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## **Report**

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

**from 10 to 25 May 2022**

The Government of the Netherlands has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2023) 13.

Strasbourg, 23 June 2023

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## EXECUTIVE SUMMARY

In the course of its seventh periodic visit to the Kingdom of the Netherlands in May 2022, the CPT examined the treatment and safeguards afforded to persons deprived of their liberty by the police as well as the treatment of persons in prison and their conditions of detention. Further, several immigration detention facilities were visited to examine the situation of persons deprived of their liberty under aliens legislation. The visit was carried out to both the European part of the Kingdom and to the constituent countries of Aruba, Curaçao and Sint Maarten.

In many respects, the cooperation received by the delegation during the visit, from both the authorities and staff at all the establishments visited, was very good. However, at Dakota Immigration Detention Centre in Aruba, the delegation was confronted with an openly hostile and aggressive attitude from the officer in charge of the facility at the time of the visit. Moreover, the work of the delegation was once again seriously impeded in the European part of the Kingdom as access to medical records of persons detained in prisons and immigration detention centres was conditioned by an individual written consent of the persons concerned. The Dutch authorities must ensure that CPT delegations be granted ready and unrestricted access to the medical files of all detained persons in the establishments under the Committee's mandate.

### **The Kingdom in Europe**

#### Police custody

The vast majority of persons interviewed by the delegation made no allegations of ill-treatment by police officers but indicated that they had been treated correctly and with respect. However, the delegation did receive several allegations of unduly tight handcuffing during apprehension by the police.

It is positive that the amended legislative framework now clearly provides for relevant fundamental safeguards against ill-treatment and the CPT also gained a positive impression overall of their practical implementation. Improvements related notably to access to a lawyer for suspects, including juveniles, during questioning by the police. The CPT also welcomes the good practice observed in some police stations to allow minors to spend the night at home. However, not all persons held in police custody were fully informed of their fundamental rights and could effectively benefit from the rights of notification of custody and of access to a doctor from the outset of their detention.

Material conditions in the four police establishments visited were generally good for short periods of detention. At Amsterdam Central Police Station, the padded observation cells which measure about 5 m<sup>2</sup> in size should not be used for overnight accommodation. On a more general level, the CPT reiterates its recommendation to abolish the possibility of remand detention in police custody.

Moreover, the CPT is critical of the way in which strip searches are being carried out by the police and of the practice of placing detained persons at risk of suicide naked in an observation cell in a police station with no support. Such a practice could be considered as inhuman and degrading treatment. The CPT also requests information on the use of electrical discharge weapons by the police.

#### Immigration detention

Immigration detention is still not covered by specific rules reflecting its administrative nature and the planned reform of the legislative framework has been further delayed. The CPT reiterates that it is totally inappropriate to apply prison rules to persons held in immigration detention.

The delegation received no allegations of ill-treatment by staff at Schiphol and Zeist Detention Centres (DCs), where it observed a positive environment. However, at Rotterdam DC, a few allegations were received from persons who claimed that they had been subjected to excessive use of force by custodial staff; it also heard several complaints of verbal abuse, discriminatory and racist language, and disrespectful behaviour by some members of staff on several of the wings visited.

Material conditions ranged from very good (at Schiphol and Rotterdam DCs) to excellent (at the Closed Family Unit (GGV) at Zeist DC), where families with children and women could benefit from a community- and family-type living environment, in a non-carceral setting. Numerous complaints were however received about the food. At Schiphol DC, women should not be accommodated with men who are not their relatives.

At both Schiphol DC and the GGV at Zeist DC, foreign nationals could benefit from an open-door regime throughout the day and make use of activity rooms and various equipment. The number of organised activities on offer remained however limited in both centres. By contrast, at Rotterdam DC, most persons had to remain in their cells for a large part of the day (18 hours). Staffing resources should be significantly increased to enable an open-door regime, with at least two hours of outdoor exercise daily, to be offered and the programme of organised activities should be enhanced.

As regards healthcare services, swifter access to a doctor and to dental care should be ensured for all persons detained at Rotterdam DC. All new arrivals should benefit from a comprehensive medical screening and a dedicated register of injuries should be put in place, in the three centres visited.

Moreover, the specific needs of persons with vulnerabilities should be adequately addressed and meaningful alternatives should be considered for them. Efforts should be vigorously pursued to avoid detaining children and, as a matter of principle, unaccompanied children should not be detained.

The policy and legal framework on the use of segregation as a measure and as a disciplinary sanction in immigration detention centres should be reviewed. At Rotterdam DC, all segregation should be applied proportionately in practice and surrounded by effective safeguards. While the 14-day maximum period should never be exceeded, the aim should be to reduce the resort to solitary confinement as a public order/security measure and to no longer apply solitary confinement as a disciplinary measure in an immigration detention context. The conditions of detention for persons placed in solitary confinement should also be improved at Rotterdam DC.

The report also advocates enhancing contact with the outside world for detained persons and increasing staffing numbers at Rotterdam DC, as well as to reviewing the way in which strip searches are conducted.

### Prison establishments

No allegations of deliberate physical ill-treatment of detained persons by staff were received in any of the establishments visited and relations with staff appeared to be generally positive. However, the delegation did receive several complaints concerning abusive language and disrespectful behaviour by some members of staff at both Dordrecht and Vught Prisons. Moreover, the management of Dordrecht Prison should take steps to reduce tensions among prisoners held in the remand section. Further, staff in the BPG unit at Vught Prison and in the TA unit at Zwolle Prison should remain vigilant as regards incidents of inter-prisoner violence and intimidation.

Material conditions were of a high standard at Dordrecht Prison, in the TA unit at Zwolle Prison and at the EBI and EZV (extra care facility) units at Vught Prison, and they were good in the BPG and TA units at Vught Prison. However, the conditions of detention observed in the old buildings of Vught Prison (particularly units 6 and 7) were of a lower standard. Persons in all prisons visited complained about the poor quality, taste and insufficient quantity of the food.

The daily programme and activities provided to sentenced persons held under the ordinary regime in the establishments visited were generally satisfactory. The delegation also gained a positive impression of the newly created limited security unit (BBA unit) for reintegration at Dordrecht Prison and of the EZV units at Dordrecht and Vught Prisons. The situation was however less satisfactory for persons held on remand as most of them continued to be confined to their cells for up to 21 hours a day. Action should be taken to allow them to have additional out-of-cell recreational time (at least two hours a day) to cater for their basic needs and they should be offered a range of purposeful activities.

The delegation paid specific attention to the situation of persons placed in the high-security units, including the maximum-security institution (EBI unit), BPG and TA units at Vught Prison and the TA unit at Zwolle Prison. While the CPT acknowledges the need for adequate security measures for those who pose an enhanced security risk, the highly restrictive regimes and various security measures applied in the EBI units and in some parts of the BPG and TA units at Vught Prison appeared to be excessively restrictive. For instance, there can be no justification for the routine handcuffing of persons held in these units. Further, persons placed in the BGP unit at Vught Prison might initially spend several weeks or months confined to their cells for 23 hours a day which is not appropriate. Special efforts should be made to improve the regime and provide sufficient meaningful human contact to avoid conditions akin to *de facto* solitary confinement. As regards the two TA units at Vught and Zwolle Prisons, additional support and de-radicalisation activities should be provided to persons placed therein.

As regards the new policy framework for the enforcement of life sentences, the CPT notes that the gradual reassessment of persons sentenced to life imprisonment is still carried out in the context of a pardon procedure, which is based on ministerial discretion. Consequently, the CPT recommends that a judicial review mechanism for persons sentenced to life imprisonment be developed. Further, persons with life-sentences should benefit from individual sentence-planning objectives from the outset of their imprisonment and should be offered a real and effective possibility of conditional release into the community.

Healthcare services were of a high quality and healthcare staffing levels were adequate in all establishments visited. Nevertheless, improvements should be made regarding medical screening upon admission, the systematic recording and reporting of injuries, access to specialist medical care and medical confidentiality and restraint during medical consultations for persons held in the high-security units at Vught Prison, and swift access to enhanced psychological and trauma support services for women held at the TA unit in Zwolle Prison.

The report also makes recommendations to improve the disciplinary process and contact with the outside world as well as to review the operation of strip-searches and to abandon the resort to restraint beds in prison.

## **Aruba, Curaçao and Sint Maarten**

### Police custody

The majority of persons interviewed during the visit who were – or had recently been – in police custody made no allegations of physical ill-treatment by police officers. However, the delegation did receive a few isolated allegations of ill-treatment of persons in police custody and some allegations of excessive use of force at the moment of apprehension, of excessively tight handcuffing and of verbal abuse of persons in police custody by police officers.

Most persons interviewed during the visit confirmed that they had been informed of their rights in writing shortly after their arrival at a police facility. However, several persons complained that their request to be examined by a medical doctor during their time in police custody had been delayed for several days. The delegation also heard some allegations that the possibility to inform a third person of one's detention and the right of access to a lawyer had been delayed during the initial stages of police custody. The CPT recommends that the authorities ensure that detained persons may effectively benefit from the right of access to a lawyer and to a doctor and the right to have a third person notified of the fact of their detention from the very outset of the deprivation of liberty.

While the CPT noted the refurbishments made in some of the police establishments, it nevertheless found that the material conditions in the facilities visited remained poor in general. This was particularly true for the police detention facility located at Curaçao Prison (SDKK) and of Shaba Police Station in Aruba.

Moreover, the CPT once again found that detained persons were regularly held in these poor conditions for up to 10 days, and sometimes longer. The CPT reiterates its recommendation that persons should not be detained in these establishments in excess of some three days (that is, the initial period of police custody).

## Immigration detention

The CPT received no allegations of deliberate physical ill-treatment of persons in immigration detention by staff in the immigration facilities visited. However, a few allegations were received of verbal abuse of detained persons, as well as of physical abuse of migrants at the moment of apprehension and of excessively tight handcuffing by the police.

Material conditions at Simpson Bay Immigration Detention Facility in Sint Maarten were acceptable in several respects and the regime provided to detained persons was found to be adequate.

However, material conditions offered to men at Dakota Immigration Detention Facility in Aruba, who were accommodated in shipping containers, and at the “Illegalen Barakken” Immigration Detention Facility in Curaçao were very poor. At the end of the visit, the delegation requested the relevant authorities to cease to use the shipping containers in Aruba for the accommodation of persons and to take the facility in Curaçao out of service. The authorities subsequently informed the CPT of the steps taken to comply with these requests.

Moreover, the regime in both the aforementioned immigration detention facilities was impoverished. There was a lack of any purposeful activities and detained persons spent their days in idleness.

The CPT formulates several recommendations with a view to remedying the shortcomings observed as regards legal safeguards accompanying immigration detention. In particular, a maximum time limit for immigration detention should be introduced and all persons placed in immigration detention should be fully informed of their rights and of the procedures applicable to them. Further, a systematic medical screening of all persons newly admitted to an immigration detention facility should be introduced.

## Prisons

The majority of persons in prison with whom the delegation spoke made no allegations of ill-treatment by prison officers. Nevertheless, the delegation received some allegations of excessive use of force and rude behaviour; this concerned in particular members of special intervention teams in Aruba and Curaçao when they carried out cell searches, as well as by custodial officers in Sint Maarten when dealing with recalcitrant prisoners or instances of inter-prisoner violence.

The CPT points out that the recording of use of force by staff was deficient and recommends that a comprehensive dedicated register be maintained in the prisons visited.

Despite the commendable efforts made by staff in the establishments visited to prevent inter-prisoner violence, such as the identification of incompatible prisoners upon admission and during their stay in prison and their subsequent allocation to safe wards, as well as limiting interaction between prisoners from different wards, episodes of inter-prisoner violence still occurred. Efforts to tackle this phenomenon should be continued.

Material conditions were on the whole acceptable at Point Blanche Prison in Sint Maarten, although signs of wear and tear were visible in many parts of the prison. Despite some refurbishments, material conditions at Aruba Correctional Institution (KIA) and at the Centre for Detention and Correction Curaçao (SDKK) remained poor in general. The majority of prisoners were accommodated in dilapidated dirty cells which were infested with vermin; sanitary annexes in multiple-occupancy cells were not fully partitioned and a number of them had black mould on the walls. Moreover, most cells at KIA held three prisoners in some 9.5 m<sup>2</sup> and provided cramped conditions. The conditions were particularly deplorable in the EBA unit at SDKK and in the segregation unit at Point Blanche Prison. In addition, at KIA and SDKK, no suitable arrangements exist for disabled persons who depended on the good will of other prisoners when they needed to use the toilet or take a shower. The CPT formulates a series of recommendations to improve the material conditions and to ensure that disabled persons are held in conditions which enable them to uphold their dignity.



The CPT notes positively that most prisoners were allowed to spend between six and eight hours a day out of their cells. A number of prisoners were engaged in work (albeit, in the vast majority of cases, for a few hours a day only) and a few leisure and sports activities were also offered. However, it remained the case that the majority of prisoners spent most part of the day in idleness. The CPT reiterates that the aim should be to ensure that all prisoners (including those on remand) spend a reasonable part of the day (i.e. 8 hours or more) outside their cells engaged in purposeful activities of a varied nature. This will require the hiring of specialist staff to provide organised activities.

Healthcare staffing levels were insufficient in the three prisons visited and prisoners were not systematically medically screened upon admission. Moreover, healthcare staff continued to be involved in security-related tasks, including urine testing for drugs and cavity searches in relation to illicit items.

The FOBA unit at SDKK and the IBA unit at KIA were intended to accommodate primarily persons with mental health problems but neither unit provided a suitable therapeutic environment to address the needs of these persons, in particular due to the lack of specifically trained staff and an almost total lack of therapeutic activities. The CPT recommends, *inter alia*, that the staffing levels of various categories of healthcare staff and/or their presence in the establishments be increased and that adequate care and support be provided to prisoners with mental health problems.

Prisoners deemed at risk of self-harm or suicide were usually put alone in a cell and were either provided with a rip-proof gown or kept there naked until the arrival of mental health team. The CPT underlines that the treatment and care of such persons should be overseen by healthcare staff. Further, *de facto* isolation, resulting from a combination of confinement to a cell for most of the day, little or no contact with staff, and a poor regime, is the exact opposite of the care required for persons presenting a risk of suicide or self-harm; instead, they should be afforded increased contact with other persons. Only when there is an evident suicide risk or case of self-harm should the person have to remove their clothes and, in such cases, they should be provided with rip-proof clothing and footwear. The removal of clothes should follow an individual risk assessment and be recommended by healthcare staff. The CPT recommends that the authorities draw up a care protocol for prisoners who are deemed to be at risk of self-harm or suicide, in light of these principles.

As regards custodial staff, the situation remained problematic at KIA and SDKK, with low staffing levels, vacancies, frequent sick leaves and deployment of officers to other duties for various reasons. A new staffing table which was expected to increase the staffing levels was being prepared for Point Blanche Prison and the CPT requests up-to-date information in this respect.

## I. INTRODUCTION

### A. The visit, the report and follow-up

1. In pursuance of 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 carried out a visit to the Kingdom of the Netherlands from 10 to 25 May 2022. The visit concerned the European part of the Kingdom, as well as the constituent countries of Aruba, Curaçao and Sint Maarten.<sup>1</sup> The visit formed part of the CPT’s programme of periodic visits for 2022 and was the Committee’s seventh periodic visit to the Kingdom.<sup>2</sup>

2. The visit was carried out by the following members of the CPT:

- Hans Wolff, 1st Vice-President of the CPT (Head of Delegation)
- Judith Öhri
- Helena Papa
- Arman Tatoyan
- Gunda Wössner.

They were supported by Petr Hnátík and Sebastian Rietz of the CPT Secretariat, and assisted by three experts – Hindpal Singh Bhui, Inspection Team Leader at HM Inspectorate of Prisons for England and Wales, United Kingdom, James Jesse Hard, General Practitioner working in prisons in Wales, United Kingdom, and Tinatin Uplisashvili, Lawyer, Georgia, as well as the following interpreters: Martine Bogaert, Hildo Bos, Minerva Hieroms, Manuel Maduro, Lee Mitzman, Karel Thijs and Eva Wiertz.

3. A list of the establishments visited by the delegation is set out in Appendix I to the report.

4. The report on the visit was adopted by the CPT at its 109th meeting, held from 24 to 28 October 2022, and transmitted to the authorities of the Kingdom of the Netherlands on 24 November 2022. The various recommendations, comments and requests for information made by the CPT are set out in bold type in the present report. The CPT requests the authorities of the Kingdom of the Netherlands to provide within six months a response containing a full account of action taken by them to implement the Committee’s recommendations and replies to the comments and requests for information formulated in this report. As regards the recommendation in paragraph 200, the Committee wishes to receive a response within one month.

### B. Consultations held by the delegation and co-operation encountered

5. During the visit, the CPT delegation held consultations with Dick Schoof, Secretary General of the Ministry of Justice and Security (The Hague), Rocco G. Tjon, Minister of Justice and Social Affairs of Aruba, Shalten Hato, Minister of Justice of Curaçao, and Anna E. Richardson, Minister of Justice of Sint Maarten, as well as senior officials from relevant ministries and services.

The delegation also met Reinier van Zutphen, the National Ombudsman, as well as representatives of the National Preventive Mechanism (NPM) under the Optional Protocol to the United Nations

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1. According to the Charter of the Kingdom of the Netherlands, the Kingdom includes the countries of the Netherlands, Aruba, Curaçao and Sint Maarten. The Kingdom of the Netherlands is the subject of international law with which international treaties are concluded. Foreign relations and the safeguarding of fundamental human rights and freedoms, legal certainty and good governance are a Kingdom affair. However, each of the countries shall ensure the realisation of fundamental human rights and freedoms, legal certainty and good governance (see Articles 3(1)(b) and 43 of the Charter). Consequently, the recommendations, comments and requests for information formulated by the CPT in this report should be read and interpreted in light of these principles.

2. The CPT has previously carried out six periodic visits (1992, 1997, 2002, 2007, 2011 and 2016) and five ad hoc visits (1994, 1997, 1999, 2013 and 2014) to the Kingdom of the Netherlands. The reports on these visits and the responses of the authorities of the Kingdom have all been made public and are available on the Committee’s website: The CPT and the Netherlands (coe.int).

Convention against Torture (OPCAT), the Netherlands Institute for Human Rights, the Law Enforcement Council and the Netherlands Bar Association. In the context of the visit, the delegation also consulted the United Nations High Commissioner for Refugees (UNHCR) and several non-governmental organisations active in areas of concern to the CPT.

A full list of the national authorities and other bodies with whom the delegation held consultations is set out in Appendix II to this report.

6. The co-operation received by the delegation during the visit, from both the authorities and staff at the establishments visited, was very good in many respects. Generally, the delegation enjoyed rapid access to the places it wished to visit, was able to speak with persons deprived of their liberty and was rapidly provided with the information necessary for carrying out its task.

The delegation wishes to express its particular appreciation for the assistance provided before and during the visit by the CPT liaison officer, Ms Clarinda Coert, and her team from the Ministry of Justice and Security, as well as by the liaison officers appointed by the authorities in the constituent countries of Aruba, Curaçao and Sint Maarten.

7. However, the delegation's access to Dakota Immigration Detention Centre in Aruba was delayed by approximately 30 minutes; the facility was marked with a "closed" sign and repeated attempts made by the delegation to establish contact with staff and enter were initially unsuccessful. Moreover, during the subsequent visit, the delegation was confronted with an openly hostile and aggressive attitude from the officer in charge of the facility at the time of the visit, which included a racist remark directed towards a member of the delegation. Such an approach towards the delegation lends additional credence to the allegations of disrespectful behaviour and verbal abuse, including of a racist nature, received from detained persons at this establishment (see paragraph 207).

8. Further, the topic of unrestricted access to medical files of persons deprived of their liberty in the European part of the Kingdom has been an issue of cooperation between the CPT and the Dutch authorities for more than 20 years. Regrettably, the Dutch authorities have still not acted upon their previous assurances to resolve the situation by explicitly laying down in law the CPT's right of access to personal medical data of all persons deprived of their liberty. Thus, the work of the delegation was once again seriously impeded as access to medical records in prisons and immigration detention centres was conditioned by an individual written consent of the persons concerned. Consequently, in four of the establishments visited, the delegation was only permitted to carry out random checks of medical files of detained persons, which did not allow a thorough screening of the medical files of detained persons who had sustained injuries or were involved in incidents (such as inter-prisoner violence) and of those who had filed medical complaints.<sup>3</sup> Moreover, a few persons, whose medical records the delegation wished to consult, had refused to sign the written consent forms distributed by custodial staff, in line with the instructions issued by the Custodial Institutions Agency (*DIJ*), as they had not fully understood the purpose for which they were being asked to sign them.<sup>4</sup>

As a result, the delegation was once again hindered in carrying out effectively the Committee's mandate, which is to protect persons deprived of their liberty against torture and inhuman or degrading treatment or punishment.

9. At the end-of-visit talks, the Dutch authorities referred to the amended legislation as regards persons deprived of their liberty subject to involuntary treatment in psychiatric establishments and

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3. In principle, CPT delegations also require access to the medical files of persons who have been released or transferred to another establishment or who have died, given that in these circumstances a valid consent can no longer be obtained.

4. One detained person interviewed by the delegation in this regard indicated that, following the insistent and intrusive request by a member of the custodial staff to sign the relevant form, she felt being placed under "too high pressure", as she did not understand what the consent was for or to whom she was granting such consent. Moreover, these instructions placed the management and doctors in the establishments visited in an unenviable position whereby they could be held to account personally for granting the delegation access to the medical files of detained persons.

coercive care in social care homes, where the CPT now has an explicit right of access to the medical files of the persons concerned.<sup>5</sup> However, according to the Dutch authorities, the individual written consent is still required for persons detained in prisons and immigration detention centres who are not covered by these acts in order for CPT delegations to be provided with full access to their medical files, in line with the persons' right to privacy and medical confidentiality.

10. The CPT is fully committed to the principle of medical confidentiality, and it acknowledges the significance attached by the Dutch authorities to the protection of personal data and, more specifically, the medical data of persons deprived of their liberty. However, the Committee reiterates its firm position that the Convention itself provides for a sufficient legal basis for authorising its visiting delegations to be granted unrestricted access to individual medical files of all persons in detention. As the Dutch authorities are aware, the prevention of torture and other forms of ill-treatment under an international treaty ratified by the Kingdom of the Netherlands must not be subordinated to domestic data protection rules, with the effect to seriously frustrate the effectiveness of the preventive work of the Committee. This situation is all the more regrettable, given that the Dutch authorities have in the past explicitly recognised the principle of such access and its importance for the effectiveness of the work of the Committee.<sup>6</sup> In the CPT's view, such restrictions are contrary to Article 8 (2) d) of the Convention and undermines the principle of co-operation upon which the Convention is founded.

**The CPT calls upon the Dutch authorities to take the necessary steps to ensure that, during future visits, its delegations will enjoy ready and unrestricted access to the medical files of all persons deprived of their liberty in the establishments under the Committee's mandate, thereby guaranteeing the full implementation of the Convention's provisions.**

11. Ever since the CPT's first visit to the Netherlands in 1992, the Dutch authorities have advocated for the publication of visit reports and country responses and the Netherlands has consistently published the Committee's visit reports at the same moment as it has provided the response to the reports. The CPT has welcomed this approach in the past.

Having said that, in recent years, both the Committee of Ministers and the Parliamentary Assembly of the Council of Europe have been encouraging the Organisation's member states which have not done so to request the automatic publication of future CPT visit reports and related government responses.<sup>7</sup> The CPT considers that signing up to such an automatic publication procedure would be consistent with the Netherlands general transparency approach. At the same time, such advance authorisation to publish would still permit the possibility of delaying publication in a given case.

**The CPT invites the Dutch authorities to consider signing up to the automatic publication procedure.**

### **C. Immediate observations under Article 8, paragraph 5, of the Convention**

12. During the end-of-visit talks with the various competent authorities, the delegation outlined the main facts found during the visit. On that occasion, it made five immediate observations under Article 8, paragraph 5, of the Convention.

The authorities of Aruba were requested to ensure that:

- all persons detained overnight in police custody should be provided with a mattress, pillow and clean bedding, which should not be removed from the cells during the day as was the

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5. See Section 60 (6) of the Care and Coercion Act for Psychogeriatric and Intellectually Disabled Patients (*Wet zorg en dwang psychogeriatrische en verstandelijk gehandicapte cliënten*), the Section 3.2 (4) of the Forensic Care Act (*Wet forensische zorg*) and Section 13:1 (6) of the Compulsory Mental Healthcare Act (*Wet verplichte geestelijke gezondheidszorg*), which all entered into force on 1 January 2020.

6. See CPT/Inf (2008) 2, paragraph 6, and CPT/Inf (2012) 21, paragraph 7.

7. See, in particular, Parliamentary Assembly Resolution 2160 (2017) adopted on 26 April 2017, and the Committee of Ministers' reply to Recommendation 2100 (2017), adopted at the 1301st meeting of the Ministers' Deputies of 29 November 2017. See also What is an "automatic publication procedure"?

case at Shaba and San Nicolas Police Stations. Further, at San Nicolas Police Station, detained persons who are detained for 24 hours or more should be offered daily access to fresh air in the outdoor exercise yard;

- the dilapidated and poorly ventilated shipping containers at the Dakota Immigration Detention Centre cease to be used for the accommodation of immigration detainees without further delay. Further, the delegation wished to be informed about the facility to which the male immigration detainees have been transferred.

The authorities of Curaçao were requested to ensure that:

- the police custody cells at Curaçao Prison (SDKK) be taken out of service without further delay due to their poor material conditions;
- the immigration detention facility at SDKK be taken out of service without further delay due to their poor material conditions. Further, the delegation wished to be informed about the facility to which the male immigration detainees have been transferred;
- the prisoners accommodated on the ground floor of the extra security unit (*Extra Beveiligde Afdeling – EBA*) at SDKK, who were held in poorly ventilated, dark and dilapidated cells with no access to daily outdoor exercise for months on end, be offered daily access to outdoor exercise for at least one hour.

13. These observations were confirmed by letter of 17 June 2022 when transmitting the delegation's preliminary observations to the authorities.

On 14 and 16 July, the relevant authorities informed the CPT in writing of the steps taken to implement the immediate observations. These measures were taken into account in the relevant parts of this report (see paragraphs 198, 210, 270, 280 and 302).

#### **D. National Preventive Mechanism**

14. The CPT recalls that the Netherlands ratified OPCAT in September 2010 and that, in 2011, various bodies were designated to compose the Dutch NPM or take part in the NPM consultations.<sup>8</sup> There were no changes in the composition compared to the situation described by the CPT in 2016.<sup>9</sup>

In its report on the 2016 visit,<sup>10</sup> the CPT– in line with the calls issued by international anti-torture bodies, national human rights institutions and civil society organisations – encouraged the Dutch authorities to ensure the independence and effective functioning of the NPM.<sup>11</sup> These concerns have to date not been addressed. At the time of the 2022 visit, the NPM's functioning and structure, as well as its working methods remained unchanged.<sup>12</sup>

15. At the outset of the visit, the Dutch authorities informed the delegation, that the Ministry of Justice and Security was exploring alternative options to the current set-up of the Dutch NPM. A

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8. See CPT/Inf (2017) 1, paragraphs 8-9. For a list of organisations that currently take part in the NPM consultations, see the Dutch NPM's 2020 annual report. The Inspectorate of Justice and Security (*Inspectie van de Justitie*) acts as coordinating body.

9. In 2014, the National Ombudsman decided to stop its co-operation as an "associate" observer with the NPM, disapproving its functioning and structure, and raising concerns about its independence; in 2016, the Council for the Administration of Criminal Justice and Protection of Juveniles (*RSJ*) decided to stop its participation in the NPM.

10. See CPT/Inf (2017) 1 paragraph 9.

11. See also, in particular, the United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment's (SPT) 2015 visit report, CAT/OP/NLD/1, paragraphs 36-38; and the United Nations Committee against Torture's (UNCAT) 2018 concluding observations, CAT/C/NLD/CO/7, paragraphs 22-23.

12. According to the NPM's annual report, the organisations participating in the periodic NPM consultations all have their own duties, responsibilities and competences in accordance with the law, and only work together in areas where their supervisory competences overlap.

consultation process with relevant stakeholders had been initiated in 2019. To this end, the Ministry had commissioned an exploratory study, outlining an alternative structure, according to which the Netherlands Institute for Human Rights would be entrusted with the task of National Preventive Mechanism. The conclusions of this study, including a proposal for the budget and staffing of the future NPM, were submitted to the Ministry shortly before the CPT's visit. At the time of the visit, the relevant procedures required to amend the legal framework of the Dutch NPM were not yet initiated and there was no timeline for their planned adoption. Further, discussions regarding the possible future co-operation with the current NPM members were on-going.

**The CPT encourages the Dutch authorities to pursue the process of reforming the NPM expeditiously. Further, it would like to receive more detailed information on the Dutch authorities' plans in this regard, as well as on the concrete timeframe envisaged for the adoption of the new NPM framework.**

16. Six years on, it also remains that the Dutch NPM still does not have a mandate to visit places of deprivation of liberty in the Caribbean part of the Kingdom. Despite consultations with the Law Enforcement Council to explore a potential framework for co-operation in some parts of the Caribbean Netherlands, the Dutch authorities maintain their declaration on the exclusive territorial application of the OPCAT to the European part of the Kingdom.

**The CPT would like to be informed about the concrete steps taken or planned by the Dutch authorities to ensure that the NPM's mandate also extends to places of deprivation of liberty in the Caribbean part of the Kingdom.**

## II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

### THE KINGDOM IN EUROPE

#### A. Police establishments

##### 1. Preliminary remarks

17. In the course of the visit, the delegation visited four police establishments in Amsterdam, Dordrecht and 's-Hertogenbosch. In addition, it carried out a number of interviews with newly admitted remand prisoners in Dordrecht and Vught Prisons who had recently been deprived of their liberty by the police.

18. The legislative framework on deprivation of liberty by the police has undergone several changes since the CPT's previous periodic visit in 2016. In particular, the Dutch authorities amended the relevant provisions of the Code of Criminal Procedure (CCP) on the suspect (Sections 27-29f) and on arrest and detention (Sections 52-62a) (see also paragraphs 27-37 on safeguards).

The CCP provides that an arrested suspect can be detained for investigation (*opgehouden voor onderzoek*).<sup>13</sup> The suspect of a criminal offence for which pre-trial detention is not permitted can be detained under the authority of the police for the purpose of investigation for an initial period of up to six hours; the suspect of a criminal offence for which pre-trial detention is allowed can initially be held for a maximum of nine hours. This period can be extended once for an additional six/nine hours.<sup>14</sup>

Following this initial deprivation of liberty, police custody (*inverzekeringstelling*) of suspects based on a detention order may last for up to three days and may, exceptionally, be extended by a further three days.<sup>15</sup> Within a maximum period of 90 hours (that is, three days and 18 hours) from the time of the arrest, the suspect must be brought before the examining magistrate for a hearing.<sup>16</sup> The CPT notes that these statutory time-limits for deprivation of liberty by the police were strictly observed in practice; mostly, suspects remained deprived of liberty by the police for periods ranging between several hours and a few days.

19. From the information gathered by the delegation during the visit, it appears that, in practice, the decision to detain the suspect was exclusively taken by the assistant public prosecutor – that is, a police officer located within the police station with delegated powers to issue a detention order. It also transpired that, in many instances, this decision was routinely taken after the assistant public prosecutor had seen the suspect for only two or three minutes.<sup>17</sup>

It is also still the case that the time between midnight and 9 a.m. is not included in the calculation of the initial period of detention, to avoid police questioning taking place at night (the suspension being in the interest of the investigation).<sup>18</sup> Hence, a suspect arrested during the night will only be recorded as having been deprived of liberty as of 9 a.m., as opposed to the time that the person concerned has effectively spent in detention.

20. In the CPT's view, it is important that the decision to detain suspects for investigation, to prolong their initial detention or to place them in police custody is only taken after thorough consideration of the facts and the necessity for detention. It should not merely be considered as a rubber-stamping exercise by the assistant public prosecutor.

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13. Section 56a (1) of the CCP.

14. Section 56a (2) and 56b (1) of the CCP.

15. Sections 57 (1) and 58 (2) of the CCP.

16. Section 59a (1) of the CCP.

17. During this short lapse of time, the suspect was also informed of their rights. It should however be noted that the assistant public prosecutor shall immediately notify the public prosecutor of the detention order (Section 57 (4) of the CCP) and that the public prosecutor themselves may decide to hear the suspect (Section 58 (3) of the CCP).

18. Section 56a (2) of the CCP.

Moreover, the Committee considers that the calculation of the initial period of deprivation of liberty which is officially recorded should reflect the entire period which a suspect has effectively spent in detention. **The CPT wishes to receive the comments of the Dutch authorities on these two points.**

21. The Dutch authorities informed the CPT that the process of the modernisation of the CCP – aimed at strengthening the rights of the suspect and the position of the victim, while better aligning the national and the European legal framework – was still ongoing at the time of the visit.<sup>19</sup> It was intended to table the proposal for a new CCP before Parliament by the end of 2022. **The CPT would like to be kept informed of the progress of this legislative reform process.**

22. It is regrettable, that – in their response to the CPT's 2016 visit report – the Dutch authorities indicated that they did not intend to revoke the legal provisions which allow for the possibility of holding a person (over 16 years old) on remand in a police cell for up to 10 days.<sup>20</sup> In practice, at the time of the visit, from the few persons (including juveniles) who were being detained by the police for more than three days, none was held for more than six days. However, these provisions remain unchanged to date and – according to the information obtained by the delegation – they continued to be occasionally invoked to detain remand prisoners in police establishments.

The Committee wishes to emphasise that, as a matter of principle, remand prisoners should not be held in police detention facilities but instead in a prison establishment; this principle is also enshrined in the European Prison Rules (revised).<sup>21</sup> **The CPT therefore invites the Dutch authorities to reconsider their position and reiterates its recommendation that the necessary measures be taken, including at legislative level, to abolish remand detention in police custody.**

## 2. Ill-treatment

23. As was the case during previous visits, the vast majority of persons met by the delegation who were – or had recently been – in police custody made no allegations of ill-treatment by police officers. On the contrary, many persons deprived of their liberty explicitly indicated that they had been treated correctly and with respect.

However, the delegation did receive several allegations of unduly tight handcuffing of persons interviewed during the visit in the context of their apprehension by the police. **The CPT recommends once again that the Dutch authorities reiterate to police officers that when it is deemed necessary to handcuff a person, the handcuffs should under no circumstances be excessively tight.**<sup>22</sup>

24. The CPT has repeatedly underlined that an essential component of any strategy to prevent ill-treatment lies in the diligent examination by the competent authorities of all complaints of ill-treatment brought before them and, where appropriate, the imposition of a suitable penalty.

In the Netherlands, individuals who allege misconduct by a member of the police force can submit a complaint to the police. After completion of the initial phase of the complaints procedure, which is dealt with by the police complaints officer, the complaint can be put before the Commissioner of Police for assessment, who obtains advice from an external complaints committee, made up of independent members. If the person concerned disagrees with the decision, the complaint can then be submitted to the National Ombudsman, whose mandate also includes individual complaints brought against the police. The National Ombudsman can conduct investigations and issue

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19. The process was initiated in 2014 and an inclusive consultation process has taken place. In April 2022, the Council of State issued its opinion on the revised draft of the CCP.

20. See Section 15a of the Penitentiary Principles Act and Section 16a of the Juvenile Detention Principles Act.

21. See Rule 10.2.

22. It should be noted that excessively tight handcuffing can have serious medical consequences (for instance, sometimes causing severe and permanent impairment of the hand(s)).



recommendations on redress, but these decisions are not binding and the institution cannot press charges against police officers.

Persons who allege that they were subjected to ill-treatment or excessive use of force by the police may also lodge a criminal complaint. In addition, the Public Prosecution Service (*Openbaar Ministerie – OM*) shall be informed of all cases where the use of force is deemed excessive or where ill-treatment is alleged, and where a firearm has been used by “investigating officers”, which resulted in the death or serious bodily harm of the person concerned. At the time of the visit, the Internal Investigations Department – which is part of the police but operates under the authority of the Public Prosecution Service – was tasked with carrying out an investigation within the framework of a regular criminal investigation.

25. In the course of the visit, the delegation was informed that the procedure for reporting, registering and reviewing the use of force by police officers was undergoing review. On 1 July 2022, the amended Code of Conduct<sup>23</sup> entered into force. The Code provides for a new legal framework regarding the use of force and investigations into alleged ill-treatment. The CPT notes that the new rules introduce a new preliminary investigation, the so-called “fact-finding investigation”, in the context of which the police officer concerned is no longer deemed to be a suspect. If the fact-finding investigation that is carried out by the Internal Investigations Department reveals that the officer under investigation did not adhere to the rules governing the use of force, the Public Prosecutor can initiate a regular criminal investigation. During this criminal investigation, the officer concerned can still be considered a criminal suspect for having deliberately breached the rules governing the use of force for inflicting bodily harm, and prosecuted for existing criminal offences (such as (serious) assault or manslaughter).

In addition, the Criminal Code was amended and a new criminal offence was introduced for officers under investigation found guilty of culpable breach of the rules governing the use of force resulting in bodily harm or death. Punishable by a maximum sentence of up to three years, this offence takes into account the specific work context of investigating officers. On a positive note, the new rules clarify the criteria governing the use of force and means of restraint, which should be applied as a last resort and only after previous de-escalation attempts have failed.

26. The CPT acknowledges that the judicial authorities are independent and hence free to fix within the parameters set by the law, the sentence in any given case. Nonetheless, it considers that, via those parameters, **the intent of the legislator should be made clear: the criminal justice system should adopt a firm attitude as regards ill-treatment, which includes that acts of torture and ill-treatment committed by police officers be sanctioned with appropriate penalties.**

To obtain a comprehensive picture of the impact of the amended legal framework regarding investigations into alleged ill-treatment, **the CPT would like to be informed about how many complaints of alleged ill-treatment or excessive use of force by police officers were submitted and investigated by the Internal Investigations Department between 1 January 2020 and 30 June 2022 (within the framework of a regular criminal investigation), as well as between 1 July and 31 December 2022 (within the framework of a “fact-finding investigation” and/or a regular criminal investigation). It would also like to be informed about the outcomes of these investigations, and particularly about any disciplinary or criminal sanctions imposed on the police officers concerned.**

### 3. Safeguards against ill-treatment

27. In the course of the May 2022 visit, the delegation gained a positive impression overall of the practical implementation of the fundamental safeguards against ill-treatment by the police (namely, the rights of detained persons to notify a close relative or another person of their detention and to have access to a lawyer and to a doctor). Certain improvements were noticeable, especially as

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23. Official Instructions for the police, the Royal Military and Border Police and other investigating officers (*Ambtsinstructie voor de politie, de Koninklijke marechaussee en andere opsporingsambtenaren*).

regards access to a lawyer and the protection of juveniles. It is positive that the amended CCP now clearly provides for relevant fundamental safeguards against ill-treatment.<sup>24</sup>

28. The CCP now explicitly stipulates that arrested suspects shall be notified in writing of their rights immediately after their arrest and, in any case, prior to police questioning. Suspects who have no, or insufficient command of the Dutch language will be informed of their rights in a language they understand.<sup>25</sup>

The majority of persons interviewed by the delegation during the visit who were, or had recently been, in police custody stated that they had been informed of their rights by police officers both verbally upon apprehension, and in writing when seen by the Assistant Public Prosecutor shortly after their arrival at a police station. Comprehensive and standardised information leaflets were available in a broad range of languages in all police establishments visited,<sup>26</sup> and foreign nationals were provided with the services of an interpreter, when necessary.

29. Notwithstanding the transposition of the relevant EU Directive, it appears not to be adequately implemented in practice. The delegation received some allegations by foreign nationals that they had not been informed of their rights, either verbally or in writing, in a language they could understand. Several persons claimed that they had not been provided with an information sheet by the police. Moreover, the individual electronic registers examined by the delegation only contained the statements of the Assistant Public Prosecutor in the official report (*proces-verbaal*) on whether the detained persons had been informed of their rights, without the signature of those detained to attest that this had indeed been the case.

**The CPT recommends that the Dutch authorities ensure that all persons deprived of their liberty by police officers – for whatever reason – are fully informed of their fundamental rights from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). This should be ensured by the provision of clear verbal information at the moment of apprehension, to be supplemented at the earliest opportunity (that is, immediately upon first arrival at the police establishment) by the provision of the relevant information sheet, in a language that they can understand.**

**Further, the persons concerned should be asked to sign a statement attesting that they have been informed of their rights and should always be given, and allowed to keep in their cell, a copy of the information sheet.**

30. The 2017 amendments to the CCP also introduced an explicit right of notification of custody for the suspect. According to the new provisions, at the request of the arrested suspect, the assistant public prosecutor who orders that the suspect be detained for investigation, shall immediately notify at least one person designated by the suspect.<sup>27</sup>

This procedure was applied in practice in all police stations; the majority of persons interviewed by the delegation during the visit confirmed that the police had contacted a relative or a third person of their choice on their behalf shortly after their arrival at the police station.

31. However, some allegations were received from persons who were – or had recently been – in police custody that their requests to notify a third person of the fact of their detention had not been

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24. Incorporating relevant EU standards, such as Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

25. Section 27c (3) and (4) of the CCP. See also Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, and Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings.

26. In addition, detained persons were given a copy of the internal rules of the police of the detention area.

27. Section 27e (1) of the CCP.

granted by the police. The delegation also heard some allegations that no feedback was provided to detained persons as to whether a third person could be reached.

Consequently, **the CPT recommends that the Dutch authorities ensure that all persons deprived of their liberty by the police effectively benefit from the right of notification of custody from the very outset of their deprivation of liberty. If the notification of a relative or a third person is carried out by police officers, detained persons should be given feedback on whether it has been possible to notify this person of the fact of their detention.**

32. The amended CCP further provides that the assistant public prosecutor may delay the notification of custody “insofar as, and for as long as, this is justified by an urgent need” to (a.) prevent serious adverse consequences for a person’s life, liberty or physical integrity, or (b.) to prevent that the investigation is seriously jeopardised. This decision and the grounds for it shall be stated in the official report (*proces-verbaal*).<sup>28</sup> This clarification partly responds to the CPT’s previous recommendation to circumscribe more precisely the possibility to delay the exercise of the right of notification of deprivation of liberty.

However, the application of such an exception is still not subject to an explicit time-limit. To strike a fair balance between the needs of the investigation and the interests of the detained person, **the CPT reiterates its recommendation that the possibility of refusing the request to notify a relative be limited to a maximum period of 48 hours.**

33. The right of access to a lawyer when being questioned by the police was introduced in the Netherlands with effect from 1 March 2016. The amended CCP now explicitly provides that the suspect has the right to be assisted by a lawyer, who may attend and participate during the questioning, and to have access to legal aid.<sup>29</sup> This is a welcome development in line with previous CPT recommendations.

The CPT notes positively that the right to access to a lawyer was generally operating effectively from the very outset of deprivation of liberty by the police. All persons interviewed by the delegation during the visit confirmed that they had been offered the opportunity to benefit from the assistance of a lawyer whilst in police custody, that they could consult the lawyer in private prior to questioning by the police, and that the lawyer could be present during the police interview.

It is also positive that a suspect who is vulnerable or who has been arrested for either a serious or very serious crime or a criminal offence for which pre-trial detention is permitted, can benefit from the services of an *ex officio* lawyer free of charge. Suspects who do not fulfil one of these conditions may contact a lawyer chosen by them, but they will have to pay the costs.<sup>30</sup> It thus remains the case that (indigent) persons who do not fall under one of the criteria for mandatory legal representation provided for by the relevant provisions of the CCP are not entitled to free legal aid when detained by the police; hence, they may be questioned by the police without the presence of a lawyer.

34. Given the importance of the right to access to a lawyer as a fundamental safeguard against ill-treatment and to be fully effective in practice, this safeguard should – in the CPT’s view – be available to all detained persons, irrespective of the seriousness of the criminal offence of which they are suspected and their financial situation. In this context, the Dutch authorities informed the delegation that a reform of the legal aid system was currently being carried out, which comprises a pilot phase for the identification and implementation of best practices as well as subsequent legislative amendments, which are planned to enter into force in 2025. Additional financial resources to improve the payment of legal aid fees are also foreseen.

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28. Section 27e (3) and (4) of the CCP.

29. Sections 28 (1) and (2), and 28d (1) of the CCP. The amendments entered into effect on 1 March 2017 and were introduced to implement Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right to access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty. See also the Decree governing the organisation and conduct of police questioning (*Besluit inrichting en orde politieverhoor*).

30. Section 28b (1) – (3) of the CCP.

Consequently, **the CPT encourages the Dutch authorities to take further steps to guarantee that all persons deprived of their liberty by the police can effectively benefit, if they so wish, from access to a lawyer free of charge during their time in police custody. The Committee would also like to be updated on the progress achieved in reforming the legal aid system.**

35. The CPT has repeatedly recommended that detained juveniles should never be subjected to police questioning or be required to sign any statement related to the offence of which they are suspected without the presence of a lawyer and, in principle, a trusted adult person.

The Committee notes that, according to the amended provisions of the CCP, minors can now always benefit from free legal aid before being questioned by the police and that they may no longer waive their right to legal assistance.<sup>31</sup> According to the relevant regulations,<sup>32</sup> minors are not obliged to make a statement or to sign any document prior to police questioning. A specific leaflet with an infographic is available for minors explaining their rights in a clear and concise language.

Moreover, juvenile suspects now have the right to be accompanied by their parents during police questioning, except where this is not in the interest of the minor or the importance of the investigation precludes that presence, with the permission of the public prosecutor.<sup>33</sup> The assistant public prosecutor shall notify the parents or guardian of a minor, who has been arrested as a suspect, as soon as possible of the deprivation of liberty and the reasons for it. Only in highly exceptional circumstances may notification be deferred, which automatically triggers the duty to inform immediately the Child Protection Board of the minor's deprivation of liberty.<sup>34</sup> Additional specific safeguards for children and juveniles apply.<sup>35</sup>

36. These are positive developments. In this context, the CPT also welcomes the good practice observed in some police stations to allow minors suspected of petty crimes to spend the night at home and to report back for police questioning, together with their parents, the following morning. Moreover, minors are allocated a specific custody officer as a contact person during their stay in police custody.

37. As regards access to a doctor, persons deprived of their liberty by the police were usually asked by police officers whether they required medical attention shortly after their arrival at the police station. At the request of the person concerned or at the initiative of police officers, for example when the detained person complained of health problems, a duty doctor from the contracted healthcare provider was called to the police station to examine the person concerned. At the police stations in Amsterdam, a nurse was present in the morning and afternoon to provide some basic healthcare services.

However, the delegation heard some allegations from detained persons that they had not been granted access to a doctor or not received medication despite their explicit requests. In fact, the delegation's medical doctor met a few persons whose medical needs had remained unattended. For example, a woman interviewed at Amsterdam Central Police Station bore visible injuries, including a head injury, that she had allegedly sustained during a fight shortly before her arrest, one day prior to the CPT visit. Although she had asked for an ambulance, she was only offered paracetamol by custody officers, who did not grant her request to see a doctor or a nurse.

In the CPT's view, a request by a detained person to see a doctor should always be granted; it is not for police officers, nor for any other authority, to filter such requests. **The CPT recommends that the Dutch authorities ensure that all persons detained by the police can effectively benefit from the right to access to a doctor and necessary healthcare.**

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31. Section 28b (1) of the CCP.

32. National Regulations on the Treatment of Persons in Custody.

33. Section 488ab of the CCP.

34. Section 488b (1) and (2) of the CCP.

35. Sections 486 *et seq.* of the CCP.

38. The police stations visited used centralised electronic registers for recording each case of detention. The individual registers contained comprehensive information relating to the situation of all detained person and the exercise of their rights, which were diligently maintained in all police stations visited. However, they did not allow the delegation to obtain a clear overview on the implementation of the fundamental safeguards against ill-treatment in an easily accessible manner nor did they permit an examination of the records of persons who had previously been held in police custody, including as regards the duration of their detention. Some of this information could only be obtained retrospectively via requests for information after the relevant statistical data had been processed and analysed. Hence, the delegation could only carry out spot checks by looking at some individual files of those persons who were being detained by the police at the time of the visit.

**The CPT recommends that the Dutch authorities ensure that comprehensive electronic custody registers are readily available in all police stations to allow monitoring and inspection bodies to obtain an accurate overview about the implementation of the fundamental safeguards as well as precise information on the deprivation of liberty of persons who had previously been held in police custody, including the duration of their detention.**

39. The CPT also takes note of the information provided by the Dutch authorities that the methods of police investigation applied by investigating police officers are in compliance with the *Principles on Effective Interviewing for Investigations and Information Gathering*.<sup>36</sup> The information indicates, *inter alia*, that police interviews aim to obtain accurate and reliable information in order to seek the truth about matters under investigation without coercion and form part of the general and specialised training for investigating officers, which is continuously being updated and improved. This is positive. In this regard, **the CPT would like to be informed whether, and to which extent, the interviewing techniques of suspects described in the 8<sup>th</sup> edition (2021) of the manual on interviewing (*Handleiding Verhoor*) differ from the techniques described in the 7<sup>th</sup> edition (2017) and how these techniques have evolved in practice.**

40. Moreover, the Committee has repeatedly stressed the importance of accurate electronic (that is audio and/or video) recording of all police interviews as an effective means of preventing ill-treatment.<sup>37</sup> This is both in the interest of detained persons and police officers who might be confronted with unfounded allegations. In this regard, **the CPT would like to be informed whether all police interviews with suspects are systematically recorded in the Netherlands.**

In this context, the CPT also considers that the experience of other countries demonstrates that Body Worn Video cameras, providing they are properly used, represent an additional safeguard against abuse by police officers, as well as a protection against false allegations of ill-treatment. **The CPT would appreciate the comments of the Dutch authorities on this matter.**

#### 4. Conditions of detention

41. Material conditions in police stations in the Netherlands are governed by the relevant regulation,<sup>38</sup> which prescribes the minimum requirements for detention in police custody. A police detention centre (*politiecellencomplex*) or any part thereof that does not meet the requirements set out in this regulation cannot be used for detaining persons.

42. Once again, material conditions in the custody cells in the different police establishments visited were generally good for individual accommodation not exceeding periods of detention

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36. The *Principles on Effective Interviewing for Investigations and Information Gathering*, also referred to as the “Mendez Principles”, were adopted in May 2021. They provide guidance on obtaining accurate and reliable information in full respect on the human rights and dignity of all, by changing how public authorities conduct interviewing and through the implementation of procedural safeguards in the first hours of police custody. The CPT has outlined the added value of the methodology of investigative interviewing in its 28th General Report, CPT/Inf (2019) 9, paragraphs 73-81.

37. See paragraph 176 and 177 of the Mendez Principles.

38. Regulation on police detention centres and the registration of detained persons (*Regeling politiecellencomplex en registratie ingeslotenen*).

between a few hours and a few days.<sup>39</sup> In Amsterdam, the delegation was informed that the three police stations were gradually being refurbished and broken equipment was being replaced.<sup>40</sup>

The ordinary single-occupancy cells were all sufficient in size (some 6 m<sup>2</sup>), in a satisfactory state of repair and clean. Further they were sufficiently ventilated and adequately lit (there was both artificial lighting and some access to natural light through windows fitted with translucent glass bricks). Custody cells were adequately equipped (at a minimum with a call bell, a concrete plinth with a plastic mattress, clean sheets and blankets, a table and stool fixed to the floor, and a toilet and washbasin).

The cells in the police stations in Amsterdam were equipped with an integrated electronic system with touchscreen that also contained a television, a radio and an intercom. However, a great number of these were not functioning. **The CPT recommends that these electronic systems be repaired in the context of the ongoing refurbishment works at all police stations in Amsterdam.**

43. At Amsterdam Central Police Station, despite the recent refurbishment, it is still the case that the two padded observation cells, in which persons could be held for up to three days, measured only 5.2 m<sup>2</sup>. Further, at Dordrecht Police Station, the monitors relaying the CCTV images from the observation cells did not pixelate the in-cell toilet.

**The CPT recommends that cells of about 5 m<sup>2</sup> in size are not suitable for periods of custody lasting more than a few hours and should not be used for overnight accommodation. Further, when it is deemed necessary to place detained persons under video-surveillance, their privacy should be preserved when they are using a toilet, for example by pixelating the image of the toilet area.**

44. Moreover, detained persons were provided with food and could take a shower daily. They could also benefit from outdoor exercise every day (usually twice a day for 30 minutes) and receive some reading material (upon request).

45. The CPT formed a generally positive impression of the staffing situation and the general organisation of police custody. In particular, the Committee notes the clear benefits of having designated police staff (both women and men) who exclusively fulfil the role of “custody officer” (as distinct from an officer merely posted to the detention area), accountable for the well-being of detained persons during the period spent under their custody. In its 28th General Report, the CPT stressed that introducing designated custody officers could also strengthen the practical implementation of various procedural and other safeguards against ill-treatment.<sup>41</sup> The Netherlands have made the choice to deploy approximately 2 000 specially selected and trained custody officers both for the transfer and custody of detained persons.

## 5. Other issues

46. The information gathered during the visit indicates that resort to strip-searches in police establishments was not frequent and only some detained persons were subjected to this measure upon admission, by police officers of the same sex and based on an individual risk assessment. However, police officers in all police stations visited consistently stated that, if a strip-search of detained persons was considered necessary, the persons concerned would be obliged to remove all their clothes at once and perform a squat.

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39. In all police stations, there were also some short-term holding cells, in which detained persons were placed for periods not exceeding a few hours upon their arrival. They only contained a concrete plinth or a bench to sit and varied in size (between 2 m<sup>2</sup> and 14 m<sup>2</sup>). In addition, the police stations also had some larger cells either for claustrophobic persons or for families; the latter had not been used recently in any of the police stations visited.

40. Amsterdam Central Police Station had recently been reopened after several months of refurbishment; Amsterdam West Police Station had been closed for refurbishment at the time of the visit; and it was planned to put Amsterdam South Police Station out of use at the end of 2022 for refurbishment works.

41. See the 28th General Report of the CPT, CPT/Inf (2019) 9, paragraphs 82-85.

The Committee considers that persons who are searched should not normally be required to remove all their clothes at the same time, that is a person should be allowed to remove clothing above the waist and put it back on before removing further clothing. **The CPT recommends that the Dutch authorities take the necessary steps to ensure that the above-mentioned requirements in respect of strip-searches are complied with in all police stations.**

47. The delegation was informed by police officers at Amsterdam Central Police Station that persons at risk of self-harm and/or suicide might be placed entirely naked for up to three days in one of the above-described padded observations cells, according to the applicable procedure.

The CPT considers that an appropriate care protocol should be applied to persons who are deemed to be at risk of self-harm or suicide. They should be provided with rip-proof clothing, if considered necessary. Further, they should be placed under a special observation scheme and they should be systematically assessed by a healthcare professional. It is totally inappropriate to place a detained person at risk of suicide naked in a cell with no support. In the CPT's view, such treatment could be considered as inhuman and degrading and should be ended.

**The CPT recommends that the Dutch authorities immediately end this practice and draw up a care protocol for detained persons who are deemed to be at risk of self-harm or suicide while in police custody, taking into account the above remarks.**

48. In 2011, the Dutch authorities added electrical discharge weapons (EDWs) to the standard equipment of the specialist Arrest and Support Teams of the Dutch Police and the Royal Military and Border Police. Following a trial period conducted from February 2017 to January 2019, the Minister of Justice and Security, in November 2019, decided to equip with these instruments approximately 17 000 police officers who are exposed to a high risk of being confronted with violence and/or having to resort to the use of force during the performance of their duties. As of January 2022, the Dutch authorities have started to provide training to these officers in the use of EDWs.

The use of force – including the use of EDWs – must, in accordance with Section 7, paragraphs 1 and 7, of the Police Act 2012, meet the requirements of proportionality, subsidiarity, reasonableness and moderation, as well as the deployment criteria related to the use of EDWs, which are regulated in the Code of Conduct<sup>42</sup> and which have been further clarified. In particular, the use of EDWs is now only permitted in order to prevent a real and immediate threat to life or risk of serious injury, after having issued a warning, and following training in the use of EDWs. Further, there is no basis for the use of EDWs against persons who are handcuffed or otherwise brought under control.

In order to obtain a clear picture about the current use of EDWs by police officers, **the CPT would like to be informed if all police officers equipped with EDWs have now received training in their use. It would also like to receive information on how often EDWs have been used, both in total and against minors, pregnant women and persons with mental health disorders, in 2020, 2021 and 2022 (with a disaggregation per month for 2022).**

## **B. Immigration detention**

### 1. Preliminary remarks

49. In the course of the visit, the delegation visited all three closed immigration detention facilities in the Netherlands: it carried out follow-up visits to Rotterdam<sup>43</sup> and Schiphol Detention Centres (DCs), and it conducted a first-time visit to the Closed Family Facility (*Gesloten Gezinsvoorziening – GGV*) at Zeist DC.

50. *Rotterdam DC*, built in 2010 next to Rotterdam Airport, detains adult men with a view to expulsion and has a capacity of 332 places. At the time of the 2022 visit, the immigration detention section at the centre held a total of 181 detained persons within the six wings, each of which

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42. Official Instructions for the police, the Royal Military and Border Police and other investigating officers (*Ambtsinstructie voor de politie, de Koninklijke marechaussee en andere opsporingsambtenaren*).

43. See CPT/Inf (2012) 21, paragraph 60 et seq.

contained 32 cells.<sup>44</sup> The large majority of persons were detained under Section 59 of the Aliens Act (territorial detention).<sup>45</sup> Most foreign nationals present at the time of the visit had been held at Rotterdam DC for a period lasting between several days and several months, with an average length of stay of six weeks. Three persons were detained for more than six months, including one person for over seven months.

51. *Schiphol DC* is within the vicinity of Schiphol Judicial Complex near Schiphol Airport (Amsterdam).<sup>46</sup> The centre is mainly used for holding asylum seekers and irregular migrants who have been refused entry under Article 6 of the Aliens Act (border detention).<sup>47</sup> Persons applying for asylum upon their arrival to the Netherlands (except unaccompanied minors and families with children) or while in detention are held at the establishment for the whole duration of their asylum process under the border procedure, which can last for up to four weeks (or longer if the person lodges an appeal). On the day of the visit, the delegation visited Section C2 only, which operates under the authority of the Immigration and Naturalisation Service (*Immigratie en Naturalisatiedienst – IND*), and which accommodated 57 persons (including 45 men and 12 women) for a maximum capacity of 117 places within three wings.<sup>48</sup>

52. The delegation also visited the *Closed Family Facility (GGV)*, a separate sub-section of *Zeist DC*<sup>49</sup> that comprised a modern building with a 10-room unit for unaccompanied minors and 12 family-type housing units, each of which can accommodate up to six persons, situated around a large outdoor garden area. The GGV is used for the detention of women as well as, exceptionally, unaccompanied minors and families with children, both in the context of border detention and territorial detention. At the time of the visit, the facility held 25 persons, including five families with six children (between three and six years old) and 11 women. While the families had all been held for less than two weeks, which is the maximum time of detention permitted by law, the women were held for a period lasting between several weeks and several months, including one woman who was detained for almost six months.

53. The applicable legal framework for immigration detention in the European part of the Kingdom of the Netherlands has not undergone major changes since the CPT last examined this issue in 2011. It is set out in the Aliens Act (*Vreemdelingenwet 2000*) and its implementing regulation (*Vreemdelingenbesluit*), as amended.<sup>50</sup>

Dutch law still distinguishes between two types of detention of foreign nationals under aliens' legislation:

- (i) According to Section 6 (1) and (2) of the Aliens Act, foreign nationals who have been denied access to the territory upon arrival at one of the borders to the Netherlands

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44. The establishment also contained another remand centre (*Huis van bewaring – HvB*), which held 126 persons for a capacity of 136 places, that was not visited by the delegation.

45. Eight persons, who were suspected of having entered the Netherlands with forged documents, were held according to Section 6 of the Aliens Act (border procedure) and another five persons were transferred to Schiphol Detention Centre after having applied for asylum.

46. The whole Judicial Complex accommodated 259 detained persons for a total capacity of 640 places (in 435 cells). It also contained a larger prison section, which was not visited by the delegation, with a remand centre, units for arrestees subjected to a fine, an extra care facility (*Extra Zorgvoorziening – EZV*) and cells for persons suspected or accused of drug trafficking and those arrested by the Royal Military and Border Police (*Koninklijke Marechaussee – KMAR*). At the time of the visit, the immigration detention section and the prison section were subject to distinct regimes.

47. The prison section also detained persons who had been apprehended at the airport for smuggling drugs or using forged documents, including those sentenced for up to 8 weeks or those held on remand detention.

48. The 70 cells could, in principle be used for both single- and double-occupancy, although the cells of the section for new arrivals usually accommodated one person at a time only (except if there were family links). Further, Section C3A allowed for a reserve capacity of an additional 24 cells for the purpose of immigration detention but was not in use at the time of the visit; this section had a total capacity of 120 additional cells, but there were insufficient staffing resources to run all the wings.

49. *Zeist DC* has an overall capacity of 678 places mostly for pre-trial detainees and sentenced prisoners.

50. The most recent amendments entered into force on 1 January 2022. Both texts are supplemented by the Aliens Circular (*Vreemdelingencirculaire*) Part A and Part B and the Aliens Regulation (*Voorschrift Vreemdelingen*).



can be placed in *border detention*.<sup>51</sup> Persons placed in border detention are not considered to have formally entered the Netherlands. This type of detention may last for up to six months, which can be extended by an additional period of 12 months. The detention of asylum seekers can last for up to four weeks, or six weeks in Dublin cases.<sup>52</sup>

- (ii) Under Section 59 (1) and (2) of the Aliens Act, foreign nationals who are staying unlawfully on the territory of the Netherlands, including failed asylum seekers who are no longer allowed to remain on the territory, may be held in *territorial detention* with a view to expulsion.<sup>53</sup> This type of detention may last for up to six months, which can be extended by an additional period of 12 months. Asylum seekers may be detained for four weeks and rejected asylum seekers for up to six weeks, which can be extended by an additional period of three months if they appeal.<sup>54</sup>

In addition, foreign nationals who are apprehended by the police without legal residence may be detained under aliens' legislation (*vreemdeling bewaring*) in a police station for up to five days.

54. The statistical data provided by the Dutch authorities indicate that the previous trend of increasing numbers of foreign nationals in detention had been halted during the Covid-19 pandemic.<sup>55</sup> In 2019, a total of 3 730 foreign nationals were detained, while the numbers had dropped to 2 320 persons in 2020. In 2021, they had increased again to 2 880 persons. For most foreign nationals deprived of their liberty, the length of detention did not exceed a few weeks for persons kept under border detention and six months for persons held under territorial detention.

55. In its 2011 visit report, the CPT was critical of the fact that immigration detention in the Netherlands was not covered by specific rules reflecting the administrative nature of immigration detention. Instead, deprivation of liberty of foreign nationals in detention centres was governed by the same rules and restrictions as those applicable to persons detained under criminal law in prisons. More than a decade later, this situation remains unchanged, and the same prison legislation still applies to persons held in territorial detention: the Penitentiary Principles Act (*Penitentiare beginselenwet*) continues to regulate all aspects of detention, notably when it comes to the applicable regime and restrictions.<sup>56</sup>

56. In 2013, the Dutch authorities initiated a reform of the legal framework for immigration detention. The draft bill on the proposed Return and Detention of Foreign Nationals Act (*Wet terugkeer en vreemdelingenbewaring*), which was tabled before Parliament in 2015, would introduce a separate administrative statutory framework for the "humane immigration detention" of

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51. The grounds for refusing entry are set out in Section 3 (1) of the Aliens Act. If a foreign national applies for asylum at an external border of the Netherlands, the application will be assessed in the context of the border procedure and the person concerned may be detained (Section 6 (3) of the Aliens Act). Border detention can also be continued with the aim of transferring the asylum seeker to the EU member state responsible for the assessment of their asylum application according to the Dublin Regulation (Section 6a of the Aliens Act). If the asylum application is rejected, the foreign national may be detained if the interests of public order and national security so require (Section 6 (6) of the Aliens Act).

52. Section 3 (7) of the Aliens Act and paragraph A5/6.8 of the Aliens Circular.

53. The grounds for territorial detention are provided in Section 59a (Dublin cases) and 59b (unlawful stay on the territory and detention of asylum seekers) of the Aliens Act, and in Section 5.1b (3) and (4) of the Aliens Decree. To order detention, the detaining official needs to justify that at least two grounds for detention are applicable, that less coercive measures cannot be applied effectively, and that there is a sufficient prospect of expulsion (paragraph A5/6.1 of the Aliens Circular (Part A)).

54. Sections 59 (6) and (7), and 59(b) (2) and (3) of the Aliens Act and paragraph A5/6.3 of the Aliens Circular. The maximum time-limit is in line with Section 15 (5) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (Returns Directive).

55. Many persons were released from detention, as the requirement of a negative PCR-test had effectively rendered their forced removal impossible, because foreign nationals had to give their consent for such a test.

56. See also the Regulation on the regime in border detention (*Reglement regime grenslogies*) which governs this type of detention.

foreign nationals and regulate regimes and conditions of detention.<sup>57</sup> Under the new legal framework, the current forms of detention for foreign nationals (namely, border detention and territorial detention) would cease to exist.

The parliamentary process was halted, and the draft bill became outdated and required revision. Recently, the process was further delayed pending the adoption of amending legislation on emergency measures for foreign nationals who disturb public order and security (*Novelle maatregelen ten aanzien van overlastgevende vreemdelingen*). In April 2022, the Government informed the Parliament that the revised legislation should be tabled before the end of the year. The revised draft bill would align Dutch regulations with the current practice and the country's national and international obligations. It would also, *inter alia*, give directors of detention centres the power to impose restrictions on the regime in the event of serious problems regarding public order and security.

**The CPT would like to be informed of the status of the draft bill in the Dutch Parliament and to receive a copy of the Return and Detention of Foreign Nationals Act, once it is adopted.**

57. At the same time, the Dutch authorities informed the delegation that they consider that the dedicated section or department of a prison can be regarded as a specialised facility for detaining foreign nationals, as referred to in the Return Directive. Consequently, they take the view that the way in which the Netherlands currently implements immigration detention is compatible with the requirements set by the Council of State and Court of Justice of the European Union in recent case law.<sup>58</sup>

In this regard, the CPT wishes to recall its position, according to which a prison is – by definition – not a suitable place in which to detain someone who is neither suspected nor convicted of a criminal offence. In this regard, the CPT has made it clear that care should be taken in the design and layout of such premises to avoid, as far as possible, any impression of a carceral environment.<sup>59</sup> **The CPT trusts that the Dutch authorities will implement immigration detention in a manner that complies with these principles.**

## 2. Ill-treatment

58. The large majority of detained persons met in the three detention centres visited spoke positively of staff, and the delegation met many dedicated staff members (see also paragraph 99).

59. The delegation received no allegations of ill-treatment by staff at Schiphol and Zeist DCs, and it could observe a positive environment and a relaxed and supportive atmosphere in both centres.

However, at Rotterdam DC, the delegation did receive a few allegations from persons held on different wings of the establishment who claimed that they had been subjected to excessive use of force (punched in the shoulder, pushed to the ground) by custodial staff. The delegation was also informed of an ongoing criminal investigation against a member of staff following an official complaint of alleged excessive use of force lodged by a foreign national previously held at the establishment.

It also received several complaints of verbal abuse, discriminatory and racist language, and disrespectful behaviour by some members of staff on several of the wings visited, with persons being treated in many respects as criminal offenders. For instance, one person indicated that, while he was held in quarantine, some staff members placed the food on the ground and kicked it towards him when serving his meals and regularly insulted him in Dutch.

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57. State Secretary of Justice and Security, Letters to the Presidents of the First and Second Chamber of the Dutch Parliament, 11 April 2022. Alongside the new draft bill, a decree relating to the Return and Detention Act would detail the provisions of the new act and amend the relevant provisions of the Aliens Act.

58. See Council of State, judgment of 25 November 2020, no. 202004723/1/V3, ECLI:NL:RVS:2020:2795; and Court of Justice of the European Union, judgment of 10 March 2022, 'Landkreis Gifhorn' (C-519/20).

59. Reference is made to the basic principles on immigration detention, as summarised in the CPT Factsheet on immigration detention.

60. The CPT recommends that it be strongly reiterated to custodial staff at Rotterdam DC that all detained foreign nationals must be treated with respect and that all forms of ill-treatment, including verbal abuse, are unacceptable and will be sanctioned accordingly. It also recommends that the Dutch authorities take measures to ensure that no more force than is strictly necessary and proportionate should be used to bring those detained foreign nationals who are disobedient or violent under control.

Further, the CPT would like to be informed of the outcome of the criminal investigation into the alleged excessive use of force at Rotterdam DC by a member of staff.

3. Conditions of detention

a. material conditions

61. Material conditions ranged from very good (in Schiphol and Rotterdam DCs) to excellent (in the GGV at Zeist DC). While they were somewhat carceral at Rotterdam DC due to the existing prison-like infrastructure of the detention complex, families with children and women held at Zeist DC could benefit from a community- and family-type living environment, in a pleasant garden area within a non-carceral setting.

62. At Schiphol and Rotterdam DCs, the detention areas were clean. Cells, which were designed for double occupancy, were of sufficient size (measuring some 14 m<sup>2</sup>, including the fully partitioned sanitary annexe with a toilet, washbasin, and shower) and they were adequately lit and ventilated. They were well-equipped, including a bunkbed, a cupboard with some lockable space, a shelf, a desk with a television set, a microwave, and an electric kettle, as well as chairs, a fridge, and a phone and call bell system.

The delegation received however some complaints from persons interviewed in the IND Section at Schiphol DC about the rather low temperatures in the cells, particularly at night, and that the thin blankets provided were insufficient to keep them warm. **This deficiency should be remedied.**

63. Communal spaces in all centres visited were well equipped with a kitchen, laundry facilities, tables with seating, equipment for playing table tennis/soccer, electronic terminals and payphones. At Schiphol DC, each of the three wings also had large common rooms, where detained foreign nationals could gather, play games, read books, or do creative activities, and which were also used for spiritual care. That said, at Rotterdam DC, with the exception of the Extra Care Facility (*Extra Zorgvoorziening – EZV*)<sup>60</sup>, these spaces lacked individualisation and decoration.

The different outdoor exercise yards at the two facilities were adequate in terms of space, equipment, seating and shelter, and had some trees and artificial green space.

64. An internal bank account with a €10 starting credit was opened for every newly admitted foreign national and an amount of €15 to €18 was added every week. Detained persons could top up these accounts with a certain amount of additional funds. They were given an electronic card, by means of which they could order additional groceries which they could prepare themselves in the communal kitchen as well as cigarettes and other items at one of the electronic terminals. The credit also served to cover the costs of phone calls made by detained persons.

The delegation did receive numerous complaints by foreign nationals held in the two centres about the poor quality and insufficient quantity of the frozen food provided in the black disposable plastic boxes (see also paragraph 112). It received the explanation that the contract with the provider responsible for delivering the food in all establishments under the authority of the Custodial

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60. The EZV Unit was partially decorated with a few plants and a bird cage. There was also a communal couch area with television and computers. Half of the 32 cells in this section were equipped with CCTV cameras, including four secure cells which only contained a bed with a plastic mattress and a stainless-steel toilet and sink. Vulnerable persons or those in need of special care could be placed in the EZV Unit, after an assessment by the psychologist and/or psychiatrist.

Institutions Agency would end in summer and it was expected that the quality of the food could be enhanced under a new contract with a different service provider. **The CPT would like to be informed of the new arrangements as regards food provision for foreign nationals held in immigration detention.**

65. At Schiphol DC, detained women and men were accommodated together in the three wings of the IND Section. Although cells could be locked by them from the inside and supervision by custodial staff appeared to be adequate, the CPT considers that women should, as a matter of principle, be accommodated in an area which is physically separate from that holding men at the same establishment. Proactive protective measures should be taken where men and women come into contact in detention. Particular attention should be paid to vulnerable asylum-seeking women, who are or may be victims of violence, abuse or trafficking.

However, women may participate in activities – including outdoor exercise – together with men, provided those involved consent to such arrangements and the persons are carefully selected and adequately supervised. **The CPT encourages the Dutch authorities to consider holding women in accommodation which is physically separate from that occupied by men who are not their relatives at Schiphol DC.**

66. At the GGV at Zeist DC, the material conditions were excellent. The 12 housing units for families, which accommodated individual families or several women, were spacious, well equipped and provided for a homely environment. Each contained three bedrooms with two beds and a wardrobe, a large living room with a couch area, television, and dining table, as well as a modern and well-equipped kitchen and a bathroom and separate toilet.

The section for unaccompanied children was situated in a recently constructed building. The unit consisted of 10 individual rooms, which were kept unlocked, each equipped with a bed, a cupboard with some lockable space, a desk with a TV set, a chair, a shelf, and a fully partitioned sanitary annexe. Two of the rooms were equipped with CCTV cameras which could be turned on for observation. Rooms were adjacent to a large communal living room with a kitchen, which was well equipped and provided for a friendly environment. At the time of the visit, one woman was accommodated in the unit, who was being segregated from the other women.

The large green space around which the housing units were built was planted with grass, hedges, and trees, and contained a garden area with flower beds, benches and other seating, as well as some colourful art sculptures. The area provided for a friendly and welcoming environment.

b. regime

67. It is positive that, at Schiphol DC, foreign nationals deprived of their liberty were able to benefit from an open-door policy throughout the day (cells were open from 8 a.m. to 9.30 p.m.) under the regular regime. They could play board games, read books from the library, or watch TV in one of the common rooms, cook together in communal kitchens, or play table tennis/football, tennis, or badminton in their wings. Further, they could move freely within the IND Section and were allowed to leave their respective wings. That said, access to the outdoor exercise yards was dependent on the availability of sufficient staff for supervision.

At the GGV at Zeist DC, families with children and women had full freedom of movement within the Closed Family Facility and family houses and rooms remained open even during the night (but could be locked from inside). Both the living room in the section for unaccompanied children and the large activity room for families and women contained varied equipment for playing board games, piano, table tennis/soccer and billiards, for watching TV or gaming. There was also a communal kitchen, a library with computers, a well-equipped gym, an arts and crafts room, and a spiritual care room. Further, a range of activities was offered for children (see paragraph 88). Throughout the day, families and women held at the facility had free access to the spacious garden area, where children could play on a playground and a small football pitch and where adults could walk or sit outside or do some gardening in a green and friendly environment.

However, in both centres, the number of organised activities for those detained for longer periods remained limited to about one activity every fortnight, such as cooking, watching a film, or a board game or sports competition, and there was no education or work on offer.

68. In contrast, at Rotterdam DC, the regime for detained men was inadequate. At the time of the visit, most persons detained at the establishment had to remain in their cells for a large part of the day (some 18 hours).<sup>61</sup> Persons held on the three ordinary wings could only benefit from three out-of-cell times a day, including one hour of outdoor exercise.

The delegation was informed that, prior to the visit, they were locked in their cells for over 20 hours a day and the out-of-cell time during the evening had only recently been reintroduced.

The CPT positively notes the recent efforts to provide, on a pilot basis during weekends, a regime of organised activities for persons under the regular regime and for those placed in the EZV unit. In addition to extended access to outdoor exercise, they could also benefit from access to a sports room (for fitness and gym), creativity room (for arts, crafts, board games, and music activities), and multimedia activity room (for films, gaming, air-hockey, and billiards), for three hours a day. However, the regime of organised activities on offer during the rest of the week was inadequate.<sup>62</sup> Further, no education or work activities (apart from some small maintenance jobs, such as cleaning, offered to a few detained persons) were available. Although the average length of stay at the detention centre was between several weeks and a few months, 25 detained persons had already been held there for over three months, including three persons who had spent more than six months at the centre.

According to the management of the facility, this situation was mainly due to the lack of staff, as – in addition to several vacancies – many members of staff were reportedly absent on sick leave or long-term sick leave, including due to Covid-19 (see paragraph 100). The delegation was informed that it was planned to gradually return to the pre-pandemic situation, with the aim of applying an open-door policy throughout the day under the regular regime, thus increasing out-of-cell time and the offer of organised activities, provided that sufficient staff were present to ensure supervision.

69. In line with its administrative nature, immigration detention must not be punitive in character: it is not a sanction or a punishment. In the CPT's view, the conditions of detention for persons held in immigration detention should reflect the nature of their deprivation of liberty, with limited restrictions in place and a varied regime of activities. Within the detention facility, the freedom of movement of detained persons should be as unrestricted as possible. The longer the period for which they are held in immigration detention, the more developed should be the activities offered to them. Further, detained persons should have access to daily outdoor exercise for at least two hours (and possibly more); preferably, they should have free access to outdoor exercise throughout the day.

In this context, the CPT notes that the future legislative framework for immigration detention foresees the application of an open-door policy throughout the day for persons held under the regular regime and that this regime was already applied in practice at Schiphol DC. Staffing resources at Rotterdam DC should be significantly increased to also allow persons deprived of their liberty, including those held for lengthy periods, to benefit from an open-door regime throughout the day.

**The CPT recommends that the Dutch authorities take the necessary measures to increase the staff presence at Rotterdam DC in order to apply an open-door regime throughout the day and significantly increase the daily programme of organised activities. Further, at least two hours of daily outdoor exercise should be offered to detained persons.** Reference is also made to the Committee's remarks and the recommendation in paragraph 100.

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61. Further, those placed in the unit for detained persons posing management problems (Wing A) were permanently subjected to restrictions under the basic regime, due to their disobedient behaviour. They remained locked in their cells for up to 20 hours per day. This regime was applied by way of restrictions under the Penitentiary Principles Act, in anticipation of the new amending legislation on emergency measures for foreign nationals who disturb public order and security.

62. Detained foreign nationals could also benefit from access to a gym twice a week, from spiritual care once a week and could use the library once weekly.

Moreover, **persons who are detained for longer periods at both Schiphol DC and at the GGV at Zeist DC should be offered a greater range of organised activities (such as workshops, language classes or sports activities).**

#### 4. Legal safeguards

70. From the findings gathered during the visit, information on rights was not always provided consistently to foreign nationals in the detention centres visited. At Schiphol DC, the delegation could itself observe that staff spent quite some time explaining the rights and the house rules to newly arrived persons who had also received some written documents.

However, at Rotterdam DC, most persons interviewed by the delegation stated that they did not receive such information, either orally or in writing.

Foreign nationals held there also indicated that they had not been informed about the next stages in their procedure and/or on the expected length of their stay, and many expressed a feeling of uncertainty or anxiety about their situation and their future. In addition, many persons held at the centre were not aware of the house rules, with the consequence that many were receiving disciplinary sanctions for having breached them (see paragraph 94). The delegation was informed that detained persons could request access to the house rules at any moment but that, at the time of the visit, these were in the process of being revised and not available on the wings.

**71. The CPT recommends that the Dutch authorities take the necessary steps to ensure that foreign nationals detained at Rotterdam DC are expressly informed, without delay upon their admission and in a language that they can understand, of their rights and the procedure applicable to them. In addition to verbal information, all detained foreign nationals should be systematically provided with a document setting out this information and should be asked to confirm in writing that they have been informed of their rights, in a language they can understand, including in an appropriate format for persons who are illiterate. They should also be duly and regularly informed about the status of their case.**

**Further, all foreign nationals should be informed upon their arrival – orally and in writing and in a language that they can understand – of the applicable house rules.**

72. The CPT notes that interpretation services were generally available via phone in the three immigration detention centres visited, and that foreign nationals could normally benefit from these services, if required, including during official interviews. However, communication between detained persons and custodial officers was often difficult due to language barriers.

73. Detained persons were able to benefit from access to a lawyer free of charge and had the right to talk with the lawyer in private. Access to legal assistance and external NGOs was also possible in all centres visited and appeared to function particularly well at Schiphol DC, where the organisation *VluchtelingenWerk Nederland* provided legal advice and counselling in the context of the asylum procedure.

74. According to the Aliens Act, the initial detention order issued by the IND, which must take the individual circumstances of the case into account, can be appealed in court by the foreign national concerned. Further, the IND is under a legal obligation to notify the competent District Court within 28 days. The detention order is then automatically reviewed by a judge. Moreover, the CPT notes that an automatic periodic review was carried out every six months for persons who were held in immigration detention for lengthy terms.

75. In addition, a complaints system existed in all immigration detention facilities visited (see also paragraph 176). Detained foreign nationals could lodge written complaints via dedicated complaints boxes to the relevant independent Supervisory Committee and the complaints system in place appeared to be effective. However, at Rotterdam DC, several detained persons indicated to the

delegation that they had not received any response to their complaints. **This shortcoming should be remedied.**

## 5. Healthcare services

76. The three immigration detention centres visited offered an appropriate level of primary healthcare services on site. Each centre had dedicated examination rooms or units for that purpose, which were all well equipped.

77. Healthcare staffing levels were adequate in the three immigration detention centres visited. For example, at Schiphol DC, which had a total capacity of 640 places, including the prison part, the healthcare team consisted of four GPs, 24 nurses, and five psychologists. Further a psychiatrist attended the facility twice a week and there were also a dentist, a physiotherapist, and an optician, who regularly visited the centre. A similar situation could be observed at both Rotterdam and Zeist DCs.

It is positive that, in the three centres visited, a multidisciplinary team, consisting of a GP, a nurse, a psychologist, and a psychiatrist, met once a week to discuss patients with complex health problems or vulnerabilities, particularly those requiring psychological assistance or psychiatric care (see paragraphs 84-85). Further, at Zeist DC, there were nurses specialised in the care for children and women. In all other cases, detained foreign nationals would be transferred for specialist care to the nearest local or regional hospital.

78. In the three centres visited, GPs were working on rotation, ensuring the presence of a medical doctor throughout the day from Monday to Friday. At night and during the weekend, a GP remained on-call. Further, at Schiphol DC, a nursing presence was ensured 24/7. Nurses worked in three shifts, with five nurses on duty during the morning shift, four during the afternoon shift, and one at night. At both Rotterdam DC and Zeist DC, there was nursing cover from 7 a.m./7.30 a.m. to 10 p.m. in two shifts. While at Rotterdam DC, there were five nurses during the morning shift and three during the afternoon shift, at Zeist DC there were only three nurses in the morning and two in the afternoon.

Access to the medical service appeared to be rather easy at both Schiphol DC and at the GGV at Zeist DC. Foreign nationals who requested a consultation with a medical doctor were usually seen by a GP within one or two days of the request.

However, the delegation received several complaints of foreign nationals detained at the centre as regards the long waiting times (several weeks or months) to access a dentist. By way of illustration, one person told the delegation that prior to his detention he had received a root canal treatment and was given a temporary filling. When detained at the centre, his temporary filling fell out. He requested urgent dental treatment, as he was in severe pain. Despite his repeated requests, several complaints, and the intervention of his lawyer, it took several weeks until he was eventually transferred to be treated by an external dentist. **The CPT recommends that the Dutch authorities ensure that all detained foreign nationals receive swift access to a doctor and to dental care at Rotterdam DC, under the same circumstances as patients in the community.**

79. Electronic medical records were in use in all centres, which were detailed, complete and adequately maintained. Every day, medication was supplied by an external pharmacy and was distributed exclusively by nursing staff, in the three facilities visited. It is also positive that, on release, patients were provided with a physical copy of their medical records and a small supply of medication, if required.

80. The use of phone interpretation was normally available, including during the reception process. However, some foreign nationals held at Rotterdam DC complained that they had not been able to communicate with the doctor or psychologist as no appointment with an interpreter had been scheduled in advance. **Steps should be taken to ensure that the services of an interpreter are scheduled for medical and psychological consultations, if required.**

81. New arrivals were usually seen by a nurse for an initial medical screening immediately upon arrival (at the GGV at Zeist DC) or within a few hours of their admission (at both Rotterdam and Schiphol DCs). All detained foreign nationals were systematically seen within 24 hours the latest. A doctor would review the individual electronic medical records of all new admissions the following day and prescribe any required medication. Based on the nurse's assessment, the doctor would also see any patients requiring a consultation in person. During medical screening and consultations, medical confidentiality was guaranteed.

82. Although medical staff at Schiphol DC reported that they spent time trying to contact countries of origin and family members to gather information about the medical history of detained persons where possible, the delegation observed several deficiencies in the screening process in all three detention centres visited. The physical examination of newly arrived foreign nationals did not include a thorough screening for injuries and there was no systematic approach regarding the screening for infectious diseases (such as HIV or Hepatitis B or C). In addition, no dedicated register of injuries was kept in any of the three detention centres visited.

Moreover, initial screening also did not include a standard procedure for identifying vulnerabilities or assessing any signs of mental disorders, or previous experience of traumatisation, violence, or abuse. For instance, at Schiphol DC, the delegation met a victim of torture with post-traumatic stress disorder (PTSD) who also displayed injuries from the time of his torture two years previously. At the screening upon his admission, his injuries had not been recorded.

Further, at Rotterdam DC, no routine medical screening was carried out if a detained person was brought back to the centre following an aborted return operation. For instance, the delegation met a person who had been subjected to two attempts of forced removal to his country of origin both of which had failed, as he actively resisted his deportation. Even though escorting officers were required to use force, on both occasions, the person concerned did not benefit from a medical examination upon his return to Rotterdam DC.

**83. The CPT recommends that the Dutch authorities take the necessary measures to ensure that, at all immigration detention centres, all newly admitted foreign nationals benefit from a comprehensive medical screening carried out by a doctor or a nurse reporting to a doctor. The screening should include a comprehensive anamnesis, physical examination and screening for healthcare needs and transmissible diseases. Particular attention should be paid to the identification of any possible signs of mental disorders, vulnerabilities and previous experience of traumatisation, violence, or abuse. Further, a dedicated register of injuries observed on detained persons during admission and detention should be put in place in all centres.**

**Moreover, at Rotterdam DC, detained foreign nationals should routinely be physically examined by a doctor, or a nurse reporting to a doctor, following an aborted return operation.**

## 6. Vulnerable persons, including children in detention

84. The CPT notes positively that, in the three immigration detention centres visited, a (visiting) psychiatrist and a psychologist were available to provide support for vulnerable men, women and children deprived of their liberty. Foreign nationals with vulnerabilities, including acute psychiatric disorders, could be transferred either to a Closed facility for psychological treatment or to a Penitentiary Psychiatric Centre (PPC).

However, in the three centres visited, several detained foreign nationals interviewed by the delegation, including some with vulnerabilities, complained that they had not been able to speak to a psychologist or consult a psychiatrist. The specific needs of these persons were not being assessed and met (see paragraphs 82-83). For instance, the delegation spoke to two pregnant women who were held at the GGV at Zeist DC. The first was in her sixth month of pregnancy and refused to take the medication prescribed to her, as – in her view – she had not been adequately informed about the type of medication and why she required it. Since her arrival nine days earlier, she had not been examined specifically for her pregnancy despite her indicating that she was in pain



and bleeding. Regarding the second woman, staff had apparently been unresponsive and slow to provide care when she had felt unwell and fainted a few days prior to the delegation's visit. Further, none of the two received dietary food for their pregnancy. In addition, the delegation met a two year old child with autistic spectrum disorder, whose needs in terms of specialised care were not appropriately met at the detention centre in Zeist. His condition had visibly deteriorated, due to the sudden cessation of his treatment and his withdrawal from a specialised institution.

85. In the CPT's view, greater attention should be paid to the specific needs of vulnerable persons. In this context, the CPT considers that there should be meaningful alternatives to detention for certain vulnerable categories of person. These categories include, *inter alia*, victims of torture, victims of trafficking, pregnant women and nursing mothers, children, families with young children, elderly persons, LGBTQ persons, and persons with disabilities.

**The CPT recommends that the Dutch authorities take the necessary steps to ensure that the specific needs of vulnerable persons are adequately and effectively addressed from the moment they are deprived of their liberty in an immigration detention centre.**

**To this end, newly arrived persons should benefit from a thorough vulnerability assessment and, if needed, be swiftly referred to a psychologist or psychiatrist, or transferred to an appropriate institution that takes care of their specific needs. Meaningful alternatives to detention should be considered for certain vulnerable categories of persons after an individual assessment.**

86. When it comes to the specific situation of children deprived of their liberty, Dutch law allows for the detention of families with children, both in the context of border detention (Section 6 (3) of the Aliens Act) pending the asylum procedure, as well as in the context of territorial detention (Section 59 of the Aliens Act) pending their expulsion, in line with the relevant EU Directives.<sup>63</sup> Unaccompanied minors can be detained exceptionally pursuant to Sections 59 and 59b of the Aliens Act only for the shortest possible time and if justified by important interests at stake.<sup>64</sup> Children (both accompanied and unaccompanied) may be detained for a maximum of two weeks for the sole purpose of their removal.

In the view of the Dutch authorities, this form of detention still constitutes "a vital element of the effective removal procedures and is necessary to prevent absconding". Since 2013, children are however deprived of their liberty only as a last resort and under strict conditions, after alternatives to detention – such as freedom of movement restricting measures (*vrijheidsbeperkende locatie – vbl*) or family houses (*gesinslocatie*) – have been exhausted.

87. In practice, detention of children (both accompanied and unaccompanied) is executed at the GGV at Zeist DC. In this regard, the CPT notes that the detention of children is applied only in exceptional circumstances. In 2020, 48 families with minor children (168 family members) and three unaccompanied children were detained, while, in 2021, 74 families (248 family members) and four unaccompanied children were held in immigration detention. At the time of the visit, six young children (between two and six years old) were being detained together with their families.

88. It is positive that the GGV afforded the feel and views of a child-friendly environment. Children were able to play on a playground, football and with outdoor toys. Young children could also play in a playroom with plenty of toys and those of school age could attend some educational activities for a large part of the day. A dedicated member of staff was also providing some organised activities

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63. See Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals, and Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast). See paragraphs A1/7.3, A5/2.4, A5/3.1, A5/3.2 and A5/6.3 of the Aliens Circular.

64. Compelling interests are only at stake if the unaccompanied child is suspected or convicted of a crime or if he has repeatedly evaded supervision (paragraph A5/2.4 of the Aliens Circular). According to the applicable legislation, unaccompanied children cannot be placed in border detention unless there are doubts regarding their age (paragraphs A5/3.2 and A1/7.3 of the Aliens Circular).

offered to children such as creative activities, board games or cooking for children. Unaccompanied children are permanently supervised by qualified personnel. It was also positive that staff at the GGV did not carry uniforms which further underscores the non-carceral character and the supportive atmosphere for children, families and women held at the facility. The CPT welcomes this approach.

However, upon arrival at the GGV, children (either accompanied or unaccompanied) were required to enter the establishment via the prison section by passing tall metal fences and fenced gates equipped with CCTV cameras, which gave a very carceral and intimidating impression and atmosphere, particularly for young children.<sup>65</sup>

89. The CPT wishes to recall its position that every effort should be made to avoid resorting to the deprivation of liberty of migrant children. When, exceptionally, children are held with their parents in a detention centre, the deprivation of liberty should be for the shortest possible period of time.

Further, any form of deprivation of liberty may have a detrimental effect on the physical and/or mental well-being of unaccompanied children, given their specific vulnerability.

**The CPT recommends that the Dutch authorities vigorously pursue their efforts to avoid placing children in immigration detention, by opting for alternatives to deprivation of liberty, in line with the principle of best interest of the child. As a matter of principle, unaccompanied children should therefore not be held in a closed immigration detention facility but always be provided with special care and be accompanied in an open (or semi-open) establishment specialised for juveniles (for example, a social welfare/educational institution for juveniles). In the meantime, alternative arrangements or routes for children should be explored upon their arrival at the GGV at Zeist DC.**

#### 7. Solitary confinement

90. According to the applicable Penitentiary Principles Act, the director of a detention centre has the authority to order a detained person to be placed in solitary confinement both as a measure and as a disciplinary sanction.

Solitary confinement as a measure can be carried out “in the interest of maintaining order and security” or “to protect the detained person concerned”. Detained persons can either be confined in their own cell or placed in a solitary confinement cell. If seclusion in a solitary confinement cell lasts for more than 24 hours, the director shall inform the prison doctor and the Supervisory Committee of this measure. While solitary confinement as a measure lasts only as long as necessary and may not exceed two weeks, the director may extend it by up to two weeks each time, if solitary confinement is still necessary.<sup>66</sup>

Solitary confinement can also be imposed as a disciplinary sanction in a solitary confinement cell or other accommodation area. The maximum duration for disciplinary solitary confinement is two weeks.<sup>67</sup>

However, foreign nationals under the border procedure cannot be subjected to the sanction of disciplinary solitary confinement, as the applicable Regulation on the Regime in Border Detention does not allow for the possibility of resorting to disciplinary sanctions.

91. The delegation found that foreign nationals detained at Rotterdam DC were routinely subjected to solitary confinement, both as a measure and as a disciplinary sanction. The CPT

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65. In this respect, reference is made to the recent case-law of the European Court of Human Rights, *inter alia*, in the cases *M.D. and A.D. v. France*, application no. 57035/18, judgment of 22 July 2021, and *N.B. and Others v. France*, application no. 49775/20, judgment of 31 March 2022, in which the Court found a violation of Article 3 of the European Convention on Human Rights, having regard, in particular, to the very young age of the children concerned, the reception conditions at the administrative detention centre, and the length of their detention.

66. Sections 23 and 24 of the Penitentiary Principles Act.

67. Section 51 of the Penitentiary Principles Act.

considers that, at over 400 cases for each category in 2021, the number of instances in which foreign nationals were subjected to solitary confinement in this detention centre is excessive.<sup>68</sup>

Although distinct, both types of solitary confinement appeared to be mixed up. The delegation met foreign nationals who were placed for prolonged periods, both as a measure and as a disciplinary sanction, in solitary confinement. For instance, a foreign national held at Rotterdam DC was first placed in disciplinary solitary confinement in one of the cells in the solitary confinement unit for 14 days before being served with another disciplinary sanction of solitary confinement in his own cell for five days, which was subsequently replaced by solitary confinement as a measure for public order/security reasons. In total, he had spent a period of 19 days in solitary confinement. Five days later, he was sent to solitary confinement as a measure for public order/security reasons for 14 additional days. Another person was sentenced, due to his aggressive behaviour, to two consecutive disciplinary sanctions of solitary confinement for 14 days (one in his own cell and one in a punishment cell), thus remaining for a total of 28 days in disciplinary solitary confinement.

92. As a matter of principle, the CPT reiterates that it is totally inappropriate to apply prison rules to persons who are placed in immigration detention. Consequently, it considers that the application of a sanction of solitary confinement as a disciplinary punishment should be reviewed.

The CPT recognises that within a closed environment of immigration detention it is necessary to have clear rules in place to guarantee the safety and security of all detained persons and staff. For this reason, a measure of separation either in a person's room or in a cell in a separate unit may be appropriate to protect the person concerned, or other persons, or for the good order of the operation of the establishment.

However, the CPT recalls that solitary confinement can have extremely damaging effects on the mental, somatic, and social health of the persons concerned. In the CPT's view, disciplinary solitary confinement should therefore only be imposed as a last resort and for the shortest possible period of time, preferably avoided in an immigration context. Further, the cumulative placement of detained foreign nationals in solitary confinement for both discipline related and/or public order/security reasons, resulting in an uninterrupted period of solitary confinement exceeding the 14-day maximum period, should be ended. Any offence committed by a detained person which might call for more severe sanctions should be dealt with through the criminal justice system.

93. In light of the above remarks, **the CPT recommends that the Dutch authorities carry out a review of the policy and legal framework on the use of segregation as a measure and as a disciplinary sanction in immigration detention centres. While the 14-day maximum period should never be exceeded, the aim should be to reduce the resort to solitary confinement as a public order/security measure and no longer apply solitary confinement as a disciplinary measure in an immigration detention context. The house rules and the applicable disciplinary rules should be amended accordingly.**

Further, **the CPT recommends that, at Rotterdam DC, segregation and disciplinary sanctions be applied proportionately in practice and that staff are provided with training in this regard.**

94. Moreover, the disciplinary procedure for imposing solitary confinement as a disciplinary sanction at Rotterdam DC did not provide for adequate safeguards in all circumstances. Foreign nationals detained in the centre were not adequately informed in writing about disciplinary sanctions and the disciplinary procedure in force. Although the house rules stipulated that detained persons are deemed to be aware of the rules that apply to them following their distribution, those applicable at the time of the visit were in the course of being revised. Members of custodial staff working in the different wings were not able to produce a copy of the applicable house rules.

Consequently, all foreign nationals interviewed by the delegation indicated they were not aware of the house rules. Many of them had been subjected to disciplinary solitary confinement

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68. In 2021, there were 436 cases of disciplinary solitary confinement and 413 cases where detained persons were subjected to a measure of solitary confinement. In the first five months of 2022, the numbers amounted to 140 and 127 cases respectively.

(some on several occasions) for instance, for having answered back to the management or staff members, for having lodged a complaint, or for refusal to be accommodated together with a specific detained person in the same cell. It is therefore not surprising that they considered that disciplinary sanctions appeared to be applied as a punishment for disobedient behaviour.

Moreover, some detained persons also complained that they were either not heard in person, not granted legal assistance during the disciplinary hearing, provided with a phone interpreter who did not speak their language, or had not received a written copy of the disciplinary decision that had been taken against them. The delegation also noted that one person had been placed in one of the cells at the solitary confinement unit although he had been issued with a disciplinary decision mentioning a different sanction (confinement in his own cell without television).

95. In the CPT's view, any disciplinary sanctions, if they are considered necessary in an immigration detention context, must be proportionate and surrounded by effective safeguards. Likewise, procedures – alongside the formal disciplinary procedure – to impose a measure under which a detained person may be involuntarily segregated from other persons or placed in solitary confinement for public order/security reasons (for example, "in the interest of maintaining order and security") should also be accompanied by safeguards to ensure that it cannot be imposed on an arbitrary basis.

**The CPT recommends that the Dutch authorities ensure that, at Rotterdam DC, the disciplinary procedure, as well as any other procedures aimed at imposing measures for public order and security reasons, is surrounded by effective safeguards. Detained foreign nationals should be formally guaranteed the following rights:**

- **to be heard in person by the decision-making authority;**
- **to have the effective right to legal aid throughout the disciplinary procedure;**
- **to be granted interpretation services in a language that they can understand;**
- **to be provided as soon as possible with a copy of the decision concerning them and with information on their rights, which should inform them of both the reasons for the decision and the modalities for lodging an appeal; they should also confirm in writing that they have received a copy of the decision.**

**As regards information about the applicable house rules, reference is made to the CPT's comments and recommendation made in paragraphs 70-71.**

96. Material conditions in the 24 cells of the solitary confinement unit (Wing S) at Rotterdam DC were basic.<sup>69</sup> Each cell was 10 m<sup>2</sup> in size and consisted of a plastic covered mattress placed on the floor, a soft cube, and a stainless-steel toilet and sink. The cells were sufficiently lit and ventilated and equipped with an intercom system and CCTV camera.

However, one person placed in a solitary confinement cell shortly before the delegation's visit alleged that the running water had been switched off in his cell and that the intercom and call-bell system was dysfunctional. In addition, the monitors relaying the images from the observation cells did not pixelate the toilet area.

**The CPT recommends that the Dutch authorities take steps to ensure that all cells in the solitary confinement unit at Rotterdam DC are fitted with a proper bed and suitable seating; it would also be preferable that cells be equipped with a table. All cells should be maintained in a good state of repair and the call bells should be functioning. Further, when it is deemed necessary to place a detained person under video-surveillance, their privacy should be preserved when they are using a toilet, for example by pixelating the image of the toilet area.**

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69. Five cells were allocated to the Royal Military and Border Police (KMAR). Persons held in both immigration detention and in the prison section could be placed in one of the other 19 cells. The conditions are similar to the 14 cells of the solitary confinement unit at Zeist DC, where women held at the GGv could be placed, both as a measure and as a disciplinary sanction.

97. In terms of daily regime, the prison rules applied for persons placed in solitary confinement both as a public order/security measure and as a disciplinary sanction. This means that the person concerned was excluded from participating in activities and therefore remained in his cell for some 23 hours a day. Persons were brought for up to one hour per day to one of six small outdoor areas, which disposed of some shelter and were equipped with a stool, a CCTV camera and an intercom system. Two of the persons interviewed alleged that they did not have access to outdoor exercise for several days during their disciplinary solitary confinement.

**The CPT recommends that the Dutch authorities ensure that each detained person placed in solitary confinement, be that as a measure or a disciplinary sanction, is offered at least one hour of outdoor exercise per day.**

#### 8. Other issues

98. Foreign nationals deprived of their liberty could maintain contact with the outside world in the three immigration detention centres visited. They could receive in-person visits of their family or friends for up to two hours per week in all centres. Voice over Internet Protocol (VOIP) contacts with family via videoconference were also possible, except at Rotterdam DC due to the lack of sufficient numbers of staff to ensure supervision. **The CPT encourages the Dutch authorities to reintroduce this option as soon as possible.**

It is positive that, at Rotterdam DC and Schiphol DC, all detained persons had access to a phone in their own cell and in their wings, through the electronic card system which was regularly credited (see paragraph 64). At the GGV at Zeist DC, detained foreign nationals could make a phone call for up to 10 minutes in one of the two phone booths available. However, foreign nationals were generally not allowed to use their mobile phones in any of the centres visited. **The CPT encourages the Dutch authorities to consider the possibility for detained foreign nationals to have regular access to their mobile phones.**

99. At all three immigration detention centres visited, the delegation met with many dedicated members of staff who showed a supportive attitude towards the persons under their care. Many of them also had good language skills. Custodial staff in all centres had received special training courses on intercultural communication, suicide prevention and de-escalation. Staff working with children at the GGV at Zeist DC were required to have training and a certain experience in youth care or in dealing with unaccompanied children.

Staff interaction was particularly positive at Schiphol DC. However, some persons detained at Rotterdam DC indicated that custodial staff was not responsive, and that it could take a long time before staff responded when called via the call bell system, especially at night. **Custodial staff at Rotterdam DC should be reminded that it is imperative that they respond in a timely manner when persons require assistance via the call bell system.**

100. Whereas sufficient members of staff were present at both Schiphol DC and at the GGV at Zeist DC to ensure an open-door regime throughout the day, staffing numbers were insufficient at Rotterdam DC. At the time of the visit, the entire detention centre, which also included the prison section, had some 24 vacancies. Although recruitment was underway, these positions had not yet been filled. Moreover, over 50 members of staff of the entire detention centre were on sick leave, including 30 staff responsible for recreational time and activities, and 18 custodial staff. Consequently, in the immigration detention sections visited, the regime had been restricted significantly (see paragraph 68), and access to outdoor exercise and activities was contingent on sufficient staff presence (see paragraphs 67-68).

**The CPT recommends that the Dutch authorities take steps to ensure a sufficient staff presence at Rotterdam DC to guarantee an appropriate daily regime and activities for foreign nationals deprived of their liberty. It would like to receive an update on the current situation in terms of vacancies and staff absenteeism at the centre and the management's plans to mitigate the impact of low staffing numbers on the daily regime and activities of detained persons.**

101. From the interviews carried out by the delegation, it emerged that some foreign nationals held at Rotterdam DC had been subjected to collective disciplinary punishments. This included the prohibition of access to outdoor exercise for several days or of the possibility to make phone calls. Such a practice, if true, is unacceptable. All suspected offences of the house rules should exclusively be punished through the formal disciplinary procedure. **The CPT would like to receive the comments of the Dutch authorities on this matter.**

102. In the three centres visited, it is positive that a body scanner was used to carry out security checks of detained foreign nationals, including for illicit objects, such as drugs. The x-rays were assessed by a radiologist. This procedure, which replaced the systematic recourse to strip-searches, reduced embarrassment to a minimum, while guaranteeing security within the establishments. Dutch legislation required the person's consent for carrying out an x-ray and consent forms explaining the procedure and the use of the body-scanner were available in different languages in all facilities. Detained persons who refused to use this procedure were strip searched, as also indicated in the relevant consent forms and in the house rules. The delegation was informed that, in these cases, both men at Rotterdam DC and women at the GGV at Zeist DC were required to undress completely and to squat. At Rotterdam DC, the delegation also received a complaint by a detained man who alleged that he had been required to undress in the presence of three female custodial officers. Such an exception was also endorsed by the house rules.

**Reference is made to the CPT's remarks and recommendation formulated in paragraph 46. Further, detained persons should not be required to undress in the presence of custodial staff of the opposite sex. The house rules should be amended accordingly.**

### **C. Prison establishments**

#### 1. Preliminary remarks

103. The Dutch prison population has remained stable since the previous visit by the CPT in 2016, prior to which there had been a significant decrease over the previous decade,<sup>70</sup> resulting in the closure of 29 prison establishments.<sup>71</sup> According to the information provided by the Dutch authorities, on 4 January 2022, a total of 8 535 persons were detained in prison for an operational capacity of 10 146 places, which corresponds to a prison density of 84.1%.<sup>72</sup> It is positive that, with 52.8 prisoners per 100 000 inhabitants, the Netherlands have one of the lowest prison population rates in Europe and the number of prison sentences imposed remains low.<sup>73</sup>

The Committee also takes note of the fact that the practice of renting Dutch prisons to Belgium (Tilburg Prison) and Norway (Norgerhaven Prison in Veenhuizen) has ended. Both contracts with Belgium and Norway were either cancelled or reached the term without being renewed. At the time of the 2022 visit, the prison population was expected to increase again in the years to come. Consequently, no additional closures of prisons were foreseen and it had been decided to reopen Zeist Detention Centre. Further, it was planned to carry out major renovation works of the existing prison establishments and build a new judicial complex in Vlissingen, which was scheduled to be operational by mid-2028 (see also paragraph 122).

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70. This trend was particularly due to a drop in the country's crime rate, changes in penal policies and an increased resort to probation and community sanctions and measures. It is also noteworthy that short sentences and reintegration programmes have shown positive impacts on recidivism rates and reintegration.

71. The last four prisons (in Zoetermeer, Zeist, Almere and Zwaag) were closed in 2018.

72. This number does not include detained foreign nationals in immigration detention, juvenile offenders in juvenile correctional institutions, and patients in forensic Penitentiary Psychiatric Centres (PPC). It is to be noted that the total capacity is higher, as it contains a significant number of reserve places, which are currently not in use.

73. See Council of Europe Annual Penal Statistics (SPACE I), Prison stock on 1st January 2022. The statistical data provided are based on the total capacity of penal institutions.

That said, it is a matter of concern that the Custodial Institutions Agency (*Dienst Justitiële Inrichtingen – DJI*) had reportedly insufficient resources to carry out its functions effectively.<sup>74</sup> In addition to the closure of prisons, previous budget cuts over the past decade have, *inter alia*, led to the increased doubling up of single-occupancy cells, staff reductions, and a downsizing of day programmes. **The CPT would like to receive the comments of the Dutch authorities in this regard.**

104. During the visit, the delegation conducted a first-time visit to Dordrecht Prison, a follow-up visit to Vught Prison,<sup>75</sup> and a targeted visit to the terrorist unit (*Terroristen Afdeling – TA units*) at Zwolle Prison.

*Dordrecht Prison*, which is operational since 1996, is one of the four semi-open prisons, that are reserved for persons under the plus programme, which allows for more entitlements and reintegration activities (see paragraph 114). At the time of the visit, the establishment – with a capacity of 442 places<sup>76</sup> – was holding 367 adult men, including 180 persons (capacity 200 places) in the remand centre (*Huis van Bewaring – HvB*), 162 persons (capacity 162 places) in the unit for sentenced prisoners, 21 persons (capacity 24 places) in the extra care facility (*Extra Zorgvoorziening – EZV*), and four persons (capacity 25 places) in the recently established limited security unit (*Beperkt Beveiligde Afdelingen – BBA unit*).

*Vught Prison* is located at the outskirts of Vught and dates back to the 1950s, when it first served as a prison for young offenders. Today, the establishment is one of the largest prisons in the Netherlands and consists of some 20 buildings dispersed over an area of about 30 hectares. The complex also contains several units in which those inmates who require the highest level of security in the country are detained. At the time of the visit, 625 adult men were held at Vught Prison for a capacity of 747 places. Out of the eight different detention regimes of the prison complex, the delegation visited the following: the remand centre (holding 80 persons for 81 places), two units for sentenced prisoners (holding 155 persons for 156 places), maximum security institution (*Extra Beveiligde Inrichting – EBI unit*) (holding 10 persons for 18 places), a unit for detained persons posing management problems (*Beheersproblematische Gedetineerden – BPG unit*) (holding 36 persons for 48 places), terrorist unit (*TA unit*) (holding 27 persons for a total of 46 places), as well as an EZV unit (holding 23 persons for 24 places).<sup>77</sup>

*Zwolle Prison* is the only prison in the Netherlands that detains both men and women. At the time of the visit, 350 persons were being held for a capacity of 408 places.<sup>78</sup> The prison also accommodates a TA unit for women that was visited by the delegation. The unit has a current capacity of 10 places for women suspected or convicted of terrorist offences and was fully occupied.

105. The legal framework for the execution of remand detention and sentences has remained largely unchanged since the CPT's 2016 visit and is contained in the Penitentiary Principles Act (*Penitentiaire beginselenwet – PBW*), which sets out the conditions of detention, regime and security of Dutch prisons.

On 1 July 2021, the revised Penalties and Protection Act (*Wet Straffen en Beschermen*) entered into force. The new legislation changed the way in which prison sentences are executed, as it aims to work on the perspective of reintegration of persons from their first day in prison. It notably foresees an individualised detention and reintegration plan for every detained person, and enhanced

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74. See Government of the Netherlands (*Rijksoverheid*), report on the funding of the Dutch Prison service (Onderzoek financierbaarheid DJI), 20 May 2022.

75. The prison was last visited by the CPT in 2002 (Extra Security Institution (EBI); the facility was previously named “Nieuw Vosseveld Prison Complex, see CPT/Inf (2002) 30, paragraphs 30 *et seq.*) and in 2007 (Terrorist Unit, see CPT/Inf (2008) 2, paragraphs 39 *et seq.*).

76. According to the national regulation, the maximum operational capacity was 411 places, and the prison management did not accept new admissions beyond that number.

77. The prison complex also contains an institution for systematic offenders (*Inrichting voor Stelselmatige Daders – ISD*), an intensive specialist care unit (*Zeer intensieve Specialistische Zorg – ZISZ*) and a penitentiary psychiatric centre (PPC) that were not visited by the delegation.

78. The prison contains different units, including units for remand and sentenced prisoners, ISD unit, and EZV unit, as well as a PPC for men and women, which were not visited by the delegation. The CPT visited the PPC in 2016, see CPT/Inf (2017) 1, paragraphs 81 *et seq.*

cooperation with other institutions and organisations, such as the probation service. Under the new legal framework, a detained person is only eligible for leave if it contributes to a safe return into society, based on a review of the detained person's behaviour and an individual risk assessment, and is in line with the interests of the victim. To this end, short-term and long-term reintegration leave has replaced the former general and regular leave. During the last phase of their detention, detained persons are eligible for placement in the limited security units (BBA units), which feature a low level of security and an intensive focus on successful reintegration into society and where persons in prison are allowed to benefit from reintegration leave for work outside of the prison.<sup>79</sup> Moreover, under the new legislation, persons in prison are only eligible for conditional release two years before the term of their prison sentence ends and they are no longer obliged to work.

## 2. Ill-treatment

106. As was the case during previous visits, the delegation did not receive any allegations of deliberate physical ill-treatment of detained persons by staff in any of the establishments visited. On the contrary, relations between staff and persons in prison appeared to be generally positive, and staff displayed both professionalism and engagement in their interactions with detained persons.

However, the delegation did receive several complaints concerning abusive language, disrespectful behaviour or dismissive attitude by some members of staff at both Dordrecht and Vught Prisons, and particularly in the TA and BPG units in Vught. Several detained persons also indicated that staff did not always respond in a timely manner and that they had to wait for several hours, including when called via the intercom and call bell system.

**The CPT recommends that prison staff at Dordrecht and Vught Prisons be reminded regularly and in an appropriate manner that any form of ill-treatment – including verbal abuse – of detained persons is not acceptable and will be sanctioned accordingly.**

107. Inter-prisoner violence did not seem to be a major problem in the prisons visited, and when some tensions and occasional incidents occurred among persons in prison, they were generally dealt with appropriately by staff.

At Vught Prison, the delegation noted several incidents of violence and aggression by prisoners against staff as well as against other persons.<sup>80</sup> This was notably the case on the BPG unit, which could partly be explained by the profile of the persons on this unit.<sup>81</sup> Further, from the interviews conducted at Dordrecht Prison, it also became clear that the lack of out-of-cell time for making phone calls and taking a shower, as well as the limited possibilities to cook on their wings created tensions among persons held in the remand section (see paragraphs 112, 116 and 167). This resulted in regular verbal altercations and occasional fights in the queues in front of the telephones or showers. Moreover, in the TA unit at Zwolle Prison, several women indicated to the delegation that they had been threatened and intimidated by one radicalised woman held in their group.

108. The duty of care which is owed by the prison authorities to prisoners in their charge includes the responsibility to protect them from other prisoners who might wish to cause them harm. The prison authorities must act in a proactive manner to prevent violence by inmates against other inmates. In the CPT's view, the almost daily tensions at the remand section at Dordrecht Prison are a direct result of the lack of sufficient out-of-cell time and facilities available to cater for detained persons' basic needs (placing phone calls, taking a shower, and cooking their own food) within the time at their disposal. Such tensions could be avoided by providing sufficient staffing resources (see paragraph 153), increasing the amount of out-of-cell time for persons on remand and/or by increasing the number of telephones, showers, and cooking places available.

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79. These units have replaced the former open units ((*Zeer*) *Beperkt Beveiligde Inrichting – BBI and ZBI*), which have been gradually closed over the last decade.

80. In 2021, there have been 80 aggressions by detained persons against staff and 49 incidents of inter-prisoner violence.

81. According to the records, there had been 64 such incidents in 2021 and there were already 15 in the first five months of 2022.



In light of the above remarks, **the CPT recommends that the management of Dordrecht Prison take the necessary steps to reduce tensions among persons detained in the remand section and effectively reduce instances of inter-prisoner violence.**

**The Committee also encourages staff in the BPG unit at Vught Prison and in the TA unit at Zwolle Prison to remain vigilant as regards incidents of inter-prisoner violence and intimidation and ensure that all persons both feel and are kept safe.**

3. Conditions of detention

a. material conditions

109. Material conditions were of a high standard at Dordrecht Prison, in the TA unit at Zwolle Prison and at the EBI and EZV units at Vught Prison. They were good in the BPG and TA units at Vught Prison.

A standard single-occupancy cell was of a good size (they measured around 8.5 m<sup>2</sup>, excluding the fully partitioned sanitary annexe) and well equipped (bed, table, chair, cupboard, shelf, refrigerator, television, heating and call system). At Dordrecht and Vught Prisons, there were mostly single-occupancy cells, although several cells contained a bunk bed and accommodated two persons under somewhat crowded conditions.

At the EBI unit, the cells and cell windows were slightly larger. All cells were clean and in a good state of repair, and the lighting and ventilation were satisfactory; the common areas were generally clean and well equipped. Conditions were particularly supportive and friendly in the BBA unit (at Dordrecht Prison) and the EZV units (at Dordrecht and Vught Prisons). At Dordrecht Prison, there were also eleven six-person-cells which were much larger (some 46 m<sup>2</sup>) and better equipped, with cooking facilities, a large fridge, a washing machine and dryer, a large TV set, a phone, two separate toilets and a shower.

110. At Vught Prison, the delegation was pleased to learn that unit 1, a building dating from World War Two and which previously accommodated the temporary EBI facility and thereafter the TA unit, had been taken out of use. It was also informed of a new “masterplan” to refurbish the existing infrastructure in several old buildings (and particularly the ventilation systems), some of which were planned to be replaced with new facilities within the next five years (see also paragraph 122). However, the conditions of detention observed in the old buildings were of a lower standard, particularly in unit 7 where the delegation noted the presence of rodents and cells were less well equipped (no refrigerator or microwave). Several persons accommodated in both the unit for remand prisoners at Dordrecht Prison and parts of the units holding remand and sentenced prisoners (units 6 and 7) at Vught Prison complained about poor ventilation and high temperatures in summer in the cells. This was more problematic for persons held on remand who did not have sufficient out-of-cell time to take a shower. **The CPT recommends that units 6 and 7 at Vught Prison be refurbished and be kept clean. Further, the ventilation system in these units and in the unit for persons on remand at Dordrecht Prison should be repaired. The CPT would also like to be informed of the measures taken at Vught Prison and the timeline to implement the “masterplan”, particularly as regards the refurbishment and/or replacement of units 6 and 7.**

111. The different outdoor exercise yards were adequate in all facilities in terms of size, equipment, seating, and shelter. Most had some greenery and provided for a positive environment. There was also a football pitch at Dordrecht Prison which could however only be used by sentenced prisoners and many persons held in the remand centre expressed their dissatisfaction with this state of play. **The CPT encourages the management at Dordrecht Prison to consider also granting access to the football pitch to persons on remand.**

112. The most common complaint received from persons held in all establishments visited concerned the poor quality, taste and insufficient quantity of the food provided in the black disposable plastic boxes. Persons in all Dutch prisons are provided with frozen meals that they can warm up. This question was particularly problematic for indigent persons and for persons on remand, who did

not have the possibility of cooking their own food, due to the limited out-of-cell time and insufficient number of cooking facilities available. Many persons on remand indicated that they would prefer cooking their own food. In contrast, most sentenced prisoners did purchase and cook their own food. It was also positive that they received some additional fresh food from the prison authorities.

113. The CPT considers that all persons deprived of their liberty in prisons should be provided with adequate food, both in quantity and nutritional value, as part of a minimum decency threshold that must be observed.<sup>82</sup> The delegation was informed that a new contract for the supply of food in Dutch prisons was expected to be signed in summer 2022 and that the quality of the food served would therefore be improved.

**The CPT recommends that the Dutch authorities take the necessary steps to monitor the nutritional quality of the food provided to persons deprived of their liberty in prison. It would also like to be informed whether the new contract for food supply has been signed, whether the food quality has improved, and whether the different dietary requirements of detained persons are being catered for adequately.**

b. ordinary regime

114. The daily programme provided to sentenced persons held under the ordinary regime in the establishments visited was generally satisfactory. It is positive that, at Dordrecht Prison, which is a semi-open prison, prisoners had their own keys to their cells and could freely move inside most parts of the establishment during cell unlock. In contrast to the basic day programme, to which all persons are allocated upon arrival, the plus programme entitles persons in prison to five more hours of out-of-cell activities a week, one extra hour of visiting time and additional opportunities in terms of education, qualified work, and reintegration activities. Persons in prison become eligible for the plus programme, if they show good conduct and motivation for reintegration.<sup>83</sup>

However, only sentenced prisoners in the plus programme were able to spend additional time, on two evenings, outside their cell, whereas all other sentenced persons were required to stay in their cells as of 4.45 p.m. during weekdays. **The CPT encourages the Dutch authorities to make further efforts to provide additional out-of-cell recreational time for all sentenced prisoners, especially in the evenings.**

115. The delegation gained a positive impression of the activities on offer for persons held under the ordinary regime. Every person had an individualised sentence and reintegration plan, which was elaborated together with the person concerned shortly after their arrival. They could benefit from a variety of opportunities to engage in sport, leisure activities, education and vocational training, which allowed them to obtain a diploma (*Middelbaar Beroepsonderwijs 2 – MBO 2*), as well as work. This included for instance gardening, painting, packaging, metal work (powder coating), woodwork, textile work, cooking, cleaning, as well as work in the prison shop, warehouse, or laundry. The material conditions of the different workplaces were very good. It was positive that work was also offered to persons on remand for up to four hours a day, although work was no longer compulsory under the new legislation.

116. The situation was less satisfactory for persons on remand as most of them were still confined to their cells for up to 21 hours a day if they did not wish to work. In case of disciplinary sanctions or applicable restrictions, such as prohibition to participate in activities, this time could increase up to 23 hours a day. At Dordrecht Prison, the restrictions in terms of daily regime were such that many persons had insufficient time to call their families or friends, shower, clean their cells, prepare their own food, or wash their clothes.<sup>84</sup> The same situation prevailed at the remand centre at Vught Prison.

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82. See the 30th General Report of the CPT, *A decency threshold for prisoners – criteria for assessing conditions of detention*, CPT/Inf (2021)5, paragraphs 63-81.

83. See Section 1 (j.) of the Regulation on classification, placement and transfer of detainees (*Regeling selectie, plaatsing en overplaatsing van gedetineerden – Rspog*).

84. Persons met by the delegation indicated that they had repeatedly only been offered 30 to 45 minutes of recreation time.

117. The CPT has consistently held that the aim should be to ensure that all prisoners (including those on remand) spend a reasonable part of the day (eight hours or more) outside their cells engaged in purposeful activities of a varied nature. The regime of persons on remand in the Netherlands is far from meeting this objective.

**The CPT recommends that the Dutch authorities take the necessary steps to ensure that persons on remand are offered a range of purposeful activities of a varied nature (work, preferably with vocational value, education, sport, recreation/association). Further, at Dordrecht Prison, persons on remand should be allowed to have additional out-of-cell recreational time (at least two hours a day) to cater for their basic needs (such as preparing their own food, taking a shower, cleaning their cells and clothes, or making phone calls).**

118. The delegation gained a positive view of the newly created limited security unit (*Beperkt Beveiligde Afdelingen – BBA unit*) for reintegration at Dordrecht Prison, where sentenced persons could benefit from an open regime and reintegration leave for working outside the prison for four days per week (see however paragraph 170). The unit had just recently been established and was still evolving, with only four persons placed in the unit at the time of the visit. The security level was low, and cell-doors remained open throughout the day (from 6.30 a.m. to 9.30 p.m.). Persons in the unit could manage their own time and were free to see family or buy their own food in the community and were only required to stay in the unit at night and during weekends. Persons accommodated in these units had certain privileges such as access to a mobile phone, laptop, and musical instruments.

Further, the delegation was particularly impressed by the reintegration possibilities offered at Dordrecht Prison. At the so-called “reintegration unit”, all persons in prison (and particularly sentenced prisoners) received specific and tailor-made support for their reintegration back into the community by dedicated and specially trained members of staff. Progress during detention was regularly monitored, and persons in prison were provided with guidance regarding education, vocational training and work, including in cooperation with relevant actors, aftercare services and employers in the community. The aim was to ensure reintegration support during their deprivation of liberty and a smooth transition after their release, by ensuring education or employment, accommodation, and other support services.

They could also use computers (with restricted internet access) and access a well-equipped library, participate in computer classes or language courses and benefit from individualised counselling.

In the CPT’s view, the BBA unit and the opportunities for reintegration offered at Dordrecht Prison can be considered as good practice.

119. The very good impression of the extra care facilities (*Extra Zorgvoorziening – EZV unit*) formed during the CPT’s 2016 visit were confirmed during its 2022 visit.<sup>85</sup> At Dordrecht Prison and at Vught Prison, vulnerable persons and inmates with particular needs (such as sex offenders or persons with physical and/or underlying mental health issues), who cannot be placed in the ordinary regime for various protection reasons, were provided with appropriate care and support. The EZV units accommodated smaller groups in a calm and homely environment with the presence of plants, pictures or other decoration and sports/leisure equipment as well as, occasionally, pets. Dedicated and specially trained staff, including a psychologist, made efforts to limit the time spent in cells and allowed for a positive and caring environment. Detained persons could follow specific work activities.

c. special regimes

120. In the course of the 2022 visit, the delegation paid specific attention to the EBI, BPG and TA units at Vught Prison and the TA unit at Zwolle Prison.

121. At the outset, the CPT wishes to acknowledge the need for adequate security measures for those persons who pose an enhanced security risk for others as well as for society. The delegation

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85. See CPT/Inf (2017) 1, paragraph 44.

was informed that the Dutch authorities' efforts in tackling organised crime have led to an increase in the arrest and detention of persons suspected or convicted of having committed serious criminal activities of an organised nature, in recent years.<sup>86</sup>

122. The Penitentiary Principles Act distinguishes between four levels of security: limited security (*beperkt beveiligd*), standard security (*normaal beveiligd*), extensive security (*uitgebreid beveiligd*) and maximum security (*extra beveiligd*) (see also paragraph 163).<sup>87</sup> While Vught Prison is currently able to provide a secure environment for the most dangerous suspects and offenders of the country, the CPT takes note of the Dutch authorities' ten-point security plan for 2022, which notably focusses on strengthening the internal and external security of prisons. Further, there are plans for additional security measures in the existing locations, with a focus on Vught Prison, and particularly the creation of a facility for remote hearings via videoconference, a secure room for questioning, and a high-security courthouse within the prison complex by 2023. It was also planned to open a third small-scale Intensive Supervision Unit (*Afdeling Intensief Toezicht – AIT unit*)<sup>88</sup> in Alphen aan den Rijn Prison by mid-2022, and to build a new Judicial Complex in Vlissingen with a second EBI unit – with 30 places and a high-security courthouse with facilities for overnight accommodation – by mid-2028.<sup>89</sup> Changes to the relevant legislative framework and regulations were also planned, including by allowing for further restrictions in the various detention regimes, additional grounds for placement at the EBI unit, increased restrictions for lawyers, and more hearings by videoconference to limit and avoid the transportation of the most dangerous persons where there is an increased risk of escape.

However, as acknowledged by the Dutch authorities, these plans pose a number of security-related challenges, including for prison staff who are working directly with these high profile and potentially dangerous persons. It also requires a balanced approach. On the one hand, providing enhanced security measures and restrictions to the regime and/or contact with the outside world in order to prevent networking and ongoing criminal activity during detention.

On the other hand, ensuring that detained persons can live a dignified life in detention and that their rights are respected, with a view to allow for their possible reintegration into an ordinary detention regime and, possibly, back into the community. It appears to the CPT that this balance was not always struck in the EBI and BPG units visited, with an overemphasis on security and control.

123. The CPT's position concerning restricted regimes on high-security units is well known to the Dutch authorities and there has been an extensive exchange of views on this matter in the past.<sup>90</sup> The CPT wishes to recall the general principle, according to which prisoners who present a particular high security risk should, within the confines of their detention units, enjoy a relatively relaxed regime by way of compensation of their severe custodial situation. They should be able to meet their fellow inmates in the wing and be granted a good deal of choice concerning their activities (thus fostering a sense of autonomy and personal responsibility). Further special attention should be paid to the mental health of prisoners placed in these departments.

In particular, the highly restrictive regimes and the various security measures applied in the EBI units and in some parts of the BPG and TA units at Vught Prison appeared excessively restrictive. All persons held in these units are subjected to a tailor-made regime with a differentiated level of security measures being applied. Additional restrictions or relaxations to the regime are usually linked either to the conduct and behaviour of the persons concerned or aimed at segregating influential leaders or those who present an enhanced security risk. Persons placed on these units start with a stricter regime and, thereafter, security measures are gradually eased in case of progress, based on a risk

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86. This mainly concerns a small group of high-profile detained persons active in organised crime and drug trafficking, who continue to attempt to exert their power and influence during detention and court proceedings.

87. Section 13 (1) of the Penitentiary Principles Act; see also the Rspog.

88. Persons detained in these units are supervised more strictly than in the regular regime. They have their own day programme and no contact with detained persons from other wings or units. The first two AIT units were opened in Leeuwarden Prison in 2020 and in Krimpen aan den IJssel Prison in early 2021.

89. The construction of the Judicial Complex is expected to start at the end of 2023.

90. See CPT/Inf (93) 15, paragraphs 89-95, CPT/Inf (98) 15, paragraph 61, and CPT/Inf (2008) 2, paragraph 45. In this regard, reference is also made to the judgment of the European Court of Human Rights in *Lorsé and Others v. The Netherlands*, application no. 52750/99, 4 February 2003, paragraphs 43-44.

assessment. All persons in the EBI and BPG units are systematically handcuffed when taken out of their cells and during movements within their unit or in the establishment. In addition, they are required to hand over objects, such as their spoon, pen, toothbrush and even spectacles, before the cell door is opened, and are subjected to a pat-down search.

In the CPT's view, there can be no justification for routinely handcuffing persons held in the EBI and BPG units when they are outside their cells given that the measure is applied in an already secure environment.

**The CPT recommends that the current rules concerning the use of handcuffs be reviewed to ensure that they are applied in a proportionate way and only based on an individual risk assessment. Prison staff should be trained and encouraged to use other methods for controlling detained persons, such as verbal instruction and manual control techniques.**

124. The highest security measures and restrictions observed were applied at the maximum security institution (*Extra Beveiligde Inrichting – EBI unit*) in Vught Prison, which currently is the only such facility in the country.<sup>91</sup> It is intended for holding men and women on remand or sentenced in a high-security regime and segregated from the outside world and from other prisoners, because they present an extreme escape risk and/or an unacceptable risk to society in terms of major social unrest or indications of ongoing criminal activity.<sup>92</sup> The EBI unit has a total of 24 places (four wings of six cells each). Three wings with 18 cells are designated as EBI capacity and one wing of six cells is designated as TA capacity. At the time of the visit, 10 men were detained at the EBI unit; the high-secure TA wing within the EBI unit was neither occupied nor operational.

125. Nine of the 10 inmates were held under a restricted high-security regime in groups of three persons. Contact with anyone outside the group was prohibited. Persons held in the EBI unit could spend between three and six hours outside their cell, which included outdoor exercise, recreation and/or sport. Outdoor exercise yards were of a reasonable size and had some limited equipment and shelter. During recreation times of one to two hours, persons were allowed to access the communal areas on the upper floor where they could associate within their group, cook, and eat their own food, use a computer and/or play games. Each of the wings was equipped with various exercise equipment, located in a glass atrium. However, detained persons only had access to this equipment for one or two 45-minute sessions per week with a sports instructor. Further, they were not offered work and education.

126. The tenth person in the EBI unit was held under even greater restrictions and security measures in conditions akin to *de facto* solitary confinement with insufficient meaningful human contact since December 2019 (namely, two and a half years). At the time of the visit, he had been held in a separate wing on his own for more than eight months. Due to his physical segregation, he was entitled to an additional recreational slot which allowed him to spend up to a total of five to six hours a day outside his cell. Activities included access to the kitchen and all recreational areas on the upper floor, some daily fitness (he was allowed to use the full exercise equipment only once a week for 45 minutes with the presence of a sports instructor, who was located behind the armoured glass of the atrium) and one hour of outdoor exercise. In 2021, for two months, the person concerned had reportedly been subjected to additional security measures whereby the prison officers interacting with him wore balaclavas and only communicated with him in writing, he was not allowed any contact with the outside world (except with his lawyer), no visits by healthcare staff took place, and there was a ban on the use of television and reading material. This situation of complete isolation ended following a successful complaint and a court ruling which found the additional restrictions unlawful.

However, the Committee has been informed that the person concerned is again being subjected to additional security measures, including as regards contact with the outside world and his interactions with prison staff.<sup>93</sup> **The CPT would like to receive detailed information about the additional**

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91. The CPT previously visited the EBI unit in 1997, shortly after its completion, see CPT/Inf (98) 15, paragraphs 58- 70. The temporary EBI unit described in this report is no longer in use. The director of Vught Prison himself quite rightly referred to the facility as “a prison within the prison”.

92. Section 6 of the Rspog.

93. See the letter of 26 September 2022 from the Minister for Legal Protection, Franc Weerwind, to the House

**security measures that are currently being applied in respect to this person, as well as their legal basis.**

127. The Unit for detained persons posing management problems (*Beheersproblematische Gedetineerden – BPG unit*) aims at providing a secure environment for the detention of persons with violent or at-risk behaviour or who pose management problems to the extent that they present a risk for themselves and/or for other prisoners and/or staff. The BPG unit at Vught Prison is the only such facility in the Netherlands and might in principle also receive women. Special security measures and restrictions apply, and the higher staffing numbers on the unit are not only to allow for increased control but also to influence the behaviour of the occupants and promote their reintegration onto an ordinary regime unit. Detained persons stay on average between four and six months on the BPG unit. Material conditions on the BPG unit at Vught Prison were acceptable.

Upon entry to the BPG unit at Vught Prison, persons are placed under constant supervision by up to four prison officers and segregated from other persons on the unit. They might spend several weeks or months confined to their cells for 23 hours a day in conditions akin to solitary confinement.<sup>94</sup> In case of misbehaviour, they can be placed in a solitary confinement cell, either as a disciplinary sanction or as a measure. Restrictions are then gradually lifted and access to some activities (sport, cooking) as well as association time are granted under strict staff supervision to avoid incidents of inter-prisoner violence. Out-of-cell time may be increased to 18 hours per week. There are also some training sessions for persons in the BPG unit on how to better deal with aggression or managing addiction problems. Persons placed in this unit were not allowed to work and study.

128. The need to pay particular attention to the mental health of prisoners placed in the EBI unit, due to the harmful psychological consequences for those subjected to such a restricted regime, was highlighted by the CPT as early as 1997.<sup>95</sup> The principle of proportionality requires that a balance be struck between the requirements of the case and legitimate security concerns and the application of a highly restrictive or even solitary confinement-type regime, which is a step that can have harmful consequences for the person concerned. Interaction/association between detained persons should be the norm; conditions akin to *de facto* solitary confinement should only be used when unavoidable, in order to deal with a person who is assessed as acutely dangerous to others, and for the shortest period necessary. It is essential that these persons benefit from an individual assessment of their needs at regular intervals and every effort should be made to return them to mainstream custody.

Further, the existence of a satisfactory programme of meaningful activities (including work, education, sport, etc.) and sufficient meaningful human contact can do much to alleviate the deleterious effects upon a detained person's personality and mental health of living in isolation in the bubble-like atmosphere of such a high-security unit.

129. In light of the above remarks, **the CPT recommends that the Dutch authorities take the necessary measures to ensure that the tailor-made security regime and the restrictions applied for persons placed in the EBI and BPG units at Vught Prison always comply with the principles of proportionality and necessity. In particular, persons held in these units should be allowed to benefit from association time, sufficient out-of-cell time and a broader range of purposeful activities (including education and work).**

Further, **special efforts should be made to enhance the regime and provide sufficient meaningful human contact for those segregated from other persons to avoid that they are kept in conditions akin to *de facto* solitary confinement.**<sup>96</sup>

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of Representatives on additional measures against organised crime during detention.

94. Some cells were equipped with a TV set in a secure casing.

95. See CPT/Inf (98) 15, paragraphs 68 and 69. The symptoms described by the CPT included depersonalisation, feelings of helplessness and powerlessness, insomnia, anger and anxiety, and communication difficulties, disturbance of identity and psychosomatic symptoms.

96. Reference is made to the 21th General Report on the CPT's Activities, CPT/Inf (2011) 28, paragraphs 53-64, and to Rule 60.6.a-c of Recommendation Rec(2006)2-rev of the Committee of Ministers to member States on the European Prison Rules (revised).

130. Terrorist units (*Terroristen Afdeling – TA unit*) are intended for persons who are suspected or convicted of a terrorist offence or who proclaim or disseminate a message of radicalisation before or during their detention.<sup>97</sup> In recent years, the capacity of the TA units had increased from 48 to 70 places. In addition to the two existing units – one at Vught Prison with 46 places and one at De Schie Prison (Rotterdam) with 14 places,<sup>98</sup> a third TA unit with 10 places for women became operational in August 2020 at Zwolle Prison.<sup>99</sup> At the time of the visit, 27 men were being held in the TA unit at Vught Prison and 10 women in the TA unit at Zwolle Prison.

131. At Vught Prison, persons under the TA regime can spend between 26 and 36 hours a week (some three to six hours a day) outside their cells. This includes recreation time, including cooking or other activities in the communal room, outdoor exercise, sports, and spiritual care. Most persons also have the possibility to work. Greater restrictions are applied to newly admitted persons and those deemed as influential (leaders), who are not allowed to participate in group activities and have less available out-of-cell time. Within their cells, they could have a limited number of objects, such as pre-selected books and magazines and a television set. Most persons held in the TA unit could associate and undertake outdoor exercise in pre-established groups, consisting of between three and five inmates, based on an individualised risk assessment.

The atmosphere was more relaxed in the TA unit at Zwolle Prison, where two groups of five women could spend between three and six hours a day outside their cells for outdoor exercise, association and recreational time, including cooking. They also had the opportunity to access some (resocialisation) activities, educational classes, work, spiritual care, and a library.

132. It is positive that, in both TA units visited, a multi-agency case-oriented coordination was in place. Staff from the TA units, Custodial Institutions Agency, Probation Service, and municipalities work together in periodic multidisciplinary consultations to support persons with a terrorist or extremist background on their path towards a safe return to the community. During these consultations, an individual tailor-made resocialisation plan is discussed and established, based on a risk assessment,<sup>100</sup> with specific goals that are then monitored. Although some support activities existed, mainly in Zwolle, many persons interviewed by the delegation in the two TA units expressed their wish to receive additional support on de-radicalisation. **The CPT encourages the Dutch authorities to increase their efforts by providing additional support and de-radicalisation activities to persons detained in the TA units.**

133. Relations between inmates and staff at the two TA units at Vught and Zwolle Prisons were based on regular interactions and a dynamic security approach. Nevertheless, several persons held at the TA unit in Vught Prison told the delegation that they did not trust staff. In contrast, at the TA unit in Zwolle Prison, most of the women praised the staff working at the unit and stated that they were able to speak with them about their situation and their problems.

134. The procedure for placement and extension of placement in one of the high-security EBI and TA units are governed by the relevant provisions of the Regulation on classification, placement and transfer of detainees (Rspog).<sup>101</sup> In this regard, the CPT notes that additional safeguards have been introduced regarding the placement and extension of placement in the EBI unit by the placement officer,<sup>102</sup> such as a personal hearing of the person concerned and advice obtained by the Selection Advisory Committee for maximum security institution.

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97. Section 20a. of the Rspog.

98. The CPT previously visited these two units in 2007, see CPT/Inf (2008) 2, paragraphs 39-53. The 46 places at Vught Prison included the six TA places in the EBI unit.

99. According to the authorities, the decision to open the TA unit for women was taken due to the return of women detained in camps in Syria or Iraq and in order to hold women separately from men. Although no decision had been taken, it was anticipated that the capacity might need to be increased to 20 places, in the future.

100. The risk assessment is based on a tool for the assessment of TA detainees: Violent Extremist Risk Assessment 2 Revised (VERA-2R).

101. See Section 20a. and 26 of the Rspog.

102. In fact, the decisions on placement and extension of placements were taken by a Committee in the Custodial Institutions Agency.

An individual risk assessment is carried out upon admission to the EBI or TA units, which is periodically revised. However, placement decisions in these units (except for the women admitted to the TA unit at Zwolle Prison), appeared in a few cases to be grounded simply on a perceived risk, suspicion, or potential threat.

In this context, **the CPT would like to be provided with detailed information on the plans to amend the criteria for placement in the EBI unit and receive a copy of the amended regulations and house rules once they have been adopted.**

135. A review procedure exists for persons held in the TA units (every 12 months) and for persons placed in the EBI unit (every six months), with clearly defined criteria for sentenced prisoners that must be met to be eligible for discharge to an ordinary regime unit. The review of placement decision is carried out by a committee,<sup>103</sup> based not solely on the assessments and observations of the person's conduct and behaviour but also on the risks posed by that person, which are discussed in regular multidisciplinary consultations. However, most of the persons interviewed by the delegation in these units complained that they hardly had any privacy and felt constantly monitored and observed by staff, in whom they had no trust. Further, although the persons concerned had, in principle, the possibility to challenge their placement and renewal of placement decision, which were partly based on the conclusions from the constant observations and reports by staff on the units, it proved very difficult to do so in practice (for example, the refusal of a person to engage with the psychologist or caseworker was often interpreted as continuous aggressive or radicalised behaviour).

#### 4. Persons sentenced to life imprisonment

136. The CPT has always been very attentive to the situation of persons sentenced to life imprisonment. In its 25th general report, the CPT emphasised that all persons sentenced to life imprisonment should have a review at a pre-determined stage of the sentence, and regularly thereafter, which genuinely offers the possibility of conditional release for those no longer posing a danger to society. This review should be based on individualised sentence-planning objectives defined at the outset of the sentence. In that respect, detention in prison must be organised in such a way as to enable life-sentenced prisoners to progress towards their reintegration in the community. The possibility to apply for release after a certain amount of time should be real and effective.<sup>104</sup>

At the time of the visit, 58 men were serving sentences of life imprisonment in various prisons around the country, which represents an increase compared to the CPT's last visit in 2016.<sup>105</sup> It remains the case that most of them were placed in an ordinary detention regime, with the same regime applied as for other sentenced prisoners. The delegation interviewed several of them in different establishments.

137. The Committee takes note of the policy framework for the enforcement of life imprisonment announced by the Dutch government in 2016, which has come into effect in 2017.

The new rules provide for a gradual assessment of persons sentenced to life imprisonment and a procedure for the reassessment of their life sentences, thus taking into account the jurisprudence of the European Court of Human Rights.<sup>106</sup> Specifically, one year after the life sentence has been confirmed following the exhaustion of the right to appeal, the person concerned is examined by an

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103. Composed of the selection officer and representatives of the Public Prosecution Service, the Custodial Institutions Agency, the prison administration, and the Dutch intelligence service.

104. See 25th General Report on the CPT's Activities, CPT/Inf (2016) 10, paragraphs 67-82.

105. At the time of the 2016 visit, 33 persons were sentenced to life imprisonment.

106. European Court of Human Rights, *Vinter and Others v. United Kingdom*, application nos. 66069/09, 130/10 and 3896/10, Grand Chamber judgment of 9 July 2013, and *Murray v. Kingdom of the Netherlands*, application no. 10511/10, Grand Chamber judgment of 26 April 2016. While the Court expresses a preference for judicial review in connection with the necessary procedural safeguards and the importance of an independent assessment, Council of Europe member states have a certain discretion to choose the design of the reassessment mechanism, as long as persons sentenced to life imprisonment have a prospect of release.



outpatient psychiatrist and psychologist to establish whether this person suffers from a specific psychiatric disorder that increases the risk of recidivism and whether a therapy that reduces this risk must be started.<sup>107</sup>

It is still the case that the reassessment of the continuation of the deprivation of liberty under the new rules takes place in the context of a pardon procedure. 25 years after the start of the imprisonment, a first assessment is now carried out by the newly established Advisory Board on Life Sentences,<sup>108</sup> which evaluates whether the detained person concerned can be admitted to the reintegration phase, thereby granting the possibility to participate in resocialisation activities and qualify for reintegration leave. This decision is based on the following four criteria: the risk of re-offending, criminal threat posed, conduct and behaviour during detention, and impact on victims and survivors.<sup>109</sup> In the event of a negative decision, the Advisory Board determines when the next review would be carried out.

Two years later (that is no earlier than 27 years after the start of the detention), an *ex officio* pardon procedure takes place, in accordance with the Pardon Act (*Gratiwet*), to assess whether the life-sentenced prisoner has made such progress in terms of resocialisation and reintegration that further enforcement of the life sentence no longer serves any purpose in the administration of criminal justice and, hence, is no longer justified. The Minister, who is informed by the Advisory Committee on the progress made by the person concerned, then seeks the advice of the Public Prosecutor's Office and the criminal court that imposed the life sentence. It however remains the case that the final decision on whether to grant a pardon is taken, on a discretionary basis, by the competent Minister (on behalf of the Crown).<sup>110</sup> The Dutch Supreme Court has endorsed the new policy framework and ruled that the system for the enforcement of life imprisonment is structured in such a way that it does not violate Article 3 of the European Convention on Human Rights.<sup>111</sup>

138. Although persons sentenced to life imprisonment might receive treatment during the first 25 years of their detention, they do not qualify for activities aimed at reintegration into society<sup>112</sup> and do not have clearly defined objectives in their sentence plan to reach this goal. From the information gathered by the delegation during the visit, it also appears that the assessment and conclusions reached by the Advisory Committee on Life Sentences with respect to two persons sentenced to life imprisonment with whom the delegation spoke had not been fully considered in the decision-making process.

Moreover, in the CPT's view, the current pardon procedure, which is based on ministerial discretion rather than on a decision taken by the judicial authorities, is open to political influences and does not provide for the necessary procedural safeguards in terms of independence and impartiality. Further, the person sentenced to life imprisonment cannot appeal the decision if the Minister refuses to grant a pardon (except by way of lengthy civil court proceedings).<sup>113</sup>

**The CPT recommends that the Dutch authorities develop a reassessment mechanism for persons sentenced to life imprisonment, based on a judicial review instead of the current**

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107. As part of a catch-up operation, all persons who currently serve a life sentence are being examined.

108. The Advisory Board, which was established on 1 March 2017, is an independent committee composed of three lawyers and two behavioural experts, with extensive expertise in criminal law practice, enforcement of sentences and victims' rights. See the Decree setting up the Advisory Board for Life Sentences (*Besluit Adviescollege Levenslanggestraften*) and its explanatory memorandum.

109. The Advisory Board can access all relevant documentation and additional information necessary and bases its advice partly on the report of the diagnosis and risk analysis provided by the Pieter Baan Centrum (which is part of the Netherlands Institute for Forensic Psychiatry and Psychology), on advice obtained from the probation service and on a victim and next of kin survey. To this end, a life sentenced prisoner is placed – no later than six months prior to the assessment – in the Pieter Baan Centrum for an investigation aimed at risk analysis, criminal offence and personality development. See Section 12 of the Rspog.

110. See Sections 4, 5 and 8 of the Pardon Act.

111. Dutch Supreme Court, judgments of 19 December 2017 and 23 April 2019: ECLI:NL:HR:2017:3185 and ECLI:NL:HR:2019:600.

112. See Section 1c. of the Regulations on the Selection, Placement and Transfer of Prisoners.

113. See also Council for the Administration of Criminal Justice and Protection of Juveniles (*Raad voor Strafrechtstoepassing en Jeugdbescherming – RSJ*), Advisory report Life imprisonment revisited (*Advies Levenslang herzien*), 9 May 2022.

**pardon procedure. Further, individual sentence-planning objectives should already be defined at the outset of the sentence, offering the persons concerned a real and effective possibility of conditional release into the community.<sup>114</sup> The Committee would also like to be informed of the outcome of the evaluation of the Decree setting up the Advisory Committee for life sentences and of any further developments on this matter.**

139. In this context, the delegation was also informed about the challenges in addressing the specific needs of older prisoners in terms of conditions of detention, healthcare and nursing, given the increasing numbers of elderly persons in Dutch prisons. **The CPT would like to receive the comments of the Dutch authorities on this matter. Further, it wishes to be informed whether there is a strategy on how to deal with the steadily aging prison population.**

#### 5. Healthcare services

140. The delegation found that healthcare services were of a high quality in all establishments visited. Healthcare facilities were adequately equipped and individual electronic medical records of patients were set up and well maintained.

141. Healthcare staffing levels were adequate in the three prisons visited. Doctors usually provided cover from Monday to Friday between 8 a.m. and 5 p.m., with daily consultations being organised in the morning. After 5 p.m. and during weekends an on-call service was arranged. While at Dordrecht Prison there were only eight nurses who were present from Monday to Friday between 7.30 a.m. and 5 p.m., the delegation noted positively that at Vught Prison, 20 nurses provided 24/7 cover and that one nurse was responsible for overseeing detained persons with chronic health conditions.

Further, the presence of psychologists and visiting psychiatrists appeared sufficient for the needs of the prison population. Detained persons with psychiatric disorders can be placed in EZV units, which exist in every prison, where they can benefit from additional care; whereas persons in an acute state can be transferred to a PPC to receive specialist care in an appropriate medical environment. In addition, a dentist, a physiotherapist, and an optician regularly attended the prisons visited. Other specialities were provided externally in the nearby local or regional hospitals. It was also positive that multi-disciplinary team meetings were held weekly to discuss complex health cases.

142. Detained persons had rather easy access to healthcare staff. They could call the medical service for free to request an appointment, thus guaranteeing confidentiality and access. Inmates were usually seen first by a nurse and, if required, by a doctor. Access to specialist care was adequate for most detained persons. However, persons placed in the EBI, BPG and TA units at Vught Prison complained that the security measures and restrictions imposed delayed and significantly hindered access to outside specialists. For example, an examination of a person held in the EBI unit had not been possible because the specialist doctor was not allowed to bring his equipment inside the facility.<sup>115</sup> **The CPT recommends that the Dutch authorities ensure that all persons in the EBI, BPG and TA units at Vught Prison in need of specialist medical care are able to access the care they require.**

143. Medical screening of detained persons upon arrival was carried out by a nurse, reporting to a doctor, within 24 hours.<sup>116</sup>

The screening consisted of a questionnaire and a summary check of the somatic and psychological condition of the newly arrived inmate, including risks of suicide and self-harm.<sup>117</sup> Telephone interpretation services were available for foreign nationals, if needed. At Dordrecht Prison, it

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114. See the 25th General Report of the CPT, CPT/Inf (2016) 10, paragraphs 67-82.

115. In contrast, one woman detained in the TA unit at Zwolle Prison had been afforded access to a hospital specialist who had commenced a very expensive treatment following her diagnosis with multiple sclerosis.

116. In practice, this normally happened within the first few hours after their admission, either in the reception unit or in the medical unit of the prison.

117. That said, despite these measures and a suicide prevention programme, regular suicides and suicide attempt had occurred, at Dordrecht Prison.

transpired from the interviews with persons held on remand that medical screening was not always carried out within the first 24 hours after their arrival. While screening for tuberculosis was regularly carried out in all prisons visited, there was no systematic approach to screening for blood-borne viruses (such as HIV or Hepatitis B or C) or for identifying any possible signs of substance use and psychiatric disorders, despite the acknowledgment of a significant proportion of detained persons with a history of substance use and mental health issues.

**The CPT recommends that all newly arrived prisoners are systematically examined within 24 hours of their arrival at Dordrecht Prison. Further, all newly admitted persons in Dutch prisons should benefit from a comprehensive physical examination and screening of transmissible diseases. Particular attention should be paid to the identification of any vulnerabilities and possible signs of substance use and psychiatric disorders.**

144. Most of the women placed in the TA unit at Zwolle Prison had been held in detention camps in Syria or Iraq before being returned to the Netherlands. Often, they had also been separated from their children. Most were traumatised and/or suffered from psychological and other health-related problems. The CPT notes positively that special attention was paid to the health-related needs of the women concerned and that they were subjected to a comprehensive risk and needs assessment upon their arrival. However, several women complained that they were only able to benefit from psychological or trauma support several weeks after their arrival on the TA unit, after their induction period and risk assessment had been carried out. The delegation was also informed that the psychologist position at the TA unit was vacant, at the time of the visit. Moreover, some persons with a TBS order<sup>118</sup> who had been admitted at Dordrecht Prison, had not benefitted from adequate supervision by healthcare staff after their arrival.

**The CPT recommends that women held in the TA unit at Zwolle Prison be able to access enhanced psychological and trauma support services, and that detained persons under TBS order held at Dordrecht Prison receive adequate support and supervision by healthcare staff, swiftly after their arrival. It also wishes to be informed of whether the dedicated psychologist position has now been filled.**

145. The CPT has repeatedly stressed the important role that healthcare services can play in the prevention of ill-treatment through the diligent and accurate recording of injuries of detained persons – whether newly arrived or following a violent incident in the prison – and, when appropriate, the provision of information to the relevant authorities. At the time of the visit, there was still no comprehensive examination upon arrival in the establishments visited with a view to discover and document traumatic injuries in place, as previously acknowledged by the Dutch authorities<sup>119</sup> and despite the CPT's previous recommendation in this sense. It also remains the case that no register for traumatic injuries was kept in any of the establishments visited.

The CPT would like to recall the critical importance of the systematic recording and reporting of injuries. For prison staff to fully play their role in preventing ill-treatment, it is incumbent on every prison doctor to comprehensively screen, record and report all injuries noted on detained persons.

**The CPT reiterates its recommendation that steps be taken in the establishments visited and, if appropriate, in all prisons in the Netherlands, to ensure that the record drawn up after the medical examination of a detained person – whether newly arrived or following a violent incident in the prison – complies with the procedure set out by the CPT in paragraph 59 of its report on the 2016 visit (CPT/Inf (2017) 1).**

**Reference should also be had to the 2022 revised Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).**

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118. A "TBS" order (*terbeschikkingstelling*) is designed to respond to the special needs created by persons with psychiatric disorders who have committed serious offences and who are considered likely to re-offend.

119. See the response of the Dutch authorities to the CPT's 2016 visit report, CPT/Inf (2017) 29, p. 22.

146. Medical confidentiality appeared to be respected for consultations that were carried out in the three prisons visited, with one exception. As in the past, medical examinations of all persons held under enhanced security measures in the EBI and BPG units at Vught Prison, were systematically carried out in the presence of prison officers and while restrained and/or handcuffed to custodial staff. Further the use of restraint or handcuffs during transfers to, and treatment in, outside hospitals remained a common practice, as was the presence of escorting officers during medical examinations or acts, including during scanner, x-ray, or operation under narcosis, and in some cases despite objections from healthcare staff.

147. In the CPT's view, medical consultations should, in principle, be done out of the hearing and – unless the doctor concerned expressly requests otherwise in a given case – out of the sight of custodial staff or escorting officers, as their presence undermines medical confidentiality and is detrimental to the establishment of a proper doctor-patient relationship. Alternative solutions can and should be found to reconcile legitimate security requirements with the principle of medical confidentiality. To facilitate the preservation of medical confidentiality, external hospitals should have an appropriate room designed for this purpose which provides appropriate security safeguards. The Committee has also made it clear that the examination or treatment of prisoners subject to coercive measures is a highly questionable practice from both ethical and clinical aspects and should only be resorted to in very rare individual cases, based on an individual risk assessment of the person concerned. The practice of handcuffing a detained person to a custodial officer during a medical consultation, even when the consultation takes place in a secure environment, is not acceptable from the standpoint of medical ethics and human dignity.

**The CPT reiterates that the Dutch authorities must take the necessary steps, including at a normative level, to ensure that these precepts are respected during medical consultations to guarantee medical confidentiality, subject to an individual risk assessment. Detained persons should not be systematically handcuffed/restrained when transferred to, or examined in, external healthcare facilities or examined in a secure environment; the practice of handcuffing a detained person to a prison officer should be ceased forthwith.**

148. Medication was supplied externally by pharmacies every day. It was prepared by nursing staff into folders, but it remains the case that its distribution was carried out by custodial staff. Hence, medication and its dosage were clearly visible to prison officers – a practice which could compromise medical confidentiality requirements. In the CPT's view, medication should be distributed by healthcare staff.

**The CPT reiterates its recommendation that the practice of distribution of medication be reviewed accordingly in the establishments visited and, if applicable, in all prisons in the Netherlands.**

149. Moreover, the approach of the prison administration regarding substance use was still a punitive one. In each establishment, only a few detained persons entered a substitution programme (methadone). The delegation was informed that there was also the possibility to transfer detained persons to a drug rehabilitation clinic for treatment. Mandatory drug testing was carried out regularly by prison officers and those testing positive were systematically subjected to disciplinary sanctions. As acknowledged by the Dutch authorities, admission to prison provides an opportunity to address a person's drug-related problems. **The CPT recommends that the Dutch authorities take further steps to provide support to detained persons in dealing with substance-use issues as well as various treatment options, including opioid agonist therapy, rehabilitative programmes and harm reduction measures (including needle-exchange programmes).**

150. Once again, the CPT is concerned that, in the prisons visited, the segregation cells used for disciplinary solitary confinement were also used as a measure for secluding detained persons for medical reasons, including observation in case of risks of suicide and self-harm.

The Committee once again affirms its view that this practice should be immediately discontinued as these two types of isolation differ fundamentally due to their different function and should not be confused, in the minds of either prisoners or staff. The delegation spoke to persons who were or had

previously been placed under medical observation but who believed that they were being punished by prison staff for their behaviour. Moreover, it may also undermine the doctor-patient relation and could affect the quality of healthcare. Other arrangements should be found for prisoners requiring medical or psychiatric care and such persons should be placed in distinct observation rooms in the healthcare units equipped for this purpose.

**The CPT reiterates its recommendation that the healthcare units at Dordrecht Prison and at Vught Prison and, if applicable, in other prisons in the Netherlands, be provided with dedicated premises for this purpose.** Reference is made to the remarks and the recommendation made by the CPT in paragraph 159.

151. The last Covid-19-related restrictions (the requirement to wear masks during open visits) had been lifted in all prison establishments some two weeks prior to the visit, although detained persons were still being asked to carry out a rapid self-test after visits. There were no Covid-positive cases<sup>120</sup> in either prison, at the time of the visit. However, the effects of the restrictions regarding visits and activities on the mental health of detained person cannot be overstated.<sup>121</sup> Further, some of the staff still had health-related issues with long-Covid, which resulted in high rates of staff absenteeism and a reduced day programme, with less out-of-cell time and fewer activities. Overall, the pandemic appeared to have been well managed in the prisons visited. It is also positive that, at Vught Prison, a high proportion of the prison population had been vaccinated (an estimated 70%).

152. Prison healthcare remains under the responsibility of the Ministry of Security and Justice which is responsible for healthcare staff and the healthcare services provided to persons in prison.

The CPT would like to reiterate that it supports the ongoing policy trend in Europe which has favoured prison healthcare services being placed either to a great extent, or entirely, under Ministry of Health responsibility.<sup>122</sup> In particular, it is convinced that a greater participation of health ministries in this area (including as regards recruitment of healthcare staff, their in-service training, evaluation of clinical practice, preventive measures regarding public health certification and inspection) will help to improve the quality of healthcare for prisoners, as well as implementation of the general principle of the equivalence of healthcare in prison with that in the wider community. In light of the above findings of the CPT (and particularly the medical screening of injuries and medical confidentiality), such a change in stewardship would also have a positive effect on prevention and the provision of care for persons in prison in the Netherlands.

**The CPT again invites the Dutch authorities to consider the possibility of bringing prison healthcare services under the responsibility of the Ministry of Health.**

6. Other issues

a. prison staff

153. The Covid-19 pandemic put a great strain on prison staff, impacting negatively on their working conditions as well as resulting in many staff getting sick, some for extended periods, which had a knock-on effect on life in Dutch prisons.

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120. In the last two years, many prisoners and staff members, had tested positive and had to be placed in quarantine but no prisoners had died as a consequence of a Covid-19 infection. In contrast, a number of staff members had died.

121. The delegation was informed by the management of Dordrecht Prison of the suicide of a detained person who was reportedly held in quarantine, in January 2022. An official investigation into the case was ongoing at the time of the visit.

122. See, for example, Recommendation No R (87) 7 of the Committee of Ministers of the Council of Europe to member States concerning the ethical and organisational aspects of healthcare in prison.

The Dutch authorities informed the delegation that a total of 1 455 new prison officers were hired in 2021, which represents a welcome policy decision to bolster flagging staffing numbers.<sup>123</sup> According to the *“Life in Custody Study”*, carried out by researchers of Leiden University in 2017, the relationships between custodial staff and persons in prison remains “favourable and fair, with a discernible positive impact on the wellbeing, behaviour and even outcomes of persons after their release”.<sup>124</sup> The findings gathered by the delegation confirm the results of this survey. Prison officers undergo a basic training of three years and receive additional training including in de-escalation techniques, inter-personal communication skills, and suicide prevention throughout their careers.

However, at both Dordrecht Prison and Vught Prison, there were still several vacancies concerning both custodial staff and skilled work instructors. Reportedly, it was difficult to find new qualified staff, as the entry salary remained low, compared to other professions. Further, due to the loss of many experienced staff over the past decade, many young prison officers lacked experience in dealing with difficult situations and were offered insufficient supervision. **The CPT encourages the Dutch authorities to continue their efforts to recruit additional prison staff and to provide support, training and supervision to newly recruited or junior staff.**

154. Prison staff working in the EBI, BGP and TA units are specially trained and receive a higher salary. Regular peer evaluations are also conducted. The delegation spoke to many very dedicated and committed members of staff. However, at the EBI and BPG units at Vught Prison, the delegation noted that relations between staff and prisoners were reduced to a minimum. The atmosphere in these units – based almost exclusively on a control and security approach – was not conducive to building positive relations between staff and detained persons. Especially at the EBI unit, staff and prisoners were usually physically separated by armoured glass panels, and there was little direct contact or dialogue with persons held on the unit.

The CPT recognises that working with detained persons who require high-security measures or pose a threat to themselves or others is a particularly demanding task for prison staff. Nevertheless, special efforts should be made to develop a good internal atmosphere within such units. The aim should be to build positive relations between staff and detained persons. This is not only in the interest of the humane treatment of the units’ occupants, but also of the maintenance of effective control and security, and of staff safety. From the interviews carried out by the delegation, it became obvious that the relationship between prison officers and inmates in these two units was characterised by mutual distrust. **The CPT encourages the authorities to provide additional support and resilience training to prison staff working at the EBI and BPG units to increase positive interactions with persons held on these units.**

b. discipline

155. Disciplinary sanctions are imposed by the prison director or the deputy director after having received a report drafted by a custodial officer. Persons in prison have the right to be heard and to receive a copy of the disciplinary decision. The decision can be challenged before the Complaints Committee (*Beklagcommissie*) and its ruling may be appealed, within seven days, before the Appeals Committee (*Beroepscommissie*) of the Council for the Administration of Criminal Justice and Protection of Juveniles (*Raad voor Strafrechtstoepassing en Jeugdbescherming – RSJ*).

156. As indicated above (see paragraph 90, according to the Penitentiary Principles Act, solitary confinement can be imposed on persons in prison both as a measure and as a disciplinary sanction. It is recalled that solitary confinement may be imposed as a measure for “maintaining order and security” or for protection reasons, for up to 14 days, renewable as long as necessary.<sup>125</sup>

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123. In 2013, the Dutch Government decided to reduce the number of prison officers by more than half. In 2015, nearly 6 400 posts out of 12 300 had been cut, which amounted to 52.7% over a three-year-period, but which also coincided with a steady decrease in the overall inmate population. With the prospect of a steadily rising prison population, this policy was no longer sustainable.

124. Van Ginneken E., Hanneke Palmes A., Nieuwbeerta P., Berghuis M., *The Life in Custody Study: The quality of prison life in Dutch prison regimes*, Institute of Criminal Law and Criminology of Leiden University, 2018, p. 8.

125. Sections 23 and 24 of the Penitentiary Principles Act.

Among the list of disciplinary sanctions, solitary confinement as a disciplinary sanction in a punishment cell or other cell is the most severe. The maximum time of disciplinary solitary confinement is two weeks.<sup>126</sup>

157. According to the information gathered during the visit, disciplinary sanctions appeared to be applied proportionately in the establishments visited. In practice, those who did not respect the house rules were disciplined. Detained persons were mostly confined to their own cells, with further restrictions such as withdrawal of the TV set or prohibition to participate in communal activities. Resort to disciplinary solitary confinement was not excessive and was mostly applied for only a few days.

158. As regards the disciplinary procedure, several detained persons interviewed both at Dordrecht and Vught Prisons indicated that they were not given the opportunity to defend themselves effectively or obtain legal advice or representation when placed in disciplinary solitary confinement. Some persons who had been held in disciplinary solitary confinement for more than seven days had not been allowed by prison officers to exercise their right to complain within the time-limit required by the complaints procedure (see paragraph 176). Further, foreign nationals also complained that the disciplinary decisions were only written in Dutch language and had not been translated to them. **The CPT recommends that these shortcomings be remedied.**

159. If solitary confinement lasts for more than 24 hours, the prison director must inform the prison doctor and the prison supervisory committee of this measure.<sup>127</sup> Despite the Dutch authorities' assurances following the CPT's 2016 visit that the role of medical staff in situations involving solitary confinement would be reviewed and regulations modified, where necessary, it remains the case that persons held in solitary confinement as a disciplinary sanction were only seen by a psychologist on an irregular basis.<sup>128</sup> A doctor may be called only if the psychologist had additional concerns. Several persons who had been placed in disciplinary solitary confinement confirmed that they had not been attended by healthcare staff during their stay in the punishment cells.

The CPT is of the view that healthcare staff should be very attentive to the situation of detained persons placed under solitary confinement and should visit them immediately after placement and, thereafter, at least once per day to provide them with prompt medical assistance and treatment as required. **The CPT reiterates its recommendation that the Dutch authorities take the necessary steps, including at the legislative level, to ensure that the role of healthcare staff vis-à-vis persons held in solitary confinement be reviewed, in light of the above remarks.**<sup>129</sup>

160. In terms of material conditions, the solitary confinement cells had sufficient access to natural light and were appropriately ventilated, at Dordrecht Prison and Vught Prison. However, they were only equipped with a toilet, soft foam blocks (serving as a bed and table), a call system and CCTV camera. They did not contain a table and a chair or a proper bed. Further, the CCTV camera, which was only switched on upon medical advice for persons under observation for protection reasons, also showed the toilet area. **The CPT reiterates its recommendation that cells used for disciplinary solitary confinement, at Dordrecht Prison and Vught Prison and, if appropriate, in other prisons of the country, be equipped with a table and chair, if necessary fixed to the floor, in addition to a proper bed. Further, when it is deemed necessary to place detained persons under video-surveillance, steps should be taken to ensure that their privacy is preserved when they are using a toilet, for example by pixelating the image of the toilet area.**

161. In respect of the solitary confinement cells in the BPG unit at Vught Prison, the delegation received multiple complaints about the poor cleaning and ventilation of the cells. Detained persons previously held there told the delegation that they were asked to clean the cells in which they had

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126. Section 51 of the Penitentiary Principles Act.

127. Section 55 of the Penitentiary Principles Act.

128. In contrast, nurses and psychologists (or, if required, a psychiatrist) visited persons held in solitary confinement as a measure for observation purposes up to twice daily.

129. Reference is made to Rule 43.2 of the European Prison Rules and the comments made by the Committee in its 21st General Report, see CPT/Inf (2011) 28, paragraphs 62-63.

been placed after their stay. During the delegation's visit, the cells smelled of urine. **The CPT recommends that the cells be cleaned properly after each use and that the ventilation system is maintained.**

162. Further, the management of Dordrecht Prison informed the delegation about the plan to create time-out rooms at the EZV unit to allow agitated persons to calm down without the need to have recourse to placement in disciplinary solitary confinement. **The CPT encourages the Dutch authorities to promote the use of time-out rooms in all prisons in the Netherlands.**

c. security

163. Despite the CPT's previous recommendation to change the applicable regulations and practice as regards strip searches, it remains the case that they can be ordered by the prison director when the detained person enters or leaves the prison, receives visits or when deemed necessary. They are carried out by custodial staff – if possible, by staff of the same sex – in a dedicated area.

In all establishments visited, detained persons (both men and women) continued to be subjected to strip searches, during which they had to undress completely and squat (in some cases men were also asked to lift their testicles and/or spread their cheeks), which was perceived as degrading by many of the persons in prison with whom the delegation spoke. The delegation also received some complaints from persons placed in the EBI, TA and BPG units at Vught Prison about the systematic use of strip searches, including before and after each visit. Further, frisk searches were not always carried out by staff of the same sex.

The CPT has repeatedly stated that every strip-search is a very invasive and potentially degrading measure. To minimise embarrassment, detained persons who are searched should not normally be required to remove all their clothes at the same time, that is a person should be allowed to remove clothing above the waist and put it back on before removing further clothing, based on an individual risk assessment. Further, both frisk and strip searches should only be carried out by custodial staff of the same sex. It is time for the Dutch authorities to adhere to these principles. **The CPT recommends that the Dutch authorities take the necessary steps to ensure that these precepts are effectively implemented in all prisons. To this end, the regulations and practice applicable to strip searches should be changed accordingly.**

164. Moreover, it remains the case that the prison director can order that mechanical restraint be imposed on a person in solitary confinement for a maximum of 24 hours if this measure is necessary due to a serious health or safety risk for the person concerned or for others. This measure can be prolonged, each time for 24 additional hours, after consultation of the prison doctor.

The CPT notes with concern that restraint beds with straps for five-point fixation were still being stored or in use in the prisons visited. The delegation was informed that all prisons in the Netherlands were still equipped with such a device. At Vught Prison, the delegation found that the restraint bed in the isolation wing of the BPG unit continued to be used regularly for the immobilisation of agitated or violent persons, including those with psychiatric problems. According to the registers, in the course of 2021 and 2022, a restraint bed had been resorted to twice at Dordrecht Prison and five times at Vught Prison, for periods lasting no longer than a few hours. The most recent case of use at Vught Prison occurred two days before the delegation's visit.

165. In the Committee's view, the practice of using restraint beds in prisons should be ended. Agitated persons who pose a serious danger to themselves or to others could be temporarily isolated in a secure time-out room (if necessary equipped with soft padded walls and floor) until they restore behavioural control. If they do not calm down, they should be transferred to a suitable healthcare facility; restraint beds should not, in principle, be used in a non-medical setting. **The CPT recommends that the Dutch authorities abandon the resort to restraint beds in prison and that these beds be removed from all prison establishments.**



d. contact with the outside world

166. In all prisons visited, inmates could receive weekly visits for one hour (persons on remand or placed in one of the special regime units) or two hours (sentenced prisoners).

At Dordrecht Prison, sentenced prisoners could also receive unsupervised intimate visits from their partner once a month, for up to two hours. Persons in prison could now also benefit from parent-child visits once every six weeks in a child-friendly environment. However, persons detained at Vught Prison complained that the waiting time for such visits was several months. **Steps should be taken to reduce the waiting time for parent-child visits at Vught Prison.**

167. For sentenced prisoners held under the ordinary regime, phone calls were not restricted in principle. However, the delegation received a high number of complaints from remand prisoners at Dordrecht Prison that they had difficulties in maintaining contact with their families due to the insufficient out-of-cell time offered to them and the insufficient number of pay phones available. For instance, at Vught Prison, 20 persons on remand had to share one phone per wing. **The CPT recommends that the Dutch authorities take the necessary steps to enable all persons on remand to benefit from sufficient out-of-cell time to make phone calls.** The CPT also refers to its comments and the recommendation made in paragraphs 116-117.

168. Persons in prisons also benefitted from videoconference calls via Voice over Internet Protocol (VOIP) with their families and friends in all prisons visited.

169. While all persons in prison had the possibility of sending and receiving written correspondence, further restrictions were imposed recently. Until 2021, all persons in Dutch prisons had the possibility of sending letters to and from prison through digital e-mails that were controlled, sent and received by prison staff (“eMates”). This represents a particular restriction for foreign nationals with family living abroad, who can no longer benefit from this service and now need to use ordinary mail. **The CPT would like to be informed whether this service will be re-installed.**

170. It is positive that sentenced prisoners could benefit from reintegration leave during the final stages of their sentences. However, some sentenced prisoners, mostly detained under the ordinary regime, indicated that they had lost the possibilities of short-term and long-term leave, which had previously allowed them for instance to spend time with their families during the weekend, as these had been abolished under the new legislation. The stricter rules regarding reintegration require that some sentenced prisoners who are eligible for leave, and particularly those convicted for violent offences, must first obtain a risk assessment or crime analysis by the prison psychologist, which has resulted in long waiting times and delays in the reintegration process. Given that leave is an essential part of the successful reintegration of persons deprived of their liberty, **the CPT would like to be informed of the operation of the new leave system and whether the backlog in assessments for leave has now been cleared.**

171. Inmates placed under a special regime in the EBI, BPG and TA units at Vught Prison and in the TA unit at Zwolle Prison are entitled to a one-hour visit and between two and four 10-minute phone calls per week with family members and other persons approved in advance by the prison management. Their contact is permanently supervised and all phone calls and conversations during visits (except those with privileged persons or agencies, including lawyers) are recorded. Further, these visits took place, in principle, under “closed” conditions for persons in the EBI and BPG units. Once a month, most of these persons have the right to request an “open” visit by family members, during which they are directly supervised by prison staff and subjected to systematic strip-searches before and after the visits (see paragraph 163). Several persons detained in these units indicated that they preferred to no longer make phone calls with their families and friends or to receive “open” visits, due to these restrictions and security measures or out of fear that their conversations might be used against them both in the context of ongoing criminal proceedings and for the purpose of risk assessments or crime analyses being carried out.

172. The CPT accepts that in specific cases it will be justified, for security-related reasons or to protect the legitimate interests of an investigation, to have visits take place under “closed” conditions and/or communication monitored, based on the facts of the case or to prevent ongoing criminal activities. However, the conditions under which visits are taking place should not be restricted or be prohibitive to the extent that detained persons no longer have any contact with their families and friends. In this regard, the Committee is concerned about the planned introduction of additional restrictions of contact with the outside world for persons detained in the EBI unit.

It is very important for persons deprived of their liberty to be able to maintain good contact with the outside world. Above all, they must be given the opportunity to maintain their relationships with their family and friends, and especially with their spouse or partner and their children. The continuation of such relations can be of critical importance for all concerned, particularly in the context of resocialisation of detained persons. The guiding principle should be to promote contact with the outside world as often as possible. In light of the above remarks, **the CPT would like to be informed about the Dutch authorities plans to further restrict contact of persons detained in the EBI unit.**

173. Persons in prison had, in principle, unrestricted access to a lawyer. However, the delegation was informed about plans to significantly restrict and supervise contact with lawyers. This included, for instance, the possibility of (visual) CCTV-monitoring of interviews between lawyers and their clients.<sup>130</sup> Having in mind the importance of the fundamental right to access to a lawyer and the confidentiality of the lawyer-client relationship, **the CPT recommends that the confidentiality of the lawyer-client consultations be guaranteed.**

e. information on rights

174. Upon their arrival, detained persons have an induction meeting with prison staff, where they are provided with relevant information, including on their rights and various information documents. A copy of the prison regulations and house rules is accessible on all wings. The delegation was informed that telephone interpretation was made available to foreign nationals. However, many foreign nationals detained in both Dordrecht Prison and Vught Prison complained that they had not been provided with information on their rights in a language that they could understand. **The CPT encourages the Dutch authorities to ensure that care is taken to ensure that all detained foreign nationals are effectively informed of their rights, both orally and in writing, in a language that they can understand.**

175. At the TA unit at Zwolle Prison, women were also provided with this information upon arrival. However, some women indicated that they were too emotional to understand this information, as they had just arrived in the country and had been separated from their children. **Care should be taken to allow women to rest and receive psychological support first before providing them again with information on their rights during a follow-up interview after their arrival in the TA unit at Zwolle Prison.**

f. complaints and inspection procedures

176. Persons in prison have the right to lodge a complaint against any decision made by or on behalf of the director of a prison, including complaints about possible allegations of ill-treatment.<sup>131</sup> They could address complaints to the Complaints Committee via confidential mailboxes on each wing. The delegation was informed that the relevant Complaints Committee regularly met with the prison management to discuss relevant problems. The decision may be appealed before the Council for the Administration of Criminal Justice and Protection of Juveniles (RSJ). There is also a special Complaints Committee for medical complaints. The delegation gained the impression that, overall, the complaints system seemed to function effectively.

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130. See the letter of 26 September 2022 from the Minister for Legal Protection, Franc Weerwind, to the House of Representatives on additional measures against organised crime during detention.

131. See Sections 60 and 61 of the Penitentiary Principles Act.

177. However, some persons who had previously been placed in solitary confinement for between one and two weeks reported that they were not able to exercise their right to complain in practice, as the time limit for making a complaint cannot exceed seven days after the relevant decision. Further, several persons interviewed at both Dordrecht Prison and Vught Prison expressed their dissatisfaction about the lack of response to their complaints. In this regard, the delegation was informed that the Complaints Committees reportedly did not have sufficient resources to deal with the steadily increasing number of incoming complaints. Moreover, none of the persons met in prison were informed about the possibility to contact or complain to the National Ombudsman and/or the NPM.

**The CPT recommends that the Dutch authorities ensure that persons placed in solitary confinement can effectively exercise their right to complain within the required timelines. Further, it encourages the Dutch authorities to explore whether the Complaints Committees still have the necessary resources to effectively deal with the high number of complaints submitted. The CPT would also like to receive statistical data on the number and breakdown of complaints by topic for the years 2021 and 2022.**

**Moreover, the CPT recommends that steps should be taken to inform persons in prison about the possibility to contact and/or complain to the National Ombudsman and/or the NPM.**

178. In terms of inspections, a Supervisory Committee (*Commissie van Toesicht*) is set up for each prison establishment, which carries out regular visits. All Supervisory Committees submit annual reports in which their relevant findings are presented. Further, the Inspectorate of Justice and Security can also carry out inspections.

179. It also remains positive that each prison visited had a Committee of Prisoners (*Gedetineerden Commissie – Gedeco*), composed of prisoners who were elected by their peers to ensure the effective representation of their views and raise specific concerns with the prison management. The Committees of Prisoners hold weekly meetings and regular meetings are organised with the prison director to exchange views and discuss problems.

## ARUBA

### A. Police establishments

#### 1. Preliminary remarks

180. At the time of the visit, the 1996 Code of Criminal Procedure of Aruba (CCP) remained in force. In so far as is relevant for the CPT, it has remained largely unchanged since the previous visit in 2014.

It should be recalled that persons suspected of having committed a criminal offence may be held by the police for questioning for a maximum of six hours.<sup>132</sup> Thereafter, if the needs of the investigation so require, the person may be placed in police custody (*inverzekeringstelling*) for a maximum period of two days, on the decision of a prosecutor or an assistant prosecutor<sup>133</sup> reporting to the prosecutor.<sup>134</sup> Police custody may be further extended by the prosecutor for an additional maximum period of eight days.<sup>135</sup> However, the suspect must be brought before the investigating judge as soon as possible – and within 24 hours – after the beginning of such an extension in order to decide on its lawfulness.<sup>136</sup> During the period of police custody (up to 10 days and 16 hours), the detained person is held in a police facility.

Thereafter, a person may be placed in remand detention (*voorlopige hechtenis*) as regulated in Title VIII of the CCP. A maximum of eight days of custody (*bewaring*) may be ordered by the investigating judge, renewable once.<sup>137</sup> This detention, however, as well as any further remand custody (*gevangenhouding en gevangenneming*),<sup>138</sup> should take place at a remand facility under the responsibility of the head of that facility; that is, at the Correctional Institute of Aruba (*Korreetie Instituut Aruba - KIA*).<sup>139</sup>

181. The information gathered during the visit, in particular through interviews with persons who were – or who had recently been – deprived of their liberty by the police, and through the examination of the relevant registers and decisions in the police establishments visited, indicates that the statutory time limits described above for deprivation of liberty and its extension were respected in practice (see also paragraph 192).

182. However, as regards the length of detention in police premises, the information gathered during the 2022 visit from interviews with police officers and detained persons as well as through an examination of the relevant custody files confirmed that it was standard practice to hold persons in police detention facilities for 10 days. Moreover, several persons who were – or who recently had been – in police custody stated that they had been held on police premises for up to two weeks, in contradiction with the aforementioned legal regulation. Police officers interviewed by the delegation confirmed that this was indeed the case, in particular when there was no free capacity at Aruba Correctional Institution (KIA).

The CPT must underline once again that remand custody<sup>140</sup> on police premises in itself poses a series of risks of intimidation and ill-treatment. Moreover, the poor material conditions, the total lack of any regime activities and sporadic (if any) access to daily outdoor exercise make the police facilities

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132. Article 80 (1) CCP. This article also provides that the time period between 10 p.m. and 8 a.m. should not be counted given that, as a general rule, persons may not be questioned during that time. Therefore, the initial period of deprivation of liberty by the police may in fact last for up to 16 hours in some cases.

133. In Dutch, a *hulpofficier van justitie*, who may also be a senior police officer.

134. Article 83 (1) and (4), and Article 87(1) CCP.

135. Article 87 (2) CCP.

136. Article 89 (1) CCP. The maximum period before persons deprived of their liberty are brought before a judge thus amounts to three days and 16 hours.

137. Articles 92 (1) and 93 CCP.

138. Articles 95 to 99 CCP. The initial period that may be imposed by a judge is 60 days and may be extended several times.

139. Articles 94 (2) and 99 CCP.

140. Or any other type of custody for extended periods of time, whatever its formal classification under the national legislation.

visited by the delegation totally unsuitable for holding detained persons once they have appeared before a judge (that is, longer than three days and 16 hours). Subsequently, detained persons should be promptly transferred to prison; such an approach does not preclude the police from carrying out further questioning, if necessary, of persons held in prison.

**The CPT once again calls upon the Aruban authorities to review the system of detention on police premises with a view to reducing its duration, in light of the above remarks.** This requirement should be duly taken into account in the ongoing discussions on the new Code of Criminal Procedure (see paragraph 183).

183. For almost a decade, discussions have been taking place regarding a new CCP which would apply in all parts of the Caribbean part of the Kingdom of the Netherlands (namely, in the constituent countries of Aruba, Curaçao and Sint Maarten, as well as in Bonaire, Sint Eustatius and Saba (the BES islands)). The new Code is expected to introduce significant changes which are of relevance to the CPT. For example, the initial period of police custody under the new Code shall be three days, renewable once. It also explicitly lays down the right of detained persons to consult their lawyer prior to police questioning.

The delegation was informed during the visit that the issue of the adoption of the new Code would again be discussed in the near future at a meeting of the Ministers of Justice of the Netherlands, Aruba, Curaçao and Sint Maarten.

**The CPT would like to receive updated information on the expected timeline for the adoption and entry into force of the new Code of Criminal Procedure. Further, the Committee would appreciate receiving more detailed information on the changes which are expected to be introduced by the new legislation.**

**It trusts that the new CCP will take into account the recommendations and comments in this visit report, in particular as regards time limits for deprivation of liberty and legal safeguards applicable to persons in police custody (the right of access to a lawyer and a medical doctor, and the right to inform a third person of the fact of one's detention, as well as the obligation to inform detained persons of these rights).**

## 2. Ill-treatment

184. The vast majority of persons interviewed by the delegation during the visit who were – or who had recently been – in police custody made no complaints about the way in which they had been treated by police officers.

However, the delegation did receive a few isolated allegations of deliberate physical ill-treatment by police officers at the moment of apprehension, including from a juvenile, such as punches and baton blows to various parts of the body. In one case, a person was allegedly punched in the stomach as a punishment for having tried to run away from the police, although allegedly he did not resist the actual apprehension.

A few allegations were also received of excessive use of force during apprehension, such as kicks to the back, which had allegedly been inflicted once the person concerned had been brought under control, his hands cuffed behind his back and lying prone on the ground.

Further, a few persons (including foreign nationals detained under aliens legislation) also complained of unduly tight handcuffing at the moment of apprehension and their subsequent transfer to a police or immigration detention facility. It is noteworthy that, when met by the delegation, a person in immigration detention bore red linear marks on both wrists which were consistent with his allegations of excessively tight handcuffing. Another person described that he had temporarily lost the feeling in one of his thumbs due to the tight handcuffing.

In addition, the delegation heard a few allegations of verbal abuse of detained persons by police officers at the moment of apprehension and during police questioning.

**The CPT recommends that the Aruban authorities reiterate to police officers that any form of ill-treatment of detained persons – including verbal abuse – is unacceptable and will be sanctioned accordingly. Further, no more force than strictly necessary is to be used when carrying out an apprehension, and once the apprehended person has been brought under control there can be no justification for kicking them. In addition, when it is deemed necessary to handcuff a person, the handcuffs should under no circumstances be excessively tight.<sup>141</sup>**

### 3. Safeguards against ill-treatment

185. The CPT attaches particular importance to the right of persons deprived of their liberty to inform a close relative, or another person of their choice, of their situation; the right of access to a lawyer; and the right of access to a doctor. The CPT considers that these three rights are fundamental safeguards against the ill-treatment of persons deprived of their liberty and should apply from the very outset of the person's deprivation of liberty, namely, as from the moment when the person is obliged to remain with the police. Further, persons detained by the police should also be expressly informed, without delay and in a language they understand, of the possibility to avail themselves of these rights, and it should be possible to verify the application of these safeguards by consulting police custody records.

186. As regards information on rights, all persons met by the delegation confirmed that they had been given a standard notification form, in a language they understood, shortly after their arrival at the first police station. These forms were available in all the police establishments visited in several languages (Dutch, Papiamentu, English and Spanish) and detained persons were requested to attest with their signature that they had received a copy thereof.

However, in line with Section 82 CCP, the notification forms only referred to the right to remain silent, the right to legal counsel and the right to have a lawyer assigned free of charge in the event of custody (*inverzekeringstelling*).<sup>142</sup> The right to inform a third person of one's detention and the right of access to a doctor were absent from the form.

**The CPT recommends that the Aruban authorities review the existing standard information forms with a view to ensuring that all persons detained by the police are fully informed of all their fundamental rights, in line with the remarks set out in paragraph 185.**

187. It remains the case that the right of notification of custody to a third person is not explicitly guaranteed by the CCP. Section 6.2 of Police Order on Detainees 10/2012<sup>143</sup> provides that every detained person has the right to inform a family member or a third person of their choice of their deprivation of liberty as soon as possible after their arrest. The notification should be carried out by the police officer on duty.

The right of notification may be restricted only if it is in the interests of the investigation and only for a short time. Any decision to restrict the right to notification must be taken by an assistant public prosecutor (namely, a senior police officer) or the duty public prosecutor in consultation with the person leading the investigation, and must be recorded in the relevant register. However, neither the Police Order on Detainees nor the CCP provide for any time limit for the restriction on the right of notification.<sup>144</sup> Moreover, in the CPT's view, the current criterion "in the interest of the investigation" is too vague.

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141. It should be noted that excessively tight handcuffing can have serious medical consequences (for instance, sometimes causing severe and permanent impairment of the hand(s)).

142. Some versions provided to the delegation were slightly more detailed and provided that the right to legal counsel included the right to consult the lawyer prior to the first questioning and to have the lawyer present during questioning.

143. *Korpsorder Arrestanten 10/2012*.

144. Section 90 CCP only provides in general terms that detained persons' right to make phone calls and maintain other contact may be prohibited.

The CPT acknowledges that the right to notify one's deprivation of liberty could be made subject to certain exceptions designed to protect the legitimate interests of the police investigation, provided those exceptions are clearly circumscribed and are subject to an explicit time limit.<sup>145</sup>

**The CPT recommends that the Aruban authorities take steps to ensure that the possibility to delay the exercise of the right of notification of deprivation of liberty is circumscribed more precisely in the relevant legislation and that it is time-limited. The Committee considers in this respect that the possibility of refusing the request to notify a third person should be limited to a maximum period of 48 hours; this would strike a fair balance between the needs of the investigation and the interests of the person in police custody.** These requirements should be duly taken into account in the ongoing discussions on the new Code of Criminal Procedure (see paragraph 183).

188. As regards the practical operation of the right of notification of custody, the delegation received several allegations that detained persons had not been informed of their right that a third person be informed of their detention<sup>146</sup> and that, despite their explicit requests, police officers had not contacted their family, in particular during the first hours of deprivation of liberty by the police. In some cases, no feedback was allegedly provided to detained persons even when the family had apparently been contacted.

It is noteworthy in this context that some police officers met during the visit asserted that the right only applied once the person concerned had been formally taken into police custody (i.e. after six hours and, in some cases, after up to 16 hours from the moment of deprivation of liberty; see paragraph 180).

**The CPT reiterates its recommendation that the Aruban authorities take steps to ensure that all detained persons can effectively benefit from the right that a third person be informed of their situation as from the very outset of their deprivation of liberty (that is, from the moment that they are obliged to remain with the police). Police officers should be reminded of their obligation to apply the relevant legal framework. Further, detained persons should be provided with feedback on whether it has been possible to notify a third person when the notification is done by police officers.**

189. Section 82 (1)(c) CCP provides that every suspect who is brought to a place for questioning must, immediately thereafter, and in any case before any questioning begins, be informed of his right to be assisted by a lawyer and, if he cannot afford a lawyer, of his right, if he is placed in custody (*inverzekeringstelling*), to have one provided to him free of charge. Section 70 guarantees the right to unhindered access of lawyers to their clients. Further, Section 6.5 of the Police Order on Detainees provides that detained persons may consult with their lawyers in private already before the first questioning.

A number of persons interviewed during the visit confirmed that, in line with the aforementioned legal provisions, they had been granted access to a lawyer shortly after their apprehension and arrival at a police station and could consult with a lawyer in private before the first questioning by the police. Moreover, unlike at the time of the 2014 visit, lawyers were allowed to be present during questioning. This is a positive development.

However, the delegation still received several allegations that access to a lawyer was delayed for several hours (and up to several days in a few cases), in particular if the person was apprehended and arrived at the police station in the evening or at night. Further, a few persons alleged that police officers had attempted to discourage them from requesting access to a lawyer, claiming that this would only unnecessarily prolong their detention.

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145. The exceptions must also be made subject to appropriate safeguards. In particular, as is the case in Aruba, any delay in notification of custody should be recorded in writing with the specific reasons therefor and should require the approval of a senior police officer unconnected with the case at hand or a public prosecutor.

146. These claims are supported by the findings set out in paragraph 186.

**The CPT recommends that the Aruban authorities take steps to ensure that all persons can effectively benefit from the right of access to a lawyer from the very outset of their deprivation of liberty by the police. Further, it should be reiterated to police officers that they should not seek to dissuade detained persons from exercising their right of access to a lawyer.**

190. In the report on the 2014 visit, the CPT expressed serious reservations about Section 70 (2) CCP which provided that, in the case of serious suspicion that the course of justice might be hindered, access to a lawyer may be restricted or denied by the prosecutor for a maximum period of eight days. Regrettably, this provision remained unchanged.

The CPT recognises that it may exceptionally be necessary to deny for a certain period a detained person's access to a *lawyer of their choice*. However, this should not result in the right of access to a lawyer being totally denied during the period in question. In such cases, access to another independent lawyer who can be trusted not to jeopardise the legitimate interests of the investigation should be organised without undue delay. It is perfectly feasible to make satisfactory arrangements in advance for this type of situation, in consultation with the local Bar Association.

**The CPT reiterates its recommendation that the Aruban authorities amend the legislation accordingly in order to provide for the right of access to another lawyer without undue delay whenever access to a specific lawyer is restricted or denied in the interests of justice. This requirement should be duly taken into account in the ongoing discussions on the new Code of Criminal Procedure (see paragraph 183).**

191. According to Section 6 (4) of the Police Order on Detainees, every arrested person has a right to access medical care. Every request for medical care should immediately be forwarded by the shift commander to a doctor or nurse on duty and should be recorded in the arrested person's file (*arrestantenmodule*). A detained person may also request, at their expense, to be seen by a doctor of their own choice. Further, the Police Order on Detainees guarantees the medical confidentiality of any consultation and of the medical records.

However, a number of persons interviewed during the visit complained that their request to see a doctor whilst in police custody had been delayed for several days or that the requests had not been granted at all during the time the persons concerned stayed in a police facility (that is, up to 10 days, or even longer in some cases) and that they had only been able to see a doctor upon arrival in prison. The relevant legal provisions thus appear not to be fully implemented in practice. Further, several persons claimed that they had not been allowed to take their medication whilst in police custody.

**The CPT reiterates its recommendation that the Aruban authorities remind police officers that every request by a detained person to see a medical doctor should be granted promptly, in compliance with the procedure outlined in the Police Order on Detainees. It is not for police officers, or any other authority, to filter such requests. This will ensure that detained persons have access to the necessary medication and facilitate the continuity of care.**

192. As regards custody records, as far as the delegation could ascertain, all cases of deprivation of liberty in a police establishment were properly recorded and a valid warrant imposing police custody or its extension was available in individual files of detained persons.

However, the delegation received allegations from some persons that they had not been informed of the extension of their custody beyond the initial period of two days. Indeed, the warrants examined by the delegation did not contain a signature of the person concerned and police officers met by the delegation confirmed that a copy was not provided to detained persons.

**The CPT recommends that all persons deprived of their liberty by the police be duly informed of the imposition of police custody and its extension, as well as of any available legal remedies. This could be ensured by serving them with a copy of the relevant warrants.**

193. Moreover, none of the records shown to the delegation in the police establishments visited contained information as to whether detained persons had chosen to avail themselves of their



fundamental rights (with the exception, in some cases, of the general indication on the information sheet of whether or not they wanted to consult a lawyer).

The CPT considers that the fundamental guarantees of persons placed in police custody would be reinforced if a single and comprehensive custody record were to be kept for each of these persons. In this record would be entered all aspects of custody and all measures taken in connection with it (when and for what reason(s) the custodial measure was taken; when the person arrived on police premises; when they were informed of their rights; whether they showed signs of injuries, health problems, mental disorder, etc.; in which cell(s) they were placed; when provided food; when questioned; when they had contact with and/or visits from close relatives, a lawyer, a doctor or representatives of the consular services; when transferred; when brought before a prosecutor or the relevant judge; when remanded or released, etc.).

**The CPT recommends that a system of comprehensive custody records including the aforementioned information be introduced and diligently kept at police stations in Aruba. Further, for various questions (namely, personal effects confiscated; having been informed of one's rights and having availed oneself of or waived these; having been able to inform a close relative or another third party), the detainee's signature should be required and, if necessary, its absence duly accounted for.**

#### 4. Conditions of detention

194. The CPT considers it necessary to recall that police establishments should meet certain elementary material requirements.

All police holding facilities should be clean, of a reasonable size for the number of persons they are being used to accommodate and have adequate lighting (that is sufficient to read by, sleeping periods excluded) and ventilation; preferably, such facilities should enjoy natural light. Further, holding facilities should be equipped with a means of rest (for example, a fixed chair or bench) and persons obliged to stay overnight in custody should be provided with a clean mattress, clean blankets and a pillow.

Persons in custody should be allowed to comply with the needs of nature 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 (that is, something more substantial than a sandwich) every day. Persons held for 24 hours or more should be provided with appropriate personal hygiene items (including sanitary towels) and be offered outdoor exercise every day.

195. In the course of the 2022 visit, the delegation visited the police stations of San Nicolas and Shaba (district Noord). It also briefly visited Santa Cruz Police Station, which had been taken out of service shortly beforehand and which was expected to be refurbished. **The CPT would like to receive detailed information as regards the planned works and their timeline for the refurbishment of Santa Cruz Police Station.**

196. Some improvements had been made to the material conditions at *San Nicolas Police Station* since the Committee's 2014 visit. The 12 single-occupancy custody cells for male detainees (each measuring 5 m<sup>2</sup> excluding the semi-partitioned in-cell sanitary annexe) and one seven-bed cell for women (measuring some 28 m<sup>2</sup> excluding the semi-partitioned in-cell sanitary annexe) had been refurbished and were now in an acceptable state of repair. The cell for female detainees was fitted with windows which provided access to natural light; cells for male detainees had some access to natural light from the corridor via barred cell doors.

However, the cells still had no artificial lighting and, with the exception of the cell for women, were not equipped with a call bell. Further, several of the in-cell sanitary annexes were in an appalling state of hygiene, and the cells were filled with a strong smell emanating from the sewage system.<sup>147</sup> Whenever

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147. This was also because the flushing mechanism was operated by police officers from outside the cells and toilets were allegedly not always flushed when necessary.

the in-cell toilets were flushed or showers used, the cells were flooded with water. The sanitary annexe in the multiple-occupancy cell for women was not fully partitioned and the toilet bowls were positioned next to one another with no partitioning, hence affording the women no privacy. Only one of the three showers in this cell was functional at the time of the visit and detained persons were not provided with any cleaning products. Further, only toilet paper, soap and sanitary towels were provided to detained persons; other hygiene items (most notably a toothbrush and toothpaste) had to be brought by the family.<sup>148</sup>

Mattresses had only been provided shortly before the visit to detainees held overnight and these were removed during the day.

Finally, although the police station was equipped with an outdoor exercise yard and despite the fact that detained persons were held in the facility for up to 10 days (and longer in some cases – see paragraph 202), they were not usually provided with access to daily outdoor exercise.<sup>149</sup>

197. The material conditions at *Shaba (district Noord) Police Station* remained as poor as they had been during previous visits. The cells were dilapidated and lacked ventilation, with a pervasive smell of the sewage system.<sup>150</sup> Whenever the in-cell toilets were flushed or showers used, the cells were flooded with water.

They had no artificial lighting and only very limited access to natural light thus rendering the cells very dark; reading in such limited light was not possible. Call bells, placed close to the cell door, did not function.<sup>151</sup>

The cells, which measured 5 m<sup>2</sup> excluding the semi-partitioned sanitary annexe, were intended for single-occupancy and were only fitted with one concrete sleeping platform but were regularly used to hold two persons; in such instances, conditions in these cells were extremely cramped. In addition, no mattresses and bedding were provided to detained persons, who had to sleep on the concrete platform or directly on the dirty concrete floor, for 10 days or even more in some cases. Such conditions are totally unacceptable and, in the CPT's view, may amount to inhuman and degrading treatment.

The police facility had an outdoor exercise yard but access for detained persons was not granted when it rained as there was no shelter.<sup>152</sup>

Further, detained persons were only provided with soap, toilet paper and sanitary towels but other hygiene items (most notably a toothbrush and toothpaste) needed to be brought by the family.<sup>153</sup>

198. At the end of the visit, the delegation made an immediate observation pursuant to Article 8, paragraph 5, of the Convention and requested that the authorities of Aruba ensure that all persons detained overnight in police custody are provided with a mattress, pillow and clean bedding. These items should not be removed from the cells during the day. Further, at San Nicolas Police Station, persons who are detained for 24 hours or more should be offered daily access to fresh air.

By e-mail of 16 July 2022, the authorities of Aruba provided a response to the immediate observation. In particular, the request concerning the provision of a mattress, pillow and clean bedding has not yet been “fully implemented” due to procurement procedures and the relevant legal requirements.

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148. This was only possible several days after apprehension.

149. This was reportedly due to the fact that members of the Special Corps Aruba (*Cuerpo Especial Arubano – CEA*) who were in charge of the custody of detained persons were often not present in the police station and only basic custodial functions could be assured by police officers.

150. This was also because the flushing mechanism was operated by police officers from outside the cells and toilets were allegedly not always flushed when necessary.

151. This was particularly problematic because no member of staff was present in the detention area at night.

152. Otherwise, detained persons were provided one hour of daily outdoor exercise.

153. This was only possible several days after apprehension.

The authorities had “full confidence” that the procedure would be completed in the near future. Indeed, the response fails to alleviate the concerns of the Committee.<sup>154</sup>

The authorities further informed the Committee that the requirement of daily access to fresh air for detained persons had been communicated to police stations where detainees are held.

199. In light of the findings of the visit, as well as the response to the immediate observations, **the CPT recommends that the Aruban authorities ensure that all police custody cells:**

- **are maintained in a good state of repair and hygiene;**
- **are adequately ventilated; the state of repair of the sewage system should be reviewed and any problems resolved;**
- **have adequate artificial lighting;**
- **are equipped with a functional call bell.**

**Cells measuring 5 m<sup>2</sup> should under no circumstances be used for overnight accommodation of more than one person.**

Further, **detained persons held overnight should be provided with basic hygiene items and cleaning products to able to clean their cells.**

Moreover, **the CPT wishes to receive confirmation that detained persons who are held for 24 hours or more are now offered daily access to fresh air. The outdoor yards should be equipped with a shelter against rain/sun and a means of rest.**

200. In addition, **the Committee recommends that all detained persons held overnight in police custody are provided with a clean mattress, pillow and clean bedding. These items should not be removed from the cells during the day.**

**The CPT would like to receive, within one month, confirmation that this recommendation has been implemented.**

201. Although cells in both police stations visited were equipped with a pipe in the ceiling of the sanitary annexe which served as a shower, water was only switched on once a day for a short period of time. No other washing facility (such as a washbasin) was available to detained persons during the rest of the day (for example, after having used the toilet). Moreover, the delegation met one person who claimed that he had not been allowed to take a shower until the day after his apprehension despite having fallen in sewage water when attempting to escape the police.

**The CPT recommends that the Aruban authorities take the necessary steps to ensure that persons in police custody may maintain adequate personal hygiene. In particular, they should have ready access to water to be able to wash at all times.**

## 5. Other issues

202. The delegation again met a few persons who had been agitated, drunk or considered at risk of suicide when in police custody and who had been held for up to 10 days naked (or at best in their underwear) in a police cell. Police officers met by the delegation confirmed that this was the procedure that they were obliged to follow.

The CPT must reiterate that an appropriate care protocol should be applied to persons who are deemed to be at risk of self-harm or suicide. They should be placed in a cell which has no ligature points and provided with rip-proof clothing, if considered necessary. Further, they should be placed

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154. Regarding the provision of bedsheets during daytime, according to the authorities, they had to “take into careful consideration the safety of detainees”. However, the Committee fails to discern the increased risk of providing bedsheets during daytime, as opposed to night hours. Moreover, as regards the treatment and care that should be provided to persons at risk of suicide, reference is made to paragraph 202.

under a special observation scheme and should be systematically assessed by a healthcare professional. It is totally inappropriate to place a detained person at risk of suicide naked in a cell with no support. In the CPT's view, such treatment could be considered as degrading and should be ended.

**The CPT reiterates its recommendation that the Aruban authorities draw up a care protocol for detained persons who are deemed to be at risk of self-harm or suicide while in police custody, taking into account the above remarks.**

203. Upon admission to a police detention facility, detained persons were strip-searched and were systematically required to remove all their clothes and make three squats.

The CPT must point out that a strip-search is a very invasive and potentially degrading measure, which can be particularly (re-)traumatising for persons who have experienced sexual violence. It should be based on an individual risk assessment. Further, in order to minimise embarrassment, persons who are searched should not be required to remove all their clothes at the same time, for example, a person should be allowed to remove clothing above the waist and put it back on before removing further clothing.

**The Committee recommends that the Aruban authorities take steps to ensure that these principles are effectively implemented in practice in all police facilities.**

204. Moreover, the delegation received a few allegations that detained persons had been blindfolded upon their apprehension and had remained blindfolded during their strip-search.

The CPT can see no justification for blindfolding detained persons during a strip-search. To blindfold a person in police custody – and in particular someone undergoing questioning, being transported from one place to another or, even more so, someone being strip-searched – is a form of oppressive conduct, the effect of which on the person concerned will frequently amount to psychological ill-treatment.

**The CPT recommends that the Aruban authorities expressly prohibit the blindfolding of persons who are in the custody of police.**

205. Shaba (district Noord) Police Station had one cell for holding persons suspected of body-packing (that is, concealing drugs in their body) which was equipped with a special toilet to enable the evacuation of any drug package to be detected. According to police officers, when a person suspected of body-packing was detained, a medical doctor would be called but the person would thereafter be detained in the police station. Once the ingested package had been evacuated, the person would be taken to hospital for a radiological examination.

The CPT considers that, in addition to specialised equipment, detention of persons suspected of body-packing requires appropriate medical supervision, due to the serious risk of acute intoxication if the receptacle in which the drugs are placed bursts, as well as the risk of obstruction of the intestines, both of which may lead to death. Consequently, it is best practice for the persons concerned to be placed under medical observation in hospital rather than being kept in a police station.

**The CPT recommends that appropriate medical supervision always be made available for the detention of persons suspected of body-packing.**

## B. Dakota Immigration Detention Facility

### 1. Preliminary remarks

206. The delegation carried out a brief targeted follow-up visit to Dakota Immigration Detention Facility. At the time of the visit, the facility had a capacity of 80 places and was accommodating 18 men and four women, who had been held in the establishment for up to two months.<sup>155</sup>

According to the staff, the usual length of stay in the establishment was approximately one week. However, Venezuelans who were in the majority stayed for longer periods of time due to the political situation in their country and practical difficulties in deporting them. The maximum length of stay was reportedly some seven months.

### 2. Ill-treatment

207. The delegation received no allegations of deliberate physical ill-treatment of detained persons by staff and most staff were described as behaving correctly by those persons held in the facility.<sup>156</sup>

However, the delegation did receive several allegations of verbal abuse, including threats and bullying, as well as racist, mocking, provocative and dismissive remarks, made by a senior member of the management. The credibility of these allegations was further bolstered by the fact that a racist remark was directed against a member of the delegation (see paragraph 7).

208. The CPT recalls that staff working in immigration detention facilities should be carefully selected and receive appropriate trainings. Staff should possess both well-developed qualities in the field of interpersonal communication and cultural sensitivity, given the diverse backgrounds of the detained foreign nationals. Further, they should be taught to recognise possible symptoms of stress reactions displayed by detained persons (for example, post-traumatic, induced by socio-cultural changes, etc.) and to take appropriate action.

At the end of the visit, the Aruban authorities informed the delegation that educational courses for staff working in the establishment were planned.

**The CPT recommends that the Aruban authorities ensure the management and staff working at Dakota Immigration Detention Facility are both carefully selected and provided with the requisite training to enable them to carry out their duties professionally, with specific emphasis on interpersonal communication and cultural sensitivity as set out above.**

### 3. Conditions of detention

209. In the recently constructed building, which was accommodating *women*, the material conditions were acceptable. The building was clean and generally in a good state of repair and the six rooms of different sizes intended to accommodate between one and four women provided sufficient living space.

However, the drainage system was faulty and whenever the shower was used, the room was flooded with water. **The CPT recommends that this deficiency be remedied.**

210. Material conditions offered to *men* were however notably poor. They were accommodated in dilapidated, poorly ventilated shipping containers<sup>157</sup> which were not suitable for holding people. The sanitary areas had black mould on the walls and there were problems with the drainage system.

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155. According to the information provided by the authorities, children were never held in the establishment and a reporting obligation was generally imposed on families with children instead of detention.

156. See paragraph 184 as regard the allegations made by persons detained under aliens legislation of excessively tight handcuffing by the police.

157. In each container there were three to four detained persons.

At the end of the visit, the delegation made an immediate observation pursuant to Article 8, paragraph 5, of the Convention and requested that the authorities of Aruba cease to use the shipping containers for accommodation of immigration detainees without further delay. Further, it wished to be informed about the facility in which male immigration detainees would be held in future.

On 16 July 2022, the authorities of Aruba informed the Committee in writing that on 23 July 2022, the shipping containers would be taken out of service and that the men would be transferred to a newly constructed building within the Dakota Immigration Detention Facility.

**The CPT notes the information provided by the Aruban authorities and would like to receive confirmation that the shipping containers have been taken out of service and that men in immigration detention are now accommodated in the newly constructed building. Further, the Committee would like to be informed of the capacity of the new building, as well as the number of rooms for detained persons and their equipment.**

211. The regime offered to detained men and women was extremely impoverished. They were offered access to fresh air twice or three times a day, each time for 30 minutes. For the rest of the time, they were locked up in their rooms/accommodation containers, with absolutely nothing to do, in some cases for weeks and months on end (see paragraph 206). This is unacceptable.

The CPT considers that the conditions of detention for persons held in immigration detention should reflect the nature of their deprivation of liberty, with limited restrictions in place and a varied regime of activities. Within the detention facility, the freedom of movement of detained persons should be as unrestricted as possible and should include access to daily outdoor exercise for at least two hours; preferably, detained persons should have free access to outdoor exercise throughout the day.

Immigration detention centres should include access to a day room and to radio/television and newspapers/magazines, as well as other appropriate means of recreation (for example, board games, table tennis, sports), a library and a prayer room. The longer the period for which persons are held, the more developed should be the activities (educational, recreational and vocational) which are offered to them.

**The CPT recommends that the Aruban authorities take the necessary steps to ensure that detained persons have as unrestricted freedom of movement as possible within the detention facility throughout the day, which should include at least two hours (and preferably more) of daily outdoor exercise. Further, a range of activities should be developed for detained foreign nationals held at Dakota Immigration Detention Facility.**

#### 4. Safeguards

212. The legal framework for immigration detention is laid down in the 1993 National Ordinance Admission and Expulsion (*Landsverordening toelating en uitzetting - LTU*). Since the 2014 visit, the Ordinance has been amended and the detention and expulsion of foreign nationals is now regulated in Sections 16 and 17.

The findings of the visit indicate that, in line with these provisions, expulsion and detention orders were issued in each case and the foreign nationals concerned received a copy thereof.

However, the orders were provided in Dutch and at best verbally explained to the foreign nationals concerned in a language they could understand.

213. Unlike at the time of the 2014 visit, Section 16 (3) of the Ordinance now provides that persons in immigration detention must be brought before a judge within 72 hours of apprehension to check the lawfulness of their deprivation of liberty. Further, a judge may decide to release persons from immigration detention upon their request at any time. These are positive developments.

However, it remains the case that the Ordinance does not provide a maximum period of detention under immigration legislation. Further, while the authorities informed the delegation that detention

orders would be automatically reviewed “every two or three months” to assess the need for continued detention, this does not appear to be explicitly required by the Ordinance.<sup>158</sup>

**214. The CPT recommends that the Aruban authorities take the necessary steps to ensure that a maximum time limit is introduced for the detention of foreign nationals who are subjected to an expulsion order.**

Further, **the Committee considers that it would be desirable for foreign nationals to receive a written translation in a language they understand of decisions regarding their detention and expulsion, including on the modalities and deadlines for appealing against such decisions.**

In addition, **the Committee would like to be informed of the legal basis for the automatic review of the need for continued detention of persons subjected to an expulsion order and the precise deadlines for the review.**

215. Several complaints were heard that detained persons were not informed of their rights or of the procedures applicable to them; it appeared that no written material existed on these issues that could be provided to detained persons. Moreover, the house rules of the detention facility only existed in Dutch, which were in any case not provided to the detained persons.

The CPT considers that persons detained under aliens legislation should be expressly informed, without delay and in a language they understand, of their rights and the procedure applicable to them. To this end, all immigration detainees should be systematically provided with a document setting out this information; the document should be available in the languages most commonly spoken by those concerned and, if necessary, the services of an interpreter should be made available.

Further, they should be informed upon their arrival at an immigration detention facility, in writing and in a language they understand, of the relevant house rules.

**The CPT recommends that the Aruban authorities take the necessary steps to ensure that all persons placed in immigration detention are fully informed, in a language they can understand, of their rights and the procedures applicable to them as set out above.**

216. As regards access to a lawyer, while several persons were in practice represented by their own lawyer, the possibility to consult with their lawyer in person was restricted to Mondays, Wednesdays and Fridays.

Moreover, there still appeared to be no arrangements for the provision of free legal assistance for those who could not afford to pay for a lawyer.

**The CPT recommends that the Aruban authorities ensure that all detained persons have an effective right to consult with their lawyer, without any undue restrictions. Further, the Committee recommends that the authorities make arrangements to ensure that persons in immigration detention who cannot afford to pay for a lawyer can benefit from free legal assistance.**

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158. The authorities also informed the delegation that the lodging of an appeal against the expulsion order (or requesting international protection) had a suspensive effect on the implementation of the extradition.

## 5. Other issues

217. As regards access to healthcare, a nurse was present in the establishment Monday to Friday during working hours and, outside of these times, could be called in if necessary (and could arrange for a medical doctor to attend the facility). The CPT welcomes these arrangements.

However, several persons interviewed during the visit stated that they had not been screened for healthcare issues upon admission to the facility or that the screening had not included any physical examination.

218. Particular mention should be made of the case of a woman held in the establishment who suffered from diabetes and for whom no blood test had been carried out upon admission. When she later requested to see the nurse again, while access was swiftly granted and a blood test was done, her medication (Metformin) was discontinued by the nurse, apparently without having consulted a doctor and without the doctor having examined the woman concerned. The CPT considers that such decision is beyond the remit of the professional competence of a nurse and requires consultation with a medical doctor.

**The CPT reiterates its recommendation that systematic medical screening of all newly admitted persons by a doctor, or a fully qualified nurse reporting to a doctor, including a full physical examination and screening for transmissible diseases, be introduced.**

**Further, healthcare staff working in the establishment should receive specific training for working in an immigration detention facility, in particular as regards the initial screening, mental health issues, victimisation and recording of injuries.**

219. As regards the staffing levels for custodial staff, they appeared to be adequate for the number of persons accommodated in the establishment at the time of the visit. The day shift consisted of six officers; at night, there were four.<sup>159</sup>

At the time of the visit, it was positive that staff was not routinely carrying pepper spray, batons or handcuffs while working in the detention areas. Further, there had been no recent incidents which had required staff to have recourse to such coercive means, and yet the delegation was informed that the authorities planned to provide custodial staff with this equipment.

The CPT considers that the routine carrying of pepper spray, handcuffs and batons in detention areas is not conducive to developing positive relations between staff and detained persons; **the CPT recommends therefore that custodial officers should not routinely carry such equipment in detention areas.**

220. As regards arrangements for maintaining contact with the outside world, detained persons were given an opportunity to contact a third person shortly after their admission to inform them about their situation and had access to their mobile phones three times a week. However, they were not allowed to receive visits (other than from a lawyer).

**The CPT recommends that the Aruban authorities take steps to ensure that persons held at Dakota Immigration Detention Facility can receive visits on a regular basis. Further, the Committee invites the authorities to consider permitting detained persons to keep their mobile phones.**

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159. See paragraph 207 as regards CPT considerations concerning the provision of training for staff working in immigration detention facilities.



### C. Aruba Correctional Institution (*Korrectie Instituut Aruba – KIA*)

#### 1. Preliminary remarks

221. The CPT carried out a follow-up visit to the Aruba Correctional Institution, the only prison in Aruba. The establishment is located in the south-east part of the island and has been operational since 1990. At the time of the visit, it had a capacity of 270 places<sup>160</sup> and was accommodating 252 prisoners, including 16 women and four male juveniles. Approximately one third of the inmates were held on remand.

#### 2. Ill-treatment and use of force

222. The delegation received no allegations of deliberate physical ill-treatment of prisoners by custodial staff.<sup>161</sup>

However, it did receive several allegations of rough behaviour, as well as unjustified and/or excessive use of force by the special intervention team (referred to by the prisoners as “IBT” (*Interne Bijstandsteam*) or “K9 units”), sometimes reinforced by police officers, when carrying out cell searches. Allegedly, prisoners were given little time to comply with orders and force was immediately used against prisoners who showed no resistance. For example, a man interviewed by the delegation stated that he had been on the toilet and had been dragged from there to be searched. In another case, a man was allegedly given no time to comply with an order to lie down on the floor and was hit with a shield and punched in the stomach.

Further, a few allegations were received of verbal abuse of prisoners by custodial staff.

**The CPT recommends that the Aruban authorities deliver the clear message to members of the special intervention team, as well as to police officers intervening in prisons, that no more force than strictly necessary and proportionate should be used when dealing with prisoners. In addition, in light of the allegations, the Committee recommends that interventions by these teams be supervised by senior managers.**

**Further, a clear message should be delivered to custodial staff that verbal abuse of prisoners is unacceptable and will be sanctioned accordingly.**

223. The delegation was informed that there was no dedicated register of use of force by staff. Some information on the use of force could be found in individual disciplinary files, for example when disciplinary proceedings were subsequently instituted against a recalcitrant prisoner. However, the records seen by the delegation were very brief and lacked precision. For example, in the second case of use of force described in the preceding paragraph, the record in the disciplinary file merely stated “force used to subdue the prisoner”.

The CPT considers that every instance of use of force/special means should be recorded in a dedicated register established for that purpose. The entry should include the times at which the use of force/special means began and ended, the circumstances of the case, the reasons for resorting to force/special means, the type of means used, and an account of any injuries sustained by inmates or staff. An assessment of the compliance of such coercion with the principles of necessity, proportionality and legality should be conducted with an analysis of all relevant information by the direct supervisor.

**The CPT recommends that the Aruban authorities take steps to ensure that these principles are effectively implemented in practice at Aruba Correctional Institution.**

224. The CPT acknowledges the commendable efforts made by staff to prevent inter-prisoner violence, such as the identification of incompatible prisoners upon admission and during their stay

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160. An additional sixty places (20 cells) were out of service.

161. See, however, paragraph 247 as regards body cavity searches carried out for security purposes.

in prison, and their subsequent allocation to safe units, as well as limiting interaction between prisoners from different units.

Although there was no comprehensive register of instances of inter-prisoner violence maintained in the prison, the examination of the disciplinary register, as well as the information gathered through interviews with staff and prisoners, indicate that the situation has improved since the last visit carried out by the CPT in 2014 and that serious cases of inter-prisoner violence were rare. However, disciplinary files showed that there were still regular instances of less serious inter-prisoner violence.

**The CPT trusts that management and staff at Aruba Correctional Institution will continue their efforts to prevent inter-prisoner violence and that staff intervene promptly and adequately whenever any such instances occur. Further, all instances of inter-prisoner violence should be systematically recorded.**

3. Conditions of detention
  - a. situation of male adult prisoners

225. The CPT acknowledges the efforts which have been made to improve material conditions in the establishment; for example, most roofs have been repaired, locks and doors were replaced, several walls within the prison have been refurbished and a new laundry room was being constructed at the time of the visit.

Despite these efforts, several of the deficiencies identified in the past remained and, overall, material conditions continued to be poor. In particular, most parts of the prison were dilapidated, floors were damaged, lumps of plaster and concrete were peeling off the walls and ceilings and iron reinforcing bars in the concrete structure were exposed and corroded.

Most cells (measuring approximately 9.5 m<sup>2</sup>, excluding the sanitary annexe) were holding three prisoners and provided very cramped conditions and the in-cell sanitary annexes were only partially partitioned from the rest of the cell. Further, the cells were not equipped with a call bell. Most of the cells seen by the delegation were dirty and artificial lighting was insufficient.

Moreover, the delegation observed puddles of stagnating water in various parts of the prison, including in the outdoor exercise yards, as well as in inside areas (for example, in a communal activity room).

**The CPT reiterates its recommendation that the Aruban authorities take the necessary steps to redress the state of decay and dilapidation of the Aruba Correctional Institution. Further, the number of inmates in each cell should not exceed two. Measures should also be taken to ensure adequate artificial lighting in every cell, to fully partition the sanitary annexe in each cell and to equip cells with a call bell.**

226. The situation of a prisoner using a wheelchair and accommodated in the Extra Security Unit (EBA) is of particular concern. The prison was not adapted to the specific needs of such persons and the prisoner concerned was completely dependent on the good will of other prisoners with routine daily life as he needed to be carried for medical appointments, visits, to make phone calls and to take outdoor exercise. Even more strikingly, the in-cell sanitary facility was not adapted and he needed assistance from other persons whenever he needed to use the toilet or wanted to take a shower. The CPT considers that the situation did not allow him to live a dignified life in the establishment and could amount to degrading treatment.

**The CPT recommends that the Aruban authorities take urgent steps to ensure that the prisoner concerned, as well as any other prisoners with a physical disability who may be admitted to the establishment in future, are held in dignified conditions. If a dignified environment cannot be created at Aruba Correctional Institution, the prisoner concerned should be transferred to another, suitable, establishment.**

227. During interviews with prisoners, whether men, women or juveniles, the delegation was inundated with complaints about the quality of food provided to them. **The CPT recommends that the Aruban authorities review the quality of food provided to prisoners.**

228. As regard the regime, as a general rule, cell doors were open for at least six hours a day and prisoners could associate with each other in their respective units and communal rooms (albeit devoid of almost any equipment). They were also offered access to outdoor exercise yards for one-and-a-half hours twice a day.

Approximately one half of the prisoners had a paid job, but this was usually limited to a few dozen minutes a day or at best a few hours. Only 25 persons had a full-time job in one of the workshops. The only vocational training opportunity taking place at the time of the visit was a welding course provided in co-operation with an external foundation.

The fact thus remains that the great majority of prisoners spent most of the day in idleness, and the offer of purposeful activities continued to be totally insufficient. This led to a considerable level of frustration among prisoners.

As stressed by the CPT in the past, a satisfactory programme of activities is of crucial importance for the well-being of prisoners, contributes to the establishment of a more secure environment within prisons and is an essential part of their preparation for release and reintegration into the community.

**The CPT recommends once again that a comprehensive regime of out-of-cell activities be developed for all prisoners. In the CPT's view, the aim should be to ensure that all prisoners (including those on remand) are able to spend a reasonable part of the day (that is, eight hours or more) outside their cells engaged in purposeful activities of a varied nature: work, preferably with vocational value; education; sport; recreation/association.**

b. situation of juveniles

229. The juvenile unit consisted of 12 cells (each measuring 12 m<sup>2</sup>) and was accommodating four juveniles and 13 young adults at the time of the visit. Material conditions were in principle as poor as those described in respect of the general prison population and **the recommendations set out in paragraph 225 also apply to the juvenile unit.**

230. While the CPT acknowledges that juveniles were able to spend most of the day outside their cells and were offered outdoor exercise twice a day for a total of two to three hours, the programme of organised activities was virtually non-existent. They were only offered yoga classes, access to a gym and some occasional organised sports, as well as simple jobs, such as cleaning or heating up food in the evening, for a few minutes per day. One of the four juveniles had textbooks in his cell and was expected to start some educational courses soon; no educational activities were provided to the three other boys.

The CPT wishes to underline in this respect that although a lack of purposeful activity is detrimental for any prisoner, it is especially harmful for juveniles, who have a particular need for physical activity and intellectual stimulation. Regardless of their period of detention, they should be offered a full programme of education, sport, vocational training, recreation and other purposeful activities. Physical education should constitute an important part of that programme.

**As long as juveniles are held at Aruba Correctional Institution, the CPT reiterates its recommendation that the Aruban authorities ensure that they are provided with a full programme of activities, in light of the above remarks.**

231. More generally, the CPT considers that juveniles in prison should not as a rule be held in institutions for adults but in detention centres specifically designed for persons of this age, offering a non-prison-like environment with regimes tailored to their needs and staffed by persons trained in dealing with the young. **The CPT reiterates its recommendation that the Aruban authorities**

**develop and implement a strategy for addressing the specific needs of juveniles deprived of their liberty in a suitable environment, in light of the above remarks.**

c. situation of women

232. Material conditions in the section for women were better than those for the general prison population. The unit, which had the same layout as the unit accommodating juveniles, was in a reasonable state of repair; the walls were freshly painted, and the cells were suitably equipped and decorated with personal items. (See, however, paragraph 252.)

However, as observed already in 2014, there were no call bells. **This deficiency should be remedied.**

233. Cell doors were open for most part of the day and women could associate in communal areas of their unit, had access to a recreation room (equipped with some sports equipment and board games) and were offered two hours of daily outdoor exercise.

However, beyond yoga classes and some cleaning jobs, hardly any other organised activities were offered to female prisoners and the regime remained impoverished.

**The recommendation set out in paragraph 228 applies equally to female prisoners held at Aruba Correctional Institution.**

4. Healthcare services

234. In comparison with the situation observed in 2014, the staffing resources at KIA have decreased. The healthcare team now consisted of a medical doctor who covered 0.6 full-time equivalent (FTE) and visited the prison three times a week and two full-time nurses who worked every working day between 8 a.m. and 2 p.m. For the rest of the time, members of the healthcare team were on call.

Since approximately one year prior to the visit, the establishment has no longer been visited by a dentist, although some prisoners were transferred to receive dental care outside prison.

**The CPT recommends that the input by a medical doctor be increased to one FTE and that the nursing resources be increased by an additional two (and preferably three) nurses. Further, steps should be taken to ensure the regular presence of a dentist in the establishment.**

235. As regards psychiatric and psychological care, the CPT notes positively that the establishment was now visited by a psychiatrist twice a week, who covered 0.2 FTE. However, no clinical psychologists or occupational therapists who could provide assistance and support to prisoners with mental health problems visited the establishment (see also paragraph 252).

Persons with mental health problems were placed in the unit for vulnerable persons (IBA). Although they had access to a gym equipped with some sports equipment during the day and to a garden, material conditions in the unit were only slightly better than in other parts of the prison. Further, they were only provided minimal psychiatric and psychological care and support. It thus remained the case that the unit did not provide a suitable therapeutic environment.

**The CPT recommends that the Aruban authorities thoroughly review the conditions of detention and care provided to prisoners with mental health problems held at Aruba Correctional Institution. In particular, material conditions in the IBA unit should be improved and the establishment should be regularly visited by specialist staff (clinical psychologist, mental health nurse, occupational therapist) to provide adequate care and support to prisoners with mental health problems.**

236. Agitated prisoners were sometimes subjected to chemical restraint. While the injection was applied by a GP in the medical unit, the prisoner concerned was then usually transferred to the IBA unit and was only checked by healthcare staff every 15 to 30 minutes or was kept under constant CCTV observation. Further, the persons concerned were not informed what medication they were given and there was no debriefing session after the restraint.

**The CPT recommends that when it is considered necessary, as a matter of last resort, to chemically restrain prisoners, they should be kept under continuous personal supervision by a member of healthcare staff. Further, a debriefing of the person concerned should take place, which will provide an opportunity to explain the rationale behind the measure, and thus reduce the psychological trauma of the experience as well as restore the doctor-patient relationship. In addition, all instances of chemical restraint should be recorded in a specific register.**

237. While in principle the healthcare unit was adequately equipped, it remains the case that the premises were small and poorly ventilated. Moreover, water was leaking through the ceiling of the medical consultation room. The delegation was informed of the plans to construct a new building for the healthcare unit. **The CPT would like to receive updated information on the implementation of these plans.**

238. Upon admission to KIA, prisoners were not systematically medically screened. Moreover, even when a medical examination took place, injuries detected by healthcare staff were not recorded and no clear reporting procedure appeared to be in place when injuries were detected.

The CPT is obliged to reiterate the importance of medical screening of newly arrived prisoners, in particular in the interests of identifying special medical needs, preventing the spread of transmissible diseases, suicide prevention and the timely recording of any injuries.

All newly admitted prisoners should be properly interviewed and physically examined by a medical doctor, or a fully qualified nurse reporting to a doctor, as soon as possible and no later than 24 hours after their admission, and any signs of injuries should be duly recorded.

The record should contain:

- (i) an account of statements made by the person which are relevant to the medical examination (including their description of their state of health and any allegations of ill-treatment),
- ii) a full account of objective medical findings based on a thorough examination (supported by a "body chart" for marking traumatic injuries and, preferably, photographs of injuries), and
- iii) the healthcare professional's observations in the light of i) and ii), indicating the consistency between any allegations made and the objective medical findings.

In addition, a special trauma register should be kept, in which all types of injury observed should be recorded.

The results of every examination, including the abovementioned statements and the doctor's opinions/observations, should be made available to the prisoner and, with the consent of the prisoner, to their lawyer. Further, procedures should be put in place in order to ensure that whenever injuries are recorded which are consistent with allegations of ill-treatment made by a prisoner (or which, even in the absence of allegations, are indicative of ill-treatment), the report is immediately brought to the attention of the relevant prosecutorial authorities regardless of the wishes of the person concerned.

**The CPT reiterates its recommendation that the Aruban authorities take steps to ensure that all newly admitted prisoners to Aruba Correctional Institution undergo a thorough medical screening and that all detected injuries are duly recorded and reported, in light of the above remarks.**

239. As regards the specific situation of female prisoners, the admission procedure did not include gender-specific screening for specific needs, in particular for a history of any sexual abuse and other gender-based violence.

The CPT considers that a gender-specific screening on admission for women should be in place in all prisons accommodating women. In addition to identification of the responsibilities of newly admitted women towards their families/children, such screening should allow for the detection of specific needs, including a history of any sexual abuse and other gender-based violence. This information should be duly considered when drawing up an individual sentence plan for the woman to ensure appropriate care and avoid re-traumatisation.<sup>162</sup>

**The CPT recommends that the Aruban authorities take steps to ensure that a gender-specific screening in the period following admission for women by specifically trained staff (and, preferably, healthcare staff) is introduced at Aruba Correctional Institution, in light of the abovementioned remarks.**

240. As regards medical confidentiality, medical examinations still routinely took place in the presence of custodial staff. **The CPT reiterates its recommendation that medical examinations of prisoners be conducted out of the hearing – and unless the doctor concerned requests otherwise in a particular case – out of the sight of prison officers.**

241. Urine testing to detect illicit drug use was carried out by the healthcare staff who were treating the prisoners concerned. The CPT considers that this essentially non-medical task can affect the therapeutic relationship between healthcare staff and their patients. **The CPT recommends that healthcare staff at Aruba Correctional Institution not be involved in the collection and testing of urine samples for administrative purposes (namely, illicit drug use).**

242. In light of the findings of the visit concerning the involvement of healthcare staff in security related issues, such as the above-described urine testing and the body cavity searches ordered by the management for security reasons (see paragraph 247), the CPT considers that there is a need to increase the professional independence of healthcare staff, including from the prison authorities. **The CPT recommends that the Aruban authorities take steps to increase the professional independence of healthcare staff at Aruba Correctional Institution, including by effectively implementing the recommendations set out in paragraphs 240, 241 and 247.**

243. More generally, the CPT wishes to point out that the recent policy trend in Europe has favoured prison healthcare services being placed either to a great extent, or entirely, under the responsibility of the Ministry of Health.<sup>163</sup> In principle, the CPT supports this trend. In particular, the CPT is convinced that a greater participation of Health Ministries in this area (including as regards recruitment of healthcare staff, their in-service training, evaluation of clinical practice, certification and inspection) will help to ensure optimum healthcare for prisoners, as well as implementation of the general principle of the equivalence of healthcare in prison with that of the wider community. Indeed, such a change of responsibility must be accompanied by the allocation of adequate financial means and by the establishing of good communication channels between healthcare and custodial staff. **The CPT would like to receive the comments of the Aruban authorities on this issue.**

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162. See also Rule 6 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (*Bangkok Rules*).

163. See, for example, Recommendation No R (98) 7 of the Committee of Ministers of the Council of Europe to member States concerning the ethical and organisational aspects of health care in prison.

5. Other issues

a. prison staff

244. No improvement was observed as regards staffing levels at KIA since the visit carried out in 2014 and the staffing situation remains inadequate for the proper functioning of the establishment.

Of the 147 theoretical posts of custodial staff, 72 posts were vacant and eight of the 75 officers employed by the establishment were on long term sick leave or deployed to other duties. For the whole establishment, the day shift was supposed to consist of 29 officers; however, up to 10 of these were newly recruited members of staff who were still undergoing the initial training and had to work under the supervision of more senior colleagues. The night shift consisted of 12 officers.

The delegation was once again informed that frequent one-day sick leave, as well as some cases of very long-term absence (that is, up to 10 years) remained a serious challenge, with an estimated 8% of staff being on sick leave at any given moment.

Given these low staffing levels, it is not surprising that the role of custodial staff was still limited to that of a “turn-key”, with no other responsibilities than static security. The CPT must reiterate that prison officers should be encouraged to extend their role into interacting positively with inmates, taking part in rehabilitation programmes and being an integral element in a multi-disciplinary approach towards prisoners’ welfare. This would not only provide a far more challenging and interesting job for the prison officers, but it would also address the resocialisation aspect of prison which has to date been moribund.

**The CPT reiterates its recommendation that the Aruban authorities take the necessary measures to increase the number of prison officers employed as well as to develop the capacity and role of prison officers, in light of the above remarks. In parallel, the levels of, and reasons for, absenteeism should be tackled.**

245. The situation was equally problematic with respect to specialist staff to provide activities and support to prisoners. There were only two social workers, one vocational training instructor, four workshop instructors and two activity leaders. The following posts were vacant: all five posts of teachers and education and work consultants/coordinators, three posts of vocational training instructors, two posts of workshop instructors, one post of a social worker, all three posts of social work assistants and one post of staff activity leader.

**The CPT recommends that the Aruban authorities take steps to fill the aforementioned vacant posts at Aruba Correctional Institution.** Indeed, this is a prerequisite for the successful implementation of the recommendations concerning the regime of activities set out in Section 3 of this report.

b. security related issues

246. In the context of cell searches (as well as upon admission to KIA in most cases), prisoners were routinely strip-searched and were systematically asked to remove all their clothes at once and make several squats.

Moreover, while prisoners were usually taken one by one to an empty cell to be strip-searched, allegations were heard that on a few recent occasions, all persons from a single unit were stripped naked and were ordered to stand naked in the corridor while their cells were being searched.

The CPT must emphasise in this context that a strip search, if considered necessary on the basis of an individual risk assessment, must always be carried out in a manner respectful of human dignity. In particular, prisoners should never be required to remove all their clothes at the same time or to strip naked in front of other prisoners.

**The CPT recommends that these principles be effectively implemented in practice at Aruba Correctional Institution.** Reference is made to the more detailed remarks set out in paragraph 203, which also apply in the prison context.

247. More worryingly, according to information gathered through interviews with staff and prisoners, as well as the examination of records of the Supervisory Committee of the prison, all female prisoners were subjected to a strip-search and a cavity search in July 2018. The searches were ordered by the prison management for security reasons due to a suspicion of the existence of illicit items in the establishment. The cavity searches were carried out by a female member of the healthcare staff of the establishment. At least two women refused to submit to the searches and they were forcibly moved with the assistance of members of the special intervention team to the room where the search was conducted; during the transfer, one of the women was allegedly punched and kicked by a member of the team. Male members of the special intervention team were then apparently present in the room during the search. No illicit items were found during the searches.

The CPT considers that such indiscriminate use of these highly intrusive procedures in respect of the entire female population and the way in which it had apparently been carried out, at least in the two cases described above, may well amount to inhuman and degrading treatment.

The CPT considers that intrusive searches of the genital area and body cavities carry a high risk of abuse and intimidation. Alternative screening methods, for example, through the use of ultrasound examinations, should be developed.

Vaginal searches, in particular, should have a clear legal basis and should only be conducted exceptionally, when absolutely necessary on the basis of an individual risk assessment, and should be surrounded by appropriate safeguards. An intimate internal examination should be conducted by a medical practitioner only, it being understood that this medical practitioner should not be the doctor who would treat the patient with respect to health-related issues, in order to preserve the patient-doctor relationship. Examinations of this intimate nature should be conducted in a way that respects, to the greatest possible extent, the safety and dignity of the woman. Each examination should also be properly recorded in a special register. Indeed, as any other search which requires a prisoner to undress, body cavity searches should be conducted out of the sight of custodial/security staff of the opposite sex.<sup>164</sup>

**The CPT recommends that the Aruban authorities take urgent steps to ensure that these principles are effectively implemented in practice at Aruba Correctional Institution and that revised protocols on the conduct of any searches are drawn up.**

248. It is inappropriate that members of the special intervention team carried firearms in detention areas when cell searches were being carried out.

The Committee must stress that the carrying of firearms by staff who are in direct contact with prisoners is an undesirable and dangerous practice, which could lead to high-risk situations for both prisoners and staff. Indeed, in most Council of Europe states, the carrying of firearms within accommodation areas of prisons is generally prohibited.<sup>165</sup> **The CPT recommends that the Aruban authorities put an end to the carrying of firearms by staff inside detention areas of Aruba Correctional Institution.**

249. More generally, the CPT was struck by the security-driven approach that it observed at KIA. For example, a lot of emphasis seemed to be put by senior management on investments in static security measures (perimeter walls with shards of glass on the top, combined with barbed wire). Members of the special intervention team (sometimes with reinforcement by police officers) routinely intervened in the prison in full riot gear (black combat uniforms, balaclavas, shields and ballistic helmets), carried firearms in detention areas and several allegations were received of their rough

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164. See also Rule 20 of the UN Rules for the Treatment of Women Prisoners and Non-Custodial Sanctions for Women Offenders (the Bangkok Rules).

165. See also Rule 69.1 of the European Prison Rules (as revised in 2020).



behaviour and inappropriate use of force. Further, custodial staff was reportedly encouraged by senior management to routinely carry batons, pepper spray canisters and handcuffs in detention areas.<sup>166</sup> Indeed, the instance of the cavity searches described above also illustrates this approach well.

While the CPT acknowledges that security measures are necessary in every prison, it considers that ensuring safety and security requires, above all, adequate staffing levels in detention areas, greater contact, and the development of positive relations, between inmates and staff, based on the notions of dynamic security and care.<sup>167</sup>

**The CPT recommends that steps be taken at Aruba Correctional Institution to ensure that the overall approach to security and safety in the establishment duly takes into account the principle of dynamic security.**

c. discipline

250. Disciplinary procedures were well documented in disciplinary files and prisoners facing disciplinary charges were heard in person before a disciplinary punishment was imposed and received a copy of the decision which informed them of the possibility to lodge an appeal.

The most severe disciplinary sanction that may be imposed is solitary confinement for up to 14 days. However, the examination of the disciplinary files revealed that the same sanction (one or two weeks' confinement in one's own cell or, less frequently, in a punishment cell) was often imposed for minor infringements, as well as for major offences, such as assaulting another inmate. Moreover, the confinement was still usually accompanied by the corollary punishment of withdrawal of the right to receive visits.

**The CPT reiterates its recommendation that the Aruban authorities take steps to ensure that disciplinary punishment of prisoners does not include a total prohibition of family contact and that any restrictions on family contact as a form of punishment should be used only where the offence relates to such contact.**

Further, **steps should be taken to ensure that any disciplinary punishment imposed on a prisoner is proportionate to the infringement committed.**

251. Prisoners placed in disciplinary solitary confinement were visited by healthcare staff only once every two to three days. As noted in the report on the 2014 visit, a prison's healthcare service should be very attentive to the situation of prisoners placed under solitary confinement. Not only should they be informed of any such placement, but they should visit the prisoner immediately after placement and on a regular basis, at least once per day, and provide them with prompt medical assistance and treatment as required. They should report to the prison director whenever a prisoner's health is put seriously at risk by being held in solitary confinement.

**The CPT reiterates its recommendation that steps be taken to bring the practice at Aruba Correctional Institution into line with these principles.**

252. Particular mention should be made of the material conditions in the solitary confinement cell in the department for women, which was very austere. The cell was devoid of any equipment other than a concrete sleeping platform and an unpartitioned sanitary annexe (containing a shower, toilet

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166. The CPT considers that the routine carrying of pepper spray, handcuffs and batons in detention areas is not conducive to developing positive relations between staff and inmates; prison officers should thus not routinely carry such equipment in detention areas.

167. Dynamic security is the development by staff of positive relationships with prisoners based on firmness and fairness, in combination with an understanding of their personal situation and any risk posed by individual prisoners (see Rule 51 of the European Prison Rules and paragraph 18.a of the Recommendation Rec (2003) 23 of the Committee of Ministers of the Council of Europe to member states on the management by prison administrations of life sentence and other long-term prisoners).

and washbasin).<sup>168</sup> The whole front wall of the cell was made of metal plates reinforced with metal bars and once the door was closed, there was no access to natural light. Artificial lighting was reportedly often switched off at the request of the person placed in the cell as it produced unbearable heat. Consequently, women were held in a completely dark cell. Further, the cell was not fitted with a call bell.

It is totally inappropriate that suicidal or self-harming women could be placed in this cell, with very little care and support, except for daily visits by the establishment's psychologist.<sup>169 170</sup>

**The CPT recommends that urgent steps be taken to find more suitable cellular accommodation for prisoners undergoing solitary confinement as a punishment. The cells should, *inter alia*, be adequately ventilated, enjoy not only adequate artificial lighting but also access to natural light and be equipped with a table and chair (fixed to the floor if necessary) in addition to a bed, as well as a call bell.**

Moreover, **immediate steps should be taken to ensure that the cell in question is never used for the isolation of suicidal or self-harming prisoners. Instead, such persons should be afforded increased contact with other persons,<sup>171</sup> as well as appropriate support and counselling. If necessary, they should be kept under a special observation scheme and the treatment and care provided to them should be overseen by healthcare staff.**

d. contact with the outside world

253. The arrangements for prisoners to maintain contact with the outside world were in principle satisfactory. Both remand and sentenced prisoners were allowed to receive visits for one hour and 15 minutes every week and could make phone calls several times a day (each lasting for up to 10 minutes) from payphones located in the outdoor yards and association rooms.

The CPT notes positively that the possibility of making free-of-charge Voice-over-Internet-Protocol (VoIP) calls (Skype) was introduced during the Covid-19 pandemic and **encourages the Aruban authorities to maintain this possibility beyond the pandemic.**

254. The continued use of plexiglass partitioning of tables during visits which had been introduced during the pandemic was a source of considerable frustration among prisoners and the delegation received a number of complaints in this respect. **The CPT recommends that the Aruban authorities take steps to ensure that the plexiglass partitioning is removed and open visits are re-introduced.**

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168. Reportedly, whenever a prisoner was placed in the cell, she was provided with a mattress and a fan.

169. The establishment employed two psychologists who, however, were not clinical psychologists and were mainly dealing with risk assessment for administrative purposes.

170. It was expected that the new healthcare facility (see paragraph 237) would be equipped with a special observation room which would accommodate prisoners deemed at risk of self-harm or suicide.

171. Indeed, isolation may well increase the risk of suicide rather than decrease it.

## CURAÇAO

### A. Police establishments

#### 1. Preliminary remarks

255. At the time of the visit, the 1996 Netherlands Antilles Code of Criminal Procedure (CCP) remained in force in Curaçao. In so far as is relevant for the CPT, it has remained largely unchanged since the last visit.

It should be recalled that persons suspected of having committed a criminal offence may be held by the police for questioning for a maximum of six hours.<sup>172</sup> Thereafter, if the needs of the investigation so require, the person may be placed in police custody (*inverzekeringstelling*) for a maximum period of two days, on the decision of a prosecutor or of an assistant prosecutor<sup>173</sup> reporting to the prosecutor.<sup>174</sup> Police custody may be further extended by the prosecutor for an additional maximum period of eight days.<sup>175</sup> However, the suspect must be brought before the investigating judge as soon as possible – and within 24 hours – after the beginning of such an extension in order to decide on its lawfulness.<sup>176</sup> During the period of police custody (up to 10 days and 16 hours), the detained person is held in a police facility.

Thereafter, a person may be placed in remand detention (*voorlopige hechtenis*) as regulated in Title VIII of the CCP. A maximum of eight days of custody (*bewaring*) may be ordered by the investigating judge, renewable once.<sup>177</sup> This detention, however, as well as any further remand custody (*gevangenhouding en gevangenneming*),<sup>178</sup> should take place at a remand facility under the responsibility of the head of that facility; that is, the Centre for Detention and Correction Curaçao (*Sentro di Detenshon i Korekshon Kòrsou* or SDKK).<sup>179</sup>

The information gathered during the visit, in particular through interviews with persons who were – or who had recently been – deprived of their liberty by the police, and through the examination of the relevant registers and decisions in the police establishments visited, indicates that the statutory time limits described above for deprivation of liberty and its extension were respected in practice. See however, paragraph 271 as regards CPT concerns with respect to the length of stay in police facilities.

256. For almost a decade, discussions have been taking place regarding a new CCP which would apply in all parts of the Caribbean part of the Kingdom of the Netherlands (namely, in the constituent countries of Aruba, Curaçao and Sint Maarten, as well as in Bonaire, Sint Eustatius and Saba (the BES islands)). The new Code is expected to introduce significant changes which are of relevance to the CPT. For example, the initial period of police custody under the new Code shall be three days, renewable once. It also explicitly lays down the right of detained persons to consult their lawyer prior to questioning by the police.

The delegation was informed during the visit that the issue of the adoption of the new Code would again be discussed in the near future in a meeting of the Ministers of Justice of the Netherlands, Aruba, Curaçao and Sint Maarten. **The CPT would like to receive updated information on the expected timeline for the adoption and entry into force of the new Code of Criminal**

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172. Article 80 (1) CCP. This article also provides that the time period between 10 p.m. and 8 a.m. should not be counted given that, as a general rule, persons may not be questioned during that time. Therefore, the initial period of deprivation of liberty by the police may in fact last for up to 16 hours in some cases.

173. In Dutch, a *hulpofficier van justitie*, who may also be a senior police officer.

174. Article 83 (1) and (4), and Article 87 (1) CCP.

175. Article 87 (2) CCP.

176. Article 89 (1) CCP. The maximum period before persons deprived of their liberty are brought before a judge thus amounts to three days and 16 hours.

177. Articles 92 (1) and 93 CCP.

178. Articles 95 to 99 of the CCP. The initial period that may be imposed by a judge is 60 days and may be extended several times.

179. Articles 94 (2) and 99 CCP.

**Procedure.** Further, the Committee would appreciate receiving more detailed information on the changes which are expected to be introduced by the new legislation.

It trusts that the recommendations and comments in this visit report will be taken into account, in particular as regards time limits for deprivation of liberty and legal safeguards applicable to persons in police custody (the right of access to a lawyer and a medical doctor, and the right to inform a third person of the fact of one's detention, as well as the obligation to inform detained persons of these rights).

## 2. Ill-treatment

257. The CPT notes positively that its delegation received no allegation of deliberate physical ill-treatment by the police.

However, a few allegations were received of verbal abuse of detained persons by police officers during questioning, including from a juvenile. The delegation also heard a few allegations of excessively tight handcuffing of detained persons, most notably when immigration detainees were transported by the police to an immigration detention facility.

**The CPT recommends that the Curaçao authorities reiterate to police officers that verbal abuse of detained persons is unacceptable and will be sanctioned accordingly. Further, police officers should be reminded that when it is deemed necessary to handcuff a person, the handcuffs should under no circumstances be excessively tight.**<sup>180</sup>

## 3. Safeguards against ill-treatment

258. The CPT attaches particular importance to the right of persons deprived of their liberty to inform a close relative or another person of their choice of their situation; the right of access to a lawyer; and the right of access to a doctor. The CPT considers that these three rights are fundamental safeguards against the ill-treatment of persons deprived of their liberty and should apply from the very outset of the person's deprivation of liberty, that is, from the moment when the person is obliged to remain with the police. Further, persons detained by the police should also be expressly informed, without delay and in a language they understand, of the possibility to avail themselves of these rights, and it should be possible to verify the application of these safeguards by consulting police custody records.

259. As regards information on rights, by virtue of Section 82 CCP, detained persons shall be promptly informed of the reasons for their arrest, the right to an attorney (including one appointed *ex officio*), and the right to remain silent. This shall be done in a language they understand and shall also be provided in writing.

In line with these provisions, the majority of persons interviewed during the visit confirmed that they had been informed of their rights in writing shortly after arrival at the first police station. Moreover, it is a positive development that all the language versions of the relevant information sheet (Dutch, Papiamentu, English, Spanish and French) now also contain a reference to the right of detained persons to have a third person notified of the fact of their detention and the right of access to a doctor, as recommended by the CPT in the report on the 2014 visit.

However, the delegation received a few allegations that detained persons had been informed of their right only verbally, or that they had neither been informed verbally nor in writing throughout the duration of police custody.

Further, despite the practice observed during the 2014 and 2022 visits to allow the presence of a lawyer during police questioning (see paragraph 261), the information sheets still provided, in line

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180. It should be noted that excessively tight handcuffing can have serious medical consequences (for instance, sometimes causing a severe and permanent impairment of the hand(s)).

with the letter of Section 48 (4) CCP, that the right to have a lawyer present during police questioning only applied to juveniles.

**The CPT recommends that the Curaçao authorities take steps to ensure that all persons deprived of their liberty by police officers – for whatever reason – are fully informed of their fundamental rights from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). This should be ensured by the provision of clear verbal information at the moment of apprehension, to be supplemented at the earliest opportunity (that is, immediately upon first arrival at a police establishment) by the provision of the relevant information sheet, in a language which the detained persons understand.**

Further, **the existing information sheets should be reviewed with a view to ensuring that all persons deprived of their liberty by the police are fully informed of all fundamental rights applicable to them.**

260. According to Section 42 (1) of the Official Instruction to the Police on measures to which persons deprived of their liberty may be subjected in Curaçao (no. 99 of 2010, further referred to as “Police Instruction 99/2010”),<sup>181</sup> police officers shall as soon as possible inform a family member or household member of the detained persons’ arrest. If the detained person is a juvenile, the police shall do this on their own initiative; in the case of adults, notification shall be made upon their request.

This provision appeared to be generally respected in practice. Most persons interviewed by the delegation during the visit confirmed that a third person was contacted on their behalf by police officers.

Nevertheless, a few allegations were heard that the right to notify a third person had not been granted at all during several days that the detained person had spent in police custody, and that the notification could be done only upon their transfer to a prison.

**The CPT recommends that the Curaçao authorities ensure that all detained persons can effectively benefit from the right to inform a third person of their situation as from the very outset of their deprivation of liberty (that is, from the moment that they are obliged to remain with the police).**

261. In practice, detained persons could benefit from the right of access to a lawyer (including one appointed *ex officio*) shortly after their apprehension; this included the right to consult with the lawyer in private before the first police interview and to have the lawyer present during police questioning. The delegation received no complaints in this regard from detained persons.

However, Section 48 (4) CCP continues to provide that legal counsel may not be present during police interviews until the suspect has appeared before an investigating judge, which can take up to three days and 16 hours from the moment of arrest.<sup>182</sup> Moreover, as already mentioned in paragraph 259, the information sheet for detained persons provided that while detained persons had the right to legal assistance, including prior to the first police interview, the right to assistance from a lawyer (or another person of confidence) *during* police questioning applied only to juveniles.

**The CPT recommends that the Curaçao authorities take steps to ensure the full recognition in law of the right of access to a lawyer for all detained persons as from the outset of their deprivation of liberty, including during any police interview. This requirement should be duly**

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181. “*Ambtsinstructie voor de politie en de buitengewone agenten van politie en regels met betrekking tot de maatregelen waaraan rechtens van hun vrijheid beroofde personen kunnen worden onderworpen voor Curaçao (Ambtsinstructie politie, 2010 no. 99)*”

182. This discrepancy between law and practice was due to the judgment of the European Court of Human Rights in the case of *Salduz v. Turkey* ([GC], No. 36391/02, 27 November 2008) and the Dutch Supreme Court’s interpretation of its impact on the Dutch legal system. In the immediate aftermath, criminal suspects were entitled to consult their lawyer prior to the first interview on the substance of the case and, in the case of a juvenile, the lawyer could be present during interviews (but could not actively intervene during questioning).

taken into account in the ongoing discussions on the new Code of Criminal Procedure (see paragraph 256).

262. As regards juveniles more particularly, a few juveniles interviewed during the visit alleged that they had been questioned by the police without the presence of a lawyer.

The CPT considers that juveniles should never be subjected to police questioning or requested to make any statement or to sign any document concerning the offence(s) they are suspected of having committed without the presence of a lawyer and, in principle, a trusted adult person.

**The Committee recommends that the Curaçao authorities ensure that a lawyer is always present when a juvenile is questioned by the police.**

263. Concerning the right of access to a doctor, according to Section 48 of the Police Instruction 99/2010, if a detained person needs medical assistance or possesses medication, a medical doctor should be consulted. A doctor shall also be consulted if the detained person requests medical treatment or medication.

The findings of the visit indicate that if a detained person was ill or injured, medical assistance was organised by police officers. However, the delegation received several allegations that requests from detained persons who had not been visibly ill had not been granted by police officers and the persons concerned had only been able to consult a doctor after their admission to prison. Clearly, this would be in contradiction of the aforementioned provisions of the Police Instruction 99/2010.

By letter of 14 July 2022, the Curaçao authorities informed the Committee that they intended to ensure that a certified nurse is employed and can be reached immediately when a person in custody asks for a doctor. The nurse will determine whether or not the presence of a doctor is needed. In the affirmative, the nurse will inform the doctor accordingly. The authorities expected that the measure would be approved in August 2022 and would then be tested for three months. If the subsequent evaluation is positive, it will be maintained permanently.

264. The CPT considers such an approach to be a positive development. It would however recall that, in addition to identifying healthcare needs, a key objective of guaranteeing an effective right of access to a doctor during police custody is aimed at preventing ill-treatment. In the CPT's experience, it is during the period immediately following the deprivation of liberty that the risk of intimidation and ill-treatment is at its greatest.

Medical doctors examining persons in police custody will be best positioned to draw up a comprehensive and timely record of any injuries observed and any relevant statements made by the detained person, as well as the doctor's observations indicating the consistency between any allegations/statements made and the objective medical findings. The record should be made available to the detained person. Hence, it will be important that nurses are clearly instructed to report any injuries which a detained person displays to a doctor immediately, who should thereafter carry out a physical examination of the detained person.

In light of these considerations, **the CPT recommends that if nurses examine persons in police custody, they should be instructed to report to a doctor whenever the person in police custody makes an allegation of ill-treatment or displays injuries which are indicative of ill-treatment (even where no allegations are made). The person concerned should then be examined by a medical doctor (preferably qualified in forensic medicine) and the record should be systematically brought to the attention of the prosecutorial authorities, regardless of the wishes of the person concerned. To this end, arrangements should be made to ensure that clear reporting lines are in place.**

More generally, **the CPT wishes to point out that a request by a detained person to see a doctor (or another healthcare professional) should always be granted; it is not for police officers, or any other authority, to filter such requests. Police officers should be reminded of the relevant rules laid down by the Police Instruction 99/2010.**

265. As regards custody records, and as already observed during the 2014 visit, while the individual files of detained persons maintained at the police detention facility at SDKK<sup>183</sup> contained the first warrant for police custody, further warrants were not included. According to police officers, the extension of police custody was sometimes communicated to them only verbally, for example, by police officers escorting the detained person concerned from a court hearing.

**The CPT reiterates its recommendation that a valid warrant, providing the legal basis for custody, always be kept in the individual custody record of a detained person. A valid warrant should automatically be provided by the authority ordering the custody to the authority responsible for executing it. All persons deprived of their liberty by the police should be duly informed of the imposition of police custody and its extension, as well as of any available legal remedies. This could be ensured by serving them with a copy of the relevant warrants.**

266. Moreover, it remains the case that only basic information was recorded in the ACTPOL computer application, such as the personal data of detained persons, date and time of their apprehension and to which police establishments they were taken. Neither ACTPOL, nor any other records (maintained in paper form) shown to the delegation in the police establishments visited (including individual files of detained persons) contained information as to whether detained persons had been informed of their fundamental rights and had chosen to avail themselves of or to waive them, when and by whom their police custody was extended, when they were released, etc.

The CPT considers that the fundamental guarantees of persons placed in police custody would be reinforced if a single and comprehensive custody record were to be kept for each of these persons. In this record would be entered all aspects of custody and all measures taken in connection with it (when and for what reason(s) the custodial measure was taken; when the person arrived on police premises; when they were informed of their rights; whether they showed signs of injuries, health problems, mental disorder, etc.; in which cell(s) they were placed; when provided food; when questioned; when they had contact with and/or visits from close relatives, a lawyer, a doctor or a representatives of the consular services; when transferred; when brought before a prosecutor or the relevant judge; when remanded or released, etc.).

**The CPT recommends that comprehensive custody records including the aforementioned information be introduced and diligently kept at police stations in Curaçao. Further, for various questions (for example, personal effects confiscated; having been informed of one's rights and having availed oneself of or waived them; having been able to inform a close relative or another third party), the detainee's signature should be required and, if necessary, its absence duly accounted for.** Indeed, consideration could be given to developing the ACTPOL system and duly using it in practice to meet these requirements.

#### 4. Conditions of detention

267. The CPT considers it necessary to recall that police establishments should meet certain elementary material requirements.

All police holding facilities should be clean, of a reasonable size for the number of persons they are used to accommodate and have adequate lighting (that is sufficient to read by, sleeping periods excluded) and ventilation; preferably, such facilities should enjoy natural light. Further, holding facilities should be equipped with a means of rest (for example, a fixed chair or bench) and persons obliged to stay overnight in custody should be provided with a clean mattress and clean blankets.

Persons in custody should be allowed to comply with the needs of nature 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 (that is, something more substantial than a sandwich) every day. Persons held for 24 hours or more should be provided with appropriate personal hygiene items (including sanitary towels) and be offered outdoor exercise every day.

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183. This was the only police *detention* facility in use in Curaçao at the time of the visit. See paragraph 268.

268. In the course of the 2022 visit, the delegation visited Barber and Rio Canario Police Stations. It also visited the police detention facility at SDKK,<sup>184</sup> which, at the time of the visit, was the only police detention facility in Curaçao intended to be used for holding detained persons for longer than a few hours (see, however, paragraph 272).<sup>185</sup>

269. At the time of the visit, a complete refurbishment of *Barber Police Station* was in its final stage and the facility was expected to be brought into service within a few days (see also paragraph 270). In many respects, material conditions in the facility were adequate. In particular, the state of repair was indeed very good, with air conditioning and fans having been installed in the corridors. The cells were also equipped with call bells.<sup>186</sup>

However, the eight cells intended for double-occupancy<sup>187</sup> only measured some 6.5 m<sup>2</sup> (excluding the sanitary annexe); as already noted in the report on the 2014 visit, this is inadequate for keeping more than one person for several days. Moreover, the in-cell sanitary annexes (equipped with a floor-level toilet, a shower and a water tap) were still only partially partitioned from the rest of the cell and in particular the upper bunk-bed provided an unobstructed view of the sanitary area. No ladder was available to climb up to the upper bunk-bed. In addition, access to natural light remained very limited. Moreover, none of the cells was suitable for wheelchair users.

While acknowledging the considerable improvement in the material conditions, **the CPT reiterates its recommendation that the Curaçao authorities take the necessary steps for the cells to be used for single occupancy only, and for police detention not exceeding a few days. Access to natural light should also be improved. Steps should also be taken to ensure that at least one cell is adapted for wheelchair users.**

Further, **it would like to receive information on the number of days during the first two months of 2023 that the occupancy at Barber Police Station exceeded 10 persons.**

270. As regards material conditions in the *police detention facility at SDKK*, they were unacceptable for any length of stay. The three cells, each of which had a capacity to hold four persons, measured only 12 m<sup>2</sup> and provided cramped conditions. The cells were dark, filthy, dilapidated and poorly ventilated, and were also infested with rats and insects. Some mattresses were placed on the floor and no bedding was provided to detained persons.<sup>188</sup> In-cell toilets were only partially partitioned. Conditions in the two isolation cells, located next to the office block, were in an even worse state, with the cells in an appalling state of hygiene and black mould present in the sanitary area. This was particularly problematic as these cells held persons with mental health problems, drug dependency and people in need of isolation on health grounds.

In light of these findings, the delegation made an immediate observation pursuant to Article 8, paragraph 5, of the Convention and requested that the authorities of Curaçao take the police custody cells at SDKK out of service without further delay.

By letter of 14 July 2022, the Curaçao authorities informed the Committee that the facility had been taken out of service on 28 May 2022 and that all police detainees had been transferred to the newly refurbished Barber Police Station.

The CPT welcomes the swift reaction of the Curaçao authorities. **It would like to be informed about the future plans for the police detention block at SDKK.**

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184. The facility was located in a separate building within the broader compound of SDKK, outside the main perimeter wall of the prison. One wing was used as a police detention facility, the other for immigration detention (see paragraph 275).

185. During the 1994 and 2007 visits, CPT also visited Punda Police Station. In 2022 (and as was the case already in 2014), it was no longer used for holding detained persons.

186. The call bells were located outside the cells but could be reached through the barred doors.

187. In addition, there were two single-occupancy cells of the same size.

188. On a more positive note, detained persons were offered toothpaste, toothbrush, soap, and toilet paper.



## 5. Other issues

271. In the report on the 2014 visit, the CPT noted that police stations continued to be used in exceptional circumstances for holding prisoners for extended periods of time (that is, several months), apparently for reasons of protection. The information gathered during the 2022 visit indicates that this practice has been abandoned. This is a welcome development.

Nevertheless, it remained the case that detained persons were held for up to 10 days in the police detention facility at SDKK.<sup>189</sup>

The CPT must underline that remand custody<sup>190</sup> on police premises in itself poses a series of risks of intimidation and ill-treatment. Moreover, material conditions and the lack of regime activities will usually make police facilities unsuitable for long periods of detention. Instead, once they appeared before a judge, persons remanded in custody (or persons whose initial police custody has been extended) should be promptly transferred to prison; such an approach does not preclude the police from carrying out further questioning, if necessary, of persons held in prison.

**The CPT reiterates its recommendation that detention in police premises does not exceed the initial period of police custody (*inverzekeringstelling*)<sup>191</sup> and that any further extensions of detention are carried out at SDKK.** This requirement should be duly taken into account in the ongoing discussions on the new Code of Criminal Procedure (see paragraph 256).

272. As regards more particularly the detention of juveniles, the delegation came across a few cases of juveniles who had been accommodated in police cells at the police detention facility at SDKK together with adults. Moreover, despite the assurances received from the authorities that persons would not be held at Rio Canario Police Station for more than one night (and only exceptionally when they arrived late in the evening or at night – see paragraph 268), the delegation found that juveniles as young as 14 years of age had been detained for three days in this facility shortly before the visit. During their stay, two of them allegedly had to share one mattress.

The CPT considers that, as a rule, juveniles should not be held in a law enforcement establishment for more than 24 hours. Further, given their vulnerability, as a matter of principle, they should be accommodated separately from adults. Naturally, all detained persons held overnight in police custody should be provided with a clean mattress, pillow and clean bedding.

**The CPT recommends that the Curaçao authorities take immediate steps to ensure that juveniles are not held in police custody longer than 24 hours and that, if they are held overnight, they are provided with a mattress, pillow and clean bedding.**

273. In the 2014 visit report, the CPT noted that Rio Canario Police Station was designated to hold persons suspected of body-packing and it expressed concerns about the lack of appropriate medical supervision in place. During the 2022 visit, the delegation was informed that persons suspected of body-packing were now brought to a public hospital and were held in a secure room until the drug package has been evacuated. The CPT welcomes this development; **it would like to receive a copy of the current protocol applicable to persons suspected of body-packing, including as regards medical supervision.**

274. The information gathered during the visit indicates that detained persons were not systematically subjected to a strip-search by police officers; indeed, this measure was used only rarely.

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189. Exceptionally, police detainees were held a few days longer in this facility if no place was available at Block 1 (admission unit) of SDKK. For example, the longest stay at the time of the CPT visit was 13 days.

190. Or any other type of custody for extended periods of time, whatever its formal classification under the national legislation.

191. That is, two days and 16 hours, and possibly 24 additional hours for the detained person to be brought before a judge.

It is noteworthy in this context that an Instruction for the Curaçao Police Force on the care for detained persons<sup>192</sup> was being drawn up. The ambition of the document was to provide comprehensive guidelines for police officers as regards the dignified treatment of and care for persons in police custody. The Committee appreciates the efforts that have been put into developing this reference tool.

Without attempting to assess fully the draft which existed at the time of the visit, the CPT wishes to point out that a strip-search is a very invasive and potentially degrading measure, which can be particularly (re-)traumatising for persons who have experienced sexual violence. It should be based on an individual risk assessment. Further, in order to minimise embarrassment, persons who are searched should not be required to remove all their clothes at the same time, for example, a person should be allowed to remove clothing above the waist and put it back on before removing further clothing.

It would appear that these principles are not fully reflected in the draft document.

**The CPT recommends that the relevant parts of the draft Instruction for the Curaçao Police Force on the care for detained persons be amended to ensure that the aforementioned principles are reflected in the document (and respected in practice by police officers).**

## **B. Immigration detention**

### 1. Preliminary remarks

275. The delegation carried out a targeted follow-up visit to “Illegalen Barakken” Immigration Detention Facility (further referred to as “the Barakken”), the only establishment of this type in Curaçao.<sup>193</sup> It also assessed the situation of seven women held in immigration detention in the women’s unit at SDKK.<sup>194</sup>

At the time of the visit, Barakken had a capacity of 10 places and was accommodating 12 adult male foreign nationals held under aliens legislation.<sup>195</sup> As regards the length of detention, see paragraph 278.

### 2. Ill-treatment

276. The delegation received no allegations of deliberate physical ill-treatment of detained foreign nationals by staff working at the Barakken or in the female unit of SDKK.

However, a few allegations were heard that at the moment of apprehension, foreign nationals were “hit on the head and beaten” by the Coast Guard and verbally abused by them.<sup>196</sup> **The CPT recommends that members of the Coast Guard be reminded, through the appropriate channels, that any form of ill-treatment of detained persons – including verbal abuse – is unacceptable and will be sanctioned accordingly.**

277. Violence among persons held in immigration detention was not an issue.

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192. *Instructie Arrestantenzorg Korps Politie Curaçao*.

193. The facility was located in a separate building within the broader compound of SDKK, outside the main perimeter wall of the prison. One wing was used for immigration detention, the other as a police detention facility (see paragraph 268).

194. See paragraph 280 as regards CPT concerns regarding the accommodation of persons held under aliens legislation in prisons.

195. Juveniles in immigration detention were accommodated in the Judicial Youth Institute Curaçao (*Justitiële Jeugd Inrichting Curaçao* (JJIC)). The establishment was visited by the CPT in 2014 (see doc. CPT/Inf (2015) 27, paragraphs 190 *et seq.*). It was confirmed by the authorities that if families were detained, they were split up and family members were accommodated in the various establishments. See paragraph 282 as regards CPT concerns with respect to this approach.

196. See also paragraph 257 as regards excessively tight handcuffing by the police.

### 3. Conditions of detention

#### a. material conditions, staff and detention of families

278. Material conditions at the Barakken<sup>197</sup> were as poor as those described in paragraph 270 in respect of the adjacent police detention facility at SDKK.

In brief, two cells intended for four persons (14.5 m<sup>2</sup>) were holding five persons and a cell measuring 10 m<sup>2</sup> was accommodating two persons. The conditions in the bigger cells were cramped and the number of beds (two bunk-beds in each cell) was insufficient and two persons slept on mattresses placed on the floor. All three cells were dark, filthy and dilapidated, and were also infested with rats and insects. Despite a fan being placed in the corridor in front of each cell, the ventilation in the cells remained inadequate. In-cell sanitary annexes were only partially partitioned, the cells were poorly equipped (no tables, chairs or storage space for personal belongings, which the detained persons kept in plastic bags on the floor) and call bells were not functional.

While these conditions were unacceptable for any length of stay, the situation was all the more problematic for those foreign nationals held under aliens legislation who had spent up to several months in the facility – at the time of the visit, five persons had been held for less than one month, two for 43 and 81 days respectively, and the remaining five in excess of 90 days, the longest stay being 115 days.<sup>198</sup>

279. In light of these findings, the delegation made an immediate observation pursuant to Article 8, paragraph 5, of the Convention and requested that the authorities of Curaçao take the facility out of service without further delay.

280. By letter of 14 July 2022, the Curaçao authorities informed the Committee that the facility had been closed down on 28 May 2022. Detained men had been transferred to Block 1 of SDKK which had been temporarily designated as an immigration detention facility by a Decree of the Minister of Justice.<sup>199</sup>

Subsequently, the Court of First Instance of Curaçao held that the regime (daily programme) which was implemented in Block 1 was not adequate for immigration detention and was contrary to Article 5, paragraph 1 (f), of the European Convention on Human Rights. It ordered the constituent country of Curaçao to immediately lift the measure of immigration detention of the undocumented male persons mentioned in the verdict, except for two of them.

The CPT concurs with the aforementioned opinion of the court. The Committee has repeatedly held that a prison is by definition not a suitable place in which to detain someone who is neither suspected nor convicted of a criminal offence. Persons detained under aliens legislation should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation. Care should be taken in the design and layout of such premises to avoid, as far as possible, any impression of a carceral environment.

281. The delegation was informed that a new immigration detention facility was being constructed next door to the Barakken. The overall capacity of the new facility will be 70 places, mostly in double-occupancy rooms. There will also be two rooms for mothers with children (or vulnerable persons). The new facility will accommodate women, men, and juveniles. According to the information provided by the authorities after the visit, the facility was expected to enter into service by the end of 2022.

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197. The material conditions and regime for women held under aliens legislation in the female unit at SDKK were the same as those offered to female prisoners (see paragraph 309 *et seq.*).

198. According to the information provided by the authorities, the usual length of stay in the establishment was five days. However, in certain cases, detained persons were in reality held in the establishment for up to 200 days.

199. Prisoners who had been previously accommodated in Block 1 had been moved to other parts of SDKK.

The authorities also indicated that staff who will work in the establishment will be carefully selected and will receive appropriate training from the DJI (*Dienst Justitiële Inrichtingen*), a Dutch government agency responsible for the custody of detained persons.

**The Committee would like to receive confirmation that the new immigration detention facility is now in use and to be informed of the current occupancy and the regime afforded to detained persons. Further, it would like to receive more details about staffing levels, shift patterns and staff training.**

282. Regrettably, according to the plans which existed at the time of the visit, the current practice of splitting up families would be maintained in the new facility to a certain degree. While mothers and children will be accommodated together, fathers will still be held separately (even if they will be regularly allowed to visit their families).

The CPT must underline the general principle that every effort should be made to avoid resorting to the deprivation of liberty of an irregular migrant who is a child. The placement of minors with their parents in a detention centre should only occur as a last resort and if, in exceptional circumstances, such placement cannot be avoided its duration should be as short as possible. Furthermore, every possible effort should be made to avoid splitting up the family.

**The CPT recommends that the Curaçao authorities take the necessary steps to ensure that these principles are effectively implemented in practice in the new immigration detention facility.**

b. regime

283. From 7 a.m. to 5 p.m., cell doors within the Barakken facility were open and detained persons could access a narrow strip of corridor (measuring 1.5 by 13 m) in front of the cells, associate with each other and play cards and dominos. However, they were only offered daily access to fresh air in a sheltered area surrounded by metal bars, for up to two hours (but usually shorter).<sup>200</sup>

Moreover, as observed already in 2014, there continued to be a lack of any organised purposeful activity in the facility and detained men remained idle for most of the day.

The CPT considers that the conditions of detention for persons held in immigration detention should reflect the nature of their deprivation of liberty, with limited restrictions in place and a varied regime of activities. Within the detention facility, the freedom of movement of detained persons should be as unrestricted as possible and should include access to daily outdoor exercise for at least two hours (and possibly more); preferably, detained persons should have free access to outdoor exercise throughout the day.

Immigration detention centres should include access to a day room and to radio/television and newspapers/magazines, as well as other appropriate means of recreation (for example, board games, table tennis, sports), a library and a prayer room. The longer the period for which persons are held, the more developed should be the activities (educational, recreational and vocational) which are offered to them.

**The CPT recommends that the Curaçao authorities put in place a regime for persons detained under immigration legislation in line with the above remarks.**

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200. The area measured some 70 m<sup>2</sup>.

#### 4. Safeguards

284. The legal framework of immigration detention is laid down by the National Ordinance Admission and Expulsion (*Landsverordening toelating en uitzetting - LTU*).

Practical guidance on its implementation is provided for in the 2006 Revised Instruction of the Minister of Justice to the Governors on the application of the National Ordinance Admission and Expulsion (*Herziene instructie aan de Gezaghebbers inzake de toepassing van de Landsverordening Toelating en Uitzetting - HIG*).

According to Section 9.3 HIG, in conjunction with the National Ordinance Identification Obligation, anyone may be stopped by the police for the purpose of checking their identity, nationality and residence status. If necessary, the persons concerned may be transferred to a police station.

The deprivation of liberty may last for up to six hours. The time needed for the transfer to the police station and the time between 10 p.m. and 7 a.m. is not counted. The detention may be extended by the aliens police by a maximum of 48 hours if no clarity has been obtained and there are reasons to suspect that the detained person is not lawfully resident.

As far as the delegation could ascertain, foreign nationals apprehended by the police were taken to Rio Canario Police Station for short periods of time (usually a few hours and exceptionally overnight) and then transferred to the Barakken.

285. Section 19 LTU lays down a legal basis for the expulsion of foreign nationals and their detention to this end. It remains the case, however, that no maximum period of detention is provided for in the legislation. According to Section 10.5 HIG, detention should not last longer than reasonably necessary to remove the person concerned.<sup>201</sup>

The administrative decisions seen by the delegation contained both the order for expulsion and the order for the detention of the foreign national pending expulsion.

However, while the orders systematically stated that the person should be deported within one month, if deportation did not take place within this time limit, the individual files did not contain any order for the extension of the detention. Staff confirmed to the delegation that in these cases, a new decision was not issued and there was no review of the detention.

Further, Section 10.6.1 HIG provides that while a *detention order* may not be appealed against, the person concerned may bring interlocutory proceedings before civil courts to have the detention reviewed;<sup>202</sup> however, the orders did not contain information about this legal remedy.

An appeal against the *expulsion order* may be lodged with the court within six weeks. In addition, an objection may be lodged with the body which took the decision.<sup>203</sup> While the decisions seen by the delegation contained information on these remedies, some of the decisions stated explicitly that lodging an appeal or an objection does not have a suspensive effect on the implementation of the deportation and the outcome of the proceedings must be awaited abroad.

Finally, although information on legal remedies was sometimes provided in the decision in a language the person understood (usually Spanish, but possibly also in English, French and Dutch), the text of the decision as such only appeared in Dutch. According to staff, it was only verbally explained to the foreign national concerned.

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201. According to the relevant case law of the courts, the starting point is that if no removal has taken place after 6 months, it is in principle assumed that there is no prospect of removal, and that the detention should be lifted. However, there may be grounds for prolonging detention if the alien knowingly frustrates the search for their identity or if it is very likely that the alien may be removed shortly after the expiry of the six months.

202. According to HIG, this satisfies the requirements of Article 5 of ECHR concerning legal remedy to have the lawfulness of one's detention speedily reviewed by the court.

203. See Section 11.3 HIG.

286. **The CPT recommends that the Curaçao authorities take the necessary steps to ensure that:**

- **a maximum time limit is introduced for the detention of foreign nationals who are subjected to an expulsion order;**
- **detained persons are informed in writing and in a language they understand of the possibility of having the lawfulness of their deprivation of liberty decided speedily by a judicial body;**
- **the need for continued detention is reviewed periodically by an independent authority and the foreign national concerned is informed in writing of any decision taken in this respect.**

Further, **the Committee considers that it would be desirable for foreign nationals to receive a written translation in a language they understand of decisions regarding their detention/expulsion (in addition to the information on the modalities and deadlines for appealing against such decisions).**

**It also considers that appeals against expulsion orders should have a suspensive effect on the implementation of the expulsion, to ensure that the procedure provides an effective protection against *refoulement*.**

287. Several complaints were received that detained persons were not informed of their rights (with the exception, in some cases, of the right to legal assistance) and the legal procedures applicable to them. It remained the case that there was no written information on rights of persons held under aliens legislation which could be provided to the foreign nationals concerned.

Further, there were still no house rules which would regulate the functioning of the immigration detention facility. According to the authorities, new house rules for immigration detention were being developed and will include information on the rights of detained persons. The information should also be displayed in the facility.

The CPT welcomes these plans. It considers that persons detained under aliens legislation should be expressly informed, without delay and in a language they understand, of their rights and the procedure applicable to them. To this end, all immigration detainees should be systematically provided with a document setting out this information; the document should be available in the languages most commonly spoken by those concerned and, if necessary, the services of an interpreter should be made available.

Further, they should be informed upon their arrival at an immigration detention facility, in writing and in a language they understand, of the relevant house rules.

**The CPT recommends that the Curaçao authorities ensure that all persons placed in immigration detention are fully informed, in a language they can understand, of their rights and the procedures applicable to them as set out above. Further, the Committee recommends that the house rules reflect the specific nature of immigration detention.<sup>204</sup>**

288. While detained foreign nationals had the right to consult with a lawyer, in practice, none of the detained persons interviewed during the visit could afford to pay for a lawyer, and the arrangements concerning access to the immigration detention facility of NGOs who could provide free legal assistance to detained persons were unclear. **The CPT would like to receive clarification from the Curaçao authorities regarding the arrangements for the provision of legal assistance to persons in immigration detention.**

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204. Reference is made in this context to the CPT Fact Sheet on immigration detention which summarises basic principles on immigration detention.

## 5. Other issues

289. Healthcare for detained persons continued to be provided by the healthcare staff of SDKK. However, persons newly admitted to the Barakken were not systematically medically screened.<sup>205</sup> Moreover, the delegation heard a few complaints of delayed access to healthcare (for up to two weeks).

**The CPT reiterates its recommendation that systematic medical screening of all newly admitted persons, including for transmissible diseases, be introduced. Further, the necessary steps should be ensured that foreign nationals in immigration detention have ready access to medical care.**

290. The delegation met a 22-year-old woman awaiting deportation who had been separated from her 2-year-old child who had remained with the family; she became very distressed and cut her wrists and arms while in the female unit at SDKK. As confirmed by staff, in response to her behaviour, she was stripped naked and given a heavy rip-proof cotton gown extending just below her waist which was not only extremely hot to wear but was also undignified. She was segregated in one of the austere cells for newly arrived prisoners where she was kept for 10 days without any meaningful human contact (except for short contact with staff when they brought her meals) and without any psychological support. Healthcare staff only attended to assess whether she was fit to return to the normal cells.

The CPT considers that such an approach is punitive and may well exacerbate the mental health crisis, rather than provide the necessary care and support, and may amount to inhuman and degrading treatment.

291. The CPT must point out that acts of self-harm frequently reflect problems and conditions of a psychological or psychiatric nature and should be approached from a therapeutic rather than a punitive standpoint. All cases of self-harm ought to be assessed medically immediately after the incident to evaluate the extent of lesions and to assess the psychological state of the person concerned. *De facto* isolation, resulting from a combination of confinement to a cell for most of the day, little or no contact with staff, and a poor regime, is the exact opposite of the care required; persons presenting a risk of suicide or self-harm should be afforded increased contact with other persons. Indeed, isolation may well increase the risk of suicide rather than decrease it. The treatment and care of persons identified as being at risk of suicide should be overseen by healthcare staff. Once such a person has been identified, he or she should be the subject of regular visits by healthcare staff and follow-up.

**The CPT recommends that the Curaçao authorities draw up a care protocol for detained persons who are deemed to be at risk of self-harm or suicide while in immigration detention, taking into account the above remarks. Further, the design of the gown provided to persons at risk of self-harm or suicide should be reviewed or the gown should be replaced by a suicide-proof top and bottoms to maintain a person's dignity.**

292. Although the practice was not systematic, some persons were strip-searched upon their admission to the immigration detention facility and were requested to remove all their clothes at once and to squat and jump. This included menstruating women. **The principles set out in paragraph 274 above should also be implemented in the immigration detention context.**

293. As regards contact with the outside world, the CPT notes positively that detained persons were now allowed to receive visits. They were also generally allowed to make one free phone call (including abroad), although a few complaints were received that this was only possible several days

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205. According to the authorities, foreign nationals arriving by boat were medically examined immediately upon their apprehension by Coast Guard on the shore. The CPT has certain reservations about this approach. First of all, several foreign nationals claimed that they had not been seen by a doctor when apprehended. Second, the CPT is not persuaded that such examination can replace comprehensive medical screening. Finally, not all persons who could be held in the establishment arrived by boat.

after their admission. Moreover, the payphone located in the detention area of the Barakken did not work and detained persons had to rely on staff to allow them to use the office phone to maintain contact with the outside world.

Detained persons were still not allowed to keep their mobile phones.

**The CPT recommends that arrangements be made in the new immigration detention facility to enable detained persons to have regular and frequent access to a telephone.**

Further, **the Committee invites the authorities to consider permitting detained persons to keep, or at least have regular and frequent access to, their own mobile phones. It also invites the authorities to consider introducing the possibility of making free-of-charge Voice-over-Internet-Protocol (VoIP) calls.**

### **C. Centre for Detention and Correction Curaçao (SDKK)**

#### 1. Preliminary remarks

294. The prison, located in the neighbourhood of Koraal Specht, and formerly known as Bon Futuro, changed its name in 2010 to Centre for Detention and Correction Curaçao (*Sentro di Detenshon i Korekshon Kòrsou* or SDKK). The establishment was repeatedly visited by the CPT during previous visits.

295. The theoretical official capacity of the establishment was 684 places. However, as was already the case during previous visits, the capacity was significantly reduced as many cells were out of use due to their poor material condition. At the time of the visit, the available capacity was 440 places and the establishment was accommodating 434 prisoners: 177 men on remand (including one juvenile), 244 adult sentenced men, four adult women held on remand and nine sentenced adult women. In addition, seven female foreign nationals held under aliens legislation were accommodated in the unit for women.

296. The delegation was informed that amendments to the National Ordinance on Penitentiary Principles (*"Landsverordening beginselen gevangeniswezen"* – the Curaçao Prison Act) were being prepared by the authorities. **The CPT would like to receive more detailed information on the changes these amendments will introduce.**

297. In the report on the 2014 visit, the CPT made critical remarks concerning gaps in documentation at SDKK. The delegation which carried out the 2022 visit noted the efforts made by the prison management to maintain basic records concerning the prisoners held in the establishment (even if it was still difficult to extract a precise breakdown of, for example, the number of remand versus sentenced prisoners, as well as of the number of juveniles versus young adults), and registers of inter-prisoner violence, use of force and discipline.

Further, the individual administrative files of remand prisoners who had been held in the establishment for several weeks now contained a valid remand order. However, such orders were still missing in a number of files of remand prisoners who had been recently admitted. As confirmed by staff, the order to hold prisoners on remand was sometimes still communicated to the prison by phone by the prosecutorial authorities and provided in writing only after several weeks.

**The CPT reiterates its recommendation that a valid warrant, providing the legal basis for the detention of each individual, always be provided to and kept at SDKK.**

#### 2. Ill-treatment and use of force

298. The delegation received no allegations of deliberate physical ill-treatment of prisoners by custodial staff. It noted positively that in particular in Block 1 and in the unit for female prisoners (Block 10), staff constantly interacted with inmates and, for example, played board games with them.



However, the delegation did receive several allegations of rough treatment and excessive use of force by the special intervention team (IBT) when carrying cell searches. This included members of the teams throwing personal belongings around and breaking items.

**The CPT recommends that the Curaçao authorities deliver the clear message to members of the special intervention team that no more force than strictly necessary and proportionate should be used when dealing with prisoners. In addition, in light of the allegations, the Committee recommends that interventions by these teams be supervised by senior managers.**

299. Whenever force was used, staff were supposed to complete use of force incident reports. However, the relevant register did not contain any recent reports and it was acknowledged by the senior management that staff did not systematically produce these reports, except in the rare cases of serious disturbances, assaults and attempted escapes.

The CPT considers that every instance of use of force/special means should be recorded in a dedicated register established for that purpose. The entry should include the times at which the use of force/special means began and ended, the circumstances of the case, the reasons for resorting to force/special means, the type of means used, and an account of any injuries sustained by inmates or staff. An assessment of the compliance of such coercion with the principles of necessity, proportionality and legality should be conducted with an analysis of all relevant information by the direct supervisor.

**The CPT recommends that custodial staff, as well as members of the special intervention team (IBT), are firmly reminded of their obligation to complete use of force incident reports after every use of force or special means.**

300. Considerable efforts were made by the management and staff to prevent instances of inter-prisoner violence. Upon admission, prisoners were asked whether they had rival gang members or other enemies in prison, incompatible prisoners were allocated to different accommodation blocks and interaction between prisoners from different blocks was limited. Prisoners considered to be at a particular risk were allocated in the extra security unit (EBA) or in Block 1 for their own protection.

These measures seemed to have been effective in reducing violence. As stated by staff, as well as by several prisoners with a previous or longer experience in the prison, there were fewer incidents and the prison was now safer. According to the information in the register of inter-prisoner violence maintained by the management, there were 19 instances of inter-prisoner violence in 2021 and six instances in the first half of 2022.

However, despite the aforementioned efforts, serious cases of inter-prisoner violence still occasionally occurred; for example, one case in 2022 concerned an attempted stabbing of another inmate with a sharpened object and six cases in 2021 involved possession of a stabbing weapon.

Further, several allegations were received from the inmates interviewed during the visit and it was acknowledged by staff that, due to the low number of custodial officers on duty (see paragraph 323), they were not always in a position to intervene immediately if inter-prisoner violence occurred and so had to wait for reinforcement.

**The CPT recommends that management and staff at SDKK continue their efforts to prevent inter-prisoner violence and that staff intervene promptly and adequately whenever any such instances occur. This will require adequate presence of staff in the establishment at all times.**

3. Conditions of detention

a. situation of male prisoners, including juveniles

301. The CPT notes the efforts made to address the most serious shortcomings in the material conditions and to maintain the facility in a functional state. For example, Block 1 was refurbished shortly after the previous visit, the roof in Block 3 was renovated, Block 4 was freshly painted (and the painting of Block 5 was planned), Block 6 was completely renovated, including the sewage system, in 2018, water pipes in various parts of the prison were replaced and flushing mechanisms in Blocks 7 and 8 were mended.

Despite these efforts, the state of repair overall remains poor. Most of the cells seen by the delegation were dilapidated and dirty. Sanitary annexes in multiple-occupancy cells (including a toilet and a washbasin) were not fully partitioned and the in-cell toilets in Block 2, as well as in several cells in other blocks, did not have a functional flushing mechanism. Many cells were poorly equipped; the number of chairs was insufficient, there was no storage space and prisoners had to keep their personal belongings in plastic bags on the floor or at best in plastic boxes under their beds.

In a number of cells in different parts of the prison, the delegation observed potentially dangerous improvised electrical wiring and call bells were either not functional or missing completely; this was particularly problematic given the complete absence of staff at night in most blocks. Further, it remained the case that the prison was infested with insects and rodents.<sup>206</sup>

While acknowledging the efforts made so far, **the CPT reiterates its recommendation that the Curaçao authorities take the necessary steps to refurbish and improve material conditions at SDKK, in light of the above remarks.**

302. Material conditions were particularly deplorable at the establishment's extra security unit (EBA) where prisoners were held in dilapidated, filthy, unventilated and dark cells for months and years on end. Most of these inmates were offered no activities; those accommodated on the ground floor of the unit had free access during the day to a small, enclosed space with a barred ceiling but those on the first floor were offered no access to fresh air and bright daylight whatsoever.

At the end of the visit, the delegation made an immediate observation pursuant to Article 8, paragraph 5, of the Convention and requested that the authorities of Curaçao take steps to ensure that prisoners held in the extra-security unit have daily access to outdoor exercise for at least one hour.

303. By letter of 14 July 2022, the Curaçao authorities informed the Committee that as of 19 May 2022, the ground floor of EBA was taken out of service; the first floor was used to accommodate up to five prisoners for as long as Block 1 is used for immigration detention (see paragraph 280). For the time being, the outdoor exercise will still take place in the "airing cage". Once prisoners can be transferred back to Block 1, the unit will no longer be used for accommodation of prisoners.

**The CPT would like to receive confirmation that the EBA unit has now been taken out of service.**

304. The situation of a wheelchair user is of particular concern to the CPT. His cell was not sufficiently adapted to his particular needs, he could not easily and safely get out of bed and his wheelchair could only come straight in or out of the cell and he was unable to manoeuvre it around. Although the in-cell toilet was equipped with grab rails, he had difficulties using it without the assistance of other inmates and often used empty food boxes instead.

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206. On a more positive note, the cells provided sufficient living space for the number of prisoners accommodated therein. For example, a single-occupancy cell measured 6.5 m<sup>2</sup>, double-occupancy cells measured between 13 and 15 m<sup>2</sup> and cells holding three or four inmates measured between 24 and 31 m<sup>2</sup>.

By letter of 14 July 2022, the Curaçao authorities informed the Committee that two cells in Block 6 would be joined together to create a cell suitable for a person with a physical disability. Further, in Block 1, two cells will be made suitable for disabled persons. The plan was to carry out these adaptations by the end of 2022.

**The CPT welcomes these plans and would like to receive confirmation that they have now been implemented.**

305. Many complaints were received by the delegation about the quality of food provided to prisoners. This was apparently linked with the fact that the kitchen was ordered to be taken out of service by the health authorities and the food was delivered in plastic boxes by an outside catering service and allegedly often arrived cold. A new kitchen was expected to be opened in November 2022. **The CPT would like to receive confirmation that the new kitchen at SDKK is now in service.**

306. As regards the regime, most prisoners (with the notable exception of the EBA and FOBA units) benefitted from an open door regime within their blocks during the day, had free access to the outdoor exercise yard and were also offered access to a gym two to three times per week. They could also benefit from spiritual support sessions.

Although some 190 prisoners worked (that is, fewer than half), this entailed, in most cases, cleaning jobs which at best took a few hours per day.

However, vocational training and jobs in workshops which had been taking place before the pandemic (carpentry, masonry, car mechanics, sewing and upholstery) had been interrupted and had not yet recommenced at the time of the visit.

It follows that the majority of prisoners were left to their own devices for most part of the day, their only distraction being association with other inmates, playing dominos and watching TV. This is a matter of particular concern given that the establishment was holding a number of young adults.<sup>207</sup>

As stressed by the CPT in the past, a satisfactory programme of activities is of crucial importance for the well-being of prisoners, contributes to the establishment of a more secure environment within prisons and is an essential part of their rehabilitation and preparation for release.

**The CPT reiterates its recommendation that the Curaçao authorities pursue their efforts to develop a comprehensive regime of out-of-cell activities for all prisoners. In the CPT's view, the aim should be to ensure that all prisoners (including those on remand) are able to spend a reasonable part of the day (namely, eight hours or more) outside their cells engaged in purposeful activities of a varied nature: work, preferably with vocational value; education; sport; recreation/association.**

307. The CPT notes with interest in this context the information provided by the Curaçao authorities by letter of 14 July 2022 that a resocialisation project had been approved by the Minister of Justice which will give SDKK "financial space" to build multipurpose centres in each block. This was expected to facilitate the participation of more inmates in organised activities (including language classes and courses on various skills to enhance their chances to find a job after their release) which will be outsourced to professionals. **The CPT would like to receive updated information on the implementation of these plans.**

308. Concerning juveniles, the CPT was informed that they were placed at SDKK only exceptionally, when this was required by the nature of the offence of which they were suspected (for example, in the case of suspicion of a serious violent crime).

The only juvenile held in the establishment at the time of the visit, a recently admitted 17-year old male remand prisoner, was accommodated alone in a single-occupancy cell in Block 1. As regards

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207. These inmates were held in Block 3 ("JoVo" unit).

the regime offered to him, while he could spend most of the day outside of his cell and associate with other inmates within the block, under the supervision of staff, he was provided with no organised activities and no education.

The CPT wishes to underline that although a lack of purposeful activity is detrimental for any prisoner, it is especially harmful for juveniles (as well as young adults), who have a particular need for physical activity and intellectual stimulation. Regardless of their period of detention, they should be offered a full programme of education, sport, vocational training, recreation and other purposeful activities. Physical education should constitute an important part of that programme.

More generally, as noted already in the report on the 2014 visit, the Committee considers that juvenile prisoners should not as a rule be held in institutions for adults but in detention centres specifically designed for persons of this age, offering a non-prison-like environment and regimes tailored to their needs and staffed by persons trained in dealing with the young.

**The CPT reiterates its recommendation that juveniles not be held at SDKK, but exclusively in a juvenile institution.**

Further, **as long as juveniles are held at SDKK, the CPT reiterates its recommendation that the Curaçao authorities ensure that they are provided with a full programme of activities, in light of the above remarks.**

b. situation of women

309. Material conditions in the section for women were similar to those described for men and a number of the deficiencies described above (in particular the poor state of repair, insufficient lighting, infestation with vermin, leaking toilets) were also observed in Block 10 accommodating female prisoners. Moreover, the block was located close to the construction site of the new immigration detention facility and the cells were dusty at the time of the visit.

**The recommendation set out in paragraph 301 equally applies to Block 10 accommodating female prisoners.**

310. As regards the regime, cell doors were open throughout the day and women had access to a spacious outdoor yard located within their block which was in a good state of repair and had a volleyball court, as well as to a kitchen where they could cook together. Moreover, nine of the 13 women held in the establishment had a job.

However, no other activities were provided and the gym for female prisoners was out of service at the time of the visit.

**The CPT recommends that the Curaçao authorities take steps to further develop the programme of activities offered to female prisoners held at SDKK. Moreover, steps should be taken to repair and put back into service the gym located in the unit for female prisoners at SDKK.**

4. Healthcare services

311. Some improvements were noted by the delegation as regards the provision of healthcare in comparison with the situation observed in 2014. In particular, the supply of medication has improved and the medical unit was now suitably equipped (including with an ECG and a defibrillator, as recommended by the CPT in the report on the 2014 visit). However, several shortcomings identified in the past remain.

312. This is particularly true for the insufficient staffing levels of all categories of healthcare staff. The establishment was visited by three general practitioners (GPs) who worked on a rota basis and were present from Monday to Friday, every day for approximately two hours only. Two of the four

full-time nurses were present every day between 7 a.m. and 3 p.m.;<sup>208</sup> six additional posts for nurses were vacant. A dentist visited once a week for four hours.

A psychiatrist was only dedicated six hours a week for the general prison population and there was no clinical psychologist (see paragraph 318 as regards the psychiatric and psychological input in the FOBA unit).

**The CPT calls upon the Curaçao authorities to secure the equivalent of at least one full-time general practitioner at SDKK and to fill the vacant posts for nurses.**

Further, **the Committee reiterates its recommendation that steps be taken to ensure that a person competent to provide first aid (which should include being trained in the application of CPR and the use of automated external defibrillators) is always present at SDKK, including at night and on weekends; preferably, this person should be a qualified nurse** (see also the recommendation set out in paragraph 319).

**In addition, the Committee reiterates its recommendation that a full-time psychologist be recruited for SDKK and that the psychiatric input be increased in order to ensure appropriate psychological and psychiatric care for prisoners.**

313. It remained the case that medical screening was often carried out with considerable delays (days, weeks or even months after admission) and some prisoners were apparently not screened at all. As a consequence, healthcare needs remained undetected and injuries which were (or which may have been) displayed by prisoners upon their admission to prison were not duly recorded.

Further, while it is positive that specific forms existed for the description of injuries (whether detected upon admission to prison or following a violent episode) and a register of the injury reports was in place, the CPT has serious reservations about the fact that the injury reports were drawn up by nurses and only subsequently signed by a GP. The CPT considers that drawing up of injury reports and description of injuries are beyond the remit of the professional competence of a nurse and should be done by a trained medical doctor. Moreover, the delegation noted that body charts on the forms were not filled in, no photos of injuries were taken and the statement of the prisoner concerned as to the origin of the injuries was absent, as was *a fortiori* the doctor's observations as to the consistency of any such statement with injuries recorded.

The CPT underlines the importance of medical screening of newly arrived prisoners, in particular in the interests of identifying special medical needs, preventing the spread of transmissible diseases, suicide prevention and the timely recording of any injuries.

All newly admitted prisoners should be properly interviewed and physically examined by a medical doctor, or a fully qualified nurse reporting to a doctor, as soon as possible and no later than 24 hours after their admission and any signs of injuries should be duly recorded. The record should contain:

- (i) an account of statements made by the person which are relevant to the medical examination (including their description of their state of health and any allegations of ill-treatment),
- ii) a full account of objective medical findings based on a thorough examination (supported by a "body chart" for marking traumatic injuries and, preferably, photographs of injuries), and
- iii) the healthcare professional's observations in the light of i) and ii), indicating the consistency between any allegations made and the objective medical findings.

In addition, a special trauma register should be kept in which all types of injury observed should be recorded.

The results of every examination, including the abovementioned statements and the doctor's opinions/observations, should be made available to the prisoner and, with the consent of the

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208. A doctor and a nurse were on call when no healthcare staff was present in the establishment.

prisoner, to their lawyer. Further, procedures should be put in place in order to ensure that whenever injuries are recorded which are consistent with allegations of ill-treatment made by a prisoner (or which, even in the absence of allegations, are indicative of ill-treatment), the report is immediately brought to the attention of the relevant prosecutorial authorities regardless of the wishes of the person concerned.

**The CPT reiterates its recommendation that the Curaçao authorities take steps to ensure that all newly admitted prisoners to SDKK undergo thorough medical screening and that all detected injuries are duly recorded and reported, in light of the above remarks.**

314. Urine testing to detect illicit drug use was carried out by the healthcare staff who was the treating staff of the prisoners concerned. The CPT considers that this essentially non-medical task can affect the therapeutic relationship between healthcare staff and their patients. **The CPT recommends that healthcare staff at SDKK not be involved in the collection and testing of urine samples for administrative purposes (namely, illicit drug use).**

315. The delegation was informed that there were three persons under a TBS order<sup>209</sup> in Curaçao but there was no specific facility in which they could be placed.

At the time of the visit, one of them was held in FOBA (see paragraph 316), another in the EBA unit at SDKK and the third one outside the prison system. Although plans existed to build a dedicated TBS ward within SDKK, the delegation was told that, given the specific needs and challenging nature of these inmates, it was difficult to make suitable arrangements to provide an adequate environment, staffed with suitably trained professionals, in the individual constituent countries of the Kingdom of the Netherlands.

The CPT considers that a coordinated approach which would involve the authorities of all constituent countries of the Kingdom of the Netherlands is required to ensure that persons under TBS order in Curaçao (as well as in Aruba and Sint Maarten) are held in a suitable environment.

**The Committee would like to receive updated information on the plans to address the situation of persons subjected to a TBS order in Curaçao.**

## 5. FOBA

316. The forensic psychiatric support unit (*forensische observatie en begeleidings afdeling* or FOBA) was accommodating prisoners with serious mental disorders. At the time of the visit, it had a capacity of 21 beds and was holding 19 adult men.

The unit continued to offer acceptable material conditions. In particular, prisoners were held in single-occupancy cells which were clean and in a reasonable state of repair. The unit was decorated with colours and plants, which created an overall positive atmosphere.

317. As regards the regime and treatment, inmates were allowed out of their cells twice a day, for a total of four hours, and during this time had access to an outdoor yard where they could play ball games. A few prisoners had some cleaning work within the unit and some occasional group activities were also on offer (a religious group once a week, music classes once every two weeks, arts and crafts and gardening). However, most of the time, inmates remained left to their own devices, locked up in their cells. Although efforts were made to draw up individual treatment plans, the range of therapeutic activities which could be offered was very limited.

318. A team of nine members of custodial staff (including a senior officer) were deployed in the unit, with each shift consisting of at least two officers. They received specific training on how to deal with persons with mental disorders, most of them had lengthy experience in the unit and were dedicated to their job.

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209. A TBS order ("*terbeschikkingstelling*") is designed to respond to the special needs of persons with mental disorders who have committed serious offences and who are considered likely to re-offend if no treatment is applied.

However, the above-described lack of therapeutic activities was indeed linked with the clearly insufficient staffing levels of specialist staff. A psychiatrist visited FOBA for a total of six hours per week, a psychologist for a total of eight hours per week and a social worker visited the unit once or twice a week. There was no other staff available to provide therapies and occupational activities. Medication was prepared once a week by a nurse and then distributed to inmates by custodial staff.<sup>210</sup>

319. As already concluded in the report on the 2014 visit, the CPT must reiterate that the unit currently cannot function as a proper psychiatric institution and fails to provide a suitable therapeutic environment to inmates with serious mental disorders. In particular, the staffing levels of specialist staff are clearly insufficient, the offer of therapeutic activities is very limited and the daily routine is very restrictive, with inmates spending most of the time in idleness, locked up alone in their cells.

**The CPT recommends that the Curaçao authorities take steps to ensure that:**

- **at least one full-time clinical psychologist and one full-time occupational therapist are available at FOBA;**
- **a nurse (preferably psychiatric) is present in the unit at all times;**
- **the psychiatric input is increased to 15 hours per week;**
- **a wide range of occupational and therapeutic activities is developed, which will be aimed at both controlling the symptoms of the illness and reducing the risk of re-offending.**

Further, **the Committee reiterates its recommendation that medication be distributed exclusively by healthcare staff.**

320. The situation of one prisoner held in FOBA is of particular concern to the CPT. He was suffering from a severe mental health disorder, had repeated psychotic episodes and was regarded as dangerous. Whenever he was taken out of his cell, he was handcuffed; he took his daily outdoor exercise (sometimes as little as 30 minutes) alone and was only allowed to associate with other inmates in FOBA (for example, to play board games) through bars. No other activities were offered to him.

**The CPT recommends that the Curaçao authorities take urgent steps to ensure that the prisoner concerned is transferred to a suitable therapeutic environment.**

321. Patients deemed at risk of self-harm or suicide were usually placed in a cell alone,<sup>211</sup> their clothes were removed and they were provided with a tear-proof gown. The CPT acknowledges that a three-level observation scheme existed whereby prisoners were checked once per hour, once every 30 minutes or were put under a constant observation. However, in reality, very little care and support were provided to these inmates and they were sometimes not even seen by a psychologist or a psychiatrist.

The CPT considers that *de facto* isolation, resulting from a combination of confinement to a cell for most of the day, little or no contact with staff, and a poor regime, is the exact opposite of the care required; persons presenting a risk of suicide or self-harm should be afforded increased contact with other persons. Indeed, isolation may well increase the risk of suicide rather than decrease it. The treatment and care of persons identified as being at risk of suicide should be overseen by healthcare staff. Once such a person has been identified, he or she should be the subject of regular visits and follow-up by healthcare staff.

**The CPT recommends that the Curaçao authorities review the care protocol for prisoners who are deemed to be at risk of self-harm or suicide, taking into account the above remarks.**

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210. On a positive note, a range of medication, including modern antipsychotic drugs, was available in the unit.

211. Male prisoners were placed in one of the two observation cells at FOBA, female prisoners in one of the five isolation cells in the female unit.

322. Agitated inmates were occasionally subjected to chemical restraint. Forced injections were applied by a nurse (usually with the assistance of special intervention team members, who held the prisoner). It is a matter of concern that the chemical restraint was usually ordered by a psychiatrist by phone only and the psychiatrist did not systematically come to see the patient and to evaluate the state of health of the prisoner and the effects of the medication. Further, following the forced injection, inmates were not under constant supervision by a member of the healthcare team.

In the CPT's view, chemical restraint should always only be administered in a medical setting and accompanied by appropriate safeguards. The Committee considers that FOBA does not currently provide a suitable medical setting in which resort to chemical restraint would be acceptable and the current procedure does not provide the necessary safeguards.<sup>212</sup>

**The CPT reiterates its recommendation the Curaçao authorities take the necessary steps to ensure that chemical restraint is never administered in a prison setting.**

6. Other issues

a. prison staff

323. In several previous visit reports, the CPT highlighted serious problems with staffing. Regrettably, the findings of the 2022 visit indicate that staffing levels remain insufficient.

The prison had 208 posts for custodial staff which were all officially filled. However, the delegation was informed that the frequency of sick leave (in particular one-day sick leave, which did not require medical certificate) remained high. Several custodial officers worked part-time for health-related reasons, while others could not be deployed to detention areas on the same grounds and were transferred to administrative duties. Moreover, since 2012, a ban on hiring civil servants had been in place, several members of administrative staff who left the prison service could not be replaced<sup>213</sup> and custodial staff had to be transferred to carry out these duties. Only approximately 100 prison officers could thus be put on duty in the detention areas.<sup>214</sup>

As a result, as few as three officers could be in the day shift in each house block, which accommodated approximately 100 inmates in two separate sections. Moreover, while the day shift was supposed to last from 7 a.m. to 3 p.m., officers regularly stayed until the cell doors were closed, that is, until 5 p.m. The night shift only consisted of a team of four to five officers and two coordinators for the whole prison.<sup>215</sup>

Moreover, there were very few specialist staff who could provide activities and support to prisoners. For example, the following posts were vacant: four out of the eight posts for social worker, 1.5 of the 3.5 FTEs for sports instructor (another instructor was retiring in one month's time), all six posts for foreman and one of the three posts for activity leader.<sup>216</sup>

324. By letter of 14 July 2022, the Curaçao authorities informed the Committee that an analysis of the situation had taken place and a plan had been made in July 2022 to fill, over a three-year period, the most critical vacancies in several institutions, including SDKK. This proposal was to be submitted to the Council of Ministers.

Further, the authorities stated that a twinning project had been approved by the Minister of Justice and would be submitted to the Council of Ministers in July 2022. In the context of the project, SDKK

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212. In particular, as indicated above, a medical doctor did not arrive to monitor the persons' response and deal with any complications, there was no constant supervision by a member of the healthcare team and there was no de-briefing of the person following the chemical restraint.

213. In principle, only posts belonging to "critical functions" could be filled with new recruitments.

214. The management estimated that all 208 prison officers would be needed for custodial duties, as well as additional 13 full-time posts.

215. During the night shift, two additional officers were permanently present in FOBA and one additional officer was sometimes deployed to Block 1, as well as to the female unit (Block 10).

216. The management estimated that, altogether, 101 critical posts of various categories of staff were vacant.



custodial officers will be sent to receive training in Bonaire where “prison staff [...] have already made the shift to working more towards rehabilitation [of prisoners]”.

**The CPT welcomes the plans to fill the critical functions and provide training to staff, in co-operation with Bonaire, and would like to receive confirmation that they have now been approved by the Council of Ministers and that the necessary budgetary funds have been allocated. Further, the Committee would like to receive more detailed information on the practical implementation of these plans, in particular which categories of staff and how many will be newly recruited for SDKK, as well as the number and categories of staff which will receive training in Bonaire.**

b. security-related issues

325. Upon their admission to SDKK, prisoners were routinely strip-searched and were systematically asked to remove all their clothes at once and make several squats and/or bend forward.

The CPT must emphasise in this context that a strip search, if considered necessary on the basis of an individual risk assessment, must always be carried out in a manner respectful of human dignity. In particular, prisoners should never be required to remove all their clothes at the same time.

**The CPT recommends that these principles be effectively implemented in practice at SDKK.** Reference is made to the more detailed remarks set out in paragraph 274, which also apply in the prison context.

326. At the end of the visit, the delegation expressed concern that members of the special intervention team carried firearms in detention areas whenever they were deployed at SDKK, most notably during cell searches.

By letter of 14 July 2022, the Curaçao authorities informed the Committee that as of August 2022, only the “commandant” of the intervention team will carry a firearm when the special intervention team is deployed. Further, when prisoners are locked up in their cells at night, custodial staff carry firearms.

The Committee considers that the aforementioned measures taken in respect of the special intervention team are a step in the right direction. However, it must stress that the carrying of firearms by staff who are in direct contact with prisoners is an undesirable and dangerous practice, which could lead to high-risk situations for both prisoners and staff. Indeed, in most Council of Europe states, the carrying of firearms within accommodation areas of prisons is generally prohibited. **The CPT recommends that the Curaçao authorities put an end to the carrying of firearms by all staff inside detention areas of SDKK.**

327. All custodial officers were equipped with pepper spray, handcuffs and batons, and senior staff encouraged them to systematically carry them in detention areas.

The CPT has reservations about this approach. **The Committee considers that the routine carrying of pepper spray, handcuffs and batons in detention areas is not conducive to developing positive relations between staff and inmates; therefore prison officers should not routinely carry such equipment in detention areas.**

c. discipline

328. Unlike during the 2014 visit, a disciplinary register which gave an overview of the disciplinary procedures and the sanctions imposed has now been introduced (in addition to the individual disciplinary files). The examination of this documentation revealed that procedures were followed, prisoners were heard in person and received a copy of the disciplinary decision, which informed them of the possibility to lodge an appeal.

329. Disciplinary sanctions are regulated in Chapter X of the National Ordinance on Penitentiary Principles (Prison Act). The sanctions that may be imposed include solitary confinement (for up to two weeks), deprivation of the right to receive visitors and send and receive letters or restricting other rights and privileges<sup>217</sup> (for up to four weeks), a fine or a warning (Section 36 of the Prison Act).

The delegation was informed that the sanction of disciplinary solitary confinement was never imposed in practice as the establishment did not have suitable disciplinary cells. In the vast majority of cases, prisoners were punished with the withdrawal of visits.

**The CPT recommends that the Curaçao authorities take steps to ensure that disciplinary punishment of prisoners does not include a total prohibition of family contact and that any restrictions on family contact as a form of punishment should be used only where the offence relates to such contact.**

d. contact with the outside world

330. All categories of prisoner had access to payphones located in the outdoor yards (or in the communal areas in some blocks) and could make phone calls whenever they were out of their cells. However, several phones were out of order.

Prisoners were also allowed one (unpartitioned) visit lasting for one hour every two weeks.

**The CPT recommends that the visiting entitlement be increased to at least one hour every week. Further, steps should be taken to repair the broken payphones in various parts of the establishment.**

331. The CPT notes positively that the possibility of making free-of-charge Voice-over-Internet-Protocol (VoIP) calls (WhatsApp) for 30 minutes per week was introduced during the Covid-19 pandemic and that it was planned to maintain this possibility in the future.

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217. In practice, this meant being disallowed to work or to buy articles from the canteen.

## SINT MAARTEN

### A. Police establishments

#### 1. Preliminary remarks

332. At the time of the visit, the 1996 Netherlands Antilles Code of Criminal Procedure (CCP) remained in force in Sint Maarten. In so far as is relevant for the CPT, it has remained largely unchanged since the 2014 visit.

It should be recalled that persons suspected of having committed a criminal offence may be held by the police for questioning for a maximum of six hours.<sup>218</sup> Thereafter, if the needs of the investigation so require, the person may be placed in police custody (*inverzekeringstelling*) for a maximum period of two days, on the decision of a prosecutor or of an assistant prosecutor<sup>219</sup> reporting to the prosecutor.<sup>220</sup> Police custody may be further extended by the prosecutor for an additional maximum period of eight days.<sup>221</sup> However, the suspect must be brought before the investigating judge as soon as possible – and within 24 hours – after the beginning of such an extension in order to decide on its lawfulness.<sup>222</sup> During the period of police custody (up to 10 days and 16 hours), the detained person is held in a police facility.

Thereafter, a person may be placed in remand detention (*voorlopige hechtenis*) as regulated in Title VIII of the CCP. A maximum of eight days of custody (*bewaring*) may be ordered by the investigating judge, renewable once.<sup>223</sup> This detention, however, as well as any further remand custody (*gevangenhouding en gevangenneming*),<sup>224</sup> should take place at a remand facility under the responsibility of the head of that facility; that is, at Point Blanche Prison.<sup>225</sup>

The information gathered during the visit, in particular through interviews with persons who were – or who recently had been – deprived of their liberty by the police and through the examination of the relevant registers and decisions in the police establishment visited, indicates that the statutory time limits for deprivation of liberty and its extension as described above were respected in practice. However, see paragraph 346 as regards CPT concerns with respect to the length of stay in police facilities.

333. For almost a decade, discussions have been taking place regarding a new CCP which would apply in all parts of the Caribbean part of the Kingdom of the Netherlands (that is, in the constituent countries of Aruba, Curaçao and Sint Maarten, as well as in Bonaire, Sint Eustatius and Saba (the BES islands)). The new Code is expected to introduce significant changes which are of relevance to the CPT. For example, the initial period of police custody under the new Code shall be three days, renewable once. It also explicitly lays down the right of detained persons to consult their lawyer prior to questioning by the police.

The delegation was informed during the visit that the issue of the adoption of the new Code would again be discussed in the near future in a meeting of the Ministers of Justice of the Netherlands, Aruba, Curaçao and Sint Maarten. **The CPT would like to receive updated information on the expected timeline for the adoption and entry into force of the new Code of Criminal**

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218. Article 80 (1) CCP. This article also provides that the time period between 10 p.m. and 8 a.m. should not be counted given that, as a general rule, persons may not be questioned during that time. Therefore, the initial period of deprivation of liberty by the police may in fact last for up to 16 hours in some cases.

219. In Dutch, a *hulpofficier van justitie*, who may also be a senior police officer.

220. Article 83 (1) and (4), and Article 87 (1) CCP.

221. Article 87 (2) CCP.

222. Article 89 (1) CCP. The maximum period before persons deprived of their liberty are brought before a judge thus amounts to three days and 16 hours.

223. Articles 92 (1) and 93 CCP.

224. Articles 95 to 99 of the CCP. The initial period that may be imposed by a judge is 60 days and may be extended several times.

225. Articles 94 (2) and 99 CCP.

**Procedure.** Further, the Committee would appreciate receiving more detailed information on the changes which are expected to be introduced by the new legislation.

**It trusts that the recommendations and comments in this visit report will be taken into account, in particular as regards time limits for deprivation of liberty and legal safeguards applicable to persons in police custody (the right of access to a lawyer and a medical doctor, and the right to inform a third person of the fact of one's detention, as well as the obligation to inform detained persons of these rights).**

## 2. Ill-treatment

334. The vast majority of persons interviewed by the delegation during the visit who were – or who had recently been – in police custody made no complaints about the way in which they had been treated by police officers.

However, the delegation received an allegation that a person had been kicked in the back by a police officer during questioning. Further, a few allegations were also received of excessively tight handcuffing.

**The CPT recommends that the Sint Maarten authorities reiterate to police officers that any form of ill-treatment of detained persons is unacceptable and will be sanctioned accordingly. Further, when it is deemed necessary to handcuff a person, the handcuffs should under no circumstances be excessively tight.<sup>226</sup>**

## 3. Safeguards against ill-treatment

335. The CPT attaches particular importance to the right of persons deprived of their liberty to inform a close relative or another person of their choice of their situation; the right of access to a lawyer; and the right of access to a doctor. The CPT considers that these three rights are fundamental safeguards against the ill-treatment of persons deprived of their liberty and should apply from the very outset of the person's deprivation of liberty, that is, from the moment when the person is obliged to remain with the police. Further, persons detained by the police should also be expressly informed, without delay and in a language they understand, of the possibility to avail themselves of these rights, and it should be possible to verify the application of these safeguards by consulting police custody records.

336. As regards information on rights, by virtue of Section 82 CCP, detained persons shall be informed promptly of the reasons for their arrest, the right to an attorney (including one appointed *ex officio*), and the right to remain silent. This shall be done in a language they understand and shall also be provided in writing.

Generally, these provisions appeared to be respected in practice – the majority of persons interviewed during the visit confirmed that they had been informed of their rights in writing shortly after arrival at the first police station. It is also positive that standard information sheets were available in several languages (namely, Dutch, Papiamentu, English, Spanish and French) and that, in addition to the rights mentioned in Section 82 CCP, they also referred to the right of detained persons to have a third person notified of the fact of their detention and the right of access to a doctor.

However, the delegation received a few allegations that detained persons had been informed of their rights only verbally or that they had received the information sheet in a language they did not understand (even if the sheet existed in a language they spoke).

Further, while several adult persons confirmed that their lawyer could be present during police questioning (see paragraph 339), the information sheets provided, in line with the letter of Section 48 (4) CCP, that the right to have a lawyer present during police questioning only applied to juveniles.

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226. It should be noted that excessively tight handcuffing can have serious medical consequences (for instance, sometimes causing severe and permanent impairment of the hand(s)).

337. **The CPT recommends that the Sint Maarten authorities take steps to ensure that all persons deprived of their liberty by police officers – for whatever reason – are fully informed of their fundamental rights from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). This should be ensured by the provision of clear verbal information at the moment of apprehension, to be supplemented at the earliest opportunity (that is, immediately upon first arrival at a police establishment) by the provision of the relevant information sheet, in a language which the detained persons understand.**

Further, **the existing information sheets should be reviewed with a view to ensuring that all persons deprived of their liberty by the police are fully informed of all fundamental rights, including the right to have a lawyer present during police questioning.**

338. According to Section 42 (1) of the Official Instructions for the Police on measures to which persons legally deprived of their liberty may be subjected in Sint Maarten (further referred to as “Police Instruction on Detained Persons”),<sup>227</sup> police officers shall as soon as possible inform a family member or household member of the detained persons’ arrest. If the detained person is a juvenile, the police shall do this on their own initiative; in the case of adults, notification shall be made upon their request.

The findings of the visit indicate that most persons were offered the possibility that a third person be contacted and informed of the fact of their detention. The delegation heard only a few allegations that they were not allowed to contact a third person and that police officers did not provide any feedback whether they had done so on their behalf.

**The CPT recommends that the Sint Maarten authorities take steps to ensure that all detained persons can effectively benefit from the right that a third person be informed of their situation as from the very outset of their deprivation of liberty (that is, from the moment that they are obliged to remain with the police). When the actual notification is carried out by police officers, detained persons should be provided with feedback on whether it has been possible to notify a third person of the fact of their detention.**

339. The majority of detained persons interviewed during the visit confirmed that, in practice, they had been granted the right of access to lawyer (including one appointed *ex officio*) shortly after their apprehension. This included the right to consult with the lawyer in private before the first police interview and to have the lawyer present during police questioning.

However, a few complaints were received that, despite the requests of the detained person, *ex officio* lawyer did not appear during several police interviews and that police officers put pressure on detained persons to accept interviews without the presence of a lawyer.

Moreover, despite the practice observed during the visit, Section 48 (4) CCP still provides that legal counsel may not be present during police interviews until the suspect has appeared before an investigating judge, which can take up to three days and 16 hours from the moment of arrest.<sup>228 229</sup>

**The CPT recommends that the Sint Maarten authorities take steps to ensure the full recognition in law of the right of access to a lawyer for all detained persons as from the outset**

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227. “Ambtsinstructie voor de politie en de buitengewone agenten van politie en regels met betrekking tot de maatregelen waaraan rechtens van hun vrijheid beroofde personen kunnen worden onderworpen voor Sint Maarten”

228. This discrepancy between law and practice was due to the judgment of the European Court of Human Rights in the case of *Salduz v. Turkey* ([GC], No. 36391/02, 27 November 2008) and the Dutch Supreme Court’s interpretation of its impact on the Dutch legal system. In the immediate aftermath, criminal suspects were entitled to consult their lawyer prior to the first interview on the substance of the case and, in the case of a juvenile, the lawyer could be present during interviews (but could not actively intervene during the questioning).

229. See paragraph 336 as regards the information provided to the detained with respect to the right of access to a lawyer.

**of their deprivation of liberty, including during any police interview.** This requirement should be duly taken into account in the ongoing discussions on the new Code of Criminal Procedure (see paragraph 333).

Further, **it should be reiterated to police officers that they should not seek to dissuade detained persons from exercising their right of access to a lawyer.**

Moreover, **steps should be taken – in consultation with the Bar Association – to ensure that *ex officio* lawyers appointed to represent persons in police custody perform their functions diligently.**

340. Concerning the right of access to a doctor, according to Section 48 of the Police Instruction on Detained Persons, if a detained person needs medical assistance or possesses medication, a medical doctor should be consulted. A doctor shall also be consulted if the detained person requests medical treatment or medication.

The findings of the visit indicate that if a detained person was ill or injured, medical assistance was promptly organised by police officers. However, as was the case during the 2014 visit, the delegation again received several allegations that requests from detained persons to consult a medical doctor were delayed for up to several days.

**The CPT reiterates its recommendation that the Sint Maarten authorities take steps to ensure that persons held in police custody can effectively benefit from the right of access to a medical doctor from the outset of their deprivation of liberty. A request by a detained person to see a doctor should always be granted without undue delay; it is not for police officers, or any other authority, to filter such requests.**

341. As regards custody records, in most cases, the individual files of persons held at Philipsburg Police Station contained a valid warrant for police custody and its extension. However, in a few cases, the files only contained a "*proces-verbaal*" which did not indicate whether or not the person should be taken into custody and for how long. According to the police officers met during the visit to Philipsburg Police Station, this was regarded as sufficient, and the custody warrant could be provided later.

**The CPT recommends that a valid warrant, providing the legal basis for custody, always be kept in the individual custody record of a detained person. A valid warrant should be automatically provided by the authority ordering the custody to the authority responsible for executing it. All persons deprived of their liberty by the police should be duly informed of the imposition of police custody and its extension, as well as of any available legal remedies. This could be ensured by serving them with a copy of the relevant warrants.**

342. Moreover, the records shown to the delegation in the police establishments visited generally did not contain information as to whether detained persons had chosen to avail themselves of their fundamental rights. Only in some cases, the "*proces-verbaal*" contained a statement that the persons concerned were informed of their rights in writing and whether they wished to consult a lawyer; this statement was signed by the police officer in charge of the case, but not the detained person.

The CPT considers that the fundamental guarantees of persons placed in police custody would be reinforced if a single and comprehensive custody record were to be kept for each of these persons. In this record would be entered all aspects of custody and all measures taken in connection with it (when and for what reason(s) the custodial measure was taken; when the person arrived on police premises; when they were informed of their rights; whether they showed signs of injuries, health problems, mental disorder, etc.; in which cell(s) they were placed; when provided food; when questioned; when they had contact with and/or visits from close relatives, a lawyer, a doctor or a representatives of the consular services; when transferred; when brought before a prosecutor or the relevant judge; when remanded or released, etc.).

**The CPT recommends that comprehensive custody records including the aforementioned information be introduced and diligently kept at police stations in Sint Maarten.**

Further, **for various questions (for example, having personal effects confiscated; having been informed of one's rights and having availed oneself of or waived them; having been able to inform a close relative or another third party), the detainee's signature should be required and, if necessary, its absence duly accounted for.**

#### 4. Conditions of detention

343. The CPT considers it necessary to recall that police establishments should meet certain elementary material requirements.

All police holding facilities should be clean, of a reasonable size for the number of persons they are being used to accommodate, and have adequate lighting (that is sufficient to read by, sleeping periods excluded) and ventilation; preferably, such facilities should enjoy natural light. Further, holding facilities should be equipped with a means of rest (for example, a fixed chair or bench) and persons obliged to stay overnight in custody should be provided with a clean mattress and clean blankets.

Persons in custody should be allowed to comply with the needs of nature 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 (that is, something more substantial than a sandwich) every day. Persons held for 24 hours or more should be provided with appropriate personal hygiene items (including sanitary towels) and be offered outdoor exercise every day.

344. The detention facility at Philipsburg Police Station<sup>230</sup> consisted of 11 cells; three larger cells (measuring some 16 m<sup>2</sup>)<sup>231</sup> were intended to hold four persons; the other eight cells measured between 7 and 8.5 m<sup>2</sup> and were designed to hold two to three detainees. At the time of the visit, there were 15 adults (including three women) held in the establishment. 12 persons were police detainees, and two men were prisoners transferred from Point Blanche Prison (see paragraph 347 *et seq.* for more details).

Upon admission, detained persons were now provided with soap, toilet paper and sanitary towels, as well as reportedly some basic cleaning products for their cells. They were also usually given sheets and a pillow, even if the stock was not sufficient and families were asked to furnish these items in some instances, as well as other hygiene items such as a toothbrush and toothpaste.<sup>232</sup>

345. However, the delegation found that the material conditions in the detention area remained very poor. The cells were very dark, with limited access to natural light and no functioning artificial lighting in the cells; it was too dark to be able to read. At full capacity, the cells provided cramped conditions. The ventilation was insufficient; the cells were hot, there were no fans in the cells and there was a pervasive smell of sewage throughout the detention area. Moreover, the cells were dirty and the in-cell, partially partitioned sanitary annexes had black mould on the walls around the shower area. Some of the damage caused by the 2017 hurricanes, such as a damaged leaking roof, had not yet been repaired.

The unhealthy environment was compounded by the noise – a cacophony of sounds as detained persons held loud conversations with each other from one cell to another across the detention area; further, given the absence of call bells, detained persons had to shout repeatedly to attract the attention of staff.

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230. This was the only police detention facility in Sint Maarten. However, the custodial officers were provided by Point Blanche Prison.

231. All the cell sizes are excluding the in-cell sanitary annexes.

232. This was only possible several days after the apprehension.

The only activity offered to detained persons consisted of outdoor exercise – 15 to 20 minutes per day for those held under police authority (that is, for up to some 10 days) and 30 minutes every day for those held under the authority of Point Blanche Prison. The rest of the time, detained persons were locked up in their cells. This is totally inadequate.

346. The situation was further exacerbated by the length of stay of detained persons at Philipsburg Police Station. As a general rule, and despite the recommendation made in the report on the 2014 visit, detained persons were held in this facility for up to 10 days. The facility is totally unsuitable for stays of such length.

347. Moreover, it is a matter of serious concern that persons committed to Point Blanche Prison were being held for prolonged periods at Philipsburg Police Station. The delegation met a sentenced prisoner who had been held at the police station since 1 October 2021 (that is, for some eight months) for his own protection, as no safe environment could apparently be assured for him at Point Blanche Prison.

Furthermore, the information gathered during the visit indicates that, albeit exceptionally, detained persons could be held at Philipsburg Police Station for up to two years.

348. The delegation also met a remand prisoner who had been held in the police detention facility since 6 April 2022, that is, for approximately one and a half months. The person was suffering from mental health problems and was accommodated alone in a cell. The cell was equipped with a rusty bunk-bed and a bed, as well as a bench and a table, and the person had a blanket and a sheet; however, he had no mattress after he had destroyed the one provided to him. According to staff, the person had been seen by a mental health team, but the delegation was unable to consult the person's medical file. The conditions of detention at Philipsburg Police Station were totally inappropriate for accommodating a person suffering from severe mental health problems, who was left to his own devices for an extended period of time, in a dark, dirty, unventilated and poorly equipped cell in the noisy and stressful environment of the detention facility.

349. The CPT wishes to recall that in the case of *Corallo v. the Netherlands*,<sup>233</sup> the European Court of Human Rights found a violation of Article 3 of the European Convention on Human Rights (ECHR) on account of the poor conditions of detention at Philipsburg Police Station where the applicant had been detained between December 2016 and August 2017, that is, for more than eight months, pending extradition proceedings.<sup>234</sup>

350. In light of the findings of the visit, **the CPT reiterates its recommendation that persons should not be detained at Philipsburg Police Station in excess of some three days (that is, once they have appeared before a judge).**

Further, **the Committee reiterates its recommendation that urgent steps be taken to improve the conditions of detention at Philipsburg Police Station, in particular:**

- **the custody cells should be thoroughly cleaned;**
- **ventilation and lighting of the detention area should be improved; preferably, cells should enjoy access to natural light;**
- **all detained persons should be provided with at least 4 m<sup>2</sup> of living space per person in multi-occupancy cells;**
- **all detained persons held overnight should be systematically provided with clean bedding and a pillow, as well as basic hygiene items;**
- **in-cell sanitary annexes should be partitioned up to the ceiling and the sewage system should be inspected and repaired if necessary;**
- **all cells should be equipped with a call bell;**

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233. No. 29593/17, 9 October 2018.

234. In another case (*Georg and others v. the Netherlands* (dec.), Nos. 63169/19, 64133/19 and 7320/20, 15 April 2021) in which the applicants complained under Article 3 of the ECHR of poor conditions of detention at Philipsburg Police Station, friendly settlements were reached between the applicants and the Dutch government.



- the damaged leaking roof should be repaired;
- persons held for 24 hours or more should be offered at least one hour of outdoor exercise every day.

In addition, the CPT recommends that the Sint Maarten authorities draw up a protocol for the care and treatment of persons with a mental disorder who are committed to Philipsburg Police Station. Such persons should be assessed by a healthcare professional as soon as possible after their admission and, where appropriate, should be cared for and treated in a suitable therapeutic environment with sufficient qualified staff to provide them with the necessary assistance.

#### 5. Other issues

351. It is positive that upon admission to the police detention facility at Philipsburg Police Station, detained persons appeared to be strip-searched on the basis of an individual risk assessment and not routinely. Several persons met stated that they were only subjected to a pat down search.

However, when a strip-search was carried out, the person concerned was often asked to remove all their clothes at once, squat and cough. Moreover, detained persons were sometimes subjected to a strip-search twice – upon their arrival at the police station by the arresting police officers and again once the initial procedures had been finished and they were transferred to the detention facility within the same police complex and handed over to custodial officers.

The CPT must point out that a strip-search is a very invasive and potentially degrading measure, which can be particularly (re-)traumatising for persons who have experienced sexual violence. It should be based on an individual risk assessment. Further, in order to minimise embarrassment, persons who are searched should not be required to remove all their clothes at the same time, that is, a person should be allowed to remove clothing above the waist and put it back on before removing further clothing.

**The Committee recommends that the Sint Maarten authorities take steps to ensure that these principles are effectively implemented in practice at Philipsburg Police Station. Further, the Committee recommends that authorities ensure that persons detained in this facility are not subjected to a strip-search twice at the beginning of their police custody.**

### B. Simpson Bay Immigration Detention Facility

#### 1. Preliminary remarks

352. The delegation carried out a brief visit to Simpson Bay Immigration Detention Facility. The establishment, which was initially built as an immigration detention centre, was temporarily used as a prison at the time of the 2014 visit. It was later closed for refurbishment and opened again in August 2021 to accommodate foreign nationals detained under aliens legislation.<sup>235</sup> Since 1 March 2021, the responsibility for immigration detention in Sint Maarten was transferred from the police to the Immigration and Border Protection Service.

At the time of the visit, the establishment had a capacity of 24 places (eight for women and 16 for men) and was accommodating one adult woman who had been held in the establishment for three days. According to the detention records, the usual length of stay in the establishment was between two and 14 days.

353. As regards ill-treatment, the CPT wishes to stress at the outset that the detained woman had no complaints against staff. On the contrary, she stated explicitly that she was treated and cared for well and staff made every effort to alleviate her situation and relieve her stress and anxiety.

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235. In the meantime, immigration detention was implemented at Philipsburg Police Station.

## 2. Conditions of detention

354. As regards material conditions, women and men were accommodated separately in two large dormitories (each measuring some 60 m<sup>2</sup>) located on the first floor. The facility was in a good state of repair, clean and adequately ventilated.

However, access to natural light was poor and there was no horizontal view whatsoever from the whole facility (including from the dormitories, communal room and outdoor yard) as windows consisted of metal vents with thick diagonal overlapping slats (but no glass windows). Moreover, the dormitories and the communal room were relatively noisy due to the lack of properly insulated windows and the busy road in front of the building.

Further, there was no storage space for personal belongings in the dormitories and there were no call bells.<sup>236</sup> The toilet adjacent to the women's dormitory had no door and the sanitary annexe for men had four toilets in a row which were only partially screened and provided little privacy.

355. According to staff, there were plans to completely refurbish the facility. The first floor would be used for the initial detention of up to one or two days (for example, to establish identity and residence status) and the second floor would contain rooms for detention of up to two weeks, as well as a family room.

The CPT wishes to point out that every effort should be made to avoid resorting to the deprivation of liberty of a migrant who is a child. The placement of minors with their parents in a detention centre should only occur as a last resort, and if, in exceptional circumstances, such placement cannot be avoided, its duration should be as short as possible. Further, every possible effort should be made to avoid splitting up the family.

More generally, persons detained under aliens legislation should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation. Care should be taken in the design and layout of such premises to avoid, as far as possible, any impression of a carceral environment.

**The CPT recommends that the aforementioned principles be duly taken into account when Simpson Bay Immigration Detention Facility is being refurbished.<sup>237</sup> The above-identified deficiencies should be addressed in the context of the refurbishment.**

356. As regards the regime, the dormitories were open from 7 a.m. to 6 p.m. and detained persons had access to a suitably equipped communal room where they could associate, play cards and dominos and watch TV. There was also a small library with books, magazines and newspapers, and a computer with internet connection. Access to outdoor exercise was offered for two hours a day.

Considering that persons were usually accommodated in the facility for short periods of time (see paragraph 352), this regime could be considered as adequate. However, **if persons were to stay for longer, a range of purposeful activities (educational, recreational or vocational) should be developed. The longer the period for which persons are detained, the more developed should be the activities which are offered to them.**

## 3. Safeguards

357. The legal framework of immigration detention is laid down by the National Ordinance Admission and Expulsion (*Landsverordening toelating en uitzetting - LTU*). Pursuant to Sections 16 and 19 LTU, detention of a foreign national may be ordered to ensure their expulsion; a copy of the expulsion order and of a detention order shall be provided to the person concerned.

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236. The lack of a call bell was less problematic in the women's dormitory, which was separated from the control room by a glass wall.

237. Reference is also made in this context to the CPT Fact Sheet on immigration detention which summarises certain basic principles on immigration detention.

The findings of the visit indicate that, in line with these provisions, an expulsion order and a separate detention order were issued in each case and the foreign nationals concerned received a copy of these documents. The orders contained information on legal remedies, namely, the possibility to appeal to a court.

However, the detention orders did not indicate for how long a period the detention was imposed or whether they would be automatically reviewed after a certain period of time. Moreover, as far as the delegation was informed, there was no maximum period of detention under immigration legislation in Sint Maarten.

Further, the detention and expulsion orders were provided in Dutch and at best verbally explained to the foreign nationals concerned.

**358. The CPT recommends that the Sint Maarten authorities take the necessary steps to ensure that:**

- a maximum time limit is introduced for the detention of foreign nationals who are subjected to an expulsion order;
- the need for continued detention is reviewed periodically by an independent authority and the foreign national concerned is informed in writing of any decision taken in this respect.

Further, the Committee considers that it would be desirable for foreign nationals to receive a written translation in a language they understand of decisions regarding their detention and expulsion, including on the modalities and deadlines for appealing against such decisions.

**The CPT would also like to be informed whether lodging an appeal against an expulsion order has suspensive effect on the implementation of the expulsion.**

359. It would appear that foreign nationals detained under aliens legislation were not systematically informed of their rights and the legal procedures applicable to them. Further, house rules of the detention facility existed only in Dutch and were only verbally explained to newly arrived foreign nationals.

The CPT considers that persons detained under aliens legislation should be expressly informed, without delay and in a language they understand, of their rights and the procedure applicable to them. To this end, all immigration detainees should be systematically provided with a document setting out this information; the document should be available in the languages most commonly spoken by those concerned and, if necessary, the services of an interpreter should be made available.

Further, they should be informed upon their arrival at an immigration detention facility, in writing and in a language they understand, of the relevant house rules.

**The CPT recommends that the Sint Maarten authorities ensure that all persons placed in immigration detention are fully and effectively informed, in a language they can understand, of their rights and the procedures applicable to them as set out above.**

360. The information gathered during the visit indicates that persons held under aliens legislation had access to a lawyer throughout their detention. Further, the authorities informed the delegation that an *ex officio* lawyer could be provided free-of-charge to detained persons who could not afford to pay for a lawyer. **The CPT would like to receive more detailed information on the free legal aid scheme available to persons held in immigration detention who cannot afford to pay for a lawyer.** Further, the Committee would like to be informed whether NGOs who could provide free legal assistance to detained persons have access to the immigration detention facility.

#### 4. Other issues

361. The findings of the visit indicate that if detained persons had health problems or were taking medication, access to a medical doctor was swiftly arranged. However, no systematic medical screening of newly arrived persons was in place. **The CPT recommends that systematic medical screening of all newly admitted persons, including for transmissible diseases, injuries, mental health issues and victimisation, be introduced.**

362. As regards staff, there was a pool of 15 officers provided by various services subordinated to the Ministry of Justice who were deployed to the immigration detention facility, including, if necessary, female officers.<sup>238</sup> They worked in three shifts, each staffed with two officers. These staffing levels appeared adequate, given the capacity and occupancy of the establishment.

That said, the officers deployed to the facility were provided with no specific training on immigration detention issues.

The CPT considers that staff working in immigration detention facilities should be carefully selected and receive appropriate trainings. Staff should possess both well-developed qualities in the field of interpersonal communication and cultural sensitivity, given the diverse backgrounds of the detained foreign nationals. Further, they should be taught to recognise possible symptoms of stress reactions displayed by detained persons (for example, post-traumatic, induced by socio-cultural changes, etc.) and to take appropriate action.

**The CPT recommends that training be provided to all staff deployed to Simpson Bay Immigration Detention Facility, in light of the aforementioned remarks.**

363. The possibilities for detained persons to maintain contact with the outside world were satisfactory; they could use their mobile phones for two hours a day and could connect to internet via wi-fi and make free-of-charge Voice-over-Internet-Protocol (VoIP) calls. Visits were allowed every working day, for a minimum of 20 minutes, but the arrangements were flexible and visits could also be organised on the weekend. The CPT welcomes these arrangements.

364. Persons newly admitted to the facility were systematically strip-searched and were requested remove all their clothes at once, make a squat and cough. **The principles set out in paragraph 351 should also be implemented in the immigration detention context.**

#### C. Point Blanche Prison

##### 1. Preliminary remarks

365. Point Blanche Prison was built in the 1990s and is located on a secluded hilltop on the outskirts of Philipsburg, in the south-eastern part of Sint Maarten. It was repeatedly visited by the CPT during previous visits.

In 2017, the prison was seriously damaged by hurricanes and a number of prisoners had to be temporarily transferred to other establishments in Curaçao, Bonaire and in the metropolitan Netherlands.<sup>239</sup>

At the time of the visit, the establishment had a capacity of 80 male and six female prisoners and was holding 78 adult men and five adult women.<sup>240</sup> Approximately one third of the prisoners were held on remand.

366. At the outset, the CPT must point out that, despite the genuine efforts made by the management, its delegation faced difficulties when collecting basic information about the prisoner

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238. There were plans, however, to create a team of officers dedicated for the facility.

239. At the time of the visit, approximately 10 prisoners from Sint Maarten were still held in Curaçao and a further 10 in the metropolitan Netherlands.

240. Juveniles were never placed at Point Blanche.

population. No data management system was in place which would give a reliable overview of basic information concerning inmates, such as their legal status (remand or sentenced), or which would make it possible to generate an alphabetical list of inmates with the date of their admission to the establishment.

Moreover, the date of release of prisoners could not easily be retrieved from the existing computer records and was apparently not even available in the establishment in respect of several inmates. This was due to the fact that final judgments were reportedly provided by the courts to Point Blanche Prison via the prosecutor's office and were received with a considerable delay. Moreover, as was the case during the 2014 visit, the delegation again received a number of complaints from prisoners that they were not informed of the length of their sentence and the release date.

**The CPT recommends that the Sint Maarten authorities take steps to ensure that a data management system which is capable of recording comprehensive information about prisoners and which will enable data retrieval be put in place at Point Blanche Prison.**

**Further, the Committee recommends that the authorities take steps to ensure that Point Blanche Prison is informed without any undue delay of the final judgments and the date of release of prisoners placed in the establishment, in order to ensure release at the correct time. In addition, it reiterates its recommendation that all prisoners be accurately informed of their release date from prison as soon as possible after their admission to prison.**

367. The delegation was informed that there were plans to build a new establishment which would replace Point Blanche Prison and a project team of the United Nations Office for Project Services (UNOPS) was expected to visit Point Blanche at the end of May 2022. During the first phase, which was expected to last 20 months, a project of the new prison should be drawn up and the actual construction of the new establishment was expected to take a further three years. Consequently, the new establishment was expected to become operational between 2027 and 2028.

**The CPT would like to receive updated information on the plans to build a new prison in Sint Maarten, including the expected location, capacity and layout of the new establishment.**

## 2. Ill-treatment and use of force

368. The majority of prisoners interviewed by the delegation during the visit made no allegations of ill-treatment by staff.

However, a few allegations were received of excessive use of force by custodial officers when dealing with recalcitrant prisoners or instances of inter-prisoner violence.

For example, a prisoner held in the detention facility at Philipsburg Police Station alleged that he had been standing in the office and refused to sit down while making a phone call. A prison officer deployed to the facility had then allegedly poked him with a baton in the back of his leg, while another prison officer had held him in a headlock.

In another case, according to consistent statements made by several prisoners interviewed separately, when intervening in a fight between two prisoners at Point Blanche Prison, a senior prison officer punched a prisoner in the face and sprayed pepper spray in his face, after the two inmates had already been separated and brought under control by staff. One of the prisoner's teeth was allegedly broken by the punch. The medical file of the prisoner concerned was not available in the prison (see the following paragraph as regards the use of force incident report).

369. The delegation was informed that there was no dedicated register of use of force by staff. In some cases, use of force incident reports could be found in disciplinary files, for example, when staff intervened in instances of inter-prisoner violence and disciplinary proceedings were subsequently instituted against the prisoners involved. However, the records seen by the delegation lacked precision and appeared to be incomplete. For example, in the second case of use of force described in the preceding paragraph, the record in the disciplinary file merely stated "force used to subdue the prisoner". No more details were provided and no mention was made of the punch, which was

allegedly witnessed by several prisoners. Further, no analysis of the legality and proportionality was apparently carried out by supervisors of the prison officer involved.

The CPT considers that every instance of use of force/special means should be recorded in a dedicated register, established for that purpose. The entry should include the times at which the use of force/special means began and ended, the circumstances of the case, the reasons for resorting to force/special means, the type of means used, and an account of any injuries sustained by inmates or staff.

An assessment of the compliance of such coercion with the principles of necessity, proportionality and legality should be conducted with an analysis of all relevant information by the direct supervisor.

**The CPT recommends that the Sint Maarten authorities take steps to ensure that a register of use of force and special means is put in place and diligently maintained at Point Blanche Prison, in light of the preceding remarks.** See paragraph 381 as regards recording and reporting of injuries after violent episodes in prison.

370. Although there was no official record of instances of inter-prisoner violence, the head of security took the initiative to maintain a comprehensive record of notable incidents which included cases of violence between inmates. The CPT highly appreciates this initiative as it provided the prison with data showing how levels of violence changed over time.

371. Efforts were made by management and staff to prevent instances of inter-prisoner violence, in particular by keeping rival gang members apart and by thoroughly investigating the cases that occurred, as well as, where appropriate, imposing a disciplinary sanction. The findings of the visit indicate that there has been an improvement since the 2014 visit. For example, the aforementioned records showed that, while there had been 16 cases of prisoner-on-prisoner violence in 2021, only three cases occurred in the first five months of 2022.

Despite the efforts made by staff, serious attacks still occurred which involved slashing the back of the head of another inmate with a sharpened object. In 2021, five cases of prisoners being in possession of a makeshift weapon and one such case in the first five months of 2022 were recorded.

Moreover, a few prisoners alleged that staff were not always in a position to rapidly intervene when fights among inmates broke out as no officers were present in the unit.

372. The CPT recalls that addressing the phenomenon of inter-prisoner violence and intimidation requires that prison staff be alert to signs of trouble, and both resolved and properly trained to intervene when necessary. The existence of positive relations between staff and prisoners, based on the notions of dynamic security and care, is a decisive factor in this context; this will depend in large measure on staff being present and possessing appropriate interpersonal communication skills. It is also obvious that an effective strategy to tackle inter-prisoner intimidation/violence should seek to ensure that prison staff are placed in a position to exercise their authority in an appropriate manner. Consequently, the level of staffing must be sufficient (including at night-time) to enable prison officers to supervise adequately the activities of prisoners and support each other effectively in the exercise of their tasks. Both initial and ongoing training programmes for staff of all grades must address the issue of managing inter-prisoner violence.

**The CPT recommends that the Sint Maarten authorities take steps to ensure that management and staff at Point Blanche prison build on the positive developments described above and continue their efforts to tackle the phenomenon of inter-prisoner violence, in light of the above principles.**

### 3. Conditions of detention

#### a. situation of male prisoners

373. As regards material conditions, it is a positive development that cells (measuring approximately 10 m<sup>2</sup> excluding the sanitary annexe) now accommodated no more than two inmates, as recommended by the CPT in the 2014 visit report. Further, since the 2014 visit, an outdoor sports area, a gym and a sawing workshop have been refurbished and ongoing efforts were made to maintain the establishment in an acceptable state of repair (such as minor repairs and painting the cells).<sup>241</sup>

Although material conditions remained on the whole acceptable, signs of wear and tear were visible in many parts of the prison.

In some areas, walls were dirty and scratched, with paint and lumps of plaster peeling off the walls. Moreover, the delegation noted that some mattresses were worn out and dirty, the artificial lighting in several cells did not work and the toilets did not flush.

**The CPT recommends that the Sint Maarten authorities continue their efforts to keep Point Blanche Prison in an acceptable state of repair; in this context, the shortcomings identified above should be addressed as a matter of priority.**

374. By contrast, material conditions were unacceptably poor in the segregation unit, which consisted of two solitary confinement cells and an isolation cell. Despite its name, the isolation cell was used for ordinary accommodation of prisoners. At the time of the visit, two inmates were being accommodated in the isolation cell, for six months and for more than a year respectively; two other inmates had been transferred from the cell a few days prior to the CPT visit.

The cells were dark, there was ingrained dirt on floors and walls and black mould in the in-cell sanitary annexes. There was no furniture in the cells, except for bunk-beds in the isolation cell and concrete sleeping platforms in the solitary confinement cells. Water from the roof was leaking onto one of the bunk-beds in the isolation cells and the prisoner concerned had put a black bin bag on the grille above the bed to stop his mattress from getting wet. Moreover, the cells were hot and there were no fans.

**The CPT recommends that the Sint Maarten authorities take urgent steps to ensure that the solitary confinement and isolation cells at Point Blanche Prison are taken out of service without delay and are not used for holding of prisoners until they have been thoroughly refurbished.**

375. As regards the regime, as a general rule, cell doors were open for some eight hours during the day and prisoners could associate with each other within their respective units (even though the space was very confined). They were also offered two hours of daily outdoor exercise and access to a gym several times per week.

It is a positive development that approximately 40 to 50 sentenced prisoners now had paid work (such as cleaning, maintenance and catering), although this was sometimes limited to a few hours per day; however, no work was, as a general rule, offered to remand prisoners. Some 10 prisoners were enrolled in literacy classes with an external teacher, which started shortly before the CPT visit.

However, prisoners held in the high security and protection unit (BEVA) were sometimes offered only 45 minutes of daily outdoor exercise.

376. The authorities and management of the establishment were well-aware of the importance of a satisfactory programme of activities for the well-being of prisoners and their resocialisation and preparation for release. A programme team was created in 2021 to ensure that the prison meets

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241. Most of the damage caused by the 2017 hurricanes has also been repaired.

basic standards in various areas. To this end, an action plan has been drawn up which included the development of regime activities.

**The CPT recommends that the Sint Maarten authorities continue their efforts to develop a full programme of activities for all prisoners. In the CPT's view, the aim should be to ensure that all prisoners (including those on remand) are able to spend a reasonable part of the day (that is, eight hours or more) outside their cells engaged in purposeful activities of a varied nature: work, preferably with vocational value; education; sport; recreation/association.**

Further, **steps should be taken to ensure that all prisoners are offered at least one hour of daily outdoor exercise.**

b. situation of female prisoners

377. The small separate unit for women consisted of three accommodation cells and another cell for isolation of women on medical grounds.

Material conditions were similar to those observed in the male units. The cells measured some 10 m<sup>2</sup> (excluding the fully partitioned sanitary annexe which contained a washbasin, toilet and shower) and were accommodating up to two women. The cells were in an acceptable state of repair and suitably equipped with a bunk-bed, a table, chairs and shelves.

However, the artificial lighting in the cells did not function, there was black mould in the in-cell sanitary facilities, the sewage system was clogged and there were puddles of water in the shower areas. The metal shelves were rusty and mattresses were dirty and worn-out.

**The CPT recommends that the Sint Maarten authorities take steps to improve material conditions in the unit for female prisoners at Point Blanche Prison, taking into account the aforementioned remarks.**

378. More generally, although the cells were not overcrowded, the unit as a whole provided a relatively enclosed and cramped environment and gave the impression that makeshift arrangements had been made to create a separate unit for women, rather than creating a pre-planned fully fledged unit for them. The unit was in a small separate building, close to the wall surrounding the detention area, and the adjacent outdoor exercise yard, although relatively spacious (50 m<sup>2</sup>), was surrounded by a high concrete wall; there was no horizontal view from the unit. Women could be confined to this unit for several years.

**The CPT recommends that when drawing up a concrete plan for the construction of the new prison, the Sint Maarten authorities make sure that due account is taken of the specific needs of the female prison population. A specific section created for women should provide appropriate material conditions and enable women to participate in a range of purposeful activities of a varied nature (work, preferably with vocational value; education; sport; recreation/association) to prepare them for reintegration into the community.**

379. As regards the regime, cell doors were open for approximately five hours during the day and women had access to an outdoor exercise yard, as well as to a communal area in front of the cells where they could associate with other women, play board games, watch TV together and use a computer. The area was also equipped with some sports equipment (a cross-trainer, a treadmill and a stationary bike).

However, there were virtually no organised activities, except for simple cleaning work for two women.<sup>242</sup>

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242. One woman worked for five hours a day, another for two.



**The recommendation set out in paragraph 376 equally applies to female prisoners held at Point Blanche Prison.**

4. Healthcare services

380. As regards staffing levels of healthcare staff, the establishment was visited, at best, once a week by a GP for one or two hours; however, it was not unusual that the GP only visited once every two to three weeks. Moreover, no GP visited the establishment between 8 February and 4 May 2022. In the CPT's view, this is clearly insufficient for an establishment with a population of 80 prisoners and, as described in the following paragraphs, this situation had negative repercussions in several areas. Most notably, nurses working in the establishment carried out and bore responsibility for tasks which were not within their professional competence (such as recording and reporting of injuries and assessing medical emergencies).

There were two full-time nurses, of whom at least one was present in the establishment during the day from Monday to Friday.<sup>243</sup> Outside of these hours and at weekends, no healthcare staff was present in the establishment (but a nurse was on call).<sup>244</sup>

**The CPT recommends that the Sint Maarten authorities thoroughly review the healthcare needs of the prison population at Point Blanche Prison and increase the attendance of a general practitioner accordingly; the GP should be present in the establishment three times a week.**

Further, **the Committee recommends that a person competent to provide first aid (which should include being trained in the application of CPR and the use of automated external defibrillators) is always present at Point Blanche Prison, including at night and on weekends; preferably, this person should be a qualified nurse.** This may require increasing the number of nurses employed in the establishment.

381. Medical screening of newly admitted prisoners was often carried out with considerable delay (days or even weeks after admission) and some prisoners were apparently not screened at all. As a consequence, healthcare needs of the prisoners were not identified and injuries which were (or which may have been) displayed by them upon their admission to prison were not duly recorded.

Further, there was no injury register and even when injuries were observed upon admission (or after a violent episode in prison), a nurse made only a very brief record in the individual medical file of the prisoner concerned. The CPT considers that the drawing up of injury reports and description of injuries are beyond the remit of the professional competence of a nurse and should be done by a trained medical doctor. Moreover, there were no body charts to mark injuries, no photos of injuries were taken and the statement of the prisoner concerned as to the origin of the injuries was absent, as was *a fortiori* the nurse's observations as to the consistency of any such statement with injuries recorded.

The CPT underlines the importance of medical screening of newly arrived prisoners, in particular in the interests of identifying special medical needs, preventing the spread of transmissible diseases, suicide prevention and the timely recording of any injuries.

All newly admitted prisoners should be properly interviewed and physically examined by a medical doctor, or a fully qualified nurse reporting to a doctor, as soon as possible and no later than 24 hours after their admission, and any signs of injuries should be duly recorded. The record should contain:<sup>245</sup>

- (i) an account of statements made by the person which are relevant to the medical examination (including their description of their state of health and any allegations of ill-treatment),

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243. The nurses were also responsible for Philipsburg Police Station and a juvenile institution.

244. Dental care was provided to prisoners free of charge in an external healthcare facility.

245. The same requirements apply to records of injuries drawn up after a violent episode in prison.

- (ii) a full account of objective medical findings based on a thorough examination (supported by a “body chart” for marking traumatic injuries and, preferably, photographs of injuries), and
- (iii) the health-care professional’s observations in the light of (i) and (ii), indicating the consistency between any allegations made and the objective medical findings.

In addition, a special trauma register should be kept in which all types of injury observed should be recorded.

The results of every examination, including the abovementioned statements and the doctor’s opinions/observations, should be made available to the prisoner and, with the consent of the prisoner, to their lawyer. Further, procedures should be put in place in order to ensure that whenever injuries are recorded which are consistent with allegations of ill-treatment made by a prisoner (or which, even in the absence of allegations, are indicative of ill-treatment), the report is immediately brought to the attention of the relevant prosecutorial authorities regardless of the wishes of the person concerned.

**The CPT reiterates its recommendation that the Sint Maarten authorities take steps to ensure that all newly admitted prisoners to Point Blanche Prison undergo a thorough medical screening and that all detected injuries are duly recorded and reported, and their healthcare needs met, in light of the above remarks.**

382. The risks linked with the lack of medical screening upon admission and the insufficient presence of a GP can be illustrated by the case of a prisoner who was admitted on 15 March 2022 but upon whose admission no medical examination was carried out. He was first seen by a nurse on 26 April 2022; he had a high blood pressure (195/124) and a pulse of 103 bpm. The nurse prescribed dietary measures (“no salt, brown bread, more vegetables”) but no other measures were taken until 4 May 2022 (some eight days later) when the prisoner was seen by a GP who prescribed medication.

In the CPT’s view, such management of a hypertensive crisis is totally inadequate and puts patients at risk. Further, the current arrangements put inappropriate responsibility on the nurses. Reference is made in this respect to the recommendation set out in paragraph 380 concerning staffing levels of healthcare staff and the presence of a GP at Point Blanche Prison.

383. As regards medical confidentiality, as a general rule, custodial staff remained present during medical consultations (or at best stayed in front of the room with the door open, that is, within hearing distance). This concerned both medical consultations inside the prison and in external medical facilities.

**The CPT recommends that steps be taken to ensure that medical examinations of prisoners are conducted out of the hearing and – unless the doctor concerned expressly requests otherwise in a given case – out of the sight of non-medical staff.**

384. Moreover, the findings of the visit indicate that prisoners were systematically hand- and ankle-cuffed during transport to an external medical facility and remained restrained during medical examinations.

The CPT understands that it may sometimes be necessary to make special arrangements in respect of security. However, to restrain prisoners systematically during transfer is not acceptable; such a measure should be done on the basis of an individual risk assessment.

Further, in the CPT’s view, to apply handcuffs to a prisoner undergoing a medical consultation/intervention is a highly questionable practice, both ethically and from the clinical viewpoint. Practices of this kind prevent an adequate medical examination from being carried out, will inevitably jeopardise the development of a proper doctor-patient relationship and may even be prejudicial to the establishment of objective medical observations. If, exceptionally, the application of handcuffs is deemed necessary on the basis of an individual risk assessment, the decision on this matter should be taken by the healthcare staff involved.

**The CPT recommends that the Sint Maarten authorities take steps to ensure that the use of hand- and ankle-cuffs during transfer of prisoners to an external medical facility and during their medical examinations is reviewed, in line with the aforementioned principles.**

385. The delegation was informed that nurses systematically accompanied patients to external medical consultations, in addition to members of custodial staff. The CPT considers that this arrangement is not necessary from the medical point of view and that it would be more beneficial to invest the scarce resources in the provision of healthcare in Point Blanche Prison. **The CPT would like to receive comments of the Sint Maarten authorities on this issue.**

386. Urine testing to detect illicit drug use was carried out by nurses who were the treating staff of the prisoners concerned. The CPT considers that this essentially non-medical task can affect the therapeutic relationship between healthcare staff and their patients. **The CPT recommends that healthcare staff at Point Blanche Prison not be involved in the collection and testing of urine samples for administrative purposes (that is, illicit drug use).**

387. Several shortcomings were observed by the delegation when it comes to the equipment of the medical unit. In particular, there was no ECG, no defibrillator, no sterile material and the dental chair was out of order. **These deficiencies should be remedied.**

388. As regards psychiatric and psychological care, a contracted psychiatrist carried out between 10 and 20 visits per year and a psychiatric nurse visited once a week. If considered necessary, a clinical psychologist could visit the establishment once a week. The CPT considers that such input is insufficient to identify, assess and provide adequate care to prisoners with mental health problems.

**The CPT recommends that the Sint Maarten authorities take steps to ensure that a thorough assessment of the mental healthcare needs of inmates at Point Blanche Prison is carried out and that the psychiatric and psychological input is increased accordingly.**

389. If agitated prisoners needed to be chemically restrained, an external mental health team was called to the prison. However, following the forced injection, the prisoner concerned was not under continuous supervision by a member of the healthcare staff.

As already stated in the 2014 visit report, the CPT considers that prisoners with serious mental health problems should be kept and cared for in a hospital facility which is adequately equipped and possesses appropriately trained staff. It remained the cases that Point Blanche Prison possessed neither the staff nor the facilities to hold prisoners suffering from a serious mental health problem. Further, chemical restraint should always be administered only in a medical setting and accompanied by appropriate safeguards.

**The CPT reiterates its recommendation that the Sint Maarten authorities take the necessary steps to ensure that prisoners with serious mental health problems are cared for in a suitable therapeutic environment. Further, steps should be taken to ensure that chemical restraint is never administered in a prison setting.**

390. Prisoners deemed at risk of suicide were put alone in a cell, their clothes were removed and they were kept naked until the arrival of a mental health team.

In the CPT's view, the treatment and care of persons identified as being at risk of self-harm or suicide should be overseen by healthcare staff. Only when there is an evident suicide risk or case of self-harm should the person have to remove their clothes and, in such cases, they should be provided with rip-proof clothing and footwear. The removal of clothes should follow an individual risk assessment and be recommended by healthcare staff.

**The CPT recommends that the Sint Maarten authorities draw up a care protocol for prisoners who are deemed to be at risk of self-harm or suicide, in light of the aforementioned principles.**

391. As regards the specific situation of female prisoners, the admission procedure did not include gender-specific screening for specific needs, in particular for a history of any sexual abuse and other gender-based violence.

The CPT considers that gender-specific screening on admission for women should be in place in all prisons accommodating women prisoners. Such screening should allow, in addition to identification of the responsibilities of newly admitted women towards their families/children, for the detection of specific needs, including a history of any sexual abuse and other gender-based violence. This information should be duly considered when drawing-up an individual sentence plan for the woman to ensure appropriate care and avoid re-traumatisation.<sup>246</sup>

**The CPT recommends that the Sint Maarten authorities take steps to ensure that gender-specific screening on admission for women by specifically trained staff (and, preferably, healthcare staff) is introduced at Point Blanche Prison, in light of the above-mentioned remarks.**

5. Other issues

a. prison staff

392. The complement of custodial staff included 69 prison officers of whom 13 were still undergoing initial training and nine were deployed to Philipsburg Police Station. The day shift consisted of approximately 10 officers and the night shift consisted of three officers.

As regards specialist staff to provide activities to prisoners, the prison employed only four educators and a foreman. The CPT considers that this is insufficient to provide a full programme of activities to the prisoner population (see also the remarks and recommendations concerning the regime of activities set out in Section 3 of this report).

The delegation was informed that all posts in the current staffing table were filled. However, a new staffing table which was expected to increase the number of staff was being prepared by the Ministry of Justice. **The CPT would like to receive detailed information about the new staffing table for Point Blanche Prison. The Committee recommends that a sufficient number of posts of staff who will provide activities to prisoners be allocated to Point Blanche Prison.**

b. security related issues

393. Upon their admission to Point Blanche Prison, prisoners were routinely strip-searched and were systematically asked to remove all their clothes at once, make several squats and cough.

The CPT must emphasise in this context that a strip search, if considered necessary on the basis of an individual risk assessment, must always be carried out in a manner respectful of human dignity. In particular, prisoners should never be required to remove all their clothes at the same time.

**The CPT recommends that these principles be effectively implemented in practice at Point Blanche Prison.** Reference is made to the more detailed remarks set out in paragraph 351, which also apply in the prison context.

c. discipline

394. The documentation of disciplinary procedures has significantly improved since the last visit. The files shown to the delegation were well-kept and gave a good overview of the offence committed, the procedure and the sanction imposed.

Prisoners facing disciplinary charges were heard in person before a disciplinary punishment was imposed and received a copy of the disciplinary decision, which informed them of the possibility to lodge an appeal.

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246. See also Rule 6 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (*Bangkok Rules*).

395. Disciplinary sanctions are regulated in Chapter X of the National Ordinance establishing Penitentiary Principles (Prison Act). The sanctions that may be imposed include solitary confinement (for up to two weeks), deprivation of the right to receive visitors and send and receive letters or restricting other rights and privileges<sup>247</sup> (for up to four weeks), a fine or a warning (Section 36 of the Prison Act).

The examination of the disciplinary decisions revealed that the whole range of disciplinary sanctions was used and that attempts were made to impose sanctions which were proportionate to the disciplinary offence.

However, the sanction of withdrawal of visits was sometimes imposed even if the disciplinary offence did not relate to a visit.

**The CPT recommends that the Sint Maarten authorities take steps to ensure that disciplinary punishment of prisoners does not include a total prohibition of family contact and that any restrictions on family contact as a form of punishment should be used only where the offence relates to such contact.**

d. contact with the outside world

396. Both remand and sentenced prisoners were allowed to receive one 30-minute visit per week. During the Covid-19 pandemic, tables in the visiting area had been fitted with plexiglass partitioning which had not yet been removed at the time of the visit.<sup>248</sup>

**The CPT recommends that the visiting entitlement be increased to at least one hour every week. Further, the plexiglass partitioning should be removed and open visits should be re-introduced.**

397. Phone lines had been destroyed by the hurricanes in 2017 and were being fixed at the time of the visit. In the meantime, prisoners could request to make one phone call per week lasting for up to five minutes from an office phone. However, several complaints were received from prisoners that access to a phone was difficult in practice.

Prisoners whose families lived abroad were not allowed overseas phone calls but were offered the possibility of making one 5-minute, free-of-charge Voice-over-Internet-Protocol (VoIP) call (Skype) every week.

**The CPT wishes to receive confirmation that phone lines at Point Blanche Prison have now been repaired and would like to be informed of the prisoners' weekly entitlement to make phone calls. Further, the Committee encourages the Sint Maarten authorities to maintain the possibility to make free-of-charge Voice-over-Internet-Protocol (VoIP) calls beyond the pandemic and to offer it to all prisoners held at Point Blanche Prison.**

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247. In practice, this meant being disallowed to work or to buy articles from the canteen.

248. In addition, once every 90 days, prisoners could be granted a family meal for up to three hours as an incentive. According to the management of the establishment, this possibility significantly decreased the number of disciplinary offences committed by prisoners.

## **APPENDIX I**

### **LIST OF ESTABLISHMENTS VISITED BY THE DELEGATION**

#### **The Kingdom in Europe:**

- Amsterdam City Police Station (Elandsgracht)
- Amsterdam South Police Station (Flierbosdreef)
- Dordrecht Police Station
- 's-Hertogenbosch Police Station
  
- Dordrecht Prison
- Vught Prison
- Zwolle Prison (targeted visit to the Terrorist department (TA))
  
- Closed Family Facility (GGV) at Zeist Immigration Detention Centre
- Schiphol Immigration Detention Centre (Amsterdam)
- Rotterdam Immigration Detention Centre

#### **Aruba:**

- Aruba Correctional Institution (KIA)
- Noord (Shaba), San Nicolas and Santa Cruz Police Stations
- Dakota Immigration Detention Facility

#### **Curaçao:**

- Centre for Detention and Correction Curaçao (SDKK)
- Barber and Rio Canario Police Stations, as well as the police detention facility located at SDKK premises
- "Illegalen Barakken" Immigration Detention Facility

#### **Sint Maarten:**

- "Point Blanche" Prison
- Philipsburg Police Station
- Simpson Bay Immigration Detention Facility.

## **APPENDIX II**

### **LIST OF AUTHORITIES AND ORGANISATIONS MET BY THE DELEGATION**

#### **A. Authorities of the Netherlands (European part of the Kingdom)**

##### **Ministry of Justice and Security**

Mr Dick Schoof	Secretary General
Mr Eric Bezem	Acting Director General Sanctions and Protection
Ms Marinke van der Kroon	Deputy Head of Department, Sanction and Victim Policy Division
Ms Anne Timmerman	Senior Policy Advisor, Sanction and Victim Policy Division
Mr Bart-Jan ter Heerdt	Deputy Director-General for Migration
Mr Ries Wever	Legal Advisor, Directorate-General Migration
Mr Hans Cornelissen	Head of the Police Policy Development Programme
Ms Roos Lawant	Programme Manager, Directorate-General for the Police and Safety Regions
Mr Arjen Taselaar	Head of International Relations and Project
Ms Sabine Leijten	Senior Policy Officer Caribbean Netherlands and Kingdom Affairs, Department of European and International Affairs
Ms Clarinda Coert	Senior Legal Advisor Human Rights Law and CPT Liaison Officer, Directorate for Legislation and Legal Affairs
Ms Janine van Veldhuizen	Legal Advisor Human Rights Law, Directorate for Legislation and Legal Affairs
Ms Laura Ludwig	Intern Human Rights Law, Directorate for Legislation and Legal Affairs

##### **Custodial Institutions Agency**

Mr Wim Saris	Director
Ms Monique Schippers	Director, Prison Administration and Immigration Detention

##### **Justice and Security Inspectorate**

Mr Henk Korvinus	Inspector General
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##### **Ministry of the Interior and Kingdom Relations**

Ms Saskia de Reuver	Director, Kingdom Relations/ Countries of the Kingdom of the Netherlands
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## **Netherlands Police**

Ms Hanneke Ekelmans Deputy Commissioner Force Command

## **Royal Netherlands Marechaussee, Ministry of Defence**

Ms Nynke Wygman Legal Advisor

## **B. Authorities of Aruba**

### **Ministry of Justice**

Rocco G. Tjon Minister of Justice and Social Affairs

Erik Teepe 1<sup>st</sup> advisor to the Minister

Richard Kramers Head of Immigration Detention

Gino Winklaar Director of Aruba Correctional Institution (KIA)

Aron Verschuur Head of Medical Department at KIA

Janice St. Jago Chief of staff at KIA

### **Judicial authorities**

Saskia de Vries Chief prosecutor

## **C. Authorities of Curaçao**

### **Ministry of Justice**

Shalten Hato Minister of Justice

D. Lai Prommes Secretary General

G. Van der Gen Sector Director, Judicial Care, Execution of Sentences and Resocialisation

R. Thode Councillor at the Ministry of Justice

L. Pieters Councillor at the Ministry of Justice

Mr. Isidora Councillor at the Ministry of Justice

U. Floran Director, Centre for Detention and Corrections Curaçao (SDKK)

M. Jessurun Head of Quality, SDKK

A. Hasselmeyer Staff member, SDKK

J. Ilario Member Management Team, Curaçao Police Force

C. Gomez Member Management Team, Curaçao Police Force

A. Schoop Member Management Team, Curaçao Police Force



**D. Authorities of Sint Maarten**

**Ministry of Justice**

Anna E. Richardson	Minister of Justice
Demi Bute	Police Advisor
Geertje van Haperen	Senior Legal Policy Officer
Johishi Romney	Senior Policy Advisor
Steven Carty	Prison Director, Point Blanch Prison
Rob Kievitsbosch	Program Director at Point Blanche Prison (from the Ministry of Interior and Kingdom Relations)
Viziola Angel	Team Leader, Immigration and Border Protection Services (IBPS)
Erling Hoeve	Policy Advisor, Immigration and Border Protection Services (IBPS)

**E. Other authorities**

**National Ombudsman**

Mr Reinier van Zutphen	National Ombudsman
Mr Frans Weerkamp	Strategic Advisor National Ombudsman

**National Preventive Mechanism**

Inspectorate of Justice and Security (coordinator of the NPM network)
Health and Youth Care Inspectorate
Commission of Oversight for Penitentiary Institutions
Commission of Oversight for Police Custody
Detention Areas Supervisory Commission of the Royal Netherlands Marechaussee

**Netherlands Institute for Human Rights**

Ms Britta Böhler	Member of the Board
Ms Sabine Park	Senior Policy Advisor

**Law Enforcement Council**

E. R. A. Morillo	Secretary of the Law Enforcement Council, Curaçao
L. M. Lasten	Inspector, Law Enforcement Council, Curaçao

**Netherlands Bar Association**

Mr J. Soeteman	Lawyer
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**F. Non-governmental organisations**

Amnesty International, Dutch Section

Dutch Association of Asylum Lawyers

International Commission of Jurists, Dutch Section

Netherlands Helsinki Committee