ALTERNATIVE REPORT

to the list of issues (CCPR/C/DNK/Q.6) dated 29 November 2011 to be considered by

the UN Human Rights Committee during the examination of the 6th periodic report of

DENMARK

117th Session, 20 June – 15 July 2016
Examination of Denmark 20 – 21 June 2016

RETSPOLITISK FORENING
Danish Law Association

ANTI TORTURE SUPPORT FOUNDATION

International Rehabilitation Council for Torture Victims

BEDRE PSYKIATRI
- landsforeningen for pårørende

Danske Handicaporganisationer

DANSK FLYGTNINGE HJÆLP
RANKED AS THE WORLD'S BEST HUMANITARIAN NGO 2013

kvinderådet

LGBT DENMARK

BØRNESAGENS FÆLLESRÅD
JOINT COUNCIL FOR CHILD ISSUES IN DENMARK

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Introduction

Since Denmark's ratification of the UN International Covenant on Civil and Political Rights (ICCPR) in 1972, the UN Human Rights Committee (HRC) has undertaken five examinations of Denmark. In relation to the upcoming review of Denmark on 20-21 June 2016, this report is submitted to the Committee as an alternative report to Denmark's report of 10 November 2015 regarding progress made with respect to treaty implementation and compliance that replied to the questions in the list of issues prior to reporting published four years earlier (29 November 2011).

This report is written by a Coalition of 15 NGOs in Denmark composed of the following organisations:

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

Positive developments

Since Denmark underwent its last review by the Committee in 2008 and since the List of Issues of 2011, it has made progress in a number of areas, notably with regard to reduction of solitary confinement during pre-trial detention[1]; the establishment of the Independent Police Complaints Authority[2] and the adoption of a comprehensive action plan to reduce the use of coercive measures in mental health facilities.[3]

[1] One of the recommendations by the Human Rights Committee during the last review in 2008 (para 11 in Concluding Observations).
[2] List of Issues para 13.
[3] List of Issues para 15.

Issues of concern

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

Notably, Denmark maintains its position **not to incorporate the ICCPR into Danish law**, despite the clear recommendation to the contrary by members of two Expert Committees in 2001 and 2014. Moreover, in spite of the long-standing criticism of Denmark's use of solitary confinement as a disciplinary sanction[4] (not during pre-trial detention) and despite the authorities' pledge to work on reducing such measures, the numbers indicate that **solitary confinement is still used extensively, including towards minors,** and its use has increased dramatically over the past decade. Similarly, **the use of pre-trial detention** continues to be extensive and respect for the legal safeguards of pre-trial detainees is at times lacking despite strong recommendations by UN committees and the CPT.

Furthermore, over the last years, and especially since the election of the current government in June last year, we have witnessed **further restrictions on the protection granted to refugees who come to Denmark.** This would also raise serious concerns under the ICCPR, for example in relation to the increased use of detention of refugees and their right to family life.

Moreover, the Human Rights Committee has found that **Denmark has violated the principle of non-refoulement in a number of cases** concerning deportation of refugees.[5] In two of the cases from last year,[6] the Danish Refugee Appeals Board reopened the cases and concluded that despite the decision by the Committee, the person could be returned home.[7] In light of this[8], we are concerned about the response by Denmark to decisions by the Committee, and we would recommend that **Denmark explains its position on the legal status of the decisions by the Human Rights Committee and its criteria for deciding when and eventually not to follow such decisions**.

Moreover, Denmark's participation in the armed conflicts in Iraq and Afghanistan has illustrated that it is **cumbersome for foreign victims of torture to have access to justice** before Danish courts, which might raise issues under the ICCPR, including Article 2. By way of example, 23 Iraqis have brought a case against the Danish Ministry of Defence claiming Danish liability for transfer of

[4] See also List of Issues, para 13.

[5] In the 6-month period of January 2016 - August 2015, a total of 6 cases: See the webpage of the UN Human Rights Committee: Communication No. 2343/2014 (Egypt) of 3 September 2015; Communication No. 2370/2014 (Afghanistan) of 7 September 2015; Communication No. 2288/2013 of 15 September 2015 (Nigeria); 2360/2014 of 25 September 2015 (Italy); Communication no. 2389/2014 of 21 October 2015 (Iran); and Communication 2258/2013 of 8 January 2016 (Sri Lanka).

[6] I.e., deportation to Sri Lanka (Communication 2258/2013) and to Nigeria (Communication 2288/2013).

[7] In Communication 2288/2013, the Board noted: "The Refugee Board first notes that the Human Rights Committee's opinion is not legally binding and that it is thus also after the reopening of the asylum cases the competent of the Danish authorities to decide whether the applicant may be sent back to (Nigeria), see Website of the Refugee Appeals Board.

[8] See also the Human Rights Committee's decision in the case Q v. Denmark (Communication No. 2001/2010) in relation to which the Danish government has informed the Parliament that it is awaiting the ruling by the European Court of Human Rights in two similar pending cases against Denmark.

prisoners to torture and ill-treatment. Despite these serious accusations – and a previous decision by the Supreme Court on some procedural issues[9] - the Danish Ministry of Defense maintains that the case should be barred due to rules on statute of limitation and the Ministry will make this claim during court hearings in June in an attempt to have the case ended without any adjudication of the merits - leaving the victims without any access to justice. Moreover, regrettably, the current government decided in **July 2015 to end the Commission of Inquiry on Denmark's participation in these two armed conflicts** whose mandate was amongst others to assess if Denmark had adhered to its international obligations concerning the handling of persons who had been captured and detained by Danish troops and later transferred to Iraqi or Afghan jurisdiction.[10]

The alternative report falls into two parts:

- **Part A** provides alternative replies to some of the questions raised in the list of issues and suggested recommendations to be made to Denmark in order to ensure full implementation of the ICCPR.

- **Part B** addresses new and important issues that have emerged over the past five years since the adoption of the list of issues in 2011, including increased use of administrative detention of foreigners; tolerated stay regime and violations of rights of LGTBI persons and persons with disabilities. The Coalition has chosen to do so, because some of these issues give rise to concerns regarding Denmark's fulfilment of its international obligations under the ICCPR.

The documentation presented in this report primarily derives from the NGOs' ongoing monitoring of Danish law and practice within the areas of the ICCPR, including advocacy activities carried out vis-à-vis the Danish government, parliament and relevant public institutions.

Promoting implementation of the ICCPR at the inter-governmental level

Commendably, Denmark has for decades assumed a leadership role at the inter-governmental level in the efforts to promote a number of the key civil and political human rights. By way of example, within the **UN General Assembly**, Denmark continues to spearhead the process of drafting and promoting the annual omnibus resolutions on the issue of torture. Similarly, Denmark has been playing a pioneer role within the **UN Human Rights Council** being the lead author and promoter of thematic resolutions on issues as diverse as torture and the role and responsibility of judges.

[9] Decision by the Supreme Court of Denmark 13 September 2013 regarding the procedural issue concerning providing guarantee of security.

[10] Last week, it was revealed in the media that Denmark had transferred a higher number of prisoners than previously known and that Denmark likely knew that these prisoners would be maltreated by Iraqi authorities. Information newspaper 19, 20, 23 and 25 May 2016.

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

Finally, it should be emphasized that the present government – like its predecessors – has continued to provide moral and financial support to NGOs engaged in the promotion of human rights and has maintained a good and constructive dialogue and cooperation with NGOs.

Yours sincerely,

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

Part A: LIST OF ISSUES PRIOR TO REPORTING (LOIPR)

I. INTRODUCTION

In response to the Committee's request for general information on the human rights situation in Denmark (LOIPR PARA 1-3), Denmark provided information on various modifications to the Administration of Justice Act (Retsplejeloven) and other legislation and information on other developments relating to the implementation of the Covenant (National Report para 4-19).

Below, we would like to highlight three new legislative developments (1) that occurred after the submission of the National Report last year and that related to the situation of refugees and the possibility to be granted legal aid when submitting cases to the HRC. We would like to suggest that **Denmark is asked to explain how these new legislative developments correspond with Denmark's specific obligations under the ICCPR and its general legal obligation in Article 2 of ICCPR to "…adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant**".

Moreover, we would also make a critical comment to the new Military Manual mentioned by Denmark (National Report para 18) (2).

1: Legislative Amendments

a) Amendments of the Danish Aliens Act (LBK 1021 of 19 September 2014)

Two amendments to the Aliens Act in November 2015 and February 2016 entailed further restrictions for asylum seekers:

- Law 102 of 3 February 2016: The modification of the Aliens Act entailed that the right to family reunification for persons on temporary protection[11] was postponed to after three years after granted asylum. We – as well as the Danish Institute for Human Rights - consider this modification of the Aliens Act incompatible with the right to private and family life, as stipulated in the ICCPR (and article 8 of European Convention on Human Rights (ECHR)) (see further below). [12]
- Law 1273 of 20 November 2015: The modifications of the Aliens Act entailed that the compulsory right to judiciary control of the administrative decision to detain a refugee could be restricted under certain circumstances. We consider this modification incompatible with the right to fair trial under the ICCPR.

[11] This temporary protection status was introduced by the previous government in February 2015 with limited possibility for family reunification.

[12] See response by DIGNITY to the Ministry of Immigration, Integration and Housing (MIIH) 6 January 2016. See also response by the Danish Institute for Human Rights of 6 January 2016.

b) Amendments to Law on Integration (LBK 1094 of 7 October 2014)

The Parliament is currently debating to remove the compulsory medical check-up that refugees who have received asylum in Denmark are so far entitled, except for refugees who are referred by UNHCR ("kvoteflygtninge"). This change will have severe consequences for vulnerable refugees with medical conditions, including victims of torture, as their needs for treatment will not be identified at an early stage[13]– especially due to the already inadequate identification earlier in the asylum process (see Part B). [14]

A new integration allowance (*integrationsydelsen*), which entailed a serious reduction in the state provided allowance for refugees (e.g., up to 50% reduction for some individuals and families), was introduced in September 2015 aiming at making it less attractive for foreigners to seek asylum in Denmark[15] and at creating incentive to work and to become integrated into Danish society. The new lower integration allowance may not have the anticipated effect of enhancing integration, as it will hinder traumatized refugees from obtaining the necessary rehabilitation that is a prerequisite for their integration. [16]

c) Amendment to law relating to legal aid in cases related to submission of complaints to international complaints mechanisms based on human rights conventions and the Administration of Justice Act (Law 944 of 20 December 1999)

This amendment, which was adopted by the Parliament on 3 March 2016 and entered into force on 1 April 2016, significantly restricts the possibility for legal aid when submitting complaints against Denmark to the UN Committees, including to the Human Rights Committee. The law was strongly criticised by various human rights organisations,[17] the Danish Bar Association[18] and three parties in the Parliament who noted that in a time with mounting international criticisms of Denmark due to its government's increased restrictions on asylum seekers, it would not be right to reduce the right to legal aid for people who wish to complain about Denmark within the UN system.[19]

The new restriction entails that an administrative entity ("Civilstyrelsen" (first instance) with possibility for appeal to "Procesbevillingsnævnet") will assess whether it is fair to grant legal aid in

[13] Today, there are serious challenges in the referral system for victims of torture who in average have to wait 15,7 year after obtaining residence before they are referred to treatment at DIGNITY.

[14] This amendment will affect a large group of refugees, as an estimate of 30% are traumatised and many of these are victims of torture. These numbers are likely higher among the Syrian refugees. The Committee against Torture noted in its latest Concluding Observations this deficiency in the Danish asylum system and asked Denmark to set up a procedure for systematic screening within a year (follow-up procedure, para 50 of the CAT Concluding Observations).

[15] See the preparatory notes to the law.

[16] The lower allowance may also have the negative side effect of increasing the risk of expulsion and ultimately the risk of radicalization, as underlined by an expert group on prevention of radicalization in August 2015.

[17] Politiken 13 December 2015.

[18] Høringssvar (response to the law) of 4 December 2015: "På denne baggrund finder Advokatrådet, at den foreslåede lovændring, som lægger op til en markant mere restriktiv anvendelse af adgangen til retshjælp, er unødvendig og retssikerhedsmæssigt meget betænkelig".

[19] Betænkning til L 97, afgivet af Retsudvalget d. 25. februar 2016.

a specific case. [20] This fairness criteria relates to a number of factors, including procedural aspects (e.g., the committees'' admissibility conditions), but most importantly also to whether there is a fair expectation that the ICCPR could have been violated by Denmark. If a Committee requests legal comments from Denmark, it would be assumed that the complaint has a fair ground to submit the complaint – except in a number of cases, including asylum cases related to the assessment of evidence (bevisvurdering), including the credibility assessment by Danish asylum authorities – for example when assessing the credibility of a victim of torture (even when the asylum authorities have not asked for a medical examination). The government justified this change by noting that the premise for the original system, which was introduced after Denmark ratified the Optional Protocol to the ICCPR, was that the international committees would properly assess admissibility so that when they asked Denmark for legal comments to a complaint, Denmark could assume that fairness criteria was fulfilled. According to the government, this premise is no longer valid, as the UN Committees have been reluctant to dismiss complaints.[21] Moreover, the government noted that current system of legal aid encourages dismissed asylum seekers[22] to use the committees as a third appeal in relation to decisions by Danish authorities.[23]

2: New Military Manual: Extraterritorial application of the ICCPR

Finally, with regard to the new Military Manual (National Report para 18), we would like to stress that various human rights organisations submitted critical comments to the initial draft of the Military Manual. [24] It is positive that the Manual clearly states that international human rights law apply in international military operations and that Danish forces' will have to abide by the human rights standards – for example in relation to handling and transfer of prisoners. However, in the first draft of the Manual it was not clear how the extraterritorial application of the ICCPR would be ensured in specific situation and how the human rights standards would be balanced against the military necessity principle. This issue has become even more pertinent with the recent decision by the Danish Parliament to expand Denmark's involvement in the war against ISIS (decision B 108) and the revelation last week in the media of likely poor implementation of the non-refoulement principle in the previous military operation in Iraq. **We recommend that Denmark is asked to explain what the extraterritorial application of the ICCPR will mean for Danish troops, for example in relation to handling and eventual transfer of prisoners (Article 2, 7 and 10 of the ICCPR).**

[20] Lovbemærkninger s. 13: "…indebærer kriteriet "rimelig grund" endvidere, at der skal foreligge en rimelig udsigt til, at der foreligger en krænkelse af den omhandlede konvention".
[21] Se bemærkninger to law proposal, s. 3-4.
[22] The majority of cases against Denmark relates to deportation of rejected asylum seekers. The numbers of such cases against the Refugee Appeals Board amount to: 2011: 9 cases; 2012: 10 cases; 2013: 14 cases; 2014 83 cases; and 2015 until 1 September 36 cases (see lovbemærkninger).
[23] The government referred to the case 2393/2014, K v. Denmark, in which the Human Rights Committee asked Denmark for legal comments in May 2014 and then in July 2015 the Committee dismissed the case due to the fact that the complaint had not explained why the credibility assessment by the Refugee Appeals Board had been arbitrary or entailed a denial of justice.
[24] See DIGNITY's response available at: https://hoeringsportalen.dk/Hearing/Details/59198

II. SUGGESTED RECOMMENDATIONS TO THE IMPLEMENTATION OF ARTICLES 1 – 27 OF THE CONVENTION

CONSTITUTIONAL AND LEGAL FRAMEWORK WITHIN WHICH THE COVENANT IS IMPLEMENTED (**Article *2;*** LOIPR PARA 4-7)

1: Denmark's reservations to the ICCPR (LOIPR PARA 4)

With regard to the reservations made by Denmark upon ratification of the ICCPR, we would like to note that Denmark maintains its reservation to Article 10 (3) second sentence regarding segregation of juveniles from adults and to "be accorded treatment appropriate to their age and legal status".[25]

We would like **to recommend** that Denmark withdraws this reservation so that the few juveniles who currently serve their sentence in prison are placed in juvenile centers. [26]

2: Incorporation of the ICCPR into Danish Law (LOIPR PARA 5)

A Committee of Experts recommended in 2001 an incorporation of ICCPR into Danish Law, but this was not followed up by any political initiatives.[27] Some 13 years later – in August 2014 - a new Committee of Experts issued its 527-page report (*betænkning*) no. 1546/2014.[28] After its thorough assessment of the legal, judicial, and practical implications of incorporation of the ICCPR into Danish law, the majority of the voting members of the Committee of Experts recommended an incorporation of the ICCPR. The Committee was split in its final vote in the following way:

- Six members recommended that ICCPR be incorporated into Danish law.
- Four members generally 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). However, two of these (John Lundum og Hanne Schmidt) noted that the ICCPR is adapt for incorporation due to its clear and precise provisions[29] .
- 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.

[25] The Government of Denmark makes a reservation in respect of Article 10, paragraph 3, second sentence. In Danish practice, considerable efforts are made to ensure appropriate age distribution of convicts serving sentences of imprisonment, but it is considered valuable to maintain possibilities of flexible arrangements.

[26] Reference is also made to the recommendation by the Committee against Torture, Concluding Observation para 35.
[27] Report no. 1407/2001.
[28] Report no 1546/2014 on incorporation etc. in the human rights field, 14 August 2014, available at: http://justitsministeriet.dk/sites/default/files/media/Pressemeddelelser/pdf/2014/Betaenkning_1546.pdf
[29] P. 13: Disse medlemmer afstår derfor fra at komme med udtrykkelige anbefalinger om de enkelte konventioner, men finder grund til at bemærke, at de konventioner, som generelt indeholder de mest præcist formulerede rettigheder og pligter, og som indebærer mindst risiko for en forskydning af balancen mellem lovgiver og domstole og andre retsanvendende myndigheder, er FN's konvention om borgerlige og politiske rettigheder, FN's konvention om afskaffelse af alle former for racediskrimination og FN's konvention mod tortur og anden grusom, umenneskelig eller nedværdigende behandling eller straf

No political initiatives were taken regarding incorporation - neither by the former government nor by the present government, which came into office in 2015[30]. During the examination of Denmark by the Committee against Torture last year, the Danish delegation noted that the incorporation of the UNCAT would be reconsidered. However, nothing has happened since that statement in November.

As a support for the Danish position on no need for incorporation, Denmark refers to 9 decisions in which the courts have applied provisions of the Covenant in the period January 2001 – January 2014 (National Report para 23). In response, we would like to note that over a 13-year period, this represents a very low average (less than 1 case yearly, i.e., 0,70 % cases) demonstrating exactly the negative consequences of no incorporation of the ICCPR into Danish law, namely that the Covenant is rarely relied upon in courts. Moreover, in these 9 cases, the Covenant was not used to set aside Danish legislation and the government representatives in some cases argued that as a non-incorporated convention, the courts should not refer to its provisions.

Thus, we conclude that as the Covenant is not incorporated into Danish law, judges and administrative bodies have been and will continue to be reluctant to fully apply its provisions directly. Moreover, we note that in certain areas of law, the ICCPR would provide further protection than the ECHR that is incorporated in Danish law, for example in relation to the principle of non-discrimination (Article 26).

It is **recommended** to repeat the Committee's 2008 recommendation to Denmark (para. 6) to incorporate the ICCPR into Danish law.

3: Implementation of the Committee's views under the Optional Protocol (LOIPR PARA 6)

Denmark notes that the Committee's views are carefully considered (National Report para 25).

We would also like to stress that there has been an increase in the number of complaints against Denmark submitted to the Committee (some 111 complaints pending as of 8 April 2016) and especially cases against the Refugee Appeals Board. Some lawyers explain the rise in the number of violations by the fact that there has been a shift in the credibility assessment by the Refugee Appeals Board and that it is more difficult now to be deemed credible. [31]

In the 6-month period January 2016 – August 2015, the following 18 cases were decided by the Committee against Denmark (cases involving violations of ICCPR are underlined):

[30] Denmark decided, however, to accept the individual complaints mechanisms under the Convention on the Rights of the Child.
[31] See Information 22 September 2015: Flygtningenævnet får massiv kritik af FN-komite. With reference to four cases in which the Committee concluded violations of Article 7: Egypt, Afghanistan, Nigeria, and Italy.

a) 8 cases related to violations of Article 7 were decided on the merits: 2258/2013 (Sri Lanka); 2389/2014 (Iran); 2360/2014 (Italy); 2288/2013 (Nigeria); 2393/2014 (Afghanistan); 2329/2014 (Iran); 2370/2014 (Afghanistan) and 2343/2014 (Egypt).
b) 6 cases were discontinued: 2605/2015; 2535/2015; 2514/2014; 2492/2014; 2320/2013; 2363/2014.
c) 4 cases were declared inadmissible: 2351/2014; 2344/2014; 2426/2014; 2428/2014.

During the year of 2015, the Human Rights Committee found violations in a total of 8 cases against Denmark, primarily regarding non-refoulement (7 cases[32] (i.e., the six cases mentioned above and Communication 2272/2013)) and one case re naturalization for a person with PTSD (Q v. Denmark Communication 2001/2010)). In a number of discontinued cases, the Danish authorities reopened the cases and granted asylum to the plaintiffs[33].

By way of example, in cases related to Article 7, the Committee concluded that Denmark had violated the provision in the following three cases: 2258/2013 of 8 January 2016 regarding expulsion of two minors to Sri Lanka; 2389/2014 of 21 October 2015 related to expulsion to Iran; and 2288/2013 of 15 September 2015 related to expulsion to Nigeria. On the November 17, 2015 the Danish Refugee Board reopened the first and last of these cases, however in both cases stating that:

> "*Refugee Board first notes that the Human Rights Committee's opinion is not legally binding and that it is thus also after the reopening of the asylum cases the competent of the Danish authorities to decide whether the applicant may be sent back to (Nigeria)…"* (See homepage of the Board)

Both applicants were then rejected residence permit and told to leave Denmark.

Only one decision has been made as of 2015 regarding naturalisation, i.e., Q vs. Denmark, Communication No. 2001/2010, finding violation of the Covenant Article 26. However, a number of other Communication about the same issue were discontinued, including amongst other Communications No. 2012/2010 and No. 2045/2011, which were discontinued because these authors were granted Danish citizenship. All of these Communications included disabled persons seeking naturalization in Denmark, suffering amongst other PTSD due to torture in their countries

[32] A total of 8 cases in 2015 by the UN Committees (HRC and UNCAT) against Denmark's decision about deportation whereas only 4 such cases in the previous 11 years.
[33] Including Communication No 2150/2012; No 2286/2013; No. 2023/2011; No. 2056/2011; No. 2074/2011; No. 2150/2012; No. 2167/2012; No. 2180/2012; No. 2194/2012; No. 2207/2012; No. 2246/2013; No. 2286/2013; No. 2320/2013 and No. 2488/2014.

of origin before fleeing. At the moment two other cases are pending at the European Court of Human Rights about the similar issue. [34]

It is expected by the Danish Government that these ECHR cases may be decided before summer 2016. The Government thus inform Parliament, that no initiatives are taking with regard to implementing the Human Rights Committees opinion in "Q vs. Denmark", before the rulings of the European Court establish the legal interpretation under international law.

We would like to **recommend that Denmark explains the procedure for implementation of the Committee's views and the criteria for deciding when and eventually not to follow a decision**.

COUNTER-TERRORISM MEASURES AND RESPECT FOR THE RIGHTS GUARANTEED IN THE CONVENTION (**Articles 7, 9 and 14**; LOIPR PARA 8-9)

1: Danish anti-terrorism legislation (LOIRP PARA 8)

Since 2002, Danish anti-terrorism legislation has regularly been expanded - a trend which has been closely tied to the terrorist attacks abroad and in Copenhagen last year. When considering what anti-terrorism measures to adopt, any given state needs to strike a balance between security considerations on the one hand and human rights considerations on the other hand, notably the right to privacy, freedom of expression and freedom of movement. In recent years, this balancing act has impacted negatively on fundamental civil liberties, as reflected in the "terror packages" from 2002, 2006 and 2015.

We would like to note some concerns: First, the concept of 'terrorism' is not clearly defined and several 'terror lists' appear to be drawn up in ways, which allude to arbitrariness and (undue) geo-political considerations. [35] Second, the "terror package" in 2006,[36] entailed an expansion of police powers insofar as the Danish Security and Intelligence Service (PET) was granted extended access to surveil and obtain information without a court order. PET given amongst others given the following powers: To retrieve information from public bodies, without the person of concern is

[34] On January 18, 2016, the Minister wrote to the Danish Parliament that: "There currently pending two cases against Denmark at the European Court of Human Rights (ECHR), which also concerns the Naturalization Committee of lack of reasoning and where the question is whether the lack of justification is in line with the European Convention on Human Rights (ECHR) Article 8 in particular the right to privacy, as well as the ECHR Article 8 in conjunction with the prohibition of discrimination in Article 14 (Case 55607/09 and case 64372/11)."

[35] See case against ROJ-TV. As a consequence of the "terror package" of 2002, a case was initiated against the Kurdish television station, ROJ-TV. ROJ-TV had approx. 30 million viewers worldwide, and a Danish broadcasting license. ROJ-TV was acquitted in three decisions by the Danish Radio and TV Board, concerning complaints from the Turkish authorities about ROJ-TV's coverage of the conflict between Turkey and PKK. In these decisions the Board found that ROJ-TV's coverage of the conflict correspond-ded to the coverage of the two main TV-stations in Denmark, DR and TV2. However, in 2014, the Supreme Court found that ROJ-TV was guilty of propaganda for PKK and suspended its broadcasting license.[35] This case currently pending before the European Court of Human Rights, where Denmark is charged with allegation of violating article 10 of the European Convention of Human Rights.

[36] Act No. 542 of 06.08.2006

getting notified; to tap and monitor a non-suspect, if PET estimates that a suspect might contact the person; and to right to obtain airline passenger data one year back without a warrant. Third, in 2008, the Parliament adopted an additional series of restrictions in the freedom of movement for aliens on tolerated stay in Denmark out of security concerns (see below). The bill was met by criticism amongst other from the Danish Institute of Human Rights who considered the bill to raise concerns under international human rights law.

Further, as a result of the reinforced action against Danes and persons with a Danish residency permit involved in armed conflicts abroad, the Danish Passport Law and the Alien Act have been amended, hereby limiting the right to freedom of movement and allowing the cancellation of foreigners' Danish residency permits.

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

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

2: Deportations and expulsions of aliens on national security grounds (LOIPR PARA 8)

Aliens can be deported for various reasons, and the legislative framework has been further tightened several times over the last 10 years. As explained in the National Report (para 56 ff), a special procedure for expulsion of foreign nationals on national security grounds was introduced in 2009. Such decisions by the Security and Intelligence Service may be taken without the affected person's access to the information. Only his lawyer may have such access but is not allowed to reveal it to his client.

We recommend that Denmark ensures that the principle of non-refoulement is complied with in these deportation cases, as well as other standards of the ICCPR.

3: Rendition flights (LOIPR PARA 9)

In its Concluding Observations to Denmark (2008), the Committee noted its concern at allegations that the airspace and airports of Denmark had been used for rendition flights of persons from third countries to countries where they risk being subjected to torture or ill-treatment. The Committee recommended Denmark to establish an inspection system to ensure that its airspace and airports are not used for such purposes.[37] The European Court of Human Rights has addressed the issue of

[37] CCPR/C/DNK/CO/5, 16 December 2008, para. 9.

rendition and responsibility for complicity in a number of judgements[38], notably the two landmark rulings of 24 July 2014: al-Nashiri v. Poland, and Hasayn (Abu Zubaydah) v. Poland.[39]

As Danish airspace has been used by CIA rendition flights (more specifically allegedly 100 flights passed through Danish airspace and 45 stopovers were done at Danish airports by planes allegedly used by the CIA[40]), this raises concerns about Denmark's fulfilment of its obligations under the ICCPR. Denmark has initiated two inquiries about the CIA rendition flights, i.e, by an Inter-ministerial Working Group and the Danish Institute for International Studies (DIIS). However, both inquiries concluded that that it was not possible to determine whether or not CIA flights had occurred in Danish, Greenlandic or Faroese airspace. Denmark has not clarified, as asked by the Committee, how it will in the future ensure that Denmark's airspace and airports are not used for such purposes (last sentence LOIPR 9).

We recommend **that the Committee urges Denmark to take steps to ensure that cases of rendition are prevented in the future and that Danish, Greenlandic or Faroese airspace is used in accordance with international principles, including the prohibition of non-refoulement (ICCPR Art 7).**

VIOLENCE AGAINST WOMEN, INCLUDING DOMESTIC VIOLENCE (**Articles 3, 7, 26**; LOIPR PARA 12)

In its response, Denmark notes that violence against women continues to be a serious gender equality problem (National Report para 101) and referred to the national action plans (National Report para 104 ff).

The number of women who were victims of physical violence in intimate relations in 2000 (total of 42,000) decreased to app. 29,000 in 2010. [41] A study by the European Agency for Fundamental Rights (FRA) of 2014[42] showed that 30-39 % of Danish women had experienced physical and/or sexual partner violence since the age of 15 - compared to a lower EU average of 28%. The FRA study revealed that Denmark was at the top end of the scale on almost every parameter. The study referred to a telephone survey of 3,552 women in Denmark that found – in addition to what mentioned above - that 50 % of women had experienced physical or sexual violence, or threat from a partner or a non-partner, since the age of 15. The FRA survey also found that in Denmark, 55 % of women have experienced physical and/or sexual violence or threat from a partner or a non-partner

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

[39] Application no. 28761/11 and 7511/13, decision of 27 July 2014.

[40] See letter to the European Parliament's Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners.

[41] According to the National Institute of Public Health, the estimated annual number of women (age 16-74 years) exposed to violence in the family and in intimate relations has decreased from 42.000 (2,4 pct.) in 2000 to 29.000 (1,5 pct.) in 2010. As regards dating violence (age 16-24 years) the number of women is estimated to have decreased from 13.000 (4,7 % in 2007) to 10.000 (3,2 pct.) in 2011.

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

since the age of 15.[43] Moreover, Denmark displayed a relatively high rate of partner violence, and 42 % of the most serious incidents of partner violence resulted in injuries. [44]

Prevalence rates for sexual violence vary according to study design, methods and sample. However, it is well-documented that reports of rape have been stable in the past 30 years (400-600 per year).[45] This number of reported cases is very low compared to for example Sweden (app. 6,000 cases reported yearly).

There is a need for strengthening and ensuring the legal rights of victims of sexual violence. A Danish report from 2010 showed that only 30 % of reported rapes come to trial, and less than one in five results in a conviction.[46] Moreover, there is a need to strengthen the support and treatment by the social and health system to victims of violence in intimate relations and their children and to do so through legislative amendments.[47]

The access to shelters is limited for women with physical disabilities as only a limited number of shelters are accessible for wheelchair users. [48] In some areas of the country there are long distances to the nearest accessible shelter. This limits the options both for women with disabilities and for mothers to children with disabilities, as they are forced to stay in a violent relationship or leave the disabled child with a violent partner.

In its recent Concluding Observations concerning Denmark[49], the Committee on the Elimination of All Forms of Discrimination against Women recommended Denmark to incorporate the Convention on the Elimination of All Forms of Discrimination against Women or at least to adopt relevant legislation.[50] We also refer to the Concluding Observations of the Committee against Torture last year.[51]

We suggest that Denmark in accordance with its obligations under the ICCPR intensify its efforts to combat all forms of violence against women, including domestic violence and rape, in particular by:

[43] Ib, at page 24.
[44] Ib, at page 63.
[45] Balvig: Offerundersøgelsen 2012 (2013).
[46] The Danish Crime Prevention Council (2010).
[47] Act on Social Service Section 109 obliges municipalities to provide battered women and their children with shelter. This also applies to women with disabilities. See further Denmark's response to ICCPR.
[48] http://www.lokk.dk/Faa-hjaelp-her/Oversigt-over-krisecentre/
[49] CEDAW/C/DNK/CO/8.
[50] The Committee reiterates its call upon the State party to reconsider its decision not to incorporate the Convention into its national legal order, or at least to adopt a comprehensive law on the prohibition of sex discrimination in all areas covered by the Convention. The Committee also recommends that the State party consider the enactment of a comprehensive law on the prohibition of discrimination covering all internationally recognized grounds and the establishment of institutionalized structures to exchange and coordinate information among its various bodies for tackling discrimination, with a view to ensuring legal clarity and consistency, especially for women who are victims of intersecting forms of discrimination.

[51] Concluding Observations para 45.

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

PROHIBITION OF TORTURE AND OF OTHER CRUEL, INUMAN OR DEGRADING TREATMENT OR PUNISHMENT, EXCESSIVE USE OF FORCE, SECURITY OF PERSON AND TREATMENT OF PRISONERS, AND JUVENILE JUSTICE (**Articles 3, 6, 7, 9, 10 and 24;** LOI PARA 13-15)

The following eight issues will be discussed under the above heading:

1. *Criminalisation of torture (LOIPR 13 (a))*

The question whether Denmark has a legal obligation to introduce a specific crime of torture in national legislation has been challenged by successive Danish governments. Denmark has repeatedly insisted on *not* having such legal obligation. According to Denmark's Committee on Criminal Law's report no. 1494/2008 on 'a torture provision in the criminal code'[52] Denmark is not under any international legal obligation to introduce a definition of torture or the crime of torture in Danish criminal law. The international legal obligation is interpreted as exclusively consisting of an obligation to ensure that all acts of torture are punishable by appropriate penalties. Furthermore, the Committee on Criminal Law found that the introduction of a specific offence of torture in the Criminal Code would be difficult to reconcile with the current structure of the law. It should be noted that the Criminal Code does not have a distinct chapter on crimes under international law. The reasoning was that acts of torture may have very different forms and purposes, and a specific torture offence could lead to problems regarding delimitation and collision, and possibly 'double criminalisation'.

Several other European states have adopted a specific provision in their national criminal legislation defining and prohibiting torture.[53] Some of these states have underlined the important symbolic value of such criminalisation. For instance, Norway decided to introduce a specific torture provision

[52] Committee on Criminal Law, Report 1494/2008, 25 January 2008, available at: http://www.statensnet.dk/betaenkninger/1401-1600/1494-2008/1494-2008_pdf/printversion_1494-2008.pdf
[53] Torture is criminalized in several European states, including the Germany (Article 340 and 223a, 224-25), Great Britain (Article 134), France (Article 222), Spain (Article 173-77) and Norway (§ 117a).

in 2004, although the crime of torture was already covered by existing provisions, and Sweden has most recently decided to reconsider the issue.

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

Nonetheless, following the recommendation of the UN Committee against Torture to Denmark in 2007, the Danish parliament amended national criminal legislation in 2008 and introduced torture as an aggravating circumstance in section 157a of the Criminal Code and section 27a of the Military Criminal Code.[54] It is noteworthy that while torture is considered as one of the most serious crimes under international law and a peremptory norm (*jus cogens*), the very same acts of torture are merely considered as an aggravating circumstance under Danish law.[55]

We would recommend that the Committee reiterate its recommendation 2008 re criminalisation of torture.

2. *Statute of limitation (LOIPR PARA 13 (B)*

Positively, following the above mentioned legislative amendment in 2008, acts of torture are no longer subject to any statute of limitation, cf. section 93b of the Criminal Code and section 10a of the Military Criminal Code (see also National Report para 116). [56] However, the amendments were limited to criminal liability, and the normal rules regarding statute of limitations still apply in civil cases. This deficiency prompted recently the Committee against Torture to recommend to Denmark to ensure that there is no limitation of civil claims (para 17 in the Concluding Observations):

> *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).*

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

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

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

This recommendation has not been followed by Denmark and in the current case involving 23 Iraqis against the Danish Ministry of Defense, the Ministry will continue to rely upon the Danish rules regarding statute of limitation in order to have the case dismissed.

We would suggest the Human Rights Committee to follow the Committee against Torture with a similar recommendation as the current legislation has the effect that some victims are not granted access to justice.

3: Independent Police Complaint Authority (LOIPR PARA 13 (C))

It is positive that the Independent Police Complaint Authority (IPCA) was established in 2012. However, there are still some concerns with regard to investigation and prosecution of criminal offenses committed by the police:

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

First, the mandate of the ICPA-authority is limited to the investigation of criminal cases against police officers (eg. the ICPA is authorized to make arrests and request orders for pre-trial from court) whereas the regional public prosecutor has the power of indictment and thus the power of discretion to assess whether there are grounds for prosecuting, preparing the indictment, and conducting the proceedings. [57]

Limited mandate of the ICPA

Secondly, the ICPA's mandate does not include so-called complaints about decisions made by the police (*dispositionsklager*) that are still investigated by the police.

Justice is not seen to be done

In light of the lack of clarity about how the ICPA assesses and eventual dismisses complaints; how the prosecutor assesses a complaint about dismissal by the ICPA, and the low number of final convictions, it might be important to review whether the public in general perceive the ICPA as actually providing justice.

We therefore recommend to ensure DUPENs compliance with international standards, including consider reviewing whether victims of ill-treatment have confidence in the current system and whether further measures could be taken to protect victims and witnesses.

4: Pre-trial detention (LOIPR PARA 13 (d))

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

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

Sweden and Norway.[58] The proportion of pre-trial detainees continues to be around 30% of the total prison population.[59] In 2011, the Danish government pledged to reduce the number of persons placed in pre-trial detention, and as a result in 2012, the Director of Public Prosecution initiated a lean-project to identify best practices in handling pre-trial detention cases with the overall aim of limiting the use of pre-trial detention, particularly the length of pre-trial detention. There is no publicly available data about the preliminary outcome of the project.

However, statistics from Danish Statistical Bureau established that there was an increase of the use of pre-trial detention in the period 2006 (6013 cases) – 2011 (8022 cases) followed by a decrease in 2012 (7372 cases).[60] The statistics from the Chief Prosecutor and the Ministry of Justice differ and indicate a lower number of cases.

With regard to cases of lengthy pre-trial detention (i.e., more than three months), there has been a decrease from 1764 cases in 2010 to 1427 in 2012.[61] However, the average length of the pre-trial detention was still six months in 2012, and in 278 cases persons were detained longer than what is prescribed in the Administration of Justice Act. Noticeably, some 36 of these were juveniles. It should also be noted that there are still significant differences in the use of pro-longed pre-trial detention in the different police districts.[62] Often restrictions are imposed on pre-trial detainees, for example in relation to visits and correspondence.

Pre-trial detention can have severe psychological consequences for the detainees. In particular the first weeks of pre-trial detention entails increased vulnerability, as identified in studies establishing evidence for a relatively high number of suicides during pre-trial detention.[63] The uncertainty about the length of the pre-trial detention period is another important factor.

The Committee on the Prevention of Torture recommended after its visit to Denmark last year that the Danish authorities should take with regards to legal safeguards for pre-trial detainees:

> *the Danish authorities take the necessary steps to ensure that the right of all detained persons to have access to a lawyer is effective in practice as from the very outset of custody. Further, it recommends that, in association with the Bar Association, a list of ex officio lawyers which detained persons can consult be compiled for each police station. In addition, a record should be maintained of any request by a detained person to see a lawyer and whether such a request was granted*.[64]

[58] Report by the Danish Institute for Human Rights 2014-2015, Frihedsberøvelse, page 17.
[59] Statistics from the Danish Prison and Probation Service referred to in Report by the Danish Institute for Human Rights 2014-2015, Frihedsberøvelse, page 19.
[60] Ib.
[61] Chief of Prosecution Report on lengthy pre-trial detention 2011-2012.
[62] The Danish courts have on several occasions concluded that the rules regarding pre-trial detention in the Danish Administration of Justice Act have not been respected. By way of example, the Supreme Court ruled on 2 February 2015 that the detention of a Swedish citizen prior to trial did not comply with the Danish Administration of Justice ActCase 209/2014
[63] Report by the Institute for Human Rights, at page 20.
[64] Ib, para 16.

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

5: Prohibition of solitary confinement of minors (LOIPR PARA 13 (d))

In its Concluding Observations on Denmark (2015), the Committee against Torture recommended (para. 14):

> *Solitary confinement of persons under the age of 18 should be abolished.*

During pre-trial detention

The Human Rights Committee recommended in 2008 that Denmark should review its legislation and practice in relation to solitary confinement during pre-trial detention. The Administration of Justice Act regulates the use of solitary confinement on children, and it is required that exceptional circumstances shall be present before such measure can be taken.

It is positive to note that the use of solitary confinement of minors during pre-trial detention has been reduced dramatically, and only amounted to between 0 and 6 juveniles annually in the period 2001-10 and no juveniles were held in isolation in 2011-2014.[65] Earlier in 2016, a 15-year old girl was put in isolation during her pre-trial detention period.[66]

During sentence

It is the main rule that children aged 15-17 years, who have committed an offence, are placed outside prisons. This main rule is derogated from, if the Ministry of Justice decides that the law enforcement requirement, speaks against a placement outside the prison, cf. the Sentence Enforcement Act § 78 part. 2. In 2013, the average number of children placed in prison each day was twelve (three of these children were in pre-trial detention).[67]

The Sentence Enforcement Act allows isolation for different offences and for rather long time periods. The system of isolation of detainees in prisons is established for adult detainees as the target group, but the reality is that this system is (with very few exceptions) equally enforced on juveniles who serve their sentences in prison.

The number of children in isolation under the Sentence Enforcement Act is still a serious problem: The Prison and Probation Service registered 158 placements of children in 'Isolation as a disciplinary

[65] Annex C to Rigsadvokatens Redegørelse August 2015.
[66] She was arrested on 14 January 2016 and released early February. The Ombudsmand visited her on 4 February.
[67] the Prison and Probation Service, yearly statistic(2003), page 15;
file:///C:/Users/nnb/Downloads/Kriminalforsorgens+Statistik+2013+juli+2014%20(1).pdf

sanction' or in 'Exclusion from association' of a duration of 24 hours to 14 days, between 2009 and 2013.[68]

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

- *"[…] take measures to ensure that no child, regardless of circumstance, is subjected to imprisonment in the ordinary prison system with adults."* [69]
- *"[…] prohibit the placement of persons under the age of 18 in solitary confinement"* [70]

In its 2014 report on Denmark, the CPT expresses very strong reservations about any form of solitary confinement of juveniles as this can compromise their physical and/or mental integrity. It considers that a juvenile should not be placed in solitary confinement for disciplinary purposes more than three days.[71]

It is our view that children should not be placed in isolation **and we therefore recommend** Denmark to prohibit placement of persons under the age of 18 years in solitary confinement.

6) Solitary confinement during pre-trial detention (LOIPR PARA 14)

The use of isolation in pre-trial detention, on the basis of the Danish Administration of Justice Act[72], is at a historically low level. The annual report of the Director of Public Prosecution shows that the number of pre-trial detainees in solitary confinement was: 132 persons in 2012, 55 persons 2013 and 36 persons in 2014.

Although this development is very positive, we recommend Denmark to further work towards further restricting, in accordance with international standards, the conditions and the length under which solitary confinement during pre-trial detention is permitted in the interest of criminal investigation. [73]

7) Confinement of minors on remand with adult inmates (LOIPR PARA 14)

As noted above, a few juvenile offenders continue to be placed in prisons with adults. We refer to the recommendation of the Committee against Torture and suggests that Denmark ends this practice.[74]

[68] According to the National Council for Children; http://www.boerneraadet.dk/media/77586/Brev20til20justitsministeren20vedr2020isolationsfc3a6ngsling20af20unge2007101420underskrevet.pdf

[69] CRC/C/DKN/CO/4 2011, para. 66(d)

[70] CRC/C/DKN/CO/4 2011, para. 66(b)

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

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

[73] See recommendation by the Committee against Torture (2015), Concluding Observations, para 33.

[74] Ib, para 35.

8) Coercive treatment in mental health facilities (LOIPR PARA 15)

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

The Psychiatry Act was amended in 2007, 2010 and 2015. The 2010 amendment was aimed at reducing the use of coercion in psychiatric institutions, by restricting the criteria for applying medical restraint and requiring a minimum frequency of medical supervision and simultaneous assessment of whether restraint – fixation - should cease or continue.[75] Similarly, the 2015 amendment aimed at tightening the criteria for and supervision of the use of immobilisation.

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

The use of coercion in practice

Despite the positive steps taken by the state, the use of coercion on patients in psychiatric institutions is still rather extensive, also when compared to other countries. Generally, the percentage of adults who have been subjected to such measures are the same now as in 2011-2013 (baseline) and 2014.[76]

With regard to juveniles, an increase has been noted in relation to the baseline and 2014. [77] The National Council for Children has documented that a high number of children and youth in psychiatric wardens are subject to forced hospitalization and treatment. [78] The UN Committee on the Rights of Persons with Disabilities (CRPD) has recently expressed strong criticism of the Danish practice and recommended Denmark to abolish forced hospitalization and treatment of children in psychiatric hospitals:

> The Committee recommends that the State party abolish forced hospitalization and treatment of children in psychiatric hospitals, and provide adequate opportunities for information and counselling to ensure that all children with disabilities have the support they need to express their views.[79]

This issue was selected under the 1-year follow procedure. The Danish government replied to the UN CRPD Committee by reiterating the legal basis for the situation, but without noting any specific initiatives that have been taken to change the situation.

[75] Patients are attached to their bed (or a bed in an isolation room) with an abdominal belt.
[76] See Sundhedsstyrelsen: Monitorering af tvang i psykiatrien 2015, published April 2016.
[77] See Sundhedsstyrelsen: Monitorering af tvang i psykiatrien 2015, published April 2016.
[78] http://www.boerneraadet.dk/media/31161/Det-er-bare-almindelige-mennesker-der-har-en-saarbarhed_-til-web.pdf
[79] Concluding Observations (2014), para 20-21 og 68. Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fDNK%2fCO%2f1&Lang=en

Another concern is that statistic shows that minorities, especially men with a minority background, are overrepresented when it comes to being subjected to coercion in the psychiatric hospitals.[80]

When focusing on the various types of measures, we can note that with regard to **fixation by belts**, there has been a downward trend as regards the overall use of immobilization with belt in recent years – although the use of fixation for a medium period (2 – 8 hrs) has increased. The total number of cases, all regions/local councils (except Region Midtjylland og Nordjylland) have noted a decrease compared with baseline and 2014. In those two regions, the total numbers of cases have not decreased, but the total number of persons has decreased.

With regard to using **medicine as an alternative**, we can note that there has been an increase in all regions (except Copenhagen and Sjælland) – also in regions/local councils that have decreased the use of belts (see below). [81]

A High Court judgment concluded in 2014 that the Odense University hospital was found to have breached article 3 of the European Convention Human Rights because the plaintiff was subjected to coercive measures (fixation) that lead to such intense physical and psychological suffering. [82] In the judgement Bureš v. the Czech Republic, of the European Court of Human Rights, ruled that the use of immobilization of individuals with belts requires that the intervention is strictly necessary.[83]

In its report on Denmark (2004), the CPT expressed serious concern about the Danish practice:[84]

> *"However, despite measures taken to tackle the frequent use and length of immobilisation in psychiatric hospitals, such as increased staff training and certain legislative amendments, there had been no reduction in the registered use of immobilisation in Denmark. On the contrary, the instances of immobilisation, and notably those of prolonged immobilisation (for more than 48 hours), has steadily increased and reached all-time peaks in 2012 and 2013 on a national level. The CPT therefore remains seriously concerned about the frequent and prolonged use of immobilisation in psychiatric hospitals."*
>
> *"In the CPT's view, the duration of the actual means of restraint should be for the shortest possible time (usually minutes to a few hours), and should always be terminated when the reason for the use of restraint has ceased. The maximum duration of the application of mechanical restraint should ordinarily not exceed 6 hours. As pointed out in the reports on the CPT's 2002 and 2008 visits to Denmark,* ***the Committee considers that applying instruments of physical restraint to psychiatric patients for days on end cannot have any medical justification and amounts to ill-treatment.****"*

We also refer to the Concluding Observations of the Committee against Torture (2015).

We therefore recommend Denmark to:

(a) End the use of immobilization with belt exceeding 24 hours.

[80] Danish Institut of Human Rights, "Menneskerettigheder og tvang I psykiatrien. Anbefalinger", page 7, Refers to a 2012 survey.
[81] Ib.
[82] Judgement of 4 July 2014.
[83] Bureš v. the Czech Republic, 18 January 2013, para. 80 and 86
[84] CPT/Inf (2014) 25, para. 121 and 125.

(b) Examine why coercion in psychiatric establishment are used more widely vis-à-vis minority groups.
(c) Ensure that staffing levels and staff competencies in psychiatric institutions in order to reduce the recourse to coercion in the psychiatric hospitals. This should include allocating contact persons and review guidelines for staff at the child and youth psychiatric wardens.

PROHIBITION OF SLAVERY OR FORCED OR COMPULSORY LABOUR (**Articles 3, 8 and 24;** LOIPR PARA 16)

In its response, Denmark referred to statistics regarding **human trafficking** (481 persons identified from 2007-2014; mainly from Nigeria (vast majority), Romania and Thailand), referral mechanism, the institutional system and the mandate of the Danish Centre against Human Trafficking, the various national action plans and efforts to protect victims of trafficking (para 153ff).

Denmark has initiated a number of measures to address the issue of trafficking. However, there are still a number of challenges, including only few cases reported; no protection of the women after return home despite the extension of the reflection period to 120 days; the temporary residence permit for women who decide to bring a case does not protect the women – and hence is not a real alternative. Victims of trafficking are still treated primarily as irregular migrants, and policies and practices still emphasize return of victims to their home countries rather than ensuring redress and protection. Denmark still offers no long-term alternatives that allow victims of trafficking to stay in the country on a work or residency permit, but solely offers repatriation or, in exceptional cases, asylum.

Victims of trafficking are offered a reflection period of 120 days (National Report para 156). In this period, victims may remain in the country and receive some medical and psychological support. However, the victim must agree to a voluntary return to their home country. There is a need for granting the 120 days reflection period to all victims of trafficking regardless of willingness to return to the home country. Moreover, there is a lack of jurisprudence, as it is often impossible to establish evidence for the subjective element (i.e., intention).

The Special Rapporteur on Torture have on numerous occasions highlighted the rights of victims of trafficking, and he remained concerned that the efforts by Denmark in relation to trafficking appeared to be aimed less at the rehabilitation of victims than at repatriating them to their countries of origin.[85]

We recommend that Denmark enhances its efforts to combat trafficking in persons by providing adequate protection and redress to the victims; by granting additional education to the victims in order to make transition to a life without trafficking more sustainable; and by preventing the return of trafficked persons to their countries of origin where there is a substantial ground to believe that

[85] See for example Report A/HRC/13/39/Add.5 of 5 February 2010.

they would be in danger of torture or ill-treatment – for example by granting the 120 days reflection period to all victims of trafficking regardless of willingness to return to the home country.

DIPLOMATIC ASSURANCES AND MAXIMUM LIMIT TO DETENTION PRIOR TO EXPULSION (Article 2 and 13; LOIPR PARA 17)

Diplomatic Assurances (LOIPR PARA 17)

The UN Human Rights Committee noted in its previous Concluding Observations to Denmark its concerns that Denmark may be willing to rely on diplomatic assurances to return foreign nationals to countries where treatment contrary to article 7 of the Covenant is believed to occur.[86]

In its response, Denmark referred to the amendment of the Aliens Act in 2009 that introduced judicial review of certain decisions on administrative expulsion, and to the explanatory note to the bill setting out the limits and conditions for Denmark to rely on diplomatic assurances (National report, para 166-169). Denmark underlined that the principle of refoulement (Article 31 of the Aliens Act) will be upheld in all cases in which Denmark considers relying on diplomatic assurances.

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

Denmark noted that it has not used diplomatic assurances in cases in which there was a risk of death penalty or torture (para 169 of the report). However, in light of the current context of anti-terrorism policies, it can be expected that Denmark will use diplomatic assurances in the future. The recognition of this is also implicit in the amendment to the Aliens Act in 2009, and reflects the conclusion by a working group established by the Ministry of Integration in 2009 who stated that there is a possibility to use diplomatic assurances without violating international legal standards if certain conditions are fulfilled.[87]

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

The former and the current UN Special Rapporteur on Torture, as well as the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, have on numerous occasions stressed that diplomatic assurances with regard to torture

[86] Report CCPR/C/DNK/CO/5, at para 10.

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

are nothing but attempts to circumvent the absolute prohibition of torture and non-refoulement.[88] The European Court of Human Rights has in its jurisprudence accepted the use of diplomatic assurances under certain conditions and it has developed specific criteria for assessing diplomatic assurances.[89]

We therefore suggest that the Committee calls on the State Party to respect, in law and practice, its non-refoulement obligations and to admit that diplomatic assurances are unreliable and ineffective and should not be used as an instrument to modify the determination of the Convention.

Maximum limit to the length of deprivation of liberty for migrants and asylum-seekers pending deportation (LOIPR PARA 19)

Deprivation of liberty, including administrative detention, should respect the protection provided by article 7, 9 and 10 of the ICCPR. Lengthy administrative detention without basic safeguards would present a severe risk of arbitrary deprivation of liberty, and might also raise concerns in relation to the UNCAT.[90] The Danish Aliens Act provides for the possibility for the police to *administratively* – thus not in contemplation of prosecution on criminal charges - detain foreigners, including asylum seekers, pursuant to article 35 and article 36 of the Aliens Act. [91] The former relates, for example, to foreigners who have been criminally convicted and received a deportation order.

The Aliens Act provides that the police should first consider less restrictive measures against foreigners, including for example requesting the person to leave his/her passport with the police or give notice at a specific location (article 34 of the Aliens Act). As an exemption to this main rule, the police might decide – if these less restrictive measures are insufficient - to detain foreigners and deprived them of their liberty pursuant to article 36 of the Aliens Act. Thus, detention should be the exception to the main rule of using less restrictive measures. After a maximum of three days, the court will consider the detention (article 37 of the Aliens Act). During the initial max 3-day period, there is no review of the decision by the police. Morover, after the amendment to the Aliens Act in November 2015 (L 62), the judicial review after 3 days can be suspended by the Minister of Immigration (see further below Part B).

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

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

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

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

As noted in the National report (para 172), in 2011, the authorities introduced a maximum limit of six months for administrative detention pursuant to article 36 (article 37 (8) of the Aliens Act) that can in exceptional cases be extended by 12 months (hence a total of 18 months). There is no maximum to the detention pursuant to article 35 of the Aliens Act.

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

We therefore recommend that Denmark reviews the compliance of its regulations with international standards and that the principle that detention should be the exception is maintained.

Part B: OTHER SUGGESTED RECOMMENDATIONS

Issue 1: SOLITARY CONFINEMENT OF ADULTS

The use of solitary confinement during pre-trial detention has been mentioned above. In this section, the use of solitary confinement as a form of punishment or disciplinary sanction related to sentence enforcement will be discussed. There are four types of placements in the Sentence Enforcement Act, which constitute or may amount to solitary confinement;

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

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

Exclusion from association

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

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

Voluntary exclusion from association

It is the main rule that detainees should have access to association with other detainees. As an exception to this principle, a detainee may serve time without association with other inmates in voluntary exclusion from association cf. the Sentence Enforcement Act § 33. I practice, this measure is used by persons who feel that they safety in association with other prisoners cannot be safeguarded by the prison, such as gang members serving on wings with rivaling gangs, pedophiles and certain vulnerable groups that rank at the low end of the informal prisoner hierarchy. This

vulnerable group lacks legal safeguards, and statistics from the Department of Prisons and Probation show that the practice of using voluntary isolation in detention centres and in the closed prisons, is relatively common and often used for several weeks.

Table from the Prison and Probation Service:[92] Voluntary exclusion from association. Closed prisons and gaols. Number and duration

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

Table from the Prison and Probation Service:[93] Voluntary exclusion from association. Closed prisons and gaols. Degree of exclusion

	Degree of exclusion		
	With access to contact with other detainees	**Without access to contact with other detainees**	**Total**
Closed prisons	220	81	301
The prisons of Copenhagen and gaols	76	56	132
2013	296	137	433
2012	260	143	403
2011	276	171	447

[92] "Statistic 2013", Prison and Probation Service Table 5.5
[93] "Statistic 2013", Prison and Probation Service Table 5.6

2010	353	206	559
2009	312	172	484
2008	259	180	439
2007	259	131	390
2006	272	105	377
2005	246	146	392
2004	184	198	382

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

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

Isolation and the additional possibility of forced physical restraint (fixation), does not have any upper time limit. However, the prison is obliged to report instances of isolation to the Prison and Probation Service, if they extend beyond 24 hours in the case of children aged 14-17 years and beyond 3 days for adults.[94]

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

Table from the Prison and Probation Service:[95] Isolation in protection cell. Number and duration

	Less than 6 hours	**6 – 12 hours**	**12 – 24 hours**	**1 – 3 days**	**More than 3 days**	**Total**	**- Here of fixation**
Closed prisons	45	9	20	9	-	83	63
Open prisons	8	3	10	1	2	24	22
Copenhagen prisons and gaols	70	21	45	9	0	145	129
2013	123	33	75	19	2	252	213
2012	113	47	64	14	1	239	204
2011	121	31	55	9	2	218	193
2010	90	45	58	13	5	211	157
2009	97	42	43	13	2	197	179
2008	98	34	46	12	2	192	185
2007	122	40	30	12	2	206	187

[94] Regulation (bekendtgørelse) No. 791 of 25 June 2010, § 14 (3).
[95] "Statistic 2013", Prison and Probation Service, Table 5.7.

2006	89	33	50	17	2	191	140
2005	105	39	60	18	4	226	177
2004	100	38	69	16	1	224	156

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

Solitary confinement as a disciplinary sanction (punishment cell)

Solitary confinement as a disciplinary sanction may be imposed for the following offences: failure to return from leave, escape, smuggling or possession of alcohol, drugs, weapons, etc., refusal to provide urine samples, violence or threats of violence against fellow inmates or staff, gross vandalism or other gross or frequently repeated offenses. The absolute time limit is 4 weeks[96], except for pre-trial detainees held in isolation for whom the absolute time limit is 2 weeks.[97] In the latter case, the pre-trial detainee has an extended access to a judicial review, after seven days of isolation.[98]

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

Table from the Prison and Probation Service:[99] Disciplinary sanctions. Number and character

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

[96] Sentence Enforcement Act §70.
[97] Administration of Justice Avt § 775 (1).
[98] Sentence Enforcement Act § 122 (1) No. 3.
[99] "Statistic 2013", Prison and Probation Service, Table 5.1

2004	2.023	1.003	8.935	11.961

In its 2014 report to the Danish government, CPT stated that a continued period of up to 28 days of solitary confinement as punishment is excessive. The Committee considers that the maximum length of solitary confinement as punishment should be no more than 14 days for a given offense, and preferably lower. In conclusion, the CPT recommended that the Sentence Enforcement Act be revised accordingly.[100] As follow-up to its 2008 visit to Denmark, the CPT recommended that the Danish authorities develop a national approach to address the issue of prisoners seeking isolation for their own protection. Reference is also made to the 2009 report on Denmark by the UN Special Rapporteur stated.[101]

In 2015, the Committee against Torture recommended that Denmark:

- Limiting the length of permissible solitary confinement to a maximum of 15 days;
- 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.

In light of these recommendations; the experience from our neighbouring country Sweden, where solitary confinement is no longer used; and the lack of improvements with regard to the use of solitary confinement, we would like to recommend Denmark to:

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

Issue 2: NON-REFOULEMENT AND MEDICAL "TORTURE" EXAMINATION

The Human Rights Committee and the Committee against Torture has repeatedly reiterated the absolute nature of the principle of non-refoulement and called on Denmark to ensure the implementation of this principle in individual cases relating to the detention and deportation of immigrants or asylum seekers. Furthermore, in seven concrete cases in 2015, the Committee noted that Denmark had violated the principle of non-refoulement (see above).

[100] CPT report to the Danish government on the visit to Denmark in 2014, CPT/Inf (2014)25, para. 61.
[101] UNSRT, Mission to Denmark, A/HRC/10/44/Add.2, 18 February 2009, para. 45.

Moreover, the Committee against Torture has emphasised in its concluding Observations and in individual cases that Denmark is under an obligation to make substantial efforts to determine whether there were grounds for believing that an asylum seeker would risk torture, if returned. This may include a specialised medical torture examination of the asylum seeker. [102]

However, the Danish asylum authorities still rarely request a torture examination and there has been a significant downward trend as regards the number of requests made by the immigration authorities for specialized medical torture examinations. The precise number of specialised 'torture' examinations in the period 2009-15 was 14 (2009: 0; 2010: 3; 2011: 7; 2012: 0; 2013: 0; 2014: 2 and 2015:2). In 2016, so far to our knowledge one examination has been requested.

In order to fully protect against unlawful deportation we recommend that Denmark respect its non-refoulement obligation and make substantial efforts within the asylum process to determine whether there are ground for believing that an asylum seeker would be in danger of being subjected to torture if returned and, when deemed necessary, to ensure that independent and specialised medical examinations be undertaken so as to establish whether the asylum seeker previously have been subjected to torture

Issue 3: INCREASED USE OF DETENTION OF FOREIGNERS AND CONDITIONS IN DETENTION CENTERS (Article 7, 9 and 10)

Last year's amendment of the Danish Aliens Law reflected an intention to use detention of newly arrived asylum seekers and rejected asylum seekers to a larger extent.[103]

Detention of the latter group is justified by being a motivation enhancing instrument and by the aim of securing the presence of the rejected asylum seeker. However, the Danish Police has repeatedly concluded that detention has limited effect on forcing rejected asylum seekers to cooperate. Unfortunately, the experience of the Danish police was not taken into consideration during the extremely brief legislative process (less than 5 days) during which the amendment was amended by the Parliament and during which civil society and others did not have a proper chance to provide comments.

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

[102] CAT/C/49/D/464/2011, CAT/C/45/D/393/2008 and CAT 580/2014 of 22 December 2015.
[103] Law no. 1273 of November 2015.

The group of *foreigners who are awaiting deportation* - either following a judgement or an administrative decision - is diverse and would include, for example, foreigners who have been illegally in Denmark; asylum seekers who have been rejected; or foreigners who have been convicted of a crime. The group would generally include many less resourceful people and various vulnerable groups, including victims of torture and children. Imprisonment can be particularly damaging to those who are already psychologically vulnerable because of past trauma, such as torture.[104] The UN Special Rapporteur on the human rights of migrants has pointed out that

> "detention can be particularly damaging to vulnerable categories of migrants, including victims of torture, unaccompanied older persons, persons with a mental or physical disability, and persons living with HIV/AIDS."[105]

Research also shows that detention of specifically asylum seekers has widespread and seriously damaging effects on the mental (and sometimes physical) health of those incarcerated.[106]

The Committee against Torture raised concerns about the long waiting periods at asylum centres in its Concluding Observations concerning Denmark (2015). Moreover, in a decision of 6 February 2013 to Denmark, the Committee noted that;

> *when detention of refused asylum seekers is applied, as a last resort, its duration should be limited, medical checks upon arrival in detention facilities should be ensured, and a medical and psychological follow-up by a specially trained independent health expert should be provided when signs of torture or traumatization have been detected during the asylum proceedings*.[107]

In the opinion of the Special Rapporteur on Torture, deprivation of liberty for administrative reasons for a prolonged period without knowing the length of the detention may amount to inhuman and degrading treatment. [108]

The CPT stressed, in its report to the Danish Government on its visit to Denmark in 2014, that asylum seekers should only be detained as a last resort, for the shortest possible duration, and after other, less coercive measures have proven insufficient to ensure the presence of the persons.[109]

Specifically with regard to minors, CPT noted after its visit to Ellebæk, (formerly "Sandholm") Prison and Probation Establishment for Asylum-seekers and Others Deprived of their Liberty[110]:

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[104] Zachary Steel and Derrick M Silove (2001), 'The mental health implications of detaining asylum seekers', (2001) MJA 2001 175: 596-599.

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

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

[107] Communication No. 412/2010, para 7.3.

[108] Report to Denmark, A/HRC/10/44/Add. 2. Para 47.

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

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

> *The CPT wishes to recall its position that every effort should be made to avoid resorting to the deprivation of liberty of an irregular migrant who is a minor. Following the principle of the "best interests of the child", as formulated in Article 3 of the United Nations Convention on the Rights of the Child, detention of children, including unaccompanied children, is rarely justified and, in the Committee's view, can certainly not be motivated solely by the absence of residence status.*[111]

Moreover, the amendment to the Danish Aliens Law opens up for suspension of the automatic judicial review of detention in special circumstances – for example in a situation of mass influx. Deprivation of liberty, including administrative detention, should respect the protection provided by article 9 of the ICCPR.

We **recommend that Denmark** takes all necessary measures to ensure that the detention of foreigners is applied in accordance with the standards of ICCPR and used only as a last resort and, where necessary, for as short a period as possible and without excessive restrictions. We **recommend to Denmark** to take particular measures vis-à-vis particularly vulnerable groups, notably children and victims of severe traumatisation and torture, and that generally, the conditions of detention are appropriate and in accordance with international standards.

Issue 4: PERSONS ON TOLERATED STAY WHO CANNOT BE DEPORTED (Article 7)

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

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

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

[111] Ib, at para. 76.

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

If a person on tolerated stay does not comply with the prescribed reporting obligations, the punishment is a fine or up to one year of imprisonment, cf. the Aliens Act § 60 stk. 1. In 2015, The High Court[112] sentenced a person on tolerated stay who had not met the reporting requirements, to 40 days of imprisonment.

Following an NPM inspection of *Center Sandholm* in 2014, in which DIGNITY – Danish Institute Against Torture participated - the Ombudsman concluded that while the general conditions for persons on tolerated stay are not at this point in time contrary to article 3 of the ECHR, the cumulative effect of the restrictions under which persons on tolerated stay live may over time, and in concrete cases, amount to a violation of article 3 of the European Convention of Human Rights. It was concluded that the overall conditions for persons on tolerated stay are a tremendous personal burden and restriction on living conditions. The Ombudsman recommended that the entire tolerated stay regime be re-considered.

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

In recent years more and more individuals have been placed on tolerated stay. However, since 2007, not a single person has been expelled. In 2015, there were 67 persons on tolerated stay.

LGBT Denmark is particularly concerned about a case of an LGBT person who was sentenced to five years of imprisonment and subsequent expulsion. The person has served his sentence but the expulsion order cannot be effectuated and, as a result, the case remains in deadlock, now in its 17th year. The case was brought to the attention of the CoE Commissioner for Human Rights during his visit to Denmark in 2013.[113]

We recommend Denmark to consider:

[112] Judgment from the Eastern High Court, 13 March 2015.

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

- introducing an upper time limit in the legislation on tolerated stay, which is decided upon in connection with the judgement on expulsion, which is proportionate to the gravity of the crime and sentence.
- introducing an absolute time limit for persons on tolerated stay.
- Re-considering the conditions for persons on tolerated stay ensuring that the restrictions are not an disproportionate infringement upon their lives and do not violated the rights of foreigners on tolerated stay, including Article 7 ICCPR.[114]

Issue 5: THE PROTECTION OF LGBTI PERSONS (Article 2, 7, 17 and 26)

While Danish authorities have taken commendable steps to enhance the protection of LGBTI persons against discrimination, certain formal structures remain in place, making it challenging to report and obtain remedies in cases related to discrimination on the basis of sexual orientation, gender identity & expression or sex characteristics, and to access health services**.**

Danish Legislation

The Danish legislation is inadequate with regard to protection of LGBTI (lesbian, gay, bisexual, trans*, intersex) persons. By way of example, the legislation does not specify that it is illegal to discriminate on the basis of sexual orientation, gender identity & expression or sex characteristics in all contexts (see further below). While the law includes the prohibition to discriminate in the workplace, this does in many cases not adequately protect trans* or intersex persons.

Furthermore, as the illegality of discrimination on the basis of sexual orientation is limited to the work place, organisations and individuals cannot report other cases regarding discrimination taking place in the public sphere to the Danish Board of Equal Treatment.

We suggest more focus on cases of discrimination with more thorough investigations and access to justice before the courts. It should be easier to bring claims against companies and individuals in cases related to discrimination on the basis of gender identity or expression. Likewise, to include the prohibition to discriminate on the basis of sexual orientation, gender identity & expression or sex characteristics in non-discrimination and equal treatment legislation would enhance the legal protection of LGBTI persons in the public sphere and simplify the process of reporting cases to the Danish Board of Equal Treatment.

We therefore suggest **that the Committee recommends the State party to adopt necessary changes or additions to the legislation, in order for it to sufficiently protect LGBTI persons from discrimination or inhuman treatment**.

The health system

[114] Reference is also made to the recommendation by the Committee against Torture (2015), para 29.

Some formal obstacles also remain in the health system resulting in serious mental and physical health issues particularly for trans* and intersex persons, which may raise concerns under article 7 ICCPR.

Many trans* persons do not have access to timely and appropriate healthcare, as they meet an unusually slow process of treatment in the health system due to only a single institution with the authorisation to help trans* persons accessing hormones and receiving gender reassignment medical treatment. Many trans* persons are highly uncomfortable with the biological gender, and a recent report released (2015) shows that 18% of trans* persons in Denmark are accessing and treating themselves with hormones.[115]

We would like to argue that giving a single health institution the monopoly of providing trans* persons with hormones is strengthening the trend of trans* persons to access hormones on their own without any medical supervision. The lack of access to proper and timely healthcare is pushing trans* persons into an unsecure and dangerous process of self-medication. Furthermore, the lack of access to proper and timely healthcare leaves trans* persons in a situation of stress and discomfort, which can have a serious effect on the reported high levels of poor mental health.

The 2015 report also concluded that particularly trans* persons under the age of 35, have poorer mental health[116]. For children who have gender dysphoria, the teenage years can be unbearable. Trans men struggle with growing breast that are not wanted, as well as broader hips and lower end-height than the average men. Trans women struggle with body hears that are not wanted as well as the Adam's apple, a dark voice and a taller end-height than the average women.[117] In order to meet the physical and psychological needs of particularly young trans* persons, the government ought to address the lack of recourses.

Intersex persons are subjected to inhuman or degrading treatment. This is particularly the case when they as infants are subject to so called "normalising" corrections of the infants' genitalia[118]. These are irreversible surgeries that can affect the personal development of the individual.[119]

The above might involve a violation of Denmark’s positive obligations towards protecting the rights

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

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

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

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

[119] As pointed out in the UN's fact sheet on "The Right to Health", the right to health includes "the freedom to be free from non-consensual medical treatment", see Office of the High Commissioner on Human Rights & World Health Organization (2008), The Right to Health, Fact Sheet nr. 31, p. 3, available at http://www.ohchr.org/Documents/Publications/Factsheet31.pdf.

of intersex persons. Reference is made to the recent recommendation by the UN Committee against Torture that in order to fulfil the obligations in Article 14 and 16 of UNCAT Denmark should[120]:

> (a) *Take the necessary legislative, administrative and other measures to guarantee the respect for the physical integrity and autonomy of intersex persons and ensure that no one is subjected during infancy or childhood to unnecessary medical or surgical procedures;*
>
> (b) *Guarantee counselling services for all intersex children and their parents, so as to inform them of the consequences of unnecessary surgery and other medical treatment;*
>
> (c) *Ensure that full, free and informed consent is respected in connection with medical and surgical treatments for intersex persons and that non-urgent, irreversible medical interventions are postponed until a child is sufficiently mature to participate in decision-making and give full, free and informed consent;*
>
> (d) *Provide adequate redress for the physical and psychological suffering caused by such practices to intersex persons.*

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

Issue 6: SEPARATION OF CONVICTED AND ACCUSED PERSONS

Denmark has a practice to occasionally placed persons convicted of short sentences in places of detention with pre-trial detainees. The Danish NPM has noted this during visits to places of detention.

The Committee against Torture therefore recommended to Denmark last year to ensure that convicted are always separated from persons on pre-trial detention. With reference to the reasons behind Article 10 (2) (a) ICCPR, **we suggest Denmark to end this practice**.

Issue 7: FAMILY REUNIFICATION

The Danish Aliens Law was amended in February 2015 to the effect that asylum seekers with origin in countries of armed conflict (typically Syria) would obtain temporary protection status. Temporary protection status entailed initially a limited right to family reunification (at the earliest one year after their recognition). Recently, in February 2016 the Aliens Law was further restricted[121] so that refugees with temporary protection would not have a right to family reunification until at the earliest three years after their recognition.

We would like to note that many of the family members of these refugees, who are in Denmark on a temporary protection status, live in conflict zones in their home country or neighboring countries and barely survive under highly insecure circumstances. Therefore, we are deeply concerned about

[120] Concluding Observations, para 43.
[121] Law 102 of 3 February 2016.

the risks these family members face while waiting for family reunification, as well as the stress that is imposed on the refugees in Denmark due to the uncertainty about the protection of their families.

Moreover, we are of the view that this serious limitation of the right to family reunification is a violation of the right to family life as stipulated in Article 23 ICCPR (and Article 8 of the ECHR). Criticism by civil society – and by the Danish Institute for Human Rights - was expressed to the government prior to the adoption of the amendment to the Aliens Act.[122] However, the government proceeded with the adoption of the law noting that there could be a risk of violation of ECHR Article 8[123].

Finally, we would like to note that it is unclear how the provision in the Danish Aliens Act regarding marriage between cousins (Article 9 (8)) in practice is implemented in accordance with international standards.

We would like to **recommend that Denmark amends the Aliens Act and abolish the three-year restriction of access to family reunification**.

Issues 8: PERSONS WITH DISABILITIES

NO RIGHT TO VOTE (Article 25)

In Denmark, persons under extensive guardianship are deprived of the right to vote. This is justified by a reference to the Danish Constitution.

Currently, the Danish Parliament (Folketinget) is debating a new legislation that will grant persons under guardianship the right to vote at elections to the European Parliament, regional councils and municipality councils. However, such persons will still be deprived of the right to vote at elections to the national parliament and at referendums.

The issue has been subject for recommendations by the UN CRPD-Committee in September 2014[124] and in the latest Universal Periodic Review for Denmark January 2016.

We **recommend that Denmark takes all necessary measures to ensure that no Danish citizens above the age of 18 are deprived of the right to vote at national elections and referendums**.

LIMITED PROTECTION AGAINST DISCRIMINATION BASED ON DISABILITY (Article 26)

[122] Responses of 6 January 2016 (see above).
[123] Lovbemærkninger: "…Henset hertil og da EMRK artikel 8 i alle tilfælde indebærer en afvejning, er der en vis risiko for, at Den Europæiske Menneskerettighedsdomstol i forbindelse med prøvelse af en konkret sag vil kunne nå frem til, at det ikke efter Den Europæiske Menneskerettighedskonventions artikel 8 er muligt generelt at stille krav om 3 års ophold."
[124] Concluding Observations (2014), para 32-33 and 60-61.

Discrimination for disability reasons is prohibited in relation to employment. However, Denmark has not adopted a general anti-discrimination legislation that would apply to and protect persons with disabilities in all areas, including outside labour issues.

Various UN bodies have recommended an amendment to the Danish legislation (by way of example, the UN CRPD-Committee in September 2014[125], and the latest Universal Periodic Review January 2016). However, the government maintains its position that there is no need for such a general ban on discrimination while noting that all legislation is equally applicable to everybody. [126]

In practice that is highly questionable. The Danish Board of Equal Treatment makes decisions in cases of discrimination based on ethnicity and gender whereas its mandate in cases regarding discrimination based on disability is limited to discrimination on the labor.[127]

We **recommend that Denmark adopts legislation stating a coherent and general prohibition on discrimination based on disability**.

[125] Ib, para 14-17.
[126] It is also worth noting that Denmark has still not ratified Protocol No. 12 of the ECHR.
[127] This is done on the basis of EU regulation, i.e., Council directive 2000/78/EC of 27 November 2000 that is available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:c10823