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Report to the authorities of the Kingdom of the Netherlands on the visit to Aruba carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

from 30 June to 2 July 1994

The authorities of the Kingdom of the Netherlands have agreed to the publication of the CPT's report on its visit to Aruba, together with the responses of the Government of Aruba.

Strasbourg, 3 October 1996

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Copy of the letter transmitting the CPT's report

Strasbourg, 5 January 1995

Dear Sirs,

In pursuance of Article 10, paragraph 1, of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment, I have the honour to enclose herewith the report to the authorities of the Kingdom of the Netherlands drawn up by the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) after its visits to Aruba from 30 June to 2 July 1994. The report was adopted by the CPT at its twenty-third meeting, held from 28 November to 2 December 1994.

I would draw your attention in particular to paragraph 5 of the report, in which the CPT requests the authorities of the Kingdom of the Netherlands to provide an interim and a follow-up report on action taken upon its report. The CPT would be most grateful if it were possible, in the event of the reports being forwarded in Dutch, for them to be accompanied by an English or French translation.

I am at your entire disposal if you have any questions concerning either the CPT's report or the future procedure.

Finally, I would be grateful if you could acknowledge receipt of this letter.

Yours faithfully,

Claude NICOLAY
President of the European Committee for
the prevention of torture and inhuman
or degrading treatment or punishment

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FOREWORD

1. In accordance with Article 7 of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment (hereinafter referred to as "the Convention"), a delegation of the CPT visited the Netherlands Antilles from 26 to 30 June 1994 and Aruba from 30 June to 2 July 1994¹.

2. The delegation consisted of the following members of the CPT:

- Mrs Nora STAELS-DOMPAS, Second Vice-President of the CPT (Head of the delegation)
- Mrs Pirkko LAHTI
- Mr Stefan TERLEZKI.

The delegation was assisted by:

- Mr James McMANUS, Senior Lecturer in Law at the University of Dundee, United Kingdom (expert)
- Mr Dominique BERTRAND, Head of the Prison Medicine Division at the University Institute of Forensic Medicine in Geneva, Switzerland (expert)
- Mr Stanley BRAAFHEID (interpreter)
- Mrs Esther HUHN (interpreter)
- Mrs Wilhelmina VISSER (interpreter).

The delegation was also accompanied by the following members of the CPT's Secretariat:

- Mr Trevor STEVENS, Secretary of the CPT
- Mr Fabrice KELLENS.

¹ When ratifying the European Convention for the prevention of torture and inhuman or degrading treatment or punishment, the Kingdom of the Netherlands accepted it for the Kingdom in Europe (i.e. the Netherlands), the Netherlands Antilles and Aruba.

Under the Statute for the Kingdom of the Netherlands, the latter consists of the Netherlands, the Netherlands Antilles and Aruba. The respective competences of the different countries of the Kingdom and of the Kingdom as a whole in the field of fundamental human rights and freedoms are set out in Article 43 of the Statute. The safeguarding of fundamental human rights and freedoms is a "Kingdom affair" (i.e. an affair which is conducted jointly by the countries of the Kingdom). However, the individual countries are charged with the task of promoting the observance of those rights and freedoms. The Kingdom may only intervene if they fail in this duty.

3. The visits to the Netherlands Antilles and Aruba appeared to the CPT to be required in the circumstances (cf. Article 7, paragraph 1, of the Convention). They were triggered by reports received in recent years containing allegations of the ill-treatment, on occasion severe, of persons arrested by the law enforcement agencies in these two parts of the Kingdom of the Netherlands.

4. The facts found during the visits are set out under sections I (Netherlands Antilles) and II (Aruba) of this report. The various recommendations, comments and requests for information formulated by the CPT are summarised in Appendices I (Netherlands Antilles) and III (Aruba).

5. As regards more particularly the CPT's recommendations, having regard to Article 10 of the Convention, the CPT requests the authorities of the Kingdom of the Netherlands:

i. to provide within six months an interim report giving details of how it is intended to implement the CPT's recommendations and, as the case may be, providing an account of action already taken (NB: the CPT has indicated the urgency of certain of its recommendations);

ii. to provide within twelve months a follow-up report providing a full account of action taken to implement the CPT's recommendations.

The CPT trusts that it will also be possible for the authorities of the Kingdom of the Netherlands to provide in the above-mentioned interim report, reactions to the comments formulated by the CPT as well as replies to the requests for information made.

FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Introduction

174.* The delegation visited the following places of detention:

Police establishments

- Oranjestad Police Station
- San Nicolaas Police Station

Prisons

- Aruba Prison (KIA), Santo di Patia

In addition, the delegation visited the former Dakota Prison, located in Oranjestad, which was taken out of service in September 1990, date of opening of the KIA. This former prison was still used, from time to time, by the police to accommodate persons detained under the Aliens legislation.

175. In addition to meetings with officials at the establishments visited, the delegation held consultations with governmental authorities and persons active in the CPT's fields of interest.

A list of the authorities and persons with whom the delegation held talks is set out in Appendix II to this report.

176. The talks held by the delegation with governmental authorities, both at the beginning and at the end of the visit, took place in a spirit of close co-operation. Fruitful discussions were held with the Aruban Attorney General, Mr J. H. M. Zwinkels, and several senior officials. However, the CPT regrets that the Minister for Justice was not in a position to meet the delegation.

The delegation also wishes to underline the considerable assistance provided by the liaison officer, Mrs Angelique Peterson of the Department of Foreign Affairs, not only during but also before and after the CPT's visit to Aruba.

177. The delegation received a very satisfactory reception from both management and staff in all the establishments visited, including those which had not been notified in advance. The delegation noted that the staff were aware of the possibility of a visit by the CPT and that some of them had at least a basic knowledge of the Committee's mandate.

* The section of the report to the authorities of the Kingdom of the Netherlands concerning the visit carried out by the CPT to the Netherlands Antilles (paragraphs 6. to 173.) was published on 18 January 1996 (CPT/Inf (96) 1).

178. On 2 July 1994, at the end of its visit to Aruba, the CPT delegation met the competent authorities at a meeting in the Department of Foreign Affairs. At that meeting, the delegation made an immediate observation on the material conditions of detention in the Oranjestad and San Nicolaas Police Stations, in accordance with Article 8, paragraph 5, of the Convention; that observation was subsequently confirmed by letter of 10 August 1994 addressed to the Minister for Justice. This issue will be dealt with later in the report. However, the CPT wishes to underline the constructive spirit in which the Aruban authorities received and subsequently reacted to the above-mentioned immediate observation.

179. Thus, on 28 July 1994, the CPT's liaison officer in Aruba informed the Committee that "less than a week after the CPT's visit to Aruba, the Aruban Council of Ministers decided to institute a commission with the aim of improving conditions in the police cells".

Moreover, in a letter dated 3 October 1994, the new Minister for Justice, Mr E. J. Vos, supplied the CPT with detailed information on the results of the above-mentioned commission's activities, which had been formally approved by the Council of Ministers on 30 September 1994. The principle of a radical improvement in the detention conditions at both Oranjestad and San Nicolaas Police Stations has been accepted.

180. In conclusion, the CPT welcomes the general spirit of co-operation encountered before, during and after the delegation's visit to Aruba, which was in full accordance with Article 3 of the Convention.

B. Police establishments

1. General remarks

181. Anyone suspected of having committed a criminal offence may be held by the police for questioning for a maximum of six hours² (section 41 of the Code of Criminal Procedure or "CCP").

After that period, if the needs of the inquiry so require, persons may be placed in police custody (*inverzekeringstelling*) for a maximum of four days, on the decision of a deputy public prosecutor (*Hulp officier van justitie*), who must inform the public prosecutor (*Officier van justitie*), in writing, within twenty-four hours (CCP, section 38). On the third day of police custody at the latest, suspects must be brought before the public prosecutor, who may extend police custody for up to six days (CCP, section 39).

Suspects may subsequently be made the subject of a remand order (*bevel tot voorlopige aanhouding*), valid for eight days, issued by an examining judge (*Rechter Commissaris*) (CCP, section 67). The remand order may be extended for a further eight days, at the request of the public prosecutor (CCP, section 67).

Within 26 days, the public prosecutor may apply to the courts for an imprisonment order (*bevel tot gevangenhouding*), for a period of eight weeks (CCP, section 104). This latter period may be renewed; however, the public prosecutor strives to bring cases to trial within a maximum of 82 days.

It should be added that in order to comply with Article 5, paragraph 3, of the European Convention on Human Rights, the judicial authorities of Aruba have taken steps to ensure that, in practice, the legality of police custody is reviewed by a judge on the third day of custody.

182. The Code of Criminal Procedure currently in force in Aruba dates from the early part of the century (PB 1914, No 21, and PB 1918, No 6, as amended). However, a general revision of the Code is now under way. According to the Aruban authorities, the draft new criminal procedure law contains several provisions designed to improve the protection of persons subject to criminal proceedings. **The CPT would like to receive, in due course, the new Code of Criminal Procedure of Aruba.**

183. During the visit, the delegation observed that police stations could accommodate not only persons suspected of having committed criminal offences, but also persons detained under the Aliens legislation. The latter were mainly placed in San Nicolaas Police Station, situated to the south of Aruba.

² The period between 10 pm and 8 am is not taken into account.

The conditions of detention in San Nicolaas Police Station shall be the subject of comments in paragraphs 204 et seq. of the report. However, the CPT wishes to stress from the outset that the material environment and the regime in a police station will often, if not always, be inappropriate for this type of administrative detention (which, it should be remembered, concerns people who are not suspected of criminal offences and who may have to be detained for prolonged periods). This certainly proved to be the case at San Nicolaas Police Station. It should be added that a prison is, by definition, also an unsuitable place in which to detain persons who are neither suspected nor convicted of criminal offences. If it is deemed necessary to deprive persons of their liberty under Aliens legislation, it is far preferable to accommodate them in centres specifically designed for that purpose.

In the light of the above, and bearing in mind that large numbers of persons are sometimes detained in Aruba under the Aliens legislation, **the CPT recommends that the authorities of Aruba explore the possibility of creating a specific centre for such persons, offering material conditions of detention and a regime appropriate to their legal situation.**

2. Torture and other forms of physical ill-treatment

184. It should be stated from the outset that the CPT's delegation heard no allegations, from either persons in police custody or persons met in prison, of severe ill-treatment amounting to torture inflicted in police premises. Nor did the delegation find any other evidence of torture in such premises during its visit to Aruba.

185. Nevertheless, the delegation did hear a number of allegations of the physical ill-treatment of persons during their arrest or detention by the police. These included, *inter alia*, punches and slaps, truncheon blows, etc. In respect of two recent cases, the CPT was informed of medical information gathered by doctors according to which the persons concerned presented injuries consistent with allegations of police ill-treatment.

186. Moreover, the delegation heard a considerable number of complaints from persons who had been in police custody about the material conditions of detention in police cells. These allegations were confirmed by other sources, in particular a doctor and a social worker, who had written letters to the authorities on this subject.

187. The delegation itself found that **the material conditions of detention prevailing in the police stations visited were such that they could readily be described as inhuman and degrading**, a situation which was all the more disturbing given that persons were often detained in those stations for prolonged periods.

The issue of the material conditions of detention in Oranjestad and San Nicolaas Police Stations will be considered later in the report (cf. paragraphs 197 et seq.), but the issue of the length of detention in police stations calls for immediate comment.

188. The delegation learned that a police officer from the criminal investigation department decided on the transfer of persons detained in police stations to Aruba Prison. He himself indicated that the transfer took place when the police officer in charge of the relevant investigation considered that it had been concluded. He stated that he tried to avoid periods of detention in police cells exceeding twenty days. This attitude is consistent with the provisions of paragraph 4 of Department Order No 10/1987 which states that "in principle, detained persons who are the subject of such warrants³ shall not be held in police cells save on the express instructions of the chief of police."

189. The CPT must, as a matter of principle, express the strongest reservations about the situation described above. Irrespective of the material conditions of detention in police stations, it must be stressed that the period of time during which a person suspected of having committed a criminal offence may remain in police (as distinct from prison) premises is of direct relevance to the issue of the prevention of ill-treatment. Prolonged periods of detention of criminal suspects in police premises can lead to high-risk situations.

The situation is all the more disquieting when, as in Aruba, the decision to transfer a person detained by the police to prison rests in practice with a police officer attached to the criminal investigation department rather than a judge responsible for the case. Offering an officer of the criminal investigation department such wide discretion to decide when the transfer should take place creates a not insignificant risk that detained persons will be subjected to psychological pressure or other forms of ill-treatment.

190. The report of the commission set up to improve conditions in police cells states that "the Examining Judge has decided that, from 26 July 1994, whenever a remand order (*bevel tot voorlopige aanhouding*) is issued, this shall be executed at Aruba Prison" (thereby limiting the period during which a criminal suspect can be held in a police station to a maximum of ten days). While welcoming this decision, the CPT must emphasise that in its view a period of detention of up to ten days in police premises is still far too long.

The CPT therefore recommends that the period of time during which a person suspected of having committed a criminal offence may be detained in police premises be substantially reduced. Of course, this would not necessarily preclude the police from carrying out further questioning of suspects following their departure from police premises.

191. The Aruban authorities informed the delegation of the creation, by ministerial order of 23 February 1993, of a State Police department (*Landsrecherche*)⁴. The department, mainly staffed by police officers seconded from the Netherlands and directly answerable to the Attorney General, is responsible in particular for disciplinary and criminal investigations into alleged misconduct by police officers. Since mid-1993, it has already registered a certain number of cases involving allegations of police ill-treatment.

³ Namely, those covering the period of custody beyond the twentieth day.

⁴ It should be noted that a committee to examine complaints of misconduct by police officers, established under Act No 71 of 8 June 1988, already exists but, according to the authorities themselves, has never become operational.

The CPT welcomes the establishment of this department and **would like to receive up-to-date information on cases involving allegations of police ill-treatment.**

The CPT also recommends that the general public be duly informed about the right of individuals to submit complaints to this department.

192. Nevertheless, it must be added that in a small island community, it would be unwise to rely exclusively on complaints from individuals as a means of combatting ill-treatment by the police. Fear of victimisation as well as the continuing need to interact on a regular basis with the police officers involved could well discourage the lodging of complaints. Consequently, other types of safeguards against ill-treatment should not be overlooked.

193. Later in this report, the CPT shall recommend that certain formal safeguards against ill-treatment, applicable during the phase of police custody (notification of the fact of detention to a third party, access to a lawyer, access to a doctor), be reinforced. However, it goes without saying that appropriate professional training is an essential element of any strategy for the prevention of ill-treatment. Properly trained law enforcement officers will be able to carry out successfully their duties without having to resort to ill-treatment and to cope with the presence of formal safeguards against ill-treatment.

The CPT must stress that particular attention should be paid to training (both initial and ongoing) in the art of handling - and more especially of speaking to - arrested and detained persons i.e. in interpersonal communication skills. The possession of such skills will often enable police officers to defuse a situation which might otherwise become violent.

In this context, the CPT has noted with interest various course booklets used at Aruba Police College.

194. **Further, in the light of the allegations referred to in paragraph 185, the CPT recommends that senior police officers deliver to their subordinates the clear message that ill-treatment is not acceptable and will be the subject of severe sanctions.**

195. Finally, it goes without saying that public prosecutors must respond swiftly and effectively to complaints of ill-treatment and that, where necessary, the courts must impose appropriate sanctions. An awareness that the courts are ready to impose severe penalties could act as a very powerful deterrent.

In this connection, **the CPT would like to receive the following information from the Aruban authorities:**

- **the number of complaints of ill-treatment by police officers lodged during 1993 and 1994 and the number of criminal/disciplinary proceedings initiated as a result of those complaints;**
- **an account of criminal/disciplinary sanctions imposed during 1993 and 1994 following complaints of ill-treatment by police officers.**

3. Conditions of detention in the police establishments visited

a. introduction

196. All police cells should be of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (ie. 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 (eg. a fixed chair or bench), and persons obliged to stay overnight in custody should be provided with a clean mattress and (if appropriate) blankets.

Persons in police custody should be allowed to comply with the needs of nature when 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. Persons held for extended periods (24 hours or more) should, as far as possible, be offered outdoor exercise every day.

b. situation in the establishments visited

197. As already indicated (cf. paragraph 187), the detention conditions observed in the police establishments visited by the delegation were totally unacceptable.

198. Oranjestad Police Station was of recent construction. It included fifteen cells located at some distance from the administrative building. The cells were designed for individual occupation but often accommodated two, and sometimes three, detainees. Some twenty persons were being detained in the police station at the time of the visit.

199. The cells were all identical in layout, measuring approximately 9 m² - quite satisfactory for individual occupancy - and equipped with a concrete platform and an asian toilet and shower (the latter facilities being semi-partitioned, but very badly maintained). Detainees were not supplied with tables, chairs, mattresses or blankets.

200. The cells had no artificial lighting. The timing of the visit - the middle of the night - meant that it was not possible to assess how much natural light they received; however, the general layout suggested that their access to natural light must be limited. Ventilation was quite inadequate and the temperature in the cells during the visit was very high: more than 30°C. The cells were all extremely dirty, foul-smelling and infested with cockroaches and similar insects.

201. A call system was in place but did not appear to work, with the result that detainees who wanted assistance had to beat on the metal door of their cell to attract the duty staff's attention. The staff informed the delegation that they inspected the cells every hour. However, the detainees claimed that these inspections only took place at shift-change times, that is every eight hours.

202. Persons detained were not offered any form of distraction, for example reading material. Moreover, none of the detainees could take outdoor exercise. In fact, they only ever left their cells for interrogations.

These are both major deficiencies, bearing in mind the extended periods of detention which certain persons had to undergo. Indeed, stays of up to twenty days, or even more, in the police cells were not unusual.

203. As the cells had no tap, detainees wanting drinking water had to wait for a police officer to turn on the showers (when they were working), which in principle happened twice a day. The more fortunate among the persons detained had succeeded in obtaining a bucket, which they used to store water for use throughout the day and night.

Food was provided by the Aruba Prison and comprised breakfast (a roll and tea or coffee), a hot lunch at midday and dinner, which was similar to breakfast. However, the prisoners were not supplied with eating utensils, and therefore had to eat with their fingers.

204. San Nicolaas Police Station was also of recent construction but, as in Oranjestad, the cell area, located in the basement, left much to be desired.

It contained 13 individual cells, each measuring about 7 m², and a larger multi-occupancy cell for women measuring approximately 28 m². Some ten persons were detained in the police station at the time of the visit.

The individual cells were large enough to accommodate one person and this was the occupancy level when the delegation saw them. The multi-occupancy cell for women was also accommodating one prisoner, but the delegation was told that it had been overcrowded in the recent past. Given its size, **the CPT considers that this cell should not accommodate overnight more than seven persons.**

205. The fittings in the individual men's cells were similar to those observed in Oranjestad (see paragraph 199). However, the women's cell did not even contain sleeping platforms, with the result that persons detained had to lie on the floor. Moreover, the in-cell asian toilet offered no privacy. As in Oranjestad, the cells were all disgustingly dirty, foul-smelling and infested with cockroaches and rodents.

Attention must also be drawn to the inadequate access to natural light, the absence of any artificial lighting, the grossly inadequate ventilation - resulting in unbearable heat in the cells - and the absence of a call system. Moreover, San Nicolaas Police Station had the same deficiencies in terms of access to water and eating utensils.

206. Prisoners were offered no form of distraction and although the cell area had two exercise yards, the prisoners were not allowed to use them.

Once again, these were major deficiencies, bearing in mind the long periods for which certain persons were held.

207. At the end of the visit, the delegation invoked Article 8, paragraph 5, of the Convention and recommended that steps be taken immediately to improve material conditions of detention in the Oranjestad and San Nicolaas Police Stations. It requested that a report on action taken in this respect be provided within three months.

As already indicated (see paragraph 179), shortly after the visit the Aruban Council of Ministers set up a commission with the aim of improving conditions in the police cells. The commission subsequently proposed major improvements to the conditions of detention at both the Oranjestad and San Nicolaas Police Stations, and the commission's report was adopted by the Council of Ministers on 30 September 1994.

208. The CPT welcomes the Aruban authorities' determination to bring conditions of detention in the Oranjestad and San Nicolaas Police Stations into line with the criteria set out in paragraph 196 of this report and **recommends that the highest priority be given to completion of the works identified in the report of the previously-mentioned Commission.**

It also recommends that appropriate steps be taken to ensure that conditions of detention in all police establishments meet the criteria set out in paragraph 196.

209. With particular regard to persons detained under the Aliens legislation, **the CPT recommends that:**

- **the possibility of offering such persons a minimum activities programme (access to a communal area, television, reading matter, etc.) be explored;**
- **they be provided with an information booklet explaining the procedure applicable to them and setting out their rights; the booklet should be available in the languages most commonly spoken by those concerned and, if necessary, the services of an interpreter should be made available.**

In this connection, it has already been noted (see paragraph 174) that the former Dakota Prison was used by the police from time to time to accommodate persons detained under the Aliens legislation. The buildings were unoccupied at the time of the visit and the delegation was informed that they had last held such persons in February 1994. An inspection of the parts of the premises used for this purpose revealed deplorable material conditions. **The CPT therefore recommends that, in its present state, the former Dakota Prison should no longer be used for custodial purposes.**

Naturally, the above is without prejudice to the recommendation of a more general nature in paragraph 183 of the report.

4. Safeguards against the ill-treatment of detained persons

210. The CPT attaches particular importance to three rights for persons detained by the police:

- the right of those concerned to have the fact of their detention notified to a close relative or third party of their choice,
- the right of access to a lawyer,
- the right to request a medical examination by a doctor of their choice.

The CPT considers that these rights are three fundamental safeguards against the ill-treatment of detained persons, which should apply from the very outset of custody (i.e. from the moment when those concerned are obliged to remain with the police).

211. Furthermore, in the view of the CPT, persons taken into police custody should be expressly informed without delay of all their rights, including those referred to above, in a language which they understand.

- a. information to a relative or another third party

212. Neither the Aruba CCP nor the Aruba Police Department Order No 10/1987 on arrested persons provides someone arrested by the police with the right to inform a relative or another third party of his situation. However, certain police officers whom the delegation met stated that in practice they did not prevent such persons from informing a relative, if there was no risk of this prejudicing the investigation.

213. The CPT considers that a detainee's right to inform a relative or a third party of his choice of his situation should be expressly guaranteed from the outset of his detention. The exercise of this right may, of course, be subject to certain exceptions designed to protect the interests of justice; however, any such exceptions should be clearly defined.

The CPT therefore recommends to the Aruban authorities that:

- **persons detained by the police have the right to inform, without delay, a close relative or a third party of their choice of their detention, either directly or through a police officer;**
- **any possibility exceptionally to delay the exercise of this right be clearly circumscribed in law, made subject to appropriate safeguards (e.g. any delay to be recorded in writing together with the reasons therefor and to require the approval of a court or a public prosecutor) and strictly limited in time.**

b. access to a lawyer

214. In Aruba, the right of access to a lawyer from the time of deprivation of liberty is provided for in Article 1.5.3.b of the Constitution. As for the CCP, Article 50 sexto states that such access is an entitlement from the moment an arrested person is placed in police custody (see paragraph 181).

215. In this connection, the CPT wishes to stress that the period immediately following deprivation of liberty is when the risk of intimidation and ill-treatment is greatest. It therefore considers it essential that detainees should be entitled to access to a lawyer from the very outset of their detention.

The CPT recommends that persons detained by the police be entitled to have access to a lawyer from the very outset of their detention. This right should include the right to contact the lawyer and to be visited by him (in both cases under conditions guaranteeing the confidentiality of their discussions) and, in principle, the right of the person concerned to have the lawyer present during interrogation.

216. The CPT has also noted that Article 50 sexto (paragraph 2) of the CCP authorises the public prosecutor or the investigating judge to prohibit or restrict contacts between a detained person and a lawyer and, in particular, to prohibit private consultations. Reasons must be given for the decision. Such prohibitions or restrictions may not be applied beyond the time which is necessary and may in no circumstances exceed six days.

217. The CPT has reservations about this provision. It recognises that it may exceptionally be appropriate, for a certain period, to delay (or restrict) a detained person's access to a lawyer of his choice, in order to protect the interests of justice. However, it fails to understand why a measure of this kind should apply to access to any lawyer (and also, therefore, to an officially appointed lawyer).

The CPT recommends that steps be taken to ensure that every person detained by the police has the right to consult in private with a lawyer (where necessary, an officially appointed lawyer), without delay.

218. Finally, according to information received by the delegation during its visit, it appears that notwithstanding the above-mentioned Article 50 sexto, it is quite common for persons detained by the police to speak for the first time with a lawyer only after their arrival in KIA (and on occasion only just before their trial), especially if the lawyer has been officially appointed.

The CPT would welcome the Aruban authorities' comments on this subject.

c. access to a doctor

219. In Aruba, the CCP does not provide for a right of access to a doctor. However, paragraph 17 of Department Order No 10/1987 stipulates that:

- the duty police officer (*wachtcommandant*) must ensure that persons showing signs of injury are not placed in a cell until they have been examined and treated by a doctor;
- persons in custody who complain of an illness or pain must also be examined and treated by a doctor;
- when a doctor is contacted, he must be informed of the symptoms complained of by the person in custody and the duty police officer will complete a form requesting a medical visit;
- any medicines found in the possession of persons placed in custody, or which have been prescribed for them following a doctor's visit, will be looked after by the duty police officer, who will record the fact in the custody register; he will be responsible for distributing them according to the doctor's directions.

220. However, during its visits to police establishments, the delegation heard numerous complaints that access to a doctor during police custody could be subject to significant delays.

The CPT would welcome the Aruban authorities' comments on this subject.

221. **The CPT also recommends that legal provisions be adopted on the subject of the right of persons detained by the police to have access to a doctor. These provisions should stipulate in particular that:**

- **detained persons are entitled to be examined, if they so wish, by a doctor of their choice (in addition to any examination carried out by a doctor called by the police);**
- **all medical examinations are to be conducted out of the hearing and - unless the doctor concerned requests otherwise - out of the sight of police officers;**
- **the results of every examination, as well as any relevant statements by the detainee and the doctor's conclusions, are to be recorded in writing by the doctor and made available to the detainee and his lawyer.**

d. information on rights

222. Article 1.5.3.b of the Aruba Constitution stipulates that "any person deprived of his liberty is entitled ... to be rapidly informed, in a language he understands, of the reasons for his detention, his right not to reply to questions and his right to be assisted by a lawyer." Nevertheless, the delegation heard numerous complaints from prisoners that they were not informed of their rights, or if they were, only very partially.

223. The CPT has already indicated the importance it attaches to persons detained by the police being informed, without delay and in a language they understand, of all their rights, including those referred to in paragraphs 210 to 221 above.

In order to ensure that persons in police custody are duly informed of all their rights, **the CPT recommends that a form setting out those rights be systematically given to detainees at the outset of their custody. This form should be available in an appropriate range of languages. Further, the detainee should be asked to sign a statement attesting that he has been informed of his rights** (cf. paragraph 229).

e. conduct of interrogations

224. According to the Aruba CCP "inappropriate measures to extort confessions or statements are not authorised ...; ... confessions and statements made following such conduct shall not be admitted by the courts" (section 93). Police officers whom the delegation spoke to stated that they had not received any more detailed instructions on the conduct of interrogations.

Although the art of questioning criminal suspects will always be based in large measure on experience, the CPT considers that formal guidelines should exist on a number of specific points. The existence of such guidelines would, inter alia, help to underpin the lessons taught during police training.

225. **The CPT therefore recommends that the Aruban authorities draw up a code of practice for interrogations.** The code should deal inter alia with the following: the systematic informing of the detainee of the identity (name and/or number) of those present at the interrogation; the permissible length of an interrogation; rest periods between interrogations and breaks during an interrogation; places in which interrogations may take place; whether the detainee may be required to remain standing while being questioned; the questioning of persons who are under the influence of drugs, alcohol, medicine, or who are in a state of shock. It should also be required that a record be systematically kept of the time at which interrogations start and end, of the persons present during each interrogation and of any request made by the detainee during the interrogation.

The position of specifically vulnerable persons (for example, the young, those who are mentally disabled or mentally ill) should be the subject of specific safeguards.

226. The CPT considers that the electronic recording of interrogations represents another important safeguard for those in custody, as well as offering advantages for the police. According to the delegation's observations, such a system did not appear to be in current use in Aruba.

The CPT invites the Aruban authorities to consider the possibility of introducing a system for the electronic recording of police interrogations. The system should offer all appropriate safeguards (for example, the consent of the detainee and the use of two tapes, one of which would be sealed in the presence of the detainee and the other used as a working copy).

227. Finally, it has already been indicated that the period between 10 pm and 8 am is not taken into account in calculating the period of six hours during which a suspect may be held for questioning by the police (see paragraph 181).

The CPT would like to know whether persons detained may nevertheless be questioned between 10 pm and 8 am.

f. custody records

228. The CPT's delegation noted that certain aspects of detention by the police were recorded in this arrest forms and interview records and others in *ad hoc* registers; a computerised system was also used. The delegation's observations showed that the quantity and quality of the information in these different documents varied.

229. In this respect, the CPT considers that the fundamental safeguards of detained persons would be reinforced if a single and comprehensive custody record were to be kept for each person detained, in which would be recorded all aspects of his custody and all the action taken in connection with it: time of and reason(s) for the arrest; when informed of rights; signs of injury, mental disorder etc; contacts with and/or visits from next of kin, lawyer, doctor or consular official; when offered food; when questioned; when brought before the relevant judge, when released, etc. For certain matters (for example, personal effects removed, the fact of being informed of his rights and of invoking or waiving them), the detainee's signature should be obtained and, if necessary, the absence of a signature explained. The detainee's lawyer should have access to such a custody record.

The CPT recommends that the Aruban authorities consider the possibility of drawing up such an individualised custody record.

g. supervision by the prosecuting/judicial authorities

230. Public prosecutors are responsible for supervising the criminal investigation department of police in Aruba. In this connection, the CPT considers that regular visits to places of detention by prosecuting or judicial authorities could have a significant effect in terms of preventing ill-treatment.

The CPT would therefore like to know whether on-the-spot supervision of the implementation of custodial measures is undertaken by such authorities.

h. persons detained under the Aliens legislation

231. As already indicated, police stations in Aruba accommodated, among others, persons detained under the Aliens legislation. **The CPT wishes to stress that the recommendations in this section of the report also apply to these persons.**

232. **The CPT would also like to receive information on the formal safeguards and practical arrangements which exist in order to ensure that foreign nationals are not sent to a country where they run a risk of being subjected to torture or inhuman or degrading treatment or punishment.**

C. Aruba Prison

1. General remarks

233. Aruba Prison (KIA), the only prison in Aruba, is situated in an isolated location to the south-east of the island, and has been operational since 1990.

It comprises a series of separate buildings and has a theoretical capacity of 236; at the time of the visit, there were 160 prisoners⁵, an occupancy rate of 68%. The establishment accommodated, in separate units, about 120 men, a dozen women and some 30 young prisoners (aged 18-23). The prisoners were classified as follows: 57 long sentences (eight months or more), 10 short sentences (under eight months) and 93 on remand. Nearly 50 % of the prison population were of foreign origin, representing some fifteen nationalities.

2. Torture and other forms of physical ill-treatment

234. The CPT delegation heard no allegations of torture or other forms of physical ill-treatment of persons detained in Aruba Prison. Nor did they find any other evidence of such treatment during the visit.

235. Nevertheless, **the CPT would like to receive from the Aruban authorities, for the years 1993 and 1994:**

- **information on the number of complaints of ill-treatment lodged against prison officers;**
- **an account of any sanctions imposed following complaints of ill-treatment by prison officers.**

⁵ The statistical information supplied by the prison management reflects the situation on 24 June 1994.

3. Conditions of detention in Aruba Prison

a. material conditions of detention, activities and food

i. *material conditions of detention*

236. The material conditions of detention in this recently built establishment were quite good.

237. A typical cell measured approximately 9.5 m², to which must be added a sanitary annexe measuring about 3 m². All the cells were correctly equipped, with a bed plus mattress and blankets, chairs, table and cupboard. The sanitary annexes contained a combined WC/shower unit and a washbasin, and were partially partitioned from the rest of the cell. Artificial lighting and access to natural light were satisfactory; however, the cells were not fitted with a call system.

238. The cells were occupied by one, two or three persons, according to circumstances; cells in the remand prisoners' and young persons' sections very frequently had three occupants.

It must be stressed in this connection that the cells were entirely satisfactory for accommodating one person and could, at the outside, be considered acceptable for two (subject to the qualification that the sanitary annexe was not fully partitioned). However, they provided a very confined living space for three prisoners.

239. On arrival in the establishment, all prisoners received an individual toilet bag designed to meet their initial needs (tooth brush and paste, soap, shaving equipment, etc.), but these basic materials were not subsequently replaced. This caused some difficulty for prisoners with no job, and thus no income (other than any support they received from their families). The delegation also observed that certain prisoners did not have sheets and pillows. The prison management indicated that these were not supplied by the establishment; prisoners had to rely on their families or other prisoners for help. There were also allegations that cleaning materials for cells were allocated very sparingly.

240. Finally, the delegation observed that despite the prison's recent construction, there were a number of signs of premature wear and tear. The most striking example was that of the main gate to the prison, which had been blocked - in the closed position - for several months. This could have posed problems if the emergency services (for example, the fire brigade) had needed to gain access to the establishment; such a situation is quite unacceptable.

According to the prison management, this situation could be attributed to the present budgetary system. **The CPT would like to receive the comments of the Aruban authorities on this subject.**

ii. activities

241. During the week, prisoners at the KIA spent six hours a day outside their cells, or even more if they had a job. However, the situation at the weekend was less favourable. Certain categories of prisoner, above all young persons and those on remand, were confined to their cells for up to nineteen, or even twenty, hours per day.

242. Some sixty prisoners had paid jobs in the establishment, with sentenced prisoners having priority. Various types of work were available: about fifteen prisoners worked on coach-building and joinery, ten in the kitchen, eight on outside projects (preparing recreation areas), six on book binding, six on cleaning duties in each of the prison buildings and about ten others on various tasks, (such as canteen and library work).

243. The activities programmes offered prisoners between two and four hours of outdoor exercise each day, the number of hours varying according to the part of the prison and the particular day concerned.

The outdoor exercise areas provided for various activities (basketball, volleyball, etc.) and the establishment also had a football pitch. Depending on the part of the prison concerned, prisoners could practice between two and four hours' sport per week. In addition, prisoners who so wished could use a weight training room, in groups of eight, for two hours a week. There were two such rooms in the sentenced prisoners' building.

244. Leisure activities (two hours each evening) generally took place in the ground floor areas of each building set aside for that purpose, and included television, table tennis and various games. There was also a prison library, financed by voluntary donations.

245. Only four young prisoners had paid employment and about twenty others were receiving English lessons. However, it should also be noted that arrangements had apparently been made with a local school to enable certain young prisoners to take part in a form of distance learning, with teachers and parents regularly fetching and returning "homework" completed in the establishment.

246. The female prisoners spent most of their time outside their cells in a well equipped building with an exercise room, a recreation room, etc. They were paid for the upkeep of their building and had no particular complaints about their situation.

247. Naturally, these activities could only be provided if a sufficient number of staff were on duty in the establishment. In fact, according to the management, there was a chronic staff shortage⁶, which was exacerbated by a high rate of absenteeism (see paragraph 254). By way of example, the absence - apparently on leave - of the prison's only sports instructor during the delegation's visit meant that all organised sporting activities had been cancelled.

⁶ According to statistics supplied by the management, the prison had a theoretical staff establishment of 169.5 posts, of which 114 were filled at the time of the visit.

iii. food

248. The delegation received a certain number of complaints from prisoners about the food served in the establishment. These related partly to the meagreness of the breakfasts and dinners but above all to the lack of variety of the menus and the fact that the midday meal was generally served cold.

With regard to the latter point, the delegation observed that the midday meal was transported to the different buildings in metal trays placed on trolleys with no effective insulation cover.

249. A visit to the kitchen also showed that it failed to meet a number of the conditions necessary for the preparation of large numbers of meals - lack of an effective ventilation system or air conditioning in the kitchen and food storage area, numerous items of kitchen equipment not functioning, infestation by cockroaches and rats.

iv. action proposed

250. In the light of the above comments, **the CPT recommends:**

with regard to material conditions

- **that the maximum capacity of the cells be progressively reduced to two prisoners;**
- **that the partitioning of the sanitary annexes in cells accommodating more than one prisoner be improved;**
- **that steps be taken to ensure that all prisoners, including those with no resources, are provided with sheets and pillows and personal hygiene products;**
- **that it be verified that prisoners are regularly supplied with the necessary materials to maintain their cells in a clean and hygienic state;**
- **that cells be fitted with a call system;**

with regard to activities

- **that activities programmes for prisoners be further developed; the objective should be to ensure that all prisoners, including those on remand, are able to spend a reasonable part of the day (eight hours or more) outside their cells, engaged in purposeful activities of a varied nature (work, preferably with a vocational value; education; sport; recreation/association).**
- **that a high priority be given to diversifying and improving the activities programmes for young prisoners;**

In this connection, the CPT wishes to stress that young persons in custody should be provided with a full programme of educational, recreational and other purposeful activities. Physical education should constitute a significant element of that regime. Moreover, the staff assigned to young persons' units should be carefully selected and, more specifically, be persons capable of guiding and motivating young people.

with regard to food

- **that steps be taken to ensure that the midday meal is served hot to prisoners;**
- **that the prison kitchen be renovated and disinfected regularly.**

b. prison staff

251. The CPT places great importance on prison staff having the right qualities and suitable training. There can be no better safeguard against ill-treatment than a properly recruited and trained prison officer who knows how to adopt the appropriate attitude in his relations with prisoners. Advanced professional skills in communication techniques are an essential element in the make-up of such a prison officer. Such skills will often enable officers to defuse situations which could degenerate into violence. More generally, they will help to reduce tensions and improve the quality of life in the establishment concerned, to everyone's benefit.

252. The delegation's on-the-spot observations suggested that much still remained to be done in this respect. The predominant attitude of prison officers was one of indifference. There was no clear commitment on their part to enter into a constructive dialogue with prisoners and they appeared to have developed a minimalist approach to their work. It is interesting to note that according to some prisoners, there was a marked difference in attitude between the prison officers of long standing, who had known the "Dakota" Prison (see paragraph 174) and who took more or less no interest in the prisoners, and those recruited more recently, who seemed to be more open to the notion of the treatment of inmates.

253. The basic training for prison staff, provided by the Police College, lasted three months. The delegation was informed that the new policies recently introduced by the prison management included a significant improvement in the recruitment and the basic and in-service training of prison staff. To that end, some ten officers had already been sent for training to the Netherlands.

The CPT recommends that the Aruban authorities give a high priority to improving the recruitment and the basic and in-service training of prison staff.

254. The delegation was also informed of a number of organisational innovations which the prison management hoped to introduce. These included the establishment of a sense of collective and individual responsibility among the prison officers, the introduction of an effective disciplinary system for officers failing in their duty, the creation of a proper hierarchical structure, better communication between the various units and measures to combat absenteeism. However, it appeared that this initiative was meeting a certain amount of resistance among prison staff.

The CPT trusts that the prison management will be able to rely on the full support of the Aruban authorities in its efforts to modernise the operation of the establishment. One of the priorities should be a vigorous plan to combat absenteeism among prison staff.

c. contact with the outside world

255. It is very important for prisoners to be able to maintain good contact with the outside world. Above all, they must be given the opportunity to safeguard their relationships with their family and friends, and especially with their spouse or partner and their children. The continuation of such relationships can be of critical importance for all concerned, particularly in the context of prisoners' social rehabilitation. The guiding principle should be to promote contact with the outside world; any restrictions on such contacts should be based exclusively on security concerns of an appreciable nature or considerations linked to available resources. This is in line with a number of recommendations in the 1987 European Prison Rules, particularly rule 43, sub-paragraph 1 and rule 65, point c.

256. All prisoners in KIA could receive 50 minutes of visits per week (on Saturdays or Sundays) in an appropriate setting in the prison's multi-purpose recreation centre. Visits took place round a table, under the supervision of two prison officers. A play area was provided for young children. During visits, prisoners could receive parcels containing basic items such as clothes, fruit and cigarettes.

To summarise, the arrangements for visits - facilities, times, etc. - seemed to be satisfactory.

257. Prisoners could use the telephone for ten minutes each week. They had to meet the cost of the calls, which staff could listen in to.

258. All prisoners could send and receive correspondence. Prisoners' correspondence was subject to censorship - by the prison governor, in the case of sentenced prisoners, and the judicial authorities, in the case of remand prisoners.

Very many prisoners complained about delays in sending out correspondence. In this connection, the delegation was informed that prisoners' letters only left the establishment once a week. **The CPT invites the Aruban authorities to review the arrangements for sending out correspondence.**

259. The delegation also discovered that prisoners without money did not receive writing materials (notepaper, pencil, stamps), which inter alia rendered it difficult for them to inform close relatives of their imprisonment. The management explained this in terms of administrative and financial difficulties (see also paragraph 240).

The CPT invites the Aruban authorities to rectify this shortcoming.

260. **Finally, the CPT wishes to stress the need for a certain flexibility in applying the rules on visits, telephone contacts and correspondence to prisoners whose families live very far from the establishment, thus making regular visits very difficult if not impossible.** For example, such prisoners could be authorised to combine several visiting entitlements into one longer session and be given more opportunities to have telephone contacts with their families.

d. discipline

261. The regulations governing disciplinary matters in the prison are set out in a number of documents⁷.

These regulations still provide for certain archaic disciplinary sanctions which could certainly be described as unacceptable, in particular:

- placement in a punishment cell for up to four weeks, with normal meals or only bread and water on alternate days;
- placement in irons for a period of eight consecutive days or on alternate days for fifteen days.

However, the delegation was informed that the practices of placing prisoners in punishment cells on a bread and water regime and of placing them in irons had not been used in Aruba for many years. The CPT welcomes this state of affairs and **recommends that the regulations be amended accordingly.**

262. With regard to the disciplinary procedure, it is stipulated that prisoners must be heard before any disciplinary sanction is imposed (section 23, PB 1930, no 73).

In this context, **the CPT recommends that steps be taken to ensure that any disciplinary sanction is communicated in writing to the prisoner concerned and that there is a right of appeal against any such sanction to a higher authority.**

The CPT wishes to add that the Prison Governor should be immediately informed of any placement of a prisoner in a punishment cell and that a decision should be taken on the case within 24 hours.

263. The material conditions observed in the men's disciplinary unit - which was accommodating two prisoners at the time of the visit - left a great deal to be desired. The unit, situated over the kitchen and directly beneath the roof of the building, contained four cells.

The cells were of a satisfactory size - about 9 m² - and also included a sanitary annexe comprising a combined WC/shower unit. However, they lacked any other fittings and did not even contain a sleeping platform (prisoners were issued with foam mattresses at night).

The cells were dark; they had no windows and access was via a reinforced door with a spy hole. Moreover, the atmosphere in the cells was almost unbearable, owing to the lack of ventilation and the suffocating heat from the roof. Further, there was no call system in the cells and no member of staff was permanently present in the disciplinary unit.

The cells' general state of maintenance and hygiene was just about acceptable. However, the delegation noted that in one of the cells a defective shower dripped continuously, giving rise to a repetitive sound which soon became extremely irritating.

⁷ In particular, the order on the principles governing prison affairs (PB 1930, no 73, sections 22-23) and the government decree on prison administration (PB 1958, no 18).

264. **The CPT recommends that significant improvements (installing a sleeping platform and call system, improving the lighting and ventilation, repairing showers) be made to the prison's punishment cells, having regard to the above comments.**

Moreover, it would be desirable for the improvements to include the installation of a table and chair in each cell, if necessary fixed to the floor.

265. Prisoners in the punishment cells received three meals a day. Between meal times, their ability to drink water was dependent on the functioning of the showers, which were switched on by the staff twice a day, at 8 am and 3 pm.

The CPT recommends that steps be taken immediately to ensure that prisoners in the punishment cells have regular access to drinking water throughout the day.

266. Prisoners in the disciplinary unit did not benefit from outdoor exercise. They spent two hours a day, one in the morning and one in the afternoon, exercising in a cage-like area measuring 8 m² situated just in front of their cells, without going out into the fresh air.

The CPT recommends that all prisoners placed in a punishment cell be entitled to at least one hour's outdoor exercise each day.

267. Placement in a punishment cell was normally accompanied by other restrictions, relating to reading matter, visits, correspondence, etc. In this context, **the CPT recommends that all prisoners in punishment cells have access to reading matter.**

268. The women's section also included two punishment cells. They were similar in layout to the men's cells but the detention conditions - in terms of access to natural light, ventilation, etc. - were better. **Nevertheless, the lack of a call system was very regrettable.** Female prisoners undergoing punishment were entitled to two hours' outdoor exercise each day.

e. solitary confinement

269. Alongside formal disciplinary procedures, other procedures often provide for prisoners to be involuntarily separated from fellow inmates for reasons connected with discipline and/or security (for example, in the interests of good order in the establishment). Such a procedure appeared to exist in Aruba (see section 78, PB 1958, no 18).

The application of such procedures should be accompanied by effective safeguards. Prisoners should be informed of the reasons for the measures taken (it being understood that the reasons given might not include details which security requirements reasonably justify withholding from the prisoner), be given the opportunity to present their views on the matter to the deciding authority and be entitled to contest the decision before an appropriate authority. In addition, placements of prisoners in solitary confinement for a prolonged period should be fully reviewed at regular intervals (at least every three months), where appropriate on the basis of a medico-social report.

Finally, whenever a prisoner placed in solitary confinement (for whatever cause: disciplinary reasons, the danger he presents, disruptive behaviour, in the interests of a criminal investigation or at his own request) asks for a doctor - or a prison officer asks for one on his behalf - the doctor should be called without delay with a view to carrying out a medical examination of the prisoner. The results of the medical examination, including an account of the prisoner's physical and mental condition as well as, if need be, the foreseeable consequences of continued isolation, should be set out in a written statement to be forwarded to the competent authorities.

The CPT recommends that the Aruban authorities take steps to ensure that the relevant regulations and practice are consistent with the points made in this paragraph.

270. The solitary confinement unit adjoined the men's disciplinary unit. It contained four cells of an acceptable size - about 9 m² - each of which also included a sanitary annexe comprising a combined asian WC/shower unit. The front of each cell comprised floor to ceiling bars, which offered better ventilation and better access to natural light than in the neighbouring punishment cells.

The delegation was informed that, in principle, prisoners in the solitary confinement unit had the use of a large covered area located in front of the cells and, where appropriate, enjoyed daily outdoor exercise. As in the punishment cells, there was no call system and staff were not permanently present in the solitary confinement unit.

The CPT recommends that cells in the solitary confinement unit be fitted with a call system and a table and chair, if necessary fixed to the floor. It also recommends that all prisoners placed in the unit be entitled to at least one hour's outdoor exercise each day.

271. There was one prisoner in the solitary confinement unit at the time of the visit. He was stretched out on a bed and was visibly under the influence of a strong sedative. An examination of his medical record revealed a long history of serious psychiatric disorders (cf. paragraph 298).

It must be stressed that the KIA solitary confinement unit was a totally inappropriate location for such a prisoner; neither the environment nor the staff concerned (if any had been present) were suitable.

The CPT recommends that such prisoners no longer be placed in the KIA solitary confinement unit.

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272. Finally, it must be pointed out that there was no official register concerning persons detained in the disciplinary/solitary confinement unit, recording such information as dates and times of entering and leaving the unit, reasons for the detention, cell occupied, destination on departure, etc. **The CPT recommends that such a register be maintained in the disciplinary/solitary confinement unit.**

f. complaints and inspection procedures

273. Effective complaints and inspection procedures are basic safeguards against ill-treatment in prisons. Prisoners should have avenues of complaint open to them, both within and outside the prison system, and be entitled to confidential access to an appropriate authority.

The CPT attaches particular importance to regular visits to all prison establishments by an independent body (for example, a visiting committee or a judge with responsibility for carrying out inspections) with authority to receive - and, if necessary, take action on - prisoners' complaints and to visit the premises.

274. The CPT has noted that section 57 (paragraph 1) of Decree no 7 of 12 February 1958 (PB no 19, 1958) give all prisoners the right to submit complaints to the governor. In addition, under section 67 (paragraph 2) of that decree, prisoners may communicate by confidential letter with a certain number of authorities - the Minister for Justice, the Attorney General, the prison's Supervisory Commission, etc.

However, many prisoners alleged that such complaints generally received no reply.

The CPT recommends that the Aruban authorities review the application of the complaints procedures, with a view to ensuring that they are operating effectively. It also invites the Aruban authorities to add the President of the CPT to the list of authorities with whom prisoners can communicate by confidential letter.

275. The CPT has also noted that a decree of 29 November 1962 (PB no 160, 1962) instituted a Supervisory Commission for both offenders' and remand prisons. Its tasks are to report on the situation in the prison, advise the Minister for Justice on this subject and deal with any prisoners' complaints. The Commission meets once a month and a member of the Commission, who changes each month, visits the establishment on a regular basis.

276. The CPT considers that the effectiveness of such a body will depend on the way in which it organises its activities in the establishment, on the provision of appropriate training for its members and, perhaps above all, on its ability to make itself seen as a quite separate body from the prison staff and administration.

To be effective, such a body or certain of its members should undertake regular prison visits. During these visits, the members must be "visible" to the prison authorities and staff and to the prisoners themselves. More specifically, members must not restrict their contacts to individuals who have expressly requested to meet them, but should take the initiative by visiting the prison's detention areas and entering into contact with inmates.

Naturally, particular attention should be given to how the members of such a body are appointed. In order to ensure that they are impartial - and seen to be impartial - it is extremely desirable that an authority other than the prison administration should be responsible for their appointment. Moreover, as far as possible, their composition should reflect the different elements of the local community.

It is essential that, should the need arise, such a body is authorised to have direct contact with governmental and/or parliamentary authorities. In certain situations, to fulfil its functions effectively, it must be able to address itself to someone other than just the head of the establishment concerned.

In addition, it would be very desirable for the body to produce and publish an annual report on its activities, in order to achieve greater openness and stimulate public debate on the prison service. It goes without saying that its findings in certain areas could remain confidential.

The CPT recommends that the Aruban authorities review the operation of the existing Supervisory Commission, in the light of the above remarks.

g. information for prisoners

277. Many prisoners claimed that on arrival they had not received any information on the prison's day-to-day rules. This state of affairs made the situation particularly difficult for prisoners of foreign origin.

The management informed the delegation that an information leaflet, written in Dutch, had been available for the previous three weeks or so and had been distributed around the establishment. However, it was not available in the other languages commonly spoken by prisoners.

278. The CPT recommends that all new prisoners be supplied with written information on the regime in force in the establishment and on their rights and duties, in a language which they understand.

Apart from this information supplied to prisoners on arrival, **it would be useful if a description of the main features of the prison's regime, a list of prisoners' rights and duties and an outline of the avenues of appeal open to them were to be posted on the prison notice boards.**

4. Medical services

a. introduction

279. The general organisation of medical services in the Aruba prison service is governed by sections 29 to 36 of Government decree No 6 of 12 February 1958 (PB 1958, No 18) and sections 27 to 30 of Government decree No 7 of the same date (PB 1958, No 19).

The general principle is that care is provided by Government doctors, with prisoners also having the option of requesting a doctor of their choice, at their own expense (section 29, decree No 6).

b. medical care in general

280. The KIA's medical staff consisted essentially of one general practitioner, who held a three hour surgery in the prison each Thursday. In addition, a psychiatrist from Surinam visited the prison on an irregular basis - generally for a few hours once a month. No dentist or psychologist practised in the prison : however, dental care was apparently available outside the establishment. **The CPT would like to receive clarification on the last point.**

A psychiatric and forensic observation centre (FOBA) was originally planned for the KIA but has never come to fruition because of a shortage of qualified staff and facilities.

281. The time spent by general practitioners in KIA is insufficient. An establishment with a theoretical capacity of nearly 200 remand and sentenced prisoners and an actual population of more than 150 prisoners should have the equivalent of a half-time general practitioner.

It is not surprising therefore that the delegation was deluged with prisoners' complaints about the difficulties of securing medical treatment. Waiting times of several days, or even several weeks, were not unusual. Prisoners who needed urgent medical treatment could no doubt be rapidly transferred to the nearest emergency unit. However, for non-urgent cases, such a poorly staffed medical service must inevitably mean a low standard of care.

The CPT recommends that the Aruban authorities take immediate steps to ensure the presence of general practitioners to the equivalent of one half-time doctor.

282. The medical team was assisted by one qualified male and one qualified female nurse, both employed full-time and the former having a psychiatric qualification. According to the doctor, both nurses were on duty in the prison each weekday (from 8 am to either 4 or 5 pm). Unfortunately, neither of the nurses was present in the KIA during the delegation's visit.

283. The number of qualified nurses in the KIA could usefully be increased. In this context, it should be noted that the current norm for prisons in the Netherlands is one full-time qualified nurse for 50 male or 35 female prisoners (or young offenders).

The CPT recommends the creation of an additional post for a qualified nurse in the KIA.

284. It should be added that a prison medical service should not confine its attention to the treatment of sick prisoners. It should also be given responsibility for social and preventive medicine.

It has to be stated that the KIA medical team lacked the resources to assume such a responsibility. This is an additional reason for strengthening the medical service, as proposed in paragraphs 281 and 283.

285. At nights and weekends and on public holidays, a group of nine general practitioners provided a permanent on-call service on a rota basis and could be contacted for emergencies. At weekends, a nurse was on duty in the prison during the day.

In this context, the CPT recommends that someone qualified to provide first aid, preferably with a recognised nursing qualification, should always be present in the prison, including at night.

286. Access to medical consultations outside the prison was possible on the island of Aruba, provided escort facilities were available. Admission to an external hospital - the Dr Horacio E Oduber Hospital - was subject to the prior approval of the Director of Public Health. According to information received from various sources, the latter on occasion opposed or delayed admission to hospital or ordered an early discharge, against medical advice⁸.

287. In this connection, the CPT wishes to stress that whenever prisoners need to be hospitalised, they should be transferred with the promptness and in the manner required by their state of health.

The CPT therefore recommends that the Aruban authorities review the arrangements for the transfer of prisoners to hospital.

288. Finally, the CPT wishes to stress that the health care staff of any prison is potentially "at risk". Their duty to care for patients (sick prisoners) can often come into conflict with prison management and security considerations. This situation can pose ethical dilemmas and difficult choices, hence the considerable importance which the CPT attaches to the independence of care staff in prisons.

In this context, the delegation was informed that the general practitioner currently attached to the prison was paid by the Ministry of Justice. In order to safeguard their independence, it could be considered desirable for all the health care staff - medical and nursing - of the establishment's medical service to be attached, for administrative purposes, to the Ministry of Health.

The CPT would welcome the Aruban authorities' comments on this subject.

⁸ Two cases identified by the delegation's medical expert are worthy of mention: the first relates to a prisoner with a brain tumour, whose admission to hospital was authorised only after three weeks; the second, to a prisoner who had to wait seven months for a major surgical operation.

c. medical facilities and records

289. The prison medical service had the use of a consulting room (for nursing care and the doctor's surgeries), a medical secretary's office and a waiting room for prisoners (in reality, the corridor of the medical service). The Governor of the KIA indicated that there were plans to provide a proper waiting room. One other room in the service was empty; according to the Governor, it was intended for the use of the prison social services.

It should be noted that five unfurnished cells, originally intended as detention facilities for the FOBA, were located next to the medical service.

290. The infirmary was located in a separate building to the medical service and did not have any patients at the time of the visit. It comprised a five-bedded ward which was furnished with two folding screens and a table, chair and cupboard. The natural light and artificial lighting were satisfactory. However, the delegation observed that the ward was in a state of considerable disorder and did not appear to be properly equipped to receive patients. It was also dirty and badly maintained.

The ward was connected by a corridor to four other rooms: two were fitted with a toilet and washbasin, another was a shower room and the fourth a bathroom (with WC and washbasin). The four rooms were obviously poorly maintained.

It should be added that the infirmary was in any case unsuitably located, requiring care staff to make journeys to and from the medical service.

291. To summarise, although the material conditions, standard of equipment and state of cleanliness in the medical service were acceptable, this was not at all the case as regards the infirmary.

The Prison Governor stated that he envisaged the provision of suitable facilities directly linked to the medical service. The CPT fully supports this approach and **recommends that the Aruban authorities take steps without delay to improve the material conditions, standard of equipment and state of cleanliness in the KIA infirmary, in the light of the above comments.**

292. The delegation's medical expert found that the situation regarding prisoners' medical records in the KIA's medical service was unsatisfactory. These turned out to be extremely succinct (administrative forms designed to provide basic information on prisoners often incomplete; no proper medical admission form (see paragraph 294); only very summary information on patients' medical progress; no proper medical prescriptions form, no special form for psychiatric consultations).

293. The CPT wishes to stress that a medical record should be compiled for each patient, containing diagnostic and treatment information as well as an ongoing record of the patient's progress and of any specialist examinations carried out. Where a prisoner is transferred, the record should be forwarded to any subsequent doctor concerned.

The CPT recommends that the Aruban authorities take steps to ensure that the above points are taken into account when medical records are drawn up.

d. medical examination on admission

294. Section 321 (paragraph 3) of Government decree No 6 stipulates that all prisoners should receive a medical examination as soon as possible after their admission.

According to the general practitioner attached to the KIA, in theory, all prisoners newly entering the establishment were seen by a member of the nursing staff within one or two days of admission. However, an examination of the prison medical service's records showed that there were no specific medical admission forms for recording case histories and the results of the first medical examination on admission (see also paragraph 292).

295. The CPT considers that all newly admitted prisoners - sentenced or on remand - should be seen without delay by a member of the prison health service and, if necessary, given a medical examination. The medical screening on admission could be undertaken either by a doctor or by a qualified nurse reporting to a doctor.

It goes without saying that the initial interview and any examinations should be carried out in conditions which respect prisoners' right to privacy and offer appropriate safeguards regarding confidentiality. It would also be desirable for a note or booklet to be distributed to all newly admitted prisoners informing them of the existence and operation of the health care service, and drawing attention to various preventive and health promotion measures.

The CPT recommends that the Aruban authorities take the necessary steps to ensure that practice in this area is consistent with the points made above. Clearly, this presupposes, *inter alia*, the application of the recommendation made in paragraph 281.

e. psychiatric care

296. The situation found by the delegation in the KIA as regards psychiatric care was quite unacceptable. As already noted (see paragraph 280), a psychiatrist from Surinam visited the prison on an irregular basis (generally, once a month). As far as non-hospital care was concerned, the direct consequences of this were that:

- prisoners presenting psychiatric or psychological disorders did not receive appropriate treatment;
- the range of psychiatric care available for offenders who were mentally ill was totally inadequate.

297. Moreover, the admission of mentally ill prisoners to a psychiatric hospital appeared to pose very real difficulties. The medical staff of the Dr Horacio E Oduber Hospital were reluctant to accept this sort of prisoner and opted, as far as possible, for their remaining and being cared for in the KIA.

298. The delegation's medical expert identified at least two cases of mentally ill prisoners for whom the psychiatric provision in the KIA was quite inadequate.

The first concerned a prisoner - a known psychiatric patient - whose sentence of imprisonment in the KIA ended on 6 October 1993. The day before, a Government order, issued by the Ministry of Public Works and Health, extended his period of detention in the establishment under section 5 of the Mental Illness Order (AB 1992, No 15), pending his ultimate transfer to a psychiatric institution.

Despite an approach by the Governor of the KIA to the Minister for Justice on 11 March 1994, the individual concerned was still detained in the establishment at the time of the delegation's visit, that is nearly nine months after the temporary confinement order.

The second case concerned a prisoner who, over a period of more than ten years, had been repeatedly imprisoned in Aruba, interspersed with a number of admissions to the psychiatric unit of the Dr Horacio E Oduber Hospital. While in custody, the prisoner habitually spent periods of varying length in solitary confinement. At the time of the visit, the patient was once more in solitary confinement, which on this occasion had already lasted three months (see paragraph 271).

299. The CPT wishes to emphasise that the provision of medical and nursing staff, as well as the layout of prison premises, must be such as to ensure that regular pharmacological, psychotherapeutic and occupational therapy programmes can be provided for prisoners with psychiatric symptoms.

In addition, mentally ill prisoners should be kept and cared for in a hospital facility which is adequately equipped and possesses appropriately trained staff. That facility could be a civil mental hospital or a specially equipped psychiatric facility within the prison system.

Whichever option is adopted, the psychiatric facility must offer a sufficient number of places. Too often, there is a prolonged waiting period before a necessary transfer is effected. The transfer of the person concerned to a psychiatric facility should be treated as a matter of the highest priority.

300. In view of the seriousness of the situation observed in the KIA, **the CPT recommends that the Aruban authorities take immediate steps to ensure that:**

- **the mentally ill prisoners referred to in paragraph 298 of the report are transferred to a hospital facility which is adequately equipped and possesses appropriately trained staff;**
- **an early decision is taken either to establish a FOBA in the KIA or to open a secure psychiatric observation and treatment unit in the Dr Horacio E Oduber Hospital.**

301. It should also be pointed out that all prisons accommodate a certain number of prisoners who, while not requiring admission to a psychiatric facility, could benefit from ambulatory psychiatric or psychological care. As things stand at present, such prisoners do not receive appropriate psychiatric or psychological treatment in the KIA.

The CPT recommends that the Aruban authorities take the necessary steps to provide ambulatory psychiatric/psychological services which are sufficient to meet the needs of prisoners in the KIA.

In this connection, the KIA medical service should be able to rely on the regular presence of a part-time psychiatrist.

f. issues relating to communicable diseases

302. According to the doctor, prisoners entering the KIA were offered an HIV test, on a voluntary basis, when the nursing staff thought that this was appropriate. The delegation was informed that prisoners could seek general information on HIV and AIDS, and other communicable diseases, when they saw the doctor or nurses. The Governor also indicated that a number of information sessions, in the form of lectures, had been organised in the prisons and had been favourably received by the prisoners. However, there were no explanatory booklets or leaflets for prisoners on this subject.

303. The CPT considers that prison health care services should provide regular information to prisoners and prison staff on communicable diseases (in particular, hepatitis, AIDS, tuberculosis and skin diseases). Where appropriate, medical screening of persons with whom a particular prisoner has regular contact (fellow prisoners, prison staff, frequent visitors) should be carried out.

With particular regard to AIDS, appropriate counselling should be provided before and -if necessary - after HIV testing. Prison staff should receive careful training about the preventive measures to be taken and the attitude to adopt towards those who are HIV-positive, and be given appropriate instructions on non-discrimination and confidentiality.

The CPT recommends that the Aruban authorities strengthen their existing measures, in the light of the above points.

g. drug addiction

304. According to estimates supplied by the medical service, drug addicts represented approximately two-thirds of the total prison population, most of them cocaine/crack⁹ users.

Addicts could be prescribed drug treatment on admission, lasting about two weeks, after an initial assessment by the doctor. Patients could also request rational therapy, which was provided by the nurse who specialised in psychiatry. In other, more exceptional, circumstances, they could ask to be transferred to the psychiatric unit of the Dr Horacio E Oduber Hospital.

305. To summarise, the situation which the CPT delegation found gave cause for concern. Firstly, the delegation was informed that prisoners continued to consume and/or traffic in drugs. Secondly, the lacunae in the establishment's psychiatric and social services had a particularly important impact in this area (see paragraph 301).

306. Given the size of the prison's drug dependence problem, linked to the large number of addicted prisoners, **the CPT recommends that the Aruban authorities increase the level of provision for drug addicted prisoners and institute a genuinely multidisciplinary therapeutic programme to help them.**

h. female prisoners with children

307. Neither the Prison Governor nor the general practitioner attached to the establishment had been confronted with the problem of caring for a pregnant prisoner or one with a new-born child. However, the Governor said that, if necessary, one of the cells in the women's unit could be furnished to accommodate a mother and her young child (up to one year). The doctor also indicated that, in his view, the KIA was not at present sufficiently well equipped to admit a mother and child.

308. The CPT considers that if mothers and children are together in prison, they must be offered conditions which guarantee them the equivalent of a crèche as well as support from specialist staff in the fields of neo-natal and infant care. In addition, long-term arrangements relating particularly to the transfer of the child to the outside community and its separation from its mother, should be decided on in each individual case, having regard to the child's best interests.

The CPT recommends that the Aruban authorities take these remarks into account, in the event of a prisoner being imprisoned with her child.

⁹ i.e. cocaine heated until hard and broken into small pieces for smoking or inhaling.

D. Recapitulation

1. Police establishments

309. It should be stated from the outset that the CPT's delegation heard no allegations, from either persons in police custody or inmates met in Aruba Prison (KIA), of severe ill-treatment amounting to torture inflicted in police premises. Nevertheless, the delegation did hear a number of allegations of the physical ill-treatment of persons during their arrest or detention by the police. These included, inter alia, punches and slaps, truncheon blows, etc. In respect of two recent cases, the CPT received medical information gathered by doctors, according to which the persons concerned presented injuries consistent with allegations of police ill-treatment.

310. In this connection, the Aruban authorities informed the delegation of the recent creation of a State police department. This department, directly answerable to the Attorney General, is responsible in particular for disciplinary and criminal investigations into alleged misconduct by police officers. The CPT welcomes the establishment of this department and has recommended that the general public be duly informed about the right of individuals to submit complaints to it. Further, the CPT has requested up-to-date information on cases dealt with by the department involving allegations of ill-treatment by the police.

311. The CPT has stressed that particular attention should be paid to training (both initial and ongoing) in the art of handling - and more especially of speaking to - arrested and detained persons, i.e. in interpersonal communication skills. It has also recommended that senior police officers deliver to their subordinates the clear message that ill-treatment is not acceptable and will be the subject of severe sanctions.

312. The CPT has also underlined that public prosecutors must respond swiftly and effectively to complaints of ill-treatment and that, where necessary, the courts must impose appropriate sanctions. An awareness that the courts are ready to impose severe penalties could act as a very powerful deterrent.

313. Various recommendations have been made with a view to strengthening formal safeguards against the ill-treatment of persons detained by the police (for example, that such persons be granted the right to inform, without delay, a close relative or a third party of their choice of their detention; that they be granted the right to be examined by a doctor of their choice ; that a code of practice for interrogations be drawn up).

As regards, more particularly, the right of detained persons to have access to a lawyer, at present this right applies only from the time a person is placed in police custody. In this connection, it should be stressed that the period immediately following deprivation of liberty is when the risk of intimidation and ill-treatment is greatest. Consequently, the CPT has recommended that the right of access to a lawyer - where necessary, an officially appointed lawyer - be guaranteed from the very outset of detention, (i.e. also during the initial period of detention for questioning).

314. The delegation was concerned to learn that persons suspected of having committed a criminal offence could be detained in police stations for periods of weeks, if not longer, and that a police officer from the criminal investigation department decided on the transfer of persons detained in police stations to Aruba Prison.

The period of time during which a person suspected of having committed a criminal offence may remain in police (as distinct from prison) premises is of direct relevance to the issue of the prevention of ill-treatment. Prolonged periods of detention of criminal suspects in police premises can lead to high-risk situations. In this connection, the Aruban judicial authorities have recently decided that a person who is the subject of a remand order shall be transferred without delay to Aruba Prison, thereby limiting the period during which a criminal suspect can be held in a police station to a maximum of ten days.

While welcoming this decision, the CPT has emphasised that in its view a period of detention of up to ten days in police premises is still far too long. Consequently, it has recommended that this period be substantially reduced. This would not necessarily preclude the police from carrying out further questioning of suspects following their departure from police premises.

315. The delegation heard a considerable number of allegations about the material conditions of detention in police cells. The delegation observed for itself that the material conditions of detention in Oranjestad and San Nicolaas Police Stations were such that they could readily be described as inhuman and degrading, a situation which was all the more disturbing given that persons were often detained in those stations for prolonged periods.

Police cells designed for single occupancy were often used to accommodate two, or even three, persons. They were badly lit, very badly ventilated and furnished only with a sleeping platform. Moreover, they were extremely dirty, foul-smelling and infested with cockroaches and rodents. The conditions in the multi-occupancy cell for women at the San Nicolaas Police Station were particularly poor.

316. This situation led the delegation to invoke Article 8, paragraph 5, of the Convention and make an immediate observation regarding material conditions of detention in the Oranjestad and San Nicolaas Police Stations, which was subsequently confirmed in a letter addressed to the Minister for Justice on 10 August 1994. Shortly after the visit, the CPT was informed of the decision of the Aruban Council of Ministers to set up a Commission with the aim of improving conditions in the police cells. The Commission completed its work on 16 September 1994 and made a number of detailed recommendations. The Commission's recommendations were adopted by the Council of Ministers on 30 September 1994.

The CPT welcomes the decision of the Aruban Council of Ministers and has recommended that the highest priority be given to completion of the works in the Oranjestad and San Nicolaas Police Stations, as identified in the report of the previously-mentioned Commission.

317. Finally, given that large numbers of persons are sometimes detained in Aruba under the Aliens legislation, and for prolonged periods of time, the CPT has recommended that the possibility be explored of creating a specific centre for such persons, offering material conditions of detention and a regime appropriate to their legal situation. In this connection, the CPT has also recommended that, in its present state, the former Dakota Prison should no longer be used for custodial purposes.

2. Prisons

318. The CPT's delegation heard no allegations of torture or other forms of physical ill-treatment of persons detained in Aruba Prison (KIA). Nor did they find any other evidence of such treatment during the visit.

319. The material conditions of detention in this recently built establishment were in general quite good. However, the CPT has made a number of recommendations, particularly as regards the maximum capacity of the cells (to be progressively reduced to two prisoners), the partitioning of the sanitary annexes in cells accommodating more than one prisoner, and personal and collective hygiene.

As regards the activities programmes for prisoners, the CPT has recommended that these be further developed, and that a high priority be given to diversifying and improving the activities programmes for young prisoners.

It has also recommended that steps be taken to ensure that the midday meal is served hot to prisoners, and that the prison kitchen be renovated and disinfected regularly.

320. In addition to the above, the CPT has made a number of recommendations, comments and requests for information regarding prison staff, contact with the outside world, discipline, solitary confinement, complaints and inspection procedures, and information for prisoners. In this respect, the CPT wishes to highlight two issues, namely prison staff and discipline.

321. The predominant attitude of prison officers at Aruba Prison was one of indifference; there was no clear commitment on their part to enter into a constructive dialogue with prisoners and they appeared to have developed a minimalist approach to their work. The CPT has recommended that a high priority be given to improving the recruitment and the basis and in-service training of prison staff.

Reference should also be made to a number of organisational innovations which the prison management hoped to introduce, in particular as regards the establishment of a sense of collective and individual responsibility among the prison officers, the introduction of an effective disciplinary system for officers failing in their duty, the creation of a hierarchical structure, etc. The CPT trusts that the prison management will be able to rely on the full support of the Aruban authorities in its efforts to modernise the operation of the establishment. One of the priorities should be a vigorous plan to combat absenteeism among prison staff.

322. As regards discipline, the material conditions observed in the disciplinary unit for men left a great deal to be desired. The four cells in question were dark, very badly ventilated and had no furnishings (other than a mattress provided at night). Further, despite the fact that there was no permanent staff presence, no call system had been installed. The CPT has therefore recommended that significant improvements be made to the material conditions of detention in the prison's punishment cells. Further, the CPT has recommended that the disciplinary procedure be reinforced by certain additional safeguards.

323. The KIA medical service was understaffed at the time of the visit, which inevitably had consequences as regards the standard of care provided. Moreover, the limited amount of time spent by general practitioners in the prison and the insufficient number of qualified nursing staff had the additional consequence that the health care team was not in a position to fulfil its responsibilities as regards social and preventive medicine.

The CPT has recommended that immediate steps be taken to ensure the presence of general practitioners to the equivalent of a half-time doctor, and that an additional post be created for a qualified nurse.

The CPT has also recommended that the arrangements for the transfer of prisoners to hospital be reviewed. According to information received from different sources, there were sometimes difficulties in this respect.

324. The situation found by the CPT's delegation in the KIA as regards psychiatric care was quite unacceptable. A psychiatrist from Surinam visited the prison on an irregular basis, which had direct consequences regarding ambulatory care: prisoners presenting psychiatric or psychological disorders did not receive appropriate treatment, and the range of psychiatric care available for offenders who were mentally ill was totally inadequate. Moreover, the admission of the latter to a psychiatric hospital appeared to pose considerable difficulties.

In view of the seriousness of the situation, the CPT has recommended that immediate steps be taken to ensure that two mentally ill prisoners identified by the delegation's medical expert are transferred to a hospital facility which is adequately equipped and possesses appropriately trained staff. Further, it has recommended that an early decision be taken either to establish a FOBA in Aruba Prison or to open a secure psychiatric observation and treatment unit in the Dr Horacio E Oduber Hospital.

The CPT has also recommended that the necessary steps be taken to provide ambulatory psychiatric/psychological services which are sufficient to meet the needs of prisoners in the KIA. In this connection, the prison's medical service should be able to rely on the regular presence of a part-time psychiatrist.

325. The material conditions, standard of equipment and state of cleanliness in the medical service of the KIA were acceptable. However, the CPT's delegation observed that the prison's infirmary, which was distant from the medical service, was in a state of considerable disorder and did not appear to be properly equipped to receive patients. The CPT has made a recommendation aimed at improving the material conditions, standard of equipment and state of cleanliness in the establishment's infirmary.

The CPT has also recommended that steps be taken to improve the standard of the medical records.

326. Additional recommendations and comments have been made in respect of communicable diseases, drug addiction and female prisoners with children.

APPENDIX I

**SUMMARY OF THE CPT'S RECOMMENDATIONS, COMMENTS
AND REQUESTS FOR INFORMATION**

A. Police establishments

1. General remarks

recommendations

- the possibility to be explored of creating a specific centre for persons detained under the Aliens legislation, offering material conditions of detention and a regime appropriate to their legal situation (paragraph 183).

requests for information

- the new Code of Criminal Procedure of Aruba (paragraph 182).

2. Torture and other forms of physical ill-treatment

recommendations

- the period of time during which a person suspected of having committed a criminal offence may be detained in police premises to be substantially reduced (paragraph 190);
- the general public to be duly informed about the right of individuals to submit complaints to the State Police department (paragraph 191);
- senior police officers to deliver to their subordinates the clear message that ill-treatment is not acceptable and will be the subject of severe sanctions (paragraph 194).

comments

- particular attention should be paid to training (both initial and ongoing) in the art of handling - and more especially of speaking to - arrested and detained persons i.e. in interpersonal communication skills (paragraph 193).

requests for information

- up-to-date information on cases investigated by the State Police department involving allegations of police ill-treatment (paragraph 191);
- the number of complaints of ill-treatment by police officers lodged during 1993 and 1994 and the number of criminal/disciplinary proceedings initiated as a result of those complaints (paragraph 195);
- an account of criminal/disciplinary sanctions imposed during 1993 and 1994 following complaints of ill-treatment by police officers (paragraph 195).

3. Conditions of detention in the police establishments visited

recommendations

- the highest priority to be given to completion of the works identified in the report of the Commission set up to improve conditions in police cells (paragraph 208);
- appropriate steps to be taken to ensure that conditions of detention in all police establishments meet the criteria set out in paragraph 196 (paragraph 208);
- the possibility to be explored of offering persons detained under the Aliens legislation a minimum activities programme (access to a communal area, television, reading matter, etc.) (paragraph 209);
- persons detained under the Aliens legislation to be provided with an information booklet explaining the procedure applicable to them and setting out their rights; the booklet to be available in the languages most commonly spoken by those concerned and, if necessary, the services of an interpreter to be made available (paragraph 209);
- in its present state, the former Dakota Prison no longer to be used for custodial purposes (paragraph 209).

comments

- the multi-occupancy cell for women at San Nicolaas Police Station should not accommodate overnight more than seven persons (paragraph 204).

4. Safeguards against the ill-treatment of detained persons

recommendations

- persons detained by the police to have the right to inform, without delay, a close relative or a third party of their choice of their detention, either directly or through a police officer (paragraph 213);
- any possibility exceptionally to delay the exercise of the right to inform a close relative or third party to be clearly circumscribed in law, made subject to appropriate safeguards (e.g. any delay to be recorded in writing together with the reasons therefor and to require the approval of a court or a public prosecutor) and strictly limited in time (paragraph 213);
- persons detained by the police to be entitled to have access to a lawyer from the very outset of their detention. This right to include the right to contact the lawyer and to be visited by him (in both cases under conditions guaranteeing the confidentiality of their discussions) and, in principle, the right of the person concerned to have the lawyer present during interrogation (paragraph 215);
- steps to be taken to ensure that every person detained by the police has the right to consult in private with a lawyer (where necessary, an officially appointed lawyer), without delay (paragraph 217);
- legal provisions to be adopted on the subject of the right of persons detained by the police to have access to a doctor. These provisions to stipulate in particular that:
 - . detained persons are entitled to be examined, if they so wish, by a doctor of their choice (in addition to any examination carried out by a doctor called by the police);
 - . all medical examinations are to be conducted out of the hearing and - unless the doctor concerned requests otherwise - out of the sight of police officers;
 - . the results of every examination, as well as any relevant statements by the detainee and the doctor's conclusions, are to be recorded in writing by the doctor and made available to the detainee and his lawyer (paragraph 221);
- a form setting out their rights to be systematically given to detainees at the outset of their custody. This form to be available in an appropriate range of languages. Further, the detainee should be asked to sign a statement attesting that he has been informed of his rights (paragraph 223);
- a code of practice for interrogations to be drawn up (paragraph 225);
- the possibility of drawing up an individualised custody record to be considered (paragraph 229).

comments

- the Aruban authorities are invited to consider the possibility of introducing a system for the electronic recording of police interrogations. The system should offer all appropriate safeguards (for example, the consent of the detainee and the use of two tapes, one of which would be sealed in the presence of the detainee and the other used as a working copy) (paragraph 226);
- the recommendations made concerning safeguards against the ill-treatment of detained persons also apply to persons detained under the Aliens legislation (paragraph 231).

requests for information

- the comments of the Aruban authorities on the information received according to which it was apparently quite common for persons detained by the police to speak for the first time with a lawyer only after their arrival in KIA (and on occasion only just before their trial), especially if the lawyer had been officially appointed (paragraph 218);
- comments of the Aruban authorities on complaints received that access to a doctor during police custody could be subject to significant delays (paragraph 220);
- whether persons detained may be questioned between 10 pm and 8 am (paragraph 227);
- whether on-the-spot supervision of the implementation of custodial measures is undertaken by prosecuting/judicial authorities (paragraph 230);
- information on the formal safeguards and practical arrangements which exist in order to ensure that foreign nationals are not sent to a country where they run a risk of being subjected to torture or inhuman or degrading treatment or punishment (paragraph 232).

B. Aruba Prison

1. Torture and other forms of physical ill-treatment

requests for information

- information on the number of complaints of ill-treatment lodged against prison officers in 1993 and 1994, and an account of any sanctions imposed following complaints of ill-treatment (paragraph 235).

2. Conditions of detention in Aruba Prison

recommendations

with regard to material conditions

- the maximum capacity of the cells to be progressively reduced to two prisoners;
- the partitioning of the sanitary annexes in cells accommodating more than one prisoner to be improved;
- steps to be taken to ensure that all prisoners, including those with no resources, are provided with sheets and pillows and personal hygiene products;
- to be verified that prisoners are regularly supplied with the necessary materials to maintain their cells in a clean and hygienic state;
- cells to be fitted with a call system;

with regard to activities

- activities programmes for prisoners to be further developed; the objective should be to ensure that all prisoners, including those on remand, are able to spend a reasonable part of the day (eight hours or more) outside their cells, engaged in purposeful activities of a varied nature (work, preferably with a vocational value; education; sport; recreation/association);
- a high priority to be given to diversifying and improving the activities programmes for young prisoners;

with regard to food

- steps to be taken to ensure that the midday meal is served hot to prisoners;
- the prison kitchen to be renovated and disinfected regularly (paragraph 250).
- a high priority to be given to improving the recruitment and basic and in-service training of prison staff (paragraph 253);
- the disciplinary sanctions of placement in a punishment cell on a bread and water regime and placement in irons to be rescinded (paragraph 261);
- steps to be taken to ensure that any disciplinary sanction is communicated in writing to the prisoner concerned and that there is a right of appeal against any such sanction to a higher authority (paragraph 262);

- significant improvements - installing a sleeping platform and call system, improving the lighting and ventilation, repairing showers - to be made to the prison's punishment cells (paragraph 264);
- steps to be taken immediately to ensure that prisoners in the punishment cells have regular access to drinking water throughout the day (paragraph 265);
- all prisoners in punishment cells to be entitled to at least one hour's outdoor exercise each day (paragraph 266);
- all prisoners in punishment cells to have access to reading matter (paragraph 267);
- steps to be taken to ensure that the regulations and practice regarding solitary confinement are consistent with the points made in paragraph 269 (paragraph 269);
- cells in the solitary confinement unit to be fitted with a call system and a table and chair, if necessary fixed to the floor. All prisoners placed in the unit to be entitled to at least one hour's outdoor exercise each day (paragraph 270);
- mentally ill prisoners no longer to be placed in the KIA solitary confinement unit (paragraph 271);
- an official register to be maintained in the disciplinary/solitary confinement unit, recording dates and times of entering and leaving the unit, reasons for the detention, cell occupied, destination on departure, etc. (paragraph 272);
- the application of the complaints procedures to be reviewed, with a view to ensuring that they are operating effectively (paragraph 274);
- the operation of the existing Supervisory Commission to be reviewed, in the light of the remarks made in paragraph 276 (paragraph 276);
- all new prisoners to be supplied with written information on the regime in force in the establishment and on their rights and duties, in a language which they understand (paragraph 278).

comments

- young persons in custody should be provided with a full programme of educational, recreational and other purposeful activities. Physical education should constitute a significant element of that regime. Moreover, the staff assigned to young persons' units should be carefully selected and, more specifically, be persons capable of guiding and motivating young people (paragraphe 250);
- the CPT trusts that the prison management will be able to rely on the full support of the Aruban authorities in its efforts to modernise the operation of the establishment. One of the priorities should be a vigorous plan to combat absenteeism among prison staff (paragraph 254);
- the Aruban authorities are invited to review the arrangements for sending out correspondence (paragraph 258);

- the Aruban authorities are invited to provide prisoners without money with writing materials (notepaper, pencil, stamps) (paragraph 259);
- the need for a certain flexibility when applying the rules on visits, telephone contacts and correspondence to prisoners whose families live very far from the establishment, thus making regular visits very difficult if not impossible (paragraph 260);
- the Prison Governor should be informed immediately of any placement of a prisoner in a punishment cell, and a decision on the case should be taken within 24 hours (paragraph 262);
- it would be desirable for improvements to the prison's punishment cells to include the installation of a table and chair in each cell, if necessary fixed to the floor (paragraph 264);
- the lack of a call system in the punishment cells of the women's section was very regrettable (paragraph 268);
- the Aruban authorities are invited to add the President of the CPT to the list of authorities with whom prisoners can communicate by confidential letter (paragraph 274);
- it would be useful for a description of the main features of the prison's regime, a list of prisoners' rights and duties and an outline of the avenues of appeal open to them to be posted on the prison notice boards (paragraph 278).

requests for information

- the comments of the Aruban authorities on the remarks made in paragraph 240 (paragraph 240).

4. Medical services

recommendations

- immediate steps to be taken to ensure the presence of general practitioners to the equivalent of one half-time doctor (paragraph 281);
- an additional post for a qualified nurse to be created (paragraph 283);
- someone qualified to provide first aid, preferably with a recognised nursing qualification, to always be present in the prison, including at night (paragraph 285);
- the arrangements for the transfer of prisoners to hospital to be reviewed (paragraph 287);
- steps to be taken without delay to improve the material conditions, standard of equipment and state of cleanliness in the KIA infirmary (paragraph 291);

- the remarks in paragraph 293 to be taken into account when medical records are drawn up (paragraph 293);
- steps to be taken to ensure that practice as regards medical screening on admission is consistent with the points made in paragraph 295 (paragraph 295);
- immediate steps to be taken to ensure that:
 - . the mentally ill prisoners referred to in paragraph 298 of the report are transferred to a hospital facility which is adequately equipped and possesses appropriately trained staff;
 - . an early decision is taken either to establish a FOBA in the KIA or to open a secure psychiatric observation and treatment unit in the Dr Horacio E Oduber Hospital (paragraph 300);
- the necessary steps to be taken to provide ambulatory psychiatric/psychological services which are sufficient to meet the needs of prisoners in the KIA (paragraph 301);
- the existing measures taken at the KIA concerning communicable diseases to be strengthened (paragraph 303);
- the level of provision for drug addicted prisoners to be increased and a genuinely multidisciplinary therapeutic programme to be instituted (paragraph 306);
- the remarks made in paragraph 308 to be taken into account, in the event of a prisoner being imprisoned with her child (paragraph 308).

comments

- the KIA medical service should be able to rely on the regular presence of a part-time psychiatrist (paragraph 301).

requests for information

- clarification as regards the availability of dental care for prisoners (paragraph 280);
- the Aruban authorities' comments on the question of attaching all the health care staff at the KIA to the Ministry of Health (paragraph 288).

APPENDIX II

**LIST OF THE GOVERNMENTAL AUTHORITIES AND
PERSONS WITH WHICH THE CPT'S DELEGATION
HELD CONSULTATIONS**

A. Governmental authorities

- | | | |
|-----------------------|---|---|
| Mr. J.H.M. Zwinkels | - | Attorney General |
| Mr. B. Vocking | - | Deputy Director, Aruba Correctional Institute |
| Ms. C. van den Berg | - | Head of the Rehabilitation and Child Welfare Council |
| Ms. Y. Spellen | - | Director, Guardianship Board |
| Mr. J. van de Straten | - | Head of the National Bureau of Investigations |
| Mr. L. Rasmijn | - | Police Commissioner |
| Mr. E. Bennet | - | Head of the Airport Immigration Authorities |
| Mr. R. Martus | - | Inspector of Police |
| Ms. A. Peterson | - | Department of Foreign Affairs
Liaison officer to the CPT |

B. Persons active in the CPT's fields of interest

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|--------------|---|--------|
| Mr. R. Oomen | - | Lawyer |
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