



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

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**Committee against Torture**

**Eighth periodic report submitted by Denmark  
under article 19 of the Convention pursuant to the  
simplified reporting procedure, due in 2019<sup>\*</sup>, <sup>\*\*</sup>**

[Date received: 9 December 2019]

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\* The present document is being issued without formal editing.

\*\* The annexes to the present report may be accessed from the web page of the Committee.



## **I. Introduction**

1. Pursuant to article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Danish Government is pleased to hereby submit its eight periodic report. Denmark is using the optional reporting procedure adopted by the Committee against Torture at its thirty-eighth session. Prior to the submission of this eight periodic report, the Committee against Torture provided the Danish Government with a list of issues adopted by the Committee at its sixty-third session (CAT/C/DNK/Q/8). The list of issues contains 36 paragraphs, comprising a series of questions with regard to the implementation of the Convention. This report replies to those questions.

## **II. Replies to the list of issues (CAT/C/DNK/QPR/8)**

### **Reply to paragraph 1 of the list of issues prior to reporting**

2. Reference is made to the replies to the issues raised in paragraphs 3, 9 and 20 of the list of issues.

### **Reply to paragraph 2 of the list of issues prior to reporting**

3. The Government maintains that the current Danish legislation is a sufficient and adequate implementation of the obligation to criminalize the crime of torture. Reference is made to the Government's reply to paragraph 2 of the list of issues in Denmark's sixth and seventh periodic reports.

### **Reply to paragraph 3 of the list of issues prior to reporting**

4. The Government notes that the Rapporteur for Follow-up to Concluding Observations, on behalf of the Committee, questioned how incorporation of the Convention in Danish law entails a risk that power is shifted from the legislature to the courts. Therefore, the Government wishes to elaborate on its position below.

5. Generally, ensuring compliance with conventions entails a choice between different concrete implementation measures. Even conventions containing relatively self-executing provisions require in-depth interpretation and detailed implementation efforts when transposing the rights and principles enshrined in said conventions into national law systems. When a convention is incorporated in national law, as opposed to ensuring that national law is in accordance with the convention, there is a risk that detailed implementation is left to the courts, whereby political choices are removed from the democratically elected legislature.

6. This position has been subject to thorough political debate and deliberations in two expert committees that in 2001 and 2014 delivered in-depth reports on the issue.

7. However, the choice of non-incorporation merely reflects a choice of the means to ensuring Convention compliance, and the Government reiterates its firm commitment to ensuring the compliance of Danish law with the Convention. Furthermore, the Government observes that Danish courts, although the Convention is not incorporated in Danish law, do consider and attach weight to the provisions of the Convention.

8. Firstly, in Denmark, the law is applied in accordance with the international conventions that Denmark has acceded to. In cases where there is doubt as to the proper interpretation of a national rule, the courts and other authorities interpret the national rules in such a way as to avoid conflict with Denmark's international obligations (the so-called "interpretation-rule"). Also, the courts and other authorities presume as a general rule that the legislature did not intend to act in contravention of Denmark's international obligations. Accordingly, the courts and the authorities must as far as possible apply national rules in a way that avoids violating international obligations (the so-called "presumption-rule").

9. Secondly, conventions that are not incorporated into Danish law can be and are invoked before Danish courts. Recent examples, where the Convention (CAT) has been invoked and explicitly considered by Danish courts, include, inter alia, the following decisions and judgments:

(a) Supreme Court decision of 26 May 2011, case no. 365/2010, regarding the submission of evidence possibly obtained through torture committed abroad.

(b) Supreme Court decision of 24 October 2014, case no. 86/2014, regarding, inter alia, the conformity of the dismissal of a case with Denmark's human rights obligations, including those enshrined in the Convention.

(c) High Court of Eastern Denmark judgment of 22 August 2016, case no. B-3448-14, regarding Danish statutes of limitation as interpreted in light of, inter alia, the Convention.

10. These decisions and judgments have not been translated but copies in Danish can be submitted upon request.

### **Reply to paragraph 4 of the list of issues prior to reporting**

11. Pursuant to paragraph 1(2) of Circular no. 9155 of 18 March 2010, persons detained by the police must be informed of their rights as set out in the Circular, e.g. access to a lawyer and the informing of relatives or others about the arrest. The information must be given in a language the detainee can understand, and an information sheet must be provided at the police station. The information sheet is available in Danish, English, German, French, Spanish, Turkish, Arabic, Lithuanian, Polish, Bulgarian, Romanian and Somali. If the detainee does not understand any of these languages, the police must ensure that the information is given in a comprehensible way without undue delay – for instance by summoning an interpreter. In exceptional cases where it is not possible to inform the detainee of the rights before his/her release, e.g. because an interpreter is not available, the information sheet should be handed out in English.

12. As regards the right to notify a relative or any other person, it is stated in paragraph 2(2) of Circular no. 9155 that the police without undue delay must give the detainee the opportunity to inform his closest relatives or other relevant persons about the arrest. However, pursuant to paragraph 2(3), the detainee can be denied this right temporarily or definitively, if, due to the specific circumstances of the case, information about the arrest in itself may compromise the investigation. If the detainee is denied this right, the police must, as a general rule, notify his/her relatives or other relevant persons, if the detainee so wishes, cf. paragraph 2(4). However, the police may refrain from doing so, if, due to the circumstances of the case, there are specific reasons to presume that information about the arrest in itself would interfere with the investigation of the case and refraining from notifying is crucial for reasons of the investigation.

13. Regarding the right to have access to a lawyer, it follows from paragraph 3(1) of Circular no. 9155 that the police without undue delay must allow the detainee to contact a lawyer who meets the requirements for representing the defendant in the case, cf. chapter 66 of the Administration of Justice Act (*retsplejeloven*).

14. As regards the right to request and receive an examination by an independent medical doctor in full confidentiality, it follows from paragraph 4(1) that the police, without undue delay, must transport the detainee to a hospital, summon a doctor to the police station or allow the detainee to contact a doctor, if the detainee requires medical attention. Pursuant to paragraph 4(3), the examination should, to the extent possible, be conducted in full confidentiality without the presence of the police, if the detainee so requires and if deemed safe.

15. Observance of the above-mentioned safeguards must be recorded in, for example, the arrest report or protocol, cf. paragraph 1(3), 2(6), 3(5) and 4(4).

16. In addition, there are specific standards for the treatment of intoxicated detainees in Administrative Order no. 988 of 6 October 2004 and The National Police regulation no. 55 of 10 March 2016. Pursuant to Administrative Order no. 988, section 9 (1) and regulation no.

55, section 13 (1), an intoxicated detainee must always receive an examination by a medical doctor before he/she is definitively placed in the detention cell. In addition, the police must inform an intoxicated detainee of the right to contact his/her relatives and/or employer, cf. Administrative Order no. 988, section 7 (1) and regulation no. 55, section 9 (1). Pursuant to regulation no. 55, section 4, the police must complete a detention report with information about – inter alia – observance of the above-mentioned safeguards. The report must be stored at the police station for at least two years, cf. regulation no. 55, section 28.

### **Reply to paragraph 5 of the list of issues prior to reporting**

17. The Ombudsman's activities and achievements are reflected in the annual and thematic reports from the Ombudsman. In the reports one can find the information concerning activities and achievements with respect to the prevention of torture and ill-treatment for the period 2014 to 2018, including briefs on the ombudsman's meetings with representatives from the authorities and representatives from civil society. Please find reference hereto in the enclosed annex 1.

18. The reports also contain data on all visits to places of detention carried out by the National Preventive Mechanism (The Parliamentary Ombudsman in cooperation with DIGNITY – Danish Institute Against Torture and The Institute for Human Rights) during the period and the recommendation to the institutions. The data in the reports concerns adults (the Ombudsman's Monitoring Division) and children (the Ombudsman's Children's Division).

19. During the period, the Ombudsman has carried out 50–60 visits (including forced return inspections) in average per year. Almost all visits have resulted in recommendations from the ombudsman. The following major achievements could be mentioned:

#### **Adults**

20. Within the Prison and Probation Service's institutions, the Ombudsman in cooperation with DIGNITY have made many recommendations concerning the health-care service. Thus, the Prison and Probation Service has been recommended a more general change in the way the health-care service is organized. This recommendation has been given in order to improve among other things the continuity and the quality of the treatment. The Prison and Probation Service is now considering such changes.

21. With the aim of creating a better framework for a more uniform and efficient health service for inmates in the institutions of the Prison and Probation Service, the Prison and Probation Service has initiated a pilot project on the health service in the Prison and Probation Service in Southern Denmark. The pilot project proposes to set up a medical unit under the Prison and Probation Service in Southern Denmark with one consultant doctor and two doctors. The unit is planned to be located in Nyborg State Prison, from where the doctors in the unit together with the nurses in the area's other prisons and remand prisons will be responsible for the health care management of all the area's institutions. The pilot project must be able to be implemented in the other three areas of the Prison and Probation Service if the model is found suitable for this purpose.

22. Within the areas of the Mental Health Care System, the Police, and the Prison and Probation Service the Ombudsman's visits have led to a number of recommendations concerning the documentation and reporting on – especially the reasons for – the use of fixation, the use of physical force and the use of isolation. The Police's reports concerning forced deportations and the use of force have improved considerably and within the Mental Health Care System and Prison and Probation Service the personnel have received further instructions and courses on satisfactorily reporting.

#### **Children**

23. In 2016, Parliament passed the Act on Adult Responsibility for children and young persons at a placement facility. The Act (*Voksenansvarsloven*) is to a great extent based on recommendations from the Committee on the Use of Force Towards Children and Young

Persons at Placement Facilities. The Committee was set up following monitoring visits by the Ombudsman in which he raised questions about the rules on the use of force.

24. During monitoring visits in recent years, the Ombudsman has continuously focused on the teaching provided for children and young people placed outside their home, e.g. in local and state prisons or in-house schools for children and young persons at placement facilities. The ombudsman has raised a number of questions with the relevant authorities, which, for instance, has led to the introduction of new rules, which ensures that young people serving time are offered schooling, which bears comparison with that provided in primary and secondary schools.

25. As important results of the activities, the Ombudsman produces thematic reports every year. Please also find reference hereto in the enclosed annex 1.

#### **Material, human and budgetary resources allocated to the NPM work**

26. 15 persons (overhead not included) working for the Ombudsman are on a daily basis involved in the NPM work, which equals approximately nine full-time persons. The NPM budget is not a separate budget, but part of the Ombudsman's budget. The Ombudsman's annual budget was raised by Parliament as of 2009 when the NPM work began. DIGNITY – Danish Institute Against Torture contributes to the NPM work with approximately one full-time medical doctor and the Institute for Human Rights contributes with approximately 0.6 full-time human rights expert.

#### **Reply to paragraph 6 of the list of issues prior to reporting**

27. Denmark has had five national action plans on intimate partner violence since 2002. The current action plan to combat psychological and physical violence in close relationships covers the period 2019–2022. DKK 101 m was allocated to the plan, which has 18 initiatives under the heading of three focus areas:

- Prevention and recognition of psychological violence, including awareness raising targeting women and men and specifically children and young women and men. This focus is in line with the Government's bill on introducing a separate section concerning psychological violence in the criminal code;
- Further strengthening of ambulatory counselling and treatment programs for female and male victims of physical and psychological violence in intimate relations;
- Increased knowledge gathering, including a nationwide study of the prevalence of physical and psychological violence in intimate relation disaggregated by sex.

28. The new action plan also allocates permanent funding for the Danish Stalking Center and strengthens measures to combat digital violence.

29. In March 2019, the Danish Parliament adopted a bill on psychological violence in close relations (family etc.), which entered into force on 1 April 2019. The act amends the Criminal Code by introducing a new separate section on psychological violence in close relations. Civil society has played an important role in the preparatory legislative process. In April 2019, the Danish National Police issued a set of guidelines to the police districts on cases regarding psychological violence (Rigspolitiets retningslinjer for politiets behandling af sager om psykisk vold). Furthermore, police officers receive training in various "Risk Assessment Tools", which are, among other things, used to assess the risk of recurrent psychological violence. Reference is made to section 39.

30. Furthermore, a number of initiatives aimed at strengthening efforts against stalking have been initiated. In March 2016, the Ministry of Justice and the Ministry of Children, Education and Gender Equality presented the package of initiatives "Stop Stalking", which contains seven initiatives and has the purpose of strengthening police efforts against stalking, improving help and counseling for persons exposed to stalking and strengthening the knowledge about stalking among professionals and the general population. As part of the implementation of "Stop Stalking", the regulation on stalking was amended with effect as of

1 January 2017, by which the police were given the possibility of imposing a temporary restraining order.

31. In addition to the national action plan, the Parliament agreed to launch the initiative “Collective effort to end violence in intimate relations” (*Samlet indsats mod vold i nære relationer*) in 2017.

32. The initiative has three focus areas:

- Funding for the Mother’s Aid counselling and treatment programs for victims of domestic violence;
- Funding for Dialogue against Violence’s treatment programs for perpetrators of domestic violence;
- Establishment of a national unit against violence in intimate relations. The purpose of the new unit, which started functioning in 2017, is to establish a collective and inclusive approach to violence in intimate relations. The unit runs a national hotline; offers counselling to men and women exposed to domestic violence and provide information on the different kinds of violence in intimate relations, including both psychological and physical violence. The unit has adopted the name *Lev Uden Vold* (Live Without Violence).

33. The action plans and the collective effort against violence in intimate relations do not stand-alone, but complement the extensive nationwide support system. Every municipal council has a legal obligation to provide temporary accommodation for women who have experienced violence, threats of violence or any similar crisis in relation to family or marital status. Women may be accompanied by children and receive care and support during their stay. Women staying at women’s shelters receive introductory and coordinated counseling, and the municipal council must offer psychological treatment to children accompanying their mother at the shelter.

34. Table 1 below shows that the number of women’s shelters has increased during the past 5 years.

*Table 1 – Number of Women’s Shelters in Denmark 2015–2019*

<i>Year</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>	<i>2019</i>
Number of women’s shelters	38	38	41	46	52

*Source:* Data from the national database on social service institutions Tilbudsportalen.

*Note:* Status by end of February.

35. According to the Director of Public Prosecutions and the National Police Service, it is not possible to provide statistical data, disaggregated by the age and ethnicity or nationality of the victims, on the number of complaints, investigations, prosecutions, convictions and sentences recorded in cases of gender-based violence. It would require going through all cases of violence manually to provide such statistical data.

36. Training aimed at raising awareness about domestic and sexual violence is an important part of the basic education of the police.

37. During their first 11 months at the Danish Police Academy, students are trained in the handling of victims as the students study a case of violence and a case of (street) robbery. Through the cases the students are trained in the police officer’s special obligations regarding domestic violence as mentioned in the Director of Public Prosecutions’ notice on domestic violence. Further, the students are introduced to the Act on Restraining Orders and Dismissals under which the police may ban an offender from contacting a victim and have an offender expelled from the residence.

38. Additionally, as part of their training in patrol services, police students are trained in the operational part and the following criminal proceedings, as well as in the special obligations of the police with regard to guidance of victims in cases on domestic violence.

39. During the last part of police student's basic education, training of the students takes place both as a theoretical reflection on violence as a phenomenon and at the case processing level with the following learning objectives for the students:

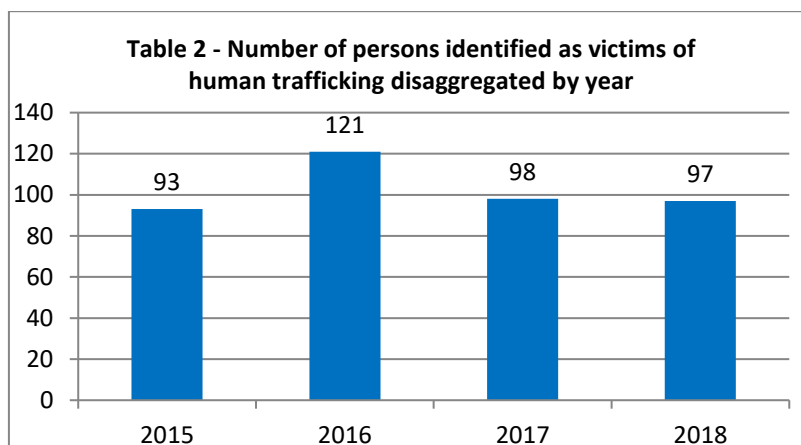
- To handle criminal proceedings on sexual matters in a necessary, proportionate and professionally responsible manner;
- To handle rape cases in a professionally responsible manner, and to take responsibility for guiding and advising rape victims and victims of other crimes, and to involve other authorities and bodies who can provide further guidance and support for the victim.

40. Further, police officers are offered training in "Risk Assessment Tools". The purpose of this course is to ensure that all police districts have employees who are certified users of the risk assessment tools SARA, SV, SAM and PATRIARK, which are used to assess the risk of recurrent stalking, acute violence and very serious/fatal violence in domestic-related cases, as well as stalking and crimes of "honor".

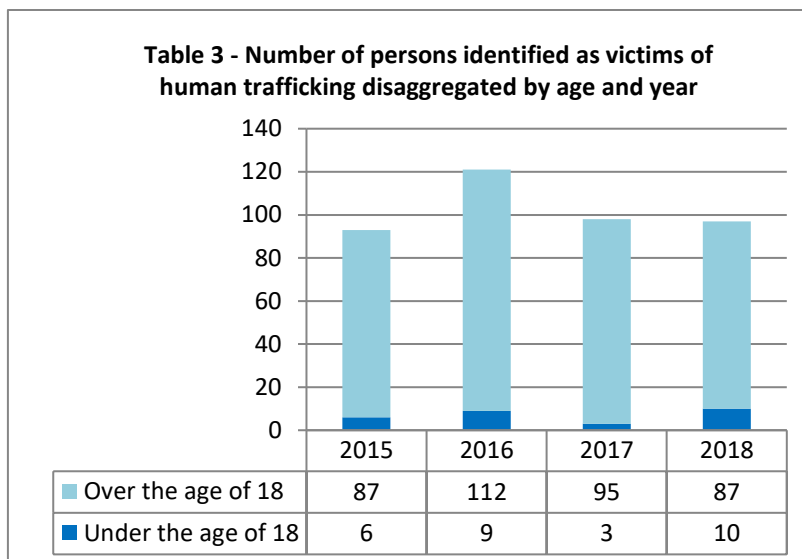
41. Relevant police officers are also offered education in handling cases on assaults, including sexual assaults against children. The purpose of this training is to ensure the relevant level of competence in the investigative units that are involved in the handling of cases of abuse against children under the age of 15, some cases of abuse against young person up to the age of 18 and cases of abuse against adults with permanent disabilities.

### **Reply to paragraph 7 of the list of issues prior to reporting**

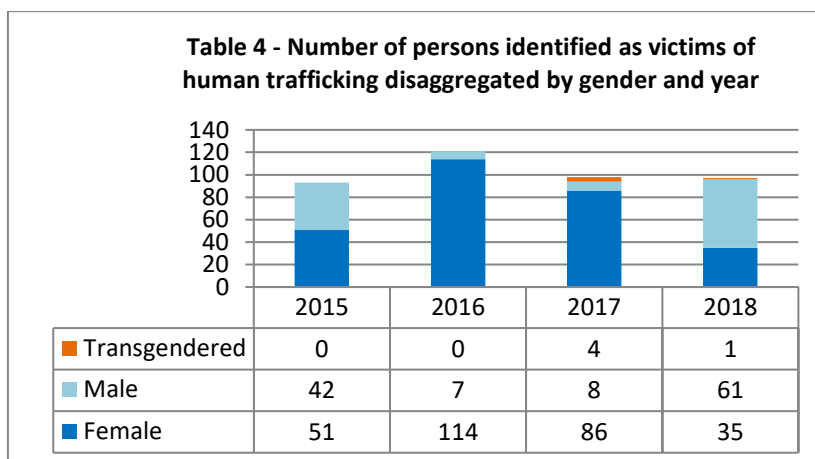
42. In the period 2015–2018, 409 persons were identified as victims of human trafficking in Denmark.



43. Of the 409 victims of human trafficking, 28 victims were under the age of 18 years and 381 victims were over the age of 18 at the time of identification with an age range from 1 year to 58 years.



44. Of the 409 victims of human trafficking, 286 victims were female; 118 victims were male and five were transgendered.



45. The 409 victims of human trafficking originated from 44 different countries. The number of victims from each country range from one victim to 217 victims. Nigerians constitute more than 50 pct. of the victims.

46. Six countries (including Nigeria) have 10 victims or more in total. All together, these six countries make up 83 pct. of the total number of victims in the period 2015–2018. 38 countries have five or less victims in total and make up less than 10 pct. of the total number of victims in the period 2015–2018. For statistical data on complaints, charges, prosecutions and sentences in cases of trafficking in persons in the period 2014–2019, please see the enclosed annex 2, table 1.

47. Section 262 a of the Criminal Code criminalizes human trafficking and provides for a penalty of imprisonment for a term not exceeding ten years. For statistical data regarding number of persons prosecuted and convicted for violation of section 262a, please see annex 2, table 2.



### **Reply to paragraph 7 (a) of the list of issues prior to reporting**

48. The fifth national action plan to combat trafficking in human beings was adopted in 2018 and covers 2019–2021.<sup>1</sup> This action plan builds on and develops previous efforts and ensures that Denmark continues to live up to international conventions. The budget of the action plan is 63 million DKK.

49. The objectives of the Action Plan are to:

- Build confidence in and knowledge about the possibilities for support and assistance for victims and potential victims of human trafficking;
- Provide information on human trafficking in relevant communities and build knowledge and awareness about human trafficking and thereby prevent and reduce demand;
- Prevent human trafficking through training relevant players and through knowledge and information;
- Identify victims of human trafficking in order to offer assistance, support and prepared repatriation;
- Offer prepared repatriation and reintegration to foreign nationals who are victims of trafficking, and who must or want to leave Denmark, to help them to a life without human trafficking;
- Investigate and prosecute traffickers to help curb human trafficking;
- Cooperate and coordinate to contribute to flexible, targeted and effective efforts against human trafficking;
- Provide knowledge about human trafficking to strengthen efforts and limit demand for the services provided by victims;
- Cooperate internationally to ensure exchange of experience and help maintain focus on human trafficking on the international agenda.

### **Reply to paragraph 7 (b) of the list of issues prior to reporting**

50. Guidelines on how the police forces and the prosecution service should deal with cases of trafficking in persons appear in the Director of Public Prosecutions' set of instructions on human trafficking. Section 2.5 of the notice includes guidelines on how to treat victims of trafficking. The notice is continuously amended in accordance with development in the area.

51. According to the Administration of Justice Act, section 741(b), the police must inform a potential victim of trafficking of his/her right to legal representation. The legal representative may assist the victim during questioning and in connection with the victim's claim for compensation if relevant. According to the Administration of Justice Act chapter 89, the police must also inform the victim about the right to claim for compensation during the criminal case.

52. Section 2.5.2 in the notice from the Director of Public Prosecutions prescribes that the police must inform the victim on the rules regarding appointment of legal assistance (legal advocate). The legal advocate may assist the victim during questioning and in connection with the calculation of a claim for compensation where relevant.

53. In the Director of Public Prosecutions' notice on guidance of the injured party, general guidelines are issued to the prosecution service and the police on how to inform victims about support services and the legal measures available to them, such as appointment of legal advocate. The prosecutor has to inform and guide the victim about the case. The information and guidance should be given regularly and should include information about the court case,

<sup>1</sup> The action plan is available in English: <http://um.dk/~media/UM/Danish-site/Documents/Ligestilling/Publikationer/2018/153843%20Handlingsplan%20til%20bekmpelse%20af%20menneskehandel%20UK.pdf?la=da>.

witness rights and duty, getting help throughout the process and the possibility of getting a legal advocate.

54. In addition hereto, the police contacts the Danish Centre against Human Trafficking if they encounter a potential victim of human trafficking. Depending on the circumstances of the case, the Centre against Human Trafficking carries out counselling to the victim, including about the victim's access to effective remedies.

55. Further, a victim of human trafficking can be assigned a contact person within the police, if the police considers that the victim in question might have to testify in court. The contact person will often be a police officer who will provide guidance and information on the legal process.

56. According to the current Action Plan to Combat Trafficking in Human Beings 2019–2022, the Prosecution Service will continue to focus on the handling of cases of trafficking in human beings by discussing the subject in the academic networks for personal and organized crime, where all police districts and the State prosecutors are represented.

57. The Director of Public Prosecution is currently producing written information material targeted the Danish Centre against Human Trafficking and relevant NGOs about the course of a criminal case and about the victim's rights in that regard.

58. In addition to that, it is noted that the Director of Public Prosecutions is continuously updating the database on convictions for human trafficking so that the prosecutors working on such cases will have knowledge of the development of legal practice and precedence on this area. The database is public and available at the homepage of the Prosecution Service.

### **Reply to paragraph 7 (c) of the list of issues prior to reporting**

59. To ensure a holistic and harmonized support, The Danish Centre against Human Trafficking, which is part of the National Board of Social Services, coordinates the support to victims and potential victims of trafficking in Denmark.

60. During the identification process, potential victims can be accommodated if needed. During the identification, potential victims are also offered access to medical treatment, psychological assistance, legal and social counselling and information according to their individual needs.

61. Financed through the Government's National Action Plan, both NGOs and private operators provide accommodation. In some cases, victims can also be accommodated in the asylum system. Two shelters are reserved for trafficked women.

62. To ensure support for potential victims, outreach is carried out by the Danish Centre against Human Trafficking and the NGO's that hold a contract under the National Action Plan. Outreach takes place in massage parlours, on the street, with persons who do escort and private/discrete prostitution, in asylum centres, in prisons and other places where potential victims of trafficking might be found.

63. In Copenhagen, a counselling centre and health clinic for foreign women in prostitution is established, and in Aarhus, there is a health clinic, which assists potential victims of trafficking.

64. The Danish Centre against Human Trafficking provides accommodation for potential victims of trafficking while identification processes are carried out when possible and appropriate in relation to the needs and security of the individual potential victim.

### **Reply to paragraph 7 (d) of the list of issues prior to reporting**

65. List of multilateral agreements signed and ratified by Denmark (in chronological order):

- ILO Convention No. 29 on Forced Labour of 28 June 1930 and the Protocol thereto Protocol P29 of 2014;

- Universal declaration of human rights of 10 December 1948 (prohibition against slavery);
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 2 December 1949;
- European Convention on Human Rights of 4 November 1950 (prohibition against slavery and forced labour);
- ILO Convention No. 105 on Abolition of Forced Labour of 25 June 1957;
- International Covenant on Civil and Political Rights of 16 December 1966 (prohibition against slavery);
- The Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979 (prohibition against slavery);
- Convention on the Rights of the Child of 20 November 1989 (prohibition against slavery);
- ILO Convention No. 182 on Worst Forms of Child Labour of 17 June 1999;
- Convention against Transnational Organized Crime of 15 November 2000 and the Protocols thereto, Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and Protocol against the Smuggling of Migrants by Land, Sea and Air;
- The Council of Europe Convention on Action against Trafficking in Human Beings of 3 May 2005;
- Charter of Fundamental Rights of the European Union of 2 October 2000 (prohibition against forced labour).

66. Directive 2011/36/EU of the European Parliament and the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims (replacing Council Framework Decision 2002/629/JHA) are covered by the Danish opt-out on EU justice and home affairs. However, Denmark has passed Act no. 275 of 27 March 2012 amending the Criminal Code in accordance with the EU Directive.

67. To the knowledge of the Government, no bilateral agreements on trafficking in human beings have been signed by Denmark.

### **Reply to paragraph 8 of the list of issues prior to reporting**

68. Denmark has implemented the principle of non-refoulement directly in the Aliens Act, section 31. The principle is also found in the Aliens Act, section 7, which determines that an alien will be granted asylum if he or she is in risk of being subject to torture or cruel, inhuman or degrading treatment or punishment, if returned to the country of origin.

69. If a claim for asylum is rejected by the Immigration Service it is automatically appealed to the Refugee Appeals Board. The merits of an asylum claim will therefore be examined twice to ensure that an asylum seeker is not returned to a country or territory where he/she risks being exposed to human rights violation, including torture and cruel, inhuman or degrading treatment or punishment in accordance with the principle of non-refoulement.

70. An alien will be referred to reside in Denmark on tolerated stay if the alien is excluded from obtaining a residence permit, or if the alien has lost his or hers already obtained residence permit on the grounds of crime etc., but meets the conditions for asylum, and therefore cannot be returned to the country of origin due to the principle of non-refoulement. The alien can stay in Denmark on tolerated stay until the Refugee Appeals Board approves that the alien's rights according to the principle of non-refoulement are no longer in danger of being violated.

71. If an alien is facing expulsion or return due to a decision made by the Immigration Service, the decision will contain information about how to appeal the decision to the Immigration Appeals Board.

72. If an alien argues reasons for staying in Denmark that are related to asylum the Immigration Service will guide the individual accordingly. If a decision from the Immigration Service sets a time limit for departure, the Immigration Appeals Board will decide whether there are special circumstances, which allows the person to stay in Denmark while the case is being processed by the board. An appeal does not automatically have a suspensive effect. That is decided on a case-by-case basis.

73. If the police after an individual assessment of a specific case have reason to believe that the alien wants to apply for asylum, he/she will be referred to the relevant authority and instructed about how to apply for asylum.

74. Throughout the asylum procedure at the Immigration Service and the Refugee Appeals Board it is ensured that either oral or written interpretation is provided.

75. If an alien receives a rejection of his/her claim for asylum from the Immigration Service, the alien will be designated a lawyer free of charge to assist the alien with the appeal before the Refugee Appeals Board.

76. If an alien receives a rejection from the Immigration Service stating that the application has been considered manifestly unfounded, the application will be given to the Refugee Council for review in order to determine whether the Refugee Council agrees with the decision made by the Immigration Service.

77. If the Refugee Council disagrees with the Immigration Service the case will be rejected in the normal procedure and automatically appealed to the Refugee Appeals Board.

78. If the Refugee Council agrees with the decision made by the Immigration Service, the Refugee Council offers legal guidance to the alien. Legal guidance is also available for other aliens who have had their application for asylum rejected and aliens who have had their case treated in accordance with the Dublin Regulation (Regulation No. 604/2013) in which the criteria and mechanisms are established for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

## **Reply to paragraph 9 of the list of issues prior to reporting**

### **Number of asylum applications**

79. For the individual figures for the 10 largest nationalities as well as total number of asylum applications lodged in Denmark (gross application figure) in the period 1 January 2015–31 August 2019, please see the enclosed annex 3, table 1.

### **Number of residence permits**

80. For the individual figures for the 10 largest nationalities as well as total number of residence permits regarding refugee status or other protection status in Denmark in the period from 1 January 2015 to 31 March 2019, please see the enclosed annex 3, table 2.

### **Number of applications concerning victims of torture**

81. The Immigration Service's case processing system does not have structured data on asylum seekers' grounds for applying for asylum, which is a prerequisite for providing the statistics requested. A manual examination of all asylum cases would be required in order to provide such information. Therefore, it is not possible to provide the requested statistics.

### **Rejected Asylum Seekers**

82. It is noted that the police and immigration authorities' statistics are derived on the basis of registrations made in the electronic case and document handling system. They are not designed as actual statistical systems and therefore, there is some degree of uncertainty attached to the figures provided. Further, it is noted that post-registrations can occur which might not be reflected in the present figures.

83. Rejected asylum seekers, who were returned the most in 2018, had the following nationalities: Iraqi, Afghani, Georgian, Iranian and Albanian.

84. For the individual figures for returns of these five nationalities and disaggregated on escorted, non-escorted and voluntary returns in the years 2015–2018 and for the first quarter of 2019, please see enclosed annex 3, table 3–7.

85. Rejected asylum seekers are most commonly returned to the country in which they have citizenship. In 2018, 87% of the rejected asylum seekers were returned to the country in which they have citizenship. Other countries to which rejected asylum seekers are returned to are countries in which they have legal stay.

86. It is noted that the figures above is subject to some uncertainty as the information is based on a case management document, which is not intended for statistical use.

### **Reply to paragraph 10 of the list of issues prior to reporting**

87. Reference is made to the Government's reply to the Committee's previous concluding observations paragraph 23 provided on 9 December 2016 (CAT/C/DNK/CO/6-7/Add.1). The procedures described herein are unchanged.

88. The Special Rapporteur for Follow-up to Concluding Observations' follow-up letter of 10 May 2018 gives cause to the following elaboration of the procedure regarding asylum seekers who claim to be victims of torture.

89. Most asylum seekers are accommodated in asylum centres. If an asylum seeker's health conditions require so, the operator of the asylum centre can contact the Immigration Service with a request that the asylum case is accelerated for that reason. Asylum seekers who are accommodated elsewhere may also submit such a request to the Immigration Service. If the responsible case officer at the Immigration Service considers the request grounded, he or she must then ensure that the asylum case is processed as soon as possible. If the application for asylum is rejected by the Immigration Service and thereby automatically appealed to the Refugee Appeals Board, the Board is also requested to prioritize the case on the grounds of health reasons.

90. The above-mentioned procedure was also applicable in 2016, but was not described in details in the Government's reply of 9 December 2016.

91. Throughout the entire asylum procedure, asylum seekers have access to medical staff.

92. In cases where torture is invoked as one of the grounds for asylum, the immigration authorities can initiate a medical examination of the asylum seeker to identify whether the asylum seeker is a victim of torture before deciding on the application for asylum.

93. A medical examination to assess for signs of torture will be conducted if of significance to the decision regarding the application for asylum, decision hereof to be based on a specific and individual assessment of the circumstances of the case.

### **Reply to paragraph 11 of the list of issues prior to reporting**

#### **Extradition cases**

94. According to the Extradition Act (*udleveringsloven*) section 6 (2) and section 10 (h) (2) a person shall not be extradited if there is a risk, that the person will suffer torture or other inhuman or degrading treatment or punishment after extradition. The provisions are based on the European Convention on Human Rights article 3, and obliges the Director of Public Prosecutions to make an assessment of the possible conditions, for example prison conditions, that the person will be subject to after extradition.

95. In the period 10 December 2015–31 May 2016, Denmark has not extradited any persons on the basis of the acceptance of diplomatic assurances or the equivalent thereof regarding prison conditions.

96. Unfortunately, for technical reasons, it has not been possible to recover information regarding the period 1 June 2016–31 January 2017.

97. In the period 1 February 2017–16 May 2019, Denmark has extradited 33 persons on the basis of the acceptance of diplomatic assurances or the equivalent thereof regarding prison conditions.

98. Denmark has not been asked to offer diplomatic guarantees in regards to torture or ill treatment for the purpose of extraditing a person to Denmark.

99. If it is deemed necessary on the basis of a concrete assessment, Denmark ensures that the Danish authorities have unrestricted access to persons who have been extradited on the bases of the acceptance of diplomatic assurances or the equivalent thereof.

#### **Expulsion cases**

100. It is noted, that Denmark has deported one individual to Morocco, who had been expelled. The person in question argued that he would risk treatment contrary to article 2 and 3 of The European Convention of Human Rights in Morocco. The Government did not find that he was in risk of such treatment. The person in question brought the case before The European Court of Human Rights. The court dismissed the case as manifestly ill-founded, see app. 74411/16.

#### **Reply to paragraph 12 of the list of issues prior to reporting**

101. In 2002, the Ministry of Justice decided to set up a Jurisdiction Committee (Justitsministeriets Jurisdiktionsudvalg) with the task of evaluating the provisions on jurisdiction in the Criminal Code (straffeloven). As part of the task the Committee assessed whether the legislation on jurisdiction in force at the time should be amended as consequence of international development. Based on the Committee's report No. 1488/2007 from June 2007 the regulation on jurisdiction was among others amended by Act no. 490 of 17 June 2008.

102. As regards to article 5 (1) (a) in the Convention against Torture the existing legislation comprised all offences committed in any territory under Danish jurisdiction or on board a ship or aircraft registered in Denmark, and Act no. 490 of 17 June 2008 only contained minor adjustments, which were primarily made for linguistic reasons.

103. As regards to article 5 (1) (b) the existing legislation established jurisdiction over offences committed by a person who is a Danish national or is resident in Denmark. By Act no. 490 of 17 June 2008 the existing regulation was expanded so jurisdiction could be established even if a person is not a Danish national or resident in Denmark, if the person instead has a similar permanent residence in Denmark.

104. As regards to article 5 (1) (c) the existing legislation only established jurisdiction due to a crime committed outside another state's jurisdiction against a Danish national or a person who is resident in Denmark, if the acts committed could entail imprisonment for a period of 4 months or longer. This provision was also included in Act no. 490 of 17 June 2008. However, by Act no. 490 of 17 June 2008 it was included that jurisdiction could also be established, when a crime is committed within another state's jurisdiction against either a Danish national, a person who is resident in Denmark or a person who has a similar permanent residence in Denmark, provided that the crime committed is also punishable by law in the state, where the crime was committed, if the crime can be punished with imprisonment for a period of at least 6 years, and the crime committed is either intentional homicide, gross violence, deprivation of liberty, robbery, an offence dangerous to the public, a sexual offence, incest or female circumcision.

105. As regards to article 5 (2) the existing legislation established jurisdiction irrespectively of the home country of the offender, where extradition for the purpose of prosecution in another country of a person provisionally charged is refused, and the act, provided that it was committed within the territory of another state, is a criminal offence under the legislation of the country in which the act was committed, and the act may carry a

sentence under Danish legislation of at least one year in prison. Act no. 490 of 17 June 2008 only contained minor adjustments, which were primarily made for linguistic reasons.

106. Please, find below a list of extradition treaties and agreements concluded between Denmark and other nations:

- Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the Surrender Procedures between Member States;
- European Convention on Extradition of 13 December 1957;
- Agreement on Extradition between the United States of America and the European Union signed 23 June 2003 as to the application of the Treaty on Extradition between the United States of America and the Kingdom of Denmark signed 22 June 1972;
- Treaty on Extradition between the Kingdom of Denmark and Canada of 30 November 1977;
- Convention on surrender on the basis of criminal offences between the Nordic countries of 15 December 2005 (the Nordic Arrest Warrant).

107. The Danish Criminal Code does not contain a separate offence of torture. However, the current provisions of the Criminal Code meet the purpose of a provision on the crime of torture as they underline the seriousness and gross nature of acts that are committed by the use of torture. Add to this that the current provisions mean that the character of the specific crime will be clearly reflected in connection with the criminal case.

108. Thus, instead of being convicted of the general crime of “torture”, which is a wide concept, the perpetrator will be convicted in accordance with the relevant specific provision with reference to the fact that the criminal act was committed by the use of torture (for example, “assault of a particularly dangerous nature by the use of torture” or “confinement by the use of torture”). Reference is made to the Government’s reply to paragraph 2 of the list of issues.

109. Therefore, it is possible to extradite a person for using torture if the general conditions for extradition are fulfilled.

### **Reply to paragraph 13 of the list of issues prior to reporting**

110. In the periods 10 December 2015–31 May 2016 and 1 February 2017–29 May 2019, Denmark has not rejected extradition of individuals suspected of having committed torture.

111. Unfortunately, for technical reasons, it has not been possible to recover information regarding the period 1 June 2016–31 January 2017.

### **Reply to paragraph 14 of the list of issues prior to reporting**

112. Please, find below a list of the mutual assistance treaties and agreements concluded between Denmark and other nations:

- The European Convention on Mutual Legal Assistance in Criminal Matters of 20 April 1959;
- First Additional Protocol of 17 March 1978 to the European Convention on Mutual Legal Assistance in Criminal Matters of 20 April 1959;
- Second Additional Protocol of 8 November 2001 to the European Convention on Mutual Legal Assistance in Criminal Matters of 20 April 1959;
- The European Convention on the Transfer of Proceedings in Criminal Matters of 15 May 1972;
- The Nordic Agreement on Mutual Legal Assistance of 26 April 1974;
- United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988;

- The European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 8 November 1990;
- Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union;
- Protocol of 16 November 2001 to the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union;
- The Schengen Agreement of 19 June 1990;
- Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence;
- The European Convention on Cybercrime of 23 November 2001;
- The Additional Protocol to the European Convention on Cybercrime, concerning the Criminalization of Acts of a Racist and Xenophobic Nature committed through Computer Systems of 28 January 2003;
- Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the government of the Kingdom of Denmark concerning mutual legal assistance in criminal matters of 23 December 2004;
- Legal Assistance Agreement of 23 June 2005 concluded by Denmark and the United States of America.

113. It has not been possible to draw statistics that provide information on whether or not mutual legal assistance based on treaties or agreements have in practice led to the transfer of any evidence in connection with prosecutions concerning torture and ill-treatment.

### **Reply to the paragraph 15 of the list of issues prior to reporting**

114. During training of police officers at the Police Academy basic human rights including the provisions of the Convention against Torture are addressed.

115. A police officer is employed as an official and must therefore comply with Section 10 of the Staff Regulations, which states that the official must conscientiously "comply with the rules governing his position, both in and out of service, worthy of the respect and trust, as the job requires."

116. The Police Basic Training program qualifies the student to exercise the executive power in society in a professional, ethical and responsible manner, in accordance with the laws and regulations applicable to the exercise of police authority and the requirements for the quality of police work, in respect of the democratic rules of national law as well as applicable conventions, including the Convention against Torture.

117. From the beginning of the training, the student is introduced to the purpose, tasks and methods of the police work, and is made aware of the special responsibilities and duties of the police profession. The student must, among other things, gain knowledge of the rules for, and become aware of, the special responsibility associated with the exercise of police power and the use of force. After completing the course, the student should be able to handle police powers and means of power in a responsible, situational, professional and ethical way, in which all citizens are treated with dignity and respect and according to national law and applicable conventions.

118. The Police Academy has included DIGNITY – Danish Institute Against Torture and the Institute for Human Rights in the development of teaching materials for the police basic education in order to ensure engagement of relevant organizations.

119. Students are regularly tested during their education both through exams and through practical exercises.

120. In addition to providing students with basic police training to act in an ethically correct and sound manner, students are continuously evaluated during their education on both their



personal competences and their overall understanding. This includes evaluation on their ability to verbally and nonverbally communicate in a respectful manner, and whether the police student is fundamentally “a proper person” who understands the social role of the police and respects the ethical and moral responsibility it entails.

121. The basic police training in conjunction with the continuous training of police officers ensures that police officers are made fully aware of the provisions of the Convention against Torture and know that breaches will not be tolerated and will be investigated, and that any offenders will be prosecuted.

122. The National Police has not developed a specific methodology to assess the effectiveness of training and educational programs in reducing the number of cases of torture and ill-treatment.

123. Torture and ill-treatment committed by police officers will be investigated by the Independent Police Complaints Authority. The Independent Police Complaints Authority is charged with investigating criminal offences committed by police personnel while on duty and handling complaints concerning the conduct of police personnel, as well as investigating cases concerning the death or injury of persons in police custody. The Independent Police Complaints Authority is an autonomous government agency, which – in accordance with section 118a and 118b of the Administration of Justice Act – is independent of the police, prosecution service and the Ministry of Justice.

124. The prison staff (prison officers, prison overseers and prison transport officers) receives education in the provisions of the Convention against Torture, including information about the prohibition of degrading treatment and torture of inmates. The prison staff also receives education about human rights in general, the European Prison Rules and the Programme of Principles for Prison and Probation Work in Denmark, which among others contains ethical guidelines.

125. The prison staff is specifically educated in identifying torture and degrading ill-treatment of inmates, and they are informed about recent and historical international cases of torture, including the consequences for the inmates. In addition, in several occasions during the prison staff's education, it is stressed that the use of torture and other degrading ill-treatment is strictly prohibited.

126. The Prison and Probation Service uses a case based teaching method regarding these topics. Based on practical experiences, the prison staff composes their own cases and identify, analyse and discuss the ethical dilemmas. Each module of the prison staff's education is evaluated subsequently.

127. The Prison and Probation Service has not developed a methodology to assess the effectiveness of the educational programme.

128. Border guards carry out border control, which requires highly specialized skills. Border control is primarily performed by police officers supported by specially trained civilians. The civilians are not allowed to detain, search or conduct interviews of those detained.

129. The police officers have two different levels of education about border control. Both levels add to the knowledge acquired during basic training at the police academy. The course is separated in first line work and second line work as defined in the Schengen Common Core Curriculum. The classes in first line work has a duration of one week as part of which three hours focuses on human rights and vulnerable groups. Police officers can only attend classes in second line work after attending classes and passing the exam on first line work. Second line work classes has a duration of two weeks as part of which further three hours focuses on human rights and vulnerable groups. The course is concluded by an examination.

130. Civilian border guards attend a training program lasting nine weeks. Seven weeks on site and two weeks at the police academy. Hereof two hours are dedicated to the topic of human rights and vulnerable groups. The subjects are revisited throughout the course, due to their importance. These subjects form a major part of the exam.

131. Both police officers and civilians have to pass the exams concluding the mandatory courses. The exams include both a written test, which includes human rights and vulnerable

groups, a practical test on site, which also concerns the subjects in question, as well as an overall screening of conduct. All these requirements must be met in order to conduct border control.

132. Beyond the national measures ensuring high standards for all border guards, all member states of Frontex are subject to unannounced monitoring from the international Frontex office.

133. The basic training at the police academy together with the continuous training of police officers after finishing the police academy, ensures that police officers and border guards are made fully aware of the provisions of the Convention and are aware that breaches will not be tolerated, will be investigated and that any offenders will be prosecuted.

134. Regarding educational programmes for prosecutors, reference is made to the Government's reply to paragraph 16 of the list of issue.

### **Reply to paragraph 16 of the list of issues prior to reporting**

135. The Higher Education Institutions in Denmark are self-governing institutions. The Ministry of Higher Education and Science lay down the overall regulations for the institutions (admission, structure of studies, awarding of degrees etc). The individual institutions draw up and update their study programmes, which indicate the aims, scope, duration, form and contents of the individual courses, as well as prepares the syllabus.

136. The education programmes for medicine students requires, that the students must obtain knowledge of the Convention Against Torture and the medical aspect of torture. The postgraduate medical education and training program in forensic medicine describes specifically requirements for obtaining skills in examining victims of torture. Competences on identification of torture lesions, examination of victims and knowledge about the obligation to report is achieved during training. Nurses are trained to observe and identify phenomena associated with reactions to psychological problems and suffering.

137. Furthermore, the partly state funded NGO, DIGNITY – Danish Institute Against Torture (DIGNITY) works on developing and communicating knowledge on health related consequences of torture. Moreover, health professional experts work on developing health professional capacity at partner organisations around the world. In Denmark, medical students are taught about torture as part of the course 'Clinical Social Medicine' at the University of Copenhagen, and each semester a small group of medical students have clinical training at DIGNITY as part of the course. A small number of physiotherapists and psychotherapists are able to do internships within DIGNITY's rehabilitation department and thereby gain knowledge on torture.

138. With regard to the education of prosecutors, the Director of Public Prosecutions offers almost 50 courses which covers mandatory training for all newly hired prosecutor trainees and optional courses for all prosecutors. There is no course specifically on the sequelae of torture or on the Istanbul Protocol. However, international legislative obligations and human rights issues are an important part of the content in all courses. All relevant courses implement the latest jurisprudence regarding human rights and other international legislative topics. For instance, the course "Expulsion of foreigners" educates prosecutors on aliens on tolerated stay, who are excluded from obtaining a residence permit or who has lost their already obtained residence permit on the grounds of crime etc., but meets the conditions for asylum, and therefore cannot be returned to the country of origin due to the principle of non-refoulement.

139. Similarly, with regard to judges, no special training focusing on the Istanbul Protocol alone is offered at present. Human rights conventions and the Istanbul Protocol will normally be incorporated as a topic in courses and training programs when relevant. For example, in the two day training on the rules regarding expulsion of foreigners that have committed criminal offences, the Istanbul Protocol is included as a topic. Additionally, the Court Administration offers international training on the subject through international partners.

### **Reply to paragraph 17 of the list of issues prior to reporting**

140. As of 4 April 2016, the National Police has extended the reporting scheme regarding administrative deprivations of liberty. Hereunder, the police districts are required to report administrative deprivations of liberty performed under sections 5, 8 and 9 of the Act on Police Activities (*politiloven*) where the police district, the National Police or the courts have subsequently found that the conditions for administrative deprivation of liberty have not been met. An annual report on the matter is drafted by the National Police and forwarded to the Ministry of Justice and the Parliament.

141. As of 1 April 2019, the National Police has issued a new action card regarding reporting on deaths and serious suicide attempts while in police custody which has expanded the reporting obligation. The reporting scheme includes all deaths and serious suicide attempts that have occurred while the individuals were in police custody, i.e. detentions or administrative deprivations of liberty, which are reported to the Ministry of Justice, the Public Prosecutor and the National Police. Subsequently, the Ministry of Justice notifies the Parliamentary Ombudsman.

142. As regards psychiatric institutions, reference is made to the Government's reply to paragraph 25 of the list of issues.

### **Reply to paragraph 18 of the list of issues prior to reporting**

143. For statistical data regarding remand and convicted prisoners and occupancy rate, please see the enclosed annex 4, table 1–7.

144. The Danish Health Data Authority is responsible for a number of databases concerning treatment in the healthcare system. From The Registry of Coercive Measures in Psychiatric Treatment (TIP) and The National Patient Register (LPR) The Danish Health Data Authority has calculated the average number of persons admitted to psychiatric ward by court order, the average number of persons in mental health detention in 2015–2017, and all persons admitted to any psychiatric ward or mental health detention. Reference is made to the enclosed annex 4, table 8–10.

### **Reply to paragraph 19 of the list of issues prior to reporting**

145. In order to remand a suspect, the person in question must be older than the minimum age of criminal liability of 15 years, according to the Criminal Code (*straffeloven*), Section 15, cf. the Administration of Justice Act, Section 755 (1).

146. However, if the suspect is younger than 18 years, the person may often be subject to the general rule that less intrusive measures than remand shall be used, if the purpose of remanding can be met through such measures, cf. the Administration of Justice Act, Section 765.

147. Minors younger than 15 years old cannot be remanded in custody, but can be withheld by the police provided that the general requirements for remand are fulfilled and the purpose of the withholding cannot be met by less intrusive measures, cf. the Administration of Justice Act, Section 821 a (1).

148. Minors are generally placed in special wards. The Prison and Probation Service has three institutions with special wards for minors: A ward for minors in an open prison, a ward primarily for minors in a closed prison and a section for underage remand prisoners in a larger remand prison. Minors can also be placed in ordinary wards together with adult inmates, but it must be done in a ward where being in company with the other inmates is considered to be in accordance with the minor's interests, and with consideration of protecting the minor against unfortunate influence.

149. There are currently four state prisons that accommodate women in Denmark.

150. In three of the state prisons, if the conditions allow, women can choose to serve their sentence separated from male inmates. Furthermore, in some of the state prisons, it is possible for women to choose employment in locations where there are no male inmates.

151. From the multi-annual budget agreement for the Prison and Probation Service for the period 2018–2021, it follows that the Prison and Probation Service must establish an actual women's prison to increase women's safety in relation to harassment and abuse from male inmates and to make it possible to provide activities and employment tailored to female inmates. The Prison and Probation Service is currently adapting Jyderup Fængsel, which has been designated as the future women's prison, to this purpose.

152. Female inmates in Greenland are either placed in the open section of the prison institution in Ilulissat or the open section of the prison institution in Nuuk. In Ilulissat, female inmates are placed separately from male inmates. In Nuuk, the female inmates are placed in the same section as male inmates, but are separated from male inmates to the greatest extent possible. Female remand prisoners from all over Greenland are placed in Nuuk, separately from male remand prisoners.

153. The Prison and Probation Service in Greenland has initiated the drafting of guidelines for staff on the handling of female inmates, including guidelines for the separation of female and male inmates.

### **Reply to paragraph 20 of the list of issues prior to reporting**

154. Reference is made to the Government's reply to the Committee's previous concluding observations paragraph 37 provided on 9 December 2016 (CAT/C/DNK/CO/6-7/Add.1). From this it follows that according to national law, convicted prisoners are, as a main rule, placed in state prisons, whereas remand prisoners are placed in remand prisons or in separate units in state prisons.

155. In certain circumstances, however, a convict may be placed in a remand prison together with remand prisoners.

156. Thus, a convict may serve a short-term sentence in a remand prison if deemed necessary in view of the overall utilisation of the places in the institutions of the Prison and Probation Service. Otherwise, there would be a risk of overcrowding in certain prisons. Furthermore, a convict may be placed in a remand prison for individual reasons, for instance in order to protect the convict from assault, to prevent escape, for medical reasons or for compelling personal reasons.

157. As regards the risk of subjecting remand prisoners to negative influence from convicted prisoners, a convict placed in a remand prison may take part in joint activities with remand prisoners, but such joint activities take place under supervision of the staff or in the presence of staff members, if deemed necessary for reasons of order or security.

158. Furthermore, each inmate has a private cell, where he or she is imprisoned at night.

159. The living conditions in both state prisons and remand prisons are subject to control by the National Prevention Mechanism (the Parliamentary Ombudsman) who carries out inspections in the institutions.

160. The Government notes that the remarks made in paragraph 33 of the Government's reply to the Committee's previous concluding observations, regarding special units for certain groups of inmates, e.g. members of organized criminal groups are no longer relevant as such units no longer exist.

161. Regarding the separation of juveniles from adults in all places of detention, reference is made to the Government's reply to paragraph 19 above.

162. As regards contact with the outside world, remand prisoners' and convicted prisoners' access to visits, exchange of letters and phone conversations are regulated in the Administrative Order on Detention (*varetagtsbekendtgørelsen*), Sections 40–76, and the Criminal Enforcement Act (*straffuldbyrdelsesloven*), Sections 51–57, respectively.

163. The major difference between the rights of remand prisoners and convicted prisoners is the rules on letter and visitation control, cf. the Administration of Justice Act, Sections 771–772, which applies only to remand prisoners.

164. According to Section 771 (1), a remand prisoner can receive visits to the extent allowed to maintain order and security in the remand prison. The police may, in the interest of ensuring the purpose of the remand custody, oppose that a remand prisoner receives a visitor, or the police may demand that a visit takes place under supervision.

165. According to Section 772 (1), a remand prisoner has the right to receive and send letters. The police may look through the letters before the remand prisoner receives or sends the letters. The police must deliver or send the letters as soon as possible, unless the content could be damaging to an investigation or to the maintenance of order and security in the remand prison. However, according to Section 772 (2), a remand prisoner has the right to communicate with the courts, his or her attorney, the Minister of Justice, the director of the Danish Prison and Probation Service and the Parliamentary Ombudsman without any supervision by the police.

166. As regard statistics concerning letter and visitation control, please see the enclosed annex 5, table 1–2.

167. Similarly, the police may, to ensure the purpose of the remand custody, oppose that a remand prisoner has phone conversations.

168. Any measure regarding letter and visitation control is subject to judicial control.

169. In order to limit the use of solitary confinement, particularly during pretrial detention, new rules concerning solitary confinement entered into force on 1 January 2007 (Act No. 1561 of 20 December 2006 amending provisions in the Administration of Justice Act).

170. The Administration of Justice Act provides strict rules for the use of solitary confinement with regard to remand prisoners. As a general principle in Section 770, remand prisoners are only subject to the restrictions necessary to ensure the purpose of the remand in custody or the maintenance of order and security in the remand prison. Sections 770a, 770b and 770c set out the conditions for the use of solitary confinement as regards remand prisoners as well as the duration thereof. Furthermore, Section 770 b stipulates that solitary confinement may only be used during remand in custody when the aim of the solitary confinement cannot be attained by less invasive measures, when the solitary confinement is not disproportionate to the importance of the case and the expected legal ramifications if the defendant is convicted, and the investigation of the suspected criminal offence is carried out with the speed which is required in such cases. Furthermore, according to Section 767 and 770d, the court must continuously review the basis for remand in custody and solitary confinement.

171. Reference is made to Denmark's combined sixth and seventh periodic report paragraphs 60–67.

172. Concerning data on the use of solitary confinement with regard to remand prisoners, the Director of Public Prosecution has informed that 37 remand prisoners were put in solitary confinement by court order in 2016 (average length 26 days), whereas the number was 17 in 2017 (average length 11 days) and 14 in 2018 (average length 14 days). For comparison, in 2001, just before the Prosecution Service launched its initiative to reduce the use of solitary confinement, the number was 553. Concerning remand prisoners under the age of 18, one person under the age of 18 (17 yrs.) was placed in solitary confinement for 13 days in 2017. In 2018 no remand prisoners under the age of 18 was placed in solitary confinement. Consequently, the data shows that the use of solitary confinement of remand prisoners has been reduced considerably, both regarding the number of persons and the average length of the confinement. Denmark continues to keep the use of solitary confinement under close review, in particular on the basis of the annual reports from the Director of Public Prosecution.

173. According to the Criminal Enforcement Act, Section 67 (1), the Prison and Probation Service is allowed to use disciplinary punishment, including solitary confinement, against convicted inmates who commit certain breaches of the law or disciplinary offences.

174. Solitary confinement includes penalty cell, cf. the Criminal Enforcement Act, Section 68 (1), which in regards to convicted prisoners can be imposed for a period of no longer than four weeks, cf. the Criminal Enforcement Act, Section 70 (1), first sentence. If the convicted prisoner is under the age of 18, the maximum period is seven days, unless the case concerns violence against staff in the institution, cf. the Criminal Enforcement Act Section 70 (1), second sentence, which was introduced in Act no. 1541 of 18 December 2018.

175. The Government will consider the need for an amendment of the disciplinary punishment system as part of the implementation of the multi-annual budget agreement for the Prison and Probation Service for the period 2018–2021.

176. For statistical data regarding the number of instances of solitary confinement, including unconditional penalty cell and exclusion from community, disaggregated by year and length of time, please see the enclosed annex 5, table 3–4. It is noted that the statistical data regarding 2018 and 2019 are preliminary.

177. Inmates must be offered the same health treatment as the rest of the population. It is the duty of the Prison and Probation Service to ensure that inmates who need psychiatric or psychological support and help receive the relevant treatment.

178. The state prisons and remand prisons have affiliated psychiatrists. Some state prisons also have affiliated psychologists. Treatment may also take place at a hospital or at a specialised doctor.

179. Some of the convicted inmates may serve their sentence in Anstalten ved Herstedvester, which has full-time psychiatrists and psychologists employed.

180. If a convicted inmate suffers from an actual mental illness (psychosis), the person must be transferred to a hospital or another applicable treatment institution as soon as possible.

181. If a convicted inmate does not suffer from a mental illness, but another psychiatric disorder requiring treatment, the person in question may in special cases be allowed to serve their sentence in an institution outside of the Prison and Probation Service, cf. the Criminal Enforcement Act, Section 78.

182. In addition, the Prison and Probation Service has launched a screening system for 15–17-year-olds who are to be placed in an institution under the Prison and Probation Service. The system entails that the minors are screened for potential psychiatric disorders.

183. Finally, it should be noted that the Danish healthcare system is based on consent. If an inmate, who is assessed as being able to make his or her own decisions, does not wish to receive psychiatric or psychological treatment, this treatment may not be forced on said inmate.

### **Reply to paragraph 21 of the list of issues prior to reporting**

184. For statistical data on the number of instances of violence and threats of violence committed by inmates against other inmates, please see the enclosed annex 6, table 1.

185. The Government is not in possession of statistical information on cases “involving possible negligence on the part of prison personnel, the number of complaints made in this regard and their outcome”, but it should be noted that the inmates can complain about the prison personnel to the areas under the Prison and Probation Service. The areas’ decision can be appealed to the Department of the Prison and Probation Service. The Government is not aware of cases of this nature within the Department of the Prison and Probation Service.

186. As regards measures for the prevention of violence between inmates, it should be noted that the Prison and Probation Service continually works on reducing the amount of episodes of violence between inmates, inter alia, through systematic safety assessments of all inmates to ensure the safest and most appropriate placement of each inmate.

187. The episodes in the individual institutions are analysed, and any potential learning is extracted and used. There is zero tolerance towards inmates who exhibit violent behaviour,

and violent behaviour will, inter alia, be sanctioned by disciplinary punishment, transfer to another institution or the filing of a police report.

### **Reply to paragraph 22 of the list of issues prior to reporting**

188. As regards statistical data concerning deaths in custody, reference is made to the enclosed annex 7, table 1–2.

189. The areas under the Prison and Probation Service supervise the institutions on handling of instances of, among others, death, suicide and suicide attempts which pertain to an inmate in the Prison and Probation Service's custody.

190. When a case is concluded in an area belonging to the Prison and Probation Service, it is forwarded to the Parliamentary Ombudsman, who reviews the case.

191. The rules on the handling of the above mentioned cases follows from Circular no. 9916 of 14 July 2015 on the Prison and Probation Service's areas' treatment and reporting of incidents concerning deaths, suicides, qualified suicide attempts and other qualified self-harming acts and other suicidal or self-harming behaviour among inmates in the Prison and Probations Service's custody. Further, the Prison and Probation Service has on 9 January 2018 sent an instruction to all prison staff on how to observe inmates who are deemed as being at certain risk of exposing themselves to danger. The instruction pertains to prison wardens and other supervisory staff and concerns observation of inmates who are deemed to be at a certain risk of exposing themselves to lethal danger, but where the staff has not found cause to transfer the client to an observation cell or solitary confinement.

192. According to the Administration of Justice Act, Section 1020 (2), the Independent Police Complaints Authority (*Den Uafhængige Politiklagemyndighed*) examines all deaths or serious injuries which follow as a consequence of police intervention or while the individual is in police custody. During the period from January 2014 until May 2019, the Independent Police Compliant Authority has reviewed 28 cases involving deaths under Section 1020 a (2). Of the 28 cases, six cases involve deaths in police detention. Please find data on the 28 cases involving deaths, disaggregated by place, age, gender and nationality enclosed in annex 7, table 3.

193. None of the cases above led to criminal charges being raised against police officers following investigations. Unfortunately, it is not possible to provide statistical data on potential compensation in these cases.

### **Reply to paragraph 23 of the list of issues prior to reporting**

194. The use of pepper spray by prison staff is regulated in the Criminal Enforcement Act, Section 62, Administration Order no. 296 of 28 March 2017 On the Use of Force Towards Inmates in the Institutions Belonging to the Prison and Probation Service (*magtanvendelsesbekendtgørelsen*) and Letter no. 9315 of 30 March 2017 On the Administration Order on the Use of Force Towards Inmates in the Institutions Belonging to the Prison and Probation Service.

195. Here it is stated, inter alia, that (1) use of force may not be carried out if it would be a disproportionate intervention according to the purpose of the intervention and the violation and discomfort which the intervention may be assumed to cause; (2) use of force must be as gentle as the circumstances allow; (3) before pepper spray is used the inmate must, to the extent possible, be informed that pepper spray will be used if the staff's instructions are not followed; (4) it should be ensured, to the extent possible, that the inmate is able to follow the instructions; (5) as a general rule, pepper spray should not be used in a closed room if other and less intrusive means of force can be used and are sufficient; (6) after the use of pepper spray, the inmate must be offered appropriate remediation of the nuisances caused by the use of pepper spray.

196. Furthermore, the Prison and Probation Service has by Letter of 3 November 2014 and orally on 21 May 2015 emphasized to the institutions that staff must be cautious with their

use of pepper spray in closed rooms and given general information on the use of pepper spray, including the principle of least intrusive measures with regard to the use of force.

197. The wardens' option to carry pepper spray as part of their usual equipment has been clarified in Act No. 203 of 28 February 2017. The legislative amendment created a legal base allowing the Minister for Justice to determine that wardens in closed prisons, in closed remand prisons and in remand prisons may carry pepper spray as part of their usual equipment, cf. Letter No. 9315 of 30 March 2017.

198. By Act no. 1722 of 27 December 2016, the Parliament adopted an amendment to the Act on Police Activities regarding the use of pepper spray by police staff. The purpose of the amendment was to put the already existing rules into statutory form. Generally, the Act on Police Activities stipulates that police officers may use pepper spray only if necessary and justified, and only by such means and to such an extent as is reasonable with regards to the interest which the police are seeking to protect. In the specific assessment the number of persons involved and their physics and state of mind must, inter alia, be taken into account. In addition, the police must exercise particular restraint with the use of pepper spray on handcuffed individuals.

199. Furthermore, pursuant to the Act on Police Activities, Section 20 a, the police must, to the extent possible, warn a person of the intention of using pepper spray before the person is exposed hereto. In addition, the person exposed to pepper spray shall immediately receive medical attention if needed.

200. The National Police continuously monitor the use of pepper spray by police staff and has noted that the use of pepper spray has declined over the last years.

### **Reply to paragraph 24 of the list of issue prior to reporting**

201. If less coercive measures such as depositing the alien's passport, ordering a designated residence or a duty to report to the police, cf. the Aliens Act, section 34 (1), are not deemed sufficient to secure the possibility of a return, the police shall as far as possible, upon a concrete assessment, administratively detain the alien, cf. section 36 (1), first sentence. The decision to detain an alien can be appealed by the alien to the National Police Commissioner if the alien is released within 72 hours, cf. section 48 (3). This does not suspend enforcement of the decision.

202. If the alien is not released within 72 hours the decision to detain shall be reviewed by a court of justice. The court will assign the alien a lawyer and rule on the lawfulness of the detention, cf. section 37 (1), first sentence.

203. If the decision to detain is upheld, the court must set a time limit for the continued detention. The time limit can subsequently be extended by the court, but only for four weeks at a time, cf. section 37 (3), second and third sentences. When assessing the duration of the detention, the court considers the principle of proportionality and Denmark's international obligations. In this connection, the court shall take into account whether the return proceedings are progressing and whether there are prospects of a return within a reasonable period of time.

204. Detention for the purpose of return under section 36 may not exceed a period of 6 months. The court may extend this period for up to 12 additional months if there are special circumstances, including cases where, notwithstanding all reasonable efforts, the return process may be expected to take a long time owing to the alien's lack of cooperation in the return, or delays in obtaining the requisite travel documents and entry permit. The detention must be as brief as possible and may only be upheld while the return proceedings are being arranged and duly carried out.

205. The police is aware that detention is a very intrusive measure and the police has developed a strategy for the use of administrative detention pursuant to the Aliens Act. The strategy establishes the main framework for the application of detention and is based on the main principle that detention should be used with care and only if and as long as it is necessary to accommodate the targeted objective purpose. The police prioritizes and



promotes cases of administrative detention of aliens as much as possible and the police strives to ensure that detention is as short as possible.

206. The above mentioned rules do not distinguish between adults and minors, and administrative detention of children – including unaccompanied children – is also covered by these provisions. It should be noted that as a general rule the police does not detain minors pursuant to the provisions of the Aliens Act, and such cases only rarely happens and for short periods of time. The Government agrees that detention of children should only be used in exceptional cases, as a measure of last resort and for the shortest time possible.

207. It is not possible to extract the requested information regarding detained aliens, who are or have been detained according to the Aliens Act section 36 in the period 2017–2019 from the National Police's case management system (POLSAS).

208. The data in the enclosed annex 8, table 1–3 is based on the compilation of data from POLSAS and an internal case management sheet. The data is subject to some uncertainty, as the internal case management sheet is kept solely for the purpose of administering the status of aliens deprived of their liberty and not for the purpose of compilation of data for publication, as POLSAS is a case management system rather than a statistical system. In this regard, it is noted that the numbers are dynamic and therefore can be subject to alterations primarily due to post-regulations.

209. Table 1 and 2 in the enclosed annex 8 show the number of aliens, who were detained in the period 2017–2018, cf. the Aliens Act, section 36, disaggregated by adults/unaccompanied minors, nationality and sex. These numbers are based on the compilation of data from POLSAS as of 14 May 2019.

210. Table 3 in the enclosed annex 8 shows the number of aliens, who were detained in the period 1 January 2019–18 June 2019, cf. the Aliens Act, section 36. These numbers are based on the compilation of data from POLSAS as of 18 June 2019.

211. In tables 1–3, aliens who were under the age of 18 at the time of detention, but turned 18 before the time of release, are included as minors for the years of their detention. It is noted that during the period January 2017 to 18 June 2019, no accompanied minors have been detained pursuant to the Aliens Act, section 36.

212. Tables 1–3 include the following categories of aliens named as: Rejected asylum seekers, asylum seekers, illegal stay, Dublin-cases, waived application for asylum and persons who have had their application for asylum rejected on grounds of already being granted asylum elsewhere.

213. The data in the tables 1–3 have been collected based on the abovementioned legal grounds of detention, which was registered at the time of release or at the time of calculation on 14 May 2019 and on 18 June 2019, if the alien was still detained.

214. Tables 1–3 also include information about the aliens registered in POLSAS at the time of calculation on 14 May 2019 and on 18 June 2019. It is noted that nationality is not necessarily the same as the subsequent destination in the event of return.

215. It is noted, that tables 1–3 show the number of detentions and not the number of persons. If a person has been detained and released several times during the relevant period, the person will be included in the data several times.

216. The above mentioned tables do not include cases of brief detention on the actual day of return.

217. Section 37 k of the Aliens Act, which in special circumstances allowed for temporary suspension of an automatic judicial review of administrative detention of aliens, was amended in June 2018. As a consequence, it is no longer possible to suspend the judicial oversight, but the normal deadline of three days for the judicial review can still be extended for up to 4 weeks in special circumstances. It should be noted, that the possibility in the former provision to suspend judicial oversight was never used. Moreover, section 37k is connected to a sunset provision. Therefore, it will automatically be nullified in December 2021.

218. All newly arrived asylum seekers are offered an initial medical interview following their arrival at the reception centre. The purpose of the initial medical interview is to assess the overall physical and mental health of the alien and to determine if the alien has any urgent or otherwise necessary health related issues that needs treatment.

219. The medical interview includes a questionnaire designed by DIGNITY – Danish Institute Against Torture with the purpose of identifying victims of torture. The medical interview is conducted by a nurse, but based on the individual needs of the alien the nurse may refer the asylum seeker to further consultations with a doctor.

220. In connection with asylum seekers' entry into Denmark the task of the Police solely consists of an initial registration of the individuals name, date of birth, nationality, etc. The case is then transferred to the Immigration Service.

221. If the Police, during this initial registration, becomes aware of an asylum seeker who is suffering from physical or mental illness, the police can contact the Danish Red Cross, where healthcare professionals are employed. Furthermore, the police provides the individual with guidance about the possibility of establishing contact with the Danish Refugee Council.

222. Detention of asylum seekers is not a part of the regular asylum case proceedings in Denmark, but may be used in connection to a criminal case. When the police initiates the detention of an alien, the individual is provided with guidance about the detention. In this connection, the individual is asked to inform the police whether the individual is suffering from any illness that demands treatment. The police does not have access to any other information about the alien's health conditions.

223. In cases of detention, where the immigration authorities have rejected the asylum seeker's request for asylum, it may occur that the police receives health information, including initiated torture examinations, in the case files sent from the immigration authorities.

224. The police takes all available information on personal matters, including health, into consideration when determining to initiate or maintain a detention.

225. All detainees have a right to receive medical treatment as well as other healthcare.

226. When a foreigner arrives at the Centre for Foreigners (*udlændingecenter*) for the first time, a nurse attends the foreigner as soon as possible. If necessary, the nurse can refer to a doctor.

227. The personnel at the Centre for Foreigners is continually checking to see whether there is need for supervision by a specialised doctor. An increased attention is given in the first two weeks of the stay.

228. The healthcare professionals in the institutions belonging to the Prison and Probation Service are aware of the fact that the detainees might have been victims of abuse, violent trauma or torture – even in cases where a detainee denies such a thing when directly asked. Thus, the healthcare professionals carry out an individual and specific assessment of the detainee's health condition.

229. If there is suspicion of abuse, torture or ill-treatment, or if the detainee speaks of nuisances caused by torture, relevant questions will be asked. If deemed necessary, the detainee will be referred to a doctor, who takes care of the detainee as soon as possible after the referral. The doctor may refer the detainee to further examination, e.g. at a hospital. The institution's healthcare professionals will simultaneously perform treatment at the institution.

230. Since 1 February 2018, no third-country nationals have been detained in Vridsløselille and the institution is no longer in use. The conditions for female inmates in Ellebæk have been improved. During the summer of 2016, female inmates were placed in a separate building not connected with the institution's main building. As female inmates are placed in a separate building, they are protected against potential harassment from male inmates.

#### **Educational and recreational activities**

231. According to the Aliens Act, section 42 c, asylum seekers older than 18 years of age are required to enter into a contract with the asylum centre. The contract with the asylum

centre requires that the asylum seeker assists with necessary daily tasks at the asylum centre, participates in activities at the asylum centre and/or participates in activities outside the asylum centre, e.g. unpaid job-training programs, and attends classes either at, or in affiliation with, the asylum centre.

232. Asylum seekers, who are granted a residence permit in Denmark, will be offered intensive Danish language courses until they are relocated to the municipality where they are going to live.

233. Asylum seekers who meet certain requirements may request the Immigration Service to approve an offer of employment until he/she is granted a residence permit or until he/she leaves Denmark voluntarily or is deported from Denmark, cf. the Aliens Act section 14 a (1).

234. Asylum seekers older than 17 years of age may opt to participate in the same education and other activities as adult asylum seekers.

235. All migrant children of mandatory school age who have the expenses of their stay and necessary healthcare services defrayed by the Immigration Service have access to primary and lower secondary education equivalent to the education available to bilingual children residing legally in Denmark. Teenage migrants older than the mandatory school age who have the expenses of their stay and necessary healthcare services defrayed by the Immigration Service have access to upper secondary education, provided they possess the required academic qualifications.

### **Social and health services**

236. According to the Aliens Act, section 42 a (1), asylum seekers will have the expenses of healthcare services defrayed by the Immigration Service, provided the treatment is necessary and urgent and/or pain-relieving. Whenever treatment is deemed necessary, the centre-operator needs to request the Immigration Service to provide a guarantee of payment. Further, certain forms of treatment can be initiated by the healthcare professionals at the asylum centre on their own initiative.

237. Minor asylum seekers obtain procedural stay and are entitled to the same healthcare services as any other children in Denmark.

238. According to established practice, social measures are also considered within the framework of necessary healthcare.

### **Reply to paragraph 25 of the list of issues prior to reporting**

239. The rules describing involuntary admission and the use of coercive measures are found in the Mental Health Act. According to the Mental Health Act, section 5, involuntary admission and coercive measures, such as the use of fixation or coerced medication, can only be used at a mental health facility if the patient is insane or suffers from a similar condition. Compulsory admission to a psychiatric ward also requires that the patient would otherwise not be cured, that the mental health of the patient would otherwise not significantly improve, or that the patient would otherwise impose a threat to himself or to others.

240. Persons sentenced to treatment at a mental health facility due to a mental disorder or a comparable condition at the time of committing a crime are also covered by the provisions of the Mental Health Act.

### **Physical restraints and forced medication**

241. In order to limit the use and duration of physical restraints, the Mental Health Act, section 14 stipulates that fixation must only be used short term and to the extent necessary to prevent harm against the patient or others, to prevent the patient from following or harassing other patients, or if the patient vandalizes property in a significant degree.

242. However, a patient can be restrained for more than a few hours if the restraining of the patient ensures the life or security of the patient or others. When restraining a patient, only belt-, hand- and foot restraints and gloves can be used.

243. When a patient is restrained, the Mental Health Act requires medical supervision three times a day as a minimum and continuous assessment of whether restraint should cease or continue. If the physical restraint lasts more than 24 hours, an independent doctor has to attest that use of physical restraints is necessary, cf. section 21. When considered necessary to forcibly medicate a patient, only tested medication can be used with a usual dose and with as few side effects as possible, cf. section 12.

244. As a general rule, all kinds of coercion may only be used after attempts to seek the patient's acceptance of treatment has failed. The use of coercion must be proportional and must be used as gently as possible, so unnecessary discomfort is avoided, cf. the Mental Health Act, section 4.

### **Legal rights for psychiatric patients**

245. The Mental Health Act contains a number of legal rights actions to ensure that coercion is used as little as possible. Among other, every use of coercive measures has to be registered in a protocol with a description of the coercive measure and why it was deemed necessary to use it, cf. section 20. The protocol is monitored by the Danish Health Authority.

246. Every time coercion has been used, the medical staff is obligated to offer the patient a conversation about the coercion and why the medical staff thought it necessary to use coercive measures, cf. section 4. The patient also has a right to talk to a patient adviser, cf. section 24. The patient adviser must assist and guide the patient in relation to questions about the treatment. The patient adviser must also assist the patient, if the patient wishes to complain. The patient can complain to either an independent board or the courts, cf. Mental Health Act, section 34–37.

### **Minor psychiatric patients**

247. Since 2015, the Mental Health Act and the ensured procedural safeguards found in the provisions mentioned above also cover patients between 15–17 years, who do not consent to admission or treatment. This practice was adopted to clarify the legal position of minor psychiatric patients.

248. The Mental Health Act does not apply to minors under the age of 15, if the parent has given parental consent to admission or treatment. However, as stipulated in the Health Act all minor patients, including psychiatric patients, under the age of 15, must be informed and involved in the treatment to the extent that the minor understands the situation. The Mental Health Act also contains an obligation to report interventions performed on children under the age of 15 to the National Board of Health, regardless of whether the intervention is made with parental consent or not.

249. Lastly, the parent who has custody must be informed that he or she has the opportunity to withdraw consent for use of coercion against the minor. If the parent does not wish to decide or do not consent, the Mental Health Act will apply if the other conditions for use of individual coercive measures are met.

### **Alternative forms of treatment and other forms of outpatient treatment programs.**

250. The psychiatric wards use a variety of treatments to help psychiatric patients. The basic principle is to offer the most effective, sufficient and gentle treatment possible. Every treatment is individual and the treatment is, if possible, decided in cooperation with the patient.

251. The following forms of treatment can be mentioned as examples: physical activity and training, musical therapy, training of social skills, creative workshops and behavioral therapy.

### **The number of persons deprived of the liberty in psychiatric hospitals and other institutions**

252. In regards to the question of the number of persons deprived of the liberty in psychiatric hospitals and others institutions, reference is made to the Government's reply to paragraph 18 of the list of issues.

### **Initiatives to reduce coercion in psychiatric hospitals**

253. In general, Denmark has a strong focus on reducing coercion in psychiatric hospitals and a number of initiatives have been taken to contribute to reduce the use of coercive measures.

254. For instance, 70m DKK (9,300,000 euros) has been earmarked per year to establish new intensive psychiatric wards for adults. The wards will focus on intensive care and prevention of coercion. Also for the period 2018–2021, 25m DKK (3,350,000 euros) has been earmarked to inter-sectoral teams to reduce coercion.

### **Reply to paragraph 26 of the list of issues prior to reporting**

255. Reference is made to the enclosed annex 9, table 1. The Government notes, that due to technical reasons, it has not been possible to automatically draw statistics regarding complaints about torture and ill-treatment. Thus, the data in table 1 is based on manual searches in the case management tools of the Department of Prison and Probation Service and does not necessarily provide a complete list of relevant cases.

256. Table 1 includes cases where the inmate explicitly complained about torture or ill-treatment and cases where the inmate did not explicitly complain about torture or ill-treatment, but where the Prison and Probation Service has found it relevant to include the case.

257. The Independent Police Complaints Authority has registered reports on torture and ill-treatment under a separate category since 2016. Before 2016, said reports were filed under other categories, and therefore it is not possible to provide statistical data on cases from before 2016.

258. During the period 2016 to May 2019, the Independent Police Complaints Authority has examined six cases involving reports of torture and ill-treatment.

259. Please find enclosed in annex 9, table 2, data on the six cases disaggregated by place of detention, gender, age and nationality.

260. No disciplinary sanctions have been imposed by the police in these six cases.

261. The Psychiatric Patients' Board of Complaints is responsible for administrative decisions in first instance concerning complaints from psychiatric patients who have received coercive psychiatric treatment in psychiatric facilities in Denmark.

262. From 2015 to 2018, the Board received 6,675 complaints from psychiatric patients who received coercive psychiatric treatment in psychiatric facilities in Denmark.

263. The Board's statistical data concerning complaints from psychiatric patients does not differentiate between complaints from psychiatric patients admitted or treated due to court order and other psychiatric patients. The number of complaints thus covers all complaints received by the Board regardless of, whether the complainant has been admitted or treated due to a court order or not. Furthermore, the Board does not register statistical data on parameters such as sex, age, ethnic origin or nationality or place of detention and is thus not able to disaggregate data accordingly.

### **Reply to paragraph 27 of the list of issues prior to reporting**

264. The Danish Military Prosecution Service may conduct preliminary examinations or investigations into potential breaches of international law committed during military operations, including breaches of international human rights law and the law of armed conflict, which fall under Danish criminal jurisdiction.

265. Preliminary examinations or investigations may be launched on the basis of a report from military commanders or individuals when there is a reasonable suspicion that a criminal act including breaches of international law has been committed, or ex officio by the Military Prosecution Service as required by international law. The Military Prosecution Service does

not form part of the military chain of command and accordingly its investigations are conducted independently of the military chain of command.

266. Furthermore the Danish Military Manual was published in September 2016. It is based on findings from an in-depth study of the experience gained by the Armed Forces over the last 20 years and is binding on all members of the armed forces as a Joint Operation Staff Directive. The Manual was published in English in March 2019.<sup>2</sup>

267. Chapter 12 of the Manual sets out rules for armed forces in connection with the deprivation of liberty; how they are to be treated, how they are to be accommodated, which procedures are to be followed, and what is to happen when they are released or transferred to another State/for prosecution.

268. The Manual confirms that “all persons deprived of liberty are to be treated humanely, with respect, and are guaranteed their rights”. In addition to binding international law, chapter 12 refers to various international instruments, such as the Copenhagen Principles and international human rights law; according to section 1.3 “[human rights law] applies in all conflict scenarios and plays a particularly important role in the area of deprivation of liberty because, in these circumstances, Danish jurisdiction is established from the time Danish forces have physical power and control over the person concerned.”

269. Chapter 12, section 14.2 describes the transfer of persons deprived of liberty and confirms the principle of non-refoulement: “Denmark may not transfer a person deprived of liberty to another State if there are substantial grounds for believing that there is a real risk that the person will be subjected to torture or any other form of cruel or degrading treatment. Nor is a transfer allowed if the transferred person risks the death penalty or a life sentence without the possibility of a reduction of sentence. Furthermore, case law indicates that, in exceptional instances, the transfer of a person deprived of liberty may be inconsistent with the European Convention of Human Rights if the person has already suffered or risks suffering a flagrant denial of a fair trial in the receiving State. Whether a real risk exists must be based on an individual assessment. The general conditions are also relevant to assessing the risk, but the crucial factor is the real risk to which the person deprived of liberty is exposed.” The Manual confirms that the prohibition is absolute.

270. The prohibition applies to the transfer of persons from Danish territory or from a foreign territory in cases in which Danish jurisdiction is established. The prohibition applies not only to the primary State to which Denmark transfers a person but also to any subsequent transfer to a third State.

271. Over the last decade, Denmark has entered into agreements on transfers in connection with the deployment of Danish troops to three different mission areas. The written agreements are adapted to the specific circumstances of the operation and describe the obligations of both Denmark and the host State in relation to the deprivation of liberty and transfer of persons.

### **Reply to paragraph 28 of the list of issues prior to reporting**

272. It is, given the circumstances, legal for a healthcare professional to report such findings. According to the Criminal Code there is no general duty to prevent or report crimes. However, the Criminal Code, section 141 provides a duty for everyone who obtains knowledge of certain serious crimes to do everything in his or her power to prevent the mentioned crimes and their consequences, when necessary by reporting to the authorities. The mentioned crimes includes crimes, which create threat to the life of persons and their welfare.

273. Further, reference is made to Government’s reply to paragraph 24 of the list of issues.

<sup>2</sup> The manual can be found at: [www.fmn.dk/eng/allabout/Pages/military-manual.aspx](http://www.fmn.dk/eng/allabout/Pages/military-manual.aspx).

### **Reply to paragraph 29 of the list of issues prior to reporting**

274. In cases where the claim for damages or compensation in relation to torture is dealt with during the criminal proceedings, and the accused is found guilty, the perpetrator can be ordered to pay damages or compensation to the victim of torture even if the general three-year limitation period is expired.

275. The victim's claim can also be made under separate civil proceedings if they are commenced within one year after the final decision of the criminal case (in which the accused is found guilty).

276. In June 2018, the High Court of Eastern Denmark ordered the Danish Ministry of Defence to pay compensation to 18 Iraqi claimants for Danish complicity in the ill-treatment they had been exposed to by Iraqi police in 2004. The Danish Ministry of Defence has appealed the decision to the Danish Supreme Court and the Court's decision is expected in 2021.

277. There are no statistics available regarding specific cases where redress and compensation measures, including means of rehabilitations ordered by the court, have been given. The Government is not aware of cases of such nature in the reporting period.

### **Reply to paragraph 30 of the list of issues prior to reporting**

278. Denmark has universal health coverage which means that patients have the right to medical treatments if necessary no matter the cause.

279. In Denmark there are 10 specialized outpatient treatment facilities for traumatized refugees – seven public and three private.

280. The cost for these public specialized treatment facilities are estimated to DKK 150 mill. in 2018 (for two of the clinics these costs also covers treatment for war veterans.) The three private treatment facilities receive approximately DKK 54 mill. in public funding for the treatment of traumatized refugees.

### **Reply to paragraph 31 of the list of issues prior to reporting**

281. According to the Administration of Justice Act, section 750, the police cannot impose on anyone to make statements during an interrogation or use any kind of coercion in order to obtain such statements. The court can dismiss evidence obtained in violation of the Administration of Justice Act, section 750.

282. There are no statistics available regarding specific cases where evidence was declined on the grounds that said evidence was obtained through torture or other cruel or degrading treatment. The Government is not aware of cases of such nature in the reporting period.

### **Reply to paragraph 32 of the list of issues prior to reporting**

283. There are numerous definitions of the term intersex. However, they all share that intersex de-notes human beings "that are born with sex characteristics (including genitals, gonads and chromosome patterns) that do not fit typical binary notions of male or female bodies." The umbrella term DSD (disorders of sex development or differences in sex development) is often used as a general medical term for congenital conditions in which development of chromosomal, gonadal, or anatomical sex is atypical. In the following descriptions the Government uses the term DSD. The Government recognizes that widespread use of the term DSD is problematic, and has in its normative work highlighted the need to use more precise descriptors of the individual conditions, such as Klinefelter and Adrenogenital syndrome. The Government also notes that the term is rarely used by health professionals as it is most common to use the name for the specific condition. The Government is in the process of finalizing a review of the regulation of specialized hospital services related to DSD-conditions, that has also addressed the need for non-stigmatizing

terminology in the field. Furthermore, the Government has in its normative work highlighted the fact that the vast majority of epi- and hypospadias (congenital defects of the male urethra) are idiopathic (of unknown origin) and should only rarely be associated with a DSD-condition. Finally, the Government notes that both the term intersex, and the term DSD, can be seen as stigmatizing, as some individuals will consider the term intersex as more fitting to their identity and regard DSD as medicalizing gender identity issues, while others with DSD-conditions feel that the term intersex is highly stigmatizing because they have no ambiguity of sex characteristics or gender identity.

### **Respect for physical integrity**

284. Surgery on cosmetic indication for children under the age of 18 is illegal in Denmark.

285. Differences in sex development (DSD) includes a broad variety of conditions some of which require immediate medical intervention and others that are less serious and require little or no medical intervention. Surgical treatment is rarely relevant for children under the age of 15. Surgery is always conducted on medical indication and only after thorough medical evaluation by medical DSD-experts in a multidisciplinary setting. Surgery on genitals in children with DSD conditions are very rarely performed in Denmark and it is never performed solely with the intention to decide the sex of the child or for gender normalization reasons.

286. Advantages and disadvantages of surgical treatment, in particular of children, will always be carefully evaluated. Surgical treatment is offered at the appropriate time in the child's or young person's life in order to achieve the best possible outcome of the surgery and taking into account the development of the child, including the anatomical and developmental conditions of tissues and organs, etc. There may be several purposes for offering surgery, including preventing urinary tract diseases such as infections and incontinence, preventing fluid accumulation in the vagina and cervix, preserving the possibility for future reproduction, preventing the development of gonadal cancer and improving the child's development and quality of life. Surgical treatment of children and adolescents with DSD conditions can only be performed by two highly specialized hospital departments approved by the Danish Health Authority. The specialized hospital departments are members of the relevant international professional forums such as the European Reference Networks (ERN): Endo-ERN, and eUROGEN. The members of the ERNs consult, exchange information and share knowledge, review patient diagnosis and treatment, and can also develop guidelines.

287. To further improve the quality of the overall treatment of patients with DSD conditions and to ensure increased national and international collaboration, The Danish Health Authority is in the process of finalizing a review of specialized hospital services for DSD-conditions. As a result of this review, the requirements for providing these services has been strengthened to include requirements for highly specialized care for very rare conditions as well as the setting up a national multidisciplinary teams to discuss rare and difficult cases. With this in the relevant medical specialties. The recommendations of this work will include an increased national and international collaboration in the field of both medical and surgical services for patients with DSD-conditions, the Government considered the provision and quality of these services in Denmark to be at the highest international level.

288. Children with DSD conditions are followed regularly by paediatricians and medical professionals from other relevant specialties, such as urologists, gynaecologists, endocrinologists surgeons and mental health professionals, when needed.

### **Counselling**

289. Hospitals services for children with DSD conditions are centralized in three highly specialized university hospital departments depending on the age of the patient and the specific condition. This ensures that children with DSD conditions, the child's parents and adults with DSD conditions receive the appropriate information, support and counselling before treatment is offered. As mentioned, treatment – medical as well as surgical – must only be carried out after informed consent. The patient's consent therefore must be given on the basis of adequate information from the healthcare professional, and the patient can at any



time revoke the consent. Surgical treatment is offered at the appropriate time in the child's or young person's life in order to achieve the best possible outcome.

290. In accordance with Danish law, the information should include information on relevant prevention, treatment and care options, including information on other treatment options and in-formation on the consequences of no treatment being initiated. The information should be more comprehensive when the treatment poses a close risk of serious complications and side effects.

### **Consent**

291. According to Danish law, full, free and informed consent is required to conduct all medical treatments – surgical as well as non-surgical. In Denmark a person is able to give their informed consent at age 15. Until the person turns 15 the required informed consent is given by the parents. No matter the age, the preferences of the person under 15 should always be taken into account. As mentioned above it is illegal to perform surgery on cosmetic indication for children under the age of 18 in Denmark.

292. Surgery will always be preceded by a thorough medical and interdisciplinary assessment where the advantages and disadvantages of the intervention, the child's or the young person's development, etc. is taken into account. It is considered good clinical practice to offer surgery at the time that is most optimal for the child's development, anatomy and in terms of achieving the best possible outcome with the least adverse effects. Surgery that can wait until later in life should therefore be postponed accordingly.

### **Redress possibilities**

293. The Agency for Patient Complaints serves as a single point of entry for all patients who wish to complain about healthcare professionals and/or treatment provided in the healthcare system (public and private). Particularly serious cases may be submitted to the public prosecutor with a view to bringing the case before a court.

294. Patients who have sustained injuries caused by treatment in hospitals or by authorized healthcare professionals may be entitled to compensation, and patients can seek compensation by reporting injuries to the Patient Compensation Association. The Patient Compensation Association is responsible for applying the legislation that deals with injuries occurring in connection with treatment in the public and private healthcare system.

295. The Patient Compensation Association may also award compensation in injuries related to pharmaceutical products, i.e. in cases where patients are injured because of side effects of medicines. Compensation is given for losses and expenses as a consequence of the injuries. The legislation and practices apply to all patients, including intersex persons.

296. The Patient Compensation Association has a registry of more than 150,000 claims, all with medical codes for referral diagnosis, surgical or medical treatment, and possible complications. The Patient Compensation Association has reviewed relevant data to identify cases where intersex children have undergone gender reassignment surgical or medical treatment. The Patient Compensation Association has searched for cases where the referring diagnosis was:

- Gender dysphoria (which could possibly results from child gender reassignment surgery or medication);
- Sex chromosome anomaly.

297. The Patient Compensation Association has received six complaints in the period 2007–2017. Two of the cases were dismissed in the initial face of the complaint process. Three of the complaints were regarding lack of treatment. One complaint addressed the result of treatment.

### **Reply to paragraph 33 of the list of issues prior to reporting**

298. The National Police is overall responsible for countering hate crimes in Denmark and has taken several measures as part of an effort to reduce the number of hate crimes committed in Denmark.

299. For instance, the National Police has increased their focus on the public's willingness to report hate crimes. The National Police has organized a number of initiatives with the purpose of informing the public about hate crimes and the importance of reporting hate crimes to the police, e.g. by attending relevant events, answering questions and encouraging people to report hate crimes. Furthermore, the National Police has initiated a dialogue regarding hate crimes with a number of significant stakeholders such as The Muslim Council and The Jewish Community in Denmark. This was set in motion to establish a closer and ongoing cooperation with the stakeholders and to obtain input to considerations regarding future efforts of the police in this area. The dialogue also serves the purpose of improving the cooperation in order to get more victims to report hate crimes to the police and to highlight any difficulties or barriers regarding the reporting process.

300. Additionally, in 2015 the National Police launched a monitoring program on hate crimes to strengthen the registration and handling of hate crimes in the police districts and to obtain an overview of hate crimes committed.

301. Further, as part of the Danish effort regarding prevention of extremism and radicalization, there are different initiatives targeted at prevention of the development of risk behaviour. An important part of this prevention effort contributes to providing children and young people with democratic skills, honing their critical thinking and social competencies, and thereby preventing the development of risk behaviour. The effort includes a systematic effort in day-care facilities, primary schools and upper secondary schools to strengthen democratic skills and citizenship, mobilization of young people in prevention of hate speech and radicalisation online, and a nationwide youth dialogue corps consisting of young people aged between 18 and 35 who run discussions and workshops to fuel a debate among young people on topics significant to their development. This includes topics such as identity, discrimination and non-discrimination, images of friends and enemies, intolerance, extremism, etc.

302. Furthermore, supplementary training is offered to a range of professionals working in close contact with youngsters e.g. in the social services, schools and upper secondary school so that they may be able to prevent and respond to signs of risk behaviour.

## **III. Other issues**

### **Reply to paragraph 34 of the list of issues prior to reporting**

#### **Greenland**

303. The rights enshrined in the Convention are primarily legislatively secured through the Administration of Justice Act and Criminal Code for Greenland. The acts entered into force in January 2010 and form part of a greater judicial reform in Greenland following a report from the Commission on Greenland's Judicial System (*Den Grønlandske Retsvæsenkommission*).

304. According to the mandate of the Commission, it was, inter alia, the task of the Commission to ensure that the judicial system of Greenland is in conformity with the international obligations, which the Realm must observe, including in particular human rights obligations. The consideration for human rights has for example led to the codification of a number of fundamental principles regarding criminal proceedings.

305. Furthermore, the Commission made a thorough examination of the accordance of indeterminate sentences (safe custody) with international obligations, including articles 1 and 16 of the Convention against Torture. Another example is the legal regulation of treatment of prisoners which has been updated in conformity with international obligations in this field.

306. Additionally, the mandate of the Danish Institute for Human Rights was expanded in 2014 to also cover Greenland, which gives the institute a mandate to monitor the promotion and protection of human rights in Greenland, including the Convention against Torture.

### **Faroe Islands**

307. The Faroese Criminal Code is in most areas identical with Danish Criminal Code. The Faroes criminal law, as the Danish, does not have a specific provision on the crime of torture. Instead all acts covered by the definition of torture in article 1 of the Convention against Torture – including acts where mental pain and suffering is inflicted on the victim, are covered by existing provisions of the Faroese Criminal Code.

308. The Faroese Criminal Code also has a similar special provision, which makes torture an aggravating circumstance in the determination of a penalty for violation of the Criminal Code.

309. The Faroese special provision deviates from the Danish in a single area: Handicap has been added as an aggravating cause for torture.

### **Reply to paragraph 35 of the list of issues prior to reporting**

310. As regards measures taken by the State party to respond to threats of terrorism, reference is made to Denmark's sixth and seventh periodic reports.

311. Since then, Denmark has, inter alia, taken the following steps:

312. By Act no. 9 of 7 October 2015, the Defence Intelligence Service Act (Lov om Forsvarets Efterretningstjeneste) was amended to allow the Defence Intelligence Service of information about Danish residents staying overseas when there are certain reasons to believe they participate in activities that may involve or increase threats of terrorism to Denmark and Danish interests.

313. By Act no. 1880 of 29 December 2015, Parliament passed an amendment to the Criminal Code regarding penalty for joining a hostile armed force. With the amendment, foreign fighters risk life imprisonment under particular aggravated circumstances if they join a hostile armed force. Recruitment for and incitement to join a hostile armed force is punishable by up to 16 years imprisonment.

314. By Act no. 642 of 8 June 2016, Parliament amended the Criminal Code in respect of armed conflicts occurring overseas. Thus, the maximum penalty for being recruited for terrorism or otherwise furthering terrorism was raised from 6 years' imprisonment to 10 years' imprisonment – and to 16 years' imprisonment under particular aggravated circumstances – in those cases where the crime is related to the perpetrator's having joined an armed force. Furthermore, the Government was authorised to designate areas where Danish nationals and residents are not allowed to go without prior permission from the Danish authorities. An area may be designated if a terrorist organisation is a party to an armed conflict in the area.

315. Furthermore, by Act no. 674 of 8 June 2017, the Administration of Justice Act was amended with a view to enable the police, after obtaining a court order, to require Danish Internet Service Providers to assist the Police in blocking access to a website if there is reason to believe that violations of the Criminal Code's rules on terrorism are committed from the website.

316. On 20 December 2018, Parliament passed the so-called PNR Act. The Act creates a legal basis for law enforcement to access PNR data (Passenger Name Records) and to establish a Danish PIU (Passenger Information Unit) under the Danish National Police. The Danish PIU processes PNR data for the prevention, detection, investigation or prosecution of terrorist offences and serious crime. The Danish PIU appoints a data protection officer responsible for monitoring the processing of PNR data and implementing relevant safeguards.

317. Denmark observes that the above-mentioned measures are in compliance with the European Convention on Human Rights, the Convention against Torture and other relevant international legal instruments and human rights safeguards. Thus, the measures are generally

of important interests of society, including national security, public safety and the prevention of crime, and do not go further than necessary to achieve the aims sought. Furthermore, anti-terrorist measures performed by the Danish Security and Intelligence Service, such as invasion of the secrecy of communication, are generally subject to prior approval by the courts. Oversæt fra dansk Viser oversættelse for Oversæt Målrettet indhentning af oplysninger om danske ekstremister, når de opholder sig i udlandet. Formålet med bestemmelsen er, at styrke FE's muligheder for at forebygge og modvirke terrortrusler mod DK og danske interesser. i stedet Mente du.

318. The European Convention on Human Rights is particularly relevant for the work of the police. Teaching on the European Convention on Human Rights and its relevance for policing takes place at the National Police Academy as a part of the theme: "Law enforcement and cultural understanding". The Police Academy has close relations with the Institute for Human Rights and DIGNITY – Danish Institute Against Torture.

319. Police officers employed by the Danish Security and Intelligence Service (PET) have completed the basic training programme of the Danish Police Academy. As part of their employment with PET, police officers undergo special training in relation to, among other topics, antiterrorism and they are given instructions on the topic of civil rights. Furthermore, a separate training programme is provided for special units under PET, such as the Personal Protection Unit and the Special Intervention Unit.

320. Since 10 December 2015, there have been a total of 18 convictions of crimes related to terrorism.

321. Consolidated data regarding complaints of non-observance of international standards are not available.

#### **IV. General information on other measures and developments relating to the implementation of the Convention in the State party**

##### **Reply to paragraph 36 of the list of issues prior to reporting**

322. Since the Committee's consideration of Denmark's sixth and seventh periodic reports, Denmark has prepared a revised version of the common core document on Denmark for reporting under the international human rights conventions of the United Nations. The revised version of the common core document was presented to the OHCHR 28 March 2018. The revised common core document includes a full account of Denmark's legislation, policies, and administrative framework relating to human rights policy and implementation of conventions to which Denmark is a State Party. Specific reference is made to section II of the common core document, which gives an overview of the general framework for the protection and promotion of human rights in Denmark, including the right to freedom from torture.

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