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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1994

Addendum

NETHERLANDS*

(European part of the Kingdom)

[14 April 1994]

CONTENTS

* The initial report submitted by the Government of the Netherlands is contained in documents CAT/C/9/Add.1 to 3; for its consideration by the Committee, see documents CAT/C/SR.46, 47, 63 and 64 and the Official Records of the General Assembly, forty-fifth and forty-sixth sessions, A/45/44 paragraphs 435-470 and A/46/46, paragraphs 154-181.

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* Available for consultation, in English, in the files of the Centre for Human Rights.

Introduction

1. This second report submitted by the Netherlands under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) contains few references to new legislation or new policy because there has been little change in this respect since the initial report (see CAT/C/SR.46 and 47). Such developments as have occurred are described in the first part of the report. These new developments are then compared with or viewed in the context of the former or current situation. The second part of the report, which is more extensive, provides a more detailed explanation of how the Convention is implemented in respect of those matters on which the information contained in the initial report was incomplete or unclear. It deals in particular with the articles of the Convention which occasioned additional questions by the members of the Committee against Torture during the consideration of the first report.

I. INFORMATION ON NEW MEASURES AND NEW DEVELOPMENTS RELATING TO IMPLEMENTATION OF THE CONVENTION

Article 3

2. Partly as the result of an incident, a committee was established early in 1993 "to advise on the policy to be pursued with regard to aliens who are refused entry to the Netherlands or must be expelled from the Netherlands and to their actual treatment, in particular the use of compulsion and force during the actual expulsion". The committee was named after its chairman Mr. Van den Haak (president of the Amsterdam Court of Appeal). The committee's report, entitled "Humane expulsion: a paradox?" was presented to the State Secretary for Justice on 6 May 1993.

3. In preparing its report the Committee interviewed numerous members of all the services connected with implementing the policy, including people in positions of authority. This resulted in a thorough analysis of how deportation works in practice. The manner in which the Royal Netherlands Military Constabulary carries out its duties was described as "very satisfactory" or "good". The Committee recommended ways of improving the policy. Almost all of these recommendations were accepted by the State Secretary for Justice. The main changes made as a result of the recommendations are:

(a) The institution where aliens are kept before expulsion will give careful consideration to the problems they face and the tensions caused as a result. The personnel responsible for dealing with aliens should be adequately equipped for this purpose. This is why special "return officials" have been appointed. Such officials have also been appointed in the aliens departments of the larger police forces. One of the duties of these return officials is to ensure that conduct and medical reports about the alien concerned are made available in good time to the services to which the alien will later be entrusted (in particular the department responsible for transport and the detachment of the Royal Netherlands Military Constabulary at Schiphol Airport). The official also ensures that the alien is informed of the actual deportation well in advance;

(b) The Royal Netherlands Military Constabulary will be provided as quickly as possible with more facilities for the reception of people who have been refused entry to the Netherlands and are to be deported;

(c) The use of adhesive gagging tape over the mouth to prevent screaming and biting used until mid-1992 will be definitely discontinued;

(d) Straitjackets and immobilizing stretchers will be permitted only in exceptional cases as a means of controlling aggression. It is not necessary to proceed with a deportation at any cost. Where appropriate, a fresh attempt may be made later. In addition, the Netherlands Organization for Applied Scientific Research (TNO) has been asked to study the feasibility of using or developing a restraining helmet of the kind advocated by the Van den Haak Committee. Such a helmet would be used for deporting aliens who try to resist expulsion by spitting, biting and screaming;

(e) Pharmacological restraints (sedatives) will be provided only where this is indicated on medical grounds.

4. The Van den Haak Committee also considered the establishment of a scheme to confer extraterritorial powers on the officials charged with expulsion (a subject which becomes relevant where aliens who are expelled by boat or aircraft are accompanied by a guard). Clearly, the powers could never go beyond the limit permitted by the country in which they would have to be exercised.

Article 4

5. During the consideration of the first report a member of the Committee inquired whether there had been any allegations of police brutality and, if so, what action had been taken. The heads of the regional police forces and the procurators general have been asked to provide information that is as up-to-date as possible. The information gathered in this way will be forwarded as quickly as possible.

Articles 10 and 11

6. Owing to the reorganization of the Dutch police and the consequent replacement of the municipal police forces and national police by regional police forces and the National Police Services Force, Parliament has passed a new Police Act which will take effect on 1 April 1994. The Act lays down new rules governing police operations, replacing among other things the existing piecemeal legislation governing the accommodation, treatment and care of people kept in custody in police cells. A new Code of Police Conduct will also come into effect. The use of force by the police is strictly regulated in both the existing Code (annex 1) and the new code (annex 2). The new Code also applies to the Royal Netherlands Military Constabulary when they are engaged in carrying out police duties. The Code regulates not only the use of force but also searches of the person and the provision of assistance and medical care.

7. The basic and refresher training courses for the police and the Royal Netherlands Military Constabulary pay close attention to the way in which

suspects should be treated, particularly during examination. Reference is made not only to the rules of the Code of Criminal Procedure but also to international treaty obligations and general ethical considerations.

8. It is, for example "standard procedure" when people are held in custody to inform their relatives or other members of their household where they are being held, unless this would hamper the investigation. This procedure will also be recorded in writing in the new Code of Conduct for the police, the Royal Netherlands Military Constabulary and special investigating officials.

9. The likelihood that powers will be abused is greatly reduced by the supervision of the way in which police officers carry out their duties. The European Committee against Torture and Other Inhuman or Degrading Treatment stated in a report about the Netherlands published in June 1993 that "any person in the Netherlands who may wish to complain about ill-treatment whilst detained by the police benefits from access to an extensive range of complaints procedures" (CPT (93) 20, 11 June 1993). Under section 61 of the new Police Act clear rules will be drawn up governing the procedure for complaining about police action.

10. Inmates of custodial institutions also have many different ways in which they can lodge complaints about bad treatment or ill-treatment by the staff of the institution. They may for example lodge a complaint with the Supervisory Committee or the complaints committee of the relevant institution formed from among its members, or write to the medical inspectorate or other officials of the criminal justice system. People in custody make full use of the opportunities for lodging complaints and appeals.

11. The decisions in these procedures are, where relevant, sent by the Ministry of Justice to the institutions concerned in order to ensure a uniform policy on the execution of sentences. These decisions are also published periodically in the journals entitled "Sancties" and "Delikt en Delinkwent".

12. Each month a member of the Supervisory Committee holds a "surgery" which can be attended by the prisoners. In this way the Supervisory Committee is able to keep abreast of the wishes and views of the prisoners. The institutions are also periodically visited by the Central Council for the Application of the Criminal Law. The code of conduct relating to the use of force by people employed in custodial institutions is enclosed (annex 3).

13. Defence counsel can also play an important role in supervising the treatment of persons who have been deprived of their liberty. A suspect is entitled to legal assistance from the moment that he or she is suspected of a criminal offence (art. 28, para. 1, of the Code of Criminal Procedure).

14. In addition to the above-mentioned forms of supervision, a major contribution to the care of inmates (and supervision of this care) is made by doctors. If a person is kept in a police cell, a request by that person to consult a doctor of his or her own choosing will be granted wherever this is reasonably possible. This is now regulated in the "Guidelines for the treatment of people in police custody" (Government Gazette 1987, 213). In the future similar arrangements will be incorporated in the new Code of Police Conduct.

15. Inmates of custodial institutions may consult the prison doctor. This is generally a family doctor with a practice in the local area who has a part-time contract with the institution. In practising their profession and carrying out their duties doctors have an inalienable professional autonomy, irrespective of whether they are in the employ of the institution or called in as outside professionals.

16. Private security officers may not question or guard suspects or prisoners. As soon as they catch someone committing a criminal offence, they hand them over to the police.

Article 14

17. If a case of torture were to occur the State could be ordered to pay both compensation for both pecuniary and non-pecuniary damage. Moreover, the public servant who committed the offence could be held liable under civil law. As far as is known, no complaint in respect of torture has ever been lodged, nor therefore has any claim in connection with such a complaint ever been submitted.

18. New legislation which came into force on 1 April 1993 provides a general compensation scheme for the victims of crime. When passing judgement in criminal proceedings the courts can oblige a person convicted of an offence to pay an amount to the State (in so far as the offender is liable for the damage caused) which is then used for the victim. The measure can be combined with other sanctions. If the victim does not wish to receive compensation, the offender can be obliged to deposit a sum in a fund for the victims of crime.

19. In terms of procedural law, the new Act greatly strengthens the legal position of victims in their capacity as injured parties. The possibility of joining the victim as a party to criminal proceedings has been extended by the new legislation. Whereas the victim could formerly obtain compensation not exceeding f.1,500, there is no limit on the amount of compensation that can be recovered under the new rules. However, there must be a possibility of easily determining whether the compensation claimed is directly linked to the offence. In addition, the damage must be pecuniary. Any part of the damage which cannot easily be shown to have been caused by the offence (i.e. the rest of the pecuniary damage plus any non-pecuniary damage) can still be recovered by the victim by means of civil proceedings.

20. The victim need no longer appear at the trial and it is now sufficient for a statement of the claim to be submitted to the Public Prosecutions Department. It is also possible for the victim to appeal independently against a rejection of the claim if no appeal has been instituted in the principal proceedings by the Public Prosecutions Department or the suspect.

II. ADDITIONAL INFORMATION

Article 1

21. During the consideration of the initial report submitted by the Netherlands, the delegation was asked to explain how the Netherlands

proposed to regulate by law the obligations under the Convention. As some points may still be unclear, a further explanation is given below.

22. The Convention has been introduced into Dutch law by means of the Act of 29 September 1988 (Bulletin of Acts and Decrees 478) implementing the Convention on Torture. The first section of the Act defines the offences constituting torture as referred to in article 1 of the Convention. Since the date on which the Act came into effect, there has been no prosecution or conviction for offences as defined in the Act.

23. As indicated in the initial report, the Netherlands Government considered that the Convention should not be implemented by means of an alteration to the ordinary criminal law. It was felt preferable to have a separate Act, first of all because of the highly individual character of this special form of assault, and second because the Convention gives rise to a number of special obligations whose character is such that they would not fit in with the other provisions of the Dutch Criminal Code. Besides universal jurisdiction in respect of torture, these obligations involve exclusion of the possibility of relying on a statutory provision (article 42 of the Criminal Code) or on an official order whether given by an authority competent to do so or otherwise (article 43 of the Criminal Code).

24. As already mentioned, the Act implementing the Convention contains definitions of the acts that constitute torture as referred to in article 1 of the Convention. The literal text of the definition of the offence differs from that used in the Convention. Although it does not use the word torture explicitly, the Act implementing the Convention means by torture "assault for the purpose of obtaining information or a confession, punishing a person, intimidating him or another person, or forcing him or another person to perform certain acts or to allow them to be performed or out of contempt for that person’s right to be treated as an equal human being". Under this definition of the offence there are two possible motives for these acts. Assault is a criminal offence under the Act implementing the Convention if it is for a particular purpose, or the assault takes place "out of contempt for that person’s right to be treated as an equal human being".

25. In the former case it is necessary for the assault to serve a particular purpose. The text of the Convention uses the words "for such purposes as". In this respect, therefore, the Act implementing the Convention uses the same words as the Convention. The existence of a purpose is required in the definitions of a number of offences in the Criminal Code (see articles 225, 310, 326, 326a and 328 of the Criminal Code). The term "purpose" relates to the intention of the offender. The actions of the offender are intended to serve a more remote object. The existence of a particular purpose can be inferred by the courts entirely from objective circumstances, even without any express statements by the suspect.

26. In the latter case, the wording "out of contempt for that person’s right to be treated as an equal human being" is intended to reproduce the part of article 1 of the Convention which reads "or for any reason based on discrimination of any kind". This is applicable if the torture is occasioned not by what a person has done (or alleged to have done) but by certain personal aspects or characteristics of the victim.

27. The text of the Convention specifies two forms of intent. The first involves the act which is made punishable, i.e. the infliction of severe pain. And the second is introduced by the expression "for such purposes", which relates to the result to be achieved by the act. The former is not repeated in section 1 of the Act implementing the Convention, which defines the offence.

28. The use of the term assault presupposes intent to cause injury. The provisions in the Criminal Code designated as indictable (i.e. serious) offences, including the offence of assault (mishandeling), must have been committed with intent if they are to be punishable. (Offences that may be committed negligently are an exception to this rule, but are few in number. The requirement of intent also does not apply to a small number of indictable offences included in special Acts containing criminal provisions).

29. It should also be noted that the definition of the offence in section 1 of the Act implementing the Convention was originally based on the concept of serious assault (zware mishandeling). The Government later changed its mind about this because under paragraph 2 of article 82 of the Criminal Code serious assault occasioning mental suffering occurs only if the act causing the suffering results in derangement of the mental faculties for longer than four weeks. This would have produced an unduly narrow definition of the offence and was therefore not considered desirable.

30. One element of the definition of the offence in section 1 of the Act implementing the Convention is the phrase "deprived of his liberty". The Committee has raised the question of whether torture occurs only when the person concerned has been deprived of his liberty. In answer to this, reference may be made in part to the initial report of the Netherlands (CAT/C/9/Add.1), in particular to the remarks in respect of article 1 in paragraph 18. It may be added in this connection that the concept of torture does not relate to what occurs between individuals. Such acts are already sufficiently covered by the offences defined in the Criminal Code (in particular the offence of assault in its various aggravated forms and with circumstances giving rise to heavier sentences). The Convention, on the other hand, relates to assault by the authorities. It follows from the scope of article 1 of the Convention that it involves people who are in the physical control of the offender or in any event of the government body to which the offender belongs. This is why subsection 1 of section 1 of the Act implementing the Convention clearly indicates in the definition of the offence that it concerns a person who has been deprived of his liberty. It is therefore immaterial whether the deprivation of liberty has been ordered legally or illegally.

31. The definition of torture in the Act implementing the Convention is wide but certainly not unlimited. An unlimited definition would in fact be contrary to Dutch criminal law and the nulla poena principle as contained in article 1, paragraph 1, of the Dutch Criminal Code and article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention). The legal certainty intended by the nulla poena principle means that the legislature is under an obligation to ensure that acts made criminal are formulated clearly and unambiguously (the

requirement of specificity in the definition of an offence) and that the courts applying the criminal law must interpret these definitions restrictively.

32. The definition of the offence must be properly accessible and sufficiently accurate. Legal certainty requires clear definitions. The reason for these obligations is that it is thus possible to prevent prosecutions for conduct which the person concerned could not reasonably be expected to have known beforehand constituted an offence. It is also clear from article 7 of the European Convention and the relevant (established) case law of the European Court of Human Rights that a given criminal law norm may not be applied by analogy to acts which it is not directly intended to cover, unless such an application would work to the advantage of the individual concerned.

Article 2

33. The following may help to clarify the information already possessed by the Committee. Paragraph 3 of article 2 of the Convention contains the rule that an order from a superior officer or a public authority may not be invoked as a justification of torture. This provision gave rise to section 3 of the Act implementing the Convention. Section 3 provides that articles 42 and 43 of the Criminal Code do not apply to the offences referred to in sections 1 and 2 of the Act. Articles 42 and 43 provide that acts which would otherwise be punishable are not criminal. The acts cease to be criminal if performed pursuant to a statutory regulation (including an international obligation) or an official order. As a result of the exclusion of these provisions in section 3 of the Act implementing the Convention, a statutory regulation or order from a public official is therefore not regarded as a ground for exclusion of criminal liability for torture. This means that an assault as defined in section 1 of the Act implementing the Convention which is performed by a public official does not cease to be criminal merely because it has been ordered by a superior of the relevant official.

34. The exclusion of articles 42 and 43 of the Criminal Code does not, however, exclude the possibility of raising the defence of force majeure. Force majeure may be defined in abstract terms as every force, coercion or compulsion which a person cannot reasonably be expected to resist. Force majeure exists where a person is forced to commit an offence by means of severe (mental) pressure and he could not be expected to have acted differently at the time of such action.

Article 3

35. Further to what was said in the initial Dutch report, the Netherlands Government wishes to inform the Committee how the authorities ensure that no one is returned or expelled to a country where he or she will be subjected to torture and/or other inhuman or degrading treatment.

36. Every asylum-seeker is interviewed by a reception official of the Ministry of Justice about his or her reasons for seeking asylum. On the basis of the report of the interview a decision is taken by other officials of the Ministry of Justice on whether there has been persecution and whether the

person concerned can be recognized and admitted as a refugee. The assessment is made in accordance with the Convention of 1951 relating to the Status of Refugees and the Protocol of 1967. If the request for asylum is refused, the authorities ascertain in accordance with the European Convention on Human Rights (inter alia, arts. 3 and 8) and the case law of the European Court of Human Rights whether the person concerned is eligible for a residence permit on humanitarian grounds. Article 3 of the European Convention on Human Rights provides that "No one shall be subjected to torture or inhuman or degrading treatment or punishment". The Netherlands does not expel people to a country where they run a real risk of becoming the victims of treatment as referred to in article 3 of the European Convention.

37. Every request for asylum is considered individually. The individual account of an asylum-seeker is viewed against the background of the situation in the country of origin. The Ministry of Foreign Affairs uses official bulletins to report to the Ministry of Justice on the situation in the countries of origin of asylum-seekers in so far as this is relevant to an assessment of the requests for asylum. The findings of international organizations and authoritative human rights organizations are also used to check the motives of asylum-seekers. It is possible that the Medical Inspector of the Ministry of Justice may institute an examination to determine the mental and physical condition of an asylum-seeker. There may also be an examination to assess allegations of assault or torture.

38. During the oral proceedings to consider the initial report of the Netherlands the Committee also expressed interest in receiving information about the possible use of force in expelling aliens. The following information is provided for this purpose.

39. The officials of the various bodies which may have to deal with people trying to resist expulsion in the various stages of the expulsion procedure (in particular the Royal Netherlands Military Constabulary, the police and staff of the Border Hostel or remand centres) may be obliged to use force in order to implement the duties with which they are charged. The rules governing the use of force - which is deemed to include application of coercive force and threatening the use of force - correspond, inter alia, with the provision contained in article 3 of the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169 of 17 December 1979) and apply to all employees of the relevant authorities to an equal extent. The main points are as follows:

(a) Force involving an infringement of fundamental rights should have a basis in law. Article 15, paragraph 4, of the Constitution and - in so far as applicable - section 33a of the Police Act provide such a basis;

(b) An official who uses force must do so in the course of his lawful duties;

(c) The object which the official wishes to achieve must not be capable of being achieved in any other way and must, taking into account any dangers attendant on the use of force, be such as to justify such use;

(d) The force used must not exceed that which is strictly necessary to achieve the proposed object;

(e) As much warning as possible should be given before the use of force;

(f) The use of force should be reported by the official concerned to his superior. The use of handcuffs is justified only if it is reasonable to believe that this is warranted in the light of the security risks, taking into account the facts and circumstances of the case.

40. Various complaints procedures are available against the alleged unjust use of force. An alien may also request the public prosecutor to institute criminal proceedings.

41. The Royal Netherlands Military Constabulary keeps a record of each incident that occurs during an expulsion. Examination of these records produces the following information:

6,323 aliens were expelled from Schiphol Airport in 1991. Force was used in 54 of these cases:

in 3 cases light physical force was used;

in 38 cases handcuffs were used;

in 13 cases handcuffs and gagging tape were used.

6,799 aliens were expelled from Schiphol Airport in 1992. Force was used in 46 of these cases:

in 3 cases light physical force was used;

in 39 cases handcuffs were used;

in 4 cases handcuffs and gagging tape were used.

Article 5

42. During the oral proceedings to consider the initial report, it appeared that there was a misunderstanding about the statement of the Netherlands Government in paragraph 39 that "it is contrary to Dutch legal tradition to establish criminal jurisdiction on the basis of the nationality of the victim. The provisions of article 5, paragraph 1 (c), of the Convention have therefore not been implemented".

43. A few members of the Committee were under the impression that the Netherlands had limited the exercise of jurisdiction. This is not the case. Its recognition of the principle of universal jurisdiction covers de facto all possible connecting factors for jurisdiction, i.e. including the nationality of the victim. Incorporation of the provision in article 5, paragraph 1 (c), was therefore superfluous since Dutch criminal law is also applicable -

pursuant to the Act implementing the Convention - to any person who commits torture or procures the commission of torture outside the Netherlands.

Articles 10 and 11

44. The Netherlands also wishes to provide some information about pre-trial detention and solitary confinement - subjects which were inquired about during the oral proceedings to consider the first report.

45. Suspects may be deprived of their liberty on various grounds:

(a) Immediately after being arrested (for an offence for which pre-trial detention is permitted or where caught in the commission of an offence) a suspect may be detained for police questioning for not more than six hours, not including the hours between midnight and 9 a.m. (art. 61, para. 2, of the Code of Criminal Procedure);

(b) Thereafter the public prosecutor or assistant public prosecutor may remand a suspect in police custody for offences for which pre-trial detention is allowed if such remand is in the interests of the investigation (art. 57, para. 1, of the Code of Criminal Procedure). Defence counsel may be present at the examination. In keeping with a guideline issued by the procurators general following the judgement of the European Court of Human Rights (in the Brogan case), remand in police custody generally does not exceed three days. This practice will also become law in a bill which has now almost completed its passage through Parliament;

(c) The suspect should be brought before the court not later than in the course of the third day. The court then decides whether the deprivation of liberty is permissible. The suspect is assisted by counsel during the court hearing (art. 63, para. 4, of the Criminal Code);

(d) After a period of remand in custody by order of the examining magistrate (not exceeding 10 days) the district court sitting in chambers may, after hearing the suspect, order a further period of remand of 30 days, which may be extended twice. The suspect is also heard before the period is extended. Legal aid is provided on each occasion.

46. The following points should be made about solitary confinement during custody in a police station. Suspects may sometimes be placed in observation cells, but this is done only for their own safety.

47. This may be necessary for example in the case of people with suicidal tendencies who have mutilated themselves or exhibited highly aggressive behaviour. Suspects may also be placed in an observation cell on medical grounds. In such cases checks are made and/or assistance provided in the following ways:

(a) Medical check by a doctor or psychiatrist;

(b) Personal check by the person responsible for the care of those under arrest; these checks are recorded on computer;

(c) Round-the-clock surveillance by means of a closed-circuit TV system.

48. The number of people placed in observation cells is small, and those that are placed in them are kept there for only a short time. In Amsterdam, for example, the number usually varies between three and five a year. As a doctor is immediately consulted in such cases, the period spent in an observation cell can generally be kept to a minimum.

49. Solitary confinement also occurs in custodial institutions. In such cases a person may be placed in solitary confinement as a punishment or as a measure to maintain order. For whatever reason a person is placed in an isolation cell, the governor must notify the prisoner in writing of his decision within 24 hours. In doing so he must give reasons for the decision. The governor also informs the prisoner of his or her right to lodge an objection with the Supervisory Committee.

50. If a prisoner is to be punished by solitary confinement, he must be visited by someone from the medical service before he is put into the cell or, if the governor considers that the punishment must start immediately, as soon as possible thereafter. The visits are then repeated at regular intervals.

51. A prisoner who is to be placed in solitary confinement for the purpose of maintaining order will almost always be put in the isolation cell immediately because of his or her state of mind. The medical service will offer the prisoner medical assistance as quickly as possible (in any event within 24 hours). As long as the prisoner remains in the isolation cell, he or she is visited daily by a doctor or nurse. Hearing a prisoner held in these circumstances will often give rise to problems in practice because of the prisoner's state of mind. A provision for the hearing of such prisoners will be included in the Penal System Act and the Hospital Orders Nursing Care Act (both of which have already been presented to Parliament) and in the Youth Custody Institutions Act (now being prepared). There is already an obligation to hear a prisoner placed in solitary confinement as a punishment (section 45 of the Prisons Act).

Article 13

52. During the consideration of the initial Dutch report much interest was shown in the institution of the National Ombudsman. The information already given is therefore amplified below.

53. If a person believes that a representative of the central Government or the police has behaved wrongly, he or she may complain to the National Ombudsman. The National Ombudsman has the authority to institute an independent investigation, unless an administrative law remedy is available to the person concerned. Like members of the judiciary, the national Ombudsman is independent of the Government. He is appointed by Parliament.

54. The National Ombudsman investigates whether government bodies have acted with due care. In practice this means investigating whether the actions of a particular government body were in keeping with both the statutory rules and with legal norms (some of which may be unwritten). Unwritten norms include

such principles as reasonableness and proportionality, the balance between means and ends, the principle of legal certainty or trust, etc. In principle, the National Ombudsman publishes a report of his findings which is communicated in any event to the applicant, to the administrative body which is the subject of the complaint and to Parliament. The report may include a recommendation.

55. Investigations may be instituted by the National Ombudsman not only in response to a request but also on his own initiative. As mentioned in the previous report, an investigation of this kind was carried out by the Ombudsman in relation to police cells in the Netherlands. The National Ombudsman also publishes an annual report which is discussed in Parliament.

56. Below are some examples of investigations conducted by the National Ombudsman:

(a) An investigation on his own initiative into the registration of information on the treatment/care of people in custody. On 9 December 1991 the National Ombudsman published a report on this and formulated certain key items of information which must be recorded, for example particulars of the physical condition of the prisoner, use of medicines, visits by a doctor or nurse, etc. The Ombudsman recommended to the competent authorities that they consider taking measures to ensure that key information of this kind is properly recorded in accordance with the principles outlined by him. In his 1992 annual report the National Ombudsman observed in this connection that he had received reactions from the Ministers of Justice and Home Affairs in which they undertook to include implementation of the recommendation in the reorganization of the police and, pending this reorganization, urgently to request the district commanders of the national police and heads of the municipal police forces to act as far as possible in accordance with the letter and spirit of the recommendations;

(b) Following a request from the Coornhert League (Association for Criminal Law Reform) the National Ombudsman instituted an investigation into the registration of deaths in police cells. In his report of 8 April 1993 the Ombudsman recommended to the Minister for Home Affairs and the Minister of Justice that they consider introducing a national system for the registration of suicides and attempted suicides in police cells.

Article 15

57. The following information on article 15 of the Convention is intended to amplify that which was provided in the initial report. Article 29 of the Code of Civil Procedure not only regulates the right of a suspect not to answer questions but also lays down rules to be observed by the official conducting the examination. Under article 29 of the Code of Civil Procedure, the official must "refrain from any action whose purpose is to induce the suspect to make a statement which cannot be described as being made of the suspect's own free will". This means that methods of examination in which any form of pain is inflicted, threats, promises or false promises are made, trick questions are asked or any other form of pressure is brought to bear are proscribed. Article 29 starts with the words "in all cases", which indicate that this principle is applicable at all stages of criminal proceedings. It

is therefore applicable, inter alia, to examination by the investigating official and examination by the examining magistrate during the preliminary judicial investigation, and at the examination during the trial.

Final observations

58. Finally, it is worth noting that the Netherlands Government has found that many refugees and asylum-seekers in the Netherlands are victims of war and/or torture (including sexual violence). The authorities try to provide the best possible assistance for the victims. The basic principle underlying their reception is that care should be provided by the normal institutions. However, since these institutions often lack the knowledge of how to treat refugees and asylum-seekers, it has proved necessary to make special provision for these people. The assistance of institutions which are familiar with and specialized in looking after people traumatized by war and violence will be obtained. For example, the capacity of the Centrum '45 Foundation in Oegstgeest to admit victims of violence will be expanded early in 1994. This Foundation has long experience of treating the victims of war and therefore has adequate expertise in this area. Also, the Wolfsheze Mental Hospital in Wolfsheze has a wing which specializes in transcultural psychiatry. A good many of the patients treated here are victims of violence. Ambulatory care is also evolving.

59. In the last two years a number of Regional Institutes for Ambulatory Mental Health Care (RIAGGs) have acquired knowledge and experience of assisting and treating victims of war and violence. Another organization which should be mentioned in this connection is the Pharos Steunpunt Foundation in Utrecht. The aim of this foundation is to help develop expertise in the provision of health care services for refugees. If necessary, the Foundation can also provide direct assistance itself.
