



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

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COMMITTEE AGAINST TORTURE

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**Written replies by the Government of Denmark* to the list of issues
(CAT/C/DNK/Q/4/Rev. 1) to be taken up in connection with the consideration
of the fifth periodic report of Denmark (CAT/C/81/Add.2 and Add.2, Part II)**

Additive

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being edited sent to the United Nations translation services.

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ARTICLE 3

Question 1

Please provide further information in respect of a "tolerated stay" in Denmark without a residence permit (paragraph 25 of the report). What is the maximum length of a "tolerated stay"? Is the need for a "tolerated stay" assessed at regular intervals?

1. According to the Aliens Act, section 7, an alien will, upon application, be issued with a residence permit if the alien falls within the provisions of the Convention relating to the Status of Refugees (28 July 1951) (the Refugee Convention), or if the alien risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in case of return to his country of origin.
2. However, an alien cannot be issued with a residence permit if the alien must be considered a danger to Denmark's national security or a serious threat to public order, security or health, or if the alien is considered to fall within Article 1 F of the Refugee Convention. In addition, an alien is not, unless particular reasons make it appropriate, eligible for a residence permit if, for example, the alien has been convicted outside Denmark of an offence which might result in expulsion under sections 22 to 24 of the Aliens Act, had the adjudication taken place in Denmark, or if there are serious reasons for assuming that the alien has committed an offence outside Denmark which might result in expulsion under sections 22 to 24 of the Aliens Act.
3. Despite the fact that an alien in some cases presents a serious danger to the public safety or national security, an alien may according to the Aliens Act, section 31 (1), not be returned to a country where he or she will be at risk of the death penalty or of being subjected to torture or inhuman or degrading treatment or punishment, or where the alien will not be protected against being sent on to such a country. Moreover, according to section 31 (2) an alien falling within section 7(1) may not be returned to a country where he or she is at risk of persecution on the grounds set out in Article 1 A of the Refugee Convention, or where the alien will not be protected against being sent on to such country. This does not apply if the alien must reasonably be deemed a danger to national security or if, after final judgement in respect of a particularly dangerous crime, the alien must be deemed a danger to society, but cf. subsection (1).
4. The provision in section 31 (1) must be applied in compliance with Denmark's international obligations, including the prohibition, from which no derogation is possible, to be inferred from, inter alia, article 3 of the European Convention on Human Rights and article 3 of the Convention against Torture, on return to a country where the alien will be at risk of torture or inhuman or degrading treatment or punishment.
5. As mentioned in Denmark's 5th periodic report, paragraph 25, an alien who cannot be granted residence permit in Denmark because of the provisions regarding exclusion and who – at the same time – cannot be returned to his or her country of origin or former residence because of the risk of the death penalty or of being subjected to torture or inhuman or degrading treatment or punishment or of persecution on the grounds set out in Article 1 A of the Refugee Convention, can stay in Denmark if he or she wishes so. In such cases the alien is referred to a "tolerated stay" in Denmark without a residence permit. Aliens living in Denmark on a "tolerated stay" are thus aliens who are, in principle, undesired in Denmark.

6. In the opinion of the Danish Government it should be possible to control such persons' stay in Denmark. Partly because they are serious criminals of whom the authorities should be aware in any case – even if they have served their sentences for the offences committed – partly because they are aliens who are to be returned as soon as an opportunity arises.

7. Against this background the Government has introduced a system according to which the Danish Immigration Service every six months, or when the occasion otherwise arises, must verify whether aliens excluded from being issued with residence permits in Denmark can be returned without risking persecution in their countries of origin. If return continues to be impossible because of the risk of persecution, the alien will continue the “tolerated stay” in Denmark. There is no maximum length of a “tolerated stay”.

Question 2

The Committee takes note of the amendments to the Aliens Act introduced by Law No. 367 of 6 June 2002 (in effect since 1 July 2002). In the light of the safeguards contained in article 3 of the Convention, please elaborate in greater detail on the abolition of "de facto" refugee status and the introduction of a new "protection status".

8. Act No. 365 of 6 June 2002 which entered into force on 1 July 2002 abolished the former de facto refugee concept with the effect that residence permits are now only issued to asylum-seekers who are entitled to protection under international conventions (i.e. The Refugee Convention, the UN Convention against Torture, and the European Convention on Human Rights, etc.).

9. Pursuant to the present section 7(2) of the Aliens Act, a residence permit will be issued to an alien upon application if the alien risks the death penalty or being subjected to torture, inhuman or degrading treatment or punishment in case of return to his country of origin (protection status).

10. The wording is close to the wording of Article 3 of the European Convention on Human Rights, according to which no person may be subjected to torture or exposed to inhuman treatment or punishment. The Sixth and Thirteenth Additional Protocols to the European Convention on Human Rights also comprise a prohibition against the imposition of the death penalty and execution in peacetime.

11. According to the explanatory notes to the bill introducing section 7(2), the immigration authorities are required to comply with the case law of the European Court of Human Rights in the field when applying the provision.

12. Furthermore, according to the explanatory notes to section 7(2), Denmark has an obligation to respect a number of other conventions of relevance to the provision in addition to the provisions in the European Convention on Human Rights.

13. This includes, inter alia, Article 3 of the United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (Convention against Torture), which prohibits State parties from returning a person to a country where there is a risk that the person will be subjected to torture.

14. It also includes Article 7 of the International Covenant on Civil and Political Rights, which prohibits State parties from exposing individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment.

15. The main difference between the previous and the current legislation concerning subsidiary protection is that it is no longer possible to be granted asylum only on grounds that the asylum seeker has fled from a war.

16. The Danish Immigration Service and the Refugee Board will thus generally consider the conditions for issuing a residence permit with protection status to be fulfilled when there are specific and individual factors rendering it probable that the applicant will be exposed to a real risk of the death penalty or of being subjected to torture or inhuman or degrading treatment or punishment in case of return to his country of origin.

17. Thus, the conditions for granting a residence permit will generally be considered fulfilled when exceptional circumstances in the country of origin involves a real risk that the applicant upon return will be subject to specific and individual persecution or exposed to a real risk of treatment as mentioned in section 7(2) of the Aliens Act.

Question 3

Section 33(7) of the Aliens Act provides for the possibility to allow for the reopening of an application for asylum, or a rejection of a residence permit on humanitarian grounds, in order to suspend the enforcement of a decision to return if the time limit for departure has been exceeded and if exceptional reasons make it appropriate. Please indicate how many cases have been reopened on the basis of this provision. In how many of the cases has there been a reversal of the original decision in favour of the applicant?

18. According to section 33(7) of the Danish Aliens Act, an application for reopening of a decision under section 7 or section 9b does not suspend enforcement of the decision with a view to the time-limit for departure, unless the authority that made the decision so decides. Where the time-limit for the alien's departure has been exceeded, an application for reopening does not suspend enforcement, unless exceptional reasons make it appropriate.

Reopening of a decision under Section 7 of the Aliens Act:

19. In 2004, 2005 and 2006 The Refugee Appeals Board reopened a total of 234 asylum cases distributed as follows:

20. In 2004 the Board reopened 104 asylum cases. In 31 of the reopened cases the original decisions were reversed in favour of the applicant.

21. In 2005 the Board reopened 55 asylum cases. In 20 of the reopened cases the original decisions were reversed in favour of the applicant.

22. In 2006 the Board reopened 75 asylum cases. In 33 of the reopened cases the original decisions were reversed in favour of the applicant.

Reopening of a case under Section 9b of the Aliens Act:

23. According to section 9b(1) of the Danish Aliens Act, a residence permit on humanitarian grounds may be issued, upon application, to an alien who, in cases not falling within section 7(1) and (2) (asylum), is in such a position that essential considerations of a humanitarian nature conclusively make it appropriate to grant the application.
24. In 2006, a total number of 87 humanitarian cases according to section 9b(1) – regarding 206 persons – have been reopened on the basis of section 33(7). In 62 of these cases – regarding 152 persons – the applicants were granted a residence permit on humanitarian grounds.
25. It should be noted that according to Act no 301 of 19 April 2006, which came into force on 1 May 2006, section 33(4) of the Danish Aliens Act has been altered. According to section 33(4), an application for a residence permit on humanitarian grounds under section 9b(1) – if the asylum case has not been refused as manifestly unfounded according to section 53b(1) of the Danish Aliens Act – suspends enforcement of the time-limit for departure if the application is submitted within 15 days after the date of the registration of the alien as asylum-seeker in Denmark according to section 48e(1) of the Danish Aliens Act.
26. According to the previous provision of section 33(4), an application for a residence permit on humanitarian grounds under section 9b(1) – if the asylum case was not refused as manifestly unfounded according to section 53b(1) of the Danish Aliens Act – suspended enforcement of the time-limit for departure if the application was submitted within 15 days of refusal by the Danish Immigration Service to grant a residence permit under section 7.
27. This amendment might result in a larger number of applications for reopening of a decision under section 9b(1), as the decision of the application under section 9b(1) now – as a main rule – will be taken before the applicant's asylum case under section 7 has been finally decided upon. As a consequence, this might also result in a larger number of applications for reopening of a decision under section 9b(1), which will not lead to the granting of a residence permit on humanitarian grounds.

ARTICLE 4

Question 4

In the light of the Committee's previous recommendation (CAT/C/CR/28/1, paragraph 6(a)), please provide updated information on the State party's position on introducing into Danish penal legislation the definition of torture, as provided for in article 1 of the Convention?

28. The Minister of Justice has asked the Standing Committee on Criminal Matters to consider the possibility of inserting a special provision on torture in the criminal code. Part of the committee's work will be to consider how torture should be defined. The committee held its first meeting about this issue in October 2006 and has scheduled meetings until June 2007. The Committee will report its recommendations to the Government.

Question 5

Please elaborate on the State party's decision not to introduce a special provision on the prohibition of torture in the new Military Criminal Code that was adopted in 2005.

29. During the reading in Parliament of a new Military Criminal Code it was considered to introduce a special provision on the prohibition of torture. The Government decided not to introduce such a provision because it is of the opinion that all acts which may be defined as torture are covered by the provisions in the Criminal Code, which also applies to military personnel, and that Denmark hereby fully meets the requirements of the Convention.

30. However, as stated in the reply to question 4, the Minister of Justice has asked the Standing Committee on Criminal Matters to consider the possibility of inserting a special provision on torture in the Criminal Code. In addition to this The Standing Committee on Criminal Matters will also consider this question in relation to the Military Criminal Code.

Question 6

Please provide data with respect to persons tried and convicted, including the sanctions imposed, for the crime of torture.

31. From May 2002 when Denmark was last examined up to today there have been no convictions for the crime of torture. In 2006 a case against 5 military personnel, who had been engaged with the Danish military force in Iraq, was tried before the court. The 5 military personal were charged with violation of section 15 in the Danish Military Criminal Code on gross dereliction of duty, cf. article 27 and 31 in the Fourth Geneva Convention on the protection of civilians during war. The charges concerned the handling of Iraqi detainees in an interrogation situation. The indicted were acquitted of the charges partly due to the fact that the charges could not be proved and partly due to the fact that the action proved, did not constitute a criminal offence.

ARTICLE 5

Question 7

Has the committee that was set up by the Ministry of Justice to examine the provisions of the Criminal Code concerning jurisdiction, including the question of jurisdiction in cases of torture committed abroad, completed its work? If so, please elaborate on the committee's findings and provide information on the measures taken or planned to be taken to follow up on its suggestions and recommendations.

32. The committee set up by the Ministry of Justice to examine the provisions of the criminal code on jurisdiction has not yet completed its work. It is expected to do so by summer 2007.

ARTICLE 8

Question 8

Has the State party rejected, for any reason, any requests for extradition by another State for an individual suspected of having committed a crime of torture, and thus engaging its own prosecution as a result?

33. No such rejections have occurred.

ARTICLE 10

Question 9

The police officers are provided with basic and maintenance training and a considerable part of this training is devoted to the use of force by the police. Please provide information on the training provided for law enforcement officials with respect to human rights in general and the measures for the prevention of torture and cruel, inhuman or degrading treatment or punishment in particular. How and by whom is this training monitored and evaluated?

34. In the vast majority of subjects, including those devoted to the use of force, comprised by training programmes, there is substantial focus on human rights, ethics, morals and attitudes, psychology, sociology and cultural sociology. Tuition in these subjects is provided both as individual parts of the curricula and as components of the tuition in the regulations that govern police activities and in which conventions on human rights and various recommendations have been implemented or are reflected. Within the area of human rights the Police College has close cooperation as well with the Danish Institute for Human Rights as the Rehabilitation and Research Centre for Torture Victims. Members of these institutions, moreover, carry out much of the actual tuition in the subject.

35. In 2006 an inter-disciplinary project (civics and English language) was implemented in order to reinforce students' awareness of human rights. Each new probationer is issued with a booklet in English, Human Rights and Police Ethics, prepared for that purpose, and tuition in both subjects focuses on the interconnection between Danish law and the texts of the European Convention on Human Rights and the Council of Europe recommendation on a European Code of Police Ethics.

36. In basic and maintenance training in the conduct of operational policing (including tactical support duties), which will involve the use of force, the instructional concept is subject to continuous evaluation and adjustment. In this respect, previous experience, new legislation etc. will be taken into account. Monitoring and evaluation is carried out against the background of discussions held in various panels with representatives from police districts and the National Police.

37. In 1995, and again in January 2007, police self defence techniques as well as techniques applied in connection with the use of force were subject to examination by independent medical experts. This was done in order to identify any risk involved in these activities. Circumstances, in which – according to expert opinion or for any other reason – special caution must be exercised, are included in the training.

Article 11

Question 10

Please provide information and statistics about cases where an inmate has been provided with opportunities to associate with one or more inmates in the same situation during his or her solitary confinement (paragraph 93 of the report).

38. It appears from para. 93 of the fifth periodic report of 19 July 2004 to the Committee against Torture that exclusion from association may be affected. It is possible to be excluded from general association but at the same time be allowed to associate with one or more inmates in the same situation.

39. When an inmate has been excluded from association for more than two weeks, the current rules provide that staff must note in particular whether the exclusion from association can be relaxed with reference to the inmate's situation as seen in conjunction with considerations of order and security in the institution, for example in the form of association with one or more other inmates in the cell, during the outdoor exercise, opportunities for work or leisure-time activities in association with one or more inmates.

40. In 2004, the institutions of the Prison and Probation Service decided on administrative exclusion from association in 687 cases. In 92 of those cases the inmate had access to association with fellow inmates, corresponding to 13 per cent of all the cases of exclusion.

41. 389 of the 687 cases of exclusion lasted less than 7 days.

42. In 2004, the total number of lengthy exclusions from association amounted to 113 cases lasting for 15-28 days. In 12 of those cases the inmate had access to association with fellow inmates, corresponding to 10 per cent of all these cases of exclusion. 30 cases of exclusion lasted for more than 28 days. In 7 of those cases the inmate had access to association with fellow inmates, corresponding to 23 per cent of all these cases of exclusion.

43. In 2005, the institutions of the Prison and Probation Service decided on administrative exclusion from association in 759 cases. In 88 of those cases the inmate had access to association with fellow inmates, corresponding to 11 per cent of all the cases of exclusion. 407 of the 759 cases of exclusion lasted less than 7 days.

44. In 2005, the total number of cases of lengthy exclusion from association amounted to 130 lasting for 15-28 days, of which 15 cases included access to association with fellow inmates, corresponding to 11 per cent of these cases of exclusion. 51 of the cases of exclusion lasted for more than 28 days, of which 13 cases included access to association, corresponding to 25 per cent of these cases of exclusion.

45. The reason for the relatively small total number of inmates who have been excluded from association with access to association with fellow inmates in 2004 and 2005 (13 per cent and 11 per cent, respectively) is that association with fellow inmates will often be contrary to the purpose of the exclusion.

46. It is positive, however, that as regards lengthy exclusion from association lasting for more than 28 days, the inmate had access to association with fellow inmates in one in four cases.

47. Statistics on the cases of exclusion from association for 2004 and 2005 broken down by reasons and by 'with access to association' or 'without access to association' is appended. The statistics concerning 2006 are not yet available.

Exclusion from association in 2004 – broken down by reasons and by ‘with access to association’ and ‘without access to association’.

		Length of exclusion					Total
		1-3 days	4-7 days	8-14 days	15-28 days	28+ days	
Type of violation							
S. 63(1) – to prevent escape	With access to association with fellow inmates	5	3	4	1	1	14
	Without access to association with fellow inmates	11	11	6	4	1	33
S. 63(1) – opposing security measures	Without access to association with fellow inmates	1	3	-	2	-	6
S. 63(1) – continued association unjustifiable	With access to association with fellow inmates	23	6	3	5	3	40
	Without access to association with fellow inmates	71	46	45	26	6	194
S. 63(1) – to prevent criminal activities	With access to association with fellow inmates	5	5	7	1	2	20
	Without access to association with fellow inmates	49	63	53	34	5	204
S. 63(1) – to prevent violent behaviour	With access to association with fellow inmates	8	2	2	5	1	18
	Without access to association with fellow inmates	42	31	33	34	11	151
S. 63(1) – opposing health measures	Without access to association with fellow inmates	1	-	1	1	-	3
S. 63(1) – refusing to accept occupation	Without access to association with fellow inmates	3	-	1	-	-	4
Total		219	170	155	113	30	687

Exclusion from association in 2005 – broken down by reasons and by ‘with access to association’ and ‘without access to association’.

		Length of exclusion					Total
		1-3 days	4-7 days	8-14 days	15-28 days	28+ days	
Type of violation							
S. 63(1) – to prevent escape	With access to association with fellow inmates	1	3	1	1	2	8
	Without access to association with fellow inmates	13	2	4	3	4	26
S. 63(1) – opposing security measures	Without access to association with fellow inmates	5	1	2	1	-	9
S. 63(1) – continued association unjustifiable	With access to association with fellow inmates	13	3	6	4	6	32
	Without access to association with fellow inmates	98	49	40	19	13	219
S. 63(1) – to prevent criminal activities	With access to association with fellow inmates	6	6	12	3	2	29
	Without access to association with fellow inmates	58	67	64	61	10	260
S. 63(1) – to prevent violent behaviour	With access to association with fellow inmates	1	3	3	7	2	16
	Without access to association with fellow inmates	38	33	39	29	11	150
S. 63(1) – opposing health measures	Without access to association with fellow inmates	3	-	-	2	-	5
S. 63(1) – refusing to accept occupation	With access to association with fellow inmates	1	1	-	-	1	3
	Without access to association with fellow inmates	1	1	-	-	-	2
Total		238	169	171	130	51	759

Question 11

Please provide information on the use of solitary confinement in respect of persons under the age of 18, particularly in the light of section 770C, subsection 4 of the Administration of Justice Act. Please describe measures taken, if any:

- a) **to review the current practice of solitary confinement of persons under the age of 18;**
- b) **to limit the use of this measure to very exceptional cases;**
- c) **to reduce the period for which it is allowed;**
- d) **to seek its eventual abolition;**
- e) **to abolish the practice of imprisoning or confining in institutions persons under the age of 18 who display difficult behaviour.**

48. The number of persons under the age of 18 years placed in solitary confinement:

Year	Number of persons in solitary confinement
2002	3
2003	5
2004	5
2005	4
2006*	3

** The number only covers the first three quarters of 2006.*

49. As stated in the fifth periodic report the Standing Committee on Administration of Criminal Justice has been given the task to evaluate the amendments adopted in 2000 on solitary confinement in pre-trial detention. In 2006 it finished its work and submitted a report to the Ministry of Justice.

50. The report contains an evaluation of the impact of the amendments adopted in 2000 and recommendations from the committee on how to further decrease the use of solitary confinement in general and regarding persons under the age of 18 years.

51. Based on this report the Minister for Justice in 2006 tabled a bill in Parliament, which was later adopted. The main purpose of the amendment is to maintain the decrease in the number of solitary confinements that has been obtained by the amendment of the Administration of Justice Act in 2000 and to obtain a further limitation in the duration of solitary confinement. Regarding persons under the age of 18 years the act tightens the rules for initiating solitary confinement by stressing that solitary confinement in these cases must only be initiated and continued if exceptional circumstances make it necessary, cf. section 770 b, (2). Furthermore the upper limit for solitary confinement of persons under 18 years is reduced from 8 weeks to 4 weeks, unless the charge concerns offences against the independence and security of the state (chapter 12 in the criminal code) or against the constitution and the supreme authorities of the state (chapter 13 in the criminal code), cf. section 770 c, (5).

52. The question of continuation beyond 4 weeks must also be submitted to the Director of Public Prosecution for his approval, before the request can be submitted in court, cf. section 770 d, (3). If the approval has not been obtained the court cannot comply with the request for continuation.
53. The act entered into force on 1 January 2007.
54. Only a small number of inmates below 18 years are placed in the state and local prisons of the Prison and Probation Service.
55. In 2005, the average daily number of places occupied by young offenders below 18 years serving a prison sentence in the state and local prisons of the Prison and Probation Service was 9, while the corresponding number for detainees and remand prisoners was 10.3. From 1998 to 2004, the average daily number of places occupied by young offenders below 18 years serving a prison sentence in the state and local prisons of the Prison and Probation Service has fluctuated between 5.4 and 9, while the corresponding number for detainees and remand prisoners has fluctuated between 4.7 and 10.7.
56. To the widest possible extent, young remand prisoners will be remanded in alternative custody in secured social institutions. Young persons aged 15-17 who are to serve a prison sentence must be placed in institutions, etc., outside the Prison and Probation Service or in a halfway house of the Prison and Probation Service, unless placement outside state or local prisons is inappropriate for preventive reasons, for example due to the nature of the crime, the inmate's dangerousness, a record of violent behaviour, escape or the like from previous periods of confinement in an institution, cf. section 78(2) of the Sentence Enforcement Act.
57. In all cases where young offenders under the age of 18 have been sentenced to imprisonment, it must thus be assessed whether there is a basis for placing them in a treatment institution or the like (so-called "alternative serving of sentences").
58. Young remand prisoners (15-17 years old) who cannot be remanded in alternative custody must be placed in local prisons. However, it must be assessed individually on the basis of information available on the current occupancy mix, etc., whether another local prison should be chosen instead. To accommodate the requirement of maintaining contact with their families, etc., the local prison chosen should be a local prison near the young person's residence, if possible.
59. In the local prison, the young person is placed in the unit that provides the best possibilities of protecting the young person against unfortunate influence. 15-17-year-olds may be placed in cells together with older inmates in very extraordinary cases and only with the consent of the Department of Prisons and Probation. This may be relevant when such placement is in accordance with the young person's best interest because of close family ties or other comparable factors. The young person must consent to such placement.
60. As previously, the 15-17-year-olds who are to serve their sentences in a closed institution will be placed in Ringe State Prison, Herstedvester Institution or in a local prison. Ringe State Prison accepts young men aged 15-25 and women. Ringe State Prison has a special unit for 15-17-years olds. This unit has another staff composition than ordinary units and offers treatment of the young offenders

in the form of a special socio-educational programme in collaboration with the social authorities outside the prison.

61. Finally, it should be mentioned that the Prison and Probation Service has been granted funds for establishing a special open unit in Jyderup State Prison in 2007 for convicted offenders aged 15-17 years. The unit will have a high prescribed number of staff, including educationally trained staff and will offer activities particularly suited for this young target group. Like the special unit in Ringe State Prison the unit in Jyderup State Prison will have a close collaboration with the social authorities outside the prison.

Question 12

Please provide additional information on:

a) Confinements in observation cells, including updated statistics on the number and nature of the observation measures taken as well as the material conditions of these cells;

b) The cases of immobilization by force in connection with security-cell confinement in 2004 and 2005.

62. An inmate may only be confined in an observation cell under the Sentence Enforcement Act if:

- a) it is necessary to prevent vandalism;
- b) it is required for vital reasons of order and security in the institution; or
- c) special observation is required.

63. An inmate may not be confined in an observation cell if the confinement would be disproportionate in view of the purpose of the measure and the indignity and the unpleasantness presumably caused by the measure.

64. Confinement in an observation cell must be effected as considerately as circumstances permit.

65. The confinement must be terminated promptly when the conditions for such confinement are no longer present. The director of the institution or the person so authorised must decide on confinement in an observation cell and on termination of the confinement. The institution must promptly prepare a report on events.

66. A doctor must be summoned if:

- a) it is suspected that the inmate has fallen ill or been injured in connection with the confinement; or
- b) the inmate himself requests medical assistance.

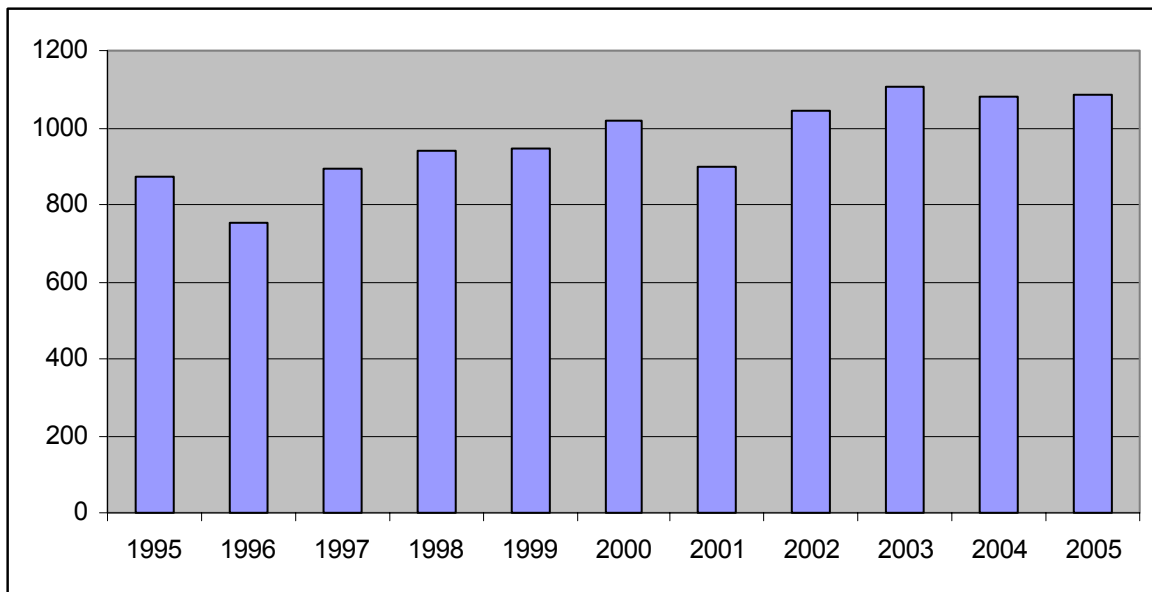
67. In connection with the confinement, a search of the inmate's person is made, unless the institution deems it to be unnecessary. If necessary in the individual case, the inmate's clothing may also be changed.

68. During the confinement the inmate must be attended regularly by the staff of the institution. Any person attending the inmate must note it in a specific observation form irrespective of any changes in the inmate’s situation. The note must include information on the date and time of the attendance and information on the inmate’s condition as well as comments on the need to continue confinement. Confinement may only be effected in a cell approved as an observation cell by the Department of Prisons and Probation.

69. The furnishing of an observation cell is based on an ordinary cell and its furnishing, but with the limitations following from the special use of the cell. Cell furniture is limited to a plank bed and a combined table and chair, all clamped to the wall/floor to minimise the risk of injury to inmates and staff. The cell door is provided with an observation pane made of armoured glass. The lighting of the cell must allow for suitable observation, and it must be possible to dim the light from the outside.

70. Concerning statistics on the number of observation cell confinements, reference is made to the tables below. It should be noted in that connection that it is not possible to break down the statistics by the nature of the observation measures taken.

Terminated observation cell confinements, 1995 - 2005



	n	Per 100 prisoner population
1995	875	25
1996	754	23
1997	891	26
1998	938	27

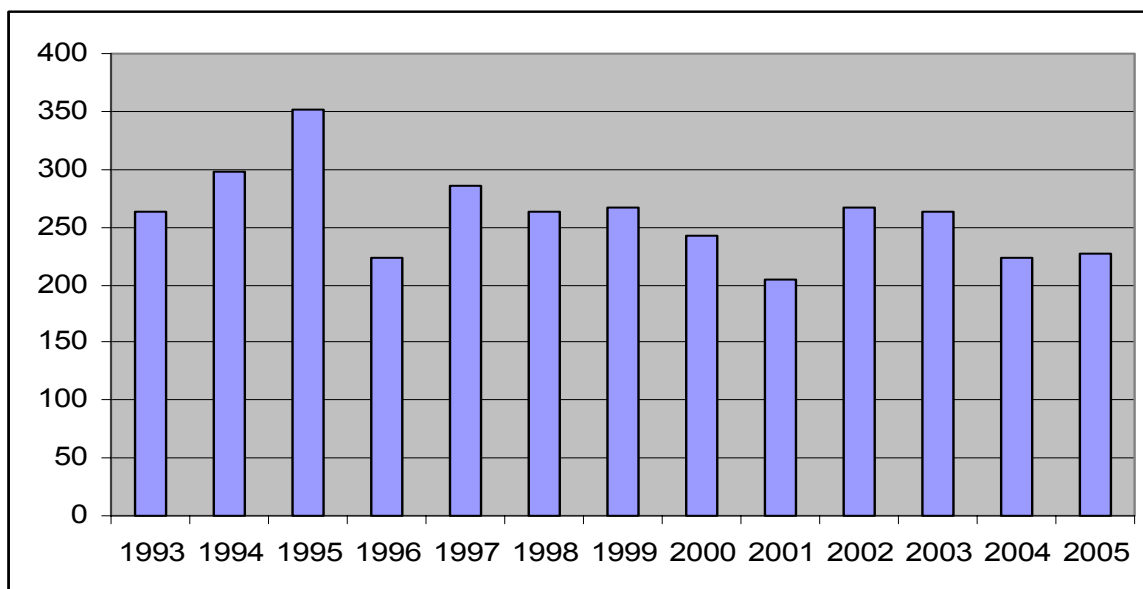
1999	943	27
2000	1016	30
2001	897	28
2002	1044	30
2003	1108	30
2004	1078	29
2005	1088	27

71. The table below shows the number of security cell confinements by year, including the number of confinements applying immobilization by force.

Security cell confinement. Length

	Length of confinement						Immobilized
	Up to 6 hours	6-12 hours	12-24 hours	1-3 days	3 + day	Total	
Closed prisons	35	10	20	9	2	76	65
Open prisons	8	2	7	-	-	17	13
Copenhagen Prisons and local prisons	62	27	33	9	2	133	99
2005	105	39	60	18	4	226	177
2004	100	38	69	16	1	224	156
2003	128	54	64	17	1	264	202
2002	132	60	59	14	2	267	183
2001	91	34	61	14	4	204	151
2000	114	50	64	12	3	243	150
1999	153	49	51	11	2	266	150
1998	137	59	55	11	2	264	147
1997	155	58	65	8	-	286	157
1996	125	49	45	4	1	224	128

Terminated security cell confinements, 1993 - 2005



	n	Per 100 prisoner population
1993	263	7
1994	297	8
1995	352	10
1996	224	7
1997	286	8
1998	264	8
1999	266	8
2000	243	7
2001	204	6
2002	267	8
2003	264	7
2004	224	6
2005	226	6

Question 13

As regards the violent riot in the Nyborg prison on 15 February 2004, please describe the gradual measures taken to normalize the situation, in particular, regarding inmates who were involved in the incident. What measures, if any, have been taken to restore and improve the dialogue between inmates and the prison management after the riot?

72. After the riot on 15 February 2004, about 110 out of about 230 inmates in the prison were affected by restrictions (revocation of visiting orders, outdoor exercise, association, occupation, etc.). The restrictions were imposed for security reasons to prevent continuing unrest.

73. Promptly after the riot, prison management prepared a plan for gradual normalisation of the situation in the prison for inmates and prison staff over a period.

74. The prison appointed a crisis group which implemented a number of initiatives in the subsequent months to overcome stress and the feeling of insecurity among staff as a result of the riot. The aim was to take care of the employees who needed help and to ensure a professional approach when the situation was normalised.

75. The five inmates who the prison management considered to have had an active and controlling role in connection with the riot were transferred to various local prisons on 5 March 2004. On the same day, the coordination committee of the prison held a meeting at which the prison management explained how the inmate regime would gradually be relaxed.

76. From March to May 2004, permission was gradually granted for visits, outdoor exercise, cell association between inmates, shopping in the prison store, self-catering, general unit association, participation in occupation and leisure-time activities and resumption of leaves. Permission was given gradually with certain restrictions adapted to the individual units and with enhanced attention on the part of staff.

77. For a prolonged period after the riot, the staff picked up various rumours from the inmates, so that the management got the impression that more unrest was brewing, both inside and outside the prison. Therefore, the reaction among the inmates was carefully monitored as the various relaxations were introduced. The rumours in question mentioned inter alia the burning down of buildings, renewed vandalism in units and workshops, assaults on staff outside the prison and poisoning of staff in units.
78. In mid-May 2004, the prison regime was normal again, except that outdoor exercise was given during working hours on workdays. The gradual relaxation of the restrictions and the time employed for this was necessary in view of restoration of the facilities that had been destroyed. For security reasons it was necessary for the prison to constantly prevent the inmates from carrying out one or more of the plans rumoured during the period. Prison management also has the impression that the time spent in restoring the damage had a preventive effect in itself in relation to the inmates.
79. From the beginning of May 2004, prison management encouraged the inmates to elect spokesmen again to create a forum for dialogue between inmates and prison management. At first it was difficult to get inmates to volunteer as candidates, but since then the spokesman scheme has got going again. The spokesmen of the inmates may request a meeting with the prison management, which fixes a date for the meeting as soon as possible. To the extent possible, any desires expressed by inmates at spokesman meetings are granted.
80. The prison has launched several local initiatives to improve relations between inmates and staff and thus also prison management.
81. A rulebook for the inmates and house rules for the individual units have been made so that the inmates may seek information about the prison regime.
82. Prison management has delegated comprehensive powers to staff in cases concerning inmates so that decisions in many matters concerning inmate conditions can be made fairly quickly and without too much paperwork.
83. The prison has worked quite hard at getting the contact person scheme to work to provide a close, but professional relationship between inmates and prison staff. Today, the contact person scheme is considered to work well, and prison officers take an active part in the processing of cases concerning those inmates whose contact person they are.
84. The individual units have regular inmate meetings at which inmates may enter into a dialogue with the individual unit managers and their deputies. These meetings give inmates an opportunity to make requests concerning various aspects of their imprisonment.
85. Altogether, the management finds that the above initiatives have greatly contributed to reducing the risk of a situation similar to that on 15 February 2004. The risk is now deemed to be very small. During the past couple of years, the prison management has not had the impression that a renewed round of organised vandalism is being planned. No major dissatisfaction with prison conditions is discernable among inmates other than what naturally follows from being deprived of liberty.

Question 14

Has the Government Bill No. 175 of 26 February 2004 amending the Act on Euphoriant and the Enforcement of Sentence Act been enacted yet, and if so, have more detailed guidelines for its implementation been adopted?

86. Act No. 445 of 9 June 2004 amending the Act on Euphoriant and the Sentence Enforcement Act (enhanced efforts against drugs, etc.) inserted a new provision in section 60a of the Sentence Enforcement Act. One of the purposes of the amendments was to enhance the efforts made against the smuggling, dealing in and use of drugs and other illegal substances in the institutions of the Prison and Probation Service.

87. According to the provision of section 60a(1) of the Sentence Enforcement Act, the director of the institution or the person so authorised may decide that an inmate has to provide a urine sample for testing for any use of euphoriant drugs or other drugs prohibited under general legislation. The Act entered into force on 1 July 2004.

88. Section 60a of the Sentence Enforcement Act provides for random urine sampling of inmates in the institutions of the Prison and Probation Service to check for any abuse of euphoriant, etc. Urine sampling pursuant to section 60a of the Sentence Enforcement Act thus does not presuppose a concrete suspicion of an inmate's abuse of euphoriant, etc. The provision may be applied to a large group of inmates, for example, so that all inmates of one or more institutions or units may be ordered to provide urine samples.

89. Under section 60(4) of the Sentence Enforcement Act, urine sampling must be made as leniently as circumstances permit. Pursuant to section 3 of the Search Order (Executive Order No. 1625 of 13 December 2006 on Search of an Inmate's Person and Room in the Institutions of the Prison and Probation Service), no other inmates may witness the provision of a urine sample.

90. To reduce the risk that an inmate who has used euphoriant cheats with the urine sample, urine samples must always be provided under staff supervision. Only staff of the same sex as the inmate may be present at urine sampling except in case of health staff.

91. The Prison and Probation Service evaluated the preliminary experiences with the tightened urine-sampling regime in 2006. The evaluation seems to indicate that the tightened urine sampling regime and the other measures taken to enhance the treatment efforts against drug abuse has led to a development towards less drug abuse in state and local prisons.

Question 15

Please provide information on any review undertaken in respect of the immobilization of patients in psychiatric establishments (see the report of the European Committee for the Prevention of Torture (CPT) following its third periodic visit to Denmark in 2002). Please provide annual statistics since 2004 on the extent of coercive measures applied based on the amendments made to the Consolidation Act on involuntary treatment, immobilization, restraint protocols, etc. at psychiatric wards (Consolidated Act No. 194 of 23 March 2004).

92. The Danish Psychiatric Act was amended in June 2006, and the amendments entered into force on 1 January 2007. All alterations introduced since the previous amendments in 1998, including the

changes from June 2006, have been combined in Consolidated Act no. 1111 of 1 November 2006 on the application of restraint in psychiatry.

93. Preparation for the most recent amendments commenced in 2003.

94. The aim of the amendment of the Danish Psychiatric Act is to strengthen the legal status of patients and the protection of patients' legal rights in a number of areas relating to the application of restraint in psychiatry, and to reduce the use of restraint in some areas.

95. Long-term immobilisation is one of the main points dealt with in this Act.

96. It is the government's aim that the use of long-term immobilisation should be reduced.

97. The government did not however find grounds for establishing an absolute legal limit to the duration of immobilisation in connection with the amendment of the Danish Psychiatric Act, as this might deprive psychiatric departments and staff of the means to undertake necessary measures for the protection of the patient concerned and other patients, should the patient's condition be unaltered at the expiry of the time limit.

98. With a view to ensuring high quality in the use of restraint and limiting the duration of the immobilisation, the government instead proposed that clear and uniform rules be laid down stipulating a minimum frequency of medical supervision and simultaneous assessment of whether the immobilisation should cease or continue.

99. These rules were adopted, with the result that medical assessment of the immobilisation must now take place at least four times daily at evenly-spaced intervals. The aim is for the systematically increased medical supervision to focus the awareness of doctors on whether the immobilisation should be maintained, and on the possibility of alternative treatment. The overall goal is to ensure that any compulsory immobilisation, in common with other forms of restraint sanctioned by law, continues no longer than absolutely necessary.

100. The decision to enforce immobilisation will moreover be subject to a special review if it is extended beyond 48 hours. This review is to be undertaken by a doctor who is not employed in the psychiatric department in which the measure is being enforced, is not responsible for treating the patient, and is not a subordinate of the doctor treating the patient. This measure will secure impartiality in relation to the evaluation of the need to continue the immobilisation. The doctor undertaking the external review must be a trained medical specialist in either psychiatry or child and youth psychiatry, and the review may take account of factors other than the strict assessment of the patient, such as conditions in the ward that the patient may experience as inappropriate, working practices, etc.

101. Further to enhancing the level of professionalism in relation to the application of long-term immobilisation, both initiatives will improve the legal protection of patients' rights, as the patient will be guaranteed medical supervision at least four times a day at evenly spaced intervals, and the fixation will be evaluated after 48 hours by a doctor who is independent of the department in which the measure is enforced. If there is a divergence of opinion between the assessments of the two doctors concerning the need to continue the forcible restraint, the decision of the doctor treating the patient will be decisive, as this doctor will have a more in-depth familiarity with the patient's health situation than the

external doctor, and is responsible for the continuing treatment of the patient. The discrepancy between the two doctors' assessments of the situation must however be communicated to the patient both verbally and in writing, as in such cases there will be an opportunity to have the matter considered by the local psychiatric patients' complaints board.

102. With respect to strengthening the legal protection of patients' rights and ensuring that patients can in all cases request that the legality of a fixation be reviewed by a court of law, the government did not find there was a need to alter the legal rules concerning appeals. All complaints concerning immobilisation will, as previously, be directed to the local psychiatric patients' complaints board at the state administrative bodies, but now with the right of appeal to a court of law, rather than, as formerly, to the Patients' Complaints Board of the National Board of Health.

103. The mandatory patient adviser scheme was also extended to include immobilisation.

104. As mentioned above, these alterations came into force on 1 January 2007. The effect of these changes in reducing the duration of immobilisation will be revealed in the statistics of the National Board of Health on the annual number of fixations, initially in the statistics for 2007, which are expected to be published in 2008.

105. Enclosed are the National Board of Health's annual statistics for fixations undertaken in the years 2004-2005. The corresponding figures for 2006 are expected to be published in June 2007.

Question 16

Please provide information on the reform of the Danish Psychiatric Act, in particular on:

a) The results of the analysis on the implementation of the amendments to the Psychiatric Act, which entered into force on 1 January 1999;

b) The results of the analysis of the responses submitted by stakeholders in the psychiatric held, in particular organizations of patients and their relatives.

106. The amendment of the Danish Psychiatric Act introduced a number of changes in various areas, including strengthening the legal status of patients by making it mandatory to offer interviews to patients following any compulsory intervention, and introducing the appointment of patient advisers in the case of compulsory interventions, increased medical supervision of long-term immobilisation of patients with abdominal belts, and an external medical review of the intervention.

107. The title of the Act and the definition of restraint were altered. New sections were introduced on personal shielding and the locking of doors in the department, on compulsory personal hygiene and the examination of patients' post, property and patient rooms, the use of body searches, etc.

108. The opportunity of the guardian to consent to a psychosurgical intervention has been abolished, and an obligation has been introduced to inform the patient both verbally and in writing of the envisaged compulsion. Finally, the access to appeal has been altered, so that compulsory interventions, which could amount to detention, may now be brought before a court of law.

109. The examination of the Danish Psychiatric Act also encompassed the alterations adopted in the previous amendment in 1998, and which entered into force in 1999.
110. These alterations related to the maintenance of a good psychiatric hospital standard, the complaints system, decisions made in the absence of the consultant, discharge plans and co-ordination plans, compulsory readmission, the registration and reporting of compulsion, the patient adviser scheme and patient councils and patient meetings.
111. As a consequence of the examination of the Psychiatric Act, the following amendments have been introduced:
112. The concept of a good psychiatric hospital standard has been extended to encompass patient care, staff skills and policies towards relatives and patients.
113. As mentioned in the response to question no. 15, the complaints system has been altered in such a way as to allow interventions, which could amount to detention, to be brought before a court of law.
114. Similarly, as mentioned in the response to question no. 15, the patient adviser scheme has been altered to the effect that a patient adviser is now appointed in all such interventions, apart from the compulsory imposition of personal hygiene and the examination of the patients' post, property and patient rooms, body searches, etc. However, most patients subjected to such interventions will already have been assigned a patient adviser, e.g. as a result of involuntary placement.
115. The provisions relating to patient councils and patient meetings have been rescinded. While the government believes that patient influence is important, it is the view of the government that the former regulations on patient meetings and patient councils were more suitable to a time in which psychiatric patients were admitted for very long periods to the psychiatric departments, in some cases for life. Given current patterns of patient treatment and shorter periods of care, it is the view of the government that patient influence can be better secured by other means.
116. The government also finds that, rather than issuing a ministerial order on patient influence, better tools to secure the involvement of patients and relatives in a flexible manner in the workings of the psychiatric department are provided by the extension of the concept of a good psychiatric hospital standard to include policies towards patients and relatives, in combination with the new duty of the hospital authority to draw up written house rules.
117. All stakeholders involved in psychiatric care have been consulted in the process of preparing the amendments to the Danish Psychiatric Act. This applies not only to the preparations to introduce the bill and the hearings in relation to the proposed amendments, but also in connection with hearings concerning the accompanying regulations.

118. The Act as amended thus contains recognisable elements proposed by, for example, international organisations, the National Board of Health, organisations of health service professionals and patients' and relatives' associations, e.g. the new duty of the hospital authority to supply a copy of the plan of action to the patient, unless the patient requests that this is not done. The alteration of the definition of compulsion in the Act, placing somatic and psychiatric patients on an equal footing, was also partly inspired by a proposal from a patients' association.

Question 17

Has a new climate study on the prison employees and their work environment already been carried out? If so, please provide information on the results of the study compared to the previous study of 2001.

119. A job satisfaction study was carried out in the summer of 2006. The general aim of the job satisfaction study was the same as the 2001 Climate Study, viz. to “take the temperature” of the psychological working environment of the staff of the Prison and Probation Service.

120. Since 2001, however, the study design has been changed, which meant that the study could be completed electronically. In addition, the scale used has been changed, and the composition and wording of the questions differ compared with the 2001 study. The results of the two studies are therefore not directly comparable.

121. With the current design of the Job Satisfaction Study, two or three identical measurements will be carried out, the first one having been carried out already, as mentioned above. Measurement No. 2 has been initiated in February 2007, and the results are expected in April 2007.

122. The results of the summer 2006 study showed that almost nine out of ten employees were satisfied with working for the Prison and Probation Service. This was the result based on the statement: “Altogether I am happy with my job within the Prison and Probation Service.” But the measurement also showed that certain areas have problems that the Prison and Probation Service has to address. As an example, less than half of the employees of the Prison and Probation Service, 47 per cent, find that their nearest superior is good at resolving conflicts, and only 48 per cent do not experience any lengthy periods of negative stress.

123. It is also a major problem that only 37 per cent of the employees feel that employees who seem burned out are taken care of, and only 43 per cent find that the IT of the Prison and Probation Service supports the work processes in a good way.

124. Some of the problems will be addressed in connection with the follow-up on project “Good Job”. The “Good Job” project was launched in June 2006 by a so-called “future camp” at which 48 representative employees of the Prison and Probation Service were gathered for 48 hours to make specific proposals for creating good working environment for the employees of the Prison and Probation Service. Several project ideas were developed at the future camp, and a task force consisting of employees from the Prison and Probation Service and an external consultant firm have continued working on these ideas. The work of rolling out the project ideas will continue in 2007 and also in the next years. The project ideas range far and wide, and an example of the activities already launched is a simplification of a central IT system. In addition, several project ideas are in the testing and evaluation phase. This is the case for, for example, supervision of employees, targeted competence development in

the IT field and the development of dialogue technique courses for staff. Moreover, the Prison and Probation Service intends to introduce a systematic manager evaluation, which goes into its pilot phase in early 2007.

125. Other problems uncovered by the Job Satisfaction Study require a special effort, particularly the problem of lack of follow-up in connection with burning out.

126. It is not possible directly to compare the results with the 2001 Climate Study as the two studies have different designs, as described above. Particularly the difference between the scales used and differences in the wording of the questions make it difficult to compare them directly. It should be mentioned, however, that the 2001 Climate Study asked the employees the following question, which is partially comparable with the above satisfaction measure:

127. "How satisfied or dissatisfied are you altogether with being employed at your present place of employment?"

128. The replies to the question showed that about 65 per cent of the employees of the Prison and Probation Service were satisfied with their employment at their present place of employment, while 14 per cent of the employees were dissatisfied with their employment at their present place of employment. As the questions in this study had scores on a five-point scale, the replies from the remaining 21 per cent of the employees fell in the middle category "neither satisfied nor dissatisfied".

129. As it is uncertain how the 21 per cent would have replied if this middle category had not existed, and as it is uncertain how the respondents would have replied in the respective studies if the wordings had been the same, a comparison must be viewed with great caution.

130. However, it will be more relevant to talk about an assessment of the development in the working environment on the basis of measurements of the employees' psychological working environment when the next job satisfaction study has been completed in April 2007 with the same concept as the 2006 study. When it is available, the Prison and Probation Service will have an indication of whether the ongoing work to improve the psychological working environment has a positive effect for the employees of the Prison and Probation Service.

Question 18

Please provide updated information on the measures taken to follow up on the proposals and recommendations of the Commission on Greenland's Judicial System (Report No. 1442/2004 on Greenland's Judicial System), in particular, regarding:

- a) **Solitary confinement of detainees, the conditions for solitary confinement and its duration;**
- b) **Sentences for indeterminate periods (safe custody) and the possibility of removing persons held in safe custody in the Herstedvester Institution in Denmark to serve their sentences in a special prison in Greenland;**
- c) **Provisions on time limits and procedural rules regarding the mental examination of detainees during pre-trial investigations (the preparation of pre-sentence reports);**

d) The treatment of remand prisoners and other detainees, and the conditions in detention premises.

131. The report from the Commission on Greenland's Judicial System came out in the summer of 2004. The Commission proposes, among several other proposals, to build a new institution in Greenland capable of hosting those prisoners who are currently serving their sentences in the Prison of Herstedvester in Denmark. Additionally, the Commission has drafted provisions on solitary confinement of detainees, safe custody, time limits and procedure regarding the mental examination of detainees as well as a provision empowering the Danish Minister of Justice to issue orders on the conditions in detention premises.

132. The Greenland Home Rule commented the report in May 2006 and, following that, the Danish Ministry of Justice is now drafting a new Special Criminal Code and a new Special Administration of Justice Act for Greenland. It is expected that the two drafts can be sent to the Greenland Home Rule in autumn 2007 in order for the Home Rule to make its comments.

133. The Danish Government will consider very carefully the proposal to build a new closed institution in Greenland as well as the other mentioned provisions as some of the main issues during this process.

Question 19

Please comment on the widely used practice of detaining asylum seekers during the processing of their asylum applications. Please provide information, including disaggregated statistical data by age, sex and nationality, on the number of asylum seekers detained and the maximum length of and the grounds for detention. Which authority is entitled to order such detention? Are detention measures regularly reviewed by a competent, independent and impartial authority or judicial body? Are detained asylum-seekers kept apart from other detained persons/prisoners?

134. The rules governing the deprivation of liberty of asylum seekers are found in the Danish Aliens Act. There are basically two distinct sets of rules: remand of an alien into custody, and deprivation of liberty of an alien by administrative decision.

135. The National Police estimates that the majority of deprivations of liberty – and typically also those of the longest duration – takes place during the phase of the return of an alien, i.e., after an alien's application for asylum under section 7 of the Danish Aliens Act has been rejected. Deprivations of liberty of asylum seekers during the pre-asylum phase or during the Dublin phase (bør det udtryk ikke forklares?) are typically of a shorter duration – up to 4 weeks. Deprivations of liberty during the examination of the asylum application by the Danish Immigration Service and the Refugee Board are rare and will typically involve aliens who have been expelled by a court judgment or an administrative decision, cf. sections 35(2) and 36(3) of the Danish Aliens Act. The examination of such applications is given the highest priority by the refugee authorities.

Remand of an alien into custody – Section 35 of the Danish Aliens Act

136. 35(2): An alien who has submitted an application for a residence permit pursuant to section 7, and who has been expelled by final judgment under sections 22 to 24, may be remanded in custody to ensure efficient enforcement of the decision of expulsion.
137. 35(3): The provisions of the Administration of Justice Act on remand in custody and measures in replacement thereof apply in other cases. A time limit must however always be determined for the length of custody or measure in cases where the remand in custody or the imposition of the measure in replacement thereof is solely laid down with a view to enforcement of a decision by a final judgment of expulsion. The time-limit under the second sentence hereof is determined by the court at the place where the alien is detained.
138. Section 35(2) was incorporated into the Aliens Act in 2001 with the intent of ensuring an efficient enforcement of the decision of expulsion after an alien has already served his/her sentence. Thus the provision should not be applied, if there is an overwhelming probability that the alien in question – in accordance with the current practice of the Danish Immigration Service and the Refugee Board – will be granted asylum as a member of a particular nationality or ethnic group.
139. According to section 764(1) of the Danish Administration of Justice Act, the decision to remand a person into custody is made by the court upon request by the police.

Deprivation of liberty of an alien by administrative decision – Section 36 of the Danish Aliens Act

140. The civil service is at all times bound by a general principle of proportionality according to which the least invasive measure should be applied in administrating the law. In this specific context it means that a deprivation of liberty pursuant to section 36 of the Aliens Act may not be enforced unnecessarily or extended longer than necessary. This general principle of proportionality is supplemented by specific requirements of proportionality defined in the law. Thus, it is a precondition for enforcing deprivation of liberty pursuant to sections 36(1), 36(4), 36(6), 36(7) and 36(8) that the measures referred to in section 34 are insufficient to ensure cooperation by an alien.
141. The measures referred to in section 34 are considered less invasive than deprivation of liberty and may be ordered by the police in order, for example, to ensure an alien's presence or cooperation. These measures include ordering an alien to deposit his passport, other travel documents, and ticket with the police; provide a bail in an amount determined by the police; stay at an address determined by the police; or report to the police at specified times.
142. The rules governing the deprivation of liberty of an alien by administrative decision are found in section 36 of the Danish Aliens Act.
143. Section 36(1), first sentence, is applicable to all aliens who are not permanently resident in Denmark. As concerns asylum seekers specifically, the decision may be made to deprive an asylum seeker of liberty in the pre-asylum phase based on a specific and individual assessment of each case when the identity and travel route of the asylum seeker has not been or is not considered to have been established. The decision to deprive an asylum seeker of liberty in the pre-asylum phase may also be

made during the process of investigating the possibilities for transferring or retransferring of an asylum seeker in accordance with the Dublin Convention¹. Section 36(1), first sentence, does not allow for deprivation of liberty of an asylum seeker during the examination of his or her asylum application.

144. If the deprivation of liberty has been effected pursuant to section 36(1), third sentence, the deprivation of liberty may be upheld under this provision for not more than 7 days after the enforcement of the deprivation of liberty pursuant to section 36(1), third sentence, cf. section 37(3), fourth sentence.

145. Deprivation of liberty of asylum seekers under section 36(2), second sentence, is meant to be applied only to deprivations of liberty of short duration – from a few hours to less than one full day – with the sole purpose of ensuring the alien’s presence for the interrogation. If the interrogation cannot be completed within such a short period of time, the asylum seeker must be released. This provision does not allow for the deprivation of liberty of asylum seekers who substantially obstruct the procuring of information for the case through their behaviour.

146. Section 36(3) was incorporated into the Aliens Act in 2001. As the purpose of section 36(3) is to ensure an efficient enforcement of a decision of expulsion under section 25a(1), deprivation of liberty pursuant to this provision should be enforced in all cases in which an asylum seeker has been expelled by an administrative decision in accordance with section 25a(1). In other words, in making the decision to deprive an alien of liberty under section 36(3) it is not necessary to make a separate assessment of the decision of expulsion under section 25a(1).

147. Section 36(3) may be seen as a parallel to section 35(2) in that deprivation of liberty should not be enforced if there is an overwhelming probability that the alien in question – in accordance with the current practice of the Danish Immigration Service and the Refugee Board – will be granted asylum as a member of a particular nationality or ethnic group.

148. Furthermore, deprivation of liberty under section 36(3) should not be enforced if – on the basis of a specific and individual assessment of the asylum seeker’s personal situation – it is deemed that deprivation of liberty would constitute a particularly heavy strain on the person in question. This could be the case if the asylum seeker is alone with young children or if he or she is critically ill and is able to document this by a medical declaration.

149. Section 36(4) was also incorporated into the Aliens Act in 2001. According to the preparatory works, “repeatedly failing to appear” is to be understood as failing to appear on two or more occasions. It is thus a precondition for enforcing a deprivation of liberty under this provision that the police has previously attempted to use section 36(2), second sentence.

150. The examples of obstructive behaviour listed in section 36(4) are not exhaustive. The decision of whether or not an asylum seeker is essentially obstructing the procuring of information for the case must thus always be based on a concrete assessment of the case.

¹ The Dublin Convention as replaced by Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

151. As the deprivation of liberty under section 36(4) is meant to ensure an efficient examination of the asylum application and subsequent return from Denmark, the deprivation of liberty should as a rule be extended until the asylum seeker in question cooperates in such a way that the examination of the application and the return can be efficiently carried out.

152. Deprivation of liberty under section 36(4) should not be enforced if it is deemed— on the basis of a specific and individual assessment of the asylum seeker's personal situation – that deprivation of liberty would constitute a particularly heavy strain on the person in question. This could be the case if the asylum seeker is alone with young children or if he or she is critically ill and is able to document this by a medical declaration.

153. Section 36(5) was incorporated into the Aliens Act effective from May 1, 2003. According to the preparatory works, deprivation of liberty pursuant to this provision may be enforced in a situation where an alien refuses to cooperate with respect to providing specific information or undertaking a specific action which is essential to the police's efforts to arrange for the return of the alien, e.g. the alien refuses to sign a passport application. The alien in question must be released immediately after he or she begins to cooperate. Deprivation of liberty pursuant to section 36(5) may not be enforced when the police is unable to effect a (forceful) return of the alien due to general obstacles in the way of the return and when the police is unable to point to a feasible travel route for a voluntary return.

154. Deprivations of liberty pursuant to section 36(5) had been enforced in respect of 31 persons in the period from May 1, 2003 – October 2005. In its status report on the work to return refused asylum seekers of April 2005, the National Police notes that the Eastern High Court in three separate cases had released aliens who were deprived of liberty under section 36(5), citing the principle of proportionality, cf. the European Convention on Human Rights, and referring to the duration of the deprivation of liberty together with the prospects for persuading the alien to cooperate. Subsequently, the Danish National Police decided to reconsider in general the use of deprivation of liberty under section 36(5), as it was the experience of the police that even prolonged deprivations of liberty had so far had limited results with respect to persuading aliens to cooperate. At the end of September 2005, the National Police released 6 aliens of its own accord, and by October 9, 2005, there were no aliens deprived of liberty under section 36(5). From October 2005 – October 2006 the Danish National Police had not enforced any deprivations of liberty under section 36(5).

155. Section 36(6) was also incorporated into the Aliens Act in 2003. According to the preparatory works, deprivation of liberty pursuant to this provision may be enforced as a means to motivate an alien to cooperate in general when the lesser means, cf. sections 34, 42a(7), first sentence, and 42a(10), are insufficient to ensure the alien's cooperation. Deprivation of liberty pursuant to section 36(6) may not be enforced when the police is unable to effect a (forceful) return of the alien due to general obstacles in the way of the return and when the police is unable to point to a feasible travel route for a voluntary return.

156. Section 36(7) was incorporated into the Aliens Act in 2002. Deprivation of liberty pursuant to this provision may be enforced when the alien in question has failed to report to the police at specified times and when the place of residence of the alien in question thus has not been known to the police and the immigration authorities during an extended period of time. Thus, when it can not be ruled out

that the alien in question has been abroad, deprivation of liberty may be enforced in order to secure the alien's input in determining whether a possibility of his return to his home country or to another country has arisen. Deprivation of liberty under this provision should be discontinued when the alien in question has provided the information necessary to determine whether a possibility of his return has arisen.

The competent authority to decide upon deprivation of liberty

157. It follows from section 764(1) of the Administration of Justice Act that the decision to remand a person into custody pursuant to section 35(2) of the Aliens Act is made by the court upon request by the police. A court order to remand a person into custody is subject to appeal under the rules of Part XXXVII of the Administration of Justice Act.

158. According to section 48, second sentence, of the Aliens Act, the decision to deprive an alien of liberty under section 36 of the Aliens Act may be made by the National Commissioner of Police, the Chief Constable concerned, or by the Commissioner of the Copenhagen Police.

159. According to section 48, fourth sentence, the decision to deprive an alien of liberty under section 36 can be appealed to the Minister of Refugee, Immigration and Integration Affairs, but only if the decision cannot be brought before the courts under section 37, cf. section 48, sixth sentence. In other words, a decision to deprive an alien of liberty under section 36 can be appealed to the Minister of Refugee, Immigration and Integration Affairs within the first 3 full days after the enforcement of deprivation of liberty.

160. According to section 37(1), first sentence, an alien deprived of liberty under section 36 must, if he has not already been released, within 3 full days after the enforcement of deprivation of liberty be brought before a court of justice, and the court shall rule on the lawfulness of the deprivation of liberty and its continuance.

161. According to section 37(3), first sentence, the decision of the court must be made by court order subject to appeal under the rules of Part XXXVII of the Administration of Justice Act.

162. The Aliens Act does not establish a maximum length of time that an alien may be deprived of liberty. However, according to section 37(3), second and third sentences, if the alien is deprived of liberty at the time the decision is made and if his deprivation of liberty is found lawful, the court order must determine a time-limit for continued detention. The court may extend this time limit at a later date, but by not more than 4 weeks at a time.

163. The total length of time that an alien may be deprived of liberty is thus decided by the court on the basis of a specific and individual assessment of each case with due consideration to the principle of proportionality.

164. As mentioned above, the deprivation of liberty of an alien effected pursuant to section 36(1), third sentence, may be upheld under this provision for not more than 7 days after the enforcement, cf. section 37(3), fourth sentence.

Are detained asylum-seekers kept apart from other detained persons/prisoners?

165. Detained asylum seekers are normally held in the institution of the Prison and Probation Service for detained asylum-seekers at Sandholm (IFFA). This special institution was established at the end of 1989 to accommodate asylum-seekers detained pursuant to the Aliens Act. The purpose of establishing this institution was to avoid placing detained asylum-seekers in a state or local prison. The institution has a total capacity of 118. There are currently 67 asylum seekers at Sandholm.

166. Detained asylum seekers with pre-school children are housed in a special section of the Sandholm institution, so that the children can stay together with their parents without being exposed to contact with other detained asylum seekers except for (potentially) other detained asylum seekers with small children. Deprivation of liberty of asylum seekers with pre-school children is usually upheld for a maximum duration of 72 hours and is for the most part enforced only in the phase of the return of an asylum seeker.

Statistics

167. In 2006 a total of 404 aliens were deprived of liberty in accordance with sections 35 and 36 of the Aliens Act after having been brought before a court of justice. Of these, 287 were detained in the institution of the Prison and Probation Service for detained asylum-seekers at Sandholm (IFFA) and 117 in the Western Prison (Vestre Fængsel).

168. The total number of asylum seekers deprived of liberty covers all phases of the asylum application process. It is not possible to separate the number of persons deprived of liberty in the pre-asylum phase from the total number. As mentioned above, however, the National Police estimates that the majority of deprivations of liberty – and typically also those of the longest duration – take place during the phase of the return of an alien, i.e., after an alien's application for asylum under section 7 has been refused. Deprivations of liberty of asylum seekers during the pre-asylum phase or during the Dublin phase are typically of a shorter duration – up to 4 weeks. Deprivations of liberty during the examination of the asylum application by the Immigration Service and the Refugee Board are rare and will typically involve aliens who have been expelled by a court judgment or an administrative decision, cf. sections 35(2) and 36(3). The examination of such applications is accorded the highest priority by the refugee authorities.

169. The Danish National Police does not collect data on the deprivation of liberty of asylum seekers disaggregated by age, sex, nationality or duration.

170. According to statistics from the Danish Prison and Probation Service, in 2005 there were 1162 (1014 men, and 148 women) asylum seekers detained in the Sandholm institution, and in 2004 there were 1662 (1427 men and 235 women).

171. The Prison and Probation service also keeps statistics of the average rate of occupation, the average capacity, and the percentage of use of the Sandholm institution:

Average rate of occupation	hereof women	Average capacity	Percentage of use
2005 74,4	8,9	119,3	62,4
2004 99,8	13,7	126,8	78,7
2003 89,7	11,7	127,0	70,6
2002 98,3	6,5	128,0	76,8
2001 74,0	6,7	128,0	57,8
2000 74,9	5,3	106,6	70,3
1999 74,6	3,4	132,6	56,3
1998 84,9	6,5	140,0	60,6
1997 72,4	7,9	128,1	56,5
1996 107,7	15,5	160,0	67,3
1995 96,8	11,7	155,4	62,3

Source: Table 29 in the Danish Prison and Probation Services publication: "Kriminalforsorgen. Statistik 2005".

Question 20

Please inform the Committee whether legislation prohibiting torture and cruel inhuman and degrading treatment includes specific provisions regarding gender-based breaches of the Convention, such as sexual violence. Please indicate also what effective measures have been taken to prevent such acts and provide data on investigation, prosecution and punishment of the perpetrators.

172. The provisions in the criminal code are presumed to provide the necessary prohibition on torture and cruel, inhumane and degrading treatment. As explained in the fourth periodic report this includes e.g. sections 244-246 on violence, section 250 on rendering, etc. a person helpless, section 260 on duress. Furthermore chapter 24 in the criminal code covers sexual offences including for instance rape, see section 216.

173. Specific data on the investigation, prosecution and the punishment of gender-based breaches of the Convention are not available.

ARTICLES 12 and 13

Question 21

As regards the examination of complaints against the police and the evaluation of the operation of the police complaints board in Denmark as well as the police complaints board in Greenland, please provide information on the results of the latest evaluations. In particular, how many complaints against the police have been filed and investigated in Denmark and in Greenland in 2003, 2004 and 2005 and how many of these complaints have led to the issuance of a decision? What is the current length of complaint proceedings?

174. In Denmark's 4th periodic report there is a reference to the system of police complaints boards, which was introduced in 1995. In connection with the evaluation of the system in 1998 and 1999, a number of authorities and organisations directly affected by it were consulted about their experience with regard to the operation of the police complaints board system.

175. Based on the consultation response received, the Ministry of Justice informed the Parliamentary Legal Affairs Committee, by a letter of 2 July 1999, that the Ministry was of the opinion that, essentially, the system of police complaints boards worked satisfactorily and that, at that point in time, there was no need to change the rules governing the handling of complaints against the police, and that the Ministry therefore intended to carry on the system in its existing form.

176. It should also be noted that, at the annual meeting of the police complaints boards in January 2002 and again in January 2006, stock was taken of the first years of the police complaints board system. The conclusion at the meetings was that the system is operating satisfactorily. It was, however, also the conclusion that there might be a need for a certain streamlining of the administrative routines for the casework, including in particular the processing of road traffic cases (automatic traffic control) and petty offences in the field of road traffic.

177. In the light of this conclusion, inter alia, the Director of Public Prosecutions issued a Circular on 30 September 2002 laying down guidelines for a simplification of the police complaints board system. Thus, the Circular includes simpler rules for the processing of cases concerned with automatic traffic control as well as the handling of so-called 'notice cases' (behavioural cases).

178. Furthermore, on 11 October 2006, the Ministry of Justice set up a broad-based committee tasked with reviewing and evaluating the current system for dealing with complaints against the police and processing criminal cases against police officers.

179. Extract from the terms of reference of the Committee:

180. "(2) In recent years, renewed criticism, particularly with reference to specific individual cases, has increasingly been levelled against the complaints system, claiming that it does not sufficiently promote the unbiased handling of complaints against the police. The lengthy processing time in certain cases has also been the subject of criticism in certain cases.

181. Overall, the Ministry of Justice maintains its opinion that the present complaints system, including the regional public prosecutors' cooperation with the police complaints boards, is working satisfactorily. However, it is essential that the public also have full confidence in a system that ensures professional, correct handling of the cases in every respect, within an acceptable timeframe.

182. The current rules on the treatment of complaints against the police, etc., have now been in force for more than a decade, and a number of lessons have been learned regarding the practical application and impact of the rules.

183. On this basis the Ministry of Justice has decided to set up a committee to review and evaluate the current system for handling complaints against the police and processing criminal cases against police officers.

184. The Committee has been asked to review the rules of the Danish Administration of Justice Act dealing with complaints against the police, criminal cases against police officers and police complaints boards (Part 93- b - 93 d of the Danish Administration of Justice Act) with a view to considering whether, based on the experience gained, etc., the current complaints system is working satisfactorily or whether it should be modified. The Committee should consider whether, within the overall framework of the current complaints system, public confidence in the efficiency of the system in handling cases regarding police officers can be further bolstered – e.g. by strengthening the authority of the police complaints boards – or whether, in the light of foreign experience with other complaints systems, for example, more extensive modifications should be made to the complaints system.

185. The Committee should focus on the importance of ensuring that, as far as possible, the complaints system supports the speedy conclusion of cases being processed, and the Committee is requested to consider proposals that promote such a solution.

186. It is presumed that the recommendations of the Committee can be implemented within the framework of the general legislation applying to civil servants.

187. To the extent the Committee finds that it is required to amend the law, the Committee shall make proposals for statutory provisions.”

188. The Committee has started its work and is expected to submit its report before the summer of 2008.

189. Furthermore, the brochure “Police Complaints Board Cases in Denmark”, which contains a description in English of the rules regarding processing of police complaints can be downloaded from the Internet on the following address: http://www.rigsadvokaten.dk/media/police_comp_03412_72.pdf . It was published in 2002, and no major changes have been adopted since then.

190. Finally, with regard to the development in the number of police complaints cases, the statistics for 2005 show that the number of incoming cases in recent years has stabilised at around 900 pr. year. The increase in the total number of cases compared with 1997 is partly attributable to an increase in the number of traffic-related cases (from 100 in 1997 to 252 in 2005).

191. Of the total number of complaints received in 2003, 385 concerned the conduct of police officers and 532 were reports of criminal offences committed by police officers. Of the latter 220 were traffic-related cases. In 2004, 400 complaints were received concerning the conduct of police officers and 571 reports of criminal offences committed by police officers. Of the latter 251 were traffic-related cases. In 2005, 367 complaints were received concerning the conduct of police officers and 567 reports of criminal offences committed by police officers. Of the latter 567 cases 252 were traffic-related cases. In the period from 1997 to 2005, the number of investigations under Section 1020 a, (2) of the Danish Administration of Justice Act concerning persons who died or were seriously injured as a result of police interference ranged from six in 1997 to 17 in 2001.

192. There is no statistical information about the case processing time in police complaints cases. The issue of case processing time has, however, often been discussed and is a high-focus area.

193. As a result of the Parliamentary Budget agreement of 2006, the regional public prosecutors have been allocated additional resources for bringing down case processing time in police complaints cases, and in spring 2007 a so-called “lean project” will be implemented with the assistance of an external firm of consultants in order to significantly reduce case processing time.

194. The police complaints system in Greenland is largely identical to the Danish system and has been in force since 2000.

195. With regard to the development in police complaints cases in Greenland, the statistics show, that the number of police complaints board cases has fluctuated greatly in the last few years. In 2001 24 cases were received, in 2002 there were 14 cases, in 2003 there were 12 cases and in 2004 there were 28 cases. In 2005 the number was 20, which corresponds on the whole to the average number of cases received in the period 2001-2004.

Question 22

Please comment on the case of Jens Arne Ørskov and the allegations that there was a failure to conduct a thorough, effective, independent and impartial investigation into his death. Have any measures been taken to respond to the request to establish a new mechanism for the investigation of human rights violations by law enforcement officials, which would be completely independent of the police?

196. The Director of Public Prosecutions has handled a complaint regarding the case of Jens Arne Ørskov. The Director of Public Prosecutions ended his examination of the matter on 17 January 2006 and held that there were no grounds for reopening the case. The decision of the Director of Public Prosecutions regarding the matter is final and can not be appealed to any higher administrative authority – i.e. the Ministry of Justice.

197. The case has now been brought before the High Court, where it is still pending.

198. Regarding the issue of whether any measure has been taken to respond to the request to establish a new mechanism for the investigation of human rights violations by law enforcement officials, the Ministry of Justice refers the Committee to the remarks made in relation to issue 21.

ARTICLE 14

Question 23

Please provide information, including disaggregated statistical data by sex and type of crime, on the number of cases where redress and/or compensation measures have been ordered by the courts and on those that have been provided to victims of torture or cruel inhuman or degrading treatment or punishment, or their families, since 2002.

199. The Director of Public Prosecutions has informed the Ministry of Justice that he is not familiar with such cases. Furthermore, in this connection the Director has informed the Ministry that he does not keep statistics of compensations paid out under part 93 a of the Danish Administration of Justice

Act, including Section 1018 h, distributed by gender, type of criminality or the nature of the measure. Accordingly, he is unable to state the number of any administratively decided compensations of possible relevance for a response to the question.

Question 24

Please provide information on the implementation of the decision by Parliament to cover the Rehabilitation Department of the Rehabilitation and Research Centre for Torture Victims (RCT) by the Hospital Act as of 2006. How has this decision affected the number and quality of services provided by the Rehabilitation Department?

200. Until January 2006 treatment at RCT in Copenhagen was financed by grants from the Ministry of Foreign Affairs. From January 2006 the regional authorities were obliged to pay for treatment at RCT in Copenhagen within a limit of 13.5 million Dkr. a year (2006 price and wage rate). The Copenhagen Hospital Corporation was obliged to enter into a contract with RCT in Copenhagen about the price per patient/treatment. From January 2007 the obligation is with the Capital Region.

201. Being covered by the Hospital Act RCT offers specialized treatment to traumatized patients. The payment limit is equivalent to the amount of money it received previously from the Ministry of Foreign Affairs. RCT therefore delivers treatment for the same amount of money as before. There may be a difference in the number of patients treated depending on their illness etc. RCT is only supposed to treat patients that need highly specialized treatment that can not be offered by communities. Patients needing general psychiatric treatment shall be referred to general psychiatric hospitals etc.

ARTICLE 16

Question 25

As regards inter-prisoner violence, including sexual violence and intimidation, please provide information on the scale and nature of this problem, including statistical data disaggregated by sex, age, nationality, location, type of sentence etc., since the consideration of the State party's fourth periodic report.

202. Since April 2004, the Prison and Probation Service has recorded statistics on the extent of inter-inmate violence and threats. The statistics of the Prison and Probation Service only describe the extent and nature of the incidents and do not include other factors like sex, age, nationality and place.

203. The figures for 2004 and 2005 appear from the table below. It should be noted that the 2004 figures only cover three-quarters of the year, and that the rise is therefore not as steep as it would seem directly. Taking the length of the periods covered into account, the number of reported incidents has risen by about 10 per cent.

Inter-inmate violence and threats

	Number of inmates assaulted or threatened	Incidents ²							
		Threatened by co-inmate	Attempted immobilisation made by co-inmate	Pushed or shoved by co-inmate	Hit, leaving no visible marks	Hit, leaving bruises	Hit, leaving wounds or injuries	Stabbed or shot or attacked with weapon	Otherwise assaulted
2005	159	24	3	20	42	22	34	5	14
2004³	107	37	2	13	24	20	25	5	9

204. The total number of incidents reported for 2005 was about 160. This figure should be compared with the total number of incarcerations of about 16,000 for 2005, which means that about 1 per cent of those incarcerated during 2005 experienced violence or threats from their co-inmates. In 2004, the total number of incidents reported was 107, or 0.8 per cent of the total number of incarcerations of about 14,000. The figures and the trend since 2004 are thus deemed not to be alarming, but they do show that this area needs focus also in the future.

Question 26

What specific measures have been taken to monitor and address this issue, and to protect inmates, particularly female, juvenile and immigrant detainees, against this type of violence? If a prisoner is classified as "negatively strong", is his/her classification regularly reviewed by the prison authorities?

205. Vulnerable inmates in the institutions of the Prison and Probation Service are mainly protected through dynamic security, which requires a fairly high staff density and a close continuous contact with the inmates. In addition, the Prison and Probation Service tries to shield vulnerable groups through placement in special units. In that connection, the Prison and Probation Service is highly aware of groups that may have special needs or may be exposed to pressure from co-inmates. These include mentally vulnerable inmates, drug addicts, women, young inmates and, not least, sexual offenders. The Prison and Probation Service tries to protect these groups through placement in special units.

² An episode may result in more than one of the above incidents (this happened once in 2005 and 18 times in 2004). The sum of incidents is therefore higher than the number of episodes.

³ Recording only started on 1 March 2004.

Young 15-17-year-old offenders

206. As described in the reply to question 11, 15-17-year-olds normally serve custodial sentences in secured social institutions outside the Prison and Probation Service or in the halfway houses of the Prison and Probation Service. In the few cases when young criminals serve their sentence in prison for preventive reasons, those who are to serve in a closed prison are placed in Ringe State Prison, which has a special unit for 15-17-year-olds. This unit has another staff composition than ordinary units and offers treatment of the young offenders in the form of a special socio-educational programme in collaboration with the social authorities outside the prison.

207. Those who are to serve in an open prison are mainly placed near their residence and, upon an individual assessment, where the possibilities of protecting them against the negative influence of older fellow inmates are best.

208. The Prison and Probation Service has been granted funds for establishing a special open unit attached to Jyderup State Prison for 15-17-year-old offenders in 2007. The unit will have a high prescribed number of staff, including educationally trained staff, and will offer activities particularly suited for this young target group.

Sexual offenders

209. Inmates convicted of sexual offences are often those most exposed to pressure from fellow inmates. Basically, these offenders may serve in open prisons with ordinary association. However, in many cases the Prison and Probation Service will consider that there is a risk of pressure from co-inmates. In such cases, sexual offenders may serve their sentence in semi-open units separated from the rest of the prison and with higher staff density.

210. In almost all cases, sexual offenders serving in a closed prison will be placed in the Herstedvester Institution, which offers treatment to the sexual offenders and is an institution with very high staff density where sexual offenders may associate without pressure from their fellow inmates.

211. In 2006, a special unit for sexual offenders was set up in Vejle Local Prison. Inmates waiting to be transferred to the Herstedvester Institution may be placed here. Some of these inmates would otherwise, due to pressure from fellow inmates, have had to accept voluntary exclusion from association during their stay in the local prison.

Drug and alcohol addicts

212. From 1 January 2007, a treatment guarantee has been introduced for drug addicts, which means that an addict is entitled to commence a course of treatment within 14 days of having expressed a desire to do so if the addict is deemed to be motivated and suited to take part in treatment. There is a similar guarantee for the treatment of alcohol addicts.

213. The introduction of the treatment guarantee resulted in a notable expansion of the aggregate treatment offer. Treatment is now offered in all prisons, and a considerable part thereof in special units designed for the purpose.

214. In collaboration with municipal treatment centres, motivational treatment and pre-treatment are also offered to all inmates in the local prisons in Denmark.

Inmates with an ethnic background other than Danish

215. The Prison and Probation Service finds that inmates with an ethnic background other than Danish are not generally particularly vulnerable or strong in the institutions of the Prison and Probation Service. However, there is a small group of negatively strong inmates among ethnic inmates. A special unit has therefore been established for negatively strong inmates with an ethnic background other than Danish and with gang affiliations, and funds have been allocated for yet another unit of the same type. The inmates in these units are also offered special courses, and the staff is trained to work with the group of negatively strong inmates with an ethnic background other than Danish.

216. The Prison and Probation Service is generally aware that inmates with an ethnic background other than Danish may have special needs and has launched various initiatives in that connection. Thus, an “ethnic team” is working on launching special initiatives in state and local prisons. In some places, the initiatives include special training or guidance of the inmates, and in other places the inmates’ possibilities of getting a job after the end of their sentence are in focus. Finally, a special effort is made to train the staff to work with the different groups.

Female inmates

217. The three closed prisons that accommodate women (Ringe State Prison, East Jutland State Prison and Herstedvester Institution) all have separate units for female inmates, and they can offer leisure-time and occupational activities separately from male inmates. In the two open prisons that accommodate women (Møgelkær State Prison and Horserød State Prison), female inmates may choose whether they want association with men or they want to serve in a separate unit.

218. Horserød State Prison moreover has a treatment unit for female addicts only.

219. The Prison and Probation Service is currently conducting a research project on women in prison. The study, which is expected to be concluded in 2008, is part of the efforts to optimise practices for female inmates in prisons and their preparation for life after the prison. In addition, the study is to provide greater knowledge in general about women’s needs in Danish prisons. The study is conducted with observations of and interviews with female inmates in the State Prisons of Herstedvester, Ringe and Møgelkær.

Review of the classification of prisoners as “negatively strong”:

220. It follows from section 22(3) of the Sentence Enforcement Act that prison sentences may be enforced in a closed prison if it is deemed necessary to prevent assaults on fellow inmates, staff or others in the institution, including if an inmate is classified as “negatively strong”. Such classification may, for example, be based on the inmate’s affiliation with a biker gang.

221. In terms of determination of the place of incarceration, the knowledge that a convicted offender belongs to the group of “negatively strong inmates” is typically based on information from the trial or information received from the police or from previous state or local prison stays, including in connection with pre-trial detention.

222. Pursuant to section 24(1)(i) of the Sentence Enforcement Act, an inmate placed in a closed prison pursuant to section 22(3) must be transferred to an open prison when the conditions for the placement are no longer satisfied.

223. The closed prison accommodating the negatively strong inmate has a duty to consider, on an ongoing basis, whether the conditions for continued placement are satisfied. The prison thus has to submit the matter to the Department of Prisons and Probation on its own initiative if the institution becomes aware that this is no longer the case. The Department thus has the competence to consider the question of a possible transfer to an open prison if an inmate can no longer be characterised as negatively strong.

224. Particularly concerning convicted offenders who state that they are no longer members of, for example, a biker gang, the crucial question is whether the offender is in fact affiliated with the gang in question. By contrast, it is not crucial whether the inmate is (also) a formal member of the gang.

Question 27

What measures have been taken to provide so called "vulnerable prisoners" with adequate protection and a secure environment in prisons? Please provide information on voluntary isolation offered to prisoners who feel at risk of assault or intimidation as well as statistical data on "vulnerable prisoners" in voluntary isolation.

225. Please also see the reply to question 26. The table below shows the development in the number of voluntary exclusions from association, broken down by the length of the placements. It should be noted that the figures comprise both solitary confinements and placements with limited association, where the inmate associates with a few other inmates.

Voluntary exclusion from association. Length of exclusion

	1-3 days	4-7 days	8-14 days	15-28 days	28+ days	Total
2005	59	39	52	62	180	392
2004	66	54	46	61	168	395
2003	52	41	55	74	245	467
2002	61	68	44	65	212	450
2001	56	52	63	87	238	496
2000	75	61	70	90	299	595
1999	101	65	71	95	310	642
1998	82	49	47	69	287	534
1997	96	60	77	89	362	684
1996	128	77	89	100	303	697

226. The table shows that the number of voluntary exclusions from association has declined by about 40 per cent over the past 10 years. The decline is evenly distributed on all lengths of placement. From 2004 to 2005, the total number of voluntary exclusions from association was stable at about 400 a year. It should be noted that the number of long-term voluntary exclusions from association (more than 28 days) varies greatly from year to year. Particularly from 2003 to 2004, the number of long-term

voluntary exclusions from association dropped drastically from 245 in 2003 to 168 in 2004. Although the figure rose to 180 in 2005, the lower level has been maintained.

227. The reason for the decline in the number of voluntary exclusions from association is above all the initiatives of recent years. Several semi-open units have thus been set up for vulnerable inmates. Moreover, special units have been established for negatively strong inmates in the closed prisons, and a special unit has also been established for negatively strong inmates and others who have acted in a violent or threatening way, see para. 78 and 79 in the fifth periodic report of 19 July 2004. To this must be added the extensive efforts relative to treatment offers for the group of drug addicts whose previous sole resort was voluntary exclusion from association.

228. A particular problem has arisen because of the intensified efforts of the police towards bikers and gangs, which have created a need for protecting convicted offenders who have testified, mainly in cases involving organised criminals.

229. The Prison and Probation Service has a natural duty to place these inmates where they will suffer no harm, and it may also be necessary to protect the anonymity of a few inmates.

230. However, the current building structure makes this difficult, and therefore inmates in need of protection are most frequently placed in especially secure units or in small local prisons. During their incarceration, it may be difficult to ensure the same possibilities of association, work and education because inmates under protection cannot take part in ordinary association, and the continuity is also typically broken by frequent transfers for protection purposes. Therefore, it is necessary to plan the incarceration individually based on an individual assessment and taking into account the individual's situation and desires. It is considered very important that a member of staff has close contact with the inmate as it has proved that the inmate frequently has a great need of a confidant.

231. The police and the Prison and Probation Service collaborate closely concerning these inmates, and the situation and conditions of the individual inmate are carefully monitored.

Question 28

Owing to the decrease in the number of asylum seekers in Denmark, several asylum centres have closed down. Please provide information on the living conditions in the asylum centres, including educational and recreational opportunities for adults and children. Has the closing down of asylum centres had an adverse effect on the number and quality of services provided for asylum seekers?

Question 29

Please describe the measures taken to support the healthy development of asylum seekers, in particularly asylum-seeking children, while they wait for their asylum decisions often for a prolonged period in these centres.

Educational and recreational activities for children of asylum seekers

232. All children of asylum seekers in Denmark attend special primary schools for these children. The education is arranged so that it corresponds with the education of the "receiving classes" of the Danish public schools. This means that the education is similar to the education of bilingual children.

In certain cases, when children are particularly good at Danish or other social reasons are apparent, children can also attend the ordinary classes in the public schools in Denmark.

233. For the smaller children, there are kindergartens at the centres, and there are playgrounds and opportunities for the children to play outside.

Educational and recreational activities for adult asylum seekers

234. Adult asylum seekers are not allowed to work in Denmark. However, there are several possibilities for volunteer work and practice in public and private companies⁴.

235. Upon arrival to Denmark, asylum seekers attend a course on the basics of Danish society. During their stay at the centres, they are required to attend classes in English and other relevant subjects.

236. Education in Danish is only possible in the event, that it is necessary to attend external practice or if it may prepare the asylum seeker for work in the country of origin.

237. The requirements for activation and education of asylum seekers and their children are regulated in Executive Order No. 622 of 30 June 2003, most recently amended by Executive Order No. 882 of 21 August 2006.

238. The closing down of asylum centres in Denmark has had a positive effect on living conditions and activities in the remaining asylum centres. With the current number of accommodated asylum seekers and the number of places in the asylum centres there is more room for the remaining asylum seekers.

239. As of February 2007 there are 9 asylum centres active in Denmark. In the centres, there are a total of 2374 beds available. A total of 1719 asylum seekers are accommodated in the centres, not including the number of asylum seekers living in private accommodation with their spouse or family in other parts of Denmark. This corresponds to an effective use of 72 % of the total number of beds, which also means that each asylum seeker in general has more personal space available.

240. In June 2006 the Government decided to allocate additional funds of 37.6 million DKK to improve the living conditions in Danish asylum centres, in particular the conditions for families with children.

241. The additional funds were targeted at the following improvements:

- a) Closing the cafeteria in Centre Avnstrup and creating kitchens for the residents to cook their own meals as is the case at all asylum centres except from Centre Sandholm.
- b) Improvement of the rooms to take into consideration long waiting times.
- c) Improvement of room inventory.
- d) Mother-tongue teaching of children.

⁴ This is, however, not possible when an application for asylum is rejected, and the rejected asylum seeker refuses to cooperate with the authorities regarding discharge to their country of origin.

- e) Expanded activities after school for children.
- f) Summer activities, such as “Happy Summer”, Circus etc.
- g) Specialised and individually adopted education offers for the children.
- h) Expansion of social activities concerning adult education and activation with focus on learning skills of value in the home country.

242. In conclusion the conditions of asylum seekers have improved parallel with the closing of asylum centres.

Question 30

Please comment on the information that a significant number of unaccompanied asylum-seeking children disappear from asylum centres. Please also describe the conditions in these centres which have allegedly led to disappearances. What measures have been taken to investigate these cases and to improve the conditions in the asylum centres with a view to preventing disappearances of unaccompanied asylum-seeking children?

243. Unaccompanied asylum seeking children are accommodated in a children’s centre, centre Gribskov, which is run by the Danish Red Cross. The staff at this centre is specially trained and educated to deal with children.

244. The centre has room for 36 children – at the moment there are 34 residents. The majority of the children are 16 or 17 years old. Most of the children share a room with one other child. They have their own bathroom. Boys and girls are separated, and there is a special youth department for the oldest of the children.

245. The unaccompanied children have the same opportunities as other asylum seeking children. They attend school in the special school for asylum seekers from the reception centre Sandholm, and they are provided with the same health care as Danish children. All unaccompanied children are provided with a personal representative appointed by the local state administrative body.

246. An independent study done in 2006 by the Danish National Institute of Social Research rated the overall standing of centre Gribskov as very good. The report from the study shows that centre Gribskov is a well-managed and well-run centre in which the children have good conditions.

247. In 2006 the total number of disappearances from centre Gribskov was 62. The majority of these (34) came from Iraq. The total number of unaccompanied children seeking asylum in Denmark in 2006 was 104.

248. It is the Danish Immigration Service’s belief that the conditions in centre Gribskov has played no role in the disappearance of unaccompanied children.

249. Consultations are held among the authorities and organisations involved in matters concerning unaccompanied asylum seeking children, including the Danish Ministry for Refugees, Immigration and Integration Affairs, different departments of the Danish Police, the Immigration Service and the Danish Red Cross, in order to coordinate the efforts regarding unaccompanied asylum seeking children and to ensure proper procedures and efficient cooperation between the relevant authorities in these cases.

250. The Danish Red Cross has a specific procedure for reporting unaccompanied asylum seeking children missing. Minors will thus immediately be reported missing to the Immigration Service and the local police authorities. The disappearance of unaccompanied asylum seekers over 15 years of age will be reported missing after 12-24 hours unless there are grounds for concern regarding the disappearance, in which case the person will be reported missing immediately.

251. The Danish Police are responsible for investigating incidents of disappearances including the disappearances of unaccompanied asylum seeking children when these are reported missing. Such cases are handled as any other cases of missing persons. In cases regarding minors, who are reported missing, the police will actively investigate such disappearances. Cases regarding persons over 15 years of age, who are reported missing, will be actively investigated if there is a suspicion that any criminal conduct is involved in the disappearance.

252. In 2005 the police investigated two cases of alleged human trafficking of two groups of unaccompanied Chinese children, which led to convictions for smuggling in human beings.

Question 31

Please describe the measures taken to combat racism and discrimination, in particular racially motivated offences and hate speech, against minority groups or foreigners, including prompt and impartial investigations into allegations of offences pursuant to articles 1 and 16 of the Convention.

Civil law anti-discrimination legislation

253. New and existing legislation amended in order to strengthen protection against discrimination on the grounds of race and ethnic origin.

254. The following Acts contain civil-law prohibitions against discrimination:

255. Act no. 374 of 28 May 2003 on Ethnic Equal Treatment. The Act contains provisions prohibiting direct or indirect discrimination, harassment and victimisation on the grounds of racial or ethnic origin.

256. Consolidation Act no 240 of 12 January 2005 on the prohibition against discrimination in the labour market. The Act contains provisions prohibiting direct or indirect discrimination, harassment and victimisation on the grounds of race, colour of skin, religion or faith, political observation, sexual orientation, age, disability and national, social or ethnic origin.

257. By Act no. 411 of 6 June 2002 establishing the Danish Centre for International Studies and Human Rights the Institute for Human Rights was established as the Danish body for the promotion of equal treatment as required by Article 13 in the EU-directive on Racial Equality (2000/43/EU). The Institute has in accordance with the requirements of Article 13 in the Directive been given the power to assist victims of discrimination, to conduct surveys concerning discrimination and to publish reports and make recommendations on discrimination.

258. The Parliament in 2003 and 2004 decided to further expand the powers of the Institute for Human Rights within the field of ethnic equality by granting the Institute the power to handle individual complaints on racial or ethnic discrimination both in and outside the labour market. The Institute for Human Rights in summer 2003 set up the Complaints Committee for Ethnic Equal Treatment to carry out this task.

259. The Government has decided to take protection against discrimination even further. On 15 January 2007 the Government sent a Bill on the Complaints Board for Equal Treatment into public hearing. The Complaints Board for Equal Treatment will be competent to review complaints on the grounds of discrimination because of gender, race, religion or faith, age, disability, national, social or ethnic origin, political observation or sexual observation. Victims of discrimination will be accorded compensation for non-pecuniary damages directly by the Common Complaints Board and the Common Complaints Board will be entitled to take the case to the courts if the perpetrator is not willing to pay. According to the Bill in hearing the Complaints Board for Equal Treatment will begin its operations on 1 January 2008.

Anti-discrimination policies

260. The Government furthermore stresses dialogue with and among minorities and the majority population in Denmark, and a wide range of initiatives for the promotion of tolerance and diversity and the combat of racism and discrimination are carried out or supported by the Government.

261. In 2003 the Government issued its Action Plan to promote Equal treatment and Diversity and Combat Racism. The Action Plan contains both initiatives and principles for further work within the field.

262. Current examples of important initiatives for the promotion of tolerance and diversity and the combat of racism and discrimination include the campaign 'Show Racism the Red Card', which was launched by the Government in the Spring of 2006 together with the professional football players union (Spillerforeningen) and the NGO MixEurope. The campaign is inspired by similar campaigns in other European countries but goes further in that it includes awareness raising activities at schools and at work-places.

263. Other dialogue initiatives taken to strengthen dialogue and promote cohesion and co-existence include the campaigns 'Diversity in the Workplace', 'The Diversity Management Programme', 'We Need All Youngsters' and 'the Auschwitz Day'.

Action within the administration of justice

264. The Director of Public Prosecution has to be notified of cases concerning section 266 b and cases concerning the Act on Prohibition against Discrimination on the basis of Race. He also has to be notified of court decisions or withdrawal of charges involving section 81 in the criminal code.

265. Since 1992, the National Commissioner of Police has received reports of criminal acts and incidents directed against foreigners on a presumed racist background from the 54 Danish police districts (CERD/C/496/Add.1, paras. 175-180). The National Commissioner of Police has recently decided to extend the scheme to include criminal incidents that may have a political background.

266. Denmark regularly reports to the Committee on the Elimination of Racial Discrimination (CERD) on measures taken to combat racism and discrimination. According to section 266 b of the Criminal Code it is prohibited to disseminate statements or other information by which a group of people is threatened, insulted or degraded on account of their race, colour, national or ethnic origin, religion, or sexual orientation. The provision and its associated case law are described in e.g. Denmark's fourteenth report to CERD (CERD/C/362/Add.1, paras. 135-143).

267. Furthermore according to section 81 of the Criminal Code it shall generally be considered an aggravating circumstance in determining the penalty if the offence is based on others' ethnic origin, faith, sexual orientation or the like. The provision is described in Denmark's fifteenth report (CERD/C/496/Add.1, paras. 64-66).

268. The Act on Prohibition against Discrimination on the Basis of Race prohibits discrimination in connection with commercial or non-profit businesses on the basis of a person's race, colour, national or ethnic origin, religion or sexual orientation. The Act is described in Denmark's fourteenth report (CERD/C/362/Add.1, paras. 246-251).

OTHER ISSUES

Question 32

As regards Denmark's ratification of the Optional Protocol to the Convention against Torture on 25 June 2004, please provide information on the independent national preventive mechanism(s) for the prevention of torture at the domestic level.

269. The Parliamentary Ombudsman undertakes systematic inspection of places of detention and will continue to do so as the national preventive mechanism under the Optional Protocol. In the light of experience gained during the implementation of the Optional Protocol it will be assessed if there is need to adjust the present arrangement e.g. in order to make special expertise available to the Ombudsman.

Question 33

Please indicate whether there is legislation in your country aimed at preventing and prohibiting the production, trade, export and use of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment. If so, please provide information about its content and implementation. If not, please indicate whether the adoption of such legislation is being considered.

270. Export of goods used for the purposes of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment is governed by Council Regulation (EC) No 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.

271. According to Article 3 and 4 of the Council Regulation it is prohibited to export or import goods which have no practical use other than for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment as listed in Annex II. Furthermore it is prohibited to supply technical assistance related to such goods, whether for consideration or not, from the customs territory of the Community, to any person, entity or body in a

third country. An authorisation is required for any export of goods that could be used for the purpose of torture and other cruel, inhuman or degrading treatment or punishment but which also have another application and are listed in Annex III irrespective of the origin of such equipment.

272. According to Article 5 of the Council Regulation an authorisation is required for any export of goods that could be used for the purpose of torture and other cruel, inhuman or degrading treatment or punishment as listed in Annex III, irrespective of the origin of such goods. However no authorisation shall be required for goods which only pass through the customs territory of the Community.

273. The regulation is managed jointly by the Ministry of Economic and Business Affairs (National Agency for Enterprise and Construction) and the Ministry of Justice.

Question 34

With regard to the Government's Plan of Action to Fight Terrorism, please provide information on the legislative, administrative and other measures the Government has taken to respond to any threats of terrorism. Please indicate if, and how, these measures have affected human rights safeguards in law and practice.

274. A number of the recommendations listed in the Government's Plan of Action to Fight Terrorism (November 2005) were implemented by Act no. 542 of 8 June 2006.

275. The introduction of the act also aims to fulfill the obligations pursuant to the Council of Europe Convention on the Prevention of Terrorism and the International Convention for the Suppression of Acts of Nuclear Terrorism. The act was accompanied by several legislative amendments. Among the amendments are:

- a) An amendment to the Administration of Justice Act allowing a less restricted access to exchange of information between the Security Intelligence Service and the Military Intelligence Service.
- b) Amendments to the Administration of Justice Act strengthening the exchange of information between administrative authorities.
- c) An amendment to the Administration of Justice Act allowing the police to obtain an interception warrant following the person rather than the specific means of communication.
- d) An amendment to the Administration of Justice Act allowing the police (including the Security Intelligence Service) (on the basis of a warrant) to jam or cut off radio or telecommunication.
- e) Amendments to the Danish Criminal Code inserting provisions on inter alia training and recruitment for terrorism and complicity to terrorism.
- f) An amendment to the Air Navigation Act allowing the Security Intelligence Service to retrieve standard information about airline passengers without any prior order of the court.

276. In accordance with one of the recommendations in the Government's Plan of Action, a multi-agency Centre for Terrorism Analysis was established in 2006 under the auspices of the Security Intelligence Service in order to improve an overall understanding of terrorist threats and behaviours and to provide a better service of threat analysis and assessment for governments and others. The centre employs representatives from the Security Intelligence Service, the Military Intelligence Service, the Ministry of Foreign Affairs and the Emergency Management Agency.

277. Staff members from the National Centre of Investigative Support have been transferred to the Security Intelligence Service. The purpose of this transfer is primarily to strengthen the operational investigative efforts of the Security Intelligence Service in the counter-terrorism field.
