

**FOLLOW-UP REPORT OF THE GOVERNMENT OF ARUBA
IN RESPONSE TO THE REPORT OF THE EUROPEAN
COMMITTEE FOR THE PREVENTION OF TORTURE
AND INHUMAN OR DEGRADING TREATMENT OR
PUNISHMENT (CPT) ON ITS VISIT TO ARUBA
FROM 30 JUNE TO 2 JULY 1994**

(transmitted by letter of 17 June 1996)

REPORT TO THE CPT BY ARUBA

This report updates and adds to the interim report submitted by the Aruban government in July 1995, and should be read in conjunction with it.

A. POLICE CELLS

182 As reported previously, the Aruban parliament (*Staten*) was expected to have adopted the draft Code of Criminal Procedure by the end of 1995. This target was nearly met; the draft Code will probably be adopted by the *Staten* at the end of January or beginning of February 1996, and will enter into force with effect from 1 January 1997. The draft Code incorporates the safeguards for those held in detention arising from the various human rights conventions which apply to Aruba (notably the ECHR) and from domestic and international case law. It should be noted for the record that most of these safeguards are already being applied in practice. The new Code confers more rights on suspects than its predecessor, a significant change being that suspects must be brought before a judicial authority within three days (article 89 of the new Code of Criminal Procedure). The judicial authority then examines the merits of the order extending remand in custody.

The preparatory work for the entry into force of the new Code will form a project entailing the involvement and supervision of every executive agency. The Aruban Minister of Justice has therefore appointed a technical support officer to supervise the project and to provide assistance to the various agencies on request. Since mid-1995, the entire corpus of legislation on detention has been undergoing a review and modernisation process, under the leadership of a technical support policy officer. A country ordinance is in preparation which will regulate the legal status of detainees in the Aruban Correctional Institute (KIA) and custody in police cells. The development of this ordinance is expected to take two

years. As soon as both this ordinance and the new Code have been completed, a copy will be forwarded to the CPT.

185 The Policy Plan on Crime Prevention of January 1995 shows how much importance the government attaches to reviewing the police complaints procedure. The police have a monopoly on the use of force in the interests of law enforcement and the maintenance of public order. Given the nature of the police's duties, and the circumstances in which they perform them, it is clear that they are likely to infringe human rights, and that conflicts between the police and the public are therefore likely to arise. Experience shows that in such cases members of the public complain to various government agencies as well as to the police. Individuals are therefore not restricted in the remedies at their disposal. However, these options should all be channelled through the new complaints procedure. The Government believes that complaints about the police can send out signals about faults in police procedure and that a complaints procedure can thus help legitimate police conduct. Senior police officers have indicated the need for a transparent, easily understood procedure which will enable members of the public to lodge complaints. The police know what they stand for and are prepared to expose themselves to criticism. In September 1995 the Aruban Police Force (KPA) set up a committee to implement the crime prevention plan, with the aim of drafting effective regulations to govern the processing, investigation and disposal of complaints. The committee's remit was prepared in close consultation and cooperation with the Dutch police and judicial authorities. Once in place, the committee went to work with a will, and is expected to publish a proposal at the beginning of 1996.

The main aims of the draft complaints regulations are as follows. The public should be familiar with the complaints procedure, their complaints should be listened to, and the time-limits and conditions laid down in the regulations should be respected. The safeguards to be built in to the

regulations are designed to restore public confidence in the police, which has recently been undermined. Efforts will be made where appropriate to mediate and reach a settlement with the complainant. Informational booklets will be published, and a copy will be given to any individual who lodges a complaint at a police station. This will guide complainants through the procedure. Every effort is to be made to ensure that complaints are heard as soon as possible, and to this end the regulations will include a time-limit within which complaints must be heard. In view of the nature of the complaints lodged, the committee believes that the complaints regulations should apply to all investigating officers. The Council of Ministers has already agreed to this proposal.

Under the new regulations a complaints coordinator will be appointed with responsibility for monitoring the progress of a complaint through the various stages of the procedure: filing, processing, investigation and disposal. In the interests of objectivity, the coordinator will not be a police officer but a civilian official with an understanding of police work and the relevant legislation. The new regulations also provide for the appointment of an independent complaints committee, whose members will be a separate group, familiar with police work, who can advise the chief of police on request. The regulations do not explicitly state when the advice of the complaints committee is to be sought. As things stand at present, the complaints committee will be informed of every complaint lodged. Once the new regulations enter into force, the complaints committee will have the right of initiative, and can advise the chief of police or take up a case without being asked to do so. This will provide additional safeguards for the rights conferred on the public by the new complaints regulations and external scrutiny of the way the police deal with complaints.

- 187 The Aruban Police Force and the public works department conducted a feasibility study of the CPT's recommendations and the related costs. Following the submission of this report, the government approved all the

recommendations and made the necessary funds available.

The cells at San Nicolaas Police Station (including the women's cell) were completely renovated between May and August 1995, and now meet most of the CPT's criteria. The alterations to the Oranjestad cell block are in the final phase, and will be completed in January 1996. These cells too will then meet most of the CPT criteria.

- 190 The interim report acknowledged that 10 days in a police cell is too long. Policy consultations between the public prosecutions department and the KPA led to the setting up of a working group to make recommendations on this issue and a number of other points raised by the CPT. The working group's members are drawn from the KPA, the public prosecutions department, the KIA, the Department of Public Order and Security and the office of the procurator-general. As stated above, the scope for reducing the 10-day period was studied and talks on this subject have been held.

It should be noted that the KPA and the KIA object to the proposal to reduce the length of time spent in police cells and transfer suspects to the KIA at an earlier stage. Their main reasons for objecting are that the proposal would increase the workload on the relevant police officers, given the shortage of time and staff available for investigation, and that this might affect the investigation and prejudice the chances of establishing the truth. If suspects were transferred, the relevant police officers would have to travel to the KIA to conduct every examination, which would waste a considerable amount of time. It is obvious that in cases of staff shortages, the existing staff should be deployed as efficiently and effectively as possible. As regards establishing the truth, if several suspects are in detention in connection with the same case, they must not be allowed to talk to each other. The transfer of suspects to the KIA in the early stages of an investigation, when it is vital to obtain

information, would obstruct the investigation. Staff and space are in such short supply at the KIA that it is virtually impossible to keep suspects apart. The interests of the investigation, particularly of serious crimes, cannot permit contact between them. After all, it is the task of the police to investigate criminal offences and to maintain public order and safety. This does not mean that the judicial apparatus believes that these are the only considerations at stake. They are fully aware that the public interest also requires justice to be dispensed in a proper manner in criminal cases. In this connection, it should be noted in conclusion that the judicial authorities permit a stay of no longer than ten days in police cells.

- 191 The introduction of the new complaints regulations will safeguard the interests of the police force as well as those of the public. The registration of all incoming complaints will indicate structural defects in the functioning of the police force. The data thus generated will serve as a basis from which to determine the nature and volume of complaints about police conduct, and thus assist the police force in analysing its operations. The data could also prompt the management of the police force to take measures in respect of police officers. The new regulations are also intended to be used in the development of a thorough internal disciplinary and investigation procedure, complete with safeguards. It is hoped that this will result in a satisfactory internal complaints procedure.

It should also be noted that informational leaflets will be printed in various languages and distributed to the public when the new complaints regulations are introduced.

- 194 Since 1988 the Police College has focused on the enforcement of respect for human rights by the police, as part of the week spent on the theme of human rights and ethics. Human rights are also discussed under the heading of two other subjects which provide the relevant legislative context: criminal procedure and the constitution. Indeed the Constitution

of Aruba is based on the ECHR. The training course for assistant public prosecutors - aimed at middle-ranking officers - also covers the issue of human rights.

196 As stated above under point 187, the number of cells available to the KPA - 28 - is limited. In view of the crime rate, the number of people arrested for criminal offences is higher than the number of cells available. Some cells are therefore occupied by two people. The work of the aliens police in tackling the problem of illegal aliens also means that sometimes - for a short time - cells are occupied by more than one person. In this connection a balance must always be struck between the importance of fighting crime and illegal immigration and the need to confine more than one person in a cell for a short period. A strict admissions policy is required because Aruba attracts immigrants but cannot provide them all with jobs.

199 As most of the mattresses issued are destroyed during the detainee's period of detention, a new mattress is required nearly every time someone is arrested. The cost of this naturally far exceeds the budget available. Pending the purchase of mattresses that can withstand treatment of this kind, all the sleeping platforms have now been covered with a soft wood surface, so that detainees do not have to sleep on hard concrete. It is also possible for them to provide sleeping mats of their own, and most of them do so.

Experience has shown that it is not a good idea to place chairs, tables etc. in the cells. Detainees take advantage of every opportunity to break up every object available and use the pieces as weapons or to help them escape. Furthermore, as there are only a limited number of cells, they are occupied by two people at times when large numbers of detainees arrive. Dual occupation would not be possible if there were chairs and tables in the cells.

200 Both cell blocks have been provided with lighting so that detainees do not have to sit in the dark, by day or by night. Ventilation has been installed (and an overall roof in Oranjestad) so that the detainees are no longer exposed to high temperatures.

During the renovation process, the cells were painted with special paint, which greatly facilitates cleaning. As the cells are now cleaned more frequently, with more powerful cleansing agents, standards of hygiene have risen considerably.

201 The intercom systems have been repaired, so that the detainees can make their requests known to the staff on duty. As the cameras have been re-installed, the staff can observe the cell block. Detainees are checked every hour, at irregular times.

202 For a time, the KPA provided detainees with reading material. However, the majority of them tore up the paper, and threw the pieces out of the cells or stuffed them into the toilet or down the drain. The KPA therefore stopped supplying reading material to all detainees. Any specific requests for something to read are complied with.

The cell block does not have facilities for outdoor exercise. Although the KPA acknowledges this as a serious, permanent problem, nothing can be done for the time being. To make up for the lack of fresh air and to minimise the inconvenience it causes, detainees are never held in police cells for more than 10 days. The matter will be taken into account when a new police headquarters is built, although it is uncertain when this will be possible, given the shortage of financial resources.

209 The KPA does not have separate facilities for aliens. The former remand centre at Dakota, which was previously used for this purpose, was found to be in urgent need of repair. As it has now been designated for use as a

hostel for homeless drug-users, it is no longer available for use by the KPA. As previously stated, this means that aliens who have been arrested are held in the standard police cells or in the police cells at Noord, which are not normally used.

- 212 The CPT recommended that everyone arrested by the police should have the right to inform someone that he has been detained. The KPA recognises that right. To ensure that it is not abused in ways that could prejudice the police investigation, the KPA will inform a person of the detainee's choice of the arrest. The message is passed on by a police officer to an individual of the detainee's choice. A statement to this effect is entered in the custody record.
- 218 Further to what has previously been stated on this point, regular consultations take place between the public prosecutions department and the Law Society. Agreement has not yet been reached on payment rates for legal services provided on a pro bono basis in criminal cases. Twenty advocates have agreed to provide legal services on this basis if the government pays them. A defending counsel rota service will be set up as soon as the new Code of Criminal Procedure enters into force and agreement on payment has been reached.
- 223 In the light of previous reports, it is considered unnecessary for the suspect to sign a form stating that he has been advised of his rights. No further observations or developments in this area are to be noted.
- 225 The subject of a code of practice for interrogations, which is or should be observed by the police, was discussed in consultations between the public prosecutions department and the KPA. It was decided that the working party set up to make recommendations on this and other matters should consider the issue shortly. It was also decided that the KPA should be responsible for formulating the code of practice, if any. At present,

interrogations are conducted in a proper manner, without any form of compulsion, coercion or ill-treatment, in special interrogation rooms. In principle, interrogations are not conducted between 22.00 and 08.00 hours, though exceptions are made to this rule if a suspect is arrested between these times. Section heads and squad commanders regularly check on the manner in which interrogations are conducted.

- 228 The introduction and use of the X-pol computer programme has made it possible to record relevant facts about those in custody. The facts recorded include the time spent in detention, the place of confinement, medical examinations (the use of medicines, medical symptoms), restrictions imposed, the number of visits made to the suspect, and the results of searches. It is also possible to compile overviews of information concerning one or more suspects. The programme originated in the Netherlands, where it is used by a number of major police forces. It should be noted that the system for processing data on detainees has been brought into line with CPT norms.
- 232 In the interests of external scrutiny of illegal aliens confined with a view to deportation, tripartite consultations involving the Department of Public Order and Safety, the KPA and the Procurator-General concluded that the latter ought to be informed if an illegal alien is detained for more than 4 days. In practice, in the interests of efficiency, the head of the Department of Public Order and Safety has assumed responsibility for supervision. The reason or reasons for detaining someone for a longer period must be stated. In this connection, it should be remembered that most of the aliens in question have left their own country for financial rather than political reasons to seek a better life in Aruba. Illegal aliens who are expelled from Aruba are therefore never in danger of reprisals at the hands of their own governments.

B. PRISONS

Difficulties in the senior management structure of the KIA in 1995 meant that many tasks were not tackled with the requisite vigour. An interim management team, appointed in September 1995, had to deal with the backlogs that had built up. They were also faced with the fact that the appropriate budget allocations had not been made, so that it was impossible to implement the CPT's recommendations. The shortage of staff mentioned in the interim report is still a factor. The following can be added to the interim report.

250 So many detainees have been transferred from the police cells to the KIA that it has not yet been possible to implement the recommendation on two detainees to a cell. Further to the interim report, it should be noted that bids for an intercom system were invited at the beginning of 1996, although no funds were allocated for this purpose in this year's budget. An intercom system can therefore not be introduced until 1997. Developments at the KIA have been restricted because of a chronic shortage of staff. However, the government has promised that, despite the freeze on recruitment caused by the country's financial situation, 15 trainee prison officers can be recruited and trained in 1996. Sports activities have also been limited by the departure of the sports instructor. The gap has been filled by activities on a part-time basis led by a trainee sports and recreation officer. In 1995 the KIA started courses, in conjunction with the teacher training college, for young offenders. Lessons in the guitar and handicrafts were also started. As far as meals are concerned meetings are now held regularly with the catering company with a view to achieving the desired results. The KIA management fully endorses the CPT's recommendations. The Public Health Inspection Service and the dieticians on the staff of the occupational health service are involved in putting them into practice.

253 In December 1995 a new training plan providing a new, more

comprehensive training course for prison officers and guards was submitted to the Minister of Justice. The 15 new officers to be recruited in 1996 will be trained in accordance with this new programme. The government decided to take this step despite the recruitment freeze introduced some years ago because of the country's financial difficulties. The advent of more staff will also improve the facilities and scope for recreation available to the inmates.

- 254 The working group on reorganisation comprising representatives of all the relevant policymaking and executive agencies which is to advise the government on this point is expected to report in February/March 1996.
- 258 Prisoners' outward and inward correspondence is now proceeding satisfactorily. No further complaints have been received from prisoners on this score.
- 259 Writing materials are now provided to indigent detainees in a satisfactory way.
- 260 No policy changes have been made in response to these recommendations, as the management feels that the present arrangements are adequate.
- 261 The proposed changes have been incorporated in the draft country ordinance on custody, which is almost completed and will shortly be submitted to the Minister of Justice. Although the sanctions in question are indeed provided for in current legislation, they have not been applied for many years, and it is these outdated rules that have led to the development of a completely new corpus of legislation.
- 262 The KIA management and/or the duty officer are now informed without delay if a temporary disciplinary measure is taken in respect of a prisoner.

In most cases, the first step is to confine the prisoner in question to his cell. Only in extreme cases are detainees confined in punishment cells. Efforts are being made to process disciplinary reports within 24 hours.

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266 The materials for constructing concrete blocks to serve as sleeping platforms have now been purchased. Pressure is being exerted for the relevant work to be given priority in 1996. For the intercom system, see no. 250. As regards the ventilation and the outdoor exercise area in the punishment cell unit, the option of using the nearby cell for those in pre-trial detention is being looked into. All the cells, including the punishment cells, now have ice jugs.

267 The KIA management has no objection to this recommendation and, following announcements to this effect, will carry it out in 1996.

268 See above, no. 250.

269 From now on, the medical service will be called in without delay every time a prisoner is placed in a punishment cell, instead of only at the prisoner's request. The prison doctor will also be called in, if the nurse deems this to be necessary.

271 The substantial increase in the number of prisoners in this category confined in the KIA, and the fact that most of them are not fit to associate with other prisoners, makes it impossible to comply with this recommendation.

272 A logbook recording details relating to the punishment and solitary confinement cells was introduced at the end of 1995.

274 See above, under no. 261.

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- 276 The Supervisory Commission will be urged to issue an annual report, so that these recommendations can be implemented.
- 278 Pending the introduction of the new country ordinance on custody, a booklet listing the rights and obligations of prisoners will be made available in several languages in 1996.
- 280 The information in the interim report still applies. The Minister of Justice recently agreed to advertise the vacancy for a nurse.
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- 288 Policy on these matters remains the same. In 1996 the management team will press for an appropriate contract to be concluded with the prison doctor. Negotiations on this point have still to take place.
- 291 Since the infirmary is not used on a full-time basis, it may not have been cleaned every day. Pursuant to the CPT recommendations, it will now be cleaned every week. The maintenance and replacement of equipment depends on how much is allocated in the budget and on the measures being taken in the light of Aruba's financial situation.
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- 295 A shortage of personnel and funds has so far made it impossible to implement these recommendations.
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- 301 For the moment it is difficult to offer solutions to the problem of mentally ill prisoners. In addition to this category, which is increasing in number, a minor subject to a hospital order was detained for over a year in the KIA, as there was nowhere else to place him. Solutions must be sought in the framework of the Kingdom as a whole, as Aruba is too small a country to provide specialist facilities of this kind. Initial talks have been held.

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306 This problem is expressly addressed in the reformed training plan referred to above. At present, information meetings on communicable diseases (including AIDS), drugs and fitness have been organised for staff and prisoners alike, with the assistance of volunteers. Reference should also be made to the activities of the National Drugs Coordinator in the field of drug-related care.

307 A mother with a newborn baby was detained in the prison in 1995. In the light of the mother's psychological condition and the fact that she could not care properly for the baby the child was removed from the prison a day later and placed in the Casa Cuna home.