ALTERNATIVE REPORT

to the list of issues (CAT/C/DNK/QPR/8) dated 13 June 2018 to be considered by the UN Committee against Torture during the examination of the 8th periodic report of

DENMARK

78th Session, November 2023

RETSPOLITISK
FORENING
Danish Law Association

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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 Committee against Torture has undertaken six examinations of Denmark – the latest being in November 2015. In relation to the upcoming review of Denmark on the 8-9 November 2023, this report is submitted to the Committee Against Torture as an alternative report to Denmark's report of 9 December 2019 that replies to the questions in the list of issues prior to reporting of 18 June 2018 (LOIPR) regarding the progress made to treaty implementation and compliance in Denmark.

This report is written by a Coalition of 22 NGOs in Denmark:

- Amnesty International Denmark
- Association of Aliens' Lawyers
- Better Psychiatry – National Association of Relatives
- Children's Welfare (Børns Vilkår)
- Danish Law Association
- DRC Danish Refugee Council
- DIGNITY – Danish Institute Against Torture
- Ellebæk Kontaktnetværk
- Forsete – Legal and Criminal Policy Think Tank
- Danish Helsinki Committee for Human Rights
- International Rehabilitation Council for Torture Victims
- Intersex Danmark
- Joint Council for Child Issues
- KRIM – National Association
- Kvinfo
- LGBT+ Denmark
- OASIS – Treatment and Counselling of Refugees
- Refugees Welcome
- Rehabilitation Centre for Trauma Survivors
- Disabled People's Organisations Denmark
- United Nations Association Denmark
- Women's Council in Denmark

Positive developments

Since Denmark underwent its last review by the Committee in 2015, it has made progress in a number of areas, notably with regard to introducing a screening instrument at the reception center for asylum seekers (Sandholm); taking the steps to criminalise torture in the Danish legislation; adopting legal provisions to reduce the use of solitary confinement as a disciplinary sanction; repealing the statute of limitation for acts of domestic violence against children and adopting a new consent-based rape provision and a provision related to psychological violence in the Criminal Code.

In March 2023, the Minister of Justice announced that torture would be criminalised in Danish legislation and established a legal committee that includes representatives of three ministries, law professors and representatives of the Danish Institute for Human Rights and civil society

(i.e., Amnesty International and DIGNITY), with the purpose of, inter alia, proposing legislation to criminalise torture, war crimes and crimes against humanity.[1]

We would like to emphasize that the Coalition highly appreciates the dialogue with the Ministry of Foreign Affairs about the implementation of the Committee's previous Concluding Observations.[2] Similarly, we wish to express our appreciation that Danish authorities maintain a good and constructive dialogue and cooperation with NGOs.

Issues of concern

Regardless of these positive developments, improvements are lacking in other areas, and recommendations of the Committee, other UN treaty bodies and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) have not been implemented. We also note lack of progress in implementing the four follow-up issues from the Committee's last examination of Denmark.[3]

Denmark maintains its position **to not incorporate the UNCAT into Danish law**, despite the clear recommendation to the contrary by the Committee and civil society organisations. Moreover, despite criticism from various international committees, **the use of pre-trial detention continues to be extensive** (increase from 30% of all prisoners being pre-trial detainees during the Committee's last review of Denmark to 41% today) and many pre-trial detainees are *de facto* in isolation in their cell 23 hours a day. In addition, **coercive measures in psychiatric institutions continue to be practiced in Denmark** despite recommendations of the Committee and judgements by the European Court of Human Rights (ECtHR).

In June 2022, the Danish Parliament approved a new bill establishing the legal basis for Denmark's rental of prison places in Kosovo. It will therefore be possible – in the future - to transfer citizens of third countries who have been sentenced to imprisonment and subsequent expulsion by Danish courts to serve their sentence in Kosovo. We are concerned about this development and how **Denmark ensures compliance with its international obligations**.[4]

Furthermore, we continue to witness **further restrictions on the protection granted to asylum seekers and refugees** that would also raise concerns under the UNCAT. This was seen in relation to Denmark's plans to send asylum seekers to Rwanda. Although the plan has been abandoned for now, Denmark is still pursuing the idea of externalisation of asylum policy. Specifically with regard to **the prohibition of non-refoulement**, since its last review of Denmark, the Committee has found that **Denmark had violated Article 3 of the UNCAT in five cases related to lack of medical torture examination during the asylum process.**[5] We are concerned that the Danish immigration authorities maintain the position not to follow the recommendation of the Committee against Torture to request a torture examination.

Finally, **with regard to statistical data**, despite the Committee's recommendation to Denmark to compile statistical data, it is still impossible to obtain information on key issues, such as the

[1] The mandate of the Law Commission can be found here: Regeringen igangsætter arbejde med selvstændig kriminalisering af krigsforbrydelser | Justitsministeriet (Danish).
[2] See e.g., letter of 24 May 2016 by the Coalition to the Ministry of Foreign Affairs.
[3] Letter of 18 May 2018 by Rapporteur for Follow-up to Concluding Observations to Denmark. See also the Coalition's Follow-up Report of March 2017 to the Committee.
[4] E.g., DIGNITY response to the draft bill about rental of prison places abroad, 31 March 2022 (Annex 1).
[5] Annex 13, see CAT/C/56/D/580/2014; CAT/C/57/D/628/2014; CAT/C/59/D/634/2014/; CAT/C/60/D/635/2015; CAT/C/61/D/625/2014.

exact number of complaints about ill-treatment; their investigation and prosecution. The State party provided some information to the Committee[6], but this has never been published in Denmark, and statistical data is not available on a regular basis.

These issues will be further elaborated in this alternative report that falls into two parts:

- **Part A** provides alternative replies to some of the questions raised in the LOIPR. Each issue is addressed in sub-sections: A) CAT position; B) The Danish government's response; C) Issue summary and D) Suggested recommendation(s).
- **Part B** addresses new and important issues, which have emerged over the past five years since the adoption of the LOIPR in 2018. 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 Coalition's ongoing monitoring of Danish law and practice and advocacy activities carried out vis-à-vis the Danish government, the Parliament, and relevant public institutions. DIGNITY also participates in the National Preventive Mechanism (NPM) under the Danish Ombudsman.

[6] Report of December 2019 (see annex 11).

PART A: SUGGESTED RECOMMENDATIONS TO THE LIST OF ISSUES
ARTICLE 2
LOIPR 3: INCORPORATION OF THE CONVENTION AGAINST TORTURE

> Further to the previous concluding observations (paras. 12–13) and the State party's follow-up replies, 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. Please also provide information on any cases in which the Convention has been invoked before national courts.

A) CAT position

In the Concluding Observations concerning Denmark (2016), it was stated that:

> *The Committee reiterates its previous recommendation to incorporate the Convention into Danish law so that it can be invoked directly in courts.*[7]

B) State party response

The Government notes that Denmark's position on the issue of incorporation of international human rights conventions has been subject to thorough political debate and deliberations in two expert committees. The choice of non-incorporation merely reflects a choice of the means to ensuring Convention compliance, and the Government reiterates its firm commitment to ensuring the compliance of Danish law with the Convention. Furthermore, the Government observes that Danish courts, although the Convention is not incorporated in Danish law, do consider, and attach weight to the provisions of the Convention.

Firstly, in Denmark, the law is applied in accordance with the international conventions that Denmark has acceded to. In cases where there is doubt as to the proper interpretation of a national rule, the courts and other authorities interpret the national rules in such a way as to avoid conflict with Denmark's international obligations (the so-called "interpretation-rule"). Also, the courts and other authorities presume as a general rule that the legislature did not intend to act in contravention of Denmark's international obligations. Accordingly, the courts and the authorities must as far as possible apply national rules in a way that avoids violating international obligations (the so-called "presumption-rule").

Secondly, conventions that are not incorporated into Danish law can be and are invoked before Danish courts. Recent examples, where the UNCAT has been invoked and explicitly considered by Danish courts, include, inter alia, the following decisions and judgments:

- Supreme Court decision of 26 May 2011, case no. 365/2010, regarding the submission of evidence possibly obtained through torture committed abroad.
- Supreme Court decision of 24 October 2014, case no. 86/2014, regarding, inter alia, the conformity of the dismissal of a case with Denmark's human rights obligations, including those enshrined in the Convention.
- High Court judgment of 22 August 2016, case no. B-3448-14, regarding Danish statutes of limitation as interpreted in light of, inter alia, the Convention.

[7] Committee against Torture, Concluding observations on the combined sixth and seventh periodic reports of Denmark, CAT/C/DNK/CO/6-7, 4 February 2016 (CAT, Concluding Observations (2016)), para 13.

C) Issue summary

In August 2014, the Committee of Experts issued its report (*betænkning*) and 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]

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

- 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 former governments nor by the present government, which came into office in late 2022.

D) Suggested recommendation

The Committee reiterates its previous recommendation to incorporate the Convention into Danish law so that it can be invoked directly in courts.

LOIPR 6: VIOLENCE AGAINST WOMEN

> With reference to the Committee's previous concluding observations (paras. 44–45), please provide information on the measures taken to combat all forms of violence against women, particularly with regard to cases that involve the actions or omissions of State authorities or others that engage the State party's international responsibility in accordance with the Convention. Please also provide updated information on the protection and support services available to victims of all forms of violence against women that involve actions or omissions of the State authorities. Has the State party taken steps to ensure the availability of an adequate number of shelters for women and children subject to domestic violence? Please include statistical data, disaggregated by the age and ethnicity or nationality of the victims, on the number of complaints, investigations, prosecutions, convictions and sentences recorded in cases of gender-based violence since the consideration of the previous periodic report of Denmark. Please provide up-to-date information on the measures taken to strengthen training programmes for law enforcement officers aimed at raising awareness about domestic and sexual violence.

A) CAT position

In the Concluding Observations concerning Denmark (2016), it was stated that:

> *While welcoming the implementation of several action plans to combat violence against women, the Committee remains concerned that numerous women in the State party have experienced violence or have been exposed to threats thereof, and that the rates of prosecution and conviction remain low (arts. 2, 12, 13 and 16).*
> *The State party should assess the effectiveness of action plans in combatting violence against women and address obstacles to the effective prosecution of acts of violence against women so that the judicial remedy is increasingly sought and used successfully.*[9]

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[8] Ministry of Justice, report 1546/2014 on incorporation in the human rights field, August 2014, page 189: http://justitsministeriet.dk/sites/default/files/media/Pressemeddelelser/pdf/2014/Betaenkning_1546.pdf.

[9] CAT, Concluding Observations (2016), *supra* note 2, paras 44-45.

B) State party response

Denmark made in its report reference to the five national action plans on intimate partner violence that have been issued since 2002.

In March 2019, the Parliament adopted a bill on psychological violence in close relations (family etc.), which entered into force April 2019, and introduced a new separate section on psychological violence in close relations with a punishment up to three years (Criminal Act Article 243). In April 2019, the Danish National Police issued a set of guidelines to the police districts on cases regarding psychological violence.

Furthermore, a number of initiatives aimed at strengthening efforts against stalking have been initiated. In March 2016, the Ministry of Justice and the Ministry of Children, Education and Gender Equality presented the package of initiatives "Stop Stalking". The regulation on stalking was amended by which the police were given the possibility of imposing a temporary restraining order. In addition, in 2017, the Parliament launched the initiative "Collective effort to end violence in intimate relations.

The State noted an increase in the number of women's shelters.

C) Issue summary

As noted by the State, some progress has been noted with regards to combatting violence against women, especially by the adoption of the consent-based rape legislation and the criminalization of psychological violence in close relations.

However, with regards to the National Action Plans, we would like to note that the previous plans on intimate partner violence did not undergo evaluation and apparently, there is no plan to evaluate the current one either. Moreover, the National Action Plans do not systematically recognize nor address the underlying gender norms and stereotypes fueling violence against women. The few primary prevention measures on GBV used in recent years and included in the current plans are sporadic campaigns and a small-scale school programme, neither of which have documented effects.

The number of women who are subjected to intimate partner violence has decreased slightly since 2012.[10] However, still 4,5% of women above the age of 16 are victims of intimate partner violence.[11] Moreover, victims of intimate partner violence have the right to shelter, but this is only a suitable service for a small number of women, which the low number of women in shelters document. Finally, victims should have a right to ambulatory counselling, so they do not have to flee their home to get help.

The adoption of the consent-based rape legislation in 2021 (Criminal Act Article 216) was a landmark. The numbers indicate that 0,8% of women were victims of attempted rape and 0,4% victims of rape in year 2021.[12]

With regards to female refugees, it should be noted that the majority of women from refugee-producing countries are in Denmark based on family reunification to their spouse. They are at

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[10] VIVE, The Danish Center for Social and Science Research, Partnervold i Danmark 2020. Available on: Partnervold bliver sjældent anmeldt til politiet - vive.dk (Danish).

[11] Ibid.

[12] National Institute for Public Health, Vold og overgreb i Danmark 2021 (Report on *Violence and Abuse in Denmark 2021*). Available at Vold_og_overgreb_i_Danmark_2021_V2.pdf (Danish).

risk of losing their residence permit if they divorce their husband or he divorces them, as the permit is based on the marriage. Formally, victims of domestic violence have a right to their own residence permit, but this depends on the violence being documented and this includes a risk to the victim causing some to stay in violent or abusive relationships. In 2017, Denmark made amendments to the legislation improving chances of keeping a permit to stay after a divorce for victims of domestic violence.[13] But the problem remains, as the law still requires evidence of several issues, including the violence inflicted; that the woman has done an active effort to integrate into Danish society; and that she has ended the cohabitation because of the violence. We can refer to a case from 2015 in which the Immigration Appeals Board upheld a revocation of a woman's residence permit, even though she explained that her divorce was due to violence, and she had lived at a shelter for three months. She had explained that before that she had stayed with her husband for fear of losing her residence permit. Her job center confirmed that she had told them about the violence, but there was no medical evidence or other documentation of visible marks from the violence. The authorities did not believe that violence was necessarily the reason for the termination of cohabitation.[14]

The above-mentioned issue also relates to all who live in Denmark based on family reunification and without a permanent residence.

Moreover, many asylum-seeking women, who arrive in Denmark, have been exposed to violence and abuse, often sexual, on the journey to Europe, but no efforts are done to investigate this or offer psychological support to them.[15] Often, women in asylum centers do not feel safe, and abuses are not always reported. All asylum centers and deportation centers, which are placed in remote areas with difficult access and limited staff, are mixed, and only a few have closed corridors for women only. These factors make women feel insecure and often force them not to leave their rooms.
Finally, it should be noted that access to shelters and procedures for asylum seeking women who are victims of intimate partner violence is all quite unclear and handled in an ad hoc manner by administration and authorities.

Finally, it should be noted that asylum seeking women who are victims of intimate partner violence do not have a right to stay at a shelter, as Danish citizens do.

D) Suggested recommendations

The Committee recommends Denmark to:

1) enhance protection of female asylum seekers staying at asylum or deportation centers;
2) investigate international crimes that asylum-seeking women have been exposed to;
3) ensure that a woman can keep her residence permit after divorce if there is reason to believe that she has been threatened or exposed to violence; and
4) ensure a clear procedure for access to shelters for asylum-seeking women who are exposed to domestic violence.

[13] See https://www.nyidanmark.dk/en-GB/SituationChange/Family/Family%20reunification/Divorce.
[14] Refugees Welcome, *They don't know how much stress we have, 2023.* Available at: https://refugeeswelcome.dk/media/1300/they-dont-know_web.pdf; *VG Braunschweig, (25. februar 2022, nr. 2 B 27/22),* https://www.refworld.org/cases,DEU_VERWALT2,629f64df4.html
[15] Ibid, page 15.

LOIPR 7: TRAFFICKING

Please provide updated information, disaggregated by the age, sex and ethnicity or nationality of the victims, on the number of complaints, investigations, prosecutions and sentences recorded in cases of trafficking in persons since the consideration of the State party's previous report. Please also provide information on: (a) Any new legislation or measures that have been adopted to prevent, combat or criminalize trafficking in persons; (b) The measures adopted to ensure that victims of trafficking have access to effective remedies and reparation; (c) The measures taken to ensure that non-custodial accommodation is provided, with full access to appropriate medical and psychological support, for potential victims of trafficking while identification processes are carried out; (d) The signature of agreements with countries concerned to prevent and combat trafficking in persons.

A) CAT position

The 2016 Concluding Observations did not include a recommendation regarding trafficking.

B) State party response

In the period 2015-2018, 409 persons were identified as victims of human trafficking in Denmark. They originated from 44 different countries.

Section 262a of the Criminal Code criminalizes human trafficking and provides for a penalty of imprisonment for a term not exceeding ten years. The fifth national action plan to combat trafficking in human beings was adopted in 2018. The Director of Public Prosecutions established a database on convictions for human trafficking that is public and available at the homepage of the Prosecution Service.

C) Issue summary

This section will address the issue of victims of trafficking who seek asylum in Denmark and whether there is a risk of Denmark violating the principle of non-refoulement if deported after rejection of asylum. It is our experience that it is almost impossible for a victim of trafficking to obtain asylum in Denmark. Subsequently to being denied asylum, they are often detained at Ellebæk (see below).

In our view, the State party does not properly and in a timely manner verify whether a trafficking victim has a right of permanent residence in Denmark. Moreover, the authorities do not properly take into consideration whether the person is a victim of trafficking and whether s/he can be returned to his/her home country without violating the principle of non-refoulement. Thus, victims of human trafficking face deportation from Denmark before it has been confirmed that they are victims of trafficking, and some of them may be victims of torture.

The Committee on Civil and Political Rights (CCPR) decided the first case regarding a victim of trafficking in Denmark in 2013[16] and concluded that it would be a violation of the principle of non-refoulement to deport the person. Two other examples illustrate the issue:

A case relates to the deportation of a victim of human trafficking from Denmark to Nigeria. She is a single mother of three children and came to Denmark in 2015 as a victim of human trafficking without a valid travel document. The Refugee Appeals Board confirmed the

[16] 2285/2013.

decision of the Immigration Service and refused to grant a residence permit in Denmark. Thus, the victim will be deported, despite the risk of persecution upon return to Nigeria. The case – in which interim measures have been granted - is now pending with the CCPR.[17]

Another case relates to deportation of a victim of human trafficking from Denmark to Albania. The person arrived in Denmark in 2015 and applied for asylum. The Refugee Appeals Board found that the victim had not provided evidence that she would face persecution upon her return to Albania, or that she would be in a real danger of abuse and upheld the decision of the Immigration Service. On 16 March 2023, the CCPR decided that the victim's removal to Albania would be a violation of the principle of non-refoulement.[18] However, the Refugee Appeals Board has rejected to grant her asylum.

D) Suggested recommendation

The Committee recommends Denmark to ensure that the principle of non-refoulement is respected with regards to victims of trafficking.

ARTICLE 3

LOIPR 8: NON-REFOULEMENT

> Please describe the measures taken during the period under review to ensure that no person is returned to a country where he or she would be in danger of torture. Please indicate whether individuals facing expulsion, return or extradition are informed that they have the right to seek asylum and to appeal a deportation decision, and whether such an appeal has suspensive effect.

A) CAT position

The 2016 Concluding Observations did not include a recommendation about non-refoulement.

B) State party response

Denmark noted in its State report that the principle of non-refoulement is implemented in the Aliens Act, section 7 and 31.

C) Issue summary

In addition to the above-mentioned issue about violation of the principle of non-refoulement towards victims of trafficking, we are concerned about violation of the principle of non-refoulement in asylum cases. We note that since the last review of Denmark in 2015, a total of 88 cases about Denmark's fulfilment of the principle of non-refoulement have been submitted to four UN Committees (i.e., the Committee against Torture, the Human Rights Committee, the Committee on Children's Rights and CEDAW), see Annex 13. To our knowledge, the committees concluded in 33 cases that Denmark had violated the principle of non-refoulement. Some 28 cases were discontinued – some due to re-assessment of the case by the immigration

[17] CCPR, Case 4302/2022 (pending).
[18] CCPR, Case 2858/2016.

authorities who acknowledged that deportations would violate the principle of non-refoulement and thus gave asylum to the complainant, before a decision was made by the UN Committee.

Specifically with regards to asylum seekers who are returned from Denmark to Croatia according to the Dublin regulation[19], we draw the Committee's attention to the fact that in March 2023, the Danish Refugee Appeals Board for the first time decided, that asylum seekers can be returned to Croatia after the Dublin regulation if the country can provide a guarantee that they will take the case under consideration for asylum.[20] This is in contrast to Country of origin documentation and "witness statements" from several asylum seekers which support that they are asked to leave the country, exposed to push-backs and do not have their asylum case processed by the authorities in Croatia.[21] We maintain the view that the Refugee Appeals Board is at risk of violating the principle of non-refoulement by deciding to transfer asylum seekers to Croatia despite the lack of a formal guarantee from the Croatian authorities.

We are also very concerned about the risk of violation of the principle of non-refoulment in the asylum process when no medical examination of victims of torture is carried out (see below LOIPR 10).

See further regarding the use of diplomatic assurances in asylum cases under LOIPR 11.

D) Suggested recommendation

The Committee recommends Denmark to respect, in law and in practice, its non-refoulement obligations under Article 3 of the Convention and make substantial efforts to determine whether there are grounds for believing that a rejected asylum seeker would be in danger of being subjected to torture if returned to his or her country of origin (refoulement) or to a country from which he or she will be in risk of being sent to his or her country of origin (chain refoulement).

[19] Regulation (EU) No 604/2013 European Parliament and Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person. EUR-Lex - 02013R0604-20130629 - EN - EUR-Lex (europa.eu)

[20] For information on the Refugee Appeals Boards practice on return to Croatia, see Praksis - Fln.

[21] The position of the Refugee Appeals Board is in contrast with a decision by the German Constitutional Court that in 2022 concluded that diplomatic assurances in cases of asylum seekers being transferred to Croatia would not be enough to secure the asylum seekers basic rights and secure protection from refoulement. For the Court decision please see VG Braunschweig, (25. February 2022, no. 2 B 27/22), https://www.refworld.org/cases,DEU_VERWALT2,629f64df4.html

LOIPR 10: MEDICAL EXAMINATIONS OF VICTIMS OF TORTURE

In the light of the Committee's previous concluding observations (paras. 22–23), please provide detailed information on the measures adopted to ensure that the specific needs of vulnerable persons seeking asylum in Denmark, including victims of torture and/or trauma, are fully taken into consideration and addressed in a timely manner. In this regard, please provide an update on the measures taken to systematically allow medical examinations for signs of torture with a view to corroborating allegations of torture during asylum procedures, following the decision adopted by the Committee in communication No. 634/2014.

A) CAT position

In its Concluding Observations concerning Denmark (2016), it was stated that:

> *The State party should (a) put into place procedures for the systematic screening and medical examination of alleged torture victims by qualified personnel throughout the asylum process*[22]

B) State party response

Since the last review of Denmark by the Committee, no changes have been made to the procedure regarding asylum seekers, who claim to be victims of torture, and who would like to request a medical examination during the asylum procedure. In cases where torture is invoked as one of the grounds for asylum, the immigration authorities can initiate a medical examination of the asylum seeker to identify whether the asylum seeker is a victim of torture before deciding on the application for asylum. A medical examination to assess for signs of torture will be conducted if of significance to the decision regarding the application for asylum.

The task of the Police – upon arrival of asylum seekers - solely consists of an initial registration of the individual's name, date of birth, nationality, etc. The case is then transferred to the Immigration Service. If the Police, during this initial registration, becomes aware of an asylum seeker who is suffering from physical or mental illness, the police can contact the Danish Red Cross, where healthcare professionals are employed. The police also provide the individual with guidance about the possibility of establishing contact with the Danish Refugee Council.

C) Issue summary

We note that the Department of Forensic Medicine has conducted 25 medical examinations in the period from 2015 to 2021.[23] The number of requests by the Refugee Appeals Board peaked in 2016, which was the year of the publication of the Committee's last Concluding Observations to Denmark, when the Board requested nine torture examinations from the Department of Forensic Medicine. However, in the 4-year period from 2018-2021, the Board requested only nine torture examinations. The Immigration Service requested two torture

[22] CAT, Concluding Observations (2016), *supra* note 2, paras 23.

[23] The Ministry of Immigration and Integration, response to parliamentary question no. 653, 30 August 2021. Available at: https://www.ft.dk/samling/20201/almdel/uui/spm/657/svar/1805056/2438659/index.htm (Danish). Statistics have also been retrieved from the Danish Department of Forensic Medicine. See also Article published in the Danish newsletter "Information", Myndighederne foretager markant færre torturundersøgelser af asylansøgere end tidligere (Authorities conduct significantly fewer torture investigations of asylum seekers than before), 10 January 2022. See: https://www.information.dk/indland/2022/01/myndighederne-foretager-markant-faerre-torturundersoegelser-asylansoegere-tidligere (Danish).

examinations in 2017, but to our knowledge there has been no other requests since the last review of Denmark by the Committee.

The Committee's General Comment no. 4 stipulates that:

> *[…] In particular, an examination by a qualified medical doctor, including as requested by the complainant to prove the torture that the complainant has suffered, should always be ensured, regardless of the authorities' assessment of the credibility of the allegation, so that the authorities deciding on a given case of deportation are able to complete the assessment of the risk of torture on the basis of the result of the medical and psychological examinations, without any reasonable doubt.*[24]

The Refugee Appeals Board does not agree with the recommendation of the Committee, and in several decisions, it has been decided not to initiate a medical examination, stating that:

> *The Refugee Appeals Board is aware that the UN Committee against Torture in its "General Comment No. 4" points 40-41 recommends that a torture investigation is initiated, regardless of whether the relevant authority finds it likely that the applicant has been subjected to torture or not. However, it is the practice of the Refugee Appeals Board to decide on the need for such investigations on a concrete basis and not on the basis of a general standard. (our translation).*[25]

General Comment no. 4 was dealt with at the Refugee Appeals Board's Coordination Committee's meeting on 19 April 2018, where the committee noted that this was not in accordance with the Boards practice, and if the practice would be maintained, criticism from CAT could be expected.[26] The Refugee Appeals Board therefore requested information on the position of the Ministry of Immigration and Integration on the new General Comment. At the Coordination Committees meeting on the 28 April 2022,[27] the committees' members were informed that the Ministry of Immigration and Integration had answered the request for clarification of their position by mail of 3 March 2022. The Ministry replied that it was not contrary to Denmark's international obligations to maintain the current practice of not following General Comment No. 4, since CAT's recommendations are not legally binding. The Coordination Committee then decided to continue the practice of only instigating a torture assessment if they find it necessary and not when the asylum seeker has valid reasons for requesting an examination.

We note that the Committee against Torture has assessed 16 complaints against Denmark since November 2015 in which the question was whether Denmark had violated Article 3 of the Convention, i.e., the principle of non-refoulement. Five of these cases related to medical examination, and the Committee found violation of Article 3 of the Convention in all the cases. This "conflict" between the Refugee Appeals Board and the Committee is also illustrated by the following cases:

- Case submitted to CAT in September 2023, and not yet in the UN registration: Ivorian national sought protection of the Danish state due to harassment and physical abuse, as well as torture carried out by the rulers of the Ivory Coast. The Refugee Board found no basis for initiating a torture examination of the victim and confirmed the decision of the

[24] Committee against Torture, CAT/C/GC/4, 4 September 2018, para. 41.
[25] The Refugee Appeals Board, Irak/2023/5/MKTO, decision of March 2023. Available at Praksis - Fln.
[26] Summary of the meeting available at: Microsoft Word - 18-056324-011 Referat af møde i k-udvalget den 19. april 2018 (2).docx 18184518_1_0.DOCX (fln.dk)
[27] Summary of the meeting available at: Referat-koordinationsudvalget-den-28-april-2022.pdf (fln.dk)

Immigration Service of 22 March 2023. As of 28 September 2023, he is detained at Ellebæk.

- In January 2023, the Refugee Board upheld the Immigration Service's decision regarding a male citizen from Iraq (ethnic Kurd and Sunni Muslim). The Board concluded that he had given strongly divergent and expansive explanations regarding key elements of the asylum motive and a number of other matters. He invoked torture as part of the basis for asylum and made the claim that the case should be adjourned pending the completion of a torture examination. The Board then noted that even if it is assumed that he had been subjected to torture, the Board finds that there is no basis for assuming that the many divergences in the complainant's explanation can be attributed to memory problems. Taking into account the circumstances of the case, including his generally unreliable explanation, the Refugee Board concluded that it was not necessary to obtain further information about the claimed torture before a decision was made in the case.[28]

We find it extremely problematic that the immigration authorities do not follow the recommendations of the Committee. As explained above, there are several cases with very vulnerable asylum seekers who have been subjected to torture and suffers from memory-loss, concentration-issues and poor communication skills because of the torture and received negative decisions in their asylum cases when the Immigration Service and the Refugee Appeals Board failed to consider cognitive and memory impairments in relation to credibility assessment and rejects claim of torture.

D) Suggested recommendation

The Committee should reiterate its recommendation to the State party to follow the recommendation of the Committee regarding medical examination of alleged victims of torture.

LOIPR 11: DIPLOMATIC ASSURANCES

> Please indicate the number of refoulements, extraditions and expulsions carried out by the State party during the reporting period on the basis of the acceptance of diplomatic assurances or the equivalent thereof, as well as any instances where the State party has offered such diplomatic assurances or guarantees, and what measures have been taken in such cases with regard to subsequent monitoring.

A) CAT position

The 2016 Concluding Observations did not address the issue of diplomatic assurances.

[28] See also CAT 985/2020 (discontinued): Somalian citizen from a small town near Mogadishu - an area controlled by al-Shabaab. He fled to Denmark and applied for asylum, but his application was rejected. If deported back to Somalia, his life would be in danger, and he would risk serious ill-treatment. The Refugee Appeals Board rejected a medical examination and rejected to grant asylum, thus forcing him to go back to Somalia within 15 days. The case was re-assessed by the Board and ultimately, he was granted asylum.

B) State party response

In its State party report, Denmark noted that in the period 10 December 2015 - 31 May 2016, Denmark did not extradite any persons on the basis of the acceptance of diplomatic assurances. In the period February 2017 - 16 May 2019, Denmark extradited 33 persons on the basis of the acceptance of diplomatic assurances or the equivalent thereof regarding prison conditions. No other statistics were provided.

It was noted that Denmark has deported one individual to Morocco, who had been expelled. The person argued that he would risk treatment contrary to Article 2 and 3 of the ECHR in Morocco. The Government disagreed and did not find that he was at risk of such treatment. The European Court of Human Rights (ECtHR) dismissed the case as manifestly ill-founded.[29]

C) Issue summary

A new return law (hjemrejselov) entered into force in 2021.[30] Various NGOs were critical of the suggested possibility in the law to use diplomatic assurance in asylum cases.[31]

In August 2023, Denmark received a diplomatic assurance from Croatia in an asylum case concerning transfer to Croatia according to the Dublin regulation. It included the following one sentence:

> *The Ministry of Interior of the Republic of Croatia guarantees that examination of the application of international protection of the said person will take place in accordance with national legislation and obligations under EU and international laws.*

It is of concern that no effective remedy is in place for asylum seekers and that there is no information available as to how the asylum seeker should secure his/her rights if Croatia does not follow the diplomatic assurance (see also LOIPR 8).

In addition to asylum cases, Denmark is seeking to use diplomatic assurances in other cases:

By way of example, on 23 June 2023, the Danish Attorney General recommended to the city court of Hillerød that Niels Holck be extradited for prosecution in India.[32] It is now up to the courts to make the final decision. The trial is expected to take place in the fall of 2024. The Government of India requested the extradition of Niels Holck for prosecution in India the first time in 2002. In 2011, the Eastern High Court of Denmark decided that extradition could not take place, since the Court assessed that the conditions for extradition in Danish legislation were not fulfilled. Apparently, India has provided Denmark with an assurance that Niels Holck will not be placed in a prison, but in a house during the period of pre-trial detention. No further information about the assurance is made public. The Coalition is concerned that if Niels Holck will be extradited to India, he might be subjected to torture or other forms of ill-treatment.

D) Suggested recommendations

[29] Application 74411/16.
[30] Currently LBK 2023-8-17.
[31] See Annex 10 for DIGNITY's response to the draft bill.
[32] The Danish Attorney General, 23 June 2023. Press release available at: Niels Holcks udleveringssag skal for retten | Anklagemyndigheden (Danish).

The Committee should urge Denmark to refrain from using diplomatic assurance as a means of returning persons to countries known for practising torture.

The Committee should urge Denmark not to use diplomatic assurances in asylum cases, when it has been established that an asylum seeker is at risk of treatment contrary to Article 3 of the Convention, if returned.

ARTICLE 10

LOIPR 16: TRAINING ON HOW TO IDENTIFY SIGNS OF TORTURE AND ILL-TREATMENT

> With reference to the previous concluding observations (paras. 46–47), please provide detailed information on the training programmes for judges, prosecutors, forensic doctors and medical personnel dealing with detained persons on detecting and documenting the physical and psychological sequelae of torture, including whether they contain specific training with regard to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul

A) CAT position

In its Concluding Observations concerning Denmark (2016), it was stated that:

> *While noting the training courses delivered by the Red Cross, the Committee is concerned that the coverage of the issue of torture is elementary in the training programme for medical professionals in the State party. The Committee also regrets the lack of information on the assessment of effectiveness of torture-related training programmes in reducing the occurrence of torture and ill-treatment (arts. 10 and 16).*
> *The State party should:*
> *(a) Enhance the content of torture-related courses in the curricula of medical students, such as on the use of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (the Istanbul Protocol) and on the care for victims of torture;*
> *(b) Assess the effectiveness of training programmes, such as those for law enforcement officers, in reducing incidents of torture and ill-treatment.*[33]

B) State party response

The State party stated that the education programmes for medicine students requires that the students must obtain knowledge of the Convention Against Torture and the medical aspect of torture. The postgraduate medical education and training programme in forensic medicine describes specifically requirements for obtaining skills in examining victims of torture. Competences on identification of torture lesions, examination of victims and knowledge about the obligation to report are achieved during training. Nurses are trained to observe and identify phenomena associated with reactions to psychological problems and suffering.

With regard to the education of prosecutors, the Director of Public Prosecutions offers almost 50 courses which cover mandatory training for all newly hired prosecutor trainees and optional courses for all prosecutors. There is no course specifically on the sequelae of torture or on the

[33] CAT, Concluding Observations (2016), *supra* note 2, para. 46-47.

Istanbul Protocol. However, international legislative obligations and human rights issues are an important part of the content in all courses. Similarly, with regard to judges, no special training focusing on the Istanbul Protocol alone is offered.

C) Issue summary

With regards to pre-graduate education of medical students, medical aspects of torture and to a lesser extent also the relevant conventions are part of the training curriculum for forensic medicine at the medical faculties.[34] However, experience – among others from the Danish NPM – shows that very few if any prison doctors are familiar with international standards and their own professional obligations, e.g. as put forward in the Istanbul Protocol, and there is no post-graduate training in identifying signs of torture and ill-treatment for them or other health professionals.

The specialist training program for forensic doctors[35] is an exception to this general state of affairs. Their specialist training program includes specific learning objectives in relation to examining victims of torture as well as a 6-day training on victim examination including torture victims. The curriculum does not mention international conventions or standards.

DIGNITY provides a 2,5 - 3 hours session as part of the permanent pre-graduate curriculum for police officers. DIGNITY also provides a 1-hour training for the medical students at University of Copenhagen's course in clinical social medicine and is invited to other professional training events like, e.g., the abovementioned specialist training for forensic doctors.

D) Suggested recommendations

The recommendation given by the Committee in 2016 should be reiterated.

The Committee should recommend to Denmark to strengthen existing capacity building activities with the aim of ensuring that all health professionals – including prison health professionals and those working in migrant detention – are aware of their obligations in relation to identification, documentation and reporting of cases of torture and ill-treatment and have knowledge about relevant international standards.

ARTICLE 11

LOIPR 18: OVERCROWDING IN DANISH PRISONS

Please provide statistical data, disaggregated by sex, age and ethnic origin or nationality, on the number of pretrial detainees and convicted prisoners and the occupancy rate of all places of detention.

A) CAT position

The 2016 Concluding Observations did not include a recommendation regarding overcrowding in Danish prisons.

[34] Examples: Copenhagen: Course and Exam in Forensic Medicine (ku.dk) and Aarhus: Retsmedicin (au.dk)
[35] See description of the education at 1 (sst.dk)

B) State party response

The State party replied in 2018 that the occupancy rate of all places of detention was 99,5%.

C) Issue summary

The Danish prison system continues to face high occupancy levels. Within the first quarter of 2023, the occupancy rate was at 100,0 pct.,[36] showing no improvement from previous years, where the annual average has remained at between 99,6 and 100,3 pct. (2020-2022).[37] The Danish Prison and Probation Service has planned to increase the capacity in the coming years, including by renting prison space in Kosovo.

As of 19 September 2023, the occupancy rate in detention facilities (arrestpladser) was an average of 104,1 pct.[38] However, in some facilities the occupancy rate was higher and, by way of example, at 113 pct in Kalundborg, Næstved and Vejle.[39]

Until the capacity has been increased, we are concerned about the situation. In many pre-trial detention facilities, the pre-trial detainees are in *de facto* isolation due to, *inter alia*, communal areas been converted into cells for inmates and shortage of staff.

A prison cannot function effectively when operating at 100 percent of its capacity. There must be some margin for e.g., transferring incompatible prisoners from one wing to another and for receiving additional prisoners. Moreover, overcrowding and lack of staff capacity increase the risk of violation of fundamental human rights.[40]

Reference is also made to the CPT's 31st General Report which outlines the consequences of prison overcrowding for prisoners' health and well-being.[41]

The Council of Europe's White Paper on Prison Overcrowding stated that "[i]f a given prison is filled at more than 90% of its capacity this is an indicator of imminent prison overcrowding. This is a high-risk situation, and the authorities should feel concerned and should take measures to avoid further congestion."[42] We also raised this issue to the CPT in 2019 (Annex 8).

D) Suggested recommendation

Denmark is recommended to take effective steps to address the issue of overcrowding until increased capacity has been obtained.

[36] The Danish Prison and Probation Service, *Numbers from the Danish Prison and Probation Service – 1st quarter of 2023*, available at: https://www.kriminalforsorgen.dk/wp-content/uploads/2023/08/noegletal-1kvartal-2023-aa.pdf) (Danish).
[37] The Prison and Probation Service, Statistics 2020, p. 16; Statistics 2021, page 20; 4th quarter of 2022.
[38] Information on file with the coalition obtained from the Prison and Probation Service by letter of 22 September 2023.
[39] Ibid.
[40] See Institute for Human Rights, Forhøjet Risiko for Krænkelse (2021).
[41] 31st General Report of the CPT European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) , 1 January - 31 December 2021, available at 1680a63c72 (coe.int)
[42] Committee of Ministers of Council of Europe, White paper on prison overcrowding, CM (2016)121-add3, 23 August 2016, para 20.

LOIPR 20: LACK OF SEPARATION OF PRE-TRIAL DETAINEES AND CONVICTED INMATES

Taking note of the Committee's previous concluding observations (paras. 36–37) and the State party's follow-up replies, please indicate the measures taken to ensure that pretrial detainees are separated from convicted prisoners and that juveniles are separated from adults in all places of detention. Please comment on reports that remand prisoners are subjected to severe restrictions regarding contact with the outside world. Please indicate whether the State party has taken measures to bring its legislation and practice on solitary confinement into line with international standards. This should include data on the use of solitary confinement during the period under review, and an indication of its duration (paras. 32–33). Please inform the Committee about the measures taken to address concerns regarding the high number of inmates with mental health problems in the institutions of the Prison and Probation Service

A) CAT position

In its Concluding Observations concerning Denmark (2016), it was stated that:

> *The Committee is concerned that occasionally convicts serving short sentences are placed in remand prisons (art. 16). The State party should cease the practice of placing convicted persons with pretrial detainees.*[43]

B) State party response

As stated in the State party report, according to national law, convicted prisoners are, as a main rule, placed in state prisons, whereas remand prisoners are placed in remand prisons or in separate units in state prisons. In certain circumstances, however, a convict may be placed in a remand prison together with remand prisoners.

Thus, a convict may serve a short-term sentence in a remand prison if deemed necessary in view of the overall utilization of the places in the institutions of the Prison and Probation Service, and a convict may be placed in a remand prison for individual reasons, for instance in order to protect the convict from assault, to prevent escape, for medical reasons or for compelling personal reasons.

As regards the risk of subjecting remand prisoners to negative influence from convicted prisoners, a convict placed in a remand prison may take part in joint activities with remand prisoners, but such joint activities take place under supervision of the staff or in the presence of staff members, if deemed necessary for reasons of order or security.

The Government noted that the remarks made in paragraph 33 of the Government's reply to the Committee's previous concluding observations, regarding special units for certain groups of inmates, e.g., members of organized criminal groups are no longer relevant, as such units no longer exist.

The NGO-coalition also raised this issue to the CPT in 2019 (Annex 8).

[43] CAT, Concluding Observations (2016), *supra* note 2, paras 36-37.

C) Issue summary

As a result of the overcrowding in Danish prisons, we can document that convicted persons are placed at remand institutions and thereby subjected to the regime in remand detention, including less activities, less work etc.

We encourage Denmark to provide to the Committee the statistics on how many convicted persons are currently placed at remand institutions.

D) Suggested recommendation

The State party should cease the practice of placing convicted persons with pre-trial detainees.

LOIPR 20: POLICE IMPOSED RESTRICTIONS ON REMAND PRISONERS' CONTACT WITH THE OUTSIDE WORLD

Please comment on reports that remand prisoners are subjected to severe restrictions regarding contact with the outside world.

A) CAT position

The 2016 Concluding Observations did not include a recommendation regarding police-imposed restrictions on remand prisoner's contact with the outside world.

B) State party response

Remand prisoners' and convicted prisoners' access to visits, exchange of letters and phone conversations are regulated in the Administrative Order on Detention, Sections 40–76, and the Criminal Enforcement Act (*straffuldbyrdelsesloven*), Sections 51–57, respectively.

According to Section 771(1), a remand prisoner can receive visits to the extent allowed to maintain order and security in the remand prison. The police may, in the interest of ensuring the purpose of the remand custody, oppose that a remand prisoner receives a visitor, or the police may demand that a visit takes place under supervision.

According to Section 772 (1), a remand prisoner has the right to receive and send letters. The police may look through the letters before the remand prisoner receives or sends the letters. The police must deliver or send the letters as soon as possible unless the content could be damaging to an investigation or to the maintenance of order and security in the remand prison.

Similarly, the police may, to ensure the purpose of the remand custody, oppose that a remand prisoner has phone conversations.

C) Issue summary

Denmark has a long-standing practice of restricting the correspondence and visits of pre-trial detainees - a measure labeled B&B with reference to the need to ensure that the criminal suspect does not interfere with the criminal investigation (see NGO report 2015, page 16). This creates a regime making it exceedingly difficult to maintain meaningful contact with family members

and children, the latter who have a right to maintain contact with their parents when it is in the best interest of the child. Today, many pre-trial detainees have restrictions on correspondence and visits.[44] Such measures are supposed to be based on specific individual circumstances, but practice indicates that they are applied more or less automatically without any individual argumentation or concerns.

The CPT continues to criticize that the police still in a high number of cases, imposed restrictions on the pre-trial detainees' right to contact with the outside world (visits, letters, telephone calls etc.).[45]

D) Suggested recommendation

The State party should limit the extensive use of restrictions on detainees' right to contact with the outside world (visits, correspondence, telephone calls etc.).

LOIPR 20: SOLITARY CONFINEMENT AS A DISCIPLINARY SANCTION

> Please indicate whether the State party has taken measures to bring its legislation and practice on solitary confinement into line with international standards. This should include data on the use of solitary confinement during the period under review, and an indication of its duration.

A) CAT position

In its Concluding Observations concerning Denmark (2016), it was stated that:

> *The State party should bring its legislation and practice on solitary confinement into line with international standards, by:*
> *(a) Abolishing solitary confinement of minors and as a disciplinary measure in law; ...*
> *(c) Limiting the length of permissible solitary confinement to a maximum of 15 days.*[46]

B) State party response

According to the Sentence Enforcement Act (SEA), Section 67, the Prison and Probation Service is allowed to use disciplinary punishment, including solitary confinement, against pre-trial detainees and convicted inmates who commit certain breaches of the law or disciplinary offences. Solitary confinement includes penalty cell, cf. SEA Section 68.

C) Issue summary

There are four types of placements which constitute or may amount to solitary confinement:

1. Exclusion from association, cf. SEA § 63;
2. Voluntary exclusion from association, cf. SEA § 33;
3. Solitary confinement in a security cell (*sikringscelle*); and

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[44] 2018: 58,0% correspondence restrictions and 67,9% visit restrictions; 2020: 65,7%/65,6%; 2022: 62,9%/62,8%. https://menneskeret.dk/status/faengsler-frihedsberoevelse#toc-vores-vigtigste-anbefalinger (Danish).
[45] CPT report to the Danish Government on the visit to Denmark of 7 January 2020, paras 35-38, see: 1680996859 (coe.int).
[46] CAT, Concluding Observations (2016), *supra* note 2, para. 32-33.

4. Solitary confinement as a disciplinary sanction (*strafcelle*), cf. SEA § 68.

This section will deal with the latter issue (see below regarding issue 2).

A new disciplinary system has entered into force. One of the main goals was to reduce the use of solitary confinement as a disciplinary sanction (punishment cell), which we welcome as a positive development. The main rule is now that solitary confinement should not be used for more than 14 days, cf. SEA § 70.[47] In ”special cases" (”særlige tilfælde”), solitary confinement can exceptionally be for more than 14 days and for up to four weeks.

With regards to young people under the age of 18, solitary confinement can be used as a disciplinary sanction with an upper limit of seven days. The possibility for exemption to this rule exists and application for longer duration is possible in cases related to violence against staff, cf. SEA § 70.

We do not yet have statistics on the use of solitary confinement as a disciplinary sanction since the entering into force of the new system, but we expect a reduction in the overall use.

DIGNITY and others have criticized the use of punishment cell for young people under the age of 18 due to the considerable consequences for their health (see Annex 1).

D) Suggested recommendations

The Committee urges Denmark to abolish solitary confinement as a disciplinary sanction.

The Committee urges Denmark, pending the abolition of solitary confinement, at a minimum, not to use solitary confinement as a disciplinary sanction towards children and to make the 14-day rule an absolute maximum in all cases in which solitary confinement is used as a disciplinary sanction.

LOPIR 20 – VOLUNTARY EXCLUSION FROM ASSOCIATION

Please indicate whether the State party has taken measures to bring its legislation and practice on solitary confinement into line with international standards. This should include data on the use of solitary confinement during the period under review, and an indication of its duration.

A) CAT position

In its Concluding Observations concerning Denmark (2016), it was stated that:

> *The State party should bring its legislation and practice on solitary confinement into line with international standards, by:*

[47] Ved ikendelse af strafcelle som disciplinærstraf fastsættes varigheden under hensyn til overtrædelsens art og omfang til et tidsrum af højst 14 dage, jf. dog stk. 2.For unge under 18 år fastsættes tidsrummet dog til højst 7 dage, medmindre sagen angår vold mod personale i institutionen. *Stk. 2.*Der kan i særlige tilfælde ikendes strafcelle i et tidsrum på over 14 dage, dog højst 4 uger.

(d) Abolishing the practice of voluntary exclusion from association and putting into place mechanisms for the immediate removal and relocation of detainees who fear for their own safety.[34]

B) State party response

The State Party did not comment on the practice of voluntary exclusion from association.

C) Issue summary

With regards to voluntary exclusion from association, the Ombudsman published a thematic report about the topic in 2019[48] and recommended better monitoring by the prison staff of detainees in voluntary exclusion, as well as the preparation of guidelines, as exist with regards to compulsory exclusion from association.

It is the main rule that detainees, as far as possible, 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 who rank at the low end of the informal prisoner hierarchy. These vulnerable persons lack 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. In 2021, voluntary exclusion from association was used 304 times in total for both closed and open prisons.

D) Suggested recommendations

The Committee should recommend to Denmark to ensure that the Prison and Probation Service 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 to another department or institution that offers conditions under which the detainees would feel safe.

The Committee also recommends the Prison and Probation Service to monitor the individual length of solitary confinement of voluntary exclusion from association; and to develop instructions on voluntary exclusion from association – in line with the existing ones concerning forced exclusion - with guidelines on the prevention, end and early intervention of psychological harm and follow-up.

[48] Temarapport 2018 på voksenområdet, see www.ombudsmanden.dk. (Danish).

LOIPR 23: USE OF PEPPER SPRAY

Bearing in mind the Committee's previous concluding observations (paras. 30–31), please clarify whether the State party has revised the regulations governing the use of pepper spray by police and prison staff.

A) CAT position

In the Concluding Observations concerning Denmark (2016), the Committee stated that:

> *The State party should take measures to further restrict the use of pepper spray, and prohibit its use in confined spaces, on persons with mental disabilities or on individuals who have been brought under control.*[49]

B) State party response

The State party mentioned in its response that:

By Act no. 1722 of 27 December 2016, the Parliament adopted an amendment to the Act on Police Activities regarding the use of pepper spray by police staff. The purpose of the amendment was to put the already existing rules into statutory form. Generally, the Act on Police Activities stipulates that police officers may use pepper spray only if necessary and justified, and only by such means and to such an extend as is reasonable with regards to the interest which the police are seeking to protect. In the specific assessment the number of persons involved, and their physics and state of mind must, inter alia, be taken into account. In addition, the police must exercise particular restraint with the use of pepper spray on handcuffed individuals. Furthermore, pursuant to the Act on Police Activities, Section 20 a, the police must, to the extent possible, warn a person of the intention of using pepper spray before the person is exposed hereto. In addition, the person exposed to pepper spray shall immediately receive medical attention if needed.

The National Police continuously monitor the use of pepper spray by police staff and has noted that the use of pepper spray has declined over the last years.

C) Issue summary

Use of pepper spray by police

According to the National Police's (Rigspolitiet) annual report for 2021 on the use of force by the police, the number of reports about the use of pepper spray by the police has remained relatively stable in recent years. [50] Police officers are obliged to make a report in the system, when pepper spray has been used on duty. In 2021, some 579 instances of pepper spray were registered. In nine of these cases, the use of pepper spray resulted in the exposed person being registered as "injured" and in 11 cases as treated for injuries in the Emergency room.

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[49] CAT, Concluding Observations (2016), *supra* note 2, paras. 31.
[50] The Danish National Police, Annual Report for 2021, published in June 2022. Available on: https://politi.dk/-/media/mediefiler/landsdaekkende-dokumenter/statistikker/magtmidler/aarsrapport-politiets-magtanvendelse-2021.pdf (Danish).

According to the police, pepper spray is an effective and relatively mild means of force that usually only causes short-term discomfort to the people who are exposed to pepper spray.

We agree with the State party that pepper spray may only be used when strictly necessary and the use must be proportionate with the interest which the police are seeking to protect.

The prohibition of inhuman and degrading treatment should be respected in these cases, and therefore, in no circumstances can pepper spray be used towards individuals brought under control. A case from 13 September 2023 illustrated the issue: a 43-year-old man drove his bike near the area of Christiania in Copenhagen in which the police had established a visitation zone. The police stopped him due to use of mobile phone while cycling.[51] Subsequently, he was arrested and put in handcuffs while on the ground face down. A video filmed by a passerby shows that the police used pepper spray although it seemed from the video that he had already been brought under control by the police. DIGNITY and others have raised questions about the necessity and proportionality of the use of pepper spray in this specific case and argued that it could be in breach of Article 16 of the Convention.

Use of pepper spray by prison staff

Since 2011, prison staff have been allowed to use pepper spray. In 2017, the legislation was amended to allow for further use of pepper spray. There was an increase in the use of pepper spray by prison staff in the period from 2016 to 2017 (from 67 to 125 incidents). The latest figure from 2021 indicates 87 incidents.[52]

In 2018, the Ombudsman visited a detention center due to a specific complaint about the staff's use of pepper spray.[53] The Ombudsman criticized the prison staff's lack of understanding of the circumstances under which pepper spray can be used legally.

D) <u>Suggested recommendation</u>

We suggest that the Committee reiterates its previous recommendation to the State party and urge Denmark to further regulate the use of pepper spray to prevent violations of the prohibition of inhuman and degrading treatment.

[51] Article published in the Danish newsletter Politiken, "Efter voldsom anholdelse af far ved Christiania: »Jeg er sikker på, at der ikke vil blive set på den her konkrete sag med milde øjne«", published on 16 September 2023. (Danish).
[52] The Department of Prisons and Probation, statistics report for 2021, page 35. Available at: https://www.kriminalforsorgen.dk/wp-content/uploads/2019/01/afsoning-engelsk.pdf. (Danish).
[53] The Danish Paliamentry Ombudsman, *Anvendelse af peberspray I X Arrest (the use of pepper spray in x detention center),* 21 December 2018. Available at: https://www.ombudsmanden.dk/find/nyheder/alle/brug_af_peberspray/udtalelse/.

LOIPR 24: DETENTION OF ASYLUM SEEKERS (ELLEBÆK)

In the light of the previous concluding observations (paras. 22–25), please indicate the measures taken by the State party to ensure that detention of asylum seekers, including unaccompanied children, is used only as a last resort, where necessary and for as short a period as possible, and to further implement in practice alternatives to detention. Please provide statistical data, disaggregated by sex, age and nationality, on the number of persons detained pursuant to the Danish Aliens Act. What concrete measures have been taken to address concerns regarding the amendment to the Aliens Act adopted in November 2015 that allows the temporary suspension of fundamental legal safeguards, including judicial oversight over detention, in situations of a high influx of migrants and asylum seekers qualified as "special circumstances"? Please also provide information on the steps taken to ensure the early identification of victims of torture and other vulnerable individuals and groups, and to ensure that such individuals are not detained within the context of asylum procedures (paras. 22–23). What concrete measures have been taken to improve conditions of detention in deportation centres, in particular at the detention facility of Vridsløselille? Please provide information on educational and recreational activities as well as adequate social and health services in asylum

A) CAT position

The Concluding Observations concerning Denmark (2016) stated regarding Ellebæk that:

> *The Committee regrets that the State party considers prison-like structural layout and fixtures at the Ellebæk Prison as necessary for security reasons. The Committee also finds excessive the total length of detention of asylum seekers of 18 months authorized by Article 37 of the Aliens Act. (arts. 11 and 16). The State party should:*
> *(a) Reduce the length of administrative detention of asylum seekers authorized under the Aliens Act for as short a period as possible, bearing in mind that detention should be used as a measure of last resort; (b) Ensure that facilities accommodating asylum seekers are appropriate for their status and situations, especially as some of them may be victims of torture or ill-treatment. As such, the State party should alter layout and fixtures so as to change the carceral appearance of facilities hosting asylum seekers.*[54]
> *The State party should (a) put into place procedures for the systematic screening and medical examination of alleged torture victims by qualified personnel throughout the asylum process, including at reception centres and places of detention such as the Ellebæk Prison; and (b) ensure that victims of torture are not held in places of deprivation of liberty and have prompt access to rehabilitation services.*[55]

B) State party response

If less coercive measures such as depositing the alien's passport, ordering a designated residence or a duty to report to the police are not deemed sufficient to secure the possibility of a return, the police shall as far as possible, upon a concrete assessment, administratively detain the alien, cf. section 36 (1), first sentence. The decision to detain an alien can be appealed by the alien to the National Police Commissioner if the alien is released within 72 hours, cf. section 48 (3). This does not suspend enforcement of the decision.

If the alien is not released within 72 hours the decision to detain shall be reviewed by a court of justice. The court will assign the alien a lawyer and rule on the lawfulness of the detention, cf. section 37 (1), first sentence.

[54] CAT, Concluding Observations (2016), *supra* note 2, para. 24-25.
[55] Ibid., para. 22-23.

If the decision to detain is upheld, the court must set a time limit for the continued detention. The time limit can subsequently be extended by the court, but only for four weeks at a time, cf. section 37 (3), second and third sentences. When assessing the duration of the detention, the court considers the principle of proportionality and Denmark's international obligations. In this connection, the court shall take into account whether the return proceedings are progressing and whether there are prospects of a return within a reasonable period of time.

Detention for the purpose of return under section 36 may not exceed a period of six months. The court may extend this period for up to 12 additional months if there are special circumstances, including cases where, notwithstanding all reasonable efforts, the return process may be expected to take a long time owing to the alien's lack of cooperation in the return, or delays in obtaining the requisite travel documents and entry permit. The detention must be as brief as possible and may only be upheld while the return proceedings are being arranged and duly carried out.

The above-mentioned rules do not distinguish between adults and minors, and administrative detention of children – including unaccompanied children – is also covered by these provisions. It should be noted that as a general rule the police does not detain minors pursuant to the provisions of the Aliens Act, and such cases only rarely happen and for short periods of time. The Government agrees that detention of children should only be used in exceptional cases, as a measure of last resort and for the shortest time possible.

When a foreigner arrives at the Centre for Foreigners (Ellebæk for the first time, a nurse attends the foreigner as soon as possible. If necessary, the nurse can refer to a doctor. The healthcare professionals in the institutions belonging to the Prison and Probation Service (Ellebæk) are aware of the fact that the detainees might have been victims of abuse, violent trauma or torture – even in cases where a detainee denies such a thing when directly asked. Thus, the healthcare professionals carry out an individual and specific assessment of the detainee's health condition. If there is suspicion of abuse, torture or ill-treatment, or if the detainee speaks of nuisances caused by torture, relevant questions will be asked. If deemed necessary, the detainee will be referred to a doctor, who takes care of the detainee as soon as possible after the referral. The doctor may refer the detainee to further examination, e.g., at a hospital. The institution's healthcare professionals will simultaneously perform treatment at the institution.

C) Issue summary

There are three deportation centers in Denmark: Kærshovedgård, Avnstrup and Ellebæk. The following section will focus on Ellebæk (see below regarding the two other centers).

Administrative detention

Persons at Ellebæk are administratively detained pursuant to the Aliens Act and thus not in relation to criminal proceedings pursuant to the Criminal Act.

The large majority have been administratively detained at Ellebæk under section 36 of the Aliens Act and are awaiting deportation. As explained by the State party (see above), administrative detention is used if less coercive measures such as depositing the passport, ordering a designated residence or a duty to report to the police are not deemed sufficient to secure the possibility of return. Thus, the police made an assessment that there is a risk that the

person will disappear or go underground and hereby inhibiting the deportation. We are critical of this assessment as we know of cases of persons detained at Ellebæk in which there was no option of returning them to their home country.

Rejected asylum seekers are also detained at Ellebæk in order to motivate them to return home. It will be the Return Department (Hjemrejsestyrelsen) or the police that will request the detention. Other groups of foreigners are also detained at Ellebæk, such as asylum seekers whose asylum claims were considered "manifestly unfounded" or who were detained for obstructing the provision of relevant information for their claim.

It is important to stress that since the last review of Denmark by the Committee in 2015, practice regarding the use of administrative detention has changed and more and more foreigners are detained at Ellebæk. Previously, it was only foreigners in a deportation situation who would be detained at Ellebæk. Today and after the adoption of the return law (hjemrejseloven) in 2021, various categories of foreigners may end up being detained at Ellebæk, including asylum seekers during processing of an asylum claim if the applicant has received a deportation order prior to the final decision of the asylum application.[56] A deportation order can be issued in case of, for example, a 10–40-day sentence for illegal entry/false documents, but this often turns into many months of detention while the asylum case is processed. Also, in asylum cases processed according to the Dublin Regulation[57], we find that asylum seekers are almost systematically held in detention if they have been registered in two or more European countries.[58]

There are 136 places at Ellebæk.[59] Many have been held for long periods and up to several months even if they suffer from mental disorders and PTSD, including victims of torture and trafficking (see Annex 5).

The CPT stressed, in its 2020 report to the Danish Government, 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.[60]

We maintain our strong criticism of the change of practice regarding administrative detention and the extensive use of administrative detention at Ellebæk, as expressed to the Danish government on numerous occasions.[61]

Lack of medical examination

Admission screening does take place at arrival at Ellebæk, but to our knowledge it is not a comprehensive medical screening, as was also the finding of CPT,[62,] and therefore screening

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[56] Section 14, subsection 2 of the Return Act. Hjemrejseloven (retsinformation.dk)

[57] Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person. See EUR-Lex - 02013R0604-20130629 - EN - EUR-Lex (europa.eu).

[58] If there are more than two Dublin hits, it does not seem that the authorities consider whether less intrusive measures are sufficient to, for example, ensure the asylum seekers' presence.

[59] Kriminalforsorgen, see also I Ellebæk frihedsberøves uskyldige asylansøgere som "motivation" (refugees.dk)

[60] CPT Report to the Danish Government on the visit to Denmark 2019, 7 January 2020 (CPT/Inf (2019) 35.

[61] For example joint letter to the Danish Legal Committee (June 2023), Annex 5, and letters by Amnesty International and DIGNITY to the Minister of Justice 2021 (Annex 6).

[62] CPT 2020 report, para 132.

of for example victims of torture is not happening. Moreover, the staff at Ellebæk do not request the screening at Sandholm carried out by Red Cross.

Our view is that detention happens regardless of whether the applicant is a recognized survivor of torture or otherwise traumatized. This is confirmed by health examinations carried out by Amnesty International. This information will be launched in the near future.[63] Therefore, victims of torture are detained at Ellebæk.

As noted by the Committee in Concluding Observations 2016, a torture screening should take place at Ellebæk, and victims of torture should not be held in places of deprivation of liberty.[64]

Conditions of detention

We continue to be very critical of the conditions at Ellebæk that are prion-like and unacceptable, as criticized by the CPT in 2020:

> *From the outset, the CPT would like to emphasise its serious concern about the fact that the material conditions and the regime in the two migration detention centres visited were clearly prison-like and that the prison rules applied to all detained migrants. This is unacceptable.*
>
> *The CPT calls upon the Danish authorities to ensure that all persons detained under aliens' legislation are afforded material conditions appropriate to their legal situation in centers specifically designed for that purpose. These centers should be maintained in a decent state of repair, clean and adequately furnished, including with benches/chairs, tables and shelves/cupboards. Each person should also have access to lockable space for personal belongings. A major refurbishment programme is required... failing which they should be taken out of service and replaced by facilities that correspond to these criteria...'*[65]

The underlying challenge is that Ellebæk is run by the Prison and Probation Service that is used to handling convicted persons, not civilians.

The Ombudsman published its findings on the conditions in Ellebæk in 2022 and concluded that improvements had taken place, but more should be done. [66] We continue to be concerned about the conditions: people sharing small rooms locked up at night, lack of staff, very limited access to go outdoors or exercise.[46] Mobile phones and internet are not allowed, which means very limited communication with the world outside. Access to doctors and lawyers is also far from sufficient. Doctors have documented how a stay at Ellebæk exacerbates the health conditions of the detainees, see for example Annex 5.[67]

Moreover, solitary confinement is used as a disciplinary sanction.

D) <u>Suggested recommendations</u>

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[63] See previous report of 2013: frihedsber_vede_asylans_gere_i_elleb_k_2013.pdf (amnesty.dk). See Ellebæk Kontaktnetværk (Annex 5).
[64] CAT, Concluding Observations (2016), *supra* note 2, para 23.
[65] CPT 2020 report, para 113 and 117.
[66] Udlændingecenter Ellebæk er i bedre stand, men der er fortsat behov for forbedringer (ombudsmanden.dk)
[67] Refugees Welcome, Hvorfor frihedsberøvelse?, 3 September 2023. Available on: http://refugees.dk/fakta/asylproceduren-i-danmark/ellebaek/ (Danish).

The Committee recommends to Denmark to:

1. Amend legislation to clearly state the exceptional reasons for administrative detention.
2. Prior to detention at Ellebæk, request the screening made upon arrival in Denmark at Sandholm (if consent provided) and undertake a comprehensive screening.
3. Ensure that victims of torture and other vulnerable persons are not detained at Ellebæk.
4. Improve conditions at Ellebæk to prevent the risk of inhuman and degrading treatment.
5. End the use of solitary confinement as a disciplinary sanction at Ellebæk.

LOIPR 24: EARLY IDENTIFICATION OF VICTIMS OF TORTURE

> Please also provide information on the steps taken to ensure the early identification of victims of torture and other vulnerable individuals and groups…(paras. 22–23).

A) CAT position

In its Concluding Observations concerning Denmark (2016), it was stated that:

> *The Committee is concerned at the lack of a regular mechanism for the identification of victims of torture throughout the asylum process. ...*
> *The State party should (a) put into place procedures for the systematic screening and medical examination of alleged torture victims by qualified personnel throughout the asylum process, including at reception centres and places of detention such as the Ellebæk Prison...*[68]

B) State party response

The State party noted in its report that all newly arrived asylum seekers are offered an initial medical interview following their arrival at the reception center Sandholm. The purpose of the initial medical interview is to assess the overall physical and mental health of the alien and to determine if the alien has any urgent or otherwise necessary health related issues that need treatment.

The medical interview includes a questionnaire designed by Red Cross together with DIGNITY - Danish Institute Against Torture with the purpose of identifying victims of torture. The medical interview is conducted by a nurse, but based on the individual needs of the alien the nurse may refer the asylum seeker to further consultations with a doctor.

C) Issue summary

Early identification of victims of torture is important at arrival to Denmark and when placed at Sandholm. Since the last review of Denmark by the Committee, a structured questionnaire, coding for torture according to the definition of torture (Article 1 UNCAT) is used by Red Cross at Sandholm. This screening for torture is thus now an integrated part of the medical reception of newly arrived asylum seekers in Denmark. A study on the use of the screening instrument was carried through during a 2-year period as a part of the routine health screening, and alleged torture victims were referred to further medical examination. The participation rate

[68] CAT, Concluding Observations (2016), *supra* note 2, para. 22-23.

was 85.2%, and torture was reported among 27.8% of the males, with a mean of 21.2% among both sexes.[69]

We are unsure whether the victims of torture identified carry the information about the torture to the Immigration Service and/or whether the Red Cross automatically – if consent provided – sends the information to the Immigration Service.

As an NGO-coalition, we also raise this issue to the CPT in 2019, see Annex 8.

D) Suggested recommendations

The Committee recommends to the State party to:

1. Ensure that the screening result from Sandholm with the victim's consent is made available to the Immigration Service and the Refugee Appeals Board.
2. Make internal guidelines on how to address torture victims in the asylum system.

LOIPR 25: USE OF COERCION IN PSYCHIATRIC INSTITUTIONS

> With reference to the previous concluding observations (paras. 40–41), please provide information on the State party's practices relating to the use of physical and chemical means of restraint and other medical non-consensual coercive measures applicable to persons admitted to psychiatric institutions. Please also provide information on the measures taken to ensure that patients in psychiatric institutions are restrained as a last resort only and exclusively to prevent harm. Please provide information on the procedural and substantive safeguards that are applicable in situations of involuntary or non-consensual commitment of persons with disabilities, including children, on health-care grounds. Please specify the number of persons deprived of their liberty in psychiatric hospitals and other institutions for persons with psychosocial disabilities, including care homes. Please indicate what the situation is with respect to alternative forms of treatment such as community-based rehabilitation services and other forms of outpatient treatment programmes.

A) CAT position

In its Concluding Observations concerning Denmark (2016), it was stated that:

> *The State party should:*
> *(a) Ensure that every competent mental health patient, whether voluntary or involuntary, is fully informed about the treatment to be prescribed, and given the opportunity to refuse treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law; (b) Revise and tighten regulations with clear and detailed guidance on the exceptional circumstances where the use of restraints may be allowed, with a view to considerably decreasing the recourse thereto in mental health care.*[70]

B) State party response

The State party referred to the Mental Health Act and that the use of fixation or coerced medication can only be used at a mental health facility if the patient is insane or suffers from a similar condition.

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[69] Munk-Andersen, E., Toftgaard, B., & Modvig, J. (2021). Screening asylum seekers in Denmark for torture using a structured questionnaire. *Torture Journal*, *31*(2), pages 99–109.
[70] CAT, Concluding Observations (2016), *supra* note 2, para. 40-41.

The Mental Health Act, section 14 stipulates that fixation must only be used short term and to the extent necessary to prevent harm against the patient or others, to prevent the patient from following or harassing other patients, or if the patient vandalizes property in a significant degree. However, a patient can be restrained for more than a few hours if the restraining of the patient ensures the life or security of the patient or others. When restraining a patient, only belt-, hand- and foot restraints and gloves can be used.

When a patient is restrained, the Mental Health Act requires medical supervision, and if the physical restraint lasts more than 24 hours, an independent doctor has to attest that use of physical restraints is necessary, cf. section 21. When considered necessary to forcibly medicate a patient, only tested medication can be used with a usual dose and with as few side effects as possible.

Since 2015, the Mental Health Act and the ensured procedural safeguards also cover patients between 15-17 years, who do not consent to admission or treatment. This practice was adopted to clarify the legal position of minor psychiatric patients.

The Mental Health Act does not apply to minors under the age of 15, if the parent has given parental consent to admission or treatment. However, as stipulated in the Health Act all minor patients, including psychiatric patients, under the age of 15, must be informed and involved in the treatment to the extent that the minor understands the situation.

The Psychiatric Patients' Board of Complaints is responsible for administrative decisions in first instance concerning complaints from psychiatric patients who have received coercive psychiatric treatment in psychiatric facilities in Denmark.

From 2015 to 2018, the Board received 6,675 complaints from psychiatric patients who received coercive psychiatric treatment in psychiatric facilities in Denmark.

C) Issue summary

The use of mechanical restraint, i.e., fixation by belt, is widespread in Danish psychiatric institutions. For this reason, there has since 2014 been an increased political attention regarding reduction of the use of coercion in psychiatric institutions.[71]

In the period from January to December 2021 the total number of initiated restraints was 4623. In the period from January to December 2022, the figure was 4904. Thus, there has been an increase with 6 % from 2021 to 2022.[72]

After the ECtHR's judgement in *Aggerholm v. Denmark*, there has been a number of cases regarding the use of coercion in psychiatric institutions.[73] In some of these cases a complaint has been filed against Denmark before the European Court of Human Rights.[74]

[71] DIGNITY and Better Psychiatry, Briefing Note: The Use of Coercion at Psychiatric Institutions, 25 May 2023 (Annex 7).
[72] The Danish Health Authority, Annex report to the Ministry's report on Monitoring of coercion in psychiatry, 1 May 2023, page 9 (Danish).
[73] DIGNITY, Better Psychiatry and Danish Institute for Human Rights, Communication to the Committee of Ministers for the Supervision of the Execution of Judgements and of Terms of Friendly Settlements in the Case of Aggerholm v. Denmark, 17 March 2022.
[74] *Dam v. Denmark* (application no. 1349/21), *M.P. v. Denmark* (application no. 25263/22) and *Makki v. Denmark* (application no. 10297/23).

In the case of *Dam v. Denmark*, the complainant had been belt fixated for 25 hours in 2018 in a psychiatric institution. The case was settled, since the Danish Government concluded that the ECtHR would find that the complainant's rights according to Article 3 of the European Convention had been breached.[75] During the settlement negotiations, Dam requested the Government to propose an amendment to the Mental Health Act and thereby oblige the on-duty staff to take notes at least every hour when a patient is restrained by belt.[76]

In the case of *M.P. v. Denmark* the complainant was fixated by belt in 2017 for 19 hours and 27 minutes, when he was 13 years old, and for 10 hours and 25 minutes in 2019, when he was 15 years old. The case has been settled due to the same reasoning as mentioned in the case of *Dam v. Denmark.*[77]

In the Case of *Makki v. Denmark*, the complainant was restrained by belt for 11 days in a psychiatric hospital. The Danish Supreme Court found that the use of restraint was lawful. The case was communicated to Denmark on 16 March 2023 and is pending.

In 2022, the Psychiatric Patient Complaints Board made decisions in 111 cases regarding initiation of restraints by belt. In 50 of these cases the Board found that the initiation of restraints was unlawful. In the same period, the Board made decisions in 75 cases regarding the duration of restraints and found that the decision to uphold restraints in 31 cases were unlawful.[78]

On 7 August 2023 the National Audit Office published a note regarding the plans to reduce the use of coercion in the Danish psychiatry. The Office found that the initiatives by the Danish Ministry of Health have not been sufficient.[79]

D) Suggested recommendations

The Committee should recommend Denmark to:

1. Ensure a precise and comprehensive justification is provided in each case before initiating and maintaining restraints by belt.
2. Ensure proper monitoring and assessment by doctors of the continued use of restraints by belt.
3. Ensure comprehensive documentation for the use of belt in medical records.

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[75] Health Ministry's press release here: https://sum.dk/nyheder/2021/december/danmark-indgaar-forlig-i-sag-om-baeltefiksering (Danish).
[76] DIGNITY, Better Psychiatry and Danish Institute for Human Rights, Communication to the Committee of Ministers for the Supervision of the Execution of Judgements and of Terms of Friendly Settlements in the Case of Aggerholm v. Denmark, 10 July 2022.
[77] Ministry's orientation to the Parliament: https://www.ft.dk/samling/20222/almdel/§71/bilag/53/2705817.pdf. (Danish)
[78] The numbers have been retrieved from the Psychiatric Patient Complaints Board on 17 March 2023.
[79] The National Audit Office of the Parliament, Note on efforts to reduce the use of coercion in the Danish psychiatry, August 2023. Available at: Notat om opfølgning i sagen om indsatsen for at nedbringe brug af tvang i psykiatrien (rigsrevisionen.dk) (Danish).

ARTICLE 12 AND 13

LOIPR 26: INVESTIGATIONS AND COMPLAINTS OF TORTURE AND ILL-TREATMENT

> In the light of the Committee's previous concluding observations (para. 48), please provide updated statistical data… on complaints of torture and ill-treatment recorded during the reporting period. Please include information on investigations, disciplinary and criminal proceedings, convictions and the criminal or disciplinary sanctions applied. Please provide examples of relevant cases and/or judicial decisions.

A) CAT response

In its Concluding Observations concerning Denmark (2016), it was stated that:

> *The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, in particular in detention facilities, as well as on means of redress, including compensation and rehabilitation, provided to the victims.*[80]

B) State party response

The Government noted that due to technical reasons, it has not been possible to automatically draw statistics regarding complaints about torture and ill-treatment, but the information contained in Annex 11 was provided in the State party report 2019.

With regards to the police, the Independent Police Complaints Authority (IPCA) has registered reports on ill-treatment under a separate category since 2016, as recommended by the Committee. During the period 2016 to May 2019, the IPCA examined six cases involving reports of torture and ill-treatment. No disciplinary sanction was imposed by the police in these six cases.

With regards to prisons, the data provided is based on manual searches in the case management tools of the Department of Prison and Probation Service. The statistics relate to the number of cases where the inmate explicitly complained about torture or ill-treatment and cases where the inmate did not explicitly complain about torture or ill-treatment, but where the Prison and Probation Service has found it relevant to include the case.

The Psychiatric Patients' Board of Complaints do not - to our knowledge - register cases according to ill-treatment.

The government informed the Committee that there are no cases in which police officers or other authorities have been charged with torture or ill-treatment as an aggravating circumstance (Section 157a of the Criminal Code) (para 119 in the State party response).

C) Issue summary

We continue to be critical of the lack of compiled and published data on investigations and complaints of torture and ill-treatment.

[80] CAT, Concluding Observations (2016), *supra* note 2, para. 49.

To our knowledge, there are no data regarding the number of criminal complaints regarding torture and ill-treatment – whether committed in Denmark or abroad – that would have been submitted to the police or the National Special Crime Unit for investigating international crimes (NSK).[81] There are also no available data on investigations open ex officio by the police or the NSK. Thus, no data regarding criminal complaints about torture/ill-treatment and the investigation of such cases exist.

Court jurisprudence illustrates that cases of ill-treatment inflicted by police (see issue 3 below), authorities in the psychiatric sector (see LOIPR 25) and by prison authorities do exist, but no statistical material is available. We are critical of the lack of statistical material about cases of ill-treatment and that no information is published.

Complaints against the police

The mandate of the ICPA is limited to the investigation of criminal cases against police officers (e.g., 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.[82]

The number of complaints regarding police violence submitted to ICPA is available in the Annual Report by ICPA. The number of complaints regarding police misconduct was 960 in 2022.[83] In only 30 cases did the ICPA raise criticism, i.e., app. 3% of the cases. This high number of unsuccessful complaints have made defence lawyers conclude that it is not worth submitting a complaint to the ICPA.[84]

The number of complaints regarding criminal offenses has increased with around 9% from 2013 (433 cases) to 2022 (474 cases). In 19 of these cases, i.e., 4% of the cases, the case was sent to the prosecutors to raise charges.

The State party has informed the Committee of six cases of ill-treatment committed by police officers in the period 2016-19 (Annex 11). However, those statistics are not made public and are not included, by way of example, in the ICPA's annual reports.

Complaints against prison staff

The State party has provided a list of cases regarding prison staff (Annex 11), but it is unclear what the outcome of these cases was. We note that there have been court cases in which prison staff violated the prohibition of inhuman and degrading treatment (e.g., U2022.3807H). Reference is also made to the issue below about the use of pepper spray.

[81] National Special Crime Unit | | Danish police (politi.dk).
[82] See further explanation in our 2015 shadow report (Annex 12).
[83] Årsberetning 2022 (politiklagemyndigheden.dk).
[84] Advokater fraråder klienter at klage til DUP - chancen for medhold er for lille - TV 2.

D) Suggested recommendations

The Committee recommends that Denmark takes measures to ensure the availability of:

- Statistics about number of complaints of ill-treatment inflicted by the police are published in the ICPA's annual report, and statistics about number of complaints of ill-treatment inflicted by prison staff are also made available; and
- Information about the investigation, prosecution and results of the proceedings in cases related to criminal offenses regarding torture and ill-treatment, also when committed abroad, are made public.

LOIPR 28: OBLIGATION FOR MEDICAL STAFF TO REPORT TORTURE

> Has the State party established an obligation for all medical professionals to report torture and ill-treatment of individuals deprived of their liberty, as recommended by the Committee in its previous concluding observations (paras. 38–39)?

A) CAT response

In its Concluding Observations concerning Denmark (2016), it was stated that:

> *The State party should:*
> *(a) Establish an obligation for medical professionals to report torture and ill-treatment of individuals deprived of their liberty, and to seek, whenever possible, victims' consent for the use or disclosure of such information.*[85]

B) State party response

In its State party report, Denmark noted that it is legal for a healthcare professional to report torture. According to the Criminal Code there is no general duty to prevent or report crimes. However, the Criminal Code, section 141 provides a duty for everyone who obtains knowledge of certain serious crimes to do everything in his or her power to prevent the mentioned crimes and their consequences, when necessary, by reporting to the authorities. The mentioned crimes include crimes that create a threat to the life of persons and their welfare.

C) Issue summary

As mentioned above, the Danish Criminal Code has specific provisions for reporting serious crimes. However, healthcare professionals have no specific obligation to report torture and ill-treatment (provided that consent was provided) and given their general lack of knowledge about international standards related to the documentation of torture and ill-treatment they are unlikely to consider the reporting obligation mentioned by the Danish state relevant in such cases. Also, it remains unclear to whom such reporting should take place and in which form.

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[85] CAT, Concluding Observations (2016), *supra* note 2, para 39.

D) Suggested recommendation

The recommendation previously given by the Committee Against Torture should be reiterated. It could be considered to amend the recommendation to also include a request for clear reporting pathways and procedures for health professionals and information to all relevant actors about these.

ARTICLE 14

LOIPR 29: STATUTE OF LIMITATIONS IN CIVIL CASES

> In the light of the previous concluding observations (paras. 16–17) and paragraph 46 of the Committee's general comment No. 3 (2012) on the implementation of Article 14, please provide information on the measures taken to ensure that civil proceedings relating to torture and ill-treatment are not subject to statutes of limitations. Please also provide information on redress and compensation measures, including means of rehabilitation ordered by the courts and actually provided to the victims of torture or their families since the consideration of the previous periodic report.

A) CAT response

In the Concluding Observations concerning Denmark (2016), it was stated that:

> *Recalling the continuous nature of the effects of torture and that, for many victims, passage of time does not attenuate the harm, the Committee recommends that the State party take the necessary legal measures to ensure that civil proceedings related to torture and ill-treatment are not subject to statutes of limitations, which could deprive victims of the redress, compensation and rehabilitation due to them, as referred to in paragraph 40 of the Committee's general comment No. 3 (2012).*[86]

B) State party response

In Denmark, a claim for compensation can be made in relation to criminal proceedings. If the accused is found guilty, the perpetrator can be ordered to pay compensation to the victim of torture even if the general three-year limitation period is expired. The victim's claim can also be made under separate civil proceedings if they are commenced within one year after the final decision of the criminal case (in which the accused is found guilty).

A claim for compensation can also be made in a separate civil case. The State party noted in its report that in June 2018, the High Court of Eastern Denmark ordered the Danish Ministry of Defense to pay compensation to 18 Iraqi claimants for Danish complicity in the ill-treatment they had been exposed to by Iraqi police in 2004. The Danish Ministry of Defense appealed the decision to the Danish Supreme Court (see below).

C) Issue summary

The ordinary Danish rules regarding statute of limitation apply in civil cases regarding compensation for torture. DIGNITY has prepared a note on the subject matter (Annex 2). Unfortunately, there have been no legislative amendments introduced and these rules continue

[86] Ibid, paras 16-17.

to be applied. The Supreme Court of Denmark refrained from taking a position on the matter in its final judgement in the Iraqi case (Annex 4).

With regards to cases related to intersex persons, most procedures take place in early childhood, which means that by the time the victim is old or mature enough to realize the full extent of harmful consequences, they have endured, the statutes of limitation have long expired. The statutes of limitation to complain about operations are within 2-5 years and they have to seek redress and reparation within 5-10 years.[87]

D) Suggested recommendation

The Committee recommends that the State party take the necessary legal measures to ensure that civil proceedings related to torture and ill-treatment are not subject to statute of limitations.

LOIPR 29: REDRESS TO VICTIMS OF ILL-TREATMENT

> Please also provide information on redress and compensation measures, including means of rehabilitation ordered by the courts and actually provided to the victims of torture or their families since the consideration of the previous periodic report.

A) CAT position

The Committee has concluded that where State authorities or others acting in their official capacity committed, knew or have reasonable grounds to believe that acts of torture or ill-treatment had been committed by non-state officials or private actors and failed to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors in accordance with the Convention, the State bears responsibility to provide redress for the victims pursuant to Article 2 and 16 of the Convention.[88]

B) State party response

The government noted that it was not aware of cases regarding redress and compensation in the report from 2018.

C) Issue summary

With regards to cases regarding abuse of children, several Danish municipalities have been found liable for not fulfilling their positive obligations under Article 3 of the ECHR to intervene if the authorities knew or should have realized that there was a risk that children would be exposed to abuse, neglect, or maltreatment.[89] In addition to this, the state has in several older

[87] This is due to the “specialist and reasonableness Rule” blocking intersex people’s access to file a complaint and seek redress and reparations.
[88] General comment No. 2 (2002) on the implementation of Article 14 by States parties.
[89] FOB2014-19, U.2017.3272Ø, U.2017.2929H, U.2018.2013H, U2018.2054H, U.2021.3343H, U2021.2254Ø. There is no public registration of out-of-court settlements, but more than 50 plaintiffs are estimated to have received redress since 2018.

cases of abuse against children placed in children's homes recognized its liability in out-of-court settlements (Godhavnssagerne).

It is a positive development that individuals who have experienced public care negligence in their childhood can receive redress. However, in practice, it is significantly challenging to sue the authorities for such violations.[90]

Firstly, it can be difficult or impossible to provide evidence of the violation. This is partly because it can be very resource-intensive to locate historical case files. Furthermore, older case files may be incomplete or may have been lost over time. Secondly, a lawsuit against public authorities can be challenging to manage for the group of very vulnerable plaintiffs.

D) Suggested recommendations

The Committee urges Denmark to ensure redress to all victims of abuse, negligence and maltreatment.

The Committee urges Denmark to establish an independent board with the authority to initiate investigations in cases on abuse, neglect and/or maltreatment against children. The board should also have the authority to compensate victims.

LOIPR 30: ACCESS TO REHABILITATION[91]

Please also provide information on any ongoing reparation programmes, including the treatment of trauma and other forms of rehabilitation, provided to victims of torture and ill-treatment, and on the material, human and budgetary resources allocated for their effective functioning.

A) CAT response

In the Concluding Observations concerning Denmark (2016), it was stated that:

> *(...) ensure that victims of torture... have prompt access to rehabilitation services.*[92]

B) State party response

In the State party report, it was noted that Denmark has universal health coverage which means that patients have the right to medical treatments, if necessary, no matter the cause, and that in Denmark there are 10 specialized outpatient treatment facilities for traumatized refugees – seven public and three privates.

C) Issue summary

The three private specialized centers for the treatment of victims of torture are members of the NGO-coalition, i.e., RCT-Jylland, OASIS and DIGNITY.

[90] Børns Vilkår (2023): 10 år med Børns Vilkårs Erstatningsrådgiving - Erfaringsopsamling og fremtidsperspektiver
[91] See also LOIPR 29 regarding statistics: "... as well as on means of redress, including compensation and rehabilitation, provided to the victims".
[92] CAT, Concluding Observations (2016), *supra* note 2, para. 23.

It is correct, as stated by the state, that victims of torture, who have received a residence permit in Denmark, are entitled to receive health treatment. However, there are some obstacles to obtaining this treatment, such as lack of reimbursement of transportation costs. This was mentioned by Danish NGOs in their shadow report to the UN Committee for Economic, Social and Cultural rights who concluded that Denmark should:

> *ensure that refugees have adequate access to healthcare services, including by providing free interpretation or reimbursement of transportation costs as needed.*[93]

D) Suggested recommendation

The Committee recommends that the State party take the necessary legal and practical measures to ensure that victims of torture are entitled to reimbursement of transportation costs in relation to their treatment.

ARTICLE 16
LOIPR 32: INTERSEX PERSONS

> In the light of the previous concluding observations (paras. 42–43), please indicate the measures taken by the State party to guarantee respect for the physical integrity and autonomy of intersex persons and to ensure that no one is subjected during infancy or childhood to non-urgent medical or surgical procedures intended to decide the sex of the child. Please indicate the number of intersex children who have undergone sex assignment surgery during the reporting period.

A) CAT position

In its Concluding Observations concerning Denmark (2016), it was stated that:

> *While taking note of the information provided by the delegation on the decision-making process related to treatment of intersex children, the Committee remains concerned at reports of unnecessary and irreversible surgery and other medical treatment with lifelong consequences to which intersex children have been subjected before the age of 15, when their informed consent is required. The Committee is further concerned at hurdles faced by these persons when seeking redress and compensation in such cases (arts. 14 and 16).*[94]

B) State party response

The State party report noted that the numerous definitions of the term intersex all share that intersex denotes human beings “that are born with sex characteristics (incl genitals, gonads and chromosome patterns) that do not fit typical binary notions of male or female bodies."

The umbrella term DSD (disorders of sex development or differences in sex development) is often used as a general medical term for congenital conditions in which development of chromosomal, gonadal, or anatomical sex is atypical. The Government recognizes that widespread use of the term DSD is problematic and has in its normative work highlighted the need to use more precise descriptors of the individual conditions, such as Klinefelter and

[93] UN Committee for Economic, Social and Cultural rights, Concluding Observations (2018).
[94] CAT, Concluding Observations (2016), *supra* note 2, para. 42.

Adrenogenital syndrome. The Government also notes that the term is rarely used by health professionals as it is most common to use the name for specific conditions. The Government is in the process of finalizing a review of regulation of specialized hospital services related to DSD-conditions that also addressed the need for non-stigmatizing terminology in the field.

Finally, the Government notes that both the term intersex, and the term DSD, can be seen as stigmatizing, as some individuals will consider the term intersex as more fitting to their identity and regard DSD as medicalizing gender identity issues, while others with DSD-conditions feel that the term intersex is highly stigmatizing because they have no ambiguity of sex characteristics or gender identity.

Surgery on cosmetic indication for children under the age of 18 is illegal in Denmark.

Differences in sex development (DSD) includes a broad variety of conditions some of which require immediate medical intervention and others that are less serious and require little or no medical intervention.

Advantages and disadvantages of surgical treatment, in particular of children, will always be carefully evaluated according to the State party. Surgical treatment is offered at the appropriate time in the child's or young person's life in order to achieve the best possible outcome of the surgery and taking into account the development of the child, including the anatomical and developmental conditions of tissues and organs, etc.

The Danish Health Authority is in the process of finalizing a review of specialized hospital services for DSD-conditions. As a result of this review, the requirements for providing these services have been strengthened to include requirements for highly specialized care for very rare conditions as well as the setting up national multidisciplinary teams to discuss rare and difficult cases. The recommendations of this work will include an increased national and international collaboration in the field of both medical and surgical services for patients with DSD-conditions, the Government considered the provision and quality of these services in Denmark to be at the highest international level.

According to Danish law, full, free and informed consent is required to conduct all medical treatments – surgical as well as non-surgical. In Denmark a person is able to give their informed consent at age 15. Until the person turns 15 the required informed consent is given by the parents.

The Agency for Patient Complaints serves as a single point of entry for all patients who wish to complain about healthcare professionals and/or treatment provided in the healthcare system (public and private). Particularly serious cases may be submitted to the public prosecutor with a view to bringing the case before a court.

C) Issue summary

Surgeries and treatments are legally carried out on intersex children and adults in Denmark. This includes but is not limited to: Hypospadias repair, vaginal-urethral separation, and removal of undescended testicles. These procedures are in Danish medical settings, classified as medically necessary, despite evidence to the contrary at times. See further explanation in Annex 3. Surgeries and treatments performed on intersex children, before their consent is needed legally, has been addressed by various UN Treaty Bodies.[95]

[95] Committee on the Rights of the Child, CRC/C/DNK/CO/5, 26 October 2017 para 24.

To consider and treat intersex children and adults as transgender, is problematic, as is the treatment of intersex people in transgender wards, which can greatly affect the individual's physical health and psychological well-being and stands in the way of some intersex people's right to highest attainable health, including their right to highest attainable sexual health.

In Denmark incarcerated intersex and transgender women, who have been placed in the men's wards, report to have been denied their right, to have naked frisk searches conducted by a person of their own gender, they have on more occasions experienced being ridiculed, by other inmates without guards stepping in, or being ridiculed by guards, during these frisk searches. They are also denied the right to wear feminine attire in the prison.

D) Suggested recommendation

The Committee should note to Denmark that it remains concerned at reports of unnecessary and irreversible surgery and other medical treatment with lifelong consequences to which intersex children have been subjected before the age of 15, when their informed consent is required.

PART B: OTHER SUGGESTED RECOMMENDATIONS

ISSUE 1: PRE-TRIAL DETENTION AND CONDITIONS OF PRE-TRIAL DETAINEES

A) Issue summary

Some issues related to pre-trial detainees were addressed in Part A (see LOIPR 18 and 20).

Pre-trial detention is regulated in the Danish Administration of Justice Act (Chapter 70). Denmark has traditionally used pre-trial detention more extensively than neighboring countries, including Sweden and Norway:

Pre-trial detention in Denmark compared to the other Nordic countries:[96]

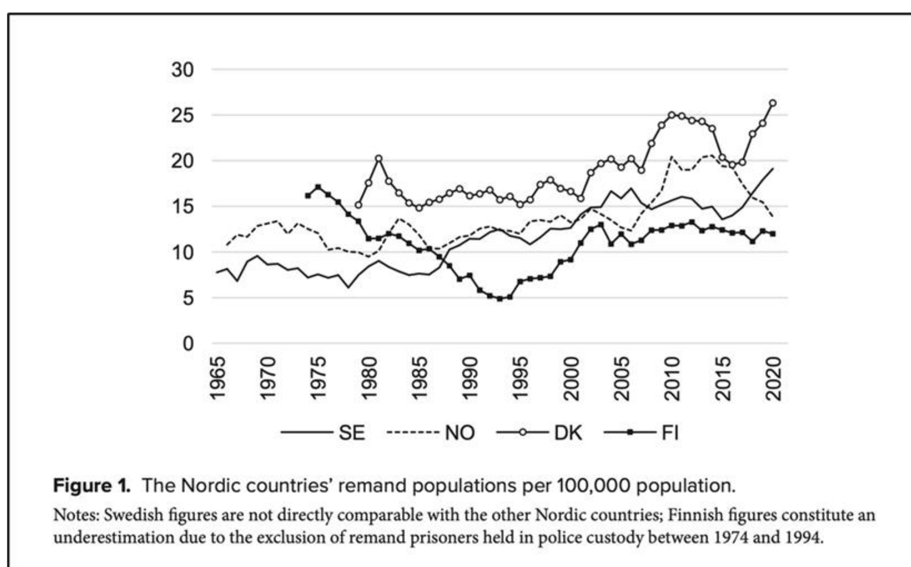

Figure 1. The Nordic countries' remand populations per 100,000 population.

Notes: Swedish figures are not directly comparable with the other Nordic countries; Finnish figures constitute an underestimation due to the exclusion of remand prisoners held in police custody between 1974 and 1994.

The proportion of pre-trial detainees continues to be high and is now around 41% of the total prison population.[97]

Denmark	Sweden	Norway	Finland	Iceland	European median
41	28	23	22	18	21,7

Remarkably 60 % of time spent in pre-trial detention takes place after the police investigation has been concluded and charges have been made.[98] Furthermore, processing time at the courts has risen dramatically in recent years. In criminal cases, the court processing has almost doubled from 4,4 months in 2018 to 8,4 months in 2022.[99]

Despite this situation, the available alternatives to pre-trial detention are almost never used by the courts/prosecution. For example, surrogate detention according to Section 765 of the Administration of Justice Act is used almost exclusively for young people under the age of 18

[96] Remand populations are a function of the number of individuals imprisoned on remand and the length of remand placements, and then measured pr. 100.000 population. See Lönnqvist, E. (2023) Prisoners of process: The development of remand prisoner rates in the Nordic countries, *Nordic Journal of Criminology*, Vol.24, Iss.2.

[97] Danish Institute for Human Rights, Fængsler og frihedsberøvelse (prisons and detainees), 1 April 2023. available at: https://menneskeret.dk/status/faengsler-frihedsberoevelse#toc-vores-vigtigste-anbefalinger (Danish).

[98] Danish Judicial Committee (Folketingets Retsudvalg), Response to parliamentary question no. 382, 4 April 2023, table 3.

[99] The Danish Courts, press release about processing time for court cases, 29 Marts 2023. Available at: https://domstol.dk/aktuelt/2023/3/fortsat-lange-sagsbehandlingstider-i-2022/ (Danish).

and mentally deviant people over the age of 18.[100] This practice seems not to meet the requirements of the Administration of Justice Act and Article 5 ECHR, according to which detention should be used as a last resort and only if the purpose cannot be achieved with less intrusive means.

Many pre-trial detainees are currently in what resembles *de facto* solitary confinement due to shortage of staff and due to lack of communal spaces in the old remand institutions. Thus, although the excessive use of court-ordered solitary confinement for pre-trial detainees has been reduced significantly, today, pre-trial detainees in Denmark are still subjected to some kind of solitary confinement. As a result, pre-trial detention has been labeled "Denmark's harshest punishment" even though the detained individuals have not been sentenced yet.[101]

We also raised this issue to the CPT in 2019, see Annex 8.

B) Suggested recommendations

The Committee should recommend to Denmark to immediately take measures to reduce the use of pre-trial detention, including by using alternatives to detention, and to ensure that pre-trial detainees are not at risk of inhuman/degrading treatment due to *de facto* isolation.

ISSUE 2: PERSONS ON TOLERATED STAY WHO CANNOT BE DEPORTED

A) CAT position

In its Concluding Observations concerning Denmark (2016), it was stated that:

> *While noting that, in accordance with the procedure of tolerated stay, individuals in danger of being subjected to torture and ill-treatment if deported or expulsed are allowed to remain in the State party, the Committee is concerned at the regime of control and limitation of rights to which such individuals are subject, especially as they may be in such status for long periods of time (arts. 3 and 16). The State party should introduce more detailed regulation of the conditions and rights of foreigners on tolerated stay.*[102]

B) Issue summary

The tolerated stay regime is governed by the Aliens Act. In 2020, there were 104 persons on tolerated stay.[103] 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 people have served their time in prison and are then placed on tolerated stay.

[100] Kessing, P.V., Varetægtsfængsling og menneskeret, 2023, published in the weekly journal for judiciary, *Ugeskrift for Retsvæsen*, B/145.
[101] Peter Scharff Smith, Pre-trial Detention: Denmark's harshest punishment (2017).
[102] CAT, Concluding Observations, (2016), *supra* note 2 para 28.
[103] Udelukkelsesgrunde, udvisningsdom og Tålt ophold (refugees.dk) (Danish).

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.

These persons remain on tolerated stay indefinitely, and since 2007 not a single person has been deported. As a main rule they must take residence at deportation center Kærshovedgaard (see below) and report to the police daily or several times a week. They do not have the right to work or receive education. They receive a low daily allowance of 100 EURO pr. month. 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. I.

Persons on tolerated stay can have their obligation to stay at Kærshovedgaard terminated by the courts. This has happened in cases of stay for more than four years when continued stay was considered disproportionate and hence a violation of their human rights, cf. Supreme Court judgements.[104]

As an NGO-coalition, we also raised this issue to the CPT in 2019, see Annex 8.

C) Suggested recommendations

The Committee should recommend to Denmark to introduce an upper time limit for persons on tolerated stay.

The State party should improve the regime of tolerated stay, including regarding control and limitation of rights.

The State party should monitor and ensure that persons on tolerated stay are not subjected to inhuman and degrading treatment.

ISSUE 3: DEGRADING TREATMENT BY POLICE – STRIP SEARCHES

A) CAT position

The Committee has addressed the issue of strip searches, e.g., to Luxembourg:

> *The State party should exercise strict supervision of body search procedures and ensure that such searches are not degrading, that invasive body searches are conducted only in exceptional cases, in the least invasive manner possible, by trained staff of the same sex, and with full respect for the person's dignity and gender identity, in accordance with rules 50–53 of the UN Standard Minimum Rules for the Treatment of Prisoners... The Committee invites State party to consider alternatives to invasive body searches (intimate body cavity and full body searches), including the use of electronic devices such as body scanners.*[105]

[104] U 2012.2874 H and U 2017.1228 H. See also U2018.1412H, 2020.1482H and 2020.1993H.
[105] Concluding observations, eighth periodic report of Luxembourg, CAT/C/LUX/CO/8, 2 June 2023, para. 18.

B) Issue summary

In April 2022 a Danish national submitted a complaint to the ECtHR arguing violation of Article 3 of the Convention due to a body search carried out by the police in a humiliating manner. The case was discontinued by the Court and is now pending before the Danish High Court. [106]

The Coalition is concerned that strip searches are being used more frequently than necessary and that e not initiated on the basis on a concrete suspicion, which is required by both national law and international standards.[107]

C) Suggested recommendations

The Committee should stress that strip searches should be initiated without violation of the prohibition of inhuman or degrading treatment.

The Committee should request the State party to publish statistics on the use of strip searches.

ISSUE 4: CONDITIONS IN DEPORTATION CENTERS

A) CAT position

In its Concluding Observations to Denmark (2007), the Committee noted:

> *[U]nduly 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. (art. 16)*
> *The State party, while improving the living conditions in asylum centres, should take into consideration the effects of long waiting periods and provide both children and adults living in asylum centres with educational and recreational activities as well as adequate social and health services.*[108]

B) Issue summary

Rejected asylum seekers who do not cooperate on returning voluntarily to their home countries are obliged to stay in deportation centers, i.e., Kærshovedgård and Avnstrup.

We are concerned that at Kærshovedgaard different groups of foreigners are placed together. Thus, by way of example, rejected asylum seekers live at the center together with criminals who have served their sentence in prison and then placed at the center awaiting deportation Living conditions at Kærshovedgaard are deliberately as unpleasant as possible with the purpose of sending the message that the persons are unwanted in Denmark. By way of example the inhabitants are not allowed to work or study; food is served three times a day in a canteen; transport expenses will only be covered if the person must meet with a doctor or a lawyer; they

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[106] European Court of Human Rights, *Larsen v. Denmark,* application no. 18649/22.

[107] Danish courts have concluded that the use of strip searches was in breach of Article 3 ECHR. By way of example, 22 June 2022, the Supreme Court ruled that a pretrial detainee, who had been strip searched at least 301 times during an 11-month period, had been subjected to degrading treatment (U 2022.2807 H). On 19 September 2019 the Supreme Court ruled that a psychiatric patient, who had been strip searched about 40 times during an 18-month period, had been subjected to degrading treatment (U.2019.4010 H).

[108] Committee against Torture, Conclusions to Denmark, CAT/C/DNK/CO/5, 16 July 2007, para 17.

have a duty to report to the center daily; they have a duty to spend every night in the center, which is registered electronically; and to report to special staff members either daily or several times per week.

Around 300 persons, including more than 50 children, have stayed for more than three years in deportation centers. Around 40 have stayed for more than 10 years.[109] Some children have spent their entire childhood in those centers. The majority of the residents come from insecure countries such as Iran, Iraq, Syria and Afghanistan.

Keeping people in an isolated limbo like this, under constant stress, may amount to inhuman and degrading treatment over time and in specific cases.

C) Suggested recommendations

The Committee urges Denmark to improve the conditions at deportation centers to prevent ill-treatment and to improve the daily life of persons living at the centers.

ISSUE 5: DOMESTIC VIOLENCE AGAINST CHILDREN

A) UN Treaty Bodies' position

In its general comment No. 13 (2011) on the right of the child to freedom from all forms of violence, the Committee on the Rights of the Child found that States are required to take a range of measures to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment, or exploitation, including sexual abuse. The Committee emphasized the enormously deleterious implications of violence against children, which often occurs at the hands of members of their own household, and which includes threats to their survival and their physical, mental, spiritual, moral and social development.[110]

The Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment has stated that "[S]tates should take legislative and other measures to criminalize and prevent domestic violence and to empower victims or potential victims to resist or escape from such abuse. They should reform judicial systems and procedures so as to enable victims or potential victims to obtain protective measures against any form of domestic violence.".[111]

The Special Rapporteur has furthermore stated that states "should take all reasonable steps to eliminate legal, structural and socioeconomic conditions that may increase exposure to, or perpetuate patterns of, domestic violence. Given that most forms of domestic violence are intrinsically linked to discriminatory patterns, structural subordination and systemic marginalization, measures of redress must go beyond individual reparation and include action aiming at structural and systemic transformation."[112]

[109] https://refugees.dk/fakta
[110] A/74/148, Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on the relevance of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment to the context of domestic violence, para 19.
[111] Ibid, para 74.
[112] Ibid, para 92.

B) Issue summary

Domestic violence gives rise to a wide range of human rights obligations, including the obligation of States to prevent acts of torture and ill-treatment within their jurisdiction, including at the hands of private actors (arts. 2 and 16 of UNCAT).[113] The European Court of Human Rights has repeatedly found violations of the prohibition of torture and ill-treatment owing to States' failure to take general and specific measures to effectively protect persons from domestic violence.[114] In doing so, the Court has elaborated States' positive obligations to protect persons facing domestic violence. The Court has found that States should strive expressly and comprehensively to protect children's dignity against domestic violence, most notably through an adequate legal framework affording protection through effective deterrence against serious breaches of personal integrity, through reasonable steps to prevent abuse of which the authorities have, or ought to have, knowledge and through effective official investigations of credible allegations of ill-treatment.[115]

Other cases in which the Court has found a violation on the basis of States' response to domestic violence also concerned the right to life[116], the right to private and family life[117] and the prohibition of discrimination.[118]

Domestic violence against children is still widespread In Denmark. A 2021 study conducted by Center for Social Science Research revealed that one in six children had experienced physical violence from their parents within the past year. Often, these incidents were isolated events. Approximately 5 percent of children suffered prolonged and/or severe violence.[119]

A study from Børns Vilkår (Children's Welfare) found that 22 pct. of children in 8th grade (13-14 years old) reported being subjected to physical violence in their homes over the past year, with 13 percent experiencing incidents like pushing, shaking, pinching, or having their hair pulled. 9 pct. endured more severe forms of violence, such as being struck with an open hand, a closed fist, objects, or kicked. Furthermore, almost one in four (23 pct.) experienced psychological violence within their households, while more than one in ten (12 pct.) suffered both physical and psychological abuse.[120]

Another study from Børns Vilkår (2023) discovered that 1,550 children in 2019 and 2022 experienced violence from a parent or stepparent, resulting in police charges. For almost four out of ten of these children (38 pct.), prior to the reported violent incident(s), there were no registered reports from teachers, day carers or other adults suspecting either violence or other forms of harm. This underscores the urgent need for enhanced public awareness in recognizing and reporting suspicions of abuse, as well as greater vigilance among professionals with

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[113] Ibid, para 11.

[114] Inter alia, Opuz v. Turkey, App. No. 33401/02, Judgment of 9 June 2009; N. v. Sweden, App. No. 23505/09, Judgment of 20 July 2010; E.M. v. Romania, App. No. 43994/05, Judgment of 30 October 2012; Valiulienė v. Lithuania, App. No. 33234/07, Judgment of 26 March 2013; B. v. Republic of Moldova, App. No. 61382/09, Judgment of 16 July 2013; T.M. and C.M. v. Moldova, App. No. 26608/11, Judgment of 28 January 2014.

[115] ECtHR, *D.M.D. v. Romania*, application no. 23022/13, judgement of October 2017, para 51.

[116] See, for example, *Kontrová v. Slovakia*, App. No. 7510/04, Judgment of 31 May 2007; and *Branko Tomašić and Others* v. *Croatia*, App. No. 46598/06, Judgment of 15 January 2009.

[117] See, for example, *Bevacqua and S. v. Bulgaria*, App. No. 71127/01, Judgment of 12 June 2008; and *A. v. Croatia*, App. No. 55164/08, Judgment of 14 October 2010.

[118] See, for example, *Eremia v. Republic of Moldova*, App. No. 3564/11, Judgment of 28 May 2013.

[119] Ottosen & Henze-Pedersen (2021): Fysisk vold og seksuelle overgreb mod børn. VIVE – Det Nationale Forsknings- og Analysecenter for Velfærd.

[120] Børns Vilkår (2022) Vold mod børn i Danmark. Analyse af fysisk og psykisk vold i hjemmet.

mandatory reporting obligations. In 43 pct. of the cases, reports suspecting violence or other forms of harm were submitted to the municipality, yet no interventions were initiated. Equally concerning, for over a third (36 pct.) of the 1,550 children whose caregivers faced charges of violence in 2019 and 2020, no interventions occurred under Act on Social Services before or after the violent incidents.[121]

If there is knowledge or suspicion that a child has been subjected to abuse, and when the police or the healthcare system is involved in the case, a municipality is obligated to utilize a Child Protection House (Børnehusene). In each individual case, the police assess whether it is relevant to request a forensic examination of the child. In Denmark, there are no established standardized guidelines and selection criteria for when the police should request a forensic examination of children suspected of being victims of violence.

In practice, this means that very few children are physically examined when it is suspected that they have been subjected to violence. The annual statistics of the Child Protection House from 2022 shows that only 5 % of children who participated in a programme at a child protection house based on suspicions of violence or sexual abuse, were physically examined by a forensic medical specialist.[122]

C) Suggested recommendations

The Committee urges Denmark to take legislative and other measures in order to prevent ill-treatment of children. This should include mandatory forensic and/or pediatric examinations without requiring parental consent in all cases with suspicions of violence against children. Furthermore, all educational programmes preparing professionals to work with children and youth should provide comprehensive training on the detection and reporting of child abuse.

The Committee recommends Denmark to initiate the development of a national strategy to combat violence against children.

ISSUE 6: PREVENTION OF ILL-TREATMENT ABROAD

A) Issue summary

In recent years, we have seen issues related to prevention of ill-treatment that occur outside the territory of Denmark. These extraterritorial issues had some link to Denmark due to the set-up of the plan (e.g., renting prison space in Kosovo or asylum handling in Rwanda) or due to the nationality of the persons involved (e.g., children in camps in Syria and al-Khawaja). Our concerns on these issues will be explained briefly below.

First, civil society organisations have been very critical of the plan to rent prison space in a prison in Kosovo,[123] and we have asked the Danish authorities about how they will ensure that inmates in Kosovo are not subjected to inhuman or degrading treatment, and how they will ensure that the Ombudsman's powers in accordance with the NPM Law will be implemented

[121] Børns Vilkår (2023): Vold i hjemmet. Får vi øje på det, og får børnene den rette hjælp? En registeranalyse af underretninger og kommunens indsatser for børn under 18 år udsat for vold i hjemmet.
[122] The Danish Authority of Social Services and Housing (2023): Årsstatistik om de danske børnehuse 2022 (Annual statistics on Danish children's homes 2022). [Årsstatistik om de danske børnehuse (sbst.dk). (Danish)]
[123] E.g., DIGNITY response of March 2022 to draft legal proposal about renting prison space abroad (Annex 1).

in Kosovo. The Committee has expressed concerns about countries' plans to lease detention facilities outside their territory. By way of example, the Committee noted to Norway in 2018 that: "The State party should: (a) **Refrain from leasing detention facilities outside its territory**.(b) Ensure that there are **sufficient numbers of prison staff** with the required level of competence; (c) Refrain from any **discriminatory detention measures against foreigners** in detention facilities outside its territory."[124]

Secondly, the Danish plans to externalize asylum handling (Rwanda-plans) also raise concerns about Denmark's fulfilment of its obligations pursuant to the Convention.[125]

Thirdly, regarding a **Danish child in detention camp in Northeast Syria:** A 7-year-old Danish citizen remains in the al-Roj prison camp as the only child who has not been offered a return to Denmark with his mother.[126] The Danish authorities have administratively stripped the mother of her Danish citizenship, claiming that she had dual citizenship prior to the removal. For over four years the Danish boy has lived in a tent of six square meters together with his mother and aunt living under extreme dire health conditions and lack of security. The child has survived bombings, been traumatized and malnourished. His health is seriously challenged due to both a shrapnel lodged in his arm and various ear nose infections leaving him almost deaf. The child sits up while he is asleep as he stops breathing if not monitored by his family. The Danish Health authorities have concluded that his health situation is very severe with a risk of serious deterioration if he remains in the camp. The Government has offered to evacuate the child without his mother, despite recommendations by healthcare and others to evacuate him together with his mother.[127]

Finally, **Abdulhadi Al-Khawaja**, is a 62-year-old prominent Danish-Bahraini human rights defender who has been unjust imprisoned since April 2011 in Bahrain. He was violently arrested for his leading role in peaceful demonstrations during Bahrain's pro-democracy uprising and is currently serving a life sentence. Al-Khawaja's health has deteriorated significantly during his imprisonment, and he has experienced cardiac arrhythmia and glaucoma. The prison authorities have repeatedly failed to provide Al-Khawaja with access to adequate medical treatment. He has been subjected to severe physical, sexual and psychological torture and subjected to lengthy solitary confinement. In August - September this year, Al-Khawaja was on a long hunger strike alongside hundreds of other inmates demanding better conditions in Jau Rehabilitation and Reform Center. The request from various organizations among others has been to release Al-Khawaja immediately and unconditionally.

B) Suggested recommendation

The Committee urge Denmark to take all steps to fulfil its legal obligations pursuant to the Convention against Torture in cases related to extraterritorial issues.

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[124] Concluding Observations to Norway June 2018, para 32.
[125] See Annex 9.
[126] In another case, a mother with two Danish kids has declined the offer by the Danish authorities to be evacuated.
[127] The reason of the Danish authorities for not offering the mother a return to Denmark is based on the assessment of her affiliations to Denmark, concluding that she has an insufficient attachment to Denmark.