

**Interim report of the Dutch Government
in response to the report of the European
Committee for the Prevention of Torture
and Inhuman or Degrading Treatment or
Punishment (CPT) on its visit to the Netherlands
from 17 to 27 November 1997**

The Dutch Government has requested the publication of this interim report. The CPT's report on its visit to the Netherlands is set out in document CPT/Inf (98) 15.

Strasbourg, 25 March 1999

**INTERIM REPORT OF THE DUTCH GOVERNMENT
IN RESPONSE TO THE REPORT OF THE EUROPEAN
COMMITTEE FOR THE PREVENTION OF TORTURE AND
INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT)
ON ITS VISIT TO THE NETHERLANDS**

FROM 17 TO 27 NOVEMBER 1997

**RESPONSE OF THE DUTCH AUTHORITIES
TO THE REPORT OF THE
EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE
(CPT (98) 25)**

A. Law enforcement agencies

1. Torture and other forms of ill-treatment

Requests for information by the CPT

1. The CPT inquires whether the use of the "Zaanse verhoormethode", and its subsequent prohibition, has led the Dutch authorities to take any other measures as regards police training in the conduct of interrogations (paragraph 13)

Response: The previous Minister of Justice decided shortly before the end of her period in office to begin an experiment with the video-taping of interrogations concerning serious criminal cases (those involving criminal offences subject to a maximum prison sentence of at least eight years). The video-taping of such interrogations provides an extra control on the treatment of suspects during questioning and on the general conduct of the interrogation. The experiment will be evaluated by a special advisory committee on criminal investigations (the "Recherche adviescommissie") before the method is introduced nationwide. The same advisory committee is also to advise on the further development of methods of interrogation with a view to improving the quality of criminal investigations.

2. The CPT would like to receive the comments of the Dutch authorities on the report drawn up by the Police Complaints Commission of the Amsterdam-Amstelland Region regarding the inquiry into police intervention during the European Summit in Amsterdam in June 1997, as well as information on the measures which have been taken subsequently (paragraph 15)

Response: Responsibility for the maintenance of law and order and public safety in Amsterdam, and hence for the conduct of the police and the judicial authorities during the European Summit, is shared by a consultative triumvirate made up of the Burgomaster of Amsterdam, the Chief Public Prosecutor for the Amsterdam district and the head of the Amsterdam-Amstelland regional police

force. In November 1997, this triumvirate issued a written response to the report by the Amsterdam-Amstelland Regional Police Complaints Commission on the actions of the police during the European Summit in June 1997. This report makes recommendations on eight matters: consultation with campaign groups, searching of female detainees, use of plastic handcuffs, identification of members of the riot police, the treatment of goods confiscated during body-searches, the makeshift conditions of detention, the measures taken to deal with large-scale disturbances and the retrospective evaluation of large-scale police action.

The response of the triumvirate to these recommendations can be summarised as follows. The current policy with regard to demonstrations which have not been agreed with the authorities in advance is to liaise with the organisers for as long as possible, both before and during the demonstration. The Committee's recommendation on demonstrations is therefore already part of normal policy and practice with regard to the tolerance shown to such events. In future, whenever large-scale police action is required, care will be taken to ensure the presence of sufficient female police officers to search any female detainees. The problem concerning the number of reserve handcuffs and the disadvantages of using plastic handcuffs is acknowledged. Efforts will be made to find a solution satisfactory to both police and detainees. As regards the identification of members of the riot police, no solution has yet been found, since due consideration must be given both to the accountability of individual officers and to their personal security. The loss of goods confiscated during body-searches is now a thing of the past, due to the introduction of a "detainee tagging system". With regard to the makeshift conditions of detention, the Committee is referred to the report of the Balkema Committee. As regards the recommendation to consult with the Public Prosecution Service on the production of a legal scenario defining the limits of tolerance in relation to large-scale disturbances, the triumvirate agrees that the civil and judicial authorities need to agree a new set of measures (scenario) specifically for the control of sustained, large-scale disturbances. Finally, the recommendation to appoint a separate new committee with broad powers to produce independent evaluations of police action in relation to major incidents of this kind is not adopted because the triumvirate feels that it should itself be given the power to conduct such evaluations.

3. The CPT would like to receive the conclusions of the investigation into the manner in which persons detained during the European Summit were treated in the various detention centres in which they were held, as well as details of the measures which the Dutch authorities have taken as a result (paragraph 16)

On 12 September 1997, the Minister of Justice appointed a committee to investigate the treatment of suspects held in the various detention centres in connection with the European Summit. On 31 December, the committee reported its findings to the Minister, who subsequently presented its report to parliament.

An important finding is that advance arrangements failed to take sufficient account of the number of places available in detention centres. As a result, the prison service was unable to anticipate the potential impact of large numbers of arrests. The committee felt that the conditions in which the detainees were held bore all the hallmarks of an unforeseen emergency. It states that, in the circumstances, the prison service went to great efforts to improvise solutions. The immediate transfer of the individuals arrested to the detention centres led to their being kept waiting for too long in the buses used to transport them there. The committee concludes that the treatment of the detainees was stern but, so far as it has been able to ascertain, correct. The complaints listed in the black book which helped to prompt the investigation could generally be traced back by the prison service staff to specific incidents. The committee could find no evidence of sexual or other intimidation on the part of prison service staff. The medical treatment provided was as good as could be expected in such an emergency situation. Where detainees were held in solitary confinement, the committee thought that the measure had not been unreasonable, although it did observe that the formal procedures required in relation to such a severe measure had not been observed.

The Committee concluded its findings with four recommendations:

- that the prison service should in future be involved at an earlier stage in consultations on arrangements for this kind of event. It should be linked to the police National Coordination Centre, which is responsible for country-wide coordination on behalf of the Ministry of the Interior and Kingdom Relations.
- that a uniform plan should be drawn up, complete with a checklist, to ensure that identical procedures are observed in all detention centres.
- that the flow of detainees should not, on any future occasion, be processed centrally.
- that the law should be clarified regarding the use of prisons to accommodate groups of people in police custody.

The Minister of Justice endorses these conclusions and recommendations.

2. Conditions of detention

Recommendations by the CPT

4. In summing up (paragraph 28), the CPT comes to the conclusion that the conditions of detention in the establishments visited were, on the whole, in accordance with the criteria for the conditions that should be offered to persons in police custody. Nevertheless, the CPT recommends that steps be taken:

4a to equip the multi-occupancy holding area in the Regional Police Headquarters in Tilburg with a bench fixed to the wall

Response: The multi-occupancy holding area in the Regional Police Headquarters in Tilburg is only used in emergencies, when large numbers of detainees arrive simultaneously. They are then detained initially in the holding area before being either transferred to the detention cells or released. Where large numbers of detainees are involved, it is obviously impossible for the officers on duty to deal with them all simultaneously, whether to transfer them to the cells or to release them. They must therefore remain for a short period, on average no more than a few hours, in the holding area. It is therefore used only for very short periods to accommodate large groups, in practice exclusively football supporters. One reason why the area lacks amenities such as natural light and furniture found in detention cells is that it has to be "vandal-proof". Even so, the Tilburg police are currently considering the possibility of expanding the holding area to include sanitary facilities and perhaps a certain amount of fixed furniture. Finally, it should be pointed out that use of the holding area is rarely necessary: in practice, only around six times a year in relation to particularly 'high-risk' football matches.

4b to separate, at night, men and women held at Schiphol Airport who have been refused entry to Dutch territory

Response: Since the beginning of January 1999, the waiting area (*Passantenverblijf West*) in Terminal 3 at Schiphol Airport has no longer been used to hold people at night.

Since 24 December 1998, the remand section of the border hostel has no longer been used for the detention of aliens. Part of the capacity thus made available is now being used to accommodate

persons refused admission to the Netherlands. Men and women can be housed separately here.

The non-Schengen transit area lounge at Schiphol Airport is used for persons refused admittance along the regular channels who are waiting for their flight. Men and women cannot be accommodated separately here. In general, such stays are brief, and those concerned can spend the night at the Airport Hotel. This can be paid for by the Dutch government on humanitarian grounds if an alien lacks the necessary funds.

5. The CPT recommends that continued efforts be made to transfer persons held under the Aliens Law in police detention facilities to more suitably-equipped facilities as soon as possible (paragraph 29)

Response: The policy is to minimise the time spent by aliens in police cells. The regulations (see appendix I) now lay down that they may not be held in police cells for more than 10 days. This is in line with current case law.

An exception can be made to this rule, however, if the person concerned is detained in a police cell while awaiting deportation and this is expected to take place within a short period (defined as no more than ten days), or if no remand capacity is available.

6. The CPT recommends that steps be taken to ensure that any criminal suspect whose police custody is prolonged beyond 3 days is guaranteed at least one hour of outdoor exercise every day (paragraph 29)

Response: The regulations concerning persons being held in police cells state that cell blocks should be equipped with an outdoor exercise area and that detainees should be given the opportunity to use it. The Regional Police Forces (Management) Decree prescribes that detainees should be offered outdoor exercise twice daily, unless the police cell block has no outdoor exercise area. The Police Cell Block Regulations lay down that a police cell block must have an outdoor exercise area measuring at least 30 m², including a square space measuring 10 m². There must be a roof offering adequate shelter from rain and snow and covering no more than one-third of the entire area. The Procurator General may grant exemption from the requirement for an outdoor exercise area, but must give reasons for doing so. An exemption is valid for a maximum period of five years.

Comments by the CPT

7. The CPT comments that conditions of detention at the Warmoesstraat Police Station in Amsterdam remained acceptable. However, it would be desirable for persons detained at that establishment for more than 24 hours to be offered outdoor exercise every day (paragraph 21)

Response: The Regional Police Forces (Management) Decree prescribes that detainees should be offered outdoor exercise twice daily, unless the police cell block has no outdoor exercise area. The Police Cell Block Regulations lay down that a police cell block must have an exercise area consisting of an outdoor area measuring at least 30 m², including a square space measuring 10 m². There must be a roof offering adequate shelter from rain and snow and covering no more than one-third of the entire area. The Police Cell Block Regulations also state that use of a police cell block not meeting these criteria is permitted where the Procurator General has granted exemption. An exemption is valid for a maximum period of five years.

Like other district police stations in the Amsterdam-Amstelland police region, the Warmoesstraat Police Station has no outdoor exercise area for detainees and therefore fails to meet the requirements of the Police Cell Block Regulations. Exemption from these requirements has been granted under the Police Cell Block Regulations until 1 January 2000.

The cell block at Police Headquarters on the Elandsgracht is currently being renovated and upgraded to meet the statutory requirements for police cells. In addition, the Amsterdam-Amstelland regional police force is currently building two large new cell blocks equipped with outdoor exercise areas. The first of these will be completed just over a year from now.

During the renovation of the police cells at the Headquarters on the Elandsgracht, detainees are being accommodated in the force's district and neighbourhood police stations and in cell blocks belonging to several surrounding regional police forces. The latter are equipped with outdoor exercise areas and, partly for this reason, the Amsterdam-Amstelland regional police do their best to find accommodation there for those individuals who are likely to remain in detention for several days.

8. The CPT states that conditions of detention in the establishments visited were, on the whole, in accordance with the criteria for those which should be offered to persons in police custody.

Nevertheless, the Dutch authorities are invited to remedy the deficiencies in police establishments visited, as identified in bold in the text of paragraphs 23 to 27 (paragraph 28):

Regional Police Headquarters in Groningen

- limited access to natural light in the eleven sobering up or holding cells;*
- deficiencies in in-cell ventilation in the fifteen detention cells;*

Regional Police Headquarters in Tilburg

- poor ventilation in the detention cells and, in certain cells, fetid air;*
- no access to natural light in the multi-occupancy holding area;*

Stationsstraat Police Station in Tilburg

- no daylight in the four holding cells;*

Response: The Police Cell Block Regulations prescribe that the minimum ventilation rate in police cells suitable for round-the-clock use should be 11 x 10⁻³m³ per second and that such cells should have daylighting apertures in the inside or outside walls sufficient to allow the occupant to distinguish night from day. Following the remarks of the CPT, these provisions will be drawn to the attention of the force managers in a circular to be issued following publication of the Dutch authorities' response to the CPT report. A copy of the circular will be sent to the CPT.

With regard to the absence of daylight in the holding cells at the Stationsstraat Police Station in Tilburg and the holding area at the Tilburg Police Headquarters, it may be noted that interrogation rooms and holding areas are not in fact covered by the requirement under the Police Cell Block Regulations for police cells suitable for round-the-clock use to have daylighting apertures sufficient to allow the occupant to distinguish night from day (article 11 (1) of the Police Cell Block Regulations). Under current Dutch law, therefore, there is no statutory requirement for an interrogation room or holding area to have access to daylight.

Requests for information by the CPT

9. The CPT would like to receive confirmation of the temporary closure of the cell block in Amsterdam Police Headquarters and information on the measures taken by the authorities to accommodate persons deprived of their liberty by the police in Amsterdam during the renovation work in question (paragraph 20)

Response: The Amsterdam-Amstelland Regional Police force's central cell block, situated in the

force's Headquarters on the Elandsgracht in Amsterdam, was closed on 11 May 1998 for extensive renovation. During the renovation work, which is expected to continue until mid-May 1999, all persons deprived of their liberty will be accommodated either in the cell blocks of the Region's nine district police stations, or in cells located in the Region's neighbourhood police stations, or in cell blocks in the three surrounding police regions.

3. Safeguards against ill-treatment

Recommendations by the CPT

10. The CPT accepts entirely that the exercise of the right to have the fact of one's custody notified to a close relative or third party could be subject to certain exceptions, designed to protect the interests of justice. However, any possibility exceptionally to delay the exercise of this right should be clearly circumscribed, made subject to appropriate safeguards (e.g. any such delay to be recorded in writing together with the reasons therefore and to require the approval of a senior officer or public prosecutor) and strictly limited in time (paragraph 32)

Response: Article 27 of the Service Instructions for the Police, the KMAR and Extraordinary Investigating Officers reads as follows: "In so far as provisions made by or pursuant to the Code of Criminal Procedure do not stipulate otherwise, the officer shall inform a relative or member of the household of the person in custody as quickly as possible of his custody. The officer shall do this on his own initiative if the person concerned is a juvenile, but only at the request of the person in custody if the latter is an adult."

In exceptional cases, notification can be postponed, for example because contact with the outside world is contrary to the interests of the criminal investigation, which may be endangered by releasing information about the detainee's whereabouts.

Section 62 of the Code of Criminal Procedure allows certain measures, such as the postponement of notification, to be taken in the interests of the investigation. However, this may only be done on the authority of a public prosecutor, assistant public prosecutor or examining magistrate.

11. The CPT recommends that any person detained by the police for interrogation purposes should

have access to a lawyer as from the very outset of his deprivation of liberty (paragraph 34)

Response: Under Dutch criminal law, suspects cannot be required to furnish evidence against themselves and have the right to remain silent until their lawyer arrives. In practice, however, a lawyer is frequently unavailable during their first few hours in custody. Indeed, instant access to a lawyer is virtually impossible to achieve. The Dutch government feels that it is in any case not generally in the interests of the investigation that a lawyer should be present during initial police questioning, the purpose of which is simply to establish what actually happened at the time of the alleged offence and the role of the suspect in these events.

Under the Dutch system, each stage of the investigation involves a reconsideration of what types of pressure may be brought to bear on the suspect and what infringements of particular constitutional rights may be permissible in the circumstances. The more serious these infringements, the more safeguards surround them.

For example, suspects may be held for interrogation for no more than six hours. After that, they must either be released or (if they are actually suspected of a crime) placed in police custody. The warrant for police custody is valid for a maximum of three days and can only be issued by the assistant public prosecutor. Within that period, the suspect must be brought before a court. Once the warrant for police custody has been issued, the suspect is entitled to the services of a defence lawyer. Suspects who have not chosen their own defending counsel are provided with one free of charge via the public rota service.

The Dutch legislature has decided that the period of custody for purposes of interrogation is so short that no legal assistance is necessary during it.

The Dutch government is aware that, worldwide, it is precisely during the initial hours of detention that torture and ill-treatment tend to occur. In the Netherlands, however, the system includes so many built-in safeguards that there is little risk of unlawful action being taken against suspects. These safeguards include positive peer pressure (due in part to the emphasis on proper interrogation techniques during police training), the police forces' own internal arrangements for handling complaints, the opportunity to take complaints to the National Ombudsman and the courts' evaluation of the evidence obtained (evidence obtained unlawfully cannot be used to obtain a conviction). This last safeguard has proved particularly effective, for example in achieving the

speedy abandonment of the interrogation technique known as the "Zaanse verhoormethode". After this method was criticised by a defending counsel during legal proceedings, it was not only condemned by the court but also immediately and explicitly forbidden by the Minister of Justice. Finally, as mentioned above, an experiment is currently taking place with the video-taping of interrogations. This will make it possible to assess whether the interrogation was conducted lawfully and whether the official report is a reliable record of what the suspect meant to say.

12. The CPT recommends that a specific register be established at Schiphol Airport, recording cases in which means of restraint are used during deportation procedures and all associated information (paragraph 38)

Response: The Royal Netherlands Military Constabulary (KMAR) currently keeps manual records both of personal particulars and of a range of other information, including details of means of restraint used, the reason for their use, the location where they were used and the consequences of use.

Following an investigation, it has been decided to computerise these records in 1999. The database containing the information is to be linked to the general 'PAS' system used at Schiphol to record a mass of information (personal particulars, statistics, refusal of deportation etc.). This is the information system used by KMAR officers supervising aliens during involuntary repatriation procedures.

Comments by the CPT

13. The CPT invites the Dutch authorities to remind law enforcement officials of the terms of Article 27 of the Service Instructions for the Police and the KMAR, as regards the right of detainees to inform a relative or third party of their detention (paragraph 21)

Response: Following the CPT report, the Ministry of the Interior and Kingdom Relations will draw Article 27 of the Service Instructions for the Police, the KMAR and Extraordinary Investigating Officers to the attention of the managers of the regional police forces, who are responsible for these and other arrangements. Article 27 lays down that a relative or member of the household of the person in custody is to be informed of his detention as soon as possible. This is to be done on

the initiative of the police if the person concerned is a juvenile, but only at the request of the person in custody if the latter is an adult. The relevant circular is to be sent to the force managers following publication of the Dutch government's response to the CPT report. It will be copied to the CPT.

14. The CPT invites the Dutch authorities to remind law enforcement officials that they must respect the right of a detained person to have access to a lawyer (paragraph 35)

Response: The Committee is referred to point 11, which gives the response of the Dutch authorities to paragraph 34.

15. The CPT considers that it might be wise, in respect of high-capacity police detention centres - such as those in Amsterdam and Tilburg - to make arrangements for regular visits by a qualified nurse (paragraph 36)

Response: The Regional Police Forces (Management) Decree, the Service Instructions for the Police, the KMAR and Extraordinary Investigating Officers and the Police Cell Block Regulations all contain rules for the provision of adequate medical treatment for people in police custody. The Regional Police Forces (Management) Decree states that the force manager must make arrangements to ensure that every detainee has access to necessary medical treatment and must arrange for doctors in the region to provide such treatment. The Service Instructions for the Police, the KMAR and Extraordinary Investigating Officers contain a number of provisions concerning medical assistance for detainees. Briefly, if there are signs that a person in custody requires medical assistance, if medication is found on him, or if the detainee himself requests medical assistance or medication, the officer in charge is to consult a doctor. Even if a detainee indicates that he does not wish to receive the medical attention which he appears to need, a doctor should still be informed and notified of the attitude of the detainee. If the detainee requests medical assistance from his own doctor, that doctor should be informed. The doctor's directions for the care of the detainee are to be recorded and followed. Once a doctor has been notified, the detainee is to be kept under observation in the cell every 15 minutes, and once medical assistance has been provided he should be checked as often as the doctor has stipulated. The official checking on the detainee should note particularly whether he is conscious and responsive. If the detainee lapses into unconsciousness or appears unable to respond, he should be immediately taken to hospital by ambulance. In cases where no medical assistance is thought to be necessary, detainees are checked

once every two hours. Finally, the Police Cell Block Regulations lay down that a record is to be kept of any medication used by or administered to detainees.

The CPT thinks it might be wise for high-capacity police detention centres to receive regular visits by a qualified nurse, who could then carry out a number of tasks (such as the distribution of medicines) which are currently performed by ordinary police officers. As examples of detention centres where this would be desirable, the CPT specifies the Police Headquarters in Amsterdam and Tilburg. In response to this suggestion by the CPT, it should be noted that forces are already free to arrange for a nurse to carry out particular duties of this kind, provided they comply with the aforementioned statutory regulations on the medical treatment of detainees. The Tilburg and Amsterdam police have responded to the suggestion by indicating that they see no need to involve a nurse in the care of detainees since the officers currently responsible are themselves competent to perform tasks such as the distribution of medicines. Their training includes instruction in the effects and use of prescription and other drugs.

16. The CPT would like to receive confirmation that persons suffering from "body-pack" syndrome who are detained by the KMAR at Schiphol Airport are now being systematically hospitalised (paragraph 37)

Response: Capacity for "body-packers" in the prison hospital in Scheveningen was increased during the first quarter of 1998. The 7 beds now available have so far proved sufficient to meet demand and to permit systematic admission of such individuals to that hospital.

17. The CPT would like to receive detailed information on the new law regarding requests for asylum by persons unable to formally establish their identity and on all practical measures taken by the Dutch authorities in this area; in particular, on the measures envisaged to ensure that the Dutch authorities continue to comply with the obligation not to send persons to a country where there are substantial grounds for believing that they would run a real risk of being subjected to torture or ill-treatment (paragraph 39)

Response: The main gist of the new legislation on undocumented asylum seekers recently passed by the Lower House (see Appendix II) is that applications for asylum can in future be regarded as manifestly ill-founded if the individuals lodging them have deliberately divested themselves of travel or other documents relevant to the case. The onus will be on the asylum seeker to

demonstrate that he or she cannot be blamed for the absence of travel or other documents.

It should be emphasised that the new legislation will in no way reduce the consideration invariably given to the substance of asylum applications. It is not the simple absence of documents, but rather their culpable absence, which will count against the asylum seeker during the procedure. There is therefore no question of any violation of article 3 of the ECHR.

B. Prisons

1. Torture and other forms of ill-treatment

Requests for information by the CPT

18. The CPT delegation heard no allegations of torture and hardly any allegations of other forms of physical ill-treatment of prisoners by staff in the establishments visited. Further, the CPT's delegation heard few allegations of ill-treatment having occurred in other prisons in the Netherlands. More generally, staff and prisoners in the establishments visited appeared to be on reasonably good terms. Notwithstanding this positive finding, the CPT would like to receive information on the number of complaints of ill-treatment by prison officers in the Netherlands during 1997 and the first half of 1998 and on the number of cases in which disciplinary/criminal proceedings were initiated, with an indication of any sanctions imposed (paragraph 41)

Response: So far as is known, there was only one complaint in the period specified. This related to the treatment of a detainee placed in solitary confinement. The officer concerned has been reprimanded for his actions.

2. Over-Amstel Prisons

Recommendations by the CPT

19. The CPT recommends that, by way of compensation for their more severe custodial situation, inmates held in Unit 4A be allowed to mix freely with the small number of fellow prisoners in the unit and to move without restriction within the unit and be granted a good deal of choice about

activities. Moreover, the activities provided for such prisoners should be as diverse as possible (education, sport, work of vocational value etc.) (paragraph 47)

Response: Unit 4A houses prisoners deemed to represent control and management difficulties. It is designed for detainees who are unable to function normally within the general prison community. Some of them become physically or verbally aggressive at the slightest provocation, or possess so few social skills that their presence gives rise to constant problems. Such detainees are generally insulting and unamenable. They ignore rules and may steal from fellow-prisoners. In short, they are generally antisocial. Other detainees display extremely unpredictable and irrational behaviour. This may be due to a psychosis or other psychiatric disorder but admission to the FOBA is not indicated because they are not in a crisis situation. Finally, there are prisoners who are extremely intelligent and socially highly competent, but who use their interpersonal skills to manipulate staff and fellow-prisoners. Many of the detainees in Unit 4A have personality disorders, which may have been diagnosed in the past. The most common of these is the so-called 'borderline or antisocial type'.

Given the nature of the intended inmates, the regime in the unit is deliberately restrictive. Group activities are limited to a maximum of three prisoners at a time, and prisoners are only allowed to participate in them subject to a positive report on their ability to do so from the team of prison officers and prison medical and psychological experts. Given the control and management problems presented by most of the unit's inmates, it is therefore impossible to allow them to circulate freely within the unit.

From 1 January 1999, the following activities are available within Unit 4A: sport (2 hours a week), cell-based work when available and outdoor exercise (1 hour a day). If prisoners wish to undertake educational activities, they can do so on an individual basis with the help of an education officer.

20. The CPT recommends immediate steps be taken to ensure that inmates held on remand in Unit 4B are offered a minimum of one hour of outdoor exercise every day, in areas sufficiently large to enable them to exert themselves physically (paragraph 47)

Response: Prisoners held in Unit 4B are subject to severe restrictions ordered by the examining magistrate because of the nature of the offence of which they are suspected. On average, they are held in Unit 4B for two to three months. From 1 January 1999, these prisoners will be offered at

least 1 hour of outdoor exercise a day. This will be taken in roof-top exercise areas large enough to meet the statutory minimum criteria.

21. The CPT recommends that efforts be made by staff with a view to offering additional activities and appropriate human contact to prisoners held in Unit 4B (paragraph 47)

Response: The regime observed in Unit 4B is subject to many restrictions and the range of activities must be seen against this background. In addition to outdoor exercise, inmates are offered indoor physical exercise in the unit's own body-building area (two half hours a week) and 'creative activities'. An art teacher spends four hours a week in the unit and works with prisoners individually on creative activities. There is contact between Unit 4B prisoners and prison officers during locking up and letting out, outdoor exercise, indoor physical exercise, creative activities, and the spells of cleaning work done by some of the inmates.

22. The CPT recommends that the Veer Prison (the FOBA) either revert to its original role as an observation and crisis intervention unit or be provided with the additional resources which it would require in order to provide an acceptable quality of psychiatric care to the prisoners whom it admits. If the latter course is chosen, the CPT recommends that:

- the overall management of the FOBA be entrusted to a qualified and experienced psychiatrist;

- the number of staff with appropriate professional training be increased significantly;

- a system of continuous training for forensic wardens, involving regular contacts with psychiatric services outside the prison system, be established;

- the FOBA be subject to the same system of inspection as psychiatric hospitals in the community (paragraph 54);

Response: The FOBA is a remand centre accommodating detainees suffering from acute psychiatric disorders. Prisoners are brought there for crisis support and returned to their original institutions or transferred to other facilities once the crisis is over. The movement of prisoners may occasionally be delayed by lack of places elsewhere but the aim is to keep the period spent in the FOBA as short as possible.

This aim is not, however, an obstacle to the further professionalisation of the FOBA. Since 1 April 1998, the FOBA has had two duty psychiatrists (each working 24 hours a week). This means that the vacancy for a chief psychiatrist which existed at the time of the CPT's visit has now been filled.

23. The CPT recommends that, whichever course is chosen for the future of the FOBA:

- efforts be made to develop additional regime activities for prisoners held there;

Response: The CPT's description of the daily activities of inmates in the FOBA corresponds to those of prisoners in the isolation unit (unit 6), where the individual regime necessarily offers little stimulus. In the other five units, there are plenty of activities available throughout the day, including library visits, educational activities, team sports and religious observance.

- a clear policy on medical confidentiality be introduced;

Response: The FOBA operates on a multi-disciplinary basis. This means that forensic wardens must be given access to medical information. The FOBA is currently clarifying its procedures in this regard. Care will be taken to ensure that the new procedures meet current Dutch statutory criteria on access to medical information.

- all decisions to place prisoners suffering from acute psychiatric disorders in solitary confinement be either made by a doctor or immediately brought to the attention of a doctor with a view to seeking his/her approval (paragraph 55);

Response: Section 24 in conjunction with section 5, subsection 4 (c) of the new Prisons Act (Pbw), which came into force on 1 January 1999, states that the decision to segregate prisoners must normally be taken either by the prison director or by his deputy. In emergencies, however, other members of staff are authorised to segregate prisoners for a maximum of 15 hours (section 24, subsection 4, Pbw). If a segregation cell is used (rather than the prisoner's own cell or a similar one) and the period of solitary confinement exceeds 24 hours, the supervisory board and prison doctor must be informed (section 24, subsection 6, Pbw). The draft ministerial order on the use of such cells goes still further and lays down that the prison doctor must be notified immediately whenever a prisoner is placed in a segregation cell.

The CPT's proposal to place the decision on segregation in the hands of a doctor is contrary to the new Prisons Act. The recommendation that the decision should be immediately brought to the attention of a doctor is already included in the new regulations. Although the purpose of notification is not to seek approval, the governor of the prison may of course reconsider his decision if the doctor advises against the measure.

Since the CPT's visit, the FOBA has introduced a rule that the advice of a psychiatrist is always to be sought whenever a prisoner is placed in an isolation cell. The FOBA also wishes to record that no detainee has ever been kept handcuffed in an observation cell (paragraph 52). The FOBA feels that there must have been some misunderstanding on this point.

24. The CPT recommends that the Dutch authorities consider establishing a separate unit for women prisoners with acute psychiatric problems (paragraph 56)

Response: Since an increasing number of women are now being admitted to the FOBA, consideration will be given to establishing a separate unit for them. However, there is no way to prevent a proportion of activities taking place in a mixed sex context. It should, perhaps, be noted that mixed sex wards are normal in Dutch psychiatric hospitals.

25. The CPT recommends that the administration of involuntary treatment in the FOBA be made subject to formal legal provisions, modelled upon those which apply in psychiatric hospitals (paragraph 57)

Response: Every instance of involuntary treatment in the FOBA is reported to the Health Care Inspectorate, which has powers to institute an inquiry and issue recommendations if it sees fit. There is also constant liaison with the Inspectorate concerning the centre's policies on medication and treatment, which are similar to those in mainstream psychiatric institutions. The new Prisons Act, due to come into force on 1 January 1999, will provide a legal basis for the treatment of patients without their consent.

Comments by the CPT

26. The CPT invites the Dutch authorities to fix a definite lower age limit for admissions to the FOBA (paragraph 56)

Response: Nothing in Dutch law or in the relevant international rules (including the reservations entered by the Netherlands in this respect) prohibits the emergency admission of adolescents to the FOBA. The Dutch government wishes to keep this option open, if only for use in acute emergencies. The mental health of the young person concerned should be the first consideration; the status of the institution where treatment is provided is less important. This having been said, the Ministry of Justice expects the further expansion of psychiatric facilities for young people soon to eliminate the necessity for adolescents to be transferred to the FOBA.

Requests for information by the CPT

27. The CPT would like to receive comments on the accommodation of widely differing categories of prisoners in Unit 4A at Demersluis Prison (paragraph 48)

Response: The group of prisoners in Unit 4A at the time of the CPT's visit was not a representative sample of the unit's usual population. The inmate acknowledged by staff to require a more normal regime was about to be transferred elsewhere. The foreigner was being held in Unit 4A because he had proved unmanageable in the King Willem II Detention Centre in Tilburg.

3. The 'Extra Security Institution' ((T)EBI/EBI) at the Nieuw Vosseveld Prison Complex

Recommendations by the CPT

28. The CPT recommends that steps be taken to improve access to natural light in cells in the (T)EBI (paragraph 59)

Response: In-cell natural lighting in the (T)EBI meets the statutory norms.

29. The CPT recommends that the regime currently applied in the extra security institution be revised in the light of the remarks set out in paragraphs 61 to 67. In particular, the existing group system, if not discarded, should at least be relaxed and inmates should be allowed more out-of-cell time and a broader range of activities. Further, the current searching policies should be reviewed in order to ensure that they are strictly necessary from a security standpoint. Similarly, current visiting arrangements should be reviewed; the objective should be to have visits taking place under

more open conditions (paragraph 70)

Response: The (T)EBI houses prisoners who are deemed exceptionally likely to attempt to escape, either with help from outside or by violent means. Generally speaking, they fall into three categories: prisoners believed to be members of criminal organisations; prisoners serving sentences for manslaughter or murder; and prisoners who have escaped from prison in the past either by taking staff hostage or by using firearms (and perhaps with help from outside). Arrangements for the detention of such prisoners needs to be based first and foremost on systematic, fail-safe security arrangements, though a humane regime should then be provided within that context. The task of the EBI, like any other prison, is to execute custodial sentences without disruption. The restrictions imposed on prisoners should be no more than are necessary to deprive them of their liberty. What distinguishes the EBI from other prisons is the nature of the restrictions required to achieve that purpose. They must be more severe because the prisoners present, by definition, an above-average risk of escape or disruption of the normal prison regime. In practice, this means that the purpose of the (T)EBI and EBI is to create a place and regime from which it is impossible to escape, even by taking staff hostage.

The regime in the EBI is the most severe anywhere in the Netherlands. For that reason, use of the institution is kept to a minimum and the decision to place prisoners there is taken and later reviewed at frequent intervals by a broad-based external committee. Despite the severity of the regime, prisoners in the EBI are offered sufficient out-of-cell time (paragraph 63) and have the opportunity to take part in recreational, sporting, musical, creative, educational and other activities. The range of activities on offer gives prisoners regular opportunities for human contact and the staff of the EBI deliberately strive to encourage such contact and participation in activities wherever possible. The small size of the unit's population (paragraph 67) is essential to the maintenance of order, security and control and to the prevention of escapes. It is true that there are special restrictions on contact with the outside world (in the form of the glass partition separating prisoners from visitors), but the frequency of visits is the same as in a normal remand centre.

The arrangements for searches in the (T)EBI and EBI are essential to ensure the safety of staff. They have been evaluated in the past, as part of the six-monthly assessment of the EBI, and it has been decided that prisoners should not be searched more often than strictly necessary. This means that prisoners are not always searched on return to their cells, but only if they have been out of sight of the warder who let them out.

Visits are organised in such a way as to permit visual, verbal and non-verbal contact while preventing direct physical contact. The special visiting arrangements are among the most important security measures to prevent escapes. If visits were more "open" and there were any chance of smuggling contraband into the prison, there would be little point in the existence of the EBI.

30. The CPT recommends that the Dutch authorities commission an independent study of the psychological state of current and former inmates of the extra security institution (paragraph 70)

Response: The Ministry of Justice intends to investigate the performance of the EBI in early 1999. It will then consider instituting a further study of the impact of the EBI regime on the psychological state of inmates if the outcome of that investigation gives reason to do so.

Requests for information by the CPT

31. The CPT would like to receive confirmation that work to improve the ventilation system in the (T)EBI has now been completed, together with details of the improvements involved (paragraph 59)

Response: Although the ventilation of the (T)EBI already met the relevant norms, the planned work to improve the ventilation in Unit 1 took place in January 1998. An entirely new ventilation system has been constructed, with a separate new duct for each cell.

32. The CPT would like to be informed whether the Dutch authorities plan to close the 'temporary' extra security institution in the foreseeable future (paragraph 60)

Response: At the time of writing there are no plans to close the (T)EBI in the foreseeable future. Most inmates are held in the (T)EBI only until a place can be found in the new building. The length of time spent in the (T)EBI depends on the number of vacancies in the new building and can therefore vary.

4. Health care services

Recommendations by the CPT

33. The CPT recommends that written information on the health care service at the Over-Amstel Prisons, and on related issues such as preventive measures and health promotion, be systematically provided to inmates upon arrival (paragraph 74)

Response: From 1 January 1999 the Over-Amstel Prisons will have new house rules. These will include information on health care issues in the institution.

34. The CPT recommends that the manner in which medical care is delivered to inmates held in the (T)EBI and EBI units at the Nieuw Vosseveld Prison be reviewed in the light of the remarks made in paragraph 77 (paragraph 77)

Response: A visit to the medical consulting rooms always presents a number of risks, due to the presence of potentially dangerous objects such as scissors, scalpels, needles etc. For this reason, prisoners in the (T)EBI are invariably examined in the presence of warders. Even so, medical confidentiality is respected since prisoners wishing to talk privately to the doctor or nurse can do so behind a glass screen in the visiting area. There are security reasons for keeping prisoners handcuffed at all times during physical examinations. There is no evidence that prisoners are disturbed by this lack of privacy or that the security measures impede the development of good doctor-patient relations.

Comments by the CPT

35. The CPT comments that some prisoners at the Over-Amstel Prisons have had to wait for more than a month to receive non-urgent dental care (paragraph 73)

Response: The dentists working in the Over-Amstel prisons naturally give the highest priority to the provision of emergency dental treatment. Non-urgent treatment is provided at a time convenient to both dentist and prisoner. This can occasionally mean some delay, but this is acceptable because the treatment is not urgent.

36. The CPT recommends that, whenever possible, medicines should be distributed by nursing staff (paragraph 75)

Response: The distribution of medicines invariably takes place under the aegis of the prison health care service. When non-nursing staff are involved, organisational measures are taken to prevent mistakes.

Requests for information by the CPT

37. The CPT would like to receive more information on the new procedures for appointment of medical and nursing staff, and the extent of the involvement, if any, of independent medical authorities (e.g. municipal health authorities, medical or nursing associations, or the national health authorities) (paragraph 71)

Response: The recommendations of the Van Dinter Committee have not yet been fully implemented. The CPT will be sent further information on this subject once that has been done.

C. Centres for Foreigners

1. Torture and other forms of ill-treatment

Recommendations by the CPT

38. The CPT recommends that measures be taken to ensure that all persons held at the King Willem II Detention Centre for Foreigners have appropriate clothing (paragraph 85)

Response: Inmates with inadequate clothing are offered garments belonging to the Centre, which they can use for as long as necessary. Problems arise only in very occasional cases. The pyjama-clad inmate mentioned by the CPT is a good example. The man concerned consistently refused to wear the garments provided by the Centre and tore them up. He was detained in the Special Care Unit and his behaviour appears to have been due to his psychiatric disorder.

Comments by the CPT

39. The CPT invites the Dutch authorities to examine whether some PreNed employees at the Ter Apel Departure Centre are making racist remarks about the residents, and to take appropriate action (paragraph 86)

Response: Since the CPT's visit, liaison between the Departure Centre and the management of PreNed has been stepped up and measures have been taken to prevent the occurrence of behaviour which inmates might interpret as racist. Inmates of the Centre have counsellors with whom they can discuss complaints of racist behaviour at any time. Such complaints are always taken extremely seriously.

2. Conditions of detention

Recommendations by the CPT

40. The CPT recommends that steps be taken to ascertain whether certain staff members at the King Willem II Detention Centre for Foreigners lack the necessary qualities to work with detained foreigners and, should that prove to be the case, that appropriate remedial action be taken (paragraph 88)

Response: Personnel policies at the King Willem II Centre include:

- selection procedures: the selection criteria for new staff include analytical ability, verbal fluency, flexibility, an ability to get on with people, a commitment to service and cooperativeness.

Applicants are also asked how they feel about the detention of foreigners and whether they agree with it.

- on-the-job training: custodial staff at the King Willem II Detention Centre are helped to do the job more professionally by the provision of specific in-service language and culture courses.

- code of conduct: in August 1998, all staff at the King Willem II Detention Centre received a written code of conduct developed by the Centre. Supervisory staff have been instructed to discuss the code regularly with staff. The code is designed to inculcate the Centre's norms and values. Appropriate measures will be taken wherever there is any evidence of a failure to observe these norms.

- conditions of employment regulations: in accordance with centrally laid down regulations governing conditions of employment, supervisors conduct regular job performance interviews with individual members of staff. The evaluation includes discussion of any shortcomings and decisions on ways to improve performance. Each staff member is interviewed once a year, or more frequently if past performance gives reason for this. There are also internal agreements on staff performance. Any complaints about the conduct of staff are submitted by the Supervisory Board to the Centre's legal officer. The legal officer then conducts an objective investigation into the complaint and presents his findings to the Director of the Centre, who decides what action to take. Any member of staff found to be clearly failing is removed from post under the regulations referred to above. This has happened 7 times in the last 4 years.

41. The CPT recommends that the existing detainee placement policy at the King Willem II Detention Centre for Foreigners be reviewed, in order to ensure that, to the greatest possible extent, detainees are accommodated with other persons with whom they can communicate. Further, persons under the age of 18 should not be held together with adults with whom they have no family connection (paragraph 91)

Response: Under the new organisational arrangements (to be introduced in mid-1999), mainstream detainees are to be housed in 6 to 8-person dormitories and there will be separate cell blocks for: juveniles/particularly vulnerable inmates; detainees with behavioural or psychiatric disorders; detainees who are otherwise unsuited to accommodation in group dormitories; detainees about to be deported, and those in pre-trial detention. All inmates unsuited to participate in normal communal life will be accommodated in single-person cell blocks. Selection will be based on reports following observation of detainees and on objective selection criteria (age, reason for detention, etc.).

42. The CPT recommends that immediate steps be taken to ensure that inmates held on remand at the King Willem II Detention Centre for Foreigners - and all inmates subject to judicial

restrictions in other prisons in the Netherlands - are offered a minimum of one hour of outdoor exercise every day, in areas sufficiently large to enable them to exert themselves physically (paragraph 98)

Response: From 1 January 1999, outdoor exercise has been increased to at least one hour a day.

43. The CPT recommends that efforts be made by staff with a view to offering additional activities and appropriate human contact to prisoners held on remand under judicial restrictions (paragraph 98)

Response: The new regime (to be introduced in mid-1999) will be designed to include scope for personal contact with detainees held under the criminal law and for detainees to be offered some activities on an individual basis.

Comments by the CPT

44. The CPT invites the Dutch authorities to review the manner in which welfare services are delivered to inmates at the King Willem II Detention Centre for Foreigners, in order to ensure that they are provided by suitably qualified staff who are genuinely in a position to respond to the legitimate needs of detainees (paragraph 89)

Response: As recommended by the Van den Haak Committee, repatriation officers have been appointed to assist detainees by providing information about deportation. Their job is to act in the best interests of detainees by preparing them practically and psychologically for their repatriation. Practical preparations may include, for example, helping to trace lost luggage and obtain travel documents, while psychological assistance includes, for example, reassuring detainees about their repatriation. It is clear, therefore, that the repatriation officers provide adequate support for the welfare of inmates and that there is no need to appoint separate welfare officers.

45. The CPT noted that some rooms in Unit D at the King Willem II Detention Centre for Foreigners were not adequately heated (paragraph 90)

Response: It is possible that the heating had been turned down when the committee visited these

particular rooms. Inmates can control the heating in their own rooms and the management of the Centre has never received complaints from inmates on this score.

46. The CPT invites the Dutch authorities to verify that detainees in the King Willem II Detention Centre for Foreigners are not - whether directly or indirectly - being obliged to work (paragraph 94)

Response: Foreigners detained under section 26 of the Aliens Act are held in remand centres, where there is certainly no obligation to work. Experience shows, however, that work is helpful to immigration detainees in combatting boredom, establishing a certain routine, allowing them to earn a little money and conferring a certain status.

47. The CPT invites the Dutch authorities to verify whether detainees at the King Willem II Detention Centre for Foreigners are indeed receiving the diet foreseen by the contract concluded with an outside catering company (paragraph 95)

Response: The list of meals provided shows that deliveries are in accordance with the contract.

48. The CPT wishes to emphasise that the regimes offered to juveniles should be adapted to their specific needs; in particular, they should include a significant element of physical education and be supervised by carefully selected staff who have been trained in working with the young (paragraph 96)

Response: Under the new organisational arrangements (to be introduced in mid-1999), a separate unit is to be created for juveniles. It is hoped that the establishment of a homogenous group will help prevent social or emotional isolation and negative attention-seeking behaviour. The support and supervision offered to the group will take account of the psychological limitations of the detainees. The regime will include measures specifically designed to minimise the damaging effects of detention. Staff for the unit will be selected partly on the basis of their affinity with young people and proven suitability for this type of work.

49. The CPT invites the Dutch authorities to supplement the furniture in the cells at the 1 KMAR detention unit at the Ter Apel Departure Centre by a table and chair, if necessary fixed to the floor (paragraph 104)

Response: Since the opening of the Ter Apel Remand Centre on 1 October 1998, the cells concerned are no longer in use.

Requests for information

50. The CPT would like to receive further and better particulars about the regime which is currently being offered to immigration detainees being held in Unit X at the King Willem II Detention Centre for Foreigners (paragraph 97)

Response: The aim of the Special Care Unit is to prevent negative behaviour and encourage positive behaviour by means of a regular, clearly structured regime tailored to the needs of the individual and designed to enable the detainee to function within a unit. Individual support and supervision is regularly evaluated and modified in accordance with a plan. The atmosphere is humane, calm and unconflictual.

The 32 cells in Unit X are intended for immigration detainees who gave rise to constant difficulties in the institutions or prisons where they were previously held and who need to be detained in a high-security facility with a clearly structured regime tailored to individual needs. Broadly speaking, the detainees in the unit fall into three categories:

- mentally disturbed foreigners: immigrants whose present mental condition or diagnosed psychiatric disorder cause them to behave in ways regarded as so problematic that they can no longer safely be held in an ordinary institution or prison.
- foreigners who present a serious threat to internal security: foreigners who, for reasons other than their mental condition or diagnosed psychiatric disorder, behave in ways regarded as so problematic that they can no longer safely be held in an ordinary institution or prison,
- foreigners who present a serious escape risk: immigrants who have proved to present a serious escape risk, or in relation to whom there is serious reason to believe that they will attempt to escape from the institution or prison in which they are currently being held, so that they can no longer safely be held there.

Examples of indicators for transfer to the Unit are: repeated suicide attempts, escape attempts (successful or otherwise), aggressive and perhaps unpredictable behaviour, psychiatric symptoms, generally antisocial behaviour, and verbal or other threats to staff or fellow detainees.

The regime in the Unit can be broken down into special supervision and special treatment. The aim of this distinction is to make it clear that there are two categories of inmates. The first requires only careful watching and supervision to pick up and prevent negative behaviour. They need little special treatment to achieve this, but simply to be kept under close supervision. Most inmates in this category have been placed in the unit because of the escape risk they present. The second category of inmates likewise require careful supervision, but also need treatment, for example for a medical condition.

The regime includes a wide range of activities, but all are provided on an individual basis. This may be why the committee gained the impression that many detainees were kept constantly locked up in their cells.

3. Health care services

Comments by the CPT

51. The CPT considers that the Ter Apel Departure Centre should have the services of one or more consultant psychologists and would benefit from having a fully fledged suicide prevention policy (paragraph 107)

Response: Since the opening of the adjacent Ter Apel Remand Centre (on 1 October 1998), the Departure Centre is able to call on specialist psychological services. Suicide prevention is a matter of considerable current interest to the staff at Ter Apel. Counsellors and medical staff regularly conduct interviews with inmates to assess their state of mind and, therefore, the risk of suicide. A working party with members from within and outside the centre is currently working on the improvement of psycho-social medical services. Suicide prevention is of course a topic of concern to this working party. It is probable that behavioural experts will be involved in this, following the example of the prisons.

52. The CPT invites the Dutch authorities to remedy the difficulties observed at the Ter Apel Departure Centre as regards paediatric and dental consultations (paragraph 108)

Response: Since the opening of the adjacent Ter Apel Remand Centre (on 1 October 1998), the Departure Centre is able to call on the services of a dentist. Specialist paediatric services are available at the hospital in Stadskanaal (30 minutes drive away). As a rule, on-site specialist services are neither usual nor necessary. Basic medical services are always available.

D. The Dr S. van Mesdag Clinic

Recommendations by the CPT

53. The CPT recommends the necessary steps be taken to ensure that patients in the 'old remand prison' have ready access to a toilet facility at all times (including at night) (paragraph 117)

Response: Cells in the old building are to be equipped with toilets and running water as part of the renovation of the building.

54. The CPT recommends that the Dutch authorities take appropriate steps to ensure that the quality of care and treatment at the Dr S. van Mesdag Clinic is maintained (paragraph 120)

Response: The Van Mesdag Clinic has recently moved from a psychoanalytical to a more integrated, multidisciplinary approach to treatment. This has reduced the proportion of treatment delivered by psychotherapists. The present caseload of 22 patients for each prison psychologist/psychiatrist is reasonable. Great trouble has been taken to train the prison psychiatrists/psychologists to deal with this caseload and these efforts are continuing.

Access to treatment and the quality of the therapy on offer in the Van Mesdag Clinic are also being improved by the recruitment of qualified therapists to reduce waiting lists and by the more efficient use of therapeutic capacity, including the development of treatment modules and the use of group therapy.

Finally, further work was started some time ago to develop a range of occupations and activities so that every individual patient can be guaranteed a full daily programme.

Where the expansion of the clinic has been accompanied by some disparity in staff size, this is a purely temporary phenomenon.

55. The CPT recommends that measures of segregation/isolation be recorded in a central register. The entry should include the times at which the measure began and ended, the circumstances of the case and the reasons for resorting to the measure (paragraph 126)

Response: The CPT's recommendation relates to decisions on segregation and isolation (under section 34 of the Hospital Order Placement (Nursing) Act, or "BVBG", which came into force on 1 October 1997), the use of instruments of physical restraint (s. 27 BVBG), disciplinary sanctions (s. 49 BVBG), and forced medical treatment (s. 26 BVBG). Article 6 of the Hospital Order Placement (Nursing) Regulations indicates that the decisions specified in sections 24 to 28, 30, 34 and 49 are to be recorded in a register. The entry is to include at least: the personal particulars of the patient, the nature of the decision, the circumstances leading to the decision, any diagnosis, whether the patient resisted, and the duration of the measure. Institutions are therefore already under a statutory duty to keep the records recommended by the CPT.

56. The CPT recommends that every patient, including those subject to segregation/isolation, be offered at least one hour of outdoor exercise every day (paragraph 126)

Response: This matter is also covered by the BVBG, section 43 (3) of which confers such a right on patients, even if they are subject to segregation/isolation.

57. The CPT recommends that the two isolation cells and the padded cell in the 'old remand prison' be taken out of service (paragraph 127)

Response: Padded cells are used to hold patients at risk of self-injury, who remain in them only as long as necessary. The established protocol states that patients are to be seen by a duty psychiatrist at two-hourly intervals. This means that, in addition to the normal contacts with staff, they are removed from the isolation unit for a brief interview every two hours. There is therefore intensive contact with patients placed in isolation for the duration of a crisis situation. With regard to the

other isolation cells, it is certainly the intention that patients in the old building who have to be placed in isolation should be transferred to the new isolation unit. However, a shortage of isolation cells may very occasionally compel the use of the old isolation cells. These are in fact to be improved as part of the general renovation of the old building.

58. The CPT recommends that any use of instruments of physical restraint be recorded in a central register. The entry to include the times at which the measure began and ended, the circumstances of the case and the reasons for resorting to the measure (paragraph 129)

Response: As the Committee rightly observes, instruments of physical restraint are very rarely used in the Van Mesdag Clinic. They were only used once in 1997, in the case of an external crisis admission, in which a highly aggressive patient in a manic state had to be restrained, initially without the patient's consent and later voluntarily. The use of instruments of physical restraint is already recorded in a central register. There is also a protocol for the use of such instruments and for forced medication.

59. The CPT recommends that a central register of disciplinary sanctions be established in every TBS institution (paragraph 130)

Response: Under article 6 of the Hospital Order Placement (Nursing) Regulations, all TBS clinics already keep a register of disciplinary sanctions.

60. The CPT recommends that a central register of involuntary treatment of patients at the Clinic be opened without delay (paragraph 131)

The use of forced medication is already recorded in a central register, both at the beginning and end of treatment and at two to four-weekly intervals during the intervening period. There is a detailed protocol for the use of forced medication and on every occasion when it is used an external expert is consulted and the Health Inspector is notified of the measures taken.

61. The CPT recommends to the Dutch authorities that the Clinic's revised internal rules be adopted without delay, and that they should be made available to patients (paragraph 133)

Response: The internal rules have been drafted and the layout and printwork are now being

approved. The loose-leaf folder containing the internal rules will therefore be available shortly.

Comments by the CPT

62. The CPT invites the Dutch authorities to end the practice of using cells designed for the segregation of patients as ordinary accommodation (paragraph 115)

Response: The CPT report states that, at the time of its visit, the first signs of overcrowding were evident in the Dollard 2 and 3 and Hunze 2 units. In these units, the cells designed for the segregation of patients were being used as ordinary accommodation. It is in fact very unusual for segregation cells to be used as overspill accommodation in this way. This is only done as a last resort and after the cells concerned have been furnished as normal accommodation. The circumstances in which it may occur are:

- when problems have arisen requiring a patient in the "resocialisation" department to be returned to the unit of origin, usually for a period of "time out";

- when an external body (the Ministry, the Meijers Institute or some other clinic) urgently requests the emergency admission of a patient and the management of the Van Mesdag Clinic recognises the necessity for this. Even then, however, a patient is only placed in an segregation cell if it is clear that a place will be available in an ordinary room within a short space of time (a period of a few weeks). The segregation cells are normally used to provide brief periods of time out for patients who create a disturbance, where the disturbance is not so serious that the patient needs to be placed in the isolation unit.

Recently, increasing use has been made of the medical department to provide temporary crisis accommodation for patients from outside or inside the clinic. This crisis relief role is already one of the core tasks of the medical department and is to be further developed in the near future. Proposals on this have already been put to management by the head of the medical service in consultation with the heads of Individual Treatment and Security. The practical details will be worked out within the context of the reorganisation. Consequently, recent months have seen no further emergency use of segregation cells of the kind discussed above.

63. The CPT states that it would be desirable for running water to be available within the cells of the 'old remand prison' (paragraph 117)

Response: Cells in the old building are to be equipped with toilets and running water as part of the general renovation of the building.

64. The CPT invites the Dutch authorities to actively seek alternative approaches to end the medico-legal impasse which arises when patients refuse any form of treatment (paragraph 132)

Response: Apart from the right of every patient to one hour of outdoor exercise a day, restrictive measures are inevitable in situations where a patient refuses to cooperate with treatment. This is the consequence of the basic principle of TBS: that the institution must provide treatment, but that treatment will only be given with the consent of the patient. Forced medication is only permitted where the patient presents a serious risk to himself or those around him. If patients refuse the treatment offered to them, there are few if any other activities available and they therefore remain in their rooms. After all, there needs to be some incentive for patients to cooperate in treatment. The aim of treatment is to reduce the risk posed by patients so that the hospital order can eventually be lifted. If patients refuse to cooperate in their treatment, the TBS clinic can hardly be expected to recommend the lifting of the hospital order. The restrictions on visits and so forth are connected with the difficulty of estimating the level of risk posed by patients who refuse to cooperate in their treatment. Constant supervision is a necessary precaution in such cases.

A strategy is currently being developed to motivate patients who refuse all treatment to change their minds. Motivation is a vital part of treatment and it can even be said that, when a patient is genuinely emotionally and intellectually motivated to accept treatment, the major part of the clinic's task has been accomplished. Where an impasse has been reached, attempts are made to progress by way of a transfer, either within the clinic or to a different institution.

Requests for information by the CPT

65. The CPT would like to be informed of the measures which the Dutch authorities intend to take in order to overcome the difficulties flowing from the large number of prisoners awaiting admission to a TBS establishment, and of the steps being taken to ensure that such prisoners

receive at least minimally adequate treatment whilst awaiting admission (paragraph 111)

Response: Structural solutions to the problem are now being sought through regulating demand for TBS places. To resolve this complex problem, a number of policies have already been adopted and others are now being investigated. These are outlined below.

Current initiatives

Efforts are being made to improve/accelerate the outflow of TBS patients to mainstream psychiatric facilities. Places in the forensic psychiatry departments of general psychiatric hospitals are being increased, since these can play a bridging role in this respect. In addition, there is increasing success with the transfer of TBS patients into sheltered housing schemes. The new statutory provision for conditional lifting of TBS orders is also expected to increase the outflow of patients. Meanwhile, arrangements for cooperation with the Ministry of Health, Welfare and Sport - which is necessary to achieve an outflow to mainstream psychiatric facilities - are progressing satisfactorily.

The new statutory provision for conditional TBS is expected to bring about a reduction in the numbers of patients entering TBS establishments, and it is expected that the imposition of hospital orders with treatment can be avoided in a number of cases.

In future, a proportion of the inmates of TBS establishments - those who still present a danger to the community even after lengthy treatment - are likely to be transferred to special units where treatment is less intensive. This will reduce the pressure on intensive-treatment places.

Research

An interministerial working party has investigated the possibility of reducing the duration of residential treatment in TBS establishments. The same working party has also examined the potential for offering the TBS establishments financial incentives to reduce the length of intensive treatment and increase the outflow to other facilities. Decisions will soon be taken on these proposals.

Waiting lists for admission to TBS

Until the capacity problem has been resolved, there will continue to be lengthy waiting lists for places in TBS clinics. Some inmates awaiting admission will be held in special psychiatric

institutions (BZA, (B)IBA, FOBA) and others in ordinary prisons. Experiments have been started in a few places with the aim of providing special psychiatric treatment for the latter group. In these experiments, therapists attached to forensic outpatient departments offer a form of preparatory therapy designed to alleviate anxiety about the eventual TBS treatment and reduce the growing hostility felt by these people towards the justice system. Initial results are encouraging: therapists, prison staff and prisoners have all responded positively and there is a growing demand among prisoners awaiting TBS treatment for this kind of support. The experiments are currently being evaluated and an official-level project group is to work concurrently to develop a policy framework for such pre-clinical therapy for prisoners awaiting admission to TBS. Encouragement will be given for the wider development of such initiatives and the Minister of Justice has earmarked resources for them.

66. The CPT would like to receive information on the suicide prevention measures taken at the Dr S. van Mesdag Clinic and, more generally, at TBS establishments in the Netherlands. In addition, it would like to receive information on such measures taken with regard to persons subject to a TBS order waiting in prison for admission to a TBS establishment (paragraph 121)

Response: A working party established by the management of the Van Mesdag Clinic has produced a report on suicide prevention. This makes a number of recommendations for suicide prevention measures at the clinic. If the recommendations are accepted, the management will ensure their implementation. The TBS field is also working more broadly on the development of protocols for treatment and supervision. As part of this exercise, suicide prevention will also be made so far as possible subject to protocol.

67. The CPT would like to be informed whether the Dr S. van Mesdag Clinic has been inspected by the competent regional Health Inspector in 1997-1998 and, if so, to receive copies of any reports drawn up by the Inspector (paragraph 134)

Response: On average, the Van Mesdag Clinic is inspected once a year by the Health Inspector and his staff, but reports are not always drawn up.