



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE

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SUMMARY RECORD OF THE 757th MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 2 May 2007, at 10 a.m.

Chairperson: Mr. MAVROMMATIS

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The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (agenda item 5)

Fifth periodic report of Denmark (CAT/C/81/Add.2; CAT/C/DNK/Q/5, 5/Rev.1
and 5/Rev.1/Add.1)

1. At the invitation of the Chairperson, the members of the delegation of Denmark took places at the Committee table.
2. The CHAIRPERSON commended the format and content of the fifth periodic report and the comprehensive written replies to the list of issues. He welcomed Denmark's contribution to human rights in general and to the fight against torture in particular.
3. Mr. VINTHEN (Denmark), introducing his country's fifth periodic report, said that the effective and independent international monitoring of compliance with international human rights standards was one of the key areas of Danish international human rights policy. The importance his Government attached to combating torture was reflected in the omnibus resolution on torture it submitted at the General Assembly each year. Denmark was also prepared to pursue the issue of torture in the Human Rights Council once that body had decided how to deal most effectively with thematic issues. Denmark took the lead in the implementation of European Union policy guidelines on torture, and human rights, including freedom from torture, were a transversal issue in Danish development assistance as well as an individual priority area in that assistance.
4. He drew attention to a number of developments since the fifth periodic report had been submitted in 2005. The Government had undertaken a number of measures to resolve the problem of high occupancy rates in prisons, including the creation of 550 new permanent prison places between 2003 and 2006, the introduction of electronic tagging and the release of prisoners on parole for good behaviour. As a result, the average occupancy rate had decreased from between 96 and 98 per cent and had been maintained at 92 per cent since July 2006. Experience with electronic tagging had been positive: the average daily number of offenders tagged was increasing and currently stood at between 80 and 120, of whom only 6-8 per cent had had to be imprisoned owing to a violation of the programme's conditions.
5. Efforts to facilitate rehabilitation and improve living conditions for victims of torture were also being stepped up. As a supplement to existing health-care and rehabilitation services, a comprehensive four-year scheme had been introduced in 2007, at a cost of some 16 million kroner; it was hoped that it would help traumatized victims and their families to integrate into Danish society. In addition, over the past three years, a project aimed at developing adapted educational methods for traumatized persons to learn Danish had been implemented, and was considered a crucial element in the rehabilitation process.
6. In December 2006, a defence command directive on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment in the armed forces had been introduced; it constituted a compilation of Danish armed forces regulations in that area. The directive ordered military personnel who witnessed torture to actively engage in halting the torture and to report

any acts or omissions they believed constituted torture. It was a key priority for the armed forces that military personnel were made fully aware of the prohibition of torture, particularly when participating in international missions.

7. Mr. THORDAL-MORTENSEN, responding to question 4 of the list of issues, said his Government still maintained that it fully met the requirements of the Convention and was under no obligation to incorporate a definition of torture in its criminal legislation. However, in 2006 the Minister of Justice had asked the Standing Committee on the Administration of Criminal Justice to consider the question of incorporating a special provision on torture in the Criminal Code, as well as the statute of limitations for torture offences. The Government was awaiting the outcome of the Standing Committee's work, and would draft a bill on the introduction of a provision on torture if it so recommended.

8. Turning to question 9, he said that there was substantial emphasis on human rights in police training. The Police College cooperated closely with the Danish Institute for Human Rights and the Rehabilitation and Research Centre for Torture Victims, the two institutions which provided most of the training in those areas.

9. On the questions relating to solitary confinement (10 and 11), he said that the Government was committed to further reducing its use and ensuring the effectiveness of legislation to that end. In particular, regulations concerning the imposition of solitary confinement for detainees under the age of 18 had recently been tightened, reducing the maximum period of confinement from eight to four weeks.

10. Responding to question 21, he said that, in the light of criticism of the police complaints board in recent years, the Ministry of Justice had, in October 2006, established a broad-based committee to review the system for dealing with complaints against the police and processing criminal cases against police officers. The committee was expected to submit its report in 2008. The number of complaints against the police had stabilized at approximately 900 a year in Denmark, but the number continued to fluctuate considerably in Greenland. No statistics were available on the processing time for complaints against the police, but regional public prosecutors had recently been allocated additional resources to reduce processing time in such cases. The case of Jens Arne Ørskov, who had died while in police custody in 2002, was currently pending before the High Court.

11. In reply to question 18 concerning follow-up of the 2004 report of the Commission on Greenland's Judicial System, he said that, as recommended, a special criminal code and special administration of justice bill for Greenland were currently being drafted; the Government had also decided to build a new closed prison in Greenland.

12. Mr. SCHIOELER (Denmark), responding to question 10 on inmates' opportunities to associate with other inmates in the same situation during solitary confinement, referred to the relevant statistics contained on pages 10-12 of the written replies (CAT/C/DNK/Q/5/Rev.1/Add.1).

13. On question 12, he said that the furniture in observation cells was limited to a bed and a combined table and chair, all clamped to the floor or wall to minimize the risk of injury to the prisoner or staff, and the cell door was equipped with an observation window made of armoured glass. He drew attention to the relevant statistics on pages 16 and 17 of the written replies.

14. Responding to question 13 on the violent riot in Nyborg prison in February 2004, he described the immediate restrictions imposed and also the prison authorities' plan for gradual normalization of the situation, as outlined in the written replies. By mid-May 2004, the prison regime had returned to normal, and overall, the authorities now considered that the initiatives taken in the aftermath of the incident had helped considerably to reduce the risk of a recurrence.

15. Turning to question 17 he stressed that the results of the 2006 job satisfaction study conducted among prison employees showed that almost 9 out of 10 employees were satisfied with their working conditions, but there were still some problems to be addressed, such as the fact that less than half of respondents found their immediate superior was good at resolving conflicts and more than half experienced lengthy periods of negative stress.

16. In response to question 14, he said that the 2004 Act amending the Act on Euphoricants and the Sentence Enforcement Act provided for random urine sampling of prisoners to check for any drug abuse. Further details on the guidelines for implementation of those Acts were contained in the written replies. An evaluation of initial experience with the urine-sampling regime showed that it appeared to have led to a decrease in drug abuse in prisons.

17. Referring to question 25, he said that although statistics on the nature of inter-prisoner violence and threats had been recorded since April 2004, they did not include details concerning the assaulted prisoner's gender, age or nationality. He drew attention to the relevant figures contained on page 37 of the written replies. To address the issue, the prison service endeavoured to protect vulnerable prisoners through placement in special units. The three closed prisons that accommodated women all had separate units for women, while in the two open prisons women could choose whether to associate with men or not. Although young offenders generally served their sentences in secure social institutions outside the prison system, in the rare cases where they did not they were placed in a State prison that comprised a special juvenile unit. Prisoners with an ethnic background other than Danish were not considered particularly vulnerable, but the prison service was aware that they might have special needs and had launched initiatives in that connection.

18. Responding to question 27, he referred to the relevant statistics concerning voluntary isolation on page 40 of the written replies, which showed that there had been a considerable decrease in recent years as a result of a number of initiatives, including the establishment of several semi-open units for vulnerable prisoners.

19. Ms. AAMANN (Denmark), referring to question 1, said that an alien who could neither be granted a residence permit nor be returned to his country of origin owing to a risk of persecution could be granted permission for a "tolerated stay" in Denmark. Although there was no maximum length of "tolerated stay", the Danish Immigration Service checked every six months whether the risk of persecution still existed.

20. Responding to question 2, she said that since “de facto” refugee status had been abolished in 2002, residence permits could only be issued to asylum-seekers who were entitled to protection under international conventions. Under section 7 (2) of the Aliens Act, a residence permit would be issued to an alien if, upon return to his country of origin, he risked being subjected to the death penalty, torture or inhuman or degrading treatment or punishment. The fact that an applicant had fled from war was no longer sufficient to be granted asylum.

21. In reply to question 3, she said that, unless a decision to that effect had been taken by the relevant authorities, the reopening of an application for asylum or a residence permit on humanitarian grounds did not mean that the decision concerning the asylum-seeker’s return would not be enforced, even if the deadline for his departure had passed. In 2006, 87 humanitarian cases had been reopened. In 62 of those cases, the original decision had been reversed in favour of the applicant. From 2004 to 2006, the Refugee Appeals Board had reopened 234 asylum cases, in 84 of which the original decision had been reversed in favour of the applicant.

22. With regard to question 19, she said that cases of asylum-seekers being detained during the processing of their asylum applications were rare and usually involved aliens who had been expelled by court judgement or administrative decision. Such cases were dealt with as a matter of priority. Most cases involving detention of asylum-seekers occurred after an asylum-seeker’s application had been rejected and he had to be returned to his country of origin.

23. Turning to question 28, she said that asylum-seekers were usually housed in asylum centres while their case was being considered. Such centres were not designed for extended stays; the maximum time it took for an asylum case to be considered was eight months. Asylum centres were visited by nurses, doctors, psychologists, psychiatrists and physiotherapists. Medical treatment was provided to all asylum-seekers. Adult asylum-seekers were offered education, and could participate in various activities and perform unpaid humanitarian or other work. The closure of several asylum centres in Denmark had had a positive effect on the number and quality of services provided for asylum-seekers. The Government had earmarked 37.6 million Danish kroner in 2006 and 47.5 million kroner in 2007 for the improvement of conditions in asylum centres. In addition, 45.5 million kroner had been earmarked for that purpose in 2008.

24. In 2006, a number of steps had been taken to improve the life of children and young persons in asylum centres, including providing opportunities for education in their native language and for participation in a range of educational and leisure activities (question 29). Medical treatment was provided to all children, regardless of the asylum status of their parents. Day nurseries were in place for children between 3 and 6 years of age. Asylum children of school age were offered the same education as Danish pupils.

25. With regard to the issue of disappearances of unaccompanied asylum-seeking children from asylum centres (question 30), she said that special guidelines had been adopted to ensure that such cases would be dealt with efficiently. Cases were reported to the local police and the Danish Immigration Service by the Danish Red Cross and were investigated in the same way as cases of disappearance involving Danish children. If there were reasons to believe that a child might disappear, he or she could be subjected to increased surveillance.

26. Mr. VINTHEN (Denmark), referring to question 15 of the list of issues, said that his Government was seeking to reduce the use of long-term immobilization of patients in psychiatric establishments. A medical assessment of the immobilization was carried out at least four times a day at evenly-spaced intervals. The decision to enforce measures of immobilization for more than 48 hours was subject to special review by a doctor who was not employed in the psychiatric establishment where the measure was being enforced, was not treating the patient and was not subordinate to the patient's doctor. Complaints concerning immobilization were submitted to the local psychiatric patients complaints board, whose decisions were subject to court appeal.

27. The reform of the Psychiatric Act had strengthened the legal status of patients, inter alia by appointing medical advisers and by ensuring increased medical supervision of patients subjected to long-term immobilization, as well as external medical review of any compulsory intervention (question 16). The Act now contained new sections, notably on compulsory personal hygiene and inspection of patients' rooms, mail and property. The patient must be informed orally and in writing of the intended intervention. Decisions concerning compulsory interventions amounting to detention were subject to court appeal.

28. The Danish Parliamentary Ombudsman would continue to carry out systematic inspections of places of detention (question 32). In the light of the experience gained in implementing the Optional Protocol to the Convention, his Government would consider whether other preventive mechanisms should be introduced.

29. Mr. GROSSMAN, Country Rapporteur, stressed the importance that the Committee attached to the incorporation of the Convention and of the definition of the crime of torture into national legislation. He recalled the recommendation of the Incorporation Committee that the Convention be incorporated into Danish domestic law and reiterated the reasons for that recommendation. The incorporation of the Convention would help to prevent torture, raise awareness of the Convention and ensure that its provisions were applied in court.

30. In the course of consultations with NGOs, concern had been expressed about psychological torture, which, by its nature, left no physical traces. He asked the delegation to clarify whether Danish legislation included such treatment within the concept of torture.

31. With regard to jurisdiction under article 3 of the Convention, he referred to the detention of 31 persons by the Danish army in Afghanistan in 2002. He would welcome information on the criteria establishing jurisdiction, under Danish law, that determined the extraterritorial applicability of the Convention.

32. Commenting on the requirement for applicants to prove their attachment to the place where they were seeking citizenship or residence, he stressed the need for justice to be rendered in a flexible manner and for exceptions to be accommodated in deserving cases. That was particularly desirable in the case of victims of torture suffering from chronic post-traumatic stress disorders that prevented them from satisfying some of the requirements for incorporation into their adoptive societies. He wondered what possibilities there were for exceptions to be made in such special circumstances.

33. He was of the impression that some countries, including Denmark, had amended their immigration and refugee law so that persons who had fled their countries as a result of

international or internal armed conflict were no longer granted de facto refugee status as had previously been possible. He was therefore curious to know whether Denmark attached any political, legal or ethical value to its signature of the Council of Europe recommendations in that regard, and what the implications of that approach were for Denmark in terms of article 3 of the Convention against Torture. In the same vein, he raised the issue of the use of Danish airspace and airports for the purpose of extraordinary rendition, and asked what value the Government placed on the report and recommendations on extraordinary rendition adopted by the European Parliament in February 2007.

34. With respect to article 4 of the Convention, he said that, under international law, crimes against humanity were not subject to statutes of limitation. In his view, article 4, paragraph 2, and article 16, paragraph 2, of the Convention provided a persuasive argument for torture to be considered of such gravity that the application of a statute of limitation constituted a violation of the obligations of States parties under the Convention. He therefore asked the delegation to explain why the Danish Government applied limitations in the case of torture.

35. Quoting section 36 of the Danish Military Criminal Code, he asked the delegation to corroborate his understanding that negligence was excluded as a basis for charges to be brought in the case of torture. He asked what was the rationale behind its exclusion since it was otherwise a well-established subjective component of criminal liability.

36. In connection with article 6, he drew attention to the decision to acquit the defendants who had allegedly used excessive measures in the interrogation of Iraqi detainees, and noted that the lesser charge of “minor dereliction of duty” was cited. He queried that conclusion, stating that the practice of invoking lesser charges seriously compromised accountability and the rejection of impunity.

37. He also asked whether there were mechanisms through which aliens who had served sentences for offences would ever have the possibility of restoring their reputation if they had genuinely changed and no longer posed a threat to society. According to paragraph 6 of the written replies (CAT/C/DNK/Q/5/Rev.1/Add.1), they seemed forever doomed to be regarded by the authorities and Danish society as serious criminals.

38. Referring to question 3 of the list of issues, he asked whether there had been a category of exceptional reasons, as quoted in paragraph 18 of the written replies, that had been successful in providing guidance to persons who sought to invoke such reasons to apply for the reopening of a decision under section 33 of the Danish Aliens Act. Likewise, he wished to know the rationale behind the amendment of the provisions of section 33 of the Aliens Act governing applications for residence permits on humanitarian grounds, whereby the decision on the application under section 9 (b) would henceforth be taken before the applicant’s asylum case under section 7 had been finally decided upon.

39. Turning to the introduction of the definition of torture into Danish criminal legislation and the consideration of a special provision on the prohibition of torture in the new Military Criminal Code, he asked when the standing committee considering the matter, as mentioned in paragraphs 28 and 30 of the written replies, would submit its recommendations to the Government.

40. Mr. WANG Xuexian said he was interested in knowing the fate of the Afghans who had been handed over by Danish forces to the United States military. Noting that there had been calls for an independent investigation of the matter, over and above the review of the incident as reported by the Danish Ministry of Defence, he said that review seemed to have taken place rather hastily and without the persons handed over to the United States authorities being interviewed.

41. He also enquired about the duration of solitary confinement during pretrial detention, and said that the Committee welcomed the passage of a bill aimed, inter alia, at reducing the number of solitary confinements and their duration, and improving the terms under which solitary confinement was initiated in the case of persons under the age of 18. It was, however, a matter of concern that there seemed to be no clear limitations on the confinement of persons suspected of acts of terrorism, and he asked the delegation to clarify the situation of such suspects.

42. He referred to the case of Jens Arne Ørskov, and to the fact that some parties involved in the discussion surrounding the case had advocated the establishment of new mechanisms for prompt, impartial and independent investigations. Paragraph 178 of the written replies had mentioned the establishment of a broad-based committee to review and evaluate the current system for dealing with complaints against the police. He noted that the committee was expected to submit a report by the summer of 2008, but he was curious to know more about the work the committee had done so far.

43. He was also interested in receiving more information on the aftermath of the Copenhagen riots in March 2007, and specifically how many persons had been arrested, the period of their detention, and whether complaints against the police had been lodged in connection with events during the period of unrest.

44. Mr. MARIÑO MENÉNDEZ requested more information on the legal situation of aliens with “tolerated stay” status, for example, whether they had the right to receive social assistance, whether their children had the right to attend school and whether their status was modified in any way once they had spent two years in the country. Since Denmark was not a full party to the Schengen Agreement he asked which aspects of that Agreement it applied and to what extent it recognized other European countries’ visas and residence permits.

45. Since the Convention was directly applicable by the domestic courts, he did not understand the State party’s failure to incorporate the Convention’s definition of torture into domestic legislation, a definition which, like the definitions of refugee and genocide, was almost universally accepted.

46. Turning to the State party’s reply to question 3 of the list of issues, he enquired whether it was true that only an asylum-seeker was eligible to be considered for the issuance of a residence permit on humanitarian grounds, or whether there was some avenue for the granting of residence outside the asylum procedure.

47. He asked for clarification of the State party’s position on whether or not requests by the Committee for interim measures, such as a suspension of proceedings or action pending its

review of a complaint, were considered binding, although he noted that the State party had always shown good faith in heeding its recommendations. Finally, with regard to question 19, he asked whether detainees who were not asylum-seekers were entitled to free legal aid.

48. Ms. BELMIR expressed concern that the Administration of Justice Act contained no provisions relating to the use of solitary confinement in Greenland, but solitary confinement nevertheless occurred. She enquired whether there was a progressive scale or list of acceptable measures regarding treatment, punishment and detention, whether women detainees were dealt with by female guards and police officers, and whether there were specific times during which searches could be carried out.

49. She expressed concern that there was no provision in Greenland for discovery, or transmission to the courts, of relevant documents, and wondered how the courts could make informed decisions without having access to all the facts. She was also concerned at the persistence of the use of isolation and solitary confinement, including for minors under the age of 18, and asked if minors were in fact entitled to special treatment. She requested clarification on the situation of mentally-ill offenders, who, according to the delegation's written replies, were subject to sanctions imposed by the police, with the courts only intervening to modify or terminate those sanctions.

50. Ms. SVEAASS welcomed the State party's efforts to reduce the use of solitary confinement for minors under 18 but urged it to abolish that practice, as recommended by the Committee on the Rights of the Child, especially given the negative effects solitary confinement could have on that vulnerable group. She also welcomed the increased budget allocated to improving conditions in centres for asylum-seekers, but, noting that many asylum-seekers had been in Denmark for more than three years and some as many as nine years, she asked whether the State party would consider granting an amnesty to asylum-seekers who had been in Denmark for more than three years, especially those with children. Finally, given the psychological and mental consequences suffered by victims of torture, which might affect their ability to meet the language requirements for acquiring Danish nationality, she asked if an exception could be made for those individuals.

51. The CHAIRPERSON said that he was encouraged by the signs of progress in the State party and urged it to move towards a clear and complete prohibition of torture and to continue its efforts to restrict the use of solitary confinement. Finally, although welcoming the State party's recognition of the jurisdiction of bodies such as the European Court of Human Rights, he stressed the importance of the Convention, which was a universal instrument, and the case law of the Committee in promoting a complete prohibition of torture.

The meeting was suspended at 12.15 p.m. and resumed at 12.40 p.m.

Follow-up on article 19

52. Mr. MARIÑO MENÉNDEZ, Rapporteur for follow-up for the United States of America, said the deadline for receipt of a reply from the State party had not yet expired and he expected to receive a reply in the near future. He could, however, provide an update on related developments. In June 2006, the Supreme Court had found that the President had exceeded

his authority in creating special military commissions to try, for example, detainees at Guantánamo Bay, and had declared those commissions unconstitutional. As a result of that ruling, a new law governing those military commissions had been enacted in October 2006. The commissions were currently functioning and had taken their first decision on March 2007. In April 2007, the Supreme Court had rejected an appeal questioning the constitutionality of the reconstituted military commissions submitted by two groups of prisoners from Guantánamo, saying it preferred to wait to see how the commissions functioned in practice and to await any related decisions of the lower courts.

53. In September 2006, the Pentagon had issued new guidelines for the questioning of detainees aimed at prohibiting techniques which might be considered degrading, including some referred to by the Committee. He also expected the State party to reply to the concerns expressed by the Committee regarding lists of detainees, extraordinary rendition, respect for the principle of non-refoulement, due process for detainees at Guantánamo and the closure of Guantánamo, interrogation practices, conditions of detention for women and children, and concerns about some actions of the Chicago police. He was convinced that the State party had taken due note of the Committee's concerns and would soon submit its reply.

The meeting rose at 12.50 p.m.