

Commentary on the sixth periodic report submitted by the Kingdom of the Netherlands on the implementation of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/NLD/Q/6)

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The Commentary on the sixth periodic report submitted by the Kingdom of the Netherlands on the implementation of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/NLD/Q/6) is an initiative of the Dutch section of the International Commission of Jurists (NJCM), with written contributions from the following NGO's and civil society actors:

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- Johannes Wier Stichting (Human Rights Organization for and on behalf of doctors, nurses and paramedics)
- Justitia et Pax
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- Nederlands Juristen Comité voor de Mensenrechten, NJCM (Dutch Section of the International Commission of Jurists)
- Netwerk VN- Vrouwenverdrag (Dutch CEDAW Network)
- Platform bescherming burgerrechten (Dutch Platform for the Protection of Civil Rights)
- Stichting FairWork
- Vereniging Asieladvocaten- en Juristen Nederland, VAJN (Foundation for asylum lawyers)
- Vluchtelingenwerk Nederland (Dutch Council for Refugees)

And with the support of:

- ACAT Nederland, Mensenrechtenvereniging van Christenen voor de Afschaffing van Martelen en de Doodstraf (Action of Christians for the Abolition of Torture and the Death Penalty)
- De Evenaar, Center for Transcultural Psychiatry, GGZ Drenthe
- International Rehabilitation Council for Torture Victims
- Reinier van Arkelgroep/ Board of Directors, Psychotraumacenter South Netherlands
- Stichting TIYE International

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## Overview of recommendations

The NGOs invite the Committee:

### Article 2 CAT

1. To call upon the Dutch government to guarantee in its legislation that a general right to the presence of a lawyer during police interrogation – including possibilities for active participation – is guaranteed. Access to a lawyer paid by the Legal Aid Board for persons who are not in a position to pay for a lawyer regarding “C category offences” should also be guaranteed.
2. To question the government about the fact that in practice no absolute time limit for the detention of foreign nationals exists. The NGOs state that in the Netherlands the duration of aliens’ detention is de facto limitless.
3. To question the Dutch government about the motivation of decisions on pre-trial detention and encourage the government to facilitate the use of alternatives to pre-trial detention, such as bail, house arrest, electronic surveillance or a duty to report at a police station on a regular basis.
4. To question the Dutch government about the effects of the draft bill on Counsel and Police interviews on the rights of juvenile and adolescent offenders.

### Article 3 CAT

- 6 (a) (b) (c) and (d). To question the Dutch government about the implications of the General Asylum Procedure for the need to have a thorough and adequate assessment of asylum applications.
- 6 (e). To question the Dutch government about the strict requirements with regard to supporting documentation for asylum requests
- 6 (f). To question the Dutch government about the marginal scrutiny test.
- 6 (g). To question the Dutch government about the role of the health check in the asylum procedure.
7. To question the Dutch government about the new bill on the abolishment of national protection grounds.  
  
To question the Dutch government about the possibility of voluntary return to central and southern Iraq and central and southern Somalia.
- 8 (c). To call upon the Dutch government to provide for an adequate and accurate registration of cases, so as to ensure that it can provide the requested disaggregate data and fulfil its reporting requirement.

### Article 10 CAT

11. To question the Dutch government about the lack of implementation of the Istanbul Protocol in the asylum determination process.
12. To question the Dutch government about the consequences of excluding presence of a lawyer at certain stages of the proceedings on the interrogation techniques used by the police.
- 13(a). To question the Dutch government on the use of aliens’ detention as an *ultimum remedium*, and to ask whether real alternatives for the whole group of aliens in detention are investigated.

To ask the government to set up a distinct set of rules for aliens' detention.

To question the government about the necessity of severe security measures such as the use of handcuffs, the placing of aliens in isolation cells and the full naked body search when an alien enters and re-enters the detention centre.

To question the government on its follow up to the report by the Inspection for the Implementation of Sanctions (*Inspectie voor de Sanctietoepassing*) of September 2010. Also in light of reports about the use of isolation cells as a disciplinary measure against non-violent protest the NGOs would welcome more systematic monitoring of the use of isolation measures in aliens detention.

- 13(c).** To question the Dutch government about the lack of access to medical care in aliens' detention.

To question the government about the continuity of medical care after release.

- 14(a).** To question the government about the exceptions to the detention of unaccompanied minors

To question the Dutch government on the so called "Family Locations", especially whether these locations are suitable for children.

- 14(b)** To question the Dutch government on the practice of using a protected reception facility.

## **Articles 12 and 13**

- 15.** To question the government about the situation regarding medical assistance in prisons and about the lack of space in penitentiary psychiatric centres and forensic psychiatric hospitals.

To question the government about the performance of strip searches and the use of isolation cells when detainees start a hunger strike.

- 17.** To call upon the government to provide for an adequate registration of data, taking into account privacy safeguards, so that reporting requirements can be ensured.

## **Article 16**

- 19.** To request the Dutch government to make reports concerning individual expulsion public, with due respect for personal matters and confidentiality of the identity of the person concerned.

- 20.** To question the Dutch government on the use of pre-trial detention and policy custody as a measure of last resort with respect to minors.

To request information from the Dutch government on the use of solitary confinement, group punishment and the use of mechanical means of restraint in Youth Custodial Institutions

- 21(a).** To question the Dutch government on the lack of coherence in the capacity and quality of care at the level of local communities and within the Centres for Youth and Families.

To question the Dutch government on how the same quality in in each community and Centre can be guaranteed

- 21(b).** To call upon the government to finalize prevention of violence against women and children policies, based on a thorough gender sensitive analysis of the causes of domestic and sexual violence.

To call upon the Dutch government to ensure victims of domestic violence receive sufficient protection, most notably free legal aid.

- 22 (a).** To call upon the Dutch government to (i) integrate relevant NGOs into the membership of the Human Trafficking Task Force, (ii) engage relevant NGOs in the identification process of victims of human trafficking, (iii) develop and implement methods to start a criminal investigation without a statement of the victim, and (iv) make use of extraterritorial criminal investigation competence when minor victims are involved in a trafficking-case.
- 22 (b).** To question the government (i) on the accessibility of the B9-protection for victims of human trafficking, (ii) on the measures it proposes to improve the situation, and (iii) ensure adequate shelter for minor foreign victims of trafficking.
- 23.** To encourage the Dutch government to (i) develop a National Action Plan to combat and prevent all forms of sexual exploitation of minors that fully takes into account the different forms of sexual exploitation of children, (ii) ensure that all employees in agencies that are in direct contact with (potential) minor victims of sexual exploitation are trained in recognizing the signs and handling minor victims, (iii) guarantee specialized and tailored care for all minor victims of sexual exploitation, (iv) invest in education and media campaigns on all forms of sexual exploitation, and (v) also apply the specialist joint approach introduced by police and public prosecution to improve the combat of child pornography and child sex tourism, to the combat of trafficking of human beings.
- 25 (a).** To call upon the government to (i) provide for an adequate and accurate registration of cases, and (ii) stimulate organizations with and without an obligation to report to report and register cases consistently.
- 25 (b).** To call upon the government to provide for adequate and compulsory training of professionals regarding the identification of child abuse.
- 25 (c).** To question the Dutch government on access to adequate services for recovery, counselling and other forms of reintegration of victims, with special attention to adequate funding of these services.
- 25 (d).** To call upon the Dutch government to keep allocating adequate funds for the effective implementation of the National Action Plan on Tackling Child Abuse in the Netherlands.

## **Other issues**

- 26.** To ask the Dutch government to clarify the position of the part of the Kingdom outside of Europe with respect to the application of OPCAT, and work together with the autonomous governments to accept being bound by the Protocol and thus establish NPMs tailored for the needs of the Islands, and allow for visits by the SPT.

To ask the Dutch government to modify national legislation to provide a proper legal basis for a number of the designated NPMs including the coordinating Inspectorate for Security and Justice and the Health care Inspectorate.

To ask the Dutch government to adopt measures to ensure the independence of those NPMs that officially resort under their respective ministries; this could take place by detaching them from those ministries and establishing them under the supervision of the newly established National Human Rights Institution or in close coordination with it, or in any case ensure that their budgets are separated and ring-fenced from the budgets of the ministries and that they are able to dispose of that budget according to the NPMs needs.

To ask the Dutch government to consult civil society organizations for improving the work and the independence of the Netherlands NPMs and to move, where possible, towards representation and participation of civil society in these bodies.

**General information on the national human rights situation, including new measures and developments relating to the implementation of the Convention for the European part of the Kingdom, Aruba and the Netherlands Antilles.**

47. To question the Dutch government on the use and further introduction of taser weapons, as the use of this weapon impacts the physical and mental state of targeted persons risking a violation of Articles 2 and 16 of the Convention.

To call upon the government to be inclusive in the consultation processes, especially when human rights are at stake.

To call upon the Dutch government to adopt appropriate mechanisms in cases of alleged torture or inhumane treatment to be able to conduct the necessary preliminary enquiry into the facts in order to determine whether a sufficient case has been made out for the purpose of extradition or prosecution.

## Introduction

This document contains a commentary on the sixth periodic report of the Netherlands on the implementation of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT/C/NLD/Q/6), which is scheduled for consideration during the May 2013 session. This report was created with input and effort on the part of a wide variety of organizations and individuals.<sup>1</sup> The NGOs aim to provide the Committee Against Torture (hereinafter: the Committee) with information in order to enable it to make its dialogue with the Dutch government as effective and useful as possible.

### *Subjects and structure*

The Netherlands is using the new optional reporting procedure adopted by the Committee at its 38<sup>th</sup> session and has thus submitted this report on the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter: the Convention or CAT) on the basis of the list of issues adopted by the Committee at its 43<sup>rd</sup> session (CAT/C/NLD/Q/6). The NGOs consider that it would be most logical and convenient for the Committee if in this document the same structure is followed. Therefore, in this document, concrete answers are formulated to the questions asked by the Committee in its list of issues. The result is that most of the questions on the European part of the Kingdom are addressed, but that some remain unanswered because expertise was missing or no input was given.

Since the NGOs are all based in the European part of the Kingdom, this document almost exclusively deals with the situation in the European part of the Kingdom.

The NGOs note that the Netherlands is obliged to provide information on Aruba, Curacao, Sint Maarten and the BES-islands. The Netherlands has not addressed the situation at the BES-islands in its sixth periodic report. The NGO's therefore invite the Committee to question the Dutch government on this omission.

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<sup>1</sup> They will hereinafter be referred to as 'the NGOs'.

<sup>2</sup> *Conceptwetsvoorstel Rechtsbijstand en Politieverhoor* (Draft Bill on Counsel and Police Interviews). Under the procedural rules set out by the Board of Procurators-General of 1 April 2010, following decisions of the Dutch Supreme Court and the European Court of Human Rights, suspects already could rely on legal aid prior to their first police interrogation. Under these procedural rules, a distinction was made in A-, B- and C- categories. In a C-category (in which case no pre-trial detention is allowed), a suspect is only allowed to call a lawyer prior to the

# European part of the Kingdom of the Netherlands

## Article 2

1. **In light of the Committee's previous concluding observations, please provide information on measures taken to ensure that persons in police custody benefit from an effective right of access to a lawyer, from the outset of their deprivation of liberty, particularly where video or audio recording of interrogations, which cannot in anyway substitute for the presence of legal counsel, are not in place (para. 6). Please provide information as to whether a person in police custody, immediately upon his arrest, is informed of his right to legal counsel and his right not to testify against himself. Furthermore, please provide information on steps taken to guarantee persons in police custody an effective right of access to an independent medical doctor, if possible, of their own choice, as well as the right to inform a relative from the outset of their detention.**

The Dutch government has prepared a draft bill to give arrested suspects the right to access to a lawyer before the first police interrogation.<sup>2</sup> However, the draft bill is restricted in the sense that the actual presence of a lawyer during police interrogation is only granted to minors and to persons accused of an offence carrying a prison sentence of six years or more – in which case the police may still refuse the request if legal assistance is 'contrary to the interests of the investigation'. These exceptions may impede an effective right of access to a lawyer. What is more, the draft bill does not specify the precise function of the lawyer during the interrogation: it does not explicitly allow the lawyer an active role during the interrogation. Without the possibility of active participation, access to a lawyer can hardly be considered 'practical and effective'.

At the moment, the Dutch government is awaiting the outcome of the negotiations on a Directive on access to a lawyer and a right to communicate upon arrest, before it will implement the Draft Bill on Counsel and Police Interviews.<sup>3</sup> The draft Directive explicitly refers to an actively participating lawyer during questioning and hearing and guarantees that access to a lawyer must be granted as soon as possible, and at the latest upon deprivation of liberty.<sup>4</sup> Depending on the outcome of the negotiations, the Dutch government will likely already be obliged to adapt the draft Bill to the European standards.

The NGOs also point at the fact that persons suspected of "C category offences" (the minor offences under the Criminal Code) are not entitled to legal assistance paid by the Legal Aid Board.<sup>5</sup>

*Recommendation: the NGOs invite the Committee to call upon the Dutch government to guarantee in its legislation that a general right to the presence of a lawyer during police interrogation – including possibilities for active participation – is guaranteed. Access to a lawyer paid by the Legal Aid Board for persons who are not in a position to pay for a lawyer regarding "C category offences" should also be guaranteed.*

<sup>2</sup> *Conceptwetsvoorstel Rechtsbijstand en Politieverhoor* (Draft Bill on Counsel and Police Interviews). Under the procedural rules set out by the Board of Procurators-General of 1 April 2010, following decisions of the Dutch Supreme Court and the European Court of Human Rights, suspects already could rely on legal aid prior to their first police interrogation. Under these procedural rules, a distinction was made in A-, B- and C- categories. In a C-category (in which case no pre-trial detention is allowed), a suspect is only allowed to call a lawyer prior to the interview.

<sup>3</sup> COM (2011) 326, published on 8 June 2011.

<sup>4</sup> Article 3 and 4 of the Proposal for a Directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest (COM (2011) 326).

<sup>5</sup> *Aanwijzing rechtsbijstand politieverhoor* (Instruction on legal assistance during police interrogations), 22 March 2011.

**2. Please describe steps taken to provide an absolute time limit for the detention of foreign nationals under alien legislation**

Around 8000 aliens are detained per year.<sup>6</sup> Although since January 2012, the Dutch government is bound by law by the maximum time limit of 18 months,<sup>7</sup> in reality there exists no exact time limit. In practice, even if aliens have been detained for 18 months (the average duration is six months) and are then released, they can be re-arrested shortly thereafter, starting a new detention period with a maximum of 18 months. This makes the duration of aliens' detention *de facto* limitless. An estimated 30% of undocumented migrants can for different reasons not be expelled from the Netherlands. While the Dutch authorities are aware of this fact, these people are repeatedly detained. The NGOs are deeply concerned about the hopeless situation these detainees have to live in. There should in law and in practice be an absolute time limit.<sup>8</sup>

*Recommendation: the NGOs invite the Committee to question the government about the fact that in practice no absolute time limit for the detention of foreign nationals exists.*

**3. Please indicate steps taken to reduce the length of pre-trial detention.**

In 2011 an average of 40% of the prison population consisted of pre-trial detainees. With this percentage the Netherlands is one of the highest-ranking states in Europe. Since 1995 the use of pre-trial detention in the Netherlands has doubled. The pre-trial detention is subjected to judicial control. A study in 2007 showed that an 'order of detention' was granted in 96% of the cases. In 3% of the cases an 'order of detention' was partially granted and only in 1% of the cases it was denied.<sup>9</sup> Dutch judges indicate that it is relatively easy to meet the grounds on which pre-trial detention is based. A special motivation duty is not required in this kind of judicial decisions. The result is that judges only use standard motivations for disregarding the arguments in favour of release of the suspect. The use of alternatives instead of pre-trial detention is not common within the Dutch system.

Current Dutch practice puts a strain on the presumption of innocence and the right to liberty and security of the person. Pre-trial detention is no longer used as an *ultimum remedium*. On the contrary, the new government agreed in its coalition agreement to facilitate the use of pre-trial detention even further.<sup>10</sup>

*Recommendation: the NGOs believe that pre-trial detention should be an ultimum remedium and therefore they invite the Committee to question the Dutch government about the motivation of decisions on pre-trial detention and encourage the government to facilitate the use of alternatives to pre-trial detention, such as bail, house arrest, electronic surveillance or a duty to report at a police station on a regular basis.*

**4. In light of the previous concluding observations of the Committee on the Rights of the Child, please describe steps taken to eliminate the possibility of trying children as adults (CRC/C/NLD/CO/3, paras. 77-78).**

The Netherlands is not planning to withdraw the reservation to Article 37 of the Convention on the Rights of the Child (hereinafter: CRC). Although statistics show that youth crime is decreasing, the policy concerning youth criminal law in the Netherlands is changing towards a more punitive approach towards minors. Due to the reservation on Article 37 CRC it is possible to try 16- and 17-year old

<sup>6</sup> Available at: <http://www.dji.nl/Organisatie/Feiten-en-cijfers> (last visited on 27 January 2013).

<sup>7</sup> Article 15(5) and (6) of the EU Returns Directive.

<sup>8</sup> See also the discussion under 13(a) with regard to the circumstances of aliens' detention, the strict regime and invasive methods such as the use of isolation cells and the 'broekstok', as well the absence of serious investigation into alternatives for aliens' detention.

<sup>9</sup> The study was conducted at the District Court of Rotterdam, Zwolle and the Court of Appeal at 's-Hertogenbosch. Y. Buruma & D. van Toor, *Minder beschikken, meer wikken, De invloed van twee wetten op de werklast van gerechten* (Less decreeing, more consideration, The influence of two laws on the workload of courts), Nijmegen: Wolf Legal Publishers 2009.

<sup>10</sup> *Regeerakkoord 'Bruggen slaan'* (Coalition agreement 'Building bridges'), 29 October 2012, section VIII Security and Justice.

children under adult law. In 2010 in total 63 minors were on trial under adult law and 49 of them were sentenced to a punishment under adult law.<sup>11</sup>

On 8 December 2012, the Dutch government sent a legislative proposal on criminal law for adolescent offenders to Parliament.<sup>12</sup> According to this proposal the adolescent law will be applicable to young people between 16 and 23 years old. It opens the possibility to put juvenile offenders and adult offenders together in detention contrary to international rules prohibiting this as it exposes minors to abuse of power. Due to the reservation to article 37 CRC, minors can already be placed in prisons for adults. According to the legislative proposal it will be practice as well to place young adults up to 22 years of age in youth custodial institutions. This means a 22-year young adult can be placed for a maximum of seven years in a youth custodial institution (the so-called "PIJ-measure" – the juvenile hospital; a youth sentence) among minors. Moreover, the proposed law provides for mandatory prison sentences – reducing the possibility to sentence a juvenile offender to community service – in cases of serious sexual and violent offences and repeat offenders. Besides that, the PIJ-measure is allowed to be transferred into a TBS-measure (a hospital order; a sentence for adults only) when the juvenile offender reaches the age of 18. The TBS-measure does not assess the criterion of helpfulness, which means that the measure imposed should be in the best interest of the development of the juvenile offender. Furthermore, the TBS-measure can be prolonged for life.

*Recommendation: the NGOs invite the Committee to question the Dutch government about the effects of this far-reaching bill on the rights of juvenile and adolescent offenders.*

### Article 3

- 6. Please elaborate on the status and content of the proposal for a new asylum procedure. In particular, please indicate if:**
- (a) This accelerated procedure for the review of asylum applications in eight days has or will become the standard procedure for all asylum procedures.**
  - (b) The procedure enables a thorough and adequate assessment of asylum applications by allowing a period of time adequate for the presentation of evidence.**
  - (c) Applications from all asylum-seekers, in particular children, undocumented applicants and other vulnerable groups are processed in such a way that those in need of international protection are not exposed to the risk of being subjected to torture. Has the State party established criteria to assess which cases have to be processed under the accelerated procedure?**
  - (d) All asylum-seekers have access to an interpreter as well as to adequate legal assistance and may be, as appropriate, assisted by the same lawyer from the preparation of the first interview to the end of the proceedings. (Answer to 6(a), (b), (c) and (d)).**

The General Asylum Procedure, which is considered by the Committee as the accelerated procedure, is in fact the standard procedure in the Netherlands. Although there are certain improvements, such as the 6-day period of rest and preparation for the asylum seeker, lawyers remain under considerable time pressure and do not have enough time to invest sufficiently in individual cases. The government gives the impression in its response that during the rest and preparation time the asylum seeker can prepare his case with his lawyer, but in practice, the asylum seeker only talks to his lawyer a day

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<sup>11</sup> *Kinderrechtenmonitor 2012* (Monitoring children rights), published by the Kinderombudsman, p. 62, 15 May 2012; available in Dutch on: <http://www.dekinderombudsman.nl/329/volwassenen/publicaties/kinderrechtenmonitor-2012/?id=153> (last visited on 8 March 2013).

<sup>12</sup> *Wetsvoorstel adolescentenstrafrecht* (Legislative proposal on criminal law for adolescent offenders); available in Dutch on: <http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2012/12/08/wetsvoorstel-adolescentenstrafrecht.html> (last visited on 8 February 2013).

before his first interview.<sup>13</sup> It is only at that moment and when the asylum seeker sees his lawyer that the asylum seeker hears about the importance of documentation. Lawyers state that this gives insufficient time to gather supporting evidence to substantiate the asylum claim.<sup>14</sup> During this rest and preparation period, the asylum seeker will, however, be informed of his rights and duties and of what he can expect throughout the asylum process by the Dutch Council for Refugees.

In the General Asylum Procedure all asylum seekers will have to undergo an asylum interview on day one and day three. The risk that asylum seekers with complex cases will not have enough time to substantiate their case is high. Also, there are no established criteria on the basis of which the immigration authorities will decide to deal with a case in the extended asylum procedure except for 'due care'. The NGOs find that this leaves the Immigration Authorities too much discretion in deciding whether an application can be dealt with in eight days.<sup>15</sup> This is even more pressing, because the judge cannot assess the case in full (see under 6(f)). The NGOs are concerned that the lack of time in the General Asylum Procedure puts pressure on the need for a thorough and adequate assessment of asylum applications in order to guarantee that asylum seekers will not be expelled to their country of origin when there is a real risk that they will be subjected to torture. Moreover, the NGOs find that requirements should be developed on when to decide whether the request should be assessed in an extended procedure.

Both in the general and the extended asylum procedures the best interests of the child and specific children's rights covered by the CRC are not sufficiently taken into account. The NGOs observe that the best interests of the child are also playing an increasingly large role in jurisprudence by the European Court of Human Rights.<sup>16</sup> A clear example of the lack of attention to children's rights by Dutch authorities was shown in the decision of the UN Human Rights Committee in the case of *X.H.L. v. the Dutch State*.<sup>17</sup> The Human Rights Committee stated that the decision of the Dutch government to return X.H.L. to China violated the International Covenant on Civil and Political Rights and grounded its finding on the right on the protection of children. The Dutch government replied that it "will not take any measures to give effect to the Committee's views".<sup>18</sup>

*Recommendation: The NGOs invite the Committee to question the Dutch government about the implications of the General Asylum Procedure for the need to have a thorough and adequate assessment of asylum applications.*

**(e) The procedures with regard to required supporting documentation for asylum are clarified.**

As mentioned above, asylum seekers will in most cases only be informed about the importance of documentation one day before the procedure begins. This means that the asylum seeker will have to arrange documents in most cases in eight days. It seems unrealistic to ask the applicant to arrange documents in such a brief period of time, especially taking into account the fact that 80% of all asylum seekers are undocumented. The pressure to provide documents is high, because in cases where an asylum seeker lacks proper documentation, the asylum account has to contain strong elements of positive and convincing persuasion. This means that the asylum seeker will have to be even more convincing in his statements than would be the case if the absence of documents cannot be attributed to the asylum seeker. Also, it is almost impossible, if documentation is not brought in the first proceedings, to bring in documents in a subsequent application. On the basis of Article 4:6 of the General Administrative Act (*Algemene wet bestuursrecht*) a subsequent application can be refused if no new facts or circumstances are raised. This criterion is interpreted very restrictively. If documents raising new facts or circumstances could have been and therefore *should* have been submitted before the communication of the first decision, the subsequent application will be rejected. The NGOs are

<sup>13</sup> A. Terlouw, 'Van 48 uur naar 8 dagen plus 1. Rechtshulp onder tijdsdruk.' ('From 48 hours to 8 days plus 1'), in: A. Terlouw & K. Zwaan (red.), *Tijd en asiel. 60 jaar Vluchtelingenverdrag (Time and asylum: 60 years Refugee Convention)*, *Serie Staat en Recht* deel 7 (Kluwer 2011), pp. 227-248.

<sup>14</sup> *Ibid.*

<sup>15</sup> This period may be extended to 14 days, but this is only by exception.

<sup>16</sup> See i.a. ECtHR 28 June 2011 (*Nunez/Norway*), appl. no. 55597/09, and ECtHR 14 February 2012 (*Antwi/Norway*), appl. no. 26940/10.

<sup>17</sup> See *X.H.L./the Dutch State*, 15 September 2011, CCPR/C/102/D/1564/2007.

<sup>18</sup> Response by the Government of the Netherlands to the Views of the Human Rights Committee in respect of Communication no. 1564/2007, paragraph 6.

concerned about this practice and fear that important documents, for example indicating that an applicant has been tortured, are left out because of formalistic reasons. The NGOs fear that this policy might lead to violation of Article 3 CAT in individual cases, especially with regard to asylum requests that are rejected in the General Asylum Procedure (because there is very little time to bring forward the asylum account and gather documents to support the account).

*Recommendation: The NGOs invite the Committee to question the Dutch government about the strict requirements with regard to supporting documentation for asylum requests*

**(f) The appeal procedures entail an adequate review of rejected applications and permit asylum-seekers to present facts and documentation which could not be made available, with reasonable diligence, at the time of the first submission.**

The Committee has been critical about the marginal scrutiny of rejected applications and the fact that the opportunity to submit additional documentation and information is restricted.<sup>19</sup> Indeed, marginal scrutiny means that the judge cannot decide on the facts, but can only decide whether, taking into account the stated facts, the Minister could reasonably have come to his decision. As a consequence, the judge cannot assess in full whether the asylum seeker runs a real risk of being subjected to torture when returned to his or her country of origin. In July 2010 the *ex nunc* test has been implemented for the lower courts, but the intensity of the judicial review has not changed effectively.<sup>20</sup> Moreover, the *ex nunc* test has not been extended to further appeal before the Council of State. As a consequence, supporting evidence which is introduced after the appeal stage will not be reviewed by the Council of State.

*Recommendation: The NGOs are of the opinion that the decision by the Minister should be fully reviewed in order to guarantee an adequate review of the rejected application. The NGOs invite the Committee to question the Dutch government about the marginal scrutiny test.*

**(g) Medical reports are taken into account as part of the asylum procedure.**

The NGOs are of the opinion that the health check in the asylum procedure prior to the interviews – because of its purpose, nature and (limited) extent – is an insufficient measure to effectively take the psychological and physical effects of torture and other cruel, inhuman or degrading treatment or punishment, including effects of sexual violence, into account. The purpose of the health check is limited to establishing whether an applicant can be interviewed or not or whether special measures are necessary for the interview. If during the health check serious psychological or physical medical problems are discovered, applicants are referred for medical treatment. The health check merely consists of a brief list of possible medical problems to be checked and does not comprise a physical examination or other form of forensic medical assessment. Moreover, the medical advice does not include supporting evidence, such as confirming that scars have been incurred through torture (see question 10 on the Istanbul protocol).

It is unclear how conclusions are reached in the health checks and how they are subsequently used or interpreted by immigration officials. These conclusions do not become available to the lawyer of the asylum seeker. When medical problems occur at a later stage in the asylum procedure, often no new or additional health check is offered to the asylum seeker.<sup>21</sup>

*Recommendation: The NGOs invite the Committee to question the Dutch government about the role of the health check in the asylum procedure.*

<sup>19</sup> Committee Against Torture, Conclusions and recommendations of the Committee Against Torture, CAT/C/NET/CO/4, 3 August 2007.

<sup>20</sup> René Bruin, 'Het Comité tegen foltering doet weer van zich spreken' ('The Committee Against Torture speaks up again') *Asiel & Migrantenrecht* 2012, (1), p. 18.

<sup>21</sup> A rare example in which the government's responsibility to offer a new medical examination can be found is the verdict of the District Court of Haarlem of 3 July 2012, LJN: BX7352. Available at: [www.rechtspraak.nl/ljn.asp?ljn=BX7352](http://www.rechtspraak.nl/ljn.asp?ljn=BX7352) (last visited on 27 January 2013).

**7. Please clarify the decision to no longer automatically entitle asylum-seekers from central and southern Iraq to protection in the Netherlands, as well as reports of forced returns of asylum-seekers to Iraq in 2008.**

The decision to no longer automatically entitle asylum-seekers from central and southern Iraq to protection in the Netherlands is part of the intentions of the Dutch government to abolish protection on national grounds. In June 2012 a bill was proposed to this effect.<sup>22</sup> The NGOs are concerned that this development will lead to a gap in the protection of asylum seekers from *refoulement*. Next to the abolishment of group protection (Article 29(d) of the Aliens Act 2000), protection on the basis of humanitarian grounds (Article 29(c) of the Aliens Act 2000) for those asylum seekers who are not protected by international standards, will also be abolished. For example, Afghan girls who are too 'Westernized' to return to Afghanistan are currently granted a residence permit on this basis.

In anticipation to the proposed bill, in May 2009 the government also abolished the policy concerning national group protection for asylum seekers from southern and central Somalia, although the government still regarded the situation in this area as insecure. The NGOs oppose this abolition due to the extremely high level of general violence in the whole region of central and southern Somalia. UNHCR qualifies the security situation in central and southern Somalia as a situation as mentioned in Article 15(c) of the EU Qualification Directive.<sup>23</sup> The NGOs are concerned that the abolition of group protection leads to a protection gap, because no protection will be given in situations where return will be of exceptional gravity given the general (security) situation in the country of origin. The NGOs would like to underline that the Netherlands will be quite unique in not having any national asylum protection grounds (in case this legislation comes into force).

*Forced and voluntary return to central and southern Iraq*

At the moment the government is not able to forcibly return people to central and southern Iraq because of the lack of a Memorandum of Understanding between the Netherlands authorities and the authorities of Iraq. Currently, the Dutch government is negotiating with its Iraqi counterparts, but the outcome of these negotiations is unclear.

According to the Dutch government failed Iraqi asylum seekers are able to return to Iraq on a voluntary basis. The NGOs wish to point out that it remains unclear whether failed asylum seekers are able to obtain original identity and nationality documents, necessary for obtaining a travel document to their home country. The consequence is that these failed asylum seekers end up in a legal limbo, as they are not able to return to their home country, but are also illegal in the Netherlands. In most cases they end up in aliens' detention. With the intention of the government to criminalise illegal stay, the situation for this group will become even harsher.<sup>24</sup>

*Forced and voluntary return to central and southern Somalia*

At the moment the Dutch government is not able to forcibly return failed Somali asylum seekers to central and southern Somalia due to the security situation. Nevertheless, the Dutch government is of the opinion that voluntary return to central and southern Somalia is possible: failed asylum seekers should travel from the airport of Mogadishu through the city of Mogadishu to other parts of central and southern Somalia. The NGOs are strongly opposed to this, because the mere presence of a civilian in the city of Mogadishu already places him/her in a situation of extreme violence. Upon return, there is a real risk that every person will be subjected to treatment contrary to Article 3 CAT and Article 3 ECHR.<sup>25</sup>

***Recommendation: the NGOs invite the Committee to question the Dutch government about the new bill on the abolishment of national protection grounds.***

<sup>22</sup> *Wijziging van de Vreemdelingenwet 2000 in verband met het herschikking van de gronden voor asielerlening* (Draft bill amending the Aliens Act 2000 on the rearrangement of asylum grounds), 11 June 2012. The new government Rutte-Asscher will continue these intentions, see coalition agreement '*Bruggen slaan*', 29 October 2012, paragraph IX Immigration, Integration and Asylum. Both accessible through [www.overheid.nl](http://www.overheid.nl) (in Dutch).

<sup>23</sup> UNHCR Somalia Eligibility Guidelines from May 2009 and the recent addendum to these Guidelines from March 2012.

<sup>24</sup> *Wijziging van de Vreemdelingenwet 2000 in verband met de strafbaarstelling van illegal verblijf van vreemdelingen in Nederland* (Draft bill amending the Aliens Act 2000 to criminalise the illegal stay of aliens in the Netherlands), 14 January 2013, available at: [www.overheid.nl](http://www.overheid.nl) (in Dutch).

<sup>25</sup> ECtHR 28 June 2011 (*Sufi and Elmi/UK*), appl. nos. 8319/07 and 11449/07.

*Recommendation: the NGOs invite the Committee to question the Dutch government about the possibility of voluntary return to central and southern Iraq and central and southern Somalia.*

8. **Please provide data, disaggregated by age, sex and ethnicity, on:**  
(c) **The number of applications whose application for asylum was accepted on grounds that they had been tortured or might be tortured if returned to their country of origin, and also on asylum granted on grounds of sexual violence;**

The NGOs note that the Dutch government does not supply the requested data because these data are not registered in the system of the Immigration Authorities.

*Recommendation: the NGOs invite the Committee to call upon the Dutch government to provide for an adequate and accurate registration of cases, so as to ensure that it can provide the requested disaggregate data and fulfil its reporting requirement.*

## Article 10

11. **Please describe steps taken to integrate the Istanbul Protocol of 1999 in the training programmes provided to physicians and all other professionals involved in the investigation and documentation of torture in asylum procedures, in particular in cases where asylum-seekers allege they have been subjected to torture in their country of origin, as recommended by the Committee in its previous concluding observations (par. 8). Data should also be provided on the number of professionals that have received such training.**

Over the past years, the Dutch government acknowledged that medical information and reports could provide supportive evidence of accounts of torture or inhuman or degrading treatment.<sup>26</sup> However, at the same time the government maintains its position that no certainty can be reached in establishing a causal link between an asylum seeker's psychological state and the alleged cause of the injury.

The NGOs maintain that such a position ignores the psychological and traumatizing reality for victims of torture to recall experiences of past violence and likely impairments as a result. The government contends that it is unnecessary under Dutch asylum policy to generate supporting evidence, because a plausible account is sufficient. The 1999 Istanbul Protocol however, stresses the importance of forensic medical evidence and its documentation. It explicitly acknowledges that the "documentation methods contained in this manual are also applicable to other contexts, including (...) political asylum evaluations (...)." <sup>27</sup> One of its purposes is the "clarification of the facts (...)." <sup>28</sup> The Istanbul Protocol provides for a forensic documentation method that establishes the 'degree of consistency' between the injury and the alleged cause communicated by the victim. As such it could well support the fact-finding process in the asylum procedure.

So far, forensic medical examinations have been conducted by NGOs, in particular the Medical Examination Group (*Medische Onderzoeksgroep*: MOG) of the Dutch section of Amnesty International and the Reporting Point for Asylum Seekers with Psychological Problems (*Meldpunt voor Asielzoekers met Psychische Problemen*: MAPP).<sup>29</sup> A scientific evaluation from March 2010 to March 2011 into the effects of a formal working instruction between the Immigration and Naturalisation Service and organizations as the MOG and MAPP 'the WI 2008/6', acknowledged the need for attention for psychological problems in asylum procedures. However, in the case samples investigated, hardly any reference was documented regarding the psychological aspects of an asylum

<sup>26</sup> In line with international jurisprudence, e.g. the recent ECHR judgment of 9 March 2012 (*R.C./Sweden*), appl. no. 41827/07.

<sup>27</sup> See Istanbul Protocol 1999, the 'introduction' (page 1) and paragraph 121 under (b).

<sup>28</sup> Istanbul Protocol 1999, paragraph 78.

<sup>29</sup> In March 2012 both the MOG and MAPP merged into the new Institute for Human Rights and Medical Examinations (*Instituut voor Mensenrechten en Medisch Onderzoek*, IMMO).

seeker and the measures taken to address them. As such, its documentary value for an independent judicial review is still absent.<sup>30</sup>

Although these reports are taken seriously in the asylum procedure, it is often the case that they come too late and have to be brought in, in a newly lodged application. In this situation, reports are often not taken into account, because the report cannot be considered as a newly emerged fact or circumstance (see paragraph 6(f)). The NGOs are concerned that due to formalistic restrictions, important reports on the psychological state of the applicant or the existence of scars are not taken into consideration.

The NGOs do not share the government's opinion that with the health check and the period of rest and preparation it is "acting in the spirit of the Istanbul Protocol more than ever before". Although the government recognizes that medical evidence is important, it is not implemented in the asylum procedure, as it does not form part of the health check. Medical reports by independent organisations are taken into account but only to a certain degree, since crucial medical reports are simply left out of the decision-making process when they are brought in too late. Only in rare cases a medical report can serve as the basis for a new asylum application.<sup>31</sup>

In light of the requirements under the Istanbul Protocol, the NGOs invite the Dutch government to set up a governmentally funded forensic medical examination as supportive evidence in the asylum determination process for asylum seekers who claim to have been subjected to torture or other cruel inhuman or degrading treatment or punishment.

*Recommendation: The NGOs invite the Committee to question the Dutch government about the lack of implementation of the Istanbul Protocol in the asylum determination process.*

## Article 11

### **12. Please provide information on any new interrogation rules, instructions, methods and practices, as well as arrangements for custody, that may have been introduced since the consideration of the last periodic report, and the frequency with which they are reviewed.**

The abovementioned bill on access to a lawyer (see also under paragraph 1), which only provides the right to have a lawyer present during interrogation in case of crimes carrying a prison sentence of six years or more in case the suspect is a minor, disregards the fact that police interviews, also in cases relating to crimes with a lower maximum prison sentence, are accompanied by putting pressure on suspects. Even someone who is suspected of assault or theft can experience the pressure of police interrogation. Moreover, the bill concerns the right to legal assistance of *arrested* suspects. Suspects who are not arrested can however also experience the pressures of police interrogation. Given the nature of police interrogation, which is not significantly different in both cases, the distinction seems arbitrary. In addition, the bill does not guarantee an active role for the lawyer during police interrogation and it is suggested<sup>32</sup> that audio-visual or auditory recording can be an alternative to the presence of a lawyer during the interview. This way, the bill only allows lawyers to passively observe the interrogation. This disregards the importance of an active lawyer during the interview. Furthermore, it disregards the irreversibility of the situation in which information is given contrary to the rights of the suspect.

The Explanatory Memorandum<sup>33</sup> refers to the research results of the two-year experiment 'Counsel at Police interrogation' (*Raadsman bij politieverhoor*).<sup>34</sup> The report notes that the attitude of

<sup>30</sup> K. Mourik, K. Zwaan & A. Terlouw, *Gehoor geven. Een onderzoek naar de toepassing van IND-werkinstructie 2008/6 omtrent asielzoekers met psychische problemen* (Carrying out orders. An analysis of the application of IND-work instruction 2008/6 concerning aliens with psychological problems), Nijmegen: Wolf Legal Publishers 2012.

<sup>31</sup> District Court of The Hague 20 November 2012, Awb 12/33536 and 12/33535.

<sup>32</sup> Explanatory Memorandum of the draft bill on Counsel at police interrogation, p. 37; available in Dutch at: <http://www.rijksoverheid.nl/documenten-en-publicaties/regelingen/2011/04/18/memorie-van-toelichting-rechtsbijstand-en-politieverhoor.html> (last visited on 8 March 2013).

<sup>33</sup> *Ibid*, p. 29.

<sup>34</sup> See Report of L. Stevens and W.J. Verhoeven, *Raadsman bij politieverhoor* (Counsel at Police interrogation), Rotterdam: 2010.

Available in Dutch at <http://www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2010/11/16/rapport-raadsman-bij-politieverhoor.html> (last visited on 8 March 2013).

the suspect (after consultation) had an effect on the way the suspect was treated by the police and the interrogation techniques used by the police.<sup>35</sup> It also states that the police are more inclined to use intimidation when the suspect invokes his right to remain silent, whereas the presence of a lawyer seems to decrease this. Therefore, to guard the quality of the police interview and in the interest of truth-finding (regarding the prevention of false confessions), presence of a lawyer is necessary in all stages of the proceedings.

*Recommendation: the NGOs invite the Committee to question the Dutch government about the consequences of excluding presence of a lawyer at certain stages of the proceedings on the interrogation techniques used by the police.*

**13. In light of the recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in the report on its visit to the Netherlands in June 2007 (CPT/inf(2008) 2, Visit to the Kingdom in Europe, paras.58-70), please indicate measures to:**

**(a) Accommodate immigration detainees in specifically designed centres with a full community regime, offering material conditions and a regime appropriate to their legal status;**

The NGOs would like to underline that the frequency of application of aliens' detention in the Netherlands, compared to other European countries, is remarkably high, and that the duration of aliens' detention can be considerable.<sup>36</sup> There is a lot of criticism with respect to aliens' detention in the Netherlands, on the national and on the international level.<sup>37</sup>

Although detention is implemented in specially set up institutions, the Dutch legislator made no effort to express the distinction between aliens' detention and ordinary detention in drawing up a separate legal regime for the institutions where aliens are detained. This was also a concern of the CPT in its most recent report: "*if it is deemed necessary to deprive persons of their liberty, they should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation and staffed by suitably-qualified personnel. One of the logical consequences of that precept is that the facilities in question should be governed by a distinct set of rules*".<sup>38</sup> The NGOs fully agree with this conclusion by the CPT and urges the Dutch legislator to draw up such rules.

The NGOs do not agree with the statement by the government that in each case it will be examined if a milder alternative is applicable and that aliens' detention should only be a measure of last resort. In fact, the NGOs find that aliens' detention in the Netherlands does not function as an *ultimum remedium*. Alternatives to aliens' detention are hardly used. The Dutch state has a wide discretion to apply aliens' detention and the Court has limited possibility to review the case.<sup>39</sup> Amnesty International has repeatedly urged the Dutch government to find alternatives for aliens' detention.<sup>40</sup>

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<sup>35</sup> *Ibid*, p. 116.

<sup>36</sup> See Inspection for the Implementation of Sanctions of the Ministry of Justice, *De tenuitvoerlegging van de vreemdelingenbewaring - Drie detentiecentra doorgelicht* (The implementation of aliens detention - Three detention centres inspected), September 2010, section 3.2; available at: <https://zoek.officielebekendmakingen.nl/blg-84878.pdf> (last visited on 8 March 2013). On the basis of Article 59 Aliens Act 11% of the aliens are detained between three and six months, 7% is detained between six and nine months, 6% are detained between nine months and a year and 2% is detained more than a year. On the basis of Article 6 Aliens Act, 90% of the aliens are not detained for longer than three months.

<sup>37</sup> From *i.a.* Amnesty International, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the National Ombudsman.

<sup>38</sup> Report by the CPT on its visit to the Netherlands from 10 to 21 October 2011, paragraph 61, Strasbourg, 9 August 2012.

<sup>39</sup> Baudoin, de Burg & Kalmthout, *Vrijheidsontneming van vreemdelingen* (Deprivation of liberty of aliens), The Hague: SDU 2008, pp. 187-206.

<sup>40</sup> See e.g. Report Amnesty International, *Vreemdelingendetentie in strijd met mensenrechten* (Aliens' detention in violation of human rights), November 2010, chapter 2.

In December 2011 the Minister for Immigration, Integration and Asylum followed up on this and presented pilots with alternatives to aliens' detention.<sup>41</sup> Although the NGOs welcome the attempt by the Minister to find alternatives for aliens' detention, it also notices that the target groups of these pilots are very limited: aliens who are excluded are those criminally convicted or who form a danger to public order, aliens who obstruct their departure, aliens who have been refused at the border, aliens who have ignored earlier supervisory measures and aliens who have never filed another application for admission. According to the Minister this is because the risk of absconding is too high for these groups. This limited approach of the pilots instituted in order to find alternatives for detention means that only a few adults and a few hundred ex-unaccompanied minors are included. Moreover, aliens can only be included in these alternatives when they are able to leave within 28 days, which is in most cases impossible. The NGOs wonder whether the Minister really is interested in finding alternatives for aliens' detention, when the target group who can be covered by these alternatives is in reality almost non-existent.

In October 2011 Amnesty International published a paper in which it pointed at positive experiences in Australia, the United Kingdom and Sweden in finding alternatives for detention. These reports also indicate that the regimes for aliens' detention in these countries are a lot less sober than in the Netherlands.<sup>42</sup> The Dutch government fails to recognize that aliens spend long periods of time in detention and it does not take measures to align the regime in aliens' detention with this fact. In some aspects the regime is even more sober than in an ordinary prison. Aliens always stay with another person in one cell and are locked up for 16 hours per day together. Families have to spend around 14 hours in their cells. Aliens can go outside for one to two hours a day (in Rotterdam four hours) and there are few activities during the week, such as sports (one to two hours), creative activity (one to two hours), library visit (one to two hours), visit to a pastoral worker, visitors from outside (one to two hours). Aliens are not allowed to work or to follow any course or training. This is in line with the idea of the government that these aliens do not need to integrate in the Dutch society.<sup>43</sup> In practice, the remaining hours are filled by hanging around.

When the alien has to leave the detention centre, they are obliged to wear handcuffs and sometimes a "broekstok" (a stick attached to the trousers with leather belts so the alien cannot easily escape). Aliens find these measures humiliating and feel that they are being criminalized.<sup>44</sup> The NGOs also point at the frequently used measure, where a strip search of the alien is performed when they enter the detention facility and leave for a short while to go to a doctor or a hospital and then return. Even when the alien visits his lawyer a strip search is performed. Exceptions are not often made: a woman who was raped in her country of origin and severely traumatized had a full naked body search and was later placed in an isolation cell because of her state of mind.<sup>45</sup> In the view of the NGOs, considering the vulnerable circumstances aliens may be in, a strip search can leave aliens with 'a feeling of anguish and inferiority capable of humiliating and debasing him'<sup>46</sup> and raises questions under Article 3 CAT. Moreover, the NGOs wonder which legitimate purpose is served by performing a full strip search every time the alien enters a detention centre or re-enters a detention centre. It should be noted that these people are not criminals, and it concerns a vulnerable group who have often been through traumatizing circumstances in their country of origin. NGOs find that a strip search should not be systematically performed, but must only be applied in exceptional circumstances, when it serves a legitimate purpose, when the vulnerability of the alien is taken into account and alternatives have been assessed.

From the report of the CPT on its visit to the Netherlands in October 2011, it appears that in several establishments for immigration detention, detainees on hunger (or thirst) strike were systematically segregated or even transferred to isolation cells and obliged to wear rip-proof

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<sup>41</sup> Letter from the Minister of Immigration and asylum, 22 December 2011, *Kamerstukken II* 2011-12, 19637, No. 1483, (available at: <https://zoek.officielebekendmakingen.nl/dossier/19637/kst-19637-1483?resultIndex=272&sorttype=1&sortorder=4> (last visited on 7 March 2013).

<sup>42</sup> Report Amnesty International, *Vreemdelingendetentie in Nederland: het moet en kan anders, alternatieven voor vreemdelingendetentie* (Alien detention in the Netherlands: it must and can go differently, alternatives for alien detention), 11 November 2011.

<sup>43</sup> Report by the National Ombudsman, *Aliens detention: penal regime or measure to expel, about respect for fundamental rights in aliens detention* (7 August 2012) [hereinafter 'Report National Ombudsman'], p. 21. Available at: [http://www.nationaleombudsman-nieuws.nl/sites/default/files/rapport\\_2012-105\\_vreemdelingenbewing\\_eng\\_webversie.pdf](http://www.nationaleombudsman-nieuws.nl/sites/default/files/rapport_2012-105_vreemdelingenbewing_eng_webversie.pdf) (last visited on 8 March 2013).

<sup>44</sup> Report National Ombudsman, p. 25.

<sup>45</sup> A. Reijersen van Buuren, 'Visitation in vreemdelingenbewing' ('Visitation in aliens detention'), *Asiel & Migrantenrecht* 2012 (7), pp. 332-333.

<sup>46</sup> ECtHR 22 February 2007 (Wieser/Austria), appl. no. 2293/03.

pyjamas.<sup>47</sup> It was also noted by the Inspection for the Implementation of Sanctions (*Inspectie voor de Sanctietoepassing*) in September 2010, that remarkably often a choice is made for placement in isolation of the alien in an 'ordinary' prison cell or isolation cell. The Inspection therefore questioned whether the executive staff is sufficiently skilled in de-escalating conflicts.<sup>48</sup> The NGOs also note that in the isolation cells in the detention centre in Zeist matt glass is used, without medical indication.<sup>49</sup>

The NGOs consider that the Dutch government is not really willing to find alternatives for aliens' detention by proposing alternatives for a target group that is almost non-existent, by not changing the regime on the ground and by not recognizing in its policies that aliens' detention need a different set of rules. The lack of willingness to change policies with respect to aliens' detention was recently confirmed by the National Ombudsman in a letter to the State Secretary for Security and Justice. In this letter the Ombudsman criticises the weak response by the Dutch government on the serious criticisms in the report on aliens' detention. The National Ombudsman urges the State Secretary for Security and Justice to take steps to change the situation.<sup>50</sup>

Besides, it has not been shown that the severe security measures, the lack of education and the sober regime in aliens' detention has actually resulted in a higher percentage of aliens being expelled to their country of origin.<sup>51</sup>

*Recommendation: The NGOs invite the Committee to question the government on the use of aliens' detention as an ultimatum remedium, and to ask whether real alternatives for the whole group of aliens in detention are investigated.*

*Recommendation: The NGOs invite the Committee to ask the government to set up a distinct set of rules for aliens' detention.*

*Recommendation: The NGOs invite the Committee to question the government about the necessity of severe security measures such as the use of handcuffs, the placing of aliens in isolation cells and the full naked body search when an alien enters and re-enters the detention centre.*

*Recommendation: The NGOs invite the Committee to question the government on its follow up to the report by the Inspection for the Implementation of Sanctions (Inspectie voor de Sanctietoepassing) of September 2010. Also in light of reports about the use of isolation cells as a disciplinary measure against non-violent protest the NGOs would welcome more systematic monitoring of the use of isolation measures in aliens detention.*

### **(c) Ensure adequate medical care for immigration detainees.**

In 2009, the Health Care Inspectorate (IGZ) examined the aliens' detention centres.<sup>52</sup> The IGZ noted problems in the continuity of care transfer, continuity of staff and problems with the quality of care, including psychological care. Also problems were noted with care in the evening and night hours and

<sup>47</sup> Report by the CPT on its visit to the Netherlands from 10 to 21 October 2011, Strasbourg, 9 August 2012, par. 59.

<sup>48</sup> See Inspection for the Implementation of Sanctions of the Ministry of Justice, *De tenuitvoerlegging van de vreemdelingenbewaring - Drie detentiecentra doorgelicht* (The implementation of aliens detention - Three detention centres inspected), September 2010, sections 4.8 and 6.2; available in Dutch at: <https://zoek.officielebekendmakingen.nl/blg-84878.pdf> (last visited on 8 March 2013).

<sup>49</sup> Judgment by the Complaints Committee of the Commission of Inspection of the Detention Centre Zeist in Soesterberg, 12 August 2011.

<sup>50</sup> Letter National Ombudsman to State Secretary Teeven (23 January 2013), available at: [http://www.nationaleombudsman-nieuws.nl/sites/default/files/2013-01-23\\_pdf\\_brief\\_staatssecretaris\\_teeven.pdf](http://www.nationaleombudsman-nieuws.nl/sites/default/files/2013-01-23_pdf_brief_staatssecretaris_teeven.pdf) (last visited on 8 March 2013).

<sup>51</sup> Report National Ombudsman, p. 37.

<sup>52</sup> IGZ (Health-Care Inspectorate), *Medische diensten in detentiecentra, verantwoorde zorg maar nog niet geborgd* (Medical services in detention centres, responsible care but not yet secured), December 2009; available in Dutch at <https://zoek.officielebekendmakingen.nl/behandeldossier/24587/blg-52019?resultIndex=255&sorttype=1&sortorder=4> (last visited on 8 March 2013).

weekends. The Dutch government has announced follow up to these conclusions, but there are still many problems.<sup>53</sup> For example, according to figures from the 'Aliens Detention Hotline' (*Meldpunt vreemdelingendetentie*) 53 out of 254 complaints after one year of being in function were related to problems on access to medical care. Amnesty International reported that from interviews with detainees it appeared that medical care is an issue and notes that aliens are dissatisfied. They feel that they are not taken seriously when aspirins are prescribed again.<sup>54</sup>

The NGO's would like to underline the medical implications of detention itself. The degree of psychological distress that detainees endure is related to the length of their detention.<sup>55</sup> The long-term insecurity about their situation and the lack of distraction leads to a lot of stress and depressions and sometimes ends in serious psychological problems. The National Ombudsman speaks of an increase of requests for medical care after the weekends, when there have been no activities.<sup>56</sup>

In the report by the CPT it was concluded that the staffing level in the Rotterdam Airport Detention Centre is insufficient and that detainees complained about the delayed access to medical care. This was also reported by the National Ombudsman: an alien from Iraq was quoted who told about another alien who broke his arm and had to wait for three days before he was helped.<sup>57</sup> Similar problems arise with medical care in relation to (prevention of) pregnancy and maternity. Moreover, the CPT reports that several detainees in the Detention Centre stated that they only had been seen by a member of the health care team several days after their arrival. Also, the CPT was informed that some detainees suffering from severe psychotic disorders were not offered the possibility to deploy the necessary care and treatment.<sup>58</sup> In the context of removal operations, the CPT notices that a medical examination of deportees prior to the handover of the detainee to escort officers of the Royal and Military and Border Police (KMar) and after a failed removal attempt was not carried out systematically.

Finally, the follow up of medical files and issues of formerly detained undocumented migrants is a matter of concern. There is no proper communication between health staff in the detention centres and continuity of care when the undocumented migrant is released. As such medical issues are not discovered promptly which causes serious health risks. *E.g.* a rejected asylum seeker of Chinese origin with a hepatitis B infection and a serious liver condition was left destitute after having been kept in aliens' detention. As a result, his health situation seriously deteriorated until he fell into a coma and was given an urgent liver transplant following hospitalization.<sup>59</sup>

*Recommendation: the NGOs invite the Committee to question the Dutch government about the lack of access to medical care in aliens' detention.*

*Recommendation: the NGOs invite the Committee to question the government about the continuity of medical care after release.*

#### **14. Please provide information on:**

**(a) Steps taken to ensure that detention of unaccompanied children and families with children is only used as a measure of last resort. In this respect, information should be provided on steps taken to ensure that when the age of an unaccompanied child is uncertain, verification should be made before placing the child in detention;**

<sup>53</sup> Letter from the State Secretary of Justice to the Chairman of de Lower House of parliament, 29 January 2010, *Kamerstukken II* 2009-10, 24587, No. 375.

<sup>54</sup> Report Amnesty International, *Vreemdelingendetentie in strijd met mensenrechten* (Aliens detention in violation of human rights), November 2010, pp. 31-32.

<sup>55</sup> *Ibid.* p. 32.

<sup>56</sup> Report National Ombudsman, p. 22.

<sup>57</sup> Report National Ombudsman, p. 5.

<sup>58</sup> Report Amnesty International, par. 66-68.

<sup>59</sup> Heijmans, 'Fout op fout op fout; doodzieke asielzoeker krijgt alsnog vergunning' ('Mistake after mistake; mortally ill asylum seeker gets permit after all') *de Volkskrant*, 9 March 2012; available at: <http://www.volkskrant.nl/vk/nl/2686/Binnenland/article/detail/3222850/2012/03/09/Fout-op-fout-op-fout-doodzieke-asielzoeker-krijgt-alsnog-vergunning.dhtml> (last visited on 27 January 2013).

#### *Detention at the borders and age assessment*

When there is doubt that an unaccompanied alien is a minor, the alien can be detained in the Netherlands pending the age assessment procedure. During this procedure there is a possibility that people are detained who later on turn out to be minors. This is a violation of article 37 (detention only as a last resort and for the shortest period of time) of the CRC. When it is deemed necessary to restrict the liberty of movement the same safeguards should apply as for Dutch children who are temporarily deprived of their liberty.

#### *Detention of unaccompanied minors*

The Minister for Immigration, Integration and Asylum has revised the policy in relation to the detention of unaccompanied minors. In general unaccompanied minors will no longer be detained. However there are some worrying exceptions to this policy. An unaccompanied minor will be detained when the child is suspected or convicted of a felony, the departure of the child can be realized within fourteen days (the same measure exists for children with families), the child has previously left with unknown destination or did not comply with the imposed obligation to report or did not comply with a measure restricting his/her freedom or when the entry was refused at the border (deprivation of liberty until the minority of the child has been determined).

The detention for a maximum of two weeks prior to the return is not always in line with the *ultimum remedium* principle stipulated in article 37(b) CRC when no alternatives to the detention are investigated. Furthermore the detention centres are not suitable for children. During the first half of 2012, twenty unaccompanied minors were detained for fifty days on average.<sup>60</sup>

#### *Freedom restriction of families with children*

Families with children may be placed in aliens' detention only when there is likelihood that deportation can take place within two weeks, with a maximum extension of 28 days if deportation is obstructed. According to the CPT however on a number of occasions, families with children had been held at the Rotterdam Airport Detention Centre for considerable longer periods.<sup>61</sup>

In this context it is important to draw attention to a new form of detention in the Netherlands in which large groups of families with children are being held for long periods of time in the so called Family Locations (*Gezinslocaties*). These are semi open locations, outside villages. Inhabitants cannot cross the borders of the municipality and are required to report every day (except Sundays) at the middle of the day at the centre, risking a fine for not showing up. Six locations are operational. The locations are ill-equipped for children and the children endure a lot of stress, because in many cases they are transferred from other locations and have to change schools and leave friends behind. Their freedom is restricted (the children call these centres 'prisons') and their parents have such a low income that they can only buy food. Even severely handicapped and heavily traumatized children live in these new reception centres. The NGOs urge the government to lift these freedom restriction measures in reception centres for children and their parents and to accommodate them at a single child-friendly location during their whole procedure until their deportation or integration in the Dutch society.<sup>62</sup>

*Recommendation: the NGOs invite the Committee to question the government about the exceptions to the detention of unaccompanied minors.*

*Recommendation: the NGOs invite the Committee to question the Dutch government on the so called "Family Locations", especially whether these locations are suitable for children.*

**(b) Any further steps taken to prevent the disappearance of asylum-seeking children, and provide culturally sensitive family services, adequate housing and education for asylum-seeking and refugee children, including young returnees awaiting expulsion.**

<sup>60</sup> Letter by the Secretary of State for Security and Justice, Fred Teeven, to the Parliament concerning the monitoring of the new policy on limitation of detention of separated minors, 21 December 2012. Available in Dutch at: <http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2012/12/21/kamerbrief-monitoring-nieuw-beleid-beperking-bewaring-alleenstaande-minderjarige-vreemdelingen.html> (last visited on 27 January 2013).

<sup>61</sup> Report by the CPT on its visit to the Netherlands from 10 to 21 October 2011, Strasbourg, 9 August 2012, par. 66.

<sup>62</sup> Letter from the Working group on Children in asylum seekers centres, 8 May 2012 (in Dutch). Available at: <http://www.defenceforchildren.nl/images/20/1841.pdf> (last visited on 27 January 2013).

*Protected Reception for unaccompanied minors: no legal grounds for closed setting*

Unaccompanied minors between the age of thirteen and eighteen who are possibly (or likely to become) victims of trafficking in human beings or smuggling of migrants, can be placed in a protected reception facility. The Dutch guardianship organization Nidos makes the assessment to place a child in a protected reception facility. The protected reception (*Beschermde Opvang*) pilot started on 1 January 2008. The pilot started because a proportion of unaccompanied minors disappeared from the other reception facilities. The protected reception shelter aims to decrease the level of disappearances of the unaccompanied minors, to decrease the size of the 'risk category' and to increase returns.<sup>63</sup>

Unaccompanied minors who stay in this protected reception are assisted by a lawyer from a selected group of lawyers who have a specialized training in this field. The protected reception consists of specific, small-scale centres with a high level of supervision, including escorting young people in and out of the facility, and intensive coaching during their stay. Despite the good intentions of the protected reception centres, it has to be noted that there is no legal basis to deprive these youngsters of their liberty. Also, no legal aid is provided to the minor (regarding his or her placement in the protection centre).<sup>64</sup>

*Recommendation: the NGOs invite the Committee to question the Dutch government on the practice of using a protected reception facility.*

## Articles 12 and 13

### 15. Please provide detailed information on:

- (a) **Further measures taken to ensure prompt, impartial and effective investigations into all allegations of torture and ill-treatment in detention facilities, including immigration detention centres, as well as measures to bring the perpetrators to justice and compensate the victims appropriately;**
- (b) **Whether these investigations are undertaken by an independent body and all suspects in prima facie cases of torture and ill-treatment are, as a rule, suspended or reassigned during the investigation, as well as if records are kept of all steps during the investigation;**
- (c) **Steps taken to draw up and implement a comprehensive procedure on how to deal with allegations of ill-treatment by prison officers, as recommended in the CPT report (paras.31-38). Please elaborate on the content, in particular if the above-mentioned guarantees are provided, and on implementation of the procedure; Information should be provided on the impact of these measures in reducing cases of ill-treatment in detention facilities, including immigration detention centres.**

In the Dutch criminal justice system, prisoners in (pre-trial and post-trial) detention have a good opportunity to complain about all sorts of ill-treatment in prisons. Each detention centre has an independent Supervisory Committee and a Complaint Committee. Appeal is possible at the Council for the Administration of Criminal Justice and Protection of Juveniles. Recent jurisprudence of the Council for the Administration of Criminal Justice and Protection of Juveniles shows a wide range of complaints.

Many complaints contain medical matters. The Council has shown the importance of direct access to a doctor.<sup>65</sup> Regarding the distribution of medication, the only required staff for distribution is the medical service and they are obliged to stick to the Protocol 'distribution medication'.<sup>66</sup> Prisoners successfully complained about these issues. Because of the overload of complaints on medical matters, a special Medical Advisor has been appointed. Still, the amount of complaints on this topic is a cause for some concern.

<sup>63</sup> *Ibid*, p. 19.

<sup>64</sup> *Tussen beheersing en begeleiding: een evaluatie van de pilot 'beschermde opvang risico-AMV's* (Between control and support: An evaluation of the pilot 'protected reception for UMAs at risk') WODC, June 2010, p. 163, English summary available at: <http://www.wodc.nl/onderzoeksdatabase/evaluatie-pilot-beschermde-opvang-alleenstaande-minderjarige-vreemdelingen.aspx> (last visited 7 March 2013).

<sup>65</sup> Beroepscommissie RSJ, 13 March 2012, 11/4266/GM.

<sup>66</sup> Beroepscommissie RSJ, 12 September 2011, 11/0536/GA and 11/0927/GA.

Also worrying is the fact that many prisoners with mental disorders are detained in normal prisons, while they should be detained in a penitentiary psychiatric centre or forensic psychiatric hospitals.<sup>67</sup> This is due to a lack of space. As a result, prisoners are held in too strict regimes, or worse, unpleasant incidents occur. The Dutch government is searching for a solution.

Another complaint that is often heard concerns the frequency of strip searches carried out in prison establishments in the Netherlands and the manner in which they were performed. A strip search is an invasive and potentially degrading measure. Every reasonable effort should be made to minimize embarrassment. In addition, more than one officer should be present during any strip search. Further, inmates should not be required to undress in the presence of custodial staff of the opposite sex.<sup>68</sup>

Another cause for concern is the frequent use of isolation cells. Detainees in a hunger (or thirst) strike are nowadays soon after the start of their hunger strike transferred to the Judicial Medical Centre (*Justitieel Medisch Centrum*, the former *Penitentiar Ziekenhuis*), where they are kept in 'medical separation'. This looks very much like an isolation cell (being locked up for 23 hours each day), and is executed in a wing of a 19<sup>th</sup> century building, with windows at 2.20 meter high having bars horizontal and vertical, so the sky can hardly be seen. The staff does not call it isolation because the detainees are frequently seen by the medical staff, but in reality it is similar to isolation (for example, it is not allowed to watch TV).

Every youth custodial institution has a committee of inspection that deals with complaints as well. Despite that fact, minors say that in practice it can be difficult to complain. Complaints are easily lost and an answer is not always given. There is no general overview of the amount and the content of complaints made by minors. Complaints in appeal at Council for the Administration of Criminal Justice and Protection of Juveniles (RSJ) are rare. Not all minors know how to lodge an appeal.

*Recommendation: the NGOs invite the Committee to question the government about the situation regarding medical assistance in prisons and about the lack of space in penitentiary psychiatric centres and forensic psychiatric hospitals.*

*Recommendation: the NGOs invite the Committee to question the government about the performance of strip searches and the use of isolation cells when detainees start a hunger strike.*

**17. In light of the Committee's previous concluding observations, please provide detailed statistical data, disaggregated by crime committed, ethnicity, age and sex, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials and on related investigations, prosecutions, and penal or disciplinary sanctions (par.17). Statistics should also be provided on the number of pre-trial detainees and convicted prisoners, disaggregated by crime, ethnicity, age and sex.**

The NGOs note that the Dutch government does not supply the requested data, because it claims this is "not registered in a way that would allow the production of the statistics requested".

With respect to registration of ethnicity, the NGOs point out that these data should only be registered taking into account strict privacy safeguards. Data must be fully aggregated and anonymous, so that it cannot be traced back to individual persons.

*Recommendation: the NGOs invite the Committee to call upon the government to provide for an adequate registration of data, taking into account privacy safeguards, so that reporting requirements can be ensured.*

<sup>67</sup> E. Bulten & H. Nijman, 'Veel psychiatrische stoornissen onder gedetineerden op reguliere afdelingen van penitentiaire inrichtingen' ('Many psychiatric disorders under detainees on regular wards of penitentiary mental institutions'), *Netherlands Journal of Medicine*, 2009; 153: A634.

<sup>68</sup> Report by the CPT on its visit to the Netherlands from 10 to 21 October 2011, par. 32, Strasbourg, 9 August 2012.

## Article 16

- 19. Please provide information on the content and implementation of the recommendations made by an independent committee to improve the process of return and forced expulsion and to limit the use of force in the process of expulsion. Furthermore, data should be provided on the impact of these measures in reducing the use of excessive force in this process.**

The Repatriation Supervisory Committee (CITT) monitors the return process in the Netherlands. Every year the CITT publishes a general report on this process. These annual (general) reports are transparent. However, reports concerning individual expulsions are not made public. Occasionally, human rights organizations receive reports about disproportionate use of force by escorts from the Royal and Military and Border Police (KMar) against the alien during his expulsion. The NGOs are of the opinion that in order to examine whether there has been a disproportionate use of force by escorts during expulsions, it is necessary that reports concerning individual expulsions are also made public, with due respect for personal matters and confidentiality of the identity of the person concerned.

*Recommendation: the NGOs invite the Committee to request the Dutch government to make reports concerning individual expulsion public, with due respect for personal matters and confidentiality of the identity of the person concerned.*

- 20. Please provide updated information on steps taken to ensure that deprivation of liberty of juvenile offenders is only used as a measure of last resort and for the shortest appropriate period of time. Information should also be provided on steps taken to improve the regime in youth detention facilities through, inter alia, reviewing the regulations on the use of mechanical means of restraint on juveniles as well as improving the regime afforded to juveniles in an intensive care or Forensic Observation and Guidance Unit (FOBA).**

According to the Youth Custodial Institutions Act minors can be kept in police detention up to 9 or 16 days and fifteen hours depending on their age.<sup>69</sup> The NGOs note that the children stay in police detention too often, in conditions which are not appropriate for the needs of the child. Minors in police custody are treated almost in the same way as adults and, although prohibited by police rules, sometimes they are kept in cells together with adults. The age of children is not adequately taken into account. According to research,<sup>70</sup> protocols and codes of conduct regulating a proper approach to children in police detention are missing. During the first three days of arrest, few alternatives for deprivation of liberty are available or in use. The rule ‘suspend minor unless...’ is only applicable when the minor appears before a judge. A prosecutor or police officer has then already prolonged the minor’s custody for a maximum of three days. The Dutch government should evaluate whether the use of police custody and pre-trial detention is used as a measure of last resort and for the shortest possible period of time. Also it should be assured that a criminal procedure involving a minor is decided upon by a judge within six months of time, especially when the child is staying in pre-trial detention.

Children younger than the age of twelve and children witnesses or victims are mostly interrogated without the assistance of a counsellor. The Dutch government claims that the recording of the interrogation guarantees the properness of the procedure.

The number of children in detention has recently gone down in the Netherlands. Due to this, six Youth Custodial Institutions are not in use since 2011 and more institutions are closing due to budget cuts. The number of minors staying in Youth Custodial Institutions has reduced from 3.491 in the year 2007 to 2.406 in the year 2010. On 1 January 2007 in total 575 minors stayed in a Youth Custodial Institution. This number also lowered to 319 minors on 1 January 2011. Most of the 79% are in pre-trial detention waiting for a court decision.<sup>71</sup> The Youth Custodial Institutions are visited by the

<sup>69</sup> Report Defence for Children, *Een paar nachtjes in de cel. Het VN-Kinderrechtenverdrag en het voorarrest van minderjarigen in politiecellen* (Just a few nights in the cell. The Convention on the Rights of the Child and preliminary investigation in cases of minors in police cells), September 2011.

<sup>70</sup> *Ibid.*

<sup>71</sup> Unicef and Defence for Children, *Jaarbericht Kinderrechten* (Annual Report Children’s rights) 2011, p. 14; available at: <http://www.defenceforchildren.nl/images/20/1452.pdf> (last visited 7 March 2013).

Inspection for Youth Care every year. In the past, the quality of the institutions was heavily criticized. In August 2010 the Inspections stated that in youth custodial institution there is a safe living, treatment and working climate. There was no severe risk for staff or young people anymore.<sup>72</sup> More than one year later, in September 2012 Youth Custodial Institution, Den Hey Acker, was criticized again. The Inspection recommends this institution to make improvements for example on the communication between staff and young people.<sup>73</sup>

No information is available on the use of solitary confinement, group punishment and the use of mechanical means of restraint in Youth Custodial Institutions. This information should be made available and used for making and improving policies.

*Recommendation: the NGOs invite the Committee to question the Dutch government on the use of pre-trial detention and policy custody as a measure of last resort with respect to minors. Moreover, the NGOs invite the Committee to request information from the Dutch government on the use of solitary confinement, group punishment and the use of mechanical means of restraint in Youth Custodial Institutions*

**21. Please provide updated information on:**

- (a) measures taken to adequately prevent, combat and punish violence against women and children, including domestic violence. In this respect, please elaborate on the content and implementation of the programme 'Dealing with domestic violence', and its impact and effectiveness in reducing cases of domestic violence.**

Although child abuse has been addressed in public campaigns and there is an Action Plan to Combat Child Abuse, in 2010 there were more than 118.000 children victim of child abuse (domestic violence).<sup>74</sup> This amount has been growing in the recent years. The prevention and recognition of cases is not sufficient, due to lack of trained professionals. The use of Protocols and Reporting Codes does not belong to a daily routine of professionals working with children because they are not skilled in this. At the level of local communities there is lack of a consistent policy concerning prevention and response to child abuse. Approximately 25% of the local communities do not have any regulations on these issues. The first aid wards of hospitals receive 30 to 60 severely wounded children that are victims of child abuse yearly. In 2010 Advice and Reporting Centres on Child Abuse were asked to check the safety situation of babies in more than 2.500 cases. There are big differences in the quality and capacity of each Centre. The local communities have a large discretion in making substantive decisions about the care given by the Centres for Youth and Families. The NGOs believe that the government should impose requirements on the capacity and quality of care at the level of local communities and within the Centres for Youth and Families, to make parenting support available for all parents who need it, and to ensure the same quality in each community and Centre. The Dutch government should pay special attention to young children in families who have a lower social and economic status and children of parents who have mental problems or problems with addiction.

*Recommendation: The NGOs invite the Committee to question the Dutch government on the lack of coherence in the capacity and quality of care at the level of local communities and within the Centres for Youth and Families. Moreover, the NGOs invite the Committee to question the Dutch government on how the same quality in in each community and Centre can be guaranteed*

<sup>72</sup> Inspection report: *Veiligheid in justitiële jeugdinrichtingen: risico's aangepakt, maar kwetsbaar* (Safety in judicial mental institutions for minors: taken hold of risks, but vulnerable), August 2010.

<sup>73</sup> See: *JJI Den Hey-Acker, inspectierapport doorlichting* (JJJ Den Hey-Acker, inspection report screening), September 2012.

<sup>74</sup> *De Tweede Nationale prevalentiestudie kindermishandeling van kinderen en jeugdigen* (The Second Prevalence Study on Abuse of Children and Youngsters), University of Leiden and TNO (August 2011); available in Dutch at: <http://www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2011/09/30/de-tweede-nationale-prevalentiestudie-mishandeling-van-kinderen-en-jeugdigen.html> (last visited on 8 March 2013).

- (b) the protection provided by the State party to victims of such acts, including access to medical, social and legal services and temporary accommodation. Data should be provided on the number of victims that have received such protection and the specific form of protection they received.**

In the Netherlands there is a lack of specialized care for abused children, as confirmed by the Health Council in its advice of June 2011.<sup>75</sup> Too often it appears that after detection and identification of child abuse, children and their parents are not provided with the help and support they need. There are legal barriers in the access to appropriate care for abused children. The access to appropriate care can be seriously delayed or denied because the consent of one of the parents is missing. Only in cases where the child needs immediate treatment to prevent serious harm, the treatment can be started without the consent of both parents.

The Netherlands, compared to other countries, invests a lot in providing aid and shelter to victims of domestic violence. Still, there is much room for improvement as not all victims receive the protection they deserve. This is due to the fact that aid workers often do not recognize domestic violence as such, especially sexual violence. Also, there are not enough shelters for victims of violence.

The NGOs observe that no free legal services are available for victims of domestic violence. The Victims' Status (Legal Proceedings) Act does not provide for this and the practical assistance provided by Victim Support Netherlands, although very useful, cannot replace legal aid provided by specialized lawyers. Moreover, the legal services that the Victims' Status Act and Victim Support Netherlands provides are limited to criminal proceedings and restraining orders for the perpetrators, while victims also need (free) legal assistance in other legal fields, like civil and family law, immigration law etc.

The NGOs further observe that violence against women and domestic violence cannot be addressed without looking at gender equality issues. Certain types of violence, in particular domestic violence, affect women disproportionately. Therefore, applying a gender perspective is crucial and domestic violence must be eradicated in a context of achieving *de jure* and *de facto* equality.

The Dutch government does not report on the impact and effectiveness of measures taken to combat domestic violence since 2002. The NGOs note that available facts and figures show that prevention of domestic violence is far from successful due to limited resources and a lack of systematic, coherent and effective policy approaches.<sup>76</sup> This is problematic since only a systematic and coherent approach could lead to a substantial decrease of victims. The NGOs further note that policies on combating domestic violence lack a coordinated national approach and development program.<sup>77</sup> With regard to the scope of policies against violence against women and children, the Dutch government mainly focuses on measures to combat domestic violence but much less, for example, on a systematic and coherent approach to combat sexual violence. Policies are often very pragmatic and lack thorough analysis of the problems by which violence against women and children is caused.

*Recommendation: the NGOs invite the Committee to call upon the government to finalize prevention of violence against women and children policies, based on a thorough gender sensitive analysis of the causes of domestic and sexual violence. The NGOs further invite the Committee to call upon the Dutch government to ensure victims of domestic violence receive sufficient protection, most notably free legal aid.*

**22. Please provide updated information on:**

- (a) Measures taken to adequately prevent and combat trafficking in persons, and to prosecute and punish such acts. In this respect, please provide updated information on the implementation of the National Action Plan to Combat**

<sup>75</sup> Advice by the Health Council, *Behandeling van de gevolgen van kindermishandeling* (Treatment of the consequences of child abuse), June 2011. Available at: <http://www.gezondheidsraad.nl/nl/adviezen/behandeling-van-de-gevolgen-van-kindermishandeling> (in Dutch, last visited on 27 January 2013).

<sup>76</sup> This is confirmed by the evaluation report on the national policy on domestic violence of the Ministry of Security and Justice in 2011, 10 June 2011, par. 376-378 (in English). Available at: [http://wodc.nl/images/volledige-tekst\\_tcm44-369011.PDF](http://wodc.nl/images/volledige-tekst_tcm44-369011.PDF) (last visited on 27 January 2013).

<sup>77</sup> *Ibid.*

## Trafficking in Human Beings of December 2004 and the work of the Human Trafficking Task Force, established in 2008;

The Dutch government has taken various legal and other measures to improve the protection of children from trafficking and sexual exploitation. Nevertheless, measures taken by the Dutch government to adequately prevent and combat trafficking are insufficient in a number of ways. For instance, the Human Trafficking Task Force fails to fully integrate relevant NGOs, such as organizations that provide direct assistance to victims of trafficking and organizations with expertise on children and children's rights, into the Human Trafficking Task Force.<sup>78</sup> This results in a severe imbalance between representatives of the criminal justice system and representatives working from the perspective of the victims. The Human Trafficking Task Force's limited focus on the needs and interests of victims furthers this imbalance.

An example can be found in case victims of trafficking want to make use of the so-called "reflection period" (*bedenktijd*). The procedure by which victims have to inform the police about needing this reflection period is deterrent for some victims, and access to this procedure is limited. Therefore, relevant NGOs and other service providers should be systematically involved in the identification process of victims, and authorized to identify victims and to apply for a reflection period on their behalf. In addition, methods to start a criminal investigation without a statement of the victim should be further developed and implemented.

When minor victims are involved in trafficking cases, the Dutch police are authorized to make use of extraterritorial powers. However, too little use is made of this competence during criminal investigations.

*Recommendation: the NGOs invite the Committee to call upon the Dutch government to (i) integrate relevant NGOs into the membership of the Human Trafficking Task Force, (ii) engage relevant NGOs in the identification process of victims of human trafficking, (iii) develop and implement methods to start a criminal investigation without a statement of the victim, and (iv) make use of extraterritorial criminal investigation competence when minor victims are involved in a trafficking-case.*

### **(b) The implementation and the resources made available for the implementation of these measures. Furthermore, information should also be provided on the impact and effectiveness of the measures in reducing cases of human trafficking.**

The Dutch government reports that the Public Prosecution Service (PPS) – on average – prosecutes over three quarters of human trafficking cases.<sup>79</sup> These numbers could be interpreted as indicating that the PPS and police are successful in their investigations and prosecutions of such cases and that victims receive the protection provided by Chapter B9 of the Dutch Aliens Act Implementation Guidelines (*Vreemdelingencirculaire*), the so-called "B9-protection".<sup>80</sup>

In reality, there is need for improvement. Organizations and lawyers that assist victims observe that victims (primarily women) who turn to the police are not always given the opportunity to file an official complaint. That opportunity only exists if the prosecutor decides to start an investigation. This decision is often based upon the information extracted from the intake interview, even though this may not be enough to make an informed decision about prosecution. If the prosecutor decides not to prosecute, the victim is not given the opportunity to file an official complaint – which is a prerequisite for B9-protection. Cases have been reported in which victims were denied the possibility to file a complaint and were subsequently placed into aliens' detention.<sup>81</sup>

<sup>78</sup> Only the NGO 'CoMensha' has been granted official status in the Human Trafficking Task Force.

<sup>79</sup> See pp. 43-44 of the Dutch government's response to the list of issues (CAT/C/NLD/Q/6).

<sup>80</sup> Par. 3.1 read in conjunction with par. 2(b), chapter B9.

<sup>81</sup> See for example the following NGO-reports (in Dutch): *Slachtoffers achter de tralies. Signalering van slachtoffers van mensenhandel in detentie en knelpunten bij aangifte en verlening van de B9-status* (Victims behind bars. Noticing victims of trafficking in detention and bottlenecks with reporting and awarding of B9-status), FairWork, 2012 (available at: <http://www.fairwork.nl/assets/structured-files/Publicaties/Rapporten/Rapport+Slachtoffers+achter+de+tralies+augustus2012.pdf?nodeIn=76> (last visited 7 March 2013)) and *Uitgebuit en in de bak! Slachtoffers van mensenhandel in vreemdelingendetentie* (Exploited

This practice is in violation of Chapter B9, which provides that if the police receive the slightest indication of human trafficking during the first interview, it must grant the victim a reflection period,<sup>82</sup> as mentioned under 22 (a). It further provides that decisions about prosecution are only to be taken after an official complaint has been made<sup>83</sup> and that every victim has the right to file such a complaint.<sup>84</sup>

In November 2011 measures were taken to narrow the procedure even further, due to alleged – but unsubstantiated – claims of abuse of Chapter B9.<sup>85</sup> Most notably, these measures order to prosecute false reports of human trafficking, the quick settlement of so-called “prospectless applications” (*kansloze aanvragen*), and the denial of a reflection period to victims who escaped the trafficking situation for more than three months prior to their contact with the police. For victims, this increases the barrier to request access to protection. For example, if unviable and false victims’ reports are treated the same, victims with unviable stories may well be placed in alien detention or be prosecuted. Out of anxiety of these reprisals, other victims may not be willing to report. This leads to the situation that victims have no access to B9-protection, with the severe risk that they cannot escape the trafficking situation.

In addition, there is a lack of clarity with regard to the treatment of victims that are citizens from EU countries. Although the B9-regulation states that it also covers EU citizens, the fact that this regulation is part of the Aliens Act (*Vreemdelingenwet*) leads to confusion. There are a number of other problems regarding the implementation of the B9-regulation and the effectiveness of other measures in reducing cases of human trafficking.

Due to a change in legislation per 1 January 2012, there is uncertainty if and when victims of trafficking are entitled to a (free) interpreter. Because it is uncertain whether costs will be reimbursed, interpreters are not always used.

Furthermore, under the B9-regulation victims are entitled to shelter. However, there is a shortage of specialized shelters for minor victims of trafficking and it depends on the will of the municipality and the shelter concerned if shelter is offered.

*Recommendation: the NGOs invite the Committee to question the government (i) on the accessibility of the B9-protection for victims of human trafficking, (ii) on the measures it proposes to improve the situation, and (iii) ensure adequate shelter for minor foreign victims of trafficking.*

- 23. In light of the previous concluding observations of the Committee on the Rights of the Child, please provide updated information on efforts undertaken to reduce and prevent the occurrence of sexual exploitation and trafficking of children and child sex tourism (para. 74). Do these measures include, inter alia, a comprehensive study and data collection of the occurrence and dimension of the problems; implementation of comprehensive strategies and policies; prosecution of the perpetrators; and training of law enforcement officials, social workers and prosecutors on how to receive, monitor and investigate complaints in a child-sensitive manner? Furthermore, information should be provided on the impact and effectiveness of these measures in reducing cases of sexual exploitation and trafficking of children.**

#### *National Action Plans*

Despite previous recommendations of the Committee on the Rights of the Child, the Netherlands has no comprehensive National Action Plan to combat and prevent all forms of sexual exploitation of minors. This National Action Plan is necessary because the various forms of sexual exploitation are closely linked. However, several Action Plans were presented in 2011, such as the Plan of Action for the period 2011-2014 of the Human Trafficking Task Force. The Ministry of Security and Justice presented a Plan of Action to combat child pornography and to combat *loverboy* issues. Due to the recommendation in the first Report on Child Pornography from the National Rapporteur on Trafficking in Human Beings, the Ministry of Security and Justice has developed a common Action Plan with the

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and in jail! Victims of trafficking in aliens detention), BLinN, 2009 (available at: [http://www.humanistischverbond.nl/doc/actueel/uitgebuit\\_en\\_in\\_de\\_bak.pdf](http://www.humanistischverbond.nl/doc/actueel/uitgebuit_en_in_de_bak.pdf) (last visited 7 March 2013)).

<sup>82</sup> Par. 3.2, chapter B9.

<sup>83</sup> Par. 2(c), chapter B9.

<sup>84</sup> Article 163(6) of the Code of Criminal Procedure (*Wetboek van Strafvordering*).

<sup>85</sup> Letter of the Minister for Immigration and Asylum to the House of Parliament, 15 November 2011 (Reference 28 638, No. 57) and 7 May 2012 (Reference 28 638, No. 77).

Ministry of Health, Welfare and Sports to combat child abuse with emphasis on the link between sexual abuse and child pornography. Unfortunately, most action plans lack a timetable, targets, responsible executors, or a budget. An urgent proactive implementation and enforcement of protective measures is necessary in order to protect children against trafficking and sexual abuse.

#### *Prosecution of offenders*

According to the National Rapporteur on Trafficking in Human Beings it is still difficult to achieve convictions in trafficking cases. Annually the Public Prosecutor Service handles about 220 trafficking cases, but more than one fifth of those cases are dismissed. From the cases that come to court only 56% result in a sentence.<sup>86</sup>

#### *Assistance and shelter*

Most of the child victims of sexual exploitation do not receive specialized care and they end up in the residential youth care system. There are no special facilities in the residential youth care for victims of human trafficking. The National Rapporteur for Human Trafficking already stated in the Fifth report that simply locking up girls to protect them from themselves and their traffickers is highly undesirable and urged that attempts be made to find alternatives. Shelters specialized in victims of so-called 'loverboys' (young men involved in trafficking young girls nationally) exist, but they are insufficient in number. Specialized care for minor boys who are victim of trafficking is not regulated. Furthermore, assistance is not always tailored to the culture specific needs of victims from both the Netherlands and abroad. Foreign minor (potential) victims of trafficking are mostly received in closed shelters. According to research of the Ministry of Justice's Research Centre (WODC) of 2010, a legal basis for closed shelter is lacking and intensive protection in other forms is needed. Up until now no visible adjustments have taken place.

#### *Prevention programs*

Prevention programs focus mainly on loverboy issues, while other forms of sexual exploitation, such as through the use of internet, receive too little attention. Prevention activities consist usually of local, temporary and *ad hoc* responses. A more comprehensive, integrated approach is required where police, child welfare, health care providers, health authorities and schools work together with the support of the government.

Although there is training available in dealing with human trafficking cases for police, public prosecutors, judges and immigration officers, not all professionals who may encounter trafficking cases (such as desk clerks of the police, traffic police) are trained on how to recognize signs of trafficking and how to deal with victims of trafficking. For other cooperating organizations (such as social workers, teachers) lack a structural training.<sup>87</sup> Furthermore, the trainings not always include specific attention for the unique needs of child victims of sexual exploitation. The Ministry of Security and Justice is investing in the training of social workers in residential youth care centres to recognize victims of the loverboy trafficking technique, as stated in the Action Plan to combat loverboy issues for the period 2011-2014.

From August 2012 sexuality and sexual diversity are part of the school curriculum. It is important that sex education also covers issues such as respectful sexual relationships, self-integrity, perceptions of sexuality, group behaviour and group-induced pressure.

#### *Effectiveness of taken measures*

According to the Police Monitor 2010, more than half of the 25 police regions score poorly in the field of investigating human trafficking cases. Twenty out of 25 police regions score below minimum standards in handling child pornography cases. None of the police regions was involved in combating child sex tourism. In reaction to this the Minister of Security and Justice decided that there should be a specialized police unit for combating child pornography and child sex tourism. In October 2012 such a specialized unit was installed to be operational from January 2013 onwards. This unit would consist of a national unit of forty people and specialized units with on average eleven people, in each of the ten police regions. This new system in which the Netherlands is divided in ten police regions resulted from a police reorganization in which the twenty-five former regions have been condensed into ten regions,

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<sup>86</sup> National Rapporteur on Trafficking in Human Beings, *Mensenhandel in en uit beeld* (Human trafficking in and out of the picture), 2012. Available in Dutch at: [http://www.bnrm.nl/Images/factsheet-mensenhandel-in-en-uit-beeld.cijfermatige-rapportage-2007-2011-\(2012\)\\_tcm63-478098.pdf](http://www.bnrm.nl/Images/factsheet-mensenhandel-in-en-uit-beeld.cijfermatige-rapportage-2007-2011-(2012)_tcm63-478098.pdf) (last visited on 27 January 2013).

<sup>87</sup> *Eighth report of the Dutch National Rapporteur on Trafficking in Human Beings*, 2010. Available at: [http://english.bnrm.nl/Images/8e%20rapportage%20NRM-ENG-web\\_tcm64-310472.pdf](http://english.bnrm.nl/Images/8e%20rapportage%20NRM-ENG-web_tcm64-310472.pdf) (last visited on 27 January 2013).

led by a police directorate in the ministry of Security and Justice. Since the police reorganization is still ongoing, it is unclear what this means for the organization of the combat of trafficking in human beings. The NGOs are of the opinion that the specialist approach chosen to improve the combat of child pornography and child sex tourism should also be applied to the combat of trafficking in human beings.

Since much is still unknown about the overall scale of human trafficking in the Netherlands, the National Rapporteur on Trafficking in Human Beings believes that there are much more child victims of trafficking than registered. There is an urgent need to train professionals who are in direct contact with potential victims to recognize signs and to invest in adequate and specialized help and assistance.

*Recommendation: the NGOs invite the Committee to encourage the Dutch government to (i) develop a National Action Plan to combat and prevent all forms of sexual exploitation of minors that fully takes into account the different forms of sexual exploitation of children, (ii) ensure that all employees in agencies that are in direct contact with (potential) minor victims of sexual exploitation are trained in recognizing the signs and handling minor victims, (iii) guarantee specialized and tailored care for all minor victims of sexual exploitation, (iv) invest in education and media campaigns on all forms of sexual exploitation, and (v) also apply the specialist joint approach introduced by police and public prosecution to improve the combat of child pornography and child sex tourism, to the combat of trafficking of human beings.*

**25. Please provide information on steps taken to:**

- (a) Establish mechanisms to monitor the number of cases and the extent of violence, sexual abuse, neglect, maltreatment or exploitation of children, including within the family, in institutional or other care;**

The total number of reported cases and convictions of crimes of violence recorded against children since 2009 is not available. Studies showed that each year there are approximately 817 reports of child abuse and neglect. 51% involves physical abuse, 33% involves sexual abuse and the remaining 16% involves emotional deprivation or neglect. Not all reported cases are referred to the Public Prosecution Service. The police decide not to refer all reports to the PPS (27%) because in some cases there is a lack of evidence. Another 39% of the reports that are sent to the PPS are not prosecuted for various reasons. The remaining 61% is prosecuted of which 16% of the suspects were cleared of all charges and 84% was convicted.<sup>88</sup>

The registration of human trafficking cases has improved in the recent years, but still needs to improve further, since not all victims of human trafficking are reported consequently and of the reported victims not all data is properly registered. A number of organizations that are in contact with child victims, such as the Youth Care Centres and NIDOS (guardianship agency for unaccompanied minor asylum seekers), do not always report at the Coordination Centre for Human Trafficking (CoMensha). In addition, organizations that have a reporting obligation (police, Royal police, Labour Inspection) are inconsistent in their reporting procedure.<sup>89</sup>

*Recommendation: the NGOs invite the Committee to call upon the government to (i) provide for an adequate and accurate registration of cases, and (ii) stimulate organizations with and without an obligation to report to report and register cases consistently.*

- (b) Ensure that professionals working with children receive training on their obligation to report and take appropriate action in suspected cases of domestic violence affecting children;**

<sup>88</sup> NGO Report Netherlands, *Omvang en vervolging kindermishandeling* (Global Progress Survey on Violence against Children) (2011). English summary available at: <http://www.wodc.nl/onderzoeksdatabase/omvang-en-vervolging-kindermishandeling.aspx> (last visited on 27 January 2013).

<sup>89</sup> National Rapporteur on Trafficking in Human Beings, *Mensenhandel in en uit beeld* (Human trafficking in and out of the picture), 2012. Available in Dutch at: [http://www.bnrm.nl/Images/factsheet-mensenhandel-in-en-uit-beeld.cijfermatige-rapportage-2007-2011-\(2012\)\\_tcm63-478098.pdf](http://www.bnrm.nl/Images/factsheet-mensenhandel-in-en-uit-beeld.cijfermatige-rapportage-2007-2011-(2012)_tcm63-478098.pdf) (last visited on 27 January 2013).

In recent years the Dutch government invested in the training of professionals in identifying child abuse, including within the framework of the Regional Approach to Child Abuse. The Dutch government is preparing for the introduction (1 July 2013) of the Act mandatory report of domestic violence and child abuse (*De wet Verplichte meldcode huiselijk geweld en kindermishandeling*). The evaluation of the Regional Approach to Child Abuse shows that it is unclear what the results of the training are and how many professionals are trained in total.

The Dutch NGO Coalition for Children's Rights reported in November 2011 its concern about the competence of teachers regarding the identification of child abuse. Even professionals in the addiction and mental health care are behind in knowledge. Tackling child abuse requires constant alertness of professionals. This includes structural focus on child abuse in the training and regular in-service training for all professionals working for and with children.

*Recommendation: the NGOs invite the Committee to call upon the government to provide for adequate and compulsory training of professionals regarding the identification of child abuse.*

**(c) Strengthen support for victims and provide access to adequate services for recovery, counselling and other forms of reintegration;**

A uniform policy concerning support for victims is missing and there are not sufficient places and possibilities for all those who need support. Too few specialists at too few locations cannot properly and timely answer to the growing needs for support and treatment. The need for more serious and specialized forms of youth care is growing. In 2010, 2.952 children stayed an average of 8,1 months in a closed institution for youth care.<sup>90</sup> The government is working on a decentralization of the youth care system. The local communities will become operationally and financially responsible for all kinds of youth care services, including the most specialized care. The government is introducing 'efficiency reductions' of approximately 9% to the funds available for the youth policies. The central authority will transfer less money to the local communities while the municipalities will have to deal with the costs of a major reorganization and cutbacks in regular education and special education for children with disabilities. Reintegration services and programs for children are hardly available.

*Recommendation: the NGOs invite the Committee to question the Dutch government on access to adequate services for recovery, counselling and other forms of reintegration of victims, with special attention to adequate funding of these services.*

**(d) Implement the 2007 National Action Plan on Tackling Child Abuse in the Netherlands. Furthermore, information should be provided on the impact and effectiveness of these measures in reducing cases of child abuse.**

The National Action Plan on Tackling Child Abuse is in place but the budget for the implementation has been largely reduced. The situation is that NGOs spend more money on tackling child abuse than the Dutch government, which is the first responsible for the safe development of children and protection from abuse. At the same time proper policy rules, instruments, and political responsibility are lacking when it comes to enforcing the implementation of the agreed standards and quality criteria. The transition of the system is worrying as there are not sufficient guarantees for the safety of children at risk due to the lack of precaution instruments such as training, uniform quality demands and monitoring. It is further worrying that these shortcomings are accompanied by the planned and unexpected cutbacks due to financial crisis.

*Recommendation: the NGOs invite the Committee to call upon the Dutch government to keep allocating adequate funds for the effective implementation of the National Action Plan on Tackling Child Abuse in the Netherlands.*

<sup>90</sup> Report by the Dutch NGO Coalition for Children's Rights, *Kinderrechten in Nederland 2008-2012* (Children's Rights in the Netherlands 2008-2012), 2012. Available at: <http://www.kinderrechten.nl/p/13/77/ms6-44> (last visited on 27 January 2013).

## Other issues

- 26. Please indicate concrete measures taken since the previous concluding observations towards the ratification of the Optional Protocol to the Convention, which the State party signed on 3 June 2005. Please elaborate on the reasons why the State party has not yet ratified this protocol.**

After a protracted discussion about whether the Netherlands should become party to the OPCAT,<sup>91</sup> the government of the Netherlands ratified the OPCAT on 28 September 2010. Prior to ratification the government of the Netherlands suggested that one of the reasons for delaying ratification was the discussion of designating the appropriate bodies as national preventive mechanisms (NPM) and coordinating the work of all the Ministries that would be affected by the Optional Protocol's implementation.<sup>92</sup> However, it was only in January 2012 that the Netherlands finally adopted a decision to designate six existing national inspection bodies that would function as the country's NPM. This decision was transmitted to the Subcommittee on Prevention of Torture (SPT) on 17 April 2012, one year and almost five months after ratification.<sup>93</sup>

Given the recent designation of these bodies, no information has been made available publicly on the functioning of these bodies in light of their duties under OPCAT. Whether these bodies in their setup and in their visits stack up to what is expected of NPMs under the OPCAT remains to be seen. Meanwhile, there have been several reports on abuse in healthcare settings. For example, there have been increasing reports on abuse in geriatric care.<sup>94</sup> A debate has been held in the Dutch Parliament about these incidents, and the role of the inspecting body, the Healthcare-Inspectorate – one of the designated NPMs – has been criticized.<sup>95</sup> Other pressing issues concern abuse of psychiatric patients and abuses in youth care, and problematic conditions of detention in the detention centres for persons awaiting removal.

Against this context, it is necessary to observe a number of shortcomings in the implementation of the OPCAT by the Dutch government and certain weaknesses in the designated bodies. In the first place, although there was a discussion within the government about the bodies that could be designated as the NPMs for the Netherlands, the discussion was barely carried out at the parliamentary level.<sup>96</sup> There was no engagement with civil society in the discussion leading to the designation of the six existing bodies, as the SPT recommends when States are engaged in the

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<sup>91</sup> The question of ratification was brought to the attention in the Dutch Parliament on 30 March 2005 (See resolution of proposal to ratify the protocol presented by Dutch Members of Parliament Çörüz and Van der Laan, *Kamerstukken II* 2004/05, 29800-V, No. 88). The issue of ratification was discussed on and off until 28 September 2010. See further Explanatory Note presented by the Netherlands Minister of Foreign Affairs to the Houses of Parliament on 27 November 2008 discussing among other things the content of the Protocol and its consequences for the Netherlands (*Kamerstukken I en II* 2008/09, 31797 (R1871), No. 1/A, available at: [https://zoek.officielebekendmakingen.nl/dossier/31797-\(R1871\)/kst-31797-1?resultIndex=10&sorttype=1&sortorder=4](https://zoek.officielebekendmakingen.nl/dossier/31797-(R1871)/kst-31797-1?resultIndex=10&sorttype=1&sortorder=4) (last visited on 7 March 2013)).

<sup>92</sup> See Note on Parliamentary Report of 11 June 2010, *Kamerstukken I* 2009/10, 31797 (R1871), No. E, available at: <https://zoek.officielebekendmakingen.nl/kst-31797-E.html> (last visited on 7 March 2013).

<sup>93</sup> See Letter of the Permanent Mission of the Kingdom of the Netherlands to the United Nations Office and Other International Organizations in Geneva; available on the website of the SPT at: <http://www2.ohchr.org/english/bodies/cat/opcat/docs/NPM/LetterNetherlands23042012.pdf> (last visited 27 on January 2013). The designated bodies are the Inspectorate for Public Order and Safety (IOOV) (for police cells), the Health-Care Inspectorate (IGZ) (for health care institutions), the representative body of the Committees of Supervision (for police cells and prisons), the Council for the Administration of Criminal Justice and Protection of Juveniles (RSJ) (for minors in detention), the Committee for the Integral Supervision of Return (CITT) (for foreign nationals awaiting removal from the country) and the Inspectorate for Implementation of Sanctions (IST). The latter body, which recently changed its name to Inspectorate of Security and Justice and merged with the IOOV, is in charge of coordinating the activities of all the other NPM bodies in the Netherlands.

<sup>94</sup> I.a. Movisie, *Meer meldingen oudermishandeling* (More reports of abuse of the elderly). Available in Dutch at: <http://www.movisie.nl/persbericht/persbericht-meer-meldingen-ouderenmishandeling> (last visited on 8 February 2013).

<sup>95</sup> See debate on the topic of abuse of geriatric patients in *Handelingen II* 2011/12, 33000 XVI, No. 96, p. 96-10-45 (14 June 2012) available at: <https://zoek.officielebekendmakingen.nl/h-tk-20112012-96-10.html> (last visited on 27 January 2013).

<sup>96</sup> See for example Parliamentary debate on the ratification of the OPCAT, 24 March 2010, *Handelingen II* 2009-10, 31 797 (R1871), No. 67, p. 5854 (available in Dutch at: <https://zoek.officielebekendmakingen.nl/h-tk-20092010-67-5851.html> (last visited on 8 March 2013)).

process of setting up or appointing potential bodies to fulfil the role of NPMs.<sup>97</sup> The first time that there was some sort of open discussion about the OPCAT implementation in the Netherlands was when the IST organized a conference together with the VU University of Amsterdam on 1 June 2012 (that is, when the NPM was already operational).<sup>98</sup>

In the second place, a number of bodies in the Netherlands NPM are not really independent or have not been set up in the manner recommended by the SPT.<sup>99</sup> The coordinating body, the Inspectorate of Security and Justice is part of the Ministry of Justice, and its budget is derived from the Ministry. Although the Inspectorate itself claims that it is independent, and that its work is guided by an internal regulation,<sup>100</sup> it remains potentially problematic that the existence and budget of the Inspectorate is dependent on the political will of the incumbent Minister. Moreover, the Minister can give instructions to the Inspectorate with respect to its inspection assignments.<sup>101</sup> Furthermore, the internal regulation does not have a legally binding character and could be easily changed or modified with potential negative implications for the mandate of the Inspectorate. Similarly, although the general mandate of the Health-Care Inspectorate appears to have a legal basis,<sup>102</sup> the Inspectorate itself is part of the Ministry of Health, and no clear rules are available that guarantee its independence.

In the third place there is also a problem of coverage. In 2010 the Kingdom of the Netherlands underwent a constitutional reform with respect to Kingdom's Antilles overseas territories. The islands of Curacao and St. Maarten became autonomous countries within the Kingdom joining the island of Aruba, whereas the smaller islands of Bonaire, St. Eustatius and Saba (the BES Islands) became special city councils of the country of the Netherlands. This had an impact on the debate surrounding the ratification of the OPCAT by the Netherlands. Although initially the idea was that the ratification of the Optional Protocol would entail that the NPMs would also cover the Netherlands Antilles, it was later decided that the countries of Aruba, Curacao and St. Maarten could on their own later decide whether they could accede to the Protocol.<sup>103</sup> Thus the Netherlands ratified the OPCAT only for the parts of the Kingdom in Europe. It is thus not certain, whether the BES Islands are covered by the OPCAT or not, although the Inspectorate of Security and Justice seems to suggest in its yearly report that they assist in the coverage of these special city councils together with some local authorities. However, there is currently no NPM coverage for Aruba, Curacao and St. Maarten under the OPCAT. Although there seems to be local supervisory committees of prisons, it is not entirely clear whether these bodies fulfil the requirements of independence and autonomy. Persons deprived of their liberty in these islands therefore do not benefit from the preventive effect of independent bodies (NPMs or SPT).

#### *Recommendations:*

*The NGOs invite the Committee to ask the Dutch government to:*

- *Clarify the position of the part of the Kingdom outside of Europe with respect to the application of OPCAT, and work together with the autonomous governments to accept being bound by the Protocol and thus establish NPMs tailored for the needs of the Islands, and allow for visits by the SPT;*
- *Modify national legislation to provide a proper legal basis for a number of the designated NPMs including the coordinating Inspectorate for Security and Justice and the Health care Inspectorate;*

<sup>97</sup> See 'Guidelines on National Preventive Mechanisms', Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Doc. CAT/OP/12/5 (9 December 2010), par. 16.

<sup>98</sup> See International Conference SPT-CPT-NPM, Inspectorate, Ministry of Security and Justice, Nieuwersluis, The Netherlands, 1 June 2012, publication No. J-15329. Report available at: <http://www.ist.nl> (last visited on 27 January 2013).

<sup>99</sup> Guidelines on National Preventive Mechanisms, Subcommittee, par. 7-8.

<sup>100</sup> See 'Independence of IST', available at: <http://english.ist.nl/organisation/independence%5Fof%5Fist/> (last visited on 27 January 2013).

<sup>101</sup> The European Committee on the Prevention of Torture has observed as much in its report of its most recent visit to the Netherlands. See Report to the Government of the Netherlands on the visit to the Netherlands carried out by the CPT from 10 to 21 October 2011, CPT/Inf (2012) 21, par. 50.

<sup>102</sup> See Art. 7 Law on the *Kwaliteitswet zorginstellingen* (Quality of Health Care Institutions), BWBR0007850. Available at: <http://wetten.overheid.nl/BWBR0007850> (last visited on 27 January 2013).

<sup>103</sup> See 'Note on Parliamentary Report', *Kamerstukken II* 3009-20, 31 797 (R1871), No. E, 11 June 2010, p. 3. Available in Dutch at: <https://zoek.officielebekendmakingen.nl/kst-31797-E.html> (last visited on 7 March 2013).

- *Adopt measures to ensure the independence of those NPMs that officially resort under their respective ministries; this could take place by detaching them from those ministries and establishing them under the supervision of the newly established National Human Rights Institution or in close coordination with it, or in any case ensure that their budgets are separated and ring-fenced from the budgets of the ministries and that they are able to dispose of that budget according to the NPMs needs;*
- *Consult civil society organizations for improving the work and the independence of the Netherlands NPMs and to move, where possible, towards representation and participation of civil society in these bodies.*

## **General information on the national human rights situation, including new measures and developments relating to the implementation of the Convention for the European part of the Kingdom, Aruba and the Netherlands Antilles.**

- 45. Please provide detailed information on the relevant new developments in the legal and institutional framework within which human rights are promoted and protected at the national level, that have occurred since the previous periodic report, including any relevant jurisprudential decisions.**

### *Relevant case law*

On a positive note, on 21 March 2012 the Dutch District Court The Hague awarded € 1.000.000, - material and immaterial damages to one of the victims of the so-called Benghazi HIV-trial.<sup>104</sup> The victim submitted a claim for damages against twelve Libyan civil servants that took part in his torture and inhumane treatment during eight years of (illegal) detention in Libya. None of the Libyan defendants appeared in Court.

This case is of great importance for the protection of persons who find themselves in a position where it became impossible to submit a complaint concerning torture and/or degrading treatment in the country where the defendant(s) live(s) or the torture and/or inhumane treatment took place. The Dutch civil court assumed jurisdiction on the ground of article 9 subsection c of the Dutch Code of Civil Procedure, stating that “the situation and circumstance in Libya at the time of the commencement of the procedure” around 27 July 2011 was decisive.

- 47. Please provide any other information on new measures and developments undertaken to implement the Convention and the Committee’s recommendations since the consideration of the previous periodic report in 2007, including the necessary statistical data, as well as on any events that occurred in the State party and are relevant under the Convention.**

### *Plans to introduce taser weapons for the Dutch police*

Since May 2009, Dutch police arrest teams have gradually been equipped with electric ‘taser’ weapons (also called ‘stun guns’ or ‘electro-muscular disruption devices’). In September 2011, MP Geert Wilders requested the Prime Minister whether the rest of the national police force could also be provided with taser weapons.<sup>105</sup> The Prime Minister answered that he would pass on this request to the Minister of Security and Justice, Mr. Ivo Opstelten.<sup>106</sup> On September 28<sup>th</sup>, 2012, Minister Opstelten announced his intention to introduce taser weapons for the entire Dutch police force, including all regular police officers.<sup>107</sup> To this effect, a police pilot project would soon be conducted.<sup>108</sup> The announcement by the Minister met with criticism in Dutch media, even from the Dutch Police Union that doubted the necessity

<sup>104</sup> See the judgment of the District Court The Hague, 21 March 2012, available at: [www.rechtspraak.nl/ljn.asp?ljn=BV9748](http://www.rechtspraak.nl/ljn.asp?ljn=BV9748) (last visited 7 March 2013).

<sup>105</sup> See *Kamerstukken II* 2011/12, 33000, note 1, 22 September 2011. Available at: <https://zoek.officielebekendmakingen.nl/h-tk-20112012-3-7.html> (in Dutch, last visited on 27 January 2013).

<sup>106</sup> *Ibid.*

<sup>107</sup> See *Kamerstukken II* 2012/13, 29628, No. 330. Available at: <https://zoek.officielebekendmakingen.nl/kst-29628-330.html> (in Dutch, last visited on 27 January 2013).

<sup>108</sup> *Ibid.*

of a large-scale introduction of taser weapons and called the whole plan “incident politics”.<sup>109</sup> In national media, particular mention was also made of reports by Amnesty International, which had highlighted that, in the United States alone, 500 people had died since 2001 from the use of taser weapons by American police officers.<sup>110</sup> In the words of Amnesty International: “*What is most disturbing about the police use of Tasers is that the majority of those who later died were not a serious threat when they were shocked by police.*”<sup>111</sup> This shows that the use of tasers by police can easily result in excessive use of force. This is due to the fact that taser weapons are 1) perceived to be ‘non-lethal’, 2) easy to operate and 3) used from a distance by their handlers. In addition, taser weapons hardly leave any external scars, further lowering the personal threshold for their use and limiting the chances of subsequent medical detection, police accountability and judicial oversight. Apart from the threat of permanent physical damage (e.g. heart defects) and mental harm (psychological trauma) to anyone who has been ‘tased’, another risk lies in their discriminatory use (e.g. ethnic profiling) by which certain groups will be disproportionately affected. Depending on the circumstances, the use of taser weapons by police may even amount to torture. This was recognised by your Committee as well as the UN Human Rights Committee in its concluding observations regarding the introduction and/or use of taser weapons in the USA (2006), Portugal (2008 & 2012), Australia (2009), Spain (2009), New Zealand (2010), Austria (2010), France (2010) and Canada (2012).<sup>112</sup>

*Recommendation: the NGOs invite the Committee to question the Dutch government on the use and further introduction of taser weapons, as the use of this weapon impacts the physical and mental state of targeted persons risking a violation of Articles 2 and 16 of the Convention.*

#### *Consulting human rights organizations*

The Dutch government reports that it does consult many human rights organizations when it is preparing or amending legislation. The NGOs note with concern that neither women’s rights organizations are mentioned in this context, nor organizations that are based in the Caribbean part of the Kingdom and/or the Caribbean ‘special municipalities’.

*Recommendation: the NGOs invite the Committee to call upon the government to be inclusive in the consultation processes, especially when human rights are at stake.*

#### *Universal jurisdiction*

Among others in light of the Committee’s View in *Guegueng v. Senegal* and more recently the judgment of the International Court of Justice in *Belgium v. Senegal* the NGOs would also like to draw attention to how the Netherlands approaches universal jurisdiction, as it appears to hinder full implementation of the obligation to prosecute or extradite.

In practice the way the Netherlands applies universal jurisdiction is problematic for two reasons: (1) the failure to conduct an immediate preliminary enquiry into the alleged criminal responsibility of persons who are considered to have committed crimes as laid down in Article 1F of the Refugee Convention (2) based on the interpretation that the person concerned should be permanently present in the Netherlands, the Public Prosecution Service does not even decide whether or not to prosecute or extradite suspected torturers who are only present in the Netherlands on a

<sup>109</sup> See e.g. the news item of NOS, *Opstellen: taser voor alle agenten* (Minister Opstelten: taser for all police officers), 29 September 2012. Available at: <http://nos.nl/artikel/423898-opstellen-taser-voor-alle-agenten.html> (in Dutch, last visited on 27 January 2013); NOS, *Dit is incidenten politiek* (This is incident politics), 29 September 2012: <http://nos.nl/audio/423967-dit-is-incidentenpolitiek.html> (in Dutch, last visited on 27 January 2013).

<sup>110</sup> See Amnesty International, USA: Stricter limits urged as deaths following police; Taser use reach 500, press release 15 February 2012. Available at: <http://www.amnesty.org/en/news/usa-stricter-limits-urged-deaths-following-police-taser-use-reach-500-2012-02-15> (last visited on 27 January 2013). See also Amnesty International, *Less than lethal? The use of stun weapons in US law enforcement*, December 2008. Available at: <http://www.amnesty.org/en/news-and-updates/report/tasers-potentially-lethal-and-easy-abuse-20081216> (last visited on 27 January 2013).

<sup>111</sup> Amnesty International, USA: Stricter limits urged as deaths following police; Taser use reach 500, press release 15 February 2012. Available at: <http://www.amnesty.org/en/news/usa-stricter-limits-urged-deaths-following-police-taser-use-reach-500-2012-02-15> (last visited on 27 January 2013).

<sup>112</sup> See UN Docs. CCPR/C/USA/CO/3/Rev.1 (par. 30), CAT/C/PRT/CO/4 (par. 14), CCPR/C/PRT/CO/4 (par. 10), CCPR/C/AUS/CO/5 (par. 21), CAT/C/ESP/CO/5 (par. 27), CCPR/C/NZL/CO/5 (par. 10), CAT/C/AUT/CO/4-5 (par. 17), CAT/C/FRA/CO/4-6 (par. 30) & CAT/C/CAN/CO/6 (par. 21).

temporary basis. Yet, in the spirit of *aut dedere aut iudicare*, if the Netherlands' legislation or judicial interpretation does not allow prosecution in such cases, the possibilities for extradition should at least be considered.

Given the *ius cogens* character of the prohibition of torture and the *erga omnes* character of the resulting rights and obligations for third states, the NGOs would like to stress the practical obligation to investigate or make a preliminary enquiry as to the facts under art. 6 (1). Appropriate mechanisms must be in place that are able to conduct the necessary preliminary enquiry into the facts in order to determine whether a sufficient case has been made out for the purpose of extradition or prosecution.<sup>113</sup>

*Recommendation: the NGOs invite the Committee to call upon the Dutch government to adopt appropriate mechanisms in cases of alleged torture or inhumane treatment to be able to conduct the necessary preliminary enquiry into the facts in order to determine whether a sufficient case has been made out for the purpose of extradition or prosecution.*

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<sup>113</sup> See e.g. G. Goodwin-Gill, 'Crime in international law: obligations erga omnes and the duty to prosecute', in: G. Goodwin-Gill & S. Talmon, *The reality of international law*, 1999 (Oxford University Press), p. 224; see also, e.g. M. Ragazzi, *The concept of International obligations erga omnes*, Oxford 1997, p. 138. See also Zegveld & Handmaker, *Universal jurisdiction: state of affairs and ways ahead – a policy paper*, The Hague, Institute of Social Studies 2012, p. 8; available at: <http://repub.eur.nl/res/pub/31137/wp532.pdf> (last visited on 5 February 2013).