

**Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or  
Punishment**

**Sixth Periodic Report**

**Response of the Kingdom of the Netherlands to the list of issues  
(CAT/C/NLD/Q/6) transmitted to the State Party under the optional reporting procedure  
(A/62/44, paras. 23 and 24)**

**THE KINGDOM OF THE NETHERLANDS**

## **I. Introduction**

1. The Kingdom of the Netherlands is using the new optional reporting procedure adopted by the Committee at its 38<sup>th</sup> session and thus submitting this report of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment on the basis of the list of issues adopted by the Committee at its 43rd session (CAT/C/NLD/Q/6).

Following constitutional reforms within the Kingdom of the Netherlands, the Netherlands Antilles, consisting of the islands of Curaçao, Sint Maarten, Bonaire, Sint Eustatius and Saba, ceased to exist as a part of the Kingdom of the Netherlands with effect from October 10th 2010. Curaçao and Sint Maarten became autonomous countries within the Kingdom of the Netherlands, and the islands of Bonaire, Sint Eustatius and Saba became part of the Netherlands, constituting the Caribbean part of the Netherlands. From that date onwards, the Kingdom of the Netherlands now consists of four parts: the Netherlands (the part in Europe and a part in the Caribbean), Aruba, Curaçao and Sint Maarten.

These changes constituted a modification of the internal constitutional relations within the Kingdom of the Netherlands. The Kingdom of the Netherlands will accordingly remain the subject of international law with which agreements are concluded.

## THE NETHERLANDS

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

### Summary of the Bill on Counsel and Police Interviews in the Netherlands

A draft bill is being prepared. The Minister of Security and Justice plans to send it to the Council of State within the next few months. The primary aim of the bill is to lay down the right of arrested suspects to obtain legal assistance prior to their first police interview. The revision of the legislation concerning legal assistance for adult suspects is in line with the procedures set out in the Board of Procurators General's instructions. These instructions were developed in response to established case law of the European Court of Human Rights (starting with judgments in *Salduz* and *Panovits*, for example) and the Supreme Court. Secondly, anyone accused of a crime carrying a prison sentence of six years or more, according to the statutory definition, has the right to request the assistance of counsel during an interview. The police may deny this request if such legal assistance is contrary to the interests of the investigation. The basic principle of the legislation is that legal assistance is provided at an earlier stage in the criminal investigation. Where counsel used to be engaged when the suspect was brought before the assistant Public Prosecutor in connection with his remand in police custody, the suspect is now entitled to legal assistance by counsel (*i.e.* consultation with counsel, see further under 12.) prior to the first police interview following arrest. According to the interpretation of the Dutch Supreme Court, suspects under the age of 18 who have been arrested for a criminal offence are provided with counsel, who is entitled to be present during questioning.

### Information about the rights of suspects

This concerns the codification of the obligation to provide information to suspects on their rights, pursuant to the case law of the European Court of Human Rights, and the requirements that have to be

met to ensure a fair trial. A suspect has the right to be informed of the offence of which he is accused, the right to legal assistance and the right to the assistance of an interpreter if he has insufficient or no command of the Dutch language. Listing the rights of the suspect and the statutory notification of such rights is also in line with developments set in motion within the Stockholm Programme and the draft directive on the right to information in criminal proceedings. Under current Dutch law suspects are informed of their right to remain silent before the police interview begins.

#### Right of access to an independent medical doctor

Articles 15, 16 and 16a of the Regional Police Forces (Management) Decree specify the services and facilities to which persons in police custody are entitled. The Police Cell Complex Regulations elaborate the provisions in the Decree in more detail.

One basic service is necessary medical care (see article 15, paragraph 1 (d) of the Decree). The code of conduct for the police force concerned provides further detailed instructions, so there may be regional differences. In most regions, persons under arrest are checked by a nurse twice a day. A physician is called if medical assistance is necessary or at the detainee's request. There are arrangements for the provision of medical assistance in place at regional level. In the Amsterdam region, for example, the police have agreements with the Municipal Health Service (GGD). In Friesland, agreements have been made with a central GP out-of-hours surgery.

Detainees may also see a physician with whom no agreements have been made (i.e. a physician of their own choosing). In such cases, the cost of medical assistance is charged to the detainee. Enquiries revealed that this rarely occurs.

Only physicians have access to detainees' medical records. An independent supervisory committee (see article 16a of the Decree) supervises and reports annually to the regional police force manager and the Minister of Security and Justice.

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

Since 24 December 2010, the Netherlands has been bound by the provisions of EU Directive 2008/115 (Directive on common standards and procedures in Member States for returning illegally staying third-country nationals). Article 15, paragraphs 5 and 6 state that detention for the purposes of removal must

not exceed 6 months and can be extended by a maximum of 12 months. Dutch practice conforms with these provisions (which are directly enforceable). These provisions will be anchored in Dutch law. A bill to this effect is currently being considered by the House of Representatives and the Senate.

**3. Please indicate steps taken to reduce the length of pretrial detention.**

Time limits for the disposal of criminal cases are a constant issue of concern for the government and the judiciary. The government is working with the judiciary and the Public Prosecution Service to speed up the criminal prosecution process by introducing options such as expedited proceedings and authorising the Public Prosecution Service to dispose of simple cases (the Public Prosecution Service can impose several types of sanctions, but not deprivation of liberty). These developments unburden the judiciary, enabling it to focus on more complicated and serious cases. Thus, they serve to shorten the time spent in detention prior to conviction or acquittal. The government ordered comparative law research into, among other matters, alternatives to pre-trial detention that would involve imposing conditions on defendants aimed at limiting the risk of recidivism, including electronic monitoring and posting bail. The results of this research became available in the summer of 2011. The government is currently determining what conclusions can be drawn from the results and what measures should ensue.

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

Children appear before the children's judge (*kinderrechter*). The Code of Criminal Procedure contains a separate title with procedural rules specially formulated for cases involving children. These rules are also applied in cases, as referred to by the CRC, involving children who were 16 or 17 years old when the offence leading to prosecution was committed.

In the Netherlands it is possible in such cases for the children's judge to impose a penalty or non-punitive order laid down in adult criminal law (article 77b of the Code of Criminal Procedure), for example, due to the gravity of the offence, the perpetrator's personality or the circumstances in which the offence was committed. As a consequence, under the law the penalty or non-punitive order must, in principle, be enforced within the system applicable to adults.

It should be noted that the children's judge in the Netherlands exercises great restraint in imposing penalties or orders from adult criminal law. In 2006, 2007 and 2008, such penalties or orders were imposed on 108, 103 and 104 children, respectively. This represents 1.4%, 1.3% and 1.2% of all convictions of minors. In most cases, children who have received an adult sentence reach the age of

majority before the sentence is enforced. In accordance with recent legislation, when a hospital order ('TBS'; a treatment order under adult criminal law) is imposed on a minor by the children's judge, the sentence can be carried out at a young offenders' institution, i.e. outside the adult system, until the person turns 21. This amendment to the law was introduced to comply with CRC recommendations concerning this matter.

In this context, it is also important to mention that imposing a life sentence on a minor was explicitly prohibited by act of 20 December 2007 (Bulletin of Acts and Decrees 2007, 575) in compliance with CRC recommendations regarding life sentences for minors.

As stated above, when a children's judge imposes a sentence under adult criminal law the possibility exists that the minor concerned may have to serve the sentence in the adult system. Because of this, when it became a party to the Convention on the Rights of the Child the Netherlands entered a reservation to article 37, paragraph (c). The reservation states that while the Netherlands accepts the provision, this does not prevent the application of adult criminal law to children aged 16 or older if the criteria laid down by law are met. The Dutch government then reconsidered this reservation in light of the CRC's recommendations. The government takes the position that despite the fact that penalties or orders under adult criminal law are rarely imposed on minors it wishes to preserve the possibility. This position is set out in the letter sent to the House of Representatives by the State Secretary for Security and Justice, concerning the introduction of a separate criminal law for adolescents aged 16 to 23 (Parliamentary Papers, House of Representatives 2010/11 28 741, no. 17). The aim of having a criminal law applicable to adolescents is for courts to take a more individual approach to sentencing when imposing a penalty or non-punitive order, taking into account the phase of development that the teenager or young adult is in. It will therefore be possible to impose penalties and non-punitive orders from the educational elements of juvenile criminal law on young adults under 23. Dutch law currently allows this for young adults under 21 (article 77c, Criminal Code). Child offenders will continue to be prosecuted by children's judges. In the letter, the government writes that because it is possible to impose adult penalties and non-punitive orders on minors aged 16 and older, it is unnecessary to make what is currently a mild system of penalties under juvenile law more severe across the board.

**5. Since the consideration of the previous report, please indicate any steps taken by the State party to establish an independent national human rights institution, in accordance with the Paris principles.**

The Netherlands is in the process of establishing a national institute of human rights. The new Netherlands Institute for Human Rights will be independent and will operate in accordance with the Paris

Principles. The Senate approved the bill establishing this institute on 22 November 2011. The Institute will open its doors in 2012.

**6. Please elaborate on the status and content of the proposal for a new asylum procedure. In particular, please indicate if:**

**(a) This accelerated procedure for the review of asylum applications in eight days has or will become the standard procedure for all asylum procedures.**

**(b) The procedure enables a thorough and adequate assessment of asylum applications by allowing a period of time adequate for the presentation of evidence.**

**(c) Applications from all asylum-seekers, in particular children, undocumented applicants and other vulnerable groups are processed in such a way that those in need of international protection are not exposed to the risk of being subjected to torture. Has the State party established criteria to assess which cases have to be processed under the accelerated procedure?**

**(d) All asylum-seekers have access to an interpreter as well as to adequate legal assistance and may be, as appropriate, assisted by the same lawyer from the preparation of the first interview to the end of the proceedings.**

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

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

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

(a)

Please see the detailed description of the amended asylum procedure in the annexe to this answer (p 83 and further). It is important to note that this procedure is not an accelerated procedure (as assumed in the question), but the general procedure, which can be extended under certain circumstances. Every asylum seeker begins with the general asylum procedure; if required, the investigation can continue in the extended asylum procedure.

(b)

The introduction of the period of rest and preparation preceding the general asylum procedure will grant asylum seekers more time than they previously had to gather and submit relevant information so as to substantiate their asylum applications. The second interview (prepared by the asylum seeker together with his or her legal adviser) in the procedure also offers them adequate scope to submit the gathered information.

(c)

As explained above, this is not an accelerated procedure. Minors are given at least three weeks' rest and preparation so that they have time to prepare their case as thoroughly as possible together with their assigned guardian and legal adviser. There are also special officers trained in interviewing minors, and special child-friendly interview rooms. There is also a health check for people with medical problems, in which a medical officer examines whether their state of health will have any particular implications for the interview.

There are no criteria to determine whether an application can be decided on within the general asylum procedure, other than that of due care.

(d)

All asylum seekers are assigned free legal assistance, and all interviews take place in the presence of an interpreter. As regards the continuity of legal assistance, please see the relevant passage in the annexed summary of the amended asylum procedure.

(e)

During the period of rest and preparation the asylum seeker is advised of the importance of documentation. Facilities (internet, telephone and fax) are available to facilitate the transfer of relevant documents to the Netherlands.

(f)

Please see the relevant passage in the annexed summary of the amended asylum procedure.

(g)

Please see the relevant passage in the annexed summary of the amended asylum procedure, and to the answer to question 11.



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

The country reports on Iraq, drawn up and published by the Ministry of Foreign Affairs, indicate that the violence and human rights situation in parts of Iraq or in the country as a whole have been a cause of concern for many years. At the same time, they also show that the situation has improved significantly compared with 2006 and 2007.

In the light of this information, there is no reason to conclude that the nature and intensity of the violence in Iraq is such that any expulsion to this country would constitute a violation of article 3 of the ECHR, or of any of the other relevant conventions. Moreover, the European Court of Human Rights expressed its view that the situation in Iraq was exceptional as long ago as 2009 in its judgment *F.H. v. Sweden* (20 January 2009). The European Court of Human Rights was of the opinion that, although the general security situation in Iraq, and in Baghdad, was uncertain and problematic, it was not so acute that Iraqi citizens who were returned would face a real risk of treatment contrary to article 3 of the ECHR simply through being there.

The general situation in Iraq is reason to continue to designate a number of ethnic groups in Iraq as vulnerable minority groups. If a person is considered to be a member of a 'vulnerable minority group' there will be less pressure on them to emphasise individual factors to satisfactorily establish their need for protection. Accordingly, Iraqi Christians, Mandaeans, Yezidis, Palestinians, Jews, Shabak and Kaka'i with relatively few individual relevant factors can establish satisfactorily that they qualify for protection. Someone with relatively few individual relevant factors does not have to have personally undergone treatment in violation of article 3 of the ECHR to show that they are faced with this threat. Human rights violations in the immediate circle of the alien in question against persons belonging to the vulnerable minority groups in question can also constitute sufficient grounds for recognising the threat of violation of article 3 of the ECHR. Moreover, given what is known about the general situation in Iraq, the country-specific asylum policy on Iraq also states that applications made by members of certain groups, such as intellectuals, journalists and persons working in high-risk professions, should be evaluated with particular care.

It may be concluded from the above that both policy as a whole, and the assessment of individual asylum applications, take the general and security situation into account. Persons who are not deemed to need protection should return to their country of origin. Primary responsibility for return lies with aliens themselves. Many Iraqis have already returned to Iraq of their own accord, while others have enlisted the help of the International Organization for Migration (IOM). Figures released by the IOM show that 719 Iraqis returned to Iraq of their own accord in 2009. The Dutch government supports returnees, for example through return and reintegration projects. While independent return is favoured, forced return is, and will remain, a necessary option.

Should unsuccessful asylum seekers not make their own arrangements to return, residence will not be tolerated and forced return will be the next step. In such cases, forced return is actually carried out. The persons concerned will have had their application rejected following a procedure in which due care has been exercised and the case examined by an independent court.

**8. Please provide data, disaggregated by age, sex and ethnicity, on:**

**(a) The number of asylum applications registered and the number of applications processed respectively under the normal and accelerated procedures.**

**(b) The number of applications accepted.**

**(c) The number of applicants whose application for asylum was accepted on grounds that they had been tortured or might be tortured if returned to their country of origin, and also on asylum granted on grounds of sexual violence.**

**(d) The number of cases of refoulement or expulsion.**

(a)

In 2010 approximately 15,150 asylum applications were submitted for processing (circa 9,050 men and 6,100 women). An estimated 5,450 persons were minors (17 or younger), and 9,700 were adults.

Limitations imposed by Dutch privacy legislation mean that registration of ethnicity takes place in such a way that it is not possible to generate aggregate data.

Since 1 July 2010 some 7,710 asylum applications have been admitted to the eight-day general asylum procedure for processing. Of these, circa 3,780 have been finalised – 1,650 (21% of the total) were

rejected and almost 2,140 (28% of the total) were granted. In the first six months following the introduction of the improved asylum procedure, 49% of applications were finalised in the general procedure. The remaining 51% were processed in the extended asylum procedure. A comparison of these results with those recorded six months before the improved asylum procedure came into force shows that finalisation has increased by 20 percentage points. In the first half of 2010, some 1,970 applications were finalised under the application centre procedure, about 29% of the total (around 950, or 14%, were rejected and 1,020, or 15%, granted). The main effect can therefore be seen in the increase in numbers of applications granted rapidly.

(b)

In 2010 a total of 8,700 persons were granted an asylum residence permit (circa 4,550 men and 4,150 women). An estimated 3,800 persons were minors, and 4,890 adults.

(c)

The IND system does not register the exact grounds that have led to a positive decision on an application for a individual asylum status. Thus the Netherlands is unable to provide exact data on how many asylum permits were granted on the grounds of torture or sexual violence.

(d)

Given that there is an absolute ban on refoulement, there were no incidences whatsoever of expulsion involving refoulement, directly or indirectly.

In 2010 a total of 11,770 aliens who were not legally entitled to residence are known to have left (this covers all categories, not just former asylum seekers). Of these, 3,780 people left of their own accord (under supervision), while 7,990 persons underwent forced return.

**9. Since the consideration of the previous report, please indicate whether the State party has rejected, for any reason, any request for extradition by another State of an individual suspected of having committed an offence of torture, and has started prosecution proceedings as a result. If so, please provide information on the status and outcome of such proceedings.**

The government made enquiries with the competent authorities and found that the Netherlands received no extradition requests regarding torture offences in the period under review.

**10. With reference to the Committee's previous concluding observations:**

- (a) Please provide information on further educational programmes developed and implemented by the State party to ensure that law enforcement personnel and justice officials are fully aware of the provisions of the Convention (para. 14).**
  
- (b) Please indicate if the State party has developed and implemented a methodology to evaluate the implementation of these training/educational programmes, and its effectiveness and impact on the incidence of cases of torture, violence and ill-treatment. If so, please provide information on the content and implementation of such methodology, as well as on the results of the implemented measures.**

Police training includes a prisoner care module, an important part of which concerns the treatment of prisoners. There is also a module on the legal context of police work and the mandate of police officers. Respect for human rights, including the prohibition of torture, is an important part of that module. Much of the training takes the form of coaching and learning on the job in the police force. As police training involves combined study and work experience, the actual knowledge and skills are gained both at the Police College and through practical work in the police force itself. A manual on the treatment of prisoners in police cells serves as an important guideline for day-to-day police practice.

To ensure that due effect is given to the provisions of Dutch criminal procedure protecting the rights of suspects and witnesses, interview training courses have been developed for the Dutch police force. These courses are given by the Police Academy of the Netherlands and focus on the interviewing of particular target groups such as vulnerable suspects, child witnesses aged between 4 and 12 years and mentally disabled witnesses. An audio or video recording is made of interviews of children and vulnerable people. In this way all parties to the proceedings can check how the interview has been conducted. During their training, police officers learn to adjust their examination to the vulnerability and level of development of the persons they are interviewing.

An anti-torture training course for prison staff includes a module on criminal law and legislation. An important element is the ethical behaviour protocol, which includes detailed instructions on how and when force may be used against prisoners.

Each year the Training and Study Centre for the Judiciary (SSR) gives a number of courses that touch on the subject of torture. These courses are available to both judges and public prosecutors. For example, the WIM/WOS I and II courses deal with the International Crimes Act and the Wartime Offences Act. The SSR also gives two courses on the European Convention on Human Rights which include consideration of article 3 of the Convention, i.e. the prohibition of torture. Use is also made of training material on article 3 of the Convention that can be found on the website of the Council of Europe (<http://www.coehelp.org/course/view.php?id=8>).

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

As of 1 July 2010 a period of rest and preparation preceding the asylum procedure was introduced, including the voluntary health check mentioned under 6.c.. All asylum seekers are invited to undergo this check, and are given an explanation of why it is important they do so. The aim is to ascertain whether there are any medical problems that may influence the interview or how it is interpreted.

The incorporation of the health check into the period of rest and preparation means the Netherlands is acting in the spirit of the Istanbul Protocol more than ever before. Interviews with applicants with mental and/or physical disabilities can be arranged so they can make their statement to their best of their ability. If applicable, medical problems can be taken into consideration when interpreting statements.

The health check is not about generating supporting evidence (e.g. confirming that scars have been incurred through a particular event, such as torture). That is unnecessary under Dutch asylum policy. The guiding policy principle is that the need for protection is primarily determined by the plausibility of the account. An asylum seeker who claims to have been tortured does not need to show supporting medical evidence; a plausible account is sufficient.

Moreover, the Dutch government believes that the added value of this sort of investigation in helping to determine the outcome of an asylum procedure is very limited, as it is impossible to make definite

pronouncements about the reasons behind the asylum seeker's physical or mental state. Accordingly, a medical report on e.g. scars cannot be decisive if the account as a whole is implausible. In the Dutch government's opinion, in the light of Dutch asylum policy the asylum seeker's interests are best served if he is enabled to make the fullest and most accurate account possible in support of his asylum application and – where applicable – if mitigating factors relating to his statements are taken into account.

Should the asylum seeker himself submit supporting medical evidence, for example in the form of a report by the Amnesty International Medical Examination Group, the Immigration and Naturalisation Service (IND) will take it into account when assessing the facts.

As regards training, where medical aspects (as referred to in the Istanbul Protocol) can play a role in migration procedures, this will be taken into account when training the professionals in question – both medical advisers and IND staff who work with their reports. Interviewers and decision-making officers either took a course in dealing with trauma, or the recently introduced European Asylum Curriculum module 'interviewing vulnerable persons'. Both these courses focus not only on the health check, but also on other signs that staff may themselves observe during the interview and decision-making process. Provisions on scars and trauma are also included in the protocol for medical advisers carrying out the health check during the period of rest and preparation.

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

Audio and video recording

Since 1 October 2010 audio and video recordings have been made of certain police interviews of witnesses, suspects and informants. It was on this date that the Instructions on the Audio and Video Recording of the Examination of Informants, Witnesses and Suspects entered into force. In the interests of establishing the truth it is desirable for the Public Prosecution Service to arrange in certain cases for audio or video recordings to be made of interviews. Such recordings ensure that the interviews can be checked at a later stage of the criminal proceedings. The instructions state how and when recordings must be made. A distinction is made between audio, video and optional recordings of the interviews of suspects, witnesses and informants.

An audio recording is mandatory if:

- the victim is deceased;
- the offence carries a sentence of 12 years or more;
- the offence carries a sentence of less than 12 years and there is clear evidence of serious bodily injury;
- the offence is a sexual offence carrying a sentence of eight years or more or involves sexual abuse in a relationship of dependency.

A video recording is mandatory if:

- the person conducting the interview is assisted by a behavioural expert;
- the person interviewed is vulnerable and the offence is one for which an audio recording is obligatory (persons are deemed to be vulnerable if they are under the age of 16 or have a (manifest) mental disability or cognitive disorder);
- a witness is interviewed by a behavioural expert.

#### Optional recording:

In certain types of criminal case a public prosecutor/advocate general always has the right to have an audio or video recording made of interviews. This is known as optional recording.

Interviews are conducted in a specially equipped interview room. All recordings are wiped as soon as they are no longer needed for the purposes of the investigation. The new instructions were introduced as part of a programme to improve investigation and prosecution procedures.

#### Consultation assistance

The Police Interviews (Legal Assistance) Instructions (2010A007) of the Public Prosecution Service have been in force since 1 April 2010. The instructions lay down rules safeguarding the right of an arrested suspect to consult a lawyer before being interviewed by the police. This right stems from recent case law of the European Court of Human Rights (ECtHR). This form of legal assistance is described in the instructions as 'consultation assistance'. Both minor and adult suspects are entitled to such assistance. Consultation assistance consists of a meeting of the suspect with a lawyer before the first 'substantive' interview of the suspect by the police. A substantive interview is an interview in which a suspect is questioned about his involvement in a criminal offence. The consultation with the lawyer generally takes

place in person at a police station. In principle, a telephone conversation is sufficient only in category C cases (minor offences for which pre-trial detention is not permitted).

The instructions also contain rules concerning the right to be assisted by a lawyer during the police interview (interview assistance). In its judgments the Supreme Court has held that juveniles who have been arrested are also entitled to legal assistance or assistance from counsel or another confidential adviser during the police interview (see for example, Hoge Raad 30 June 2009, LJN rns. BH3079, BH3081 and BH3084). For the purposes of these instructions juvenile suspects means suspects who have not yet reached the age of majority. The instructions will be codified in the Counsel and Police Interviews Bill referred to in the answer to question 1.

#### Interpretation and translation

The Public Prosecution Service's Instructions on the Right to Assistance from Interpreters and Translators during Criminal Investigations (2008A010) have been in force since 1 January 2009. These instructions regulate the assistance to be provided by translators and interpreters during the investigative stage of criminal proceedings. They relate to the provisions on this subject in the Code of Criminal Procedure and are in conformity with the Sworn Interpreters and Translators Act (Bulletin of Acts and Decrees 2007, 375) which entered into force on 1 January 2009 and are intended to ensure the quality and integrity of interpreters and translators (See also the Sworn Interpreters and Translators Decree (Bulletin of Acts and Decrees 2008, 555), which includes the provision regulating the entry into force of the Sworn Interpreters and Translators Act).

The basic principle is that during the initial police interview a suspect should be addressed in a language he understands. If the suspect is not interviewed immediately after his arrest, he should be informed of the reason for his arrest in a language which he understands. This should be done in any event after his arrival at the police station and no later than the point when he is brought before the assistant public prosecutor. Immediately before this it should be decided whether the suspect has a sufficient command of Dutch and, if not, of which language he does have a sufficient command. Throughout the entire investigation the suspect should, in principle, be interviewed in that language and receive all communications relevant to the proceedings in that language.

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



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

Following the recommendations made by the CPT and other parties in 2008, recommendations were made regarding the specifically procedural nature of the aliens' detention regime. The recommendations concluded that this regime should be distinguished from a penitentiary regime for persons detained under the criminal law. In response to the CPT's report the Dutch government endorsed this principle. However, it should be taken into account that in situations in which it is necessary to deprive people of their liberty – even for reasons other than criminal acts – it is inevitable that the way in which this happens will in some ways resemble the way in which offenders are detained. For example, certain necessary security and management measures associated with the external appearance and regime typical of detention facilities will be unavoidable.

The Dutch government endorses the guiding principle that detaining people should only be a measure of last resort. When people are detained, each case should be examined on its merits to establish whether there is a milder alternative.

Since 2008 a range of improvements have been introduced to aliens' detention. Firstly, a reorientation has taken place, with the emphasis on a common vision on detention, standards and guiding principles for enforcement and a long-term agenda. As a sector, aliens' detention has been given a fixed place within the organisation of the Custodial Institutions Agency (DJI) and now features integrated management of detention centres, an underlying philosophy, a job classification system and an employee participation body. There will be further developments in care, personnel, security, regime and placement; this is the responsibility of heads of detention centres who are also portfolio holders. We are continuously working to improve buildings and facilities. Temporary facilities are being replaced by permanent buildings, where there will be service desks and a legal aid and advice centre. Activity teams have been expanded and visiting hours extended. In-house medical care is also available, with built-in quality management indicators such as incident report systems and internal audits. Regimes have been developed for locations housing families and for people requiring extra care. We are continuing to look at ways in which we can use technology to enhance the time spent in detention by e.g. providing the detainees with internet, enabling them to order from online shops and providing telephones in rooms.

**(b) Cease the use of boats as facilities for immigration detainees.**

Detention ships were in use to temporarily extend detention capacity, but this is no longer the case. DJI currently has sufficient detention capacity to house aliens in permanent buildings.

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

The basic principle governing medical care in detention locations is that it should be equivalent to that in society at large, taking into account the fact that the immigrants in question are in detention. Immigrants have adequate access to medical care while in detention. Nurses are available in detention centres from 7:30 to 22:00, and doctors are available for consultation several times a week. Outside these hours, i.e. at night and at weekends, there is always a doctor on call. During the night, staff on duty are responsible for giving first aid or calling a doctor or ambulance. Medical personnel monitor the health of individuals, where required. All aliens undergo a medical check when they are admitted.

People with psychological problems receive the appropriate care during their detention. Psychologists are available in the centres, and a psychiatrist holds weekly consultations. Moreover, the case of detainees who require treatment is discussed in a weekly meeting involving the doctor, psychologist, psychiatrist and nurse. Dental care is provided by a mobile dental clinic, which visits weekly.

Aliens in detention can also be admitted to the prison hospital, if required. Those with psychiatric problems can be admitted to an individual supervision wing or to the Forensic Observation and Guidance Unit (FOBA), where they will receive the medical and/or psychiatric care they need.

In 2009 the Healthcare Inspectorate made a number of recommendations for improving care in detention centres, which have been adopted. They concern:

\* Securing responsible medical care and a permanent process of improvement: an internal auditing system is to be set up, and a quality system to describe and standardise 21 new work processes.

\* Hygiene and prevention: detention centres operate according to hygiene guidelines and guidelines on infectious diseases. People are also provided with information on this subject via interpersonal discussion, informative materials and posters.

\* Psychological care: since 2009, psychologists working in detention centres have formed a network to monitor and discuss the quality of the professional mental health care they provide at the centres. Agreements are made on care policy, the qualitative framework and assessing professionalism.

**14. Please provide information on:**

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

Since 10 March 2011, there has been limited scope for placing unaccompanied minors in aliens' detention. Unaccompanied aliens younger than 18 years can only be detained if they meet the following criteria (in addition to the standard conditions).

1. The person in question has been convicted of a serious offence.
2. Departure can be effected within 14 days.

In these cases, detention may not exceed 14 days and should be kept to the minimum.

3. The person in question has previously absconded from the detention centre, or has failed to fulfil a duty to report to the authorities or comply with a measure restricting his liberty.

As the people in question are minors, the incident would need to be significant and repetitive rather than of a limited, incidental nature. For example, a minor who failed to report to the authorities on one occasion but did so on the next would not be placed in aliens' detention.

4. The person in question has been refused entry at the external border. Detention will apply until it can be established that the alien is a minor.

Asylum applications of persons refused entry at the border are generally processed at the application centre at Schiphol, where people are detained. Unaccompanied minors are treated differently. If an asylum seeker claims to be an unaccompanied minor, and there is no doubt that this is correct, the application will be processed not at the application centre at Schiphol but at that in Den Bosch, in the category of regular applications. In these cases, the minor will only be detained for a few days, while it is ascertained that he is a minor. If there are any doubts about the minor's age an investigation will be launched to try to establish his actual age. In that case, he may be detained while the results of the investigation are pending. The Dutch government has decided not to impose detention only once the applicant's age has been ascertained. After all, that would mean aliens refused entry at the border could unlawfully obtain entry to the Netherlands by pretending to be minors. It would be impossible to impose detention to prevent this before their age had been established. This would be undesirable. In cases in which an investigation to establish age is carried out, the assumption is usually that the person in question is an adult, meaning that detention is an option until it can be proved that he is actually a minor.

Families with children are in principle offered reception in restrictive accommodation, as an alternative to detention. This is an open location with a daily duty to report. A family may be placed in aliens' detention up to two weeks before the date of their departure from the Netherlands. This will be in a detention centre that is suitable for the reception of children. The detention of an entire family may only take place if there is physical resistance to the expulsion, or if a new application for a residence permit is submitted at the last moment.

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

In the Netherlands, various measures are taken to prevent minor asylum seekers from disappearing. There is 24-hour staffing in centres where minor asylum seekers are held. Doors are operated by key cards and cameras are in place. Minors are assigned guardians within 24 hours of arrival, and they are warned about the risks of trafficking. Refugee centre employees are trained to recognise signs of trafficking. If an unaccompanied asylum seeker arrives at the national airport, representatives of the organisations involved will be extra alert to signs of trafficking.

In addition to the aforementioned measures, a pilot project on protected reception for unaccompanied minors likely to be, or to become, victims of trafficking was launched on 1 January 2008. Since 2010 protected reception centres for these minors have been a standard part of Dutch prevention and protection policy. Victims (or suspected victims) of trafficking are placed in various small-scale locations, where extra safety measures and extra personnel are in place. These minors are given special guidance and support, and during their first months, in particular, are only allowed to go outside if they are supervised.

Children, or families with children, in reception locations are entitled to the same provisions and care offered by various youth care institutions as Dutch residents. The organisation providing health care for asylum seekers at reception locations has specific experience in the healthcare needs of this category of patient.

Families with children are, where practicable, housed in separate units to create as much privacy as possible. Unaccompanied minors are housed at special locations.

Asylum seekers have the same right to education as Dutch residents. They may complete any schooling started before the age of 18.

**15. Please provide detailed information on:**

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

The Dutch government shares the view that a proper procedure is of great importance in dealing with cases of ill-treatment or abuse of prisoners. However, it would point out that such a procedure already exists. A circular of 9 January 2003 (reference 5195514/02/DJI) provides that where the competent authority (the governor of the facility) becomes aware of (suspected) misconduct by a member of staff of the Custodial Institutions Agency (DJI) he should report this to the Integrity and Security Section of the DJI. This section can then either investigate the facts or start a disciplinary investigation and, if necessary, apply for the institution of a criminal investigation. All steps taken by the section during this procedure are recorded and accounted for in writing.

If the facts warrant a criminal investigation, the Public Prosecution Service may decide to have it carried out by the police or the National Police Internal Investigations Department. There is no evidence that this procedure is not properly implemented.

As a rule, staff who are under investigation are suspended from their duties, but this depends on the specific facts of the case and any action taken must be compatible with the official's individual legal status.

In addition, prisoners themselves can lodge a complaint with the (independent) complaints committee in the facility itself or appeal to the appeals committee of the Council for the Administration of Criminal Justice and Protection of Juveniles. They may also report the offence to the criminal justice authorities, thereby initiating a criminal investigation.

Finally, it should be noted that responsibility for supervising custodial institutions and immigration detention centres rests with the Custodial Institutions Inspectorate, which is an independent body.

**16. Please indicate further efforts undertaken to investigate and prosecute racial hatred and related violence through criminal legal proceedings.**

Criminal law provisions

Articles 137c to 137g and article 429quater of the Criminal Code lay down the basic categories of discrimination offences: insult, incitement to hatred, discrimination or violence, distribution of, or having in one's possession for the purpose of distribution, any utterances containing a message that discriminates or incites people to hatred, discrimination or violence, assisting in activities aimed at discrimination, and making a distinction in the exercise of one's profession, office or business between persons on account of their race, religion, belief, sex, sexual orientation or disability.

In addition to these specific discrimination offences in Dutch criminal law, the law prescribes that if there is a discriminatory element to a criminal offence, this is to be treated as an aggravating circumstance (e.g. an assault committed with a discriminatory motive). The Public Prosecution Service is required to demand a 50% increase in sentences in such cases and a 100% increase for criminal offences with a discriminatory element that have a major impact on the victim. This is the case, for example, when in the commission of an offence the offender violated the victim's physical integrity to such a degree that the victim died or suffered injuries requiring specialist medical treatment. An offence is also deemed to be in this category if the offender manifestly violated the victim's mental integrity or privacy or if the modus operandi was extreme, i.e. exceptionally aggressive and abusive (in his behaviour, arbitrary choice of victim, use of a firearm, etc.), or if there is an explicit pattern (the offence was not a one-time occurrence, but rather part of an obvious pattern of offences by the same offender or group of offenders). This provision came into effect on 1 May 2011.

Instructions on Discrimination

The Instructions on Discrimination, which came into effect on 1 December 2007, provide guidelines for prosecuting discrimination offences and the way the police and the Public Prosecution Service are to deal with discrimination cases.

In accordance with the Instructions on Discrimination, the police must register discrimination offences and criminal offences with a discriminatory element in a uniform manner. They are also required to register and, if possible, investigate any criminal complaint of discrimination and send the official report to the public prosecutor. The police may deviate from this rule only in consultation with the Public Prosecution Service. A Regional Forum on Discrimination (RDO) meets regularly to ensure that policy is uniform and criminal law enforcement effective. It brings together the Public Prosecution Service, the police and local anti-discrimination bureaus to discuss how discrimination cases in the region are being handled and what progress has been made.

With respect to Public Prosecution Service procedures, the Instructions on Discrimination require each regional public prosecutor's office and appeal court public prosecution office to appoint a prosecutor or advocate-general with responsibility for discrimination cases. The discrimination prosecutor is responsible for evaluating and disposing of discrimination cases and also functions as the liaison officer for the police and anti-discrimination services within the area covered by the public prosecutor's office.

In evaluating discrimination cases, discrimination prosecutors and advocates-general may consult the National Discrimination Expertise Centre (LECD-OM). Established in 1998, the LECD-OM is the Public Prosecution Service's internal expertise centre on discrimination. The LECD monitors the national inflow and disposal by the Public Prosecution Service and the judiciary of cases specifically related to discrimination.

In the case of discrimination offences that are prosecutable, it is assumed that prosecution is expedient and, in principle, a notice of summons and accusation must be served. The Instructions on Discrimination requires that the severity of the sentence and the tone of the public prosecutor's closing speech make it absolutely clear that discrimination is unacceptable in society.

#### Programme of action to tackle discrimination

At the beginning of July 2011, supplementary criminal-law measures were submitted to the House of Representatives within the context of the programme of action aimed at tackling discrimination. The changes are aimed primarily at improving and simplifying the procedure for lodging criminal complaints

of discrimination, improving investigation practice, increasing sentences and having the Public Prosecution Service adapt its Instructions on Alternative Sanctions.

#### *Reporting discrimination and lodging criminal complaints*

In order to ensure effective investigation and prosecution of discrimination offences people must be able to lodge criminal complaints and report potentially discriminatory elements when lodging complaints about other types of offences (e.g. violent crimes). The following three initiatives were launched to achieve these goals:

1. Improving and simplifying the crime reporting process and taking a more service-oriented approach in order to improve the quality of official reports of criminal complaints;
2. Improving communication about the progress and disposal of complaints (as part of the Victims' Status (Legal Proceedings) Act, which came into effect on 1 January 2011);
3. Offering more channels for lodging criminal complaints (e.g. the internet). The Rotterdam-Rijnmond regional police force is currently running a pilot project in which victims can lodge criminal complaints with the police in specially designed rooms equipped with a webcam and a 3D screen. In future, it will be possible to lodge complaints online for more offences. The technology for video conference hearing is also available for lodging criminal complaints.

#### *Use of investigative tools*

Municipalities have the authority to deploy a wide range of standard and alternative investigative tools and an array of instruments under the law to address excesses of discriminatory behaviour. In certain cases, targeted tools and methods that aid criminal investigation, such as CCTV monitoring, recording equipment and deployment of undercover law enforcement officers, help make the living environment safer. Decisions concerning the use of investigative tools are always made locally by the municipal authorities.

#### *Sanctions*

The Criminal Code is being amended to limit the possibility of imposing alternative sanctions for serious sexual and violent offences and repeat offences. The government considers it necessary to position alternative sanctions as an appropriate penalty for minor criminal offences. The bill is intended to meet that need and to fulfil the government's objective of bringing about behavioural change and preventing recidivism through the use of suspended sentences. In anticipation of the amendment, the Public Prosecution Service has adapted the prosecution guidelines accordingly. This means that there are



restrictions on imposing alternative sanctions for serious sexual and violent offences with a discriminatory background.

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

Unfortunately, the government is unable to provide this information as data are not registered in a way that would allow the production of the statistics requested.

**18. Please provide information on redress and compensation measures, including the means of rehabilitation, ordered by the courts and actually provided to victims of torture, of their families, since the examination of the last periodic report in 2004. This information should include the number of requests made, the number granted, the amounts of compensation ordered and those actually provided in each case.**

Where there has been ill-treatment by a government official either the victim or his or her surviving dependants can obtain compensation in various ways. If the official concerned is prosecuted, the injured party may join the criminal proceedings. Naturally, a victim may also submit a claim for compensation to the relevant police force. If such a claim is refused, the victim may institute proceedings before the civil courts for an unlawful government act. Finally, the victim may apply to the Criminal Injuries Compensation Fund.

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

Since 2007 the process of return as a whole has been monitored by the Repatriation Supervisory Committee (CITT). It has made recommendations in its annual report on four occasions for improving the implementation of the return process. The annual reports discuss issues such as the way in which

expulsions take place and how aliens are treated by escorts from the Royal Military and Border Police (KMar) throughout the process. In its 2008 report the CITT observed:

‘Expelling resisting and disruptive aliens to their countries of origin requires a mix of professional judgment, an operational approach, the ability to defuse situations, and concern to subdue heated emotions (both of the person being expelled and of bystanders (other passengers)). [...] Although it was established that the escort teams discharged their duties correctly, it emerged that fixed teams, who had taken the most recent escort commander training courses, [...] gave the best performance. This was evident, in particular, in their firm, professional and well-coordinated approach, which came across as highly thorough. It was recommended that preference be given to fixed escort teams who have taken the most recent, most relevant training courses and work well together.

In its 2009 annual report the CITT noted the following: ‘The CITT is pleased to note that the problems relating to the capacity of the KMar escort teams now appear to have been solved. This was achieved by organising more training courses for both escorts and escort commanders, and by deploying more personnel who had already received training, drawn from Schiphol border control or units based elsewhere in the country. Many older, part-time team members have now received extra training to supplement their original deportation officer training. The CITT regards this targeted training, offered in addition to the professional skills training, as a strong point. The Committee is pleased to note that, nowadays, aliens who resist are no longer immobilised on concrete floors, but are taken to a space with a padded floor and walls. This considerably reduces the risk of injury if the alien does offer resistance.’

In the same annual report, the CITT notes the following regarding the way in which the escorts perform their task: ‘The CITT’s observations indicate that the Dutch escorts set themselves apart from their foreign counterparts by their professional approach, especially where it concerns the treatment of aliens who are being expelled under difficult circumstances. It also struck the CITT that expulsion in unusual cases (e.g. parents and children) using small chartered aeroplanes requires especial flexibility on the part of escort team members. In addition to being able to curb what can be extreme verbal and physical violence in a professional manner at the outset of an expulsion, once the violence has subsided escorts are often able to show empathy in their dealings with the same people and their children. The fact that escorts are able to treat the aliens they are escorting in such a way means that both their training and their mentality can be described as professional.’

In the 2010 annual report the Committee concluded that ‘in general, the expulsion process is carried out humanely and with due care [...] Expulsions are generally carried out by the KMar escort teams, who are properly equipped and well trained, in an appropriate manner.’ The CITT also noted that ‘this year, too,

FRONTEX charter flights have proved successful in expelling larger groups of aliens, one reason being that the government, as the charterer, is able to manage the entire removal process appropriately. Moreover, the Committee noted that Dutch escort teams measure up in every respect to foreign teams performing the same task. This good performance relates not only to discipline and behaviour in situations where they are required to act, but equally to their presentation and appearance (clothing etc.)'. In the report the CITT also states that several charter flights to Iraq inspected by the CITT used the body cuff in a correct and humane manner.

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

Deprivation of liberty of juvenile offenders is only used as a measure of last resort and for the shortest appropriate period of time, in accordance with the Code of Criminal Procedure. Article 493 provides that the court that orders the detention of a minor must determine whether the enforcement of pre-trial detention can be suspended immediately or after a specific period of time. The principle is therefore 'suspension unless...'

The proper application of the principle of 'suspension unless...' has been improved further. The Behaviour Modification (Young People) Act (effective as of 1 February 2008) clarifies what is and what is not permitted in the context of special conditions in the case of suspension of pre-trial detention. The Behaviour Modification (Young People) Decree lists the special conditions that can be imposed.

The Behaviour Modification (Young People) Act also provides for a new measure in juvenile criminal law: the behavioural intervention order. It is expected that this non-punitive order (which is not custodial) will be applied in some cases in which juvenile detention would have been imposed in the past in some cases. This new measure is also part of a sanction practice in which deprivation of liberty is only used as a last resort.

In this context, it is also important to mention that by Act of 20 December 2007 (Bulletin of Acts and Decrees 2007, 575) minors may not be sentenced to life imprisonment, in compliance with the

recommendations of the Committee on the Rights of the Child, in so far as they relate to life sentences for minors.

#### *Steps taken to improve the regime in youth detention facilities*

In 2007 the Inspectorates conducted a joint investigation into safety in the (then) fourteen young offenders' institutions. Their recommendations resulted in an extensive package of measures aimed at substantially improving the quality of the institutions. What follows is an overview of the measures taken between 2007 and 2010 and the results achieved.

#### Introduction of the YOUTURN method and recognised behavioural interventions

The YOUTURN method was developed in 2007 to facilitate clarity of approach and uniformity in the activities of young offenders' institutions. YOUTURN provides group leaders with more concrete guidelines for interacting with young people and describes several phases of the young offender's stay in the institution. The individual treatment programme, the instruments to be used and parental involvement are described for each phase. In the first half of 2008 this method was tested at three young offenders' institutions. The pilot projects showed that the new method has definite added value for this target group. This is a more comprehensive approach in which young people acquire social skills and the staff gain a deeper insight into the young offenders' cognitive impairments. Young people are encouraged to participate in the joint EQUIP and TIP training sessions and education staff have substantive guidance on how to respond to the behaviour displayed by young people. Implementation of YOUTURN across the board began at the end of 2008 and all young offenders' institutions have been using the method since 2010. Each institution has a method coach to give group leaders and education staff continuous guidance in applying YOUTURN.

When it becomes clear that a young person will be staying at a young offenders' institution for a longer period (usually about three months), he or she will be offered a recognised behavioural intervention that is appropriate to their individual needs and behavioural problems. Behavioural interventions are only effective if they can be completed. Most take at least four months. Between 2006 and 2010 approximately 400 trainers were taught (and more are being trained now) to apply these behavioural interventions.

Parental participation is a core element of the method and parents are even more closely involved in their child's stay at a young offenders' institution than before. This is to ensure that juveniles return to a more stable home environment and are consequently less likely to revert to old behaviour patterns. A new sectoral strategy for parental participation was completed in May 2011. The young offenders' institutions

have a wide range of activities to encourage parental involvement, such as recognised family-oriented behavioural interventions. It is standard practice to invite parents to regular meetings on the juvenile's prospects and progress and involve them in the drafting of applications for leave and participation in training programmes.

#### Screening and psychiatric care

In the period under review efforts were made to improve the diagnosis of behavioural problems related to or ensuing from psychiatric disorders. Since September 2008 all juveniles observed to have a disorder are discussed in the psycho-medical consultation meeting held at least every two weeks and attended by treatment coordinators, the nurse and a psychiatrist. Group leaders are trained to observe psychological disorders in a psychopathology course taught by the institution's own child and adolescent psychologist or the municipal mental health care service (GGZ). The quality of psychiatric care has been improved in several ways, including the introduction of screening instruments that make it possible to determine a juvenile's psychiatric condition within 24 hours of reception at the institution.

A national strategy for basic psychiatric care was formulated in 2009, after a series of expert meetings involving, among others, municipal mental health care services for young people, young offenders' institutions, the Netherlands Institute of Forensic Psychiatry and Psychology (NIFP), the Healthcare Inspectorate and the national mental health services association. The strategy charts all the steps in the process from the intake screening to transfer and aftercare following departure. Attainment targets are set for each step. All young offenders' institutions have implemented this strategy and incorporated it in their specific policy.

In another measure aimed at improving the quality of psychiatric care, investments have been made to increase the number of psychiatrists, registered psychologists and mental health nurses. Additional resources have been provided for recruitment in the long term. In addition, all young offenders' institutions have partnerships with local mental healthcare providers that offer psychiatric care and stand-by services for psychiatrists. Across the sector, in 2010 the FTE count for child and adolescent psychiatrists was 7.75, for mental health nurses 5.6 and for registered psychologists 48.6 (plus 25 trainee psychologists). By comparison, in 2007 the FTE count was 6.3 for child and adolescent psychiatrists and 3 for mental health nurses.

#### ForCa

In order to improve forensic diagnostics for juveniles who are eligible for, or already undergoing, placement in a youth protection and custody institution (*Pij-maatregel*), the Forensic Consortium for Adolescents (ForCa) was established in 2007. ForCa is a partnership involving the mental healthcare services, the research community, the Netherlands Institute of Forensic Psychiatry and Psychology (NIFP) and the young offenders' institutions. ForCa and multidisciplinary observation (conducted by an observation department set up for this purpose) make it possible to acquire a better view of complex behavioural problems and produce detailed recommendations for a targeted approach.

### Personnel

In 2007 an objective was formulated to improve the quality of life in young offenders' institution groups by hiring a significant number of additional staff with higher professional education (HBO) degrees. The institutions are working towards a situation in which 75% of group staff have an HBO degree. This objective is being met primarily by training incumbent personnel. A large number of training programmes were launched in 2008. Given the duration of the programmes, staff turnover and the varied situations at the institutions, the objective will take several years to achieve.

In 2010, 32% of group staff were HBO graduates (cf. 26% in 2008). In 2011 over 350 members of staff will receive an HBO degree. In addition, the young offenders' institutions have formed partnerships with the institutions of higher professional education (HBOs) in their region in order to ensure that the training programmes are suited to working in an institutional setting.

### Smaller groups

As of January 2010 maximum group sizes at young offenders' institutions have been reduced to 10 (reception group) and 8 (treatment group) from 12 in anticipation of the amended Young Offenders' Institutions Framework Act (entry into force 1 July 2011), which abolishes the distinction between reception and treatment departments. Young offenders start out in a short-stay group (max. 10) and are transferred after three months to a long-stay group (max. 8), regardless of the basis for their stay in the institution. Reducing the group sizes makes it possible to adapt correctional measures and treatment to the individual needs of the young people, and has led to a situation in which there is one group leader for every 4 or 5 juveniles.

*Regulations on the use of mechanical means of restraint and improving the regime afforded to juveniles in an intensive care or forensic observation and guidance unit (FOBA)*

The Regulations on the Use of Mechanical Means of Restraint (Juveniles) Order apply in the young offenders' institutions and list the mechanical means of restraint that may be used, such as handcuffs, protective helmets and straitjackets (see article 1 of the Regulations). Article 3 explicitly sets out the necessity and proportionality principles and the principle of respect for human dignity. Mechanical means of restraint may be used only as a last resort and for the shortest possible time. The Regulations impose other requirements on the objects themselves and their use. The governor of the institution drafts a protocol specifying among other things the way in which these items are to be used and which members of staff are responsible for the supervision and care of juveniles restrained by mechanical means. A report is drawn up when a mechanical means of restraint is used. The protocol also specifies how members of staff are to be trained periodically in the use of these items.

The Young Offenders' Institutions Framework Act limits the duration of placement in segregation to a maximum of four days for juveniles aged 16 and older. Mechanical means of restraint may be used only in a segregation situation to restrain juveniles aged 16 and older for up to 24 consecutive hours. In such cases, the supervisory committee is informed immediately and acts as an important control mechanism both in its supervisory capacity and in a legal context.

In practice, juveniles who pose a serious threat to themselves or others are placed in the Forensic Observation and Guidance Unit (FOBA) at De Hartelborgt young offenders' institution. Mechanical means of restraint are very rarely used at De Hartelborgt and then only for very short periods and under constant staff supervision. As a rule, De Hartelborgt does not use this type of equipment and seeks to resolve problems in a way that does not involve the use of mechanical means of restraint.

As of 1 January 2010, the restraint bed is no longer in use and has literally been put under lock and key at De Hartelborgt. Due in part to improvement measures (e.g. group-size reduction and training of institution staff to detect psychiatric problems (early)), the number of juveniles in the FOBA has decreased.

In 2006 and 2007 there were 22 juveniles on average in the FOBA. In 2008 one of the FOBAs was transferred to the Interministerial Programme for Youth and Families (now the Ministry of Health, Welfare and Sport). At the time there were 10 residents on average. In 2009 the average dropped to 9 and since 2010 it has continued to decrease. In 2010 the average was about 7 and in the first half of 2011 it dropped to 6.

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

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

The first national action plan (2002–2008) stressed in particular the creation of infrastructure to tackle domestic violence: a nationwide network of support centres, regional/local forms of cooperation and a national expertise centre. The second action plan (2008–2011) aimed to widen and deepen services: e.g. more research, the provision of more instruments for local authorities. At present, the question of whether a new action plan is needed is under discussion.

The action plan uses the following definition of domestic violence (including violence against women): domestic violence is an act of violence committed by a person from within the victim’s domestic circle. The ‘domestic circle’ includes partners, ex-partners, family members and family friends. The term ‘domestic’ therefore refers not strictly to the location where the violence took place, but to the relationship between the perpetrator and the victim. Domestic violence may take the form of child abuse, (ex-) partner-related violence in all conceivable forms, as well as the abuse, exploitation and/or neglect of the elderly. It may involve physical and sexual violence as well as psychological violence such as threatening behaviour or stalking.

A large-scale publicity campaign was launched in 2007 and was repeated in later years. The aim of these national campaigns is to encourage perpetrators, victims and those who witness domestic violence to seek help. The national telephone number (0900 - 126 26 26) and the website ([www.steunpunthuiselijkgeweld.nl](http://www.steunpunthuiselijkgeweld.nl)) set up specifically for the campaign will remain available at least until 2012.

It is worth mentioning the project of the Dutch Women’s Council (NVR), which is an umbrella organisation with about a million members. The state awarded the NVR a grant for a three-year project aimed at raising awareness of domestic violence and empowering women.

People in professional organisations dealing with the phenomenon of domestic violence or child abuse have indicated that they would like information on whether and how they can share information on



domestic violence with other organisations. Dutch legislation provides some scope for striking a balance between the client's interests against the interest of confidentiality. The brochure entitled '*Horen, zien en zwijgplicht? Wegwijzer Huiselijk Geweld en Beroepsgeheim*' ('Hear all, see all, keep it confidential? Guide on Domestic Violence and Professional Confidentiality') is intended to prevent care professionals from being unnecessarily overcautious in sharing their information. The brochure contains information and advice on ways to exchange information on domestic violence or child abuse. There is also a web application that makes use of a decision tree diagram to check whether information may be shared with certain partners under current legislation. This web application should be used only as an aid. Individual professionals are still responsible for their decisions as to whether to share information. This application can be found at [www.huiselijkgeweld.nl](http://www.huiselijkgeweld.nl) It has been adapted for use in cases of child abuse as well.

On 20 November 2008, the State Secretary for Health, Welfare and Sport, the Minister of Justice and the Minister for Youth and Families announced a plan to implement an obligatory reporting code on child abuse and domestic violence provided for by law. This obligatory reporting code, which is also intended for honour-related violence and female genital mutilation, is to provide guidance for professionals on how to identify these forms of violence at an early stage and how to handle these cases. In anticipation of this reporting code becoming obligatory, professional organisations will be encouraged to actively cooperate. Efforts will also be made to increase the knowledge of professionals. In the context of the future Reporting Code Act, provision will also be made for a reporting right in cases of domestic violence, in line with the provisions that apply to child abuse. This reporting right gives professionals the right to waive their professional duty of confidentiality if they identify a case of domestic violence or child abuse. (Please note that the obligatory reporting code implies an obligation for organisations to design a reporting code. It does not impose on professionals a duty to report.) At this moment the Reporting Code Act is expected to enter into effect in 2012.

The Temporary Domestic Exclusion Order Act came into force on 1 January 2009. By introducing separate legislation, the government intended to create ways of imposing temporary exclusion orders on perpetrators of domestic violence in situations where there is an acute threat to the victims and/or any children. This new piece of legislation allows mayors to impose a ten-day exclusion order, restraining the perpetrator from entering the home. After the ten days, the mayor may decide to extend the order by another 18 days. The order may also be used in child abuse cases. The people involved receive professional help during the ten-day period.

In January 2007 the Social Support Act came into force in all municipalities in the Netherlands. Under the Act, municipalities are now responsible for organising social support. The aim of the Act is to encourage all citizens from all walks of life to participate and to achieve policy coherence in the field of social support and related areas. Social support includes the pursuit of policies to combat domestic violence. Municipalities are thus legally responsible for this policy area. Within this legal framework each municipality can make its own policy, based on the composition and needs of the population. Women's shelters are provided for in the Social Support Act.

A large part of the policy of the Public Prosecution Service on domestic violence and child abuse is formulated in two sets of instructions concerning the investigation and prosecution of domestic violence and child abuse. The instructions also govern local cooperation between police, the Public Prosecution Service and the Probation and Aftercare Service.

Combating domestic violence is one of the core tasks of the police. In 2003, a nationwide project on domestic violence was initiated and launched by the Board of Chief Constables. It aims to encourage all police regions to develop a policy on tackling domestic violence, foster police expertise and facilitate national registration of domestic violence cases. In 2007, the Board decided to incorporate the police approach to domestic violence once again in a programme entitled 'Een kwestie van lange adem' ('A process requiring time and patience') was launched in 2008 and will continue until the end of 2012.

In the context of the national action plan, several studies were carried out, including a major investigation of the extent and nature of domestic violence, which was completed at the beginning of this year. All the studies that have been carried out in recent years are being thoroughly assessed and their outcomes are being used to develop new policy measures.

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

In the context of the Social Support Act, 35 regional authorities for shelters are responsible for providing refuge to victims of domestic violence. Each year on average 10,000 clients and 4,500 children are given shelter at some 100 locations.

Pilot projects are being carried out for various groups of victims:

- two pilot projects for girls who are victims of honour-related violence (20 places in total);
- a pilot project for men who have been victims of serious threats of violence (40 places in total);
- a pilot project for victims of human trafficking (50 places in total).

In addition, these 35 regional authorities provided care in 4,300 cases on a peripatetic basis in 2009.

Since the introduction of the Temporary Domestic Exclusion Order Act in 2009, over 5,000 exclusion orders have been issued.

Every regional authority for shelters has a Domestic Violence Advice and Support Centre providing advice, support and assistance. In addition, every province and urban region has an Advice and Reporting Centre for Child Abuse and Neglect where people can ask questions and report known or suspected child abuse. All medical, social and legal assistance services are available to victims of domestic violence (although there may be exceptions to this rule in the case of people who are not lawfully resident in the Netherlands).

With regard to legal assistance, victims who have simple legal questions can turn to a Legal Aid and Advice Centre. The Dutch system also offers subsidised legal aid to people on a low income. The regular subsidised legal aid system requires users to pay a proportionate contribution. However, legal assistance for victims of serious violent and sexual offences is available completely free of charge if the violence resulted in severe physical and/or mental injury. Since 1 April 2006, victims of serious (sexual) violence, domestic or otherwise, can apply for free legal assistance from a specialised lawyer, irrespective of their financial capacity. The criteria for determining whether the condition has been met correspond to the criteria that apply under the Criminal Injuries Compensation Fund Act. Free legal aid applies to criminal proceedings and civil proceedings aimed at obtaining compensation. Persons who remain in the home after a temporary restraining order has been issued are eligible for free legal advice from the Victim Support Organisation.

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

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

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

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

Please see the answer to question nr 23 below.

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

*Comprehensive strategies*

The policy on preventing and combating human trafficking contains measures aimed at reducing and preventing the trafficking of both adults and children. After our last report in 2004, an Expertise Centre for Human Trafficking and People Smuggling was established in May 2005. It is a partnership between the National Crime Squad (NR), the Royal Military and Border Police (Kmar), the Immigration and Naturalisation Service (IND) and the Social Security Information and Investigation Service (SIOD). Information and expertise are collected, analysed and disseminated to all partners. In 2007, the Ministry of Justice introduced a programme to step up the campaign against organised crime. Within this programme, trafficking in human beings was chosen as one of three types of crime that lend themselves to an integrated approach, i.e. combined deployment of public authorities, the police, the Public Prosecution Service (PPS) and private parties. A substantial extra budget was allocated for the then government's term (until 2012).

A Task Force on Human Trafficking was established in 2008. Its mandate was recently renewed until 2014 and its membership has been expanded. It now consists of representatives of the five ministries

involved, the Public Prosecution Service, the police, the Immigration and Naturalisation Service, the Royal Military and Border Police, three mayors (Alkmaar, Utrecht and The Hague), one deputy mayor (Rotterdam), the judiciary, the National Rapporteur on Human Trafficking and the NGO Comensha. The National Human Trafficking Action Plan has been replaced by the Action Plan of the Task Force on Human Trafficking. The Task Force drew up an initial Action Plan in 2008 and has just approved a new Action Plan for the period 2011–2014. The first action plan focused on strengthening law enforcement activities concerning legal and illegal prostitution, improving the exchange of information between the organisations involved, creating innovative methods to combat human trafficking, improving support for victims of human trafficking, increasing cooperation with other countries, raising awareness and improving the expertise of judges and prosecutors. The second action plan aims to further develop the multidisciplinary approach, continue the development of innovative methods, strengthen the efforts of municipalities, tackle the problem of ‘loverboys’ and the use of the internet for e.g. recruiting victims, further improve the expertise of judges, tackle labour exploitation and further improve shelter facilities for victims.

One of the measures included in the second action plan is a project set up in 2010 by the Rotterdam-Rijnmond regional police concerning ‘loverboys’ and their victims. Among other things, methods are being developed to gather information about loverboys and to stop their activities, for example by using social media such as chat sites and social networks. A regional awareness campaign targeting potential victims and traffickers was set up. The Ministry of Security and Justice will draw on the experiences in Rotterdam to draft a handbook on tackling the loverboy phenomenon and caring for victims.

In response to the disappearance of unaccompanied minor asylum seekers who may have become victims of trafficking, a ‘protected reception’ pilot project was launched on 1 January 2008. As mentioned above, since 2010, it has been standard practice to receive unaccompanied minors in protected reception centres. Victims and potential victims are placed in small-scale locations, with extra safety measures and extra personnel, in a situation in which they may go outside only under supervision, especially during the initial months of their stay. The minors are given guidance and support tailored to their needs and are informed about the risks of trafficking.

Since 2006 more attention has been given to policies aimed at combating child pornography and child sex tourism. Starting in 2007 a package of supplementary measures has aimed to structurally enhance expertise and capacity for combating cybercrime within the police and the Public Prosecution Service. Priority was given to child pornography on the internet. Innovative methods were developed and tested by

Supra-Regional Crime Squads and then shared with other police forces. The police also established a Broad National Improvement Programme (2008–2010), aimed at developing a system to monitor police efforts in this field, standardising methods of investigation and developing technological products such as video fingerprinting and a digitally innovative database of images of sexual abuse of children. Research into the nature, scope and development of child pornography was also commissioned. At the end of 2010 this Programme was followed by the programme to improve the fight against child pornography (for the period 2011-2013).

Internet service providers and NGOs worked together to establish a private Child Pornography Hotline. The hotline is subsidised by the Ministry of Justice, the European Commission and internet service providers. It provides the public with a low-threshold channel for reporting sexual exploitation of children.

In 2009 the minister installed a Task Force on Child Pornography and Child Sex Tourism in which the police, the Public Prosecution Service, the Ministry of Security and Justice, the Ministry of the Interior, the Ministry of Foreign Affairs, the private sector and the National Rapporteur on Trafficking in Human Beings are represented. This Task Force has combined all these activities in an Action Plan, and directs the activities and monitors their progress.

At the end of 2010 the Netherlands was confronted with a case involving more than 80 incidents of sexual abuse of children by one suspect and the dissemination of images of that abuse in specific internet communities. The investigation of these incidents is still ongoing, both nationally and internationally. In addition to this very disturbing case, the interim evaluations of the programmes mentioned, and the outcomes of the police monitoring system led to the conclusion that profound restructuring was needed. Since May 2011 the police and the Public Prosecution Service, with oversight by the Ministry of Security and Justice, have been working on implementing a new national structure for dealing with child sexual abuse. Starting in January 2012 the Public Prosecution Service will prioritise and monitor the handling of cases through a new national steering committee. The investigations will be handled either by a national team or by one of ten decentralised teams. These teams, dedicated exclusively to dealing with child sexual abuse, will be staffed by 150 people, which is a substantial increase in personnel. The investigations will mainly target cases in which victims may have been submitted to actual abuse or are still being abused. The new structure will include a joint expertise centre where the police and public prosecutor's offices can share experiences, knowledge and information about child abuse material and child sex tourism.

The fight against child sex tourism is being increasingly integrated with the fight against child pornography, because the child pornographic material found in the Netherlands is also produced in source countries of child sex tourism (e.g. in Southeast Asia).

In 2010 the National Rapporteur on Trafficking in Human Beings published her eighth report, in which she looked back on ten years of independent monitoring of Dutch efforts to prevent and combat human trafficking. In that same year, the National Rapporteur's mandate was extended to include child pornography. The first report on child pornography was published in October 2011.

### *Studies*

Research into different aspects of child sexual and other abuse, trafficking, pornography and sex tourism is commissioned on a regular basis. In 2009 the then Minister of Justice ordered a study of abuse of underage boys in prostitution. The study concluded that each year there are approximately 680 registered cases of sexual abuse of underage boys outside the family, and approximately 800 registered underage victims. The researchers interviewed 44 underage boys and young adult males who perform sexual acts for money. Boys under 18 make up a very small minority in this form of prostitution.

In 2007 the Ministry of Justice's Research and Documentation Centre published a review of the literature on high-tech crime and, in particular, the perpetrators. One of the conclusions was that the internet is a popular and widely used channel, primarily because of the large market it offers and the relatively small chance of detection. Advanced technologies are making it ever easier to trade digitalised child pornography on the internet undetected.

In 2009 the police commissioned research into the link between downloading child pornography and sexual abuse of children. The main conclusion of the study was that a link between the two was difficult to establish and that more research was needed. Another study will therefore be conducted.

### *Data collection*

Data is collected on human trafficking and child pornography. In 2004 26 underage victims of human trafficking were identified in the Netherlands, 24 in 2005, 103 in 2006, 199 in 2007, 169 in 2008 and 111 in 2009, according to the National Rapporteur on Trafficking in Human Beings. The National Rapporteur has not yet published the figures for 2010, but Comensha, the NGO responsible for registering trafficking victims, counted 152 underage victims in that year.

The numbers of registered criminal cases involving underage victims of human trafficking for the years 2000 to 2008:

	Cases registered by Public Prosecution Service		Cases that involved underage victims	
	N	%	N	%
<b>2000</b>	139	100%	38	27%
<b>2001</b>	130	100%	27	21%
<b>2002</b>	200	100%	27	14%
<b>2003</b>	156	100%	41	26%
<b>2004</b>	220	100%	32	15%
<b>2005</b>	138	100%	36	26%
<b>2006</b>	201	100%	25	12%
<b>2007</b>	281	100%	56	20%
<b>2008</b>	214	100%	26	12%
<b>Total</b>	<i>1,679</i>	<i>100%</i>	<i>308</i>	<i>18%</i>

(Source: National Rapporteur on Trafficking in Human Beings (2010). Human Trafficking – ten years of independent monitoring)

The figures for 2009 and 2010 are not available yet.

Child pornography: number of cases reported to and disposed of by the Public Prosecution Service

	2006	2007	2008	2009	2010		
Inflow			410	380	390	450	480
Outflow			430	370	380	420	510
Writs of summons			330	300	300	330	400
Convictions			340	250	270	240	320

(Source: Public Prosecution Service annual report 2010)

It is extremely difficult to say whether the measures taken have been successful in reducing the number of cases of sexual exploitation and trafficking of children. The number of victims of trafficking (minors and adults taken together) identified is increasing (from 405 in 2004 to 993 in 2010). The number of underage victims identified was higher in 2010 than 2004, though the increase was not steady as the number



fluctuated from year to year. This rise is due to increased activity by law enforcement agencies on the one hand and increased awareness of the problem among professionals and the general public on the other. Since trafficking is very difficult to detect, it is impossible to say if there has been an increase or decrease in the total number of cases, i.e. identified and unidentified cases taken together.

#### *International cooperation*

The Netherlands cooperates intensively with the countries of origin of most victims of human trafficking to build capacity and assist in investigation. Capacity-building projects have been carried out in Bulgaria, Romania and Nigeria. In early 2011, three Joint Investigation Teams investigating human trafficking were set up with Bulgaria. The Netherlands has also funded projects in India aimed at curbing child labour and in Cambodia, Thailand, the Philippines, Gambia and the Dominican Republic aimed at stopping child sex tourism.

#### *Training and awareness*

In January 2010 the Minister of Justice launched a child sex tourism awareness campaign called 'Break the silence' that informs Dutch tourists that child sexual abuse is a criminal offence, and that they can report suspicious situations on a special website ([www.meldkindersekstoerisme.nl](http://www.meldkindersekstoerisme.nl)). The Minister of Justice and the Dutch Association of Travel Agents and Tour Operators (ANVR) also signed a declaration in which they undertake to cooperate more closely on measures to prevent child sex tourism. In the period under review, the Dutch authorities continued to hold national action days at Amsterdam Schiphol Airport. During these action days passengers on incoming flights from source countries of child sex tourism are checked for possession of child pornography. The Netherlands also took part in an international action day, coordinated by Europol, with the UK, Germany and Sweden in March 2011.

With regard to youth prostitution, training courses were provided for social workers and prevention workers, police officers, local and provincial government officials and schools. The Ministry of Health, Welfare and Sport has set up a programme, including an awareness campaign, aimed at promoting sexual health among young people and thereby preventing problems. The Ministry of Education, Culture and Science has made extra money available for sex education for boys and to teach children how to deal with messages coming from the media. Young people can obtain information free of charge and anonymously on sexuality, sexual assertiveness and sexual empowerment. Aid organisations have set up several websites where children and young people can find information and chat with social workers about the tricks used by loverboys, reporting sexual abuse on the internet, relationships, privacy, intimacy, sexuality, homosexuality and safe cybersex. E-coaching is available to teenagers with low self-esteem.

With regard to the issue of receiving and investigating complaints in a child-sensitive manner, the Public Prosecution Service's instructions on audio and audio-visual recording of interviews of persons lodging a complaint, witnesses and suspects prescribe that audio-visual recordings must be made of statements by minors under the age of 16. Statements by minors under the age of 12 must be taken in a child-friendly studio. Law enforcement officials have to be certified to be able to take statements from children under 12. The Public Prosecution Service instructions on human trafficking further stipulate that the public prosecutor may object to a child victim being questioned in the courtroom. In addition, the Public Prosecution Service's instructions on investigation and prosecution of child abuse and sexual abuse require the police and the Public Prosecution Service to take into account the particularly vulnerable position of minors.

Law enforcement officials also need certification to take statements from victims of human trafficking. Training to obtain this certificate is provided to groups of police officers, investigators from the Royal Military and Border Police and from the Social Security Information and Investigation Service (SIOD). Training on human trafficking is also provided for labour inspectors, prosecutors and judges, municipal officials and consular officials. As mentioned above, employees of reception centres for asylum seekers are trained to recognise signs of trafficking.

Sexual offences are investigated by specialised detectives. A certification process with special courses to promote expertise in the area of sexual offences is part of police training.

**24. Please provide detailed statistical data on the number of complaints relating to domestic violence and trafficking, and on related investigations, prosecutions, and sanctions, as well as on the protection provided to victims.**

Human trafficking

Criminal complaints lodged with the police:

2007: data unknown

2008: 220

2009: 301

2010: 350

The registration data shows that the number of criminal complaints is increasing. Generally speaking, only about 50% of victims are willing to report human trafficking. Victims of human trafficking fear for their safety (and that of their families) during and after the trial. They also feel ashamed and the taboo concerning prostitution probably also plays a role in their reluctance to file criminal complaints.

Number of cases dealt with by the Public Prosecution Service and convictions:

	2007	2008	2009	2010
Inflow	130	210	140	220
Outflow	240	220	170	160
Writs of summons	110	150	130	120
Convictions	90	100	90	90

The Public Prosecution Service has seen major fluctuations in the number of defendants in human trafficking cases, with peaks in 2008 and 2010. The disposal figures show different highs and lows than the inflow data because many of the cases are complex and time-consuming. The Public Prosecution Service prosecutes over three-quarters of cases, on average. Human trafficking is difficult to prove. A relatively large number of defendants are acquitted, and ultimately three-quarters of cases lead to conviction.

Domestic violence

Criminal complaints lodged with the police:

- 2007: 24,290
- 2008: 23,671
- 2009: 24,181
- 2010: 24,043

Number of cases dealt with by the Public Prosecution Service and convictions:

	2007	2008	2009	2010
Inflow	13,700	14,000	12,300	10,500

Outflow	12,200	14,800	12,600	11,400
Writs of summons	9,000	9,800	8,500	7,700
Convictions	4,500	7,200	7,200	6,100

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

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

Research into the incidence of child abuse was conducted in 2005. The scope of child abuse is estimated at 107,200 cases, or 30 cases of child abuse for every 1,000 children in 2005. The majority of cases involve neglect: physical and emotional neglect and neglect of a child's education. Sexual abuse was the least prevalent type of abuse; the estimated number of victims in 2005 was over 4,700 children and adolescents. Sexual abuse cases account for 4.4% of the total number of cases of abuse. Sexual abuse can be difficult to separate from the other forms of abuse by which it is usually accompanied. Physical abuse occurs in over 19,000 cases. Nearly a quarter of victims of child abuse experience sexual and/or physical abuse.

A second incidence study is currently being completed. This will reveal developments in the scope of child abuse in the Netherlands.

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

Professionals are trained in various ways to detect, report and raise the issue of child abuse and the new reporting code for domestic violence and child abuse described above facilitates this. Central government has developed various computer-based and classroom-based practical training modules for professionals, such as the foundation module entitled 'Working with a reporting code'. Trainers who have attended the 'Train the Trainer' course are qualified to teach this module. In addition, there is an e-learning module for detecting and raising the issue of domestic violence.

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

Youth care services and mental health care services provide a range of support options for victims, from short-term interventions to more intensive assistance. Support for victims of criminal offences and the position of victims in criminal proceedings have been strengthened in recent years. In addition, a great deal has been done to improve the implementation of policy, not least by improving the links between victim support services and law enforcement and the judicial system.

#### *Victim Support Netherlands*

Victim Support Netherlands provides victims with legal, practical, social and emotional support. If necessary, they refer victims to care institutions or legal counsel. The number of victims receiving assistance rose from over 101,000 in 2008 to over 123,000 in 2010. The new police practice of automatically referring people to victim support is helping to increase the influx of clients even further. The support for victims has also been improved by the introduction of a new model for psychosocial assistance, which focuses on the victim's individual needs. The goal is to help victims put the pieces of their lives back together as quickly as possible.

Victim Support Netherlands has a site for young people ([www.ikzitindeshit.nl](http://www.ikzitindeshit.nl)) with an email address. In March 2010 a chat function was added to the site because this is a familiar and appealing communication medium for teenagers. The chat function is an accessible, low-threshold, easy-to-use medium for requesting assistance.

Victims and surviving relatives often need a trusted information service that knows its way around the jungle of agencies, looks out for their interests and can advise and assist them. Victim Support Netherlands has special case managers who can provide assistance that is tailored to the individual's needs. In addition to the case managers specialised in cases involving homicide, a pilot project was launched in 2010 with case managers specialised in cases involving serious violent and sexual offences.

#### *Victim Assistance Desk*

To better serve victims, the police, Victim Support Netherlands and the Public Prosecution Service have decided to work together within a network of victim assistance desks with nationwide coverage. Victims now have a single point of contact to go to with all their questions.

#### *Strengthening the position of victims*

1 January 2011 saw the entry into force of an Act strengthening the position of victims in criminal proceedings. Victims and surviving relatives now have an official status in criminal proceedings. Among other things, they now have a statutory right to information, to access case files, to engage legal counsel and to submit documents to the case file. In cases involving violent offences in which the offender fails to pay compensation to the victim as ordered within eight months, the state will pay out the amount to the victim and recover it from the offender.

#### *Criminal Injuries Compensation Fund*

Research shows that just one in five victims entitled to compensation from the Criminal Injuries Compensation Fund actually submits a claim. In recent years, the Fund has worked to enhance its name recognition and the number of claims has increased by over 50% since 2005.

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

The National Action Plan on Tackling Child Abuse comprises a range of activities, including the nationwide roll-out of the Regional Approach to Child Abuse for which the regional authorities for shelters receive financial support from central government. The Regional Approach includes establishing partnerships between all the parties involved in tackling child abuse, an intervention plan and a training plan. By year-end 2010, 25 regions had implemented the regional approach and the 10 remaining regions will complete implementation in 2011.

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

The Kingdom of the Netherlands ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 28 September 2010. The Optional Protocol entered into force for the Kingdom on 28 October 2010.

**27. Please provide updated information on measures taken by the State party to respond to any threats of terrorism and describe how it has ensured that those measures comply with all its obligations under international law. Please describe the relevant training given to law enforcement officers; the number and types of convictions under such legislation; the legal safeguards available**

**to persons subjected to anti-terrorist measures in law and in practice; whether there are complaints of non-observance of international standards; and the outcome of these complaints.**

For counterterrorism purposes, the following changes have been made to Dutch legislation since the last periodic report in 2004.

The Crimes of Terrorism Act (entered into force on 10 August 2004)

The Act provides that recruitment for the jihad and conspiracy to commit a serious terrorist crime are separate criminal offences. The maximum terms of imprisonment for crimes such as manslaughter, aggravated assault and battery, hijacking or kidnapping are higher if they are committed with 'terrorist intent'. In most cases the sentence is increased by fifty per cent. However, if a crime carries a maximum sentence of 15 years' imprisonment, this is increased to a life sentence or a maximum of 20 years. The Act thus implements the EU Council Framework Decision on combating terrorism.

Investigation and Prosecution of Terrorist Offences (Extension of Powers) Act (entered into force on 28 December 2006)

Under this Act special investigative methods such as surveillance, infiltration, pseudo purchases and telephone tapping may be used if there are indications that a terrorist attack is being prepared, in other words where facts and circumstances point to the preparation of an attack.

Money Laundering and Terrorist Financing (Prevention) Act (entered into force on 1 August 2008)

This Act transposes the third European Money Laundering Directive into national law. The Act combines the Identification (Provision of Services) Act and the Disclosure of Unusual Transactions (Financial Services) Act. Under this legislation certain professional practitioners have a duty to report unusual transactions. In addition, the Act introduces a risk-based approach under which institutions have greater discretion to take measures, customer due diligence has been expanded to include an obligation to identify beneficial owners and verify the beneficial owner's identity, and the duty of financial institutions to keep a copy of the identification document for tax purposes has been dropped.

Receiving and Participating in Terrorist Training (Criminal Liability) Act (entered into force on 30 June 2009)

Under this Act anyone who receives terrorist training and thereby acquires the knowledge or skills needed to carry out a terrorist attack commits a serious offence. If the aim is to commit terrorist offences in the Netherlands such an offence may be prosecuted even where the training occurs abroad.

In the legislative process the Netherlands assesses whether draft legislation is in accordance with its obligations under international law. There is also the possibility of judicial review by the independent courts.

During their basic and refresher training, law enforcement officers receive instruction in and practise the application of the various instruments at their disposal.

Every citizen has the right to complain to an independent court about government acts affecting him. This also applies to citizens whose interests have been harmed as a result of coercive measures taken by the authorities in the course of combating terrorism.



## **ARUBA**

### **I. INTRODUCTION**

1. This report is submitted in pursuance of paragraph 1 of article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter the Convention). Attaining autonomous status within the Kingdom of the Netherlands in 1986 meant that Aruba was from then on obliged to report periodically under the various international human rights instruments.

2. Aruba's sixth periodic report to the Committee against Torture describes new developments in legislation and policy in relation to the implementation of the Convention, as well as more specific information relating to the list of issues provided by the Committee in January 2010 (CAT/C/NLD/Q/6) after considering the fourth periodic report (CAT/C/67/add.4). This report includes data up to 2011.

**28. In light of the Committee's previous concluding observations, please provide information on measures taken to reduce the number of non-convicted detainees and the length of pretrial detention, including through the use of alternative measures (para. 3).**

Articles 92, 93, 95, 98 of the Aruban Code of Criminal Procedure (Official Bulletin: AB 1996, No.75) specify the cases in which pretrial detention may be ordered, including the maximum periods. According to Aruban law, pretrial detention may not exceed 116 days. People in pretrial detention are held in the Aruban Correctional Facility (KIA) in a wing separate from convicted detainees.

The Code of Criminal Procedure implements article I.5, paragraph 3 (a) of the Constitution, under which a prisoner may apply to the courts for a speedy decision on the lawfulness or otherwise of his detention. Under the Code a suspect has the right to be brought before a judge within three days of his arrest (article 89, paragraph 1). This right applies while the suspect is still in police custody. Even afterwards, however, the lawfulness of detention is checked at regular intervals (during remand in custody).

Under the current Code of Criminal Procedure there are several points at which the lawfulness of detention may be examined. The suspect also has the right to appeal the decision on his or her detention to the Court. Articles 178 to 181 of the Code of Criminal Procedure create an explicit procedure for individuals to claim compensation for the unlawful application of pretrial detention. If constraints are judged to be out of proportion to their object they are held to constitute an unlawful act by the authorities.

The examining magistrate (*rechter-commissaris*) examines the lawfulness of detention during the 116 day pretrial period. Suspects must be tried within four months. This period may be extended by one or two months, but only in exceptional circumstances. Examples of these circumstances include if a suspect decides to change lawyers during his or her trial, when necessary documentation is not available or if the investigation is not completed before trial.

The examining magistrate's decision on the length of detention is based on the complexity of the case, but can also be influenced by the limited capacity of the Aruban Correctional Facility.

In recent years, concentrated efforts have been made to rapidly modernise the legislation on criminal law where necessary, particularly in the area of criminal procedure and detention law. This has resulted in modern legislation based on the human rights conventions and also in legislative projects that are on the point of completion.

The Aruban Code of Criminal Procedure has now been redrafted and is currently being reviewed by the Advisory Council of Aruba in order to be presented to Aruba's parliament in the near future. This legislation will shorten the length of pretrial detention. Under this new Code a suspect will have the right to be brought before a judge within one or two days of his arrest.

**Occupancy rate per wing on 3 July 2011**

<b><u>Detention wing</u></b>	
Not yet convicted	6
Convicted	3
Total	9
<b><u>Remand wing</u></b>	
Appeal	1
Appeal in cassation	1
Not yet convicted	63
Convicted	26
Extradition	1
Total	92
<b><u>Youth wing</u></b>	
Not yet convicted	8
Convicted	16
Total	24
<b><u>Psychiatric wing</u></b>	
Appeal in cassation	1
Not yet convicted	1
Convicted	5
Total	7
<b><u>Prison wing</u></b>	
Appeal	7
Appeal in cassation	5
Convicted	87
Total	99
<b><u>Women's wing</u></b>	
Appeal	1
Not yet convicted	10
Convicted	12
Total	23
<b>Total</b>	<b>254</b>

**29. Please provide information on measures taken to ensure that persons in detention, including under aliens legislation, benefit from an effective right of access to a lawyer and a medical doctor, if possible, of their own choice as well as the right to inform a relative, from the outset of their deprivation of liberty.**

The constraints that can be imposed on a defendant in the course of criminal proceedings and how this can be done are exhaustively regulated in the Aruban Code of Criminal Procedure. The Police Order on Detainees (*Korpsorder Arrestanten-KO 10/2009* of 1 May 2009) is a supplement to the Code. The Police Order on Detainees incorporates the provisions in force for the Aruban police force.

Since the last report to the Committee against Torture (CAT/C/NET/Q/4/Rev.1/Add.1), attention has been devoted to procedures with regard to the rights of detainees. The revised Police Order on Detainees came into force on 1 May 2009. This Order replaced the *Korpsorder Arrestantenzorg* (KO 10/2004 of 17 November 2004) to comply with the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) after their visit in December 2007.

Chapter 6 of the Police Order on Detainees clearly states in detail the rights of all detainees from the moment they are deprived of their liberty. These include the right of access to a lawyer and a medical doctor, the right to inform a relative, and the right to humane treatment during the detention. Statutory provisions provide for free legal counsel. Anyone who is arrested has the right of access to legal assistance. Indeed, a lawyer may be consulted even before the first police interview, as a result of the *Salduz* judgment (no. 36391/02 of 26.4.2007). If a person under arrest indicates that they cannot afford a lawyer, the duty officer will contact the duty lawyer. Article 2, paragraphs 1 and 2 of the Country Ordinance on Legal Aid (AB 1991, no. GT45) states the conditions governing free legal assistance. Where a provision of international law so requires, foreign nationals who are not residents of Aruba are also eligible for free legal assistance. If the person under arrest requests a lawyer of their own choice, the duty officer contacts the latter and asks him or her to come to the police station. The costs of this form of legal assistance must be borne by the person under arrest.

A recently reviewed medical aid procedure is also included in the new Police Order on Detainees. Every person under arrest has the right of access to medical care. Every request for medical care must be passed on by the duty officer directly to the doctor or nurse on duty and must be recorded in the detainees' database. If the person under arrest requests a medical practitioner of their own choice rather than the doctor or nurse on duty, this is to be recorded in the database. The duty officer contacts the doctor and

asks him or her to come to the police station. The costs of such a medical consultation are borne by the person under arrest. Medical consultations always take place in a room reserved for this purpose, with no police or security officer present unless specifically requested by the nurse or doctor. The detainee's medical details are strictly confidential and accessible only to the doctor/nurse, the person under arrest and their lawyer. Only information about necessary medication is recorded in the detainees' database, and the duty officer is responsible for providing the correct medication punctually.

The Police Order on Detainees also deals with the right to notification of detention. Every detainee has the right to inform a family member or a third person of their choice as soon as possible about their arrest. This right may be restricted only if it is in the interests of the investigation, and only for a short time (article 90, Code of Criminal Procedure). Any decision to restrict the right to notification must be taken by an assistant public prosecutor or the duty public prosecutor in consultation with the person leading the investigation, and the reasons must be noted in the detainees' database. The notification of detention is made by the duty officer, by telephone or in person, after which the information is recorded in the database, stating the day, date, time and person notified.

Upon arrival at the Aruban Correctional Facility, every detainee is interviewed by the Registration Department (*Bevolkingszaken*). This department informs the detainee of his/her rights, and in return also gathers important information from the detainee. In addition, the detainee is interviewed within three days by the social worker. A letter is then faxed to the detainee's lawyer requesting a visit with his/her client.

If during the interview with the Registration Department it emerges that the detainee is ill or has medical complaints, the Facility provides immediate medical care.

Detainees who are not legal residents are transferred to the Aruban Correctional Facility and held in a wing separate from the convicts. Detainees are given the opportunity to make one phone call to inform a third party of their detention. If necessary, the relevant consulate is informed of the detention and consular staff are allowed to visit the detainee at the Facility. Information on rights and procedures is provided in Dutch, Papiamentu, English and Spanish and when necessary, the assistance of an interpreter is sought. At this point, a lawyer is allowed to visit the detainee.

**30. Please indicate steps taken to ensure that comprehensive custody records, including when and for what reason(s) the custodial measure was taken and when the person arrived on police premises, are introduced and diligently kept at police stations, as recommended by the CPT**

**(CPT/inf (2008) 2, Visit to Aruba, para. 38).**

The ACTPOL electronic registration system was introduced in 2008 for the Aruban police force. The system eliminates manual transactions made by police officers and reduces unnecessary, repetitive data. Activities related to the day-to-day functioning of police departments, including back-end administrative processes, are also covered in ACTPOL. Processes are being automated to ease the task of administration and record keeping, thereby increasing operational efficiency throughout the police force. The use of this application enables each police station to function independently and distribute data simultaneously to a central server, reaping the benefits of a centralised system. The system offers a flexible and advanced search option in addition to an extensive and advanced analysis capacity. The ACTPOL system is proving to be an indispensable tool for the police force in its day-to-day operations and in the battle against crime.

The Aruban police also use manual record-keeping as a back-up for the ACTPOL system.

**31. In light of the Committee's previous concluding observations, please describe measures taken to send a clear and unambiguous message to the police force and to prison staff that torture, violence and ill-treatment are unacceptable; as well as to develop and implement training and instructions to ensure that police officers use no more force than is reasonably necessary (para. 13).**

The revised Police Order on Detainees gives prominence to the prohibition on the use of violence against detainees and clearly states and elaborates on the rights of all detainees including the right to humane treatment during detention. The Police Order on Detainees incorporates the provisions in force for the Aruban police force.

Under the responsibility of the police, a person under arrest is temporarily housed in one of the cell complexes. The police must treat persons under arrest as conscientiously as possible while responsible for them, and must comply with all relevant statutory provisions.

The establishment of the Internal Investigations Bureau (BIZO) within the Aruban police force was announced in an internal order of 12 September 2000. One of the duties of the Internal Investigations Bureau is to carry out thorough and objective investigations into complaints and reports against staff of the Aruban police force. The Bureau works directly with the public prosecutor and is primarily concerned with investigations of dereliction of duty and offences committed by police personnel. Examples include

theft, embezzlement, common assault and threatening behaviour.

The Bureau has recently been focusing on education, prevention and the punishment of physical and verbal ill-treatment by police officers.

More serious offences are investigated by the Public Service Investigation Agency under the authority of the public prosecutor. Legal action is taken in such cases, which include the use of firearms by the police leading to injury or death, the use of firearms by public servants leading to injury or death, serious physical injuries or death following the actions of a police officer, the death of a detainee in police cells or prison, and all abuses of office. Examples of abuses of office are accepting bribes, abuse of authority (for instance, threatening to arrest a person unless he performs certain transactions under civil law), unlawful entry into a dwelling and unlawful seizure of goods.

Aruban police instructors have been trained in the Netherlands since 2007, where they acquire practical skills to minimise the use of violence. The aim of these courses was to ensure the use of proper techniques and practical self-defence methods in order to prevent the use of excessive force. These police instructors in their turn provide a course in Aruba entitled 'Integrated Practical Police Skills'.

The Integrated Practical Police Skills course was introduced in 2010 on a compulsory, periodic basis for the Aruban police officers at the Police Training Institute. The course includes human resources development programmes for uniformed personnel so they can gain the knowledge, skills, attitudes and values necessary in carrying out their duties. It also includes instructions on the use of force against detainees. A periodic evaluation/assessment of training programmes is conducted to ensure quality, fairness and relevance.

A subject explicitly covered during the training for cadets at the Police Training Institute is the significance of human rights in relation to the work of the Aruban police force. Human rights define the standard of conduct police officers should observe in the course of their duties. This standard applies both directly (through case law) and indirectly (the spirit of the provisions).

Personnel at the Aruban Correctional Facility also receive training at the Police Training Institute to acquire the knowledge, skills and values necessary in their profession. This includes the use of force. In addition, twelve employees of the Correctional Facility have attended training in the Netherlands (*Praktisch Penitentiair Optreden*). In this context a cooperation agreement was signed on 8 April 2011

with the Custodial Institutions Agency (*Dienst Justitiële Inrichtingen*) of the Netherlands.

**32. Please describe steps taken to improve detention conditions, including through developing activities for prisoners and providing adequate health care. Please also elaborate on the impact on detention conditions in Aruba of the revision of the Police Order on the Treatment of Detainees.**

The daily programme at the Aruban Correctional Facility's remand wing (*Huis van Bewaring*) and the prison wing (*Afdeling Straf*) has been extended by one hour daily of fresh air and/or recreation time, totalling up to six hours for adult convicts. At present the KIA is working towards enhancing the daily programme with useful activities, such as sport, work, education and recreation.

Under the responsibility of the police, a person under arrest is temporarily housed in one of the cell complexes. The police must treat persons under arrest as conscientiously as possible while responsible for them, and must comply with all relevant statutory provisions.

The revised Police Order on Detainees takes into account the advice of the health sector to offer detainees/prisoners the opportunity to spend at least one hour in the open air each day and that the period allowed should not be less than half an hour. The Police Order provides the police staff with guidance on the application of this rule. For instance, a person under arrest is escorted by prison staff to the exercise yard for fresh air for 60 minutes per day. If 60 minutes is not feasible, it may be changed to a minimum of 30 minutes per day. This restriction must be recorded in the detainees' database, along with the reasons.

Every person under arrest has the right of access to medical care. Every request for medical care must be passed on by the duty officer directly to the doctor or nurse on duty and must be recorded in the detainees' database. If the person under arrest requests a medical practitioner of their own choice rather than the doctor or nurse on duty, this is to be recorded in the database. The duty officer contacts the doctor and asks him or her to come to the police station. The costs of such a medical consultation are borne by the person under arrest. The medical consultation always takes place in a room reserved for this purpose, with no police or security officer present, unless specifically requested by the nurse or doctor. The arrested person's medical details are strictly confidential and accessible only to the doctor/nurse, the person under arrest and their lawyer. Only information about necessary medication is recorded in the arrested persons database, and the duty officer is responsible for providing the correct medication punctually.



**33. Pursuant to the Committee's previous concluding observations (para. 13), please describe measures taken to:**

**(a) Investigate promptly, impartially and thoroughly all complaints submitted and, if appropriate, prosecute the perpetrators;**

Dereliction of duty and offences committed by police personnel can be investigated in two ways, namely by means of an internal police investigation under disciplinary law or by means of a criminal investigation. Cases of dereliction of duty and minor offences are investigated by an independent unit of the Aruban police force, the Internal Investigations Bureau, which works with the public prosecutor. In addition they monitor investigating officers and supervise officials in an effort to reduce abuses of power.

As already stated, the Bureau is responsible for investigating allegations of dereliction of duty and minor offences committed by police officers. A disciplinary or criminal investigation related to police officers may lead to disciplinary as well as criminal sanctions. The most important disciplinary sanctions are as follows: a formal warning, the suspension of duty and a dismissal. The criminal sanctions are fines, a prison sentence, community service, and disqualification from the profession.

More serious offences are investigated by the Public Service Investigation Agency under the authority of the public prosecutor. These include the use of firearms by the police leading to injury or death, the use of firearms by public servants leading to injury or death, serious physical injuries or death following the actions of a police officer, the death of a detainee in police cells or prison, and all abuses of office. Examples of abuses of office are accepting bribes, abuse of authority (for instance, threatening to arrest a person unless he performs certain transactions under civil law), unlawful entry into a dwelling and unlawful seizure of goods. The Public Service Investigations Agency can also investigate minor abuses of office, serious offences committed by public servants other than abuses of office, and escapes or attempted escapes where there are indications that a public servant is involved.

**(b) Guarantee that those who report assaults by law enforcement officials are protected from intimidation and possible reprisals for making such reports.**

Any possible ill-treatment of detainees must be reported to the duty officer or to the senior officer in charge at the police station. This can be done by the victim, the doctor, a family member, a lawyer or a police officer. Most of the time the detainee is then pre-emptively transferred to the Aruban Correctional

Facility.

At the Aruban Correctional Facility, prisoners are entitled to complain to the Prison Supervisory Board about limitations on their rights and about violations of their rights. The Board acts in this respect as a complaints court that is independent of the criminal justice authorities and gives judgments binding on the prison administration. The chairman of the Prison Supervisory Board is a judge of the Joint Court of Justice.

According to article 6, paragraph 2 of the *Landsbesluit Commissie van Toezicht strafgevangenis en Huis van Bewaring* (a country decree establishing the prison and remand centre supervisory board) a complaint can be lodged with the social worker of the Facility or directly to the Prison Supervisory Board. Any ill-treatment or violent incident involving personnel at the Facility is reported by the public prosecutor to the Public Service Investigations Agency (*Landsrecherche*). The Public Service Investigations Agency is free to conduct its own investigation and can count on the Facility's full cooperation.

**Please also provide detailed statistical data on the number of complaints relating to torture and ill treatment allegedly committed by law enforcement officials and on the related investigations, prosecutions, and penal or disciplinary sanctions.**

The following tables show the number of disciplinary and criminal cases investigated by the Internal Investigations Bureau in the 2000-2009 year period. As the Bureau did not undertake criminal investigations until 2005, the figures for such investigations are only available from 2005.

#### STATISTICS BIZO

2000 to 2009

YEAR	Disciplinary Investigations	Criminal investigations
2000	4	0
2001	29	0
2002	30	0
2003	21	0

2004	30	0
2005	23	15
2006	12	33
2007	7	19
2008	17	12
2009	12	18

**34. With reference to the Committee’s previous concluding observations, please describe steps taken to establish specific mechanisms to receive complaints of sexual abuse that will ensure the privacy of victims and protect both victims and witnesses against ill-treatment or intimidation as a consequence of the complaint (para. 12). In this respect, please provide updated information on the implementation of the code of conduct with regard to unwanted behaviour and contacts in correctional facilities between inmates, as well as between staff and inmates, and the impact thereof, specifically in regard to the complaints procedure for sexual harassment and sexual intimidation.**

Whether an official complaint is lodged or not, victims of sexual abuse or assault in the Aruban prison system are always provided with the necessary medical and psychological help if needed. On the preventive side, a special protocol on the correct treatment of prisoners which is based on the integrity of the prison staff is used in training and coaching prison personnel. Furthermore, a code of conduct aimed at combating inappropriate behaviour and contacts was published recently at the Aruban Correctional Facility. The code can be found in the library of the Correctional Facility, where all detainees may access it.

Complaints are usually reported via the Medical Service. The Medical Service is an obvious point of contact because of its ease of access and the guarantee of detainee privacy it offers. Another alternative for the prisoner, according to article 6, par.2 of the country decree on the Supervisory Board, is to lodge a complaint with the social worker of the Correctional Facility or directly with the Prison Supervisory Board.

In cases of sexual harassment by the prison staff, the Prison Supervisory Board will impose disciplinary sanctions: a formal warning or the suspension of duty. If an assault is committed by a member of the prison staff, the management of the Correctional Facility will lodge a criminal complaint with the public

prosecutor.

For detainees at any police station it is always possible to lodge a complaint via the duty officer or examining magistrate. BIZO or the Public Service Investigation Agency will take charge of further investigations depending on the gravity of the case.

Neither the medical staff nor the Prison Supervisory Board nor the Aruban police force have received reports of sexual assault amongst prisoners, between guards and prisoners or between police officers and detainees.

**35. In its previous concluding observations, the Committee on the Rights of the Child expressed its concern that the State party considered that sexual exploitation of children was not a problem in Aruba (CRC/C/NLD/CO/3, para. 73). Please provide updated statistical data on the occurrence of sexual abuse of children in Aruba as well as on measures taken to reduce and prevent its occurrence. In this respect, information should also be provided on the impact of the Sexual Offences and Stalking (Criminalisation) Ordinance in reducing cases of sexual abuse of children.**

The Sexual Offences and Stalking (Criminalisation) Ordinance (Official Bulletin 2003 no. 47), which expands protection for minors under the criminal law protection against sexual abuse, entered into force on 22 August 2003. It considerably extends the period in which a complaint concerning a sexual offence can be lodged, so that long after they reach the age of maturity minors can lodge a criminal complaint on account of a sexual offence committed against them (Criminal Code article 73 (d)). It also makes possession and distribution of child pornography criminal offences (article 247). The Ordinance includes male minors in its protection against rape and unwanted physical penetration (Criminal Code article 248 et seq.) and also broadens the definition of the criminal offence to include paying for sexual abuse of minors aged 16 and over or being present during such abuse (Criminal Code articles 256a and 256b). Finally, it modernises the definitions of abuse and considerably increases the penalties for the offence of promoting sexual abuse of minors by third parties and trafficking of children (Criminal Code articles 258 and 259 respectively).

The government of Aruba together with a number of non-profit organisations, such as Fundacion Respeta Mi ('Respect me') and Fundacion pa nos Muchanan ('For our children'), have run awareness campaigns, especially at primary schools, with regard to the Sexual Offences and Stalking Ordinance. This campaign aims to raise child awareness of the dangers of sexual abuse and to inform them of what is an offence,

their rights, and the steps they should take as victims or potential victims.

The child abuse counselling centre, Bureau Sostenemi ('Support me'), became operational in 2005. The Bureau aims to function as a central registration point for child abuse, in liaison with existing institutions and organisations campaigning against child abuse. The Bureau promotes a more structured approach to tackling the abuse and exploitation of juveniles.

Reports concerning minors go directly to the specialised Youth and Sexual Offences Unit of the Aruban police force. Staff in this unit have taken several courses on sexual offences and criminal law, including one on methods of questioning people with mental disabilities. In May 2011 this unit obtained once again its certification for questioning minors and victims of sexual abuse.

The following table supplied by the police force shows the total number of cases involving sexual offences registered on Aruba. This includes cases of sexual abuse of children in the years 2004 to 2009. The Aruban police force does not supply separate statistical data on the sexual abuse of children.

<b>YEAR</b>	<b>SEXUAL OFFENCES</b>
2004	8
2005	17
2006	22
2007	13
2008	27
2009	27

**36. Please describe steps taken by the State party to prohibit corporal punishment by law and enforce the prohibition in all settings, including in the family, the schools and out-of-home placements.**

Articles 313, 314, 314a, 314b, 315, 316, 317, 317a and 318 of the Aruban Criminal Code (AB 1991 no. GT 50) prohibit corporal punishment in all settings. The Criminal Code also prohibits child abuse.

The Social Affairs Department focuses on parenting support, family coaching and family therapy. A subdivision has been set up for family therapy within the Life and Family Problems Division.

An initiative to prevent cruelty to children was launched in 2006, in the shape of the website of Fundacion Respeta Mi: [www.respetami.aw](http://www.respetami.aw). The website is still operational and up to date, providing information in Papiamentu about how to recognise and deal with child abuse. The website is designed for both children and adults (parents, guardians, teachers, activity leaders, etc.).

**37. In light of the Committee's previous concluding observations, please provide information on steps taken to reinforce international cooperation mechanisms to fight trafficking in persons, prosecute perpetrators in accordance with the law, and provide adequate protection and redress to all victims (para. 7). Furthermore, information should be provided on the impact and effectiveness of these measures in reducing cases of trafficking.**

The Aruban Criminal Code was amended in May 2006 (AB 2006 no. 11) in order to comply with several international agreements, more specifically the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography; the Convention against Transnational Organized Crime; the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, supplementing the Convention against Transnational Organized Crime; and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the Convention against Transnational Organized Crime.

The above-mentioned Conventions and Protocols entered into force for Aruba in 2006 and 2007. The amendments to the Aruban Criminal Code made people smuggling a criminal offence, and further amplified the scope of the article regarding human trafficking to include forced labour, debt-bondage trafficking and organ removal. The Criminal Code thus specifically prohibits trafficking (including sexual exploitation, labour exploitation and organ removal) and smuggling of persons.

Under article 286a of the Criminal Code, human trafficking, including trafficking in women and children, is an offence carrying a maximum sentence of six years' imprisonment or a fine of AWG 100,000 (paragraph 1), which may be increased to eight years' imprisonment if the offence is committed by two or more persons acting in concert or the victim is under sixteen years of age (paragraph 3), to ten years' imprisonment if the offence is committed by two or more persons acting in concert and the victim is under sixteen (paragraph 4), to 12 years' imprisonment if the offence results in serious physical injury or threatens the life of another person (paragraph 5), or to 15 years' imprisonment if the offence results in death (paragraph 6).

An interdepartmental and interdisciplinary working group on trafficking and smuggling of persons established in early 2007 has come up with several initiatives. The objectives of the Human Trafficking and Smuggling Taskforce are:

- to draw up multidisciplinary policy proposals on preventing and combating human trafficking and people smuggling, and
- to launch an awareness campaign in and outside government bodies.

In April 2010 a training course was run on Aruba for members of the Human Trafficking and Smuggling Taskforce, the National Criminal Intelligence Division of the Aruba police force (KPA) and staff of the Prostitution Inspection Team of the Department of Aliens Policy, Admission and Integration (DIMAS). The purpose of the course was to boost the operational expertise of victim assistance professionals, members of the legal profession and the police.

In December 2010 the National Coordinator for Human Trafficking and Smuggling, members of the Taskforce and the investigation team on Aruba came together for an online Webex training course entitled 'Enhancing Resiliency Among Trafficking Victims', run by the US Department of Health and Human Services (HHS).

On Aruba, the reporting centre for cases of human trafficking and people smuggling does not fall under police services. A decision was made to use the existing telephone number of the Victim Assistance Bureau, which is available 24/7. The fact that its staff have already been trained to help crime victims means that the human aspect of dealing with potential cases of human trafficking and people smuggling is sufficiently addressed. The Victim Assistance Bureau passes on a reported incident to the National Coordinator, who prompts the assessment committee to collect information and assess the case, and alerts the necessary bodies to provide assistance to the victim and initiate a criminal investigation.

Reception facilities for victims of human trafficking are currently organised through cooperative agreements between the National Coordinator and representatives of the Red Cross (in cases where emergency reception is needed) and the Fundacion Hende Muher den Dificultad (Foundation for Women in Distress) (for short-term reception). In the near future, medium-term reception options will be sought for instance with the FCCA (a foundation specialised in public housing) or by setting up a multifunctional reception facility on Aruba with EU funding.

The Taskforce's Legislation Committee is currently seeking to enshrine the right of trafficking victims to

free legal aid and medical assistance in law. In the near future, it will also be studying the feasibility of issuing temporary residence permits, temporary work permits or temporary social assistance benefits.

In order to achieve the Taskforce's second objective, the Taskforce's Information Committee launched an information and awareness campaign on 14 and 15 April 2011, entitled 'Open Your Eyes'. Through various kinds of publicity material, the campaign is aimed at reaching the general public, young people, scholarship students and potential and actual victims and offenders. Cooperation will also be sought with the Dutch embassies and consulates in the countries from which trafficking victims are suspected to originate.

In January 2011, at the invitation of the Organization of American States (OAS), the National Coordinator gave a presentation to the Committee on Hemispheric Security in Washington DC. The OAS is very interested in Aruba's approach to tackling human trafficking and smuggling and would like it to serve as an example of best practice for the region. To this end, the National Coordinator also gave a presentation in March 2011 at a multidisciplinary training course in Antigua and Barbuda, again at the OAS's request.

In February 2009 the Memorandum of Understanding on Human Trafficking and Smuggling and Illegal Immigration was signed by the ministers of Justice of Aruba, the Netherlands Antilles and the Netherlands. Besides incorporating agreements between the signatory countries on tackling human trafficking and smuggling and illegal immigration, it sets out the responsibilities of the procurators general and the national coordinators on human trafficking and people smuggling in the three countries.

The MoU has generated various forms of cooperation and support, such as sharing expertise, organising training courses and arranging the national coordinators' annual meeting. During the expert meeting on human trafficking and smuggling on 18 and 19 April 2011 on Sint Maarten, preliminary discussions were held on continuing the MoU and a first draft of the new text was compiled by the coordinators.

On 20 June 2011, the Ministers of Justice of Aruba, Curaçao, Sint Maarten and the Netherlands signed a new MoU with regard to cooperation for the prevention and combating of trafficking and smuggling in persons.

On 27 June 2011, the latest Trafficking in Persons (TIP) report was released and favourably mentioned Aruba's efforts to combat human trafficking and establish international cooperation in the region.





## CURAÇAO

**38. In light of the Committee's previous concluding observations, please provide information on measures taken to reduce the number of non-convicted detainees and the length of pretrial detention, including through the use of alternative measures (para. 10).**

In general, the length of pretrial detention in Curaçao is not excessive. A suspect may first be detained in police custody, initially for two days but with the possibility of an extension for a further eight days (article 87, Curaçao Code of Criminal Procedure). Thereafter the suspect may be brought before an examining magistrate, who may remand the suspect for eight days and, upon expiry of this period, possibly for a further eight days (article 93, Code of Criminal Procedure). This period of 16 days is known as remand in custody. After these 16 days the examining magistrate may order further remand for a term of 60 days, which may be extended once for 30 days on the application of the public prosecutor before the start of the trial (article 98, Code of Criminal Procedure). If a preliminary judicial investigation is instituted (i.e. an investigation led by the examining magistrate) and cannot be completed within the 90-day detention period, the examining magistrate may extend the remand period once for 30 days. The maximum period for which suspects may be deprived of their liberty is therefore 116 days or, in the event of a preliminary judicial investigation, 146 days. The more often the custody is extended the more stringent the statutory requirements and conditions that have to be fulfilled become. A suspect will be remanded in custody after the initial period of 16 days only for an offence that carries a maximum sentence of at least four years in prison and if he has no fixed address or place of residence in Curaçao. The suspect must also be regarded as a flight risk or there must be clear evidence that he poses a threat to public safety (article 101, Code of Criminal Procedure). Whether these criteria are met is kept under continual review by the examining magistrate, and pre-trial detention is terminated immediately if the ground on which it was ordered is found to be lacking (article 101, Code of Criminal Procedure). A suspect may lodge a request for such termination or appeal against the decision of the examining magistrate to the Joint Court of Justice (article 104, Code of Criminal Procedure).

Under article 208 of the Code of Criminal Procedure, the public prosecutor can conditionally waive prosecution. This may be done in cases where the offence is not serious enough to warrant prosecution and the facts and circumstances are such that dropping the case conditionally would be preferable to proceeding to trial.

Examples of conditions on which prosecution may be waived are that the defendant:

- performs community service or some other alternative sanction for a specified number of hours;

- complies with directions given by the probation service for a given period;
- takes various courses registered with the probation service;
- pays compensation to the victim;
- surrenders his/her passport for a given period.

This list is not exhaustive. The condition or set of conditions may be formulated on the basis of facts and circumstances of the criminal case.

**39. Please provide information on measures taken to ensure that persons in detention, including under aliens legislation, benefit from an effective right of access to a lawyer and an independent medical doctor, as well as the right to inform a relative, from the outset of their deprivation of liberty. In its previous concluding observations, the Committee expressed its concern in particular about the fact that the presence of a lawyer during interrogation is only permitted with the prior authorization of a magistrate (para. 6). Please provide information on steps taken to address this concern.**

**Lawyer:**

Every suspect has the right to legal representation (article 48, Code of Criminal Procedure).

Following the *Salduz* judgment of the European Court of Human Rights (of 27 November 2008) (ECtHR) and a judgment of the Supreme Court based upon it (of 30 June 2009 LJN: BH3079), the Public Prosecution Service announced a new policy on the presence of a lawyer during interrogation. This means that:

- any adult or minor who is stopped for questioning and/or arrested (other than when he is caught in the act) must be informed by an investigating officer, prior to the first interrogation, of his right to consult a lawyer before interrogation;
- if the suspect waives this right in writing, the interrogation 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 interrogation may start after the lawyer/duty lawyer and the suspect have had an opportunity to consult together, either in person or by telephone;
- minor suspects must also be informed of their right to be represented by a lawyer or confidential adviser during the interrogation.

**Medical doctor:**

The right of detainees to consult a doctor is regulated in the Code of Conduct and Use of Force Instructions for the Police Force of the Netherlands Antilles (Official Bulletin of the Netherlands Antilles 2001, no. 73), referred to below as the Police Code of Conduct. If a detainee requests medical assistance or there are indications that he needs such assistance, the police officer should immediately consult the police duty doctor. In addition, the police officer has a duty to warn the police duty doctor if there are signs that medical assistance is needed even if it is declined by the detainee. A detainee may request medical assistance from his own doctor in Curaçao.

**Right to inform a relative:**

Under the Police Code of Conduct a police officer should immediately inform a relative or household member of the detainee of his arrest. If a detainee is a minor the police should do this on their own initiative. However, if the detainee is an adult notification should be given only on request. If a detainee is not a resident of Curaçao the consulate of the country of which he/she is a resident should be notified of the arrest.

**40. Please inform the Committee on steps taken to prevent and punish ill-treatment of detainees by police and other authorities in charge of prisons, as well as to ensure that prison personnel receive adequate training, including with regard to the application of the Standard Minimum Rules for the Treatment of Prisoners. Furthermore, information should be provided on the impact and effectiveness of these measures in reducing cases of ill-treatment of detainees.**

A distinction is made between measures to prevent and measures to punish the torture and other inhuman or degrading treatment of detainees. Preventive measures relate to the use of force when making an arrest and during the time when a detainee is in custody. Measures to punish ill-treatment involve investigations carried out on the instructions of the chief of police on the basis of complaints of torture or ill-treatment made against a police officer or prison officer.

As regards prevention, police officers are obliged to take a comprehensive skills training course. This consists of (1) management of the use of force (including the relevant provisions of the Police Code of

Conduct concerning the use of firearms, weapons other than firearms, handcuffs and police dogs), (2) arrest and self-defence skills, and (3) firearms proficiency. Each part of the course is concluded by an examination which the participant must pass.

### *Complaints of torture*

The Public Prosecution Service starts an investigation as soon as a case of ill-treatment becomes known. Investigations into police officers and prison authorities are conducted by the Internal Investigation Department of the National Police.

### *Impact and effectiveness of the measures*

The Prison System Supervisory Committee was established by the Prison System Country Ordinance (Official Bulletin of the Netherlands Antilles 1996, no. 73). The complaints committee appointed from among its members is responsible for dealing with written complaints of detainees. These complaints may relate to decisions to segregate a prisoner, impose a disciplinary punishment or refuse a prisoner's request to be segregated.

### **41. Pursuant to the previous concluding observations of the Human Rights Committee, please describe steps taken to improve detention conditions, including through, inter alia, alleviating overcrowding and providing adequate health care (CCPR/C/NLD/CO/4, para. 23).**

To improve the situation in Bon Futuro Prison, now called Sentro di Detenshon I Korekshon Korsou (SDKK), the following steps have been taken:

In 2010 a public tender was launched for the construction of the prison's inmate-reception building, facilities for inspecting and storing goods, a building for personal security checks and new workshops. As part of the Plan Veiligheid (Security Plan), all the projects are coordinated, with various architectural firms providing building supervision. By the end of 2011 the construction of the inmate-reception building will be finalised and the premises will be in use.

In order to further enhance security in the detention complex, a new internal camera surveillance and observation system came into operation in October 2009. In January 2010 a new fire detection system and fire extinguishers were installed throughout the complex in order to observe general regulations relating to fire safety. By May 2010 the SDKK prison was in full compliance with fire safety regulations.

With respect to the improvement of the detention conditions of the inmates, a sub-plan entitled 'Opknappen Cellen' (refurbishment of cells) was implemented, with the aim of improving the detention complex's overall basic facilities. In order to enhance the inmates' sense of security, work began in January 2010 on the installation of the call-button system for all cell blocks. The call-button system makes it possible for inmates to call prison staff members should there be an emergency. The system will be operational by January 2012.

There is also a sufficient supply of mattresses in each cell block to ensure that every inmate has a clean mattress to sleep on. A company has been hired to screen off the toilets from the showers for more privacy. The same company has also installed squat toilets. Furthermore, the entire plumbing system, as well as other sanitary facilities at the Bon Futuro prison, is high on the priority list to be overhauled.

Based on a structural plan entitled 'Schoonmaken Terreinen' (cleaning up the grounds), work began on cleaning up the grounds outside the prison walls, starting in February 2010. By February 2011, the project was almost complete. The work remaining to be done, namely the placement of louvre windows and grids, as well as maintenance of the work done in 2010, will be the focal points of the follow-up project started in February 2011.

There is also a maintenance schedule which includes periodic spraying for vermin (once every two to three months) by a professional company. Eventually, management of pest control will be conducted by the prison itself.

The leaking roof in the isolation and observation cells has been repaired and a company has also been selected to provide meals for the inmates, taking dietary requirements into consideration.

**42. In light of the Committee's previous concluding observations (para. 11), please provide updated information on steps taken to:**

- a) Ensure that juveniles are completely separated from adult offenders;**

Since December 2009 measures to separate juveniles from adult offenders have been under way.

- b) Provide educational and training programmes to help the social reintegration of juveniles. Detailed information should be provided on the number of programmes offered and their content, as well as on the number of juvenile inmates participating in these programmes;**

Cell block 3 has been designated as a special facility where guards work with juveniles. All the guards now working in that cell block have taken a crash course in dealing with juvenile inmates. There is also a special educational programme for the juveniles imprisoned in this cell block (see below).

Furthermore, taking into account ILO Recommendation 136 concerning special youth employment and training schemes for development purposes, the Government of the Netherlands Antilles passed a law in 2006 which primarily addresses the right of children and young adults to develop their potential and skills to support themselves. Through this Country Ordinance on Compulsory Youth Training (Official Bulletin 2005, no. 72, which since 10 October 2010 also applies to Curaçao) juveniles and young adults between the ages of 16 and 24 years are obligated to participate in a social and educational programme if they have no educational qualifications.

Implementation of the Country Ordinance started in 2008 for the juvenile inmates. The main purpose of this programme is to equip them with personal and occupational skills and training in order to enhance their chances later on the labour market and in their further educational career. It will also prevent recidivism. This is done gradually through a learning and work programme from Monday to Friday. Besides a basic daily programme for all cell blocks, special modules have been developed in order to cater to the specific needs of each cell block.

**The main focus is to provide:**

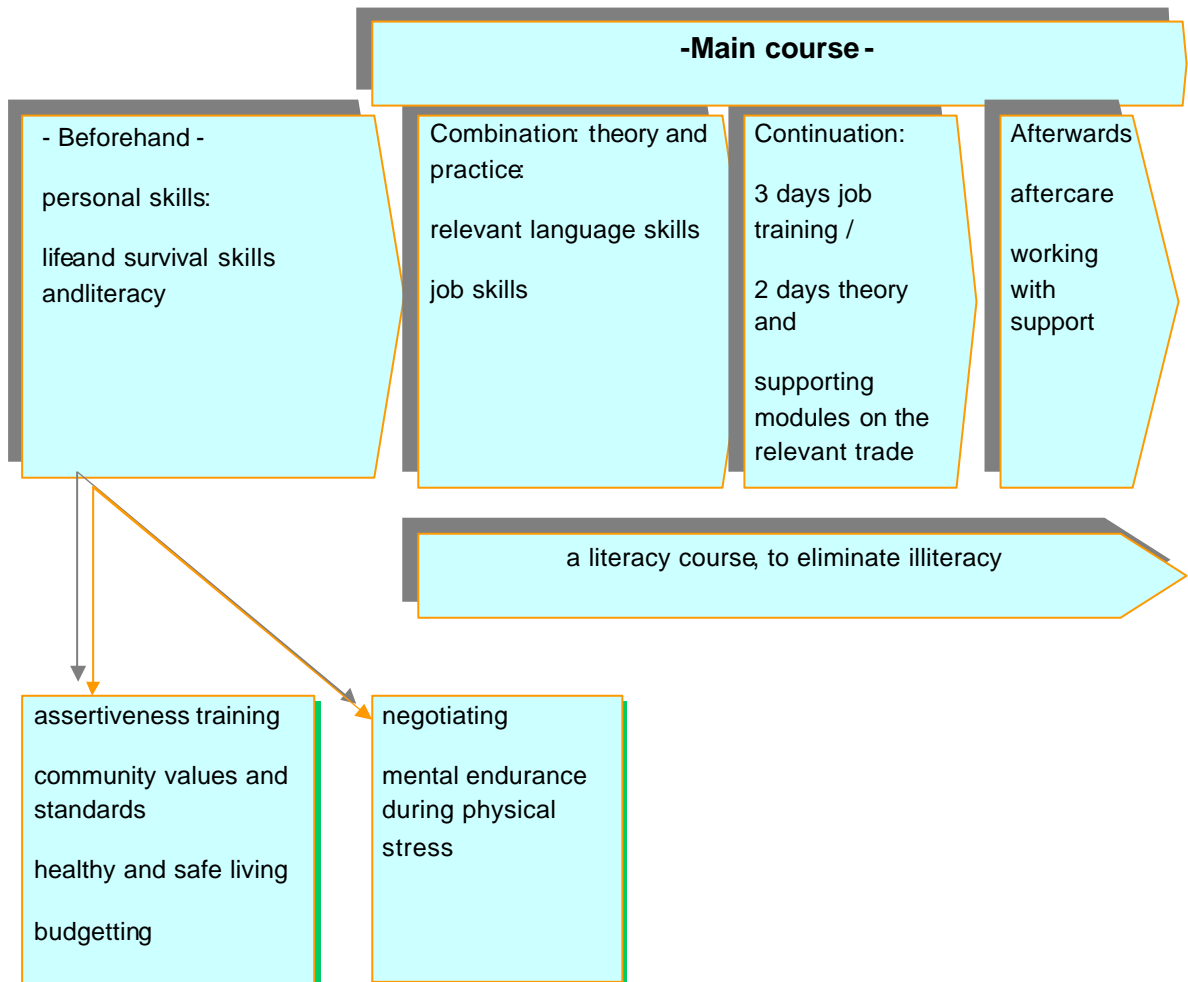
- ❖ personal skills / training
- ❖ work skills / training
- ❖ some compulsory modules: quality development, language skills, social skills, computer skills and sport therapy.

Where needed, social care will be provided.

In 2010, the daily programme, which comprises language training in both English and Papiamentu, computer skills training, sewing lessons, literacy training and music lessons, was attended by four groups of 26 inmates. Before starting the daily programme, a preliminary phase must be completed. A group of 18 juvenile inmates and a group of 18 young adult inmates were enrolled in this preparatory programme. Upon completion they will continue with the daily programme.

Courses to develop computer skills were attended by four groups of 15 inmates. 20 inmates received music lessons while two groups of 15 inmates followed English language training and three groups, of 10, 11 and 14 inmates respectively, received literacy training and Papiamentu language training. There was also a group of 10 inmates who received sewing lessons.

**The content of the programme:**



**Bron:** Instituto di Detenshon I Korekshon Kòrsou, Huis van Bewaring en Strafgevangenis op Curaçao



- c) Implement a new classification of inmates and allocation of cells. In this respect, please elaborate on the status of the plan to build a new correctional facility in Curaçao.**

The process of reclassifying prisoners was started in December 2009. The division is between inmates aged under 25 and those aged 25 and over.

- d) Eliminate life imprisonment sentences for children.**

Sentences of life imprisonment cannot be imposed on juveniles.

**43. Please describe steps taken by the State party to prohibit corporal punishment by law and enforce the prohibition in all settings, including in the family, schools and out of home placements.**

Corporal punishment is an offence under the Criminal Code and can therefore be prosecuted in all circumstances.

**44. Please describe steps taken to criminalize trafficking in human beings as a separate offence, as recommended by the Human Rights Committee in its previous concluding observations (CCPR/C/NLD/CO/4, para. 22)**

The revised Criminal Code has recently been approved by Parliament and is scheduled to enter into force in November 2011. As a result of the revision, the scope of the old article 260 of the Netherlands Antilles Criminal Code has been greatly extended. In addition to sexual exploitation, the new article now covers other objectives of trafficking such as labour exploitation, slavery or slavery-like practices and the removal of organs. The length of the sentences has also been adjusted.

The old article 260 reads:

Any person who is guilty of human trafficking may be sentenced to a term of imprisonment not exceeding nine years. A person is guilty of human trafficking if he:

- A. by means of coercion, force, extortion, fraud, deception or abuse of a de facto position of power recruits, transports, transfers, harbours or receives another person with the intention of exploiting this person;

- B. recruits, takes with him or abducts another person with the intention of inducing that person to make himself/herself available to perform sexual acts with or for a third party for gain in another country;
- C. recruits, transports etc., coerces or induces another person to make himself/herself available or performs acts, by means of extortion, fraud etc., which he knows or may reasonably be expected to know will induce that other person to make himself available to perform labour or services;
- D. induces another person to make himself available to perform sexual acts with or for a third party for gain;
- E. profits from the exploitation of another person.

Article 2:239 of the Criminal Code now reads as follows:

1. Any person who:

- (a) by coercion, force or other act, by the threat of force or other act, by extortion, fraud, deception or abuse of a de facto position of power, by abuse of a position of vulnerability or by giving or receiving payments or benefits to obtain the consent of a person having control over another person recruits, transports, transfers, harbours or receives another person with the intention of exploiting this other person or removing his or her organs;
- (b) recruits, transports, transfers, harbours or receives another person who has not yet reached the age of eighteen with the intention of exploiting this other person or removing his or her organs;
- (c) recruits, takes with him or abducts another person with the intention of inducing that person to make himself/herself available to perform sexual acts with or for a third party for gain in another country;
- (d) forces or induces another person by the means referred to at (a) to make himself/herself available to perform labour or services or make his/her organs available or takes any action in the circumstances referred to at (a) which he knows or may reasonably be expected to know will result in that other person making himself/herself available to perform labour or services or make his/her organs available;
- (e) induces another person to make himself/herself available to perform sexual acts with or for a third party for gain or to make his/her organs available for gain or takes any action in respect of another person which he knows or may reasonably be expected to know will result in that other person making himself/herself available to perform these acts or make his/her organs available for gain, if this other person has not yet reached the age of eighteen;
- (f) intentionally profits from the exploitation of another person;
- (g) intentionally profits from the removal of organs from another person, while he knows or may reasonably be expected to know that the organs of that person have been removed in the circumstances referred to at (a);

(h) intentionally profits from sexual acts performed by another person with or for a third party for gain or the removal of that person's organs for gain, if this other person has not yet reached the age of eighteen;  
(i) forces or induces another person by the means referred to at (a) to surrender to him/her the proceeds of that person's sexual acts with or for a third party or of the removal of that person's organs;  
is guilty of trafficking in human beings and as such liable to a term of imprisonment not exceeding nine years or a fifth-category fine.

2. Exploitation includes at least the exploitation of the prostitution of others or other forms of sexual exploitation, forced or indentured labour or services, slavery, slavery-like practices or servitude.

3. A person who is found guilty will be sentenced to a term of imprisonment not exceeding twelve years or a fifth-category fine if:

- (a) the offences described in paragraph 1 are committed by two or more persons acting in concert;
- (b) the offences described in paragraph 1 are committed in respect of a person who is under the age of sixteen.

4. If the offences described in paragraph 1 are committed by two or more persons acting in concert in the circumstances referred to in paragraph 3 (b), they are punishable by a term of imprisonment not exceeding fifteen years or a fifth-category fine.

5. If one of the offences described in paragraph 1 results in serious bodily injury or there is reason to fear that the act will endanger the lives of others, it is punishable by a term of imprisonment not exceeding eighteen years or a fifth-category fine.

6. If one of the offences referred to in paragraph results in a person's death, it is punishable by a term of imprisonment not exceeding twenty-four years or a fifth-category fine.

Article 2:240 of the Criminal Code now reads as follows:

Anyone who is guilty of using the services of a victim of an offence as referred to in article 2:239, paragraph 1, in the knowledge that this person is being forced or induced by the means referred to in article 2:239, paragraph 1 (a) to make himself/herself available to perform such services is liable to a term of imprisonment not exceeding four years or a fourth-category fine.

## SINT MAARTEN

**38. In light of the Committee's previous concluding observations, please provide information on measures taken to reduce the number of non-convicted detainees and the length of pretrial detention, including through the use of alternative measures (para. 10).**

Pre-trial detention is subject to strict conditions, which are defined by law. Compliance with the conditions is reviewed by the courts.

**39. Please provide information on measures taken to ensure that persons in detention, including under aliens legislation, benefit from an effective right of access to a lawyer and an independent medical doctor, as well as the right to inform a relative, from the outset of their deprivation of liberty. In its previous concluding observations, the Committee expressed its concern in particular about the fact that the presence of a lawyer during interrogation is only permitted with the prior authorization of a magistrate (para. 6). Please provide information on steps taken to address this concern.**

Every accused person has the right to legal counsel. Legal aid is available in Sint Maarten. A suspect who is suspected of an offence or placed in detention is assigned a lawyer (if so desired). Suspects are also entitled to adequate medical care even if incarcerated. The prison has contracts with physicians for the delivery of medical services to inmates.

**40. Please inform the Committee on steps taken to prevent and punish ill-treatment of detainees by police and other authorities in charge of prisons, as well as to ensure that prison personnel receive adequate training, including with regard to the application of the Standard Minimum Rules for the Treatment of Prisoners. Furthermore, information should be provided on the impact and effectiveness of these measures in reducing cases of ill-treatment of detainees.**

**41. Pursuant to the previous concluding observations of the Human Rights Committee, please describe steps taken to improve detention conditions, including through, inter alia, alleviating overcrowding and providing adequate health care (CCPR/C/NLD/CO/4, para. 23).**

**42. In light of the Committee's previous concluding observations (para. 11), please provide updated information on steps taken to:**

- a) **Ensure that juveniles are completely separated from adult offenders;**
- b) **Provide educational and training programmes to help the social reintegration of juveniles. Detailed information should be provided on the number of programmes offered and their content, as well as on the number of juvenile inmates participating in these programmes;**

**43. Please describe steps taken by the State party to prohibit corporal punishment by law and enforce the prohibition in all settings, including in the family, schools and out of home placements.**

Answer to questions 40 & 43:

The Constitution of Sint Maarten prohibits the torture and inhuman or degrading treatment of inmates. Anyone who violates this prohibition is liable to dismissal and prosecution by the Public Prosecution Service.

Answer to questions 41 & 42:

The new Criminal Code of Sint Maarten to be introduced next year will take into account the treatment of prisoners and juvenile detainees. The new Code prescribes that men and women, and youths and adults be detained separately, which is the situation already. The programme for detainees will also include more opportunities for education and training. In addition, the Minister of Justice has been very active in creating a new facility to house detainees. This facility will cater more specifically to minors and people with mental health problems.

**44. Please describe steps taken to criminalize trafficking in human beings as a separate offence, as recommended by the Human Rights Committee in its previous concluding observations (CCPR/C/NLD/CO/4, para. 22)**

Answer to question 44:

There are special provisions regarding human trafficking and smuggling in the Criminal Code that will be introduced next year. In addition, in June 2011 the countries within the Kingdom signed a new memorandum of understanding with the aim of addressing this issue seriously and sufficiently. The results achieved through this agreement will be evaluated annually.

Answer to questions 45 & 47 (see below):

Human rights are an integral part of the Constitution of Sint Maarten. The island is a young country, founded on 10 October 2010, and needs time to work out a number of specific instruments further. The human rights provisions of the various conventions have already been incorporated in the amended legislation in the Criminal Code and Civil Code. The latter includes, for example, provisions on the rights of the child.

**GENERAL INFORMATION ON THE NATIONAL HUMAN RIGHTS SITUATION,  
INCLUDING NEW MEASURES AND DEVELOPMENTS RELATING TO THE  
IMPLEMENTATION OF THE CONVENTION FOR THE EUROPEAN PART OF THE  
KINGDOM, ARUBA, AND THE ANTILLES**

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

**46. Please provide detailed relevant information on the new political, administrative and other measures taken to promote and protect human rights at the national level, that have occurred since the previous periodic report, including on any national human rights plans or programmes, and the resources allocated to its, its means, objectives and results.**

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

*Constitutional restructuring of the Kingdom of the Netherlands*

The Kingdom of the Netherlands has recently been restructured. On 10 October 2010 the Netherlands Antilles, consisting of the islands Curaçao, Sint Maarten, Bonaire, Sint Eustatius and Saba, ceased to exist as a country within the Kingdom of the Netherlands. Since that date the Caribbean part of the Kingdom of the Netherlands has consisted of the countries Aruba, Curaçao and Sint Maarten and, as public bodies within the Netherlands, the islands Bonaire, Sint Eustatius and Saba. This new constitutional set-up has implications for the Kingdom's reporting obligations to UN human rights committees. After the restructuring, Aruba, Curaçao, Sint Maarten and the Netherlands will each provide its own contribution to the joint Kingdom report. The Ministry of Foreign Affairs is responsible for coordination with Aruba, Curaçao and Sint Maarten. The Netherlands in the Caribbean (the public bodies Bonaire, Sint Eustatius and Saba) will be discussed in the contribution from the European part of the Netherlands. The Ministry in the Netherlands with primary responsibility for the content of the report in question is also responsible

for coordination with Bonaire, Sint Eustatius and Saba. The aim will always be to submit a single, joint Kingdom report.

#### *Sources of fundamental rights in domestic law*

In the Netherlands, the legal and institutional framework within which human rights are promoted and protected has remained largely unchanged since the last periodic report was submitted.

Dutch constitutional law includes a number of sources of fundamental rights. First, chapter 1 of the Constitution, entitled 'Fundamental rights', consists of 23 articles enshrining civil, political, economic, social and cultural rights. Other provisions that protect fundamental rights can be found throughout the Constitution. Examples include article 1, providing for equal treatment and the prohibition of discrimination (fleshed out in equal treatment legislation), article 114, which prohibits the imposition of the death penalty, and article 99, which provides that exemption from military service because of serious conscientious objections is to be regulated by Act of Parliament. A second source of fundamental rights is primary and secondary EC law and the case law of the European Court of Justice. By virtue of its supranational character, EC law is automatically incorporated into the Dutch national legal system. Fundamental rights that have been codified or recognised at Community level are therefore rights under national law. In addition, EU Regulations have direct horizontal effect, meaning that citizens are directly assured the rights granted to them and bound by the obligations imposed on them in relation to one another. Various international agreements constitute a third source of fundamental rights. In respect of the relationship between international and national law, the Netherlands adheres to the doctrine of monism, whereby national and international law form a single legal order. Incorporating international law into national law requires neither changes nor national legislation. This is reflected in article 93 of the Constitution, which provides for the direct effect (self-execution) of the provisions of treaties and of resolutions by international institutions which may be binding on all persons by virtue of their contents. The Netherlands is party to many different international human rights agreements. Like all other international agreements to which the Netherlands is party, these are officially published in the Dutch Treaty Series, which is freely accessible online. Regional human rights agreements to which the Netherlands is party include the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, the revised European Social Charter, and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Global human rights agreements that the Netherlands is a party to are the International Covenant on Civil and Political Rights and its Optional Protocols, the International Covenant on Economic, Social and Cultural



Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of all Forms of Discrimination Against Women and its Optional Protocol, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the Convention on the Rights of the Child and its Optional Protocols, the Convention on the Prevention and Punishment of the Crime of Genocide, and several ILO conventions. It should also be noted that under certain circumstances case law may be a source of fundamental rights and general legal principles, such as the principles of legal certainty and equality. The case law of the European Court of Human Rights, the international judicial body charged with ensuring the observance of the European Convention on Human Rights, is thus regarded as a source of human rights law.

### *Human rights organisations*

While the government and judiciary of the Netherlands are responsible for ensuring respect for human rights, there are numerous organisations whose task is to critically scrutinise government action in the area of human rights and specific sub-areas. Many of these receive government grants to enable them to carry out their mandate satisfactorily. Nevertheless they are entirely independent of government and do not hesitate to criticise it when necessary. Many organisations that defend the interests of various groups or individuals in Dutch society are consulted by the government when it is preparing or amending policy and legislation, and provide advice both on request and at their own initiative. Examples of such organisations include the National Bureau against Racial Discrimination, the Human Trafficking Coordination Centre (CoMensha), organisations representing immigrants, the Dutch Victim Support Organisation, the Netherlands Institute of Human Rights (SIM), Amnesty International, the Dutch section of the International Commission of Jurists (NJCM) and the trade unions. In addition, the Government often engages in constructive dialogue with academics and representatives of human rights organisations and calls on their expertise in order to improve and extend the observance of human rights. For example, the Advisory Council on International Affairs (AIV) is an independent body that advises government and parliament on foreign policy, particularly on issues relating to human rights.

### *Recent and current developments*

The Netherlands is currently establishing a national institute for human rights (*College voor de Rechten van de Mens*), as effective national mechanisms are needed for the protection and promotion of human rights. The new institute will be independent, in accordance with the Paris Principles. The institute will begin operations in 2012. Among other things, the institute will give advice on legislation and policy

related to human rights, conduct research on the protection of human rights, and report on the human rights situation in the Netherlands.

Since submitting its fourth periodic report to the Committee against Torture, the Kingdom of the Netherlands has made a constructive contribution to the Universal Periodic Review mechanism (UPR). The Kingdom volunteered for review in the first UPR cycle in 2008. It emphasised during the session that it in no way saw the UPR as a snapshot of the situation at a particular moment, but rather as an ongoing process that should foster a permanent focus on human rights at national level. In addition, in 2010 it submitted at its own initiative an interim report that responded to the recommendations made during the 2008 session. The Kingdom of the Netherlands is currently drafting its national UPR report for 2012.

## **ANNEX to answer 6 a: THE ASYLUM PROCEDURE (AS OF 1 JULY 2010)**

A thorough review of the asylum procedure, which came into force on 1 July 2010, has resulted in important improvements. One of the outcomes is that more asylum seekers will be informed about the results of their procedure at an earlier stage. The procedure is also more meticulous.

The new asylum procedure can be summarised as follows: after a period of rest and preparation of at least six days, the eight-day 'general asylum procedure' begins. If no considered decision can be taken within eight days, the application will be assigned to the 'extended asylum procedure'. These procedures are described below in greater detail, as are the procedure at Schiphol, the possibility of review proceedings, and second and follow-up asylum procedures.

### **Period of rest and preparation**

The period of rest and preparation is a period of at least six days during which the asylum seeker has the chance to rest and then to prepare for the asylum procedure. During this period an initial investigation into travel and identity documents may also begin, although there will be no contact at this stage between the asylum seeker and the Immigration and Naturalisation Service (IND). The period of rest and preparation will boost the quality of the asylum procedure.

#### *Intake at the central reception location*

If an alien expresses a wish to submit an asylum application, he will need to report to the central reception location. He will undergo an intake interview (not the same as the formal submission of an asylum application) and investigation of the authenticity of documents will begin. All safeguards and provisions of EU law apply from this point onwards.

#### *Extension of the period of rest and preparation*

Following the intake, the asylum seeker will be transferred to a location close to the application centre. He will remain here throughout the remaining period of rest and preparation and the general asylum procedure. The following activities will take place during this period.

### *Health check*

All asylum seekers can choose to undergo a health check, so their state of health can be taken into account during the asylum procedure. The emphasis is on whether any medical problems they may have could influence their ability to make consistent, coherent statements. This can determine the way in which the asylum seeker is interviewed. Any indications of medical problems may also prompt the IND to initiate a separate procedure, to run parallel to the asylum procedure, to examine whether the medical problems are in themselves reason to grant the asylum seeker temporary or permanent residence in the Netherlands. The reason for this is to prevent a situation arising in which failed asylum seekers are only able to submit an application for residence on medical grounds once their initial asylum procedure is complete.

### *Information provided by the Dutch Refugee Council*

The Dutch Refugee Council provides all asylum seekers with information on what they can expect in the asylum procedure, and on their rights. This includes the option of asking for a female interpreter, and the importance of giving the IND all relevant information.

### *Preparation with the assistance of a legal adviser*

All asylum seekers are entitled to free legal assistance. They are entitled to a maximum of 12 hours legal assistance during the period of rest and preparation and the general asylum procedure combined. In general, 8 hours are provided. An extra 5 hours (which can be extended to 7) is available as part of the extended asylum procedure. Efforts are made to ensure that legal assistance is provided by the same person throughout.

## **The general asylum procedure**

In principle, all asylum seekers complete the general asylum procedure first, which contains all the steps required to come to a considered decision. At this stage any steps which require the asylum seeker to be present in person are taken, and all necessary information is collected. This is done to reduce the duration of any extended asylum procedure that may be required.

The general asylum procedure consists of the following steps:

Day 1:            Submission of a signed formal asylum application to the IND, and the first interview concerning the applicant's identity and travel route.

- Day 2: Discussion of the first interview and preparation for the second interview with legal adviser.
- Day 3: Second interview concerning the account in support of the asylum application.
- Day 4: Discussion of the second interview with legal adviser. Corrections and additions can be made to the report of the second interview.
- Day 5: The IND issues written notification of intent. If the IND is planning to grant the application, the procedure will end. If the IND is planning to reject the application, the procedure continues (see below). The IND may also at this point decide that further investigation is required, and may continue with the extended asylum procedure.
- Day 6: The asylum seeker and his/her legal adviser compose a response to the IND's notification of intent to reject the application.
- Day 7/8: The IND (1) decides to reject the asylum application, (2) decides to grant the asylum application, or (3) decides that further investigation is required and that the application should be referred to the extended asylum procedure.

### **The extended asylum procedure**

If the IND concludes, during the general asylum procedure, that further investigation is required, the asylum application will be referred to the extended asylum procedure. Reasons for further investigation can vary; the Ministry of Foreign Affairs may be asked to provide extra information, or there may be indications that article 1F of the Refugee Convention might be invoked, language analysis or a medical examination is required etc. Although all the procedural steps required to reach a decision will already have been taken during the general asylum procedure, a supplementary interview may be conducted if deemed necessary. In principle, a decision on the asylum application will be taken within 6 months of the submission of the formal application.

### **Review proceedings**

Applicants may lodge an application for review of the decision on their asylum application with the district court. The court can take relevant new facts and circumstances into account, as long as this does not stand in the way of due process or mean an unacceptable delay.

If an asylum application is rejected in the general asylum procedure, the review application does not have a suspensive effect. The rejected asylum seeker will be given a departure period of four weeks in which to prepare to leave the country. During this period he may remain at the reception centre. As applicants' entitlement to reception facilities expires at the end of the four weeks, there is an urgent interest. Accordingly, in most cases courts will give judgment on the review application within the departure period. If the court fails to do so, an injunction may be granted to ensure that reception facilities will not end before the court has given judgment. This encourages a speedy procedure, but ensures no irreversible steps are taken before the case is seen by the courts.

If an asylum application is rejected in the extended asylum procedure, the review application does have suspensive effect and the asylum seeker will continue to be entitled to reception.

### **The asylum procedure at Schiphol**

Asylum seekers who arrive in the Netherlands via Schiphol are refused access to the Netherlands, in accordance with the Schengen Borders Code. They can submit an asylum application at the application centre at Schiphol and are detained. The general asylum procedure is the same as that followed in other application centres.

If no considered decision can be reached in the general asylum procedure, there are two options: (1) the application will be further processed in the extended asylum procedure and the asylum seeker will continue to stay in an open reception centre; (2) entry to the Netherlands will continue to be denied and the asylum seeker will remain in detention (closed extended asylum procedure). In such cases the extended asylum procedure will not, in principle, last longer than six weeks. This will only apply in a limited number of cases, for example if there are indications that article 1F of the Refugee Convention may be invoked, if it is suspected that fraud has been committed or if another member state of the European Union is responsible for processing the application under the Dublin Regulation.

### **Second and subsequent asylum applications**

The procedure for processing second and subsequent asylum applications is more straightforward. There is no period of rest and preparation, and rejected asylum seekers are no longer given a departure period, but are required to leave the Netherlands immediately.

Due to improvements made to the asylum procedure, in particular the fact that medical issues are addressed at an early stage and that courts can take all new facts, circumstances and policy changes into account when giving judgment, it is expected there will be fewer second and follow-up procedures.