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**Report to the authorities of the Kingdom
of the Netherlands on the visits carried out
to the Kingdom in Europe, Aruba,
and the Netherlands Antilles
by the European Committee for the Prevention
of Torture and Inhuman or Degrading
Treatment or Punishment (CPT)**

in June 2007

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on 30 January 2008.

Strasbourg, 5 February 2008

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Copy of the letter transmitting the CPT's report

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Strasbourg, 3 December 2007

Dear Mr Kuijer

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I have the honour to enclose herewith the report drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its fourth periodic visit to the Kingdom of the Netherlands. The visit comprised visits to the Kingdom in Europe (4 to 14 June 2007), to Aruba (4 to 7 June 2007) and to the Netherlands Antilles (7 to 13 June 2007). The report was adopted by the CPT at its 64th meeting, held from 5 to 9 November 2007, and consists of three distinct parts in respect of the Kingdom in Europe (Part 1), Aruba (Part 2) and the Netherlands Antilles (Part 3).

The various recommendations, comments and requests for information formulated by the CPT are listed in Appendix I of each part of the report. As regards more particularly the CPT's recommendations having regard to Article 10 of the Convention, the Committee requests the Netherlands authorities to provide within **six months** a response giving a full account of action taken to implement them.

The CPT trusts that it will also be possible for the Netherlands authorities to provide, in the above-mentioned response, reactions to the comments formulated in this report which are summarised in Appendix I to each part as well as replies to the requests for information made.

The CPT would ask, in the event of the response being forwarded in Dutch, that it be accompanied by an English or French translation. It would also be most helpful if the Netherlands authorities could provide a copy of the response in a computer-readable form.

I am at your entire disposal if you have any questions concerning either the CPT's report or the future procedure.

Yours faithfully

Mauro PALMA
President of the European Committee for the
Prevention of Torture and Inhuman
or Degrading Treatment or Punishment

cc: Mr Rudy CROES, Minister of Justice of Aruba (Part 2 of the report)
Mr David DICK, Minister of Justice of the Netherlands Antilles (Part 3 of the report)
Mr Jacobus VAN DER VELDEN, Ambassador Extraordinary and Plenipotentiary,
Permanent Representative of the Netherlands to the Council of Europe, Strasbourg

PART 1 : VISIT TO THE KINGDOM IN EUROPE

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I. INTRODUCTION

A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Convention"), a delegation of the CPT carried out a visit to the Kingdom in Europe of the Netherlands from 4 to 14 June 2007.¹ The visit formed part of the CPT's fourth periodic visit to the Kingdom of the Netherlands.²

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

- Andres LEHTMETS (Head of the delegation)
- Haritini DIPLA
- Marc NÈVE.

They were supported by Marco LEIDEKKER of the CPT's Secretariat, and assisted by

- Jurgen VAN POECKE, Director of De Grubbe Youth detention centre in Everberg, Belgium (expert)
- Hildo BOS (interpreter)
- Lee MITZMANN (interpreter).

B. Establishments visited

3. The delegation visited the following places of detention:

Law enforcement establishments

The Hague:

- Burgemeester Patijnlaan Police Station
- Hoefkade Police Station

Rotterdam:

- Doelwaterplein Police Station
- Schiedamseweg Police Station
- Zuidplein Police Station

Establishments under the authority of the Ministry of Justice

- the terrorist departments at De Schie and Vught Prisons
- the detention boats "Kalmar" in Dordrecht and "Stockholm" in Rotterdam
- the Expulsion Centre at Rotterdam Airport
- the De Hartelborgt Youth Detention Centre in Spijkenisse.

¹ The visits to Aruba and the Netherlands Antilles are dealt with separately (cf. Part 2 and Part 3).

² The CPT's previous periodic visits to the Kingdom of the Netherlands took place in August/September 1992, November 1997 and February 2002.

C. Consultations held by the delegation

4. In the course of its activities in the Kingdom in Europe, the delegation met Guusje TER HORST, Minister of Interior, Ernst HIRSCH BALLIN, Minister of Justice, Nebahat ALBAYRAK, State Secretary of Justice, Peter VAN DER SANDE, deputy head of the National Agency of Correctional Institutions, as well as other senior officials from the Ministries of Justice, Interior and Health, and from the National Agency of Correctional Institutions. The delegation also held talks with Alex BRENNINKMEIJER, National Ombudsman. In addition, meetings were held with local officials in charge of the places visited and with representatives of non-governmental organisations active in areas of concern to the CPT.

A list of the authorities and non-governmental organisations with which the delegation held consultations is set out in Appendix II.

D. Cooperation between the CPT and the Netherlands authorities

5. The degree of cooperation received by the CPT's delegation from the Netherlands authorities was excellent. In particular, the delegation was granted rapid access to the establishments it wished to visit and could meet in private persons deprived of their liberty with whom it wished to speak. Further, the delegation was granted access to all documentation it wanted to consult.

The CPT wishes to express its appreciation for the effective coordination and the quality of information provided by the liaison officer, Martin KUIJER, and his team.

6. Unlike during previous visits to the Netherlands, in the course of the 2007 visit the CPT's delegation was given immediate and unconditional access to all medical files and other documentation it wished to examine. Moreover, the delegation was informed by the Dutch authorities of a project to explicitly lay down in law the CPT's right of access to personal medical data, in order to ensure full implementation of the Convention's provisions. The CPT was pleased to learn of this positive development **and would like to be kept informed of progress towards the adoption of such a legal provision.**

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Law enforcement agencies

1. Preliminary remarks

7. As already described in previous CPT visit reports³, police custody (*in verzekeringstelling*) in the Netherlands can last up to three days and may, exceptionally, be extended by a further three days. Such police custody may be preceded by a period of up to six hours during which a person can be held in a police station for the purpose of examination (*ophouden voor onderzoek*).

Following a maximum period of six days and 15 hours⁴ in police detention, a person remanded in custody should, in principle, be transferred to a remand prison. However, an amendment to the Penitentiary Principles Act⁵, which entered into force in March 2002, authorises the detention of a remand prisoner in a police cell for a further ten days⁶. At the same time, a 2002 amendment to the Juvenile Detention Principles Act⁷ allows for juveniles between 16 and 18 years of age to be remanded in police stations for up to ten days. Children between the ages of 12 and 15 may also be remanded in a police cell for three days for the sole purpose of arranging transport to a youth institution⁸.

The decision to keep a person on remand in a police cell after expiration of police custody is made by the selection officer (*selectie functionaris*) of the prison service.

8. The reason for the 2002 amendments was to legalise a practice, already observed by the CPT in 1992 and in 2002, of using police cells for holding persons on remand. In response to the CPT's concern over the amendments, the Netherlands authorities reassured the Committee that detained persons would remain in police cells for as short a period as possible.

³ CPT/Inf (93) 15/ CPT/ Inf (97).

⁴ In principle, police questioning should not continue into the night, therefore the hours between midnight and 9 a.m. are not taken into account when calculating the length of the initial police examination. Including the nine hours between midnight and 9 a.m., a detainee may spend in total up to 15 hours in a police station during the initial examination phase. For identification purposes, this initial period can be extended by an additional six hours in those cases where the apprehended person is suspected of an offence for which custody may not be imposed.

⁵ Article 15a Penitentiary Principles Act.

⁶ Bringing the maximum length of detention in police cells to 16 days and 15 hours.

⁷ Article 16a Juvenile Detention Principles Act.

⁸ Article 16b Juvenile Detention Principles Act.

Interlocutors of the CPT's delegation estimated that detained persons remain, on average, for a total of between three and four days in police detention. However, the information gathered by the CPT's delegation during its visits to a number of police stations indicated that a significant number of persons spent between 10 and 14 days detained in a police cell. This appeared particularly to be the case for juveniles between 16 and 18 years of age; apparently this was due to capacity problems in juvenile detention facilities⁹. Also, following a decision by the Council of State of 19 June 2002¹⁰, immigration detainees may be detained in police stations for up to 14 days, and the delegation's findings would suggest that they do, indeed, spend longer than three to four days in police detention facilities.

9. The findings during the CPT's 2007 visit suggest that police cells are being used as surplus capacity for remand prisons and alien holding facilities. The CPT notes that a shortage of remand capacity, combined with a policy of keeping prison occupation rates below 100% (see paragraph 25) may encourage prolonged detention in police facilities. However, the fact remains that police facilities do not offer suitable accommodation for lengthy periods of detention, particularly as concerns juveniles. The CPT has already commented in previous reports¹¹ on the unsuitability of such arrangements. **The CPT recommends once again that the Netherlands authorities take appropriate measures to minimise the time detained persons have to spend in police cells. Moreover, particular efforts should be made to ensure that juveniles are not detained in police cells for prolonged periods and are transferred to appropriate juvenile detention facilities expeditiously. The CPT also recommends that immigration detainees be promptly transferred to suitable accommodation in keeping with their needs and status.**

2. Ill-treatment

10. As was the case in previous visits to the Kingdom in Europe, the CPT's delegation received no allegations of ill-treatment of persons detained by law enforcement agencies during the June 2007 visit. Indeed, most persons interviewed stated that they had been treated well by law enforcement officials at the time of their apprehension and during their custody.

That said, when visiting the Rotterdam Airport Expulsion Centre on 11 June 2007, the CPT's delegation was informed that on that particular day an Iranian woman had been interviewed by members of the Royal Dutch Constabulary investigating allegations of ill-treatment by officers of the Lelystad police service. **The CPT would like to be informed about the outcome of the investigation.**

⁹ Concerning persons serving a custodial sentence of less than 14 days (Rotterdam) or 7 days (The Hague) for non-payment of a fine, it transpired from interviews with custodial officers that generally no effort was made to transfer them to regular (low-security) prison facilities; their incarceration in police stations for the duration of their sentence therefore seemed to be an issue of standing policy.

¹⁰ Reference number: JV 2002/274. See also Aliens Circular A6/ 5.3.6.1

¹¹ See CPT/Inf (98) 15, paragraph 29.

3. Conditions of detention and regime

11. The delegation visited police stations in The Hague and Rotterdam. In The Hague, the Burgemeester Patijnlaan Police Station has 51 single-occupancy cells and was holding 35 persons on the day of the delegation's visit, while the Hoefkade Police Station has seven single-occupancy cells, which were empty at the time of the visit. The Doelwaterplein, Schiedamseweg and Zuidplein Police Stations in Rotterdam have 66, 22 and nine single-occupancy cells respectively and, at the time of the visit, were holding 37, 17 and two persons.

12. The Hague Burgemeester Patijnlaan Police Station and the Rotterdam Doelwaterplein Police Station serve as the central police detention facilities for their regions. Persons apprehended by officers attached to other police stations are, in principle, transferred to these central facilities, although the moment of transfer may vary from just after apprehension and initial examination¹² (Hoefkade Police Station) to after the expiration of police custody¹³ (Zuidplein Police Station).

Both central police stations had specific detention facilities for immigration detainees, who were accommodated in small dormitories.

13. As was already observed by the CPT in 2002¹⁴, custodial services in both central police stations are carried out by specially trained custodial officers, who are not involved in other aspects of police work (such as apprehension, street patrol and criminal investigations). In total, there were 80 custodial officers in the Burgemeester Patijnlaan Police Station and 50 in the Doelwaterplein Police Station.

The establishment of a specialised custodial service for persons detained by the police, as is the case in The Hague and Rotterdam, is a very positive development, given the very specific nature of this task. Further, such a service could provide an important safeguard against ill-treatment; in order for that safeguard to be fully effective, custodial officers should have both the authority and the responsibility to verify whether basic rights of detained persons, such as notification of deprivation of liberty, access to a lawyer, etc., have been respected, and to take appropriate action if this is not the case.

In this respect, the CPT's delegation noted that custodial officers in the two central police detention facilities visited could play a more active role, in particular concerning exercise of the right of notification of deprivation of liberty (see paragraph 20). **The CPT would like to receive the comments of the Netherlands authorities on this point.**

¹² After a maximum of 15 hours.

¹³ After a maximum of six days, 15 hours.

¹⁴ CPT/ Inf (2002) 30; paragraph 14

14. Material conditions in police cells in the Netherlands are prescribed by the Regulation on police cell complexes (*Regeling Politiecellencomplex*). This Regulation sets standards for, amongst other things, cell size, luminosity, outdoor exercise and cell equipment. It also lists in detail the personal data to be registered during the admission process. Furthermore, it makes provision for the establishment of an independent visiting committee to monitor both the material conditions of police cells and the treatment of detainees. All police stations visited had set up such a committee, which is a very welcome state of affairs.

The single-occupancy cells in all the police stations visited were about 7m², which is a satisfactory size. They were equipped with in-cell toilet facilities, a call bell, a plinth with a mattress, and a table with chairs. The artificial lighting was adequate and in some cases there was access to natural light. Such lack of access to natural light in many police cells appears not to be in conformity with Article 6 (1) of the Regulation on police cell complexes which states that police detainees should be able to observe the cyclus of day- and night from their cells. **The CPT recommends that the standards with respect to access to natural light contained in Article 6 (1) of the Regulation on police cell complexes is implemented in all police cells in the Netherlands.**

The visited cells were on the whole clean and, with the exception of the Rotterdam Zuidplein Police Station, well ventilated. The delegation was informed that this particular police station would be renovated in the near future. **The CPT trusts that the opportunity will be taken to install adequate ventilation.**

With the exception of the Hoefkade Police Station (where detained persons spend only a few hours) all police stations visited were equipped with an outdoor exercise area.

15. In all the police stations visited, detained persons had access to reading material in different languages and were provided with access to the outdoor exercise yard for at least one hour a day.

No other activities were provided for criminal suspects. However, for immigration detainees, the Burgemeester Patijnlaan Police Station had a recreation room equipped with a television set and chairs; similar arrangements were found in Rotterdam. In the The Hague station, juvenile detainees were permitted, on occasion, to watch television in the recreation room.

16. The material conditions in the police cells and the detention regime were on the whole suitable for a stay of a few days. However, the reality is that significant numbers of persons are detained for much longer periods in police detention. For such lengthy stays, police stations are unsuitable and the CPT has already made recommendations in this respect (see paragraph 9 above).

4. Safeguards against ill-treatment

17. In the past, the CPT has examined in detail the safeguards against ill-treatment offered to persons deprived of their liberty by law enforcement agencies¹⁵ and has made a number of recommendations. With regard to the right of access to a lawyer, some promising developments were observed during the 2007 visit. However, in respect of the right of notification of custody to a third party, the situation remained very much unchanged.

a. notification of deprivation of liberty

18. In the report on the CPT's 2002 visit, reference was made to the possibility of holding a person under a regime of "all restrictions", in conformity with Article 62 (2) b of the Code of Criminal Procedure, whereby a person may be deprived of all outside contacts with the exception of access to a lawyer. Such a regime may be imposed "in the interest of the investigation" by a public prosecutor, an assistant public prosecutor, or an examining magistrate, depending on the legal stage of the detention.

Under certain conditions, the imposition of an all restrictions regime may lead to *de facto* incommunicado detention, particularly during the first stage of police detention when no contact with a lawyer is allowed (see paragraph 21). In the course of the 2007 visit, the CPT's delegation met with a number of detained persons who appeared to have been held under such conditions.

19. The CPT wishes to reiterate that, in principle, the right to notify one's deprivation of liberty should take effect as from the outset of deprivation of liberty. In other words, persons obliged to remain with the police should have the right to notify a third party immediately. This right could be made subject to certain exceptions designed to protect the legitimate interests of the police investigation, provided those exceptions are clearly circumscribed and made subject to appropriate safeguards. In particular, it must be ensured that the reasons for postponing contact with others are in order to protect evidence and not to create hardship and to put pressure on the detained person. Further, postponement of the right to notify deprivation of liberty should be balanced by the presence of other safeguards, such as immediate access to a lawyer. The threshold for application of an all restrictions regime should be particularly high in the case of minors.

In its 1997 visit report, the CPT stated that it considered the wording of Article 62 (2) b to be imprecise and requested the Netherlands authorities to amend it accordingly. The CPT repeated its recommendation in 2002. However, the Netherlands authorities did not respond to, or act upon, this recommendation in a meaningful manner. **The CPT reiterates its recommendation that the Netherlands authorities circumscribe more precisely the possibility to delay the exercise of the right of notification of deprivation of liberty and calls upon the Netherlands authorities to give a proper follow-up to this recommendation.**

¹⁵ See CPT/Inf (93) 15; paragraphs 34 to 55 and CPT/Inf (98) 15; paragraphs 30 to 39.

20. Another issue of ongoing concern for the CPT relates to Article 27 (1) of the Police Service Guidelines, which has still not been implemented properly with respect to the right of a detained person to contact a third party or relative.

Various detained persons, not placed under the regime of Article 62 (2) b, claimed that they had not been given the possibility to inform their families or others of their detention. Police officers, both custodial and investigative, confirmed, in most instances, the accuracy of these claims; they told the CPT's delegation that authorising contact with a third person was the responsibility of police officers dealing with the case and that, in most cases, authorisation was denied. Clearly, this practice does not conform with the legislation in force. **The CPT calls upon the Netherlands authorities to ensure that all detained persons not subjected to the restrictions of Article 62 (2) b of the Code of Criminal Procedure are given the opportunity to exercise effectively the right to notify a third party or relative as from the outset of detention.**

b. access to a lawyer

21. As the Netherlands authorities are well aware, the CPT considers that detained persons should systematically be entitled to access to a lawyer as from the outset of detention¹⁶. From the facts found during the 2007 visit, this is still not the case; access to a lawyer is still denied during the initial period of detention for examination purposes.

However, a few high-profile cases in which persons sentenced for serious crimes were found to have been falsely convicted have led the Netherlands authorities to reconsider, inter alia, the safeguards in place during police questioning. On 1 October 2006, a directive was adopted requiring the mandatory audio-visual recording of police interrogations in a number of specific cases involving minors below the age of 16 and people with learning disabilities. On 17 January 2007, a new directive with a much wider scope was adopted, which will enter into force at the beginning of 2008.

Although the mandatory audio-visual recording of police interrogations in certain cases is undoubtedly a step forward, it is certainly not sufficient from the perspective of the prevention of ill-treatment. The CPT considers it to be in the interest of both law enforcement officials and detained persons that no doubts exist concerning the latter's treatment while in police detention; immediate access to a lawyer remains the best safeguard against ill-treatment of persons in police detention. **The CPT reiterates its recommendation that the Netherlands authorities introduce the right of access to a lawyer from the outset of deprivation of liberty.**

22. In this context, the CPT's delegation was very interested to receive information about a pilot project in the regions of The Hague and Rotterdam, which allows for the right of access to a lawyer as from the outset of police detention. **The CPT would like to receive details regarding this pilot project and, in due course, would like to be informed of its results.**

¹⁶ See CPT/Inf (93) 15; paragraph 41 and CPT/Inf (98) 15; paragraph 34.

c. access to a doctor

23. On the whole, access to a doctor for persons in police detention was still guaranteed in a satisfactory manner. In all the police stations visited, detained persons had access to a doctor upon request. However, the delegation noted that in Doelwaterplein Police Station, medical examinations took place in the presence of custodial officers.

The CPT acknowledges that special security measures may be required in a particular case, when a security threat is perceived by medical staff. However, there can be no justification for police officers being *systematically* present during medical examinations; their presence violates medical confidentiality and is usually unnecessary from a security standpoint. Alternative solutions can and should be found to reconcile legitimate security requirements with the principle of medical confidentiality. One possibility might be the installation of a call system, whereby a doctor would be in a position to rapidly alert police officers in those exceptional cases when a detained person becomes agitated or threatening during a medical examination.

The CPT recommends that steps be taken at Rotterdam Doelwaterplein Police Station and, if appropriate, in other police establishments in the Netherlands, to ensure that all medical examinations are conducted out of the hearing and - unless the doctor concerned expressly requests otherwise in a given case - out of the sight of police staff.

24. The CPT has been informed that a person in police detention does not have the right of access to a doctor of his/her own choice. The Committee does not agree with this prohibition. Allowing detained persons the right to consult a doctor of their own choice is important regarding continuity of care and can provide an additional safeguard against ill-treatment. That said, if this were felt necessary, such an examination by the detained person's own doctor could take place in the presence of a state-appointed doctor. **The CPT recommends that the Netherlands authorities reconsider their position with respect to the right of access to a doctor of his/her own choice by persons detained in a police cell.**

B. Establishments under the authority of the Ministry of Justice

1. Preliminary remarks

25. It is noteworthy that, since 1990, the incarceration rate for adults in the Netherlands has risen from one of the lowest to one of the highest levels in Western Europe¹⁷. At the same time, the overall capacity in prisons and alien detention facilities has increased from 7,195 in 1990 to 17,630 in 2006¹⁸. The opening of new detention facilities is planned and in particular, the increase in the number of facilities for the administrative detention of immigration detainees is set to continue with, inter alia, the opening of a new detention facility in Zaandam and the further enlargement of an existing facility in Alphen aan den Rijn.

As the budget of the prison service has not increased proportionately with the growth in cell capacity, the Dutch National Agency for Correctional Institutions (NACI) has been forced to make significant economies, primarily by reducing activities and work for inmates and by cutting staff costs. Budgetary restraints, combined with the expansion of the prison estate, within a context of public pressure to reduce the rate of prisoner re-offending, has resulted in the Dutch prison service going through a period of ongoing transformation, through which more efficient and effective forms of detention are being sought.

As a result, the Dutch prison system has undergone significant changes since the CPT's visit to the Netherlands in 2002. One of the most visible alterations is the introduction of double-occupancy cells in a number of remand prisons; although the CPT's delegation did not visit any of these cells, it was told that these cells had been refurbished and enlarged to meet the needs of double occupancy. The CPT's delegation was also informed that the use of one cell by two inmates had not led to an increased level of inter-prisoner violence and that the pressure to absorb more prisoners had not resulted in overcrowding in prison facilities, thanks to the policy of keeping the occupation level in Dutch prisons below 100%. However, no information has been received as to whether additional custodial, medical or other staff have been deployed in prisons where double-occupancy cells have been introduced.

The CPT would like to receive the following information:

- **the criteria for accommodation in double-occupancy cells;**
- **whether additional staff have been deployed in prisons where double cell occupancy has been introduced.**

Further, the Committee would like to receive confirmation that double-occupancy cells have indeed been enlarged before entering into service and, if so, it would like to be informed about the cell space per prisoner in a double-occupancy cell.

¹⁷ In 2006, 128 prisoners per 100,000 inhabitants (source: International Centre for Prison Studies).

¹⁸ Source: International Centre for Prison Studies (Numbers exclude capacity in forensic psychiatric hospitals and juvenile detention institutions).

26. Another recent development was the establishment of the Inspectorate for the Implementation of Sanctions (*Inspectie voor de Sanctietoepassing*) in 2005. Previously, prison inspections were carried out by the Council for the Application of Criminal Law and Youth Protection¹⁹. The new Inspectorate is attached to the Ministry of Justice and is staffed, inter alia, by former prison directors. It is authorised to carry out unannounced visits; its reports and conclusions become public and are published on its website, and copies are also sent to Parliament. The establishment of the Inspectorate has not resulted in changes to the system of independent supervisory boards attached to each prison²⁰.

27. The 2007 visit took place on the eve of an even more far-reaching restructuring of the Dutch prison system through the concept of “Measured Detention and Treatment” (*Detentie en Behandeling op Maat*). It provides for the introduction of three basic forms of prison detention in the Netherlands: remand; short-term sentences (of up to four months); and long-term sentences. As the four-month period of detention is considered too short for adequately preparing a prisoner for re-integration into society and the period of detention for prisoners on remand is unpredictable, all activities related to re-integration (which includes work and education) will not be available to these categories of prisoners.

The CPT’s delegation was told that, due to ongoing discussions with staff unions, the plan has been temporarily put on hold, but that the NACI-management remained firmly committed to introducing this new concept.

For the CPT, it is too early to comment upon the concept of Measured Detention and Treatment. However, the Committee would like to emphasise that this new concept should not lead to an impoverished regime whereby prisoners are left to their own devices for most of the time. Continuing attempts should be made to involve prisoners, both sentenced and remanded, in purposeful communal activities.

The CPT would like to be informed about the evolution and implementation of the new concept of Measured Detention and Treatment.

28. The CPT’s delegation observed that the fire at the Schiphol Airport detention centre in October 2005, which caused the death of 11 immigration detainees, has had a profound impact on safety regulations in Dutch prisons; in almost every establishment visited, fire-safety improvements were being installed.

29. The CPT’s delegation visited the terrorist departments at De Schie and Vught Prisons (See Section II.B.3) as well as the facilities for the administrative detention of irregular migrants on the detention boats “Kalmar” in Dordrecht and “Stockholm” in Rotterdam, and at the Rotterdam Airport Expulsion Centre (See Section II.B.4). In addition, the CPT’s delegation examined for the first time the treatment of persons held at the De Hartelborgt Closed State Youth Detention Centre in Spijkenisse (See Section II.B.5).

¹⁹ See CPT/ Inf (93) 15; paragraph 144.

²⁰ See CPT/ Inf (93) 15; paragraph 144.

30. All facilities visited have similar provisions with respect to complaints, discipline, sanctions and monitoring by outside bodies. These provisions have been described extensively in previous reports and require no further comment by the CPT²¹.

However, the delegation noted that a comprehensive register of disciplinary measures was not in place in any of the establishments visited. Instead, imposed sanctions were recorded in the prisoner's personal file and in the daily logbook. In the CPT's view, the introduction of a separate register for sanctions merits consideration as it increases managerial overview and facilitates inspection by external bodies. This is particularly important when sanctions are usually imposed by heads of unit and not by the director, as is the case in the Netherlands. **The CPT recommends the introduction of a comprehensive sanctions register in all establishments under the Ministry of Justice.**

The delegation noted that all detained persons placed in an isolation cell, whether prisoners, irregular immigrants or juveniles, are made to wear a short gown without trousers or even underwear, making it difficult for inmates to preserve their personal dignity. **The Committee recommends that more suitable clothing be provided to detained persons placed in isolation.**

2. Ill-treatment

31. As was the case in previous visits to the Kingdom of the Netherlands in Europe, the CPT's delegation did not receive any allegations of recent physical ill-treatment by prison officers during the 2007 visit. However, in the light of some cases examined relating to events over the last three years, the CPT does have some concerns with respect to the reporting and proper examination of allegations of ill-treatment.

32. One of the most effective means of preventing ill-treatment by prison officers lies in the diligent examination by the competent authorities of all relevant information regarding possible ill-treatment which comes to their attention, whether or not that information takes the form of a formal complaint; failing to do so will contribute to creating a climate of impunity. In this connection, judges, prosecutors and investigators are in a particularly crucial position. Vigilance and a pro-active stance adopted by the management of prisons can also make a vital contribution to combating impunity.

33. In the course of its visit, the CPT's delegation was made aware of one case of ill-treatment and two cases of alleged ill-treatment that had taken place during the previous three years. The case of ill-treatment dates back to 2004 and concerns De Noordsingel remand prison in Rotterdam. The two cases of alleged ill-treatment are both concerned with failed attempts to deport immigration detainees: the first incident in June 2006 at the Rotterdam Airport Expulsion Centre and the other in July 2006 on the Stockholm detention boat.

²¹ See CPT/ Inf (93) 15; paragraphs 135 to 145.

34. The ill-treatment at De Noordsingel remand prison, on 13 February 2004, received some coverage in the Dutch media. It involved a fight between an inmate and prison officers, which resulted in the inmate receiving punches after having been brought under control by the officers. Despite the presence of prison staff, including a unit-director, the incident was only investigated about 14 months later after one of the prison officers involved in the incident had filed a complaint against the inmate. During the subsequent hearing, the court was informed about the inmate's version of the events and ordered a full investigation. As a result, one officer was sentenced to 200 hours of community work and a suspended prison sentence of two months. A perjury case against the unit-director is still pending.

35. The alleged ill-treatment at the Rotterdam Airport Expulsion Centre took place in the early morning of 27 June 2006. Officials of the transport service of NACI attempted to move a detainee from his cell to a vehicle in order to be taken on a plane and deported. A struggle ensued, during which an official from the transport service apparently used excessive force against the detainee, including kicks to the head. By some accounts, the detainee temporarily lost consciousness as a result. Later that morning, employees from the Expulsion Centre, who had witnessed the incident, drew up a report for the Centre's management. Significant parts of the incident, in particular those related to the use of excessive force, were apparently left out of the report and the management of the Expulsion Centre only became aware of allegations of excessive use of force at a later stage. After the report was rewritten, it was handed over to the transport service for investigation. The transport service concluded that there were no indications for any wrongdoing by its staff. However, the management of the Expulsion Centre considered that the investigation had not been thorough, as the staff who had been on duty on 27 June 2006 had never been interviewed about the incident. Therefore, on 3 April 2007 the NACI-Bureau for Safety and Integrity was asked to carry out an investigation into the events on 27 June 2006. The investigation is still ongoing.

36. In a letter of 25 July 2006, a spiritual adviser attached to the Stockholm detention boat, informed the management of an account of ill-treatment by staff during an aborted expulsion attempt on 20 July 2006. He reported that an immigration detainee claimed to have been kicked, and hit on the head with a helmet while being transported to the airport. Documentation sent to the CPT's delegation by the authorities indicates that this detainee was examined by a doctor when he returned to the Stockholm immediately after the failed expulsion and that during the examination he made allegations of having been beaten. From the files available to the CPT's delegation, it was unclear whether any investigation had taken place.

When asked about the follow-up to the spiritual adviser's letter, the director of the Stockholm told the CPT's delegation that an investigation had been carried out by a head of department, and that the allegations had been found to be untrue. It should be noted that due to the holiday period, the investigation had taken place two months after the alleged incident, by which time the immigration detainee had already been expelled. Further, there was no written report on the investigation.

37. It is noteworthy that the three cases referred to above were not revealed through a formal reporting mechanism. Also, efforts appeared to have been made to either "soften" (at the Rotterdam Airport Expulsion Centre) or conceal (at De Noordsingel remand prison) the incidents. In the case of the detainee from the Stockholm, the alleged ill-treatment was not properly reported and no trace could be found of the investigation that had apparently taken place.

From subsequent discussions with prison managers, it transpired that there is, at present, no common NACI-procedure in operation that sets out how to deal with allegations of ill-treatment. Even the involvement of the NACI's Bureau for Safety and Integrity is not mandatory, besides receiving a notification of an allegation of ill-treatment. Instead, responsibility for dealing with allegations of ill-treatment is left in the hands of the director of the establishment concerned.

38. The three cases highlighted above demonstrate a clear need for the Dutch National Agency for Correctional Institutions to draw up and implement a comprehensive procedure on how to deal with allegations of ill-treatment. Such a procedure should include, at a minimum, mandatory reporting of all relevant events to the management of the establishment and NACI-headquarters, in order to maintain a local and national overview of allegations of ill-treatment within establishments under the responsibility of NACI.

Further, it is essential that investigations into allegations of ill-treatment are not carried out by officials of the establishment where the alleged ill-treatment took place or by officials of other services allegedly involved in the incident. On the contrary, for an investigation into possible ill-treatment to be effective, it is vital that the persons responsible for carrying it out are independent, both from those persons implicated in the events and, ideally, the NACI. Any investigation into ill-treatment, whatever its quality, could be compromised if it is not perceived to be totally independent. Further, prosecutorial authorities must exercise close and effective supervision of the operational conduct of an investigation into alleged ill-treatment by public officials.

In addition, a proper investigation into alleged ill-treatment must be capable of withstanding possible *post facto* scrutiny by other bodies or by the public. Therefore, records should be made of all steps taken during the investigation and of all persons interviewed and locations visited. Such records should be kept for an extended period. **The CPT recommends that the Netherlands authorities draft a comprehensive procedure on how to deal with allegations of ill-treatment within establishments under the responsibility of the National Agency of Correctional Institutions, taking into account the above remarks.**

3. The terrorist departments at De Schie and Vught Prisons

a. introduction

39. The murder of the film director Theo van Gogh in 2004, combined with the impact of the international fight against terrorism since 2001, has led the Netherlands authorities to reconsider its approach towards violent religious fundamentalism. One specific concern related to prisons serving as recruiting grounds for future terrorists. Consequently, it was decided to take preventive measures and, in September 2006, a so-called terrorist department was opened at Vught Prison. The department may receive male and female prisoners who are either sentenced or on remand.

A second terrorist department opened in mid-January 2007 at the all-male high-security De Schie Prison in Rotterdam. Initially, it was intended to transfer five male inmates from Vught Prison but, due to tensions in the Vught terrorist department related to the mixed detention of male and female prisoners, the Minister of Justice ordered the transfer of the two female inmates to De Schie.

At the time of the visit, eight male prisoners were being held in the terrorist department at Vught Prison and two women in the terrorist department at De Schie Prison.

40. The concern of the Netherlands authorities, that prisons may become breeding places for violent religious fundamentalism or other forms of extremism, is one shared with authorities in other jurisdictions. It falls outside the remit of the CPT's mandate to comment on the decision to establish separate "terrorism departments" or to speculate whether such a measure will contribute to curbing terrorist recruitment. However, the CPT does not wish to withhold from the Dutch authorities that, during the visits to the two departments, some of the delegation's interlocutors expressed their fear that on the terrorist departments, dedicated prisoners with fundamentalist religious principles could influence the less religious inmates. The matter was in particular brought up during the delegation's visit to the De Schie Prison and was also evident in the written reports made available to the delegation.

b. procedures for placement and extension of placement in the terrorist departments

41. Placement in a high-security terrorist department is governed by Article 20a of the Regulation on classification, placement and transfer of detainees (*Regeling selectie, plaatsing en overplaatsing van gedetineerden*), whereby a person charged with, or sentenced for, a terrorist offence, or of spreading a message of extremism among fellow inmates, may be placed in a terrorism department by order of the selection officer²². The delegation was told by various interlocutors that such a placement is automatic in cases where the criteria of Article 20a are met. This would imply that there is no comprehensive risk-assessment governing such placement, in contrast to what is stated in Article 22 of the Regulation on classification, placement and transfer of detainees. This regulation prescribes the drawing up of a "risk profile" based on three criteria: the offence, relevant police information, and behaviour during previous imprisonment. In this respect, the CPT's delegation was struck by the fact that a number of inmates placed in the restricted high-security regime of a terrorist department, had previously been under a full community regime, apparently without affecting the safety of staff or other inmates. One of the prisoners had even been assigned a cleaning job which allowed him to move around the establishment with a certain degree of liberty.

42. The CPT is of the firm view that placement of a prisoner in a department with a high-security regime should be based on a comprehensive individual risk assessment, and should not be an automatic result of the type of sentence imposed. Nevertheless, the Committee understands that in the case of an inmate charged with a terrorist offence, the precaution of placement under a high-security regime as an immediate exceptional preventive measure may be appropriate. Further, in the view of the CPT, inmates should only be held in special high-security units such as terrorist departments for as long as they are deemed to pose a particular risk. Therefore, placement in the departments should be subject to review at regular intervals, in particular in the case of a preventive placement such as that indicated above.

²² Placement in a terrorist department may be contested by an appeal to the Council for the Application of Criminal Law. Such appeals were dealt with on 27 March 2007 and 15 May 2007 and rejected as the legal procedures were applied correctly.

As Dutch law stands at present, an inmate who has been placed in a terrorist department will remain there until either a few months before release from prison or on acquittal by a court. No regular review of such a placement takes place except as regards those inmates placed in a terrorist department for spreading a message of extremism. In these cases, Article 26a of the Regulation limits the placement of such inmates to 12 months, although it may be extended each year for a further 12 months by the selection officer. However, Article 26a does not explicitly spell out the criteria the selection officer should take into account when deciding on an extension.

The CPT recommends the introduction of a regular review of placement in a terrorist department, based upon criteria clearly laid down in law. Further, the CPT recommends the introduction of a comprehensive risk assessment process as the basis for placement in a terrorist department.

c. material conditions

43. In De Schie Prison, construction works were ongoing in the terrorist department to create two separate units, each with seven single-occupancy cells. In general, the department offered good material conditions; the cells measured around 10 m², were clean and equipped with in-cell sanitation, and had sufficient access to both natural light and artificial lighting. The department contained a kitchen, an association room and a well-equipped fitness room. The yard for outdoor exercise, although rather oppressive due to the surrounding high walls, was sufficient in size and provided shelter from inclement weather.

There were also two isolation cells, located in the corridor adjacent to the segregation department, which were held in reserve for inmates from the terrorist department. The two recently constructed cells had no windows, but received daylight through a tube in the ceiling, containing an ingenious system of mirrors. Apparently, the luminosity in the cells was in conformity with the legal criteria. Nevertheless, the lack of windows rendered the cells oppressive and unsuitable for isolation purposes, in particular in the Dutch context where seclusion may last up to 14 days. According to the director, the cells would not be brought into service in their current state and he had asked that they be redesigned. **The CPT would like to receive confirmation that the two isolation cells will be redesigned before being used.**

44. The material conditions in the 18 cells of the terrorist department at Vught Prison were of a distinctively lower standard. The building that currently accommodates the terrorist department was previously the location of the (Temporary) Extra Security Institution ((T)EBI), and was described in the CPT's 1997 visit report²³. In the 1997 visit report, recommendations were made with respect to the poor ventilation and the limited access to natural light in the cells, due to the frosted glass panels obscuring the windows. In their response, the Netherlands authorities indicated that the entire ventilation system had been replaced following the CPT's visit. However, during the 2007 visit, similar shortcomings with respect to ventilation and lighting were observed by the delegation. Further, the cells at Vught Prison were designed to ensure that prison officers would have an immediate overview of the cell when looking through the wide hatch in the door. As the toilet facilities are exposed, prison staff are supposed to knock before opening the hatch or entering the cells. However, the delegation received several complaints, and observed for itself, that prison staff did not always comply with this requirement, causing embarrassment for the prisoner.

The delegation was informed that by 2009 the terrorist department would be relocated to other premises and that the existing building would be turned into a museum. Nevertheless, in order to improve, in the meantime, the living environment for inmates and staff alike, the **CPT recommends that improvements be made with respect to the ventilation and lighting arrangements at the Vught Prison terrorist department.**

d. regime

45. The CPT's position concerning restricted regimes on high-security units is well known to the Netherlands authorities and there has been an extensive exchange of views on this matter in the past. The CPT considers that prisoners who present a particularly high-security risk should, within the confines of their detention units, enjoy a relatively relaxed regime by way of compensation for their severe custodial situation. In particular, they should be able to meet their fellow prisoners in the unit and be granted a good deal of choice concerning their activities (thus fostering a sense of autonomy and personal responsibility). Special efforts should be made to develop a good atmosphere within high-security units. The aim should be to build positive relations between staff and prisoners. Further, particular attention should be paid to the mental health of prisoners placed in these departments.

²³ CPT/Inf (98) 15; paragraph 59.

46. Inmates held in the terrorist departments are totally separated from other prisoners and both departments are classified as “extensively secured”²⁴, one level below that of the Extra Security Institution (EBI) at Vught Prison²⁵. In fact, the regime in the terrorist departments is in many ways similar to that on the EBI; for instance, prisoners are subjected to strip searches whenever they have open visits (i.e. without glass partition) and, as a rule, are handcuffed for all escorts within the establishment. The handcuffs are removed for visits by family members or lawyers, and during outdoor exercise and sports, but not for other appointments such as with the dentist or the hairdresser. In each department, there is also a procedure in place to prevent potentially dangerous objects being used against staff and other inmates; in Vught, inmates are required to hand over objects such as spoons, toothbrush and even spectacles, before the cell door is opened and in De Schie these objects have to be shown to a custodial officer. However, in contrast to the EBI, interaction with staff is possible, and indeed encouraged.

47. In the terrorist departments, the inmate’s individualised regime is determined by the director of the establishment. According to the prisoners interviewed by the delegation at Vught Prison, recreation and outdoor exercise initially had to be taken individually, but, following complaints from inmates, this policy was changed. At the time of the visit, prisoners could associate and undertake outdoor exercise in pre-established groups, consisting of two or three prisoners; these groups are constituted in consultation with the public prosecutor’s office and the police. Nevertheless, the small scale of the departments provides limited flexibility as to the composition of the groups. If a group breaks up due to a disciplinary measure against one of its members or due to personal tensions, the restrictive regime is more likely to resemble isolation. For instance, in the course of the visit, it appeared that at Vught Prison, one inmate, involved in a religious dispute with other group members, had been unwilling for some time to participate in any group activity. At De Schie Prison in early 2007, one of the two inmates underwent five days of solitary confinement in her cell as a disciplinary measure for illicitly passing a copy of the house rules to her lawyer. Automatically, her punishment significantly limited human contact for the only other woman prisoner. Moreover, after the five days of solitary confinement, the communal activities were not immediately restored; for some time both inmates had their recreation and outdoor exercise separately. **The CPT recommends that the Netherlands authorities take measures to ensure that prisoners are not, by default, kept in conditions equivalent to isolation.**

48. The CPT understands that one of the two women detained at De Schie Prison has recently been released by court decision. In this context, **the CPT would like to be informed of the measures taken to prevent the complete social isolation of the remaining female prisoner in the terrorist department at De Schie Prison.**

²⁴ Article 13 (1) b of the Penitentiary Principles Act.

²⁵ The EBI regime was described in CPT/ Inf (98) 15; paragraphs 58 to 70 and CPT/ Inf (2002) 30; paragraphs 33 to 43.

49. According to the daily programme, inmates in the terrorist departments have between two and two and a half hours out-of-cell time for outdoor exercise and recreation. In addition, there are a few other out-of-cell activities every week, such as cooking and visits. Within their cells, prisoners are allowed to have a limited number of objects, such as pre-selected books and magazines and a television set. Further, a prisoner may request permission to undertake individual educational or recreational activities, such as language courses or music lessons, which take place in the prisoner's cell.

The regime in place in both terrorist departments is security-driven and therefore very restrictive. In defence of the EBI-regime, the Netherlands authorities have repeatedly emphasised the security aspect and, in particular, the above average risk of escape and disruption of the normal prison regime for inmates placed in the EBI²⁶. The CPT considers that, in the absence of a comprehensive individual risk assessment, this reasoning is difficult to justify in respect of inmates such as those currently held in the terrorist departments of De Schie and Vught Prisons. **The CPT would like to receive the comments of the Netherlands authorities on the above-mentioned concerns highlighted by the Committee.**

e. contacts with the outside world

50. Inmates placed in the terrorist departments are entitled to a one-hour visit (under open conditions or with a glass partition) and two ten-minute phone calls per week. They may be visited by a maximum of ten different persons, all of whom are subject to prior screening. According to the prisoners at Vught Prison, the initial screening of visitors and callers takes between six weeks and two months. During this period no visits are allowed and no telephone calls may be made. Persons who have been granted the right to visit the prisoners may also be contacted by telephone. All telephone calls and all conversations during the visits are recorded.

Inmates have unlimited access to a lawyer. However, in order to avoid strip-searches (cf paragraph 46), some prisoners prefer to meet their lawyers behind a transparent partition rather than have an open visit. Further, the CPT has received information about a number of restrictions imposed upon lawyers meeting their clients in open visits. **The CPT recommends that the security measures be reviewed in the terrorist departments with respect to contact between prisoners and their lawyers in order to ensure that they are not having an unduly negative impact on the quality of their legal defence.**

51. Prisoners have the right to send and receive mail. All mail is checked and, if it contains information that is considered sensitive, is confiscated by the prison administration. Mail directed to or received from bodies or persons listed under Article 37 of the Penitentiary Principles Act is confidential and exempted from checks by the prison administration. In this respect, the CPT's delegation noted that the Committee is not listed in Article 37. **The CPT would like to receive confirmation that mail addressed to, and originating from, the CPT is dealt with in a confidential manner. Further, the Committee would like to be informed whether prisoners are notified of any mail that is withheld by the prison administration.**

²⁶ CPT/Inf (99) 5, paragraph 29.

f. medical issues

52. As was the case in respect of the EBI, all physical examinations of inmates in a terrorist department by a doctor took place in the presence of custodial staff. The Dutch authorities explained that, in respect of EBI-prisoners, security issues were paramount, and that prison officers must be present during medical examinations due to the increased risk of prisoners absconding. However, in the absence of a comprehensive individual risk assessment, this argument does not apply vis-à-vis inmates placed in a terrorist department. Further, such a state of affairs contravenes medical confidentiality and can inhibit the establishment of a doctor-patient relationship. Consequently, **the CPT recommends that the manner in which medical care is delivered to inmates held in terrorist departments be reviewed; more specifically, all medical examinations should be conducted out of the hearing and - unless the doctor concerned requests otherwise in a given case - out of the sight of prison officers.**

53. In principle, all inmates in the terrorist departments remain handcuffed during medical examinations by a doctor, unless the doctor visits the prisoner in his/ her cell. The handcuffing of inmates during medical consultations outside their cells infringes their dignity and inhibits the development of a proper doctor-patient relationship (and is possibly detrimental to the establishment of an objective medical finding). **The CPT recommends that the Netherlands authorities cease handcuffing prisoners during medical examinations outside their cells.**

4. Facilities for immigration detainees

a. introduction

54. As stated above, the CPT's delegation visited the Stockholm detention boat in Rotterdam, the Kalmar detention boat in Dordrecht and the Rotterdam Airport Expulsion Centre. On the detention boats, aliens are held for the purpose of establishing their identity and nationality. In principle, immigration detainees for whom there are no remaining administrative impediments to expulsion, are transferred to the Expulsion Centre at Rotterdam Airport or Schiphol Airport.

At the time of the visit, the two detention boats, both moored to the quay, were holding male detainees, while the Rotterdam Airport Expulsion Centre was accommodating single women and couples, as well as men. The CPT's delegation was pleased to note that it did not encounter children in any of the facilities visited, in conformity with a recent decision by the State Secretary of Justice.

55. According to the Netherlands authorities, the two detention boats serve as temporary accommodation in cases of unexpected overcrowding; the Stockholm will close in 2010 and the Kalmar in 2012. The boats were selected for the detention of immigration detainees as they could be made operational more quickly and with fewer administrative formalities than any land facility.

The location of the Rotterdam Airport Expulsion Centre is also considered temporary and should move from its current site in about two years. **The CPT would like to receive detailed information concerning the plans to relocate the Rotterdam Airport Expulsion Centre.**

56. At present, the legislation governing the administrative detention of immigration detainees does not provide for an absolute time limit for detention pending deportation for certain categories of detained aliens²⁷. The CPT invites the Netherlands authorities to introduce an absolute time limit for the detention of all foreign nationals under aliens legislation (as is already the case in the majority of European countries).

b. material conditions

57. The detention boats were originally designed as floating hostels, providing accommodation for professionals working away from home. The official capacity of the Stockholm is 472 detainees, and for the Kalmar, 496. At the time of the visit, they were holding 422 and 107 detainees, respectively. Both boats have a similar layout: they are three storeys high, with the immigrant detainees accommodated in two, four or six-person rooms. The rooms for four persons contained a sleeping area and a living area, the latter being equipped with a table and four chairs; the rooms were sufficient in size. The two and six-person rooms were also adequate in size, with seating facilities in the centre. All rooms were equipped with toilet facilities and a refrigerator. The rooms were grouped into eight units; each of which had a recreation room.

In many aspects living conditions could be considered acceptable. However, the narrow corridors and low ceilings on both boats led to an oppressive environment and the boats were poorly ventilated, resulting in problems of humidity. In addition, none of the four outdoor yards on each boat provided shelter from inclement weather and the outdoor exercise yards used by inmates in solitary confinement were totally unsuitable, providing very little access to fresh air.

58. The CPT is aware of the ongoing discussions with respect to the suitability of boats as detention facilities in the Netherlands. For instance, the Stockholm was inspected jointly by the Inspectorate for the Implementation of Sanctions and the Council for the Application of Criminal Law and Youth Protection in April 2006. Their report made several recommendations, such as the installation of more spacious outdoor exercise yards. The report also referred to the maximum length of stay on the boats; it stated that, due to the conditions, immigration detainees should not be held on the boats for longer than six months. Following the report, several improvements were made. Nevertheless, judicial decisions of 11 December 2006 and 26 April 2007 laid down that immigration detainees should not be accommodated on the boats for longer than six months. The NACI has also applied the rulings to detainees held on the Kalmar. Indeed, the delegation did not meet any detainees who had stayed on the boats for longer than six months.

The CPT agrees that the boats are unsuitable for long-term detention and that they cannot easily be transformed into acceptable detention facilities. **The CPT recommends that the Netherlands authorities cease, at the earliest opportunity, to use boats as facilities for immigration detainees. In the meantime, it recommends that measures be taken to decrease the humidity on the Stockholm and Kalmar, to allow detainees in solitary confinement to have access to more suitable outdoor exercise yards and to install shelters against inclement weather in all the exercise yards.**

²⁷ See Article 6.5.3.5 of part A of the Aliens circular.

59. The Rotterdam Airport Expulsion Centre is housed in a former hangar directly adjacent to Rotterdam Airport. With a capacity of 212, on the day of the delegation's visit, the Centre was accommodating 110 detainees in single and double rooms, grouped into several units. Overall the material conditions in the Centre were significantly better than on the detention boats. That said, the outdoor exercise yards were not ideal; they were long, narrow cages, shielded from public view by plastic sheeting, which resulted in a somewhat confined atmosphere. The Expulsion Centre has a medical unit with three rooms, where detainees with mental disorders are accommodated. This unit has been allocated additional time from a nurse.

c. regime

60. In the past, the Netherlands authorities have been commended by the CPT for providing a varied and stimulating regime for immigrant detainees, including work, recreation, language or computer education, sports, library, music and handicraft²⁸. In 2007 the findings were markedly different; many activities were no longer available while others were reduced to a strict minimum. The regime on the two detention boats was particularly meagre, with detainees having a total of 18 hours of activities a week, including one hour of daily outdoor exercise, library visits (one hour a week), outdoor activity (three hours a week) and the option of visiting the shop three times a week. There were no educational activities, and work (cleaning and laundry) was available for only a few detainees. However, on the Kalmar the regime was slightly more developed as detainees could benefit from the presence of a sports instructor during outdoor exercise and there was a full-time librarian.

Within their units, detainees were generally free to leave their rooms and visit the unit's recreation room. However, a more restrictive regime was in operation in the admission department of both boats. In these departments, detainees were required to remain in their rooms for 10 days when they were not participating in activities, in order to be available for administrative arrangements linked to their expulsion. Consequently, they spent some 21 hours or more per day confined to their rooms.

61. It has been over 10 years since the CPT last visited an immigration detention centre in the Netherlands and the delegation noted the extent to which the Dutch approach to the administrative detention of immigration detainees has changed, largely duplicating the transformation in the prison system. Indeed, both forms of detention are linked by Article 9 of the Penitentiary Principles Act. Facilities used for the administrative detention of immigration detainees, such as the two detention boats, are classified as remand prisons; thus, the regime applied to immigration detainees is similar to that of remand prisoners. Moreover, the CPT understands that immigration detainees are normally held under a limited community regime²⁹ in conformity with Article 21 of the Penitentiary Principles Act and Article 3 of the Penitentiary Order.

The CPT would like to receive clarification as to the reason(s) for the decision to classify immigration detention centres as remand prisons.

²⁸ CPT/ Inf (98) 15; paragraph 93.

²⁹ Under a limited community regime, inmates are only allowed to associate during organised activities.

62. The CPT is aware that it may be necessary to deprive persons of their liberty for a period under aliens legislation in order to facilitate their expulsion. However, it is concerned by the linkage of two dissimilar forms of detention and sees no reason for immigration detainees to be held in prison facilities under a limited community regime. In the view of the CPT, such persons should be accommodated in specifically designed centres, offering material conditions and a regime appropriate to their legal status. The CPT recognises that special precautions might have to be taken vis-à-vis certain foreign nationals detained under aliens legislation (e.g. for disciplinary, health or security reasons). However, to apply a limited community regime indiscriminately to all detained aliens cannot be justified.

The CPT recommends that the Netherlands authorities reconsider their approach towards the detention of immigration detainees, in the light of the above remarks. Immigration detainees should have access to a full community regime and the additional restrictions for detainees in the admission departments should be reviewed.

63. The Rotterdam Airport Expulsion Centre has a slightly different regime, as it is governed by the Border Accommodation Regime Regulations Decision (*Reglement Regime Grenslogies*). Immigration detainees are allowed to move around their unit freely for most of the day, and have a well-equipped recreation room at their disposal. Further, each unit has access to a large interior court for half the day. In addition, one hour of outdoor exercise per day is guaranteed. Although few activities were organised, the regime was more lenient and therefore somewhat better adapted to the needs and status of migrant detainees.

d. staffing

64. The staff of centres for immigration detainees have a particularly onerous task. Firstly, there will inevitably be communication difficulties caused by language barriers. Secondly, many detained persons will find the fact that they have been deprived of their liberty when they are not suspected of any criminal offence difficult to accept. Thirdly, there is a risk of tension between detainees of different nationalities or ethnic groups. Consequently, the CPT places a premium upon the supervisory staff in such centres being carefully selected and receiving appropriate training. Staff should possess both well-developed qualities in the field of interpersonal communication and cultural sensitivity, given the diverse backgrounds of the detainees. Further, at least some of them should have relevant language skills. Further, they should be taught to recognise possible symptoms of stress reactions displayed by detained persons and to take appropriate action.

65. On the two detention boats and in the Rotterdam Airport Expulsion Centre, the staff consisted of both employees of a private security company and regular prison officers attached to the so-called NACI-prison officers pool, a unit that provides officers to prisons with a staff shortage. On the day of the visit, the Stockholm had 220 custodial staff (110 prison officers from the pool and 110 employees from a private security company), and the Kalmar had a complement of around 155 (of whom 66% were employed by a private security company). Of the 130 custodial staff at the Rotterdam Airport Expulsion Centre about 50% were employed by a private security firm. Each of the three facilities also employed specialised staff, such as social workers, spiritual counsellors and psychologists.

66. There is a certain division of tasks between regular prison officers and private security staff and some senior posts are reserved for regular NACI-staff. However, in principle all functions could be carried out by any custodial staff. As a rule, on every unit, there should always be at least one NACI-prison officer on duty; nevertheless, **the delegation observed that this was not always the case.**

67. Private security staff told the delegation that before taking up their duties, they had to complete two courses: one was on self-defence and the other was an induction course on prison work. However, the latter course did not cover the intercultural and interpersonal aspects of working in a detention facility for immigration detainees.

Custodial staffing on the two detention boats reflected the temporary nature of these facilities and their qualification as remand prisons. In particular, the CPT has some misgivings about the training given to private security staff currently working in the detention facilities for immigration detainees. In the CPT's view, that training is insufficient to enable such staff to undertake other than passive security duties, thus reinforcing the carceral atmosphere already very evident on the boats. **The CPT would like to receive the comments of the Netherlands authorities on this point.**

e. use of restraints

68. On the detention boat Kalmar, the delegation found that an immigration detainee, placed in isolation as a punishment for tampering with the sprinkler installation, had had his arms and legs restrained after he had once again tampered with the fire safety devices in the isolation cell itself. He remained restrained until transferred to the isolation department at Vught Prison, some 24 hours later. Although, the isolation cells were equipped with CCTV, in order to ensure visual supervision, there was no continuous and direct monitoring by staff of the detained person whilst restrained.

The director confirmed the delegation's findings and explained that restraining a detainee until his transfer to Vught Prison was standard practice on both the Kalmar and the Stockholm, whenever a detainee placed in isolation was found tampering with the sprinklers. She also stated that the length of time a detainee would be kept restrained depended on how long it took to transfer him to Vught Prison.

69. The CPT is seriously concerned by the practice of restraining detainees in isolation for lengthy periods without medical justification; such a practice could very well be considered as ill-treatment. In the Committee's view, means of restraint in addition to placement in an isolation cell should only be applied to an agitated or violent prisoner and should rarely last for more than a few hours, unless there is a medical condition requiring this. And in the latter case, the decision to resort to the use of means of restraint should be taken by a doctor and there must always be a constant, direct personal supervision of the person restrained. Means of restraint should be removed at the earliest opportunity; it should never be applied, or its application prolonged, as a punishment.

The CPT recommends that the Netherlands authorities immediately cease the practice of applying physical means of restraint to detained persons who tamper repeatedly with the sprinkler system on the Kalmar and Stockholm detention boats; such detainees should be transferred to a suitable alternative facility without delay.

f. medical care

70. In general, the level of medical care provided on the boats and at the Rotterdam Airport Expulsion Centre was acceptable. There was access to a wide range of health care staff (a medical doctor, nurses, a dentist and a psychiatrist, as well as other medical specialists) and they were sufficient in number. Further, all new arrivals were medically examined within 24 hours. However, during the night neither a doctor nor a nurse was present or even on call in any of the three facilities visited. Instead, in the event of a medical necessity, an external emergency service was called.

The CPT recommends that someone competent to provide first aid, preferably a person with a recognised nursing qualification, always be present on the premises of the detention boats and the Rotterdam Airport Expulsion Centre, including at night. Further, a medical doctor should always be on call.

71. The delegation was somewhat concerned by the arrangements in place with respect to detainees with psychiatric illnesses. For instance, on the Stockholm, the delegation met a man who appeared to be suffering from a serious psychiatric disorder. Due to his erratic behaviour, he was kept in isolation and visited daily by a medical doctor and psychologist and weekly by a psychiatrist. There were ongoing attempts by the management of the Stockholm to arrange a transfer to a more suitable environment, such as an Individual Support Department (*Individuele Begeleidingsafdeling*) in a regular prison. However, due to lack of space elsewhere, this man was finally accommodated in the medical unit of the Rotterdam Airport Expulsion Centre. Here, the CPT's delegation met with him a few days later; his condition was unchanged.

In the light of the above remarks, the CPT would like to receive the comments of the Netherlands authorities on the arrangements for psychiatric care for immigration detainees.

- g. contact with the outside world

72. On the two boats, as well as in the Rotterdam Airport Expulsion Centre, detainees were entitled to a one-hour weekly visit. The CPT's delegation was told that, on the Stockholm, the initiative had been taken to make use of external volunteers to visit immigration detainees who would otherwise not receive visits. This is a very welcome initiative **which, if deemed successful, should certainly be considered by other immigration detention facilities. The CPT also invites the Netherlands authorities to explore the possibility of increasing the visiting entitlement to at least two hours a week.**

There was unlimited access to a telephone to make a ten-minute call. However, there was no possibility to make a reverse-charge call, limiting considerably the possibilities for contact for detainees without sufficient means. **The CPT recommends that the Netherlands authorities verify the situation regarding the cost of telephone calls and the possibility of other communications.**

5. Youth detention facilities

- a. introduction

73. The delegation visited, for the first time, the De Hartelborgt Closed State Youth Detention Centre, in Spijkenisse. It did not visit the much smaller annex in the Rotterdam borough of Kralingen.

74. Under Dutch criminal law, juveniles who have committed a criminal offence may be sentenced to imprisonment for a maximum of two years, if they are between 16 and 18 years of age, or to one year's imprisonment if they are between 12 and 16. A juvenile may also be sentenced to placement in a juvenile institution (*PIJ-maatregel*), which is, in fact, a treatment order. Such a treatment order is initially imposed for two years, but may be prolonged to a maximum of four or, under certain conditions, even to six years, depending on the nature of the criminal offence and the juvenile's personality. Both juvenile imprisonment and treatment orders are executed in youth detention centres under the responsibility of the National Agency for Correctional Institutions of the Ministry of Justice.

In exceptional cases, young persons between the ages of 18 and 21 may be sentenced under juvenile provisions in criminal law and held in juvenile detention centres³⁰, resulting in such centres accommodating young persons ranging from 12 to 26 years of age.

³⁰ See Article 77c of the Criminal Code.

75. Youth detention centres may also accommodate juveniles placed under a civil law provision. In recent years, there has been growing resistance to the placement of juveniles on civil and penal law provisions in the same establishment, and a strict separation between the two categories is now under preparation. This will result in a significant number of youth detention centres being transferred to the Ministry of Health. However, De Hartelborgt will remain under the responsibility of the Ministry of Justice.

The CPT's delegation was informed that De Hartelborgt is currently in the process of transforming its pedagogical approach from one based on containment to one that is more therapeutic. A number of modifications to its organisation are envisaged.

76. The establishment has 95 places for juvenile imprisonment and 26 for treatment - 15 beds in three intensive care units and a psychiatric department (FOBA³¹) consisting of two units of five and six beds respectively. It is the only youth centre in the Netherlands with a FOBA and it admits juveniles with psychiatric disorders that cannot be treated in other juvenile centres. Although De Hartelborgt caters for boys, the FOBA admits girls as well. At the time of the visit, the establishment had five vacant places.

b. ill-treatment

77. The CPT's delegation did not receive any allegations of ill-treatment by members of staff. On the contrary, staff at De Hartelborgt were generally described as acting in a correct manner by those residents with whom the delegation met.

c. material conditions

78. The material conditions were very good. All residents had their own room, equipped with a bed, cupboard, chair, table and call bell, in conformity with the Regulation on requirements of rooms in juvenile detention facilities (*Regeling eisen kamer justitiële jeugdinstellingen*). The rooms had good artificial lighting and access to natural light, and were well-ventilated. All rooms had shower and toilet facilities. The accommodation was divided into 12 units (including the FOBA and Intensive Care units), each of which had direct access to a sizeable exercise yard. All units had a large common room, equipped with a table, chairs, sofas and a kitchen.

Further, the establishment had a sports hall with various amenities (such as a climbing wall), several education facilities and a well-stocked library.

79. In the isolation unit, there were two rooms that could be used as short-term accommodation for new residents for whom there was temporarily no place on the De Bolder reception unit. These rooms were sparsely furnished, containing only a bed; **they should be equipped with a table and chair.**

³¹ FOBA stands for "Forensische Observatie- en Begeleidingsafdeling".

The outdoor exercise yard attached to the isolation unit was also used by the residents of the FOBA. The yard was in fact a room with high, tiled walls and a roof; fresh air and light came through frameless windows placed high-up, which meant that juveniles could not enjoy the sensation of being outside. Unsurprisingly, juveniles often forewent their right to outdoor exercise. **The CPT recommends that the outdoor exercise yard of the isolation department be redesigned.**

d. staffing

80. The custody and care of juveniles deprived of their liberty is a particularly challenging task. The staff called upon to fulfil that task should be carefully selected for their personal maturity and ability to cope with the challenges of working with - and safeguarding the welfare of - this age group. More particularly, they should be committed to working with young people, and be capable of guiding and motivating the juveniles in their charge. All such staff should receive professional training, both during induction and on an ongoing basis, and benefit from appropriate external support and supervision in the exercise of their duties.

In total, De Hartelborgt has 273 mixed-gender staff from a wide range of professions, including six psychologists, four social workers, 108 group leaders and medical staff. However, the delegation was told that the establishment experiences difficulties in recruiting qualified staff, in particular, medical staff, such as psychiatrists, and properly trained group leaders; for instance, on the FOBA there was a psychiatrist present for only 66% of the time provided for and not all the nurses' positions were filled. Apparently, many medical and other professionals are not attracted by the prospect of working with challenging juveniles. The shortage of group leaders is resolved by employing, inter alia, former military personnel, who are given on-the-job training. This situation is exacerbated by the high turnover of staff as is illustrated by the fact that the majority of experienced staff on the Very Intensive Care, De Talie unit, will be leaving in the near future.

81. A high rate of staff turnover combined with the difficulty in recruiting new, well-trained staff, obviously has an impact on the quality of care provided. Even with the current staff complement, De Hartelborgt may experience serious difficulties in achieving its goal of adopting a more therapeutic approach. **In the light of the above remarks, the CPT would like to receive the comments of the Netherlands authorities on how they intend to tackle the staffing challenges.**

e regime

82. Most newly admitted residents are placed on the De Bolder reception unit, where they are kept under observation for about one week, after which they are placed on a suitable unit. Article 22 of the Juvenile Detention Principles Act states that residents should participate in communal activities for at least 12 hours a day on weekdays, and eight-and-a-half hours during the weekend. Indeed, the juveniles on the regular units spent most of the day between 8 a.m. and 9 p.m. outside their rooms in the company of other residents. On weekdays, there are various vocational training courses, such as metalwork, woodwork and catering. Education is mandatory for all residents of De Hartelborgt and is provided by Horizon, an association not affiliated with De Hartelborgt. However, due to a lack of staff, lessons are regularly cancelled.

83. For juveniles placed in an intensive care or a FOBA unit, the Juvenile Detention Principles Act prescribes fewer communal activities: six hours on weekdays and four hours during the weekend.

The out-of-room time required by law was certainly not being met for the residents placed on the De Talie intensive care unit. Juveniles spent up to 22 hours a day in their rooms, apparently to reduce the risk of violence that might occur if they interacted socially with other residents. Moreover, despite their placement on an intensive care unit and their sentence to treatment, there was little interaction with staff during the time they were confined to their rooms, apparently due to staff shortages. At least one of the juveniles on the unit had been transferred from another juvenile detention centre where, due to his violent behaviour, he had spent prolonged periods deprived of social interaction with other residents and with minimum contact with staff.

The CPT has misgivings about the approach to the juveniles on De Talie. Lengthy seclusion with little contact with staff can hardly be described as appropriate treatment, and is difficult to reconcile with the pedagogical objectives of placement in a juvenile detention facility. Where a juvenile, who is not subject to a disciplinary regime, is not allowed to associate with other juveniles for most of the day due to concerns for safety or mental or physical health, there should be much greater interaction with staff. Such interaction prevents the juvenile from being totally isolated and ensures that he benefits from his placement in a youth detention facility. **The CPT recommends that the Netherlands authorities take the necessary measures to improve the regime afforded to juveniles on the De Talie unit, in the light of the above remarks.**

84. The delegation was particularly concerned by the regime of one particular young man accommodated on De Talie. His file did not make reference to extreme violence or other behavioural difficulties. Yet, after his arrival at De Hartelborgt from a juvenile establishment in Vught, he spent around three-and-a-half months on the FOBA, during which time he was not on any medication. He was then transferred to De Talie, where he spent up to 22 hours a day alone in his room, pursuing recreational and educational activities. Curiously, it seems that in Vught he had been placed under a normal regime.

Staff explained that this young man had been sentenced to a treatment measure for a terrorist offence, and out of fear that he would recruit others to violent religious fundamentalism, it was decided that he should remain separated from other residents. It is intended that his regime will become slightly more lenient in the course of his detention in De Hartelborgt; for instance, it was intended that he would participate in the educational activities of another unit soon after the CPT's visit.

In this case, placement on the De Talie unit was related to the young man's offence rather than to his behaviour; such a placement could be considered as a preventive measure. However, from the files seen by members of the delegation there were no indications that he had in fact attempted to recruit other residents for violent religious purposes. Even if attempts to recruit others had been made, immediate placement in a regime of isolation is a draconian measure for a person of such an age, especially as there was no indication that other, less drastic measures had been attempted previously. **The CPT would like to receive the comments of the Netherlands authorities on this case.**

85. In principle, for every resident at De Hartelborgt a pedagogical plan (*verblijfsplan*) or a treatment plan (*behandelplan*) is drawn up after six weeks, which should involve the parents or guardians of the juvenile and the juvenile himself. The plan is reviewed every 12 weeks. However, the delegation found that a majority of juveniles did not have a pedagogical or a treatment plan; for instance, only 21 pedagogical plans had been drafted for 2007. One of the reasons provided was the unpredictable length of stay for remanded residents. Further, it appeared that no plan was drawn up if a juvenile was expected to remain for less than three months in the institution.

A pedagogical or treatment plan is a necessary tool for staff in focusing attention on problematic behaviour in a juvenile. Without such a plan, staff tend to focus too much on containment and control. **The CPT recommends that the Netherlands authorities ensure that greater efforts are made to draw up an individualised pedagogical or treatment plan for each resident of De Hartelborgt.**

f. disciplinary sanctions and order measures

86. The Juvenile Detention Principles Act empowers the Director to impose both order measures³² and disciplinary sanctions³³; either may lead to a placement in a segregation cell on the isolation department. The decision to impose an order measure or a disciplinary sanction is delegated to the head of unit, and the procedure provides for the hearing of the resident concerned. The decision is handed down in writing and may be appealed.

Both order measures and disciplinary sanctions may be imposed in “the interest of the order and safety of the establishment or the undisturbed execution of the detention”; the delegation found that the distinction between the two categories was not clear. Nor did staff appear to be certain about the difference. However, for a juvenile there is a marked difference between an order measure and a disciplinary sanction, as the former entails placement in a segregation cell for a maximum of two days, while the latter is for seven days.

In the CPT’s view, order measures and disciplinary sanctions serve distinct purposes and should therefore not be mixed. An order measure is imposed in the interest of the institution and its residents and staff, and thus aims at protection and prevention, while a disciplinary sanction is intended to correct the juvenile’s behaviour, and thus has a pedagogical objective.

The CPT recommends that operational guidelines be drafted to ensure that there is a clear distinction between the application of an order measure and a disciplinary sanction.

87. The CPT is particularly concerned about the placement of juveniles in conditions resembling solitary confinement, a measure which can rapidly have harmful consequences for them. The Committee considers that resort to such a measure must be regarded as highly exceptional. If juveniles are held separately from others, this should be for the shortest possible period of time and, in all cases, they should be guaranteed appropriate human contact, granted access to reading material and offered at least one hour of outdoor exercise every day.

³² Cf. Articles 24 and 25 Juvenile Detention Principles Act.

³³ Cf. Articles 54 and 55 Juvenile Detention Principles Act.

In De Hartelborgt, the delegation observed that a juvenile placed in isolation did have access to reading material and was offered daily outdoor exercise. However, the juvenile is left to his own devices most of the time without any contact with staff. The CPT considers that the pedagogical effect of a disciplinary sanction will be reinforced if staff remain actively involved with the juvenile while he is placed in isolation, for instance by carrying out targeted activities with the juvenile. **The CPT recommends that measures be taken in this direction.**

88. Despite clear guidance given by legislation and house rules as to the disciplinary sanctions authorised in De Hartelborgt, the delegation noted that other, non-official, punishments were applied by staff. For instance, during the visit, juveniles placed on De Bolder were collectively punished because one of the residents refused to carry out a certain task; they all lost the privileges they had earned in the course of their stay on that unit. Further, the delegation was informed that some residents were told that they would be transferred to the spare rooms on the isolation unit if they would not follow instructions.

The CPT does not agree with staff imposing non-official punishments. Non-official punishments by definition have neither safeguards nor supervision by senior management and there is a risk that they will be applied arbitrarily, thereby undermining the pedagogical climate in a juvenile detention facility. Further, given the broad range of means to discipline juveniles that are already available to staff, the application of additional measures does not appear to be necessary. The Committee also strongly disagrees with the application of collective sanctions; disciplining an entire unit when only a few misbehave severs the link between conduct and sanction. It also transmits to the residents a sign of staff weakness. **The CPT recommends that the Netherlands authorities send a clear message to the staff of De Hartelborgt that disciplinary sanctions or order measures other than those described in the house rules and relevant legislation are not permitted.**

89. Another concern for the delegation was the use of the so-called “time-out”, whereby a juvenile is sent to his room in order to cool down. The application of the time-out varies throughout the institution with respect to length and cause, and it is not recorded. While the CPT fully understands that staff should have the possibility to intervene immediately if the behaviour of a juvenile warrants it, a time-out should not become an informal equivalent to a disciplinary sanction or an order measure, but without their safeguards. **The CPT recommends that clear instructions be given to the staff of De Hartelborgt about the proper application of a time-out.**

90. Juveniles transferred to the isolation department were systematically handcuffed, even when they were only being temporarily placed in an isolation cell due to a room search. Moreover, contrary to the internal rules in place, residents of the FOBA were handcuffed during their transfer to the isolation department.

In many instances, the use of handcuffs during transfers is unnecessary, for example, when a juvenile is cooperative during his transfer to the isolation department. **The CPT recommends that the Netherlands authorities review the systematic use of handcuffs for all transfers to the isolation unit; their application should in each case be based upon a risk assessment. Further, the Netherlands authorities should remind FOBA staff not to handcuff residents when they are being transferred to the isolation department.**

g. means of restraint

91. Every establishment where restraints are in use should have a comprehensive, carefully developed, policy on their application. The involvement and support of both staff and management in elaborating the policy is essential. Such a policy should make clear which means of restraint may be used, under what circumstances they may be applied, the practical means of their application, the supervision required and the action to be taken once the measure is terminated.

The policy should also contain sections on other important issues such as: staff training; complaints policy; internal and external reporting mechanisms; and debriefing. In the CPT's opinion, such a comprehensive policy is not only a major support for staff, but is also helpful in ensuring that residents and their guardians or proxies understand the rationale behind any measure of restraint that may be imposed.

92. In De Hartelborgt the use of restraints is governed by the Juvenile Detention Principles Act, the Regulation on the use of mechanical means of restraint on juveniles (*Regeling toepassing mechanische middelen jeugdigen*) and an internal protocol. The legislation and rules in force lay down a wide range of norms regarding the application of means of restraint. For example, juveniles below the age of 16 may be restrained for a maximum of 12 hours, while those aged 16 and older for periods up to 24 hours. Direct, personal and continuous supervision by staff is mandatory when there is a risk of suffocation. In other cases, supervision is carried out by means of regular inspection (every 30 minutes) and the use of a CCTV-camera. It should be noted that at the time of the visit, no cases of the use of means of restraint had taken place at De Hartelborgt during 2007.

The CPT considers that the rules on the use of means of restraint with respect to juveniles should be tightened. In those exceptional cases that juveniles are restrained, they should be the subject of direct, personal and continuous supervision and not only those judged to be at risk of suffocating. Further, the use of means of restraint should be for the shortest possible time (usually minutes or a few hours) and not such lengthy periods as currently provided for in the legislation. In the CPT's view, a staff member present in the room may have a calming effect on a restrained juvenile as well as being able to provide immediate assistance if needed. Further, such a presence is helpful in ensuring that means of restraint are applied for no longer than absolutely necessary

The CPT recommends that the Regulation on the use of mechanical means of restraint on juveniles be reviewed, in the light of the above remarks.

93. At De Hartelborgt, the application of means of restraint is registered in the daily logbook, but there is no separate mechanical restraints register. In order to enhance oversight over the use of means of restraint for management and inspection purposes, the CPT considers that such a register should be introduced. The entries in this register should include the times at which the mechanical restraints measure began and ended, the circumstances of the case, the reasons for resorting to such measures, the type of measure, the name of the doctor who order or approved it, and an account of any injuries sustained by inmates or staff.

The CPT recommends the introduction of a special register on the application of mechanical restraints.

h. forced medical treatment and other medical issues

94. Residents of the FOBA may be administered medication against their will. In principle, every patient capable of discernment is free to refuse treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances which are applicable to the population as a whole.

In De Hartelborgt, the administration of medication against the will of a resident follows a detailed protocol which describes the various steps to be taken before the forced administration of medication may be carried out, as well as after-care provided to the juvenile³⁴. Any administration of forced medication is reported to various external authorities, including the Health Care Inspectorate and the supervisory committee.

The CPT welcomes the detailed protocol in force and the close monitoring by the Health Care Inspectorate and other authorities with respect to the forced medical treatment of FOBA residents.

95. The CPT's delegation noted the absence of a comprehensive medical file for FOBA residents at De Hartelborgt. The psychiatrist, nurses and physician all kept their own files, which were not accessible to other medical staff. At the same time, the computerised medical file did not contain all the information necessary for health-care providers; for instance, information regarding administered medication could only be found in the units and not in the medical ward. **The CPT recommends the introduction of a comprehensive medical file for FOBA residents at De Hartelborgt.**

³⁴ *'Protocol gedwongen geneeskundige handelingen in een Justitiële jeugdinrichting'*.

APPENDIX I

LIST OF THE CPT'S RECOMMENDATIONS, COMMENTS AND REQUESTS FOR INFORMATION

Cooperation between the CPT and the Netherlands authorities

requests for information

- on the progress towards the adoption of legal provisions concerning the CPT's right of access to personal medical data (paragraph 6).

Law enforcement agencies

Preliminary remarks

recommendations

- the Netherlands authorities to take appropriate measures to minimise the time detained persons have to spend in police cells. Particular efforts should be made to ensure that juveniles are not detained in police cells for prolonged periods and are transferred to appropriate juvenile detention facilities expeditiously. Further, immigration detainees should be promptly transferred to suitable accommodation in keeping with their needs and status (paragraph 9).

Ill-treatment

requests for information

- on the outcome of the investigation into the allegations of ill-treatment by officers of the Lelystad police service referred to in paragraph 10 (paragraph 10).

Conditions of detention and regime

recommendations

- the standards with respect to access to natural light contained in Article 6 (1) of the Regulation on police cell complexes to be implemented in all police cells in the Netherlands (paragraph 14).

comments

- the CPT trusts that ventilation will be improved in the cells of Rotterdam Zuidplein Police Station when this establishment is renovated (paragraph 14).

requests for information

- comments on the more active role that custodial officers in the central police detention facilities in The Hague and Rotterdam could play in the exercise of the right of notification of deprivation of liberty (paragraph 13).

Safeguards against ill-treatment

recommendations

- the Netherlands authorities to circumscribe in law more precisely the possibility to delay the exercise of the right of notification of deprivation of liberty (paragraph 19);
- the Netherlands authorities to ensure that all persons detained by the police who are not subjected to the restrictions of Article 62 (2) b of the Code of Criminal Procedure, are given the opportunity to exercise effectively the right to notify a third party or relative as from the outset of detention (paragraph 20);
- the Netherlands authorities to introduce the right of access to a lawyer from the outset of deprivation of liberty (paragraph 21);
- steps to be taken at Rotterdam Doelwaterplein Police Station and, if appropriate, in other police establishments in the Netherlands, to ensure that all medical examinations are conducted out of the hearing and - unless the doctor concerned expressly requests otherwise in a given case - out of the sight of police staff (paragraph 23);
- the Netherlands authorities to reconsider their position with respect to the right of access to a doctor of his/her own choice by persons detained in a police cell (paragraph 24).

requests for information

- details of the pilot project in the regions of The Hague and Rotterdam allowing for the right of access to a lawyer as from the outset of police detention and, in due course, information on the results (paragraph 22).

Establishments under the authority of the Ministry of Justice

Preliminary remarks

recommendations

- a comprehensive sanctions register to be introduced in all establishments under the Ministry of Justice (paragraph 30);
- more suitable clothing to be provided to detained persons placed in isolation (paragraph 30).

requests for information

- the criteria for accommodation in double-occupancy cells (paragraph 25);
- whether additional staff have been deployed in prisons where double cell occupancy has been introduced (paragraph 25);
- confirmation that double-occupancy cells have indeed been enlarged before entering into service and, if so, information about the cell space per prisoner in a double-occupancy cell (paragraph 25);
- on the evolution and implementation of the new concept of Measured Detention and Treatment (paragraph 27).

Ill-treatment

recommendations

- the Netherlands authorities to draft a comprehensive procedure on how to deal with allegations of ill-treatment within establishments under the responsibility of the National Agency of Correctional Institutions, taking into account the remarks made in paragraphs 31 to 38 (paragraph 38).

The terrorist departments at De Schie Prison and Vught Prisons

recommendations

- a regular review of placement in a terrorist department to be introduced, based upon criteria clearly laid down in law (paragraph 42);
- a comprehensive risk assessment process to be introduced as the basis for placement in a terrorist department (paragraph 42);
- improvements to be made with respect to the ventilation and lighting arrangements at the Vught Prison terrorist department (paragraph 44);
- the Netherlands authorities to take measures to ensure that prisoners are not, by default, kept in conditions equivalent to isolation (paragraph 47);
- security measures to be reviewed in the terrorist departments with respect to contact between prisoners and their lawyers in order to ensure that they are not having an unduly negative impact on the quality of their legal defence (paragraph 50);
- the manner in which medical care is delivered to inmates held in terrorist departments to be reviewed; more specifically, all medical examinations should be conducted out of the hearing and - unless the doctor concerned requests otherwise in a given case - out of the sight of prison officers (paragraph 52);
- the Netherlands authorities to cease handcuffing prisoners during medical examinations outside their cells (paragraph 53).

requests for information

- confirmation that the two isolation cells in De Schie Prison will be redesigned before being used (paragraph 43);
- on the measures taken to prevent the complete social isolation of the remaining female prisoner in the terrorist department at De Schie Prison (paragraph 48);
- comments on the Committee's concerns with respect to the regime in place in the terrorist departments (paragraph 49);
- confirmation that mail addressed to, and originating from, the CPT is dealt with in a confidential manner. Further, the Committee would like to be informed whether prisoners are notified of any mail that is withheld by the prison administration (paragraph 51).

Facilities for immigration detainees

recommendations

- the Netherlands authorities to cease, at the earliest opportunity, to use boats as facilities for immigration detainees (paragraph 58);
- measures to be taken in the meantime to decrease the humidity on the Stockholm and Kalmar detention boats, to allow detainees in solitary confinement to have access to more suitable outdoor exercise yards and to install shelters against inclement weather in all the exercise yards (paragraph 58);
- the Netherlands authorities to reconsider their approach towards the detention of immigration detainees, in the light of the remarks in paragraph 62. Immigration detainees should have access to a full community regime and the additional restrictions for detainees in the admission departments should be reviewed (paragraph 62);
- the Netherlands authorities to cease immediately the practice of applying physical means of restraint to detained persons who tamper repeatedly with the sprinkler system on the Kalmar and Stockholm detention boats; such detainees should be transferred to a suitable alternative facility without delay (paragraph 69);
- someone competent to provide first aid, preferably a person with a recognised nursing qualification, should always be present on the premises of the detention boats and the Rotterdam Airport Expulsion Centre, including at night. Further, a medical doctor should always be on call (paragraph 70);
- the Netherlands authorities to verify the situation regarding the cost of telephone calls and the possibility of other communications (paragraph 72).

comments

- the Netherlands authorities are invited to introduce an absolute time limit for the detention of all foreign nationals under alien legislation (paragraph 56);
- the delegation observed that there was not always an NACI-prison officer on duty in every unit (paragraph 66);
- if deemed successful, the use on the Stockholm of external volunteers to visit immigration detainees who would otherwise not receive visits should certainly be considered by other immigration detention facilities (paragraph 72);
- the Netherlands authorities are invited to explore the possibility of increasing the visiting entitlement to at least two hours a week (paragraph 72).

requests for information

- detailed information concerning the plans to relocate the Rotterdam Airport Expulsion Centre (paragraph 55);
- clarification as to the reason(s) for the decision to classify immigration detention centres as remand prisons (paragraph 61);
- comments on the training given to private security staff currently working in the detention facilities for immigration detainees (paragraph 67);
- comments on the arrangements for psychiatric care for immigration detainees (paragraph 71).

Youth detention facilities (De Hartelborgt Closed State Youth Detention Centre)

recommendations

- the outdoor exercise yard of the isolation department at the De Hartelborgt Centre to be redesigned (paragraph 79);
- the Netherlands authorities to take the necessary measures to improve the regime afforded to juveniles on the De Talie unit (paragraph 83);
- the Netherlands authorities to ensure that greater efforts are made to draw up an individualised pedagogical or treatment plan for each resident of De Hartelborgt (paragraph 85);
- operational guidelines to be drafted to ensure that there is a clear distinction between the application of an order measure and a disciplinary sanction (paragraph 86);
- measures to be taken in De Hartelborgt to ensure that staff remain actively involved with juveniles placed in isolation (paragraph 87);
- the Netherlands authorities to send a clear message to the staff of De Hartelborgt that disciplinary sanctions or order measures other than those described in the house rules and relevant legislation are not permitted (paragraph 88);
- clear instructions to be given to the staff of De Hartelborgt about the proper application of a time-out (paragraph 89);
- the Netherlands authorities to review the systematic use of handcuffs for all transfers to the isolation unit: their application should in each case be based upon a risk assessment. Further, the Netherlands authorities should remind FOBA staff not to handcuff residents when they are being transferred to the isolation department (paragraph 90);

- the Regulation on the use of mechanical means of restraint on juveniles to be reviewed, in the light of the remarks made in paragraphs 91 and 92 (paragraph 92);
- a special register on the application of mechanical restraints to be introduced in De Hartelborgt (paragraph 93);
- a comprehensive medical file for FOBA residents at De Hartelborgt to be introduced (paragraph 95).

comments

- the two rooms in the isolation unit that could be used as short term accommodation for new residents should be equipped with a table and chair (paragraph 79).

requests for information

- in the light of the remarks in paragraphs 80 and 81, how the Netherlands authorities intend to tackle the staffing challenges at De Hartelborgt (paragraph 81);
- comments of the Netherlands authorities on the case referred to in paragraph 84 (paragraph 84).

APPENDIX II

LIST OF THE AUTHORITIES AND OTHER PERSONS WITH WHICH THE CPT'S DELEGATION HELD CONSULTATIONS

State authorities

Ministry of Interior

- Ms G. TER HORST Minister
- Ms R. DAS DORES Police expert

Ministry of Justice

- Mr E. HIRSCH BALLIN Minister
- Ms N. ALBAYRAK State Secretary of Justice
- Ms M. DAAMS Legal Adviser, Directorate of Legislation
- Ms T. DOPHEIDE Legal Advisor, Directorate of Legislation and Liaison Officer to the CPT
- Ms J. DREESSEN Legal Advisor, Directorate of Legislation and Liaison Officer to the CPT
- Ms H. KARREMANS Advisor, Directorate of Sanctions and Prevention Policy
- Mr K. KRIJNEN Programme manager
- Mr M. KUIJER Legal Advisor, Directorate of Legislation and Chief Liaison Officer to the CPT
- Ms I. OTTING Advisor, Judicial Youth Policy Department
- Mr H. PETHKE Senior Advisor, Judicial System Department.
- Mr R. ZUIDEMA Advisor, Immigration Policy Department

National Agency of Correctional Institutions

- Mr P. van der SANDE Deputy Head and Sector Director of Prisons
- Ms S. BEUMER Head of Implementation Sector of Prisons
- Mr C. HERSTEL Deputy Head, Sector of Custodial Clinics
- Mr E. NIJMAN Deputy Head, Sector of Special Facilities
- Mr P. VISARIUS Head of Individual Management and Selection Department, Sector of Prisons
- Ms R. WESTERHOF Legal Advisor, Legal Section
- Mr R. de WILDE Account manager, Sector of Young Offender Institutions

National Police Investigations Department

- Mr H. TRIP Director

Inspectorate for the Implementation of Sanctions

- Mr W. MEURS Chief Inspector
- Mr M. TUMMERS Deputy Chief Inspector

Inspectorate for youth care

- Mr C. de FRETES Inspector
- Mr R. BRUIJN Member of staff

Health Care Inspectorate

- Mr. M. de WIT Inspector

Office of the National Ombudsman

- Mr A. BRENNINKMEIJER National Ombudsman
- Mr S. SJOUKE Senior Adviser

Council for the Application of Criminal Law and Youth Protection

- Mr Y. van KUIJK Deputy Member
- Mr P. MEVIS Member of the Prison Section
- Mr P. MOLENAAR Director
- Mr P. PLOOIJ Chief of administration of justice

Non-governmental organisations

Dutch Section of Amnesty International
Dutch Section of Defense for Children

Others

- Mr M. MOERING Professor of Penology at the University of Leiden

PART 2 : VISIT TO ARUBA

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I. INTRODUCTION

A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT carried out a visit to Aruba from 4 to 7 June 2007³⁵. The visit formed part of the CPT’s fourth periodic visit to the Kingdom of the Netherlands³⁶.

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

- Mario FELICE (Head of the Group)
- Tim DALTON
- Ann-Marie ORLER.

They were supported by Caterina BOLOGNESE, from the CPT’s Secretariat, and were assisted by:

- Eric DURAND, medical doctor, former Head of medical services at Fleury-Mérogis Prison, France (expert)
- Manuel MADURO (interpreter)
- Karel THIJS (interpreter)
- Minerva WILLEMS-HIEROMS (interpreter).

B. Establishments visited

3. The delegation visited the *Korrektie Instituut Aruba* (or ‘KIA’, the prison on Aruba), as well as the police stations at Oranjestad, Noord and San Nicolaas. It also visited the ‘Centro pa detencion di ilegalnan’ for immigration detainees.

³⁵ The CPT’s previous visit to Aruba took place in June-July 1994, as part of an ad hoc visit to the Kingdom of the Netherlands (including Aruba and the Netherlands Antilles). The report on that visit has been published on the CPT’s website (www.cpt.coe.int).

³⁶ The visits to the Kingdom in Europe and the Netherlands Antilles are dealt with separately (see Parts 1 and 3 of this report).

C. Consultations held by the delegation

4. In the course of the visit to Aruba, the delegation met Rudy CROES, Minister of Justice, Nico JÖRG, Solicitor-General, Hans MOS, Chief Public Prosecutor, Peter DE WITTE, Chief of Police, and Laurence PASKEL, Director of Government Security³⁷. At the end of the visit to the Kingdom of the Netherlands, part of the delegation also attended a meeting in The Hague with the competent authorities.

A list of the authorities and other persons active in the CPT's fields of interest with whom the delegation held consultations is set out in Appendix II.

D. Cooperation between the CPT and the Aruban authorities

5. The cooperation received by the delegation during the visit to Aruba was excellent and in full compliance with the provisions of the Convention. The delegation had rapid access to the establishments it wished to visit, to the documentation it wanted to consult and to individuals with whom it wished to speak. In this context, the Committee would like to highlight the excellent assistance provided by Angélique PETERSEN, liaison officer to the CPT for Aruba.

E. Immediate observations under Article 8, paragraph 5, of the Convention

6. On the occasion of the concluding meeting with the Minister of Justice on 7 June 2007, the delegation made an immediate observation, in pursuance of Article 8, paragraph 5, of the Convention, requesting that the cellblock at Oranjestad Police Station and the disciplinary cell at San Nicolaas Police Station be immediately taken out of service.

It also requested to be informed, within one month, of the measures taken to improve the material conditions and the regime at the 'Centro pa detencion di ilegalnan' for immigration detainees.

These immediate observations, and other matters, were reiterated to the competent authorities in The Hague at the end of the CPT delegation's visit to the Kingdom of the Netherlands, on 14 June 2007, and in writing on 11 July 2007.

7. By fax of 22 June 2007, the Aruban authorities informed the CPT of the measures taken in response to the above-mentioned immediate observations concerning Oranjestad and San Nicolaas Police Stations. Further information on all of the points raised by the delegation was provided by letter of 25 September 2007. These responses have been taken into account in the drafting of the present report.

³⁷ '*Cuerpo Especial Arubano*' (CEA).

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Police establishments

1. Preliminary remarks

8. Under the Code of Criminal Procedure (CCP) of Aruba, which entered into force in 1997, the rules for detaining persons are as follows³⁸:

Persons suspected of having committed a criminal offence may be held (*aangehouden*) by the police for questioning for a maximum of six hours. However, as the night hours between 10 pm and 8 am are not counted³⁹, this initial period may in fact last up to 16 hours (see CCP Article 80, paragraph 1).

Thereafter, if the needs of the investigation so require, the person may be placed in police custody (*in verzekering gesteld*) for a maximum period of two days, on the decision of a prosecutor (*officier van justitie*) or of an assistant prosecutor (*hulpofficier van justitie*, who can also be a senior police officer) reporting to the prosecutor in writing or orally as soon as possible and within 24 hours (see CCP Article 83, paragraphs 1 and 4, and Article 87, paragraph 1). However, if the investigation urgently requires it, police custody may be extended by the prosecutor for a further maximum period of eight days (see Article 87, paragraph 2).

CCP Article 89, paragraph 1, provides that, as soon as possible - and in any case within 24 hours - from the beginning of the enforcement of such an extension, the suspect must be brought before the investigating judge (*rechter-commissaris*). Thus the legal maximum period before a person deprived of liberty is brought before a judge amounts to three days and 16 hours.

9. At the end of the period of police custody, the investigating judge may, upon the prosecutor's request, remand the person in detention (*bewaring*, see CCP Article 92) for a period of eight days, renewable once (Article 93). Thereafter, the prosecutor may apply to the judge for an order of pre-trial imprisonment (*gevangenhouding*) of 60 days' maximum duration. This period may be extended for up to 30 days, and, in the case of more serious offences, for 30 days longer again (see Articles 95, 98, 100 and 101).

CCP Articles 94 and 99 suggest that detention and pre-trial imprisonment are measures which are to be enforced in a remand prison (*huis van bewaring*). The maximum period of custody on police premises would therefore be the initial period of apprehension for questioning (up to 16 hours) followed by 10 days (two plus eight) of police custody. Afterwards, detention, if continued, must be enforced at a remand prison, that is at KIA.

³⁸ Cf. CPT/Inf (96) 27 at paragraph 181, for a description of the legislation in force at the time of the CPT's visit in 1994.

³⁹ Indeed, in accordance with CCP Article 80, paragraph 1, persons are not questioned during those hours. If they *are* questioned, the period of questioning is counted.

10. During the visit, the CPT's delegation also interviewed persons detained under the Aliens legislation who had spent seven or eight days at a police station prior to being transferred to the 'Centro pa detencion di ilegalnan' for immigration detainees (see part B).

The comments and recommendations in the current chapter on police establishments apply equally in respect of the detention of persons pursuant to legislation or regulations other than the criminal law. Moreover, as the CPT already stated in its report on the visit carried out in 1994⁴⁰, the material environment and regime in a police station will often, if not always, be inappropriate for the detention of persons under aliens legislation. In this respect, none of the police stations visited in 2007 (see paragraphs 18 to 23) was appropriate for the detention of persons pursuant to legislation or procedures applicable to aliens.

2. Ill-treatment

11. The CPT's delegation heard no allegations of physical ill-treatment from persons interviewed who were in police custody at the time of the visit. However, during interviews with prisoners at KIA, the CPT's delegation received several credible allegations of physical and verbal ill-treatment by the police. The allegations consisted mostly of slaps and punches to the head, as well as kicks to the body, and insults of persons at the time of their apprehension and after they had been brought under control. A smaller number of allegations of physical ill-treatment also concerned the period of detention at a police station, in particular during interrogations. Recent statistics provided by the Landsrecherche and the Internal Investigations Agency of the Police (see paragraph 40) also indicate that ill-treatment by the police is by no means a rare phenomenon.

The CPT recommends that the Aruban authorities adopt a vigorous policy to combat police ill-treatment. Such a policy should include a formal statement, by the highest competent political authority, to law enforcement officials, reminding them that:

- **the rights and dignity of persons in their custody must be respected; and**
- **the ill-treatment of such persons will be the subject of severe sanctions.**

The CPT further recommends that police officers be regularly reminded, through training and instructions, that no more force than is reasonably necessary should be used when effecting an apprehension. More particularly, law enforcement officials must be trained in preventing and minimising violence in the context of an apprehension. For cases in which the use of force nevertheless becomes necessary, law enforcement officials need to be able to apply professional techniques which minimise any risk of harm to the persons whom they are seeking to apprehend.

⁴⁰ See CPT/Inf (96) 27 at paragraph 183, subparagraph 2.

12. The delegation also received a number of consistent allegations of the use of a “chill room” on the upper floor of Oranjestad Police Station. Before being interviewed, suspects were allegedly locked for several hours, without covers, in an interrogation room cooled to very low temperatures by an air-conditioning unit operating at the most powerful setting. Such a practice would clearly exert considerable physical discomfort as well as pressure on a detained person; it could certainly be considered as amounting to inhuman treatment. **The CPT recommends that the Aruban authorities take the necessary measures to ensure that law enforcement officials do not resort to such unacceptable practices.**

13. During the visit the CPT’s delegation met a woman at Noord Police Station whose right hand was handcuffed to one of two rings fixed to the wall in a waiting/interrogation room. The position of the rings did allow her to be seated, albeit uncomfortably. From the delegation’s discussions with police officers present, it transpired that such handcuffing was a routine practice - irrespective of any risk of absconding - pending the person’s transfer into a cell in the detention block, which would generally take some 45 minutes.

In the Committee’s view, there can be no justification for routinely shackling detained persons to a fixed object; such a practice could clearly amount to degrading treatment. **The CPT recommends that the Aruban authorities put an end to that practice. Persons taken into police custody should not be left handcuffed to rings fixed to a wall and instead should be accommodated without delay in rooms/cells offering appropriate security conditions. Further, the rings fixed to the wall at Noord Police Station - and any other police station where they might exist - should be immediately removed.**

14. Lengthy detention in police premises was an issue of major concern in the report on the CPT’s visit to Aruba in 1994. The authorities’ decision to reduce the period from twenty to ten days was welcomed by the Committee. However, it also emphasised that periods of detention of up to ten days in police premises would still be far too long, from the perspective of preventing ill-treatment. Although the CPT found that this principle would hold irrespective of the material conditions prevailing, the situation was certainly exacerbated by the fact that those conditions could readily be described as inhuman and degrading (see CPT/Inf (96) 27 at paragraphs 187 to 190).

In the course of the 2007 visit, the CPT’s delegation found that material conditions in police stations were still deplorable and detained persons were never offered outdoor exercise (see section 3). Moreover, many persons were being held in police stations for the full 10 days permitted by criminal law and, on occasion, even longer. By way of example, at Noord Police Station, the delegation met a person who had been in detention for 13 days. The CPT’s delegation also met minors who were kept at police stations for 10 days or more. Custody registers attested to the fact that such lengthy periods of police detention appeared by no means exceptional, but rather the norm.

The CPT therefore reiterates its view that it is highly questionable, to say the least, to resort routinely to lengthy detention on police premises. It is widely acknowledged that the period immediately following apprehension, and prior to the first appearance before a judge, is when the risk of abuse is greatest. Continued detention on police premises even after the person concerned has been presented before a judge also poses risks of intimidation and pressure. To prolong such periods beyond the duration which is strictly necessary for the purposes of an investigation is to expose persons deprived of their liberty to an undue risk of ill-treatment. In view of the number of allegations received, this risk is not negligible.

In its interim response to the CPT's report on the first visit to Aruba, the Aruban Government had endorsed the view that 10 days in a police cell is too long. It had decided to examine the scope for reducing this period⁴¹. However, in its follow-up report, the Government explained that a working group had examined the matter, but that the police and prison authorities had opposed it essentially for practical reasons associated with conducting investigations (keeping suspects close at hand to be interviewed, ensuring separation of certain suspects from one another) and taking into consideration the shortage of staff in the police service and at KIA.

The CPT does not consider such reasoning to be sound and would contend that many simple investigative acts involving the suspect can be - and are - conducted within a short period of time. And yet most persons detained, including minors, are held on police premises for 10 (or even 13) days, irrespective of the complexity of the case. A situation which might possibly be justified for exceptionally complicated cases becomes a standard practice, with no requirement to justify, in each individual case, the need for longer placement in police custody. It is untenable, in the CPT's view, to organise police custody in such a way as to subordinate the essential interests of detained persons to general practical considerations.

The Committee calls on the Aruban authorities to re-examine the system of detention on police premises with a view to substantially reducing its duration. Transfer to remand house premises could, for instance, reasonably occur immediately after a person's presentation before a judge, if the judge approves the prolongation of the person's detention.

15. In this connection, the role of judicial scrutiny of custody (*in verzekeringstelling*) should also not be underestimated. When persons detained by law enforcement agencies are brought before judicial authorities, this provides a valuable opportunity for such persons to indicate whether or not they have been ill-treated. Further, even in the absence of an express complaint, the judge will be in a position to take action in good time if there are other indicia (e.g. visible injuries; a person's general appearance or demeanour) that ill-treatment might have occurred.

⁴¹ See Interim Response in CPT/Inf (96) 27, at page 64.

16. As outlined in paragraph 8 above, in Aruba the first opportunity for judicial scrutiny of custody is provided when a suspect is brought before the judge within 24 hours from the extension of custody ordered by the prosecutor.

Although CCP Article 87, paragraph 2, stipulates that a custody extension of up to eight days may be ordered by the prosecutor only in case the investigation urgently requires it, in practice, regardless of the complexity of the case, custody extensions ordered by the prosecutor were always for the eight-day maximum duration - a period which is very long, in the Committee's view.

Moreover, when the investigating judge reviews the prosecutor's decision to prolong custody, the scope of that review would appear to be somewhat limited. In particular, CCP Article 89, paragraph 2, expressly stipulates the possibility that the investigating judge may find that the extension was unlawful, in which case he or she must order the suspect's immediate release. No specific mention is made of a possibility for the judge to *reduce* the duration of the extension of custody; nor did the CPT's delegation receive any indication of such a reduction ever occurring.

In the CPT's opinion, it is a highly questionable practice for prosecutors routinely to order the maximum possible period of extension of custody under CCP Article 87, paragraph 2, a provision which should only apply in cases of urgent necessity. This practice is all the more undesirable as the eight-day period is not further scrutinised by the judge after the first hearing, and as the protection afforded by other safeguards would also appear to be weak (see paragraphs 25 to 40 below).

The CPT recommends that the Aruban authorities take the necessary steps to put an end to this practice. As envisaged by the law, extension of police custody beyond two days should be the exception, not the rule. Further, when an extension is granted, it should be for the shortest time possible, consistent with the legitimate interests of the investigation; any decision to extend police custody beyond two days should be grounded in writing and the investigating judge should be empowered not only to declare the extension unlawful but also to reduce its duration.

3. Conditions of detention

a. introduction

17. It would appear useful to reiterate the minimum standards recommended by the CPT for conditions of detention in police cells.

All police cells should be clean, of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, cells should enjoy natural light. Further, cells should be equipped with a means of rest (e.g. a fixed chair or bench), and persons obliged to stay overnight in custody should be provided with a clean mattress and clean blankets (or sheets, in warmer climates).

Persons in police custody should be allowed to comply with the needs of nature when necessary, in clean and decent conditions, and be offered adequate washing facilities. They should have ready access to drinking water and be given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day. Whenever persons are held for more than 24 hours, they should be provided with appropriate personal hygiene items and be offered outdoor exercise every day.

b. situation encountered in the establishments visited

18. In all three establishments visited, the ventilation was very poor and the cells were extremely hot, and there was little or no access to natural light and inadequate access to water. Detained persons had to sleep on a concrete slab (at best with a wooden covering) and were provided with neither a mattress nor bed sheets. Further, there was no call-bell system and no outdoor exercise was offered. In short, the living conditions in the three police stations visited were seriously sub-standard.

19. The detention block at Noord Police Station was of recent construction and had only become operational several months prior to the visit. It consisted of one bare multi-occupancy cell (measuring some 20m²) and 12 cells for individual use. Each single-person cell contained a concrete plinth and measured just over 5m², not including the partitioned toilet and shower. No mattress or other bedding or towel were provided. None of the cells benefited from any natural light, as they had no windows; if windows had been included in the design of the corridor facing the cells, they would clearly have provided natural light and ventilation. The only illumination came from neon lighting in the connecting corridor, which was never switched off. No opportunity for outdoor exercise was provided, although there was space outside the building which could be transformed into an exercise area. According to the officer in charge, insufficient staff would be available to supervise periods of outdoor exercise. At the time of the visit, two persons were being held, one of whom had spent 13 days in such conditions.

20. As regards Oranjestad Police Station, there was no evidence of the upgrading work said to have been effected after the CPT's visit in 1994⁴². In 2007, the cell block was directly adjacent to the administrative block and consisted of 20 cells for individual use, with seven persons (one woman and six men) detained at the time of the visit.

The conditions found were extremely poor; the cell area was filthy and infested with rats - acknowledged by officers on duty - and cockroaches. The sanitary facilities did not function properly - a deficiency compounded by serious problems with the drainage system - and as a result the corridors were constantly covered in water and urine. Access to lighting and ventilation were totally inadequate: there was no artificial lighting in the cells; the floor and walls were patchy; and a powerful stench pervaded the area. Constant loud noise also emanated from the air-conditioning unit cooling the administrative offices adjacent to the cell block.

⁴² The cell area was described in detail at paragraphs 198 to 203 of the report (CPT/Inf (96) 27).

21. One person was detained at San Nicolaas Police Station⁴³ at the time of the CPT's visit there. Since the previous visit in 1994, refurbishing work had been undertaken to repair the plumbing and add wooden coverings to the concrete plinths in the women's multi-occupancy cell. However, persistent drainage problems meant stagnant water and consequently a problem with mosquitoes. An intercom system was installed, connecting the cell area to the office block, but it was not physically accessible to detained persons. Further, a new exercise yard was never used due, apparently, to a lack of staff, which meant detained persons would spend 10 to 13 days without ever going outside. Finally, the 'cachot' or disciplinary cell was dungeon-like with almost no air or light (artificial or natural); the walls were stained with human excrement, the in-cell sanitary facility was broken and dirty and the cell had no functioning water supply. Although the delegation was informed by staff on duty that this cell was rarely used, custody records indicated that it was in regular use, for periods of several days at a time, and that, on occasion, minors were placed in it.

22. The poor material conditions observed in the police stations in Aruba, including the recently constructed cellblock at Noord, could readily be described as degrading. At the end of the visit, the CPT's delegation invoked Article 8, paragraph 5 of the Convention, and requested that the cells at Oranjestad Police Station and the disciplinary cell at San Nicolaas Police Station be immediately taken out of service⁴⁴.

By fax of 22 June 2007, the Aruban authorities informed the CPT that the private office of the Minister of Justice had carried out an inspection of Oranjestad and San Nicolaas police stations on 11 June, and had noted a number of serious deficiencies in the police stations' installations. The Minister of Justice had ordered the closure of the disciplinary cell at San Nicolaas Police Station and issued instructions to the Directorate of Public Works and the Technical Inspections Service. As a result, a number of the problems identified had already been remedied and the aforementioned bodies would be taking further action to resolve the remainder of the issues.

By further letter of 25 September 2007, the authorities informed the CPT that the police cells in Oranjestad had been closed down on 31 August 2007, and persons previously detained there were transferred to Noord and Santa Cruz Police Stations. Further to a survey, funds⁴⁵ had been secured for extensive refurbishing of all four police stations on Aruba to begin in the near future. In particular, intercom systems would be installed, and mattresses purchased, for all cell blocks.

23. The Committee welcomes the vigorous steps undertaken by the Aruban authorities in response to the delegation's immediate observations. **The CPT requests confirmation from the Aruban authorities that all police cells have been refurbished in accordance with the minimum standards outlined in paragraph 17 above; the Committee would like to receive a detailed account of the measures taken. Further, the CPT recommends that the authorities ensure, through regular maintenance and inspections, that such minimum standards are sustained in all the police stations.**

⁴³ For a description of the cell area, see paragraphs 204 to 205 of the report on the CPT's first visit to Aruba (CPT/Inf (96) 27).

⁴⁴ These immediate observations were formalised in writing by letter of 11 July 2007.

⁴⁵ AWG 384, 641.00

4. Safeguards against ill-treatment by the police

a. introduction

24. Persons who are deprived of their liberty by the police should be afforded a range of key safeguards to protect them against potential ill-treatment by the police.

The CPT attaches particular importance to the right of persons deprived of their liberty to inform a close relative or another person of their choice of their situation; the right of access to a lawyer; and the right of access to a doctor. These rights should apply from the very outset of the person's deprivation of liberty, i.e. as from the moment in which the person is obliged to remain with the police. Persons should also be adequately informed of the possibility to avail themselves of these rights, and it should be possible to verify the operation of these safeguards by consulting police custody records.

25. In Aruba, two general legal provisions should be noted which govern the enjoyment of rights by persons deprived of their liberty by the police. One is Article I.5-5 of the Aruban Constitution, which provides that detained persons may be restricted in their fundamental rights insofar as the exercise of those rights is incompatible with the deprivation of liberty. The other is Article 90 of the CCP, which further provides that no undue restrictions are permitted except for reasons of public order. Article 90.2 also specifies that a prosecutor may determine restrictions, e.g. on access to reading materials or the possibility to receive visits from, or correspond with, particular persons. Such restrictions are clearly to be determined on a case-by-case basis and an appeal may be lodged against them. These provisions favour the enjoyment of rights, and consider their denial as the exception rather than the rule; as such, they are indicative of a positive approach.

However, in practice, the police's main reference text relevant to the exercise by detainees of their fundamental rights is Police Order (*Korpsorder*) No. 10/2004 on Arrested Persons. This text - which is essentially a catalogue of police responsibilities, as opposed to a positive statement of rights - would appear to be more restrictive, and at odds with the aforementioned general principles.

The CPT recommends that the Aruban authorities draw up regulations governing the rights of arrested or detained persons which are in line with Article I.5-5 of the Aruban Constitution and Article 90 of the CCP, as well as with the recommendations set out below.

b. the right to notify a third party of one's detention

26. As was the case at the time of the previous visit to Aruba⁴⁶, no right to notify a third party of one's detention is explicitly provided for in the criminal procedure⁴⁷ or in police regulations. The form on information of rights signed by apprehended persons reflects the content of CCP Article 82 to the letter and also makes no mention of the possibility to notify a third party.

The CPT's delegation was informed by the Aruban authorities that, in practice, every apprehended person is permitted to make a telephone call, unless it is contrary to the interests of an ongoing investigation. It was not clear whether a decision not to allow notification could be taken by the police or required a decision by a prosecutor or judge. In the case of minors, their parents or guardians have visiting rights analogous to those of the lawyer⁴⁸. Such visiting rights would presuppose that parents or guardians are, in practice, notified of a minor's detention.

27. Many persons interviewed by the CPT's delegation about their detention in police premises perceived themselves as being held incommunicado, as they allegedly had not been permitted to inform anybody about their detention. Further, there was no record in any police registers attesting to a practice of allowing a person to make a phone call or to have a close friend or relative informed by the police.

28. The CPT calls upon the Aruban authorities to ensure that all persons deprived of their liberty by the police, for whatever reason, are granted the right to notify a close relative or third party of their choice about their situation as from the very outset of their deprivation of liberty.

The exercise of this right could be made subject to certain exceptions designed to protect the legitimate interests of the police investigation, provided those exceptions are clearly circumscribed in law and made subject to appropriate safeguards (i.e. the decision to delay to be recorded in writing with the specific reasons therefore, and to require the approval of a senior police officer unconnected with the case at hand or a public prosecutor) and strictly limited in time.

c. access to a lawyer

29. As already stated above,⁴⁹ it is during the period immediately following apprehension - and, a fortiori, during which the individual is subjected to police questioning under an investigation procedure - that the risk of intimidation and ill-treatment is at its greatest. Consequently, the possibility for persons taken into police custody to have access to a lawyer during that period is a fundamental safeguard against ill-treatment.

⁴⁶ See the report on the CPT's first visit to Aruba (CPT/Inf (96) 27) at paragraph 212.

⁴⁷ Cf. CCP Article 82.

⁴⁸ See CCP Article 482, in conjunction with 70, as well as Section 6.4 of Police Order No. 10/2004.

⁴⁹ See paragraph 14, subparagraph 3.

The right of access to a lawyer must include the right for any person deprived of liberty to talk to his lawyer in private upon being admitted into the police station. The person concerned should, in principle, be entitled to have a lawyer present during any interrogation. Naturally, the fact that a detained person has stated that he wishes to have access to a lawyer should not prevent the police from beginning to question him on urgent matters before the lawyer arrives. Provision could also be made for the replacement of a lawyer who impedes the proper conduct of an interrogation, on the understanding that such a possibility should be strictly circumscribed and subject to appropriate safeguards.

30. Aruban criminal procedure provides that every suspect who is brought to a place for questioning must, immediately thereafter, and in any case before any questioning begins, be informed of his right to be assisted by a lawyer, and, if he cannot afford a lawyer, of his right, if he is placed in custody (*in verzekeringstelling*), to have one provided to him free of charge⁵⁰.

The CPT's delegation was informed by the Aruban authorities that no right is granted for a lawyer to be present at his or her client's interrogation by the police. In practice, it would appear that, if the suspect already has a lawyer, he or she would be called by the police after the interrogation.

31. The CCP provides that the lawyer has the right to unhindered access to his or her client, including consultations in private and confidential correspondence⁵¹. However, in case of serious suspicion that it would hinder the course of justice, access to a lawyer may be restricted or denied by the prosecutor⁵² for a maximum period of eight days.

The CPT has serious reservations about this provision⁵³. The Committee is aware that, in a number of countries, it is possible, exceptionally, to delay for a certain period a detained person's access to a lawyer of his choice on the grounds that this is necessary to protect the legitimate interests of the police investigation. Provisions of this kind should in no case result in the right of access to a lawyer being denied during the period in question. Whenever such a provision is applied, access to another lawyer should be arranged. Although certain arrangements would appear to be possible in Aruba under the CCP⁵⁴, the relevant provisions do not explicitly provide that, in such cases, access to another lawyer is, in practice, ensured without delay.

32. As concerns persons who avail themselves of the right to free legal aid, the CPT's delegation was informed by the Aruban authorities that, although in principle the duty lawyer roster system should allow for access to a lawyer on the same day as the person's placement in police custody, duty lawyers often did not turn up.

⁵⁰ CCP Article 82, paragraph 1c.

⁵¹ CCP Article 70, paragraph 1.

⁵² Or, later, during the judicial investigation, by the investigating judge. See CCP Article 70, paragraph 2.

⁵³ Indeed the Committee had also expressed reservations with regard to a similar provision in the former CCP applicable at the time of the visit in 1994.

⁵⁴ See CCP Articles 59, 62, 63 and 70.

33. The CPT recommends that the Aruban authorities ensure - if necessary by amending the relevant legal provisions - that all persons arrested have the right of access to a lawyer from the very outset of, and throughout, their deprivation of liberty, including during any interrogation.

Further, the CPT recommends that the Aruban authorities take the necessary steps to ensure the effectiveness of the system of legal aid for persons detained by the police who are not in a position to pay for a lawyer.

d. access to a doctor

34. According to Section 5.7 of the Police Regulation on Arrested Persons (Police Order Nr. 10/2004), when a person in police custody asks to see a doctor, the duty police officer must call one or organise for the person to be sent to hospital. Further, the same section provides that the duty police officer is responsible for ensuring that any person showing signs of injuries is not incarcerated before being seen by a nurse or doctor.

In practice, however, the CPT's delegation observed that access to a doctor was difficult, if not impossible. No doctor had visited Oranjestad Police Station since the beginning of 2007. Further, the delegation met a person at Oranjestad Police Station to whom access to his regular blood pressure medication, and to a doctor, had been denied. Indeed, quite apart from the numerous allegations of denial of access to a doctor during police detention, it was apparent from discussions with officers on duty, that it was very rare that a doctor would be called. Moreover, police officers would "investigate" whether the person requesting a doctor really needed to see one. This state of affairs is not acceptable.

35. The CPT recommends that the Aruban authorities take the necessary steps - including through the allocation of adequate funds - to ensure that persons deprived of their liberty by the police have effective access to a doctor from the very outset of their deprivation of liberty. In particular:

- a request by a detained person to see a doctor should be granted; it is not for police officers, nor for any other authority, to filter such requests;
- a person taken into police custody should have the right to be examined, if he so wishes, by a doctor of his own choice, in addition to any medical examination carried out by a doctor called by the police (it being understood that an examination by a doctor of the detained person's own choice may be carried out at his own expense);
- all medical examinations should be conducted out of the hearing and - unless the doctor concerned expressly requests otherwise in a given case - out of the sight of police staff;
- the results of every examination, as well as any relevant statements by the detained person and the doctor's conclusions, should be formally recorded by the doctor and made available to the detainee and his lawyer;
- the confidentiality of medical data is to be strictly observed, without prejudice to the right of the person concerned to make reference to that medical data; and
- the police station records should indicate the date and time of requests to see a doctor, when a doctor is called and when the doctor has visited.

e. information on rights

36. Persons taken into police detention should be expressly informed, without delay and in a language which they understand, of their rights, and in particular the right to notify a third party of their detention, the right of access to a lawyer and the right of access to a doctor.

37. A standard notification form, available in Dutch, Papiamentu, English, and Spanish, was in use at the police establishments visited. In accordance with CCP Article 82, it was used before the beginning of questioning, and it referred to the right to remain silent, the right to legal counsel and the right to have a lawyer assigned free of charge in the event of custody (*in verzekeringstelling*). The form requires the signature of the arresting officer and the arrested person. In the event that the arrested person refuses to sign, the refusal is also noted on the form.

The use of such a form marks a significant improvement compared to the situation found during the CPT's first visit to Aruba⁵⁵ and the Committee would commend the authorities for this improvement. However, two fundamental rights, namely to inform a third person of one's choice of one's detention, and the right of access to a doctor, are notably absent from the form.

The CPT calls upon the Aruban authorities to ensure that all persons detained by the police - for whatever reason - are fully informed of their above-mentioned fundamental rights, including to inform a third person of their choice of their detention, and to have access to a doctor, as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). This should be ensured by provision of clear verbal information at the very outset, to be supplemented at the earliest opportunity (that is, immediately upon arrival at police premises) by provision of the written notification form, which should be revised in accordance with the foregoing remarks.

f. custody records

38. The CPT's delegation noted that police records were not rigorously completed. In particular, certain events, such as visits from lawyers, were not systematically recorded.

The CPT considers that the fundamental guarantees of persons taken into police detention would be reinforced if a single and comprehensive custody record were to be kept for each of these persons. In this record would be entered all aspects of custody and all measures taken in connection with it: when and for what reason(s) the custodial measure was taken; when the person arrived on police premises; when he/she was informed of his/her rights; whether he/she showed signs of injuries, health problems, mental disorder, etc.; in which cell(s) he/she was placed; when fed; when questioned; when he/she requested to see a doctor and when a doctor was called; when he/she had contacts with and/or visits from close relatives, a lawyer, a doctor or a representative of the consular services; when transferred; when brought before a prosecutor; when remanded to prison or released, etc.

⁵⁵ See CPT/Inf (96) 27, at paragraphs 222 and 223.

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

g. complaints procedures

39. Another effective means of preventing ill-treatment by law enforcement officials lies in the diligent examination by the competent authorities of all complaints of such treatment brought before them and, where evidence of wrongdoing emerges, the imposition of appropriate disciplinary and/or criminal penalties. This will have a very strong deterrent effect. Conversely, if the relevant authorities do not take effective action upon complaints referred to them, those minded to ill-treat persons deprived of their liberty will quickly come to believe that they can act with impunity.

In this connection, the CPT considers that the persons responsible for overseeing and carrying out investigations into possible ill-treatment by law enforcement officials should be independent from those implicated in the events. Further, such investigations should offer guarantees of effectiveness, promptness and expeditiousness.

40. Two bodies were competent to carry out investigations into misbehaviour by members of the Police Corps of Aruba (KPA): the *Landsrecherche* and the *Bureau Interne Zaken en Onderzoeken* (the KPA Internal Affairs and Investigations Bureau or 'BIZO'). Both could carry out investigations into criminal offences, and the BIZO could also conduct disciplinary investigations. In 2006 the BIZO conducted 30 investigations into ill-treatment potentially constituting a criminal offence, whereas the *Landsrecherche* conducted two investigations in the same period. Between 2000 and 2007, disciplinary investigations into ill-treatment by members of the KPA had resulted in seven dismissals.

Further, an Independent Police Complaints Committee was originally established by governmental decree on 26 March 2002. However, it was inactive, due to a position left vacant, and complaints were dealt with by the BIZO. Since the visit, the Committee has learned that the Minister of Justice had reactivated this body. The CPT welcomes this development **and trusts that the necessary resources will be allocated to the Independent Police Complaints Committee to enable it to strengthen the effectiveness of the complaints system in Aruba.**

B. Foreign nationals detained under aliens legislation

1. Preliminary remarks

41. Aruban legislation foresees the detention of irregular migrants⁵⁶. Detention orders issued by the Border Guard authority (*Warda Nos Costa*⁵⁷), which is responsible for detaining and deporting aliens, are of an indefinite duration but they must be notified to the Attorney-General within four days. However, pursuant to Aruban case-law, the maximum duration of detention of irregular migrants has been set at 90 days and, on that basis, the Border Guard authority has developed a practice of releasing a foreigner after 60 days of detention on the condition to report regularly to the Border Guard authority.

The CPT invites the Aruban authorities to consider developing further the use of alternative, non-custodial, measures for irregular migrants.

42. The CPT considers that, in those cases where it is deemed necessary to deprive persons of their liberty for an extended period under aliens legislation, 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.

The Aruban authorities have established a specific centre⁵⁸, the ‘Centro pa detencion di ilegalnan’ for holding immigration detainees, adjacent to KIA.

However, despite assurances from the authorities that aliens were not held in law enforcement premises overnight, the CPT’s delegation encountered numerous persons who had spent some considerable time - seven or eight days - in a police station⁵⁹ before being transferred into custody at the Centre. Such a practice should cease. **The CPT recommends that the Aruban authorities ensure that irregular migrants are not detained in police cells for extended periods, i.e. any time longer than is necessary to arrange their transfer to the Centre.**

43. Expulsion decisions, issued by the Attorney-General, could be appealed with suspensive effect, but the CPT’s delegation was informed that, in practice, very few appeals were lodged.

⁵⁶ Article I.5 1 f) of the *Staatsregeling* (Constitution) of Aruba (like Article 5 (1) (f) of the European Convention of Human Rights) explicitly allows the “lawful detention of persons to prevent their effecting an unauthorized entry into the country or of persons against whom action is being taken with a view to deportation or extradition.”

⁵⁷ Part of the *Instituto Alarma y Seguridad Aruba* (‘IASA’, the Aruban Emergency and Security Services), under the responsibility of the Ministry of Justice.

⁵⁸ Cf. the situation found during the CPT’s previous visit, in 1994, in CPT/Inf (96) 27, at paragraph 183.

⁵⁹ Particularly in the case of persons attempting to cross the borders. Those already present on the territory were brought directly to the Centre.

2. Ill-treatment

44. It should be stated at the outset, that the CPT's delegation heard no allegations of physical ill-treatment of detained persons by supervisory staff of the 'Centro pa detencion di ilegalnan' for immigration detainees.

The delegation did, however, receive allegations of several occasions of verbal harassment and disrespectful behaviour by one staff member towards a particular person who was detained at the establishment for nearly two months. **The CPT recommends that staff working at the Centre be reminded that disrespectful, aggressive or insulting behaviour will not be tolerated and will be severely sanctioned.**

3. Conditions of detention at the 'Centro pa detencion di ilegalnan' for immigration detainees

45. With an official capacity of 60 places, the 'Centro pa detencion di ilegalnan' for immigration detainees was accommodating 16 persons, seven women and nine men, at the time of the visit. The Centre's 24 cells were arranged in two, two-storey wings facing one another across a large yard. The women were held in four cells on the upper level of one wing and the men in four cells on the ground floor. Whereas the majority of persons had been detained at the Centre for 6 days, a small number had been detained for several weeks and one as many as nine weeks.

46. As regards material conditions at the Centre, the cells were generally intended for holding one or two persons, and were of an adequate size for such an occupancy level⁶⁰. Nevertheless, at the time of the visit, one ground floor cell and one upper level cell each held three persons. Even if such an arrangement were made at the detained persons' request, the small upper level cell in particular was overcrowded as a result. The metal-bar cell doors ensured that there was adequate natural light and some aeration, and the artificial lighting could be switched on and off by the cell occupants.

However, the cells were dirty and infested with cockroaches and mosquitoes. Dirty mattresses on the cell floors were the only furnishings. The in-cell sanitary facilities were partially partitioned and the shower could be activated by the occupants of the cell. Unfortunately, due to the inadequate plumbing arrangement, whereby the toilet consisted of a hole in the cement floor of the shower, the shower drains were often blocked and unusable. As a result, a powerful smell emanated from the drains.

Sheets were provided and washed by detainees themselves. Towels and some basic personal hygiene products were provided by the Centre, if detained persons did not have their own.

As there were no call-bells, detained persons had to call out to staff across the yard to obtain their attention.

⁶⁰ Approximately 10m² on the upper-level and 14m² on the ground floor.

47. No regime activities of any description were on offer at the Centre. Detainees were confined to their cells for 22 hours a day and allowed to go into the exercise yard for one hour in the morning and one in the afternoon. The yard contained nothing but a few broken chairs.

48. At the official talks held at the end of the visit, the CPT's delegation drew attention to the shortcomings as regards material conditions and the absence of regime activities at the Centre. By letter of 25 September 2007, the Aruban authorities responded that they considered the Centre to be a temporary facility falling short of the requisite standards. An assessment was under way to determine whether it was financially feasible to refurbish and improve the Centre or to move the facility to a new location. In the meantime, new beds had been ordered and were delivered to the Centre and the period of outdoor exercise had been extended to a total of three hours per day: two hours in the morning and one in the afternoon.

49. The CPT welcomes the spirit of cooperation demonstrated by this response and trusts that acceptable conditions of detention will be provided to immigration detainees without further delay. Should persons continue to be detained at the current premises, **the CPT recommends that the Aruban authorities take urgent steps to ensure that:**

- **the in-cell sanitary facilities are promptly repaired and refurbished so as to provide hygienic conditions;**
- **all detainees are allocated a bed and provided with a clean mattress and clean bedding;**
- **all cells are fitted with call-bells;**
- **all detainees are provided with the necessary products and equipment to keep their accommodation clean, as well as with products for personal hygiene (i.e. toilet paper, soap, toothpaste, toothbrush, etc.).**

Further, as concerns regime, **the CPT recommends that:**

- **all detainees be allowed to spend a large proportion of the day outside their cells;**
- **steps be taken to introduce recreational opportunities, such as access to television, radio, reading material and sports. The longer the period for which persons are detained, the more developed should be the activities which are offered to them.**

50. The staff of centres for immigration detainees have a particularly onerous task. Firstly, there will inevitably be communication difficulties caused by language barriers. Secondly, many detained persons will find it difficult to accept the fact that they have been deprived of their liberty when they are not suspected of any criminal offence. Thirdly, there is a risk of tension between detainees of different nationalities or ethnic groups.

Consequently, the CPT places a premium upon the supervisory staff in such centres being carefully selected and receiving appropriate training. Staff should possess both well-developed qualities in the field of interpersonal communication and cultural sensitivity, given the diverse backgrounds of the detainees; at least some staff members should have relevant language skills. Further, they should be taught to recognise possible symptoms of stress reactions displayed by detained persons and to take appropriate action.

The staff working at the Centre were employed by the Government Security agency (“CEA”⁶¹) and had a strictly supervisory role; they had no say in policy and perimeter decisions, such as issues of access to urgent medical assistance - these were responsibilities of the Border Guard authority. CEA staff were, however, the staff members who had regular contact with persons detained at the Centre. At the time of the visit, mixed-gender staffing was the norm at the Centre, which is a positive measure. Nevertheless, staff members had not received specific training to deal with the particular needs of foreign nationals detained under aliens legislation. **The CPT recommends that the Aruban authorities remedy this lacuna in the light of the above remarks.**

51. As regards medical care, no medical screening was carried out of new arrivals at the Centre. The CPT considers that the carrying out of such screening is in the interests of both detainees and staff, and is also a preventive public health measure. Such screening should be performed by a doctor or by a qualified nurse reporting to a doctor.

Moreover, it appeared that access to a doctor was being unnecessarily delayed. The delegation was told that when a detained person requested to see a doctor, staff on duty at the Centre would first contact the Border Guard authorities and, if necessary, the person would be transferred to hospital for consultation and treatment. The delegation received a number of complaints from the majority of detainees that their requests to see a doctor had gone unheeded. It was also informed that funding for medication was lacking and as a result CEA staff members had on occasion helped detainees by paying for their prescription medication.

The CPT recommends that systematic medical screening of all immigration detainees, including for transmissible diseases, be introduced. Such screening should be carried out in a way that respects medical confidentiality. Further, there should be a daily presence of a person with a recognised nursing qualification, and access to acute medical and dental care and appropriate psychological/psychiatric assistance should be available.

4. Safeguards against the ill-treatment of foreign nationals detained under aliens legislation

52. In the CPT’s view, immigration detainees (whether asylum-seekers or not) should be entitled, as from the outset of their deprivation of liberty, to inform a person of their choice of their situation and to have access to a lawyer and to a medical doctor. Further, immigration detainees should be expressly informed, without delay and in a language they understand, of their rights and the procedure applicable to them. To this end, all immigration detainees should be systematically provided with a document setting out this information; the document should be available in the languages most commonly spoken by those concerned and, if necessary, the services of an interpreter should be made available. The persons concerned should attest that they have been informed of their rights, in a language they can understand.

⁶¹ *Cuerpo Especial Arubano.*

53. It would appear that immigration detainees do not benefit from the full protection of the safeguards outlined in paragraph 52 above. In particular:

- there is no right guaranteed to inform a person of one's choice of one's detention. Indeed most persons interviewed by the delegation perceived themselves as being held incommunicado;
- although access to free legal assistance was, by law, limited to Aruban citizens, the delegation did come across instances in which free legal aid was provided to foreign nationals who could not afford a lawyer. Nevertheless, most persons interviewed by the delegation complained of delays of three days or more in obtaining access to a lawyer;
- apart from a copy of the detention order in Dutch, information on rights and procedures was not provided to all detainees in a language they understood;
- the assistance of an interpreter was also not provided. Several persons complained to the delegation of considerable problems communicating with the lawyer, or understanding documentation.

The CPT recommends that the Aruban authorities take the necessary steps to ensure that all persons held under aliens legislation are afforded the fundamental safeguards, as outlined in paragraph 52 above.

54. Moreover, persons detained at the Centre had no contact with the outside world. No visits were allowed and no telephone was available for detainees at the Centre. Clothes and money could be delivered to detained persons.

The CPT recommends that immigration detainees be allowed to maintain contact with the outside world during their detention, and in particular to have access to a telephone and to receive visits from relatives and representatives of relevant organisations.

55. The asylum procedure followed in Aruba provides for a first interview and evaluation by the Immigration Service, which then sends this evaluation to the Asylum Committee⁶², which conducts a further analysis, including further interviews, if necessary, and usually consults the UNHCR office in Caracas (Venezuela). The Asylum Committee then sends its findings to the Minister of Alien integration, Policy and Admission, who takes a final decision on the asylum request. Since 2003, an average of three to four asylum applications were lodged per year, none successful at the time of the visit.

⁶² Established by Ministerial Decree in 2003, this ad hoc Committee is composed of legal advisers from the Police department, the Department of Alien integration, Policy and Admission, the Department of Foreign Affairs and the Immigration authorities.

56. In the course of the visit to the Centre, the CPT's delegation encountered a number of persons who had indicated their wish to seek asylum, but who appeared to have received no information about whether their case was being considered. Further, information gathered by the delegation indicated that officials entrusted with handling asylum application cases have not been provided with appropriate training in this field.

The CPT notes that the Minister of Justice has issued instructions⁶³ to the Immigration department and to officers of the Border Guard authority (*Warda Nos Costa*) that when persons indicate upon arrival in Aruba that they are refugees and they wish to apply for asylum, the asylum committee must be informed at once. This is a positive step.

However, in order to ensure that those who might wish to do so can take full benefit of the asylum procedure and, more generally, to ensure that no foreign national is sent to a country where he/she runs a risk of being subjected to torture or inhuman or degrading treatment or punishment, it is essential that the Aruban authorities implement in full the safeguards referred to in paragraphs 52 to 54. Further, officials entrusted with handling asylum applications should be provided with appropriate training.

⁶³ Dated 8 December 2005.

C. Aruba Correctional Institute - KIA

1. Preliminary remarks

57. Since the previous visit in 1994⁶⁴, the capacity and actual occupancy of the *Korrekție Instituut Aruba* (or 'KIA') had considerably increased. With an official capacity of 310 places⁶⁵, KIA accommodated 277 prisoners, 231 of them sentenced and 46 on remand. There were 247 male and 25 female adult prisoners; five prisoners were under 18 years old, all of them male.

A number of structural changes had also occurred since the previous visit, including the construction of new units for juveniles and for women. However, certain potentially very beneficial facilities and units were not in use, largely due to a shortage in staff.

2. Ill-treatment

58. Most prisoners at KIA had no complaints about the manner in which they were being treated by staff. However, the CPT's delegation did receive a few allegations of physical ill-treatment.

59. In **Case A**, a prison officer was alleged to have punched an inmate, R.E., in the left side of the jaw on 2 April 2007. The prisoner's medical file showed that he was seen by the prison doctor, who noted pain in the left temporal area.

At the end of the visit, the delegation requested information about any action taken with regard to this incident. By letter of 25 September 2007, the authorities informed the CPT that disciplinary proceedings were under way.

60. In **Case B**, E.G., a prisoner with a psychiatric condition, had set fire to his cell and threatened staff with a knife on 18 November 2006. The prisoner was allegedly violently beaten by a group of six prison officers, and after falling unconscious, handcuffed behind his back and taken to hospital for treatment to his jaw. Medical evidence was available which was consistent with the allegation. The report of the hospital's emergency services to the KIA health services states that the patient had been severely ill-treated at KIA, resulting in possible fracture of the jaw, the left forearm and the right arm. An examination showed a deformation to the left arm, with an open wound and oedema; a deformation to the right arm, painful to the patient; pain to the head, swollen right eye, with a haematoma and an open wound on the right eyebrow; and open wounds to the lips. Further, X-rays confirmed a fracture of the left forearm, which was subsequently placed in a cast.

The prison doctor examined the prisoner on his return to KIA the same day and filed a report to the Minister of Justice dated 19 November 2006. At the end of the visit, the CPT's delegation was informed that an investigation by the *Landsrecherche* into this incident was under way. **The CPT wishes to be kept informed of the results of the investigation.**

⁶⁴ See CPT/Inf (96) 27, paragraphs 233 to 326.

⁶⁵ Or 390 places, counting units in the prison which were unused at the time of the visit.

61. In the light of the cases outlined above, the Committee wishes to recall that the State is under a duty to provide care for all persons deprived of their liberty in prison, and that the frontline in providing such care rests with prison officers. The authorities must not only undertake a proper investigation into allegations of ill-treatment, but also institute measures to ensure that all prison officers and managers understand why ill-treatment is unacceptable and unprofessional and that, furthermore, it will result in severe disciplinary sanctions and/or criminal prosecution.

The CPT recommends that concrete measures are taken to eradicate ill-treatment of prisoners by prison staff at KIA, including through improved management and supervisory mechanisms.

62. The delegation received numerous allegations of inter-prisoner violence, during which prison officers were said to have remained passive when they should have intervened; in some of these cases, such an attitude allegedly exacerbated the situation. On other occasions involving incidents of inter-prisoner violence, there were allegedly no prison officers present or even close at hand.

The CPT wishes to emphasise that the duty of care which is owed by the prison authorities to prisoners in their charge includes the responsibility to protect them from other prisoners who might wish to cause them harm. The prison authorities must act in a proactive manner to prevent violence by inmates against other inmates.

Addressing the phenomenon of inter-prisoner violence and intimidation requires that prison staff be alert to signs of trouble and both resolved and properly trained to intervene when necessary. The existence of positive relations between staff and prisoners, based on the notions of dynamic security and care, is a decisive factor in this context; this will depend in large measure on staff possessing appropriate interpersonal communication skills. It is also obvious that an effective strategy to tackle inter-prisoner intimidation/violence should seek to ensure that prison staff are placed in a position to exercise their authority in an appropriate manner. Consequently, the level of staffing must be sufficient (including at night-time) to enable prison officers to supervise adequately the activities of prisoners and support each other effectively in the exercise of their tasks. Both initial and ongoing training programmes for staff of all grades must address the issue of managing inter-prisoner violence.

The CPT recommends that the prison management develop a strategy to address the problem of inter-prisoner violence, in the light of the foregoing remarks. It would like to be informed of the measures planned in this respect.

3. Conditions of detention

a. material conditions

63. Material conditions at the previously visited sections at KIA were, for the most part, satisfactory⁶⁶. The notable exceptions concern the disciplinary cells, addressed at paragraph 90 and, to a lesser extent, the admissions section, which was malodorous, due to drainage problems.

64. The new women's section grouped all female prisoners together, with no separation between remand and sentenced prisoners, or adults and minors, though no female minors were held at the time of the visit. The unit consisted of a long hall with, on one side, 19 cells on two floors and, on the other side, the staff control room, a dining/sitting area equipped with tables and chairs, an activities room, including fitness machines and, on the upper level, two disciplinary cells (described at paragraph 90).

Each cell measured less than 9m²⁶⁷ - not counting the partly partitioned sanitary annexe consisting of a shower, toilet and washbasin - and was occupied by up to three persons. As in the rest of the prison, each cell was closed off (on the doorway side) by floor-to-ceiling bars, offering virtually no privacy. The cells were furnished with triple bunk beds and good-quality bedding and in-cell artificial lighting was good. The openings in the concrete structure provided sufficient natural light to the section, but insufficient ventilation (and no possibility to see outside the building).

One cell had been fitted with air-conditioning in order to allow a prisoner, who was due to give birth, to keep her child with her; it was not clear until what age the child would be allowed to remain in the prison with its mother.

65. The new juveniles' section was of much the same design as the women's section, only smaller, with 12 ordinary and two disciplinary cells. The sports equipment in the activities room was broken.

66. The CPT reiterates its recommendation⁶⁸ that the maximum capacity of cells be progressively reduced to two prisoners, including in the new women's and juveniles' sections. Further, the authorities should explore the possibility of improving ventilation in the women's and juveniles' sections, and of allowing prisoners to maintain some degree of privacy in cells throughout the prison. It would also be desirable for women and juveniles to be able to look outside when in their cells.

⁶⁶ See the descriptions in the report on the CPT's previous visit (CPT/Inf (96) 27), at paragraphs 236 to 240.

⁶⁷ Roughly the same size as cells in the older cellblocks accommodating adult male prisoners.

⁶⁸ See the report on the CPT's previous visit (CPT/Inf (96) 27), at paragraphs 238 and 250.

67. As noted above, certain potentially very beneficial facilities and units were not in use, due to a shortage in custodial and other qualified staff: the CPT's delegation noted the new forensic psychiatric support unit (FOBA⁶⁹), a new seclusion unit, the dentistry facilities, an activities room for women and juveniles, and the new visiting area - all of them of recent construction or renovation, yet they were not in use.

The CPT recommends that efforts be made to ensure that all facilities at KIA are brought into service.

b. regime

68. During their time in prison, prisoners need to prepare for release into the community and to feel confident that they will be capable of leading a life away from crime. A regime which provides for varied activities, as part of an individualised custody plan, is a vital component in the preparation for release, as well as being beneficial for the running of the prison.

Considerably more time was spent out-of-cell than prisoners were allowed at the time of the previous visit in 1994. Facilities for outdoor exercise were also spacious and in good condition. Nevertheless, a common complaint from prisoners concerned the lack of activities on offer. This was the case particularly for adult men, who spent most of their time in a state of enforced idleness. 109 prisoners worked in various jobs in and around the prison. Limited spaces were available for activities such as sports, English classes and religious education. Although the regime for juveniles was somewhat more structured than that offered to adult prisoners, it lacked activities of vocational value.

The CPT reiterates its recommendation that activities for prisoners be further developed, with a view to ensuring that all prisoners (including those on remand) can spend a reasonable part of the day (i.e. 8 hours or more) outside their cells engaged in purposeful activities of a varied nature: work, preferably with vocational value; education; sport; recreation/association. In particular, young prisoners must be offered a full programme of educational, recreational and other purposeful activities.

69. Two prisoners were serving life sentences at the time of the visit, and 26 inmates were serving long sentences of 10 to 22 years' duration. Yet such prisoners, who formed over 12% of the sentenced prisoners, did not appear to benefit from a richer regime than the rather meagre one on offer to all prisoners; nor did they benefit from adequate psychological support.

⁶⁹ 'FOBA' stands for '*Forensische Observatie- en Begeleidingsafdeling*'. Consisting of 10 ordinary and 1 disciplinary cell, this had formerly been the women's section of the prison.

Long-term imprisonment can have a number of desocialising effects upon inmates. In addition to becoming institutionalised, long-term prisoners may experience a range of psychological problems (including loss of self-esteem and impairment of social skills) and have a tendency to become increasingly detached from society, to which almost all of them will eventually return. In the view of the CPT, the regimes which are offered to prisoners serving long sentences should seek to compensate for these effects in a positive and proactive way. The prisoners concerned should have access to a wide range of purposeful activities of a varied nature (work, preferably with vocational value; education; sport; recreation/association). Additional steps should be taken to lend meaning to their period of imprisonment; in particular, the provision of individualised custody plans and appropriate psychological and social support are important elements in assisting such prisoners to come to terms with their period of incarceration and, when the time comes, to prepare for release. Moreover, the provision of such a regime to life-sentenced prisoners enhances the development of constructive staff/inmate relations and hence reinforces security within the prison.

The CPT recommends that the Aruban authorities develop a policy vis-à-vis life-sentenced and other long-term prisoners, in the light of the foregoing remarks.

4. Health care services

a. introduction

70. The general health insurance system of Aruba did not cover foreign nationals detained at KIA. Although some efforts were made not to exclude indigent prisoners from access to medication, the low budgetary allocations for prison health care services in general meant that access - particularly to specialist care - posed considerable difficulties for all prisoners, but especially for those who were not covered by the public scheme.

The act of depriving a person of liberty always entails a duty of care which calls for adequate provision of health care services. **The CPT recommends that the Aruban authorities ensure that all prisoners are guaranteed the provision of care - including specialist care - required by their state of health; this implies that the funds allocated to prisons should be sufficient to enable health care services to be provided free-of-charge to prisoners who do not have the necessary resources to pay for them themselves.**

b. medical care in general

71. A prison health care service should be able to provide medical treatment and nursing care, as well as appropriate diets, physiotherapy, rehabilitation or any other necessary special facility, in conditions comparable to those enjoyed by patients in the outside community. Provision in terms of medical, nursing and technical staff, as well as premises, installations and equipment, should be geared accordingly.

In this context, it must be pointed out that the CPT's delegation received many complaints from prisoners at KIA concerning delays in access to medical care generally. It would appear that low staffing led to situations in which the nursing staff were made to assume certain responsibilities pertaining to the doctor.

72. At the time of the visit, the health care team was composed of one general practitioner, who attended the prison three half-days per week, and two full-time nurses (one male, one female), both of whom had a psychiatric qualification. It is planned to recruit a third nurse in 2008.

Given the size and profile of the prison population, **the CPT recommends that the presence of a doctor be increased to ensure daily consultations on weekdays (preferably to the equivalent of one full-time doctor) and that the complement of nurses be increased to five.**

73. Between the hours of 4 pm and 7 am on weekdays, and for the entire weekend, no healthcare staff was present, although the doctor and the two nurses were on-call⁷⁰ in case of emergencies. Such a situation is not acceptable and places both staff and prisoners at risk. **The CPT reiterates its recommendation⁷¹ that someone qualified to provide first aid, preferably with a recognised nursing qualification, should always be present in the prison, including at night.**

74. The provision of specialist care was often subject to lengthy delays, if it was available at all. The problems with the provision of psychiatric and psychological care are discussed at paragraphs 79 to 81. Further, no dentist was present. The general practitioner diagnosed the problem and arranged dental care - mostly extractions - at a dental surgery.

In the light of the evident needs of the establishment, **the CPT recommends that a dentist be recruited, on a part-time basis, to provide dental care at KIA.**

⁷⁰ It should be noted that the doctor received no additional remuneration for after-hour visits to the prison and that the same doctor was also on-call for the four police stations and the Centre for immigration detainees.

⁷¹ See CPT/Inf (96) 27, paragraph 285.

c. medical facilities and records

75. The CPT is pleased to note the considerable progress made as regards the infirmary⁷² and prisoners' medical records⁷³.

The infirmary, conveniently located next to the medical service, was clean and well-furnished and stocked. It contained a room with four beds for the medical supervision of unstable prisoners, and a glass-partitioned room for consultations with the psychiatrist or the psychologist.

Individual medical files contained extensive information and were kept in compliance with the confidentiality of patients' medical data.

d. medical screening on admission / prevention of violence

76. Prompt medical screening of newly arrived prisoners is essential, to evaluate the risk of suicide and to prevent the spread of transmissible diseases. The CPT would also recall that prison health-care services can make a significant contribution to the prevention of ill-treatment of detained persons, through the systematic recording of injuries.

The individual medical files at KIA showed that the screening of newly arrived prisoners was not always carried out within 24 hours, but sometimes only several days, after a prisoner's arrival. Further, this screening did not include screening for transmissible diseases.

The CPT recommends that every newly admitted prisoner be properly interviewed and physically examined by a medical doctor (or by a fully qualified nurse reporting to a doctor) as soon as possible after his admission; save for exceptional circumstances, the interview/examination should be carried out within 24 hours of admission. Further, this examination should include screening for transmissible diseases (TB, HIV, etc).

77. The CPT considers that the file drawn up after the examination of a prisoner who shows signs of injury should contain:

- i) a full account of statements made by the person concerned which are relevant to the medical examination (including the description of his/her state of health and any allegations of ill-treatment);
- ii) a full account of objective medical findings based on a thorough examination; and
- iii) the doctor's conclusions in the light of i) and ii).

In his conclusions, the doctor should indicate the degree of consistency between allegations made and the objective medical findings; this will enable the relevant authorities to properly assess the information set out in the record.

⁷² See CPT/Inf (96) 27, paragraphs 289 to 291.

⁷³ See CPT/Inf (96) 27, paragraphs 292 to 293

The same approach should be followed whenever a prisoner is medically examined following a violent episode in prison. If a prisoner so requests, a certificate containing the above-mentioned information should be made available to the prisoner and to his/her lawyer.

The CPT recommends that the medical screening procedure be brought in line with the above precepts and that a separate register be established for recording lesions observed on newly admitted prisoners or sustained by prisoners while detained at KIA.

e. medical confidentiality

78. Medical confidentiality, a fundamental principle of the carer-patient relationship, was not observed, as custodial staff were present during prisoners' consultations with the nurse and they regularly distributed medication to prisoners. **The CPT recommends that medical consultations and the distribution of medicine be organised in such a way as to respect confidentiality. All medical examinations of prisoners (whether on arrival or at a later stage) should be conducted out of the hearing and - unless the health-care staff concerned requests otherwise in a particular case - out of the sight of prison officers. Further, medication should be distributed by a health-care staff member.**

f. psychiatric and psychological care

79. In principle, a psychiatrist attended KIA once a month; however, the delegation noted that he had not visited for several months. The lack of provision of psychiatric care was essentially a budgetary issue. Another problem was one of conflict of roles, as the psychiatrist would not treat persons for whom he had issued a psychiatric assessment in the context of criminal proceedings, and there was apparently no alternative psychiatrist on whose services the establishment could rely.

A psychologist attended the prison once every two months, which was clearly insufficient. A psychiatric and forensic observation and assistance centre (FOBA⁷⁴) within the prison, with a capacity to hold 10 prisoners, had recently been established. However, due to a shortage of staff, both medical and custodial, the FOBA had not been brought into service. In theory, prisoners could receive acute psychiatric treatment at the PAAZ Unit at Oduber Hospital, but resort to hospitalisation was very infrequent.

80. According to the prison's medical staff, a considerable proportion of prisoners at KIA suffered from psychiatric and/or behavioural or addiction-related problems. The provision of psychiatric and psychological care to prisoners was clearly inadequate.

The CPT recalls that obliging prisoners to stay in an establishment where they cannot receive appropriate treatment due to a lack of suitable facilities is an unacceptable state of affairs which could amount to inhuman and degrading treatment.

⁷⁴ In other parts of the Kingdom, such centres also fulfil treatment functions.

81. **The CPT recommends that the Aruban authorities ensure, without further delay, that prisoners who require psychiatric and/or psychological care have access to it.**

In particular, **urgent measures must be taken to secure the necessary staffing for the FOBA, including the frequent, regular presence of a psychiatrist.**

Further, **for those prisoners who require psychiatric and/or psychological care but who would not require admission to a facility such as the FOBA, the CPT recommends that the Aruban authorities take the necessary steps to provide outpatient psychiatric services which are sufficient to meet their needs.** In this connection, **an establishment of the size of KIA should be able to rely on the regular presence of at least a part-time psychiatrist and a part-time psychologist.**

g. suicide/self-harm

82. Although no suicides had occurred at the prison for the previous three years, health-care staff pointed to an increase in cases of self-harm and suicide attempts.

Prison health care services should ensure that there is adequate awareness of the prevention of suicide throughout the establishment, and that appropriate procedures are followed whenever a prisoner has been identified as a suicide risk and/or has committed acts of self-harm. Medical screening on arrival, and the reception process as a whole, has an important role to play in this context. **The CPT recommends that the Aruban authorities develop a policy for the prevention of suicide and the management of incidents of self-harm at KIA.**

h. hunger strikes

83. There were no written instructions or guidelines at KIA regarding the standard procedure to follow in case a prisoner or a group of prisoners went on hunger strike. The delegation was informed that a group of prisoners had gone on hunger strike for a period of three weeks in 2005.

In the CPT's view, clear written instructions should be available in prisons on the steps to be taken in the event of a hunger strike⁷⁵. Such instructions should provide, inter alia, for careful and regular supervision by the health care staff and should forbid the use of punitive measures against hunger strikers.

The CPT therefore recommends that the Aruban authorities develop and adopt a written protocol on hunger strikes, reflecting the above-mentioned approach.

⁷⁵ See e.g. the World Medical Association Declaration on Hunger Strikers (Pilanesberg, South Africa, 2006).

5. Other issues

a. staff

84. The Committee is concerned by the low number of prison officers working at KIA prison: 172.5 staff were employed at the time of the visit (105 of whom as custodial staff), with 44 posts vacant and a projected total of 280 staff members required. 11 to 13 staff members were generally on duty at night. Besides the negative effects on prisoners' quality of life, the low staffing situation led to excessive overtime, stress and absenteeism. Moreover, the CPT's delegation observed that staff members were not positively engaged with prisoners.

By letter of 25 September 2007, the competent authorities informed the CPT that the Aruban Ministry of Justice had decided - despite the current bar on government recruitments - to reinforce staff at KIA through the recruitment of 15 new staff members. The selection process was under way. The authorities also outlined the development of a training programme designed to permit the establishment to fulfil its "correctional" function. In this respect, technical assistance and support from the Netherlands Prisons Administration had been requested. By January 2008, three quarters of KIA's staff would have been through the first module of this training.

The CPT recommends that the Aruban authorities pursue efforts to move away from a purely *custodial* culture of prison management. Such efforts would best be complemented by the further development of regime activities offered to inmates (see paragraphs 68 and 69).

b. drug-related issues

85. According to members of the health care team, a significant proportion of the inmate population were regular users of drugs (essentially marijuana and cocaine), which apparently circulated without great difficulty throughout the prison.

The widespread availability of illicit drugs within a prison is bound to have very negative repercussions on all aspects of prison life, and may undermine the motivation of prison officers. **The CPT recommends that the Aruban authorities vigorously pursue their efforts to prevent trafficking in drugs at KIA.** However, the Committee would stress that **it would be highly undesirable for new measures adopted vis-à-vis drug trafficking to unduly restrict prisoners' contacts with the outside world or to limit the regime activities or association possibilities offered to them.**

86. The delegation was informed that screening for drug use was carried out on admission to the prison or on re-admission after prisoners returned from leave, in accordance with a urine test protocol appended to the house rules. This protocol provides that the prisoner shall be required to urinate in a cup under the supervision of a designated staff member, who then carries out the urine test in the presence of the prisoner. If the prisoner is not able to urinate, he or she is placed in confinement for four hours. Failure to provide a urine sample after four hours will be considered to be a refusal to cooperate and will be followed by disciplinary sanctions (temporary confinement and loss of permission to use the telephone and to receive visits).

The CPT would like to be informed whether prisoners have an opportunity to contest the results of such tests - pending which a disciplinary punishment would be suspended - or to provide a legitimate medical explanation for a positive drug-test result.

87. The presence in prison of inmates with drug-related problems gives rise to a number of particular difficulties for the prison authorities. These include health and security issues, as well as the choice of forms of assistance which are to be offered to the prisoners concerned, and a policy to prevent drug addiction problems from spreading to other inmates.

In addition to an appropriate therapeutic programme, a full range of activities should ideally be offered to all prisoners treated for drug abuse, including vocational training leading to the acquisition of a recognised qualification. This will increase the inmate's possibilities to lead a socially adapted life after release. Of course, the provision of paid work and appropriate leisure and sports activities are also important elements in the rehabilitation of prisoners with drug problems. Further, a comprehensive drugs strategy must also include measures to prevent inmates from becoming drug users.

The CPT recommends that the Aruban authorities take the necessary measures to increase the level of support to drug-addicted prisoners, in the light of the above remarks.

c. discipline

88. The disciplinary procedure made provision for a hearing by the adjudicator (the prison director)⁷⁶ before any disciplinary sanction was imposed. However, prisoners were in fact merely questioned by the head of internal security. Further, the disciplinary decision was not provided in writing to the prisoner, who was therefore not informed of the possibility to appeal against the decision. **The CPT recommends that the above-mentioned procedural deficiencies are rectified.**

The delegation also heard several allegations and found disciplinary records attesting to the use of collective punishments when the perpetrator of an offence had not been identified. Any form of collective punishment is unacceptable. **The Committee calls on the Aruban authorities to put an end to the use of collective punishment at KIA.**

⁷⁶ The written disciplinary record always referred to the prisoner being heard prior to a decision being taken.

89. The CPT's delegation noted that the disciplinary sanction of solitary confinement was, in many cases, imposed for the maximum period of 14 days, extended to that of 28 days in the case of a repeat offence. The delegation also noted that solitary confinement was invariably accompanied by the corollary punishment of loss of permission to use the telephone and to receive visits, a practice which is contrary to the Revised European Prison Rules⁷⁷.

The CPT recommends that the Aruban authorities review the approach being followed at KIA as regards disciplinary sanctions, in order to ensure that they are always proportional to the offence, and that punishment does not amount to a total prohibition of family contact. The Committee also invites the Aruban authorities to reconsider the maximum punishment for a repeat offence; at present it is very high.

90. Conditions of detention in the *disciplinary unit*, a recent construction, left much to be desired. The unit suffered from drainage blockages resulting in unhygienic conditions. Further, no call bells were available and no staff were stationed in the disciplinary unit. As prison staff would only visit the unit at shift changes or to bring meals, this meant that in case of an emergency, the prisoners would have to make a lot of noise in order to attract attention from another section of the prison or from someone who happened to be passing through the adjacent courtyard.

The five cells were hot and humid by day and the lack of ventilation was not helped by the metal sheets sealing the cells almost entirely. Inmates were required to sleep on foam mattresses on the floor and they were allowed no bed sheets or shirt for the duration of their punishment. As a result, prisoners complained of being cold during the night and lacked protection from mosquitoes.

By letter of 25 September 2007, the authorities informed the CPT of the efforts which had been made to improve material conditions in the disciplinary unit: the drainage problems had been resolved, additional ventilation units and a call-bell system had been installed, and the cells had been fitted with a bed. The CPT welcomes these improvements.

The two disciplinary cells in the *women's unit* were in a good state of repair. However, the cells offered no access to natural light and, due to the concrete structure and lack of ventilation, temperatures in the cell were often very high. Persons held in a disciplinary cell were not allowed bed sheets nor, allegedly, any clothing other than underpants for the duration of their punishment.

The CPT recommends that the Aruban authorities take urgent action to remedy the remaining material deficiencies in the disciplinary cells in the women's unit. Further, all prisoners subject to the disciplinary sanction of solitary confinement should be allowed adequate clothing and a bed sheet.

⁷⁷ See Rule 60.4.

91. Although the disciplinary records specified that the inmate would continue to benefit from outdoor exercise, inmates serving punishment in the disciplinary unit or in one of the disciplinary cells in the women's unit never went outdoors for the duration of their punishment. Men were provided daily access to an airing cell which was double the size of an ordinary disciplinary cell and was better ventilated as the cell bars were not covered by a metal sheet.

By letter of 25 September 2007, the authorities informed the CPT that it was not feasible, for the time being, to give detainees in disciplinary cells access to the exercise yard for one hour a day. In particular, they mentioned that it is not advisable, for the sake of order, peace and security, to allow access to the exercise yard together with the rest of the mainstream population. Instead, KIA management intended to modify the airing cell in order to give it more of an "open air" character. However, in the CPT's view, it is doubtful whether any modification to the airing cell would enable it to offer "outdoor exercise" in the real sense of the term.

The lack of outdoor exercise for prisoners placed in a punishment cell was criticised by the CPT already in the report on the 1994 visit⁷⁸. **The CPT calls upon the Aruban authorities to ensure, without further delay, that all prisoners subject to the disciplinary sanction of solitary confinement are offered at least one hour of proper outdoor exercise per day.** It goes without saying that such prisoners could be offered outdoor exercise separate from the rest of the regular inmate population.

92. The house rules required the prison director to inform the doctor (and the supervisory committee) as soon as it is decided that a prisoner would remain in a disciplinary cell for longer than 24 hours. In practice, prisoners placed in a disciplinary cell were visited every two days by a nurse. However, certain persons detained in the disciplinary unit complained that they were seen by a doctor only four days after they had requested such a consultation.

The Committee wishes to stress that a prison's health-care service should be very attentive to the situation of prisoners placed in disciplinary cells (or any other prisoner held under conditions of solitary confinement). In this regard, **the CPT recommends that every disciplinary placement be immediately brought to the attention of the health care service. Further, a medical practitioner or a qualified nurse reporting to such a practitioner should visit, daily, prisoners held under conditions of solitary confinement and provide them with prompt medical assistance and treatment at the request of such prisoners or the prison staff.**

⁷⁸ See CPT/Inf (96) 27, paragraph 266.

d. contact with the outside world

93. Numerous prisoners, particularly foreigners, complained of insufficient access to the telephone. Although telephone calls to personal relatives are allowed at least three times per month and for a maximum of 10 minutes at a time⁷⁹, certain prisoners alleged that they were only allowed to telephone once per month. Several foreign prisoners said they had not been able to contact their families at all since their admission to the prison two weeks before, and they did not believe their families had been notified of their whereabouts during their 10-day police custody.

The prison management confirmed that technical difficulties prevented the prison from providing more extensive access to the telephone, but that these difficulties would be resolved in the coming months. **The Committee would like to receive information concerning the new arrangements for access to a telephone.**

e. complaints and inspection procedures

94. A Supervisory Committee was competent to receive complaints from prisoners at KIA, usually transmitted to it by a social worker. In theory, its members could visit prisoners at any time⁸⁰, but in practice, a member visited the prison every two weeks and the Supervisory Committee met with the Director every month. The Supervisory Committee could bring issues of concern to the attention of the Minister of Justice, who appoints the members of the Supervisory Committee. Most members, except the presiding judge, effectively served on the Supervisory Committee on a voluntary basis. **The CPT recommends that the role and effectiveness of the Supervisory Committee are strengthened through the provision of adequate funding and the introduction of means (such as a secure letterbox system) allowing prisoners to have confidential access to the Committee as well as individual hearings whenever appropriate.**

⁷⁹ See KIA House Rule No. 3.8.1.

⁸⁰ See KIA House Rule No. 3.7.2. Information about the role of the Supervisory Committee was provided to inmates through the house rules and the admissions procedures

APPENDIX I

**LIST OF THE CPT'S RECOMMENDATIONS,
COMMENTS AND REQUESTS FOR INFORMATION**

A. Police establishments

Ill-treatment

recommendations

- the Aruban authorities to adopt a vigorous policy to combat police ill-treatment. Such a policy should include a formal statement, by the highest competent political authority, to law enforcement officials, reminding them that the rights and dignity of persons in their custody must be respected, and that the ill-treatment of such persons will be the subject of severe sanctions (paragraph 11);
- police officers to be regularly reminded, through training and instructions, that no more force than is reasonably necessary should be used when effecting an apprehension. More particularly, law enforcement officials must be trained in preventing and minimising violence in the context of an apprehension. For cases in which the use of force nevertheless becomes necessary, law enforcement officials need to be able to apply professional techniques which minimise any risk of harm to the persons whom they are seeking to apprehend (paragraph 11);
- the Aruban authorities to take the necessary measures to ensure that law enforcement officials do not resort to unacceptable practices such as using a “chill room” (paragraph 12);
- the Aruban authorities to put an end to the practice of routinely shackling detained persons to a fixed object. Persons taken into police custody should not be left handcuffed to rings fixed to a wall and instead should be accommodated without delay in rooms/cells offering appropriate security conditions. Further, the rings fixed to the wall at Noord Police Station - and any other police station where they might exist - should be immediately removed (paragraph 13);
- the Aruban authorities to re-examine the system of detention on police premises with a view to substantially reducing its duration (paragraph 14);
- the Aruban authorities to take the necessary steps to put an end to routine extensions of police custody for the maximum possible period of eight days. As envisaged by the law, extension of police custody beyond two days should be the exception, not the rule. Further, when an extension is granted, it should be for the shortest time possible, consistent with the legitimate interests of the investigation; any decision to extend police custody beyond two days should be grounded in writing and the investigating judge should be empowered not only to declare the extension unlawful but also to reduce its duration (paragraph 16).

Conditions of detention

recommendations

- the Aruban authorities to ensure, through regular maintenance and inspections, that the minimum standards outlined in paragraph 17 are sustained in all the police stations (paragraph 23).

requests for information

- confirmation that all police cells have been refurbished in accordance with the minimum standards outlined in paragraph 17 and a detailed account of the measures taken (paragraph 23).

Safeguards against ill-treatment by the police

recommendations

- the Aruban authorities to draw up regulations governing the rights of arrested or detained persons which are in line with Article I.5-5 of the Aruban Constitution and Article 90 of the CCP, as well as with the recommendations set out in paragraphs 28, 33, 35, 37 and 38 (paragraph 25);
- the Aruban authorities to ensure that all persons deprived of their liberty by the police, for whatever reason, are granted the right to notify a close relative or third party of their choice about their situation as from the very outset of their deprivation of liberty. The exercise of this right could be made subject to certain exceptions designed to protect the legitimate interests of the police investigation, provided those exceptions are clearly circumscribed in law and made subject to appropriate safeguards (i.e. the decision to delay to be recorded in writing with the specific reasons therefor, and to require the approval of a senior police officer unconnected with the case at hand or a public prosecutor) and strictly limited in time (paragraph 28);
- the Aruban authorities to ensure - if necessary by amending the relevant legal provisions - that all persons arrested have the right of access to a lawyer from the very outset of, and throughout, their deprivation of liberty, including during any interrogation (paragraph 33);
- the necessary steps to be taken to ensure the effectiveness of the system of legal aid for persons detained by the police who are not in a position to pay for a lawyer (paragraph 33);

- the Aruban authorities to take the necessary steps - including through the allocation of adequate funds - to ensure that persons deprived of their liberty by the police have effective access to a doctor from the very outset of their deprivation of liberty. In particular:
 - a request by a detained person to see a doctor should be granted; it is not for police officers, nor for any other authority, to filter such requests;
 - a person taken into police custody should have the right to be examined, if he so wishes, by a doctor of his own choice, in addition to any medical examination carried out by a doctor called by the police (it being understood that an examination by a doctor of the detained person's own choice may be carried out at his own expense);
 - all medical examinations should be conducted out of the hearing and - unless the doctor concerned expressly requests otherwise in a given case - out of the sight of police staff;
 - the results of every examination, as well as any relevant statements by the detained person and the doctor's conclusions, should be formally recorded by the doctor and made available to the detainee and his lawyer;
 - the confidentiality of medical data is to be strictly observed, without prejudice to the right of the person concerned to make reference to that medical data; and
 - the police station records should indicate the date and time of requests to see a doctor, when a doctor is called and when the doctor has visited (paragraph 35);

- the Aruban authorities to ensure that all persons detained by the police - for whatever reason - are fully informed of the fundamental rights outlined in paragraph 24, including to inform a third person of their choice of their detention, and to have access to a doctor, as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). This should be ensured by provision of clear verbal information at the very outset, to be supplemented at the earliest opportunity (that is, immediately upon arrival at police premises) by provision of the written notification form, which should be revised in accordance with the remarks in paragraph 37 (paragraph 37);

- comprehensive custody records to be introduced and diligently kept at police stations in Aruba. For various questions (e.g. personal effects confiscated; having been informed of one's rights and having availed oneself of or waived them; having been able to inform a close relative or another third party), the detainee's signature should be required and, if necessary, its absence duly accounted for (paragraph 38).

comments

- the CPT trusts that the necessary resources will be allocated to the Independent Police Complaints Committee to enable it to strengthen the effectiveness of the complaints system in Aruba (paragraph 40).

B. Foreign nationals detained under aliens legislation

Preliminary remarks

recommendations

- the Aruban authorities to ensure that irregular migrants are not detained in police cells for extended periods, i.e. any time longer than is necessary to arrange their transfer to the Centro pa detencion di ilegalnan (paragraph 42).

comments

- the Aruban authorities are invited to consider developing further the use of alternative, non-custodial, measures for irregular migrants (paragraph 41).

III-treatment

recommendations

- staff working at the Centro pa detencion di ilegalnan to be reminded that disrespectful, aggressive or insulting behaviour will not be tolerated and will be severely sanctioned (paragraph 44).

Conditions of detention at the 'Centro pa detencion di ilegalnan' for immigration detainees

recommendations

- the Aruban authorities to take urgent steps to ensure that:
 - the in-cell sanitary facilities are promptly repaired and refurbished so as to provide hygienic conditions;
 - all detainees are allocated a bed and provided with a clean mattress and clean bedding;
 - all cells are fitted with call-bells;
 - all detainees are provided with the necessary products and equipment to keep their accommodation clean, as well as with products for personal hygiene (i.e. toilet paper, soap, toothpaste, toothbrush, etc.)(paragraph 49);

- as concerns regime:
 - all detainees to be allowed to spend a large proportion of the day outside their cells;
 - steps to be taken to introduce recreational opportunities, such as access to television, radio, reading material and sports. The longer the period for which persons are detained, the more developed should be the activities which are offered to them (paragraph 49);
- the Centre's staff to receive specific training to deal with the particular needs of foreign nationals detained under aliens legislation (paragraph 50);
- systematic medical screening of all immigration detainees, including for transmissible diseases, to be introduced. Such screening should be carried out in a way that respects medical confidentiality. Further, there should be a daily presence of a person with a recognised nursing qualification, and access to acute medical and dental care and appropriate psychological/psychiatric assistance should be available (paragraph 51).

Safeguards against the ill-treatment of foreign nationals detained under aliens legislation

recommendations

- the Aruban authorities to take the necessary steps to ensure that all persons held under aliens legislation are afforded the fundamental safeguards, as outlined in paragraph 52 (paragraph 53);
- immigration detainees to be allowed to maintain contact with the outside world during their detention, and in particular to have access to a telephone and to receive visits from relatives and representatives of relevant organisations (paragraph 54);
- officials entrusted with handling asylum applications to be provided with appropriate training (paragraph 56).

C. Aruba Correctional Institute - KIA

Ill-treatment

recommendations

- concrete measures to be taken to eradicate ill-treatment of prisoners by prison staff at KIA, including through improved management and supervisory mechanisms (paragraph 61);
- the prison management to develop a strategy to address the problem of inter-prisoner violence, in the light of the remarks in paragraph 62 (paragraph 62).

requests for information

- the results of the investigation into the alleged ill-treatment of the prisoner E.G. (paragraph 60);
- the measures planned to address the problem of inter-prisoner violence (paragraph 62).

Conditions of detention

recommendations

- the maximum capacity of cells to be progressively reduced to two prisoners, including in the new women's and juveniles' sections. Further, the possibility of improving ventilation in the women's and juveniles' sections, and of allowing prisoners to maintain some degree of privacy in cells throughout the prison, to be explored (paragraph 66);
- efforts to be made to ensure that all facilities at KIA are brought into service (paragraph 67);
- activities for prisoners to be further developed, with a view to ensuring that all prisoners (including those on remand) can spend a reasonable part of the day (i.e. 8 hours or more) outside their cells engaged in purposeful activities of a varied nature: work, preferably with vocational value; education; sport; recreation/association. In particular, young prisoners must be offered a full programme of educational, recreational and other purposeful activities (paragraph 68);
- a policy vis-à-vis life-sentenced and other long-term prisoners to be developed, in the light of the remarks in paragraph 69 (paragraph 69).

comments

- it would be desirable for women and juveniles to be able to look outside when in their cells (paragraph 66).

Health care services

recommendations

- the Aruban authorities to ensure that all prisoners are guaranteed the provision of care - including specialist care - required by their state of health; this implies that the funds allocated to prisons should be sufficient to enable health care services to be provided free-of-charge to prisoners who do not have the necessary resources to pay for them themselves (paragraph 70);

- the presence of a doctor to be increased to ensure daily consultations on weekdays (preferably to the equivalent of one full-time doctor) and the complement of nurses to be increased to five (paragraph 72);
- someone qualified to provide first aid, preferably with a recognised nursing qualification, always to be present in the prison, including at night (paragraph 73);
- a dentist to be recruited, on a part-time basis, to provide dental care at KIA (paragraph 74);
- every newly admitted prisoner to be properly interviewed and physically examined by a medical doctor (or by a fully qualified nurse reporting to a doctor) as soon as possible after his admission; save for exceptional circumstances, the interview/examination should be carried out within 24 hours of admission. This examination should include screening for transmissible diseases (TB, HIV, etc) (paragraph 76);
- the medical screening procedure to be brought in line with the precepts outlined in paragraph 77 and a separate register to be established for recording lesions observed on newly admitted prisoners or sustained by prisoners while detained at KIA (paragraph 77);
- medical consultations and the distribution of medicine to be organised in such a way as to respect confidentiality. All medical examinations of prisoners (whether on arrival or at a later stage) should be conducted out of the hearing and - unless the health-care staff concerned requests otherwise in a particular case - out of the sight of prison officers. Further, medication should be distributed by a health-care staff member (paragraph 78);
- the Aruban authorities to ensure, without further delay, that prisoners who require psychiatric and/or psychological care have access to it (paragraph 81);
- urgent measures to be taken to secure the necessary staffing for the FOBA, including the frequent, regular presence of a psychiatrist (paragraph 81);
- for those prisoners who require psychiatric and/or psychological care but who would not require admission to a facility such as the FOBA, the Aruban authorities to take the necessary steps to provide outpatient psychiatric services which are sufficient to meet their needs. In this connection, an establishment of the size of KIA should be able to rely on the regular presence of at least a part-time psychiatrist and a part-time psychologist (paragraph 81);
- a policy for the prevention of suicide and the management of incidents of self-harm at KIA to be developed (paragraph 82);
- the Aruban authorities to develop and adopt a written protocol on hunger strikes, reflecting the approach outlined in paragraph 83 (paragraph 83).

Other issues

recommendations

- the Aruban authorities to pursue efforts to move away from a purely *custodial* culture of prison management. Such efforts would best be complemented by the further development of regime activities offered to inmates (see paragraphs 68 and 69) (paragraph 84);
- the Aruban authorities to vigorously pursue efforts to prevent trafficking in drugs at KIA (paragraph 85);
- the necessary measures to be taken to increase the level of support to drug-addicted prisoners, in the light of the remarks in paragraph 87 (paragraph 87);
- the deficiencies concerning the disciplinary procedure mentioned in paragraph 88 to be rectified (paragraph 88);
- an end to be put to the use of collective punishment at KIA (paragraph 88);
- the approach being followed at KIA as regards disciplinary sanctions to be reviewed, in order to ensure that they are always proportional to the offence, and that punishment does not amount to a total prohibition of family contact (paragraph 89);
- urgent action to be taken to remedy the remaining material deficiencies in the disciplinary cells in the women's unit. Further, all prisoners subject to the disciplinary sanction of solitary confinement should be allowed adequate clothing and a bed sheet (paragraph 90);
- the Aruban authorities to ensure, without further delay, that all prisoners subject to the disciplinary sanction of solitary confinement are offered at least one hour of proper outdoor exercise per day (paragraph 91);
- every disciplinary placement to be immediately brought to the attention of the health care service. Further, a medical practitioner or a qualified nurse reporting to such a practitioner should visit, daily, prisoners held under conditions of solitary confinement and provide them with prompt medical assistance and treatment at the request of such prisoners or the prison staff (paragraph 92);
- the role and effectiveness of the Supervisory Committee to be strengthened through the provision of adequate funding and the introduction of means (such as a secure letterbox system) allowing prisoners to have confidential access to the Committee as well as individual hearings whenever appropriate (paragraph 94).

comments

- it would be highly undesirable for new measures adopted vis-à-vis drug trafficking to unduly restrict prisoners' contacts with the outside world or to limit the regime activities or association possibilities offered to them (paragraph 85);
- the Aruban authorities are invited to reconsider the maximum punishment for a repeat offence; at present, it is very high (paragraph 89).

requests for information

- whether prisoners have an opportunity to contest the results of urine tests for drug use - pending which a disciplinary punishment would be suspended - or to provide a legitimate medical explanation for a positive drug-test result (paragraph 86);
- the new arrangements for access to a telephone (paragraph 93).

APPENDIX II

LIST OF THE AUTHORITIES AND OTHER PERSONS WITH WHOM THE CPT'S DELEGATION HELD CONSULTATIONS

A. Aruban authorities

- Mr H.R. (Rudy) CROES Minister of Justice
- Mr Rolando BERNADINA Adviser, Minister of Justice
- Mr Peter de WITTE Chief of Police
- Mr Lambertus KROZENDIJK Police Commissioner
- Ms Jeannette RICHARDSON-BAARS Police Inspector
- Ms Golda CANDELARIA Police Inspector, Head of the Internal Investigation Bureau
- Mr Emilio GEERMAN Interim Director, Aruba Correctional Institute
- Mr Laurence PASKEL Director of Government Security (*Cuerpo Especial Arubano*)
- Mr Roy LACLÉ Acting Head of Section, Border Guard Authority (*Warda Nos Costa* (IASA))
- Ms Angélique PETERSON Adviser, Department of Foreign Affairs, CPT liaison officer
- Mr Ezzard CILIE Head of the PAAZ (Psychiatric ward of the General Hospital)
- Mr Hendrikus van GALEN Psychiatrist
- Mr Nico JÖRG Solicitor General
- Mr Hans MOS Chief Public Prosecutor
- Mr Frans van DEUTEKOM Public Prosecutor
- Mr Marcel MADURO Director of the Public Service Investigation Agency (Landsrecherche)
- Mr Ferdinand GERARD Judge, Chairman of the Prison Supervisory Board

B. Persons active in the CPT's fields of interest

- Mr Chris LEJUEZ Lawyer
- Ms Eline LOTTER-HOMAN Lawyer
- Mr Rudi OOMEN Lawyer

PART 3 : VISIT TO THE NETHERLANDS ANTILLES

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APPENDIX II

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I. INTRODUCTION

A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Convention"), a delegation of the CPT carried out a visit to the Netherlands Antilles from 7 to 13 June 2007⁸¹. The visit formed part of the Committee's fourth periodic visit to the Kingdom of the Netherlands⁸².

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

- Mario FELICE (Head of the Group)
- Tim DALTON
- Ann-Marie ORLER.

They were supported by Caterina BOLOGNESE, from the CPT's Secretariat, and were assisted by:

- Eric DURAND, medical doctor, former Head of medical services at Fleury-Mérogis Prison, France (expert)
- Manuel MADURO (interpreter)
- Karel THIJS (interpreter)
- Minerva WILLEMS-HIEROMS (interpreter).

B. Establishments visited

3. The delegation paid a follow-up visit to Bon Futuro Prison, including the Police Detention Unit (Block No. 1). It also visited Barber, Punda, and Rio Canario police stations, as well as the "Illegalen Barakken" for immigration detainees. Further, the CPT's delegation visited, for the first time, the Remand Prison and Kralendijk and Rincon police stations on the island of Bonaire.

⁸¹ The CPT's four previous visits to the Netherlands Antilles took place in June 1994, December 1997, January 1999 and February 2002. The reports on those visits have been published on the CPT's website (www.cpt.coe.int).

⁸² The visits to the Kingdom in Europe and to Aruba are dealt with separately (see Parts 1 and 2 of this report).

C. Consultations held by the delegation

4. During the visit to the Netherlands Antilles, the delegation met David DICK, Minister of Justice, Lizanne RICHARDS-DINDIAL, Lieutenant Governor of Curaçao, Dick PIAR, Attorney General of the Netherlands Antilles, and Carlos CASSERES, Acting Chief Commissioner of Police of Curaçao. The delegation also held talks with Fred WIEL, the Ombudsman for Curaçao. At the end of the visit to the Kingdom of the Netherlands, part of the delegation also attended a meeting in The Hague with the competent authorities.

A list of the authorities and non-governmental organisations with which the delegation held consultations is set out in Appendix II.

D. Cooperation between the CPT and the authorities of the Netherlands Antilles

5. The cooperation received by the delegation during the visit to the Netherlands Antilles was, on the whole, very good. The Committee would like to express its gratitude for the assistance provided to the delegation by Joan BREWSTER, liaison officer to the CPT for the Netherlands Antilles. The delegation had rapid access to the documentation it wanted to consult and to individuals with whom it wished to speak.

Access to the establishments visited was, in most cases, immediate. However, on the first day of its visit to Bon Futuro Prison, the delegation was made to wait some 45 minutes before gaining access to the establishment. Indeed the staff guarding the gate was apparently unaware of the CPT's mandate and the ongoing visit to the Netherlands Antilles. The CPT trusts that the authorities of the Netherlands Antilles will take steps to ensure that such a delay is not encountered during future visits. This should involve the dissemination of relevant information on the Committee's mandate and working methods to all the staff concerned.

6. The principle of co-operation set out in the Convention is not limited to steps taken to facilitate the task of a visiting delegation. It also requires that decisive action be taken, including at the highest political level, to improve the situation in the light of the Committee's key recommendations.

After this fifth visit to the Netherlands Antilles, the CPT notes that much remains to be done and that the authorities need in particular to invest greater efforts to tackle the systemic deficiencies in the prison service, and to provide decent conditions of detention for aliens at the "Illegalen Barakken" and for persons held on police premises. Consequently, the Committee has been obliged to reiterate many of its recommendations, some of which are of very long standing. Having regard to Article 3 of the Convention, the CPT urges the authorities of the Netherlands Antilles to intensify their efforts to improve the situation in the light of the Committee's recommendations.

E. Immediate observations under Article 8, paragraph 5, of the Convention

7. At the concluding meeting with the authorities in Willemstad, on 13 June 2007, the CPT's delegation made an immediate observation, in pursuance of Article 8, paragraph 5, of the Convention, requesting that all the cells at Kralendijk Police Station be immediately taken out of service and remain so until refurbished.

It also requested to be informed, within six weeks, of the measures taken to improve the material conditions and the regime at the "Illegalen Barakken" for immigration detainees.

The delegation further requested that the disciplinary cells in the male section of Bon Futuro Prison not be used until the very serious material deficiencies observed were remedied.

These immediate observations, and other matters, were reiterated to the competent authorities in The Hague at the end of the CPT delegation's visit to the Kingdom of the Netherlands, on 14 June 2007, and in writing on 11 July 2007.

8. By letter of 25 September 2007, the authorities informed the CPT of measures taken in response to the points raised by the delegation. These responses have been taken into account in the drafting of the present report.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Police establishments

1. Preliminary remarks

9. Under the Code of Criminal Procedure (CCP) of the Netherlands Antilles⁸³, persons suspected of having committed a criminal offence may be held by the police for questioning for a maximum of six hours. However, as the night hours between 10 pm and 8 am are not counted⁸⁴, this initial period may in fact last up to 16 hours⁸⁵. Thereafter, if the needs of the investigation so require, the person may be placed in police custody for a maximum period of two days, on the decision of a prosecutor or of an assistant prosecutor⁸⁶ reporting to the prosecutor in writing or orally as soon as possible and within 24 hours⁸⁷. However, if the investigation urgently requires it, police custody may be extended by the prosecutor for a further maximum period of eight days⁸⁸.

As soon as possible - and within 24 hours - after the beginning of such an extension, the suspect must be brought before the investigating judge⁸⁹. Thus the legal maximum period before a person deprived of one's liberty is brought before a judge amounts to three days and 16 hours.

10. The maximum period of custody on police premises set by the CCP is the initial period of apprehension for questioning (up to 16 hours) followed by 10 days (two plus eight) of police custody. Afterwards, detention, if continued, must be enforced at a remand prison⁹⁰. Nevertheless, according to relevant regulations and case-law, the maximum period varied from one establishment to the other: it could be shorter (e.g. at Punda) or it could also be extended to 18 days (e.g. at Kralendijk Police Station and at the Police Detention Unit or "Block 1" at Bon Futuro).

In the CPT's view, periods of detention of 10 and - all the more so - 18 days in police premises are far too long, from the perspective of preventing ill-treatment. It is widely acknowledged that the period immediately following arrest and prior to the first appearance before a judge represents the period when the risk of abuse is greatest. Continued detention on police premises even after the person concerned has been presented before a judge also poses risks of intimidation and pressure. To prolong such periods beyond the duration which is strictly necessary for the purposes of an investigation is to expose persons deprived of their liberty to an undue risk of ill-treatment. Further, such a situation is certainly not helped by the fact that conditions in some of these establishments are deplorable (see, e.g. paragraph 21).

The Committee recommends that the authorities of the Netherlands Antilles re-examine the system of detention on police premises with a view to substantially reducing its duration.

⁸³ The *Wetboek van Strafvordering* (P.B. 1996, no. 164) entered into force in 1996.

⁸⁴ Indeed, in accordance with CCP Article 80, paragraph 1, persons are not questioned during those hours. If they are questioned, the period of questioning is counted.

⁸⁵ See the Code of Criminal Procedure of the Netherlands Antilles (CCP), Article 80, paragraph 1.

⁸⁶ In Dutch, a *hulpofficier van justitie*, who can also be a senior police officer.

⁸⁷ See CCP Article 83, paragraphs 1 and 4, and Article 87, paragraph 1.

⁸⁸ See CCP Article 87, paragraph 2.

⁸⁹ See CCP Article 89, paragraph 1.

⁹⁰ See CCP Articles 94 and 99, together with Article 5, paragraph 16 of the Prisons Laws (*'Landsverordening beginselen gevangeniswezen'*).

2. Ill-treatment

11. Most persons interviewed on police premises by the CPT's delegation stated that they had been treated well by police officers. However, the delegation did hear allegations of physical ill-treatment. Moreover, several persons (men and women) interviewed at Bon Futuro Prison and Bonaire Remand Prison, and at the "Illegalen Barakken" made credible allegations of physical ill-treatment and verbal abuse by the police. These allegations consisted mostly of slaps and punches to the head, as well as kicks to the body, and insults of persons at the time of their apprehension and after they had been brought under control. In certain less recent cases, the persons concerned alleged being hit on the arms or in the loins with batons.

Several persons apprehended at home alleged that a large number of policemen wearing masks had used excessive violence to force their entry and to effect the arrest, including rough physical treatment of family members present. Such allegations concerned arrest operations by police in Bonaire and by officers attached to a special "zero tolerance" unit in Curaçao. A few persons alleged being blindfolded, and ill-treated, in the course of an arrest either in the street or at home.

12. **The CPT recommends that the authorities of the Netherlands Antilles adopt a vigorous policy to combat police ill-treatment. Such a policy should include a formal statement, by the highest competent political authority, to law enforcement officials, reminding them that:**

- **the rights and dignity of persons in their custody must be respected; and**
- **the ill-treatment of such persons will be the subject of severe sanctions.**

The Committee further recommends that police officers be regularly reminded, through training and instructions, that no more force than is reasonably necessary should be used when effecting an apprehension. In particular, law enforcement officials must be trained in preventing and minimising violence in the context of an apprehension. For cases in which the use of force nevertheless becomes necessary, law enforcement officials need to be able to apply professional techniques which minimise any risk of harm to the persons whom they are seeking to apprehend.

13. The CPT has strong objections to law enforcement officials blindfolding apprehended persons. This practice in itself will have an unjustifiably intimidating effect on the persons concerned and will hamper the identification of those responsible if and when instances of ill-treatment arise. For similar reasons, the Committee disapproves of the practice of law enforcement officials wearing masks when performing arrests.

The CPT recommends that the authorities of the Netherlands Antilles prohibit the blindfolding of apprehended persons. Further, only exceptional circumstances could justify measures to conceal the identity of law enforcement officials performing arrests. Where such measures are applied, appropriate safeguards must be in place in order to ensure that the officials concerned are accountable for their actions (e.g. by means of a clearly visible number on the uniform). The Committee would like to receive detailed information on the rules governing the wearing of masks by police officers in the course of their duties.

3. Conditions of detention

14. The five new cells at Punda Police Station, in Willemstad, had been operational since 2005⁹¹. Due to the absence of an exercise yard and of natural light in the cells, the cells were only used for short periods of detention. Whereas staff on duty indicated that persons could be held for up to two days at the station, the central authorities informed the delegation that persons would be held only for a number of hours, at most overnight.

Each of these windowless cells was for single occupancy and measured over 7m², including the half-partitioned sanitary facilities, consisting of a toilet, shower, sink and mirror. The cell furnishings included a concrete plinth, a thin mattress and a fixed table and stool. There was no call-bell; instead persons detained had to call out through a small opening in the metal cell-door to attract - via two audio-video devices monitoring the hallway outside the cells - the attention of officers stationed at some distance from the cell block. No-one was detained at the station at the time of the visit. Some cells were filthy, infested with mosquitoes and gave off a strong odour; the mattresses were very dirty and unfit for use, and the in-cell artificial lighting was not working in one of the cells. Staff on duty explained that the cells were cleaned once per week.

The CPT recommends that the authorities of the Netherlands Antilles take the necessary measures to ensure that cells at Punda Police Station are kept in a satisfactory state of cleanliness and are fitted with a call-bell. Further, persons detained there should be provided with a clean mattress.

15. The Police detention facility at Rio Canario was described in the report on the CPT's visit to the Netherlands Antilles in 1997⁹². It had been renovated in 2005 and fitted with a number of special toilets for use by suspected "body-packers". According to regulations, the facility could hold, for up to 8 days, criminal suspects who were subsequently remanded in police custody. At the time of the visit, two women had been held in separate cells for two days.

Despite the recent renovations, there still appeared to be insufficient ventilation in the cells, which were very hot (29°C) and humid (57%) at the time of the delegation's visit after 11pm at night. **The CPT recommends that the authorities of the Netherlands Antilles make efforts to improve ventilation in the cells at the Rio Canario police detention facility.**

16. The delegation observed that, since the previous visit in 1997, closed-circuit video surveillance cameras (CCTV) had been installed in all the cells, ostensibly as a measure against self-harm or suicide. In the absence of call-bells, the CCTV certainly allowed detained persons to attract the attention of custodial officers, who were stationed in an office at some distance from the cell area. However, persons taking a shower were nearly in full view on the monitors, although the positioning of the camera in the cell could give them the impression that they were able to shower in privacy.

⁹¹ The CPT had visited the very poor facilities formerly in use at Punda during the visit in 1994 (see CPT/Inf (96) 1, paragraphs 34 and 35).

⁹² See CPT/Inf (98) 17, paragraphs 48 to 51.

As a matter of principle, the CPT has no objection to the use of CCTV for keeping detention areas under surveillance. However, the privacy of detained persons must be observed when they use the toilet and when washing themselves. It should also be noted that bright artificial lighting was permanently switched on, apparently in order for the CCTV to be able to pick up any movement by the persons detained. Such lighting would be difficult to sleep by during night-time hours.

The CPT recommends that the authorities of the Netherlands Antilles take the necessary measures to modify the CCTV and lighting arrangements at the Rio Canario police detention facility, in the light of the foregoing remarks. Further, the CCTV system must not be allowed to replace the regular inspection of cells by members of staff to ensure the safety of detained persons.

17. Rincon Police Station (in Bonaire) was visited for the first time and was holding one person. Despite not often being in use, the four cells, each measuring just over 8 m², were in a good state of repair and cleanliness, including the in-cell sanitary facilities consisting of a toilet and shower. However, no opportunity for outdoor exercise was provided; further, the cells were very hot (31°C at the time of the visit in the early afternoon), had poor ventilation, very little access to natural light, and had no call-bells, requiring the occupant to bang on the cell door to attract the attention of officers on duty.

The CPT recommends that an opportunity for at least one hour of daily outdoor exercise be provided for persons detained longer than 24 hours at Rincon Police Station. Further, efforts should be made to improve ventilation in the cells, which should also be fitted with call-bells.

The delegation also received allegations from several prisoners at Bonaire Remand Prison that they had been held at Rincon Police Station while the premises had been left unattended for hours. **It goes without saying that police officers should always be present when anyone is detained at a police station.**

18. The Bon Futuro Police Detention Unit or “Block 1” had not undergone any significant changes since the visit in 2002⁹³. At the time of the visit in 2007, the 15 cells accommodated 29 male detainees, of whom 8 were prisoners from Bon Futuro who were placed in Block 1 for their own protection from other inmates in the prison. Most persons who had been remanded in police detention had been held in Block 1 for longer than a week, some of them for close to six weeks.

Although the material conditions of the Block had somewhat aged since 2002, they remained on the whole reasonable. However, **the CPT reiterates its recommendation that persons held for a prolonged period in Block 1 should be offered the possibility of additional forms of activities (e.g. reading matter, radio/television).**

⁹³ See CPT/Inf (2002) 30, paragraphs 21 to 24.

19. The delegation noted some improvements at Barber Police Station compared to the time when it was last visited in 1994⁹⁴. For example, cells were no longer occupied by more than two persons at a time; and detained persons were provided with a mattress and with an opportunity of daily access to an outdoor area.

However, the delegation once again found the cells to be very poorly ventilated and unbearably hot (most detainees placed their mattress on the floor where the air was slightly cooler than on the plinth provided), and to be lacking a call-bell system, making it very difficult for detained persons to attract the attention of staff⁹⁵. Moreover, the cells still had little, if any, access to natural light, they were dirty, infested with mosquitoes and, according to some detainees, mice. The shower was activated from outside the cell twice a day but only for a few minutes, and in at least one cell the plumbing was leaking. Several complaints were also received of food often being delivered very late. In short, conditions at Barber Police Station remained unacceptable.

Five persons were detained at the time of the visit, each in an individual cell. The delegation was informed that, due to the difficult conditions, including the heat, the legal maximum period of detention at Barber Police Station was 7 days. Nevertheless, the delegation met a 17-year-old boy there who had been held for 9 days; one other person met was a prisoner held separate from Bon Futuro Prison for his own protection and who had been at Barber Police Station for six weeks.

20. By letter of 25 September 2007, the authorities informed the Committee of extensive plans to refurbish the entire police station, including ventilation and call bells in the cellblock. The authorities do not, however, indicate a time frame within which the refurbishment will be carried out. The CPT welcomes the plans to refurbish Barber Police Station **and would like to receive confirmation that the deficiencies noted in the foregoing paragraph will be remedied without further delay.** Further, **the Committee recommends that, until the deficiencies observed are remedied, the cells should only be used for very short periods of detention.**

21. At the time of the delegation's visit to Kralendijk Police Station (Bonaire) two of the six cells were in use. Although the cells were designed for one person only, one of the cells was accommodating three persons during the night⁹⁶, two of whom were required to sleep on dirty mattresses⁹⁷ on the floor. The cells were filthy and in the one holding three detainees the walls and floors were heavily stained by excrement; moreover, the sanitary facility was not working. In the absence of a call-bell, detainees had to make considerable noise in order to attract the attention of staff located in the offices downstairs. In short, the conditions of detention were appalling. Further, according to regulations in force, persons could be detained there for up to 18 days, during which time no opportunity for outdoor exercise was provided.

⁹⁴ See the report on that visit (CPT/Inf (96) 1), at paragraphs 29 to 33.

⁹⁵ At the end of the visit, the delegation urged the authorities of the Netherlands Antilles to remedy these deficiencies. These observations were confirmed in writing by letter of 11 July 2007.

⁹⁶ During the day, they were usually held at the adjacent Remand Prison, but one of them had remained at the Police Station on the day of the visit.

⁹⁷ It should be noted that although the mattresses were apparently fairly new, they were unsuitable for use in police cells as they could not easily be cleaned.

At the end of the visit, the delegation invoked Article 8, paragraph 5, of the Convention and requested that all the cells at Kralendijk Police Station be immediately taken out of service, until they were properly refurbished. By letter of 25 September 2007, the authorities informed the Committee that the cells had been thoroughly cleaned and painted, new mattresses had been provided and, where necessary, the sanitary facilities had been repaired. Five out of the six cells had since been in service, the sixth one awaiting the installation of sanitary equipment.

The CPT welcomes the vigorous steps taken by the authorities of the Netherlands Antilles to remedy the serious deficiencies at Kralendijk Police Station. **The Committee recommends that the authorities of the Netherlands Antilles ensure that a call-bell system is installed and that an opportunity for at least one hour of daily outdoor exercise is provided for persons detained longer than 24 hours at Kralendijk Police Station.**

22. During the visit in 2007, the CPT's delegation was informed that the renovation of Philipsburg Central Police Station in Sint-Maarten⁹⁸ would be completed in October or November of 2007. The delegation was also shown plans for the construction of a new police detention block to be built outside of the perimeter of Bon Futuro Prison, providing a capacity for 120 persons and more reasonably sized exercise yards than the rather small one currently provided for inmates in Block 1.

The Committee would like to receive up-to-date information concerning the above-mentioned renovation/construction plans, including an account of detention conditions, occupancy levels and average/maximum periods of detention at Philipsburg Central Police Station.

23. **Finally, the CPT trusts that the necessary steps will be taken to ensure, through regular maintenance and inspections, that the Committee's minimum standards⁹⁹ are observed and sustained in all police stations in the Netherlands Antilles.**

⁹⁸ This establishment was the subject of an immediate observation at the end of the visit in 2002. See CPT/Inf (2002) 30 (Part 2), at paragraphs 6 and 11 to 20, and the authorities' Response (CPT/Inf (2003) 39 Part II), at page 28.

⁹⁹ See, e.g. the Report on the CPT's first visit to the Netherlands Antilles (CPT/Inf (96) 1), at paragraph 27. See also *The CPT's standards - "Substantive" sections of the CPT's General Reports* (CPT/Inf/E (2002) 1), page 8.

4. Safeguards against ill-treatment by the police

24. The CPT's delegation examined whether persons deprived of their liberty by the police could, in practice, avail themselves of certain key safeguards against potential ill-treatment¹⁰⁰. A significant proportion of persons interviewed - either in police custody or in prison - alleged that, while in police custody they had experienced delays of several days before being allowed to inform a close relative or another person of their choice of their situation, to have access to a lawyer or to have access to a doctor.

The Committee recommends that the authorities of the Netherlands Antilles take the necessary steps to ensure that persons deprived of their liberty by the police are able to benefit from the above-mentioned rights from the very outset of their deprivation of liberty, i.e. as from the moment at which they are obliged to remain with the police.

25. As regards, in particular, access to a lawyer, the delegation received many complaints from persons who had relied on the assistance of a duty lawyer paid by the Government and who claimed never to have spoken with or even seen the lawyer before being brought before the judge.

In the CPT's view, for as long as there is not an effective system of free legal aid for indigent persons at the stage of police custody, any right of access to a lawyer will remain, in most cases, purely theoretical.

As noted above (see paragraph 10), it is during the period immediately following apprehension - and, a fortiori, during which the individual is subjected to police questioning under an investigation procedure - that the risk of intimidation and ill-treatment is greatest. Consequently, an effective right of access to a lawyer during that period is a fundamental safeguard against ill-treatment. The possibility of access to a lawyer will have a dissuasive effect on those minded to ill-treat detained persons; moreover, a lawyer is well placed to take appropriate action if ill-treatment actually occurs.

The Committee recommends that the authorities of the Netherlands Antilles review, in consultation with the Bar Association, the system of legal aid for persons in police custody who are not in a position to pay for a lawyer, so as to ensure that such persons can in practice have access to a lawyer from the very outset of police custody. Practical arrangements should be made to ensure that *ex officio* lawyers meet their clients while in police custody.

¹⁰⁰ These were elaborated in the report on the visit in 1994 (see CPT/Inf (96) 1, at paragraphs 43 to 63), and examined again during the subsequent visit in 1997 (see CPT/Inf (98) 17, at paragraphs 53 to 56).

26. Persons should also be adequately informed of the possibility to avail themselves of the above-mentioned rights. Interviews with detained persons and staff on duty indicated that information about access to a lawyer and to a government appointed lawyer was generally provided promptly. However, such information - which was detailed on an information sheet requiring the detained person's signature - still failed to include the right to have a close relative or other person notified of one's arrest, and the right to have access to a doctor¹⁰¹.

The CPT calls upon the authorities of the Netherlands Antilles to ensure that all persons deprived of their liberty by the police are informed of their rights, including the right to have a close relative or other person notified of one's arrest and the right to have access to a doctor. Such persons should, in particular, be provided with a written form setting out their rights in a straightforward manner.

27. It should be possible to verify the operation of the above-mentioned safeguards by consulting police custody records. In this respect the delegation observed that recording practices varied considerably from one police station to another; none provided a comprehensive custody record allowing the operation of safeguards to be consistently reviewed for each person detained on the premises.

A single and comprehensive custody record could register all aspects of custody and all measures taken in connection with it (when and for what reason(s) the custodial measure was taken; when the person arrived on police premises; when he/she was informed of his/her rights ; whether he/she showed signs of injuries, health problems, mental disorder, etc.; in which cell(s) he/she was placed; when was he/she given food; when questioned; when he/she had contacts with and/or visits from close relatives, a lawyer, a doctor or a representatives of the consular services; when transferred; when brought before a prosecutor; when remanded or released, etc.). **The CPT therefore reiterates its recommendation¹⁰² that the authorities of the Netherlands Antilles consider the possibility of drawing up such an individualised custody record for use at all police stations.**

¹⁰¹ This same situation was observed during the visit in 1997 (see CPT/Inf (98) 17, paragraph 55).

¹⁰² See the report on the visit carried out in 1994 (CPT/Inf (96) 1), at paragraph 60.

B. Foreign nationals detained under aliens legislation

1. Preliminary remarks

28. As already indicated in previous reports¹⁰³, the CPT considers that persons deprived of their liberty for an extended period under aliens legislation 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.

Obviously, such centres should provide accommodation which is adequately furnished, clean and in a good state of repair, and which offers sufficient living space for the numbers involved. Further, care should be taken in the design and layout of the premises to avoid as far as possible any impression of a carceral environment. As regards regime activities, they should include outdoor exercise, access to a day room and to radio/television and newspapers/magazines, as well as other appropriate means of recreation (e.g. board games, table tennis). The longer the period for which persons are detained, the more developed should be the activities which are offered to them.

29. The situation of foreigners detained under aliens legislation in the Netherlands Antilles had not changed significantly since the CPT's previous visit in 1997 to the "Illegalen Barakken", an immigration detention facility located close to Bon Futuro Prison¹⁰⁴.

According to information provided by the authorities at the outset of the visit, persons were detained at the "Illegalen Barakken" for one week at most, before being deported; exceptionally, a longer stay would occur if the person concerned was uncooperative in the identification process. That said, when the delegation visited the establishment¹⁰⁵, it interviewed eight out of the 12 detainees present, and those eight persons had spent between six and 12 weeks in detention.

2. Ill-treatment

30. It should be stated at the outset, that the CPT's delegation heard no allegations of physical ill-treatment of detained persons by staff working at the "Illegalen Barakken". However, one person interviewed alleged having been struck by police officers at the time of the apprehension. Clearly, **the CPT's recommendations in paragraph 12 above apply equally with regard to apprehensions by the police pursuant to the aliens legislation.**

¹⁰³ See the report on the 1994 visit (CPT/Inf (96) 1), at paragraph 15, and the report on the visit in 1997 (CPT/Inf (98) 17), at paragraph 57.

¹⁰⁴ See CPT/Inf (98) 17, paragraphs 57 to 61.

¹⁰⁵ The delegation visited the men's section on 9 June and the women's section on 11 June 2007.

3. Conditions of detention at the “Illegalen Barakken” for immigration detainees

31. Men and women were detained at the “Illegalen Barakken” in two separate dormitories, each with an official capacity of 26 persons (although there were beds sufficient for 24 in the men’s dormitory and 22 in the women’s). Three women and nine men were being held when the delegation visited the premises. Thus the facility was not overcrowded at the time of the visit. However, in interviews, the delegation was told that the number of persons detained had recently exceeded the number of beds available in both the women’s and the men’s sections, requiring several persons to sleep on the floor or to share a bed.

Further, even if operating at its official capacity (i.e. one person per bed), the facility would be overcrowded. In the CPT’s view, each dormitory (measuring around 88m²) would not provide satisfactory living space for more than 20 persons.

The CPT calls on the authorities of the Netherlands Antilles to ensure that the number of persons held at the “Illegalen Barakken” never exceeds the number of beds available. Further, efforts should be made to keep occupancy levels to a maximum of 20 persons in each dormitory.

32. The dormitories were still not equipped with a call system, making it very difficult, especially at night, to attract the attention of staff (who were located at some distance in a separate building). Further, the metal roof over the women’s dormitory reportedly leaked inside when it rained. The delegation also received several complaints about the quality of the food, which was provided by the prison kitchen, and the prohibition of buying one’s own food.

The sanitary facilities were in a poor state of repair and cleanliness: in the men’s sanitary annex two out of three showers and one out of three toilets were working; whereas one out of three showers and one out of three toilets were working in the women’s sanitary annex, where faulty plumbing was also causing water to stagnate in front of the window, attracting mosquitoes.

Further, detainees were still not offered any activities apart from watching a television set, which was the property of one detainee.

Finally, as was the case in 1997, foreigners were not offered any outdoor exercise, even in cases of detention lasting several months. This situation is totally unacceptable.

33. At the end of the visit, the delegation made an immediate observation under Article 8, paragraph 5, of the Convention, requesting to be informed of action taken to improve material conditions and the activities offered at the “Illegalen Barakken”¹⁰⁶. By letter of 25 September 2007, the authorities informed the CPT that a few of the problems with the sanitary facilities had been solved, and that, one month previously, a plan¹⁰⁷ had been established in order to address the remainder of the issues.

The CPT calls upon the authorities of the Netherlands Antilles to take steps as a matter of urgency to remedy the shortcomings outlined in paragraph 32 above, and to provide persons detained at the “Illegalen Barakken” with adequate material conditions, activities and at least one hour of daily outdoor exercise.

34. The staff of centres for immigration detainees have a particularly onerous task. Firstly, there will inevitably be communication difficulties caused by language barriers. Secondly, many detained persons will find it difficult to accept the fact that they have been deprived of their liberty when they are not suspected of any criminal offence. Thirdly, there is a risk of tension between detainees of different nationalities or ethnic groups.

Consequently, the CPT places a premium upon the supervisory staff in such centres being carefully selected and receiving appropriate training. Staff should possess both well-developed qualities in the field of interpersonal communication and cultural sensitivity, given the diverse backgrounds of the detainees; at least some staff members should have relevant language skills. Further, they should be taught to recognise possible symptoms of stress reactions displayed by detained persons and to take appropriate action.

The staff working at the “Illegalen Barakken” were employees of a private security company and had a strictly supervisory role, involving no interaction with detainees; they had not received specific training to deal with the particular needs of foreign nationals detained under aliens legislation. **The CPT recommends that the authorities of the Netherlands Antilles address this issue in the light of the above remarks.**

35. Medical care was provided by the health care service at Bon Futuro Prison, by the doctor employed by the police, or the staff could call upon any doctor in the case of an emergency. However, no medical screening was carried out on new arrivals at the “Illegalen Barakken”. The CPT considers that the carrying out of such screening is in the interests of both detainees and staff, and is also a preventive public health measure. Such screening should be performed by a doctor or by a qualified nurse reporting to a doctor.

The CPT recommends that systematic medical screening of all immigration detainees, including for transmissible diseases, be introduced in accordance with the foregoing remarks. Such screening should be carried out in a way that respects medical confidentiality. Further, there should be a daily presence at the “Illegalen Barakken” of a person with a recognised nursing qualification and access to acute dental care and appropriate psychological/psychiatric assistance should be available.

¹⁰⁶ This request was confirmed in writing by letter of 11 July 2007.

¹⁰⁷ With a cost estimate of AWG 80,900.

4. Safeguards against the ill-treatment of foreign nationals detained under aliens legislation

36. In the CPT's view, immigration detainees (whether asylum-seekers or not) should be entitled, as from the outset of their deprivation of liberty, to inform a person of their choice of their situation and to have access to a lawyer and to a medical doctor. Further, immigration detainees should be expressly informed, without delay and in a language they understand, of their rights and the procedure applicable to them. To this end, all immigration detainees should be systematically provided with a document setting out this information; the document should be available in the languages most commonly spoken by those concerned and, if necessary, the services of an interpreter should be made available. The persons concerned should attest that they have been informed of their rights, in a language they can understand.

37. It would appear that immigration detainees did not benefit from the full protection of the safeguards outlined above. In particular:

- the possibility to inform a person of one's choice of one's detention was limited to persons who could afford to purchase a telephone card;
- access to free legal assistance was limited to citizens of the Netherlands Antilles, and the delegation met several foreigners who could not afford a lawyer and were, as a consequence, not provided with any legal assistance;
- the delegation received a number of complaints from detainees that they had had to wait several weeks before their request to see a doctor was granted.
- certain information on rights and applicable procedures was provided on the 30-day detention order, which, however, was often served several days after the person's detention.
- information on the right to appeal against the detention order was not provided; and
- detention continued, in practice, after the expiry of the detention order, without the order being formally renewed.

The CPT recommends that the authorities of the Netherlands Antilles take the necessary steps to ensure that all persons held under aliens legislation are afforded all the fundamental safeguards outlined in paragraph 36 above.

38. Finally, detainees' contact with the outside world was limited to one or two phone calls of two or three minutes' per day, provided one had money to pay for a phone card. No visits were allowed, except from a lawyer.

The CPT recommends that immigration detainees be allowed to maintain contact with the outside world during their detention, and in particular to receive visits from relatives and representatives of relevant organisations.

C. Prisons

1. Preliminary remarks

39. The CPT's delegation visited Bon Futuro Prison (formerly Koraal Specht), an establishment visited by the CPT on four previous occasions¹⁰⁸. Since the visit in 2002, the prison's capacity had increased to 704, with the addition - outside the main perimeter of the establishment - of a new section for women and a new section for male working prisoners¹⁰⁹. On 6 June 2007, the Prison held 590 inmates, 242 on remand (226 male and 16 female) and 348 sentenced (323 male and 25 female). More than a quarter of the inmate population was under 25 years of age, four of them minors (all 17).

The delegation also visited Bonaire Remand Prison, situated in a two-storey building adjacent to Kralendijk Police Station, on the island of Bonaire. Following a Justice Ministry review of all places of detention, the establishment had been closed down in 2000 and was reopened in 2005. With a theoretical capacity of 53 places, Bonaire Remand Prison officially operated at a maximum capacity of 27 places, due to a shortage in staff. On 11 June 2007, 29 men were accommodated, two of whom, however, spent the night at the next-door police station¹¹⁰. The population was a mixture of sentenced and remand prisoners distributed between the ground and first floor levels of the prison, but not according to any apparent classification criteria. Seven inmates were under 21 years old, but none of them minors.

2. Ill-treatment

40. It should be stated at the outset that the delegation heard no allegations of ill-treatment by staff at *Bonaire Remand Prison*. Indeed, staff-prisoner relations were generally good and the atmosphere in the establishment appeared to be relaxed.

41. The same could not be said of *Bon Futuro Prison*, where - with the notable exceptions of the women's unit and the forensic psychiatric support unit (or 'FOBA'¹¹¹) - positive relations between staff and prisoners were clearly lacking. Instead, the maintenance of control appeared to be overdependent on the presence of a Correctional Emergency Response Team (CERT), which frequently intervened in the prison, in order to re-establish order through the use of force. Specific recommendations concerning the CERT are made in section 7.

During the visit, the CPT's delegation received several allegations of physical ill-treatment of prisoners by staff, most of them involving an intervention by members of the CERT. Two examples follow.

¹⁰⁸ See the CPT's reports on its visits to the Netherlands Antilles in 1994 (CPT/Inf (96) 1, paragraphs 64 to 153), 1997 (CPT/Inf (98) 17, paragraphs 7 to 41), 1999 (CPT/Inf (2000) 9, paragraphs 8 to 46) and 2002 (CPT/Inf (2002) 30 (Part 2), paragraphs 26 to 70).

¹⁰⁹ The CPT's delegation did not visit the section for male working prisoners.

¹¹⁰ See paragraph 21 and footnote 16 above.

¹¹¹ 'FOBA' stands for '*Forensische Observatie- en Begeleidingsafdeling*'.

42. In **Case A**, C.N., a prisoner detained in Block 6, alleged that on 16 March 2007 he had had a scuffle with a prison officer, after which, once he was already brought under control, he was heavily beaten by a number of CERT officers. As a result, his nose and one finger were broken and his arm was badly bruised and swollen. He was then allegedly brought to the disciplinary unit, where the staff on duty refused to admit him before he was examined by a doctor.

The prisoner's medical file records the incident as a case of use of force, noting that the prisoner, who was seen at the infirmary after an intervention by the CERT, presented an oedema on the arch of the right eyebrow, a cut to the left nasal region, three bruises of the inner side of the right fore-arm, as well as cuts in the region of the outer edge of the right palm. The patient was sent to hospital due to a suspected fracture of the hand. An X-ray confirmed a displaced fracture of the fifth bone of the right hand. On the prisoner's return from hospital, the infirmary issued a certificate against the use of handcuffs.

The authorities informed the CPT¹¹² that the Complaints, Supervision and Monitoring Agency had conducted an inquiry into the incident referred to in Case A, further to which a request to initiate a criminal investigation was lodged, on 21 March 2007, with the Prosecutor-General. **The CPT would like to be informed of the results of that investigation.**

43. In **Case B**, the prisoners R.W. and J.M. alleged that, on 19 May 2007, during an argument with a prison officer, the officer had hit them with a padlock, injuring J.M.'s hand and R.W.'s nose. They alleged that, shortly thereafter, a group of CERT officers came to the Block, took them both to see the doctor, then to a disciplinary cell, where the officers beat J.M. in a corner of the cell and threatened R.W. with similar treatment. They further alleged that while in disciplinary confinement, which lasted until 2 June 2007, they were not seen by a doctor.

The medical files of the two prisoners, containing observations prior to the prisoners being brought to the disciplinary unit, are consistent with the relevant allegations:

R.W.'s medical file records the use of force by staff on 19 May 2007, after which the prisoner was examined at the infirmary and presented haematoma on the abdomen, a wound to the nose and an oedema of the occipital region.

The medical file of J.M. notes the recourse to force by staff on 19 May 2007, after which the prisoner was examined at the infirmary. A medical report on injuries was completed, noting bruises to the outer side of his hands. A certificate for disciplinary placement was signed by the doctor.

44. The situation observed at Bon Futuro Prison is indicative of an alarming negative trend compared to the Committee's findings during the visit in 2002, when no allegations of ill-treatment were received¹¹³.

¹¹² By letter of 25 September 2007.

¹¹³ See CPT/Inf (2002) 30 (Part 2), paragraph 30. The findings in 2002 compared favourably to those of the CPT's visits in 1994, 1997 and 1999 to Bon Futuro Prison (then Koraal Specht). See, respectively, CPT/Inf (96) 1, paragraphs 67 and 68, CPT/Inf (98) 17, paragraphs 9 and 10, CPT/Inf (2000) 9, paragraphs 10 and 11.

The CPT wishes to recall that the State is under a duty to provide safe custody for all persons deprived of their liberty in prison, and that the frontline responsibility in providing such custody rests with prison officers. The authorities must not only undertake a proper investigation into allegations of ill-treatment, but also institute measures to ensure that all prison officers - including those belonging to special security units such as the CERT - and managers understand why ill-treatment is unacceptable and unprofessional and that, furthermore, it will result in severe disciplinary sanctions and/or criminal prosecution.

The CPT recommends that concrete measures be taken to eradicate ill-treatment of prisoners at Bon Futuro Prison by prison or CERT staff, in the light of the foregoing remarks, including through improved management, staff training and supervisory mechanisms.

45. Moreover, the phenomenon of inter-prisoner violence had increased. The number of lesions recorded annually during detention (i.e. not on admission) appeared to have doubled since 2002. Further, the delegation received allegations of inter-prisoner sexual violence, most incidents of which were not reported. One homicide occurred in 2004 and another in 2005. During the visit, the delegation received various accounts of stabbings, including one, in 2006, of a prisoner in Block 1 who had been placed there for his own protection. Since the visit, the CPT has learned that another death by stabbing occurred in October 2007.

At the end of the visit, the CPT's delegation had an opportunity to express its serious concerns with regard to the problem of inter-prisoner violence at Bon Futuro Prison¹¹⁴. In response, the authorities of the Netherlands Antilles indicated¹¹⁵ that they intended to install cameras (so-called "speed domes") which would record any movement on the wing, and they expected that such a measure would have a preventive influence on prisoners' behaviour.

46. The CPT has grave concerns about the levels of violence at Bon Futuro Prison, an establishment which was clearly dangerous and unsafe for both prisoners and staff. It is noteworthy, in this context, that approximately 30 fire-arms were confiscated during searches carried out since 2003.

The CPT must recall that the duty of care which is owed by the prison authorities to prisoners in their charge includes the responsibility to protect them from other prisoners who might wish to cause them harm. The Committee accepts that technology, such as video-cameras, can be useful in an effort to reduce violence. However, ensuring safety in prison will, above all, require adequate staffing levels in detention areas, greater contact, and the development of positive relations, between inmates and staff, based on the notions of dynamic security and care (see also section 5 on staff).

The CPT calls on the authorities of the Netherlands Antilles to adopt a proactive strategy to prevent violence by inmates against other inmates at Bon Futuro Prison, in the light of the foregoing remarks.

¹¹⁴ These were confirmed in writing by letter of 11 July 2007.

¹¹⁵ By letter of 25 September 2005.

3. Material conditions

a. Bon Futuro Prison

47. The CPT's delegation gained a favourable impression of the new women's section, which had been in operation since June 2006. The 17 cells for 3 or 4 persons were arranged in two units and opened on to a large rectangular exercise yard. The staff's office, the 3 disciplinary/observation cells, two activity rooms and the doctor's consultation room were also arranged around the exercise yard. Each cell was equipped with adequate furniture (beds, chairs and lockers) and a sanitary annex in good condition (comprising a sink, toilet and shower). Whereas cells for up to 3 persons (measuring 13 m²) offered sufficient living space, those for up to 4 persons (measuring 14.5 m²) were small for such an occupancy. Although this deficiency was greatly alleviated by the fact that prisoners had access to the exercise yard for most of the day, the larger cells should not accommodate more than three persons. From every third cell, detainees had access - by reaching between the cell bars - to a call-bell button on the wall outside.

48. Conditions in the Blocks in the main perimeter of Bon Futuro Prison had not undergone major structural changes since the visit in 2002. The CPT would merely note again that certain Blocks were strewn with rubbish and were infested with rats.

Further, no call-bell system was in place in the wings or in the FOBA. However, the CPT has since learned¹¹⁶ that instructions have been issued to have a call bell system installed. The Committee welcomes this development **and trusts that all of the abovementioned deficiencies shall be remedied without delay. In particular, every cell, including in the women's section, should be fitted with a call-bell.**

49. As regards, more particularly, the disciplinary unit, at least two of the cells at the far end had insufficient access to natural light and poor artificial lighting. The cells were also very poorly ventilated (due to the panelled windows), and above all contained an in-cell shower/toilet combination which did not allow for hygienic conditions to be maintained.

At the end of the visit, the delegation made an immediate observation under Article 8, paragraph 5, of the Convention, requesting that the disciplinary cells not be used until all the aforementioned deficiencies had been remedied. By letter of 25 September 2007, the authorities informed the CPT that the use of the disciplinary cells had resumed after the necessary repairs were made to the artificial lighting, the showers, the ventilation, and to address the infestation of vermin. Moreover, cleaning products were being regularly provided and the wing was being painted. The CPT welcomes the measures taken. Nevertheless, **the Committee recommends that the design of the sanitary facilities be changed so that the toilet is separate from the shower.**

¹¹⁶ By letter of 25 September 2007.

50. One common complaint in interviews throughout the prison was the lack of quality and variety in the food provided. Indeed meals appeared to be largely based on starches and to be lacking in fresh vegetables and fruit. Meal times were also clearly designed to be organised in accordance with the low levels of staffing; the last meal of the day was served at 15h30, for example.

The CPT recommends that the authorities of the Netherlands Antilles make efforts to improve the nutritional quality and variety of food provided to inmates at Bon Futuro Prison. Further, regular meal times should be distributed more evenly throughout the day.

b. Bonaire Remand Prison

51. Detention at ground floor level at Bonaire Remand Prison offered reasonably good material conditions, including access, during the day, to an area adjoining the cells with a partly opened roof. However, this area was not sufficient for outdoor exercise purposes. The situation on the first floor was arguably worse, as the only area accessible to prisoners apart from their cells was an adjoining aerated hall area also used for hanging out laundry. The CPT was informed¹¹⁷ that, in the short term, an exercise yard would be built, for which the budget had been approved. **The CPT calls on the authorities of the Netherlands Antilles to ensure, without undue delay, that prisoners at Bonaire Remand Prison are given an opportunity of at least one hour's daily outdoor exercise.**

A further concern was that the Prison did not possess sufficient beds for the inmates present. Certain prisoners were therefore obliged to sleep on a mattress on the floor for months. This is unacceptable.

The CPT should also point out that the multi-occupancy cells on either floor at Bonaire Remand Prison were not sufficient in size (upstairs 12 m², and downstairs 13.5 m²) to accommodate more than 3 persons each. Together with the one adequately sized individual cell at ground floor level, this would bring the Prison's maximum capacity to 40 (as opposed to the official theoretical capacity of 53).

The Committee recommends that:

- **each prisoner be provided with a bed; and**
- **no more than three persons be accommodated in each multi-occupancy cell at Bonaire Remand Prison.**

¹¹⁷ By letter of 25 September 2007.

4. Regime

52. Neither of the two establishments visited offered anything resembling a programme of purposeful activities to prisoners. If anything, the bleak situation encountered during the visit to Bon Futuro Prison in 2002¹¹⁸ had worsened: despite certain activities (clothes manufacturing and upholstery) being on offer, the situation of enforced idleness for most of the day affected the vast majority of prisoners. Further, no regular activities were on offer at Bonaire Remand Prison, apart from watching television. This is a wholly unsatisfactory state of affairs.

The CPT is, therefore, pleased to learn that ‘implementing regimes and adequate day-time programmes’ for prisoners will form an integral part of the prison system reform¹¹⁹ foreseen under the Netherlands Antilles Security Plan.

Certainly the inability of the prison service to provide purposeful activities, linked to an individualised treatment plan, is to a large extent related to chronically low staffing levels. However, some minimal programme should nevertheless be possible, as it is not acceptable to leave prisoners to their own devices for months at a time. As prisoners look forward to release into the community they need to be prepared for that life, to possess a degree of self-worth and to feel capable of leading a life away from crime. A regime which provides for varied activities is a vital component in the preparation for release, as well as being beneficial for the running of the prison. The aim should be to ensure that all prisoners (including those on remand) spend a reasonable part of the day (i.e. 8 hours or more) outside their cells engaged in purposeful activities of a varied nature: work, preferably with vocational value; education; sport; recreation/association.

The CPT calls on the authorities of the Netherlands Antilles to take the necessary steps to ensure that appropriate regime activities for prisoners are developed and sustained, in the light of the foregoing remarks.

5. Staff

53. The totally inadequate numbers of prison officers at *Bon Futuro Prison* in contact with inmates meant that staff were not in control of prisoners within the establishment. Staff numbers were particularly low¹²⁰ at night, when prisoners were locked up in their cells, but, similarly, very few prison officers were in contact with prisoners on Saturday afternoons/evenings and Sundays during the day¹²¹ when prisoners were not confined to their cells.

The situation at *Bonaire Prison* was not much better, as, with a total of 16 staff members (including the Director), working in shifts of at most 5 persons strong, it was difficult to supervise two quite distinct detention areas.

The CPT calls on the authorities of the Netherlands Antilles to remedy the staff shortages in both establishments as a matter of priority.

¹¹⁸ See CPT/Inf (2002) 30 (Part 2), at paragraphs 42 and 43.

¹¹⁹ Requiring a budget of well over ANG 160 million, according to the authorities (See letter of 25 September 2007).

¹²⁰ Thirteen officers were on night-shift duty during the visit, although this figure was allowed to be as low as nine.

¹²¹ 27 officers were on duty during the visit, although this figure could be as low as 16.

6. Health care services

- a. general medical care at Bon Futuro Prison

54. The medical service at Bon Futuro Prison continued to benefit from a generally good standard of facilities¹²².

It was still the case, however, that the medical unit had no dedicated outdoor exercise yard and that, as a result, prisoners placed there were not offered daily outdoor exercise. **The CPT recommends that such a possibility be offered to prisoners if their state of health permits.**

Further, although injuries or illnesses requiring emergency treatment were a somewhat frequent occurrence, the medical service did not have at its disposal an emergency room in which to place persons pending their transfer to hospital. **The authorities of the Netherlands Antilles should explore the possibility of providing the medical service with an additional room for emergency care.**

55. As regards medical staff resources, the Committee must, once again, point out that the equivalent of a full-time doctor's position was still not secured. At the time of the visit, the regular presence of the two part-time doctors combined amounted to around 18 hours per week. In the CPT's view, an establishment of the size of Bon Futuro Prison should ideally benefit from the equivalent of two full-time doctors. **The CPT reiterates its recommendation that efforts be made to secure, as an initial minimum, the equivalent of a full time doctor's position.**

The CPT is pleased to note that the nursing staff had increased since the previous visit to 7 nurses and two assistants. However, the positions of two additional assistants (in dentistry and pharmacy) were budgeted but not filled. **The CPT recommends that efforts be made to fill these posts.**

No healthcare staff was present between the hours of 10 pm¹²³ and 7 am on weekdays, and for the entire weekend. Such a situation is not acceptable. The delegation was informed that no night or weekend presence was organised due to a lack of security arrangements during those times. **The CPT recommends that someone qualified to provide first aid, preferably with a recognised nursing qualification, should always be present in the prison, including at night.**

The situation as regards dental care had, apparently, greatly deteriorated. Although the needs of the establishment would call for the equivalent of a half-time dentist's position, only half a day of weekly presence was organised. **The CPT recommends that every effort be made to recruit a dentist to the equivalent of a half-time position.**

¹²² See the CPT report on its visit in 2002, CPT/Inf (2002) 30, at paragraphs 53 to 58.

¹²³ The delegation was informed that, as of 1 July 2007, the last shift would end at 8 pm.

56. Prompt medical screening of newly arrived prisoners is essential to prevent the spread of transmissible diseases and for recording injuries in good time. The CPT notes that medical screening was generally carried out up to 4 weeks after the prisoner's arrival; this is not acceptable.

The CPT recommends that every newly admitted prisoner be properly interviewed and physically examined by a medical doctor (or by a fully qualified nurse reporting to a doctor) as soon as possible after his admission; save for exceptional circumstances, the interview/examination should be carried out within 24 hours.

57. On a more positive note, the CPT welcomes the more rigorous recording of injuries in the incidents register. Generally, the medical service also appeared to ensure a good respect for medical confidentiality.

58. The situation of prisoners unsuitable for continued detention calls for some comment. Typical examples of such prisoners are those who are the subject of a short-term fatal prognosis, who are suffering from a serious disease which cannot be properly treated in prison conditions, who are severely handicapped or of advanced age. The continued detention of such persons in a prison environment can create an intolerable situation.

The CPT notes that although at Bon Futuro Prison the possibility existed for such persons to be released, the process was extremely difficult and lengthy. One such prisoner had died of AIDS in 2007. It would appear that certificates issued by the doctor for unsuitability of continued detention often received no follow-up. **The CPT recommends that existing procedures be improved so as to allow prisoners unsuited for continued detention to benefit from alternative measures without unnecessary delay.**

59. As regards the role of the health-care staff in the context of disciplinary placements, the delegation observed that disciplinary placement decisions were signed off by the prison doctor.

A prison's health-care service should certainly be very attentive to the situation of prisoners placed in disciplinary cells (or any other prisoner held under conditions of solitary confinement). However, medical practitioners working in prisons act as the personal doctors of prisoners, and ensuring that there is a positive doctor-patient relationship between them is a major factor in safeguarding the health and well-being of prisoners. Consequently, under no circumstances should prison doctors be obliged to certify that prisoners are fit to undergo punishment¹²⁴.

The Committee recommends that the authorities of the Netherlands Antilles ensure that prison doctors are not required to certify that prisoners are fit to undergo punishment.

¹²⁴ This point was also recognised in the recently adopted Committee of Ministers' Recommendation Rec (2006) 2 on the European Prison Rules.

b. psychiatric and psychological care at Bon Futuro Prison

60. A psychiatrist attended Bon Futuro Prison (apart from FOBA, see paragraph 59) on a half-time basis. However, prisoners did not benefit from psychological care (one psychologist attended only the FOBA unit). In the CPT's view, an establishment of the size of Bon Futuro Prison should be able to rely on the services of at least one full-time psychologist. **The CPT recommends that a full-time psychologist be recruited as soon as possible for Bon Futuro Prison.**

61. The forensic psychiatric support unit (or "FOBA"¹²⁵) at Bon Futuro Prison was developed in order to cater for certain problematic prisoners in the absence of more appropriate hospital surroundings. A psychiatrist held consultations at the FOBA for one morning per week and saw new admissions and held progress meetings another morning per week. The psychologist generally attended the FOBA one day per week, but was on long-term sick-leave at the time of the visit. A social worker also paid weekly visits to the FOBA.

Although positive in many respects¹²⁶, the FOBA did present several significant shortcomings. In particular,

- the lack of a 24-hour nursing presence on this Unit;
- the distribution of medication by non-medical FOBA staff (well-trained, motivated and well-intentioned though they might be);
- the separation between the prison medical file and the FOBA psychiatric file;
- the use of involuntary treatment in a prison environment, involving, at times, an intervention and manual restraints by the CERT; and
- the placement, by doctors, of prisoners in isolation cells in a prison context.

The CPT recommends that the authorities of the Netherlands Antilles remedy the above-mentioned shortcomings.

c. health care at Bonaire Remand Prison

62. Since the long leave of absence of the nurse¹²⁷ at Bonaire Remand Prison, the organisation of health care at the prison was all but absent. Although a doctor was on call, no systematic medical screening was carried out, no medical file was opened or kept for prisoners, no nurse was present, no doctor's or infirmary room was available and medication was simply stored in an unlocked cupboard, accessible for all prison officers.

This situation could be described as a dereliction of duty. An inadequate level of health care can lead rapidly to situations falling within the scope of the term "inhuman and degrading treatment".

The CPT recommends that urgent steps be taken to redress the absence of organised health care at Bonaire Remand Prison, in the light of the foregoing remarks. In particular, the establishment should be visited daily by a nurse.

¹²⁵ 'FOBA' stands for '*Forensische Observatie- en Begeleidingsafdeling*'.

¹²⁶ See also the report on the visit in 2002 (CPT/Inf (2002) 30), at paragraph 57.

¹²⁷ A prison guard who had a nursing qualification.

7. Correctional Emergency Response Team

63. The CPT had commented on the Correctional Emergency Response Team (CERT) in its report on the 2002 visit¹²⁸, when the CERT had only recently been established. During the visit in 2007, it was clear that the CERT - composed of 16 members, 3 of whom were women - had developed into a generally feared force whose primary task was to compensate for the lack of appropriate control in the prison (see paragraph 46), by means of frequent, armed, and often physically violent, interventions.

The CPT reiterates its recommendation¹²⁹ that the authorities of the Netherlands Antilles pay particular attention to the professional training of the CERT members and the supervision of their activities.

As regards, in particular, training, **the CPT recommends that CERT members be provided with both initial and ongoing training that has a human rights dimension - and with a training manual.**

Concerning supervision, **clear operating rules should be established for the CERT, covering the criteria and responsibility for deployment and the chain of command, particularly when the police are also involved.**

64. **The Committee further recommends that the authorities of the Netherlands Antilles:**

- **establish written selection criteria for the CERT. The selection process should involve the participation of a person independent from the prison and preferably with a qualification in psychology;**
- **consider measures - such as creating a much larger pool from which CERT members could be drawn¹³⁰ - to allow for rotation and reduce the likelihood of unhealthy corporate cultures developing.**

65. Interviews with both prisoners and staff indicated that CERT staff were perceived as being uninterested in finding a peaceful solution to a conflict. In one incident which occurred a few months prior to the visit, prisoners in the women's block had allegedly refused to return to their cells in protest against a collective punishment. It was alleged that the subsequent intervention by CERT staff was disproportionately violent: that CERT members made no attempt to discuss the matter first, but they used pepper spray on the women and dragged them (even by the hair) back into the cells.

In the CPT's view, all avenues of mediation should be exhausted before force is resorted to in prison. **The CPT recommends that a policy and protocol on this subject be developed, and that a team of persons be trained in mediation skills.**

¹²⁸ See CPT/Inf (2002) 30 (Part 2) at paragraphs 64 to 68.

¹²⁹ See CPT/Inf (2002) 30 (Part 2), paragraph 67.

¹³⁰ Foreseen under the Bon Futuro Security Plan (April 2007).

66. Moreover, pepper spray is a potentially dangerous substance and should not be used in confined spaces. Even when used in open spaces, the CPT has serious reservations; if exceptionally it needs to be used, there should be clearly defined safeguards in place. For example, persons exposed to pepper spray should be granted immediate access to a medical doctor and be offered an antidote. Pepper spray should never be deployed against a prisoner who has already been brought under control. Further, it should not form part of the standard equipment of a prison officer.

The CPT recommends that the authorities of the Netherlands Antilles draw up a clear directive governing the use of pepper spray, which should include, as a minimum:

- **clear instructions as to when pepper spray may be used, which should state explicitly that pepper spray should not be used in a confined area;**
- **the right of prisoners exposed to pepper spray to be granted immediate access to a doctor and to be offered an antidote;**
- **the qualifications, training and skills of staff members authorised to use pepper spray;**
- **an adequate reporting and supervisory mechanism with respect to the use of pepper spray.**

APPENDIX I

**LIST OF THE CPT'S RECOMMENDATIONS,
COMMENTS AND REQUESTS FOR INFORMATION**

A. Police establishments

Preliminary remarks

recommendations

- the authorities of the Netherlands Antilles to re-examine the system of detention on police premises with a view to substantially reducing its duration (paragraph 10).

Ill-treatment

recommendations

- the authorities of the Netherlands Antilles to adopt a vigorous policy to combat police ill-treatment. Such a policy should include a formal statement, by the highest competent political authority, to law enforcement officials, reminding them that:
 - the rights and dignity of persons in their custody must be respected; and
 - the ill-treatment of such persons will be the subject of severe sanctions (paragraph 12);
- police officers to be regularly reminded, through training and instructions, that no more force than is reasonably necessary should be used when effecting an apprehension. In particular, law enforcement officials must be trained in preventing and minimising violence in the context of an apprehension. For cases in which the use of force nevertheless becomes necessary, law enforcement officials need to be able to apply professional techniques which minimise any risk of harm to the persons whom they are seeking to apprehend (paragraph 12);
- the blindfolding of apprehended persons to be prohibited. Further, only exceptional circumstances could justify measures to conceal the identity of law enforcement officials performing arrests. Where such measures are applied, appropriate safeguards must be in place in order to ensure that the officials concerned are accountable for their actions (e.g. by means of a clearly visible number on the uniform) (paragraph 13).

requests for information

- detailed information on the rules governing the wearing of masks by police officers in the course of their duties (paragraph 13).

Conditions of detention

recommendations

- the necessary measures to be taken to ensure that cells at Punda Police Station are kept in a satisfactory state of cleanliness and are fitted with a call-bell. Further, persons detained there should be provided with a clean mattress (paragraph 14);
- efforts to be made to improve ventilation in the cells at the Rio Canario police detention facility (paragraph 15);
- the necessary measures to be taken to modify the CCTV and lighting arrangements at the Rio Canario police detention facility, in the light of remarks in paragraph 16. Further, the CCTV system must not be allowed to replace the regular inspection of cells by members of staff to ensure the safety of detained persons (paragraph 16);
- an opportunity for at least one hour of daily outdoor exercise to be provided for persons detained longer than 24 hours at Rincon Police Station. Further, efforts should be made to improve ventilation in the cells, which should also be fitted with call-bells (paragraph 17);
- persons held for a prolonged period in Bon Futuro Police Detention Unit to be offered the possibility of additional forms of activities (e.g. reading matter, radio/television) (paragraph 18);
- until the deficiencies mentioned in paragraph 19 are remedied, the cells at Barber Police Station only to be used for very short periods of detention (paragraph 20);
- a call-bell system to be installed at Kralendijk Police Station and an opportunity for at least one hour of daily outdoor exercise to be provided for persons detained longer than 24 hours at this police station (paragraph 21).

comments

- police officers should always be present when anyone is detained at a police station (paragraph 17);
- the CPT trusts that the necessary steps will be taken to ensure, through regular maintenance and inspections, that the Committee's minimum standards are observed and sustained in all police stations in the Netherlands Antilles (paragraph 23).

requests for information

- confirmation that the deficiencies observed at Barber Police Station and noted in paragraph 19 will be remedied without further delay (paragraph 20);

- up-to-date information concerning the renovation/construction plans referred to in paragraph 22, including an account of detention conditions, occupancy levels and average/maximum periods of detention at Philipsburg Central Police Station (paragraph 22).

Safeguards against ill-treatment by the police

recommendations

- the necessary steps to be taken to ensure that persons deprived of their liberty by the police are able to benefit from the rights mentioned in paragraph 24 from the very outset of their deprivation of liberty, i.e. as from the moment at which they are obliged to remain with the police (paragraph 24);
- the authorities of the Netherlands Antilles to review, in consultation with the Bar Association, the system of legal aid for persons in police custody who are not in a position to pay for a lawyer, so as to ensure that such persons can in practice have access to a lawyer from the very outset of police custody. Practical arrangements should be made to ensure that *ex officio* lawyers meet their clients while in police custody (paragraph 25);
- the authorities of the Netherlands Antilles to ensure that all persons deprived of their liberty by the police are informed of their rights, including the right to have a close relative or other person notified of one's arrest and the right to have access to a doctor. Such persons should, in particular, be provided with a written form setting out their rights in a straightforward manner (paragraph 26);
- the authorities of the Netherlands Antilles to consider the possibility of drawing up an individualised custody record for use at all police stations (paragraph 27).

B. Foreign nationals detained under aliens legislation

Ill-treatment

recommendations

- the CPT's recommendations in paragraph 12 to apply equally with regard to apprehensions by the police pursuant to the aliens legislation (paragraph 30).

Conditions of detention at the “Illegalen Barakken” for immigration detainees

recommendations

- the authorities of the Netherlands Antilles to ensure that the number of persons held at the “Illegalen Barakken” never exceeds the number of beds available. Further, efforts should be made to keep occupancy levels to a maximum of 20 persons in each dormitory (paragraph 31);
- steps to be taken as a matter of urgency to remedy the shortcomings outlined in paragraph 32, and to provide persons detained at the “Illegalen Barakken” with adequate material conditions, activities and at least one hour of daily outdoor exercise (paragraph 33);
- the lack of training for staff at the “Illegalen Barakken” to be addressed, in the light of the remarks made in paragraph 34 (paragraph 34);
- systematic medical screening of all immigration detainees, including for transmissible diseases, to be introduced in accordance with the remarks in paragraph 35. Such screening should be carried out in a way that respects medical confidentiality. Further, there should be a daily presence at the “Illegalen Barakken” of a person with a recognised nursing qualification, and access to acute dental care and appropriate psychological/psychiatric assistance should be available (paragraph 35).

Safeguards against the ill-treatment of foreign nationals detained under aliens legislation

recommendations

- the necessary steps to be taken to ensure that all persons held under aliens legislation are afforded all the fundamental safeguards outlined in paragraph 36 (paragraph 37);
- immigration detainees to be allowed to maintain contact with the outside world during their detention, and in particular to receive visits from relatives and representatives of relevant organisations (paragraph 38).

C. Prisons

Ill-treatment

recommendations

- concrete measures to be taken to eradicate ill-treatment of prisoners at Bon Futuro Prison by prison staff or members of the Correctional Emergency Response Team (CERT), in the light of the remarks made in paragraphs 41 and 44, including through improved management, staff training and supervisory mechanisms (paragraph 44);
- the authorities of the Netherlands Antilles to adopt a proactive strategy to prevent violence by inmates against other inmates at Bon Futuro Prison, in the light of the remarks in paragraphs 45 and 46 (paragraph 46).

requests for information

- the results of the investigation into the alleged ill-treatment of the prisoner C.N. (paragraph 42).

Material conditions

Bon Futuro Prison

recommendations

- the design of the sanitary facilities in the disciplinary unit to be changed so that the toilet is separate from the shower (paragraph 49);
- efforts to be made to improve the nutritional quality and variety of food provided to inmates at Bon Futuro Prison. Further, regular meal times should be distributed more evenly throughout the day (paragraph 50).

comments

- the CPT trusts that all of the deficiencies mentioned in paragraphs 47 and 48 will be remedied without delay. In particular, every cell, including in the women's section, should be fitted with a call-bell (paragraph 48).

Bonaire Remand Prison

recommendations

- the authorities of the Netherlands Antilles to ensure, without undue delay, that prisoners at Bonaire Remand Prison are given an opportunity of at least one hour's daily outdoor exercise (paragraph 51);
- each prisoner to be provided with a bed (paragraph 51);
- no more than three persons to be accommodated in each multi-occupancy cell at Bonaire Remand Prison (paragraph 51).

Regime

recommendations

- the necessary steps to be taken to ensure that appropriate regime activities are developed and sustained for prisoners at Bon Futuro Prison and Bonaire Remand Prison, in the light of the remarks in paragraph 52 (paragraph 52).

Staff

recommendations

- the authorities of the Netherlands Antilles to remedy the staff shortages in both Bon Futuro Prison and Bonaire Remand Prison as a matter of priority (paragraph 53).

Health care services

Bon Futuro Prison

recommendations

- prisoners placed at the medical unit in Bon Futuro Prison to be offered daily outdoor exercise if their state of health permits (paragraph 54);
- efforts to be made to secure, as an initial minimum, the equivalent of a full time doctor's position (paragraph 55);
- efforts to be made to fill the budgeted positions of two additional assistants (in dentistry and pharmacy) (paragraph 55);

- a person qualified to provide first aid, preferably with a recognised nursing qualification, always to be present in the prison, including at night (paragraph 55);
- every effort to be made to recruit a dentist to the equivalent of a half-time position (paragraph 55);
- every newly admitted prisoner to be properly interviewed and physically examined by a medical doctor (or by a fully qualified nurse reporting to a doctor) as soon as possible after his admission; save for exceptional circumstances, the interview/examination should be carried out within 24 hours (paragraph 56);
- existing procedures to be improved so as to allow prisoners unsuited for continued detention to benefit from alternative measures without unnecessary delay (paragraph 58);
- the authorities of the Netherlands Antilles to ensure that prison doctors are not required to certify that prisoners are fit to undergo punishment (paragraph 59);
- a full-time psychologist to be recruited as soon as possible for Bon Futuro Prison (paragraph 60);
- the shortcomings observed at the FOBA and outlined in paragraph 61 to be remedied (paragraph 61).

comments

- the possibility should be explored of providing the medical service with an additional room for emergency care (paragraph 54).

Bonaire Remand Prison

recommendations

- urgent steps to be taken to redress the absence of organised health care at Bonaire Remand Prison, in the light of the remarks made in paragraph 62. In particular, the establishment should be visited daily by a nurse (paragraph 62).

Correctional Emergency Response Team (CERT)

recommendations

- particular attention to be paid to the professional training of the CERT members and the supervision of their activities (paragraph 63);
- CERT members to be provided with both initial and ongoing training that has a human rights dimension - and with a training manual (paragraph 63);

- clear operating rules to be established for the CERT, covering the criteria and responsibility for deployment and the chain of command, particularly when the police are also involved (paragraph 63);
- the authorities of the Netherlands Antilles:
 - to establish written selection criteria for the CERT. The selection process should involve the participation of a person independent from the prison and preferably with a qualification in psychology;
 - to consider measures - such as creating a much larger pool from which CERT members could be drawn - to allow for rotation and reduce the likelihood of unhealthy corporate cultures developing (paragraph 64);
- a policy and protocol on conflict resolution to be developed and a team of persons to be trained in mediation skills (paragraph 65);
- a clear directive governing the use of pepper spray to be drawn up, which should include, as a minimum:
 - clear instructions as to when pepper spray may be used, which should state explicitly that pepper spray should not be used in a confined area;
 - the right of prisoners exposed to pepper spray to be granted immediate access to a doctor and to be offered an antidote;
 - the qualifications, training and skills of staff members authorised to use pepper spray;
 - an adequate reporting and supervisory mechanism with respect to the use of pepper spray (paragraph 66).

APPENDIX II

**LIST OF THE AUTHORITIES AND OTHER PERSONS
WITH WHOM THE CPT'S DELEGATION HELD CONSULTATIONS**

A. Authorities of the Netherlands Antilles

Mr David DICK	Minister of Justice
Ms Lizanne RICHARDS-DINDIAL	Lieutenant Governor of Curaçao

Ministry of Justice of the Netherlands Antilles

Mr Edsel GUMBS	Head of the National Security Department (VNA)
Mr Glen MINGELI	Head of the National Detective Department (<i>Landsrecherche</i>)

Mr Pedro VAN DER BIEZEN	Head of the Immigration Department
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Mr Robert ANTONIUS	Director of the Directorate of Justice
Ms Joan THEODORA-BREWSTER	Deputy Director, Directorate of Justice

Judicial authorities

Mr Dick PIAR	Attorney General of the Netherlands Antilles
Ms Giselle VEEN-JONKHOUT	Public Prosecutor of Curaçao

Prison and Correctional Services

Mr Bartholomeo ANDREA	Acting Director, Bon Futuro Prison
Mr Franklin VICTORIA	Acting Director, Bonaire Prison
Ms Charette PINEDO	Acting Director, Government correctional institute (GOG)

Netherlands Antilles Police Force

Mr Carlos CASSERES	Acting Chief Commissioner of Police, Curaçao
Mr Jan VAN DER STRATEN	Acting Chief Commissioner of Police, Bonaire
Mr Franklin GIRIGORIE	Chief Inspector of Police, Curaçao
Mr Ademar DORAN	Chief Inspector of Police, St. Maarten
Mr Albert SCHOOP	Chief Inspector of Police, Curaçao
Mr Jules ILARIO	Inspector of Police, Curaçao
Mr Reggie HUGGINS	Inspector of Police, Curaçao

Other authorities

Mr Fred WIEL	Ombudsman for Curaçao
Mr Chester PETERSON	Vice-president, Supervisory Committee of Bon Futuro Prison
Mr Waldi OOSTBURG Mr Urvin PICUS	Director, Capriles Psychiatric Clinic Deputy Director, Capriles Psychiatric Clinic
Mr Marcel PINEDO	Director, Brasami Rehabilitation Centre

B. Persons active in the CPT's fields of interest

Ms Jacqueline MARTIS	President, Amnesty International Curaçao
Prof. Jan REIJNTJES	University of the Netherlands Antilles, Adviser to the Dutch Caribbean Human Rights Committee
Ms Adaly RODRIGUEZ	President, Dutch Caribbean Human Rights Committee
Mr Eldon SULVARAN	Lawyer