BRIEFING

to the UN Special Rapporteur on Torture (UN SRT)
Professor Manfred Nowak

Denmark's compliance with the UN Convention against Torture
in the period May 2007 – April 2008

Prepared for the UN SRT's country visit to Denmark
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Rehabilitation and Research Centre for Torture Victims (RCT)
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I. Introduction

The present briefing has been prepared for the UN Special Rapporteur on Torture, Professor Manfred Nowak, in connection with his country visit to Denmark on 4-11 May 2008.

The briefing covers some key issues regarding Denmark's compliance with the UN Convention against torture in the period May 2007 – April 2008. Denmark's 5th period report was examined by the UN Committee against Torture in May 2007. In this connection, the RCT submitted an alternative report, which contains a detailed analysis of Denmark's fulfilment of its obligations under UNCAT. As the current briefing only covers new developments the past year, it is recommended to refer to the alternative report for a more comprehensive analysis of Denmark's compliance with the UNCAT.

II. Development in Denmark's compliance with the UNCAT since May 2007

Article 1

Definition of torture

RCT is concerned that the definition of torture, which is currently under consideration in Parliament, is not in accordance with the definition of torture in article 1 of the UN Convention against Torture (UNCAT). Please see the comments under article 4.

The Danish Security and Intelligence Service's use of hoods during the arrest of terrorist suspects

RCT is concerned about the Danish Security and Intelligence Service's (PET) reported use of hoods during the arrest of terrorist suspects on at least on occasion in September 2006 and the risk that hoods may be used in future PET operations.

On the night between 4 and 5 September 2006 the Danish Security and Intelligence Service (*Politiets Efterretningstjeneste*, PET)[1] conducted a large scale police operation in the residential area of Vollsmose, in the city of Odense, and arrested 9 people on suspicion of planning terror acts. In total PET arrested 60 persons, including relatives and acquaintances.

The Danish newspaper 'Weekendavisen' brought an article on 12 January 2007 about the PET operation based on interviews with the involved PET agents.[2] The article revealed that some of the arrestees had been hooded when arrested. It further stated that the PET explained the hooding as a necessary measure to secure evidence and to protect the arrestee's identity.

[1] http://www.pet.dk/English.aspx
[2] 'Weekendavisen': 'At modvirke og forhindre terrorhandlinger', 12 January 2007.

In December 2007 the Danish newspaper 'Information' brought several articles focusing on the PET's use of hoods during the operation in September 2006.[3] According to Professor Bent Sørensen (former member of the CPT and CAT) the PET's use of hoods amounted to torture. The articles were based on information given by the PET on earlier occasions, interviews with some of the suspects arrested during the PET operation in September 2006, who were subsequently acquitted, and interviews with Danish politicians.

The articles stated that 5 of the 9 main suspects arrested on 5 September 2006 were hooded by the PET at the time of their arrest and remained so until their arrival at the police station. The hoods were made of fabric and covered all the face, including the nose and mouth. The suspects stated that they were not informed of the grounds for their arrests until they were interrogated and that the interrogations for some of them occurred several hours after the arrest. Several of the arrestees reported that they had been isolated in cells prior to the interrogation, still unaware of the grounds for their arrest. In one of the newspaper articles several of the former suspects described their experiences from their arrests. All of them had been very scared and the hoods had caused feelings of fear and stress. One of the former suspects explained that he had been hooded for several hours. Another explained that he had thought he was being arrested/ kidnapped by foreign secret police, since he felt certain that Danish police would not use such methods.

Today several of the acquitted persons have not returned to their jobs and resumed their education due to psychological distress and problems. The problems are, according to the victims, a result of the PET arrest and the experience of being in solitary confinement.

On 17 December 2007 the Legal Affairs Committee of the Danish Parliament posed several questions to the Minister of Justice Lene Espersen in order to receive an explanation of why the PET had used hoods when arresting the terrorist suspects on 5 September 2006. They also inquired if it was correct that the arrested suspects had not been informed of the grounds for their arrest. Additionally the Legal Affairs Committee asked if the hoods had been used during other operations. In January 2008 the Legal Affairs Committee also requested to see pictures taken during the PET operation that show the arrestees with the hoods, which the Committee had learnt had been shown to two journalists from 'Weekendavisen'.

The Minister of Justice and the PET provided the following response on 27 February 2008:[4]

> During the PET operation on 5 September 2006 the PET agents used hoods on 5 of the arrested persons. However this was only for security and tactical reasons so as to ensure that the suspects could not see the PET vehicles and their working methods during the operation. The PET dismissed that the hoods had been used as means of intimidation and stated that the hoods had not been used in any other operations. Furthermore the PET confirmed that it was correct that the suspects had not been informed of the grounds for their arrest at the time of arrest, but that they had been informed of the charges soon after, during the interrogation at the police station.
>
> In addition the PET stated that they could not rule out that there might be cases in the future where it would be necessary for their agents to use similar methods to blind the sight/ cover the eyes of an arrestee in order to ensure security and tactical methods. This statement was acknowledged and accepted by the Ministry of Justice.

[3] 'Information': 'Kritik af politiets metode under terror-anholdelse' and 'Jeg troede, jeg var på vej til et hemligt CIA-fængsel', 14 December 2007; 'Hvorfor hætter?' 17 December 2007; 'Bliver hætter til anholdte standard i terrorsager' 19 December 2007; 'Hætte-billeder holdes hemlige' 29 Februar 2008; link: www.information.dk
[4] Link: http://www.pet.dk/Nyheder/Svar%20til%20Folketinget/besvarelse%20af%20spørgsmål%20nr.-d-.%20119.aspx

> The PET and the Ministry of Justice refused to hand over the pictures taken during the operation in September 2006, but said that they would be willing to come to Parliament and show them confidentially to the Legal Affairs Committee.

Several politicians have subsequently publicly asked, why only 5 of the main suspects were hooded the night of the arrest, if the actual reason for the hooding was to conceal PET's working methods and for security reasons. The PET has not explained why the other arrestees were not afforded the same treatment. PET and the Ministry of Justice have dismissed using hoods in any other PET operations. However, defence attorney Bjørn Elmquist has stated that one of his clients who was arrested on charges of planning terrorist activities during another PET operation, which took place in October 2007, had also been hooded when arrested.

The Danish Security and Intelligence Service's cooperation with intelligence services in the Middle East that are known or suspected of practising torture

RCT is concerned about the statement of the Danish Security and Intelligence Service (PET) that, as part of Denmark's efforts to fight terrorism, PET is considering to intensify its cooperation with intelligence services in the Middle East that are known or suspected of practising torture.[5] RCT is also concerned about the position of the Danish Government that PET may use information obtained as a result of torture as long as such information is not used as evidence in a court case. RCT believes that such cooperation may (indirectly) enhance the continued practice of torture (outside Denmark) and undermine the absolute prohibition of torture.

On 11 September 2007 the recently appointed head of the PET, Jaboc Scharf, stated that as part of the fight against terror it will be necessary for the PET to extend its cooperation to states in the Middle East with whom PET has had no previous cooperation, as these states have a particular significance in the fight against terror. Scharf noted that "such extended cooperation naturally has both practical and legal problems, but these are problems to which we have to find solutions."

As a result of the PET statement, the Minister of Justice was asked to respond to several questions raised in Parliament by Frank Aaen, MP (Enhedslisten) on 28 September 2008.[6]

The Minister of Justice answered that PET's cooperation with foreign intelligence services was in compliance with Danish law, and she was fully confident that this cooperation was also in accordance with the Rule of Law. With respect to the use of information obtained under torture, the Minister referred to article 15 of the UNCAT and added that Danish law does not contain similar limitations when it comes to the police's use of information as part of the investigation (*efterforskningsarbejde*). In other words the Minister concluded that in would not be a breach of UNCAT or Danish law, if the PET would use information obtained as a result of torture, as long as such information would only be used for investigative purpose, and not in a court case.

The Minister of Justice has been backed by the Prime Minister, Anders Fog Rasmussen, who stated on 9 October 2008 that:

[5] The statement was made at a public meeting at Copenhagen University, 11 September 2007.
[6] Questions raised on 28. September 2007. : S 6184, S 6187, S 6189-90, S 6192-94. The questions and answers can be found at http://www.ft.dk/Samling/20061/MENU/01181740.htm

> *"It is my clear conviction that if Danish authorities receive information, which can contribute to the prevention of terrorist acts, then we should use such information. We owe it to the Danish population to do all we can to provide the greatest security".*[7]

The statements of the government have been met with fierce criticism from a wide range of independent experts, political parties, human rights organisations and the former head of PET.

The UN Special Rapporteur on Torture, Manfred Nowak, has stated that although it may be practically impossible to exclude cooperation with "torture states", such inter-state cooperation must take place under conditions that ensure that the UNCAT is respected by both parties. [8]

The UN Special Rapporteur on human rights and counter-terrorism, Martin Scheinin, has gone one step further stating that in situations where intelligence service share information, any indirect involvement in torture would be contrary to the absolute prohibition of torture.[9]

The International Commission of Jurists (Danish Section) has pointed out that any cooperation between intelligence services is based on the mutual exchange of information. In the ongoing cooperation with intelligence services in the Middle East, there will consequently be a hand-over of information about Danish citizens, residents or asylum-seekers in Denmark to the foreign intelligence services. Such information may well place individuals in the recipient states at risk of torture or ill-treatment.[10]

The Forum on the Rule of Law (*Retssikkerhedsfonden*) and the RCT held a national conference in January 2008 on the issue of cooperation and exchange of information between intelligence services. On that occasion, the head of PET, Jacob Scharf, underlined that PET never uses any information without first evaluating whether or not it has been obtained legally. However, he could neither specify how such evaluations are made, not indicate whether any PET evaluation has ever concluded that the information received was obtained illegally, notably as a result of torture.

Use of Danish airspace and airports in connection with the US-led programme on renditions

RCT is concerned about the fact that private airplanes, the so-called CIA-flights, have crossed Danish airspace and landed in Denmark's and Greenland's airports on several occasions. RCT is furthermore concerned that despite these revelations and despite international recommendations to initiate independent investigations, the Danish government has not found it necessary to do so. Instead it has limited itself to appointing a Ministerial Committee that will investigate the matter.

The Danish Government has, in a letter to the European Parliament's Temporary Committee on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners (TPID), reported over 100 flights through Danish airspace and 45 stopovers in Danish airports by planes allegedly used by the CIA, including for renditions.[11]

[7] Statement by the Prime Minister at his weekly press conference, 9 October 2007.
[8] Cf. RCT press release of 10 October 2007 and DIHR press release of 10 October 2007.
[9] Cf. Danish Institute for Human Rights, press release of 10 October 2007.
[10] Chronicle in the newspaper "Politiken", 22 November 2007 (newspaper and date to be confirmed)
[11] Cf. Amnesty International's alternative report on Denmark to the Committee against Torture, May 2007. http://www2.ohchr.org/english/bodies/cat/docs/ngos/AI_Denmark.pdf

In January 2007 it was revealed that private airplanes connected to CIA had landed 39 times in Denmark and 34 times in Greenland.[12] The Danish government found that it was not necessary to investigate these incidents further.

At the end of January 2008 the Danish radio DR broadcast a documentary called "CIA's Danish connections", which showed how an air plane from a fictive CIA corporation had landed in Greenland. The pilot was linked directly to CIA. On these grounds the Danish government appointed a Ministerial Committee, which was to investigate the matter and to present a review of the situation. The Committee is expected to present its findings during the summer of 2008.

These incidents gave rise to a debate in the Danish parliament early 2008. In January 2008, the political opposition in Parliament asked the government to provide any information available on the previously documented CIA flights in Danish and Greenlandic territory. Furthermore, the opposition asked the government to clarify if Danish authorities had knowledge of the CIA flights.[13]

In response to the opposition, the Minister of Foreign Affairs Per Stig Møller stated that the Parliament had already received an answer to this question back in 2005. The Minister repeated his previous answer that the government had no reports or knowledge of any CIA flights landing in Greenland and the alleged CIA flights were only accusations of the Danish media. The Minister further stated that the government would await the above-mentioned Committee's findings.[14]

The political parties in opposition characterised development as a step in the right direction. However, the opposition maintained – and still maintains – the need for an impartial investigation of the whole matter in order to establish whether the Danish authorities have been involved. The opposition has suggested that the investigation include interrogation of witnesses and the possibility of pressing charges if it is revealed that unlawful actions may have taken place.[15]

As is well known, the Council of Europe and the European Parliament have requested the European governments, including the Danish, to initiate independent investigations into all stopovers made by civilian aircraft carried out by the CIA, at least since 2001. Whether the findings of the announced Danish investigation will be forwarded to the Council of Europe and/or the European Parliament is uncertain.[16]

[12] Ibid.
[13] Parliamentary debate of 6 January 2008: http://www.ft.dk/doc.aspx?/samling/20072/MENU/00000002.htm
[14] Ibid.
[15] Spokesman of the Socialdemocratic party Jeppe Koefod, 'Information', 29 February 2008
[16] European Parliament resolution on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners (2006/2200(INI)), adopted on 14 February 2007.

Article 3

The Danish Government's possible adoption of a policy of seeking "diplomatic assurances" from states that are known to practice torture

RCT is concerned about the perspectives of the Danish government concluding bi-lateral agreements with "torture states" and hereby relying on "diplomatic assurances" that persons who are expelled by Denmark will not be subjected to torture upon return to the recipient country.

In recent months, Denmark has had cases in which the issue of administrative expulsion has arisen in relation to persons, who are considered a threat to national security by the Danish Security and Intelligence Service (PET). As such expulsions may be contrary to Denmark's international obligations, the Government is considering whether to seek "diplomatic guarantees" from "torture states" that persons who are expelled from Denmark will not be subjected to torture.

In February 2008, the Danish authorities arrested two Tunisians and a Dane of Moroccan origin, reportedly on suspicion of involvement in an alleged conspiracy to murder one of the cartoonists who drew the controversial caricatures of the Prophet Mohammad. This alleged conspiracy has been characterized by the Danish authorities and in the Danish media, as a 'terrorist' plot.[17]

Within days of the arrests, the Danish national was released. The two Tunisian nationals, who both hold Danish residency permits, have not been charged with any criminal offence; they remain in detention [18] and may face expulsion from Denmark, reportedly on the grounds that the Danish Intelligence Services consider them to be "a threat to national security". They are now awaiting a decision on whether or not they will undergo administrative expulsion and be sent back to Tunisia.

In a recent case, the European Court of Human Rights concluded that the deportation to Tunisia of a Tunisian living in Italy would have amounted to a violation of Italy's obligation, under the ECHR, not to remove anyone to a country where they would face a real risk of torture or other ill-treatment (Saadi vs. Italy, 28 February 2008). The Court noted what it described as the "disturbing situation" in Tunisia, as described in reports of international organizations, including Amnesty International and Human Rights Watch, particularly in relation to "numerous and regular cases of torture and ill-treatment" of individuals charged and detained under counter-terrorism legislation in Tunisia.

In a similar case, two Iraqis were considered a threat to national security in 2007 by the PET, which took steps to initiate an administrative expulsion of the said persons. Consequently, in late 2007 their residency permits were withdrawn and they were detained until the expulsion was possible. Early April 2008, the Danish Refugee Council decided that the two Iraqis could not be returned to Iraq, as this would not be safe. The Danish Refugee Council's decision is based on the fact that it was not informed why the PET considered the two Iraqis to be a security risk. The Iraqis have instead been granted "tolerated residence permits" in Denmark.[19]

[17] Cf. press release of 9 April 2008 issued jointly by Euro-Mediterranean Human Rights Network (EMHRN); Amnesty International Denmark; Rehabilitation and Research Centre for Torture Victims (RCT); Committee for the Respect of Liberties and Human Rights in Tunisia (CRLDHT); Tunisian League of Human Rights (LTDH); National Council for Liberties in Tunisia (CNLT); and Tunisian Association of the Democratic Women (ATFD).
[18] The Danish Supreme Court has just accepted to examine whether the Tunisians should still be detained.
[19] Article in the newspaper "Politiken" dated 2 April 2008, and press release from DIHR dated 8 April 2008.

As a result of these two cases the Danish Minister of Justice Lene Espersen decided in early April 2008 to appoint a committee of civil servants that will investigate existing Danish legislation concerning administrative expulsion vis-à-vis persons who hold Danish residency permits and the possibilities of concluding agreements containing "diplomatic assurances" with States that are known to torture returned citizens.[20]

The Minister of Justice stated on 20 and 21 April 2008 that she is very positive about the idea of concluding "diplomatic assurance" agreements with torturing states so as to ensure that terror suspects residing in Denmark can be returned to their home country without being tortured.[21]

The Minister of Justice has stated that she has spoken with representatives from Great Britain at a recent EU meeting, and they believed they had been very successful in making these types of diplomatic agreements with torturing countries. Furthermore the Minister stated her belief that Denmark, as a comparable state to Great Britain, would be able to do the same.[22] The Minister is certain that diplomatic agreements will be able to ensure the safety of expelled or rejected asylum seekers and that the procedure will be compatible with Denmark's international obligations.

The political parties that constitute the Danish government have stated that they are positive towards the idea of making such expulsion agreements. The political opposition, however, has expressed strong concerns about whether such diplomatic assurances would be in accordance with Denmark's international obligations.

Amnesty International (Danish section) has strongly recommended that the Danish government not adopt a practice of making diplomatic agreements with states known to practice torture for the purpose of expelling "terror suspects" from Denmark. Several cases, such as the Agiza-case[23], have shown that "diplomatic assurances" do not work in torture cases. Instead, Amnesty International recommends increasing the budget of PET so as to boost their capacity to maintain national security.[24]

On earlier occasions, the Danish Institute of Human Rights has spoken out against diplomatic agreements with "torture states". However, most recently, the Institute has stated that it cannot dismiss the use of diplomatic agreements in all cases; instead such "torture free agreements" should be assessed on a case to case basis.[25]

[20] Article in the newspaper "Politiken" dated 9 April 2008.
[21] Article in the newspaper "Politiken" dated 20 April 2008; Interview with the Minister of Justice Lene Espersen in the Danish radio P3 in 'Godmorgen P3', 21 April 2008. 'Berlingske Tidende' : 'Lene E. vil udvise til torturstater', 21 April 2008; 'Berlingske Tidende': 'Terrorister må ikke kunne søge ly bag menneskerettigheder', 21 April 2008.
[22] Interview with the Minister of Justice Lene Espersen in the Danish radio P3 in 'Godmorgen P3', 21 April 2008.
[23] CAT/C/34/D/233/2003
[24] National Television News, "DR" (TV-avisen), Interview with the Secretary General of the Danish section of Amnesty International, Lars Normann Jørgensen, 21 April 2008.
[25] Danish Institute of Human Rights, "Torturefri aftaler skal vurderes fra sag til sag", 22 April 2008, and the newspaper "Information": "Diplomatiske forsikringer kan beskytte mod tortur", 22 April 2008.

Article 4

Criminalization of torture in the Danish Criminal Code and Military Criminal Code

RCT is concerned that the draft bill to amend the Criminal Code and Military Criminal Code (L 98), which is under consideration in Parliament, does not follow the recommendations of the Committee against Torture in its conclusions and recommendation concerning Denmark, July 2007.[26] First of all, the draft bill does not propose to incorporate a specific offence of torture, as defined in article 1 of the Convention, in the Criminal Code and Military Criminal Code, but only suggests that torture be include an as aggravating circumstance. Secondly, the draft bill does not ensure that acts of torture, attempts to commit torture, and acts which constitute complicity or participation in torture, can be investigated, prosecuted and punished without time limitations.

At present Denmark does not have a specific offence of torture in the Criminal Code. Since Denmark's ratification of the UNCAT in 1987 it has been the position of the Director of Public Prosecutions and the Ministry of Justice that torture can be punished appropriately according to the Criminal Code's provisions on assault (Sections 244-46), placing another person in a helpless position (Section 250), causing danger intentionally (Section 252), unlawful coercion/duress (Section 260), unlawful deprivation of liberty (Section 261), threats about committing an unlawful act (Section 266) and crimes committed in public duty (chapter 16). These crimes carry a statute of limitation of ten years.

The question of whether the Danish criminal code should include a specific torture offence has been raised several times over the years. In 2005 Amnesty International collected more than 145.000 signatures from Danes in favor of a specific torture offence and in the same year the Public Prosecutor for International Crimes was forced to drop several cases related to torture due to the statute of limitation of ten years.

This provoked the Minister of Justice in 2006 to request the Standing Committee on Criminal Matters to consider whether to introduce a specific torture provision in the Criminal Code and whether there should be a specific provision on the statute of limitation in relation to such a provision.[27] In the terms of reference for the assignment it is stated that:

> *"The Ministry of Justice finds that Denmark is not under any international obligation to introduce a specific torture provision in the Criminal Code. At the same time, the Ministry of Justice is aware of the fact that the introduction of a torture provision in the Criminal Code would send a positive signal to the international community. Furthermore, such a provision would address the criticism, which has been raised against Denmark. In addition, there is the question of the statute of limitation in relation to criminal liability for acts of torture"*

In May 2007 the Committee against Torture considered the fifth periodic report of Denmark. In its conclusions the committee once again encourages Denmark to enact a specific offence of torture in the Criminal Code.[28]

[26] Conclusions and Recommendations of the Committee against Torture, Denmark, 16 July 2007, CAT/DDNK/CO/5, para. 10-11.
[27] Mandate of the Standing Committee on Criminal Matters, 23 June 2006.
[28] Conclusions and Recommendations of the Committee against Torture, Denmark, 16 July 2007, CAT/DDNK/CO/5.

In January 2008 the Standing Committee on Criminal Matters presented a White Paper on the inclusion of a specific offence of torture in the Criminal Code.[29] The main conclusion of the Committee is that torture should not be enacted as a specific offence, but that it should be included in the Criminal Code (and the Military Criminal Code) as an aggravating circumstance. In the White Paper the committee has made a concrete suggestion for the wording of that such a provision in the Criminal Code. The crime of torture will still carry a statute of limitation of ten years.

In its White Paper the Committee once again underlines that torture is already criminalized in Denmark, as all acts of torture are covered under separate provisions of the Criminal Code. The Committee reaffirms that international law does not oblige Denmark to enact a specific provision on torture in the Criminal Code.

Despite their conclusion, the Committee acknowledges that there could be several reasons why it would be desirable to enact a specific offence of torture in the Criminal Code. The committee points out that torture is one of the most serious international crimes and that there is an absolute prohibition of torture in international law. Enacting a specific provision would reinforce the Danish commitment to upholding this absolute prohibition and would create increased awareness on the issue both nationally and internationally. Further, such a provision would enable the authorities to register cases of torture more easily.

Against the enactment of a specific provision the committee mentions the difficulties surrounding the definition of torture. The committee states that there are different definitions of torture in different international conventions (UNCAT, Rome Statute, etc.) and that it may prove difficult to ensure that an actual provision covers all the definitions. Further, the Committee states that torture is committed in various forms and for different purposes. It will be difficult to account for different and varied crimes of torture in one single provision on torture. The committee also states that the maximum and minimum penalties in the Criminal Code should signal the severity of the crimes. As acts of torture may be very different in nature, introducing one single provision on torture may have the effect that the maximum and minimum penalties are spread too thin. This means that a provision on torture will not be able to respond with a penalty suited to the character and severity of the act of torture committed.

On January 2008, the Ministry of Justice sent the White Paper in a written hearing to a wide range of state institutions and non-governmental organisations, including the Danish Red Cross, Amnesty International and the RCT. All of these organisations have recommended the enactment of a specific offence of torture rather than the proposed solution of treating torture as an aggravating circumstance.

The RCT submitted a detailed response to the hearing making the following points amongst others:

1) Torture is one of the most serious international crimes. As one of very few international human rights the prohibition of torture is absolute. The prohibition of torture is well established under customary international law as *jus cogens*.

2) Torture is a specific criminal offence. It is not adequate to only criminalize torture by way of existing provisions of the criminal code. The existing code does not properly take into account the premeditation of the crime of torture both as relates to the infliction of severe pain or suffering and to the purpose with which the perpetrator inflicts such pain. This premeditation may be compared to that which is required for committing rape. If we imagine that there was no provision in the Criminal Code on rape this would also only be punishable under separate provisions of the Criminal Code. To commit the crime of rape it requires that

[29] Straffelovrådets Betænkning om en torturbestemmelse i straffeloven, 2008. Betænkning nr. 1494

it be proven that the perpetrator has premeditation to sexually violate the victim, which would not be properly covered by these separate provisions. This would be unacceptable both in relation to the nature of the crime of rape, but also for the victim. This is most certainly also the case for the crime of torture.

3) Denmark should send a clear signal that torture is unacceptable under any circumstance. There seems to be little coherence in the political motivation of the Danish government as to which crimes are introduced as specific provisions in the Danish Criminal Code. Both human trafficking and female genital mutilation have recently been introduced in the Danish Criminal Code, despite the fact that they have been found to be criminalized by way of existing provisions in the Criminal Code. The government has underlined that they wish to send a signal that these crimes are so heinous and that they are not acceptable in the Danish society. Is torture not such a heinous crime that the government wishes to send a similar signal?

4) Statute of limitation. The introduction of torture as an aggravating circumstance does not solve the problem of a statute of limitation. The Public Prosecutor for international crimes has been forced to drop cases due to the statute of limitation. Further, the fact that certain crimes that are part of the Rome Statute for the International Criminal Court carry no statute of limitations in the Danish Criminal Code will have the effect that certain acts of torture committed during armed conflict and in peace time will be treated differently from one another, which besides creating institutional conflict and confusion, will have a disagreeable effect on the public sentiment of justice.

5) Definition of torture. The definition of torture included in the suggested provision does not correspond with the definition of torture in the UNCAT. The definition is different in two ways. As regards the purpose the list that is included in the provision has been made exhaustive and with regard to the perpetrators the provision will not include torture that has been committed by private firms at the request of the authorities.

6) Denmark as a key actor in the international fight against torture. Over the past decades, successive Danish governments have played a key role in the global fight against torture both at the normative level, at policy level and at implementation level in many countries worldwide. As a result of many years of development assistance to fight torture, Danish organisations and institutions have played an important role in promoting the eradication and criminalisation of torture in states, which are known to practice torture. Such states turn to Denmark when they are considering whether and how to criminalise torture, but without a clear and specific provision against torture in Denmark's Criminal Code it will be difficult to explain why other states should enact such provision in their Criminal Code.

7) Several other European states have a specific torture offence in their Criminal Code. This includes Norway, Germany, the United Kingdom, France and Spain.

Based on the recommendations of the Standing Committee in Criminal Matters, the Minister of Justice has tabled a bill to include torture in the Danish Criminal Code as an aggravating circumstance. The bill was introduced on 12 March 2008. Thus, the Minister has chosen to follow the recommendations of the Committee in full. The bill has gone through the first reading on 10 April 2008 and it has now been referred to the Legal Affairs Committee of the Parliament. It is expected that they will conclude their work in the middle of May. The RCT will currently holding meetings with individual members of the Legal Affairs Committee and an appearance before the full Legal Affairs Committee will take place on 24 April 2008. The purpose of these meetings is to try to persuade a majority of parliament to introduce torture as a separate offence with no statute of limitation. A majority of parliament has spoken in favour of the tabled bill.

Article 11

Use of excessively harsh practices by some correctional staff in Danish prisons

RCT is concerned about the recent development in two Danish prisons where a "hard core" of correctional officers have used excessively harsh practices via-à-vis both inmates and colleagues, hereby generating a negative prison environment.

Over the past years there have been reports of problems in two Danish prisons where correctional officers have reportedly used excessively harsh practices, hereby creating a negative environment for both prisoners and other correctional officers. Please find below a description of the problems that have occurred in Herstedvester prison and the new State prison in East Jutland.

Herstedvester Fængsel (Prison situated in Albertslund, west of Copenhagen):

Since 2005 there have been reports of problems with a smaller group of correctional officers in the prison. The officers have reportedly used excessively harsh practices towards inmates, assaulting them and harassing other correctional officers. The former prison warden filed several complaints against the correctional officers over these practices. However, the behaviour of the correctional officers allegedly did not improve, and caused the former prison warden to resign in October 2007.

In November 2007, the Minister of Justice, Lene Espersen, consequently requested *Kammer-advokaten*, a law firm that serves as legal adviser to the Danish Government, to inspect the conditions in Herstedvester prison. *Kammeradvokaten* finished their report in March 2008. The report is not publicly available, but the Ministry of Justice has issued a press release confirming that there were serious problems with the working environment in Herstedvester Prison.[30]

Kammeradvokaten's findings have resulted in the State filing criminal charges against one correctional officer for assaulting an inmate, and disciplinary measures taken against 6 other officers. Furthermore, the Ministry of Justice has stated that a lot more needs to be done to create a good environment in the prison both for inmates and correctional officers.

Statsfængslet Østjylland (State prison in East Jutland):

The new maximum security prison in East Jutland opened in October 2006. Since its opening there have been reports of problems with the working environment caused by controlling and repressive correctional officers who have had an extremely pernicious effect on both inmates and other correctional officers.

In a questionnaire for the correctional officers, concerning their working environment, several officers reported that they were threatened by other officers and 2 officers anonymously reported that they had been physically assaulted/ beaten by other officers. Furthermore it has been reported that a correctional officer arranged for an inmate with gang relations to beat a paedophile inmate. The questionnaire and the reports have resulted in 12 officers being transferred to another ward in the same prison. However, representatives of the inmates have reported that it is the wrong correctional officers whom have been transferred.

Please note that CPT inspected both prisons during their recent visit to Denmark in March 2008.

[30] See press release from the Ministry of Justice, 26 March 2008, www.justitsministeriet.dk