



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

Distr.
GENERAL

CAT/C/DNK/CO/5
16 July 2007

Original: ENGLISH

COMMITTEE AGAINST TORTURE
Thirty-eighth session
30 April-18 May 2007

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Conclusions and recommendations of the Committee against Torture

DENMARK

1. The Committee considered the fifth periodic report of Denmark, including Greenland, (CAT/C/81/Add.1 (Part I) and CAT/C/81/Add.2, Part II) at its 757th and 760th meetings, held on 2 and 3 May 2007 (CAT/C/SR.757 and CAT/C/SR.760), and adopted, at its 773rd meeting on 14 May 2007 (CAT/C/SR.773), the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the submission of the State party's fifth periodic report which was submitted on time and follows the Committee's guidelines for reporting. The Committee welcomes the information provided on the measures taken to follow-up to the Committee's previous recommendations and on Greenland's judicial system and its reform in the second part of the State party's report (CAT/C/81/Add.2, Part II). The Committee also welcomes the State party's thorough written replies to the list of issues (CAT/C/DNK/Q/5/Rev.1/Add.1), which provided additional information on the legislative, administrative, judicial and other measures taken by the State party in order to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment.

3. The Committee notes with satisfaction the constructive efforts made by the multisectoral delegation of the State party to provide additional information and explanation during the dialogue.

B. Positive aspects

4. The Committee welcomes the State party's ongoing efforts to improve conditions in prisons, including the additional resources allocated to administer the daily occupancy rates. In particular, the Committee welcomes the State party's efforts to introduce alternative measures to custodial ones, such as the use of electronic monitoring, so called "tagging".

5. With regard to traumatized refugees and their families residing in Denmark, the Committee notes with appreciation funds allocated to special projects, which are set to run until 2010, to facilitate their rehabilitation and improve their living conditions.

6. The Committee also notes with appreciation the State party's decision to allocate additional funds to improve the living conditions in asylum centres, in particular the living conditions of families with children.

7. The Committee welcomes the State party's cooperation with non-governmental organizations engaged in eradicating torture and providing assistance and rehabilitation to victims of torture in Denmark and internationally.

8. The Committee commends the State party for its global efforts to promote respect for human rights, in particular to combat and eradicate torture, such as:

(a) Being one of the world's largest bilateral donors in terms of development assistance per capita, and in this context developing a national framework for bilateral cooperation against torture;

(b) Contributing to United Nations agencies, programmes and funds, including the United Nations Voluntary Fund for the Victims of Torture;

(c) Promoting the universal ratification of the Optional Protocol to the Convention, including the State party's early ratification of the Optional Protocol in 2004, and supporting its implementation;

(d) Presenting a draft resolution against torture to the Third Committee of the General Assembly of the United Nations as well as the former Commission on Human Rights, and taking initiatives to structure and strengthen the newly established Human Rights Council's action against torture;

(e) Playing an active role in the implementation of the Guidelines to European Union policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment.

C. Principal subjects of concern and recommendations

Incorporation of the Convention

9. The Committee regrets that the State party has not changed its position with regard to the incorporation of the Convention into Danish law. The Committee is of the view that the incorporation of the Convention into Danish law would not only be of a symbolic nature but that it would strengthen the protection of persons allowing them to invoke the provisions of the Convention directly before the courts.

The Committee recommends that the State party incorporate the Convention into Danish law in order to allow persons to invoke it directly in courts, to give prominence to the Convention as well as to raise awareness of its provisions among members of the judiciary and the public at large.

Definition of torture

10. The Committee notes that the Ministry of Justice has recently requested the Standing Committee on Criminal Matters to consider the possibility of inserting a special provision on

torture in the Criminal Code. Notwithstanding the State party's ongoing efforts to review this issue and the existing provisions of the Criminal Code, the Committee reiterates the concern expressed in its previous conclusions and recommendations (CAT/C/CR/28/1, para. 6 (a)) with regard to the absence of a specific offence of torture, consistent with articles 1 and 4, paragraph 2, of the Convention. While noting the introduction of a Defence Command Directive on the prohibition of torture and other cruel, inhumane or degrading treatment or punishment in the Armed Forces, the Committee regrets the State party's decision to exclude a special provision of torture from the new Military Criminal Code. (art. 1 and 4)

The Committee calls upon the State party to incorporate a specific offence of torture, as defined in article 1 of the Convention, in its Criminal Code as well as in the Military Criminal Code making it a punishable offence as set out in article 4, paragraph 2, of the Convention.

Statute of limitations

11. The Committee notes with concern that the offence of torture, which as such does not exist in the Danish Criminal Code, is punishable under other provisions of the Criminal Code, and is, therefore, subject to the statute of limitations. While noting that acts of torture that amount to a war crime or a crime against humanity, according to the Rome Statute of the International Criminal Court, ratified by the State party on 21 June 2001, will not be subject to any statute of limitations due to section 93a of the Criminal Code, the Committee is concerned that the statute of limitations applicable to those other provisions of the Criminal Code may prevent investigation, prosecution and punishment of these grave crimes, in particular when the punishable act has been committed abroad. Taking into account the grave nature of acts of torture, the Committee is of the view that acts of torture cannot be subject to any statute of limitations. (art.s 1 and 4)

The State Party should review its rules and provisions on the statute of limitations and bring them fully in line with its obligations under the Convention so that acts of torture, attempts to commit torture, and acts by any person which constitute complicity or participation in torture, can be investigated, prosecuted and punished without time limitations.

Non-refoulement

12. The Committee takes note of the information received that the Danish Special Forces captured 34 men and handed them over to allied forces during a joint military operation in Afghanistan in February-March 2002, in circumstances where allegations later emerged of ill-treatment while the men were in allied forces' custody. The Committee also notes the State party's assurance that it undertook a full investigation of the incident reaching the conclusion that it did not violate article 12 of the Third Geneva Convention by handing over the detainees. Finally, the Committee takes note of the State party's assurances that all detainees were released shortly after their transfer to allied forces' custody and that none of them were ill-treated while in the said custody.

13. The Committee recalls its constant view (CAT/C/CR/33/3, paras.4 (b)and (d), and 5 (e) and (f) and CAT/C/USA/CO/2, paras. 20 and 21) that article 3 of the Convention and its obligation of non-refoulement applies to a State party's military forces, wherever situated, where they exercise effective control over an individual. This remains so even if the State party's forces are subject to operational command of another State. Accordingly, the transfer of a detainee from

its custody to the authority of another State is impermissible when the transferring State was or should have been aware of a real risk of torture. (art. 3)

With regard to the transfer of detainees within a State party's effective custody to the custody of any other State, the State party should ensure that it complies fully with article 3 of the Convention in all circumstances.

Solitary confinement

14. The Committee notes with appreciation that the upper limit for solitary confinement of persons under the age of 18 is reduced from eight weeks to four weeks. Despite the amendments of the Administration of Justice Act to limit the use of solitary confinement in general, and in particular with respect to persons under the age of 18, the Committee remains concerned at the placement of persons in prolonged solitary confinement during pre-trial detention. It notes with particular concern that persons, including persons under the age of 18, suspected of offences against the independence and security of the State (chapter 12 of the Criminal Code) or against the Constitution and the supreme authorities of the State (chapter 13 of the Criminal Code) may be held indefinitely in solitary confinement during their pre-trial detention. However, the Committee notes that there is a judicial review mechanism in place to review the need to continue the solitary confinement. (art. 11)

The State party should continue to monitor the effects of solitary confinement on detainees and the effects of the 2000 and 2006 amendments to the Administration of Justice Act which have reduced the number of grounds that may give rise to solitary confinement and its duration. The State party should limit the use of solitary confinement as a measure of last resort, for as short a time as possible under strict supervision and with a possibility of judicial review. Solitary confinement of persons under the age of 18 should be limited to very exceptional cases. The State party should aim at its eventual abolition (CRC/C/DNK/CO/3, paras. 58-59).

With regard to persons suspected of offences against the independence and security of the State (chapter 12 of the Criminal Code) or against the Constitution and the supreme authorities of the state (chapter 13 of the Criminal Code) who may be held indefinitely in solitary confinement during their pre-trial detention, the State party should ensure respect for the principle of proportionality and establish strict limits on its use. In addition, the State party should increase the level of psychological meaningful social contact for detainees while in solitary confinement.

Prompt and impartial investigations

15. The Committee notes that the State party has responded to the criticism raised by the case of the death in police custody of Jens Arne Ørskov in June 2002, and other individual cases, by setting up a broad-based committee to review and evaluate the current system for handling complaints against the police and processing criminal cases against police officers. Nevertheless, the Committee is concerned at allegations of violations committed by law enforcement officials and, in particular, at the fact that the impartiality of subsequent investigations has been questioned. (art.s 12, 13 and 14)

The State party should ensure that all allegations of violations committed by law enforcement officials, and in particular any deaths in detention, are investigated promptly, independently and impartially. It should also ensure the right of victims of police misconduct to obtain redress and fair and adequate compensation, as

provided for in article 14 of the Convention. The State party should expedite the ongoing review process and provide the Committee with detailed information on the results of this process.

Excessive use of force, including killings, by law enforcement officials

16. The Committee is concerned at reports emerging of alleged excessive use of force, such as the use of physical violence and tear gas, by law enforcement officials during the “Ungdomshus” Youth House riots in Copenhagen in March 2007. The Committee also notes with concern reports suggesting that a number of persons had been killed by Danish law enforcement officials over the past two years. (arts 10, 12, 13, 14 and 16)

The State party should review the existing framework to handle allegations of excessive use of force, including the use of weapons, by law enforcement officials to ensure its compliance with the Convention. The State party should ensure prompt and impartial investigations into all complaints or allegations of misconduct, in particular when a person dies or is seriously injured following contact with law enforcement officials. In addition, the State party should review and strengthen its education and training programmes relating to the use of force, including the use of weapons, by law enforcement officials in order to ensure that the use of force is strictly limited to that required to perform their duties.

Long waiting periods in asylum centres

17. Despite the measures taken to improve the living conditions and activities in asylum centres, in particular the conditions for asylum-seeking families with children, the Committee is concerned at unduly long waiting periods in asylum centres and the negative psychological effects of long term waiting and of the uncertainty of daily life on asylum-seekers. (art. 16)

The State party, while improving the living conditions in asylum centres, should take into consideration the effects of long waiting periods and provide both children and adults living in asylum centres with educational and recreational activities as well as adequate social and health services.

Reform of Greenland’s judicial system

18. The Committee notes with interest the proposals and recommendations of the Commission on Greenland’s Judicial System (report No. 1442/2004), particularly with regard to the treatment of remand prisoners and other detainees, the preparation of pre-sentence reports, the surrender or presentation to the court of documents or other issues of importance in relation to the conduct of criminal proceedings, and the prison structure. It also notes with interest the ongoing drafting of a new Special Criminal Code and a new Special Administration of Justice Act for Greenland.

The State party should expedite the ongoing drafting and adoption of a new Special Criminal Code and a new Special Administration of Justice Act for Greenland, ensuring that all provisions of these new acts are in full conformity with the Convention as well as with other relevant international standards.

19. The Committee requests the State party to provide detailed statistical data, disaggregated by crime, ethnicity, age and sex, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials and on the related investigations, prosecutions, and

penal or disciplinary sanctions. Information is further requested on any compensation and rehabilitation provided to the victims.

20. The State party is encouraged to disseminate widely the reports submitted by Denmark to the Committee and the conclusions and recommendations of the Committee, in appropriate languages, through official websites, to the media and non-governmental organizations.

21. The Committee invites the State party to submit its core document in accordance with the requirements regarding the common core document in the harmonized guidelines on reporting under international human treaties, approved by the Fifth Inter-Committee meeting of the human rights treaty bodies in June 2006 (HRI/MC/2006/3 and Corr.1).

22. The Committee requests the State party to provide, within one year, information on the measures taken to implement the Committee's recommendations contained in paragraphs 15, 16 and 19.

23. The State party is invited to submit its seventh periodic report by 30 June 2011.
