a negative process of anxiety, depression or other reactions indicating a serious decrease in the wellbeing of the child. Thus, it is clearly in the best interest of the relevant children and in accordance with the UN Convention on the Rights of the Child, article 3 and 22, to avoid further waiting time.

The Danish Bar and Law Society – the organisation of lawyers specialised in the Danish Aliens Law (FAU) is aware of cases in which their lawyers have represented clients who have waited for years in Danish asylum centres. A recent extreme example was a single mother of two who fled Iran in year 2000, and only in 2015 did she finally get asylum after spending 15 years in different Danish refugee camps with her children.

D) Other UN and Regional Human Rights Bodies Recommendations

ECtHR Judgment, *M.S.S. v. Belgium and Greece*, Application no. 30696/09, 21 January 2011.

- The ECtHR refers in para. 251 to asylum seekers as a particularly vulnerable group: "The Court attaches considerable importance to the applicant's status as an asylum-seeker and, as such, a

¹⁰⁸ CAT/C/DNK/6-7, para. 104-115.

member of a particularly underprivileged and vulnerable population group in need of special protection (see, *mutatis mutandis*, *Oršuš and Others v. Croatia* [GC], no. 15766/03, § 147, ECHR 2010).”

- Moreover, Judge Sajó adds on page 105: “Waiting and hoping endlessly for a final official decision on a fundamental existential issue in legal uncertainty caused by official neglect arouses feelings of fear, anguish or inferiority capable of breaking an individual’s moral and physical resistance, and therefore it may be characterised as degrading.”

ECtHR Judgment, *Tarakhel v. Switzerland*, Application no. 29217/12, 4 November 2014.

- The court refers in para. 119 to the special protection of children as asylum seekers: “This requirement of “special protection” of asylum seekers is particularly important when the persons concerned are children, in view of their specific needs and their extreme vulnerability. This applies even when, as in the present case, the children seeking asylum are accompanied by their parents (see *Popov*, cited above, § 91). Accordingly, the reception conditions for children seeking asylum must be adapted to their age, to ensure that those conditions do not “create ... for them a situation of stress and anxiety, with particularly traumatic consequences” (see, *mutatis mutandis*, *Popov*, cited above, § 102). Otherwise, the conditions in question would attain the threshold of severity required to come within the scope of the prohibition under Article 3 of the Convention.”

E) Suggested Recommendation

It is recommended to repeat CAT’s 2007 recommendation to Denmark (para. 17) with the addition that the State party is recommended to take particular measures vis-à-vis particularly vulnerable groups, notably children and victims of severe traumatisation and torture.

Articles 12, 13 and 14

LOI para 17 – Statistics on the number of complaints of torture and ill-treatment

17. Please provide information, including statistics, on the number of complaints of torture and ill-treatment filed since the previous report, their investigation and prosecution and results of the proceedings, both at the penal and disciplinary levels. This information should be disaggregated by sex, age and ethnicity of the victim.

A) CAT position

The Committee underlined in the previous concluding observations the importance of establishing a system in compliance with the standards of Article 12 and 13 of the Convention. The Committee underlined that

*The State party should ensure that all allegations of violations committed by law enforcement officials, and in particular any deaths in detention, are investigated promptly, independently and impartially. It should also ensure the right of victims of police misconduct to obtain redress and fair and adequate compensation, as provided for in article 14 of the Convention. The State party should expedite the ongoing review process and provide the Committee with detailed information on the results of this process.*¹⁰⁹

B) State Party response

Complaints against the Police and subsequent prosecution

In its State Party response, Denmark did not provide the requested information and noted that it was not possible to submit an answer to the Committee's question regarding the number of complaints and investigations concerning torture and ill-treatment "*as there are no specific provisions in national criminal legislation concerning these concepts (i.e., torture and ill-treatment)*" (para. 117). Denmark noted that only by "manually" going through all the cases would it be possible to provide some information.

Denmark submitted, however, information about the total number of complaints against police officers in the period 2007-2013 and the number of investigations and prosecutions (Annex B). For 2013, the following numbers were submitted:

a) Number of complaints against police: 1085 - of which 652 related to police officers' conduct and 433 to criminal proceedings against police officers.

b) Number of prosecutions, including fine notice: 9 - according to the Criminal Code (article 119, 152, 155, 156, 171 and 244).¹¹⁰

Denmark further noted that it is not aware of any cases in which police officers have been charged with torture or ill-treatment as an aggravating circumstance pursuant to article 157 (a) of the Criminal Code

¹⁰⁹ State Party Response, para. 15.

¹¹⁰ The other prosecutions in 2013 (total of 92) related to traffic cases and other specific regulations, including re dogs and weapons.

(para 119 in the State Party response). Denmark submitted information on a civil case (COP-15) in which the Eastern High Court had found that the police had violated Article 3 of the European Convention on Human Rights (para 195-198 of the national report).

Prison staff

Denmark noted that provision of the required information would have required a manual verification of all cases, and that this was not possible due to time and resource constraints (para. 120). Denmark submitted some information for 2005-2013, as well as Jan – May 2014, gathered on the “basis of memory and partly electronic searches in Word files” (para 120) (Annex C). The average number of complaints in the period 2005 – 2013 was seven, and four cases had been received in the first five months of 2014.

Denmark submitted information on a civil case in which the Eastern High Court had found that the Danish Prison and Probation Service had violated Article 3 of the European Convention on Human Rights (para 199 of the national report).

C) Issue summary

Complaints against the police

Since the last State Party report (i.e., fifth periodic report of April 2005¹¹¹), Denmark has established the Independent Police Complaint Authority (IPCA). The mandate of the IPCA is limited to complaints of police misconduct (Part 93b of the Administration of Justice Act) and investigation of criminal cases against police officers (Part 93c of the Administration of Justice Act). The mandate of the IPCA does not include complaints about decisions made by the police management (*dispositionsklager*).

The total number of complaints submitted to IPCA is available in the Annual Reports by IPCA.¹¹² In Denmark, however, there is no national register specifically concerning the number of complaints regarding torture and ill-treatment; the investigation and prosecution of such cases; and the outcome of the proceedings.

Criminal offenses committed by the police

The number of complaints of criminal offenses has increased with 14,5 % from 2013 (433 cases) to 2014 (496 cases).¹¹³ In 2014, in some 164 cases concerning criminal offenses, the IPCA decided to dismiss the complaint. Some 45 of these decisions were appealed to the Regional Public Prosecutor (*Stasadvokaten*) who in all of the 41 cases, which so far have been decided on substance, dismissed the appeal.¹¹⁴ Thus, none of the persons, who in 2014 appealed a dismissal of a complaint by IPCA, succeeded at appeal level.

In 2014, some 291 cases were after investigation by IPCA referred to the prosecutor. Of these, only 13 cases resulted in the prosecutor deciding to charge police officers on the basis of provisions of the Criminal Code, and seven of these cases ended with a fine. As less than 3 % of the complaints concerning criminal

¹¹¹ CAT/C/81/Add.2 of 5 April 2005

¹¹² See further the website of IPCA <http://www.politiklagemyndigheden.dk/>

¹¹³ Annual Report 2014, page 39

¹¹⁴ In one case, the complaint was not entitled to submit the complaint and three cases are still pending.

offenses resulted in prosecution, there is a discrepancy between the number of complaints and number of final convictions.

Police misconduct

The number of complaints regarding police misconduct is nearly the same in 2014 (651 cases) as in 2013 (652 cases). In 2014, in some 358 cases, the ICPA decided to make an investigation that ended with a decision.¹¹⁵ Some 30 cases resulted in criticism by ICPA while 15 cases resulted in regretting the incident although there were no grounds for criticism (*forholdet beklaget*).

Complaints against Prison staff

There is no electronic case management system over complaints regarding prison staff. As mentioned above, the government provided some figures for 2005-2014 regarding cases against prison staff (Annex C to the State Party report) and noted that during the first five months of 2015, it had received four complaints whereas the average for the previous eight years was seven cases. This is a small number in light of a prison population of around 3,481 inmates.¹¹⁶

D) Suggested recommendation

The Committee recommends the State party, as a matter of urgency, to compile statistical data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement and prison personnel.

LOI para 18 – Effective investigations and Complaint system regarding violations of law enforcement officials

18. In light of the previous concluding observations of the Committee, please provide detailed information on any measures taken to ensure a prompt, impartial and effective complaint system to undertake investigations into all allegations of violations committed by law enforcement officials, in particular when a person dies or is seriously injured following contact with law enforcement officials, including in detention (paras. 15 and 16). In this respect, please provide information on the status and outcome of the review and evaluation of the current system for handling complaints against the police and processing criminal cases against police officers. Are all suspects in prima facie cases of torture and ill-treatment as a rule suspended or reassigned during the process of investigation?

A) CAT position

In its previous Concluding Observations (2007), the Committee recommended that Denmark:

should review the existing framework to handle allegations of excessive use of force, including the use of weapons, by law enforcement officials to ensure its compliance with the Convention. The

¹¹⁵ The other complaints have either been withdrawn by the complainant; dismissed due to late submission or sent back to the police as a *dispositionsklage* (59 cases) or decided with a notice (*notitsbehandling*) (226 cases).

¹¹⁶ As of May 2015, <http://www.kriminalforsorgen.dk/>

State party should ensure prompt and impartial investigations into all complaints or allegations of misconduct, in particular when a person dies or is seriously injured following contact with law enforcement officials. In addition, the State party should review and strengthen its education and training programmes relating to the use of force, including the use of weapons, by law enforcement officials in order to ensure that the use of force is strictly limited to that required to perform their duties.

B) State Party Response

In its State Party report, Denmark explained the set-up of the IPCA by Act. No. 404 of 21 April 2010 (para 121-128) and noted that as there have been no cases in which a law enforcement officer has been charged with torture or ill-treatment, there is no basis for stating whether or not all suspects in prima facie cases of torture or ill-treatment as a rule are suspended or reassigned during the process of investigation (para 131).

C) Issue summary

It is positive that the IPCA was established in 2012 and that Denmark has decided to review the work of the authority now three years later. However, there are still a number of concerns concerning the fulfilment of the obligations in Article 12 and 13 of the UNCAT with regard to investigation and prosecution of criminal offenses committed by the police.

Independent Police Complaint Authority (ICPA) has no mandate to indict

First, the mandate of the ICPA-authority is limited to the investigation of criminal cases against police officers (eg. the ICPA is authorized to make arrests and request orders for pre-trial from court) whereas the regional public prosecutor has the power of indictment and thus the power of discretion to assess whether there are grounds for prosecuting, preparing the indictment, and conducting the proceedings.¹¹⁷ In essence, the prosecutor decides whether or not there is sufficient evidence to bring charges against the police. As mentioned above, only very few of the complaints submitted to ICPA resulted in final conviction. It is unknown whether the prosecution office has initiated any *ex officio* investigation of cases of torture or ill-treatment pursuant to its obligation in Article 12 of the UNCAT.

Thus, the current structure and mandate of the ICPA does not fully fulfil the criteria of independence, as the Authority still does not have the power to indict.

Limited mandate of the ICPA

Secondly, the ICPA's mandate does not include so-called complaints about decisions made by the police (*dispositionsklager*) that are still investigated by the police. As discussed during the preparations of the establishment of ICPA,¹¹⁸ the distinction between complaints about misconduct and complaints about

¹¹⁷ The decision of the prosecution can be appealed to the Director of Public Prosecution (*Rigsadvokaten*) (see the Administration of Justice Act Chapter 11a).

¹¹⁸ Betænkning 1507/2009.

decisions made by the police is unclear, and thus complaints, which according to UNCAT should have been investigated independently, are still investigated by the police system itself.

Fear of submitting a complaint during a criminal case and eventual risk of reprisals

Some lawyers report of victims of ill-treatment being fearful of bringing a complaint against the police and of not having confidence in the current system composed of the police and prosecutors. Some also reported incidents of victims having been intimidated by the police after having submitted a complaint.

Justice is not seen to be done

In light of the lack of clarity about how the ICPA assesses and eventually dismisses complaints; how the prosecutor assesses a complaint about dismissal by the ICPA, and the low number of final convictions, it might be important to review whether the public in general perceive the ICPA as actually providing justice. Thus, is not entirely clear whether the new system fulfils Denmark's obligations under Article 12 and 13 regarding the handing of complaints or allegations of police misconduct.

D) Suggested recommendation

The Committee recommends the State Party to review its framework to handle allegations of misconduct and criminal offenses by the police and prison staff to ensure its compliance with the Convention. The State Party should ensure to fulfil its obligation to undertake *ex officio* investigations when there is a suspicion of ill-treatment having been carried out by law enforcement officials. In addition, the State party could consider reviewing whether victims of ill-treatment have confidence in the current system and whether further measures could be taken to protect victims and witnesses in accordance with Article 13 of UNCAT.

LOI para 19 – Redress and reparation for victims

19. Pursuant to the recommendation of the Committee, please provide information on the steps taken to ensure the right of victims of police ill-treatment to obtain redress and fair and adequate compensation, including the means for rehabilitation, as provided for in article 14 of the Convention (paras. 15). Please provide data on the number of requests for compensation made, the number granted, and the amounts ordered and those actually provided in each case.

This question (LOI para 19) relates specifically to victims of police ill-treatment, but it also applies more generally in relation to the entire group of victims who would be entitled to redress and compensation pursuant to Article 14 of the Convention. Moreover, it should be noted that the victims' rights under Article 14 are linked with the states' obligations under Article 12 and 13, as a State's failure to investigate or prosecute may constitute a *de facto* denial of redress and thus constitute a violation of the State's obligations under article 14.¹¹⁹ Article 14 is also linked to Article 2 of the Convention, as court cases have have an inherent preventive effect.¹²⁰

¹¹⁹ Committee Against Torture, General Comment No. 3, para. 17.

¹²⁰ *Ib*, para 6.

A) CAT position

The Committee noted in its previous Concluding Observations that the State party should ensure the right of victims of police misconduct to obtain redress and fair and adequate compensation, as provided for in article 14 of the Convention.¹²¹

The Committee has underlined in its General Comment No. 3 that:

*States parties to the Convention have an obligation to ensure that the right to redress is effective. Specific obstacles that impede the enjoyment of the right to redress and prevent effective implementation of article 14 include, but are not limited to: inadequate national legislation, discrimination in accessing complaints and investigation mechanisms and procedures for remedy and redress; inadequate measures to secure the custody of alleged perpetrators, state secrecy laws, evidential burdens and procedural requirements that interfere with the determination of the right to redress; statutes of limitations, amnesties and immunities; the failure to provide sufficient legal aid and protection measures for victims and witnesses; as well associated stigma, and the physical, psychological and other related effects of torture and ill-treatment.*¹²²

Specifically with regard to statutes of limitation, the Committee has noted that:

*On account of the continuous nature of the effects of torture, statutes of limitations should not be applicable as these deprive victims of the redress, compensation, and rehabilitation due to them. For many victims, passage of time does not attenuate the harm and in some cases the harm may increase as a result of post-traumatic stress that requires medical, psychological and social support, which is often inaccessible to those whom have not received redress. States parties shall ensure that all victims of torture or ill-treatment, regardless of when the violation occurred or whether it was carried out by or with the acquiescence of a former regime, are able to access their rights to remedy and to obtain redress.*¹²³

B) State Party response

The government of Denmark explained the rules concerning compensation in the Administration of Justice Act, i.e., Chapter 93a and section 1020(1) while noting that it was not possible to provide statistics, as it would require going through all the cases manually (para 133 of the state party response).

C) Issue summary

Redress and compensation are obtained in a civil law suit according to the above-mentioned rules in the Administration of Justice Act. A number of examples of court cases in which compensation has been granted to victims of ill-treatment are mentioned by Denmark in its State Party response para 194-201.

¹²¹ CAT/C/DNK/CO/5, para 15

¹²² Committee Against Torture, General Comment No. 38.

¹²³ *Ib*, at para 40.

However, it is unclear whether Denmark in any of these cases initiated an investigation *ex officio* pursuant to Article 12 of UNCAT.

A number of obstacles remain in fully ensuring the right of victims pursuant to Article 14 of the UNCAT. First, the lack of incorporation of the Convention into Danish law and the lack of criminalisation of torture, as discussed above in relation to Articles 1 and 4, constitute obstacles to the full enjoyment of the right to redress and prevent effective implementation of article 14. By way of example, the case of Carmi Gillon in 2014¹²⁴ was closed due to failure to remove the statute of limitation that prevents criminal investigation of cases in which the time-limit for establishing a criminal liability had already expired when the amendments to the Criminal Code in 2008 entered into effect. A notification by a Danish MP to the police about a visit by former minister Tzipi Livni to Denmark in 2006 also did not result in an investigation that could have shed light on the allegations of torture and ill-treatment of Palestinians and thus eventually have paved the way for some form of justice and redress to the victims.

Secondly, the discrepancy between the number of complaints and the number of cases in which a police officer has been criminally convicted, as discussed above in relation to Articles 12 and 13, would also have a negative effect on the possibility for victims of torture and ill-treatment to obtain redress and reparation in accordance with Article 14 of the UNCAT.

Thirdly, civil claims regarding compensations are governed by the ordinary rules concerning statute of limitation in Danish compensation law, and no exemption is made concerning claims regarding torture and ill-treatment.

Finally, obstacles remain in ensuring the right to rehabilitation for victims of torture and ill-treatment. It is well-established that early intervention by the health care system regarding treatment of PTSD will increase the chances of recovery and rehabilitation for the patients. A report by the Danish Institute of Human Rights (2014) concluded that app. 45-57% of all asylum seekers have been exposed to torture, and that even relatives of torture victims (especially wives and children) suffer from secondary PTSD.¹²⁵ The report also noted that some general practitioners are reluctant to examine refugees' experiences with torture and traumatic experiences. Unfortunately, this entails as a result that victims are not offered the relevant and appropriate treatment.

D) Human Story

As previously mentioned, some 23 Iraqis from Basra filed a civil suit against the Danish Ministry of Defence in 2011 with claims for compensation for injuries stemming from torture or inhuman treatment. They argued that they were detained in Iraq in 2004 by Danish military and handed over to Iraqi police and in this connection tortured. As Denmark was leading the military operation entitled 'Operation Green Dessert', it was responsible for any act occurring under its jurisdiction.

¹²⁴ Mentioned in the State Party response para 208-211.

¹²⁵ The report stated that: "[...] refugees are a vulnerable group in relation to mental health problems and the seemingly scarce awareness of this subject on the side of the health professionals should be reason for concern. General practitioners are the gatekeepers for access to much psychiatric treatment, and knowledge of how they experience providing care to refugees is crucial in order to secure adequate treatment for this patient group" (Jensen m.fl., 2013, 14:17).

Various of the alleged torture victims' procedural rights pursuant to Article 14 UNCAT were violated by the Ministry of Defense. However, in September 2013, the Supreme Court of Denmark was asked to consider the legality of the request of the Ministry of Defense ordering that each of the plaintiffs should pay a security guarantee of DKK 40,000 to the Ministry for legal costs that they might be required to pay to the Ministry (equivalent to app. USD 7-8.000). The Supreme Court concluded that

The present cases concern the Danish government's liability for the alleged torture in connection with the Danish military in Basra in Iraq allegedly having detained a number of local people and handed them over to the Iraqi police. Based on the evidence of the economic conditions in the locations where the appellants reside, there is reason to believe that a demand for payment of security for legal costs could effectively debar the filed cases. The special nature and circumstances of the cases - the Danish government's potential liability for the use of military force abroad and the allegedly socio economically disadvantaged victims of torture abroad in conjunction with the government's limited interest in the payment of security for the legal costs involves - in the opinion of the Supreme Court - that it would be unreasonable to comply with the Ministry of Defence's demand for payment of security. The Supreme Court thus grants exemption to the 11 appellants for having to pay security for legal costs.¹²⁶

E) Suggested recommendation

The Committee recommends the State party to ensure in law and in practice the effectiveness of the right of victims of torture and ill-treatment to obtain redress and reparation, as provided for in article 14 of the Convention, also when acting extraterritorially.

¹²⁶ See Annex A.

Article 16

This section relates to Denmark's implementation of its obligations pursuant to article 16 of UNCAT with regard to women and victims of trafficking. However, these issues would also raise concerns regarding Denmark's implementation of its obligation pursuant to article 14 of UNCAT (see above).

LOI para 20(a) – (c): Efforts taken to prevent and combat violence against women; Impact of measures of investigation and victim support; and nature and scope of violence against women

20. Please provide information on:

(a) Efforts undertaken to prevent and combat violence against women. Do these measures include adopting a coordination policy and a specific law on violence against women, including domestic violence, as recommended by the Committee on the Elimination of Discrimination against Women (CEDAW/C/DEN/CO/7, para. 30)?

(b) The impact and effectiveness of these measures, including of Act No. 517 of 6 June 2007, the 2008 Directive concerning investigation in relationship matters and support given to victims, and the directives concerning honour killings as well as of the "Action plan to stop men's domestic violence against women and children for the period 2005-2008".

(c) The nature and the scope of violence against women in Denmark, including information about any systematic collection of data on violence against women, through a national statistical office or regular population-based survey

A) CAT position

The Committee against Torture has on numerous occasions addressed the issue of violence against women, for example in the latest concluding observations concerning Slovakia¹²⁷ and concerning Sweden in which the Committee noted its concerns about the increasingly high incidence of violence against women compared to the low number of complaints, investigations, prosecutions and convictions in rape cases.¹²⁸

Moreover, the Committee stated in the General Comment No. 3 that:

complaints mechanisms and investigations require specific positive measures which take into account gender aspects in order to ensure that victims of abuses such as sexual violence and abuse, rape, marital rape, domestic violence, female genital mutilation and trafficking are able to come forward and seek and obtain redress.

¹²⁷ CAT/C/SVK/CO/3 at para 14.

¹²⁸ CAT/C/SWE/CO/6-7, at para 16.

State Parties in their national reports should include information on “the safeguards available for the special protection of members of marginalized or vulnerable groups, including women and children seeking to exercise their rights guaranteed under article 14 of the Convention.”

B) State Party response

In its State Party response, Denmark referred to the national action plans; annual reports on the progress of implementation of these plans; and the various independent external evaluations of the action plans that concluded that the plans have had a positive effect (para 134-139).

Denmark also provided statistics on the number of women who were victims of physical violence in intimate relations in 2000 (total of 42,000) and noted that this number had increased to app. 29,000 in 2010.¹²⁹

Finally, Denmark referred to the study by the European Agency for Fundamental Rights (FRA) that showed that 30-39 % of Danish women had experienced physical and/or sexual partner violence since the age of 15 - compared to a lower EU average of 28% (para 142 in the State Party response).

C) Issue summary

Domestic violence, as well as trafficking (discussed below), such cases may be covered by the UNCAT due to State Parties' responsibility to protect (i.e., their positive obligations) that reach into the private sphere.

The FRA study of 2014¹³⁰ revealed that Denmark was at the top end of the scale on almost every parameter. The study referred to a telephone survey of 3,552 women in Denmark that found – in addition to what mentioned above - that 50 % of women had experienced physical or sexual violence, or threat from a partner or a non-partner, since the age of 15. The FRA survey also found that in Denmark, 55 % of women have experienced physical and/or sexual violence or threat from a partner or a non-partner since the age of 15.¹³¹ Moreover, Denmark displayed a relatively high rate of partner violence, and 42 % of the most serious incidents of partner violence resulted in injuries.¹³²

Prevalence rates for sexual violence vary according to study design, methods and sample. However, it is well-documented that reports of rape have been stable in the past 30 years (400-600 per year).¹³³ This number of reported cases is very low compared to for example Sweden (app. 6,000 cases reported yearly).

As mentioned in the State response, three action plans to prevent and combat violence in intimate relations that have been implemented since 2002. However, the focus of these action plans has been narrowly on domestic violence/violence in intimate relations whereas more broad action plans covering all

¹²⁹ See also Denmark's State Party report to the ICCPR: According to the National Institute of Public Health, the estimated annual number of women (age 16-74 years) exposed to violence the family and in intimate relations has decreased from 42.000 (2,4 pct.) in 2000 to 29.000 (1,5 pct.) in 2010. As regards dating violence (age 16-24 years) the number of women is estimated to have decreased from 13.000 (4,7 in 2007 to 10.000 (3,2 pct.) in 2011.

¹³⁰ European Agency for Fundamental Rights Violence against women: An EU-wide survey (2014)

¹³¹ *Ib*, at page 24.

¹³² *Ib*, at page 63.

¹³³ Balvig: Offerundersøgelsen 2012 (2013).

forms of gender based violence, including rape and other forms of sexual violence, have not been developed.

There is a need for strengthening and ensuring the legal rights of victims of sexual violence. A Danish report from 2010 showed that only 30 % of reported rapes come to trial, and less than one in five results in a conviction.¹³⁴

Moreover, there is a need to strengthen the support and treatment by the social and health system to victims of violence in intimate relations and their children and to do so through legislative amendments.¹³⁵

D) Other UN and Regional Human Rights bodies Recommendations

In its recent Concluding Observations concerning Denmark¹³⁶, the Committee on the Elimination of All Forms of Discrimination against Women recommended Denmark to incorporate the Convention on the Elimination of All Forms of Discrimination against Women or at least to adopt relevant legislation:

The Committee reiterates its call upon the State party to reconsider its decision not to incorporate the Convention into its national legal order, or at least to adopt a comprehensive law on the prohibition of sex discrimination in all areas covered by the Convention. The Committee also recommends that the State party consider the enactment of a comprehensive law on the prohibition of discrimination covering all internationally recognized grounds and the establishment of institutionalized structures to exchange and coordinate information among its various bodies for tackling discrimination, with a view to ensuring legal clarity and consistency, especially for women who are victims of intersecting forms of discrimination.

E) Suggested recommendation

The Committee recommends that State party to intensify its efforts to combat all forms of violence against women, including domestic violence and rape, in particular by:

- (a) Conducting awareness-raising campaigns for the public at large and, in particular, providing training on domestic violence issues for law enforcement personnel, judges, lawyers and social workers who interact with the alleged and actual victims, in order to prevent and prosecute gender-based violence.
- (b) Adopting a specific legislation on the rights of victims of domestic violence, including regarding the right to receive counselling and long-term psychological treatment.
- (c) Adopting a national plan of action for the prevention of sexual violence and for ensuring the legal rights of victims of sexual violence.

¹³⁴ The Danish Crime Prevention Council (2010).

¹³⁵ Act on Social Service Section 109 obliges municipalities to provide battered women and their children with shelter. This also applies to women with disabilities. See further Denmark's response to ICCPR.

¹³⁶ CEDAW/C/DNK/CO/8

LOI para 22 and LOI para 23 – Data on trafficking in women and efforts to address trafficking in women

22. Please provide data on the extent of trafficking in women into, through and from Denmark since the consideration of the previous report as well as on the number of prosecutions and convictions of traffickers. Please also provide information on the composition and the work of the inter-ministerial working group on trafficking and Centre for Human Trafficking as well as on the composition of regional and national reference groups. Furthermore, data should be provided on the implementation of the “Action Plan to Combat Trafficking in Human Beings 2007-2010” and on its impact on reducing cases of trafficking.

23. The Special Rapporteur remained concerned that the efforts by the Government in relation to trafficking appeared to be aimed less at the rehabilitation of victims than at repatriating them to their countries of origin (A/HRC/10/44/Add.2, paras. 57 and 76). Please provide information on steps taken by the State party to address this issue.

A) CAT position

The Committee against Torture has on numerous occasions addressed the issue of trafficking, for example in relation to its Concluding Observations concerning Sweden last year. Moreover, the General Comment No. 3 highlighted that:

‘complaints mechanisms and investigations require specific positive measures which take into account gender aspects in order to ensure that victims of abuses such as sexual violence and abuse, rape, marital rape, domestic violence, female genital mutilation and trafficking are able to come forward and seek and obtain redress’.

B) State Party response

In its State Party response, Denmark referred to statistics, number of charges based on section 262a of the Danish Criminal Code (total of 4 persons convicted in 2013 whereas there were 10 convictions in 2010), referral mechanism, the institutional system and the mandate of the Danish Centre against Human Trafficking, the various national action plans and efforts to protect victims of trafficking (para 154-169).

C) Issue summary

Denmark has initiated a number of measures to address the issue of trafficking. However, there are still a number of challenges, including only few cases reported; no protection of the women after return home despite the extension of the reflection period to 120 days; the temporary residence permit for women who decide to bring a case does not protect the women – and hence is not a real alternative.

Victims of trafficking are still treated primarily as irregular migrants, and policies and practices still emphasize return of victims to their home countries rather than ensuring redress and protection. Denmark still offers no long-term alternatives that allow victims of trafficking to stay in the country on a work or residency permit, but solely offers repatriation or, in exceptional cases, asylum.

Victims of trafficking are offered a reflection period of 120 days. In this period, victims may remain in the country and receive some medical and psychological support. However, the victim must agree to a voluntary return to their home country. There is a need for granting the 120 days reflection period to all victims of trafficking regardless of willingness to return to the home country. Moreover, there is a lack of jurisprudence, as it is often impossible to establish evidence for the subjective element (i.e., intention).

The Independent Police Complaint Authority has investigated some cases involving police abusing their position towards prostitutes.¹³⁷

D) Other UN and Regional Human Rights bodies Recommendations

The Special Rapporteur on Torture have on numerous occasions highlighted the rights of victims of trafficking, and he remained concerned that the efforts by the Government in relation to trafficking appeared to be aimed less at the rehabilitation of victims than at repatriating them to their countries of origin.¹³⁸

E) Suggested recommendation

The Committee recommends the State party to enhance its efforts to combat trafficking in persons by providing adequate protection and redress to the victims; by granting additional education to the victims in order to make transition to a life without trafficking more sustainable; and by preventing the return of trafficked persons to their countries of origin where there is a substantial ground to believe that they would be in danger of torture or ill-treatment – for example by granting the 120 days reflection period to all victims of trafficking regardless of willingness to return to the home country.

¹³⁷ See for example case DUP-2013-313-0081, p. 35 in Annual Report 2013.

¹³⁸ See for example Report A/HRC/13/39/Add.5 of 5 February 2010.

II. Other issues

LOI para 25- Anti-terrorism measures

25. Please provide updated information on measures taken by the State party to respond to any threats of terrorism and please describe if, and how, these measures have affected human rights safeguards in law and practice and how it has ensure that those measures taken to combat terrorism comply with all its obligations under international law. Please describe the relevant training given to law enforcement officers, the number and types of convictions under such legislation, the legal remedies available to persons subjected to antiterrorist measures, whether there are complaints of non-observance of international standards, and the outcome of these complaints.

A) CAT Position

The Committee did not address the issue of anti-terrorism measures in its previous concluding observation to Denmark (2007). However, it has addressed this issue vis-à-vis several other State parties reiterating that no exceptional circumstances whatsoever can be invoked as justification for torture, cf. article 2.

B) State party response

Please refer to paras. 175-183 of the State party report.

C) Issue summary

Since 2002, Danish anti-terrorism legislation has regularly been expanded - a trend which has been closely tied to the terrorist attacks abroad (Madrid 2004, London 2005, Paris 2015). The goal of preventing terrorist attacks on Danish territory has been particularly strong after the attacks in Copenhagen earlier this year.

When considering what anti-terrorism measures to adopt, any given state needs to strike a balance between security considerations on the one hand and human rights considerations on the other hand, notably the right to privacy, freedom of expression and freedom of movement. In recent years, this balancing act has impacted negatively on fundamental civil liberties, as reflected in the “terror packages” from 2002, 2006 and 2015. First of all, the concept of ‘terrorism’ is not clearly defined and several ‘terror lists’ appear to be drawn up in ways, which allude to arbitrariness and (undue) geo-political considerations.

Case of ROJ-TV. As a consequence of the “terror package” of 2002, a case was initiated against the Kurdish television station, ROJ-TV. ROJ-TV had approx. 30 million viewers worldwide, and a Danish broadcasting license. ROJ-TV was acquitted in three decisions by the Danish Radio and TV Board, concerning complaints from the Turkish authorities about ROJ-TV’s coverage of the conflict between Turkey and PKK. In these decisions the Board found that ROJ-TV’s coverage of the conflict corresponded to the coverage of the two main TV-stations in Denmark, DR and TV2. However, in 2014, the Supreme Court found that ROJ-TV was guilty of propaganda for PKK and suspended its broadcasting license.¹³⁹ This case currently pending before the European Court of Human Rights, where Denmark is charged with allegation of violating article 10 of the European Convention of Human Rights.

¹³⁹ The Supreme Court, judgement of 27 February 2014, case number: 231/2013

The “terror package” in 2006,¹⁴⁰ entailed an expansion of police powers insofar as the Danish Security and Intelligence Service (PET) was granted extended access to surveil and obtain information without a court order. PET given amongst others given the following powers:

- To retrieve information from public bodies, without the person of concern is getting notified.
- To tap and monitor a non-suspect, if PET estimates that a suspect might contact the person.
- To right to obtain airline passenger data one year back without a warrant.

In 2008, the Parliament adopted an additional series of restrictions in the freedom of movement for aliens on tolerated stay in Denmark out of security concerns (see Part B, issue 5 on tolerated stay). The bill was met by criticism amongst other from the Danish Institute of Human Rights who considered the bill to raise concerns under article 5 and 8 of the ECHR and article 3 under the ECHR Protocol 4.

In 2009 the Aliens Act’s provisions on expulsion were amended, and as a result a person can be expelled administratively merely on the grounds that the Security and Intelligence Service suspects that s/he is a danger to national security. Such decisions may be taken without the affected person’s access to the information. Only his lawyer may have such access but is not allowed to reveal it to his client. The Supreme Court has considered the legislation’s compatibility with the ECHR in two cases, and in one case the Court found the Aliens Act to be an undue interference with the person’s rights under article 8 of the ECHR.

After the shootings at a community centre and at the Jewish synagogue in Copenhagen in February 2015, resulting in the death of three people, the former government launched an additional program consisting of 12 points, several of which extended the access to monitor and control the citizens’ behavior, including:

- Expanding the possibility to obtain information on airline passengers
- To obtain information on registration of users of pre-paid calling cards
- Reinforced actions against Danish extremists abroad

Several of new initiatives have since been made statutory. As a result of the reinforced action against Danes and persons with a Danish residency permit involved in armed conflicts abroad, the Danish Passport Law and the Alien Act have been amended, hereby limiting the right to freedom of movement and allowing the cancellation of foreigners’ Danish residency permits. Furthermore, the powers of the Danish Defence Intelligence Service (FE) to monitor Danes abroad have been expanded.

Finally, in February 2015, the former government established a Commission, which was mandated to assess the effectiveness and the costs of Denmark’s anti-terrorism measures. The Commission is expected to present its findings in the spring of 2016.

D) Suggested recommendation

The Committee calls on the State party to consider reviewing Danish anti-terror legislation with a view to determining whether it is in accordance with its obligations under the Convention, and to consider introducing ‘sunset clauses’ in any future anti-terrorism legislation.

¹⁴⁰ Act No. 542 of 06.08.2006

III. General information on the national human rights situation, including new measure and developments relating to the implementation of the Convention

LOI para 26- Developments of the legal and institutional framework

26. Please provide detailed information on the relevant new developments on the legal and institutional framework within which human rights are promoted and protected at the national level, that have occurred since the previous periodic report, including any relevant jurisprudential decisions.

In the State Party response, a number of developments of the legal and institutional framework were mentioned (para 184-211). Below additional developments are mentioned of which some have occurred since Denmark submitted its response in September last year.

Amendment of the Danish Enforcement Act (Straffuldbyrdelsesloven) May 2015

The Danish Enforcement Act (LBK nr 435 af 15/05/2012) was recently amended as a consequence of the reorganisation of the Prison and Probation Service. As a result, the right to complaint about decisions by the Prison and Probation Service has been restricted. Article 111, stk. 1 of the Danish Enforcement Act now stipulates that the main rule is that decisions made by an authority within the Prison and Probation Service cannot be appealed whereas the main rule prior to the amendment was that such decision could be appealed.

A effective complaint mechanism is a measure to prevent ill-treatment in prisons. The UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) provides in Rule 57 1 that:

Every request or complaint shall be promptly dealt with and replied to without delay. If the request or complaint is rejected, or in the event of undue delay, the complainant shall be entitled to bring it before a judicial or other authority.

We would like to suggest that Denmark provides information on how these new amendments to the Danish Enforcement Act fulfil Denmark's obligations under the Convention.

Amendment of the Danish Aliens Act

Denmark referred to improvements introduced to the Aliens Act in May 2013 and noted that focus on rejected asylum seekers' possibilities to start over in their country of origin has been strengthened (para 190). It should be noted, however, that more recent amendments to the Aliens Act on the contrary entail further restrictions for asylum seekers. By way of example a new integration allowance (*integrationsydelsen*), which entered into force by law 1 September this year, aimed at creating incentive to work and to become integrated into Danish society, and at making it less attractive for foreigners to seek asylum in Denmark, as stated in the preparatory notes to the law. The serious reduction in allowance (e.g., up to 50% reduction for some individuals and families) may not have the anticipated effect of enhancing integration. On the contrary, it may hinder traumatized refugees from obtaining the necessary rehabilitation that is a prerequisite for their integration. Furthermore, it may increase the risk of expulsion

and ultimately the risk of radicalization, as underlined by an expert group on prevention of radicalization in August 2015.

Moreover, a new temporary protection status entails limited possibility for family reunification.

Proposed amendments concerning number-tags on police uniforms¹⁴¹

The government will introduce numbers on police uniforms as a result of a number of cases in which an investigation or indictment of police officers was dropped due to the fact that it was not possible to identify the police officer in question (for example COP-15 case). The Minister of Justice asked the police by letter of 30 October 2014 to introduce such individual identity numbers.¹⁴² The numbers will enable the complainants to identify the police officer in question, as suggested by a working group under the National Police (Rigspolitiet) who proposed that the new identification numbers should consist of one letter and four numbers; be placed on the right side of the chest; and with a size that would make it possible to see the number in a distance between 2 and 4 meters. However, there may be some concerns with regard to the effectiveness of the new system and with regard to the likely slow implantation process of the new system that may take between three to five years.

Supreme Court judgements

Iraq case - in the judgement by the Supreme Court (Annex A), the Court underlined the right of alleged victims of ill-treatment to have access to justice.

U.2011.2318 H - application of Article 15 of the Convention

U.2011.2358 H - deportation to Iran

U.2011.2673H - deportation to Iraq

The Supreme Court has also decided a number of cases regarding pre-trial detention (see above).

High Court judgment on inhuman treatment

In a judgement by the Eastern High Court of 8 December 2014 the court concluded that Denmark had violated Article 3 of the European Convention on Human Rights because coercive measures had been used against a person who had been sentenced to psychiatric treatment after involvement in cases of robbery and serious violence.

High Court judgement regarding deportation

U.2011.726 Ø - the Eastern High Court concluded that deportation to Iran would constitute a violation of Article 3 ECHR.

¹⁴¹ See further <http://politiken.dk/indland/ECE2413033/politiet-vil-udstyre-betjente-med-numre-paa-deres-uniformer/>

¹⁴² See further Denmark's response to CPT March 2015, at page 4.

Judgement of 3 February 2015, prosecution office v. Muneer Ahmed Hussini; the Eastern High Court decided that deportation of Mr. Hussini could take place, and that the decision of the UN Human Rights Committee of 12 November 2014 would not lead to a different result.

Extra-territorial jurisdiction pursuant to the UNCAT

Denmark mentioned one case from 2014 in which the police received notification about the arrival of the former leader of Shin-Bet in Israel Carmi Gillon. However, it would be relevant for the assessment of Denmark's implementation of its obligations in Article 5-7 and Article 13 of the UNCAT to understand whether there have been other cases in which the police has received notification containing claims of alleged torture, and how the cases were dealt with by the police and the prosecution service.

Ex officio investigations by the prosecution office

Denmark has not provided information on the number of cases in which the prosecution service has initiated *ex officio* investigations in order to fulfil the obligations pursuant to Article 12 of the UNCAT.

Part B: Other SUGGESTED RECOMMENDATIONS

Article 2

Issue 1 – Use of pre-trial detention

A) CAT Position

The Committee has on numerous occasions addressed the issue of pre-trial detention and extensive length of pre-trial detention, for example in the Concluding Observations concerning Sweden last year.¹⁴³

B) Issue summary

Pre-trial detention is regulated in the Danish Administration of Justice Act (Chapter 70). Denmark has traditionally used pre-trial detention more extensively than neighbouring countries, including Sweden and Norway.¹⁴⁴ The proportion of pre-trial detainees continues to be around 30% of the total prison population.¹⁴⁵

In 2011, the Danish government pledged to reduce the number of persons placed in pre-trial detention, and as a result in 2012, the Director of Public Prosecution initiated a lean-project to identify best practices in handling pre-trial detention cases with the overall aim of limiting the use of pre-trial detention, particularly the length of pre-trial detention. There is no publicly available data about the preliminary outcome of the project.

However, statistics from Danish Statistical Bureau established that there was an increase of the use of pre-trial detention in the period 2006 (6013 cases) – 2011 (8022 cases) followed by a decrease in 2012 (7372 cases).¹⁴⁶ The statistics from the Chief Prosecutor and the Ministry of Justice differ and indicate a lower number of cases.

With regard to cases of lengthy pre-trial detention (i.e., more than three months), there has been a decrease from 1764 cases in 2010 to 1427 in 2012.¹⁴⁷ However, the average length of the pre-trial detention was still six months in 2012, and in 278 cases persons were detained longer than what is prescribed in the Administration of Justice Act. Noticeably, some 36 of these were juveniles. It should also be noted that there are still significant differences in the use of pro-longed pre-trial detention in the different police districts.

The Danish courts have on several occasions concluded that the rules regarding pre-trial detention in the Danish Administration of Justice Act have not been respected. By way of example, the Supreme Court ruled

¹⁴³ Para 9 of the Concluding Observations CAT/C/SWE/CO/6-7.

¹⁴⁴ Report by the Danish Institute for Human Rights 2014-2015, *Frihedsberøvelse*, page 17.

¹⁴⁵ Statistics from the Danish Prison and Probation Service referred to in Report by the Danish Institute for Human Rights 2014-2015, *Frihedsberøvelse*, page 19.

¹⁴⁶ *Ib.*

¹⁴⁷ Chief of Prosecution Report on lengthy pre-trial detention 2011-2012.

on 2 February 2015 that the detention of a Swedish citizen prior to trial did not comply with the Danish Administration of Justice Act.¹⁴⁸

Often restrictions are imposed on pre-trial detainees (see discussion about police-imposed restrictions (LOI para 4)).

Pre-trial detention can have severe psychological consequences for the detainees. In particular the first weeks of pre-trial detention entails increased vulnerability, as identified in studies establishing evidence for a relatively high number of suicides during pre-trial detention.¹⁴⁹ The uncertainty about the length of the pre-trial detention period is another important factor.

C) Other UN and Regional Human Rights Recommendations

The CPT recommended after its visit to Denmark last year that the Danish authorities should take:

*the necessary steps to ensure that all prisons operate within their design capacity and that they pursue their efforts to manage the prison population, taking due account of the relevant Recommendations of the Committee of Ministers of the Council of Europe in this area, in particular: Recommendation No. R(99)22 concerning prison overcrowding and prison population inflation; and Recommendation Rec(2006)13 on the use of remand in custody.*¹⁵⁰

With regards to legal safeguards for pre-trial detainees, the CPT recommended that:

*the Danish authorities take the necessary steps to ensure that the right of all detained persons to have access to a lawyer is effective in practice as from the very outset of custody. Further, it recommends that, in association with the Bar Association, a list of ex officio lawyers which detained persons can consult be compiled for each police station. In addition, a record should be maintained of any request by a detained person to see a lawyer and whether such a request was granted.*¹⁵¹

D) Suggested Recommendation

The Committee recommends the State party to use pretrial detention as a measure of last resort, in particular for minors, and prolonged pre-trial detention of minors should only be resorted to exceptionally. In general the State party should consider alternative measures to pretrial detention and ensure that the decisions imposing pretrial detention are based on objective criteria and supporting facts.

¹⁴⁸ Case 209/2014

¹⁴⁹ Report by the Institute for Human Rights, at page 20.

¹⁵⁰ CPT Report, CPT/inf (2014) 25, para 25.

¹⁵¹ *Ib*, para 16.

Article 3

Issue 2 – Principle of non-refoulement and medical ‘torture’ examinations

A) CAT Position

The Committee has repeatedly reiterated the absolute nature of the principle of non-refoulement under article 3 of the Convention¹⁵² and called on State parties to bring its legislation and practices relating to the detention and deportation of immigrants or asylum seekers in line with this principle.¹⁵³

Furthermore, in two concrete cases, the Committee has emphasised that Denmark was under an obligation to make substantial efforts to determine whether there were grounds for believing that an asylum seeker would risk torture, if returned. This may include a specialised medical torture examination of the asylum seeker. A central element in both decisions¹⁵⁴ was the presence or lack of a specialized medical examination, which was missing in CAT/C/49/D/464/2011 concerning deportation to Afghanistan while it was given insufficient weight in CAT/C/45/D/393/2008 concerning deportation to Iran.

In the decision of CAT/C/49/D/464/2011, the Committee stated:

- *...the committee further notes that despite the complainant’s request, the Board considered that a specialized medical examination was unnecessary since his statement were contradictory.*¹⁵⁵
- *The committee considers that although it is for the complainant to establish a prima facie case to request for asylum, it does not exempt the state party from making substantial efforts to determine whether there are grounds for believing that the complainant would be in danger of being subjected to torture if returned. In the circumstance, the Committee considers that the complainant provided the state party’s authorities with sufficient material supporting his claims of having been subjected to torture, including two medical memoranda, to seek further investigation on the claims through, inter alia, a specialized medical examination [...].*¹⁵⁶

The Committee concluded that:

Therefore, the Committee concludes that by rejecting the complainant’s asylum request without seeking further investigation on his claims or ordering a medical examination, the State party has failed to determine whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned. Accordingly, the Committee concludes that, in

¹⁵² General Comment No. 1. With regard to country examinations, by way of example see the Committee’s concluding observations to Canada, CAT/C/CAN/CO/6, 2012.

¹⁵³ See by way of example the Committee’s concluding observations to Japan, CAT/C/JPN/CO/2, 2013.

¹⁵⁴ CAT/C/45/D/339/2008 and CAT/C/49/D/464/2011. The Committee has in three other decisions concluded that the deportation would not constitute a violation of Article 3 of the Convention (i.e., CAT/C/52/D/466/2011; CAT/C/51/D/429/2010 and CAT/C/49/D/412/2010).

¹⁵⁵ Para. 8.5.

¹⁵⁶ Para. 8.8.

*the circumstances, the deportation of the complainant to his country of origin would constitute a violation of article 3 of the Convention.*¹⁵⁷

Moreover, in two cases, the registration of the complaint with the Committee entailed that a medical examination was subsequently undertaken.¹⁵⁸

The UN Human Rights Committee has also concluded in a number of cases that a deportation order would violate Denmark's obligations pursuant to article 7 of the Covenant on Civil and Political Rights.¹⁵⁹

B) Issue summary

In the above mentioned case of CAT/C/49/D/464/2011, the Danish authorities did not suspend the deportation to Afghanistan of the complainant, Khojarejzullha Hamdard, while the Committee considered the case. After the Committee's decision the Refugee Appeals Board has reopened the case, but it has reportedly not yet been possible to locate Khojarejzullha Hamdard. According to a newspaper article in *Politiken*¹⁶⁰ the head of secretary at the Refugee Appeals Board has stated that Denmark will comply with the decision.

Nevertheless, the board defends that no special medical examination was undertaken of Khojarejzullha Hamdard, because "it is not normal procedure for the Refugee Appeals Board to order a special medical examination, if the complainant's explanation about the torture is found not to be trust-worthy and is consequently aside by the Refugee Appeals Board." In other words, the reasoning of the Refugee Appeals Board is effectively a 'catch 22' for the alleged torture victims.

The Danish Aliens Act was amended in order to allow most rejected foreigners a certain number of days to leave the country (7 or 15) before they would be deported by force. However, several lawyers report that they still encounter a number of decisions of the immigration authorities, especially from the Danish Refugee Board, are to be implemented "immediately". Consequently, lawyers have no or very limited time to file Communications under article 22 of the Convention. In other words the right to file a Communication alleging a violation of article 3 is made illusory, because the authors of the Communication have no time to complain, and the Committee has no time to make a decision on interim measures.

C) Suggested recommendation

The Committee recommends that the State party respect, in law and practice, its non-refoulement obligation under article 3 of the Convention, and to make substantial efforts within the asylum process to determine whether there are grounds for believing that the asylum seeker would be in danger of being subjected to torture if returned and, when deemed necessary, to ensure that independent and specialised medical examinations be undertaken so as to establish whether the asylum seekers have been subjected to torture.

¹⁵⁷ Para 8.8.

¹⁵⁸ Complaint 409/2009 discontinued on 11 November 2010 and Complaint 460/2011 discontinued on 14 May 2012.

¹⁵⁹ See for example CCPR/C/114/D/2343/2014; CCPR/C/114/D/2370/2014; CCPR/C/114/D/2288/2013 and CCPR/C/114/2360/2014.

¹⁶⁰ Article in the newspaper, *Politiken*, 4 January 2013 (Danish) <http://politiken.dk/indland/ECE1859079/danmark-vil-hente-tvangsudvist--tilbage-igen/>

Issue 3 – Persons on tolerated stay who cannot be deported

A) CAT position

To the best of our knowledge, the CAT has not adopted a position on the issue.

B) Issue Summary

Tolerated stay regime

The tolerated stay regime is governed by the Aliens Act. There are three categories of persons placed on tolerated stay. Common for all persons on tolerated stay is that they have no residency permit in Denmark, but cannot be expelled due to the risk of torture or death penalty upon expulsion. The categories are:

1. Persons who are excluded from obtaining asylum or have been deprived of their residence permit on the basis of crime committed in Denmark. These persons have served their time in prison and are then afterwards placed on tolerated stay.
2. Persons, who are excluded from obtaining asylum in Denmark, cf. the UN Refugee Convention art. F section 1 (strong reasons to believe that they have committed non-political crimes abroad).
3. Foreigners who are administratively expelled from Denmark, on the basis of being considered a threat to the national security.

Until expulsion can be effectuated, these persons remain on tolerated stay indefinitely. The main condition when being on tolerated stay is; that the person as a main rule, must take residence at a deportation centre, either Centre Sandholm or Centre Sjælsmark, and/or must report to the police daily or several times a weekly, does not have the right to work or receive education, receives a daily allowance of DKK 31 (EUR 4), can as a main rule not marry and has restricted access to health care.

In December 2008, the tolerated stay provisions in the Aliens Act were amended. These amendments introduced requirements that significantly worsened the conditions for persons on tolerated stay, e.g. by introducing the daily reporting requirement. It is clear from the preparatory work to the amendment, that the purpose is to reinforce the control of foreigners, who are a danger to national security, but who do not leave voluntarily and cannot be expelled due to Denmark's international obligations. Despite this purpose, the amendment addresses all the three categories of persons on tolerated stay, without distinguishing between those who are considered to be a danger to the state security, and those who do not.

If a person on tolerated stay does not comply with the prescribed reporting obligations, the punishment is a fine or up to one year of imprisonment, cf. the Aliens Act § 60 stk. 1. In 2015, The High Court¹⁶¹ sentenced a person on tolerated stay who had not met the reporting requirements, to 40 days of imprisonment.

NPM inspection and recommendation

Following an NPM inspection of *Center Sandholm* in 2014, in which DIGNITY – Danish Institute Against Torture participated - the Ombudsman concluded that while the general conditions for persons on

¹⁶¹ Judgment from the Eastern High Court, 13 March 2015.

tolerated stay are not at this point in time contrary to article 3 of the ECHR, the cumulative effect of the restrictions under which persons on tolerated stay live may over time, and in concrete cases, amount to a violation of article 3 of the European Convention of Human Rights. It was concluded that the overall conditions for persons on tolerated stay are a tremendous personal burden and restriction on living conditions. The Ombudsman recommended that the entire tolerated stay regime be re-considered.

This recommendation was not followed by the previous government and there are no statements or indications from the current government that they will follow the Ombudsman recommendation.

In recent years more and more individuals have been placed on tolerated stay. However, since 2007, not a single person has been expelled. In 2015, there were 67 persons on tolerated stay. For further details on tolerated stay, we kindly refer to the submission to CAT of the Ombudsman.

Restrictions other than tolerated stay

LGBT Denmark is particularly concerned about a case of an LGBT person who was sentenced to five years of imprisonment and subsequent expulsion. The person has served his sentence but the expulsion order cannot be effectuated and, as a result, the case remains in deadlock, now in its 17th year. The case was brought to the attention of the CoE Commissioner for Human Rights during his visit to Denmark in 2013.¹⁶²

C) Other UN and Regional Human Rights Recommendation

There are no international judgements or recommendations, which can be applied directly to the Danish system of tolerated stay. However, CPT did expressed concerns about the previous British system “control orders”, when imposed on persons with serious mental problems, see. CPT/Inf (2006) 28.

The CoE Commissioner on Human Rights has expressed concern about Denmark’s tolerated stay regime during his visit to Denmark in 2013 and made the following recommendation:

“The Commissioner urges the Danish authorities to find a long-term solution to the situation of rejected asylum-seekers who cannot be deported from Denmark to their countries of origin. He emphasises that indefinite duration stays in asylum centres cannot be considered as a viable option. The willingness to incite voluntary return or to punish refusal to return should never result in arrangements that impinge on the human rights of the persons concerned and the members of their families.”¹⁶³

D) Suggested Recommendation

The Committee recommends the State party to consider introducing an upper time limit in the legislation on tolerated stay, which is decided upon in connection with the judgement on expulsion, which is proportionate to the gravity of the crime and sentence. Furthermore, the Committee invites the State party to consider introducing an absolute time limit for persons on tolerated stay.

¹⁶² LGBT Denmark (2013), *LGBT Denmark to the human rights commissioner: Several concerns*, available at: www.Panbloggen.wordpress.com < <https://panbloggen.wordpress.com/2013/11/21/lgbt-denmark-to-human-rights-commissioner-several-concerns/>>

¹⁶³ Council of Europe Commissioner for Human Rights, Report on visit to Denmark, November 2013, CommDH(2014)4, para. 64, available at: https://panbloggen.files.wordpress.com/2015/10/commdh20144_en.pdf

Article 16

Issue 4 – Inter-prisoner violence

A) CAT Position

CAT has on several occasions called on State parties to adopt preventive measures to reduce inter-prisoner violence¹⁶⁴ and to address the factors contributing to inter-prisoner violence.¹⁶⁵

B) Issue summary

The level of inter-prisoner violence is a persistent phenomenon in Danish prisoners, which for several reasons is hard to detect. One of the reasons is the absence of a reporting obligation for prison doctors. Under Danish law, a prison doctor is not under an obligation to report instances in which he suspects or discovers signs of violence to the prison authorities. As organisations that regularly inspect Danish prisons and monitor the treatment of the prisoners, we have seen several cases where prisoners with bruises – inflicted by other inmates – have been attended to by the prison doctor who, despite the visible signs of violence, did not report the incidents to the prison authorities.

Furthermore, incidents of violence among inmates are often not reported by the prisoners themselves (i.e. the victims), often out fear for repercussions from fellow inmates. As a result, there is a considerable level of unreported violence.

The statistics from the Prison and Probation Service show that the registered cases of violence inflicted on inmates by other inmates, have increased slightly from 284 in 2008 to 295 in 2012.¹⁶⁶

Table: Violence and threats of violence committed on inmates by inmates

	Incidents								
	Total no. of episodes where inmates have been exposed to violence or threats	Treats of violence	Attempts not to move	Pushed or Shoved	Beaten, without leaving visible marks	Beaten, leaving bruises	Beaten, leaving wounds or injuries	stabbed, shot or attacked with weapons	Attacked in a different way

¹⁶⁴ See, for instance, CAT's concluding observations to Lithuania, CAT/C/LTU/CO/3, 2014; CAT's concluding observation to Kazakhstan, CAT/C/KAZ/CO/3, 2014; and CAT's concluding observations to Ireland, CAT/C/IRL/CO/1, 2011.

¹⁶⁵ See, for instance, CAT's concluding observations to Cyprus, CAT/C/CYP/CO/4, 2014.

¹⁶⁶ Department of Prisons and Probation, statistic 2012, table 5.16

2012	295	55	13	25	64	52	68	13	41
2011	331	50	3	35	66	70	77	24	39
2010	353	54	3	28	91	70	77	11	47
2009	317	53	7	37	75	53	78	7	40
2008	284	41	2	31	51	58	67	12	49

C) Other UN and Regional Human Rights Bodies Recommendations

In its report to Denmark in 2014, the CPT noted that tackling inter-prisoner violence and intimidation has been a priority of the Danish Prison and Probation Service for many years. The most notable measure taken was the establishment of special units for “negatively strong” inmates, as a response to organised groups of criminals seen to be exerting a highly negative influence on other prisoners, as well as units for prisoners seeking protection from other inmates (vulnerable prisoners) and high-security units for dangerous/disruptive prisoners. At the time of the visit, there were some 380 “negatively strong” prisoners. Nevertheless, not all gang members or “negatively strong” inmates were accommodated in small units.¹⁶⁷

The CPT’s delegation was concerned about inter-prisoner violence and intimidation at Ringe State Prison. Several serious assaults by prisoners on other prisoners had taken place in recent times; health-care staff reported that there were fights most weeks and that they were sure that not all injuries were being picked up. In the course of the delegation’s visit, a number of inmates from different sections told the delegation that they did not feel safe. Moreover, prisoners considered that staff were playing too passive a role in asserting their authority and in ensuring that bullying and inter-prisoner violence did not occur. This was particularly the case in the male accommodation Wings 1, 3, and 4 of the prison. Some prisoners also attempted to exploit racial (white/coloured) and religious (Christian/Muslim) differences between Danish prisoners as well as with foreign national prisoners

In conclusion, the CPT recommended that further steps be taken to put into place a comprehensive anti-bullying strategy to reduce the incidence of inter-prisoner violence and intimidation at Ringe State Prison, taking into consideration the above remarks.

D) Suggested recommendation

The Committee recommends the State party to intensify its efforts to reduce and prevent the prevalence of inter-prisoner violence. With the changing profile of the inmate population, including the acceptance into the establishments of gang members, the State party should adapt its approach accordingly, herby possibly amending the balance between prisoners’ privacy and their supervision.

¹⁶⁷ CPT report to the Danish government, CPT/Inf (2014)25, para. 28-29.

Issue 5 - Use of coercion in the psychiatric institutions

A) CAT position

In its concluding observations to Sweden (2014), the Committee recommended the State party to use restraints as a measure of last resort, for the shortest possible time and under strict medical supervision. The Committee furthermore recommended the introduction of an integral registration systems and appropriate safeguards for administering electroshock therapy. Finally, it recommended that the State part ensures effective monitoring of the conditions in psychiatric institutions and provides training for medical and non-medical staff on methods of non-violent and non-coercive case.¹⁶⁸

B) Issue Summary

Legislative and procedural steps taken to limit the use of coercion in psychiatric institutions

The Psychiatry Act was amended in 2007, 2010 and 2015. The 2010 amendment was aimed at reducing the use of coercion in psychiatric institutions, by restricting the criteria for applying medical restraint and requiring a minimum frequency of medical supervision and simultaneous assessment of whether restraint – fixation - should cease or continue.¹⁶⁹ Similarly, the 2015 amendment aimed at tightening the criteria for and supervision of the use of immobilisation.

The former government also established a Commission on Mental Health in 2012, which was tasked with developing proposals for improving the treatment of psychiatric patients, also with the aim of reducing coercion in the psychiatry. This led to the adoption of an action plan for a 50% reduction of the level of coercion by 2020, including a 50% reduction in the use of immobilisation with belts.

The use of coercion in practice

Despite the positive steps taken by the state, the use of coercion on patients in psychiatric institutions is still rather extensive, also when compared to other countries, c.f. see link to statistics in the footnote.¹⁷⁰ While there has been a downward trend as regards the overall use of immobilization with belt in recent years, this tendency is unfortunately not very clear when it comes to the use of immobilization by belt exceeding 48 hours, see figure below.

This figure concerns the immobilizations exceeding 48 hours and shows the total number of hours where persons have been immobilized by belts from 2011 to 2015. The blue line shows the total number for the whole country.¹⁷¹

¹⁶⁸ CAT/C/SWE/CO/6-7, 12 december 2014, para. 13.

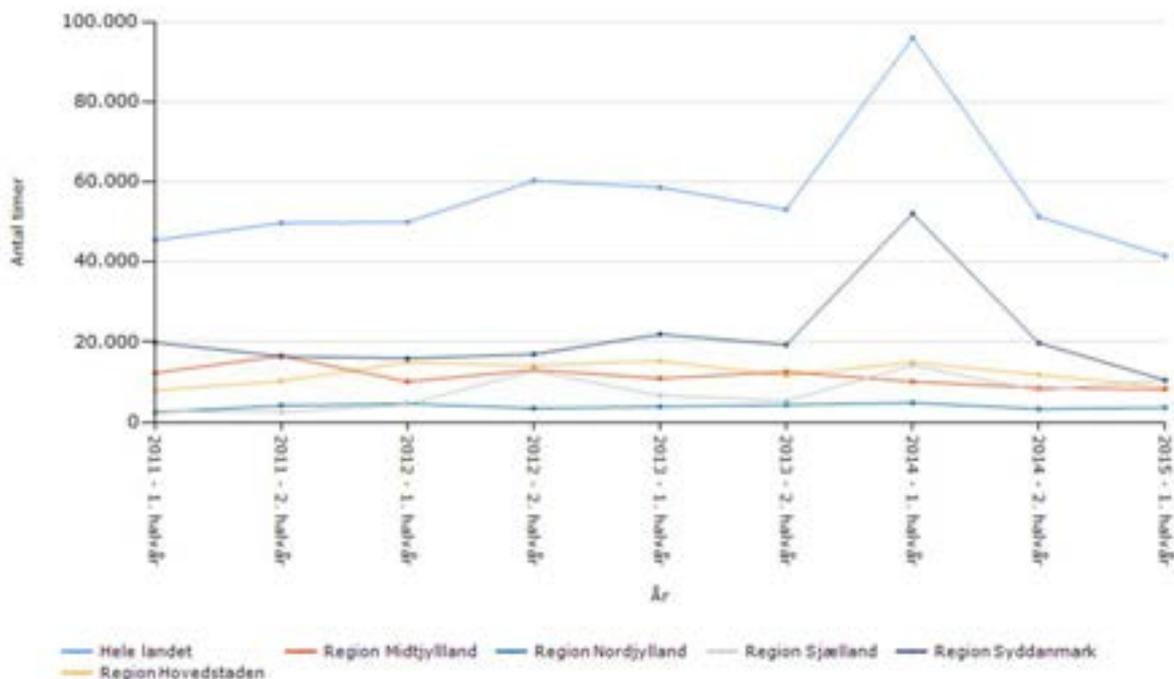
¹⁶⁹ Patients are attached to their bed (or a bed in an isolation room) with an abdominal belt and often

¹⁷⁰ Statens Serum Institut, yearly evaluation of the use of coercion in the psychiatry

<http://esundhed.dk/sundhedsregistre/tip/Sider/tip01.aspx>

¹⁷¹ Monitoring of coercion in the psychiatry, half-yearly evaluation 2015, Published by the Ministry of Health, September 2015, Figure 9, link:

http://sundhedsstyrelsen.dk/da/nyheder/2015/~/_media/4603FB39F43241408B2CDF797EDF12D9.ashx



Another concern is that statistic shows that minorities, especially men with a minority background, are overrepresented when it comes to being subjected to coercion in the psychiatric hospitals.¹⁷²

A High Court judgment concluded that the Odense University hospital was found to have breached article 3 of the European Convention Human Rights because the plaintiff was subjected to coercive measures (fixation) that lead to such intense physical and psychological suffering.

C) Other UN and regional Human Rights Bodies Recommendations

In the judgement *Bureš v. the Czech Republic*, of the European Court of Human Rights, 18 January 2013, the Court ruled as follows concerning the use of immobilization of individuals with belts, which makes it clear that this kind of use of force requires that the intervention is strictly necessary:¹⁷³

- *Para. 80. "...The issue is thus not that the applicant objected to his medical treatment, but that restraints and force were applied to him that would only be allowed by Article 3 of the Convention if made strictly necessary by his own conduct (see Ribitsch v. Austria, 4 December 1995, § 38, Series A no. 336)."*
- *Para. 86. "In respect of persons deprived of their liberty, recourse to physical force which has not been made strictly necessary by their own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see Krastanov v. Bulgaria, no. 50222/99, § 53, 30 September 2004). In the context of detention in a sobering-up centre, it is up to the Government to justify the use of restraints on a detained person. Regarding the use of*

¹⁷² Danish Institute of Human Rights, "Menneskerettigheder og tvang i psykiatrien. Anbefalinger", page 7, Refers to a 2012 survey.

¹⁷³ *Bureš v. the Czech Republic*, 18 January 2013, para. 80 and 86

restraining belts, the Court accepted that aggressive behaviour on the part of an intoxicated individual may require recourse to the use of restraining belts, provided of course that checks are periodically carried out on the welfare of the immobilised individual. The application of such restraints must, however, be necessary under the circumstances and its length must not be excessive (see Wiktoro, cited above, § 55)."

In its report on Denmark (2004), the CPT expressed serious concern about the use of psychiatric hospitals:¹⁷⁴

"However, despite measures taken to tackle the frequent use and length of immobilisation in psychiatric hospitals, such as increased staff training and certain legislative amendments, there had been no reduction in the registered use of immobilisation in Denmark. On the contrary, the instances of immobilisation, and notably those of prolonged immobilisation (for more than 48 hours), has steadily increased and reached all-time peaks in 2012 and 2013 on a national level. The CPT therefore remains seriously concerned about the frequent and prolonged use of immobilisation in psychiatric hospitals."

*"In the CPT's view, the duration of the actual means of restraint should be for the shortest possible time (usually minutes to a few hours), and should always be terminated when the reason for the use of restraint has ceased. The maximum duration of the application of mechanical restraint should ordinarily not exceed 6 hours. As pointed out in the reports on the CPT's 2002 and 2008 visits to Denmark, **the Committee considers that applying instruments of physical restraint to psychiatric patients for days on end cannot have any medical justification and amounts to ill-treatment.**"*

D) Suggested recommendation

The Committee recommends the State party to:

- (a) End the use of immobilization with belt exceeding 24 hours.
- (b) Examine why coercion in psychiatric establishment are used more widely vis-à-vis minority groups.
- (c) Ensure that staffing levels and staff competencies in psychiatric institutions in order to reduce the recourse to coercion in the psychiatric hospitals.

¹⁷⁴ CPT/Inf (2014) 25, para. 121 and 125

Issue 6 – Nervous and mental disorders among prisoners and detainees

A) CAT position

In its concluding observations to New Zealand (2009), the Committee expressed concern about the inadequate provision of mental health care to mentally ill inmates in prisons as well as the use of instruments of physical restraint that may cause unnecessary pain and humiliation. (arts. 11 and 16).¹⁷⁵

B) Issue summary

Several studies have established that there is a high frequency of people suffering from mental illnesses within places of detention in Denmark. Such persons are sometimes detained for a long period of time within remand institutions and prisons due to lack of capacity in psychiatric institutions.

In 2009 the Prisons and Probation Service initiated a screening project on mental illness. The study, which was mainly conducted at 'Vestre Fængsel' in Copenhagen, was concluded in 2013. It reveals that there is a high frequency of nervous and mental illnesses amongst the pre-trial detainees. Furthermore, it states that it is difficult to design a reliable screening tool, which systematically supports the nurses' screening of pre-trial detainees, and that nurses do often not react to acute suspicion of mental illnesses. The report concludes that the investigated remand population as a whole and the mentally ill in particular have complex and overlapping issues stemming not only from a mental or psychiatric disorder, but also from social marginalization. As a matter of urgency, the report concludes that there is not access to sufficient or adequate treatment offers, and that the identified problems should be targeted at several levels so as to ensure that future delinquency is prevented. The report takes note of and concludes that introduction of screening methods, including systematic questions, should contribute to heightening the general health assessment and not least the early identification and transfer of inmates with mental illnesses for treatment, who are currently sitting unnoticed. One of the initiatives by the Prison and Probation Service has been to attach a psychiatric consultant to all detention centers (*Arresthuse*).

The report has received attention in the Danish media in January 2014, which prompted the Director of 'Vestre Fængsel' to express that they are well-aware that the prisons are not geared to handle detainees and prisoners with nervous or mental illnesses and that there is a grave need for sensitization and training of health and prison staff on these issues. In this connection, the former Minister of Justice, Karen Hækkerup, clearly acknowledged the problem and the need to take urgent action and steps to improve the situation.

C) Suggested recommendation

The Committee recommends the State party to:

- Introduce more effective methods to identify mentally ill detainees and mechanisms to transfer severe mentally ill and suicidal persons to the psychiatric system for treatment.
- Build capacity to effectively address the needs of pre-trial detainees and prisoners who are in need of treatment and access should be ensured at the same level as in the society in general.

¹⁷⁵ CAT/C/NZL/CO/5, 2009, para. 9.

Issue 7 – LGBTI persons' access to health care

A) CAT position

To the best of our knowledge, the CAT has not adopted a position on the issue.

B) Issue Summary

While Danish authorities have taken commendable steps to enhance the protection of LGBTI persons against discrimination, certain formal structures remain in place, resulting in serious mental and physical health issues particularly for trans* and intersex persons, which may raise concerns under article 16.

Many trans* persons do not have access to timely and appropriate healthcare, as they meet an unusually slow process of treatment in the health system as there is only a single institution with the authorisation to help trans* persons accessing hormones and receiving gender reassigned medical treatment. Many trans* persons are highly uncomfortable with their biological gender, and a newly released report shows that 18% of trans* persons in Denmark are accessing and treating themselves with hormones¹⁷⁶. LGBT Denmark argues, that giving a single health institution the monopoly of providing trans* persons with hormones, is strengthening the trend of trans* persons to access hormones on their own without any medical supervision. As the lack of access to proper and timely healthcare is pushing trans* persons into an unsecure and dangerous process of self-medication, this may raise concerns under article 16. Furthermore, the lack of access to proper and timely healthcare leaves trans* persons in a situation of stress and discomfort, which can have a serious effect on the reported high levels of poor mental health¹⁷⁷.

The report also notes that particularly trans* persons under the age of 35, have poorer mental health¹⁷⁸. For children who have gender dysphoria, the teenage years can be unbearable. Trans men struggle with growing breast that are not wanted, as well as broader hips and lower end-height than the average men. Trans women struggle with body hairs that are not wanted as well as the Adam's apple, a dark voice and a taller end-height than the average women¹⁷⁹. In order to meet the physical and psychological needs of particularly young trans* persons, the government ought to address the recourse problems of having only one sexology clinic, that is authorised to help trans* persons with hormones and surgeries. This monopoly propels the long waiting lines for trans* persons to receive the public health support they are entitled.

Also intersex persons are subjected to inhuman or degrading treatment by the health system. This is particularly the case when they as infants are subject to so called "normalising" corrections of the infants' genitalia¹⁸⁰. These are irreversible surgeries and can affect the personal development of the individual. As

¹⁷⁶ Holm Johansen, Katrine Bindsbøl; Laursen, Bjarne; Juel, Knud (2015), *LGBT Sundhed: Helbred og Trivsel blant lesbiske, bøsser, biseksuelle og transpersoner*, Statens Institut for Folkesundhed, Syddansk Universitet, Københavns Kommune <<http://www.kk.dk/sites/default/files/LGBT-sundhed%20%28si-folkesundhed%29%20%282015%29.pdf>> from <http://www.kk.dk/nyheder/lgbt-personer-k%C3%A6mper-med-d%C3%A5rligt-helbred>

¹⁷⁷ *ibid.*

¹⁷⁸ *Ibid.*

¹⁷⁹ LGBT Denmark (2015), *Open letter to the Minister of Health*, LGBT Denmark <http://lgbt.dk/wp-content/uploads/Aabent-brev-LGBT-Danmark-til-Sundheds-og-aeldreminister.pdf>

¹⁸⁰ Region Midtjylland (no year), *Intersex – Usikkert køn*, from <<https://pri.rn.dk/Sider/11732.aspx>>

pointed out in the UN's fact sheet on "The Right to Health", the right to health includes "the freedom to be free from non-consensual medical treatment"¹⁸¹.

C) Other UN and Regional Human Rights Recommendation

The European Court of Human Rights has noted that a violation of article 3 of the ECHR may occur where the purpose or the intention of the State's action or inaction was not to degrade, humiliate or punish the victim, but where this was nevertheless the result.¹⁸²

D) Suggested recommendation

The Committee recommends the State party to ensure that procedures and practices within the public health care systems take into account the particular needs and vulnerabilities of LGBTI persons in order to prevent instances of inhuman or degrading treatment.

¹⁸¹ Office of the High Commissioner on Human Rights & World Health Organization (2008), *The Right to Health, Fact Sheet nr. 31*, p. 3 < <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf> >

¹⁸² See *Peers v. Greece*, Application No. 28524/95 (2001), paras. 68, 74; *Groni v. Albania*, Application No. 25336/04 (2009), para. 125.