



Ministry of Justice

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Date 15 January 2009

Re RESPONSE OF THE AUTHORITIES OF THE KINGDOM OF THE NETHERLANDS  
TO THE REPORT OF THE EUROPEAN COMMITTEE FOR THE PREVENTION OF  
TORTURE

**Our reference**  
5583124/09/6

**Enclosures**  
3

*Please quote date of letter  
and our ref. when replying.  
Do not raise more than one  
subject per letter.*

Dear Mr Palma,

With reference to article 10 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I have the honour to present the response of the authorities of the Kingdom of The Netherlands, also on behalf of the Ministers of Justice of Aruba and the Netherlands Antilles to the CPT report on the Committee's visit to the Kingdom of the Netherlands from 4 to 14 June 2007.

The authorities have responded to the recommendations, comments and requests for information made in the CPT report, following the order used in Appendix I of the three reports. In this regard, it is important to note that the treatment of persons deprived of their liberty is the responsibility of the three countries constituting the Kingdom.

Please do not hesitate to contact the authorities concerned if this response gives rise to any further questions from the Committee.

The authorities of the Kingdom of the Netherlands attach great importance to the work of the CPT in critically assessing national human rights standards in member states of the Council of Europe, including the Kingdom. Human rights are close to the heart of the government. In line with this, we have given due consideration to all recommendations the CPT has made and many of them have already been implemented. Those waiting for implementation and those still under consideration will remain subject of the continuous attention of each of the Ministers of Justice of each of the countries of the Kingdom of the Netherlands.

The authorities of the Kingdom of the Netherlands look forward to continuing their cooperation with the CPT in the future. The authorities will make their response public, once it has been submitted to the CPT.

**Directorate-General for  
Legislation, International  
Affairs and Immigration**  
Legislation Department

Yours sincerely,  
on behalf of the Government of the Kingdom of the Netherlands

**Date**  
15 January 2009

**Our reference**  
5583124/09/6



Dr. E.M.H. Hirsch Ballin  
Minister of Justice of the Kingdom of the Netherlands

**Response of the Authorities of the  
Kingdom of the Netherlands  
to the Report of the European  
Committee for the Prevention of Torture  
and Inhuman or Degrading Treatment  
or Punishment (CPT)  
on its visits to the Kingdom in Europe,  
to Aruba and to the Netherlands  
Antilles in June 2007**

# **Part I**

## **The Kingdom in Europe**

## **RESPONSE OF THE DUTCH AUTHORITIES TO THE REPORT OF THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE**

### **General issues**

The Government intends to amend the law in such a way that the Committee for the Prevention of Torture (hereinafter: the CPT) will be authorised to inspect the medical files of patients with a mental disorder, compulsorily admitted to a mental hospital or otherwise. The legislative proposals Compulsory GGZ Act and Care and Compulsion Act will be amended in this respect. A time schedule has been drawn up with regard to the aforementioned legislation that assumes publication in the Government Gazette (*Staatsblad*) in 2011.

### **Law enforcement agencies**

The police force managers of the regional police forces and the National Police Services Agency (hereinafter referred to as: KLPD) were informed of the CPT's recommendations by letter from the Minister of the Interior and Kingdom Relations dated 5 June 2008 (reference 2008-0000199914). A copy of this letter was sent to the chiefs of police of the regional police forces, the KLPD and the Police Cells Supervisory Committees [*Commissie Toezicht Politiecellen*] (hereinafter referred to as: CTPC). The relevant section of the letter reads:

"I would first of all like to point out the CPT's observation in § 14 of the report that many police cells lack sufficient natural light, which is contrary to the provisions of Article 6(1) of the Police Cell Complex Regulations. Pursuant to this Article, the cell needs to be provided with light openings created in the inner or outer walls in such a way that the detainee can observe the day and night cycle. The police cells in your region must comply with this statutory requirement.

Secondly, I explicitly draw your attention to the CPT's observation in § 20 of the report that the procedure described in Article 27(1) of the Official Instructions for the Police, the Royal Military Constabulary and Special Investigating Officers is not always followed. Pursuant to this Article, a family or household member of the detainee must be informed of the detention as soon as possible, unless the provisions of the Dutch Code of Criminal Procedure dictate otherwise. This is done at the request of the detainee. If the detainee is a minor, the police will inform a family or household member irrespective of whether the detainee made a request to that effect. To the extent this procedure is not yet – or not always – followed within your police force, I request you to ensure that it will be always followed from now on.

Thirdly, I would like to draw your attention to the CPT recommendation in § 23 of the report to have medical examinations performed out of earshot and, if possible, out of sight of police officials. I am of the opinion that this approach should be the starting point, of course to the extent permitted by the security situation.

Finally, it is worth noting the CPT's observation in § 24 of the report regarding the detainee's right to have a medical examination carried out by his own physician. I wish to explicitly draw your attention to Article 32(2) of the Official Instructions for the Police, the Royal Military Constabulary and Special Investigating Officers. This Article

provides that if the detainee requests medical assistance from his own physician, the official will inform the physician thereof. The explanation to Article 32 of the Official Instructions (Bulletin of Acts and Decrees 1994, 275 p. 26) states the following: 'If the detainee requests assistance from his own physician, this will not cause any problems in most cases. The detainee's own physician will act as attending physician. If this physician or his deputy is prevented from attending or lives elsewhere, the help of the medical consultant on duty will be called in. If the need arises, the official can also consult a medical consultant on duty in addition to the detainee's own physician. The physician summoned must be completely free to examine and treat the detainee on site in a closed off area. This physician must be provided with the facilities that are necessary for him to carry out his work in a satisfactory manner'."

The following should be noted in addition to the above.

The following is noted with respect to the request for information concerning an alleged incident in Lelystad (§ 10). It concerns Family H. (husband and wife) who were detained in the Luttelgeest reception centre, municipality of Noordoostpolder, while awaiting their removal. They physically opposed their removal and police intervention was necessary. The Internal Safety Bureau [*Bureau Interne Veiligheid*] (hereinafter referred to as: BIV) of the Lelystad police instituted an investigation. On 13 July 2007, the Public Prosecution Service determined, on the basis of the file, that there were no grounds for prosecuting the police officials. The reason for this decision was that the police officials acted correctly. The use of hypodermic needles did not become apparent and in particular not on the part of the police. The woman's behaviour could, at the time of the arrest, be characterised as hysteric. Her own husband even tried to give her a pill and some water, which she smashed from his hands. The colleagues inquired what kind of pill it was. He informed that she needed the pill to remain calm. The woman was apprehended by three colleagues, which did not involve a great deal of physical force. She was easily subdued. That same day a stitch was indeed removed from the woman's foot. This was apparently related to an injury sustained long before the arrest; the cause of the injury is unknown.

With respect to the CPT observation on the inadequate ventilation of police cells (§ 14), it is emphasised that this observation relates exclusively to an individual case, namely the police cell complex of Rotterdam Zuidplein. This cell complex will however be renovated in the near future, whereby it is assumed that the cells will be provided with adequate ventilation at that time.

The CPT makes a recommendation in § 19 with respect to the notification of the detention to a third party. The government maintains its position regarding this CPT recommendation. The implementation of restrictions and measures in the interest of the investigation on the basis of Article 62(2)(a) of the Dutch Code of Criminal Procedure will only be effected to the extent the interest of the investigation so requires. These restrictions will be lifted as soon as possible. This is also expressed by Article 62 of the Dutch Code of Criminal Procedure: the detainee will not be subjected to any other restrictions than are strictly necessary in the interest of the investigation or public order. The implementation of Article 62 of the Dutch Code of Criminal Procedure is provided with the necessary safeguards. The detainee can, for example, file an objection against the restrictions order with the competent court. The order will not be implemented while awaiting the court's decision, unless the person who issued the order deems the immediate implementation of the order absolutely necessary in the interest of the investigation (Article 62(a)(4)).

The government agrees with the CPT's observation that the grounds for restrictions regarding the detainee's contacts with third parties must lie in the interest of the investigation and that the restrictions must not be intended to punish or pressure the defendant. Previous investigations show that the Netherlands complies with this requirement.

The government notes the following with respect to the CPT's observations in paragraphs 21 and 22 with respect to the presence of legal counsel during police interrogation. On 1 May 2008, a pilot program in which the counsel for the defence was allowed to attend police interrogation in the event of a suspicion of a crime against someone's life within the meaning of Title XIX of the Dutch Criminal Code. Counsel for the defence will be afforded the opportunity to confer alone with his client for thirty minutes prior to the initial interrogation. During the interrogation, counsel for the defence will be allowed to be present in the interview room, provided that he does not influence the interrogation. Counsel for the defence can, however, inform the interrogators if he feels the prohibition on pressuring is violated. Following the interrogation, counsel for the defence will be allowed put forward comments and remarks concerning the interrogation, the official record and the registration, as a result of which the official record may be amended. Any differences of opinion between the interrogators and counsel for the defence will be recorded in a separate official record. The interrogation will be recorded in audiovisual form, with different camera positions that show the interrogators, the suspect and his counsel.

At the start of the pilot, in the months of May and June 2008, a zero measurement will be carried out in the police regions of Amsterdam-Amstelland, Rotterdam-Rijnmond and The Hague. As of 1 July 2008, counsel for the defence will be invited to attend the police interrogation in the police regions of Amsterdam-Amstelland and Rotterdam-Rijnmond. The entire pilot will be accompanied by research. The pilot will run until 1 May 2010, after which an evaluation will take place. The results of the evaluation will be included in the assessment that will be made, within the context of the revision of the Dutch Code of Criminal Procedure, as a result of the question of whether and if so, in what manner the pilot is to be converted into a structural regulation.

### **Establishments under the authority of the Ministry of Justice – general remarks**

The CPT recommends introducing an extensive sanctions register in all institutions that come under the Ministry of Justice (§ 30).

The Dutch government recognises the importance of the reliable registration of all sanctions imposed on persons detained in custodial institutions. The obligation imposed on every institution to maintain a sanctions register lapsed as a result of the entry into force of the Custodial Institutions Act (hereinafter referred to as: Pbw) in 1999. The Pbw does contain the obligation imposed on directors of institutions to maintain a record of all sanctions imposed. These are recorded in the detainee's file and not in a register. The director is additionally obliged to discuss with the committee all facts and circumstances that are important for the exercise of the duties of the supervisory committee.

It has been investigated, on the basis of this CPT recommendation, why the sanctions register disappeared as a result of the entry into force of the Pbw and other framework acts. The exact reason for its disappearance could not be ascertained on the basis of

the available information. It is most likely that it was decided at the time to drop the register as various automated systems (such as TULP), which record sanction information on the level of the detainee, were considered to provide sufficient information.

The Government deduces from the CPT recommendation, and the related explanation, that the CPT considers the following matters important with respect to a sanctions register:

- It should offer extensive information on disciplinary punishments imposed on persons residing in an institution that comes under the responsibility of the Ministry of Justice; and
- It should offer management information and facilitate inspection by external supervisory agencies.

It was enquired of several institutions if it was possible to generate information that satisfies the CPT's requirements from the existing automated systems. It became clear that the staff members of the relevant institutions were not able to generate this information.

The Information Analysis and Documentation Department [*afdeling Informatieanalyse en Documentatie*] (hereinafter referred to as: ID) was subsequently asked to examine if it could generate the relevant information from the various systems. This proved possible, but (a) it remains unclear whether this information is extensive enough (it is, after all, obvious that the register must in any case show what behaviour has been punished and in what way) and (b) a sanctions register is currently not available in the relevant institution.

As a result of the above considerations, an instruction was issued to conduct an impact analysis that should lead to approaches to a solution with regard to the way in which a sanctions register can be effected at the level of the institution (including private institutions) which satisfies the requirements set by the CPT.

The CPT also recommends that more suitable clothing is issued to detainees who are placed in solitary confinement (§ 30).

Article 28 of the Regulations on Punishment and Solitary Confinement Cells in Custodial Institutions [*Regeling straf- en afzonderingscel penitentiaire inrichtingen*] provides that detainees are provided with clothing by the government. This may include so-called 'anti-tear clothing', which is clothing that cannot – or can hardly at all – be torn or ripped apart by a detainee. Naturally, a detainee's stay in solitary confinement – as this is now a measure that is implemented from a management viewpoint – should not last longer than is strictly necessary.

It will be investigated whether the existing regulation is sufficiently specific to guarantee that the detainee's stay in solitary confinement is in practice as safe and humane as possible. If this is not the case, it will be assessed whether the ministerial regulation has to be amended. The relevant ministerial regulations that apply to the various divisions of the National Agency of Correctional Institutions provide the following:

- Prison system sector / Directorate for Detention and Special Facilities: in the event of placement in a punishment cell or solitary confinement, the detainee is provided with clothing by the government. The director may determine otherwise in special circumstances.
- Correctional Institutions for Juvenile Offenders sector: in the event of placement in a punishment cell or solitary confinement, the juvenile will be provided with



clothing and shoes if the wearing of his/her own clothes or shoes constitutes a danger to the juvenile or to the order or safety of the institution.

- Hospital Order sector [Directorate for Forensic Care]: the person placed under a hospital order can be obliged to wear special clothing or shoes during the segregation. This provision is related, according to the explanation, to the possibility that the segregated person can be required to wear special shoes and/or clothing in the interest of his own safety.

The policy in place at the Forensic Observation and Guidance Unit [*Forensische observatieafdeling*] (hereinafter referred to as: FOBA-GW) with respect to detainees and the department responsible for crisis reception for juveniles (hereinafter referred to as: FOBA-JJI) were also investigated:

- FOBA-GW: detainees can wear their own clothing or overalls provided by the government. They are only provided with anti-tear clothing if there are indications that they are likely to attempt suicide and/or are likely to undertake self-mutilation. Underwear is always provided in such cases. The FOBA-GW has special paper underwear that cannot be used by the detainees to harm themselves. The detainee's personal dignity is, of course, of primary importance. An exception may be made for security reasons. This will always be done in the most careful manner possible.
- FOBA-JJI: the juvenile placed in solitary confinement will be obliged to wear an anti-tear shirt if so required for his own safety or for the order and safety of the institution.

It will be assessed whether the various ministerial regulations need to be aligned with each other.

The CPT recommends drawing up a comprehensive procedure for dealing with reports of abuse or ill treatment of detainees, with due observance of the principles intended to guarantee a careful procedure (paragraphs 31-38).

The Dutch government shares the CPT's opinion that a sound procedure in the event of abuse or ill treatment of detainees is of great importance. The government wishes to point out, however, that such a procedure already exists. It has been determined by ministerial circular of 9 January 2003, reference 5195514/02/DJI, that the competent authority (the director of the institution) will report (assumed) violations of professional integrity by DJI staff members to DJI's Integrity and Security Bureau (hereinafter referred to as: BV&I). This bureau can, subsequently, initiate an examination of the facts or a disciplinary investigation and, if necessary, submit an application for a criminal investigation. The Public Prosecution Service can – if the offence qualifies for a criminal investigation – decide to have an investigation conducted by the police or the National Police Internal Investigations Department.

In its report (paragraphs 34-36), the CPT refers to three incidents. The government wishes to provide further information on these cases.

#### De Noordsingel

A great deal of attention has since been devoted to the culture within the institutions within the context of the national campaign entitled Mutual Aggression and Violence held in 2006 and 2007. The importance of the early identification and discussion of incidents involving violence or violation of integrity has been emphasised within that same context. According to the current procedure, the site manager would have called together all persons concerned to hear all sides of the story, which means that he would most likely have been informed sooner of the detainee's allegation of abuse.

### Rotterdam Airport

This case concerns the use of force during a removal by the Transport and Support section in 2006. This case led to an internal investigation by a review committee. The head of the removal centre subsequently requested BI&V to conduct an investigation. This investigation was performed, but it remains unclear exactly what happened. It can be concluded that the correct procedures were followed, but that this did not lead to an unambiguous conclusion in the present case.

### Stockholm

It became clear that the foreign national concerned made a complaint about the way he was treated through an imam who visited him. The director of the institution immediately initiated an investigation pursuant to the imam's report. A physician examined the foreign national within the context of the investigation. No evidence of injuries or other signs of abuse were found during the examination. The CPT received the physician's report of the examination. There was no reason to assume violation of integrity nor were there grounds for submitting a report to the BI&V as the examination in no way revealed that the foreign national had been abused.

The government concludes that, in the cases identified by the CPT, the established procedures were followed, or that the relevant work processes have in the meantime been adapted.

The CPT also requests further information on the use of multi-person cells (§ 25): the criteria for accommodation of multi-person cells, whether extra staff have been employed by the institutions that have implemented multi-person cells and on the floor area of the multi-person cells.

The government first and foremost makes reference to the provision of the relevant information to the Lower House of Parliament. The Lower House was informed on various occasions on the manner in which the intensification of the use of multi-person cells has been and is given shape (for example Lower House 28 979, numbers 8, 9 and 10).

The floor area of multi-person cells has remained unchanged when compared with a single-person cell, namely 10 m<sup>2</sup>. The inventory of the multi-person cell has been extended with a chair and personal sleeping facilities for the individual detainee. The cell has also been equipped with at least one lockable storage space for the individual detainee. As regards structural aspects, attention has been devoted to ventilation, thermal comfort, limitation of draft nuisance, supply of fresh air, removal of air, sound insulation and energy performance.

The need for extra staff was taken into account during the introduction of multi-person cells. The following FTE commitment has been included in the 2008 Standard Budget for this purpose:

- Management: 0.0023 FTE per detainee
  - Middle management executive personnel: 0.0128 FTE per detainee.
- Staffing was increased by 0.341 FTE per detainee for the benefit of the other departments of the service.

On balance, staffing was increased by 0.3615 FTE per detainee (situation of 2008) for the purpose of multi-person cells.

Finally, the CPT requested additional information on the progress and implementation of 'Custom/Tailor Made Detention and Treatment' [*Detentie en Behandeling op Maat*]

(hereinafter referred to as DBM, see also § 27). The CPT will be informed in similar fashion as the Lower House, namely by means of the letters on Modernisation of the Prison System, which were sent in June and November 2007 (Lower House 24 587, no. 236 and Lower House 24 587, no. 225). This information will be sent separately to the CPT.

### **The Terrorist Units**

*The CPT recommends the introduction of an extensive risk analysis as the basis for placement in a Terrorist Unit [Terroristen Afdeling] (hereinafter referred to as: TA) (§ 42). The CPT also recommends introducing a regular review of placement in a TA, based on criteria clearly set out in law (§ 42).*

The Dutch government has decided, following advice to that effect from the National Coordinator for Counterterrorism and on the basis of information provided by the General Intelligence and Security Service, on a general line of policy to concentrate the detention of persons with a terrorist background in a limited number of institutions. Selection on the basis of the suspicion of or the conviction for terrorist crimes, is based on the experience that these detainees pose a threat of recruitment and radicalisation. The purpose of this concentration of persons with a terrorist background is to prevent these persons coming into contact with other categories of detainees. This serves both the interest of public order and safety and the order and safety in the institution(s). Concentration of persons with a terrorist background prevents (further) radicalisation and recruitment of other categories of detainees. The current shape and extent of the terrorist threat, the measures undertaken to combat this threat and the consequences for the manner in which persons who are detained in connection with this threat are treated, are new. The government considers it justified, in view of the above, to implement the selection in a different manner than is usual in the Prison System.

The selection criterion for the TA aligns with the provisions of Article 14(2) of the Pbw, which provides that special reception may be connected to the age, personality, physical or mental health of the detainee, as well as the offence for which they are detained. The selection procedure with respect to the TA has been laid down in the amendment to the Regulation on the Selection, Placement and Transfer of Detainees [*Regeling selectie, plaatsing and overplaatsing van gedetineerden*] (hereinafter referred to as: RSPOG), in connection with the creation of a special reception facility for terrorists, dated 15 September 2006, no. 5441965/06/DJI (Government Gazette 18/09/2006, no. 181). The criteria – which have been made objectifiable to the greatest extent possible – that apply for placement in a TA are: (a) being suspected of a terrorist crime, (b) being convicted, with or without the possibility of appeal, for a terrorist crime and (c) propagating or spreading messages of radicalisation before or during detention.

A regular review has little to no added value as parts A and B of Article 20(a) of the relevant Regulation are static criteria. Less static criteria apply to the implementation of part C of Article 20(a) of the relevant Regulation. It can be assessed, for example during detention in another institution or after some time has lapsed within the TA, to what extent the radicalisation message propagated in the past still requires that the person concerned remains in a TA. Therefore, the selection official takes a decision *ex officio* every twelve months regarding the continuation of the placement in a TA with respect to persons placed there on the grounds of part C. The selection official is

advised by an advisory committee, which consists of a representative of the Public Prosecution Service, a representative of the National Police Services Agency and a behavioural expert. An objection and appeal can be filed against this decision.

All of the above, of course, does not detract from the fact that the selection official can decide on the premature transfer, if there are grounds for doing so, with respect to detainees in a TA as well. A detainee of a TA furthermore has the right, pursuant to Article 18(1) Pbw to submit a transfer application to the selection official every six months. An appeal against decisions of the selection can at all times be filed with the Council for the Administration of Criminal Justice and Protection of Juveniles [*Raad voor Strafrechtstoepassing en Jeugdbescherming*] (hereinafter referred to as: RSJ) appeals committee.

As indicated to the Lower House (549767/07/DSP), the TAs will be evaluated three years after they have been taken into service. The selection and placement procedure will also be included in the evaluation. This will allow an assessment as to whether the inclusion of this advisory committee in the regulations is necessary and whether the criteria are sufficiently clear.

*The CPT requires confirmation that the two cells for solitary confinement in penal institution (PI) de Schie will be refurbished before they are taken into use (§ 43).*

This concerns two newly built punishment cells. These were not provided with a normal window, but with so-called solar tubes in the ceiling. These are not satisfactory. It has been decided to create windows in the walls. Reconstruction is underway for this purpose. In the meantime, the cells are not being put into use.

*The CPT furthermore recommends that improvements with respect to ventilation and lighting are implemented in the TA in PI Vught (§ 44).*

The terrorist unit is housed in a unit in an old building, which means that it has certain limitations. This is the reason why development of a unit in a new building has been started. Delivery of the replacement unit is expected in 2009. Temporary measures have been taken for the intervening period to improve ventilation and the supply of natural light.

*The committee furthermore makes several critical comments with respect to the current detention regime: the security measures during contact between a detainee and his lawyer (§ 50), the manner in which medical examinations are conducted (paragraphs 52 and 53) and the detainees' day programme (§ 49). Detention in a terrorist unit should not de facto be the same as detention in solitary confinement (§ 47).*

The concentration of – briefly put – terrorist detainees [in designated, separate units in a limited number of institutions] prevents them from recruiting non-terrorist fellow detainees for terrorist purposes in the institution and it prevents them radicalising non-terrorist detainees. The latter, after all, stay in a different unit or institution. In that sense the proposed amendment of the regulation is expected to contribute to the realisation of this objective. Moreover, it will prevent the spread of the message of radicalisation outside the institution, through a fellow detainee who is not considered to be connected or who is not suspected of or convicted for a terrorist crime or by other means. Whether this measure will ultimately result in the desired ultimate

outcome will have to be shown in practice; the special facility will be evaluated for this purpose.

The day programme/ overall detention regime within the TA fall within the scope of the Pbw, as do the security measures. Long-term solitary confinement is not part of the basic principles of the regime in the terrorist unit. Detainees are afforded the opportunity to take part in activities with others, if such is deemed a safe and responsible choice under the circumstances. Should there still be a need for long-term solitary confinement in special cases, the customary duties of a director of an institution will in such a case include the responsibility for the mental welfare of the detainees placed in the unit. If there is indication of such a case, this may constitute grounds for a temporary transfer to another special facility.

The Dutch government will make use of the CPT's observations in the implementation of the evaluation of the terrorist unit, which is intended to take place by the end of 2009. Regime and security aspects will be included in the evaluation. The manner in which medical examinations are conducted will also be evaluated.

*The CPT would furthermore like to receive additional information on the measures PI de Schie will take in order to guarantee that the only remaining female detainee in the terrorist unit will not be detained in complete social isolation (§ 48).*

The female detainee concerned has since been transferred to the TA in Vught where she is offered the opportunity – taking into account the religious convictions of those currently detained in the TA – to take part in joint activities with others. This may mean that in some cases she will undertake these activities with members of staff.

### **Facilities for immigration detainees**

In § 54 of the report, the CPT expressed its satisfaction that it did not discover any children in the facilities it visited. In that respect the CPT refers to a recent decision by the State Secretary of Justice. The CPT received a letter pursuant to this decision from the Supervisory Committee of the Rotterdam Removal Centre, dated 1 July 2008, which stated that there had to be a misunderstanding. The government would like to explain this policy. New policy in respect of families with children in aliens detention was presented in a letter to the Lower House on 29 January 2008. This letter indicated that the primary principle is that detaining families with children has to be prevented to the fullest extent possible. Measures that restrict freedom should be deployed as alternatives to detention, which offers the possibility to deploy custodial measures even more conservatively. Deprivation of liberty, with a view to the removal of families with children, will be limited to term of in principle at most fourteen days. The detention may last at most four weeks if admission is refused at the border, which term may be extended to two months if an asylum application is submitted at the border. This will not rule out the detention of families with children, but it can prevent families with children from staying in detention for prolonged periods of time.

The CPT wishes to receive further information on the plan to move Removal Centre (UC) Rotterdam Airport (§ 55).

The removal centre on the Rotterdam Airport grounds is indeed being replaced by a newly-built detention centre elsewhere on these grounds. The facility will have 10 units each with 32 multi-person cells. In addition to 6 units for male foreign nationals, 2

units will be designated for female foreign nationals and 2 units for male detainees who require extra care or management measures. The tendering procedure for this new construction has been concluded and the contract has been awarded to a consortium of private parties. The contract between the Netherlands and the consortium was signed on 27 March 2008. The detention centre is intended to be taken into use in July 2010. The existing removal centre will be dismantled some months after that.

The CPT would ask the Dutch government to set an absolute term with respect to every form of administrative aliens detention (§ 56).

Article 59(4) at b of the Aliens Act 2000 (hereinafter referred to as: Vw 2000) mentions a number of cases in which a maximum term of aliens detention applies. This detention will not last longer than four weeks, if the foreign national is engaged in legal proceedings (Article 59(1) at b Vw 2000) or if the detention is justified on the basis of the fact that the documents required to proceed with the removal are or soon will be available (Article 59 at b Vw 2000). If Article 39 of the Vw 2000 (intention procedure regarding an application for asylum) has been implemented prior to a decision on the application, the detention will not last longer than six weeks pursuant to Article 6(1) and 6(2) of the Vw 2000 (awaiting a decision on an application). In all other cases, including a measure entailing the deprivation of liberty on the basis of Article 6(1) and 6(2) of the Vw 2000, no specific term is set by the regulations. This does not mean that the measure is allowed to be of an indefinite term. The measure may not last longer than is strictly necessary for the intended objective and must be commensurate with it. The interest of the foreign national to be released increases as the measures continues in place. It is established as a rule of thumb, in case law where assessments made by the courts are concerned, that after six months of aliens detention, the interest of the foreign national will, in principle, take precedence over the public interest. The term of six months may be exceeded in the following circumstances, among others:

- The foreign national has been pronounced undesirable or has serious criminal antecedents;
- The foreign national has obstructed the actual removal by acting aggressively;
- The foreign national has obstructed the investigation to establish the foreign national's identity or nationality;
- The foreign national, following detention, has initiated one or more procedures to acquire a residence permit with the obvious intention of delaying the removal or the acquisition of a travel document;
- The foreign national will almost absolutely certainly be removed soon after the expiry of the term of six months.

The government is not willing to attach a maximum term to the duration of the measure with respect to cases other than those mentioned in Article 59(4) Vw 2000. If a preset maximum term is implemented, the possibility exists that the foreign national, who is or becomes aware of this maximum term, will cooperate to a lesser extent in his return, because he knows that his return cannot easily be effected without his cooperation and that the measure will be terminated if he sits out that maximum term. By cooperating, the foreign national can shorten the term of the measure, for that matter. The CPT points out that in the majority of European countries a maximum term is attached to the term of detention. It is worth noting in that connection that, within the context of the debate on the Directive Proposal for Community Standards and Procedures regarding Return, the Council of Europe and the European Parliament

(hereinafter referred to as: EP) both discuss the term of measures that deprive persons of their liberty. The Dutch government has indicated in those negotiations that it in principle does not favour a maximum term of aliens detention. The EP *would* prefer a maximum term aliens detention. The most recent proposal suggests a term of aliens detention of six months with a possible extension of this term to at most 18 months. The Netherlands has, in view of its wish to achieve a compromise and because of the fact that such a long term of detention in practice hardly ever occurs, decided to acquiesce to the EP in this respect. It is expected that the Return Directive will be formally adopted in December 2008 as political agreement had already been reached in June 2008.

The CPT recommends the Dutch government to cease using the detention barges/boats as possible (§ 58). In the meantime, the CPT would recommend taking measures to reduce the humidity on the 'Stockholm' and the 'Kalmar', to create better exercise areas for foreign nationals held in segregation and to provide every exercise area with shelter against harsh weather conditions (§ 58). In answering questions from member Verdonk (hereinafter referred to as: Verdonk) regarding the alleged negotiations to transfer the 'prison ships' to England (846), the State Secretary of Justice indicated that, with the detention centre in Alphen aan de Rijn and the detention platforms in Zaandam having been taken into use, there is now sufficient structural detention capacity to consider taken the detention boat/barge Stockholm out of service. The detention boats/barges Rotterdam, Stockholm and Reno have in the meantime been taken out of service. Detention boat/barge Kalmar was not taken into use until 2 May 2007 and satisfies all requirements that have been set in respect of her. This detention boat/barge will in principle remain open until the middle of 2011. In 2010 the new detention centre on the grounds of Rotterdam Airport will be taken into use. A new custodial complex at Schiphol Airport will be taken into use by 2012 as well. The DJI has in the meantime realised better exercise areas for foreign nationals held in segregation on the detention boats/barges. The CPT's recommendation to create sheltered spaces in the exercise areas of the detention boats/barges has also been realised. Humidity was never a problem on the Stockholm or the Kalmar.

The CPT would furthermore like to receive further substantiation of the decision to classify foreign national detention centres as mainstream custodial institutions (§ 61). Article 5:4(1) of chapter A5 'measures that restrict or deprive liberty' of the Aliens Decree 2000 (hereinafter referred to as: Vb 2000), provides that detention on the grounds of Article 59 Vw must be implemented at a police station, in a Royal Marechaussee cell, a custodial institution or in an area or place as referred to in Article 6(2) or Article 58(1) of the Act. Article 9(2) at d of the Pbw provides that the persons held in aliens detention can be housed in custodial institutions.

The CPT recommends the Dutch government to reconsider its approach to administrative aliens detention (§ 62).

Foreign nationals should in principle have access to the regime of the general population. Additional limitations imposed on foreign nationals in the reception unit should be reconsidered. Deprivation of liberty pursuant to Article 6 Vw 2000, should be implemented in an institution where the Border Accommodation Regime Regulations apply. This regime was at the time specifically designed for this target group. The regime is characterised by the fact that the foreign national is afforded the greatest degree of freedom of movement possible. This means for example that detainees are not locked in their cells until evening. Deprivation of liberty pursuant to Article 59 Vw 2000, should be implemented in a custodial institution. In such a case, the framework

will be determined by the Pbw which also applies to persons in police custody and convicted persons. It should be noted in this regard, however, that the day programme in institutions for aliens detention comprises more hours outside the cell when compared with mainstream custodial institutions. The government intends to assess whether more uniformity could be introduced to the different regimes in place with respect to measures that deprive liberty with regard to foreign nationals. In doing so, the government acknowledges the importance of expressing the special nature of aliens detention in the regime in place as referred to by the CPT, and will include the CPT's recommendations in this area in its policy developments. Policy proposals were developed in this area during the course of 2008. A number of projects were started, in, among others, the following areas: regime and day programme, placement and (internal) differentiation, and care and assistance.

The Regime and Day Programme subproject investigates the opportunities for increasing the offer of activities, widening of access to sports and the library, free access to the exercise yard and the relaxation of visitors' regulations, taking into account the structural limitations and the personnel consequences.

The Placement and Internal Differentiation subproject investigates the use and necessity of differentiation, which for example includes matters such as care units, management units and family units.

The implementation of the Legal Desk was realised within the context of the Care and Assistance subproject. This project furthermore assesses the aftercare of foreign nationals with special medical files.

The plans relating to the various subprojects are expected to be finalised by December 2008.

During its visit to the Rotterdam UC, the CPT observed that not every unit was at all times staffed by at least one prison warder from the DJI pool (in addition to private security personnel, see § 66).

The government notes that the intention is to have a ratio of one prison warder from the DJI pool to every single private warder in the detention centres. Private security personnel and personnel from the DJI pool are, for that matter, appointed on the basis of the same competency and recruitment and selection criteria.

The training of private security personnel is inadequate according to the CPT (§ 67). The government does not agree with this observation. The mandatory course 'detention supervisor' for private security personnel in the DBV institutions was expanded in the autumn of 2007. This course used to comprise 15 half days and was expanded to 34 half days. There is more attention for reporting and translating (aliens) law into the practical situation and more specific attention for multicultural communication. Communication and aggression management are shaped in more practical terms as well during the course. In addition to this course, private security personnel are required to pass the 'MBO security guard level 2' exam during the first year. If they do not obtain this diploma within the first year, they will no longer be qualified to work as security guard in a DBV institution.

The CPT further recommends the Dutch government to immediately stop handcuffing detained foreign nationals who continuously tamper with the sprinkler installations on



the Stockholm and Kalmar detention boats/barges (§ 69). Such detainees should be transferred to appropriate alternative facilities forthwith.

The wrist and ankle restraints that are used are mechanical aids allowed in custodial institutions pursuant to the Regulations on Mechanical Aids in Custodial Institutions. It has become clear that in the case observed by the CPT, the mechanical aids were deployed on 27 May 2007 and remained in place until transport to the national Segregation Unit was possible, which was on 28 May 2007 (a total of 18 hours). Mechanical aids are never allowed as punishment. It is a measure, on the basis of Article 33 Pbw, to avert a serious danger posed by the detainee to his own health (for example, self harm with a sharp component of the sprinkler installation) or to the safety of persons other than the detainee himself with a duration of, in principle, 24 hours (which can be extended by another 24 hours).

This statutory obligation was satisfied in the case identified by the CPT as well. The CPT, however, correctly observes that now that the solitary confinement cells on the detention boats/barges have been equipped with a sprinkler head these cells are now fire safe, but they are nevertheless not safe as regards the person of the detainee. The destruction of sprinkler heads involves the risk that the foreign national can hurt himself on sharp components. By making use of mechanical aids to avert this danger, pursuant to Article 33 Pbw, the detainee is subjected to greater restrictions than would an ordinary detainee who for the same offence is placed in solitary confinement, which lacks a sprinkler head but is physically safe.

Pursuant to the observations of the CPT, a foreign national who expresses his intention to destroy the sprinkler, or tries to do so, is immediately transferred to an institution with a segregation cell without a sprinkler.

The CPT also recommends that someone, preferably a nurse, be present at the detention boats/barges and the Rotterdam UC 24 hours a day, in order to be able to provide emergency medical attention. A doctor should be available at all times (§ 70). In view of the matters set out below, the government is of the opinion that these requirements are satisfied. Nurses are in daily attendance at the detention boats/barges and at Rotterdam UC from 7:30 am to 10 pm. A doctor holds consulting hours for 4 half days per week at the Rotterdam UC and for 7 half days per week days on the detention boats/barges. Executive personnel is responsible for providing emergency medical attention or for arranging a doctor and/or an ambulance during the remaining hours. An emergency doctor can be reached during the other hours and is available on call to the detention boats/barges and the Rotterdam UC. For all other matters, use can be made of the regular emergency services through the emergency number 112.

The CPT would also like to receive a response from the Dutch government with respect to the possibilities of referral of foreign nationals with serious mental health issues (§ 71).

On the indication of a psychiatrist of the Netherlands Institute of Forensic Psychiatry and Psychology (hereinafter referred as: NIFP) a foreign national is referred to an appropriate care differentiation within a prison system institution (for example the Individual Care unit of the Forensic Observation and Guidance Unit). If placement cannot be effected immediately due to a lack of capacity at the relevant institution, the foreign national will be transferred to an Extra Care unit in the UC or to the Zeist detention centre. It is, for that matter, also the case that so-called psycho-medical consultations take place in all detention and removal centres. A team of primary and secondary care professionals (doctor, psychologist, psychiatrist and nursing care)

conducts periodical consultations regarding foreign nationals who require care and also advises management on matters relating to the psycho-social climate in the centres.

The CPT recommends the Dutch government to explore the possibilities of extending the visiting hours from 1 to 2 hours per week (§ 72).

The Dutch government has investigated the possibilities of extending the visiting hours and has decided to extend them from 1 to 2 hours. This extension of the visiting hours requires the necessary adjustments within the institutions and is expected to be implemented in the course of 2009. If the foreign national expects visitors from abroad, leniency will be shown with respect to the visiting hours, both in terms of the duration of the visit and the time at which the visit takes place.

The government will investigate if there are more opportunities for deploying volunteers for visiting foreign nationals who would otherwise not receive any visits. The starting point will be that this will not jeopardise the enforcement of order and safety of the institution. An appropriate solution will be sought for individual cases in which a foreign national clearly shows a great need for visitors.

And finally, the CPT recommends that the Dutch government assesses access to the telephone and other means of communication (§ 72).

Each foreign national is issued a € 5 calling card. Collect calls were already possible from the Zestienhoven UC. The Kalmar has a different provider which meant that collect calls were not possible at that facility. Collect calls within the Netherlands are now possible on the Kalmar as well. The foreign national will have the opportunity to make calls every day during exercise times. The foreign nationals' weekly allowance has been increased from € 5 to € 10 which means they can buy more budget telephone cards.

### **Youth detention facilities**

In a general sense, the government wishes to provide further information on the current regimes in place in Correctional Institutions for Juvenile Offenders and in Closed Youth Care Facilities.

#### *Correctional institutions for juvenile offenders*

The Youth Custodial Institutions (Framework) Act (hereinafter referred to as Bjj), and not the Youth Care Act, will continue to apply to young persons with an authorisation for placement in closed youth care who are placed in a Correctional Institution for Juvenile Offenders (hereinafter referred to as: JJI) during the transitional phase (until 2010). This also means that the Ministry of Justice is responsible for them. Young persons with a closed youth care authorisation placed in a closed youth care facility fall under the regime of the Youth Care Act. During the transitional phase in which the youth care authorisation can still be implemented in a JJI, young persons with a closed youth care authorisation in a JJI will in principle be placed in separate groups. This should not lead to long waiting periods. In these separate groups, the regime that applies to young persons with a closed youth care authorisation can be adjusted with respect to leave and searches. The director of a JJI has the authority, on the basis of the Bjj, to search a young person's body or clothing. After the transitional phase, only young persons convicted of a crime or placed there pursuant to aliens law will stay in a JJI. The Bjj will continue to apply to them.

### *Closed Youth Care Facilities*

The Youth Care Act is the legal framework that applies to young persons placed in a Closed Youth Care Facility. The Bjj operates on the principle of restriction and subsequently awards rights to young persons. The Youth Care Act operates on the principle of freedom and restricts this freedom in line with the young person and his individual need for care. This therefore does not concern a worse or better legal position, but a different legal regime. A care plan is drawn up for every young person admitted to a Closed Youth Care Facility. This care plan focuses primarily on the individual care requirements of the young person. A difference with the regimes in JJIs is that not all restrictive measures apply to everyone, but that these are included in the care plan of each young person. It is assessed for each individual young person what measures are expected to be necessary. These are included in the care plan. There is also a difference between JJIS and Closed Youth Care Facilities as regards the starting point of the deprivation of liberty. Closed Youth Care focuses primarily on care, not on the deprivation of liberty and employs a process approach. A process is initiated that allows for a variable deprivation of liberty on the basis of the degree of deprivation of liberty that is necessitated by the young person's problems. Depending on his development, the young person will move on to another place where treatment will be continued. This may be another place within the secure setting; from a unit with a strict regime to a unit which employs a less strict regime. It may also be the case that a young person moves from a closed setting to youth care in an open setting or outpatient treatment in a family setting.

*The CPT wishes to point out that young persons between the ages of 16 and 18 are regularly detained in a police cell for up to 10 to 14 days (§ 8).*

The basic principle is that a young person's stay in a police cell should be as short as possible. If there is a lack of capacity at the JJI, the young person convicted of a crime can await his placement in a JJI in a police cell for a maximum term of 10 days, pursuant to Article 16(a) of the Bjj. A maximum term of three days applies to young persons of 12 to 15 years of age. The term of 10 days commences the moment the detention of the young person is ordered by the court. The judicial authorities no longer place young persons under civil law orders (these are the young persons with a closed youth care authorisation) in a police cell.

JJI capacity has increased from an average number of 2292 places in 2002 to an average number of 2769 places in 2007. Effective 1 January 2008, young persons with civil law orders are admitted to Closed Youth Care Facilities. A transitional phase will be in effect until 1 January 2010 during which young persons with civil law orders can still be placed in a JJI. In time, JJI capacity will, in principle, only be available for young persons convicted of a crime and for young persons to be placed there pursuant to aliens law. This allows for better alignment of supply and demand. There will of course continue to be situations in which it cannot be avoided that young persons convicted of a crime have to remain in a police cell, for example during the time it takes to arrange for transportation or to find an available place in a JJI. The time a young person spent in a police cell in 2007 amounted on average to less than a day for 12 to 15 year olds and to an average of 3.5 days for 16/17 year olds.

It is the governments opinion that the above complies with the basic principle that a young person's stay in a police cell should be as short as possible to the fullest extent possible.

*The CPT recommends that the equipment of the solitary confinement cells as well as the possibility of exercise are improved at JJI De Hartelborgt (§ 79).*

Placement in solitary confinement (segregation cell) can be effected if:

- a. this is in the interest of the order or security of the institution or in the interest of the undisturbed implementation of the deprivation of liberty;
- b. this is necessary for the protection of the young person concerned (Article 25 in conjunction with Article 24 of the Bjj) and the implementation cannot be effected in a normal residential accommodation in the institution (Article 3 of the Regulations on Punishment and Solitary Confinement Cells in Custodial Institutions for Juvenile Offenders [*Regeling straf- en afzonderingscel justitiële jeugdinstellingen*]).

In order to guarantee security and prevent risks to the fullest extent possible, segregation cells have been fitted out with the least amount of stimuli possible. At the relevant site, the segregation cells are equipped with: a toilet, a mattress, a pillow, 2 anti-tear blankets, 1 anti-tear shirt, 2 cups of water and toilet paper. An elevated seat has been built into the segregation cells. It will be assessed whether expansion of the equipment of the segregation cells is advisable and feasible in view of the objective of placement in such a cell and in particular in view of the safety of the young persons placed in them. Placing a chair and table in segregation cells that are used as such cannot be realised in connection with the safety of both the young persons as well as members of staff.

The CPT recommends placing a table and a chair in those segregation cells that are used as temporary residential accommodation. By expanding the number of places in the reception units, it will hardly ever be necessary to use cells in the segregation units as residential accommodation. The only time that those areas will be used as such is when limitations related to the criminal investigation are imposed on a young person in pre-trial detention. At that time a table and chair are placed in the cell.

The CPT recommends changing the layout of the exercise yard of the solitary confinement unit. Most exercise yards of the solitary confinement units are not equipped with a roof. The exercise cage of the segregation unit at De Hartelborgt is a load-bearing structure. Technically speaking, it could be replaced, but the government deems this undesirable for the following reasons. It would involve constructing support beams in the exercise cage itself which could cause security problems. The sides of the exercise yard border institution areas on three sides and the exercise cage borders the group exercise yard on the fourth side. This means that it is impossible to replace the wall as contact with other young persons must be avoided. Adaptation of the exercise yard of the solitary confinement unit is therefore unfortunately impossible.

The government, perhaps superfluously, wishes to point out the following as well. Many efforts on the part of the institutions are aimed at making the young person's stay in solitary confinement as short as possible. The young person's return to the group will be effected as soon as possible. This means that the exercise yard of the solitary confinement unit is not used frequently.

*The CPT recommends improving the regime for young persons at the De Talie unit (§ 83).*

De Talie is a unit for intensive treatment within the meaning of Article 22(b) of the Bjj. During his stay in an intensive treatment unit, the young person will participate in communal activities for at least six hours a day during the week and for at least four

hours during the weekend. Young persons who are not (yet) ready to stay and be treated in a group and who may additionally pose a danger to themselves are placed in this treatment unit. However, young persons who cannot function, or cannot function properly (due to their disorder and/or behaviour), within that regime, and who require more time in an environment that does not offer many stimuli (their own room for example) are also placed in these units. With due observance of Articles 23(3) and 4 of the Bjj, young persons are placed in a restricted programme if there are grounds for doing so that come under Article 23(3)(a) and (b). These arrangements (step by step acclimatisation program) relating to exclusion/restriction are laid down in treatment agreements, which are reviewed weekly and extended if necessary (or lapse if the young persons are able to cope with the aforementioned pressure and the communal nature of the activities). This does not mean, for that matter, that young persons stay in their own room for 22 hours a day (with the exception of sanctions/measures to enforce order) and are totally bereft of any contact with fellow group members or the group leaders/supervisors. They are offered activities on an individual basis (education, exercise, recreation, sports etc.) and sometimes also limited communal activities (exercise, short recreation periods, in increments that are slowly built up). The government does not see any reason to change the regime in place at De Talie.

*The CPT also wishes to draw attention to the manner in which deprivation of liberty is given shape in Correctional Institutions for Juvenile Offenders (for example as regards individual pedagogical residence and treatment plans and as regards guaranteeing sufficiently qualified personnel, see also paragraphs 81 and 85).*

The government would first and foremost like to note that, pursuant to recent reports from the joint Inspections and from the Netherlands Court of Audit, further improvement plans regarding the quality of the JJIs have been taken in hand. The government refers to the letters of 10 September 2007 (Lower House, session year 2007-2008, 31 215, numbers 1-2), 4 October 2007 (Lower House, session year 2007-2008, 31 215, numbers 1-2), and of 31 October 2008 with a related progress report (Lower House, session year 2008-2009). The CPT's recommendations are in line with these reports. More highly qualified personnel is being recruited and current staff is being provided with further training. There will be more time and attention for an individual approach with respect to the young person. September 2008 saw the national start of network consultations in all reception facilities and the nation-wide roll-out of network and process consultations will have been completed by 1 April 2009. The implementation of network and process consultations means a more efficient coordination of what will be done with the young person in the JJI and what will subsequently be done outside the JJI. The network consultation (focused on gathering information) takes place within one week of arrival; the process consultation (focused on total guidance of the young person) takes place within three weeks of arrival. The young person must be informed within three weeks of what will happen during the first phase of his or her stay in the JJI. This provides more clarity regarding his or her situation and can reduce the stress experienced by the young person. This will ensure that the young person is more receptive to further guidance or treatment. Concrete actions are laid down in a perspectives plan. This plan must be finalised within three weeks. A coherent set of behavioural interventions is also developed, which is submitted after (provisional) accreditation by the Behavioural Intervention Accreditation Committee of the Ministry of Justice. Thirteen behavioural interventions have since been (provisionally) accredited, ten of which can be deployed in the JJIs. Currently, five JJIs are working with the Aggression Regulation and Appropriate Social Skills behavioural interventions. The assessment by the Behavioural Intervention

Accreditation Committee also contributes to the harmonisation of the supply. In doing so, investments are made in scientific research into providing more effective interventions. Furthermore, the documentation of both the individual files as well as that of registers will be improved.

*The government would note the following with regard to the recommendation of the CPT to compile comprehensive medical files of FOBA detainees (§ 95).*

Every health care professional is required, pursuant to Article 7:454(1) of the Dutch Civil Code (hereinafter referred to as: DCC), to maintain a personal file on the care provided to a patient. Both the manner in which a care provider is required to structure his patient file as well as the manner in which the details contained in such a file should be handled are laid down in various laws, including the Medical Treatment Contracts Act (Articles 7:446 to 7:468 of the DCC). The basic principle is that the care provider is obliged to observe a duty of confidentiality, pursuant to which he must ensure that no patient details are provided to third parties without the patient's consent.

An exception to this rule concerns care providers who are jointly involved in the treatment of a patient. Within the medical service of an institution, the care providers and doctors work so closely together that they are able to maintain a joint patient file. The medication prescribed to the patient must also be recorded in this file. As psychiatrists often treat patients for an illness that has symptoms that are different from those treated by the doctor and care providers; the psychiatrist is required to maintain a separate file.

The above does not detract from the fact that within the Youth division consideration is currently being given to implementing a more intensive form of cooperation between somatic care providers and psychiatric care providers through psycho-medical consultations (PMO).

The abovementioned matters mean that the CPT's requirement can be satisfied in part at this time: nurses and institution doctors can maintain a joint medical file, which will also record what medication has been prescribed for a patient, but psychiatrists are required to maintain their own file. In addition, the institution doctor can make certain parts of the 'Huisartsen Informatie Systeem' (hereinafter referred to as: HIS; an internal electronic patient file of the medical service of an institution) digitally accessible to the psychiatrist, so the psychiatrist can take note of all medication that has been prescribed by the institution doctor. Due in part to the introduction of the national Electronic Patient File (hereinafter referred to as: EPD) for each patient in The Netherlands, it is currently being investigated how the information of all care providers can be linked electronically and made available to each of them.

*The CPT is of the opinion that members of staff must actively involve themselves with young persons during their stay in solitary confinement (§ 87).*

The government shares the CPT's opinion that there must be sufficient interaction between members of staff and the young person during the young person's period of segregation. This is also laid down in Article 25(5) Bjj. In addition to this Article, the Regulations on Punishment and Solitary Confinement Cells in Custodial Institutions for Juvenile Offenders provide that a young person is entitled to an hour of exercise, two moments of personal care a day and regular provision of meals during his stay in solitary confinement. It also provides that the director of the institution is informed

daily, including weekends, of the young person's wellbeing. This duty to provide information guarantees a daily verification of the necessity of the segregation measure and of its continuation. It is also provided that a doctor or nurse or a youth psychiatrist or behavioural expert will regularly visit the young person if there are medical or behavioural problems. If the young person displays self-destructive behaviour or if there is suspicion of such behaviour, his condition will be checked at least once every hour. It will be assessed whether contact moments need to be included when the Bjj is amended. The provision that the director must ensure that regular personnel or professional/specialised staff members have sufficient contact with the young person on a daily basis will be included in the Regulations on Punishment and Solitary Confinement Cells in Custodial Institutions for Juvenile Offenders. This will only be implemented in the regulations that apply to young persons in view of the educational nature of the JJI.

*The CPT also makes a number of observations on the difference between measures intended to maintain order, and disciplinary measures (§ 86) and the advisability of sending a message to staff members of De Hartelborgt that only the measures described in the relevant (statutory) provisions may be imposed (§ 88).*

The CPT correctly makes a distinction between the measures intended to maintain order and disciplinary punishments. The first is intended to restore order and safety in the institution while a disciplinary punishment is intended to correct undesirable behaviour on the part of the young person. The authority to impose a measure will be reviewed when the Bjj is amended. The government sees no reason to adapt the grounds for imposing a measure. In view of quality improvement, the government will once again bring the system of measures and punishment to the attention of members of staff of the JJIs. The government will emphasize that only the punishments set out in the Bjj, and the internal rules based on it, can be imposed. The government will send its response to the CPT's report to the general managers/directors of the JJIs as well, to reemphasise the difference.

*The CPT also draws attention to the use of handcuffs and other mechanical coercive measures (paragraphs 90, 91 and 92).*

These measures can only be implemented on the basis of limited legal grounds and following an individual assessment of the relevant case. Experience unfortunately shows that institutions cannot do without this measure. Rules governing the use of force provide that a member of staff has the authority to handcuff detainees, for example if a detainee needs to be transported or transferred internally. This measure must be used conservatively as indicated above.

*The CPT recommends introducing a special register that will record details on the use of mechanical coercive measures (§ 93).*

Article 38 of the Bjj provides that the director can determine that a young person be restricted in his freedom of movement by means of mechanical measures attached to his body during his segregation. It is set out in the Minister of Justice's Regulations on the Implementation of Mechanical Measures on Young Persons [*Regeling toepassing mechanische middelen jeugdigen*] that the director is required to draw up a protocol for the implementation of mechanical coercive measures. The protocol must in any case include the manner in which the young person's condition is reported. It must also include the decision-making process, the commencement, the continuation, the

adjustment and termination of the application. This means that the regulations provide that relevant information on the use of mechanical coercive measures must be recorded, although a dedicated register is not required. See also in this respect the text on the sanctions register.

*The CPT also recommends issuing clear instructions to members of staff on the correct use of the time-out measure (§ 89).*

A legal basis for the time-out measure will be provided by the amendment of the Bjj. A legal basis will thus be provided for a measure that is increasingly often implemented in practice: the time-out. The time-out is a short, minimally invasive pedagogical measure, during which the young person is temporarily placed outside the group in order to influence the young person's behaviour in a positive manner. The implementation of this measure is focused on the young person's education. Contrary to measures intended to restore order, the focus of the implementation of the time-out measure is not on restoring order and calm in the group. The primary focus is on influencing the behaviour of the young person and the learning effect that arises from this measure. These measures are intended to make it clear that certain ways of behaving have consequences for the young person.

*And finally, the CPT would like to draw attention to an incident in De Talie (§ 84).*

The government assumes that this concerns a young person, who received a Placement in a Correctional Institution for Juvenile Offenders order [*pij-maatregel*] for a terrorist offence and was placed in a FOBA without displaying behaviour in the institution that would warrant this. The CPT observed that he was detained in his room for 22 hours because of the risk that he would recruit other young persons for violent, religious fundamentalism. The CPT notes that no evidence was ever found that he had actually tried to do so. Moreover, he had already stayed in a normal regime in Vught on a previous occasion. The CPT considers this isolation very drastic, especially in view of the fact that less drastic measures were not implemented prior to this solitary confinement.

The government would note in a general sense that recruitment for violent forms of fundamentalism (Jihad) poses such a risk to the safety of other young persons and staff members of the institution, that the use of drastic preventative measures are understandable. The Ministry of Justice is after all also responsible for the safety of the young persons that stay in the institution and fall under its responsibility. The information provided by the CPT does not clearly establish which young person is involved. Presumably it concerns two young persons who received a Placement in a Correctional Institution for Juvenile Offenders order for terrorist activities and were placed in De Hartelborgt. Both young persons showed many similarities in their behaviour and were treated in the same manner. It is known that one of them was initially placed in the FOBA to observe him and in doing so obtain an insight into his behaviour and underlying problems. He was subsequently placed in JJI De Ley in Vught where he did actually undertake efforts to recruit other young persons for violent Jihad. The behaviour of recruiting for violent Jihad may be caused by underlying problems that require treatment. He was subsequently selected for intensive treatment in De Hartelborgt. De Talie is an intensive treatment unit within the meaning of Article 22(b) of the Bjj. This is where the other young person convicted of terrorist offences was also placed. Young persons who are not (yet) ready to stay and be treated in a group due to their underlying problems are placed in this treatment unit. Placement only takes place if this is necessary for the stabilisation and treatment of the young



person. The young person is prepared for the introduction to regular treatment while staying in a group in an environment that offers very few stimuli. During his stay, the young person will participate in communal activities for at least six hours a day during the week and for at least four hours during weekend. The institution offered these activities, but the young persons concerned refused to cooperate and declined to participate. The head of the unit has repeatedly spoken with the young persons. The behavioural expert also had contact with the young persons, but was unable to convince them to rejoin all of the activities. This may have led to them staying in their rooms longer than the term allowed by law.

### **Response of the government of the Kingdom to the CPT report regarding the Netherlands Antilles and Aruba**

The findings of the CPT concerning the prison system and police cells of Aruba and the Netherlands Antilles respectively are serious cause for concern on the part of the government of the Kingdom. According to Article 41(1) of the Charter for the Kingdom of the Netherlands, the Netherlands, the Netherlands Antilles and Aruba conduct their own affairs, which includes law enforcement and the administration of justice, independently. Foreign relations are, however, Kingdom matters according to Article 3(1)(b) of the Charter for the Kingdom of the Netherlands. The findings of the CPT report may have an impact on the Kingdom's international position. The Kingdom is, after all, obliged to comply with its international obligations according to international law. The Kingdom is additionally required, according to Article 43(2) of the Charter for the Kingdom of the Netherlands, to safeguard fundamental human rights and freedoms, legal certainty and the soundness of administration. The Kingdom is for the above reasons justified to draw the countries' attention to the identified problems and to promote that all necessary measures are taken to ensure that the problems are resolved. The State Secretary of the Interior and Kingdom Relations has, in accordance with the decision of Kingdom Council of Ministers, requested the Governors of Aruba and the Netherlands Antilles to closely monitor that such measures are taken by the countries with respect to the prison system that the problems will be resolved. The State Secretary of the Interior and Kingdom Relations has requested the Governors to submit semi-annual reports concerning the above.

The Netherlands will provide assistance within the context of Article 36 of the Charter. Declarations of intent have also been concluded within this context between the Prison System Service of Aruba (hereinafter referred to as: DGWA) and the Judicial Affairs Directorate of the Netherlands Antilles on the one hand and the Dutch DJI on the other.

The collaborative arrangement with Aruba consists of:

- a. offering support in the area of:
  - the development of personnel training for staff members of the DGWA;
  - the development of a training plan for staff members of the DGWA;
  - arranging for training and/or other educational processes for staff members of the DGWA;
- b. providing expertise in the development and implementation of an integrity protocol, with related courses, for the benefit of the DGWA;
- c. providing expertise in the development of social reintegration processes for the benefit of the DGWA;
- d. the temporary exchange and twinning of DGWA and DJI staff members;

- e. providing expertise in the development and implementation of a security plan for the benefit of the DGWA.

The collaborative arrangement with the Netherlands Antilles consists of:

- a. offering support to the Netherlands Antilles' prison system by the DJI in the modernisation of internal penal regulations on the Netherlands Antilles, which includes standing orders, internal rules and day programmes, taking into account the current rules and regulations of the Netherlands Antilles;
- b. offering support in the area of:
  - the development of personnel training for staff members of the Netherlands Antilles prison system;
  - the development of a training plan for staff members of the Netherlands Antilles prison system;
  - arranging for training and/or other educational processes for staff members of the Netherlands Antilles prison system;
- c. the temporary exchange and twinning of staff member of the Netherlands Antilles prison system and DJI staff members;

With respect to Bonaire the government would also note the following. The activities to be carried out within the context of the CPT on Bonaire cannot be seen entirely in isolation from the imminent political reform of the Netherlands Antilles. In the new political system, Bonaire will become part of the Netherlands as a public body, as will St. Eustatius and Saba. This means that it will remain the responsibility of the government of the Netherlands Antilles, until the transition date, to realise the required quality levels in the Bonaire Remand Prison. After the transition date the Netherlands will be politically responsible for the implementation of sanctions on the so-called BES Islands and therefore primarily accountable for the quality of the prison system on those islands. The recommendations formulated by the CPT regarding improvement of the detention situation in the Bonaire Remand Prison mainly concern the buildings of the facility, the offer of a day programme and the manner in which members of staff treat detainees. The government takes these recommendations into account. In order to remedy the identified shortcomings, the government will, in the short term, insure that the following activities are carried out in the Bonaire prison:

- The government will first and foremost ensure that the buildings are adjusted in such a way that a detention or prison sentence can be served in a humane and hygienic manner. Capacity currently not used because it requires the abovementioned improvements can be reopened after said improvements of a structural nature have been carried out. This naturally also means that the government will meet the need for basic materials such as beds, mattresses etc.
- A day programme will be developed and implemented in order to effect that detainees spend a reasonable part of their day outside their cells while engaged in useful activities and also to realise regime differentiation (separation of young persons and adults and separation of persons in preventive custody and those punished for a crime). The government will also provide the materials necessary to carry out the day programme.
- The government will have a secure exercise yard built in order to allow detainees to exercise or engage in sport for at least one hour a day.
- With respect to the identified shortcomings in medical care, the government undertakes that it will structure medical care in such a way a nurse will be present every day, that medical examinations will be carried out regularly and that the facilities required for the provision medical care will be taken into account when making adjustments to the buildings.

- In order to assure more professional treatment of detainees, the government will ensure that current staff receives training in basic skills regarding the treatment of detainees from various target groups.
- The DJI will, as of the middle of October 2008, deploy a unit director, two departmental heads and approximately 20 prison system workers to support and supplement current staff at the Remand Prison. At the same time, current personnel will be offered education and training, and recruitment and selection of new personnel will start on Bonaire.
- The DJI will start preparations for the new construction on Bonaire. The program of requirements will be drawn up in the coming months in consultation with local staff members of the prison system. The objective is to complete the new buildings of the institution within three years so the existing buildings can be demolished.

The State Secretary of the Interior and Kingdom Relations has also formally requested the Ministers of Justice of both countries by letter to respond to the findings of the CPT report by 10 January 2008 at the latest. In this letter, the State Secretary referred explicitly to the seriousness of the findings and the need to take measures within the shortest term possible to ensure that the prison system and police cells in both countries are brought completely in line with the requirements set by the CPT. The Minister of Justice of the Netherlands Antilles indicated in his response to share the concerns of the Dutch Minister and State Secretary. He subsequently dealt with the measures that have since been taken and the plans to improve the situation that are being drawn up and implemented. Various improvement plans have been drawn up within the context of the Netherlands Antilles Security Plan which are intended to implement a sustained improvement of the administration of, among other things, the prison system. This includes training of personnel in addition to the maintenance of buildings. The Minister also dealt with specific measures that have since been taken pursuant to the CPT's visit in June of last year. The various observations concerning structural issues will be dealt with as soon as possible. This has already been done in a number of cases. For example, the police cells on Bonaire have been returned to a good state of repair and satisfy requirements again. In addition, the Minister will instruct the Public Prosecution Service to explicitly inform the police that they have to treat suspects according to current regulations. The Minister of Justice of the Netherlands Antilles finally observes that the available resources (both the collaborative resources made available by the Netherlands and the financial and personnel resources of the Netherlands Antilles) are insufficient to resolve the identified problems.

The meeting of the ministerial steering group of the Netherlands Antilles Security Plan that took place on 21 January 2008 on St. Maarten also dealt with the CPT report. During this meeting, the State Secretary of the Interior and Kingdom Relations promised an additional amount of € 9.5 million for the prison system on the Netherlands Antilles. Those € 9.5 million have now been made available to the Netherlands Antilles to resolve the issues raised by the CPT. The authorities of the Netherlands Antilles have since submitted project plans to Usona, which administers the funds, so that these can now be implemented.

The Aruban Minister of Justice indicated in his response that action was taken immediately after the CPT's visit. The police cells in Oranjestad were taken out of service because of the identified shortcomings and a plan of approach was drawn up immediately afterwards. Resources from the collaborative programme Law Enforcement have also been made available for this purpose. The Aruban Minister of

Justice indicated moreover that, in addition to resolving the issues identified by the CPT, a Supervisory Committee on Cells, Treatment of Detainees and "Indocumentados" will be instituted as well. This committee will, in addition to the material aspects of the CPT report, also focus on legal, personnel and individual aspects. The Minister finally indicated that expansion and training of prison and police personnel are in progress.

## **Part II**

### **Aruba**

**CPT's recommendations, comments and requests for information  
and (proposed) action taken by Aruban authorities**

**A. Police Establishments**

<b>Findings</b>	<b>Recommendation(s)</b>	<b>(Proposed) action(s)</b>
<b><i>Ill-treatment</i></b>		
<p><b>Physical and verbal ill-treatment by the police</b></p>	<p>The CPT recommends that the Aruban authorities adopt a vigorous policy to combat police ill-treatment. Such policy should include a formal statement, by the highest competent political authority, to law enforcement officials, reminding them that:</p> <ul style="list-style-type: none"> <li>- the rights and dignity of persons in their custody must be respected; and</li> <li>- the ill-treatment of such persons will be the subject of severe sanctions</li> </ul> <p>The CPT further recommends that police officers be regularly reminded, through training and instructions, that no more force than is reasonably necessary should be used when effecting an apprehension. More</p>	<p>The Aruba Police Force (APF) has adopted a vigorous policy to combat police ill-treatment. The rules and regulations regarding the treatment of detainees have been established since 2004 in the Police Order on Detainees (Korpsorder 10/2004). This instruction has undergone a revision in order to further comply with CPT regulations. In the coming months the revised Police Order on Detainees will be communicated to police personnel through short specific instructions (Korpsmededelingen) and training.</p> <p>The Police Order on Detainees reminds police personnel of the rights and dignity of persons in custody. Cases of possible ill-treatment of detainees must therefore be reported to the watch commander or to the senior officer in charge immediately. This can be done by the victim, the doctor, his/her family, his/her lawyer or a police officer.</p>

<b>Findings</b>	<b>Recommendation(s)</b>	<b>(Proposed) action(s)</b>
	<p>particularly, law enforcement officials must be trained in preventing and minimizing violence in the context of an apprehension. For cases in which the use of force nevertheless becomes necessary, law enforcement officials need to be able to apply professional techniques which minimize any risk of harm to the persons whom they are seeking to apprehend.</p>	<p>Severe sanctions are taken if the Police Internal Affairs Unit (BIZO) concludes that the behavior of the officer(s) can be considered ill-treatment. The Police Internal Affairs Unit will also concentrate more of its efforts on education and prevention, combined with repression and punishment. Steps have already been taken to establish a training program for personnel in direct contact with persons in police custody (arrestantenzorg) in cooperation with the competent authorities in the Netherlands.</p> <p>On the occasion of the reopening of the cell complex in Oranjestad in October 2008, at the installation ceremony of the new police recruits in November 2008 and at the reopening of the Police School in January 2009, the Minister of Justice and the Commissioner of Police will make formal statements reminding law enforcement officials that the rights and dignity of the persons of persons in their custody must be respected and that the ill treatment of such persons will be the subject of severe sanctions.</p> <p>During basic training at the Police School recruits are trained intensively in the proper techniques to realize an apprehension and to limit the use of force. This training is repeated on a yearly basis for all police personnel. To further improve this training a police-instructor has been trained in the Netherlands in the education of practical police skills to minimize the use of violence. As part of the ongoing training program (funded by the FDA) which will start in 2009, he will train police personnel in the use of proper techniques to prevent excessive force in</p>

<b>Findings</b>	<b>Recommendation(s)</b>	<b>(Proposed) action(s)</b>
<p><b>Rings fixed to wall to handcuff persons taken into police custody</b></p>	<p>The CPT recommends that the Aruban authorities put an end to that practice. Persons taken into police custody should not be left handcuffed to rings fixed to a wall and instead should be accommodated without delay in rooms/cells offering appropriate security conditions. Further, the rings fixed to the wall at Noord Policy Station – and any other police station where they might exist – should be immediately removed.</p>	<p>Unfortunately, the impression has been created that this method is common practice in Aruba and that detainees are handcuffed to rings for lengthy periods of time, which is certainly not the case.</p> <p>Complying with the CPT recommendation, the Aruba Police Force has removed the ring on the wall in the Noord Police Station – the only one – and the use of this room as a temporary holding cell has been made impossible.</p>
<p><b>Lengthy detention in police premises</b></p>	<p>The committee calls on the Aruban authorities to re-examine the system of detention on police premises with a view to substantially reducing its duration.</p> <p>Although CCP Article 87, paragraph 2, stipulates that a custody extension of up to eight days may be ordered by the prosecutor only in case the investigation urgently requires it, in practice regardless of the complexity of the case, custody extensions ordered by the prosecutor were always for the eight-day maximum duration – a period which is very long, in the Committee’s view.</p> <p>The CPT recommends that the Aruban authorities take the necessary steps to put an end to this practice. As envisaged by the law,</p>	<p>It is the aim of the Attorney General to limit police custody to two days. At present representatives of the Public Prosecutor’s Office, the Aruba Police Force and the KIA are working on solving the practical problems that delay the implementation of this new policy</p> <p>It should be emphasized that the two day period will only be extended if the investigation urgently requires this. The decision to extend the period of detention beyond two days and the reasons to do so, are registered in the Detainee Module of the police registration system ACTpol, in which all relevant information regarding individual detainees is recorded.</p>



<b>Findings</b>	<b>Recommendation(s)</b>	<b>(Proposed) action(s)</b>
	<p>extension of police custody beyond two days should be the exception, not the rule. Further, when an extension is granted, it should be for the shortest time possible, consistent with the legitimate interests of the investigation; any decision to extend police custody beyond two days should be grounded in writing and the investigating judge should be empowered not only to declare the extension unlawful but also to reduce its duration</p>	
<b><i>Conditions of detention</i></b>		
<p>Poor ventilation, little or no access to natural light, inadequate access to water, no mattress or bed sheets, no call-bell system and no outdoor exercise, extremely poor conditions, filthy and infested with rats and cockroaches, no properly functioning sanitary facilities, inadequate access to lighting and ventilation, insufficient maintenance, too much</p>	<p>Minimum standards recommended by the CPT for conditions of detention in police cells:</p> <p>All police cells should be clean, of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, cells should enjoy natural light. Further, cells should be equipped with a means of rest (e.g. a fixed chair or bench), and persons obliged to stay overnight in custody should be provided with a clean mattress and clean blankets (or sheets, in warmer climates).</p> <p>Persons in police custody should be allowed to comply with the needs of nature when</p>	<p>Shortly after the CPT's visit, the cellblock in Oranjestad and the disciplinary cell in San Nicolas were closed. The refurbishing of the San Nicolas police cells started on the 18th of February 2008 and was completed on the 25<sup>th</sup> of April 2008 (see attached pictures). The refurbishing of the complex in Oranjestad started on the 12<sup>th</sup> of May 2008 and will be completed in October 2008. All of the abovementioned projects have been realized with funds of the 'Fondo Desaroyo Arubano (FDA)'</p> <p>After the refurbishing all cells are clean and painted, are of a reasonable size and have adequate lighting and ventilation. Every cell is equipped with a sleeping bench, a toilet and a shower. Each detainee is provided with sufficient drinking water (on request) and food on a regular base (morning, midday and evening).</p>

<b>Findings</b>	<b>Recommendation(s)</b>	<b>(Proposed) action(s)</b>
<p>noise, persistent drainage problems, no physically accessible intercom system, no exercise outside, unacceptable conditions in the 'cachot' (disciplinary cell).</p>	<p>necessary, in clean and decent conditions, and be offered adequate washing facilities. They should have ready access to drinking water and be given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day. Whenever persons are held for more than 24 hours, they should be provided with appropriate personal hygiene items and be offered outdoor exercise every day.</p> <p>The CPT request confirmation from the Aruban authorities that all police cells have been refurbished in accordance with the minimum standards recommended by the CPT for conditions of detention in police cells.</p> <p>The Committee would like to receive a detailed account of the measures taken. Further, the CPT recommends that the authorities ensure, through regular maintenance and inspections, that such minimum standards are sustained in all the police stations.</p>	<p>Regarding the facilities for detainees i.e. mattresses, a local supplier was found who supplied an acceptable mattress, comparable to the one being used in the prison.</p> <p>The communication of the detainees with the guard and/or the station sergeant has been improved with the installation of an intercom system in the Macuarima and Noord police station. The intercom in the San Nicolas and Oranjestad police station have been repaired or replaced and are functioning again.</p> <p>The APF has a very small amount of personal hygiene items and clothing at her disposal in the cell blocks. Therefore, detainees are allowed to have family bring them personal hygiene items, clothing and sheets during visits.</p> <p>Additional guards from the Cuerpo Especial Arubano (CEA) have been requested by the APF to provide and supervise periods of outdoor exercise. These guards will attend a basic training course and start working at the police stations in the first half of 2009.</p>
<p>There was no evidence of the upgrading work said to have been effected after the CPT's visit in 1994.</p>		<p>After the 1994 CPT-visit, funds were made available for the necessary upgrading of the cellblocks of Oranjestad and San Nicolas, so that they would comply with CPT standards. After a couple of years, due to insufficient funds for maintenance, the conditions in the cell blocks deteriorated very fast. To avoid a similar situation from occurring again, financing for maintenance is proposed for the yearly governmental budget and the Minister of Justice has appointed an Inspector to oversee compliance</p>

Findings	Recommendation(s)	(Proposed) action(s)
with the CPT standards on a continuous basis.		
<i>Safeguards against ill-treatment</i>		
<p>No right to notify a third party of one's detention, no records in any police registers attesting to a practice of allowing a person to make a phone call or to have a close friend or relative informed by the police.</p>	<p>The CPT recommends that the Aruban authorities draw up regulations governing the rights of arrested or detained persons which are in line with Article 1.5-5 of the Aruban Constitution and Article 90 of the CCP, as well as the recommendations set out below.</p> <p>The CPT calls upon the Aruban authorities to ensure that all persons deprived of their liberty by the police, for whatever reason, are granted the right to notify a close relative or third party of their choice about their situation as from the very outset of their deprivation of liberty.</p> <p>The exercise of this right could be made subject to certain exceptions designed to protect the legitimate interests of the police investigation, provided those exceptions are clearly circumscribed in law and mad subject to appropriate safeguards (i.e. the decision to delay to be recorded in writing with the specific reason therefore, and to require the approval of a senior police officer unconnected with the case at hand or a public prosecutor) and strictly limited in time.</p>	<p>Special attention has been given to procedures with regard to the rights of detainees by, among other things, amending the existing Police Order on Detainees (Korpsorder No. 10/2004). Furthermore training courses are being developed for personnel of CEA, KIA and APF who are in charge of guarding detainees.</p> <p>The Police Order on Detainees stipulates that detainees have the right to notify a relative or third party of their detention. The watch commander makes the call for the detainee and registers this in the detainee records. If it is deemed necessary for the legitimate interests of the police investigation, this call can be withheld for a limited time and only with the approval of a senior police official.</p> <p>All information concerning detainees will be registered in the new Police Registration System ACTPol, which is already in place. Training is currently provided to police personnel and the new system will be operational at the end of 2008.</p>

Findings	Recommendation(s)	(Proposed) action(s)
<p>No lawyer to be present at the interrogation by the police, no unhampered access to the client, duty lawyers often do not turn up.</p>	<p>The CPT recommends that the Aruban authorities ensure – if necessary by amending the relevant legal provisions – that all persons arrested have the right of access to a lawyer from the very outset of, and throughout, their deprivation of liberty, including any interrogation.</p> <p>Further, the CPT recommends that the Aruban authorities take the necessary steps to ensure the effectiveness of the system of legal aid for persons detained by the police who are not in a position to pay for a lawyer.</p>	<p>A detainee who indicates that he wishes to consult a lawyer will not be interrogated until the lawyer has arrived, unless the severity of the case dictates otherwise. The information regarding the request of the detainee for a lawyer, the name of the lawyer and the lawyer's consultation with the detainee will be registered in the detainee module of the ACTpol-registration system.</p> <p>In Aruba a system of legal aid is in place and detainees who cannot afford to pay for a lawyer may indicate such. A lawyer will then be provided for them free of charge. All the information regarding this request, the name of the pro deo lawyer and the lawyer's consultation with the detainee will be registered in the detainee module of the ACTpol-registration system.</p>
<p>Access to a doctor is difficult or impossible, police officers will determine if doctor's assistance is needed.</p>	<p>The CPT recommends that the Aruban authorities take the necessary steps – including through the allocation of adequate funds – to ensure that persons deprived of their liberty by the police have effective access to a doctor from the very outset of their deprivation of liberty. In particular:</p> <ul style="list-style-type: none"> <li>- a request by a detained person to see a doctor should be granted, it is not for police officers, nor for any other authority, to filter such requests;</li> <li>- a person taken into police custody should</li> </ul>	<p>A system of medical aid is in place and has recently been reviewed. A detainee is allowed to request medical assistance of a medical professional (doctor or nurse) and this assistance will be provided as soon as possible. If a detainee indicates that he wishes to see a doctor of his choice, provisions are made but the detainee will have to pay the costs of the doctor's visit himself.</p> <p>Medical examinations always take place in a specific room that is reserved for this purpose (dokterskamer). A police officer is only present at the medical examination if the doctor requests this for security reasons or if the specific circumstances of the case make this necessary. The police officer will be discreet and remain at a</p>

<b>Findings</b>	<b>Recommendation(s)</b>	<b>(Proposed) action(s)</b>
	<p>have the right to be examined, if he so wishes, by a doctor of his own choice, in addition to any medical examination carried out by a doctor called by the police (it being understood that an examination by a doctor of the detained person's own choice may be carried out at his own expense);</p> <ul style="list-style-type: none"> <li>- all medical examinations should be conducted out of the hearing and – unless the doctor concerned expressly request otherwise in a given case – out of the sight of police staff;</li> <li>- the results of every examination, as well as any relevant statements by the detained person and the doctor's conclusions, should be formally recorded by the doctor and made available to the detainee and his lawyer;</li> <li>- the confidentiality of medical data is to be strictly observed, without prejudice to the right of the person concerned to make reference to that medical data;</li> <li>- the police station records should indicate the date and time of requests to see a doctor, when a doctor is called and when the doctor has visited.</li> </ul>	<p>distance respecting the privacy of the detainee.</p> <p>The medical information of the detainee is available to the detainee and his lawyer. Medications, as subscribed by the medical professional, will be registered in the records of the detainee (ACTpol detainee module) at the watch commander's station. The watch commander is responsible for giving the medications to the detainee.</p> <p>All information concerning the request for a doctor, the name of the attending physician, the request for police presence during the examination and the medication for the detainee will be recorded in the detainee module of the ACTpol-registration system. The procedures concerning medical aide and registration are part of the revised Police Order on Detainees.</p>

<b>Findings</b>	<b>Recommendation(s)</b>	<b>(Proposed) action(s)</b>
<p>Two fundamental rights are notably absent from the notification form used, namely to inform a third person of one's detention, and the right of access to a doctor.</p>	<p>The CPT calls upon the Aruban authorities to ensure that all persons detained by the police – for whatever reason – are fully informed of their above-mentioned fundamental rights, including to inform a third person of their choice of their detention, and to have access to a doctor, as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). This should be ensured by provision of clear verbal information at the very outset, to be supplemented at the earliest opportunity (that is, immediately upon arrival at police premises) by provision of the written notification form, which should be revised in accordance with the foregoing remarks.</p>	<p>The APF is revising the written notification form that is currently being utilized to inform detainees of their fundamental rights, to include also the right to have a third person of their choice informed of their detention and the right to have access to a doctor. The watch commander will inform the chosen third party of the detention, either by telephone or in person. This information will be registered in the detainee module of the ACTpol-registration system.</p> <p>As soon as they arrive at the police station detainees are informed verbally of their rights during the arraignment before a senior police officer. They also receive a copy of the written notification form. This information will also be registered in the detainee module of the ACTpol-registration system.</p>
<p>Police records were not rigorously completed. Certain events, such as visits from lawyers, were not systematically recorded.</p>	<p>The CPT recommends that comprehensive custody records including the aforementioned information be introduced and diligently kept at police stations in Aruba. Further, for various questions (e.g. personal effects confiscated; having been informed of one's rights and having availed oneself of or waived them; having been able to inform a close relative or another third party), the detainee's signature should be required and, if necessary, its absence duly accounted for.</p>	<p>A system of comprehensive custody records will be introduced in 2009, as part of the ACTpol registration system, to keep record of each detainee, including all aspects of custody and all measures taken concerning:</p> <ul style="list-style-type: none"> <li>- when and for what reason(s) the custodial measure was taken;</li> <li>- when the detainee arrived on police premises;</li> <li>- when the detainee was informed of his/her rights;</li> <li>- any medical information as visible injuries, health problems, mental disorder, medications etc.</li> <li>- in which cell(s) he/she was placed;</li> <li>- when the detainee was fed;</li> <li>- when the detainee was questioned, by whom and for how long;</li> <li>- when the detainee requested to see a doctor and when a</li> </ul>

<b>Findings</b>	<b>Recommendation(s)</b>	<b>(Proposed) action(s)</b>
<p><b>The Independent Police Complaints Committee has been inactive for some time.</b></p>	<p>The CPT has learned that the Minister of Justice has reactivated this body. The CPT welcomes this development and trusts that the necessary resources will be allocated to the Independent Police Complaints Committee to enable it to strengthen the effectiveness of the complaints system in Aruba.</p>	<p>doctor was called;</p> <ul style="list-style-type: none"> <li>- any contacts or visits from close relatives, a lawyer, a doctor or a representative of the consular services;</li> <li>- when the detainee was transferred, to where and why;</li> <li>- when the detainee was brought before a investigative judge or prosecutor;</li> <li>- when the detainee was remanded to prison or released</li> </ul> <p>The watch commander is responsible for keeping the records up to date and will therefore receive a specific training in the use of the detainee module of ACTpol. This training will be completed before the end of 2008.</p>
		<p>Names of new members for the PCC have been proposed and a decision is expected shortly. Complaints on police conduct will then be referred to the PCC.</p> <p>The Prison Supervisory Committee has submitted a proposal on the way the cellblocks will be inspected in the future. The Minister of Justice has yet to make a decision on this proposal.</p>

## B. Foreign nationals detained under aliens legislation

Finding(s)	Recommendation(s)	(Proposed) action(s)
<p>Preliminary remarks</p>	<p>The Aruban authorities need to ensure that irregular migrants are not detained in police cells for extended periods, i.e. any time longer than is necessary to arrange their transfer to the "Centro pa detencion di ilegalnan".</p>	<p>When irregular migrants (i.e. without valid papers) are detained an investigation as to their legal status is conducted as promptly and as efficiently as possible. The persons in question are allowed to call their relatives or (possible) employer and are provided food and beverages.</p> <p>Once it has been ascertained that the Ordinance on the Admittance and Expulsion of Aliens (Landsverordening Toelating en Uitzetting) has been violated, a consideration of the interests at stake is made in order to determine whether someone should be detained at the CDI. It is also possible that a "reporting duty" (meldingsplicht) is imposed pending a person's expulsion.</p> <p>If a detention order is issued, irregular migrants are transferred to the CDI. They are not held at police stations, unless they have also committed a crime.</p>
	<p>Aruban authorities are invited to consider developing further the use of alternative, non custodial measures for irregular migrants</p>	<p>At present it is already common in many cases for a reporting duty to be imposed instead of a detention order (depending on the circumstances of the person in question). The Government will take this recommendation into consideration in the development of a new policy regarding migrants.</p>



<p><b>III treatment</b></p>	<p>Staff working at the “Centro pa detencion di ilegalnan” to be reminded that disrespectful, aggressive or insulting behaviour will not be tolerated and will be severely sanctioned</p>	<p>The Head of the CEA supervises and coaches staff working at the centre. The Minister of Justice has appointed a special inspector in charge of supervising the execution of the recommendations of the CPT, who will have access at the CDI at all times. Personnel of the centre will also take part in the special training courses on the treatment of detainees which the ICN will organize in consultation with the Dutch DJI. Disciplinary sanctions are taken against personnel that violate these regulations. (<i>Landsverordening Materieel Ambtenarenrecht</i>)</p> <p>Also immigration personnel and <i>Guarda Nos Costa</i> personnel receive regular training and supervision to ensure that they are aware of the applicable laws and regulations and that they do not misuse or abuse their powers in the execution of their duties.</p>
<p><b>Conditions of detention at the “Centro pa detencion di ilegalnan” for immigration detainees</b></p>	<p>The Aruban authorities need to take urgent steps to ensure that:</p> <ul style="list-style-type: none"> <li>• the in-cell sanitary facilities are promptly repaired and refurbished so as to provide hygienic conditions</li> <li>• all detainees are allocated a bed and provided with clean mattresses and clean bedding</li> <li>• all cells are fitted with call- bells</li> <li>• all detainees are provided with the necessary products an equipment to keep their accommodation clean, as</li> </ul>	<p>In view of the conditions at the centre, the Government decided to shut down the Centro.</p> <p>It is the intention of the Government to build a completely new facility for the detention of immigration detainees. At present plans are being drawn for such a centre which will comply with international standards and will also provide more recreational facilities. Funds and a location in Oranjestad have been allocated for this project.</p>

	<p>well as with products for personal hygiene (i.e. toilet paper, soap, toothpaste, toothbrush, etc)</p>	
	<p>As concerns regime:</p> <ul style="list-style-type: none"> <li>• all detainees to be allowed to spend a large proportion of the day outside their cells;</li> <li>• steps to be taken to introduce recreational opportunities, such as access to television, radio, reading material and sports. The longer the period for which persons are detained, the more developed should be the activities which are offered to them</li> </ul>	
	<p>The Centre's staff to receive specific training to deal with the particular needs of foreign nationals detained under aliens legislation</p>	<p>This specific training will also be included in the training course that the ICN and the Dutch DJI will provide.</p>
	<p>Systematic medical screening of all immigration detainees, including for transmissible diseases to be introduced. Such screening should be carried out in such a way that respects medical confidentiality. Further their should be a daily presence of a person with a recognized nursing qualification, and access to acute medical and dental care and appropriate psychological/psychiatric assistance should be available</p>	
<p><b>Safeguards against illtreatment of foreign</b></p>	<p>The Aruban authorities to take the necessary steps to ensure that all persons held under</p>	<p>All immigration detainees are given the possibility to make phone calls to inform a person of their choice of</p>

<p><b>nationals detained under aliens legislation</b></p>	<p>aliens legislation are afforded the fundamental safeguards, as outlined in paragraph 52.</p>	<p>their detention. Their consul is also informed and consuls regularly visit the centre. Information on rights and procedures is provided in 4 languages. When necessary, the assistance of an interpreter is sought.</p>
	<p>Immigration detainees to be allowed to maintain contact with the outside world during their detention, and in particular to have access to a telephone and to receive visits from relatives and representatives of relevant organizations</p>	<p>Immigration detainees are allowed to make phone calls and can be visited by their lawyer or consul.</p> <p>In the future a special area will be created where detainees can meet with their relatives.</p>
	<p>Official entrusted with asylum applications to be provided with appropriate training</p>	<p>With the assistance of the UNHCR Caracas various training courses were organized in Aruba for officials entrusted with asylum applications. It is standard procedure for the asylum committee to consult with UNHCR Caracas regarding individual cases of asylum seekers.</p>

**C. Aruba Correctional Institute**

<b>Finding(s)</b>	<b>Recommendation(s)</b>	<b>(Proposed) action(s)</b>
<p>Physical and verbal ill-treatment of prisoners</p>	<p>Concrete measures are taken to eradicate ill-treatment of prisoners by prison staff at KIA, including through improved management and supervisory mechanisms.</p>	<p>The management team visits the department(s) with increased regularity in order to direct and coach personnel.</p> <p>Per 1<sup>st</sup> October 2008 the KIA in consultation with the DJJ, has adopted and adjusted “treatment courses” for its personnel which will form an integral part of the education plan. These courses will be given before the end of the year.</p>
	<p>Development of a strategy to address the problem of inter-prisoner violence, in the light of the foregoing remarks.</p>	<p>The management team is informed daily of the problems concerning inter-prisoner violence and it tries as much as possible to keep problematic prisoners separated from other prisoners. The KIA has now expanded its facilities for activities for prisoners in remand. With this adjustment prisoners are separated more with the intended result of minimizing inter-prisoner violence</p> <p>Furthermore, the offer of day programs with variation, job formation and courses should be able to solve the above mentioned problem. Nevertheless the management team continues to be confronted with so called ‘gang members’ who share a history prior to imprisonment. These gang members are kept separated as much as possible. This, if the infrastructure and capacity allow it.</p>

<p><b>Detention conditions</b></p>	<p>The maximum capacity of cell must be progressively reduced to two (2) prisoners, including in the new women's and juveniles' sections.</p>	<p>The penitentiary law defines 1 or 3 prisoners per cell. This suggestion also means a total capacity decrease of 33%. The I.C.N. has been expanded to purposely correct the structural premature release.</p> <p>However, more daily activities and programs have now been developed so that prisoners are not confined to a cell most of the time.</p>
<p>Improvement of the ventilation system in the women's and juvenile sections.</p>	<p>Ceiling ventilators on the mentioned sections have been installed. In addition, some ventilation elements have been removed to provide extra airflow and daylight in cells.</p>	<p>The cell doors directly facing the command posts have been partially covered by metal plates in order to increase privacy.</p>
<p>Privacy increase throughout the prison.</p>	<p>The Ministry of Justice intends to make all sections and facilities operational within a term of 2 to 3 years.</p> <p>Fifteen new guards have been taken into service in 2008. Currently the recruitment of another fifteen guards is taking place. They are expected to assume their posts by June 1, 2009.</p>	<p>The Ministry of Justice intends to make all sections and facilities operational within a term of 2 to 3 years.</p>
<p>Pursuit to make all sections and facilities operational.</p>	<p>Expansion of the daily programs is dependant of the number of guards and supporting personnel at disposal. Plans to ensure that more than 50% of the prisoners have</p>	<p>Expansion of the daily programs is dependant of the number of guards and supporting personnel at disposal. Plans to ensure that more than 50% of the prisoners have</p>

	<p>(i.e. 8 hours or more) outside their cells engaged in purposeful activities of a varied nature: work, preferably with vocational value; education; sport; recreation/association. In particular, young prisoners must be offered a full program of education, recreational and other purposeful activities.</p>	<p>daily and useful activities are being developed and the objective is to start as per July 1<sup>st</sup> 2008. Juveniles are expected to follow certain recourses. For this objective extra resources have been added to the budget for 2009. These will be used to hire external manpower/professionals. The intention is to send at least 2 guards to the Netherlands for an internship to gain experience in a juvenile detention unit. Training personnel to work with this target group will be a guarantee for durability.</p>
<p><b>Medical care</b></p>	<p>Aruban authorities ensure that all prisoners are guaranteed the provision of care- including specialist care- required by their state of health; this implies that the funds allocated to prisons should be sufficient to enable health care services to be provided free-of-charge to prisoners who do not have the necessary recourses to pay for them themselves.</p>	<p>This recommendation has been accepted and implemented.</p>
	<p>Increase the presence of a doctor to ensure daily consultations on weekdays (preferably to the equivalent of one full-time doctor) and that the complement of nurses be increased to five (5).</p>	<p>The physician is subservient to the Justice department and provides a couple of hours of service to the I.C.N. The possibility of having a physician work for the I.C.N. on a daily basis is presently being evaluated.</p> <p>The medical staff has been reinforced with one nurse. The recruitment of another nurse is still pending.</p>
	<p>To ensure that a qualified person to provide first aid, preferably with a recognized nursing qualification, should always be present in the</p>	<p>The personnel stop makes this recommendation unrealistic for this year. In order to attend this recommendation, first aid courses/trainings have been given to all personnel.</p>

	<p>prison, including at night.</p>	
<p>A dentist on a part-time basis ought to be recruited to provide the dental care needed in KIA.</p>	<p>The number of patients on a yearly basis makes the implementation of this recommendation financially unjustifiable. Transfers to an external dentist will be continued.</p>	
<p>Every newly admitted prisoner must be properly interviewed and physically examined by a medical doctor (or by a fully qualified nurse reporting to a doctor) as soon as possible after his admission; save for exceptional circumstances, the interview/examination should be carried out within 24 hours of admission. Further, this examination should include screening for transmittable diseases (TB, HIV, etc.)</p>	<p>The service will improve as soon as the additional nurses are hired and the physician is available on a daily basis. For this objective extra resources have been added to the budget for 2009.</p>	
<p>The medical screening procedure is brought in line with precepts in paragraph 77 and that a separate register be established for recording lesions observed on newly admitted prisoners or sustained by prisoners while detained at KIA.</p>	<p>This recommendation has been implemented.</p>	
<p>Medical consultations and distribution of medication are to be organized in such a way as to respect confidentiality. All medical examinations of prisoners ought to be conducted out of the hearing and- unless the</p>	<p>This recommendation has been implemented.</p>	

	<p>health care staff concerned requests otherwise in a particular case- out of the sight of prison officers. Further, medication ought to be distributed by a health-care staff member.</p>	
	<p>Aruban authorities ensure, without further delay, that prisoners who require psychiatric and/or psychological care have access to it.</p>	<p>The ICN is dependant of availability of these professionals. There is an overall shortage of such professionals on the island and the ones that are in practice choose only to operate independently. This means that the chance of recruiting full-time professionals is practically impossible. Currently talks are being held with other services sectors to share a professional. ICN is willing to budget extra resources in order to improve psychiatric and/or psychological care and treatment of prisoners.</p>
	<p>Urgent measures must be taken to ensure the necessary staffing for the FOBA, including the frequent, regular presence of a psychiatrist.</p>	<p>The IBA (Individual counseling for prisoners with psychological or psychiatric problems) became operational on the 15<sup>th</sup> September 2008. In addition to the regular staff a nurse specialized in dealing with psychiatric patients will be hired soon.</p>
	<p>Aruban authorities develop a policy for the prevention of suicide and the management of incidents of self-harm at KIA.</p>	<p>The protocols of the DJI were translated to the Aruban situation and have become applicable as of October 1, 2008. Personnel will follow on-the-job training on how to apply and use the protocols.</p>
	<p>Aruban authorities develop and adopt a written protocol on hunger strikes, reflecting the approach mentioned in paragraph 83.</p>	<p>Protocols have been developed and have become applicable as of October 1, 2008. Personnel follow on-the-job training on how to apply and use the protocols.</p>



<p><b>Other cases</b></p>	<p>Aruban authorities pursue efforts to move away from a purely custodial culture of prison management. Such efforts would be best complemented by the further development of regime activities offered to inmates.</p>	<p>A number of guards and supporting personnel will complete an internship in the Netherlands and will be additionally trained in order to gain knowledge on how to promote a positive attitude towards changing this culture. KIA and DJI are in the process of developing an education plan.</p>
<p>Aruba authorities vigorously pursue their efforts to prevent trafficking in drugs at KIA.</p>	<p>An integrity protocol is in the making and is expected to be implemented as per end of the year 2008.</p>	<p>A collaboration agreement was signed with the <i>Centro pa Informacion pa Asuntunan di Droga</i> (centre for information on drug related matters). It will offer structural collaboration for the duration of the detention and the period afterwards.</p>
<p>Aruban authorities take the necessary measures to increase the level of support to drug-addicted prisoners, in the light of the remarks in paragraph 87.</p>	<p>The policy regarding disciplinary punishments has been adjusted. Measures are no longer imposed automatically but depend on the nature of the violation. The new policy will also be presented to the Supervisory Committee KIA.</p>	<p>See above</p>
<p>Rectification of deficiencies in the disciplinary procedures.</p>	<p>Review of the approach being followed at KIA as regards disciplinary sanctions, in order to ensure that they are always proportional to the offence, and that punishment does not amount to a total prohibition of family contact.</p>	<p>This recommendation has been accepted. Restriction of clothing occurs only on indication of suicidal tendencies.</p>
<p>Take action to remedy the remaining material deficiencies in the disciplinary cell in the</p>	<p></p>	<p></p>

	<p>women's unit. Further, all prisoners subject to the disciplinary sanction of solitary confinement should be allowed adequate clothing and a bed sheet.</p>	<p>The medical department is consulted to provide this indication.</p>
	<p>Aruban authorities ensure, without further delay, that all prisoners subject to the disciplinary sanction or solitary confinement are offered at least one hour of proper outdoor exercise per day.</p>	<p>This recommendation cannot be realized within a short period of time due to a lack of outdoor exercise grounds and shortage of personnel.</p>
	<p>Every disciplinary placement ought to immediately be brought to the attention of the health care service. Further, a medical practitioner or a qualified nurse reporting to such a practitioner should visit, daily, prisoners held under conditions of solitary confinement and provide them with prompt medical assistance and treatment at the request of such prisoner or the prison staff.</p>	<p>All cases of placements in punishment cells are directly reported to the medical staff who visits these prisoners daily. If they consider continued solitary confinement a danger to the health of the prisoner, it is stopped.</p>
	<p>The role and effectiveness of the Supervisory Committee are strengthened through the provision of adequate funding and the introduction of means (such as a secure letterbox system) allowing the prisoners to have confidential access to the Committee as well as individual hearings whenever appropriate.</p>	<p>A letterbox has been introduced and prisoners have confidential access to the Committee as well as individual hearings whenever appropriate.</p>

## **Part III**

# **The Netherlands Antilles**

## NETHERLANDS ANTILLES

Minster of Justice  
**D.A. Dick**

To: Mr Mauro PALMA  
President of the European Committee  
for the Prevention of Torture and  
Inhuman or Degrading Treatment of  
Punishment  
Council of Europe  
67075 STRASBOURG Cedex  
France

Willemstad, 10 November 2008

**Subject: Status of the implementation of the CPT's recommendations**

As agreed, I herewith inform you of the status of the implementation of the improvement activities within the prison system of the Netherlands Antilles within the context of the findings and recommendations included in the CPT report.

Various efforts have been made within the financial parameters of the Netherlands Antilles since the CPT's visit. In the middle of July last, the Dutch government allocated an amount of € 9.5 million for the required improvements and adjustments. € 800,000 of this amount has been reserved for the BES Islands.

A Master plan has now been submitted to USONA for assessment and financing. This Master plan includes the various subprojects that are a reflection and further substantiation of the activities intended to resolve the shortcomings identified by the CPT.

Preparations (technical and otherwise) are now underway, completely in line with current (compatibility) procedures, with respect to the activities that are to take place on the islands Curaçao and St. Maarten, in order to realise the material improvements.

Several subprojects, such as recruitment and selection of senior officials within the prison system, deployment of technical support staff and the acquisition and implementation of an automated ICT platform (from 'intake' to 'release'), have since been submitted to USONA.

Attention was also paid to aspects such as training and administration in the recent period. A plan of approach has been drawn up, and with respect to the ICT process, I can inform you that an award advice was issued at the end of October.

As regards the activities on Bonaire and the other BES Islands, I would refer to the activities that, partially under my own responsibility, are being carried out by the DJI.

Below I will deal briefly, point by point, with the activities undertaken within the prison system until the end of September and with the activities to be undertaken in the near future. Within this context I would also refer you to the progress report (version dated September 2008), presented to you by the Cabinet of the Governor of the Netherlands Antilles, regarding the improvements to be made within the prison system.

It is established first and foremost that the situation requires urgent and efficient action. The intended activities will, nevertheless, have to go through the statutory procedures, which will have a negative impact on the expediency pursued.

## **A.1 Introductory remarks**

A general circular was sent to the staff members of the institutions. The members of staff were, again, informed of the CPT committee's role, duties and powers, so that they will provide all assistance during the visit to the facilities.

## **A. 2 Police cells**

Considerable progress can be reported in this area. The police forces have received explicit instructions to carry out their duties in accordance with current regulations on how to deal with and treat persons under arrest. The existing regulations that became effective in 1996 were used for this purpose. Reference is made, within this context, to the Ministerial Order with General Effect, dated 3 March 2001, Regulations on Official Instructions and the Rules Governing the Use of Force, of the Police Force of the Netherlands Antilles [*Korps Politie Nederlandse Antillen*] (hereinafter referred to as: KPNA) and the Ministerial Order of January 1996.

An advisory group, "General Orders", of the Curaçao Police Force [*Korps Politie Curaçao*] (hereinafter referred to as: KPC) is currently assessing, tightening and adjusting the rules of conduct, standards and official instructions. This has already resulted in three internal instructions being issued and sent to the Lieutenant Governor for confirmation.

The Quality Bureau of the KPC, which consists of two officials, one of which is a technical expert from the Government Accountancy Bureau Foundation [*Stichting Overheid Accountants Bureau*] (hereinafter referred to as: SOAB), will issue a report on the monitoring and safeguarding of detainees' rights. It is our intention to add another two officials to this bureau. The expansion of the Internal Affairs Bureau has been implemented and currently consists of 5 persons.

The "Integral Professional Skills Training" (IBT) is progressing well; training is taking place.

And finally, general guidelines have been issued by the Procurator General, which entail that the Police Forces have to draw up rules of conduct for their

Arrest Team (AT). The Police Force is drawing up a complaints procedure, which will include these rules.

### **A. 3 Condition of police cells**

#### **Curaçao police cells:**

An offer has been requested for the acquisition of "durable and aggression-proof mattresses". A model is expected shortly, which will be examined, following which they will be acquired.

With respect to hygiene, it can be stated that progress is made in this area as well. The cells are cleaned every week by a cleaning company and the detainees themselves do minor cleaning work on a daily basis. The Public Prosecution Service conducts monthly cell inspections in cooperation with the police and Legal Affairs Department.

We have elected to carry out the implementation of an intercom system in the police cells on a project basis.

The Montagna police post is equipped with a calling system for those under arrest. The other intercom systems will be included in the aforementioned project. Measures to address shortcomings in the area of ventilation will be included in the new construction/renovation projects of the various complexes. Offers have already been requested for this purpose, which offers are expected shortly. This applies to the police cells in Barber and Rio Canario.

The required specifications with regard to the Barber police post have been finalised. The open tendering procedure will take place in December 2008 and new construction/renovation will commence in January 2009.

A fire hose will also be installed in the Rio Canario police post, while the cells intended for drug swallows will be adapted.

In the Bon Futuro prison and detention centre, a regime for 24-hour supervision by prison personnel of the police cells (the so-called Block 1) has been realised. The intercom system was cancelled as a result.

#### **Material circumstances**

The committee that has been set up conducted an inventory and cost estimate regarding the acquisition of useful recreational material. A day programme for persons held in police custody has been drawn up as well.

#### **Police cells Bonaire and St. Maarten**

The police cells on Bonaire have been put in order and cleaned as regards the sanitary facilities.

The expansion of the police cells on St. Maarten was implemented, but they have not yet been delivered. Delivery was delayed due to dismissal of the contractor. Construction will recommence in the very near future. The existing police cells were thoroughly cleaned and painted. These cells are also thoroughly cleaned by a cleaning company once a week, and the detainees perform minor cleaning activities on a daily basis.

## **Protection against abuse by the police**

Clear implementation guidelines have been communicated to the police. A 'rights form' is administered by the police. The draft text for the amendment of this form was discussed on 15 July. The text will be translated by court interpreter(s) and made available in all four languages, namely Papiamentu, Dutch, English and Spanish). The supplement to the form relates to: a) the suspect's right to have a family member or other person (not being a fellow suspect if there are restrictions) informed of the arrest and detention and b) the suspect's right to medical assistance. The amendment is expected to enter into effect by the middle of November.

The Public Prosecution Service will shortly commence an inventory of the problem of negligence on the part of pro bono lawyers. The emphasis will be on visiting the person in preliminary police custody in a police cell following remand in a police cell, and attending the assessment and extension of the remand in a police cell and the demand for detention of this person submitted to the examining magistrate.

Within this context, the examining judge's clerk will, during closed court session regarding the imprisonment, also register whether counsel for the defence provides assistance in addition to recording the extension of the remand in police custody and the detention.

The Public Prosecution Service intends to conduct a meeting with the Bar Association and the cabinet of the examining magistrate to make arrangements with regard to the abovementioned registration. The manner in which this assistance is provided will be observed during a preset period prior to this meeting. The intention is to create a central registration system ("electronic detainee file"), which will be gradually expanded. A small work group is currently working on its preparation.

## **B. Aliens detention**

### **B.1 Abuse**

The same instructions that apply to the treatment of detainees apply to the way foreign nationals are treated. Compliance will be monitored by means of regular inspections.

### **B.2 Condition of the barracks for illegal foreign nationals**

A technical plan has been drawn to ensure that the barracks comply with the CPT's requirements. Part of this plan, the installation of a camera system, is underway. This plan also includes recreation areas, one for the men's unit and one for the women's unit, and two exercise yards. The public tender will take place in December 2008 and (re)construction of the barracks for illegal foreign nationals will commence in January 2009.

A day programme has been drawn up for "incarcerated" foreign nationals. A total medical care plan has been drawn up, and it is proposed to integrate

this plan into the prison's medical care. A profile for the personnel to be recruited has also been prepared. The educational requirements have already been finalised. The National Police Institute (LPO) has been entrusted with the development and structuring of a training programme.

### **St. Maarten**

The technical preparations for the establishment of a holding centre for asylum seekers is underway. Financing is provided with reserved means from the Netherlands Antilles Security Plan (PVNA). The estimated time until completion is approximately 8 months.

## **C. Prisons and detention centres**

### **C.1 Abuse**

The members of the Riot Team (C.E.R.T.) followed the "Practical Penitentiary Action" (PPO) training course. 80 persons followed this training. A total of 130 persons will ultimately follow the training. The training for a broader group in Bon Futuro will start by mid August. The Riot Team will be reorganised. The current team will be discontinued and a recruitment and selection process will take place. The new training of the team will include the rules governing the use of force (including the use of pepper spray). The guidelines currently in force are those included in the "Police and Procedure Manual".

### **C.2 Material circumstances**

A phased plan is being drawn up, in accordance with priority measures, during which the most necessary improvements will take place (including sanitary facilities and ventilation) at the same time. A "hygiene committee" has been instituted which will be headed the institution's doctor.

An integral plan is currently being drawn up, in collaboration with the Curaçao Municipal Health Service (GGD), Environment Department, which will ensure a structural resolution of the shortcomings in this area. This plan, including the relevant financing, will shortly be submitted.

### **BES Islands**

€ 800,000 has been reserved for the necessary improvements. A plan of approach for Bonaire, to be issued by the DJI, is currently being awaited, as was agreed during the visit of the aforementioned Agency.

### **St. Maarten**

An amount has been reserved for improvements to sanitary facilities, installing a camera system and a system for fighting fires. The possibility of installing an intercom system will also be assessed.



### **C. 3 Regime**

Resocialisation regimes and day programmes intended for the detention centres on Curaçao, St. Maarten and Bonaire are being prepared in close cooperation with the technical support staff.

### **C. 4 Personnel**

The job ranking with respect to management personnel has been finalised. The recruitment campaign has been prepared and an offer for its implementation has been submitted.

### **C. 5 Medical facilities**

Sessions with personnel concerning medical care in the prison take place on a regular basis. A manual for medical care is currently being drawn up, and personnel is being trained to implement it. It is also the intention to draw up a total plan for medical care both inside and outside of the prison. This programme could include the barracks for illegal foreign nationals and the police cells.

### **C. 6 Riot Team (C.E.R.T.-team)**

I would refer you to the information at C.1.

The Minister,

[Signature]

## NEDERLANDSE ANTILLEN



MINISTER VAN JUSTITIE  
D.A. Dick

Aan: Mr Mauro PALMA  
President of the European Committee  
for the Prevention of Torture and Inhuman  
or Degrading Treatment or Punishment  
Council of Europe  
67075 STRASBOURG Cedex  
France

Willemstad, 10 november 2008

**Onderwerp: Stand van zaken uitvoering aanbevelingen CPT**

Zoals afgesproken, doe ik u hierbij de stand van zaken toekomen met betrekking tot het implementeren van verbeteringsactiviteiten binnen het gevangeniswezen op de Nederlandse Antillen in het kader van de bevindingen en aanbevelingen zoals opgenomen in het CPT-rapport.

Sinds het bezoek van het CPT zijn verschillende inspanningen gepleegd binnen de financiële kaders van de Nederlandse Antillen. De Nederlandse regering heeft medio juli jl. een bedrag van € 9.5 miljoen beschikbaar gesteld voor de nodige verbeteringen en aanpassingen. Hiervan is voor de BES-eilanden € 800.000 gereserveerd.

Bij USONA ligt thans ter beoordeling en financiering een Masterplan, waarin opgenomen de verschillende deelprojecten, die een reflectie zijn en een verdere concretisering van de activiteiten ter verhelpen van de door het CPT geconstateerde tekortkomingen.

Met betrekking tot de activiteiten die plaats zullen vinden op de eilanden Curaçao en Sint Maarten, worden, geheel in de lijn van de geldende (comptabiliteits)procedures, (technische) voorbereidingen getroffen om de fysieke verbeteringen te realiseren.

Ook zijn er enkele deelprojecten, zoals de werving en selectie van topambtenaren binnen het gevangeniswezen, inzet technische bijstanders en de aanschaf en implementatie van een geautomatiseerde ICT-platform (van 'intake' tot 'release') reeds bij USONA ingediend.

Aspecten zoals opleiding en bedrijfsvoering hebben ook aandacht gehad in de afgelopen periode. Er is een plan van aanpak voor de opleiding van het personeel en wat het ICT-traject betreft kan ik u informeren dat er eind oktober een gunning advies is uitgebracht.

Voor wat betreft de activiteiten op Bonaire (en de overige BES-eilanden), verwijs ik graag naar de activiteiten die, mede onder mijn verantwoordelijkheid, door de DJI worden ondernomen.

W

Hieronder ga ik puntsgewijs, summier in op de ondernomen activiteiten binnen het gevangeniswezen, tot eind september en hetgeen in de nabije toekomst ondernomen zullen worden. In dit kader verwijs ik u ook naar het door het Kabinet van de Gouverneur van de Nederlandse Antillen aan u aangeboden voortgangsrapport (versie september 2008) met betrekking tot de verbeteringen binnen het gevangeniswezen.

Voorop is gesteld, dat de situatie urgentie en efficiëntie vergt. Desalniettemin, zullen de voorgenomen activiteiten wettelijke procedures moeten doorlopen, waardoor aan de gestreefde voortvarendheid tekort wordt gedaan.

#### **A.1 Inleidende opmerkingen**

Er is een algemene circulaire opgestuurd voor het personeel in de inrichtingen. Het personeel is over de rol, taken en bevoegdheden van het CPT-Commissie wederom geïnformeerd, zodat zij alle medewerking zullen verlenen bij het betreden van de faciliteiten.

#### **A.2 Politiecellen**

Op dit gebied zijn aanzienlijke vorderingen te melden. De Politiekorpsen hebben nadrukkelijke instructies ontvangen om hun werkzaamheden te verrichten conform de geldende regelgeving hoe met arrestanten om te gaan en deze te bejegenen. Hiervoor is gebruik gemaakt van de bestaande regels die sinds 1996 in werking zijn getreden. In dit kader wordt verwezen naar de Ministeriele beschikking met Algemene Werking van de 3<sup>de</sup> maart 2001, regeling amht- en geweldinstructie KPNA en de Ministeriele beschikking van januari 1996.

Verder is er een adviesgroep "Algemene Orders" van het KPC bezig met het doorlichten, aanscherpen en aanpassen van de gedragsregels, normen en dienstvoorschriften. Als gevolg hiervan zijn al drie interne instructies uitgevaardigd en naar de Gezaghebber gestuurd voor bekrachtiging.

Het Kwaliteitsbureau Korps Politie Curaçao (KPC), dat met 2 functionarissen is bemand, waarvan 1 technisch expert van de Stichting Overheid Accountants Bureau (SOAB), zal een rapport uitbrengen over de bewaking en waarborging van de rechten van gedetineerden. Het streven is om het bureau met nog 2 functionarissen te bemannen. De uitbreiding van het Bureau Interne Zaken heeft plaatsgevonden en telt momenteel 5 personen.

De "Integrale Beroepsvaardigheden Training (IBT) loopt goed. De trainingen vinden plaats.

Tot slot zijn algemene richtlijnen uitgevaardigd door de Procureur Generaal, zodat Korpsen instructies opstellen voor het optreden van hun Arrestatie Team (AT). Samen met deze instructies wordt door het Korps een klachtenprocedure opgesteld.



### A.3 Staat van de politiecellen

#### Politicellen Curaçao:

Er is een offerte opgevraagd voor de aanschaf van "duurzame en agressie bestendige matrassen". Een model wordt binnenkort verwacht en bestudeerd. Hierna kan er overgegaan worden tot het aanschaffen hiervan.

Voor wat betreft de hygiëne kan gezegd worden dat ook hier vooruitgang is geboekt. De cellen worden wekelijks schoongemaakt door een schoonmaakbedrijf en dagelijks proper gehouden door de gedetineerden zelf. Het Openbaar Ministerie verricht ook maandelijks celinspecties, in samenwerking met de Politie en de Directie Justitiële Zaken.

Er is gekozen om de aanleg van intercom systemen voor de politiecellen in de vorm van een project uit te voeren.

Bij de Politiepost Montagna is een belystingssysteem aanwezig voor de arrestanten. De andere intercomsystemen zullen worden meegenomen in voornoemd project.

Tekortkomingen betreffende de ventilatie zullen worden meegenomen in de projecten vernieuwbouw/renovatie van de verschillende complexen. Hiervoor zijn al offertes opgevraagd, welke binnenkort verwacht wordt. Dit geldt voor de politiecellen te Barber en Rio Canario.

Voor wat betreft politiepost Barber kan gezegd worden dat het benodigde bestek gereed is. In december 2008 zal de openbare aanbesteding plaatsvinden, waarna in januari 2009 met de vernieuwbouw/renovatie begonnen kan worden.

Bij politiepost Rio Canario zal ook een brandslang worden geïnstalleerd, terwijl de cellen voor bolletjesslikkers zullen worden aangepast.

Bij de politiecellen in de Strafvangenis en Huis van Bewaring Bon Futuro (zgn. Blok 1) is een 24-uurs personeel toezicht gerealiseerd. Het Intercom systeem is daardoor komen te vervallen.

#### Materiële omstandigheden:

De ingestelde commissie heeft een inventarisatie en kostenraming gemaakt voor de aanschaf van nuttig recreatiemateriaal. Ook is er een dagprogramma opgesteld voor de politie arrestanten.

#### Politicellen Bonaire en Sint Maarten:

De politiecellen op Bonaire, zijn qua het sanitair in orde gemaakt en schoon.

De uitbreiding van de politiecellen op Sint Maarten heeft plaatsgevonden, maar de oplevering nog niet. De oplevering is namelijk vertraagd wegens schorsing van de aannemer. Op zeer korte termijn zal de bouw worden hervat. De bestaande politiecellen hebben een grondige schoonmaakbeurt gehad en zijn geleverd. Ook hier worden de cellen een keer per week grondig schoongemaakt door een schoonmaakbedrijf en overigens dagelijks onderhouden door de gedetineerden.



#### A.4 Bescherming tegen politie mishandeling

Eenduidige uitvoeringsrichtlijnen zijn bekend gemaakt bij de politie. Er is een "rechtenformulier" in het beheer van de politie. De concepttekst voor de wijziging van het formulier is op 15 juli besproken.

Deze tekst zal nog door de Gerechtstolk(en) worden vertaald en beschikbaar zijn in alle vier talen (Papiamentu, Nederlands, Engels en Spaans). De aanvulling van het rechtenformulier heeft betrekking op: a. het recht van de verdachte om een familielid of een andere persoon van zijn keuze (niet zijnde een medeverdachte in het geval van beperkingen) op de hoogte te laten stellen van zijn aanhouding en detentie en b. het recht van de verdachte op medische bijstand. Naar verwachting zal het rechtenformulier medio november zijn gewijzigd.

Binnenkort vindt er een inventarisatie van de problematiek van nalatigheid van pro-deo advocaten plaats door het OM. De nadruk ligt daarbij op bezoek van de voorlopig gehechte in de politiecel na de inverzekeringstelling en het bijwonen van de toetsing en verlenging van de inverzekeringstelling en de vordering bewaring bij de rechter-commissaris.

In dit kader wordt door de griffier van de Rechter Commissaris, naast de vermelding in het proces-verbaal met betrekking tot de verlenging van de IVS en de hewaring, tijdens de raadkamer gevangenhouding ook bijgehouden of door de raadsman bijstand wordt verleend.

Het OM is voornemens met de Orde van Advocaten en het kabinet RC een overleg te beleggen om tot afspraken te komen met betrekking tot voormelde registratie. Voor dit overleg plaatsvindt wordt over een geplande periode waargenomen hoe deze bijstand geschiedt. Het voornemen is om hierna een centraal registratiesysteem te creëren ("elektronisch arrestantendossier"), dat geleidelijk aan wordt uitgebreid. Een kleine werkgroep werkt momenteel aan de voorbereiding hiervan.

#### B. Vreemdelingendetentie

##### B.1 Mishandeling

Dezelfde instructies die gelden voor het bejogenen van arrestanten, worden tevens gebruikt in het geval van vreemdelingen. Door regelmatige inspecties zal gecontroleerd worden op de naleving hiervan.

##### B.2 Staat van de illegale barakken

Er is een technisch plan opgesteld om de barakken aan de CPT-normen te laten voldoen. Een onderdeel van het plan, het aanbrengen van een camerasysteem, is in uitvoering. In dit plan zijn ook recreatiezalen opgenomen, één voor de mannenafdeling en één voor de vrouwenafdeling en twee "luchtruimtes". In december 2008 zal de aanbesteding plaatsvinden en in januari 2009 zal ook met de verbouwing/bouw van de barakken voor illegale vreemdelingen worden begonnen.

Er is een dagprogramma opgesteld voor de "opgesloten" vreemdelingen. Een totaal plan voor de medische zorg is opgesteld, waarbij het voorstel is om deze te integreren in de medische zorg van de gevangenis. Ook is er een profielschets gemaakt voor het te werven personeel. Inmiddels zijn de opleidingseisen gereed. Het Landelijke Politie Opleidingsinstituut (LPO) is belast met de ontwikkeling en opzet van een opleidingsplan.

**Sint Maarten:**

De technische voorbereiding voor een grenshospitium vindt plaats. Financiering geschiedt met gereserveerde middelen via Plan Veiligheid Nederlandse Antillen (PVNA). Geschatte periode voor de realisatie is ongeveer 8 maanden.

**C. Gevangenen en Huizen van Bewaring****C.1 Mishandeling**

De leden van het Riot-Team (C.E.R.T.) hebben een training "Praktisch Penitentiair Optreden" (PPO) gevolgd. Er zijn 80 mensen getraind. In totaal zullen er 130 mensen worden getraind. Medio augustus begint de training in Bon Futuro voor een bredere groep. Het Riot-team zal worden gereorganiseerd. Het huidige team wordt opgeheven en er komt een werving- en selectie ronde. In de nieuwe opleiding voor het team zullen geweldinstructies (o.a. gebruik van Pepperspray) worden opgenomen. De richtlijnen die thans worden gehanteerd zijn die welke zijn opgenomen in de "Policy and Procedure Manual".

**C.2 Materiële omstandigheden**

Conform a-prioritering wordt een gefasceerd plan opgesteld waarbij tegelijkertijd de meest noodzakelijke verbeteringen zullen plaatsvinden (o.a. sanitair, ventilatie). Er is een "hygiëne commissie" ingesteld onder voorzitterschap van de inrichtingsarts.

Samen met het team van de Gezondheidsdienst van het eilandgebied Curaçao (GGD), Afdeling Milieu, wordt nu een integraal plan opgesteld, waarbij een structurele aanpak van het tekortkomingen op dit gebied zal worden uitgevoerd. Binnenkort wordt dit plan opgeleverd met een daarbij behorende begroting.

**BES-eilanden:**

Er is C 800.000 gereserveerd voor de nodige verbeteringen. Thans is het wachten op een plan van aanpak van de Directie Justitiële Inrichtingen t.b.v. Bonaire, wat tijdens het bezoek van voornoemde directie is afgesproken.

**Sint Maarten:**

Er is een bedrag gereserveerd voor verbeteringen van sanitair, aanbrengen van een camerasysteem en een systeem voor brandbestrijding. Tevens zal worden gekeken naar de mogelijkheid voor het aanbrengen van een intercom systeem.

**C.3 Regiem**

In nauw overleg met de technische bijstanders worden resocialisatieregimes en dagprogramma's voor de penitentiaire inrichtingen Curaçao, St. Maarten en Bonaire voorbereid.



**C.4 Personeel**

De functiewaardering ten behoeve van het leidinggevend personeel is gereed. De wervingscampagne is al voorhereid en er is een offerte ingediend ter uitvoering.

**C.5 Medische faciliteiten**

Er vinden regelmatige sessies plaats met het personeel over de medische zorg in de gevangenis. Een handleiding voor de medische zorg is in de maak en het personeel wordt getraind om deze uit te voeren. Tevens ligt het in de bedoeling om een totaal plan op te zetten voor de medische zorg zowel in de gevangenis als daarbuiten. Gedacht wordt hierbij aan de "illegale barakken" en de politiecellen.

**C.6 Riot team (C.E.R.T.-team)**

Gaarne verwijst ik naar informatie onder C.1

De Minister

