

RESPONSE OF THE KINGDOM AUTHORITIES TO THE REPORT OF THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE (CPT)

I. Introduction

The Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter – CPT) made its seventh periodic visit to the Kingdom of the Netherlands from 10 to 25 May 2022 pursuant to Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

The four governments of the Kingdom of the Netherlands greatly appreciate the work of the CPT on improving the standards that apply to the functioning of state institutions where persons are deprived of their liberty. All four governments therefore wish to express their gratitude to the CPT for the findings and recommendations reflected in the report of its visit to the Netherlands, Aruba, Curaçao and St Maarten (Kingdom of the Netherlands).

The response of the governments of the Kingdom of the Netherlands to the recommendations, comments and requests for information contained in the CPT's report of 24 November 2022 on its visit is set out in this document. For ease of reference and reading, this response follows the format of the CPT's report.

1. 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. (paragraph 10)

The government regrets that the work of the delegation was impeded by the fact that access to medical records of persons detained in prisons and immigration detention centres was made conditional upon the individual written consent of each of the persons concerned. During the final meeting held in The Hague on 25 May 2022, the Secretary-General, speaking on behalf of the Minister for Legal Protection, committed to explore what could be arranged for future visits, in cooperation with the Minister of Health, Welfare and Sport.

The commitment resulted in a Bill to amend the Healthcare Quality, Complaints and Disputes Act. The aim of this Bill is to give the CPT the same authority as that already laid down in the Forensic Care Act, the Care and Compulsion (Psychogeriatric and Intellectually Disabled Patients) Act, the Compulsory Mental Healthcare Act and the Youth Act: that is to say, the authority to access – without requiring the consent of the person concerned – the medical records relating to voluntary care provided to persons deprived of their liberty:

- on the basis of the Criminal Code, the Military Criminal Code or the Code of Criminal Procedure;
- on the basis of the Aliens Act 2000;
- who are receiving compulsory care on the basis of the Compulsory Mental Healthcare Act;

- who have been admitted involuntarily on the basis of the Care and Compulsion (Psychogeriatric and Intellectually Disabled Patients) Act or who are residing in a facility registered under that Act.

An internet consultation on the Bill was launched on 18 January 2023. The Dutch Data Protection Authority (DPA) has also been asked for its opinion. Once the results of the internet consultation and the advice from the DPA have been processed, the Bill will be submitted to the Advisory Division of the Council of State for an advisory opinion. The next step will be to present it to the House of Representatives – and then to the Senate – to begin the parliamentary consideration of the Bill.

2. The CPT invites the Dutch authorities to consider signing up to the automatic publication procedure. (paragraph 11)

The government is grateful to the CPT for this recommendation. Indeed, in the past it has always advocated for the publication of CPT reports and the government's subsequent responses. The government notes that the recommendation to consider signing up to the automatic publication procedure warrants further reflection within the relevant ministries of all four countries of the Kingdom of the Netherlands. At this time, therefore, the government is not in a position to respond affirmatively to the recommendation.

3. 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. (paragraph 15)

As mentioned to the CPT during its visit, the government is currently investigating how to reform the National Preventive Mechanism (NPM). An exploratory study was conducted in 2022, which indeed focused on designating the Netherlands Institute for Human Rights as the National Preventive Mechanism. This study has not yet been published. The government's aim is to decide this year on the necessary reforms to put in place an effective NPM and to implement those reforms, in accordance with the results of the study and in consultation with the current NPM, the Netherlands Institute for Human Rights and other stakeholders.

4. 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. (paragraph 16)

The Optional Protocol has been approved for the Kingdom as a whole, with the proviso that it applies exclusively to the Netherlands in Europe. This means that the mandate of the current National Preventive Mechanism (NPM) does not extend to places of deprivation of liberty in the Caribbean part of the Kingdom. As part of the imminent reform of the NPM in the European part of the Netherlands, the government will discuss the possibility of the Protocol's entry into force for the Caribbean Netherlands.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

THE KINGDOM IN EUROPE

A. Police establishments

1. Preliminary remarks

5. 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. 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. (paragraph 20)

In relation to the first point, the government would observe as follows. The government agrees with the CPT that the decision to detain a person for investigation or remand them in police custody is a drastic measure. However, it does not accept that assistant public prosecutors conduct a rubberstamping exercise and routinely decide to place people in detention. There may be valid reasons why the process of assessing the validity of the detention and remand in police custody takes place quickly – for instance where the public prosecutor has issued an arrest warrant and at the same time ordered that, given the seriousness of the alleged offences, the person must be brought before the examining magistrate. Before someone can act as an assistant public prosecutor, they must complete the basic training course for assistant public prosecutors and obtain the accompanying certificate, as well as complying with other statutory requirements as laid down in the regulations governing assistant public prosecutors. From that point on, they are authorised to act as an assistant public prosecutor. After that, assistant public prosecutors are required to follow an annual programme of permanent training and to demonstrate their professional competence every three years before their certification, and hence their authorisation to act in this capacity, is renewed for another three years. Certification as an assistant public prosecutor is performed by the independent Police College on the basis of qualification requirements laid down by the Minister of Justice and Security. Obtaining the said certificate means that the person possesses the competence and authority to exercise the powers assigned to assistant public prosecutors under the law of criminal procedure, including assessing the validity of the detention for investigation and of the remand in police custody.

An assistant public prosecutor learns to base their decision on a careful analysis and weighing of the relevant facts and the different interests involved (including, in any case, the interests of the victim, the suspect and the investigation) and then to communicate the decision to the suspect in as concrete and clear a manner as possible. Finally, the government is of the opinion that that the current statutory framework is set up in such a way as to enable the public prosecutor and the examining magistrate to assess the validity of the detention for investigation or remand in police custody as quickly as is necessary.

In relation to the second point, the government would note that the fact that the law provides that the night hours are to be disregarded in calculating the hours that a person may be detained for

investigation does not mean that these hours are not officially registered as hours during which the person was detained. The [National Regulations on the Treatment of Persons in Police Custody](#) provide that the date and time of the beginning and end of detention must be recorded. This is necessary in order to verify whether the statutory time limits have been observed. The night hours also count, for instance, when calculating the time within which someone must be brought before the examining magistrate. It must therefore always be possible to check in the police systems – and this is essential for all parties – how long someone has been detained in a cell complex. It is not clear to the government exactly what the CPT observed during its visit. It is to be hoped that the above clarification has illuminated the framework within which the police operate.

6. 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. 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. (paragraph 21)

In April 2022, the Council of State issued a comprehensive advisory opinion regarding the Bill to adopt Books 1 to 6 of the new Code of Criminal Procedure (CCP). This Bill is part of a larger programme of legislation aimed at adopting an entirely new CCP. The Council of State's recommendations have since been incorporated into the Bill. Books 1 to 6 of the Bill have been submitted to the House of Representatives in March 2023, followed by a technical briefing in April 2023. A first [written response](#) on Book 1 from the House of Representatives has been published on 2 June 2023. The last two new Books (7 and 8) were given in formal consultation to partners in the criminal justice chain on 18 April 2023.

7. 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). 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. (paragraph 22)

The government does not intend to review the legislative provisions which allow for the possibility of remanding a person (over 16 years old) in police custody for up to 10 days. In certain circumstances, it is essential in the interests of an investigation to have a suspect remanded in police custody – for example when, in the interests of a criminal investigation, it is not possible to release the person and there is no room at a remand centre in this period. Nonetheless, the police will exercise restraint in regard to detaining suspects longer than necessary.

2. Ill-treatment

8. *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. (paragraph 23)*

The government welcomes the CPT's observation that '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.'

The recommendation regarding the use of handcuffs has been brought to the attention of the police. Ensuring that handcuffs are applied in the correct manner is a crucial part of the certification in the [framework of the Police Use of Force Review Regulations](#) and during RTGP training courses. The use of handcuffs is governed by the requirements of proportionality and subsidiarity, reasonableness and moderation.

9. *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. (paragraph 26)*

The government believes that the state's monopoly on the use of force – the exercise of which is largely entrusted to the police – means that any use of force must be subject to a thorough investigation, examining whether it was applied in accordance with the rules governing its use, and that transparent communication regarding such use of force is essential. This is made possible by the introduction of a fact-finding investigation under the Use of Force (Investigating Officers) Act. This investigation is led by the public prosecutor. The aim of this investigation is to find out whether the use of force was in accordance with the rules governing its use. If this investigation reveals that the investigating officer in question did not follow the instructions on the use of force, and the use of force was such that internal disciplinary measures against the officer will not suffice, a regular criminal investigation will be initiated against the officer. The Public Prosecution Service will then make an independent, impartial decision on whether to bring charges and, if so, for what criminal offence. The new offence of violating the instructions on the use of force (article 372 of the Criminal Code) is intended for cases where the violation of these instructions is the result of a culpable error in judgment or a lack of due care on the part of the investigating officer, a situation in which prosecution for a general violent offence, such as assault or manslaughter, would often be less

appropriate given the task of an investigating officer. The introduction of this offence provides the Public Prosecution Service with wider scope to take into account the circumstances of the use of force and the accusations laid against the investigating officer when deciding whether or not to prosecute. This makes it easier for the Public Prosecution Service to differentiate according to the seriousness of the offence. In general, it may be said that article 372 of the Criminal Code is intended exclusively for cases where an investigating officer made an incorrect assessment without exercising the necessary due care, resulting in a use of force that violated the instructions on the use of force. Prosecution for a general violent offence will be appropriate in the case of a wilful violation of the instructions on the use of force. This means that the degree of malicious intent is the decisive factor when deciding whether to prosecute for a general violent offence; in cases involving malicious intent, there are no grounds to apply a specific assessment framework tailored to the position of an investigating officer. This point was repeatedly emphasised by the government while the Use of Force (Investigating Officers) Act was being considered by parliament.

The National Criminal Investigation Department (Rijksrecherche) investigates all incidents involving the use of firearms and other uses of force by investigating officers resulting in serious injury or death. Such cases may relate to persons who die or are seriously injured, whether due to firearm use, in a police cell, following the use of force by the police, or after a pursuit. These investigations focus on whether the force used by the investigating officer was in accordance with the instructions on the use of force. The public prosecutor then assesses whether the use of force was lawful and decides whether or not to prosecute. The National Criminal Investigation Department's figures on investigations into shooting incidents and other uses of force by investigating officers resulting in serious injury or death are published in the annual reports of the Public Prosecution Service. The annual report for 2022 has not yet been published.

Figures on the internal assessment of the use of force can be found in the police's annual report. In 2020, there were six cases in which there was cause to initiate disciplinary measures against an officer. In 2021, there were 13 such cases.¹ The figures for 2022 have yet to be published.

3. Safeguards against ill-treatment

10. 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. (paragraph 29)

¹ Netherlands Police, Annual Report 2020 ([Jaarverantwoording 2020](#)); Netherlands Police, Annual Report 2021 ([Jaarverantwoording 2021](#)).

The government fully acknowledges the importance of police officers employing clear and consistent communication to every person deprived of their liberty in order to ensure that those concerned are fully informed of their fundamental rights from the outset of their deprivation of liberty. As stated above, detention will be a drastic experience for every person concerned. Persons deprived of their liberty receive an explanation about the necessary procedures and their rights, both verbally and in writing (in the form of a leaflet). The information is available in several of the most common languages. Assistant public prosecutors take their responsibilities very seriously, including the responsibility to ensure adequate communication. To facilitate communication with a person deprived of their liberty, the assistant public prosecutor can quickly call on a telephone interpretation service, to ensure that the person concerned fully understands the decisions made by the assistant public prosecutor and is aware of all of their rights (for example the right to the assistance of a lawyer or a doctor). However, other barriers may impede communication in some cases – the use of narcotics, for instance. But even then, the assistant public prosecutor will endeavour to ensure that the person concerned is informed as fully and effectively as possible about their rights. More information about the role and training of assistant public prosecutors can be found in the government’s reply to recommendation 20 in section 5 above.

As soon as a suspect has been remanded in police custody, the police officer explains the procedures governing daily treatment and care in the cell complex. The police service operates according to the [National Regulations on the Treatment of Persons in Police Custody](#). These regulations were recently updated, and the importance of maintaining a professional approach and clear communication was again emphasised. The Regulations are a very important part of the professional standards that apply in relation to the treatment of persons detained in holding cells and police stations. Each cell complex has a document laying down the rules that apply in the cell complex. A copy is handed out to each detainee. In Amsterdam, for example, these written rules are available in ten languages. They cover the vast majority of communication with detainees. In addition, simple pictures are available to clarify the rules governing activities like taking a shower or having dinner. During the intake procedure, every detainee leaves their belongings in a locker. The police officers make a list of the items concerned and the detainee then signs this list.

All suspects are informed of their rights, both verbally and in writing. If the assistant public prosecutor is unable to communicate with the suspect verbally, an interpreter is called in, using the telephone interpretation service. It is true that the suspect does not sign a document to indicate that they have been informed of their rights. The leaflet detailing these rights is not available in every language. The police do their utmost to convey (and discuss) the content of the leaflet verbally. They also ascertain whether the suspect has understood the content. At that point, it would not benefit the suspect to have them sign a statement attesting that they have been informed of their rights.

Providing a suspect with correct information is an important part of the training for the assistant public prosecutor and part of their permanent education programme.

11. 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 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. (paragraph 31)

The government wholeheartedly agrees with this recommendation and will ensure that it is implemented. It will receive added emphasis in the [National Regulations on the Treatment of Persons in Police Custody](#) and be brought to the attention of police officers.

12. The assistant public prosecutor may delay the notification of custody “insofar as and 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. 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. (paragraph 32)

In its policy response of 21 September 2017, the government responded to a similar recommendation by the CPT. It takes note of the current recommendation and considers that the matter requires further consideration involving all relevant parties within the justice system. The government is therefore unable to comment on the substance of the recommendation at this point in time.

13. 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. (paragraph 34)

In the Netherlands, the severity of the offence is one of the factors that play a role in determining whether a suspect is eligible for state-regulated legal aid, free of charge, prior to and during police questioning. The government provides free legal aid to suspects accused of more serious crimes. The reason for this is that in such cases, the evidence is often legally more complex and the criminal proceedings are more extensive and more complicated. In addition, a conviction in such cases may have much greater consequences for the suspect than in the case of a lesser offence. It is also important to note that in cases involving more serious crimes, the suspect is likelier to be held in pre-trial detention and in due course to receive a custodial sentence than in the case of lesser offences. Free legal aid is paid for out of public funds. This means that it is always important to assess whether funding a particular form of legal assistance is a proportionate way of serving the interests to be pursued. All this means that the interests to be served by providing legal aid to suspects accused of less serious offences are not considered weighty enough to warrant the use of public funds. Of course, all suspects have the right to legal representation if they so choose, and the police must allow them to hire a lawyer. However, in general, the suspect is expected to bear the costs. That said, if a suspect’s income is below a certain threshold, they may still be eligible for government-funded legal aid. In such

cases, the suspect will only have to pay a contribution to their legal costs based on their income. It should be added that juvenile suspects and vulnerable adult suspects can always count on government-funded legal aid when being questioned by the police, regardless of the severity of the offence at issue. That is because these suspects are unable to waive their right to legal representation during police questioning, due to their vulnerable position.

Over the past year, the government has made €154 million structurally available to improve the remuneration paid to legal aid providers. In addition, measures have been taken to boost recruitment for social legal aid lawyers to a sufficient level. For instance, a grant scheme has been introduced to enable law firms with a practice that predominantly provides subsidised legal aid to attract trainee lawyers – with the Legal Aid Council acting as guarantor for the costs of their professional training. These measures are intended to ensure that sufficient lawyers are available and willing to provide adequate legal representation to suspects in criminal proceedings.

14. 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. (paragraph 37)

The right of access to a doctor and essential healthcare is guaranteed at every police station and in every cell complex. Given the importance of ensuring the welfare of, and adequate healthcare for, all detainees, police officers do not bear any medical responsibility and should not filter requests for access to a doctor and essential healthcare. Every complaint that is made and every incident that occurs in this connection will be thoroughly assessed by the police.

15. 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. (paragraph 38)

Specific monitoring information relating to the situation of all detainees, or former detainees, may not have been readily available to the visiting delegation at every moment in time. It takes time for the relevant experts to prepare this information. The government does not consider it feasible to modify the police registration system. However, it is conceivable that the use of smart questioning could generate more information, more quickly, provided that it is possible to prepare such information.

16. The CPT would like to be informed whether, and to which extent, the interviewing techniques of suspects described in the 8th edition (2021) of the manual on interviewing (Handleiding Verhoor) differ from the techniques described in the 7th edition (2017) and how these techniques have evolved in practice. (paragraph 39)

The question relates to Part 4 of the Manual on Questioning (*Handleiding Verhoor*). Part 4, which consists of several chapters, is entitled Questioning of Suspects (*verdachtenverhoor*). The changes to the text in these chapters have been recorded and classified by the writers under four headings: minor revisions of the text; updates; additions; reformulations arising from new insights. Examples of minor revisions include the addition of United Nations Principles on Effective Interviewing for Investigations and Information Gathering, such as the difference between questioning and investigative interviewing. In addition, the text relating to legal aid has been revised, for example in order to reflect new Dutch policy and legislation. New insights have been added regarding visualisation material and the time of interview. All changes were collected and collated by the book's authors. The text was revised on the basis of recently-published research findings, and the writers also requested feedback on practical matters relating to some sections from internal and external police colleagues or scientific experts. The experts consulted differed according to the subject concerned. Prior to the publication of a new version, the text was subject to a comprehensive legal check by a criminal lawyer and a professor of the law of criminal procedure.

All changes were recorded by the authors in a document held by the Ministry of Justice and Security. A copy of this document can be made available upon request.

17. 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. (paragraph 40)

The current guidelines for all police interviews with suspects are the 'Instructions on the audio and audiovisual recording of interviews with persons who have filed a criminal complaint, victims, witnesses and suspects', issued by the Public Prosecution Service on 1 May 2021 (*Instructie auditieve en audiovisuele registratie van verhoren van aangevers, slachtoffers, getuigen en verdachten 2021/001 van het Openbaar Ministerie*), see Annexe A. Although these guidelines refer to the recording of all police interviews that meet the criteria, it is not technically feasible at present to systematically record all police interviews. The police are currently addressing this issue. A technical solution is being pursued to make audio recordings of all interviews using mobile phones. This new application will also make it possible for the file to be stored automatically and immediately in the audio-visual database ('AVR storage'); that is, it will be automatically removed from the mobile device and stored only in the police system.

Practical tests in 2017 and 2018 showed that wearing a bodycam has an impact on the behaviour of both members of the public and the police. It strengthens the de-escalating capacity of police officers. Warning people that their actions and words will be filmed may lead them to modify their behaviour. Police officers feel safer when wearing a bodycam and experience less aggression and violence. A bodycam can also be used to record criminal behaviour for evidential purposes. After the practical tests, the police purchased 2,000 bodycams. However, these are only worn and used in situations where an escalation of violence is anticipated.

4. Conditions of detention

18. 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. (paragraph 42)

The devices that were broken have been repaired by the Amsterdam police.

19. The CPT recommends that cells of about 5 m² 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. (paragraph 43)

The 2012 Buildings Decree ([Bouwbesluit 2012](#)) lays down the minimum dimensions for the functionally usable space for holding cells and police cells. The minimum size for a holding cell is 4.25m², while that for a police cell is 6m². Holding cells are usually deployed to detain a suspect temporarily, for a small number of hours, while the police prepare for further investigation. This will usually mean that confinement to a holding cell will last a relatively short period of time, up to a maximum of nine hours.

Where it proves necessary to detain the suspect for a longer period, they will be informed of this decision by the assistant public prosecutor and moved to a police cell complex. A suspect can be held in that complex for a maximum of three days, which can be extended by another three days. During this detention period, the court must decide whether the suspect is to be detained for fourteen days. If so, the suspect will in principle be transferred to a prison. Otherwise, they will be released. As noted above, the minimum size of a police cell is 6m².

With regard to the recommendation to pixelate the image of the toilet when video surveillance is deemed necessary, the government would note as follows. Standard observation cells are unfurnished and do not have toilets. However, some regular cells, which are furnished and do have a toilet, may at times also be used for observation, which involves 24/7 camera surveillance. For the sake of completeness it should be added that when the space is being used as a regular cell, the camera is switched off. Camera surveillance is sometimes deemed necessary to contain a high risk and unsafe situation. A suspect can only be placed in a camera surveillance cell by decision of the assistant public prosecutor, and the time spent there is kept to an absolute minimum. As soon as the detainee has calmed down, they will be returned to a regular police cell. When there is a risk of suicidal behaviour and/or self-harm, continuous camera surveillance in the observation cell is considered necessary, even when the detainee is using the toilet. Blurring the screen could potentially make the situation more dangerous.

5. Other issues

20. 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. (paragraph 46)

The government takes note of this recommendation. At present, it is not yet possible to alternate the removal of clothing above and below the waist. Consideration will first have to be given to the impact of the proposed method on the risk of contraband being concealed by moving it from one set of garments to the other while changing clothes. The government will therefore subject this recommendation of the CPT to further investigation.

21. 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. (paragraph 47)

There is no specific mention of the detention of a naked suspect in a police cell in the National Regulations on the Treatment of Persons in Police Custody. To address the CPT's observations and recommendation, the government needs more time to consult the police on this matter. It is therefore unable to comment on the substance of the recommendation at this time.

22. 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). (paragraph 48)

Yes, all officers equipped with an electrical discharge weapon (EDW) have attended a three-day training course in its use. Before a police officer who is authorised to use force can be armed with a weapon, they must be trained to use it. The officer must then pass annual tests (in the case of firearms, every six months) to demonstrate sufficient competence in operating and using the weapon concerned, including an EDW.²

In addition to this test, police officers who are authorised to use force must pass a test in violence control every year. This test is entirely theory-based and focuses on the relevant sections of the Police Act 2012, the deployment criteria from the Code of Conduct for the Police, Royal Military and Border

² In accordance with article 4 (b) of the Code of Conduct for the Police, Royal Military and Border Police and other Investigating Officers.

Police and other Investigating Officers, the Police Weapons and Equipment Decree and the criminal law. It consists of theoretical questions to test knowledge and its correct application. These questions are geared towards the weapons with which an individual police officer is or may be equipped when on duty.

If a police officer does not meet the certification criteria as laid down in the Police Use of Force Review Regulations (RGTP), the officer is not permitted to use the weapon in the line of duty.

Regarding the use of an EDW against a person, it should be noted that this can be done in several different ways. One way is by ‘arcing’, which makes the electric current flow visible, accompanied by a verbal warning (categorised below as: ‘threatened use’). Another is ‘red dot’: pointing the weapon at the target, making two red laser dots visible on the body (also categorised as: ‘threatened use’). Next, the EDW can be used to fire two arrows at the target (‘shooting mode’). Finally, it can be used by placing the end of the weapon in direct contact with the target person’s body (drive stun) to deliver an electric shock (‘shock mode’).³

Table 2. Use of an electrical discharge weapon (EDW) against three specific categories of target persons in 2022, per month, subdivided by type of use.

2022	Users	Use of EDW total	Minors (<18 years of age)	Pregnant women	Confused persons^[3]
<2022	301				
January	2,248	83			
Threatened use		64	0	0	0
Shooting mode		17	0	0	10
Shock mode		2	0	0	0
February	4,156	240			
Threatened use		189	0	0	0
Shooting mode		49	1	0	20

³ As indicated in the written information provided during the visit of the CPT delegation, there may be several reasons underlying a decision not to prohibit in advance the use of an electrical discharge weapon (EDW) or other weapon against a vulnerable individual. For the detailed explanation of these reasons, please refer back to the information previously provided to the CPT delegation on the use and deployment of EDWs.

^[3] Based on the mental health care indicator ‘[GGZ-indicator](#)’ (Informatie Analyse Team (IAT) , 2022).

Shock mode		2	0	0	1
March	6,240	303			
Threatened use		224	0	0	0
Shooting mode		76	2	0	38
Shock mode		3	0	0	2
April	7,492	345			
Threatened use		260	0	0	0
Shooting mode		82 ^[4]	2	0	46
Shock mode		4	0	0	1
May	8,897	375			
Threatened use		275	0	0	0
Shooting mode		94 ^[5]	1	0	45
Shock mode		9	0	0	3
June	10,389	388			
Threatened use		269	0	0	0
Shooting mode		116	2	0	51
Shock mode		3	0	0	1
July	11,100	463			
Threatened use		329	0	0	0

^[4] One deployment of which also involved shock mode.

^[5] Three deployments of which also involved shock mode.

Shooting mode		130 ^[6]	3	0	54
Shock mode		5	0	0	3
August	11,579	426			
Threatened use		321	0	0	0
Shooting mode		103 ^[7]	6	0	38
Shock mode		4	0	0	3
September	12,407	297			
Threatened use		209	0	0	0
Shooting mode		87	5	0	41
Shock mode		1	0	0	0
October	13,755	326			
Threatened use		203	0	0	0
Shooting mode		122 ^[8]	4	0	48
Shock mode		2	0	0	2
November	14,972	298			
Threatened use		199	0	0	0
Shooting mode		97 ^[9]	2	0	32
Shock mode		4	0	0	3

^[6] One deployment of which also involved shock mode.

^[7] Two deployments of which also involved shock mode.

^[8] One deployment of which also involved shock mode.

^[9] Two deployments of which also involved shock mode.

December^[10]	15,213	343			
Threatened use		233	0	0	0
Shooting mode		107	1	0	32
Shock mode		5	0	0	1

Explanatory notes

In 2022, electrical discharge weapons (EDWs) were phased in among all first responders (in basic teams). In 2020 and 2021, a detailed evaluation form was filled in for every deployment of an EDW, even in cases limited to threatened use. This made it possible to link the use to target persons in the case of threatened use. From 2022 onwards, the detailed evaluation form has been discontinued. For evaluation purposes, each instance of threatened use of an EDW is recorded, but only using a project code (a tick). This means it is no longer possible to link the recorded use to the target person. This is a different mode of registration from the mandatory detailed reporting in the case of deployment of an EDW in shock or shooting mode. In cases limited to threatened use, it is therefore not possible to link the use clearly to the target person; these lines have therefore been left blank.

In cases involving the use of an EDW in shooting and/or shock mode, the age of the target person can only be linked with certainty to the person concerned in half of the cases. In total, an EDW was used on 28 minors in shooting mode: three 13-year-olds, one 14-year-old, five 15-year-olds, six 16-year-olds and thirteen 17-year-olds.

In order to ascertain whether an EDW had been used on any target persons who were pregnant, the term ‘pregnant’ was used in a search of the police records.⁴ This search did not turn up any cases of target persons who were pregnant.

The definition used by the police for confused persons is: ‘Any person who, because of his or her impaired judgment – whether temporary or otherwise – exhibits behaviour that places him- or herself or any other person at risk and/or poses a threat to public order and safety and/or demonstrates that person’s need for help’. This definition was adopted by the Information Analysis Team (IAT, 2022), a partnership between police management, the Ministry of Justice and Security, and Statistics Netherlands. Operationalisation was laid down in the police registration system on the basis of this definition.

B. Immigration detention

1. Preliminary remarks

^[10]Two deployments of which also involved shock mode.

⁴ That is, records of official reports of findings, official reports of arrests, use of force notification forms and explanatory notes.

23. 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. (paragraph 56)

The Return and Immigration Detention Bill (*Wetsvoorstel terugkeer en vreemdelingenbewaring*) currently lies before the Senate. An amending Bill, which will make changes to the principal Bill, lies before the House of Representatives. Since the principal Bill has been under consideration by the Senate for some time, some elements of it are now out of date and certain indispensable provisions are missing. For this reason, work is being done on a draft memorandum of amendment, which will in turn make changes to the amending Bill. The aim is to initiate the process of consultation on this memorandum of amendment in the second quarter of 2023. Once the responses to the consultation have been processed, the memorandum of amendment can be submitted to the Advisory Division of the Council of State for its opinion; it is expected that it can then be submitted to the House of Representatives after the summer of 2023. The CPT can of course be sent a copy of the Return and Immigration Detention Bill if and when the Bill passes into law. This will take some time yet: it is estimated that the Bill will not be enacted before the end of 2024.

24. 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. The CPT trusts that the Dutch authorities will implement immigration detention in a manner that complies with these principles. (paragraph 57)

Foreign nationals detained at Rotterdam Detention Centre (DC) are housed in accommodation especially designed for immigration detention, not in a prison. The detention of foreign nationals at Rotterdam DC is carried out with due regard to the fact that these persons have not been convicted of, and are not suspected of, any criminal offence, and that the main objective of their detention is to ensure their availability for repatriation. This is reflected in the way the deprivation of liberty of these foreign nationals in Rotterdam DC is carried out in practice: namely, with restrictions of a limited nature, material facilities and a range of activities appropriate to foreign nationals with their particular legal status. Under the terms of the Return and Immigration Detention Bill, those concerned are entitled to access to daytime activities, such as educational provision, keeping up-to-date on the news, use of the library, physical exercise and sports, recreational activities, and the possibility of spending at least two hours in the open air each day. They are also entitled to receive visitors for at least four hours a week, to make and receive telephone calls, and to access the internet on the computers that are provided.

It is important that a measure consisting of deprivation of liberty is implemented without disruption – that is, in a manner that is safe for both the person detained and the staff. This implies that the measure is organised and implemented in such a way that the foreign national cannot evade their deprivation of liberty. This makes it inevitable to have essential security and control measures in place, which inevitably resemble the external features of a custodial institution.

2. Ill-treatment

25. 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. (paragraph 60)

The government fully endorses this recommendation. The Custodial Institutions Agency (DJI) treats all detainees entrusted to its care with respect. If pressure and coercion have to be applied as a last resort, they should always be used in accordance with the principles of proportionality and subsidiarity. Where a detainee disagrees with a decision taken in relation to them by or on behalf of the governor, they may exercise their right of complaint. Verbal abuse is not a matter on which a complaint would be admissible, but a detainee who has experienced verbal abuse can exercise their right to mediation. The mediation procedure for grievances is laid down in section 59a of the Custodial Institutions Act (PBW).

In addition, in 2022 the Council for the Administration of Criminal Justice and Protection of Juveniles (RSJ) issued [a report on racism and discrimination in detention](#). This study did not reveal any structural abuses, but it did urge extra and permanent vigilance on this issue because of the specific situation in which detainees find themselves. The government wholeheartedly agrees with this advice.

As regards the CPT's request 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, the government would note that enquiries with the Royal Military and Border Police (the competent investigative body) revealed that there was no record of any criminal complaint and therefore no criminal investigation is being conducted.

3. Conditions of detention

26. The delegation received 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. (paragraph 62)

This is a known problem at the location concerned. On hot days, the air conditioning blows out a considerable amount of cold air. This coldness may sometimes linger at night. For this reason, Schiphol Detention Centre (DC) has a stock of extra blankets in the IND section. Detainees are informed that they can request extra blankets if required.

27. The CPT would like to be informed of the new arrangements as regards food provision for foreign nationals held in immigration detention. (paragraph 64)

As from June 2022, the Custodial Institutions Agency (DJI) switched to a new contract for detainees' food. Rotterdam Detention Centre (DC) is operated in a public-private partnership (PPP). The meals at Rotterdam DC are provided by the PPP consortium. This consortium is negotiating a new contract, which is scheduled to start on 1 June 2023. The response to recommendation 113 in section 52 details the changes in food quality envisaged under the new contract.

28. 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. (paragraph 65)

The regime at the Application Centre (AC) of the Immigration and Naturalisation Service (IND) at the Schiphol Criminal Justice Complex is regulated by the Border Holding Area Regime Regulations, an Order in Council adopted pursuant to the Aliens Act 2000. The regulations determine whether a foreign national is placed in accommodation alone or in a group. Each foreign national or group of foreign nationals is allocated accommodation. The Schiphol AC has been designed so as to support the asylum process. At Schiphol AC, men and women have separate living quarters. They can mingle freely while taking part in activities in the communal areas. If the initial medical service intake reveals that a person has a need for somatic, psychological or psychiatric care or has any other special vulnerability, this is addressed in the psycho-medical consultations. In certain cases, individualised care is provided. The staff take a proactive approach to maintaining a safe living environment in the wing. Segregation by gender is a principle applied under criminal law, whereas immigration detention is administrative in nature. Strict segregation by gender would lead to a more restrictive regime, whereas in a setting governed by administrative law it is more appropriate and conducive to a more normal environment for the genders to participate in activities together. Of course, the conditions of this shared participation must be safe. Care is therefore taken to ensure that adequate protection is also provided.

Given the fact that the living quarters are segregated, that any necessary supplementary care measures are taken on the basis of the medical service's intake procedure and that staff adopt an active attitude to preserving a good social climate, the government believes it is not necessary to introduce completely separate spaces for shared activities.

29. 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. At least two hours of daily outdoor exercise should be offered to detained persons. Moreover, persons who are detained for longer periods at both Schiphol DC and at the GVV at Zeist DC should be offered a greater range of organised activities (such as workshops, language classes or sports activities). (paragraph 69)

In relation to the presence of staff at Rotterdam Detention Centre (DC): during and in the aftermath of the COVID-19 pandemic, high levels of staff absenteeism meant that it was not always possible to

provide a full day and evening programme. The Custodial Institutions Agency (DJI) is making every effort to restore or maintain proper staffing levels.

In addition, the applicable statutory framework provides that detainees must be given the opportunity to spend at least one hour a day in the open air. When a full day programme is provided at the DC, those detained have free access to the open air during the entire day, rather than just one hour in accordance with the statutory provisions.

Finally, the range of activities is the same for all detainees, regardless of length of stay. In the interests of equal treatment, it is undesirable to differentiate according to length of stay. In all cases, the aim is to make detention as short as possible.

4. Legal safeguards

30. 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. 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. (paragraph 71)

The government has never before heard any suggestion that foreign nationals at Rotterdam Detention Centre (DC) are not informed about their rights. It is standing policy that the authority responsible for placing foreign nationals in detention informs them immediately upon doing so of their rights, the consequences under immigration law, and the possibility of availing themselves of legal remedies. The government does not consider it necessary to require foreign nationals to confirm in writing that they have been informed of their rights. Considerable attention is already paid to properly informing those concerned, in accordance with the principle of humane treatment. Moreover, the rights of foreign nationals are safeguarded by giving them many opportunities to contact their legal adviser. A written confirmation would be an unnecessary formality, which could moreover lead to all manner of new complicated or undesirable legal consequences.

Furthermore, upon entering the detention centre, the foreign national is informed verbally about the detention centre rules. These rules are also available on paper in seven languages in the various wings, in both abridged and detailed versions.

31. 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. (paragraph 75)

This finding has been brought to the attention of the Supervisory Committee (*Commissie van Toezicht*) and will be discussed in the regular consultations between the governor of Rotterdam Detention Centre (DC) and the Supervisory Committee.

5. Healthcare services

32. 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. (paragraph 78)

All detainees undergo a medical intake by a forensic nurse under the responsibility of a forensic physician within 24 hours of entering the system. 24-hour care by general practitioners is provided at all institutions. The forensic physician is responsible for making diagnoses, determining whether care is necessary and urgent, and making referrals to the in-house physiotherapist, psychologist, psychiatrist or dentist or to a hospital if necessary. The Custodial Institutions Agency (DJI) provides care that is medically essential and cannot be postponed (including dental care) of a standard equivalent to the regular care provided in the outside world. If dental care is necessary, an appointment with a dentist can generally be arranged quickly. Depending on the circumstances (such as the urgency of the care needed), a detainee may occasionally have to wait for a longer period of time.

33. Steps should be taken to ensure that the services of an interpreter are scheduled for medical and psychological consultations, if required. (paragraph 80)

This finding endorses current practice. If necessary, consultations take place with the help of a telephone interpreter. If the use of an interpreter is necessary, care will be taken to ensure that this is brought to the attention of all parties involved.

34. 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 traumatising, 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. (paragraph 83)

All detainees undergo a medical intake examination within 24 hours of entering the system. The forensic medical officer is responsible for registration, diagnosing any conditions, and determining whether care is necessary and urgent. The screening consists of a questionnaire and a summary check of the somatic and psychological condition of the new arrival, including any treatment and diseases, both at present and in the person's medical history. The matters explored include any infectious

diseases, addiction and abuse. On the basis of the findings, any necessary action will be taken and discussed with a physician or other healthcare professional, depending on the medical needs of the detainee.

The purpose of the medical intake procedure is to identify any medical problems or health risks – not injuries. However, if a detainee says that they have an injury or this becomes apparent during the intake procedure, it is recorded in their medical file. The government believes this is sufficient to ensure that any injuries are recorded. If the injury was caused by a third party, for instance another detainee or a staff member, the detainee is free to file a criminal complaint with the police. The information in the person's medical records can then be used in preparing an injury report. If any information on the injury is needed, the in-house physician can be called in to provide it. As the existing structure functions well, the government does not consider it necessary to set up a special injury register.

The government further believes that it is not desirable to routinely perform physical examinations in the case of an aborted return operation. Physical examinations are conducted for the purpose of the effective delivery of healthcare. If there is any concrete reason to conduct a physical examination as a result of an aborted return operation, for example because force had to be used, such an examination will take place. However, routine examinations do not serve the effective delivery of healthcare.

6. Vulnerable persons, including children in detention

35. 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. (paragraph 85)

The government would note that safeguards are in place as standing policy to address the needs of vulnerable persons in detention. The overwhelming majority of these vulnerable persons are not detained, but placed in open locations, where they are supported by qualified personnel. In any case, no detention is involved if the foreign national cooperates with their return procedure. However, if detention is deemed necessary, all aspects of the case are taken into account to ensure that detention is indeed a proportionate measure in the specific situation. In fact, safeguards have been in place since 2013 to ensure that relevant information with regard to the health (including mental health) of the person in question are available to personnel whose task it is to decide whether or not detention is appropriate. Naturally, if detention is deemed proportionate and necessary, adequate care will be provided. It should further be added that the detention decision is reviewed by the court.

All detainees undergo a medical intake procedure within 24 hours of entering the system. 24-hour care by general practitioners is provided at all institutions. The forensic medical officer is responsible

for registration, making diagnoses, and determining whether care is necessary and urgent. The screening consists of a questionnaire and a summary check of the somatic and psychological condition of the new arrival, including any treatment and diseases, both at present and in the person's medical history. The matters explored include any infectious diseases, addiction and abuse. On the basis of the findings, any necessary action will be taken and discussed with a physician or other healthcare professional, depending on the medical needs or vulnerabilities of the detainee.

In the event that a foreign national requires medical care, the Custodial Institutions Agency (DJI) provides care that is medically essential and impossible to delay (including mental health care) of the same standard as the regular care provided in the outside world. If the detention centre is unable to provide the necessary care, a referral will be made. This may include placement in a psychiatric hospital especially equipped to address the needs of persons in this situation (Centre for Transcultural Psychiatry Veldzicht).

The Secure Family Facility (GGV) at Zeist Detention Centre (DC) is organised in such a way as to prioritise the needs and best interests of the child. Parents and their children are detained together in this facility. Support is always available. The GGV's medical service is responsible for medical care. The nurse, psychologist and physician see all children within 24 hours of arrival. The nurses conduct an intake procedure and pass on the results to the GP. If necessary, a referral is made. The medical service is always available during the family's stay at the GGV. Any special particulars are kept updated in the medical records.

36. 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 GVV at Zeist DC. (paragraph 89)

The government agrees that the detention of minors – whether as part of a family unit or unaccompanied – should be the very last resort, but also feels that detention to ensure that the person remains available for forced return is a necessary part of a realistic return process.

Given the wording of the recommendation and its focus on unaccompanied minors, the government believes it is already acting as much as possible in line with the recommendation. In the Netherlands, fewer than one in a thousand unaccompanied minors is placed in a secure detention facility. This illustrates that, in principle, the government certainly does avoid detaining them in such facilities. Those who are thus confined do indeed receive special care. In most cases, minors are placed with families for the duration of their procedure and return process, in an open facility with specially assigned carers. However, where there is a risk of absconding – or indeed of abduction by a smuggler who brought the unaccompanied minor to the Netherlands – experience has shown that a secure facility is one of the few effective options.

It should be added that the detention of families with children is also a last resort. Where families or unaccompanied minors are placed in detention, this confinement will be limited to a maximum of two weeks before their return. Families with children who are subject to the return procedure are mainly accommodated in open facilities, where they are under an obligation to report regularly to the authorities and to remain in the municipality. If there are signs that they may abscond, it may be appropriate to transfer them to the secure facility shortly before their return. The Zeist facility has been specially designed for this particular group, and it resembles an open facility as much as possible.

7. Solitary confinement

37. 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. (paragraph 93)

Current practice follows these recommendations, in so far as it aims to avoid as much as possible the need to resort to measures or disciplinary punishments within detention centres. To minimise the use of disciplinary powers for ensuring order, peace and safety in the facility, the living environment and the taking of de-escalating action by staff are essential. In immigration detention, the principle of minimum restrictions always applies: this means that detainees have as much independence, freedom and autonomy as possible.

The personnel in immigration detention facilities have taken training courses geared towards the specific target group held in immigration detention, covering matters such as intercultural work, professional resilience, motivating behaviour and recognising radicalisation. The key elements are adopting a person-centred approach, as well as motivating and activating the detainees. The staff preserve an open atmosphere in the wing and adopt an open attitude towards the detainees. This means that staff are approachable, culturally sensitive and assume good intentions on the part of the detainees. Communication and cooperation between colleagues are also important factors in ensuring a good, open atmosphere. To achieve this, staff are encouraged to communicate openly with one another and to discuss the atmosphere in the wing, and data in systems are kept up-to-date.

Although the aim is to impose as few measures and disciplinary sanctions as possible, in practice it is not possible to abolish such measures altogether in immigration detention. Experience has shown that situations still arise in which a foreign national displays culpable behaviour that is so incompatible with order and/or safety in the institution or with the smooth implementation of immigration detention that a measure or disciplinary sanction is the only solution. Punishments are never imposed routinely. If the staff are unable to de-escalate the situation, with the result that order and peace are disrupted

and the safety of the detainee, other detainees and/or the staff is in jeopardy, staff may draw up and file a report to enable management to assess the incident. Such a report will describe the actual circumstances of the undesirable behaviour and/or incident. In addition, the governor of the facility will be informed of the behavioural reports and previous communications or reports on the foreign national in question, while the staff will give their account of the incident. On the basis of this information, the governor will speak to the foreign national concerned. The only exceptions would be if that person is unable to have a conversation because of their mental state, or if there is some urgent reason to depart from this procedure. In this conversation, the foreign national will have an opportunity to explain their side of what happened. If the foreign national's state of mind gives rise to concern, the director will seek advice from a behavioural expert.

After speaking to the foreign national and based on the information available, the governor will take a well-considered decision, taking account of the foreign national's personal circumstances. This decision may mean a warning, conditional disciplinary sanction, the imposition of a measure or disciplinary sanction or placement in the wing for detainees requiring closer supervision. The governor will always choose the least intrusive option to ensure order, peace and safety. When considering segregation, the governor will take its potential harmful effects into consideration.

38. 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. (paragraph 95)

These recommendations support current practice, which is aimed at avoiding as much as possible the need to impose measures and disciplinary sanctions within detention centres. If it proves necessary, as a last resort, to impose a measure or sanction, this should be done with due observance of all the safeguards required by legislation. If the peace and order are disturbed and the safety of persons is at risk, staff may draw up a report so that the management can assess the incident. Such a report will describe the actual circumstances of the undesirable behaviour and/or incident. The governor of the facility will then have a conversation with the foreign national, if necessary with the aid of an interpreter. Following this conversation and on the basis of the available information, the governor will take a well-considered decision, taking the foreign national's personal circumstances into account.

The foreign national will receive a copy of this decision without delay, in a language that is as understandable to them as possible. The governor will always choose the least intrusive option to ensure order, peace and security. The governor's decision is open to complaint and appeal. Under section 65 of the Custodial Institutions Act (PBW), a detained foreign national is entitled to legal assistance during a complaint or appeal procedure.

39. 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. (paragraph 96)

Further rules on solitary confinement and the furnishing of the cell used for this purpose are set out in the Isolation and Segregation Cells (Custodial Institutions) Order. A furnished segregation cell is recommended by the behavioural expert if there is a need for segregation in an observation wing and a room without regular furniture. A furnished segregation cell will have soft furniture (a wardrobe, a seat and a mattress).

An unfurnished segregation cell is recommended by the behavioural psychologist if there is a need for a low-stimulation environment. Such a cell will have a seat and and/or a mattress.

Detained persons can only be placed under camera surveillance subject to strict conditions and in certain circumstances, these matters having been taken into consideration prior to implementation. To safeguard detainees' welfare, visibility is necessary at all times. If the toilet area was not fully visible, the detainee could evade surveillance. This could be more dangerous, since it would create a risk of a detainee seriously harming him- or herself away from the cameras. This is unacceptable, and shielding or restricting the view is therefore undesirable.

40. 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. (paragraph 97)

This recommendation supports current policy. As laid down in legislation, the detainee – even if placed in solitary confinement – has the right to spend at least one hour a day in the open air. The only reason to depart from this rule is if the detainee prefers to remain inside.

8. Other issues

41. 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. (paragraph 98)

The government recognises the importance of reintroducing a video call facility for detainees. This possibility is now once again available at the detention centres.

42. The CPT encourages the Dutch authorities to consider the possibility for detained foreign nationals to have regular access to their mobile phones. (paragraph 98)

The government agrees with this recommendation. The Custodial Institutions Agency (DJI) will examine the scope for allowing detainees in immigration detention centres to use mobile phones, subject to certain conditions, as well as assessing the associated risks.

43. 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. (paragraph 99)

The government agrees with the CPT in endorsing the importance of a timely and adequate response to an intercom call. The management of Rotterdam Detention Centre (DC) will again bring this to the attention of middle management and staff.

44. 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. (paragraph 100)

Absenteeism in Rotterdam Detention Centre (DC) has decreased since the Covid-19 period but is still high. Rotterdam DC is focusing on further reducing absenteeism. In addition to that, DCR has several dozen vacancies. The tight labour market means that the entire Custodial Institutions Agency (DJI) is having difficulties filling vacancies. Recruitment measures have been taken both within Rotterdam DC and DJI-wide.

45. 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. (paragraph 101)

The government has no knowledge of any such claims. Access to the open air and the possibility of making phone calls are rights that cannot be deprived by means of a disciplinary punishment.

46. 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. (paragraph 102)

The Return and Immigration Detention Bill provides that strip searches can only be carried out by a person of the same gender. The state of affairs regarding this Bill is set out in section 23 above.

C. Prison establishments

1. Preliminary remarks

47. 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. 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. (paragraph 103)

On 20 May 2022, the House of Representatives was informed about the investigation that Pricewaterhouse Coopers (PwC) had conducted into the budget needed to finance the Custodial Institutions Agency (DJI). PwC noted an imbalance between the DJI's responsibilities and its resources, with a funding shortfall forecast to rise to €398 million in 2032 in the absence of additional financing or measures. According to PwC, the budget incorporated insufficient sums relating to several significant cost components – ICT, housing, personnel and changing population – which put the quality of DJI's services under pressure. In recent years, the response to this shortfall has been mainly to take incidental measures and postpone investments.

Since this report by PwC, several steps have been taken to close the gap between the DJI's responsibilities and its resources. The government has announced a structural investment in DJI, rising to €210 million by 2026. This will reduce the original projected structural funding shortfall of €398 million in 2032 to €187 million. To close the remaining gap, measures have been taken to resolve the imbalance. More specifically, the government has informed the House of Representatives of the following four measures:

- 1) Prison capacity will be frozen at its current level of 11,100 places.
- 2) The personal contribution payable by clients in forensic care will be reintroduced.
- 3) Non-statutory government aspirations in the realm of sustainability will not be taken into account during the current renovations.
- 4) Savings will be made in DJI's operating costs.

In spite of these measures, a structural shortfall of approximately €23 million will remain as of 2028. Additional measures are currently being explored to address this problem. The House of Representatives will be informed of these additional measures in the course of 2023.

2. Ill-treatment

48. 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. (paragraph 106)

The government fully endorses this recommendation. When maintaining order, peace and safety, the primary focus is on social and relational safety. If this is disturbed, appropriate force may be used – in accordance with the applicable instructions on the use of force. However, this is only done in an extreme emergency and when necessary for the purpose of maintaining order or safety in the institution, to implement a decision taken by the governor, to prevent the detainee from evading supervision, or to implement a decision by the public prosecutor or the examining magistrate under the Code of Criminal Procedure or the DNA Testing (Convicted Persons) Act (section 35, subsection 1, Custodial Institutions Act (PBW)). Detainees are informed in the prison rules of the governor's authority to order the use of force. When the use of force is necessary in a particular situation, detainees are, if possible, warned in advance about the use of appropriate force – for example, before entering a cell. The use of appropriate force and dealing with aggression and violence are subjects dealt with in periodic staff training. They are also discussed at team meetings, during periodic discussions of the instructions on the use of force and during physical resilience training.

49. 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. (paragraph 108)

In all institutions, including the three mentioned above, considerable attention is paid to creating a safe, supportive living environment that encourages detainees to be active and reduces tensions and violence between detainees to a minimum. This living environment is shaped by diverse factors including various forms of social contact, education and opportunities to engage in sports. In addition, attempts are made to give detainees a certain amount of autonomy, if possible – for example by enabling them to cook their own meals in the wing. Preventive measures are also in place, such as supervision and monitoring by staff.

In the case of violence between detainees, the measures taken may include appropriate sanctions, detainee transfers and enabling a detainee to file a criminal complaint with the police.

3. Conditions of detention

50. *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. (paragraph 110)

These recommendations are in line with the forthcoming large-scale renovation activities of Dordrecht Custodial Institution, which shall take place during 2023 and 2024, and the renovation of Vught custodial institution, which has been decided on, but whose timetable has not yet been determined. During the renovation of Vught custodial institution, units 6 and 7 will have priority.

51. *The CPT encourages the management at Dordrecht Prison to consider also granting access to the football pitch to persons on remand. (paragraph 111)*

The government is at a loss to understand this complaint. Detainees in Dordrecht Custodial Institution are entitled to take part in sports at least twice a week. These activities include regular opportunities to play football on the football pitch. This applies to detainees in the Remand Centre as well as those in prison. No distinction is made between these two groups with regard to the possibility of using the football pitch.

52. *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. (paragraph 113)*

On 31 May 2022, the Custodial Institutions Agency (DJI) signed a new agreement with three parties – Vitam, the Compass Group and Sodexo – for the regular supply of food for its Prisons and Immigration Detention Division. The aim of this agreement is to ensure that ‘Every detainee is offered sufficient, varied and healthy food every day (section 44, subsection 1, Custodial Institutions Act (PBW)) and that detainees’ religion or philosophy of life is taken into account (section 44, subsection 3 PBW)’. This is monitored using some 20 key performance indicators (KPIs) agreed with the suppliers. The results of these KPIs are discussed quarterly with the contract manager. In addition, the supplier must report periodically to the contracting authority. Formally speaking, the contracting authority is the contract manager, but in a particular institution the governor can play this role. The results of the satisfaction survey are also discussed with the detainees’ committee (gedeco). Twice a year the opinions of the detainees at each institution regarding the food are surveyed, in collaboration with the universities of Leiden and Brussels. The results of these surveys are likewise shared with the institutions and with the detainees’ committee.

53. 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. (paragraph 114)

In accordance with international standards, such as the European Prison Rules and the Nelson Mandela Rules, a minimum of one hour a day of out-of-cell time is prescribed. In the Netherlands, the Custodial Institutions Act (PBW) prescribes a programme for detainees that consists of at least 43 hours per week of out-of-cell activities. This requirement is the result of a responsible balancing of available staff and resources and amounts *de facto* to a programme of six to seven hours of activities per day. Given that this is well in excess of international standards and guidelines, the government sees no reason to increase the minimum number of hours of out-of-cell time.

In addition, detainees can be promoted to the 'plus programme' on the basis of good behaviour in detention. This entitles them to spend additional hours outside their cells on top of the 43 hours, for instance by following an evening programme. It is the detainee's own responsibility to earn this entitlement, in line with the objectives of the Sanctions and Protection Act. Offering additional hours of out-of-cell time to all inmates would reduce the value of the 'plus programme' and undermine the objectives of the Sanctions and Protection Act.

54. 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). (paragraph 117)

As stated in the previous response, the government has no intention at the moment of changing the amount of out-of-cell-time as laid down in the Custodial Institutions Act (PBW). The minimum of 43 hours that persons on remand can spend outside their cells exceeds the international standards. Of those 43 hours, at least six hours a week are dedicated to recreational activities and at least one hour is for 'personal care', as prescribed by section 49 (c) of the PBW. Taking into account the available staffing and financial resources, the government believes that these minimum standards are sufficient.

Dordrecht Custodial Institution offers persons on remand opportunities – on top of the prescribed 43 hours – to attend additional educational and re-integration activities, such as visits to the library of the re-integration centre. If a prisoner prefers not to go to the library, they are allowed to stay at the wing and engage in recreational activities instead of being locked up in their cell. Dordrecht Custodial Institution also allows detainees the additional option of video calling, in addition to a weekly visit.

55. 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. (paragraph 123)

Handcuffs are used only when there is no other, less drastic, way to control a detainee. Any use of handcuffs will always be based on an individual risk assessment. In other words, handcuffs are not used systematically; their use is always subjected to prior consideration. Only when it is anticipated that other methods (which are also covered in basic staff training) will not provide sufficient guarantees for both detainees and staff are handcuffs deployed. Staff receive periodic, systematic training on the procedures around handcuffing detainees.

56. The Committee has been informed that the [tenth person in the EBI unit] concerned is again being subjected to additional security measures, including as regards contact with the outside world and his interactions with prison staff. The CPT would like to receive detailed information about the additional security measures that are currently being applied in respect to this person, as well as their legal basis. (paragraph 126)

Because of privacy and safety procedures we will not respond to questions regarding individual detainees. However, we can provide the CPT with the newly revised criteria for placement in the high-security unit (EBI) and the prison rules for the high-security unit: see Annexe B.⁵

57. 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. (paragraph 129)

Placement in the high-security unit (EBI) is made only after an individual assessment. On behalf of the Minister for Legal Protection and on the basis of a recommendation from the high-security unit selection advisory committee (SAC EBI), the competent official decides when to place a detainee in the EBI. The chair of the SAC EBI is an employee of the head office of the Custodial Institutions Agency (DJI). The SAC EBI also includes employees of the Public Prosecution Service, employees of Vught Custodial Institution and a behavioural psychologist. This is the standard procedure for each placement in the EBI. Assessments made by the SAC EBI are governed by the principles of proportionality and subsidiarity.

EBI detainees can follow educational courses and participate in other educational activities, as far as this is compatible with the nature and duration of their detention and their personal characteristics. Working in groups or in open rooms is not part of the daily programme, since this would be incompatible with the nature of detention in the EBI.

⁵ Government Gazette 2022, 33927.

Meaningful contact is possible in the form of phone calls and visits. Phone calls of 10 minutes per week are permitted and relatives or others may visit once a week.

58. 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. (paragraph 132)

The deradicalisation support for offenders at the TA units has been stepped up by introducing a multi-agency approach to rehabilitation (MAR). The MAR is a national programme, organised by the Dutch Custodial Institutions Agency (DJI). Working with key partners, such as the probation service (specialised in countering radicalisation, extremism and terrorism) and municipal authorities, individual case conferences are organised for each detainee. The MAR is the platform for discussing and deciding on risk profiles and opportunities for intervention. As a result, deradicalisation activities aimed at this target group have increased.

59. 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. (paragraph 134)

With the recent amendment of the Selection, Placement and Transfer (Prison Inmates) Order ([RSPOG](#)), it is now possible to assign someone to the high-security unit (EBI) on the basis of the threat posed by that person in view of their role and position within a criminal network. There were previously three main grounds for placement in the EBI in Vught: (A) extreme flight risk; (B) extreme risk to society; and (C) risk of continued criminal conduct during detention. The amendment to the RSPOG added a fourth ground (D): the threat posed by that person's role and position within a criminal network. The plans were amended on 16 December 2022 and entered into force on 17 December 2022: see Annexe C on the prison rules for the high-security unit.⁶

4. Persons sentenced to life imprisonment

60. 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 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. 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. (paragraph 138)

⁶ Government Gazette 2022, 33928.

On 8 June 2022, the Minister for Legal Protection announced by letter to the House of Representatives his intention to make provision for an alternative mode of reassessment.⁷ A Bill is currently being drafted to provide for a release on parole scheme specifically for life sentence prisoners, under which the courts will make the decision. This scheme will replace the current reassessment system, which consists of an automatic review system under which the life sentence prisoner concerned can be granted a pardon. In line with European case law, the court's assessment will hinge – as in the current automatic review procedure – on the question of whether changes in the life of the convicted person and progress in his or her resocialisation are sufficiently significant that continuation of the sentence is not justified because it can no longer be seen as reasonably serving a legitimate punitive purpose (such as retribution). If a legitimate punitive purpose is still present, the court will not grant release on parole and the person will continue to serve their life sentence. The court can then conduct a new assessment after some time has elapsed. Following on from this, in accordance with European case law, life sentence prisoners must be able to prepare for the reassessment. This means that elements of the current system regarding the reintegration phase of life sentence prisoners should be incorporated into a new release on parole scheme. Even in the case of a release on parole scheme for life sentence prisoners, a certain preliminary procedure in the form of admission to reintegration will have to remain in place, as is the case with the current automatic review procedure, which is based on the Advisory Board (Life Sentence Prisoners) Order (*Besluit Adviescollege Levenslanggestraften*).

On 30 November 2021, the Minister for Legal Protection presented the evaluation report by Erasmus University Rotterdam on the Advisory Board (Life Sentence Prisoners) Order to the House of Representatives. A number of recommendations resulted from this evaluation.

Critical points and resulting recommendations:

1. The design, including the duration of the reintegration phase, needs to be rethought;
2. The Advisory Board needs to be strengthened as an organisation.

Non-critical points needing attention and resulting recommendations:

1. Change the detention conditions of life prisoners in the period preceding the point at which the Order becomes applicable to the person in question;
2. Ensure the timely availability and completeness of information (criminal file, custodial file, criminal justice records);
3. Bring forward the start of the Advisory Board's work;
4. Improve counselling of victim(s) and surviving dependant(s);
5. Put in place a provision for funded legal aid;
6. Improve the provision of information to, and the legal position of, life sentence prisoners (information, participation, legal remedies);
7. Update the way the system works, institutionalise consultation within the justice system.

The evaluation report includes points to build on to make improvements for the period prior to the reassessment of life imprisonment. The recommendations were discussed with experts within the justice system. By letter of 3 February 2023, the House of Representatives was informed of the plans

⁷ Parliamentary Papers, House of Representatives, 2021/2022, 29 279, no. 719.⁸ [Letter to parliament accompanying the 2023 report of the Central Government Audit Service on decision-making regarding the eMates messaging service.](#)

for following up on the recommendations.⁸ It was announced that the reintegration phase would be extended by one year by delaying the point at which the automatic review procedure takes place by one year (that is, after 28 rather than 27 years of detention). This will allow more time for a gradual expansion of reintegration activities once the person serving a life sentence has been admitted to the reintegration phase.

61. The delegation was 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. (paragraph 139)

We are familiar with the challenges in addressing the specific needs of older prisoners in terms of detention conditions. The Custodial Institutions Agency (DJI) pursues a person-oriented approach for all prisoners and the detainee's personal needs and care needs – including those of older detainees – are central concerns.

The Council for the Administration of Criminal Justice and Protection of Juveniles (RSJ) recently provided the Ministry of Justice and Security with an advisory report about the specific needs of older prisoners.

The report includes suggestions for better ways of responding to the needs of older prisoners. DJI will explore whether such care and extra facilities can be concentrated in a few prisons.

5. Healthcare services

62. 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. (paragraph 142)

One of the elements of the duty of care incumbent on the Custodial Institutions Agency is that every detainee has access to specialist medical care. This includes detainees placed in special regimes such as the high-security unit (EBI), the wing for prisoners posing management problems (BPG) and the terrorist wing (TA). In principle, any such care is provided by the in-house physician, and is of equivalent quality to the care provided in the outside world. The Health and Youth Care Inspectorate (IGJ) monitors this and has thus far seen no reason to doubt the quality of care, including specialist medical care. Alternatively, detainees may consult a doctor of their choice, but that person cannot act as the attending physician. The in-house physician remains responsible for treatment. Consequently, since the external doctor chosen by the detainee is not authorised to provide treatment, he or she may run up against obstacles. These can be addressed in consultation with the in-house physician in order to draw up the most appropriate treatment plan.

⁸ [Letter to parliament accompanying the 2023 report of the Central Government Audit Service on decision-making regarding the eMates messaging service.](#)

63. 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. (paragraph 143)

The government has never received any indication that detainees in Dordrecht Custodial Institution have not been through a medical screening procedure within their first 24 hours in detention. It is standing policy in all custodial institutions, thus including the one in Dordrecht, that new arrivals receive a medical examination within 24 hours after admission. This means they have at least been seen by a nurse. As an additional check, Dordrecht Custodial Institution will carry out a spot check on the medical records of detainees to see whether the 24-hour time limit has occasionally been exceeded. Should this be the case, action will be taken to remedy this fault.

The medical intake is a medical screening procedure, conducted by a nurse and supervised by a physician, within the first 24 hours of detention. It consists of a questionnaire and a summary check of the somatic and psychological state of the new arrival, including any treatment and diseases, whether at present or in the person's medical history. The matters explored include any infectious diseases, addiction and abuse. On the basis of the findings, any necessary action will be taken and discussed with a physician or other healthcare professional, depending on the medical needs of the detainee. In addition, guidelines are being developed as a reference tool for the questions to be asked and the desirable action to be taken in relation to diverse topics.

64. 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. (paragraph 144)

In the terrorist wing (TA), a set procedure is followed with regard to psychological care and support. If the initial intake performed by the medical service indicates a need for psychological or psychiatric care, this is reported to the Head of Treatment, whether through the psycho-medical consultations or through a request from the detainee herself or the TA's staff team. Several women have been referred to psychologists through these channels, for an intake and possible subsequent treatment. When psychological care can be started depends on the availability of therapists and the length of any waiting lists, as is the case in the outside world. The custodial institution can do little to influence this.

The vacancy for a psychologist for the TA in Zwolle was briefly filled by a registered general psychologist, but is now open again. The Head of Treatment is holding consultations with psychologists who are training at Zwolle Custodial Institution to become registered general psychologists, to find out whether they might be able to fill that position after completing their training. A psychiatrist has again become available for this target group since December 2022, which also creates more opportunities.

Regarding detainees subject to a TBS order (a hospital order) who are held temporarily at Dordrecht Custodial Institution, please refer to the response to the previous recommendation.

65. *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). (paragraph 145)*

In the Netherlands, this procedure is vested in the municipal health service (GGD), where any victim of violence, whether or not a detainee, can have an injury report drawn up by an independent physician. The police will refer the victim to the GGD if they request it after filing a criminal complaint. The injury report contains the victim's account of the circumstances and the findings of a forensic physician, who will examine, describe, and assess the externally observable injuries. The physician will also assess whether the observed injuries are compatible with the victim's account. The police attach the injury report to their official report. Naturally, the option of filing a criminal complaint is open to detained persons. The physician can inform the detainee about the possibilities in this regard.

The examination at the GGD is conducted by physicians who have specialised in forensic medicine. They assess the injuries based on the victim's account and collect samples and other evidence.

It is an important principle that the injury report is drawn up by an independent medical specialist who is not involved in the treatment. The attending physician can only be asked to supply factual medical information – a procedure that protects the physician from having to answer questions implying a judgment. This principle is laid down *inter alia* in the Guidelines on Doctor-Patient Privilege and Police/Justice System (*Handreiking Beroepsgeheim en politie/justitie*) of the Royal Dutch Medical Association (KNMG).

The CPT recommends setting up a register to record all types of injuries in custodial institutions and that the findings of a medical examination conducted as a result of a violent incident be systematically brought to the attention of the investigating and prosecuting authorities, regardless of the wishes of the person concerned. However, the latter cannot be done without the person's consent. Medical data is sensitive personal data. This means that the attending physician can only provide such data to the relevant authorities if the detainee so chooses – in the knowledge that the GGD can already be asked to supply the findings of the independent medical examination of the injury. If the GGD examination does not provide sufficient information, the attending physician can be asked to provide information, but can only do so with the consent of the person concerned.

Setting up a special register to record all injuries in the medical records as a standard procedure would have little added value beyond the existing patient files that are already available in the custodial institution and the GGD registration system.

Those who are placed in a custodial institution are informed about the Electronic Patient Record (EPD) kept by the Custodial Institutions Agency (DJI). The information is supported by a leaflet in simple

language, which has been translated into seven languages. This leaflet informs detainees that they are entitled to request a copy of their medical records and that their lawyer can also do so, provided they give their written consent.

66. 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. (paragraph 147)

Detainees receive necessary medical care. This includes cases in which the medical assessment is that a visit to a civilian hospital is necessary. Doctor-patient confidentiality continues to apply to conversations that take place during such a visit. However, other interests related to the detainee's stay outside the institution must also be taken into account, such as the risk of absconding and the risk to hospital staff and to society. With this in mind, the use of restraints, such as handcuffs, may be justified. Handcuffs are not used systematically. The use of handcuffs (or other means of restraint) is considered on a case-by-case basis, based on a comprehensive risk analysis. Where their use is deemed necessary, they are attached only to the detainee. The practice of handcuffing a detainee to a transport guard or other security guard is not permitted, as stipulated in the instructions on the use of force. In this regard, the government fully agrees with the CPT and will expressly uphold the ban on detainees being handcuffed to prison officers.

In principle, consultations are governed by doctor-patient confidentiality. However, this confidentiality may be breached after careful weighing of the professional confidentiality to be respected by the doctor against the safety of all those involved and the supervisory task of the accompanying staff. Where appropriate, the doctor may speak to the transport escort. This may result in the examination taking place in the presence of the transport escort. Alternatively, it may mean the transport escort staff member taking up a position very close to the entrance to the consulting room, provided they consider this responsible in terms of preserving safety.

67. 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. (paragraph 148)

Dispensing medication is not exclusively reserved to healthcare professionals under the Healthcare Professions Act (BIG). It is however a requirement is that any staff member performing this task must be competent to do so in a responsible manner. Training has been developed for this purpose, which is part of the basic professional training of staff.

The medication delivered each day is checked by the pharmacy and includes a list of each detainee's medication so that it can be signed off after the medication is dispensed: the person who dispensed the medication initials the list. This ensures that it is always possible to verify who dispensed the

medication, at what time and whether there were any irregularities. The dispensation lists are returned to the medical service each day. They are checked by the nurse and any irregularities are recorded in the medical records. If necessary, the physician is consulted. This ensures medical supervision of the consumption of medication. Custodial staff have their own professional duty of confidentiality. The basic principle is that security staff who have access to medical data to enable them to fulfil their healthcare-related duties properly must handle such data carefully, thus safeguarding confidentiality.

68. 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). (paragraph 149)

Dutch custodial institutions (PI) have drug detoxification and addiction treatment programmes. It is possible to provide methadone to drug-addicted detainees. It is also possible, whether by order of the court at sentencing or following an assessment made during the PI's psycho-medical consultations, to place a convicted person in a forensic addiction treatment clinic for part of the prison sentence or for a suspended part of the sentence. Helping people with addiction problems is done on a case-by-case basis. The government endorses the CPT's recommendation and also believes that the current framework is sufficient to allow for this case-by-case assistance to be provided.

The most commonly used substances in the Dutch context are cannabis and synthetic drugs (usually in the form of pills or powder). The injection of drugs such as heroin in the Netherlands is extremely rare. This means there is no need for a needle exchange programme.

69. 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 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. (paragraph 150)

The segregation cells used for the disciplinary punishment of solitary confinement are also used to implement the measure of seclusion. In both cases, the cell must meet the requirements for humane treatment during the implementation of the punishment or measure. These requirements are set out in the Custodial Institutions (Isolation and Segregation Cells) Regulations. Since a segregation cell must always meet these statutory requirements, there is no need to draw a distinction – the purpose for which it is used does not detract from the quality of the cell.

Where it is necessary to protect the detainee's mental or physical health, camera surveillance may be ordered during segregation. In the case of a measure, this can be done under section 24 (1) in conjunction with section 24a (1) of the Custodial Institutions Act (PBW). In the case of a disciplinary punishment, it can be done under section 51 (1) (a) of the PBW. The Custodial Institutions (Isolation

and Segregation Cells) Regulations also provide that both isolation and segregation cells may be equipped with surveillance cameras.

70. The CPT again invites the Dutch authorities to consider the possibility of bringing prison healthcare services under the responsibility of the Ministry of Health. (paragraph 152)

The government does not see any reason to undertake a fundamental review of the role of healthcare services in prisons. The Ministry of Health, Welfare and Sport (VWS) already lays down the statutory requirements and defines the criteria that all care must meet, including care provided in detention. Nursing care and psychological care in custodial institutions are provided by healthcare professionals employed by the institution. GP care, dental care and a variety of other forms of care are provided through a procurement model by contracted private healthcare providers. All care in detention is supervised by the Health and Youth Care Inspectorate (IGJ), falling under the Ministry of Health, Welfare and Sport. This existing structure provides sufficient safeguards to guarantee the quality of care.

71. 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. (paragraph 153)

The government sees the encouragement by the CPT as acknowledgment of its recruitment and training efforts and affirmation of the urgency of these efforts. Given the current situation on the Dutch job market, however, in which vacancies outnumber job seekers, these efforts have become increasingly challenging. In response, the Custodial Institutions Agency (DJI) has launched several marketing campaigns in an attempt to boost the number of applicants and further raise awareness of the existence of our organisation among the Dutch population. Independently of these efforts, DJI is also currently looking into the potential scope for job redesign in addressing these pressing employment issues.

72. 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. (paragraph 154)

At the high-security unit (EBI) and the wing for prisoners posing management problems (BPG), the manner of interaction between staff and detainees is discussed at team and peer review meetings and is part of staff training sessions. An in-depth training programme has been developed and offered to all staff members who work on the terrorist wings. It covers issues such as resilience and positive interactions with detainees.

73. 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. (paragraph 158)

Under the terms of section 57 (1) of the Custodial Institutions Act (PBW), any detainee placed in an isolation cell for disciplinary reasons must be given an opportunity to be heard by the governor. This should be done in a language that the detainee understands. In addition, pursuant to section 58 (1) of the PBW, the detainee receives a copy of the decision in a language that is as understandable as possible to them. Furthermore, every such placement is reported to the independent Supervisory Committee and from the very beginning of placement there is the possibility to submit an application for suspension to the – likewise independent – Council for the Administration of Criminal Justice and Protection of Juveniles (RSJ).

The imposition of a disciplinary measure is a decision subject to a complaint procedure. If a detainee lodges a complaint against the decision, they have the right under section 65 (1) of the PBW to be assisted by a legal adviser or other trusted person. If the person concerned has no or insufficient command of the Dutch language, an interpreter may be called in. This should be arranged by the chair of the Supervisory Committee.

74. 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. (paragraph 159)

The Isolation and Segregation Cells (Custodial Institutions) Order provides that the governor must immediately notify the physician attached to the institution of a placement in an isolation or segregation cell. The doctor or his substitute, or the nurse acting on his instructions, visits the detainee in the isolation or segregation cell as soon as possible and regularly after the notification. The governor must also be informed daily of the condition of any detainee who has been placed in segregation. This ensures proper monitoring of the detainee's well-being.

When a detainee is placed in segregation for disciplinary purposes, the law does not require regular visits by a psychologist. Nevertheless, if it does appear that the detainee needs a psychologist, such a visit will take place. This follows from the Custodial Institutions Agency's duty to provide detainees with the care that they require.

The government believes that these regulations and practices ensure that there is adequate monitoring and care for the mental and physical condition of detainees in segregation. While the government is not aware of any signs of non-compliance with this policy, the importance of compliance will be emphasised once again.

75. 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. (paragraph 160)

For reasons of safety and security, for both detainees and staff, the cells used for disciplinary solitary confinement are equipped with 'soft furniture' and no fixed furnishings. Any deviation from that standard would entail disproportionate risks for those involved.

The placement of detained persons under camera surveillance can take place only under strict conditions and in certain circumstances, such matters having received due consideration prior to implementation. To safeguard the detainee's welfare, it is essential for the person to be visible at all times. From this point of view, it would be undesirable to shield or restrict the view.

76. The CPT recommends that the cells be cleaned properly after each use and that the ventilation system is maintained. (paragraph 161)

It is standing policy that cells used for segregation are cleaned and ventilated after use. The government has not heard any information to the effect that detainees are being asked to clean the cell themselves after leaving the cell, but takes note of this recommendation and will ensure that the policy is adhered to.

77. The CPT encourages the Dutch authorities to promote the use of time-out rooms in all prisons in the Netherlands. (paragraph 162)

Dordrecht Custodial Institution plans to create time-out rooms for the extra care wing for vulnerable prisoners to enable detainees to 'cool down'. This is the first custodial institution to introduce such an option. The Custodial Institutions Agency (DJI) therefore considers it too early to introduce this provision nationwide.

78. 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. (paragraph 163)

The practice of strip searches is necessary to maintain order and security in the facility. The government is aware of the intrusive nature of strip searches and therefore ensures that the policy on strip searches is implemented in a professional manner and is as non-stressful as possible. Under

section 29 of the Custodial Institutions Act (PBW) it is a statutory obligation to ensure that strip searches are not unnecessarily long and that the practice is confined to situations in which it is necessary for the safety of the detainee, fellow detainees and the personnel. This means that strip searches are not carried out after every visit, but only in the case of transport, visits without a glass partition, or when there are signs of contraband having been concealed in the body.

At the present time it is not yet possible to conduct strip searches by alternately removing clothing above and below the waist. Consideration will first have to be given to the impact of the proposed method on the risk of contraband being concealed by moving it from one set of garments to the other while changing clothes. The government will therefore subject this recommendation of the CPT to further investigation.

As a rule, strip searches are conducted by a staff member of the same gender as the detainee. It is possible, if there is sufficient opportunity, for a detainee to be briefly placed in segregation until a staff member of the same gender has arrived to conduct the search. Nonetheless, in exceptional cases it may happen that the need to conduct a strip search is so great that it proves necessary to deviate from policy. The government wishes to retain the freedom to do so.

79. 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. (paragraph 165)

A restraint bed is used as a last resort as a means of protecting a detainee from him- or herself and others. These are cases in which there is a risk of serious self-harm in which there is no other way to restore the detainee to a sense of reality and other means offer insufficient protection. Placing a restraint bed in a regular custodial institution is a carefully-considered process that includes numerous safeguards.

The use of restraint beds is not part of any regime. Their use is very rarely necessary. Nonetheless, exceptional situations may still arise in which a restraint bed is the only way to protect a detainee. Since it is impossible to completely rule out the possibility of such situations arising, the government does not consider it desirable to abolish the use of restraint beds.

80. Steps should be taken to reduce the waiting time for parent-child visits at Vught Prison. (paragraph 166)

The government endorses this recommendation. Vught Custodial Institution has for some time been examining ways to increase the frequency of parent-child days in order to reduce the wait for all detainees wishing to participate. This is taking place in partnership with the relevant voluntary organisation, Stichting Exodus, which supervises young children during visits to a parent who is in detention.

81. 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. (paragraph 167)

In regular institutions, the Custodial Institutions Agency (DJI) intends to make it possible for detainees to make phone calls in their cells. In some cases, this option already exists. In introducing this possibility, various issues need to be taken into account to check its practical feasibility. This relates in part to the risk of continued criminal activity in detention, but also to possible building-related constraints. Detainees who have a phone in their cell can call family members at all times, unless their behaviour gives cause to limit their phone time.

Detainees who are not yet able to phone from their cell are given an opportunity to call family members during the time they are allowed to stay outside their cell. In accordance with regulations, they are allowed to call for 10 minutes per week, but in practice, with the current supply of phones and the time available outside the cell, most detainees are able to make calls for much longer than this statutory minimum. The government does not therefore see any reason to further increase the scope for making phone calls.

82. The CPT would like to be informed whether the service eMates will be re-installed. (paragraph 169)

The digital email messaging service eMates was suspended by the Custodial Institutions Agency (DJI) in 2021 due to security concerns. Following an independent [investigation](#) by the Central Government Audit Service (ADR),⁹ the DJI decided on 3 February 2023 to permanently terminate its facilitation of the messaging service. The DJI is looking into the possibility of engaging an alternative messaging service for detainees. The guiding principles in this connection are that a messaging service must be secure and up to date, and that it must fit within the DJI's legal, staffing and financial frameworks.

All detainees still have the same rights as before in relation to sending and receiving physical mail.

83. 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. (paragraph 170)

With the introduction as from 5 November 2021 of article 3, paragraph 7 of the Temporary Leave (Custodial Institutions) Order,¹⁰ which defines the criteria for granting leave, the wording used was – unintentionally – overly inclusive. In consequence, the paragraph refers to an overly broad group of detainees.

Paragraph 7 of article 3 provides that the governor of the institution must take into account a crime analysis and a risk assessment when assessing any request for leave other than incidental leave.

⁹ Central Government Audit Service, Report of findings on factual investigation regarding eMates 2023 ([Rapport van bevindingen Feitenonderzoek eMates 2023](#)).

¹⁰ Government Gazette 2021, 45379.

However, the current wording inadvertently creates the impression that a crime analysis and a risk assessment must be performed for reintegration leave of *any* person convicted of a serious violent or sex crime. This places too great a burden in terms of implementation, given the limited capacity of behavioural experts in relation to the time-consuming nature of crime analysis and risk assessment. Furthermore, the majority of detainees convicted of a serious violent or sex offence are not in need of any treatment or forensic care. This means it is inappropriate to require a risk assessment and crime analysis as a condition before granting reintegration leave.

For this reason, article 3, paragraph 7 of the Temporary Leave (Custodial Institutions) Order is being redrafted. The aim is for the technical amendment of the Order to take effect in mid-2023.

For detainees who do not have a care needs assessment that recommends their transfer to a forensic care institution, the normal process for granting reintegration leave now applies again. This means that the requirement to conduct a prior risk assessment and crime analysis will no longer apply to reintegration leave. In consequence, detainees no longer have to wait for these procedures, and the associated waiting time before this target group of detainees can go on reintegration leave no longer applies.

84. The CPT would like to be informed about the Dutch authorities plans to further restrict contact of persons detained in the EBI unit. (paragraph 172)

The Bill that is under consideration will give the Minister for Legal Protection the statutory power to issue an order limiting detainees' communication with the outside world. The Minister can do so as a preventive measure in relation to 'leaders' of criminal organisations who are considered to pose a particular danger to society or in relation to other detainees where there are indications that the detainee is abusing the ability to maintain contact with the outside world for the purpose of involvement in serious crimes outside the prison (kidnappings, gangland killings, threats to important public figures).

85. The CPT recommends that the confidentiality of the lawyer-client consultations be guaranteed. (paragraph 173)

What passes between a detainee and their legal adviser is always confidential and the institution facilitates contact between them.

For a very limited group of detainees, it is necessary to enable stricter measures that can prevent abuse of the privileged communications between detainees and their lawyers. This is regulated in the Bill that is referred to above in in section 84 in response to recommendation 172. Those concerned are detainees who pose a high threat because they are or have been involved in ruthless criminal activities, committed in an organised context, which constituted a serious affront to the legal order. Even for this small group of detainees, who may be subject to stricter measures, the principle that contact with their legal adviser is confidential still applies. In order to safeguard the confidentiality of

communication, additional supervision measures will be limited to visual forms of surveillance. This ensures that communication can still take place freely, while preventing any covert communication.

86. 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. (paragraph 174)

Under section 56 of the Custodial Institutions Act (PBW), the governor is obliged to ensure that every detainee is informed of their rights and obligations upon entering the institution. This should be done in a language that is as understandable as possible to the detainee. To this end, the institution's rules are available in several common languages. If the detainee is unable to sufficiently comprehend any of the available translations, they can request the use of an interpreter, which will be facilitated by the institution.

Section 56, subsection 3 of the PBW provides that foreign detainees must be informed of their right to contact the embassy of their country of origin.

87. 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. (paragraph 175)

Upon arrival at the custodial institution, legislation requires that several matters must be attended to within a statutory time limit (e.g. the medical intake must take place within 24 hours). However, this does not mean losing sight of the fact that women detainees may need rest and support. This too is a priority. Given that women's needs may differ, providing the right amount of rest and support is determined on a case-by-case basis. This individualised approach is taken to the extent that is permissible within the legal frameworks. However, to make it possible, the person concerned must herself indicate her limits or needs. To ensure that women feel free to communicate these matters, staff will be directed to ask the woman concerned – if possible beforehand – whether she considers herself in a fit state to absorb the information regarding the rules and her rights. If not, either the information will be handed to her in written form or an appointment will be made to come back to this later. Another possibility would be to have the conversation at that time, but to schedule a second one to discuss the information again at a later stage.

88. 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. (paragraph 177)

Detainees have sufficient opportunity, as laid down in legislation, to file a complaint within the statutory time limits. The government does not consider it necessary to extend these statutory time limits.

On 5 July 2022, the Minister for Legal Protection informed the House of Representatives about a number of initiatives/exploratory studies to reduce the number of complaints in detention. Many institutions are pursuing complaint mediation. These initiatives offer sufficient points of departure for improvements to the right to complain. There are also other channels with the potential to reduce the number of complaints: the supervisory committees and their duty member (assigned on a monthly basis), as well as formal mediation. All this means that the resources currently available are sufficient, and there is no need for any expansion of the supervisory committees at the moment.

Statistics on the number of complaints and breakdowns by subject for the years 2021 and 2022 can be found in Annexe D.

ARUBA

A. Police establishments

1. Preliminary remarks

89. 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. (paragraph 182)

The duration of detention is set according to Aruban criminal law and the decision of the Public Prosecutor's Office.

90. 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). (paragraph 183)

The rules for the notification of the rights of persons detained for investigation are laid down in article 82 of the Code of Criminal Procedure (CCP). The new CCP provides for the following additional rights of the suspect:

- The suspect has the right to be assisted by counsel during questioning (article 48, paragraph 1).
- A suspect who waives their right to counsel is informed of the consequences of waiving this right and that they can reverse their decision (article 48, paragraph 6).
- The suspect cannot be questioned until they have had the opportunity to consult counsel (article 48a, paragraph 1).
- The right to legal assistance cannot be waived if the suspect is incapable, or insufficiently capable, of understanding the potential consequences of such a waiver (article 48a, paragraph 2).
- The suspect's counsel is authorised to be present when the suspect is being questioned (article 48b, paragraph 1).
- The suspect may be held for questioning for up to nine hours (previously six) with a view to an investigation – and as a consequence of the suspect's right to consult counsel prior to questioning (article 80, paragraph 1)
- The suspect has the right to have a person notified about their deprivation of liberty (article 82, paragraph 3(g)).
- Medical assistance: this is already possible under the current legislation.

It should be noted that most of these rights have already been applied (since 2008) on the basis of the *Salduz* case law of the European Court of Human Rights (ECtHR) and in anticipation of the new CCP.

In addition, under the terms of the new CCP, a suspect will also have the right to appeal against their pre-trial detention.

2. Ill-treatment

91. 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. (paragraph 184)

Every police officer in the Aruba Police Force is aware that excessive force or ill treatment of any detainee is unacceptable and that if such occurs, it may have serious consequences. Kicking a detainee is unacceptable and, if it does occur, there may be serious repercussions for the police officer concerned. It should be noted, however, that detainees often misrepresent the course of events, failing to state that they had attacked the police officer(s) first. Professional modes of self-defence on the part of officers are allowed and ill-treatment is forbidden.

Regulations stipulate that if handcuffs are applied too tightly and the detainee complains, the handcuffs will be adjusted as soon as possible.

Complaints are investigated either by the Internal Affairs Department of the Aruba Police Force (KPA) or the Special Investigation Unit.

3. Safeguards against ill-treatment

92. 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. (paragraph 186)

All forms will be checked and revised. The forms have already been translated into English and Spanish. The Aruba Police Force will decide on any translations into other languages such as Chinese.

93. 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. (paragraph 187)

At the request of an arrested suspect who is being detained for investigation, the assistant public prosecutor will immediately notify a person designated by the suspect about their deprivation of liberty (article 82, paragraph 7 of the new CCP).

94. 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. (paragraph 188)

This recommendation is already being implemented.

95. 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. (paragraph 189)

Article 82 of the new Code lays down the rights of the suspect and the obligation of the police to inform the suspect of these rights.

Article 48a of the new Code states that questioning can only commence after the suspect has been informed that they have the right to be assisted by counsel, have been given the opportunity to consult counsel and have exercised this right, subject to some exceptions.

It should be noted that the police already observe this right in practice (following the *Salduz* case law of the European Court of Human Rights) and forms are available at police stations that the suspect must sign in the event that they waive the right to counsel.

Furthermore, all police officers of the Aruba Police Force are aware of the detainee's right to be assisted by counsel. If a police officer were to try to persuade a detainee not to exercise that right, the police officer can and will be reported and the necessary steps will be taken.

96. 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. (paragraph 190)

In the event that the suspect is denied access to counsel of their choice in the interests of justice, the public prosecutor must immediately inform the examining magistrate, who will then immediately assign counsel to the suspect (article 70, paragraph 5).

97. *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. (paragraph 191)*

Every detainee who requests medical assistance will be given such assistance with due diligence.

98. *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. (paragraph 192)*

Every detainee is duly informed of their rights by the assistant prosecutor and is also informed about what the process of detention involves.

99. *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. (paragraph 193)*

This record keeping is duly executed from the moment the detainee arrives at the police station until the moment of transport (if ordered by the Public Prosecutor's Office) to the local custodial institution.

4. Conditions of detention

100. *The CPT would like to receive detailed information as regards the planned works and their timeline for the refurbishment of Santa Cruz Police Station. (paragraph 195)*

The refurbishment of the cells in the Santa Cruz Police Station has been completed. The metal protectors and lighting system have been replaced and the cell block has been repainted. In addition, new mattresses have been delivered.

101. 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 m2 should under no circumstances be used for overnight accommodation of more than one person.

Detained persons held overnight should be provided with basic hygiene items and cleaning products to able to clean their cells.

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. (paragraph 199)

The necessary decisions have been taken in order to ensure:

1. the maintenance of cells' state of repair and hygiene;
2. proper ventilation in relation to the sewage system;
3. better artificial lighting;
4. the installation of a call bell system.

The custody cells were recently repaired and repainted. With regard to:

1. Proper ventilation: this is definitely an area of concern and advice will be issued to address this issue as soon as possible.
2. The state of repair of the sewage system: this is constantly being monitored. San Nicolas Police Station (Aruba) has undergone thorough renovation.
3. Artificial lighting in the cells: this needs improvement. Recommendations to this effect will be included in the next plan for repairs to the custody cells.
4. The functional call/alarm bell should be installed as soon as possible.

Given the growing pressure on custody cells, it is essential to expand the number of cells as soon as possible. This will eliminate the need for cells to be shared by two detainees. As regards access to the open air, it is standard practice for detainees to be given such access at least once a day. The recreation area will also have to be adapted accordingly.

102. 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. (paragraph 200)

This recommendation was addressed in the Minister's letter of 20 December 2022 to the CPT.

103. 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. (paragraph 201)

In all cell blocks of the Aruba Police Force (KPA), detainees have access to water at all times. Every cell has a toilet and a shower. Detainees can use the showers twice a day.

5. Other issues

104. 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. (paragraph 202)

Measures are in place to deal with the eventuality of a detainee being at risk of self-harm or suicide while in police custody. However, detainees will not always express or give any indication of such intentions. If such possibilities are suspected, the detainee will be given medical/psychological assistance and help.

105. 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. (paragraph 203)

This recommendation is being taken into consideration.

106. The CPT recommends that the Aruban authorities expressly prohibit the blindfolding of persons who are in the custody of police. (paragraph 204)

The blindfolding of a detainee is a highly exceptional measure that is taken only in special circumstances, such as in the case of a highly dangerous detainee. Any such decision is taken by the public prosecutor – again, only in exceptional circumstances.

107. The CPT recommends that appropriate medical supervision always be made available for the detention of persons suspected of body-packing. (paragraph 205)

This recommendation is being taken into consideration.

B. Dakota Immigration Detention Facility

2. Ill-treatment

108. 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. (paragraph 208)

The government is giving due consideration to the CPT's recommendation. It has received tenders for the provision of training courses for personnel. Two members of staff have followed a 'hostmanship train-the-trainer' course.

3. Conditions of detention

109. 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. (paragraph 209)

The problem with the drainage system has been dealt with.

110. 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. (paragraph 210)

The shipping containers have been taken out of service. The newly constructed building is fully operational and has the capacity for 160 detainees. Each room can accommodate up to six detainees.

111. 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. (paragraph 211)

The Immigration Detention Facility is not a prison. The objective is to send the people held there back to their country of origin within the short term. Detainees can spend a period of time in the open air in both morning and afternoon.

4. Safeguards

112. 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. (paragraph 214)

In general, the expulsion of a detainee takes place at short notice. It often happens that the person's family buys a ticket for their return. In other cases, these expenses are paid by the government. Detainees are aware that it may take time to arrange a flight and that the government is dependent on their cooperation (regarding the possession of a valid passport, for instance).

The closed border with Venezuela means that only a limited number of Venezuelan nationals can be expelled. However, the government does expel small numbers of detainees to Venezuela on a daily basis via other countries.

113. 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. (paragraph 215)

Detainees are fully informed in a language they are able to understand.

114. 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. (paragraph 216)

All detainees have access to lawyers and legal advice. In some cases, legal assistance is also provided through non-governmental organisations (NGOs).

5. Other issues

115. 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. (paragraph 218)

The Guarda Nos Costa (GNC) facility has a doctor and a nurse on site. All detainees have access to medical care on a daily basis.

116. 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. (paragraph 219)

At the Guarda Nos Costa (GNC) facility, the only equipment carried on site by officers is a set of handcuffs.

At Aruba Correctional Institution (KIA) the lack of personnel gives rise to security issues. This problem is exacerbated by the design of the complex: it is impossible to survey the different wings, making it necessary to rely on the CCTV system. All this means that pepper spray may sometimes have to be used where appropriate to help defuse dangerous situations. The institution is working hard to resolve these shortcomings, so that work can start on implementing the CPT's recommendations. New uniforms have already been introduced. These are less intimidating in appearance, which may help in the development of a positive relationship with the detainees. The blue colour of the uniforms is conducive to calming detainees. In other words, KIA is focusing on this aspect of its service.

117. 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. (paragraph 220)

All detainees have access to their phones on specified days.

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

2. Ill-treatment and use of force

118. 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. (paragraph 222)

The special intervention team already operates in accordance with a set of instructions on the use of force.

In addition, KIA is set to implement a recently-developed ethics policy, with clear consequences for transgressors. The restructuring of the organisational chart will bring more personnel into supervisory roles, which will help to reduce potential cases of abuse. KIA will do its best to prevent any such abuse in relation to detainees. KIA's duty manager oversees the operations of the special intervention team and any action undertaken by police riot squads. Detainees are also entitled to submit complaints to the independent supervisory committee (*Commissie van Toezicht*), which must be addressed by KIA's management.

119. 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. (paragraph 223)

The special intervention team uses bodycams. The head of security uses the recordings to evaluate their interventions. KIA will do its best to prevent any ill-treatment towards detainees. The operations are documented and photographs can be retrieved if necessary.

120. 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. (paragraph 224)

KIA has a recording mechanism that records and saves the videos displayed in the camera room. The videos are re-evaluated in the event of violence and downloaded onto a separate server and external memory bank. These recordings are retained by the head of security. Where KIA has evidence that a crime has been committed, it lodges criminal complaints with the police. Such complaints have helped to deter crimes among detainees.

3. Conditions of detention

121. 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. (paragraph 225)

Both the government and the institution's management are aware of the state of the facility. Efforts are underway to repair the various wings.

- The former Centro di Motivasion (CDM) structure will be repaired: the first stage is to move detainees out of the remand wing so that it can be renovated.
- The medical wing is currently being renovated.
- Areas used as classrooms are being refurbished.

The government will take the CPT's recommendation into consideration as regards improvements in lighting, intercom communication and sanitary facilities. Gradual improvements are underway, while it is hoped that a new complex may be built in due course. KIA frequently finds that each improvement

reveals new challenges of further deterioration. Keeping an old facility in a highly corrosive environment in good repair is a never-ending job. Even so, KIA is determined to continue its efforts until a new facility can be built. With the support of the Dutch government, the government is currently updating a 2018 project plan for a new prison facility. It is expected that a decision to construct a new facility will be taken at the end of this year.

122. 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. (paragraph 226)

The detainee with disabilities has been transferred to a facility in the Netherlands that offers the proper conditions. Plans are being made to introduce improvements that will make it easier to accommodate detainees with disabilities.

123. The CPT recommends that the Aruban authorities review the quality of food provided to prisoners. (paragraph 227)

The medical service conducts daily checks on the quality of detainees' food. If any complaints are made about the food's quality, the medical service confirms receipt of the complaint and sends it to the food provider. KIA is currently launching a tendering process to find a new provider: the new contract will include conditions to guarantee that a better quality of food is provided.

124. 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. (paragraph 228)

KIA is working towards improving its services by offering classes, sports, and arts and crafts. It plans to reactivate its out-of-institution work programme and to improve services to detainees. The Prison Service is well aware that this is an area of concern and KIA has sent 20 guards to Bonaire prison to receive on-the-job training in bringing about a culture change on the work floor.

125. The recommendations set out in paragraph 225 also apply to the juvenile unit. (paragraph 229)

KIA will seek to take the CPT's recommendation into consideration as regards improved lighting, intercom communication and sanitary facilities. Conditions in the juvenile unit were improved before the CPT's visit: KIA has converted some rooms into flex rooms/library and a 'smart' classroom equipped with internet to provide an e-learning platform.

126. 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. (paragraph 230)

KIA is currently preparing some personnel to work exclusively in this wing, to provide better supervision and to improve professionalism. As previously stated, KIA is investing in outsourcing education to provide better services to juveniles. Other activities, such as sports and arts and crafts, are being coordinated.

127. 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. (paragraph 231)

KIA is currently preparing some personnel to work exclusively in this wing, to provide better supervision and to improve professionalism. As previously stated, KIA is investing in outsourcing education to provide better services to juveniles.

128. 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. (paragraph 232)

KIA will seek to take the CPT's recommendation into consideration as regards improved intercom communication, and a fresh coat of paint has been planned. The women's section has been renovated most recently. Further renovations are planned in the near future.

129. The recommendation set out in paragraph 228 applies equally to female prisoners held at Aruba Correctional Institution. (paragraph 233)

As previously stated, KIA is investing in outsourcing education to provide better services to detainees. Other activities, such as sports and arts and crafts, are being coordinated.

4. Healthcare services

130. 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. (paragraph 234)

The government will seek to give due consideration to this recommendation. The capacity issue of staff members of the facility is on the agenda of the ministers of Justice of the Kingdom and the Dutch ministry of the Interior and Kingdom Relations, i.a. as part of a broader challenge to strengthen the services in the law enforcement chain.

131. 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. (paragraph 235)

A group of guards has been selected to follow training to provide more specialist care. KIA is working with the psychiatric clinic Respaldo, which provides specialist psychiatric care to detainees with mental health problems. Infrastructural improvements are also being planned. The government and KIA share the CPT's concerns. KIA has several internal and external taskforces working on the subject of mental health and is also seeking help from the Netherlands to help determine the best next steps from a strategic point of view. For now, KIA will focus on basic mental healthcare in its institution.

132. 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. (paragraph 236)

Medication may be administered to psychiatric patients during a crisis if they are aggressive and do not want to take their medication. This is done under medical supervision. The medical service will only proceed to this measure as a last resort, after exhausting all other options.

133. 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. (paragraph 237)

The medical facility is currently being restructured and undergoing substantial expansion. The conclusion of this project is in the final phase. The government will be happy to provide an update as soon as the new facility is up and running.

134. 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. (paragraph 238)

All new arrivals at KIA undergo a thorough medical screening. During the COVID-19 pandemic, this screening was conducted at the police station before transfer to KIA and was performed by medical

doctors attached to KIA. At present, new arrivals undergo a medical screening within 48 hours of arrival.

135. 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. (paragraph 239)

KIA will continue to work on procedures to implement this recommendation as well as pursuing innovation in order to upgrade its services. That said, KIA would like the CPT to acknowledge that its prison service has the best equipped medical service in the Dutch Caribbean.

136. 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. (paragraph 240)

When the renovation of its medical facility has been completed, KIA will have more suitable spaces in which to safeguard patient privacy. In the case of certain detainees whose aggressive behaviour poses an imminent threat to medical staff, prison guards will always be nearby for security reasons.

137. 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). (paragraph 241)

The medical service is no longer collecting and/or testing urine samples for administrative purposes. This procedure is currently outsourced to an external laboratory.

138. 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. (paragraph 242)

KIA management will work to improve the professional independence of healthcare staff at its facility.

139. 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. In principle, the CPT supports this trend. The CPT would like to receive the comments of the Aruban authorities on this issue. (paragraph 243)

This recommendation has been noted.

5. Other issues

140. *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. (paragraph 244)*

The capacity issue of staff members of the facility is on the agenda of the ministers of Justice of the Kingdom and the Dutch ministry of the Interior and Kingdom Relations, i.a. as part of a broader challenge to strengthen the services in the law enforcement chain.

141. *The CPT recommends that the Aruban authorities take steps to fill the aforementioned vacant posts at Aruba Correctional Institution. (paragraph 245)*

The government will seek to take this recommendation into account. The capacity issue of staff members of the facility is on the agenda of the ministers of Justice of the Kingdom and the Dutch ministry of the Interior and Kingdom Relations, i.a. as part of a broader challenge to strengthen the services in the law enforcement chain.

142. *The CPT must emphasise 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. (paragraph 246)*

This recommendation is duly noted.

143. *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. 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. (paragraph 247)*

This recommendation will be taken into consideration.

144. *The CPT recommends that the Aruban authorities put an end to the carrying of firearms by staff inside detention areas of Aruba Correctional Institution. (paragraph 248)*

This recommendation is duly noted.

145. *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. (paragraph 249)*

This recommendation is duly noted.

146. *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. (paragraph 250)*

This recommendation is duly noted.

147. *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. (paragraph 251)*

This recommendation is duly noted.

148. *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, 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. (paragraph 252)*

The medical service will supervise these patients with extra care. In addition, the KIA management will develop a plan to tackle this problem.

149. 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. (paragraph 253)

The possibility of making Voice-over-Internet-Protocol (VoIP) calls (Skype) free of charge will be retained as an option for detainees wanting to communicate with their families.

150. The CPT recommends that the Aruban authorities take steps to ensure that the plexiglass partitioning is removed and open visits are re-introduced. (paragraph 254)

This recommendation is duly noted.

CURAÇAO

A. Police establishments

1. Preliminary remarks

151. 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 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). (paragraph 256)

Suspects in police custody are informed verbally and in writing of their rights and the reasons for their arrest. This information is given in Papiamentu, Dutch, English, Spanish and Creole. The assistant prosecutor (who is a senior police officer) will assess the lawfulness of the arrest and inform the suspect (once again) of their rights. During questioning by the assistant prosecutor, the suspect will be asked if they were ill-treated by the police during the arrest or subjected to the use of force. In addition, the person will be asked if they have any health problems or need medical assistance. If the suspect does require medical assistance, they will be transferred to the hospital or placed in the care of the police doctor.

The timeline for the adoption of the new Code of Criminal Procedure is difficult to estimate at this point. Parliament has been contacted for a technical briefing on the new Code: a written request was sent to arrange a meeting for this purpose. This briefing took place on the 15th of February 2023. The new Code is a priority for the government. The government will therefore do its utmost to ensure that it is adopted as soon as possible.

2. Ill-treatment

152. 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. (paragraph 257)

Article 2 of the 2013 Instructions for Police Officers on the Use of Force states: 'While executing his task, the police officer must conduct himself properly and refrain from any acts that could harm the good name of the Curaçao Police Force'.

If a suspect has a complaint about a police officer's conduct, they can raise it during the interview with the assistant prosecutor, the examining magistrate, their counsel or a member of the prison staff (such as a social worker or one of the medical staff). Depending on the severity of the complaint, it will be handled by the Police Force's Internal Affairs Department or the National Criminal Investigation

Department. The latter carries out investigations of facts and conduct when the integrity of government authorities, persons or legal entities that execute or are involved in public duties is alleged to have been compromised. Those carrying out the investigation operate independently and impartially.

It is standard procedure that when a police officer handcuffs a person, they will ask the person concerned whether the handcuffs are too tight. However, the management team will keep reminding personnel of this requirement.

3. Safeguards against ill-treatment

153. 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. (paragraph 259)

Suspects in police custody are informed verbally and in writing of their rights and the reason for their arrest. The written information is available in Papiamentu, Dutch, English, Spanish and Creole. In this context, the government would also refer to its more extensive response to recommendation 256. As recommended by the CPT, the management team of the Curaçao Police Force will review its current information sheets.

154. 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). (paragraph 260)

A third person is always informed if it is decided that the suspect will remain in police custody. This is important so that the suspect can be provided with basic necessities such as clothing, personal hygiene articles and medicine.

155. 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. (paragraph 261)

All persons who have been deprived of their liberty have access to counsel from the moment of their detention. Article 48 of the Code of Criminal Procedure of 1 October 1997 provides that a suspect can be assisted by counsel before police questioning.

Since 1 March 2017, every criminal suspect in Curaçao has had the right to have counsel present during police questioning as a matter of law, thereby implementing European Directive 2013/48/EU on the Right of Access to a Lawyer in Criminal Proceedings. Although no legislation has been enacted, the Prosecutor has issued directives on how to apply the *Salduz* judgment of the ECtHR during questioning.

156. The Committee recommends that the Curaçao authorities ensure that a lawyer is always present when a juvenile is questioned by the police. (paragraph 262)

Since 1 March 2017, every criminal suspect in Curaçao has had the right to have counsel present during police questioning as a matter of law, thereby implementing European Directive 2013/48/EU on the Right of Access to a Lawyer in Criminal Proceedings. Although no legislation has been enacted, the Prosecutor has issued directives on how to apply the *Salduz* judgment of the ECtHR during questioning.

Furthermore, article 48 of the Code of Criminal Procedure of 1 October 1997 provides that a suspect can be assisted by counsel before police questioning. A juvenile is also assisted by their parents or guardian.

157. 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. (paragraph 264)

Chapter 7, article 36 of the 2013 Instructions for Police Officers on the Use of Force states that the police have the obligation to ensure that persons with injuries (even minor injuries) or persons who are ill receive treatment from medical professionals. If a suspect requests medical treatment, this request will be granted.

158. 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. (paragraph 265)

Records of all arrests made by police are kept in the digital automated system ATCPOL. Hard copies are also kept at the police station and the suspect is provided with a copy of the warrant. A copy of all documents is also made available to the suspect's counsel, as part of his or her file.

159. 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. (paragraph 266)

Any of the suspect's personal effects that are not relevant to the investigation and that the suspect is not permitted to retain during police custody will be given to a third person with the suspect's consent.

4. Conditions of detention

160. 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. 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. (paragraph 269)

The detention centre at Barber Police Station operates in accordance with the CPT's recommendations. Any suspect who uses a wheelchair or is in need of special medical assistance recommended by the police doctor will be held in the medical wing at SDKK.

A list giving the occupancy of Barber Police Station's detention centre is attached as Annexe E.

161. It would like to be informed about the future plans for the police detention block at SDKK. (paragraph 270)

In accordance with the CPT's recommendations, the police detention block at SDKK has no longer been in use since May 2022.

5. Other issues

162. The CPT reiterates its recommendation that detention in police premises does not exceed the initial period of police custody (inverzekeringstelling)¹⁹¹ and that any further extensions of detention are carried out at SDKK. (paragraph 271)

The draft Bill for the new Code of Criminal Procedure (CCP) is still under consideration by Parliament. The Minister of Justice has asked Parliament to schedule a technical briefing with regard to the Bill.

This means that at the time of this response, the initial period of police custody is still two times eight days.

163. 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. (paragraph 272)

Only in exceptional cases will a juvenile be held in a police cell. In such cases, the juvenile will only be held in the cell at night and will be transferred to the juvenile detention centre during the day. It is important to note that this has only happened once in recent years.

164. The CPT would like to receive a copy of the current protocol applicable to persons suspected of body-packing, including as regards medical supervision. (paragraph 273)

Since there is no facility that can handle body packers, any person arrested and suspected of body packing will be held under police supervision in a separate ward of the hospital.

165. 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. 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). (paragraph 274)

A new draft of the instructions has been prepared and will be officially released in the near future. In the meantime, the draft has already been distributed among the staff, who are partially implementing its provisions.

B. Immigration detention

1. Preliminary remarks
2. Ill-treatment

166. 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. (paragraph 276)

Within the Dutch Caribbean Coast Guard, the core values of integrity, professionalism, transparency, non-discrimination and operating within the legal framework are actively promoted and adhered to. The Coast Guard personnel are very familiar with the mandates, procedures and requirements for

performing their tasks at sea. Some have been trained as ‘hostmanship’ instructors. At regular intervals, these trainers instruct crews in the appropriate way to interact with those they encounter at sea, whether they are undocumented immigrants, detainees, or regular fishermen or boat owners etc. The key point is for the Coast Guard to adopt the appropriate attitude and to approach people with empathy and understanding of their situation.

3. Conditions of detention

167. 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. (paragraph 281)

The new immigration facility has been operational since 24 November 2022, in line with the CPT’s recommendations. It currently has space for 36 males and 16 females (total capacity being 35 men and 35 women). There are also four segregation cells. The occupancy as at 3 January 2023 consisted of 28 males and 10 females. The facility is staffed by five prison guards, three security guards, and two personnel from the Police Force for the evening and night shifts. The prison guards work the morning and evening shifts (07.00 – 15.00 and 15.00 – 23.00).

The prison guards assigned to the immigration facility have attended ‘hostmanship’ courses as well as courses on immigration law and motivational treatment. All future employees will likewise undergo this training (five courses in total).

168. 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. (paragraph 282)

A working group has been established to optimise immigration detention procedures. This working group is in charge of carrying out the Project Implementation Plan (PIP) under the supervision of a senior manager at the Ministry of Justice. It issues progress reports on a regular basis. The intention is that families are to be kept together, with mothers and children being held in the women’s wing and fathers being held in the men’s wing. Fathers can visit their family in the women’s wing during the day.

169. 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. (paragraph 283)

One of the guiding principles is to be ‘hard on the outside, soft on the inside’. In terms of the ‘soft’ aspect, this means that treatment is more flexible, with people being allowed to move freely within the detention centre, taking security and safety into account. Each wing has a multifunctional room where detainees have access to television, recreation, religious activities and a library. They also have the opportunity to prepare their own meals. The SDKK personnel have undergone training to deal with people held in immigration detention. In 2021, action was taken to improve the detention centre. This included the Dutch Custodial Institutions Agency (DJI) advising and training personnel to perfect their skills so that they can perform their duties properly. Curaçao is currently working on legislative proposals, which are also a priority.

4. Safeguards

170. 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. (paragraph 286)

One of the assumptions in the plans to upgrade the Immigration Detention Centre is that detainees only stay here for a short time. However, achieving the expulsion of those detained within a short period of time poses a challenge given Curaçao’s dependence on the Venezuelan authorities.

The government plans to distribute leaflets with detention centre rules, in languages such as Spanish, to everyone at the Detention Centre. These rules will lay down the applicable rights and obligations, including detainees’ right to have access to a lawyer. The written rules will also be discussed verbally with those held in immigration detention, enabling detainees to receive answers to any questions they may have.

At the moment, these rights and obligations are only conveyed to detainees verbally.

171. 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. (paragraph 287)

For the new Immigration Reception and Detention Centre (VODC), Curaçao has drawn up detention centre rules in both Spanish and English. These rules will be placed in the VODC library. Curaçao has also drawn up a brief summary of the rules, to be handed out to all those placed in immigration detention. This is one of the agreements laid down in the Project Implementation Plan (PIP) for the VODC.

172. 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. (paragraph 288)

All persons held in immigration detention have the right to receive legal assistance. Although the government does not have a legal obligation to cover the costs involved, efforts are underway to ensure that those concerned can receive legal aid through the legal advice centre Tienda di Lei.

5. Other issues

173. 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. (paragraph 289)

All detainees – including those in immigration detention – have access to medical care. All new arrivals undergo a medical screening (this does not always take place within 24 hours, but an effort is made to conduct screening within a reasonably short time). Curaçao has drawn up a medical protocol, which is among the key aspects mentioned in the Project Implementation Plan (PIP) for the Immigration Reception and Detention Centre (VODC).

174. 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. (paragraph 290)

The SDKK medical service will look into acquiring rip-proof gowns. The revision of the suicide/self-harm protocol will require additional healthcare staff if the government is to provide treatment and care. Curaçao cannot provide this in the short term but the government will do its utmost to achieve it within a reasonable time.

For the time being, detainees who are at risk of self-harm or suicide will receive support and counselling from medical professionals, who will decide whether transfer to a specialist facility is necessary.

175. The principles set out in paragraph 274 above should also be implemented in the immigration detention context. (paragraph 292)

SDKK staff will be instructed in the new procedures.

176. 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. (paragraph 293)

Persons held in immigration detention are able to make phone calls. They are also able to communicate online with third parties such as relatives free of charge.

C. Centre for Detention and Correction Curaçao (SDKK)

1. Preliminary remarks

177. 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. (paragraph 296)

The Advisory Board has made recommendations and it appears that some changes must be made before the proposed amended national ordinance can be approved. Most of these changes relate to detainees’ legal status and their treatment and conditions.

178. 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. (paragraph 297)

The Court of Justice and the Public Prosecutor are responsible for ensuring that the respective judgments/orders contained therein are available on time. The SDKK management will follow up with the Court of Justice and the Ministry of Justice to devise a suitable solution.

2. Ill-treatment and use of force

179. 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. (paragraph 298)

Interventions are supervised by a senior manager (head of security). Before each action by the special intervention team (IBT), members are reminded of matters such as avoiding the use of excessive force.

There are plans to give IBT personnel more frequent training. The training currently given to IBT personnel focuses in part on the instructions on the use of force. The course sends a clear message that when dealing with detainees, only necessary and proportionate force must be used. Furthermore, after each cell search or other intervention, an evaluation is conducted: any use of force is discussed and a report prepared.

180. 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. (paragraph 299)

Members of the special intervention team (IBT) are firmly reminded of their obligation to complete use of force incident reports after any use of force or special means. The rule is that a report is drawn up after each instance of the use of force. However, staff have not produced such reports systematically. Starting in January 2023, management will be monitoring compliance with this rule. In addition, a register is being used in which details of the circumstances of the case, the reason for resorting to force or special means, the type of means used, and any injuries sustained by staff or inmates are registered. Senior staff/the management team (MT) will monitor the completeness of this registration and place it on the agenda of MT meetings (held once a month or more frequently if needed).

181. 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. (paragraph 300)

SDKK's management team has stated in its policy documents and official letters to the public authorities that sufficient suitable personnel are needed in order to adequately perform its core tasks and also to prevent aggression between detainees by identifying problems in a timely manner.

To have more prison guards present in the blocks, SDKK introduced a different schedule as of March 2023. Prison guards will work only the day shifts, with the late and night shifts being covered by security guards. As noted in the CPT report, SDKK has made a considerable effort to prevent instances of violence between detainees. It will continue those efforts, by means such as accommodating incompatible prisoners in different parts of SDKK and limiting interaction between prisoners from different blocks.

3. Conditions of detention

182. 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. (paragraph 301)

The shortcomings described (in particular the poor state of maintenance, insufficient lighting, leaking toilets and contamination caused by pests) are being tackled in a continuous process of improvement. In 2022, the pest control company was brought in on four occasions. In 2022 companies were also occasionally called in for extra cleaning or to deal with an acute situation (e.g. mould). Such problems occur in SDKK's kitchen and its surroundings far more frequently than in the rest of the complex.

The lighting problem is hard to solve partly because of insufficient financial resources and partly because the system is outdated. Alternatives were sought in 2022. For instance, talks were held with Aqualetra Utility on 2 December 2022, and these will be continued in 2023 with a view to improving the lighting system. The institution's technical department must draw up a maintenance plan for both water and electricity.

183. The CPT would like to receive confirmation that the EBA unit has now been taken out of service. (paragraph 303)

The ground floor has not been in use since the CPT's visit. Since November 2022, block 1 has no longer been used for immigration detention. Block 1 has been designated to accommodate the detainees from block 2. The long-anticipated renovation of block 2 will start this year and the current occupants of block 2 will have to be transferred to other parts of the institution.

184. 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. (paragraph 304)

The cell of the prisoner with a physical disability has been adjusted to meet the needs of detainees who are physically challenged. The planned joining of two cells has not yet started.

185. The CPT would like to receive confirmation that the new kitchen at SDKK is now in service. (paragraph 305)

The new kitchen is not yet in service. It will be in service by July 2023. The detainees in SDKK still receive a cooked meal delivered by the catering company. In 2022, complaints were handled in the following way. First, it was ascertained whether the complaint was well-founded. If not, either the chef himself cooked an alternative meal or food was ordered from outside. In the event of well-founded complaints, the head of facility services contacted the catering company. In practice, this meant for example that a replacement meal would be supplied on the same day.

The contract with the catering company expires the end of June 2023. On the instructions of the Minister of Justice, SDKK has set up a kitchen working group to ensure that the kitchen is fully operational again as soon as possible. Preparations are currently underway in the kitchen; SDKK issues progress reports to the Ministry every two weeks. The tendering process will take place in consultation with the Shared Services Organization (SSO).

186. 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. (paragraph 306)

SDKK's focus is on resocialising detainees in preparation for a successful return to society. Several projects and activities are being conducted to provide a comprehensive range of out-of-cell activities.

187. 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. (paragraph 307)

The plans has been approved. This plan includes the construction of multifunctional rooms in blocks 7A and 7B and block 3 (for young adults). This work is still in preparation phase and is planned to start the second half of 2023. Additionally, the minister of justice has requested a special learning skill project for adults between 18 and 30 years old which will start the first of August 2023.

188. 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. (paragraph 308)

SDKK has a specific block for young adults (18+) and will continue to focus on a programme designed specifically for this target group. As part of the 'Learning Inside Out' project, multifunctional rooms will be built in block 3 and block 7, in which a large number of young adults are detained. The project includes several educational modules for this group.

There are no minors in detention at SDKK.

189. The recommendation set out in paragraph 301 equally applies to Block 10 accommodating female prisoners. (paragraph 309)

The problems listed in the women's block have been solved. The maintenance department has replaced all toilets and work has been done to improve the lighting. Pest control has been carried out throughout the institution and extra pest repellents have been installed.

190. 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. (paragraph 310)

Steps are being taken to further develop the programme of activities for female prisoners. In 2023, as part of the project 'Learning Inside Out' some modules will be specifically aimed at female prisoners. The non-profit group Passionistas will also continue their activities (coaching sessions, pedicures, manicures) in the women's wing. In 2023, the gym located in the unit for female detainees at SDKK will be put back into service.

4. Healthcare services

191. 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. (paragraph 312)

SDKK's management team has stated in its policy documents and official letters to the public authorities that sufficient suitable personnel are needed in order to adequately perform its core tasks. Training is planned for in-house first aid and emergency response teams. First aid training is already given periodically to a select group of personnel. For the emergency response team to be fully functional, an increase in the budget will be required. There are plans to recruit a full-time psychologist to provide psychiatric and psychological support to detainees. The process of hiring professionals in the law enforcement agencies has already started. In the meantime, SDKK is hiring an external company to provide psychological and psychiatric services to detainees.

192. 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. (paragraph 313)

SDKK will take steps towards ensuring that all newly admitted detainees undergo medical screening as well as improving the reporting/recording of any observed injuries. In addition, in response to this

recommendation, steps are being taken to recruit more medical personnel to conduct these activities properly.

193. 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). (paragraph 314)

Urine samples are not tested for administrative purposes on a regular basis. However, SDKK will explore the possibility of transferring this task from healthcare staff to guards. It will also analyse the risk impact on the organisation and study what would have to be done if SDKK were to decide to allocate this task to guards.

194. The Committee would like to receive updated information on the plans to address the situation of persons subjected to a TBS order in Curaçao. (paragraph 315)

Detainees who are subject to a hospital order (TBS) are currently held in the forensic observation unit (FOBA). They receive specialist treatment from FOBA staff, including psychiatric support, with extra safety and security arrangements in place. In addition, there is now a greater focus on resocialisation activities for those subject to a TBS order, especially those in the final phase of their sentence. Efforts are also underway to improve the TBS process, such as hiring more personnel, adding to training possibilities and upgrading infrastructure. The Judicial Four-Party Consultation (JVO) has set up a working group to evaluate these issues and to present a feasible plan for the Dutch Caribbean. It should nonetheless be added that such changes cannot be achieved without increased funding.

5. FOBA

195. 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. (paragraph 319)

Curaçao recently produced an overview of all the critical functions within its law enforcement bodies. Plans do exist to fill these critical positions, but Curaçao still faces challenges in its public finances, which are delaying the process of implementation.

Medication is delivered to each block in sealed packages – each one for an individual patient and a specific day. Guards are not allowed to open the packages: they must hand them over sealed. However, the authorities will look into providing a special course for the personnel of the forensic observation unit (FOBA) on the handling of medication.

196. The CPT recommends that the Curaçao authorities take urgent steps to ensure that the prisoner concerned is transferred to a suitable therapeutic environment. (paragraph 320)

According to SDDK's management, this prisoner's condition has not improved since SDKK lacks suitable accommodation for him. In consultation with the psychiatrist, the options for transferring him to other treatment facilities within the Kingdom of the Netherlands are being explored.

197. 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. (paragraph 321)

The rip-proof gown shown to the CPT delegation is no longer in use. It has been replaced with a gown that is of adequate length.

The revision of the suicide/self-harm protocol will require additional healthcare staff if the government is to provide treatment and care. SDKK cannot provide this in the short term but the intention is to comply with this recommendation within a reasonable time frame. If necessary, detainees who are deemed to be a danger to themselves will be placed elsewhere – that is, in a psychiatric facility – to receive specialist care.

198. The CPT reiterates its recommendation the Curaçao authorities take the necessary steps to ensure that chemical restraint is never administered in a prison setting. (paragraph 322)

Constant supervision by medical staff following a forced injection (chemical restraint) is not possible at this time. However, this supervision is undertaken by forensic guards and a psychiatrist is available by phone who can reach the prison in a relatively short time. Once staffing levels are adequate, the forensic observation unit (FOBA) will be a suitable medical setting in which a forced injection could be administered.

6. Other issues

199. 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. (paragraph 324)

The training ('twinning') started on Bonaire with 22 prison guards from blocks 7 and 8. In view of the

complexity of this subject, it is not yet clear which critical functions will be filled by each organisation. In the case of SDKK, security personnel and medical staff are both high priorities to ensure that the institution – including the Immigration Reception and Detention Centre (VODC) – is run in a responsible fashion.

200. 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. (paragraph 325)

Prisoners are not routinely subjected to strip searches. Personnel are constantly reminded of this by senior managers. The practice of instructing detainees to remove all their clothes at the same time is not familiar to SDKK management. However, personnel will be reminded that these practices are forbidden.

201. The CPT recommends that the Curaçao authorities put an end to the carrying of firearms by all staff inside detention areas of SDKK. (paragraph 326)

It is no longer permissible for all staff to carry firearms inside the detention areas of SDKK from 07.00 until 19.00. Staff carry firearms only from 19.00 to 07.00, during which period the detainees are locked in. This policy has been adopted to ensure that no one – including the intervention team and management team members – enters the detention section with a firearm.

202. 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. (paragraph 327)

Safety issues relating to infrastructure and the difficulty of classifying detainees in an adequate fashion mean that it is still necessary at this time for custodial officers to be equipped with pepper spray, handcuffs and batons. SDKK is moving towards a more motivational mode of interaction with inmates, but for this to be implemented systematically, improvements need to be accomplished in several areas. The personnel shortage must be resolved and the bigger blocks must be subdivided to enable personnel to work safely without their basic safety equipment (pepper spray, batons and handcuffs). SDKK would like to reach the point at which this will become possible.

203. 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. (paragraph 329)

As from 1 April 2023, disciplinary punishment will not include a total prohibition of the detainee's contact with their family. Restrictions will only be imposed on contact with the family as a form of punishment in cases where the offence relates to such contact.

204. 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. (paragraph 330)

The infrastructure (a visiting room with limited seating) combined with the personnel shortage makes it impossible to increase the visiting entitlement to at least one hour a week at the present time. The SDDK will continue to look for ways in which visiting entitlements can be expanded.

The pay phones need to be replaced and the costs involved are being calculated. For the time being, some blocks have introduced a temporary solution (the use of telephone cards in Avaya phones installed in the blocks). Avaya phones are the regular telephones used by the prison administration. Not enough of these devices are in stock at present; they will have to be ordered.

SINT MAARTEN

A. Police establishments

1. Preliminary remarks

205. 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 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). (paragraph 333)

Status of the Code of Criminal Procedure

The adoption and entry into force of the new Code of Criminal Procedure is of great importance to the Minister of Justice. The Minister therefore requested parliament on 18 May 2022 to provide an update on the status of this legislation. On 22 June 2022 the Minister received a response from the president of parliament stating that the Committee of Justice of Parliament was considering some of the recommendations in the analysis, and would determine how to proceed with any amendments to the draft Code of Criminal Procedure that the members deem necessary. On 1 December 2022 the Minister requested another update and expressed her concerns that no progress had been made on the draft Code. On 22 February 2023 the Committee of Justice informed the Minister that the review by parliament had almost been completed and that the Minister would receive proposed amendments to the draft legislation.

Changes expected to come into force with new legislation

Below is an overview of the most relevant changes in the new Code of Criminal Procedure.

The consequences of the *Salduz* judgment handed down by the European Court of Human Rights have been incorporated in the draft of the new Code of Criminal Procedure. Specifically, these are the possibility to consult counsel before the first interview (usually conducted by the police) and the right of counsel to be present at police interviews (art. 48-48b). In future all police interviews with suspects of crimes for which pre-trial detention can be imposed must be recorded (art. 186). As a result, counsel will be assigned to the suspect slightly earlier in the process (art. 62).

Furthermore, the maximum duration of police custody will be two times three days instead of two days and eight days as is currently the case (art. 87). The legal position of persons in custody at police stations is being strengthened.

The provisions on DNA testing have been revised. Both the public prosecutor and the examining magistrate will be able to order DNA testing of found objects (art. 79), but DNA testing of suspects can only be ordered through the examining magistrate (art. 235a ff.). The possibility of detaining persons

for the purposes of identification is being introduced (art. 80) and the existing six-hour time limit is being extended to nine hours, due to the introduction of the right to consult counsel.

The arrangements for pre-trial detention (art. 92 ff.) are also being adjusted somewhat. The time limit for remand in custody (*bewaring*) will be 14 days (art. 93), instead of the current 16 days (two times eight days). The grounds for pre-trial detention and the cases in which it can be imposed will be limited in order to reduce the application of pre-trial detention (art. 100 and 100a).

Finally, article 186, paragraph 3 sets out the obligation for interviews by police officers in more serious cases to be recorded using audio equipment and, if possible, video equipment. The role of the examining magistrate is being changed from a more active role to a more judicial and somewhat supervisory and hands-off role. The preliminary judicial investigation as such is being abolished, but as long as the trial has not started in substance, either the public prosecutor or the suspect will be able to ask the examining magistrate to perform certain investigative activities (art. 222 ff.).

2. Ill-treatment

206. 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. (paragraph 334)

The Sint Maarten Police Force (KPSM) has protocols in place regarding the stopping-and-searching of suspects. Of course, a suspect's rights must not be violated. The Internal Affairs Bureau is notified directly if there are complaints regarding the treatment of suspects and conducts an internal investigation of any complaints submitted. In addition, the Ministry of Justice has established an independent complaints committee to deal with complaints about the conduct of law enforcement officers. This committee has an advisory role towards the Minister. Appropriate disciplinary action is taken when complaints are upheld.

3. Safeguards against ill-treatment

207. 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. (paragraph 337)

At the suspect's arraignment before the assistant public prosecutor, the procedure is explained to the suspect. The suspect also receives a notice of rights form in a language they understand. The suspect signs the form and indicates whether or not they wish counsel to be notified, who will then be contacted if desired.

208. 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. (paragraph 338)

The Sint Maarten law enforcement authorities ensure that all detainees are given the opportunity to inform a third person about their situation as soon as possible. In the case of minors, the parents and Court of Guardianship are informed. This is also stated on the notice of rights form signed by the suspect. The detained person is informed when contact was successfully made.

209. 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 of their deprivation of liberty, including during any police interview. 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. (paragraph 339)

The current Code of Criminal Procedure needs to be amended in this regard. At present it provides that the suspect has the right to be assisted by one or more counsel either chosen by or assigned to the suspect. Article 62 of the Code of Criminal Procedure provides that counsel must be assigned to a suspect immediately following the order for remand in police custody. Finally, article 48 provides that if a suspect requests the assistance of counsel before being interviewed by an investigating officer, the interview cannot commence until counsel has provided this assistance, unless the investigation cannot be delayed or it would be unreasonable to have to wait for counsel to arrive.

In the new Code of Criminal Procedure, which is currently awaiting further discussion by parliament, these provisions have been amended in line with the *Salduz* judgment handed down by the European Court of Human Rights. As a result, the new text provides that the first interview cannot commence until the suspect has had an opportunity to consult their counsel, unless the investigation cannot be delayed or it would be unreasonable to have to wait for counsel to arrive. The new text also states that counsel is authorised to be present while the suspect is interviewed by an investigating officer. Until this new legislation enters into force, suspects will, as far as possible, be treated in line with the revised text, having regard to the suspect's rights. The Minister of Justice will bring the above points to the attention of the Sint Maarten Police Force.

Regarding the CPT's recommendation to ensure that *ex officio* counsel perform their functions diligently, it is relevant to state that the Ministry of Justice is in the final stages of establishing a Committee on Legal Assistance in Criminal Cases. This Committee is to have an important role in ensuring that the legal assistance provided by *ex officio* counsel is of a high standard and that *ex officio* counsel are appointed in a well-structured and efficient manner.

210. 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. (paragraph 340)

If a suspect arrives at the police station injured, an ambulance is called. If a person in police custody expresses the wish to see a medical doctor, this is always arranged without undue delay.

Persons in custody are also notified of their right of access to a medical doctor by means of the notice of rights form.

211. 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. (paragraph 341)

It is already current practice that a valid warrant, providing the legal basis for custody, is kept in the custody record of each detainee. For all suspects on whom pre-trial detention is imposed, the warrant providing the legal basis for custody is delivered to them by the authority ordering the custody (either the public prosecutor or the assisting police officer). If the examining magistrate has ordered the extension of custody, the warrant is delivered to the suspect by the bailiff or police officer. A copy of the valid warrant is kept in the detainee's file.

In addition, the police detention centre where suspects are detained has records of the custody of each detainee in its charge. The government has never experienced or received any information regarding the absence of warrants providing the legal basis for custody. Nor have any complaints been received regarding a failure to hand over the valid warrants providing the legal basis for custody to the detainee. All such warrants are served on the suspect by the bailiff or the police, as the law requires.

212. 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. (paragraph 342)

The investigation file contains all these reports and forms signed by the detainee.

4. Conditions of detention

213. 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 m² 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;*
- 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. (paragraph 350)

The government acknowledges the recommendation that persons should preferably not be detained at Philipsburg Police Station for more than three days and that their stay should not exceed 10 days.

Following the European Court of Human Rights judgment in the case of *Corallo vs. the Netherlands*, a policy was established by the Public Prosecutor's Office not to detain any person in the facilities at Philipsburg Police Station for longer than 10 days. It should be noted, however, that in view of the ongoing pressure on detention capacity, the authorities are sometimes faced with difficult dilemmas. Sometimes it is inevitable that people have to be sent away from the remand centre due to insufficient capacity. This happens after careful consideration and consultation between the authorities involved.

In many cases, pre-trial detention at the remand centre at Philipsburg Police Station was suspended or terminated after 10 days. In a small number of cases, the duration of detention exceeded 10 days. In some instances, the detainee's representative submitted the situation for judicial review. The

judges then visited the facility in order to form an opinion on the conditions. In none of the cases did they find a violation of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, though in some cases an order was given to transfer the detainee to the regular remand centre in Point Blanche as soon as possible. One case was submitted to the European Court of Human Rights in December 2019, which indicated an interim measure. Consequently, the applicant was moved as quickly as possible to Point Blanche once a place was found, after which the interim measure was lifted.

Regarding the recommendation to improve conditions in the police cells, it must be stated that in 2022 a new and thorough assessment of the police cells was carried out. The aspects raised by the CPT are included in the list of improvements needed.

A discussion has been held with the Ministry of the Interior and Kingdom Relations of the Netherlands about the possibility of financing this work from the budget made available by the Ministry for improvements in the detention system for the year 2023.

In addition, the necessary follow-up steps will be taken to ensure that clean bedding and basic hygiene items are provided on a structural basis.

The care and treatment of persons with a mental disorder has the attention of the government. The Sint Maarten Police Force (KPSM) already has a protocol in place for the care and treatment of persons with a mental disorder who are committed to Philipsburg Police Station. This Holding Area Protocol specifies as follows.

Persons with a perceived mental disorder:

- A person with a perceived mental disorder is detained in the detention room (never arrested).
- A person with a perceived mental disorder may only be held in custody in anticipation of the arrival of a representative from the Mental Health Foundation (MHF).
- When a person with a perceived mental disorder is detained, the team leader immediately contacts the dispatch centre.
- The incident room acts in accordance with the National Psychiatric Hospital Joint Dispatch Centre (GMK LPZ) protocol and MHF work instruction in the event of nuisance behaviour.
- A report is made in police registration system ActPol of the time of contact with MHF and a report of findings is drawn up.

The GMK LPZ protocol notes the following about the involvement of MHF.

Support by MHF at the request of the police:

- The dispatch centre clearly passes on the report to MHF.
- After consultation between the dispatch centre and MHF, it will be decided whether MHF will take action.
- If the police patrol is on site, they will wait for MHF to arrive.
- If the police patrol receives another report with higher priority, the dispatch centre will inform MHF of this by telephone and clear agreements will be made about how to proceed.

Police support at the request of MHF:

- MHF discusses its expectations of police deployment.
- The dispatch centre indicates the scope for police deployment.
- MHF provides clear information about the individual and the risk.
- After proper consultation between the dispatch centre and MHF, it is decided whether the police will be deployed.
- Initially, the Community Police Officer (CPO) is sent to the scene. If necessary, or if no CPO is available, a police patrol can be sent instead or as well.

In both situations described above, the police officer acts to maintain the legal order and to provide assistance, in accordance with section 5 of the Police (Curacao, St Maarten and Bonaire, St Eustatius and Saba) Act (*Rijkswet politie van Curaçao, van Sint Maarten en van Bonaire, Sint Eustatius en Saba*) and article 125 of the Constitution of St Maarten (*Staatsregeling Sint Maarten*).

Furthermore, the government wishes to highlight that a working group has been set up at Kingdom level to address this matter. In addition, an inspection will be carried out by the Law Enforcement Council in St Maarten in 2023. The outcome of that inspection will be of great value for deciding on the specific appropriate and necessary steps to be taken for St Maarten in this regard.

5. Other issues

214. 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. (paragraph 351)

The Sint Maarten Police Force (KPSM) complies with the legal provisions with respect to body searches, whether for the purposes of security, investigation or being remanded in police custody. Strip searches can be conducted as part of a criminal investigation only by order of or with the consent of the public prosecutor or examining magistrate.

If there are serious objections against a suspect in light of the offence for which they have been arrested (drug-related or weapon-related), the search prior to being remanded in police custody may, with the permission of the assistant public prosecutor, also include a strip search in the interests of the safety of the suspect and the investigating officers/remand centre staff.

This procedure has been laid down in a protocol on searches, which has been discussed with all police staff and made available digitally.

The government echoes the CPT's position that a strip search should not be conducted unless an individual risk assessment has concluded that it is absolutely necessary and proportionate in light of a concrete security need. This assessment should consider alternative monitoring measures that would preclude the need for a strip search. Law enforcement officers are instructed to seek out and employ alternative methods for conducting searches that are not inherently humiliating and, if a strip search is nonetheless deemed necessary in a particular instance, the detainee should be asked to remove their upper clothes and lower clothes in two separate steps to avoid total nudity.

B. Simpson Bay Immigration Detention Facility

1. Preliminary remarks
2. Conditions of detention

215. 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. The above-identified deficiencies should be addressed in the context of the refurbishment. (paragraph 355)

This recommendation will be taken into consideration when Simpson Bay Immigration Detention Facility is refurbished as part of the action plan to strengthen border controls. Funding has been made available by the Netherlands for the implementation of the action plan.

An assessment will be made to the best practices of immigration detention facilities. The starting point is that the conditions of detention for irregular migrants should reflect the nature of their deprivation of liberty, with limited restrictions in place and a varied regime of activities. It is the intention to include possibilities of outdoor exercise throughout the day, family rooms, visit rooms, a prayer room, a library as well as a play area for children in the refurbishing of the Immigration detention facility.

216. 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. (paragraph 356)

This recommendation has been duly noted and will be included in the further development of Simpson Bay Immigration Detention Facility. This type of purposeful activities could include computer classes, language classes, arts and crafts, outdoor sport facilities and so-called "cultural kitchens".

3. Safeguards

217. *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. (paragraph 358)

The government acknowledges the recommendations made regarding the detention of foreign nationals and has noted the suggested amendments regarding a maximum time limit, the periodic review of continued detention by an independent authority and appeal having suspensive effect on the implementation of expulsion. However, to realise these suggested changes, national legislation will have to be amended. The need for and feasibility of these legislative amendments will be discussed internally.

Currently, there is no legal maximum time limit for the detention of foreign nationals who are subjected to an expulsion order.

In practice, foreign nationals who are subjected to an expulsion order are detained for as little time as possible. The detention of a foreign national pending the implementation of an expulsion order is only ordered when it is strictly necessary to ensure the departure of a person who poses a danger to public order or peace, national security or public morality, or if there is a well-founded fear that the person concerned will attempt to evade departure. Wherever possible, less impactful measures, such as a reporting duty, are used.

Regarding the CPT's comment about the desirability of foreign nationals receiving a written translation of decisions regarding their detention and expulsion in a language they understand, it is relevant to note that if necessary an interpreter is used when a foreign national is questioned.

Under current legislation, lodging an appeal does not automatically have suspensive effect on the implementation of the expulsion. However, in practice implementation is regularly suspended due to lawyers filing injunctions against expulsion orders.

218. *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. (paragraph 359)*

The recommendation on fully and effectively informing detainees of their rights and procedures has been duly noted. The Immigration and Border Protection Services makes use of interpreters to ensure information is conveyed to immigration detainees in a language they can understand.

219. 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. (paragraph 360)

The Free Legal Aid National Decree (*Landsbesluit Kosteloze Rechtskundige Bijstand*) and the Assignment of Counsel (Criminal Cases) National Decree (*Landsbesluit toevoeging in strafzaken*) form the legal basis for providing free legal aid to both residents of St Maarten and foreign non-residents who are not registered in St Maarten. Legal aid is provided in criminal and civil cases only. There is therefore currently no legal basis for providing free legal aid to immigration detainees. Immigration detainees are however informed of their right to a (paid) lawyer; if they request information about lawyers, a list is provided.

NGOs are given access to detainees and in some cases NGOs representing certain nationals of certain countries are proactively informed about the arrest of persons in certain categories (minors, pregnant individuals, individuals who require special care).

4. Other issues

220. The CPT recommends that systematic medical screening of all newly admitted persons, including for transmissible diseases, injuries, mental health issues and victimisation, be introduced. (paragraph 361)

The government supports this recommendation and will take the necessary steps to fully implement it.

In this regard it is relevant to state that when newly admitted persons are questioned/interviewed, they are asked whether they have any medical conditions that require medical intervention or special treatment and medication.

221. The CPT recommends that training be provided to all staff deployed to Simpson Bay Immigration Detention Facility, in light of the aforementioned remarks. (paragraph 362)

The government acknowledges this recommendation and echoes the need to have qualified and trained staff working for the Ministry of Justice. Matters relating to staff, including improving initial and continuous training, are a focus point for the Ministry of Justice in 2023. The training of staff at Simpson Bay Detention Facility will be included in the course programme for 2023. If necessary, the Netherlands will be asked to provide expert assistance for the purpose of carrying out this training.

222. 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. (paragraph 364)

The government shares the CPT's view that strip searches should not be carried out systematically and takes the view that this should remain an exception based on a risk assessment. Nevertheless, the

Ministry of Justice will ensure that immigration staff tasked with detention are instructed explicitly about this matter and the CPT's recommendation.

C. Point Blanche Prison

1. Preliminary remarks

223. 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. (paragraph 366)

The prison is currently in the process of implementing a prison administration system (DEMO). This will be followed by a testing phase. A new prison administration and data system will require the prison's computer hardware to be renewed. This is a project that will be worked on in 2023.

The prison depends on the Public Prosecutor's Office for the receipt of the final judgements. The Ministry of Justice will ensure that the undue delay in receiving final judgements and dates of release is resolved as soon as possible.

224. 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. (paragraph 367)

On 7 December 2022 agreements were signed for the first phase of St Maarten's new prison project. On behalf of the Government of St Maarten, Minister of Justice Anna E. Richardson signed a Letter of Agreement with the United Nations Office for Project Services (UNOPS) and on behalf of the Government of the Netherlands, State Secretary for Kingdom Relations Alexandra van Huffelen signed a Project Agreement with UNOPS for phase one of the project. Phase one began in February 2023 and is being fully funded by the Netherlands at a cost of €4 million.

Phase one of the project includes the following deliverables: (i) the design and preparation of procurement of transitional detention facilities for urgent accommodation of all prisoners and detainees; (ii) the design and preparation of procurement for long-term humane and resilient accommodation for the prisoners and detainees at Point Blanche Prison. Based on the intermediate and final results of phase one, discussions between the parties will commence on the start of phase two, which concerns the construction of the prison building. Information on the expected location, capacity and layout will follow from the execution of phase one of the project.

2. Ill-treatment and use of force

225. 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. (paragraph 369)

The prison utilises a system that registers uses of force and special means. Going forward, the prison will ensure that the entries are diligently maintained.

The prison registers uses of force and special means in its administration. Going forward, the prison will ensure that entries are diligently maintained by clearly assigning responsibilities and accountability which will include regular checks.

226. 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. (paragraph 372)

One of the methods used to deal with inter-prisoner violence is to identify potential gang members upon intake. The information gathered is used to avoid placing gang members together. There are also incentives in place (such as family day and special meals) to reward inmates for good behaviour. In addition, all prison guards are currently receiving a refresher course that consists of certified basic prison guard training, administered by the Dutch Custodial Institutions Agency (*Dienst Justitiële Inrichtingen*; DJI). The topics covered include self-defence, integrity, regulating aggressive situations and additional skills that will allow for safe inmate-guard relations.

3. Conditions of detention

227. 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. (paragraph 373)

Significant improvements have been made to the facility, such as repainting all inner walls, exercise yards and recreational rooms. Recreational rooms have been refurbished, creating a new music room, refurbished gym, barber shop, common area and more. In addition to funds earmarked in the national budget for repair work and maintenance, sufficient financial resources have also been made available by the Ministry of the Interior and Kingdom Relations of the Netherlands to support the prison's efforts to address the issues identified by the CPT.

228. 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. (paragraph 374)

This recommendation has been addressed. In December 2022 two new isolation/confinement cells with a separate exercise yard were built and fitted with new furniture. The old isolation cells have been refurbished and turned into four new cells to be used for inmates who cannot be held in the regular population.

229. 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. (paragraph 376)

Steps were taken in 2022 to improve the programme of daytime activities for inmates. Inmates now have access to a refurbished gym and improved sports activities, educational classes and work opportunities. The intention is to further expand these opportunities in 2023 by refurbishing the carpentry workshop.

Male prisoners are offered 1 hour of recreation or yard time (luchttijd) in the morning and 1 hour in the afternoon to engage in activities. General Education Development credential classes, in short GED classes, as well as sewing classes are offered. The gym is available and other sport activities can take place in the yard. Female prisoners can move out of their cells as they wish and have an own enclosed area within the prison facility that they can make use of for yard time.

230. 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. (paragraph 377)

This recommendation is supported. To further enhance the material conditions of female prisoners several initiatives are being implemented. Sewing machines have been acquired to work on textiles, a gardening activity has come into effect, and the potential for hydroponics as a means to cultivate vegetables is being explored.

231. 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. (paragraph 378)

This recommendation has been noted and will be reiterated to the partners engaged by the Ministry of Justice to build the prison. The Rule of Law Infrastructure project proposal – also known as the new prison project – already makes specific mention of a gender-based study that will be carried out by

the United Nations Office for Project Services (UNOPS) during the first phase of the project to ensure all the needs of female inmates are met.

232. The recommendation set out in paragraph 376 equally applies to female prisoners held at Point Blanche Prison. (paragraph 379)

This recommendation is acknowledged. The efforts to further develop a comprehensive program for female prisoners include initiatives such as the purchasing of sewing machines to work on garments, gardening, and exploring the potential to cultivate vegetables .

4. Healthcare services

233. 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. (paragraph 380)

Steps are being taken by the Ministry of Justice to strengthen the medical services in the country's detention centres. These steps include but are not limited to holding discussions with the current medical service providers and seeking collaboration with the Ministry of Public Health, Social Development and Labor (VSA) to increase the number of medical professionals present (whose competences must include the ability to provide first aid).

234. 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. (paragraph 381)

The efforts being made to improve medical services in the country's detention centres include that upon arrival at the Point Blanche Prison, new prisoners are medically screened by a general practitioner within 24 hours. Note is then taken of any injuries. In addition, the prison is currently drafting an action plan to acquire and implement a completely new prison administration system, which will include an improved recording of the screening process. This is the same prison administration system already used by the prison in Bonaire.

235. 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. (paragraph 383)

This recommendation is acknowledged. As such, going forward all parties will be informed that medical examinations of prisoners take place out of the vicinity of non-medical staff.

236. 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. (paragraph 384)

The prison will review its protocol for the use of handcuffs and ankle cuffs during the transfer of prisoners to external medical facilities and carefully consider how these security measures could be adjusted. It must be noted that at present all inmates at the prison are high-risk inmates, which poses an additional security concern.

237. 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. (paragraph 385)

Before inmates are transported to the location where the medical consultation is to take place (generally the hospital), nurses will travel ahead in order to ensure that all the necessary arrangements are in place to handle the inmate's arrival and ensure their efficient transfer to the medical professionals. A strong working relationship has been established between the prison's nurses and the medical professionals at the hospital, guaranteeing the proper communication of medical information to all parties involved.

It is also important to note that the current hospital has only one entrance and does not have a separate waiting area that inmates can use. This poses a security risk.

238. 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). (paragraph 386)

This recommendation is supported. Medical staff will be instructed to no longer be involved in the collection and testing of urine samples for administrative purposes.

239. 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. (paragraph 387)

These shortcomings will be addressed. Currently, medical care is a focus of attention for Point Blanche Prison. The doctor's office will be refurbished in 2023 with new or slightly-used equipment. Collaboration has been sought with St Maarten Medical Center, which is undergoing new construction and might be in a position to donate unused equipment. Secondly, the entire medical protocol will be revised in 2023.

240. 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. (paragraph 388)

Collaboration with the Ministry of Public Health, Social Development and Labor (VSA) will be sought to implement this recommendation.

Steps were also taken in the last quarter of 2022 to separate inmates who require extra care from the general prison population. An extra care unit is under construction. The next step will be to arrange the necessary therapeutic treatment for these inmates. This will be done in collaboration with the local mental health foundations.

241. 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. (paragraph 389)

The prison will engage in dialogue with mental health organisations to discuss how inmates can best be taken care of and what facility is adequately equipped to ensure the provision of proper care. The guiding principal for the use of chemical restraints should be that it always takes place under the prevalent legal and ethical considerations with respect for the patient's human rights and human dignity and that it is used as a last resort.

The treatment and care of persons with severe mental health issues is also a topic of discussion at Kingdom level and a joint solution is being discussed by the Dutch Caribbean countries and the Netherlands.

242. 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. (paragraph 390)

This recommendation is supported and is actively utilized within the organization. The prison will take measures to have clothing available that is designed to minimize the risk of self-harm.

243. 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. (paragraph 391)

The prison is in the process of drafting an action plan to implement a completely new prison administration system, which will include an improved screening process. This is the same prison administration system already used by the prison in Bonaire. The intention is to include gender-specific screening on admission.

244. 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. (paragraph 392)

The new approved list of job descriptions for the Ministry of Justice, which also includes the staffing table for the prison, is currently being finalised. Once it has been implemented, the number of staff will increase. This information will be shared with the CPT.

5. Other issues

245. 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. (paragraph 393)

During strip searches, prisoners are not requested to remove all their clothes at the same time but are asked to do so in two steps. Going forward, the prison will ensure that more detailed attention is paid to implementing this recommendation.

246. 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. (paragraph 395)

This recommendation is supported and is already applied. Family visits are not restricted as a disciplinary punishment unless the offence relates to such contact or the inmate is in isolation. In cases where such a punishment is applied, it is for a limited time only.

247. 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. (paragraph 396)

All inmates have a visiting entitlement of at least one hour per week. This is standard. The plexiglass has been removed and the visiting room refurbished. A children's area has been added to the visiting room to accommodate open visits with children and partners.

248. 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. (paragraph 397)

Currently inmates are given the opportunity to make phone calls upon request. This applies to all inmates.

The telephone landline was damaged when hurricane Irma hit in 2017 and its repair requires a substantial investment. The installation of a completely new telephone system will take place once a contract has been signed with UNOPS for the construction of a new prison. Until then, an interim solution has been tested using a Voice over Internet Protocol (VoIP) system. This will be rolled out in the second quarter of 2023.

Annexe A

PUBLIC PROSECUTION SERVICE
Board of Procurators General

INSTRUCTIONS ON THE AUDIO AND AUDIOVISUAL RECORDING OF INTERVIEWS WITH COMPLAINANTS, VICTIMS, WITNESSES AND SUSPECTS

From: Board of Procurators General
To: Heads of the parts of the Public Prosecution Service, Chief of Police,
Heads of the Special Investigative Services, Commander of the
Royal Military and Border Police
Registration number: 2021I001
Date of entry into force: 01-05-2021
Repealed: Instructions on the Audio and Video Recording of Interviews with
Complainants, Witnesses and Suspects
Relevant administrative rules: Instructions on Sex Offences (2016A004); Instructions on Human
Trafficking (2013A012); Instructions on Domestic Violence and
Child Abuse (2016A003); Instructions on the Disclosure of Criminal
Case Information for Purposes Not Related to the Administration of
Criminal Justice (2018A003); Instructions on the Police Data Act and
the Role of the Public Prosecutor (2018A004); Instructions on
Victims' Rights (2018A005)
Statutory provisions: -

SUMMARY

These instructions contains rules on making audio and audiovisual recordings of interviews with complainants (i.e. persons who have lodged criminal complaints), victims, witnesses and suspects.

1. INTRODUCTION

Audio and audiovisual recordings serve in the first place as a tool to ensure interviews can be reviewed. If an audio or audiovisual recording has been made of an interview, this makes it possible to check at a later stage of the criminal proceedings what exactly was said and happened during the interview. A recording can provide a clear picture of the way in which the interview was conducted, for instance the interview methods used or the intonation of the questions. This can contribute significantly to the quality of the interview, the quality of subsequent interviews, the quality of the investigation and – by extension – to the correct and complete exchange of information. It is also a key tool in helping to prevent secondary victimisation. It is in the interest of victims (and often also of complainants and witnesses) to limit the number of interviews and to avoid asking the same questions multiple times. Recording an interview can help achieve this.

Compared with an audio recording, an audiovisual recording provides more insight into the circumstances in which an interview took place. An audiovisual recording registers nuances (such as facial expressions, displays of emotion, and movements by the person being interviewed), making the information about the content and circumstances of the interview more complete, of higher quality and more accessible. The added value in comparison with an audio recording is particularly relevant in the case of interviews with complainants, victims, witnesses and suspects who are vulnerable.

Vulnerability in interview situations

Minors are by definition regarded as evidently vulnerable in an interview situation. In the case of adults, the assistant public prosecutor assesses whether this is the case.

Below is a non-exhaustive list of possible indications that a person is evidently vulnerable in an interview situation:

- an individual is unable or less able to function independently in a variety of everyday situations due to their limited intellectual capacities or limited social and emotional maturity, for example a person living in sheltered accommodation due to a mild intellectual disability;
- an individual struggles to understand questions, recall memories, oversee a situation or understand the context; these and other limitations in cognitive abilities (observation, memory, thought, language (both speaking and comprehension)), attention, concentration and executive functions (e.g. impulse control) can be caused by a disease (e.g. Parkinson's or Alzheimer's) or by brain damage (e.g. due to a brain haemorrhage);
- an individual's thoughts, feelings and/or behaviour are disrupted to such a degree by a psychiatric disorder that their ability to function in a social or professional environment or in other important areas of their life is seriously limited. Such limitations in functioning are not always recognised by the person in question, but may instead have been observed by those around them.

It follows that evident vulnerability in an interview situation can become apparent either from background information or during contact with the person in question. It is up to the assistant public prosecutor to assess this. If there is any doubt about an individual's vulnerability, they should be regarded as evidently vulnerable in an interview situation.

2. AUDIO RECORDING

In all investigations into minor and serious offences, an audio recording of interviews may be made.

Compulsory audio recording

Audio recordings **must be made** of all interview with complainants, victims, witnesses and suspects in connection with a minor or serious offence in the event that:

- a fatality has occurred;
- the offence carries a sentence of 12 years or more;
- the offence carries a sentence of less than 12 years and serious bodily injury has manifestly been inflicted;
- the offence is a sexual offence carrying a sentence of eight years or more or involves sexual

- abuse within a relationship of dependency;
 - the offence is a violent crime carrying a sentence of eight years or more.
- If an urgent need exists, the audio recording can be foregone following consultation with the public prosecutor, for instance where it is necessary to conduct an interview immediately after the offence being committed.

The requirement to make an audio recording does not apply to interviews aimed at establishing someone's identity, hearings when the suspect is brought before the assistant public prosecutor and interviews by the assistant public prosecutor on remand in police custody.

3. AUDIOVISUAL RECORDING

An audiovisual recording provides more insight than an audio recording into the circumstances in which an interview is conducted. An audiovisual recording shows non-verbal communication, making information about the content and circumstances of the interview more complete, of higher quality and more accessible. The added value in comparison with an audio recording is relevant in cases involving offences that resulted in a loss of life with a major impact on society in which perpetration cannot be unequivocally established and when interviewing minors and evidently vulnerable individuals.

Compulsory audiovisual recording

Investigations by the Large-Scale Investigation Teams (TGOs) relate to the intentional perpetration of serious offences, often involving one or more fatalities.

In principle an audiovisual recording is made of **all interviews with all suspects in connection with a TGO investigation (Team Grootchalige Opsporing – Major Investigation Team)**. If an urgent need exists, the audiovisual recording can be foregone following consultation with the public prosecutor, for instance where it is necessary to conduct an interview immediately after the offence being committed.

An audiovisual recording must also be made:

- a. of all interviews with complainants, victims, witnesses and suspects in which:
 - o the interviewer is assisted by a behavioural expert in carrying out the interview;
 - o an audio recording is compulsory and the interviewee is evidently vulnerable in an interview situation in the sense described above;
- b. if the complainant, victim or witness is interviewed by a behavioural expert.

The requirement to make an audiovisual recording does not apply to interviews aimed at establishing someone's identity, hearings when the suspect is brought before the assistant public prosecutor and interviews by the assistant public prosecutor on remand in police custody.

4. IMPLEMENTATION

Storage and retention periods

The law enforcement agency is responsible for the availability, capacity, organisation and integrity of the technical infrastructure and for proper storage and record-keeping with regard to recordings.

Both analogue or digital means may be used for audio and audiovisual recordings. Recordings must be stored in a secure location and protected against alteration. For digital recordings this means a hash value must be calculated. This hash value must be recorded in an evidence record, which in turn must be secured and saved in a secure location.

The retention periods set out in the Police Data Act apply to audio and visual recordings in the possession of a law enforcement agency. If the investigation led to prosecution, audio and video recordings must be deleted six months after final judgment has been handed down in the criminal proceedings (section 9, subsection 4 of the Police Data Act) and then destroyed after a further five years (section 14, subsection 1 of the Police Data Act). In other cases the recordings are kept until the limitation period for the offence in question has expired, unless the data controller concludes sooner – in consultation with the public prosecutor dealing with the case – that the recordings are no longer required for the purposes of the investigation. Audio and visual recordings that have been incorporated into a case file by the Public Prosecution Service are subject to the provisions of the Judicial Data and Criminal Case Information Act.

Access and disclosure

The defence has the right of access to the documents in the action. In principle, this does not include audio and audiovisual recordings. However, the principles of due process mean that the defence may not be denied access to audio and/or audiovisual recordings of an interview. In light of this, the defence can request submit a request to the public prosecutor for access to documents other than the documents in the action (including audio and audiovisual recordings), for the purposes of substantiating a request to have these recordings added to the documents in the action (article 34 of the Code of Criminal Procedure). The public prosecutor can deny such a request if access would be incompatible with one of the interests referred to in article 187d, paragraph 1 of the Code of Criminal Procedure. In the case of access by a suspect in pre-trial detention, for example, information is disclosed on the basis of a loan agreement.

A victim can request access from the public prosecutor to documents in the action that are relevant to him or her (article 51b of the Code of Criminal Procedure). A victim does not have the right of access to documents other than the documents in the action, such as audio and audiovisual recordings. A victim can, however, submit a request the public prosecutor for these to be added to the documents in the action. The public prosecutor can deny the victim access and refuse to add audio and/or audiovisual recordings of interviews if these are not documents in the action or if access would be incompatible with one of the interests referred to in article 187d, paragraph 1 of the Code of Criminal Procedure.

In order to deny the victim access, the public prosecutor must have written authorisation from the examining magistrate (articles 34, paragraph 4 and 51b, paragraph 4 of the Code of Criminal Procedure).

Only if an audio or audiovisual recording has been designated as a document in the action by the public prosecutor or the examining magistrate and if – briefly stated – there is no compelling interest limiting the disclosure of copies (article 32, paragraph 2 of the Code of Criminal Procedure),

can the Public Prosecution Service decide to disclose a copy of the recording in response to a request to this end from the defence or the victim.

Basic principles

The following principles apply in any case to the making of **audio and audiovisual recordings**:

- in all cases where an audio and/or video recording is made of an interview, the person being interviewed is informed of this at the start of the interview;
- if investigating officers and/or third parties (e.g. behavioural experts) will be listening to and/or observing the interview from another room, the person being interviewed is informed of this at the start of the interview;
- at the start of the interview, the date and time and the names of those present are stated;
- the recording begins before those involved enter the interview room and is stopped after they have left; this means that the person who starts the interview enters the room first and that the others do not enter until the recording device has been switched on;
- once it has been decided that an audio or audiovisual recording will be made of an interview with a complainant, victim, witness or suspect, all interviews with that person relating to the investigation in question will be recorded in the same way;
- an official report of every recorded interview is drawn up in accordance with article 152 of the Code of Criminal Procedure. The most important passages¹¹ are rendered as far as possible in the words of the person interviewed. This official report also describes the method used.

In the case of an **audiovisual recording**, all those present in the interview room must be visible in the recording.¹²

Interviews with **children under 12** are conducted in a child-friendly studio.

Interviews with **victims** are also subject to the rules relating to the identification of specific needs for protection of victims as referred to in article 51aa of the Code of Criminal Procedure in conjunction with article 10 of the Victims of Criminal Offences Decree.

TRANSITIONAL PROVISION

The administrative rules in these Instructions will have immediate effect from the date of their entry into force.

¹¹ Quotes from the interview should as far as possible be provided with a timestamp indicating the minute and second at which they can be found in the recording.

¹² Nevertheless, the law enforcement agency, in its capacity as the data controller, can decide when disclosing a copy of an audiovisual recording to render the faces of the reporting officers conducting the interview unrecognisable in order to protect their privacy.

Annexe B

Model Prison Rules (High-Security Wing/Unit) Order

Order of the Minister for Legal Protection of 7 December 2022, no. 4354686, establishing the model prison rules for the high-security unit.

The Minister for Legal Protection;

Having regard to section 5, subsection 1 of the Custodial Institutions Act;

Having regard to the opinion of the Council for the Administration of Criminal Justice and Protection of Juveniles of 4 November 2022, reference 4229807;

Orders:

Article 1

1. The governor of a high-security unit or wing adopts the prison rules for this unit or wing, in addition to the rules laid down by or pursuant to Act of Parliament and in accordance with the model included in the schedule and the instructions given therein. If prison rules have already been adopted for the high-security unit or wing, the governor will ensure that the instructions in the schedule are incorporated into the prison rules.
2. The governor will adopt the prison rules within two days of the entry into force of this Order.

Article 2

This Order enters into force on the day after the date of publication of the Government Gazette in which it appears.

Article 3

This Order may be cited as the Model Prison Rules (High-Security Unit/Wing) Order.

This Order will be published in the Government Gazette along with the explanatory notes and schedule.

The Minister for Legal Protection,

F.M. Weerwind

Schedule

Prison rules for the high-security unit or wing,

General supervision regime for prisoners placed in the high-security unit or wing under article 6,

paragraph 1 (c) or (d) of the Selection, Placement and Transfer (Prison Inmates) Order (*Regeling selectie, plaatsing en overplaatsing van gedetineerden*).

In order to prevent continued criminal behaviour in detention and actions that threaten the lives of others from within the high-security unit, the following supervision measures apply to prisoners who have been placed in the high-security unit or wing under article 6, paragraph 1 (c) or (d) of the Selection, Placement and Transfer (Prison Inmates) Order:

- The prisoner is permitted to conduct one or more phone calls during a 10-minute period once a week.
- The prisoner is only permitted to conduct phone calls with persons who are at a police station or custodial institution at the time of the call. After the persons to whom the prisoner wishes to speak have been screened, they are informed at which police station or institution the phone call will be made. Further rules will be laid down concerning calls to persons abroad.
- Each week there is a visiting hour. One visitor at a time is permitted during this visiting hour. Children aged under 14 visiting the prisoner must be accompanied by one adult. Up to two children under 14 are admitted together per visit. If the prisoner has more than six children under 18 a tailored arrangement may be made.
- The prisoner must state 48 hours before the phone call or visit in which of the languages listed in the prison rules he wishes to conduct the call or visit. The call or visit will be terminated if a different language to the one stated is used.

These measures were prompted by the motion of 6 July 2022 submitted by MP Ulysse Ellian, which calls on the government to introduce a stricter general supervision regime for prisoners placed in the high-security wing.¹³ This motion was approved. I informed the House of Representatives in my letter of 26 September 2022 that I would implement this motion as follows.¹⁴ Due to the increased danger to staff, and the governor in particular, the governor of Vught Custodial Institution has been instructed to incorporate into the prison rules of the high-security unit a stricter supervision regime that applies to all prisoners placed in the unit under (c) or (d). These measures are no longer imposed by the governor by means of individual decisions.

This allows maximum supervision to be implemented to prevent a prisoner from directing their criminal network from within the high-security unit. Sections 38 and 39 of the Custodial Institutions Act form the statutory basis for these supervision measures. The measures do not apply to contact with 'privileged persons' as referred to section 37, subsection 1 of the Custodial Institutions Act. If there is a specific reason to do so, other supervision measures may also be imposed separately, either in the prison rules or by decision of the governor of the high-security unit or wing.

These measures are closely linked to an amendment of the Selection, Placement and Transfer (Prison Inmates) Order in connection with changes to the rules on placing prisoners in the high-security unit and the reassessment of such placements and on the exclusion from regional placement of prisoners who are highly likely to abscond or who pose a serious threat to society. That

13) House of Representatives 2021-2022, 24 587, no. 844.

14) House of Representatives 2021-2022, 24 598, no. 374.

amendment of the Selection, Placement and Transfer (Prison Inmates) Order will be published in the same Government Gazette as the present Order. Detailed notes can be found in the explanatory notes on the Selection, Placement and Transfer (Prison Inmates) Order. Specifically, those notes address the question of how the opinion of the Council for the Administration of Criminal Justice and Protection of Juveniles of 4 November 2022, reference number 4229807, was taken into account with regard to the present Order.

The Minister for Legal Protection,
F.M. Weerwind

Annexe C

Order of the Minister for Legal Protection of 7 December 2022, no. 4354696, amending the Selection, Placement and Transfer (Prison Inmates) Order in connection with changes to the rules on placing prisoners in the high-security unit and the reassessment of such placements and on the exclusion from regional placement of prisoners who are highly likely to abscond or who pose a serious threat to society.

The Minister for Legal Protection,

Having regard to section 13, subsection 3 and section 15, subsection 5 of the Custodial Institutions Act;

Having regard to the opinion of the Council for the Administration of Criminal Justice and Protection of Juveniles of 4 November 2022, reference 4229807;

Orders:

ARTICLE I

The Selection, Placement and Transfer (Prison Inmates) Order is amended as follows:

A

Article 1 (c) is to read as follows:

- c. threat to society: the threat that the prisoner poses to society, in terms of social unrest, the general danger to public order or the safety of people and to order and safety within the institution;

B

Article 6 is amended as follows:

1. The number '1.' is placed before the text.
2. The opening words of the new paragraph 1 are to read as follows: 'In high-security units, prisoners can be placed who:'
3. The new paragraph 1 (c) is to read as follows:
 - c. pose an unacceptable threat to society in terms of a suspicion of a general threat to public order or the safety of persons, due to life-threatening or other very serious criminal behaviour continued during detention;
4. In the new paragraph 1, the following point is added after (c):
 - (d) pose an unacceptable threat to society in terms of a general threat to public order and the safety of persons due to the nature of the suspicion, the nature of the serious offence(s) of

which the prisoner has been convicted, the circumstances in which the serious offence(s) in question were or were allegedly committed, or the prisoner's personality.

3. After the new paragraph 1, the following paragraph is added:

2. A general threat as referred to in paragraph 1 (d) is at any rate assumed if the prisoner is suspected of or has been convicted of participating in an organisation whose aim is to commit serious offences which, according to the statutory definition, carry a term of imprisonment of 12 or more years and, based on the suspicion or conviction, the prisoner must be designated as a founder, leader or director, as referred to in article 140, paragraphs 3 and 4 of the Criminal Code, of such an organisation.

C

Article 24 is amended as follows:

1. At the end of paragraph 1 the following words are added: ' , unless the prisoner is highly likely to abscond or poses a serious threat to society.'

2. At the end of paragraph 2 the following sentence is added:

In the event that a prisoner is highly likely to abscond or poses a serious threat to society, the assignment officer may in light of this decide to transfer the prisoner at regular intervals.

D

Article 25 is amended as follows:

1. At the end of paragraph 2 the following sentence is added:

In the event that a prisoner is highly likely to abscond or poses a serious threat to society, the assignment officer may in light of this decide to transfer the prisoner at regular intervals.

2. Paragraph 8 is amended to read as follows:

8. Paragraph 7 does not apply to:

- a. persons under arrest;
- b. prisoners who are highly likely to abscond or pose a serious threat to society.

E

Article 26 is amended as follows:

1. Paragraph 3 is to read as follows:

3. Every 12 months the assignment officer makes a decision of their own motion regarding the extension of placement in the high-security unit. The first decision on extending or terminating placement in a high-security unit takes place 12 months after the person in question is placed in a high-security unit.

2. In paragraph 4 (a) 'five months' is replaced by '11 months'.

ARTICLE II

1. Within eight weeks after the entry into force of the present Order, the decisions to place prisoners in the high-security unit under the old article 6 as it read before the present Order entered into force will be reassessed.
2. The decisions referred to in paragraph 1 remain in force until this reassessment has been carried out.

ARTICLE III

This Order enters into force on the day after the date of publication of the Government Gazette in which it appears.

This Order and explanatory notes will be published in the Government Gazette.

The Minister for Legal Protection,

F.M. Weerwind

Annexe D



Annual overview for 2021: total number of complaints and grievances by sector and by issue
 Updated on 19 December 2022

2021	Transport and Support Services Department (DV&O)	Immigration detention	Youth detention	Forensic care	Prisons	Total
Activities (work)		2	1	60	932	995
Activities (miscellaneous)		15	64	21	857	957
Activities (open air)		9	88	66	663	826
Activities (sports and exercise)		1	25	7	399	432
Treatment			30	85	246	361
Conduct complaints		26	192	140	1,623	1,981
Freedom of movement within the institution			93	309	86	488
Compensation		1	9	12	85	107
Contact with outside world (phone calls)		10	45	86	830	971

Contact with outside world (visitors)		3	28	67	1,593	1,691
Contact with outside world (media)				3	31	34
Contact with outside world (post)		2	4	89	365	460
Checks		7	61	61	394	523
Daily programme, security and tailored supervision		1	21	1	832	855
Repatriation and Departure Service (DTV)		1			4	5
Disciplinary punishment		35	103	2	2,258	2,398
Compulsory treatment				84	67	151
Requirements for accommodation spaces		6	35	19	374	434
Violence		2	15	2	62	81
Information/procedure		39	98	66	1,616	1,819
Persistent Offenders Institution (intervention + treatment)					90	90
Unknown		7	7	27	460	501
Non-punitive measure		25	128	75	870	1,098
Custodial Institutions Act – strip search	1					1
Custodial Institutions Act – use of force	1					1
Custodial Institutions Act – restrictive means	15					15
Personal items		42	81	168	1,745	2,036
Regime		5	2	1	787	795
Current account/spending and clothing allowance		11	16	81	747	855
Rogatory request		3	50	53	1,692	1,798
Recovery of loss/damage			17	13	27	57
Selection/transfer (external)		2	1	16	406	425
Selection/transfer (internal)		8	13	24	362	407
Time-out			31		2	33
Supervision			1		11	12
Transportation		4		3	48	55
Leaving the institution		3	42	78	324	447
Care (miscellaneous)		8	57	88	1,366	1,519
Care (religious, spiritual)			8	14	207	229

Care (medical)		22	38	101	1,282	1,443
Care (personal)		10	75	92	583	760
Total	17	310	1,479	2,014	24,326	28,146

Annual overview for 2022: total number of complaints and grievances by sector and by issue

Updated on 19 December 2022

2022	Transport and Support Services Department (DV&O)	Immigration detention	Youth detention	Forensic care	Prisons	Total
Activities (work)		1	3	57	954	1,015
Activities (miscellaneous)		3	59	15	923	1,000
Activities (open air)		2	52	52	664	770
Activities (sports and exercise)			4	9	307	320
Treatment			11	60	126	197
Conduct treatment		12	128	118	1,355	1,613
Freedom of movement within the institution			58	394	66	518
Hospital Orders Framework Act – restrictive means	2					2
Compensation		1	4	2	51	58
Contact with outside world (phone calls)		2	20	70	781	873
Contact with outside world (visitors)		2	30	66	1,258	1,356
Contact with outside world (media)				4	20	24
Contact with outside world (post)		2	7	63	376	448
Checks		13	40	85	418	556
Daily programme, security and tailored supervision			6		1,260	1,266
Repatriation and Departure Service (DTV)		1			4	5
Disciplinary punishment		13	70	1	2,236	2,320
Compulsory treatment				71	90	161
Requirements for accommodation spaces			12	14	525	551

Violence		1	9	4	70	84
Information/procedure		36	87	128	1,849	2,100
Persistent Offenders Institution (intervention + treatment)					64	64
Unknown		8	9	52	301	370
Non-punitive measure		20	112	62	1,012	1,206
Custodial Institutions Act – strip search	1					1
Custodial Institutions Act – restrictive means	5					5
Personal items		7	56	159	1,369	1,591
Regime		3	1	4	491	499
Current account/spending and clothing allowance		4	17	57	583	661
Rogatory request		1	52	82	1,661	1,796
Recovery of loss/damage			4	5	20	29
Selection/transfer (external)			5	10	378	393
Selection/transfer (internal)		6	6	21	346	379
Time-out			29		3	32
Supervision				7	34	41
Transportation				1	42	43
Leaving the institution			28	40	413	481
Care (miscellaneous)		8	62	39	1,015	1,124
Care (religious, spiritual)			5	13	332	350
Care (medical)		11	27	84	1,229	1,351
Care (personal)		4	69	93	546	712
Total	8	161	1,082	1,942	23,172	26,365

Annexe E

Cell occupancy at Barber Police Station 2023

DATE	NO. OF DETAINEES
1-1-2023	1
2-1-2023	1