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Contact: John Darcy  
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Date: 25/02/2019

**DH-DD(2019)194**

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Meeting: 1340<sup>th</sup> meeting (March 2019) (DH)

Reply from the authorities (22/02/2019) following a communication from The Netherlands Institute for Human Rights (14/02/2019) in the case of Corallo v. the Netherlands (Application No. 29593/17)

Information made available under Rules 9.2 and 9.6 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1340<sup>e</sup> réunion (mars 2019) (DH)

Réponse des autorités (22/02/2019) suite à une communication de l'Institut néerlandais des droits de l'homme (14/02/2019) relative à l'affaire Corallo c. Pays-Bas (requête n° 29593/17) (**Anglais uniquement**).

Informations mises à disposition en vertu des Règles 9.2 et 9.6 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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DGI

14 FEV. 2019

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

NETHERLANDS  
INSTITUTE FOR  
HUMAN RIGHTS

Department for the execution of judgments of the ECHR  
Directorate General 1 - Human Rights and Rule of Law  
Council of Europe  
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**Subject**

Communication with regard to the execution of the judgment of the European Court of Human Rights in the case of *Corallo v. The Netherlands* (29593/17)

**Date**

February 14<sup>th</sup>, 2019  
Our reference  
2019/0017/AvD/JN/HvE

Dear Madam, Sir,

The Netherlands Institute for Human Rights (hereafter: the Institute) hereby respectfully submits its observations and recommendations under Rule 9(2) of the “Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements” regarding the execution of the judgment of the European Court of Human Rights in the case of *Corallo v. The Netherlands* (Application no. 29593/17, Judgment of 9 October 2018).

**About the Institute**

The Institute is an independent body established by law. Its objectives are set out in the Netherlands Institute for Human Rights Act of 2012 (hereafter: the Act): to protect human rights in the Netherlands, to increase awareness of these rights and to promote their observance. The Institute is the A-status National Human Rights Institution (NHRI) in the Netherlands and the only NHRI in the Kingdom of the Netherlands.

The mandate of the Institute is set out in the same Act, inter alia: to investigate and to conduct research, to report and issue recommendations on the protection of human rights and to cooperate with national, European and other international institutions engaged in the protection of human rights. The Institute submits this communication in light of its mandate.

**Structural deficiencies of the prison system of St. Maarten**

The *Corallo* case concerns the detention conditions at Philipsburg Police Station on St. Maarten. The applicant was held there in “degrading” circumstances and thus in violation of Article 3 ECHR.

The entire detention system of St. Maarten - including Philipsburg Police Station and Point Blanche Prison - has been subjected to scrutiny since long, in particular since St. Maarten gained its “status aparte” within the Kingdom of the Netherlands (10-10-2010). Since then many reports have been issued that summon the Government of St. Maarten to improve the detention conditions within the country as soon as possible.<sup>1</sup> Notably, the Law Enforcement Council (hereafter: the Council) states that the Point Blanche Prison had hit rock bottom early 2017, but concludes that the situation in 2018 is deemed to be even worse. This was partly due to the devastating hurricanes Irma and Maria that struck the windward island St. Maarten in September 2017. “Considering the overall state of the prison and the consequences thereof in daily practice, the Council must conclude that the prison is currently inadequate for detention as well as a workplace. By no means there is a humane detention climate and safe working environment in prison.”<sup>2</sup>

The European Court of Human Rights cites the CPT recommendations in its judgment in the case of *Corallo*. The Court notes that the Government does not dispute that prison conditions remain very poor. Already on 10 March 2017 Mr. Plasterk, then Minister of the Interior and Kingdom Relations, stated that the prison situation was hardly in line with (inter)national laws and regulations and that this contains risks for the guarantee of human rights.<sup>3</sup> To date no significant improvements have been realized and the situation has even deteriorated.

The 2017 hurricanes severely damaged Point Blanche Prison and for security reasons around 60 detainees have been taken in by Curaçao and the European country The Netherlands. The Netherlands has enabled the reconstruction of the outer walls and has catered for temporary security. Nevertheless, the detention situation is still clearly substandard and inadequate for detention, as demonstrated by the recent reports of the Law Enforcement Council.

According to established ECHR case-law persons may not be surrendered when there are substantial grounds for believing that they would be in danger of being subjected to torture, inhuman or degrading treatment or punishment.<sup>4</sup> It would clearly not be compatible with Art. 3 ECHR to return detainees from St. Maarten temporarily held in prisons in Curaçao and The Netherlands, back to Point Blanche Prison. Despite this, it appears that Curaçao has sent detainees back to St. Maarten. Whether The Netherlands has returned detainees cannot be confirmed. No exact information has been provided.

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<sup>1</sup> Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Government of the Netherlands on the visit to the Caribbean part of the Kingdom of the Netherlands*, CPT/Inf (2015) 27, 25 August 2015; Law Enforcement Council (Raad voor de Rechtshandhaving), *Penitentiary Institution Sint Maarten. Inspection of the legal status of prisoners and Personnel and Organization* (2016), *Penitentiary Institution of Sint Maarten. Inspection of internal security of the prisons* (2017), *Penitentiary Institution of Sint Maarten. Inspection of treatment of detainees and social reintegration* (2017), *Penitentiary Institution of Sint Maarten. Follow-up report internal security and social safety* (2018), *Penitentiary Institution of Sint Maarten. Follow-up report legal status of prisoners and Personnel & Organization* (2018). Reports with English summary are available at [http://www.raadrechtshandhaving.com/en\\_GB/sint-maarten/onderzoeken/rapporten/](http://www.raadrechtshandhaving.com/en_GB/sint-maarten/onderzoeken/rapporten/); various reports of the Progress Committee St. Maarten (Voortgangscommissie Sint Maarten), i.e. 29<sup>th</sup> *Progress report to the Ministerial consultation on the period 1/1/2018 - 1/4/2018*, 30<sup>th</sup> *Progress report to the Ministerial consultation on the period 1/4/2018 - 1/7/2018* and 31<sup>th</sup> *Progress report to the Ministerial consultation on the period 1/7/2018 - 1/10/2018*.

<sup>2</sup> Law Enforcement Council, *Follow-up report internal security and social safety* (2018), p. 11-12.

<sup>3</sup> *Handelingen* 2016-2017, nr. 1367, p. 1-2.

<sup>4</sup> *Soering v. UK*, appl. no. 14038/88.

The Government of St. Maarten has acted insufficiently to prevent the occurrence of torture or inhuman or degrading treatment in the future. It has failed to address systemic deficiencies that limit the possibilities of preventing torture, inhuman or degrading treatment during detention and adequately guarantee detention conditions that meet international human rights standards.

These systemic deficiencies include the (1) Personnel & organization; (2) Internal security; (3) Safety of society; and (4) Treatment of detainees and social integration.

### **1. Personnel & organization**

The living and working conditions are so poor that continuation in this manner is absolutely unjustified.<sup>5</sup> “Security personnel work in shifts of up to 3 people instead of 15 people and have to guard almost 60 - mostly dangerous - detainees. They walk with a bunch of keys from padlocks, because the door locks are defective. The building is worse off than immediately after Irma. Leakages, broken showers and other plumbing, broken beds, three men in a cell. Cells have to be mopped up after a rain shower. Most guards are women. Also in the opinion of the staff, the current confinements in Point Blanche are inhuman. Of the 107 people on the payroll, only 40 work effectively, including 10 people in supporting positions.”<sup>6</sup>

### **2. Internal security**

Point Blanche Prison is not adequately prepared to prevent and control calamities. Plans are insufficient, materials (locks, doors and fire detectors) do not work properly. The prison suffers from serious problems with regard to aggression control. There is no clear vision nor active policy and no structural cell inspections. Furthermore, the present state of the prison shows increased risks for the import of drugs. The Council concludes that the relevant standards are not met.<sup>7</sup>

### **3. Safety of society**

Judges and prosecutors take the poor detention conditions into account. For some time now young people, including those armed and dangerous, have been sent home, regardless of the offense. Based on the interviews, the Progress Committee St. Maarten expects, that adults will also be sent home soon, or that the Public Prosecution Service will no longer demand a prison sentence, because an even somewhat humane form of detention is no longer possible.<sup>8</sup>

### **4. Treatment of detainees and social integration**

Detainees are incarcerated for most of the day. Due to the temporary transfer of detainees because of the hurricanes there are currently only two detainees per cell. But this will increase once the transferred detainees return. There are no daily activities. There is no policy for granting freedoms to detainees near the end of their sentence and

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<sup>5</sup> Law Enforcement Council, *Follow-up report internal security and social safety* (2018), p. 12.

<sup>6</sup> Progress Committee St. Maarten (30<sup>th</sup> report 1 April 2018 - 1 July 2018), p. 7 and 31<sup>st</sup> report (1/7/2018 - 1/10/2018), p. 10.

<sup>7</sup> Law Enforcement Council, *Follow-up report internal security and social safety* (2018), p. 27 - 30.

<sup>8</sup> Progress Committee St. Maarten (30<sup>th</sup> report 1 April 2018 - 1 July 2018), p. 7.

there is a total lack of resocialization for released detainees.<sup>9</sup>

### **Division of responsibilities within the Kingdom of The Netherlands**

The Kingdom of The Netherlands is signatory to the ECHR and was found to be in violation of the ECHR in the case of *Corallo*. According to the division of tasks within the Kingdom of The Netherlands each country is responsible for its own detention system. For this reason the country St. Maarten is obliged to respect human rights within St. Maarten territory. As *ultimum remedium* it is the Kingdom of The Netherlands that has the task to guarantee human rights and freedoms, the rule of law and good governance.<sup>10</sup>

For years now the Government of St. Maarten has shown insufficient urgency to take the necessary decisions and ensure their implementation. Therefore, the Netherlands Institute for Human Rights considers an active role for the Kingdom of utmost importance and in accordance with its responsibilities under the Statute and the ECHR. Neither the prison, nor the Ministry of Justice or the country St. Maarten can apparently solve the complex problems on their own. Given the urgency and gravity of the situation, the Institute deems it necessary for the Kingdom of the Netherlands to step up and ensure implementation of the judgment of the Court.

### **Conclusion**

In order to reach structural improvement of the detention system of St. Maarten, the Institute recommends the Committee of Ministers of the Council of Europe to supervise the implementation of the *Corallo* case in the enhanced procedure. This will underline the seriousness of the matter and will strengthen the hope that in the shortest possible time the detention system of St. Maarten will meet the international human rights standards.

Sincerely yours,



Adriana van Dooijeweert  
President

In copy sent to:

- Mr. S. Dekker, Minister for Legal Protection
- Mr. R. Knops, State Secretary for the Interior and Kingdom Relations
- Mr. R. Böcker, Permanent Representative of The Netherlands in Strasbourg

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<sup>9</sup> Law Enforcement Council, *Follow-up report legal status of prisoners and Personnel & Organization* (2018), p. 20 - 24.

<sup>10</sup> See art. 43 par. 2 of the Statute of The Kingdom of The Netherlands.



Ministry of Foreign Affairs

DGI

22 FEV. 2019

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

Department for the Execution  
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Date 22 February 2019  
Re Case Corallo v. the Netherlands (Application No. 29593/17) –  
Judgment of 9 October 2018, final on 19 October 2018

Dear Mr Schafer,

Further to your letter of 15 February 2019 enclosing a communication with respect to the above case from the Netherlands Institute for Human Rights, I wish to inform you as follows.

The Government has taken note of your letter and the communication submitted in accordance with Rule 9 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

The Government will provide information on the measures taken so far and those envisaged in its action plan on the implementation of the judgment of the Court, due by 9 April 2019.

Yours sincerely,

Babette Koopman  
Agent of the Government of the Kingdom of the Netherlands