

THE DANISH  
INSTITUTE FOR  
HUMAN RIGHTS

PARALLEL  
REPORT  
DENMARK –  
OCTOBER 2015

CAT

**PARALLEL REPORT DENMARK – OCTOBER 2015  
CAT**

Parallel report to the UN Committee Against Torture on the combined sixth and seventh periodic report of Denmark concerning the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

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Denmark's National Human Rights Institution  
Wilders Plads 8K  
DK-1403 Copenhagen K  
Phone +45 3269 8888  
[www.humanrights.dk](http://www.humanrights.dk)

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## **ABBREVIATIONS**

CAT	UN Committee Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CCPR	UN Human Rights Committee
CEDAW	UN Committee on the Elimination of Discrimination against Women
CERD	UN Committee on the Elimination of Racial Discrimination
CESCR	UN Committee on Economic, Social and Cultural Rights
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRC	UN Committee on the Rights of the Child
DIHR	The Danish Institute for Human Rights
ECHR	The European Convention on Human Rights
EU	The European Union
ICCPR	International Covenant on Civil and Political Rights
NHRI	National Human Rights Institution
NPM	National Preventive Mechanism
OP-CAT	Optional Protocol To the UN Convention Against Torture
UN CAT	UN Convention Against Torture
UN CRPD	UN Convention on the Rights of Persons with Disabilities
UPR	Universal Periodic Review

# PREFACE

## INTRODUCTION

This parallel report to the UN Committee Against Torture (CAT) on the committee's combined sixth and seventh examination of the Government of Denmark is compiled by the Danish Institute for Human Rights (DIHR). The report contains recommendations to the Government of Denmark on the strengthening of the national human rights protection within the scope of the UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UN CAT).

The selection of issues included in this report is based on recommendations to the Government of Denmark from various international bodies such as UN treaty bodies, UN Special procedures, The Universal Periodic Review of Denmark. Furthermore, the selection of issues is based on relevant human rights debates in Denmark, legislative developments, previous recommendations given by the DIHR or civil society through legal briefs, thematic reports etc. Finally, the selection of issues is based on the recommendations contained in the DIHR annual status report on human rights in Denmark.

The structure of the parallel report follows the structure of the list of issues prior reporting issued by the committee to the Government of Denmark in January 2010 (CAT/C/DNK/Q/6-7).

Each issue in this report contains a brief description of the human rights regulation, an explanation of the situation in Denmark or Greenland and one or more specific recommendations to the Government of Denmark. The titles of headings in the parallel report refer to articles of the UN CAT. For each theme, a reference is made to the relevant paragraph of the list of issues.

### **THE DANISH INSTITUTE FOR HUMAN RIGHTS**

The Danish Institute for Human Rights (DIHR) is Denmark's national human rights institution (NHRI). DIHR was established in 1987 and is regulated by act no. 553 of 18 June 2012 on the Institute for Human Rights – Denmark's National Human Rights Institution.

DIHR is an independent, self-governing institution within the public administration and is established and functioning in accordance with the UN Paris Principles. DIHR is accredited as an A-status NHRI.

DIHR is also appointed as National Equality Body in accordance with EU directives on equal treatment of all persons without discrimination on the grounds of gender and race or ethnic origin. Furthermore, DIHR is designated as independent mechanisms to promote, protect and monitor the implementation of the UN CRPD.

DIHR participated in OP-CAT inspections together with DIGNITY – The Danish Institute Against Torture and the Parliamentary Ombudsman, who is appointed as NPM of Denmark.

DIHR monitors the human rights situation in Denmark and publishes an annual status report as well as academic research, analyses and reports on human rights.

Greenland is a self-governed part of the Kingdom of Denmark. Denmark's ratification of UN CAT (1987) and its optional protocol (2004) applies to Greenland with no territorial exclusion. DIHR is national human rights institution for Greenland and works in close cooperation with the Human Rights Council of Greenland in order to monitor the promotion and protection of human rights in Greenland. DIHR participates in OP-CAT inspections in Greenland upon request from the National Preventive Mechanism (NPM).

The mandate of DIHR does not extend to the Faroe Islands, the other self-governed part of the Kingdom of Denmark.

# CHAPTER 1

## 1 ARTICLE 1 AND 4

### 1.1 INCORPORATION OF CAT INTO DANISH LAW

#### List of issues paragraph 1.

The Danish Government has decided not to incorporate CAT into Danish law.

#### HUMAN RIGHTS

The treaty bodies under all UN core human rights conventions, that Denmark are a party to, have recommended that Denmark incorporate the conventions into Danish law. Thus, CERD, CEDAW, CRPD, CESCRC, CRC, CCPR and CAT have all recommended that Denmark incorporate their convention into Danish law. During the Universal Periodic Review (UPR) of Denmark in 2011, incorporation of UN core human rights conventions was also recommended.

#### DENMARK

Currently the European Convention on Human Rights is the only incorporated human rights convention in Denmark. In 2012, the Danish Government appointed an expert committee with the task of considering the possibility of incorporating a number of human rights conventions into Danish law, including CAT. The members of the committee consisted of independent experts and government representatives. The expert committee finalised its work in 2014.<sup>1</sup> Of the 15 members of the expert committee, four members recommended that no additional conventions were incorporated since it might entail a shift in competence between the Danish legislator and the courts. The five members representing the government did not make any recommendations concerning incorporation. The largest group consisting of six members of the committee recommended that six UN human rights conventions be incorporated into Danish law, including CAT. This group did not find any risk of a shift in competence between legislator and courts.

In 2001, a similar expert committee unanimously recommended that CAT and other conventions be incorporated into Danish law.

The Danish government has chosen not to incorporate additional conventions.

Today there are very few examples of CAT provisions being either invoked before the Danish Courts or applied by the Danish Courts. Incorporation would strengthen citizens' rights as well as increase attention and create greater awareness of the conventions among citizens, local and State authorities as well as the judiciary.

#### **RECOMMENDATION**

The Danish Institute for Human Rights recommends that Denmark:

- Incorporates CAT into national legislation.

### **1.2 A SPECIFIC CRIME OF TORTURE IN THE CRIMINAL CODE**

#### **List of issues paragraph 2.**

Torture is an offence under Danish criminal law, although it is not listed as a specific offence in the Danish Criminal Code.

#### **HUMAN RIGHTS**

CAT and the European Committee for the Prevention of Torture (CPT) have recommended several times that Denmark introduces the act of torture as a specific offence in the Danish Criminal Code and the Military Criminal Code. During the Universal Periodic Review (UPR) of Denmark in 2011 this was also recommended by several countries.

#### **DENMARK**

The Danish Government is of the opinion that CAT article 4 does not require member states to adopt a specific criminal provision concerning torture. It is only required that all acts of torture are criminal offences under its criminal law. Since the crime of torture is already covered by existing provisions of Danish criminal law, the Danish government sees no reason to introduce a specific crime of torture. Section 157 a of the Danish Criminal Code stipulates that the use of torture shall be considered an aggravating circumstance when determining the penalty for violation of the Criminal Code. Furthermore torture, attempted torture and complicity in torture, are not subject to the statute of limitations.

The Danish Institute for Human Rights agrees that the Danish criminal code is in compliance with CAT article 4. The institute however also finds that an implementation of the recommendations from CAT, CPT and the UPR of Denmark concerning a specific prohibition of torture, will strengthen Denmark's efforts to combat torture internationally.

This would also be in line with the Danish criminalisation of terrorism and human trafficking which are listed as specific offences in section 114 and 262 a of the Danish Criminal Code even though both offences are already covered by other provisions of the Criminal Code.

#### **RECOMMENDATIONS**

The Danish Institute for Human Rights recommends that Denmark:

- Introduces the act of torture as a specific offence in the Danish Criminal Code and the Military Criminal Code.

# CHAPTER 2

## 2 ARTICLE 2

### **2.1 RESTRICTIONS ON REMAND PRISONERS' CONTACT WITH THE OUTSIDE WORLD**

#### **List of issues paragraph 4.**

The conditions for remand prisoners in Danish prisons are often more strict than condition of convicted prisoners. Often remand prisoners experience restrictions in the access to receive visits and to send and receive letters as well as the access to a telephone.

#### **HUMAN RIGHTS**

During a visit to Denmark in 2014 the European Committee for the Prevention of Torture (CPT) noted that a high proportion of Danish remand prisoners have restricted contact with the outside world. CPT reiterated that the use of judicial restrictions on remand prisoners' contacts with the outside world should be limited to the strict minimum necessary for investigation purposes and that there should be a more rigorous supervision of their application. The CPT was not convinced that the current safeguards in place are sufficient. The restrictions can continue for several months since they can be applied throughout the remand period, including during appeal and while awaiting sentence confirmation.

#### **DENMARK**

The use of remand imprisonment has risen significantly during recent years – both in terms of length of stay in remand and in the number of people subjected to remand imprisonment - and around one third of the entire Danish prison population is currently not sentenced. In addition, remand prison conditions are among the most strict and severe prison conditions in Denmark and involve isolation like regimes and sometimes outright solitary confinement. A count from 27 May 2013 showed that 70.4 percent of all remand prisoners in Denmark at that time were subjected to visit- and correspondence control. Being subjected to visit- and correspondence control seriously strengthen the isolation aspect of a remand regime, which already from the outset involves very high levels of isolation, where many prisoners spend 22-23 hours alone in their cells.

The Danish Administration of Justice Act and the Remand Custody Order regulate remand prisoners' right to receive visits and to send and receive letters.

According to section 771 and 772, the Danish police can impose restrictions on remand prisoners' right to receive visits and to send or receive letters (Brev- og besøgskontrol). According to section 773, the police can impose other restrictions such as restrictions on telephone calls. According to section 770 of the Administration of Justice Act, restrictions must be deemed necessary to ensure the purpose of the remand or the maintenance of order and security in the detention centre.

Usually a remand prisoner will not receive a written confirmation of the decision to restrict the right to receive visits or mail. If the prisoner requests so, the prosecutor may produce a written justification. Danish courts periodically review the continued need for remand in custody. However, restrictions on visits and mail imposed by the police is not automatically reviewed in this connection. These restrictions can be brought before the courts, but usually upon request by the remand prisoner.<sup>2</sup>

#### **RECOMMENDATIONS**

The Danish Institute for Human Rights recommends, in accordance with the recommendations of CPT, that Denmark:

- Ensures that Danish police is given detailed instructions concerning proportionate use of restrictions on remand prisoners' access to contact with the outside world.
- Introduces a legal obligation to provide remand prisoners with a written decision to restrict contact with the outside world as well as a reasoning behind the decision.
- Ensures that restrictions on remand prisoners' contact with the outside world is considered as a separate issue when reviewing continued remand in custody.

# CHAPTER 3

## 3 ARTICLE 3

### 3.1 DANISH MILITARY OPERATIONS AND THE TREATMENT AND TRANSFER OF DETAINEES

#### List of issues paragraph 5.

Within the last decades, Denmark has been actively involved in a number of military operations abroad in e.g. Afghanistan and Iraq. In relation to these operations the Danish military has taken prisoners and in some cases transferred prisoners to the authority of other States e.g. to Iraqi and Afghan authorities.

#### HUMAN RIGHTS

It has been established by the CAT as well as other international human rights bodies that whenever States are operating extraterritorially and are in a position to transfer persons, the prohibition against non-refoulement applies in full.

This implies as summarized by the UN Special Rapporteur on Torture – in paragraph 43 in his recent report of 7 August 2015 to the UN General Assembly on the extraterritorial application of the prohibition of torture – that there is “a the right to challenge detention and potential transfer on the basis of fear of mistreatment in the receiving State. This challenge must take place prior to transfer before an independent decision maker with the power to suspend the transfer during the pendency of the review and must be an individualized procedure incorporating timely notification of potential transfer and the right to appear before this independent body in person.”

#### DENMARK

In 2010, there were allegations in the Danish press that Iraqi prisoners taken by Danish soldiers and transferred to Iraqi authorities in 2004 had been exposed to ill-treatment. In December 2010, the Danish Ministry of Defence decided to establish an internal task force in the Danish Defence Command. The task force consisted of 11 officials from various institutions and authorities under the Danish military and they were tasked with scrutinizing allegations of ill-treatment of prisoners.

In 2011, a new Danish government established an Independent Commission (Irak- og Afghanistankommissionen) headed by a High Court judge that should investigate the former government's decision to take part in the invasion of Iraq in 2003 and the Danish forces' handling and transfer of detainees in Iraq and Afghanistan. Consequently, the Ministry of Defence suspended the work of the internal task force. All confidential material collected by the task force was transferred to the Independent Commission for their further scrutiny as well as a 5-page Memo on the preliminary findings of the task force.

The Memo, which is publicly available, highlights a number of critical circumstances and questions, including that:

- Danish military forces had taken more prisoners (about 500 prisoners in Iraq) and transferred more prisoners to other States (about 300 prisoners) than previously informed to the Danish Parliament. Of the transferred prisoners, more than 260 had been transferred to local Iraqi authorities.
- It is unclear whether Danish military forces had monitored or inspected the further treatment of transferred prisoners, including those transferred to Iraqi authorities.
- Limited information had been registered concerning detainees. In 43 out of 500 cases was it possible to establish the name and fate of detainees and to determine whether Danish requirements for registration, monitoring and reporting had been met.
- During certain periods no clear instruction had existed on the handling of prisoners by Danish military forces and under what circumstances – if any – prisoners could be transferred to other States.

In August 2015, a newly elected Danish government decided to dismantle the Independent Commission.

A civil claim for compensation against the Danish Ministry of Defence is pending before a Danish High Court. The case concerns an Iraqi prisoner who was captured by Danish military forces in November 2004 in Iraq and transferred to Iraqi authorities and allegedly exposed to torture. The ministry argues that the Court due to statutes of limitation in Danish law cannot examine the case.

It is the view of the Danish Institute for Human Rights that:

- Danish forces should prior to decisions on transfer thoroughly examine whether there are reasons to believe that transferred persons risk being exposed to ill-treatment.

- Prisoners should prior to transfer have a right to be heard (and to contradiction) about the decision to transfer to another state as well as a right to have the envisaged transfer examined by an impartial and independent body.
- The Danish forces should monitor transferred prisoners in order to ensure that they are treated in compliance with CAT.
- The Danish military should carry out a prompt, impartial and independent investigation if there are reasonable grounds to believe that prisoners transferred by Danish forces have been exposed to torture or ill-treatment in the receiving State.

#### **RECOMMENDATIONS**

The Danish Institute for Human Rights recommends that the Danish military:

- Finalises the preliminary investigation carried out by the internal task force under the Danish Defence Command which revealed a number of critical circumstances and questions about the Danish forces' handling and transfer of detainees in Iraq in 2003-2007 and which was suspended when the (now defunct) Independent Commission was established.

# CHAPTER 4

## 4 ARTICLE 10

### 4.1 THE USE OF PEPPER SPRAY BY THE POLICE AND IN PRISON FACILITIES

#### List of issues paragraph 9.

Since 2008, Danish police officers have been able to use pepper spray as a means of force. In 2011, Danish prison officers were allowed under certain conditions to carry pepper spray and to use it in prisons and detention centres.

#### HUMAN RIGHTS

The European Committee for the Prevention of Torture (CPT) considers pepper spray as a potentially dangerous substance and should not be used in confined spaces. In 2014, CPT recommended that the Danish authorities review the use of pepper spray in prisons.<sup>3</sup>

#### DENMARK

In 2014, the Danish police used pepper spray 810 times. In the same year, truncheons and police dogs were used 276 and 269 times respectively. Pepper spray was used 70 times in Danish prisons in 2013.

In 2014-15, the Danish Institute for Human Rights carried out two comprehensive studies on the use of pepper spray by the police and by prison guards. The studies were carried out in collaboration with the police and prison service and were published in December 2014 (use of pepper spray in prisons) and in October 2015 (use of pepper spray by the police).

#### RECOMMENDATIONS

The Danish Institute for Human Rights recommends that Denmark:

- Limits the use of pepper spray as much as possible.
- Restricts and regulates the use of pepper spray more precisely in Danish law.
- Prohibits the use of pepper spray on persons who have been brought under control.

- Ensures that pepper spray, as a starting point may not be used on the driver of a vehicle in motion.
- Ensures that pepper spray, as a starting point may not be used in confined spaces, if less severe means of force can be used.
- Ensures that pepper spray may only be used in hospitals in life-threatening situations.
- Ensures that pepper spray (or other means of force) as a starting point may not be used against mentally ill persons. Situations may occur, however, in relation to the handling of mentally ill persons by the police, where the use of force is both necessary and proper.
- Adopts further measures to reduce the use of pepper spray on mentally ill persons, including further training of personnel.

# CHAPTER 5

## 5 ARTICLE 11

### 5.1 THE GENERAL USE OF SOLITARY CONFINEMENT

#### List of issues paragraph 11.

The use of solitary confinement in Danish prisons and jails has previously been exposed to strong criticism from human rights monitoring mechanisms, especially in the case of solitary confinement during remand custody. Other critical areas are, for instance, the use of punitive isolation cells (solitary confinement as disciplinary punishment), administrative isolation as well as so-called “voluntary solitary confinement”.

#### DENMARK

The use of solitary confinement during pre-trial has been termed “a peculiar Scandinavian phenomenon” and has been an issue in Denmark for many years. The use of pre-trial solitary confinement has however been reduced significantly during the last decades. From 2001 to 2006 between 8-10 percent of all remand prisoners were subjected to pre-trial solitary confinement. In 2010 the number was decreased to 1.9 percent. This is a very positive development. In 2011, however, the use of pre-trial solitary confinement increased with 46 percent from 127 cases in 2010 to 186 cases in 2011. The average duration of solitary confinement was 24 days in both 2010 and 2011. The above data are in any case much better compared to previous decades.

It is however important to keep in mind that other types of solitary confinement has been applied increasingly towards remand prisoners as well as convicted prisoners.

#### RECOMMENDATIONS

The Danish Institute for Human Rights recommends that Denmark:

- Ensures that prisoners in all forms of solitary confinement have access to sufficient meaningful social contact.

## **5.2 SOLITARY CONFINEMENT AS DISCIPLINARY PUNISHMENT**

**List of issues paragraph 11(a) and 11 (b). Paragraph 60-71 of the periodic report from the Danish government.**

Pursuant to section 68 (2) in the Danish Sentence Enforcement Act (Straffuldbyrdelsesloven) prisoners can be excluded from association with other prisoners as a punishment due to, inter alia, reasons of escape, smuggling or possession of alcohol, narcotics, or weapons.

There is no information in the periodic report from the Danish Government on the use of this type of solitary confinement, which is decided by the prison management (contrary to pre-trial solitary confinement decided by the Danish courts).

The use of solitary confinement as punishment in Danish prisons has escalated significantly during recent years. Pursuant to statistical information from the Danish Prison and Probation Service, this type of solitary confinement was used 1,289 times in 2001 and has steadily increased until peaking at 3,044 cases of disciplinary solitary confinement in 2011. In recent years the rates has been 2,892 (2012), 2,959 (2013) and 2,867 (2014). The use of solitary confinement as disciplinary punishment has more than doubled during a period where the number of prisoners has increased with approximately 25 percent.

### **RECOMMENDATIONS**

The Danish Institute for Human Rights recommends that Denmark:

- Takes measures to reduce the use of solitary confinement as disciplinary punishment through exclusion of prisoners from association with other prisoners.

## **5.3 SOLITARY CONFINEMENT IN ORDER TO MANAGE CERTAIN CATEGORIES OF PRISONERS**

**List of issues paragraph 11(b).**

Pursuant to section 63 (1) in the Danish Sentence Enforcement Act (Straffuldbyrdelsesloven) prisoners can be excluded from association with other prisoners if it is deemed necessary in order to e.g. prevent escape, criminal activity, or violent behaviour or because the behaviour of the prisoner is clearly irreconcilable with association with other prisoners. The decision is taken by the prison authorities.

It is mentioned in paragraph 69-71 in the report from the Danish government that section 63 and 64 in the Danish Sentence Enforcement Act was amended in 2012 (entered into force on 1 April 2012) with a view to reduce this type of exclusion from association in particular for prolonged periods of time.

Pursuant to statistical information from the Danish Prison and Probation Service, this type of exclusion from association was used 582 times in 2012; 546 times in 2013; and 512 times in 2014. 30 prisoners were excluded from association more than 28 days in 2012; 31 more than 28 days in 2013; and 37 more than 28 days in 2014.

Hence, there has been a decline in the use of this type of exclusion from association over the last three years. However, it is still at a high level and there has been an increase in longer periods of exclusion (more than 28 days).

#### **RECOMMENDATION**

The Danish Institute for Human Rights recommends that Denmark:

- Take further initiatives to reduce the exclusion of prisoners from association with other prisoners.

#### **5.4 EXCLUSION FROM ASSOCIATION AS PROTECTION FROM OTHER PRISONERS**

**List of issues paragraph 11(b).**

##### **HUMAN RIGHTS**

The European Court of Human Rights has stated that it is unjustified to order a prisoner to be placed in solitary confinement in order to ensure the prisoner's own protection.<sup>4</sup> In such situations, the endangered prisoner should be removed to another section in the prison or to another prison.

##### **DENMARK**

According to section 63 (2) in the Danish Sentence Enforcement Act, prisoners can in exceptional cases be excluded from association with other prisoners for up to five days if it is deemed necessary in order to protect the prisoner against harm from other prisoners.

It appears from statistical information from the Danish Prison and Probation Service that 28 prisoners were excluded from association with other prisoners in 2014 in order to protect them against harm and attacks. Some of them were excluded from association for 15-28 days.

## RECOMMENDATIONS

The Danish Institute for Human Rights recommends that Denmark:

- Amends the Sentence Enforcement Act so prisoners cannot be ordered to be excluded from association with other prisoners/solitary confinement in order to ensure their own protection.

### 5.5 ACCESS TO INFORMATION CONCERNING EXCLUSION FROM ASSOCIATION

#### List of issues paragraph 11(b).

Prisoners who are excluded from association with other prisoners are not entitled to a reasoning from the prison authorities explaining the decision.

#### HUMAN RIGHTS

The European Court of Human Rights has stated that decisions imposing solitary confinement must be based on genuine grounds both *ab initio* as well as when its duration is extended. The statement of reasons should be recorded by the authorities and be increasingly detailed and compelling as time goes by.

Furthermore, the European Committee for the Prevention of Torture (CPT) has stated that any person placed in solitary confinement should be informed in writing of the reasons behind the confinement. The prisoner should be given an opportunity to express his views and there should be a possibility to appeal to authorities outside the prison should he wish to challenge the decision to place him in solitary confinement or to extend the duration of such confinement.

#### DENMARK

According to Danish law prisoners who are being excluded from association with other prisoners are not entitled to receive any information or reasoning from the prison authorities about why they are being excluded from association with other prisoners. This system was introduced in 2002 by an amendment in, *inter alia*, the Danish public administrative act. One of the reasons for the amendment was that if an excluded prisoner would receive a reasoning or information about the exclusion it could endanger the security of other prisoners who possibly could have provided information to the prison authorities leading to the exclusion.

The Danish Ministry of Justice concluded in a thorough legal memo from January 2015 that the Danish system where prisoners receive no information or reasons why they are being excluded from association with other prisoners is in

compliance with Article 3 in the European Convention on Human Rights prohibiting torture and inhuman or degrading treatment or punishment.

#### **RECOMMENDATIONS**

The Danish Institute for Human Rights recommends that Denmark:

- Amends Danish legislation so that prisoners, who are excluded from association with other prisoners, have a right to be informed of the reasons behind the decision unless concrete and specific security reasons make it necessary to withhold specific details.

#### **5.6 VOLUNTARY EXCLUSION FROM ASSOCIATION**

It is not unusual that prisoners in Danish prisons request to be voluntarily excluded from association with other prisoners often due to security concerns.

Pursuant to statistical information from the Danish Prison and Probation Service, the number of voluntary exclusions of prisoners from association with other prisoners has increased slightly during the previous three years. In 2012 403 prisoners were voluntarily excluded from association (137 prisoners for more than 28 days); 433 were excluded in 2013 (142 for more than 28 days); and 447 were excluded in 2014 (140 for more than 28 days).

Some of the prisoners voluntarily excluded from association with other prisoners enjoy association with another prisoner in their cell.

#### **RECOMMENDATIONS**

The Danish Institute for Human Rights recommends that Denmark:

- Takes measures to reduce the number of voluntary exclusion from association with other prisoners.

#### **5.7 SOLITARY CONFINEMENT OF CHILDREN**

##### **List of issues paragraph 11 (c)**

The use of solitary confinement towards children is limited in Denmark, but still allowed according to Danish law.

#### **HUMAN RIGHTS**

Solitary confinement has potentially harmful effects, which is reflected in the number of human rights recommendations concerning this issue aiming at its

reduction or abolishment. In some cases, solitary confinement can result in inhuman and degrading treatment. CAT, CPT and the UN special rapporteur against torture all recommend that solitary confinement is limited to a strictly necessary level. The special rapporteur and CRC have both recommended that solitary confinement of children be abolished.

#### **DENMARK**

Measures have regularly been adopted in Denmark to reduce the use of solitary confinement. This has proved successful for the use of solitary confinement during pre-trial detention, which has been reduced significantly in recent years.<sup>5</sup>

Solitary confinement of children is allowed according to Danish law. According to the periodic report of the government of Denmark, new requirements for the use of solitary confinement of persons under the age of 18 were introduced in 2007. Solitary confinement of persons under the age of 18 requires that exceptional circumstances warrant the solitary confinement. Furthermore, persons under the age of 18 may not be held in solitary confinement for continued periods longer than 8 weeks, unless the person is suspected of an offence against the independence and security of the State or against the Constitution and the supreme authorities of the State.

According to the periodic report of the government of Denmark, the number of persons under the age of 18 held in solitary confinement during pre-trial detention between 2001 and 2012 was between 0 and 6 each year. According to the report, only one person under the age of 18 was held in solitary confinement during pre-trial detention in the period from 2009 until 2012. In 2013 and 2014 no persons under 18 were held in solitary confinement during pre-trial detention.

Statistics concerning the use of other types of solitary confinement towards children are not available.

#### **RECOMMENDATIONS**

The Danish Institute for Human Rights recommends that Denmark:

- Abolishes solitary confinement of children.
- Provides a statistical overview of the use of other types of solitary confinement towards children other than pre-trial detention.

## **5.8 TOLERATED STAY (TÅLT OPHOLD)**

**List of issues paragraph 16. See also information provided in the report from the Danish NPM under the Danish Parliamentary Ombudsman.**

### **DENMARK**

Foreigners who have lost their residence permit in Denmark – due to e.g. crimes committed – and who cannot be expelled by Denmark because they risk torture or ill-treatment in the receiving country are allowed to stay in Denmark under so-called ‘tolerated stay.’

The number of persons on tolerated stay has increased from 17 persons in 2002 to 67 persons in 2014.

In the future, foreigners on tolerated residence must, as a rule, reside in a special exit camp (udrejsecenter Sjælsmark) under more strict control and monitoring. The camp is controlled by the Danish Prison and Probation Service and not by the Danish Red Cross as ordinary refugee camps in Denmark. Foreigners on tolerated stay must report to the police on a daily basis and are subject to a number of other restriction. For instance, they only receive pocket money and are not allowed to study or work in Denmark. See the report from the Danish NPM to CAT for further information.

There are no time limits on the duration a foreigner can be ordered to remain on tolerated residence in the exit camp. Statistical information from the Danish Immigration Service confirms that tolerated residence in the exit camp can be for a very long time period. In 2014, three foreigners had been on tolerated stay for more than 10 years in the exit camp and 12 foreigners between 5-10 years.

After two inspections of the (former) exit camp, the Danish NPM under the Parliamentary Ombudsman issued in December 2014 a report on the situation of foreigners on ‘tolerated stay.’

The NPM found no grounds to declare that the general conditions for foreigners in the exit camp (Sandholm Centre) were in violation of the prohibition against degrading treatment in the UN Convention against Torture and the European Convention on Human Rights.

It is the view of the Danish Institute for Human Rights that foreigners on tolerated residence in the exit camp are experiencing a number of severe limitations in their lives and daily routines. Some of these constraints interfere with a number of human rights, including the right to privacy and family life, the

right to personal liberty and freedom of movement and the right to work, right to education, the right to an adequate standard of living and the right to health.

The cumulative effect of the restrictions on civil as well as economic and social rights and the duration of the stay in the expulsion position can in the opinion of the Institute in specific individual cases lead to human rights violations, including a violation of the prohibition against inhumane and degrading treatment in the UN Convention against Torture. Particularly, in relation to vulnerable or sick foreigners.

### **RECOMMENDATIONS**

The Danish Institute for Human Rights recommends that Denmark:

- Introduces more detailed regulation of the conditions and rights of foreigners on tolerated stay.
- Ensures that the situation for foreigners on tolerated stay is and continues to be in compliance with human rights obligations, including the prohibition against inhumane and degrading treatment.

# CHAPTER 6

## 6 ARTICLE 16

### 6.1 VIOLENCE AGAINST WOMEN IN GREENLAND

**List of issues paragraph 21. Paragraph 143-153 of the periodic report of the government of Denmark.**

Further efforts are needed in Greenland in order to minimize the prevalence of domestic violence, including sexual violence against women.

#### **GREENLAND**

As mentioned in the state report and according to the Greenlandic government's official website on domestic, [www.brydtavsheden.gl](http://www.brydtavsheden.gl) ('Break the silence'), 62.4 percent of women over 17 years of age in Greenland have at some point during their lives been subjected to violence or to serious threats of violence.

In 65.2 percent of cases where women in Greenland are subjected to violence, the perpetrator is her partner or a previous partner.

The Greenlandic parliament (Inatsisartut), has adopted a Strategy and Action Plan against Violence 2014-2017. The strategy focuses among other topics on ensuring better counselling opportunities for victims of violence as well as treatment/counselling opportunities for perpetrators in order to prevent future violent behaviour. A prerequisite for the fulfilment of the strategy is skilled and professional counselling personnel. In Greenland, however, far from all persons employed in these matters have a relevant education.

#### **RECOMMENDATION**

The Danish Institute for Human Rights recommends that Greenland:

- Provides information on how the government (Naalakkersuisut) will ensure that all persons employed to give counselling or treatment to victims of violence and their perpetrators have the necessary skills to fulfil the goals of the Strategy and Action Plan against Violence 2014-2017.

- Provides information on how developments in relation to the goals of the Strategy and Action Plan against Violence 2014-2017 are monitored and followed-up on during the strategy period.

# CHAPTER 7

## 7 OTHER ISSUES

### 7.1 CRITICISABLE CONDITIONS IN POLICE DETENTION FACILITIES IN GREENLAND

List of issues, paragraph 24. Paragraph 170-174 of the periodic report of the government of Denmark.

After inspections in 2013 of five detention facilities of police custody cells (detentioner) in Greenland, the Danish Parliamentary Ombudsman (Folketingets Ombudsmand) criticised the conditions in these facilities.

#### HUMAN RIGHTS

The European Committee for the Prevention of Torture (CPT) visited Greenland, including Nuuk prison and detention facility, in September 2012.<sup>6</sup> The committee did not visit establishments outside of Nuuk.

#### GREENLAND

In Greenland, police detention facilities (detentioner) are used for detention of persons under criminal procedure law as well as for detention of persons in police custody of other reasons. Some of these facilities are without constant police surveillance. Inspections in five towns and villages gave the Danish Parliamentary Ombudsman (Folketingets Ombudsmand) reasons to request further information from the Danish Ministry of Justice and the police in Greenland. The police in Greenland is under the auspices of the Danish National Police and the Danish Ministry of Justice, as the justice area in Greenland has not been taken over by the Self-rule and thus is the responsibility of the authorities of the Kingdom of Denmark.

One of the inspected facilities was a detention facility without constant police surveillance. The persons detained did not have access to call for personnel and did not have access to food, drink or visits to the toilet unless the local police authority was present.

#### RECOMMENDATIONS

The Danish Institute for Human Rights recommends that Denmark in coordination with Greenland:

- Informs the committee on the steps taken to address the concerns and recommendations by the Danish Parliamentary Ombudsman relating to conditions in Greenlandic police detention facilities.

# CHAPTER 8

## 8 GENERAL INFORMATION ON THE NATIONAL HUMAN RIGHTS SITUATION

### 8.1 COERCION IN PSYCHIATRIC TREATMENT IN DENMARK

#### List of Issues, paragraph 26.-27.

Physical immobilisation lasting more than 48 hours occurs regularly in Danish psychiatric hospitals.

#### HUMAN RIGHTS

Coercion in mental health treatment affects the right to personal liberty and respect for physical and psychological integrity. ICCPR, UN CAT, ECHR and UN CRPD protects these rights. According to UN CRPD article 14, member states shall ensure that the existence of a disability in no case justifies a deprivation of liberty. Article 17 confirms the right to respect for the physical and mental integrity on an equal basis with persons without disabilities.

The European Committee for the Prevention of Torture (CPT) has concluded that the duration of a fixation should be for the shortest possible time (usually minutes rather than hours). In addition, the use of restraints for periods of days at a time cannot have any justification and will amount to ill-treatment.<sup>7</sup>

The UN Committee on the Rights of Persons with Disabilities (CRPD) has also expressed concern for the use of straps or belts for more than 48 hours and has recommended that Denmark amend its laws and regulations in order to abolish the use of physical restraints with regard to persons with psychosocial disabilities. The committee particularly recommends training on treatment for medical professionals and personnel in care institutions and other similar institutions on preventing torture and cruel, inhuman or degrading treatment or punishment.<sup>8</sup>

**DENMARK**

In Denmark, there is a widespread use of coercion in the psychiatric system. More than 20 percent of all psychiatric patients experiences the use of coercive measures. Belt fixation is one of the most invasive measures available in the Danish psychiatric system. The use of belt fixation has rather constantly amounted to 5,500 fixations per year. Around 500 of them last more than 48 hours.<sup>9</sup>

In February 2015, the Danish government enacted a number of amendments regarding coercion in the psychiatric system.<sup>10</sup> The purpose has been to increase the focus on equality, influence of the patient, dialogue and cooperation with regard to hospitalization, accommodation and treatment at psychiatric wards and thereby to ensure that coercion is only used when all other options have been exhausted. Accordingly, the purpose is also to reduce the use of coercion in the psychiatric system. The amendments entered into force 1 June 2015. Although the amendments strengthens individual self-determination in some cases, it does not contain a prohibition on forced physical restraints lasting more than 48 hours in mental health treatment.

Furthermore, the amendments changed the legal status held by minors in relation to coercion in the psychiatric system. The amendment of the act established that the use of forced admission or treatment does not constitute “coercion”, if the patient is under the age of 15 and if the holder of custody has consented to the admission or treatment.

Therefore, the authorities have no obligation to assess whether a child younger than 15 years old is capable of forming his or her own views and to give these views due weight in accordance with the age and maturity of the child. This entails that a child below the age of 15 years, despite of adequate maturity, does not enjoy the procedural safeguards and standards equivalent to those provided for children over the age of 15 years and adults.

**RECOMMENDATIONS**

The Danish Institute for Human Rights recommends that Denmark:

- Abolishes the use of forced physical restraints lasting more than 48 hours.
- Limits the use of coercive measures in psychiatric institutions through legislative amendments and revision of guidelines.
- Amends legislation in order to give due weight to the views of children capable of forming their own views, with the aim of changing the scope

of the safeguards and standards provided for children in the psychiatric system.

## **8.2 MENTAL HEALTH IN PRISON POPULATIONS IN DENMARK**

### **List of Issues, paragraph 26.-27.**

#### **HUMAN RIGHTS**

It is laid down in rule 109 in the revised and updated draft UN Standard Minimum Rules for the treatment of Prisoners (the Mandela Rules), 2015, that “Persons who are found to be not criminally responsible, or who are later diagnosed with severe mental disabilities and/or health conditions, for whom staying in prison would mean an exacerbation of their condition, shall not be detained in prisons, and arrangements shall be made to transfer them to mental health facilities as soon as possible.”

#### **DENMARK**

The level of psychological problems and mental disease is typically very high in prison populations compared to the population as a whole. A recent study from December 2013 shows that 8 percent of 1,857 remand prisoners in the Copenhagen prison “Vestre fængsel”, who were subjected to psychiatric evaluation, were diagnosed with a mental health disease (insanity). 83 percent were diagnosed with other psychiatric problems, which included stress-related conditions as well as abuse problems. The latter category – drug abuse etc. – constituted 41 percent of the diagnosed. This in other words means that only 9 percent were diagnosed as healthy. Seen from both a health- and human rights perspective the 8 percent diagnosed as mentally ill (insane) should not be in prison at all. Such a situation in other words requires attention.

#### **RECOMMENDATIONS**

The Danish Institute for Human Rights recommends that Denmark:

- Adopt measures to reduce the number of prisoners suffering from mental diseases or severe psychological problems in Danish prisons.

## **8.3 COERCION IN PSYCHIATRIC TREATMENT IN GREENLAND**

### **List of issues, par. 26-28.**

The list of Issues and the state report do not contain information on legislation or developments in the area of coercion in psychiatric treatment. Greenlandic legislation on deprivation of liberty and other coercion in psychiatric treatment

does not contain an upper limit for prolonged physical immobilisation (“fixation”).

### **HUMAN RIGHTS**

The European Committee for the Prevention of Torture (CPT) has on several occasions pointed out that a patient should only be exposed to the use of mechanical restraint (“fixation”) as a measure of last resort to prevent imminent injury or to reduce violence. Restraints should be removed at the earliest opportunity. They should never be applied, or their application prolonged, as a sanction for perceived misbehaviour or as a means to bring about a change in behaviour. CPT has recommended that immobilisation of psychiatric patients should never be used as to compensate for shortages of trained staff and should never be used as a precautionary measure or as a substitute for adequate medication.<sup>11</sup>

The UN Convention on the Rights of Persons with Disabilities applies to Greenland with no territorial exclusion. The UN Committee on the Rights of Persons with Disabilities has expressed concern at the use of straps or belts for more than 48 hours and has recommended that Denmark amend its laws and regulations in order to abolish the use of physical restraints with regard to persons with psychosocial disabilities. It particularly recommends training on treatment to medical professionals and personnel in care institutions and other similar institutions on preventing torture and cruel, inhuman or degrading treatment or punishment.<sup>12</sup>

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited Greenland, including the psychiatric ward of Queen Ingrid Hospital, Nuuk, in September 2012.<sup>13</sup>

### **GREENLAND**

The Greenlandic Parliamentary Ombudsman (Ombudsmanden for Inatsisartut) carried out an OP-CAT inspection the psychiatric ward of Queen Ingrid’s Hospital, Nuuk, in March 2012. The Ombudsman criticised the lack of systematic and continuous record keeping of measures of coercion without which it was impossible to monitor the prevalence of coercion measures.

Greenland introduced a new act on deprivation of liberty and other coercion in psychiatric treatment as of 1 July 2013.<sup>14</sup> This is a positive development in accordance with international and national concerns raised, as the new act modernises the legal framework, including regulation of the use of coercion, patient security and demands of record keeping. However, the new act does not contain an upper limit for prolonged physical immobilisation (“fixation”).

The Danish Institute for Human Rights recommends that Greenland:

- Informs the committee on measures taken to ensure record keeping and incident reporting of the use and duration of coercion measures.
- Abolishes the use of forced physical restraints lasting more than 48 hours.

#### **8.4 COORDINATION OF OP-CAT INSPECTIONS IN GREENLAND**

##### **List of issues paragraph 26-28.**

Which institution is National Preventive Mechanism (NPM) relating to Greenland depends on the subject matter in question. Legislation for Greenland is the responsibility of either the parliament of Greenland (Inatsisartut) or the parliament of the Kingdom of Denmark (Folketinget). Accordingly, OP-CAT inspections in Greenland in facilities under the auspices of the authorities of the Greenlandic self-rule and municipalities (e.g. psychiatric institutions) fall under the mandate of the Greenlandic Parliamentary Ombudsman (Ombudsmanden for Inatsisartut). OP-CAT inspections in facilities in Greenland under the auspices of the Danish authorities (e.g. pre-trial detention and facilities for the serving of sentences) fall under the mandate of the Danish Parliamentary Ombudsman (Folketingets Ombudsmand).

This solution ensures that the relevant NPM has thorough knowledge of the law in question. The division of NPM responsibility, however, implies a risk that the gathering of knowledge relevant for the committee and the public becomes fragmented and unsystematic.

#### **RECOMMENDATIONS**

The Danish Institute for Human Rights recommends that the two National Preventive Mechanisms:

- Coordinates inspection efforts and informs the public of inspection findings on a systematic and continuous basis.

# END NOTES

- <sup>1</sup> Ministry of Justice (Justitsministeriet) (2014), Betænkning nr. 1546, Betænkning om inkorporering mv. Inden for menneskeretsområdet, Copenhagen 2014. Available in Danish at: [http://justitsministeriet.dk/sites/default/files/media/Pressemeddelelser/pdf/2014/Betaenkning\\_1546.pdf](http://justitsministeriet.dk/sites/default/files/media/Pressemeddelelser/pdf/2014/Betaenkning_1546.pdf)
- <sup>2</sup> Response of the Danish Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Denmark from 4 to 13 February 2014, CPT/Inf (2015) 16, 3 March 2015, page 17-18.
- <sup>3</sup> Report to the Danish Government on the visit to Denmark carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 4 to 13 February 2014, CPT/Inf (2014) 25.
- <sup>4</sup> The European Court of Human Rights, *Onoufriou v. Cyprus*, judgment of 7 January 2010, Application no. 24407/04, para. 71.
- <sup>5</sup> Danish Prison and Probation Service, 'Kriminalforsorgens Statistik 2012', side 32, og 'Kriminalforsorgens Statistik 2013', side 33.
- <sup>6</sup> The committee's report is available on-line: [http://www.cpt.coe.int/documents/dnk/2013-03-inf-eng.htm#\\_Toc346203452](http://www.cpt.coe.int/documents/dnk/2013-03-inf-eng.htm#_Toc346203452).
- <sup>7</sup> Council of Europe, 'Report to the Danish Government on the visit to Denmark carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 4 to 13 February 2014', September 2014, paragraph 121.
- <sup>8</sup> Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of Denmark', 3 October 2014 (Advance Unedited Version), CRPD/C/DNK/CO/1, paragraph 38-39.
- <sup>9</sup> Statens Serum Institut, 'Opgørelse over anvendelse af tvang i psykiatrien i perioden 2000-2013'. 6 May 2014.
- <sup>10</sup> Denmark, Act no. 579 of 4 May 2015 amending the Act on Use of Force in the Psychiatry (Determination of the legal position of minor psychiatric patients, introduction of new objects clause, increased criteria for forced physical restraint, amendment of the criteria for the opening and control of mail, inspection of wards and possessions and body search etc.) (*Lov nr. 579 af 4. maj 2015 om ændring om ændring af lov om anvendelse af tvang i psykiatrien (Fastlæggelse af mindreårige psykiatriske patienters retsstilling, indførelse af ny formålsbestemmelse, skærpede kriterier for tvangsfiksering, ændring af kriterierne for åbning og kontrol af post, undersøgelse af patientstuer og ejendele samt kropsvisitation m.v.*).
- <sup>11</sup> Please see Report to the Government of Denmark on the visit to Greenland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 to 27 September 2012. Available on-line: [http://www.cpt.coe.int/documents/dnk/2013-03-inf-eng.htm#\\_Toc346203452](http://www.cpt.coe.int/documents/dnk/2013-03-inf-eng.htm#_Toc346203452)
- <sup>12</sup> Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of Denmark', 3 October 2014 (Advance Unedited Version), CRPD/C/DNK/CO/1, paragraph 38-39.
- <sup>13</sup> Please see Report to the Government of Denmark on the visit to Greenland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 to 27 September 2012. Available on-line: [http://www.cpt.coe.int/documents/dnk/2013-03-inf-eng.htm#\\_Toc346203452](http://www.cpt.coe.int/documents/dnk/2013-03-inf-eng.htm#_Toc346203452)

<sup>14</sup> Greenlandic act no. 24 of 3 December 2012 on deprivation of liberty and other coercion in psychiatric treatment (*Inatsisartutlov nr. 24 af 3. december 2012 om frihedsberøvelse og anden tvang i psykiatrien*).

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