

Response

**of the Government of the Netherlands
to the report of the European Committee
for the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment (CPT)
on its visit to the Caribbean part of the Kingdom
of the Netherlands**

from 12 to 22 May 2014

The Government of the Netherlands has requested the publication of this response. The CPT's report on the May 2014 visit is set out in document CPT/Inf (2015) 27.

Strasbourg, 25 August 2015

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RESPONSE BY THE KINGDOM OF THE NETHERLANDS

ARUBA

A. Police

The CPT considers that a person should be kept in police custody for the shortest amount of time possible, preferably less than 24 hours. To this end, it recommends that the Aruban authorities amend the draft CCP accordingly. (paragraph 48)

On the basis of the current Code of Criminal Procedure (CCP), an order for remand in police custody is valid for two days at most, and may be extended once only in cases of urgent necessity, for eight days at most, in the interests of the investigation. On the basis of the new CCP, an order for remand in police custody will be valid for three days at most. The public prosecutor will be able to extend it in cases of urgent necessity once only, for three days at most, in the interests of the investigation. The suspect must be brought before the examining magistrate as soon as possible, but no later than during the first period of police custody, so that he can be examined.

The CPT recommends that the Aruban authorities remind police officers, through training and instructions, that they should use no more force than is strictly necessary when carrying out an arrest. Moreover, there can be no justification for striking an apprehended person after he or she has been brought under control. (paragraph 49)

This recommendation was raised with the Aruban Police Force's training institute. Consideration is currently being given to the possibility of providing a course for serving police officers in the short term.

However, Article 90 of the CCP does not provide for any time limit for the restriction on the right of notification. The CPT recommends that the restriction of this right should be time-limited. (paragraph 52)

This recommendation will be passed on to the committee (chaired by Professor Hans de Doelder) that is in charge of revising the CCP.

The CPT recommends that every effort be made to ensure that all detained persons are able to inform a third person of their situation as from the outset of their deprivation of liberty. (paragraph 53)

Detainees are given an opportunity to inform an acquaintance or family member that they have been deprived of their liberty when they are first admitted. The CPT's recommendation has been discussed in joint consultations with the police force and the Aruban Correctional Institution (KIA) to ensure that this right is respected in practice.

The CPT recommends that the Aruban authorities ensure that all persons arrested have the right of access to a lawyer from the very outset of their deprivation of liberty, including during any police interview. Such a right should include access to an ex officio lawyer if required. (paragraph 55)

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

In the new CCP, which currently lies before the Advisory Council, these provisions have been amended in line with the *Salduz* judgment handed down by the European Court of Human Rights. Thus, the new text states that the first interview cannot commence until the suspect has had an opportunity to consult his legal counsel, unless the investigation cannot be delayed, or it would be unreasonable to have to wait for the legal counsel to arrive. The new text also states that the lawyer is authorised to be present while the suspect is interviewed by an investigating officer. Until this CCP enters into force, suspects will be treated in line with the revised text, as far as possible, having regard to the suspect's rights.

The CPT recommends that the Aruban authorities amend the legislation accordingly in order to provide for right of access to another lawyer whenever access to a specific lawyer is restricted or denied in the interests of justice. (paragraph 56)

This recommendation will be passed on to the committee in charge of revising the CCP.

The CPT recommends that police officers be reminded that every request to see a doctor should be promptly dealt with in accordance with the Police Order on Detainees. Further, the police medical team should visit all police stations in which persons may be detained on a regular basis. (paragraph 57)

The above recommendation was discussed at length with the Aruban Police Force. In accordance with this force's guidelines, requests for medical care must be complied with immediately. The police management will ensure that these guidelines are implemented properly in practice. In addition, two medical doctors attached to the criminal justice system as well as two nurses have now been hired.

The CPT would like to be informed when the detention cells in Oranjestad Police Station are brought back into service. Further, it would like to receive details of the conditions of detention (inter alia access to natural light and ventilation, the functioning of the sanitary facilities and hygiene, and access to outdoor exercise). (paragraph 62)

It is not yet possible to state when the renovation of the detention cells at Oranjestad police station will be completed.

The CPT recommends that the Aruban authorities take the necessary steps to improve the conditions of detention at Noord and Santa Cruz Police Stations, notably as regards access to natural light and ventilation; mattresses should be cleaned and sheets systematically provided. Further, all detained persons held for 24 hours or more should be offered access to outdoor exercise every day. (paragraph 63)

The mattresses and sheets are already cleaned regularly. Provision has been made in the budget for 2015 to carry out work in the cells at Santa Cruz and Noord police stations to improve access to natural light and ventilation.

The CPT recommends that the Aruban authorities take out of service the detention cells at San Nicolas Police Station until such time as they have been fully refurbished and the sewage problems resolved properly. Under no circumstances should a detained person be held overnight at this police station. (paragraph 64)

The cells at San Nicolas have been out of service for some time now.

As regards persons held in a police station who are deemed to be at risk of suicide, an appropriate care protocol should be applied. (paragraph 65)

The Government endorses this recommendation and has instructed the Aruban Police Force to draft a care protocol in the short term to prevent any such incidents.

The CPT calls upon the Aruban authorities to review the system of remand detention on police premises with a view to substantially reducing its duration. (paragraph 66)

Aruba is currently struggling with a shortage of cells, both at police stations and in KIA. The government will nonetheless make efforts to implement the above recommendation as far as is possible.

B. Centro Dakota Immigration Detention Facility

The CPT recommends that the Aruban authorities move forward urgently with developing and adopting appropriate regulations for the detention of irregular migrants. Such regulations should include the right to legal assistance, provided free of charge for persons without sufficient means, and the right of appeal. (paragraph 68)

The above recommendation will be discussed with the government minister responsible for integration.

The CPT recommends that staff be selected and trained for the specific purpose of working with irregular migrants. (paragraph 70)

Efforts are currently being made, together with the justice system's training institute, to see when it will be possible to provide courses/training sessions for the staff of Centro Dakota.

No purposeful activities were offered. The CPT recommends that the exercise yard be improved. The CPT further recommends that the Aruban authorities develop a range of purposeful activities for detained persons at Centro Dakota. The longer the period for which persons are detained, the more developed should be the activities which are offered to them. (paragraph 72)

This recommendation has been discussed with the management of Centro Dakota. Sports activities are expected to start within two months.

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. (paragraph 73)

The above recommendation will be studied, taking into account the current financial constraints.

The arrangements for allowing foreign nationals contact with the outside world were generally adequate. However, the draft House Rules provided that the maximum duration of visits will be 15 minutes; the CPT does not see any justification for such a time-limit and would propose that visits be one hour or longer in duration. The CPT recommends that this provision in the draft House Rules be amended accordingly. (paragraph 74)

The above recommendation has been passed on to the management of Centro Dakota for a response.

The CPT recommends that all immigration detainees be expressly informed of their rights and the procedures applicable to them in a language they can understand. (paragraph 75)

Standard documents are currently being drafted in Dutch, English, and Spanish.

C. Aruba Correctional Institute (KIA)

The CPT reiterates its recommendation that the prison management of KIA develop a strategy to address the challenge of inter-prisoner violence. (paragraph 78)

A new governor started work at the KIA in January 2015, and since her arrival the working schedules have been modified to increase the efficiency of staffing. A strict new policy on sickness absenteeism is now being applied, and the results are already visible: the high rate of sickness absenteeism is gradually falling. The governor has also drafted guidelines for the strategic placement of detainees to avoid violence within KIA.

The CPT recommends that the Aruban authorities take the necessary steps to redress the state of decay and dilapidation in the prison, including preventing further flooding. Further, the number of inmates accommodated in each cell should not exceed two. In addition, measures should be taken to provide artificial lighting in every cell and to fully partition the sanitary annexe in each cell. (paragraph 79)

The CPT is concerned about the material conditions of detention at KIA. We acknowledge these concerns. As we have stated in an earlier communication, the current cuts in the national budget, combined with the high costs that would be involved in renovating KIA, make it impossible to tackle this problem on a large scale at the present time. However, since the last CPT inspection visit, the women's section has been moved to a different wing, which was renovated for the purpose. The sanitary facilities are now excellent and the material conditions have been considerably improved. In relation to the other renovations/modifications and construction projects that need to be carried out, consultations are currently in progress with the multidisciplinary committee (consisting of engineers from the Department of Public Works, architects, and KIA's management team).

The CPT reiterates its recommendation that activities for prisoners be 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. (paragraph 80)

Great improvements have been made in relation to daytime activities for the detainees. A new daytime programme for women detainees has started up, in addition to classes in electrical engineering and an agriculture and livestock farming project. Several detainees recently took national examinations in junior general secondary education (MAVO). In this connection it is also worth mentioning that a start has been made on drafting a resocialisation and reintegration programme for KIA, in which each detainee will have his or her own detention plan.

The CPT recommends that the Aruban authorities take the necessary steps to create an environment more appropriate for accommodating juveniles deprived of their liberty. Further, no more than two juveniles should be accommodated in each cell and juveniles should not have to share a cell with young adults. (paragraph 81)

The Government endorses the above recommendation and will make efforts to introduce improvements in the short term.

The CPT recommends that the Aruban authorities ensure that all juveniles held at KIA (whether on remand or sentenced) are provided with a full programme of vocational, educational, sports and recreational activities. (paragraph 82)

As noted above, great improvements have been made in relation to daytime activities. The ministry will make efforts to ensure that juveniles have a full programme of daytime activities for the coming financial year.

In the CPT's view, KIA was not a suitable place to accommodate a 15-year-old-boy and consideration should be given to providing a more child-centred environment for juveniles who must be deprived of their liberty. To this end, the CPT recommends that the authorities of Aruba develop a strategy for addressing the specific needs of juveniles deprived of their liberty. Moreover, the new Criminal Code provides for

sentenced juveniles to be placed in a youth institution (Plaatsing in een inrichting voor jeugdigen). As long as juveniles are kept in KIA, additional efforts must be made to provide them with a full range of purposeful activities and socio-educative support. (paragraph 83)

The Government endorses the above recommendation and will make efforts to create a more satisfactory juvenile wing.

The layout of the female unit was the same as that of the juvenile unit and was accommodating 10 women at the time of the visit. All the cells were clean, freshly painted and suitably equipped. However, the sanitary annexes were not fully partitioned and the toilets in several of the cells did not flush. Further, there were no call-bells and prisoners claimed that staff sometimes left the unit unattended. These deficiencies should be remedied. (paragraph 84)

The sanitary facilities of the women's wing have since undergone full repairs.

The CPT recommends that the Aruban authorities take the necessary steps to offer women prisoners a full range of purposeful activities, in line with the scheduled programme. Further, they should be offered the necessary support in preparation for their release. (paragraph 84)

A new programme of daytime activities for female detainees was introduced in February 2015.

The CPT wishes to highlight in particular the poor conditions in the IBA section where prisoners with mental health problems and other vulnerable prisoners were accommodated. The CPT recommends that immediate steps be taken to improve the situation in the IBA or that the IBA prisoners be transferred to alternative accommodation where their specific needs can be better met. (paragraph 85)

An estimate is currently being made of the costs that would be involved in renovating the IBA unit. In addition, the governor is now drafting an individual plan for each detainee.

The CPT recommends that the Aruban authorities take the necessary measures to increase the number of prison officers employed as well as to develop the capacity and role of prison officers. In parallel, the amounts of overtime should be reduced and the levels of, and reasons for, absenteeism tackled. (paragraph 86)

As noted above, a new sickness absenteeism policy has been introduced, which is already producing visible results. In addition, an employees' committee has been set up to organise social activities to improve internal relations among employees and between employees and management. As far as courses and training sessions to upgrade prison officers' professionalisation are concerned, talks have already been conducted with the justice system's training institute. The institute is currently drawing up and developing these courses.

The CPT recommends that all prison officers be offered in-service training and that regular compulsory refresher courses be organised for core requirements of a prison officer's job. (paragraph 87)

See the above answer.

The Committee recommends that the Aruban authorities establish a protocol for a guaranteed minimum service for inmates, applicable whenever there is a strike by prison staff. (paragraph 88)

This recommendation has been passed on to the governor of KIA to draft the prescribed protocol.

The CPT recommends that a mental health nurse be recruited at KIA and that provision be made for a psychiatrist and occupational therapist to visit the prison at least one day every week. It would like to be informed whether a dentist is now visiting KIA. Further, the CPT recommends that the Aruban authorities take the necessary steps to ensure that KIA possesses the appropriate financial resources to pay for specialist medical care that prisoners require and for laboratory testing. In this connection, consideration might be given to developing a closer partnership with the Ministry of Health, with a view to improving quality control and access to health care. (paragraph 90)

KIA currently employs two medical doctors, one psychologist, and one social worker. A dentist visits KIA every Wednesday. There is now a psychiatrist who provides KIA with support when requested to do so. The ministry is currently exploring the financial scope for hiring a psychiatrist on a full-time basis. We do not entirely comprehend the CPT's observation regarding the worrying provision of medical care because of outstanding bills and the unavailability of financial resources to provide specialist care. KIA detainees do not fall under the general health insurance scheme. If a detainee falls ill, the Ministry of Justice is responsible for paying the medical expenses, including for any specialist care that may be required. In practice, an excellent cooperative relationship exists with the National Health Insurance (AZV) implementing body. If a sick detainee requires medical care in another country, for instance, the transfer is arranged entirely by the AZV as if the detainee was covered by the general health insurance scheme. However, the Ministry of Justice is responsible for the costs incurred, and guarantees the payment of these costs in every case. AZV invoices the Ministry after the event.

The CPT recommends that the prison authorities review the current requests procedures to ensure that all requests to see a doctor or nurse are directly transmitted to the health-care service without interference by prison staff. (paragraph 91)

Requests for medical care are now submitted directly to KIA management.

The CPT recommends that the involvement of the prison doctor in drawing up dietary plans for prisoners be reviewed. (paragraph 91)

The above observation has been passed on to the KIA management for their reaction.

The CPT recommends that steps be taken to remedy the above-mentioned deficiencies with a view to ensuring that the health-care services are located in premises fit for purpose. (paragraph 92)

As already noted, the financial scope for the renovation of KIA is currently being explored.

The CPT recommends that the Aruban authorities take steps to ensure that every newly arrived prisoner be properly interviewed and physically examined by a medical doctor, or a fully qualified nurse reporting to a doctor, during the initial screening.

Such screening should always take place within 24 hours of a person's admission to prison, and preferably on the day of arrival at the establishment. Further, each prison health-care service should have in place a screening tool to enable a proper assessment of the health-care needs of each newly admitted prisoner. (paragraph 94)

Since April 2015, every detainee is now examined by the institution's medical doctor upon admission.

The CPT recommends that measures be taken with regard to the record drawn up after the medical examination of a prisoner – whether newly arrived or following a violent incident in prison. (paragraph 95)

The above recommendation has been passed on to the KIA management for implementation.

The CPT recommends that steps be taken to ensure that medical consultations at KIA guarantee medical confidentiality. Further, the CPT recommends that steps be taken to guarantee the confidentiality of medical data within the prison. (paragraph 96)

The medical information of detainees is treated with due care. This matter has once again been raised with the KIA management.

The recommendations in paragraphs 97 to 101 concerning the distribution of medication and disciplinary matters.

The above recommendations will receive further consideration.

The CPT recommends that steps be taken to bring the practice at KIA into line with the above-mentioned precepts concerning the role of health-care staff in relation to prisoners placed in solitary confinement. (paragraph 102)

The above recommendation has been discussed with KIA's medical staff. Internal agreements have now been concluded with a view to providing better guarantees of medical supervision.

The CPT recommends that the necessary steps be taken to end the involvement of health-care staff in carrying out urine tests for control purposes. (paragraph 103)

The above recommendation cannot be implemented in the short term in view of current staffing levels. The scope for implementing it in the longer term will receive due consideration.

The CPT recommends that accumulated visiting time for prisoners who receive infrequent visits be put in place and that steps be taken to increase prisoners' access to the telephone. Further, the 2005 Prisons Law should be amended to provide prisoners with at least one hour of visit time each week and increased access to the telephone. Consideration should also be given to exploring the use of communication through Voice over Internet Protocol for foreign national prisoners. (paragraph 105)

Telephone access at KIA has been improved. In addition, consultations are being held with the national telecommunications company to see whether a reduced rate could be introduced for the pay phones at KIA.

The CPT recommends that the Aruban authorities review the current system of complaints, taking into account the above remarks. Further, steps should be taken to reconstitute the Supervisory Committee and to ensure that it receives the necessary support in order to function effectively. (paragraph 106)

A detainees' committee was appointed as from February 2015. The committee meets with KIA's governor on a weekly basis. In addition, guidelines have been drawn up for dealing with detainees' complaints. Talks were recently held with the detainees, and there is now a more calm and contented atmosphere among the detainee population.

BONAIRE

The following general observation is in order. In 2008, in the run-up to the constitutional reforms that entered into effect as from 10 October 2010 (and that are described in the report), it was decided as a matter of basic principle that standards would be adopted on Bonaire, St Eustatius and Saba for an acceptable level of public services within the Netherlands, most notably in the areas of education, public health, social security, and security. In this context, the specific conditions on these islands were (and continue to be) taken into account. The European part of the Netherlands and the Caribbean part of the Netherlands ('BES') are making joint efforts to achieve these standards. To this end, the legislation of the former Netherlands Antilles is being retained wherever possible. The reasoning of the legislature was that, given the unique location and specific socioeconomic conditions of the Caribbean part of the Netherlands, there was a need for a specific statutory regime applicable solely to the islands. International law standards that applied to the Netherlands Antilles have been adopted for the Caribbean part of the Netherlands. In addition, the level of public services is being improved one step at a time, having due regard for international standards. In order to avoid placing too heavy a burden on the BES islands, a period of legislative restraint has been agreed with the islands, to last in any case until the evaluation that is scheduled for five years after 10 October 2010.

Preliminary question concerning the application of OPCAT

The CPT would like to be informed whether consideration is being given to extending the territorial application of OPCAT to the BES islands as well as to Aruba, Curaçao and St Maarten. (paragraph 10)

The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), adopted in New York on 18 December 2002, has been ratified for the entire Kingdom of the Netherlands. However, the Protocol applies solely to the European part of the Netherlands (see Dutch Treaty Series 2010, 273). It is up to the governments of Aruba, Curaçao, and St Maarten to determine whether they wish the Protocol to apply in their territories.

As far as the BES islands are concerned, the following may be observed. In the run-up to the constitutional reforms that entered into effect as from 10 October 2010 (and that are described in the report), it was decided in 2008 that the Netherlands Antillean legislation would initially be retained as far as possible. In order to minimise the administrative burden on the BES islands, a period of legislative restraint was agreed with the islands, to last in any case until the evaluation scheduled for five years after 10 October 2010.

The Government will study the results of the evaluation, and based on its findings will determine whether the Protocol can also apply to the Caribbean part of the Netherlands.

A. Police

The CPT recommends that the Dutch authorities ensure that all persons arrested have the right of access to a lawyer from the very outset of their deprivation of liberty, including during any police interview. Such a right should include access to an ex officio lawyer if required. (paragraph 18)

Every accused person in the Caribbean part of the Netherlands already has the right to consult legal counsel before the first police interview. In principle, lawyers are not present during the interview itself. In the case of minors, parents are given the opportunity to be present during the interview, where appropriate. At the moment, the presence of a lawyer during the interview is not a legal requirement, and it would also be difficult to implement in practice due to the islands' small size, which means that only a small number of lawyers are available. Consequently, the physical presence of legal counsel during the police interview would require a great deal of coordination between the police and lawyers with regard to the planning of interviews and ensuring the availability of an appropriate lawyer.

The Supreme Court has ruled that minor suspects in the European part of the Netherlands also have a right to be assisted by legal counsel or a confidential adviser during the police interview. For suspects who have reached the age of majority this right does not yet exist. As part of the implementation of EU Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings, this right will be adopted in Dutch legislation within the foreseeable future. In view of these developments, the government will look into the possibility of adopting the Committee's recommendation.

The delegation was also informed that suspects could be detained by the police for a maximum period of eighteen days in police cell blocks on St Eustatius and Saba before being transferred to the JICN on Bonaire. The CPT wishes to receive the observations of the Dutch authorities on the abovementioned issues as well as confirmation that arrested persons are indeed brought before a judge as required by the CCP BES. The Committee recommends that the safeguards against ill-treatment be reinforced in the light of the above remarks. (paragraph 19)

Suspects under arrest are brought before a judge within the prescribed statutory period. The examining magistrate of St Maarten also acts as such for Saba and St Eustatius. The duration of detention in a police cell on Saba and St Eustatius is decided on a case-by-case-basis by weighing the suspect's interests against those involved in investigation and prosecution. As the Committee itself has noted, there are no indications of any ill-treatment. The government therefore sees no need to reinforce the existing safeguards against ill-treatment by the authorities.

The CPT recommends that detained persons be offered additional time outside their cell, particularly when they are held in Block H for more than two days. (paragraph 22)

In consultation with JICN, a decision will be taken on the scope for offering persons detained in a police cell for over two days more activities outside their cell.

A number of persons complained that the prosecutor had imposed additional restrictions during their police custody, such as no phone calls or visits, for periods of ten days, with no specific reasons being provided. While an appeals procedure was in place, it appeared that this was not used much by detained persons. The CPT trusts that restrictions imposed in the interest of the investigation are kept to a minimum and assessments of the need for such restrictions are made on a case to case basis. (paragraph 23)

The government endorses this recommendation. The government is naturally unaware of the specific details of the allegations to which the CPT refers, but it is the established policy of the Public Prosecution Service to apply restrictions as the individual circumstances dictate. Restrictions are naturally imposed on contact with fellow suspects and witnesses. These restrictions are usually brief, but they may be extended in extremely serious cases involving

homicide. In each individual case, the public prosecutor will strike a balance between the different interests involved. In this connection it must be borne in mind that such restrictions are difficult to impose in JICN because of the institution's internal structure, and that they are almost impossible to impose on the Windward Islands, unless suspects are separated by sending one of them to another island (Saba/St Eustatius). This hardly ever happens in practice (just once in 2014).

B. Dutch Caribbean Correctional Institution – JICN

The CPT recommends that the Dutch authorities adopt and implement a coherent strategy designed to combat high imprisonment rates, taking due account of the relevant Council of Europe recommendations in this area, such as Recommendation R (99) 22 concerning prison population inflation; Rec (2000) 22 of 29 November 2000 on improving the implementation of the European rules on community sanctions and measures; Rec (2003) 22 on conditional release (parole); Rec (2006) 13 on the use of remand in custody; and Recommendation CM/Rec (2010)1 on the Council of Europe Probation Rules. (paragraph 25)

In 2014 the Research and Documentation Centre (WODC) launched a study to investigate the reasons for the imprisonment rate in the Caribbean part of the Netherlands. One of the research questions focused specifically on the available alternatives to detention. The study sought to gain a better understanding of the high rate of imprisonment in the Caribbean part of the Netherlands by identifying the most important factors that influence it. On the basis of the findings of this study, it will be decided to what extent new policy is desirable here.

The CPT wishes to be informed when the new facility becomes operational and to receive information on the numbers and categories of prisoners held. (paragraph 25)

Work on building the new facility started on 1 January 2015. The new facility is expected to be ready for use in the autumn of 2016, and will accommodate 125 detainees. It will be a multifunctional, flexible institution for the detention of adults (men and women) and juveniles (boys and girls) as well as aliens. It was decided to build small wings, making it possible to separate the diverse groups.

The CPT recommends that the Dutch authorities take steps to mitigate the extremely high temperatures inside the containers. (paragraph 28)

In 2010 measurements were taken of the temperature in the containers, which was shown to reach a maximum of 32 degrees centigrade on occasion. The containers are positioned such as to allow natural ventilation by the wind. The facility recently installed an awning to protect cells from the sun. To keep cool, detainees have two ventilators in the cell, besides which a quantity of ice is distributed every day. Between 08:00 and 12:00, and between 13:00 and 17:00, detainees are outside the cells and can find places in the shade. If the institution receives specific complaints about the heat, it responds by taking appropriate measures, such as distributing extra ice. In the design of the new facility, the architect and the Custodial Institutions Agency (DJI) paid particular attention to the natural ventilation of the cells and to ways of incorporating shaded spots into the cells and their vicinity.

The CPT trusts that the material conditions in the new facility will be in line with CPT standards. (paragraph 29)

The new facility was designed, and is being built, in accordance with the CPT standards. In addition, the cell design took account of the climate conditions. Please see [annexes 1 and 2](#).

The CPT recommends that the Dutch authorities pursue their efforts to offer purposeful activities to all prisoners. (paragraph 31)

The government will continue its efforts to offer purposeful activities to detainees. Thus, a start was made on the educational and training programme 'Bon-Eduka' for adult detainees at the end of 2014. This programme continues after the detainee's release and is tailored to suit the individual participant's abilities, background, and educational needs and preferences. At present, adults are offered the following subjects: Papiamentu (levels 1 and 2), English, Dutch, basic language skills, arithmetic, budgeting, and general development.

The CPT recommends that the regime for juveniles and young adults be further developed in order to provide a full programme of activities, including education, personal and social development, vocational training, rehabilitation and preparation for release. (paragraph 33)

First, the government wishes to express its satisfaction regarding the Committee's positive evaluation of the regime in the young adults' section (JOVO) of the men's wing of the prison. The government is constantly looking into policy development in this area, but believes that young detainees are currently being offered an extensive programme of activities.

The CPT recommends that the Dutch authorities take the necessary steps to ensure juveniles are not held together with adults and that every effort be made to accommodate them in specific juvenile facilities. As long as juveniles are held in JoVo, they should not have to share a cell with young adults. Further, the Dutch authorities should take the necessary legislative measures to introduce the requirement for juveniles on Bonaire to be placed in special juvenile institutions. (paragraph 34)

Young inmates under 23 years have separate facilities at JICN. Caribbean culture traditionally makes no strict distinction between juveniles aged under 18 and young adults aged 18 to 22. Given the small number of minor detainees, it would not be feasible to run a wing exclusively for this category. In view of the small scale of the BES islands and the small number of minors who must be detained in secure facilities by order of the court, it would not be realistic to build a separate juvenile institution for these minors in the Caribbean part of the Netherlands.

Improved accommodation should be available in the new facility (concerning the section for women prisoners within JICN) (paragraph 35)

The accommodation for all target groups will be improved in the new facility. All the cells will be for two detainees, although if necessary they may be used for single inmates. The surface area of each cell in the new facility will be 15 m². The cells are being built such as to allow for natural ventilation and will receive more daylight than at present.

The CPT recommends that women be offered additional schooling and relevant work opportunities in order to prepare them for their release. (paragraph 36)

Under the new vision being developed for the new JICN facility, *all* detainees will be offered work and adult education. Given the small number of female detainees and the generally short periods of detention, this will be offered on a project basis, taking account of each detainee's preferences and capacity and of what is available. When a female detainee is

admitted, JICN exerts itself to match supply to demand. The abilities and needs of the woman concerned are established, after which an effort is made to find a course that will maximise her chances of employment after her release. The course must be one that can be followed and completed within a short space of time and provide the guarantee of a job upon release. To this end, the social workers contact companies to ask them whether they can offer the woman concerned a job after her release, and what kind of education/training would be required.

The CPT recommends that systematic screening for infectious diseases and ill-treatment be introduced. (paragraph 38)

The medical intake, which takes place within 24 hours after the admission of the person arrested/detained to JICN, uses a standard questionnaire and identifies any health risks. Thus, the nurses ask whether the person admitted has (or has had) an infectious disease, such as HIV, hepatitis or other STIs. If there are any risk factors or medical reasons to suspect the presence of HIV, hepatitis B or C or other STIs, tests are administered. The government also emphasises the importance of providing good information about these diseases to prevent infection.

It is part of the standard intake procedure to ask new detainees about the presence of any symptoms or problems. At that point, the detainee can bring up any injuries or complaints that are the result of ill-treatment. This means that any signs of ill-treatment can be flagged up at an early stage. If any such signs are found, further investigation is carried out.

The CPT recommends that an adequately equipped room in the public hospital in Bonaire be made available, where such treatment and follow-up may be provided. Moreover, the Committee recommends that steps be taken to ensure that prisoners suffering from a serious mental disorder are not held in ordinary prisons but in specialised psychiatric institutions.

Furthermore, the CPT recalls that, if forced treatment is deemed necessary, it should be surrounded by appropriate safeguards and based on clear procedures. (paragraph 39)

Plans are in place to create a general psychiatric ward in Mariadal hospital on Bonaire in the course of 2015. Where appropriate, a detainee with a psychiatric disorder can be admitted to this ward if it is deemed medically essential and the person concerned requires 24-hour

care. At the moment, detainees with a psychiatric disorder can be transferred to the Forensic Observation and Counselling Unit (FOBA) of Curaçao Centre for Correction and Detention on Curaçao, on the basis of the mutual arrangement on detention capacity. If necessary, it is possible to transfer detainees to the Netherlands for treatment.

In 2012 policy was drawn up in relation to forced medical treatment (Protocol on the admissibility of forced medical treatment, attached to these observations, see [annexe 3](#)). In practice, almost all cases involve the forced administration of medication. Forced medication is administered only in cases in which the psychiatrist sees no other way of helping the person concerned. This has occurred five or six times in total in the past two years. The necessity for forced medical treatment is determined by a medical doctor attached to the justice system in response to a psychiatrist's recommendation. This medical doctor then draws up a plan of action including an indication of when the treatment can be terminated. If the treatment lasts longer than two weeks, a committee is formed, consisting of the said medical doctor, a section head, and a psychologist, to advise the governor.

The CPT's recommendations concerning the recording of injuries (paragraph 40)

The government endorses the need for scrupulous documentation to build up a file on any violent incident and any allegation of ill-treatment made by a detainee. Any observations made by the detainee that are relevant to the medical examination are included in the file, as is any report of an ill-treatment claim. The physician's findings are included in the detainee's medical file. Dutch law does not provide for the attending physician to make a report. The assessment of the consistency between any allegations by the detainee and the findings of the physician's medical examination is the task of an independent medical doctor, often a forensic physician. An independent medical doctor may be called in, for instance, if the detainee has made a criminal complaint. If injuries are photographed in the institution, these photographs are added to the detainee's medical file. In addition, a body chart form has been developed (see [annexe 4](#)). It should be added that the medical service always checks a detainee after the internal support team has placed him in an isolation cell, and after a person who has been arrested is brought back by the police. If any injuries are found, or ill-treatment is suspected, this information is added to the person's medical file.

Descriptions of traumas are kept in a separate file as well as in the detainee's medical file.

The detainee, or his legal representative, can receive a copy of the medical file at his or her request.

In the Netherlands, a general practitioner (or the prison GP) cannot independently approach the police if he or she finds injuries on the detainee, and may certainly not do so without the patient's knowledge and consent. This would be a violation of patient confidentiality, something that is possible only in exceptional cases, for instance in cases of suspected child abuse or if the patient's life is in danger. The physician treats the patient, records his findings in the file, and advises the detainee to lodge a criminal complaint (possibly through his lawyer) if ill-treatment is suspected.

The CPT recommends that appropriate steps be taken to ensure that prisoners are able to have access to the prison's health-care service on a confidential basis, not exposing medical information to non-medical staff. (paragraph 41)

Immediately after the Committee's visit, locked post-boxes were hung up for messages to the medical service. Only staff attached to the medical service can open them.

The CPT recommends that prisoners be granted a minimum of one visit of one hour per week. It further recommends that all prisoners be able to receive visits from their family members without physical separation, except in individual cases where there may be a clear security concern. (paragraph 43)

The visiting arrangements in JICN are based on the BES Prison Rules. Article 24, paragraph 1 of these rules states that a detainee is entitled to receive visitors for one hour at least once every two weeks. JICN actually has more generous visiting arrangements: 45 minutes a week of visiting time. In view of staffing levels, walking routes, and the availability of the visiting hall, any further expansion of the visiting arrangements would not be feasible.

The limited physical separation between visitors and detainees in JICN makes it possible to keep order during visits with relatively few personnel and hence in an efficient way. It minimises opportunities to bring contraband into the institution and is therefore deemed necessary as part of the policy to suppress drug use.

In some cases, detainees can receive their visitors in an interview room, for instance on birthdays or to discuss private problems. Long-term prisoners also have the option of receiving visitors in this way. In this case, there is no physical separation.

The CPT recommends that prisoners be granted regular and frequent access to the telephone. (paragraph 44)

JICN's prison rules state that detainees are entitled to speak by telephone to people outside the institution for ten minutes at a time at least once a week. However, this is a fixed minimum laid down in regulations. In practice, detainees are permitted longer and more frequent calls, unless the prison governor or the examining magistrate has imposed restrictions.

The CPT recommends that steps be taken to ensure that disciplinary punishment of prisoners does not include a total prohibition of family contacts and that any restrictions on family contacts as a form of punishment should be used only where the offence relates to such contacts. (paragraph 45)

Current procedure is already in accordance with this recommendation. A detainee who is subject to disciplinary punishment can receive visits at a designated time, provided the detainee's conduct permits it. This includes detainees in isolation or segregation cells.

Under section 36, subsection 1 (b) of the BES Prisons Act, the suspension of visits can be imposed as a disciplinary punishment. This disciplinary punishment, which is almost never imposed in practice, is used only where the offence relates to such contacts.

The CPT would like to receive comments from the Dutch authorities on how it plans to ensure independent inspections of places of deprivation of liberty in these BES-Islands are carried out on a regular basis. (paragraph 47)

In this connection the government would refer to the Kingdom Act of 7 July 2010 establishing the Law Enforcement Council for Curaçao, for St Maarten and for Bonaire, St Eustatius and Saba ('Law Enforcement Council Kingdom Act'). Under section 3 of the Act, the Council is charged with the general inspection of institutions and other places in which custodial sentences, punishments involving the deprivation of liberty, detention orders or measures involving the restriction of liberty are imposed.

In August 2013, the Law Enforcement Council screened JICN to gain insight into the way this organisation functions as part of the justice system in the Caribbean part of the Netherlands. The State Secretary for Security and Justice submitted the report of this inspection to Parliament on 3 April 2014 (House of Representatives 2013-2014, 29270, no. 90).

In accordance with section 4 of the above Kingdom Act, the State Secretary for Security and Justice asked the Council to conduct periodic inspections. As part of quality assurance and expertise promotion, working agreements were made with other inspectorates, such as the Security and Justice Inspectorate, to arrange such inspection visits.

CURAÇÃO

A. Police

The CPT considers that a person should be kept in police custody for the shortest amount of time possible, preferably less than 24 hours. To this end, it recommends that the Curaçao authorities amend the draft CCP accordingly. (paragraph 119)

At the moment a criminal suspect may initially be detained and held in police custody for two days (*inverzekeringstelling*), but with the possibility of an extension for a further eight days (*verlenging inverzekeringstelling*). See article 87, Curaçao Code of Criminal Procedure (hereinafter: CCP).

After the initial two-day period of investigation and interview, the public prosecutor may choose to release the suspect or extend the period of remand in police custody by eight days for further investigation. After the first two days, the suspect must be brought before the examining magistrate, who will assess whether the custody is in accordance with the provisions of the law (CCP) and if the person may be classified as a suspect on the basis of the case file presented. If there is a reasonable suspicion against the person and the provisions of the law have been satisfied, the examining magistrate will conclude that the detention is lawful. At any time during the period of remand in police custody, the suspect may lodge a request with the examining magistrate for the termination of custody (article 91, CCP).

The legislature has amended the CCP. The amended draft will change the period of remand in police custody to three days, with the possibility of an extension for another three days. This is in effect shorter than the previous arrangements (i.e. an initial two-day period with the possibility of an eight-day extension).

The reason for this change is that in the Netherlands, which has a similar system, experience has shown that the initial detention period is not always extended but that, where there is cause to do so, the prosecutor uses the opportunity of the examining magistrate's assessment of the legality of custody (under article 89 of the CCP) to apply for an order for remand in custody.

This system proposed in the new draft CCP will be much more effective and beneficial to the suspect. The advantage of the new system is that the public prosecutor is authorised and obliged to release the suspect immediately if investigation after this initial period is no longer needed, besides which, in cases where such investigation is required, this cannot be obstructed or impeded by the shortness of the period of remand in police custody. In contrast, the CPT's proposal to limit the period of police custody to 24 hours would in many cases have the effect of obstructing and impeding the investigation. It should be noted that a suspect may not continue to be held in police custody if there is no longer any need for investigation, and that all demands or applications for extension submitted by the public prosecutor are subject to the approval of the examining magistrate.

Furthermore, the main reason why the Curaçao authorities agree that remand in police custody must be kept to a minimum is that police cells do not meet the minimum requirements for a place of pre-trial detention. Article 94, paragraph 1 of the draft CCP has therefore been amended as follows: 'Detention must only be implemented in a detention centre ...' However, the legislature leaves the possibility open that the court may order otherwise. This is consistent with a) the relevant legal provisions (article 110, paragraph 4 of the CCP), which states that a detention order issued by the examining magistrate must specify the time and duration for which it is granted and the place where the suspect will be kept in preventive detention) and b) current practice. The current practice is that courts sometimes indicate that the suspect or accused may not be held in a police detention centre for longer than a specified period of time.

The government is aware that the CPT has already criticised the situation in which suspects and/or sentenced detainees spend a long time in police detention centres. Although the government endorses this criticism, it appears that a shortage of detention capacity sometimes makes it unavoidable to keep suspects in police detention centres (for the shortest possible time) during the period of pre-trial detention.

The word 'only' was inserted into the text of this article to emphasise that it is not permissible to hold a suspect at a police detention centre without judicial authorisation. If such a situation occurs – that is, someone is held at a police detention centre without due authorisation – this person must immediately be released.

Article 94, paragraph 1 of the CCP is also to apply to detention and imprisonment in a detention centre such as SDKK. Article 99 states that article 94 applies *mutatis mutandis* to

arrest and imprisonment. Under the Constitution, a person may be remanded in custody elsewhere in the Kingdom (as further regulated in article 94, paragraph 4 of the CCP). If the accused person objects to this transfer, he may lodge proceedings at the Court of First Instance under article 43 of the CCP.

The CPT recommends that police custody does not exceed the initial period of two days (inverzekeringstelling) and that any further extensions of detention are carried out at SDKK. Further, once a detained person has been physically transferred to the prison, full authority over their care should be transferred to prison staff and Block 1 should be formally integrated into the prison structure. (paragraph 120)

The Minister of Justice fully supports the CPT's proposal that any further extensions of detention should be carried out at SDKK, and that once a detained person has been transferred to the prison the SDKK staff have full authority over their care. This is already the case. The suspect is detained in a police cell for the period of remand in custody and all extensions of detention are carried out at SDKK.

As noted above, the draft CCP states that detention must only be implemented in a detention centre, subject to the proviso that the court may order otherwise.

The Minister of Justice also agrees with the proposal to integrate Block 1 into the prison structure, and the necessary measures have already been taken to implement this change. Block I is currently being renovated and is expected to be ready by April 2015. Once the renovation is finished, Block I will be integrated into the prison structure and placed under the authority of SDKK; accordingly, full authority over the care of detainees in Block 1 will be transferred to SDKK staff.

The CPT would like to be informed whether the new unit at SDKK is now operational and, if so, what regime is in place. Further, it wishes to receive confirmation that long-term detention of prisoners no longer takes place in police stations. (paragraph 121)

The new unit at SDKK in which detainees with security issues can be placed in segregation cells is not yet operational. If all goes according to schedule, the new segregation cells at SDKK will be operational as from June 2015.

There has never been any long-term detention of prisoners at police stations (such as those in Punda or Otrabanda) since these can only provide overnight accommodation, but only in police detention centres (such as Block 1, Rio Canario, and Barber). In the past we have used police detention centres to accommodate prisoners who could not be moved to SDKK because they had received threats or faced life-threatening situations or some other danger.

Since 2014, we have made extensive use of the new mutual arrangements as defined in article 38, paragraph 1 of the Charter for the Kingdom of the Netherlands for the purpose of regulating the cooperation between the Netherlands, Aruba, Curaçao and St Maarten, in the mutual provision of detention capacity for prisoners as well as in the temporary transfer of persons who are legally deprived of their liberty, by transferring some of the detainees with security issues to other countries within the Kingdom.

The Curaçao authorities are working very hard to have the segregation cells ready in the short term so that we can use them for detainees with security issues.

The CPT recommends that police officers be regularly reminded, through training and instructions, that no more force than is strictly necessary should be used when effecting an apprehension. Senior police officers should remind their subordinates that ill-treatment is not acceptable and will be punished accordingly. This message should be recalled in an appropriate form at suitable intervals. (paragraph 124)

Sessions have already been held to provide information and raise awareness on this issue and these will be continued on a regular basis.

The CPT recommends that the Curaçao authorities expressly prohibit the blindfolding of persons who are in the custody of police. (paragraph 125)

It is not standard procedure to blindfold suspects. The current procedure is that suspects who are accused of a serious crime (such as murder) and who, according to information received by the police, are armed and dangerous, are blindfolded after their detention and while they are being transported from one point to another. These suspects are detained and transported by special, highly-trained police officers.

The reason for the use of blindfolds is the wide range of factors that must be taken into account by the special arrest team when dealing with suspects who are suspected to be

armed and dangerous. These include the suspect's size, age, any known history of violence, the availability of weapons, and any gang-related issues. To ensure the safety not only of the arresting officers but also of those being detained and transported, the arrest team uses blindfolds in these specific cases.

The CPT would like to be informed of the disciplinary/criminal sanctions imposed in respect of the complaints of police ill-treatment for the years 2010 to 2014 inclusive. (paragraph 126)

All complaints against police officers are received by the Internal Affairs Department, which then conducts an investigation. In view of the sensitive nature of this responsibility, the officers working for internal affairs report directly to the chief of the National Police Force and not to any other party. All cases are reviewed by the public prosecutor.

Cases involving minor offences may not be prosecuted; instead, the Internal Affairs Department may take disciplinary action such as temporary suspension. Cases involving serious offences such as torture or ill-treatment always lead to prosecution, however. Disciplinary action may include fines, community service and/or suspension. Where a criminal sanction is imposed, this may be a prison sentence or dismissal.

In the period 2010 to 2014, both disciplinary and criminal sanctions were imposed on police officers. The Internal Affairs Department does not have records for all these cases and the way they were dealt with. The sanctions imposed on police officers included the following:

- In 2008 the public prosecutor instituted criminal proceedings against two police officers ('J.D' and 'I.W.') for torture. Both were removed from their positions and given custodial sentences for torture.
- In 2012 two allegations of torture were made, in both cases against the same three police officers ('E.S.', 'A.C.', and 'H.A.'). The three suspects were tried for both these alleged offences in 2013, convicted of torture by the Court of First Instance and removed from their positions. However, the cases went to appeal, and March 2014 the three police officers were acquitted of all charges by the Court of Appeal.
- On 11 June 2013, the police officer 'R.R.R.S.' was convicted of two cases of ill-treatment. He was given a suspended custodial sentence of six months with an operational period of three years and removed his position.

- In 2014 'C. de P.' was convicted of two assaults, during one of which he was on duty. He was given a suspended custodial sentence of one month with an operational period of three years and fined ANG 1,000, but the ruling by the Court of First Instance that he should be removed from his position was overturned. Nevertheless, he was dismissed.

According to the records of the Public Prosecutor's Office, the following investigations were conducted following allegations of ill-treatment and torture by public officials during the period 2009 to 2013.

	ILL-TREATMENT	TORTURE	TOTAL
2009	17	0	17
2010	57	0	57
2011	15	15	15
2012	24	3	27
2013	17	0	17
2014	15	0	15

The CPT recommends that the Curaçao authorities ensure that all persons arrested have the right of access to a lawyer from the very outset of their deprivation of liberty, including during any police interview. Such a right should include access to an ex officio lawyer if required. (paragraph 130)

Every suspect has the right to a lawyer or legal representation (article 48, CCP) from the moment they are deprived of their liberty. This includes any police interview. Following the *Salduz* judgment of 27 November 2008 of the European Court of Human Rights (ECtHR) and a Supreme Court judgment based on it (judgment of 30 June 2009; see LJN BH3079), the Public Prosecution Service announced a new policy on the presence of a lawyer during police interviews.

Under the revised policy:

- Any adult or minor who is stopped for questioning and/or arrested must be informed by an investigating officer, prior to the first police interview, of his right to consult a lawyer;
- If the suspect waives this right in writing, the police interview may start forthwith;

- If the suspect does not waive this right, the lawyer of the suspect's choice – or otherwise the duty lawyer – must be telephoned either by the reporting officer who arrested the suspect or by the assistant public prosecutor before whom the suspect was brought after his arrest;
- The first police interview may start after the lawyer and the suspect have had an opportunity for consultation, either in person or by telephone;
- The lawyer may be present during the police interview.

Minor suspects must also be informed of their right to be represented by a lawyer or confidential adviser during the police interview.

The substance of the *Salduz* judgment of the ECtHR has been incorporated into article 48 of the draft text of the new CCP. The draft text states as follows:

Part Two: Legal aid

Article 48

1. A person who is suspected of any crime has the right, in accordance with the provisions of this Code, to choose one or more lawyers, or by virtue of articles 61 to 68 to be assisted by government-assigned counsel.
2. The suspect's counsel must be informed without delay if the suspect has been legally deprived of his liberty. The official report must include a record of this notification.
3. The first police interview cannot commence until the suspect has had an opportunity to consult his counsel, unless the investigation cannot be delayed, or it would be unreasonable to have to wait for counsel to arrive.
4. The lawyer is authorised to be present while the suspect is interviewed by an investigating officer.
5. A lawyer who is present during the police interview must refrain from influencing the interview.

In the context of the CPT's overall recommendation to place Block 1 under the full authority of SDKK (see paragraph 120), the CPT recommends that the medical care for all persons held in Block 1 be placed under the responsibility of the prison health-care service. (paragraph 131)

In the proposed amendments to the Code of Criminal Procedure, Block 1 will be placed under the authority of SDKK after its renovation, which means that all persons held in Block 1 will be placed under the responsibility of the prison health care service. The local police force and SDKK have reached agreement on this transfer of authority/responsibility.

The CPT recommends that every newly admitted prisoner to SDKK be medically assessed (see also paragraph 167). (paragraph 132)

The medical department is expected to be fully staffed by July 2015, following a recruitment drive initiated in February 2015. Once the department is fully staffed and the new intake department is in place, every new inmate will be medically assessed upon admission.

The CPT recommends that appropriate medical supervision always be made available for the detention of suspected body-packers. It would further like to receive information on the temporary airport facility for the detention of body-packers and the treatment and care protocols in place there, as well as in the new cells at Rio Canario Police Station. (paragraph 133)

The airport does not have a temporary facility for the detention of body-packers in operation. Four temporary cells have been built at Rio Canario, including two toilets for drug body-packers, but will not become operational until Curaçao police force ('KPC') personnel become available. The existing facility at Rio Canario is approaching the tendering phase and requires renovations, which are scheduled to start in May 2015. The facility is expected to be ready for use in eight months.

Once the facility for the detention of body-packers becomes operational, medical supervision will be available there. Protocols will be drawn up before the facility is opened.

In 2007, the CPT recommended that the written information on rights sheet that is provided to detainees includes a reference to the right to have a close relative or other person notified of one's arrest, and the right to have access to a doctor.⁷⁶ The notification of rights sheets collected by the delegation in 2014 did indeed include such a reference in the Dutch version. The versions in Papiamentu, English, Spanish and French, however, did not. This lacuna should be corrected in order to ensure that all the various language versions are accurate. (paragraph 134)

The notification of rights sheet is available in four languages: Papiamentu, Dutch, English and Spanish. Suspects are notified verbally, upon detention, of their right to be informed of the offence of which they are accused and the right to the assistance of an interpreter if they have little or no command of the Dutch language. They are also informed that they have the

right to remain silent and not to incriminate themselves. Suspects are not only verbally notified of these rights but also handed a written form listing these rights. These forms are available in Dutch, English, Spanish and our local language, Papiamentu.

All versions of the notification of rights sheet, including those in Papiamentu, English, Spanish and French, also include references to the right to have the police inform a specified person of the detention and the right to have access to a doctor.

There is currently no practice of recording police interviews on Curaçao. However, the new draft CCP includes an obligation to record police interviews in serious cases. The CPT welcomes the fact that the recording of police interviews will be made a standard practice. Nevertheless, it would like to be informed as to which cases will be covered by this practice.

Further, the CPT recommends that the system to be introduced should offer all appropriate safeguards (such as the use of several tapes, one of which would be sealed in the presence of the detained person and a copy used as the working tape). A copy of the electronic recording should be made available to the detained person and/or his/her lawyer on request. The obligation to record should be reflected in applicable laws and policies. (paragraph 135)

Pursuant to article 186, paragraph 3 of the amended CCP, audio and audiovisual recordings will be made of interviews conducted by investigating officers of persons suspected of criminal offences as defined in article 100, paragraph 1 wherever possible. By a Country Decree containing general measures, further instructions may be issued regarding the technical specifications of the audio equipment and the registration and storage of the information recorded. The purpose of this provision is in part to prevent the unauthorised use of coercive measures, and in part to create the possibility of control. By means of such a country decree, the government is creating the scope for using these digital resources, while also issuing instructions on how to do so. Not all suspects will be able to afford the luxury of hiring a lawyer and the government may not always reimburse them for these high costs. To reduce the crucial importance of the lawyer's physical presence, this article provides that interviews will be recorded in all cases (preferably on video, but in any case on audio equipment).

The recording obligation is limited to interviews conducted by investigating officers of persons suspected of a crime for which pre-trial detention may be imposed. In other cases (involving less serious offences or the hearing of witnesses) interviews may also be recorded, but there is no legal obligation to do so. Interview rooms must be properly equipped for recording purposes.

Although no local cases are known of any miscarriages of justice attributable to a false confession, audiovisual recordings can also help to prevent any such event taking place in the future.

The new system, when introduced, should offer all appropriate safeguards. This already applies in those few cases in which interviews are already recorded. Several tapes are used, and all parties, including the detainee and his/her legal counsel, are provided with copies.

It is too soon to state precisely how the new system will function. The recording obligation is laid down in the new CCP. The new CCP also states that general measures will be laid down in a country decree. This is a completely new procedure that needs to be implemented and all interview rooms will need to be suitably equipped. We have not yet reached that stage, and it is not yet possible to state the precise nature of the safeguards that will be in place in this system.

In the report on the 2007 visit, the CPT noted that custody recording practices varied considerably from one police station to another, none providing a comprehensive custody record. It recommended that authorities consider the possibility of drawing up an individualised custody record for use at all police stations and including all aspects of custody, as well as all measures taken in connection with it.⁷⁷ Since then, the comprehensive ICT application ACTPOL has been developed and made available for use at all police stations.⁷⁸ The CPT welcomes the introduction of this system. However, on a number of occasions it appeared that only basic information was recorded, leaving out other actions relating to detained persons (e.g. visits received, requests made and incidents). The CPT recommends that clear guidelines on the use of the system be introduced, in the light of the above remarks. (paragraph 136)

The Curaçao Police Force (KPC) has implemented an updated version of ACTPOL, which complies with the CPT recommendation on individualised custody records. The guidelines and the appropriate staff training programme will be developed and implemented in 2015.

The CPT recommends that a valid warrant, providing the legal basis for custody, always be kept in the individual custody record of a detained person. A valid warrant should automatically be provided by the authority ordering the custody to the authority responsible for executing it. (paragraph 137)

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

In addition, all police detention centres in which suspects are detained have records of the custody of each detainee in their charge. The Public Prosecutor's Office inspects the detention centres on an annual basis; all detainee warrants are checked for validity at this time. Two such inspection visits were conducted this year, at the detention centres of Rio Canario, Block I, and Barber on 5 May and 4 December. All the legal warrants for the custody of the detainees were requested and these were present in the system in all cases. The government has never experienced or received any information regarding the absence of warrants providing the legal basis for custody. Nor have any complaints been received regarding a failure to hand over the valid warrants providing the legal basis for custody to the detainee. All warrants providing the legal basis for custody are served on the suspect by the bailiff or the police, as the law requires.

An in-cell call-bell system had been installed, as well as three surveillance cameras in the corridors of the detention block. Air-conditioning now ensured comfortable temperatures. The cell block consists of ten cells, each measuring some 6.5 m² and equipped with in-cell semi-partitioned toilet and shower; eight of the cells had two beds. However, access to natural light was very limited. The CPT notes that cells under 7 m² provide limited space for one person and are absolutely inadequate for keeping more than one detained person for overnight detention. In sum, material

conditions could generally be considered as satisfactory for the purposes of police detention not exceeding a few days, if all cells are used for single-occupancy only and access to natural light is improved. The CPT recommends that the Curaçao authorities take the necessary steps in the light of the above remarks. (paragraph 138)

At present there are cells for single occupants and other cells that can accommodate more than one inmate. For example, Barber has two-person cells, but each is used for only one person. In exceptional cases, overcrowding may lead to two persons being placed in a cell.

Some detention centres admit far more natural light than others. Efforts are being made to improve the situation. The police station recently constructed at Rio Canario and the one at Otrobanda that is nearing completion each have three detention cells with direct access to natural light.

By contrast, material conditions at Rio Canario Police Station continued to be inadequate and the renovations planned for 2014 had still not taken place at the time of the CPT's visit. The CPT recommends that the Curaçao authorities proceed rapidly with the planned renovations. (paragraph 139)

The tendering process will take place in April 2015. The renovations are scheduled to start in May 2015 and expected to finish within eight months.

By letter of 24 September 2014, the authorities informed the CPT that renovations of Block 1 were ongoing and planned to be finalised in February 2015. These renovations were to include new sanitary facilities and new lighting as well as beds, mattresses and pillows from prisons in the Netherlands that had been closed. The CPT would like to receive confirmation of the implementation of the announced renovations and refurbishments. (paragraph 140)

The following improvements to Block 1 were installed by the end of February 2015:

- an emergency exit
- fire hoses
- new electrical sockets in cells
- new sanitary facilities
- a new storage area.

The complete renovation of Block 1 is scheduled to finish in April 2015. Block 1 will be furnished with new mattresses and pillows. The beds have been refurbished.

The CPT recommends that the Curaçao authorities ensure that all detained persons are offered a minimum of one hour of outdoor exercise every day. Further, an improved regime should be put in place as detention at Block 1 generally lasted up to ten days and often even longer. The CPT also recommends that the regulations governing access to visits, telephone calls, newspapers, radio and television are reviewed in order to ensure restrictions are imposed only when required to protect the legitimate interests of the police investigation, assessed on a case by case basis, in accordance with Article 90(1) of the CCP. (paragraph 141)

KPC and SDKK will review the regulations governing access to visits, telephone calls, newspapers, radio and television to ensure that restrictions are imposed only when required to protect the legitimate interests of the police investigation.

Furthermore, efforts will be made to offer a minimum of one hour's outdoor exercise every day. Once Block 1 comes under the authority of SDKK, the sports programme offered to the prisoners will also be offered to the detainees in Block 1. Another (improved) regime will be in place in Block 1 once it becomes a remand centre functioning as a fully operational intake unit. Its personnel will be trained as prison officers ('Prison institution workers' or 'PIW' staff).

The CPT recommends that the Curaçao authorities make every effort to find alternative solutions to long-term detention at police stations, such as the use of a special unit within SDKK (see also paragraph 185). Should a person be detained longer than a few days at a police station, he or she should be provided with access to activities, such as reading materials, radio, television and increased access to outdoor exercise. The longer a person is detained in such conditions, the more activities should be provided. Further, the CPT would like to be informed of the legal basis used for long-term placement in police stations. (paragraph 142)

The new segregation cells at SDKK will come into operation in June 2015. From then on, there will be no long-term detention of prisoners in police stations. To guarantee the safety of those who are believed to be at risk among the general population of detainees, these persons will be placed in segregation while in detention. The new segregation cells will have

all the necessary facilities listed by the CPT. When Block 1 is completed (planned for May 2015), those who were hitherto detained at police stations for their own safety will be moved to Block 1 until the segregation cells are ready for use.

The CPT recommends that the Curaçao authorities draw up a care protocol for all detained persons who are deemed to be at risk of suicide while in police custody, taking into account the above remarks. Further, it goes without saying that persons should never be placed naked in a cell under any circumstances, let alone as a form of punishment. (paragraph 143)

The Public Prosecutor and Curaçao Police Force (KPC) will draft a protocol for suicide risk in the short term.

B. Curaçao Centre for Detention and Correction (SDKK)

The CPT recommends that a full review of the record-keeping system at SDKK be carried out, including the introduction of the above-mentioned registers and full documentation of the legal basis for the detention of each individual held at SDKK. (paragraph 147)

A review of the record-keeping system has been carried out since June 2014. All documents for all new admissions (244) are present. Furthermore, the missing documents were inventoried and requested from the Public Prosecutor's Office. A structured registration and record-keeping system has not yet been implemented. SDKK will look into the possibility of amending the current Prison Administration System to include systematic registration and record-keeping in relation to all detainees. The findings are expected in June 2015.

The CPT recommends that the Curaçao authorities deliver the clear message to prison officers that all forms of ill-treatment, including verbal ill-treatment, are not acceptable and will be the subject of sanctions. (paragraph 148)

The Internal Affairs Department sends a clear message to prison officers that all forms of ill-treatment, including verbal abuse, are unacceptable and will be the subject of sanctions. This department is responsible for investigating allegations and serious incidents involving personnel.

The CPT reiterates its recommendation that the prison management of SDKK develop a strategy to address the challenge of inter-prisoner violence, taking into account the above remarks. Further, all incidents and injuries resulting from violence should be registered so as to better monitor the situation and identify potential risks in order to prevent inter-prisoner violence. (paragraph 149)

Inter-prisoner violence is avoided by keeping members of rival gangs in separate blocks. Most violence is triggered by members of rival gangs. The intake procedure focuses particularly on identifying any enemies among the inmates and any problems a person might have with another prisoner, and this information is taken into account when assigning the new inmate to a particular block. High-risk prisoner movements are announced through the communication system as 'red light' warnings, and all other prisoner movements come to a halt until the high-risk prisoner has been moved.

A module is being added to the Prison Administration System to register all incidents. Analysing these registrations will help to find better ways of monitoring the situation and identifying potential risks, and ultimately to prevent inter-prisoner violence. Inter-prisoner aggression is dealt with in several courses offered to detainees (e.g. those on social skills and changing attitudes). These courses should help to reduce the aggression levels of prisoners and inter-prisoner violence.

Personnel are being trained as prison officers ('Prison institution workers' or 'PIW' staff) and the coursework in this training includes recognising signs of violence and aggression problems in the prison population.

The CPT recommends that the necessary steps be taken to refurbish and improve the material conditions at SDKK in the light of the above remarks. (paragraph 150)

Block 7B has been renovated (as a pilot project) and Block 8 is next on the list. The sanitary facilities will be either fixed or replaced in all blocks as part of the Usona water project part II. In Block 2 the leakage problem has been resolved and the roof replaced. Further renovations of Block 2 are under way and the old 'kitchen cells' will be refurbished and converted into recreational rooms for the prisoners. The stairs are still in need of replacement; they will be replaced by the end of 2015 or at the beginning of 2016.

Pest control spraying takes place on a regular basis on the advice of the public health department (GGD). Extra spraying has been carried out to control mosquitoes. In normal conditions this would have sufficed, but because of the rainy season, this spraying proved inadequate. The frequency of spraying will be increased in consultation with the GGD.

Where fire safety measures are concerned, the necessary equipment has been ordered but not yet received. The fire safety equipment will be checked by the in-house emergency response officers. The team leaders have successfully completed the appropriate course and the organisational implementation is under way.

The refurbishment of cells started in August 2014. It will be completed one block at a time and will be ready by the end of 2015.

The CPT recommends that Curaçao authorities vigorously pursue their efforts to put in place a range of purposeful activities for all prisoners. (paragraph 152)

In 2015 SDKK will continue its efforts to put in place a range of purposeful activities for all prisoners. For example, the gym reopened in January 2015 and several sports activities have been planned.

SDKK's workshops provide inmates with both training and work opportunities. SDKK is looking into offering online distance courses to prisoners who are interested in this option. Some internet security issues need to be addressed before this is implemented.

The CPT recommends that opportunities be created in such a way that those who study continue to have the possibility to earn an income. (paragraph 153)

The opportunity to study and earn an income is offered to all prisoners, in accordance with availability, through working and learning in the workshops during the daytime, once SDKK has dealt with the relevant security issues.

A full programme of activities should be available for young adults held at JoVo, including for those on remand. (paragraph 154)

A separate full programme of activities will be available for young adults held in the JOVO wing, including those on remand. The activities in the JOVO wing started in March 2015 with a basic educational programme. Issues arose relating to a shortage of security personnel, but these have since been resolved.

The CPT recommends that juveniles not be held at SDKK, but exclusively accommodated at a juvenile institution. (paragraph 155)

Juveniles under 16 years of age are accommodated at the juvenile institution at JJIC and not at SDKK. The eight temporary cells for juvenile detention (persons aged under 18) at JJIC are already operational. The construction of the new facility with 27 cells including a living area started in January 2015 and is scheduled to finish within 14 months.

Detainees aged between 16 and 24 are placed in a special 'young adults block' at SDKK.

The CPT recommends that an adequate policy on babies in prison be developed bearing in mind the above considerations. (paragraph 156)

An adequate policy on babies in prison will be developed, taking due account of the welfare of mother and child. The draft policy will be presented to the prison's management team in April 2015. After it has been reviewed by the management team, this policy will be implemented in the prison.

The CPT recommends that the design of the sanitary facilities be changed so that the toilet is separate from the shower. (paragraph 157)

The design of the sanitary facilities being replaced as part of the Usona water project II does not include separating the toilet from the shower. The prison's present infrastructure cannot accommodate the change that would be necessary in order to separate them as the CPT recommends. This change would necessitate the building of a new prison. Some blocks have separate communal showers, with toilets being located in the cells.

The CPT recommends that women be offered additional schooling and meaningful work opportunities, as well as psychological support, in order to adequately prepare them for their release. (paragraph 158)

The goal is that, as of July 2015, SDKK will have a psychologist on duty to provide psychological support for women. Part of the correctional plan is to prepare prisoners (including women) for their release.

The Parole Office only deals with former prisoners and does not have any dealings with inmates in SDKK. The Parole Office devotes great care to the intake of each former inmate, paying particular attention to the person's individual abilities and needs with regard to additional schooling and employment.

Unemployment is in general very high on Curaçao and the Parole Office therefore supervises former inmates in coaching sessions that include practical training in job application methods, filling out forms, and using computers. Recent years have seen a sharp fall in the number of female prisoners. At present, there are only some 6 to 10 women inmates. Many courses cannot be provided for such a small group, because of the disproportionately high costs involved. A few years ago (2012, 2013), courses aimed at future employment such as positions as receptionists and telephonists were offered, as well as language courses (Dutch and English).

In 2007, the CPT severely criticised the totally inadequate numbers of prison officers at Bon Futuro Prison, creating a situation in which staff were not in control of prisoners within the establishment. While staffing levels have improved, serious problems with staffing, due to both vacancies and high levels of absenteeism, have continued over the years. A serious issue in recent years has been the lack of qualified managers in the prison due to a high turnover of staff and several vacancies not being filled for extensive periods of time. The delegation received complaints from staff members, and particularly from representatives of the trade union ABVO,⁸⁶ that changes in political power often led to changes in management, creating instability and hampering progress. Another problem was the serious delay in the official adoption of the 2009 'book of functions' (functieboek), creating difficulties in recruitment in line with the actual need. Since mid-2013, however, key management positions have gradually been filled, while technical support staff continue to be sent from the Netherlands. At the time of the visit, it was reported that the position of

Human Resources Manager, which had been vacant for more than two years, was going to be filled from 15 May 2014. Management of human resources had been minimal with little vision on how to address the serious problems of staff attendance. The delegation found, for example, that data entry with regard to staff absence was several months behind and little had been done in recent years to motivate staff and address concerns. The CPT recommends that the newly appointed Human Resources Manager urgently address the above-mentioned shortcomings. It further recommends that the 2009 book of functions be adopted as a matter of urgency. (paragraph 159)

Reducing staff absenteeism was a major focus in 2014 and will continue to command attention in 2015. The use of the time and absence registration system was improved in 2014, and by the end of the first quarter of 2015, all units and departments will be making full use of it.

An analysis of staff absenteeism was prepared, but it proved impossible to carry out a more detailed analysis, since key management positions relating to this subject were not yet filled. Employees are still working according to two different functional structures (the 2007 and 2009 *functieboeken* or 'books of functions'). This made it difficult to analyse absenteeism figures by departments or functions. The automated system is based on the 2009 book, but in practice some employees work in accordance with the 2007 book and others in accordance with the 2009 one. The monthly meetings of medical and welfare staff have now resumed and a formal sick leave/absence protocol has been approved. The controls need to be implemented and become part of management's day-to-day tasks.

In 2015 the 2009 'book of functions' will be adopted as a matter of urgency for this year. The human resources management vision on how to address the serious problems of staff attendance focuses initially on ensuring that up-to-date, accurate data (management information) is available on which to base a solution. In addition, managers will be instructed to take an active role in the process and to prevent absences that are work-related or that are not caused by medical issues. Sanctions will be put in place, but also rewards, e.g. for 100% attendance. The new Human Resources Manager started work in May 2014. The vision/opinion presented is that of SDKK's management team. In 2015 the focus will be on administration and registration as well as on taking action to reduce sick leave and unauthorised absences.

In the light of the above remarks, the CPT welcomes the large scale retraining of 140 prison 'guards' into prison 'officers' and recommends that all prison officers be offered regular inservice training. (paragraph 160)

All prison guards will be retrained as prison officers by the end of 2015. Those who work closely with prisoners and detainees are being trained first. A personal educational plan will be prepared for all employees with the aim of providing all prison officers with regular in-service training.

The CPT calls upon the Curaçao authorities to ensure that efforts be made to secure the equivalent of at least one full-time doctor at SDKK and that steps be taken to fill the vacant posts for nurses. The CPT further recommends that steps be taken to ensure that a member of the health-care staff is present every day, including at weekends, and that someone qualified to provide first aid always be present in the prison, including at night. In addition, the CPT recommends that a full-time psychologist be recruited as soon as possible for SDKK and that the availability of the psychiatrist be increased in order to ensure appropriate psychological and psychiatric care for prisoners. (paragraph 162)

The vacancies in the medical department will be filled by July 2015. These vacancies are for a full-time doctor, a psychologist, and nurses. A member of the health care staff is present every day including at weekends, during office hours. After 17:00 members of the medical staff are on call. Prison guards and security guards are taught how to provide first aid as part of their training. There is always someone on duty in the prison who is capable of providing first aid.

SDKK will look into expanding the availability of the psychiatrist in order to ensure proper psychiatric care for prisoners. A full-time psychologist will be recruited by July 2015.

The CPT recommends that a defibrillator and ECG be purchased. (paragraph 163)

SDKK will purchase a defibrillator and an ECG. The prison already has two AEDs. The ECG has been ordered but has not yet arrived.

The CPT recommends that the Curaçao authorities take the necessary steps, including at management level, to ensure the financial security of the medical service in order to guarantee prisoners a minimum standard of continuity of care. In this connection, consideration might be given to developing a closer partnership with the Ministry of Health, with a view to improving quality control and access to health care. (paragraph 164)

SDKK has regular contact with the public health department (GGD) with a view to improving the quality of care. The recruitment of medical staff will start as of July 2015. All medical personnel will be hired on a contract basis, for three years, and guaranteed payment for their services in accordance with legal regulations.

The CPT recommends that steps be taken to ensure prompt access to health care for prisoners. (paragraph 165)

Prisoners are given access to health care and SDKK will take steps to ensure that this care is provided promptly. Once the vacancies in the medical department have been filled, the increased capacity will make it possible to plan more visits to doctors and nurses per day. The department will closely monitor the period detainees have to wait before they can see a nurse or doctor.

The CPT recommends that the administration of the medical service be reorganised, ensuring that all relevant information in relation to a patient can be found in his or her personal medical file. (paragraph 166)

The administration of the medical service will be reorganised to ensure that all relevant information relating to a patient can be found in his or her personal medical file. As soon as all the current vacancies are filled, the focus will be on reorganising the administration of the medical files.

The CPT reiterates its recommendation 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 or her admission; save for exceptional circumstances, the interview/examination should be carried out within 24 hours. (paragraph 167)

As of July 2015 the vacancies in the medical department will be filled, making it possible to perform the medical examination and interview as soon as possible after the detainee's admission to the prison. By August 2015, when the new intake department is in place and the vacancies have been filled, medical intakes will take place within 24 hours of admission.

The CPT recommends that measures be taken with regard to the record drawn up after the medical examination of a prisoner – whether newly arrived or following a violent incident in prison. (paragraph 168)

The medical department of SDKK will take steps to ensure that the record drawn up after a prisoner's medical examination contains the information as recommended by the CPT. These steps will include making the report available (with the prisoner's consent) to his or her lawyer. If valid allegations appear to have been made, the prison governor will bring the report to the attention of the public prosecutor within 24 hours. All reports of injury are sent to the prison governor, unit heads of detention, the Internal Affairs Department, and the complaints coordinator.

The CPT recommends that appropriate steps be taken to ensure that prisoners are able to have access to the prison's health-care service on a confidential basis, not exposing medical information to non-medical staff. (paragraph 169)

Appropriate steps are taken to ensure that prisoners' use of the health care service is on a confidential basis. Non-medical staff do not have access to prisoners' medical information, including the hard-copy files stored in the cabinets in the medical department. The digital medical information in the Prison Administration System is also kept separate; the IT department ensures that only medical staff can access it.

The CPT recommends that placements in the in-patient ward of the prison be made exclusively on the basis of medical criteria, by decision of the responsible medical professionals. (paragraph 170)

Placements in the prison's inpatient ward are made exclusively on the basis of medical criteria, by decision of the responsible medical professionals.

In 2013, a 36-year old woman prisoner died from cardiomyopathy after having waited for several hours before the doctor came to see her. Deaths in custody should systematically be the subject of an investigation, in order to establish the cause of death, identify possible criminal and/or disciplinary responsibility and ascertain whether there are lessons to be learned for the future as regards operating procedures. Such investigations should always include an autopsy. The CPT was informed that an investigation had indeed been carried out into this death in 2013. The CPT would like to receive the outcome of this inquiry, including the autopsy report. (paragraph 171)

Deaths in custody always lead to an investigation (by SDKK and the Public Prosecutor's Office) to establish the cause of death, to discover whether there is any criminal and/or disciplinary liability, and to ascertain whether any lessons can be learned for the future as regards operating procedures. A copy of the autopsy report drawn up in this case will be attached to this document (see [annexe 5](#)). The report indicates that the female prisoner died as a result of heart failure.

The CPT recommends that placements at FOBA are exclusively made on the basis of medical criteria, by decision of the responsible psychiatrist. (paragraph 172)

As soon as the segregation unit is operational (June 2015), persons considered to be at risk among the general prison population will no longer be placed in the Forensic Observation and Counselling Unit (FOBA) to guarantee their safety. From then on, the decision to place a person in FOBA will be made exclusively on the basis of medical criteria by the responsible psychiatrist or ordered by the court.

The CPT recommends that medication is distributed exclusively by medical staff. (paragraph 173)

SDKK will ensure that medication is distributed exclusively by medical staff.

The CPT recommends that the Curaçao authorities take the necessary steps to ensure that forced medication is never administered in a prison setting and that alternatives be put in place, surrounded by appropriate safeguards. (paragraph 174)

The forced administration of medication in FOBA is subject to the appropriate safeguards. Any such forced medication in FOBA is administered exclusively by medical personnel and can only be prescribed by the doctor or psychiatrist. This means that although the administration does not take place in a hospital setting, certain safeguards are nonetheless in place.

The CPT recommends that the Curaçao authorities take steps to remove all ligature points from the cells and to ensure that other prisoners cannot engage with prisoners held in these cells. Further, the CPT would like to receive confirmation that the suicide watch cell at the unit for women prisoners remains out of service as it was considered unsuitable for such a purpose. (paragraph 176)

The segregation and suicide watch cells need to be upgraded and SDKK will follow the CPT's recommendations in this connection. The segregation and suicide watch cells will be modified in the course of 2015. The suicide watch cell in the women's wing will no longer be used until these modifications have been made.

The CPT notes that while FOBA indeed appeared to provide a safe environment for the prisoners who were accommodated there, the unit does not function as a proper psychiatric institution appropriate for offenders who have been ordered to undergo psychiatric treatment. Its location, within a prison environment, and its staffing cannot be considered as adequate for such patients. At the same time, however, the management of the only psychiatric hospital in Curaçao, Klínika Capriles, have indicated that they feel underequipped to accommodate particularly dangerous forensic psychiatric patients. Further, the new Criminal Code provides for the sentence of placement in a psychiatric hospital or placement at the disposal of the Government, including confinement in a custodial clinic (the so-called TBS order). The CPT would like to receive the comments of the Curaçao authorities on this matter. (paragraph 177)

Klínika Capriles

Klínika Capriles does not use ligature restraints.

SDKK

The segregation and suicide watch cells need to be upgraded and SDKK will follow the CPT's recommendations in this connection. An air-conditioning unit will be placed in the suicide watch cells for the purpose of climate control. The main task of FOBA personnel is the observation and supervision of psychiatric patients/offenders. As long as the island lacks a specialised institution for prisoners subject to 'TBS' or hospital orders, particularly dangerous psychiatric patients are sent to Klínika Capriles because this clinic's staff can provide better, more specialised psychiatric care for them.

It was difficult for the delegation to gain a clear overview of the application of disciplinary measures, due to the absence of any register. Nevertheless, it appeared from files that procedures were generally respected. The Prison Supervisory Committee, however, informed the delegation that it regularly observed different disciplinary measures being imposed for similar infractions. It had suggested the introduction of equal punishment for comparable situations and better explanations for the imposition of a certain punishment within the disciplinary decision. The CPT would like to receive the comments of the Curaçao authorities on this matter. It further recommends that steps be taken to ensure that the documentation and registers concerning disciplinary sanctions are properly maintained, accurately record the times of beginning and ending of the measure, and reflect all other aspects of custody (in particular, the precise location where a prisoner has been held). (paragraph 178)

Steps are being taken to ensure that the documentation and registers concerning disciplinary sanctions are properly maintained and that the records include the times at which the sanction began and ended and reflect all other aspects of custody. One of the measures that has been taken is the addition of a module to the existing Prison Administration System to make it easier to register disciplinary actions. On the basis of the codes in the sanctions book (which prescribes sanctions for the different types of infractions), it is decided what type of disciplinary action needs to be taken in response to a particular infraction. A scale is also applied, according to which disciplinary action depends partly on whether the infraction is the first, second, or third offence.

The CPT recommends that measures be taken to ensure that those who have been denied work as part of a disciplinary decision, are reinstated or otherwise compensated in order to redress the consequences of an annulled decision, in line with Article 44(5) of the National Ordinance on the Prison System. (paragraph 179)

The sanctions handbook defines the specific cases and circumstances in which work can be denied as a means of maintaining order or security within a block or workplace. Denial of work is not a disciplinary sanction. Work can only be denied as a means of preserving safety or keeping order in the workplace. For instance, if a prisoner starts wielding a knife violently in the kitchen, he will be forbidden to work in the kitchen as a safety measure. He will be allowed to work elsewhere, however. We therefore consider that denying access to a certain workplace is a measure taken to maintain order or safety, not a disciplinary sanction.

The CPT has further noted that solitary confinement was invariably accompanied by the corollary punishment of withdrawal of permission to use the telephone and to receive visits. The Committee has stated clearly that prisoners undergoing a punishment of solitary confinement as a disciplinary sanction should never be totally deprived of contacts with their families and that any restrictions on such contacts should be imposed only where the offence relates to such contacts. The CPT recommends that the Curaçao authorities take the necessary steps to comply with such an approach. (paragraph 180)

As we have noted above, denial of work is not a disciplinary sanction. In the very near future, SDDK will be amending the rules to the effect that prisoners will not be deprived of contact with their families. That is, they will be allowed to make phone calls and receive visitors.

On a more positive note, the delegation found the refurbishment of the disciplinary cells in Block 6 to be a vast improvement of the situation prevailing at the time of the 2007 visit, providing better hygiene, sanitary facilities and access to natural light through the installation of new windows. The cells had not yet been brought back into service at the time of the visit. The CPT would receive confirmation that these disciplinary cells have been brought back into service. (paragraph 181)

The cells in Block 6 were used temporarily as disciplinary cells. The disciplinary cells in the new block whose construction is nearing completion will come into use in June 2015. These are in accordance with CPT standards.

The CPT recommends that a comprehensive protocol for cell searches be drawn up, taking into account the above remarks. (paragraph 182)

SDKK will review the existing procedures for cell searches and take the CPT's remarks into account.

A prison doctor acts as a patient's personal doctor. Consequently, in the interests of safeguarding the doctor/patient relationship, he should not be asked to certify that a prisoner is fit to undergo punishment. The CPT recommends once again that the role of prison doctors and nurses in relation to disciplinary matters be reviewed, in the light of the above remarks. In so doing, regard should be had to the European Prison Rules (in particular, Rule 43.2) and the comments made by the Committee in its 15th General Report (see paragraph 53 of CPT/Inf (2005) 17). (paragraph 183)

The role of prison doctors and nurses in relation to disciplinary matters has been reviewed, and the medical staff do not advise on whether or not a person is fit to be placed in a disciplinary cell. However, the medical staff will determine within 24 hours of an individual being placed in a disciplinary cell whether that individual requires medical attention.

The CPT recommends that the necessary steps be taken to end the involvement of health-care staff in carrying out urine tests for control purposes, in the light of the above remarks. (paragraph 184)

SDKK has not carried out any urine tests for control purposes, nor have the health care staff been involved in any urine tests for control purposes. Urine tests are performed on admission as part of the routine medical examination, and they may be repeated during detention if there is a medical reason for it.

The CPT made certain recommendations regarding prisoners who needed to be segregated for their own protection or the protection of others. (paragraph 185)

The new discipline and segregation block will be operational as of June 2015. Policies and procedures need to be drawn up in the light of the above remarks for the management of persons who have been placed under protection. The policies and procedures for the segregation cells will specify the rules and regulations governing contact with other prisoners and personnel, and will also include details of the daily programme of activities.

The CPT recommends that the Curaçao authorities review the current system of complaints taking into account the above remarks and introduce a complaints register. (paragraph 186)

A complaints register is being developed as a module to be added to the Prison Administration System. This register will make it easier to assess the type of complaints that have been submitted and the way they have been followed up.

The CPT recommends that mechanisms be put in place to ensure timely and transparent decision-making with regard to conditional release and electronic monitoring. Further, prisoners should be informed clearly and in due time of the outcome of such decisions. (paragraph 187)

SDKK will continue to ensure timely and transparent decision-making with regard to conditional release and electronic monitoring and to inform prisoners clearly and in due time of the resulting decisions. SDKK is currently reviewing the disciplinary reporting process to ensure that all relevant information is available in good time to be weighed in the decision-making, especially with regard to electronic monitoring. SDKK will also closely monitor and urge adherence to deadlines, to ensure that prisoners receive clear and timely notification of the resulting decisions.

The Prison Supervisory Committee carries out regular visits to all sections of the prison, reporting any concerns directly to prison management and issuing an annual report including specific recommendations, based on observations of Commissioners and complaints heard by prisoners. Prison management should report to the Minister of Justice within three months of receiving the annual report on measures taken to implement the recommendations. The delegation, however, was informed by the Committee that several recommendations that had been made repeatedly over the

preceding years had remained unimplemented. The CPT would like to receive the comments from the Curaçao authorities on this issue. It would also like to receive the response by prison management to the 2013 Annual Report of the Prison Supervisory Committee. (paragraph 188)

The response to the 2013 Annual Report of the Prison Supervisory Committee is attached to this document (see [annexe 6](#)). As of the second quarter of 2014, the management team and middle management of SDKK have been virtually fully-staffed. In 2014 and continuing into 2015, a concerted effort has been made to deal with issues that have remained unresolved for some time now. Prisoner committees were recently set up to chart serious complaints made by prisoners.

The fire safety issues have now been addressed. They have not been resolved completely, but fire extinguishers were recently installed and staff have completed courses enabling them to act as in-house emergency response officers.

The Law Enforcement Council (Raad voor de Rechtshandhaving) is an inter-country body of Curaçao, St. Maarten and the Netherlands. [...] The CPT was informed that an inspection to SDKK had recently been carried out and that a report was being drafted. The CPT would like to be provided with a copy of this report. (paragraph 189)

A copy of the report will be attached to this document (see [annexe 7](#)).

C. Curacao Judicial Youth Institute (JJIC)

The delegation was also informed of plans to construct a whole new juvenile detention facility at the campus location, envisaging a total of 98 beds, with the creation of a capacity of 24 places in the initial phase. While welcoming the conceptual approach, the CPT would question the need for so many places for juvenile offenders given existing numbers were around 10. Once such a facility is built, the temptation will be to fill the whole unit, placing an overemphasis on detention of juveniles. This would be in contradiction to one of the cardinal principles enshrined in the United Nations Convention on the Rights of the Child⁹⁸ and in the

European Rules for juvenile offenders that juveniles should only be deprived of their liberty as a last resort and for the shortest possible period of time. The CPT would appreciate the comments of the Curaçao authorities on this matter. (paragraph 193)

The Curaçao authorities are pleased that there will be new facility in which juveniles can be detained and rehabilitated separately from adults. In this facility the emphasis will be on educational pedagogical methods such as ART, U-Turn, EQUIPP and TOPs, and not primarily on detention.

The CPT recommends that the Curaçao authorities deliver the clear message to staff at JJIC that all forms of ill-treatment, including verbal ill-treatment, are not acceptable and will be the subject of sanctions. (paragraph 194)

The unacceptability of all forms of ill-treatment is communicated clearly to everyone working in JJIC by means of a new policy, including the following:

- A course entitled 'Working from our heart', aimed at reminding staff to prioritise care and compassion when working with these young people, was started in JJIC in October 2014.
- Staff have received a further reminder that ill-treatment in any form whatsoever, including verbal abuse, will be the subject of sanctions.
- Verbal abuse has been discussed at personnel meetings.
- Young people have been informed of their right to be treated properly, including verbal treatment, and notified that if subjected to any form of ill-treatment they should immediately inform their social worker.
- Sanctions have been imposed on perpetrators of ill-treatment.

The state of affairs at the closed department of the juvenile judicial institute was totally unacceptable at the time of the visit. Children who have been deprived of their liberty should be provided with an extensive programme of activities (education, vocational, recreational and sports) for at least eight hours a day with an individual sentence plan drawn up and reviewed on a regular basis, with the involvement of the child. They should also be accommodated in appropriate material conditions. (see paragraph 201)

The situation during the CPT's last visit was exceptional, in that hardly any of the juveniles in the closed wing were following a programme. This was due to a combination of factors at that time, including new admissions and escapes.

Shortly after the CPT's visit, most of the juveniles were following full-time programmes, whether in the building or elsewhere.

There are currently six juveniles in JJIC, four of whom are following full-time programmes (8 hours a day). The other two are following programmes for about 6 hours a day, and this will increase to 8 hours as soon as JJIC acquires a new teacher who can provide lessons corresponding to their needs and interests.

The CPT recommends that all staff working with juveniles receive specific training for working with juveniles in the light of the above remarks. (paragraph 197)

A specific training course with regular sessions has been set up for staff working with juveniles. This training includes:

- Practical Penitentiary Action.
- A course taught in October 2014 entitled 'Working from the heart'.
- A course called 'TOPs', an extension of EQUIPP, which focuses on ways of teaching juveniles to develop a sense of responsibility.
- A refresher course in first aid and the distribution of medication.

The CPT recommends that someone qualified to provide first aid should always be present at the establishment, including at night. (paragraph 198)

There is always someone present during the day shift who is qualified to provide first aid. Once the first aid refresher course has been completed, the intention is to ensure that this also applies during the night hours.

The CPT recommends that every newly admitted juvenile 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 or her admission; save for exceptional circumstances, the interview and examination should be carried out within 24 hours. (paragraph 199)

This has been arranged with the medical doctor who works with the juveniles at JJIC. Urgent cases are attended by one of the group of 13 doctors who are on duty. A doctor is always available at night and during the weekend.

The delegation was also informed that due to the lack of specialised training for the staff, the police were called in on occasion to re-establish order. Such a practice should be ended. The CPT recommends that clear guidelines be developed regarding disciplinary sanctions, ensuring a minimal resort to the punishment of solitary confinement. Further, safeguards should be put in place as well as a recording system which can be used to monitor the application of sanctions. (paragraph 200)

There is a CCTV and recording system in the new building of the closed section. In the near future, action will be taken to purchase CCTV and recording systems for the semi-open sections as well. In addition, the staff have been trained to respond appropriately to disturbances caused by juvenile inmates. Clear guidelines for disciplinary sanctions have been developed and are evaluated on a regular basis.

By letter of 24 September 2014, the Curaçao authorities confirmed that the facility at the Rembrandtstraat is no longer being used for the detention of children. The CPT welcomes this development and would like to receive information on the operation of the new unit at the Incastraat, including information on staffing and weekly activities. (paragraph 201)

The closed section, with eight juveniles, moved into the new building on 18 September 2014. The new building includes eight individual cells, two multi-functional rooms, one indoor recreational room, one outdoor sports and recreational area, and an outdoor visiting area, which can also be used for recreation.

There are six staff members in total: two members of staff work on each of the two daytime shifts (between 06.00 and 21.30) all week. In addition, three security guards are on duty during every shift.

The daily activity programme is as follows:

05.30-06.15: wake up time, shower etc.

06.15-07.00: breakfast and chores

07.00-09.00: vocational eco-training (inside)

07.30-15.00: vocational carpentry within the grounds

(morning break and a snack from 10.15 to 10.45 and lunch from 12.30 to 13.30)

15.00-16.00: leisure time

16.30-17.30: sports

17.30-18.00: bath time

18.00-18.30: dinner

18.30- 19.30: educational topic or watching TV etc.

Every Wednesday

14.00-18.00: individual psychology for about half an hour

18.00-19.00: supervised group interaction sections

Every Friday

15.30-17.00: music lessons

Every Saturday

Morning hours: clean up room, other chores

Every Sunday

1 hour for each juvenile with their visitors

D. Immigration Detention Facility: Barracks for Irregular Immigrants

The CPT recommends that specific regulations be developed which are appropriate for the detention of irregular migrants. Such regulations should include a maximum period of detention. Further, if the only reason of failure to deport is the lack of funds for an airfare, the CPT recommends that the State provide these funds much earlier in the process. (paragraph 203)

Specific regulations will be developed for the detention of irregular migrants. This year SDKK will follow up on the CPT's recommendation, in close consultation with the police force (KPC). These consultations will lead to the development of specific regulations and a revised definition of the maximum period of detention in accordance with laws and regulations. The government of Curaçao pays the air fare when all other means of financing have been shown to be impossible, in which case the financing process is started and completed as soon as possible.

The CPT recommends that the Curaçao authorities introduce a legal remedy enabling Irregular migrants to have the lawfulness of their deprivation of liberty decided speedily by a judicial body. (paragraph 204)

Immigration detainees have the right to inform a person of choice of their situation and are given an opportunity to contact their country's consulate if they wish to contact persons in their country of origin. Local calls can be made and those costs are covered by the State. If an interpreter is required, these services are provided by the consulate of the country of origin. In addition, immigration detainees can always request *pro bono* legal aid.

All immigration detainees will be informed of their rights and the procedure in a language they can understand. This document will be prepared and made available in the languages commonly spoken by those concerned.

The CPT recommends that the Curaçao authorities develop a range of purposeful activities for detained persons at Illegalen Barakken. The longer the period for which persons are detained, the more developed should be the activities which are offered to them. (paragraph 206)

Immigration detainees are offered a range of recreational activities, including exercise (gym), football, board games, and watching television. They are also offered a choice of books to read. A programme of more purposeful activities for those detained for a relatively long period has yet to be developed in the course of this year. Most immigration detainees stay for only short periods of time, but the SDKK will nonetheless make an effort to provide a programme for those who stay for longer.

The CPT recommends that staff be selected and trained for the specific purpose of working with irregular migrants.(paragraph 207)

SDKK will look into providing special training for those working with irregular migrants. The curriculum will focus on courses in the languages most commonly spoken by those concerned and will also include courses addressing cultural differences. In addition, the section will in future be staffed by prison officers (PIW staff) rather than security guards, since the former have received more specific training on the treatment of detainees.

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. (paragraph 208)

The systematic medical screening of all immigration detainees will be introduced as soon as the vacancies in the medical department have been filled.

The CPT recommends that all immigration detainees be granted the right to receive visitors, in particular relatives and representatives of relevant organisations, throughout the period of their detention. (paragraph 209)

In the near future, immigration detainees will be granted the right to receive visitors throughout the period of their detention.

E. Klínika Capriles Psychiatric Institution

The CPT considers that persons requiring psychiatric assessment and/or treatment, whatever their status, should be assessed and/or treated in a medical facility. At present, the FOBA cannot be considered as a medical facility. The CPT would like to be informed about the intentions of the Curaçao authorities with regard to the placement of forensic psychiatric patients in the future. (paragraph 211)

This subject overlaps the remits of the Ministry of Justice and the Ministry of Health, the Environment and Nature. The law prescribes that the Ministry of Justice must bear the costs involved in caring for patients in this category. Talks have been held on the desirability of changing the relevant policy and regulations. The final policy document will depend on the outcome of these talks.

The CPT recommends that steps be taken to improve the living conditions of patients accommodated in the Pico Plata unit, in the light of the above remarks. It would be preferable that accommodation of a similar standard to that available for short-stay patients be provided for Pico Plata patients. (paragraph 213)

Arrangements are being made to provide adequate living conditions by the end of June 2015.

The CPT recommends that the staffing levels on the Pico Plata unit be reviewed; in particular the presence of the psychiatrist and of the psychologist should be increased. (paragraph 215)

The Curaçao authorities have not set any norms for staffing levels at the psychiatric hospital.

Klinika Capriles operates with a staffing level that we consider to be minimal. Thus, the psychiatrist is available at the unit for 8 hours a week, and the psychologist for 15 hours a week. The current funding (which has remained unchanged since 2000) is insufficient to raise staffing levels.

The CPT would like to receive a copy of the Klínika Capriles' policy on restraint, including on issues associated with restraint, such as staff training, complaints policy, reporting mechanisms and debriefing. Further, the CPT would like to receive confirmation that a measure of seclusion is always ordered by a doctor and that only in emergency situations is the measure applied by nursing staff and a doctor subsequently informed. (paragraph 216)

A copy of the protocol will be attached to this document (see [annexe 8](#)). New policy on these matters is in its final stages and will be introduced shortly. The staff have been trained in response methods and are assisted by security guards who have received training in Practical Penitentiary Action.

The CPT recommends (paragraph 218) that the Curaçao authorities review the procedures for involuntary placement at Klínika Capriles or any other psychiatric hospital in order to meet the standards set out in paragraph 217.

The Ministry of Health, the Environment and Nature has taken note of the recommendation and acknowledges the importance of a review of the protocol. Steps will be taken no later than August 2015 to review the protocols and discuss the issue with the relevant partners, including the Ministry of Justice and Klínika Capriles.

The CPT recommends that the Curaçao authorities take the necessary steps to recognise the principle of free and informed consent to treatment, in the light of the above remarks. (paragraph 219)

As part of the Kingdom of the Netherlands, Curaçao is a co-signatory to all the international conventions in which the principles referred to are enshrined. The Ministry of Health, the Environment and Nature has taken note of the recommendation and acknowledges the importance of a review of the protocol. Steps will be taken to review the protocols and discuss the issue with the appropriate partners, including the Ministry of Justice and Klínika Capriles.

The CPT recommends that complaints boxes be installed in each ward. Further, it would like to be informed whether a patient's counsellor has been appointed and to receive information on the number, nature and outcome of the complaints made by involuntarily placed patients for the years 2013 and 2014. (paragraph 222)

There is no statutory requirement for the appointment of a patients' counsellor. No counsellor has been appointed as yet because of budgetary uncertainties.

No official complaints were submitted in 2013. However, in response to a performance satisfaction survey, 22 suggestions for improvement were made. Managers are using these suggestions to improve performance. Written complaints are dealt with in accordance with the complaints procedure.

ST MAARTEN

On 10 October 2010 St Maarten became an independent country within the Kingdom of the Netherlands. Since then, it has introduced essential improvements in its prison system, in particular relating to detention conditions. While in the past, there were suggestions that action had not progressed beyond intentions and plans, that can no longer be said to be the case. Diverse plans of action have now been carried out, and this process will continue over the next few years.

It is also important to note that diverse mutual arrangements were agreed among the countries that make up the Kingdom of the Netherlands in 2014, providing for the availability of detention capacity. For instance Aruba signed up to an existing mutual agreement in this area. In addition, rules have been laid down in new mutual arrangements on the integrated transfer of the execution of criminal sentences and on the availability of detention capacity on medical grounds or in relation to urgent security concerns.

Finally, it is important to note that the renovation of the Point Blanche Prison was completed in 2014. In the same year, plans were developed for adding two storeys to this facility. These storeys will be ready for use in 2016.

A. Police

The CPT considers that a person should be kept in police custody for the shortest amount of time possible, preferably less than 24 hours. To this end, it recommends that the St Maarten authorities amend the draft CCP accordingly. (paragraph 223)

On the basis of the current Code of Criminal Procedure, an order for remand in police custody is valid for two days at most, and may be extended once only in cases of urgent necessity, for eight days at most, in the interests of the investigation. The new Code of Criminal Procedure (CCP) has since been drafted and submitted to the Advisory Council for its recommendations. The date on which it is to enter into force is not yet known. Under the terms of this new CCP, an order for remand in police custody will be valid for three days at most (like in the other parts of the Kingdom). The public prosecutor will be able to extend it in cases of urgent necessity once only, for three days at most, in the interests of the

investigation. The suspect must be brought before the examining magistrate as soon as possible, but no later than during the first period of police custody, so that he can be examined.

The CPT recommends that senior police officers remind their subordinates at regular intervals that ill-treatment is not acceptable and will be punished accordingly. 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, police officers 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, police officers need to be able to apply professional techniques which minimise any risk of harm to the persons whom they are seeking to apprehend. (paragraph 224)

The government endorses these recommendations by the CPT. On 24 February 2014 a training course in professional skills was launched for the staff of the St Maarten Police Force, consisting of one day's practical training and one day's theory focusing on the police code of conduct as well as marksmanship. In September 2014 the Law Enforcement Council issued a report on its study of the use of force by the island's police. This report finds that there is no systematic problem regarding the use of physical force or verbal aggression by officers of the St Maarten Police Force. The Law Enforcement Council nonetheless concludes that improvements could be made in this area, in particular by introducing structural procedures for maintaining the knowledge and skills of police officers regarding the use of force. Efforts are currently being made, within the present budgetary constraints and in accordance with the relevant statutory requirements, to devise training and testing procedures in relation to the use of force and the power to do so. One of the solutions is the development of an integrated three-day training course to develop professional skills. During this course, officers will be given opportunities to practise their various skills, after which their expertise will be tested.

The CPT would also like to receive for the years 2010-2014:

- *data on the number of complaints lodged of ill-treatment by police officers and the number of criminal/disciplinary proceedings initiated as a result of those complaints;*
- *information on the outcome of proceedings and an account of criminal/disciplinary sanctions imposed following complaints of ill-treatment. (paragraph 225)*

The Internal Affairs Department of the St Maarten Police Force launches a disciplinary inquiry if a police officer is involved in an incident relating to the use of force. Where members of the public submit complaints about conduct that does not come within the definition of a criminal offence relating to the use of force, the Internal Affairs Department resolves the situation amicably by talking to both parties.

The table shown below indicates the number of cases dealt with by the Internal Affairs Department in 2013 and 2014, other than cases of mediation.¹ The table distinguishes between types of complaints. No information is available regarding the precise results of these procedures. In one case at any rate since 2010, the chief of police advised the Minister of Justice to dismiss a police officer.

¹ These figures were supplied by the St Maarten Police Force. The Law Enforcement Council's report on its study of the use of force by the police in St Maarten ('Toepassing van geweld door de politie in St Maarten'), published in September 2014, states that the Internal Affairs Department dealt with nine complaints relating to the use of force by police officers in 2013. Of these complaints, four related to ill-treatment of a member of the public, three to threats made against a member of the public, and two to the use of abusive language to a member of the public. The report did not include complaints of disrespectful behaviour.

Year	2013	2014
Type of complaint		
Police officer subjected a member of the public to ill-treatment	4 <i>2 complaints well-founded</i> <i>2 complaints unfounded</i>	4 <i>2 complaints well-founded</i> <i>2 complaints unfounded</i>
Police officer threatened a member of the public	3 <i>2 complaints well-founded</i> <i>1 complaint unfounded</i>	1 <i>1 complaint well-founded</i>
Police officer treated a member of the public disrespectfully	10 <i>4 complaints well-founded</i> <i>6 complaints unfounded</i>	14 <i>10 complaints well-founded</i> <i>4 complaints unfounded</i>
Police officer used abusive language to a member of the public	1 <i>1 complaint well-founded</i>	5 <i>5 complaints well-founded</i>
Total	18	24

The CPT recommends that the St Maarten authorities 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 (e.g. any delay in notification of custody 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). (paragraph 227)

Article 42 of the code of conduct for the St Maarten Police Force states that when a person has been detained, the police officer must inform a relative or housemate of the detention as soon as possible. If the person detained is a minor, the officer must do so at his or her own initiative. If the person has reached the age of majority, the officer will do so only at the

person's request. This right can only be restricted on the grounds of interests relating to criminal procedure. The Minister of Justice will instruct the St Maarten Police Force in accordance with the abovementioned recommendations.

The CPT recommends that the St Maarten authorities take the necessary steps to ensure that all persons are afforded the right of access to a lawyer in practice as from the outset of their deprivation of liberty. Such a right should include access to an ex officio lawyer if required. (paragraph 228)

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

In the new CCP, which currently lies before the Advisory Council, these provisions have been amended in line with the *Salduz* judgment handed down by the European Court of Human Rights. Thus, the new text states that the first interview cannot commence until the suspect has had an opportunity to consult his legal counsel, unless the investigation cannot be delayed, or it would be unreasonable to have to wait for the legal counsel to arrive. The new text also states that the lawyer is authorised to be present while the suspect is interviewed by an investigating officer. Until this CCP enters into force, suspects will be treated in line with the revised text, as far as possible, having regard to the suspect's rights. The Minister of Justice will bring the above points to the attention of the St Maarten Police Force.

The CPT recommends that persons deprived of their liberty by the police be expressly guaranteed the right of access to a doctor from the very outset of deprivation of liberty. Further, all persons remanded at Philipsburg Police Station should undergo a proper medical assessment for as long as it is used as a remand facility. (paragraph 229)

The Minister of Justice will bring the above recommendations to the attention of the St Maarten Police Force. Under the terms of article 3 of the Constitution of St Maarten, no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 30 of the Constitution states that all persons who have been deprived of their liberty must be treated humanely and with respect for the inherent dignity of the human person. Articles 41 and 48 of the code of conduct for the St Maarten Police Force state that the Minister of Justice shall take steps to ensure that a person taken into custody has access in any case to essential medical care and that police officers must consult a doctor if the person in custody asks for medical assistance or if there are any indications that the person requires such assistance. Finally, police officers are obliged to notify a doctor specified by the person in custody at the latter's request. The officer may not impose any restrictions on the doctor in relation to the medical examination or treatment.

It should be added that on the basis of article 10 of the Prison Rules, detainees are entitled to be treated by a qualified doctor or dentist of their own choice, at their own expense, if they so request. It is a basic principle in this regard that no police officer will be present during any medical examination of a detainee, provided this is not prejudicial to the security situation.

The CPT recommends that urgent steps be taken to improve the conditions of detention at Philipsburg Police Station. Moreover, the CPT recommends that persons should not be detained at Philipsburg Police Station in excess of three days and in any event never longer than 10 days. The facility is totally inappropriate for holding remand and sentenced prisoners, and the CPT recommends that they be moved to alternative accommodation as soon as possible. (paragraph 231)

In spite of the limited capacity and financial resources, the government will attempt to comply with these recommendations in the short term. To achieve this, the detention facility at the police station will need to be renovated and equipped with the necessary additions. In view of current financial constraints, it is not possible to indicate a concrete timeframe for these improvements.

The conditions of detention at Philipsburg Police Station were totally inappropriate for juveniles. The CPT recommends that alternative arrangements be made to hold juveniles in appropriate accommodation whenever it is considered necessary to deprive a juvenile of his or her liberty. (paragraph 232)

The delegation was also informed that the intention was to construct a child-friendly threecell unit at Philipsburg Station for juveniles which would be separated from the adult area. The CPT would welcome the observations of the St Maarten authorities on this matter. Further, it would like to be informed of the number of juveniles being held in detention at Philipsburg Police Station and/or the new children's detention unit, for the period from October 2014 to April 2015. (paragraph 233)

The government endorses the Committee's recommendation that juveniles should not be detained together with adults, and that detention should be a last resort, especially where juveniles are concerned. This principle is indeed enshrined in the Constitution of St Maarten (see article 3, paragraphs 3 and 4). For this reason, a secure young offender institution, now known as the 'Miss Lalie Centre', was opened in St Maarten on 10 December 2014. This facility meets the urgent need for suitable care and treatment for juvenile males aged 12 to 18, who are subject to a court order for placement in a young offender institution, prison, remand centre or institution for persons subject to hospital orders. In addition, the Miss Lalie Centre admits juvenile males who are subject to a civil-law youth protection order on the grounds that their development is in serious jeopardy. The Miss Lalie Centre can accommodate 20 young men in total. The above fulfils the legal obligations that exist both at national and international level in relation to the care and treatment of juveniles, in particular within the criminal justice system. In the Miss Lalie Centre, juveniles are treated with due regard for their age and legal status. The institution has a special regime that is geared towards rehabilitation.

To ensure the appropriate treatment of juveniles who have been placed in the Miss Lalie Centre, a cooperation agreement was concluded between the Ministry of Justice and the Dutch organisation Horizon Youth Care and Education (*Stichting Horizon Jeugdzorg en Onderwijs*). This agreement resulted *inter alia* in a course provided by Horizon to the personnel of the Miss Lalie Centre. In the period from 10 December 2014 to mid-February 2015, six juveniles were admitted to the Miss Lalie Centre, one of whom was placed there as a sanction under the criminal law.

At present, the Miss Lalie Centre is only equipped to receive young males. Male and female detainees need to be detained separately and the Miss Lalie Centre does not yet have a wing or building in which female juveniles could be accommodated separately. For this reason, female juveniles are accommodated in the women's section of Point Blanche Prison.

It is not yet known whether the Miss Lalie Centre is to be expanded to include a detention facility for female juveniles, and if so when.

If a juvenile is arrested on suspicion of having committed a criminal offence, the juvenile is initially brought to the police station at Philipsburg. If a court has ordered pre-trial detention, the juvenile is moved to the young offender institution. At that point, a start can be made on the juvenile's treatment, on the basis of the court's ruling. In view of the above considerations, it is not deemed desirable to admit juveniles to the Miss Lalie Centre at an earlier stage in proceedings. There are currently no juveniles in detention at Philipsburg police station.

B. Point Blanche Prison

The CPT recommends that the authorities of St Maarten adopt and implement a coherent strategy designed to combat prison overcrowding, taking due account of the relevant Council of Europe recommendations in this area, such as Recommendation R (99) 22 concerning prison population inflation; Rec (2000) 22 of 29 November 2000 on improving the implementation of the European rules on community sanctions and measures; Rec (2003) 22 on conditional release (parole); Rec (2006) 13 on the use of remand in custody; and Recommendation CM/Rec (2010)1 on the Council of Europe Probation Rules. (paragraph 236)

The government acknowledges the shortage of cells noted by the CPT. Simply expanding the number of places for detention at Point Blanche Prison will not provide a structural solution to the problem of overcrowding in the detention facilities. The shortage of cells has been a focus of attention for some time. It is not only a problem in itself, but the overcrowding in the diverse detention facilities also puts pressure on a range of facilities within the justice system. In addition to the planned renovation and expansion of Point Blanche Prison, which will create a large number of cells, the increased use of electronic tagging can also help to solve the problem of overcrowding. With this in mind, a new electronic tagging system was recently procured, and the ankle tags for this system have since been delivered. This system was procured with a view to the long-term plan, and is therefore seen as a substantial structural investment. With this innovation, electronic tagging will be used not only as a way of executing phased detention, but also as a way of suspending pre-trial detention. Suspended sentences can also help to alleviate the problem, with the St Maarten Custodial Institutions Foundation (*Stichting Justitiële Inrichtingen Sint*

Maarten) monitoring compliance with the attached conditions. Finally, it is also important that efforts continue to be made in St Maarten to develop and implement preventive measures and programmes. Notwithstanding the above, the primary principle, of course, is that detention is imposed only as a last resort.

As to the actual design of the expansion, it would appear that the 120 prisoners on the first additional floor and the 60 young people on the floor above would all use stairways which brought them down onto the existing central gallery, off which the current 120 places are located. At present, there are numerous instances of inter-prisoner violence around this gallery due to the gates to the four wings (eight spurs) not always being properly secured, thus enabling prisoners from different wings to come into contact with one another. If the pressures of an additional 180 prisoners passing through this gallery were to be added, as they must to access the outdoor exercise yards, gym and other services in the prison, managing movements through this central gallery would become even more complex and promote the likelihood of even more violent incidents. The CPT would like to receive the comments of the St Maarten authorities on this matter. (paragraph 237)

During the renovation of Point Blanche Prison, every wing will be fitted with an 'airlock' through which detainees have to pass before leaving it. This is to prevent unauthorised contact between detainees accommodated in different wings.

In addition, new cells will be built on the first and second floors of Point Blanche Prison. These cells will not be connected in any way to the cells or wings on the ground floor. A separate entrance and exit will be created for the detainees on the first and second floors, who will also have their own exercise yard.

The CPT recommends that the St Maarten authorities deliver the clear message to prison officers that all forms of ill-treatment, including verbal abuse, are not acceptable and will be the subject of sanctions. (paragraph 238)

The Minister of Justice of the country of St Maarten will bring this point to the attention of the governor of the prison and the remand centre.

The CPT reiterates its recommendation that the prison management of Point Blanche Prison develop a strategy to address the challenge of inter-prisoner violence [...]. Further, it wishes to receive information on the investigations into the incidents mentioned in paragraph 239 and any subsequent action taken. (paragraph 240)

Diverse cell inspections have been conducted in Point Blanche Prison in collaboration with the St Maarten Volunteer Corps, the St Maarten Police Force, and the Marine Corps. These inspections included checks for possession of contraband such as drugs and weapons. Their purpose is to prevent physical harm being caused to fellow detainees or prison staff, to prevent violent incidents, and to prevent detainees from escaping from the prison with the use of prohibited items. In addition, the detention facility at Simpson Bay has been closed, so that it will no longer be possible to smuggle contraband into the facility using the 'fishing' method.

The detainees who were involved in the violent incident of 11 September 2014 have since been transferred to custodial institutions in the Netherlands, in order to adequately safeguard peace and security at Point Blanche Prison. The St Maarten Police Force is in charge of the further investigation of this incident, in particular in relation to the use of a firearm. This investigation is still ongoing.

The detainees who were involved in the violent incident in the detention facility at Simpson Bay on 1 October 2014, and who stabbed a fellow detainee, have been transferred to Point Blanche Prison, where they were placed in segregation on the basis of a disciplinary measure. In response to this violent incident, cell inspections were also carried out at Simpson Bay, and diverse prohibited items were confiscated.

The CPT recommends that cells of 10 m² do not accommodate more than two prisoners, and ideally that they only hold one prisoner. Further, the Committee would like to be informed of the state of repair of the prison following the renovation work, including as regards the association and exercise rooms. (paragraph 241)

The renovation of Point Blanche Prison has now been completed. Changes include the repainting of the gymnasium, which has also been equipped with new fire extinguishers. The renovation plan did not include the refurbishment of the office of the Inmates Association. An effort will be made to see whether this room too can be renovated within the existing

financial constraints. A start was made recently on the prison's expansion: two additional floors are being built onto the existing cell block. The government expects that this expansion will enable compliance with the CPT's recommendations regarding the minimum number of square metres per detainee.

The CPT recommends that the current approach to employing outside workers in the kitchen be reviewed, with a view to replacing them with inmates, thus enabling more funding to be spent on food stuffs and as a result providing a more varied diet to prisoners. (paragraph 242)

The government agrees with the CPT that working in the prison kitchen is a good daytime activity for detainees as well as cutting personnel costs. It can also contribute to detainees' resocialisation. The government therefore looks favourably on this recommendation. In the meantime, a number of detainees is working in the kitchen.

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. (paragraph 243)

The government will look into the possibility of following up on this recommendation within the current financial constraints and having regard to the number of personnel working in the prison.

The CPT recommends that the necessary steps be taken to remedy deficiencies regarding the Simpson Bay facility. (paragraph 244)

The government shares the concerns expressed by the CPT regarding the quality of detention conditions in the Simpson Bay facility. It proved no longer possible to fulfil the necessary security and quality requirements. For instance, detainees were found to be smuggling contraband into the institution using the 'fishing' method, besides which the toilet facilities were no longer acceptable. To make the necessary improvements this facility must be renovated. To this end, the facility was closed as from 2 February 2015, and the 14 inmates transferred to Point Blanche Prison.

The CPT recommends that the St Maarten authorities take the necessary measures to increase the number of prison officers employed as well as to develop the capacity and role of prison officers [...]. In parallel, the amounts of overtime should be reduced and the levels of, and reasons for, absenteeism tackled. (paragraph 245)

The prison workforce is currently undergoing rationalisation under the supervision of the Ministry of Justice, focusing on prison personnel who are inactive or whose dismissal has been requested. Once this operation has been completed, funds will be freed up to recruit and train more personnel. Hiring new personnel will make it possible to reduce the amount of overtime, besides which sickness and absenteeism are also expected to decline. These points will naturally continue to command attention.

The CPT recommends that all prison officers be offered regular in-service training. (paragraph 246)

Prison personnel receive annual courses and training sessions. The following courses are scheduled for 2015: first aid, emergency response, communication and motivation. The communication course will pay attention to matters including the proper way to treat detainees. The motivation course is expected to improve job satisfaction among the prison personnel.

The CPT recommends that the presence of the doctor at the prison be increased to the equivalent of a half-time position. Further, provision should be made for a dentist to visit the prison once a week and for the dentist's surgery to be properly equipped. (paragraph 247)

The government endorses the importance of good medical facilities in detention. In consultation with the governor of the prison and the remand centre, consideration will be given to the feasibility of following this recommendation by the CPT, in particular as regards a properly equipped dentist's surgery in the detention facility. At a later stage, a dental care contract can be concluded with a dentist.

*The CPT's recommendations concerning the recording of injuries (paragraph 249).
The CPT recommends that the authorities draw up a list of medication that should in every case be distributed by health-care staff (such as anti-psychotics, methadone and antiretroviral drugs) and to put in place procedures for the distribution of other*

medication that guarantees confidentiality. Further, the health-care service should ensure that the drugs chart, showing which prisoner was provided with which medication and when, is properly maintained, and that all missed medication dosages are recorded. (paragraph 250)

The prison governor states that injuries are always recorded by the doctor, using a form provided for this specific purpose. With regard to these recommendations, further consultations will be needed between the medical personnel, the doctor, and the governor of the prison and the remand centre, to establish the extent to which registration by the doctor concerned complies with the CPT's recommendations and where improvements can be made.

The CPT recommends that the St Maarten authorities take the necessary steps to ensure that prisoners suffering from a serious mental disorder are cared for in an adequately equipped hospital environment. Further, it would like to receive details of the treatment afforded to the above-mentioned prisoner since the time of the visit. (paragraph 251)

St Maarten does not yet possess a facility for detainees who are suffering from serious mental disorders. Such detainees receive care in the form of medication and additional supervision. If this proves insufficient, the Mental Health Foundation, for instance, is called in. In addition, it should be noted in this context that the countries within the Kingdom of the Netherlands concluded a mutual arrangement in 2014 on the mutual availability of detention capacity for prisoners on medical grounds or in connection with urgent security concerns.² This mutual arrangement relates explicitly to situations involving severe psychiatric complications on the basis of which the continued detention of the person concerned in St Maarten would be irresponsible. Transfer from the Caribbean to the European part of the Kingdom is only possible in cases in which no realistic alternative can be provided within the Caribbean part of the Kingdom. In consultation with the aforementioned Mental Health Foundation, the opening of a (private) facility for psychiatric patients is currently being considered.

² A mutual arrangement as referred to in article 38 of the Charter for the Kingdom of the Netherlands regulating the cooperation between the Netherlands, Aruba, Curaçao and St Maarten as regards the mutual availability of detention capacity for prisoners on medical grounds or in connection with urgent security concerns.

Regarding the information requested by the CPT concerning the detainee who was subjected to the forced administration of medication by the Mental Health Foundation at the beginning of May 2014, the situation was as follows. Before this detainee was apprehended and taken to a detention facility, he was already known to the Mental Health Foundation and was undergoing treatment there. This detainee suffered from serious psychiatric problems, and it proved impossible to relieve them while he was in detention. The detainee's mental state deteriorated, and by May 2014 the situation was judged to be so urgent and critical that an authorisation was requested and obtained, on the basis of the National Ordinance on the Supervision of the Mentally Ill, allowing for the forced administration of medication by the Mental Health Foundation. On the basis of this national ordinance, treatment may be administered to a detainee if he poses a threat to himself or others. Since then, a psychiatrist has been administering depot medication to this detainee, which is scheduled to continue until the date of his release in December 2015. The psychiatrist and/or psychologist visit(s) the prison two or three times a month, or more frequently at the request of the detainee or the prison. The psychiatrist also visits those to whom he has prescribed medication in the context of proper supervision. Nurses working at the Mental Health Foundation visit the prison every week, or more frequently if the need arises.

The CPT would like to receive confirmation that a new record keeping procedure for disciplinary offences and use of force is now in place. (paragraph 252)

KPMG is currently developing a comprehensive information system to support personnel in their everyday duties. In addition, it will be possible to record various details and figures in the new system. The introduction of this information system will enable improvements to be made in certain areas, such as the streamlining of diverse procedures.

The CPT recommends that a clear protocol for cell searches be drawn up. (paragraph 253)

It is correct that no written policy has yet been drafted on how cell inspections should be conducted. That does not mean that the importance of conducting good cell inspections is not endorsed. Cells are indeed inspected twice a week, or more often if deemed necessary, under the supervision of the duty officer. In the wake of two violent incidents, several cell inspections were conducted in cooperation with the St Maarten Volunteer Corps, the St Maarten Police Force, and the Marine Corps. This was a highly productive partnership, which led to the discovery of various prohibited items, which were immediately confiscated. It

has now been agreed to conduct such inspections once a month. The Minister of Justice, in collaboration with the prison governor, will assess whether it is possible to formalise this decision in writing, within the current financial and capacity constraints.

The delegation received a number of complaints from foreign national prisoners about the limited possibilities of contact with their families. The CPT wishes to re-emphasise the need for some flexibility as regards the application of rules on visits vis-à-vis prisoners whose families live far away. The CPT recommends that the relevant rules be amended so as to make it possible in appropriate cases to accumulate individual visit entitlements. (paragraph 254)

Aliens' family members can telephone the prison every Saturday, by appointment, to speak to the detainee concerned. The prison has not received any complaints in this connection. In addition, detainees themselves can telephone their relatives, even if the latter live abroad. Detainees are issued with a telephone card by prison staff; alternatively, the social worker contacts the family. Family members who are not resident in St Maarten can visit the detainee at any time they wish during working hours, provided they can produce their ticket. The government therefore believes that the existing practice adequately complies with the CPT's recommendations, but it will see if any changes need to be made to the existing regulations in this connection.

The CPT recommends that the card phones at Point Blanche be repaired. Further, access to a telephone should be improved at Simpson's Bay. (paragraph 255)

The renovation of Point Blanche Prison is now finished. During this renovation, unsatisfactory amenities were mended or replaced. The detention facility at Simpson Bay is currently closed and will in principle not be used anymore.

The CPT recommends that the St Maarten authorities review the current system of complaints. (paragraph 256)

On the basis of section 40 of the National Ordinance on Prisons, a detainee has a right to complain about the decisions referred to in that provision. The Prison Rules contain additional rules relating to the complaints procedure. The government will ask the governor of the prison and the remand centre to notify detainees explicitly of the possibility of submitting a complaint when they are admitted to the facility. Forms must be made available

to them for this purpose. In addition, consultations will take place with the Supervisory Committee of Point Blanche Prison, since the complaints procedure, and in particular the said committee's role in this procedure, needs further clarification.

The CPT recommends that all prisoners be accurately informed of their release date from prison as soon as possible after their admission to prison. (paragraph 257)

The government endorses the importance of this recommendation. The government would add that it considers that detainees are already being notified accurately of the date of their release on parole. Nonetheless, this point will explicitly be brought to the attention of the governor of the prison and remand centre. It may also be noted that the new Criminal Code will modify the procedure for release on parole in a number of ways. For instance, the Criminal Code will no longer provide for release on parole after four-fifths of the sentence has been served. In principle, all detainees will be eligible for release on parole after they have served two-thirds of their sentence, provided the period of deprivation of liberty has lasted for at least six months. In addition, the advisory tasks and powers of the independent Central Probation Board ('the CCR') are being strengthened. On the basis of article 1:32 of the new Criminal Code, the CCR will issue recommendations on a detainee's release on parole.

The CPT would like to be informed whether any foreign nationals have been granted conditional release and, if so, under what terms. (paragraph 257)

Before 25 July 2014, the so-called 'Aliens Pardon' was based on the policy rules laid down in the 2002 Communiqué. Under this policy, aliens who had been given a non-suspended custodial sentence of less than five years were granted an 'aliens pardon'. This aliens pardon was subsequently codified in article 1:37, paragraphs 2 and 4 of the new Criminal Code, as enshrined in a National Ordinance, which has been approved, granted assent and published, but has not yet entered into force. By judgment of 8 November 2013 (in case 2013/1), the Constitutional Court struck down paragraphs 2 and 4 of article 1:37 of the new Criminal Code, ruling that these provisions were incompatible with the prohibition of discrimination and the principle of equality as enshrined in article 16 of the Constitution of St Maarten. In response, the Minister of Justice revoked the aliens pardon as articulated in the 2002 Communiqué, citing this judgment of the Constitutional Court, and announced that as from 25 July 2014 in any case, all detainees (including those who are not legally resident in the country and who have received a custodial sentence, regardless of whether this is more

or less than five years) are not in principle eligible for release on parole until they have served two-thirds of their sentence. This means that the same rules on eligibility for release on parole will apply to aliens and to persons who are lawfully resident in St Maarten. If an alien is released on parole, this is conditional upon his/her removal from the country of St Maarten and a temporary ban on return. In 2014 the Ministry of Justice granted 11 persons an aliens pardon on the basis of the old policy as laid down in the 2002 Communiqué. None were granted in 2015.

Note: The annexes have not been published