THE NETHERLANDS

SUBMISSION TO THE UNITED NATIONS COMMITTEE AGAINST TORTURE

65TH SESSION, 12 NOVEMBER- 7 DECEMBER 2018

AMNESTY INTERNATIONAL

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We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

First published in 2018
by Amnesty International Ltd
Peter Benenson House, 1 Easton Street
London WC1X 0DW, UK

Index: EUR 35/9232/2018
Original language: English

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1. INTRODUCTION

Amnesty International submits this briefing to the United Nations (UN) Committee against Torture (the Committee) ahead of its examination of The Netherlands' seventh periodic report on the implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention), at its 65th Session (November – December 2018).

This briefing describes Amnesty International's main concerns regarding the implementation of the Convention by The Netherlands, based on the organization's most recent research. It focuses in particular on violations of the Convention in Dutch migration detention; the failure of the Kingdom of The Netherlands to protect refugees, asylum seekers and migrants in Curaçao; the use of electro-shock weapons in day-to-day policing and the lack of effective accountability; non-compliance of the use of force instructions of the Dutch police with the Convention; structural flaws in the Dutch National Preventive mechanism; the lack of legal safeguards and effective remedies in administrative counterterrorism measures; and violations of the Convention in the Dutch special high-security detention units that hold people suspected and convicted of terrorism offences.[1]

2. MIGRATION DETENTION (ARTICLE 16)

Undocumented migrants and rejected asylum-seekers can be placed in migration detention with a view to keeping them available for expulsion. People arriving at Schiphol International Airport without documents can be placed in border detention before entering The Netherlands/EU. Amnesty International is concerned about the recent rise in the number of people held in migration detention in The Netherlands. After a period of decline, in the past three years the number rose from 2176 in 2015 to 3181 in 2017, a rise of 46%.[2] Amnesty International is concerned that the totality of the treatment of at least some undocumented migrants and asylum seekers in The Netherlands constitutes cruel, inhuman or degrading treatment or punishment (ill-treatment).

2.1 BORDER DETENTION OF ASYLUM-SEEKERS

In its previous concluding observations, the Committee urged The Netherlands to "ensure that the detention of asylum-seekers is only used as a last resort, and, where necessary, for as short period as possible and without excessive restrictions, and to effectively establish and apply alternatives to the detention of asylum-seekers."[3]

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[1] These concerns are covered in more detail in the joint submission by Amnesty International and the Open Society Justice Initiative, *Submission to the United Nations Committee against Torture- Ill-treatment in the context of counterterrorism and high-security prisons in the Netherlands,* available at https://www.amnesty.org/en/documents/eur35/9231/2018/en/

[2] Ministry of Justice & Security, *DJI in Getal 2013-2017* [*Custodial Institutions Agency in Numbers 2013-2017*], p. 48, August 2018, https://www.dji.nl/binaries/DJI%20in%20getal%202013-2017%20definitieve%20versie%203_tcm41-350484.pdf. Hereafter referred to as: *Custodial Institutions Agency in Numbers 2013-2017*; In 2013: 3668, 2014: 2728, 2015: 2176, 2016: 2570, 2017: 3181.

[3] Committee Against Torture, *Concluding observations on the combined fifth and sixth periodic reports of The Netherlands, adopted by the Committee at its fiftieth session* (6-31 May 2013) UN Doc. CAT/C/NLD/CO/5-6, 20 June 2013, para. 14. Henceforth: *CAT's 2013 concluding observations*.

Amnesty International remains concerned about the automatic detention of asylum-seekers at the Schiphol International Airport border control.[4] No comprehensive individual assessments of the necessity of detention takes place. Approximately 10% of all asylum-seekers reach The Netherlands by air, through Schiphol Airport. Despite being at a significant health risk, vulnerable and sick people are not excluded from detention. The automatic detention of asylum-seekers at Schiphol Airport contrasts sharply with the Dutch policy and practice vis-à-vis asylum-seekers who arrive into The Netherlands by land. They are not detained and remain in application centres which are, in principle, open.

The asylum procedure at Schiphol Airport can take up to two weeks, during which time the asylum-seeker remains in detention. For situations in which the government needs more time to take a decision, and the decision is expected to be negative, the procedure will be extended and can last up to six weeks in total. This period can also be extended further; if asylum-seekers lodge an appeal against the rejection, they continue to be detained. In cases where the court rejects the appeal the asylum-seeker remains detained provided there is a prospect of expulsion.[5] In 2017, the number of applicants who went through the asylum procedure while in border detention was 336.[6]

In September 2014, a new policy was introduced that put an end to the automatic detention of families with children at the Schiphol Airport border control.[7] From that moment onwards families with children under 18 were submitted for a short screening of risks, including the credibility of family ties, the risk of trafficking or child smuggling, and the risk of undermining public order. Barring any indication of these risks, they will be transferred to an open centre in Ter Apel.[8] Whilst not ruling out the possibility altogether, in practice no asylum-seeking families have been detained since September 2014. So far, however, no effort has been made by the government to put in place a similar individual screening policy or procedure for adult asylum-seekers, including asylum-seeking families without children under 18, to assess the necessity and proportionality of their detention.

Amnesty International notes that there is a distinct disparity in access to a judicial review of the lawfulness of detention for individuals in migration detention[9], as compared, to persons in penal detention. In a criminal law context, judicial review before an examining magistrate automatically takes place within three days and eighteen hours.[10] In contrast, if detained migrants do not submit an appeal of their own accord, the court will be informed by the authorities no later than 28 days after the deprivation of their liberty. This can lead to detention of more than a month before the first judicial review of the lawfulness of the decision to detain the individual is made. In the worst case migrants can be detained up to 42 days before they first see a judge.

2.2 DURATION AND FREQUENCY OF DETENTION

In its concluding observations, the Committee recommended that The Netherlands "[s]crupulously observe the absolute time limit for the administrative detention of foreign nationals, including in the context of repeated detention" and avoid "the accumulation of administrative and penal detention, in excess of the absolute time limit of 18 months of detention of migrants under migration law."[11] Amnesty International continues to be concerned about the long duration of many migrants' detention in The Netherlands, and in particular the situation of people who are repeatedly detained. This, is in addition to concerns about the justification of such detention in the first place. The organization notes with deep concern that the absolute limit of 18 months of detention of migrants under migration law continued to be exceeded in a number of individual cases of repeated detention.

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[4] Article 6 *VreemdelingenWet 2000* [*Aliens Act 2000*]; see also: UNHCR & Dutch Council for Refugees, *Pas nu weet ik: vrijheid is het hoogste goed – Gesloten Verlengde Asielprocedure 2010-2012* [*It is only now that I realise: freedom is the greatest good – the closed extended asylum procedure 2010-2012*], April 2013, http://www.unhcr.nl/unhcr-in-nederland/campagnes/grensdetentie.html

[5] The maximum period of detention for the purpose of removal is six months, but under certain circumstances this period can be extend with twelve months. See: Article 15 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals [European Returns Directive]

[6] *Custodial Institutions Agency in Numbers 2013-2017*, p. 48; in 2013: 164; 2014: 261; 2015: 324; 2016: 340; 2017: 336.

[7] State Secretary of Security & justice, Letter to the Members of Parliament 28 May 2014: *Screening families at the border*, https://zoek.officielebekendmakingen.nl/kst-19637-1827.html

[8] State Secretary of Security & justice, 28 May 2014: *Screening families at the border*

[9] The Aliens Act 2000 gives the detainee the right to have his or her detention examined by the special 'Migration Chamber' at the administrative districts court. This is done following an application by the individual, which is then followed by a court procedure within 14 days. This is followed by another 7 days (maximum) for the court to decide on the appeal.

[10] Article 59a, *Wetboek van Strafvordering [Criminal Procedural Code]* http://wetten.overheid.nl/BWBR0001903/2018-10-01

[11] CAT's 2013 concluding observations, para 15.

Average duration of detention between 2013 and 2017 in days[12]

Year	2013	2014	2015	2016	2017
Awaiting removal	73	71	59	43	44
Border detention	52	33	26	38	32
Average duration	72	55	55	43	43

Amnesty International appreciates that the average duration of detention decreased when a more stringent individual assessment of the grounds of detention was introduced.[13] Nevertheless, the relatively long duration of migration detention (43 days) in The Netherlands raises questions at to the extent to which detention is used as a measure of last resort, and when used, whether its duration is as short as possible.

The lack of aggregated statistics on the occurrence of repeated migration-related detention makes it difficult to monitor the necessity and effectiveness of migration-related detention.

2.3 MIGRATION DETENTION OF CHILDREN AND OTHER VULNERABLE GROUPS

In its concluding observations, the Committee, inter alia, recommended that The Netherlands "take alternative measures to avoid detention of children or their separation from their families".[14] Together with the new policy on the border-detention of families with children, The Netherlands launched a new detention regime for unaccompanied children and families with children awaiting removal.[15] In October 2014, a special facility was opened in Zeist. The regime in this family migration detention centre ('Gesloten Gezinsvoorziening') has no locked cells and fewer restrictions. Nonetheless, it still constitutes detention and fails to fully comply with the Committee's recommendation.

Families with children in detention (awaiting removal)[16]

Year	2013	2014	2015	2016	2017
Families	89	44	66	76	67
Children	165	82	129	147	133
Unaccompanied children in detention	24	11	12	26	46
Young adults: 18 and 19 years old in detention	20	6	6	11	30

[12] *Custodial Institutions Agency in Numbers 2013-2017*, p. 54.
[13] Article 15 European Returns Directive (2008/115/EC); *Bashir Mohamed Ali Mahdi* (C-146/14, ECLI:EU:C:2014:1320), European Court of Justice, Third Chamber.
[14] CAT's 2013 concluding observations, para.17 .
[15] State Secretary of Security & justice, Letter to the Members of Parliament 28 May 2014: *Screening families at the border and the opening of the closed family detention centre*, https://zoek.officielebekendmakingen.nl/kst-19637-1827.html
[16] *Custodial Institutions Agency in Numbers 2013-2017*, p. 51, 53.

Moreover, since the opening of the family migration detention centre in 2014, the number of detained families (awaiting deportation) has increased again.[17] Amnesty notes with concern that the number of unaccompanied asylum-seeker children placed in migration detention nearly doubled between 2016 and 2017.[18] Amnesty International notes that, apart from the above-mentioned policies on children, the government has not instituted clear policies to prevent the detention of other vulnerable groups, such as victims of torture and persons with serious physical or mental health problems.

2.4 FLAWS IN THE NEW DRAFT LAW ON MIGRATION DETENTION

In its concluding observations, the Committee noted its concern about the similarities between the detention regime in migration detention centres and penal detention centres. It urged The Netherlands to "ensure that the legal regime of alien detention is suitable for its purpose and that it differs from the regime of penal detention."[19] Article 16 of the European Return Directive prescribes that foreign nationals must be detained in separate specialized institutions.[20] The current prison buildings are alternately used for penal detention and alien detention and the penitentiary system used by The Netherlands to detain migrants does not comply with the standards of the Council of Europe's Committee for the Prevention of Torture (CPT).[21]

In December 2013, the government published a draft Bill with a new separate regime for migration detention.[22] In July 2018 the Bill was adopted by the House of Representatives and was sent to the Senate. The Dutch Senate is expected to vote on the bills by the end of 2018. The original aim of this Bill was to take the detention of undocumented migrants and rejected asylum-seekers out of the criminal law realm into the administrative law realm. Amnesty International welcomes this objective but has strong doubts about how much of an improvement the Bill will actually provide.

The Bill creates two different regimes for migration detention. The first, less restrictive regime contains some improvements compared to the current situation, such as detainees spending fewer hours locked up in a cell (from 16 to 12 hours per day) and being able to receive phone calls (which was previously prohibited). However, newly arrived migrants and migrants who are considered a risk to order and security will be subjected to a more restrictive regime. In the latter regime people can be locked up in a cell for a maximum of 17 hours a day, with only limited rights to receive visitors (two hours per week) and limited activities outside their cell (7.5 hours per week including sport: 2 x 45 minutes a week). The right to stay in the outside air is limited to one hour per day. Migration detention must, in accordance with international regulations, be based on minimum restrictions.[23] Severe restriction and extensive cell confinement are therefore disproportionate, as there are less coercive and restrictive means to achieve this.

The Bill also creates the exact same regimes in both border detention for asylum-seekers and detention for the purpose of removal. In practice, this would mean that asylum-seekers, who currently enjoy more internal freedom than detained migrants up for removal, will be faced with more restrictions than hitherto.

Another flaw in the new Bill is that it makes a distinction between children over and under 12 years of age. This makes it possible to use coercive and seclusion measures for children above the age of twelve. This distinction is in conflict with the UN Convention on the Rights of the Child.[24]

Although the Bill creates an obligation in a new article 58a of the Aliens Act to provide an extra justification of migration detention in cases of vulnerability, it does not prescribe a comprehensive individual vulnerability assessment to prevent the detention of vulnerable people. This means that The Netherlands continues to use the current assessment of

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[17] *Custodial Institutions Agency in Numbers 2013-2017*, p. 51.
[18] *Custodial Institutions Agency in Numbers 2013-2017*, p. 50.
[19] CAT's 2013 concluding observations, para. 16.
[20] European Returns Directive (2008/115/EC), article 16.1 Detention shall take place as a rule in specialized detention facilities.
[21] There should not be a 'prisonlike' regime in migration detention. CPT Standards, CPT/Inf/E (2002)1-Rev.2015, Art IV B.28; CPT/Inf/E (2002) 1 – Rev.2015.
[22] TK 34 309 *Regels met betrekking tot de terugkeer van vreemdelingen en vreemdelingenbewaring (Wet terugkeer en vreemdelingenbewaring)* [*Rules regarding the return of aliens and migration detention (Law returns and migration detention)*], https://zoek.officielebekendmakingen.nl/dossier/34309/kst-34309-A?resultIndex=5&sorttype=1&sortorder=4
[23] See for example: Council of Europe, *European Prison Rules*, 2006, https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae
[24] On the basis of Article 3 of the International Convention on the Rights of the Child, the interests of the child in administrative decisions affecting children must be the first consideration.

'suitability for detention' ('detentiegeschiktheid'),[25] developed for the criminal justice system. This assessment only looks at the extent to which health care can be provided in detention, and does not assess the vulnerability of an individual's placement in detention.[26]

2.5 CONTINUED USE OF ISOLATION CELLS AND SOLITARY CONFINEMENT

Amnesty International is deeply concerned about the continued use of isolation cells and solitary confinement in migration detention.

Each year hundreds of migrants are held in isolation, with potentially detrimental health effects.[27] Isolation in migration detention can be used as a punishment (a disciplinary measure), an order measure, or for medical reasons in a broad range of situations. People can be placed in an isolation cell for reasons such as aggression, resistance to deportation, but also as punishment for disobeying orders given by detention centre staff, such as for refusing to be placed in a double cell or objecting to a cell mate.[28] Under both the current[29] and the draft Bill[30] people can be placed in an isolation cell for a period of up to two weeks - a period which can be prolonged by a decision from the director of the detention centre.[31] During this time they can be confined to their cell for more than 22 hours a day. Amnesty's 2015 report on the use of isolation cells in migrant detention found that the average duration of isolation as an order measure was 7.1 days and as a disciplinary measure 5.4 days in 2014.[32]

The Bill on migration detention (see previous section) continues to allow the use of isolation as a punitive measure. It continues to enable the placement in isolation cells of minors aged 12 years and older, even though this can never be in the best interest of a child, raising serious concerns. An amendment prohibiting the placement of minors in an isolation cell failed to reach a majority vote in the House of Representatives.

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[25] The Explanatory Memorandum to the Bill describes this assessment as an "individual medical assessment", as such no general guidelines for the assessment of 'suitability for detention' are developed. The assessment is done by an independent medical agency contracted by the Custodian Institutions Agency. The narrow assessment concerns the question of whether the necessary health care can be provided for in the detention centre, or in a detention centre with more specialized medical care. Only in situations where the detention would lead to an 'unreasonable aggravation' of the medical situation or vulnerability, someone is considered unsuitable for detention. TK 34 309, *Rules regarding the return of aliens and migration detention. No. 3 Explanatory Memorandum*, 2 October 2015.

[26] Amnesty International Netherlands, Medicins du Monde and LOS Foundation, *Geketende zorg* [*healthcare in chains*], May 2014, Appendix: A: Leidraad disciplinaire straffen & ordemaatregelen. p.51, http://www.amnesty.nl/nieuwsportaal/rapport/geketende-zorg-gezondheidszorgen-in-vreemdelingendetentie

[27] Amnesty International, Médecins du Monde The Netherlands, LOS Foundation, *Isolatie in vreemdelingendetentie* [*Isolation in Migration detention*], March 2015, https://www.amnesty.nl/sites/default/files/public/rapport_isolatie_in_vreemdelingen_detentie19mrt.pdf

[28] Dienst Justitiële Inrichtingen [Custodial Institutions Agency]*, Leidraad disciplinaire straffen & ordemaatregelen* [Guidelines on punitive and order measures], 2010. Available as appendix in the report: *Isolation in Migration detention*, March 2015.

[29] Penitentiaire Beginselenwet, (Penitentiary Law) https://wetten.overheid.nl/BWBR0009709/2018-08-01

[30] TK 34 309 *Rules regarding the return of aliens and migration detention.*

[31] TK 34 309 *Rules regarding the return of aliens and migration detention,* art 49. 2.

[32] Amnesty International, Médecins du Monde, LOS Foundation, *Isolation in migrant detention,* p. 28, March 2015; In the first half year of 2017, in 98 cases isolation was used as a (punitive) disciplinary measure. Amnesty International *Geen Cellen en Handboeien – Het beginsel van minimale beperkingen in het regime vreemdelingendetentie [No cells or chains – the principle of minimal restrictions in migrants detention]*, February 2018, p. 23, https://www.amnesty.nl/content/uploads/2018/02/AMN_18_05_Rapport-Geen-cellen-en-handboeien_DEF_web.pdf?x23423; see also LOS Foundation: *Straf-en-ordemaatregelen [disciplinary and order measures].* meldpuntvreemdelingendetentie.nl/wp-content/uploads/Rapport-straf-en-ordemaatregelen-def-18-7.pdf.

3. CURAÇAO: AUTHORITIES ARE DENYING PROTECTION TO PEOPLE FLEEING THE CRISIS IN VENEZUELA (ARTICLE 3)

Since October 2010, Curaçao has been one of the four constituent countries of the Kingdom of The Netherlands. Although each of the countries has its own responsibility to promote the "realisation" of human rights, the "safeguarding" of these rights is a Kingdom affair.

In 2017 Curaçao faced a growing number of Venezuelan people seeking protection from the severe human rights crisis and crack-down on anti-government protestors in Venezuela.[33] Instead of protecting arrivals from Venezuela, the Curaçao government designed an "active removal strategy" to deport those with irregular migration status. In 2017, the Curaçao authorities removed 1,203 Venezuelans from the island, while in the first four months of 2018 they deported another 386.[34]

Although the Curaçao government claims there is an asylum procedure in place, in practice it is close to impossible to obtain protection. Foreigners have not been able to even apply for international protection in Curaçao since July 2017.[35]

People who are due to be deported are held in closed detention centres and police cells. The conditions in these detention centres are appalling: including overcrowding, a lack of privacy, poor hygiene in shower and bathroom areas, and a lack of suitable bedding. Several people told Amnesty that they had suffered ill-treatment upon arrest or in detention, including the proposition of sexual favours in exchange for sanitary towels and soap.

During the detention of their parents, children are being separated and placed in children's homes.[36] This practice continues despite such separation inevitably causing considerable suffering, both to parents and to children.

[33] In March 2018, the UN Refugee Agency said a very significant proportion of Venezuelans who have fled the country need international protection. See: UN High Commissioner for Refugees (UNHCR*), Guidance Note on the Outflow of Venezuelans*, March 2018, http://www.refworld.org/docid/5a9ff3cc4.html

[34] Amnesty International, *Detained and Deported: Venezuelans denied protection in Curaçao*, September 2018, https://www.amnesty.org/download/Documents/EUR3589372018ENGLISH.pdf

[35] Amnesty International, *Detained and Deported: Venezuelans denied protection in Curaçao*, September 2018.

[36] There are indications that separation of children of diverse ages from their parents took place. A news report of 15 September 2018 reports on the separation of children ages 6 and 8 from their mother and a 3-weeks-old baby who was separated from her mother. RTL Nieuws, *Kinderen van ouders gescheiden op Curacao [Children separated from their parents on Curacao]*, 15 September 2018, https://www.youtube.com/watch?v=7A5SID7WTkM

4. POLICE USE OF FORCE (ARTICLES 1 AND 16)

4.1 ELECTRO-SHOCK WEAPONS IN DAY-TO-DAY-POLICING

In 2013 the Committee recommended that The Netherlands "refrain from flat distribution and use" of electro-shock weapons.[37] Despite this, on 1 February 2017, a pilot project commenced with a view to deciding on whether electro-shock weapons should be generally deployed for day-to-day policing ('Basispolitiezorg').[38] The official evaluation of the pilot showed that police have used these weapons in situations where there was no imminent threat to life or risk of serious injury.[39] In over half of the situations where the weapon was discharged, persons were given electric shocks with these weapons in direct contact mode (drive-stun mode)[40], including when already handcuffed, inside a police cell or vehicle, and in a separation cell in a psychiatric hospital. This usage is likely to amount to cruel, inhuman or degrading treatment or punishment (ill-treatment) and in certain circumstances to torture.[41]

Although the evaluation period ended on 1 February 2018, the four pilot teams are still authorized – and still use - electro-shock weapons. A decision on the introduction of Tasers in day-to-day policing is expected to be proposed to the House of Representatives in the final months of 2018.

The official evaluation report gives a very disturbing insight into the way electro-shock weapons have been used in day-to-day policing. During the evaluation period, 35% of the 340 officers who were trained and certified in the use of Tasers, have used it in a total of 334 situations. The use is defined to include i.e. drawing, warning the individual of the intent to use it, arcing or discharging. In 38% of the situations the officer not only threatened to use the weapon but discharged it once or several times. In over half (54%) of these situations the person was tasered in drive-stun mode.[42] Most of the 55 persons tasered in drive-stun mode were tasered once or twice, however 5 people were tasered 5 to 8 times in drive-stun mode.[43] The official evaluation report further states that 4 persons have been tasered while in custody, and 15 persons were tasered even though they were already handcuffed.[44]

Police used electro shock weapons in situations where there was no imminent threat to life or of serious injury. The report states, for example, that "the Taser has been used at least 13 times against people who tried to escape from arrest for an offense (and not a crime) without posing a direct imminent danger to their own body or someone else's". This use is in violation with the principle of proportionality and may violate the Convention, in particular where victims are in the custody or under the control of officials.

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[37] UN Committee against Torture, CAT/C/NLD/CO/5-6, 20 June 2013, para 27, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/NLD/CO/5-6&Lang=En

[38] Four teams were selected to carry out the pilot project: Two ordinary patrolling police units (in Amersfoort and Zwolle), a dog unit in Rotterdam, and a support unit in the police region of North-Netherland. The four units participating in the 2017 pilot have been equipped with - and are still using - the Taser X2. Special units (in particular: arrest teams) started using electro-shock weapons in May 2011 and are equipped with the Taser X26. This paragraph focuses on the use of the Taser in day-to-day policing however it should be noted that the instructions for use of electro-shock weapons used by arrest teams provide shortcomings as these allow use of the weapon in situations that do not amount to a threat to life or of serious injury, and do not prohibit use in drive-stun mode.

[39] O. Adang et al., *Het stroomstootwapen in de basispolitiezorg? Een evaluatie van de pilot* (*Electro-shock weapons in day-to-day-policing? An evaluation of the pilot*), May 2018. Hereafter: Evaluation Report; https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2018Z10240&did=2018D31630

[40] A mode in which the weapon is held against the body of an individual without firing the projectiles, and which is intended to cause pain without incapacitating the target/individual.

[41] See, for instance, Amnesty International The Netherlands, *A Failed Experiment: The Taser-Pilot of the Dutch Police*, February 2018, https://www.amnesty.nl/actueel/use-of-taser-by-the-dutch-police-unacceptable

[42] Evaluation Report, p. 21. See footnote 40 for the meaning of 'drive-stun' mode.

[43] Evaluation Report, p. 26.

[44] Evaluation Report, p. 31.

The police have used electro-shock weapon at least 11 times against persons with mental disability or illness inside mental health institutions during the twelve-months evaluation period.[45] Public and political debate about the use of Tasers, and more broadly police interventions in mental health institutions, was triggered by an incident in August 2018 when a man, who was inside a mental health institution separation cell, was tasered four times in drive-stun mode. This was justified by the need to administer medication to the man. In December 2017 Parliament decided to temporarily prohibit the use of electro-shock weapons in such institutions until a final decision concerning the general deployment of such weapons to all police officers is made. Aside from being only temporary, this decision falls short of addressing the more general problem of police intervening with the use of force in such institutions other than in '112 call-situations'. Despite the aforementioned temporary prohibition, in July this year police officers intervened in a mental health institution in Rotterdam and tasered a 73-year-old man suffering from dementia.[46]

All police officers who participated in the pilot initially received two days of training and during the pilot another day was added.[47] The evaluation report concludes: "Training was deficient both in its duration and content. The technical complexity of the Taser, the use of this weapon in combination with other weapons and equipment and its health risks imply that high demands must be made on training."[48]

In February 2017 the Dutch government issued new instructions ('Geweldsinstructie toepassing stroomstootwapen')[49] for the use of Tasers. These instructions merely describe four types of very general situations in which the electro-shock weapon may be used, and do not provide any decision-making criteria as to when a situation may or may not warrant such use. Moreover, they do not regulate how the weapon is to be used, in what situations it must not be used, and what precautions are to be taken before using the weapon. Amnesty considers these instructions to be insufficient by seriously failing to reduce the risks of causing death or serious injury, as well as failing to address the inappropriate or abusive use of electro-shock weapons.

There is no effective accountability for unlawful use of electro-shock weapons by police officers. The reporting system on the use of force contains no explicit requirement for police officers to explain their decision in the light of the principles of proportionality and necessity, nor are these principles effectively being used in reviewing the use of electro-shock weapons. This is evident by the fact that even the most obvious cases of abusive use of electro-shock weapons – their use in drive-stun mode on persons who are already handcuffed – have not been taken up at any level – neither by the police authorities in their internal reviewing process, nor by judicial or other oversight, nor at the political level by parliament or the relevant ministry. This seriously undermines accountability for the unlawful use of force and fosters impunity.

4.2 REVISION OF THE USE OF FORCE INSTRUCTIONS FOR THE POLICE

On May 17, 2018, the Minister of Justice and Security presented a draft of a revised version of the 'Ambtsinstructie', a legal instruction that regulates the use of force and equipment available to the Dutch Police, the Royal Netherlands Marechaussee and other law enforcement officers.[50] Amnesty International is deeply concerned about both the content of the revised Ambtsinstructie and the process behind its drafting and adoption.[51]

The draft expands the scenarios in which force and firearms can be used and introduces the use of new equipment, such as electro-shock weapons. Although the stated aims of the proposal are to clarify the existing criteria and address

[45] Answers to questions by members of Parliament, *Tweede Kamer der Staten Generaal*, 2017Z17469, 20 December 2017, https://www.tweedekamer.nl/kamerstukken/kamervragen/detail?id=2017Z17469&did=2017D37897
[46] Amnesty International The Netherlands, *Politietop and ministerie nemen onverantwoorde risico's met gezondheid burgers* (*Police leaders and Ministry take irresponsible risks with the health of citizens*), 13 July 2018, https://www.amnesty.nl/actueel/politietop-en-ministerie-nemen-onverantwoord-risico-met-gezondheid-burgers
[47] Evaluation report, p. 41.
[48] Evaluation report, p. 58.
[49] Minister of Justice and Security, *Geweldsinstructie toepassing stroomstootwapen* [*Use of force instructions for the electro-shock weapon*], 2 February 2018, https://www.politie.nl/binaries/content/assets/politie/wob/00-landelijk/stroomstootwapen/5.4-tijdelijke-geweldsinstructie-ssw-definitief.pdf. This document, though legally binding, is not a formal law.
[50] Minister of Justice and Security, *Besluit wijziging Ambtsinstructie tweede tranche* [*Revised Use of Force Instruction*], 17 May 2018. Further referred to in this document as Ambtsinstructie(d), https://www.internetconsultatie.nl/ambtsinstructie
[51] See, for instance, Amnesty International The Netherlands, *Amnesty briefing on the revised Ambtsinstruction for the police*, 9 July 2018, https://www.internetconsultatie.nl/ambtsinstructie/reacties. The document is available in English via the Dutch section of Amnesty International.

shortcomings and weaknesses in the current Ambtsinstructie, the draft revision is in effect an even vaguer document: It fails to establish clear criteria and thresholds as to when different methods, and degrees, of force may be used.

The Ambtsinstructie(d) allows the use of a service weapon, for scenarios that do not meet the key threshold criterion under international law (that is: an imminent threat to life or risk of serious injury). Also worrying are the changes made to the provision regulating the use of automatic fire. The Ambtsinstructie(d), for instance, does not contain any additional caution or threshold to take into account the particular high risks that these weapons pose, including for bystanders.[52] Amnesty sees similar problems with the criteria set for the use of precision fire ("sniper", intentional lethal fire).

Further, the Ambtsinstructie(d) introduces the use of electro-shock weapons in day to day policing despite the fact that they have been used in the pilot phase in clear violation of human rights law and standards, including the Convention (see paragraph 3.1 of this document). The Ambtsinstructie(d) also authorizes the use of kinetic impact projectiles. The Dutch police is currently scoping the introduction of a variety of kinetic impact weapons and projectiles, such as various types of weapons that shoot single projectiles, as well as the highly problematic projectiles releasing pepper spray or dye upon impact, and weapons that fire multiple projectiles at a time. These different types of projectiles fulfil different purposes and carry different levels of risk. The Ambtsinstructie(d) however fails to establish clear criteria and thresholds for each type of kinetic impact projectile separately. Instead it outlines a wide range of scenarios in which kinetic impact projectiles – under this collective term – may be used. Amnesty believes that the current draft of the revised Ambtsinstructie neither provides a clear framework on the use of force in compliance with the Convention or international human rights law and standards more generally, nor the principles set out in the Dutch Police Act.

5. COUNTERTERRORISM

We take note of the Committee's interest in obtaining from The Netherlands data on the number of complaints filed relating to torture and other ill-treatment by persons subjected to anti-terrorism measures and how those complaints were resolved.[53] Amnesty therefore draws the Committee's attention to the fact that since 2016 no comprehensive statistical data is available on the number of individuals subjected to counterterrorism measures.[54] Moreover, neither the Dutch government nor the prison authorities or the TA Supervisory Boards have published statistics the number of complaints, or the nature of such complaints, lodged by persons detained under anti-terrorism legislation. The organization is also concerned that The Netherlands has failed to draw the Committee's attention to the special high-security detention units that holds people suspected and convicted of terrorism offences ('Terroristenafdeling', or TA) in its Seventh Periodic Report (14 September 2017), a notable omission given that the units are a hallmark feature of The Netherlands' anti-terrorism response and their use has ramifications for the NL's compliance with the Convention.

5.1 DUTCH HIGH-SECURITY PRISONS IN THE CONTEXT OF COUNTERTERRORISM (ARTICLES 2, 12, 13, AND 16)[55]

Amnesty International is concerned that The Netherlands is failing to respect its obligations under Articles 12, 13, and 16 of the Convention at its two special high-security detention units that hold people suspected and convicted of

[52] To the contrary, the threshold required for their use has even been lowered, from using them in cases of an imminent threat to life, to now being legitimate to use also in case of a threat of serious injury. Ambtsinstructie(d), §2 Article 8.
[53] Committee against Torture, *List of Issues prior to submission of the seventh periodic reports of the Netherlands*, 14 January 2016, paras. 32.
[54] In 2016, The Netherlands published its last statistics on the use of counterterrorism measures. The government used to send quarterly progress reports on the comprehensive action programme to combat jihadism, but it stopped doing this in 2016 when the programme was integrated into the National Counterterrorism Strategy 2016-2010. The periodic progress reports consisted of numbers on individuals subjected to (criminal and administrative) counter-terrorism measures, but did not disaggregate on the basis of gender, nationality, ethnicity, and age.
[55] This submission is based on the findings from the Open Society Justice Initiative and Amnesty International report *Inhuman and Unnecessary: Human Rights Violations in Dutch High-Security Prisons in the Context of Counterterrorism* (October 2017),

terrorism offences. In the TA, detainees are subjected to security measures that on their own, or in combination, may constitute cruel, inhuman, or degrading treatment. Additionally, we are concerned that for some detainees at the TA the security measures exposed them to heightened risks of Article 1 violations due to their prolonged and frequent use. These measures have included the routine and frequent administration of humiliating, invasive, full-nudity body searches, and confining detainees alone in a cell for 19 to 22 hours a day, with limited contact with others when they were outside their cells. In three cases, we documented conditions of isolation that amounted to prolonged solitary confinement. In the limited amount of time detainees were permitted outside their cells, including during family visits, they have been under constant surveillance, thus producing limited relief from the general conditions of isolation.

International human rights standards permits the use of high-security detention measures, such as body searches, isolation and excessive monitoring, only under exceptional circumstances[56] and only in a necessary and proportionate manner based on an individualized risk assessment.[57] These limits protect people from exposure to measures, such as body searches and isolation, that may otherwise breach the absolute prohibition on torture and other ill-treatment. Despite this, the TA's legal framework allows authorities to automatically place individuals suspected or convicted of terrorist offences in a high-security prison, where they are then subjected to routine and frequent security measures in the absence of any individual proportionality or necessity assessment. As a result, a person posing no actual risk, and those who have never been convicted of a crime, can be held under the TA's strict high-security regime. There is also no legally required periodic review process and only very limited ways to ever transfer out of the TA. Thus, the exposure to these conditions can last for prolonged periods of time. The CPT in its 2008 and 2017 reports has also criticized the Dutch government for automatically assigning people to the TA based solely on the category of their offence, as well as for not regularly reviewing the necessity and proportionality of such placement.[58]

Another major failing of the TA is that people held there do not have effective ways to challenge the rules and procedures when those rules and procedures result in allegations of torture and other ill-treatment, such as the initial automatic decision-making process that placed people in the TA, their ongoing detention in the TA, and the routine high-security measures used against them. Moreover, no statistical data is available on the number of complaints, or the nature of the complaints, lodged by TA detainees.[59] Additionally, institutional oversight bodies are not sufficiently independent and lack effectiveness.

The Netherlands has demonstrated a willingness to undertake several reforms. Most significantly, prison authorities have issued a new inhouse regulation that significantly narrows the circumstances in which authorities can perform full-nudity body searches. Authorities are also beginning to use individualized risk assessment tools to differentiate between categories of detainees, which may result in more out-of-cell time and re-integration opportunities for some detainees, depending on their category.

These risk assessment tools are, however, insufficient and undermined by the fact that The Netherlands applies these tools only *after* a person is initially placed in the TA, thus exposing them to conditions of confinement that may

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https://www.amnesty.org/en/documents/eur35/7351/2017/en/. The findings are based on research conducted between September 2016 and June 2017 that included interviews with 50 people, including 19 former detainees who previously had been held in the TA. See for more details the joint submission by Amnesty International and the Open Society Justice Initiative, *Submission to the United Nations Committee against Torture- Ill-treatment in the context of counterterrorism and high-security prisons in the Netherlands,* available at https://www.amnesty.org/en/documents/eur35/9231/2018/en/

[56] Rule 53 of Recommendation Rec(2006)2 of the Committee of Ministers of the Council of Europe to Member States on the European Prison Rules (adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies) (hereinafter European Prison Rules).

[57] For example, the European Prison Rules explain that "restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed" and that "security measures applied to individual prisoners shall be the minimum necessary to achieve their secure custody". Rules 3 and 51.1 of the European Prison Rules.

[58] CPT, *Report to the authorities of the Kingdom of The Netherlands on the visits carried out to the Kingdom in Europe, Aruba, and The Netherlands Antilles by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in June 2007* (made publicly available on 30 January 2008) (hereinafter Netherlands Country Report, 2008), para. 42, https://rm.coe.int/168069780d. For the government's justification see CPT, *Response of The Netherlands to Country Report*, 2009, p. 14, https://rm.coe.int/1680697810; CPT, *Report to the Government of The Netherlands on the visit to The Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 to 13 May 2016* (made publicly available 19 January 2017) (hereinafter Netherlands Country Report, 2017), para. 47, https://rm.coe.int/16806ebb7c. For the governmentt6806ebb7ct/16806ebb7CPT, *Response of The Netherlands to Country Report*, 2017, p. 17, https://rm.coe.int/pdf/168074bf06.

[59] The research from our report with Open Society Justice *Inhuman and Unnecessary: Human Rights Violations in Dutch High-Security Prisons in the Context of Counterterrorism* (October 2017) revealed that no comprehensive statistical data is available on the number of complaints, or the nature of the complaints, lodged by TA detainees. We also draw the Committee's attention to the fact that neither the Dutch government nor the prison authorities or the TA Supervisory Boards have published or, to our knowledge, even collected statistics on the number of times isolation has been used, its duration of use, or the justification for its use against individuals as a punitive or order measure to restore order and safety in the TA. The same is true for security measures where prison authorities use force, such as in instances of forcible body searches.

constitute ill-treatment. Moreover, authorities have indicated that the maximum time out of cell under the most lenient circumstances would not exceed 4.5 hours a day. It is also unclear how risks assessments are being conducted and to what extent the person concerned can effectively participate in the process and challenge the use of the "individualized" security measures.

5.2 LACK OF LEGAL SAFEGUARDS AND EFFECTIVE REMEDIES IN ADMINISTRATIVE STRIPPING OF NATIONALITY AS A COUNTERTERRORISM MEASURE (ARTICLE 2)

Amnesty International is concerned about the ongoing expansion of administrative counterterrorism powers, without adequate judicial safeguards. In the context of the Convention, Amnesty expresses its particular concern about the Amendment of The Netherlands Nationality Act to Revoke Dutch Citizenship in the Interest of National Security – which went into force on March 2017.[60] It enables the Minister of Justice and Security, for national security reasons, to strip Dutch citizenship of dual nationals who travel outside the country and who are suspected of having joined armed groups operating in foreign countries.[61] It remains unclear what precise actions would constitute "joining" such a group (e.g. marrying a member). The person is declared an unwanted foreigner and not allowed access to Dutch territory.

The deprivation of nationality for dual citizens can result in breaches of the Convention if their second country cannot confirm their citizenship or refuses to accept them, and could thus lead to indefinite migration detention. There could also be a risk of torture or other ill-treatment if a person forcibly returned to his or her second home country, in violation of the principle of non-refoulement.[62]

The Netherlands Nationality Act includes a provision ensuring that the revocation of citizenship on these grounds will not lead to a person becoming stateless.[63] Amnesty International is concerned, however, that this law may violate due process standards and place restrictions on individual liberties based on perceived risks rather than established criminal offences. Under the law, individuals may be stripped of their Dutch nationality without being convicted of any criminal offence, and neither they nor their lawyers have proper access to classified information on the basis of which nationality is stripped. This undermines their ability to effectively challenge decisions against them in an appeal process. Moreover, the lodging of an appeal does not suspend the effect of the decision.

The right to a fair hearing is not guaranteed for dual nationals abroad who may not be aware of the revocation decision or, in case they do, may not be able to return to The Netherlands to appeal it in person. Although the law includes a special provision for an automatic judicial appeal in those circumstances, the Court of The Hague recently ruled this provision invalid and declared the automatic appeal inadmissible.[64]

No recent public disaggregated statistics are available on the number of persons stripped of their nationality for national security reasons, or on the number of appeals lodged and their outcomes.

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[60] Rijkswet van 10 februari 2017, houdende wijziging van de Rijkswet op het Nederlanderschap in verband met het intrekken van het Nederlanderschap in het belang van de nationale veiligheid, 10 February 2017, https://zoek.officielebekendmakingen.nl/stb-2017-52.html

[61] Netherlands Nationality Act, Art. 14(4). Amendments to the Nationality Act adopted in April 2016 had already expanded the grounds for the Minister of Security and Justice to revoke a person's Dutch nationality if a person has been convicted of terrorism-related crimes. Such crimes now also include preparatory acts such as "training for violent jihad" in The Netherlands and/or abroad. Netherlands Nationality Act, Art. 14(2b).

[62] See Counter-Terrorism Implementation Task Force (CTITF), 2018, *Guidance to States on Human Rights-Compliant Responses to the Threat Posed by Foreign Fighters*, Working Group on the Promoting and Protecting Human Rights and the Rule of Law while Countering Terrorism, p. 23, para. 43, https://www.ohchr.org/EN/newyork/Documents/Human-Rights-Responses-to-Foreign-Fighters-web%20final.pdf

[63] Netherlands Nationality Act, Art. 14(8).

[64] The Court ruled the provision invalid because it unlawfully restricted the right to an effective remedy by not allowing the affected persons affected to appeal the case in person or via a lawyer of their choice. Court of The Hague, 26 June 2018, case number: ECLI:NL:RBDHA:2018:7617.

6. STRUCTURAL FLAWS IN THE DUTCH NATIONAL PREVENTIVE MECHANISMS (NPM

Amnesty International is deeply concerned about the fact that The Netherlands has not taken any additional measures to ensure the effectiveness, pluralism and independence of the NPM. To do so is required by article 18 (1) of the OPCAT and the guidelines on NPMs of the SPT. In its 2016 report the SPT made recommendations that expressed concerns about the NPM.[65] In particular, the SPT has criticized the proximity of the central government inspectorates (the Inspectorate of Justice and Security (IJenV) and the Inspectorate of Health and Youth (IGZenJ)) to their ministries, both in their establishment and their functioning. Amnesty agrees that this threatens the NPM's credibility as an autonomous and impartial body.

Moreover, in the absence of a separate legal basis for the NPM, the inspectorates continue to work on the basis of their own mandate, using their own monitoring frameworks[66] and rules of procedure, and lack separate NPM functions which can be performed autonomously from their regular functions (as well as separate financial and human resources). In its monitoring work, the IJenV, which functions as the coordinator of the NPM, has insufficiently elaborated on how human rights standards, including recommendations of relevant international human rights bodies such as the Commission or the CPT, have been used to assess whether detention conditions amount to a violation of the prohibition against torture or other cruel, inhuman or degrading treatment or punishment.

Disconcerted by the government's non-response to such concerns, the National Ombudsman decided to step down from its observer role in 2014 and the Council for the Administration of Criminal Justice and Protection of Juveniles (RSJ) also announced that it ceased its participation in the NPM in 2016.[67] Amnesty believes that the remaining constituent organizations lack the human rights expertise and experience to effectively assess whether government law, conduct and detention conditions comply with the Convention. Amnesty is unaware of any structural engagement with or meaningful consultation of civil society organizations and institutions with a human rights mandate, for instance when developing their annual plans or when scoping risks for the human rights under the Convention. In the absence of institutional change, it is unlikely that the Dutch NPM is able to effectively prevent torture and ill-treatment in places of detention.

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[65] SPT, *Report on the visit made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the purpose of providing advisory assistance to the National Preventive Mechanism of the Kingdom of The Netherlands*, 16 March 2016, CAT/OP/NLD/R.1, paras 36-38. In its response to the SPT, the Dutch government stated that the independence of the inspectorate was sufficiently safeguarded. '*Mensenrechten in Nederland: Reactie op het rapport van het Subcomité aangaande het Nederlandse NPM*' ('*Human Rights in The Netherlands: Reaction to the report of the Subcommittee regarding the Dutch NPM*'), Parliamentary Papers, TK 33826, no. 18, 26 September 2016, p. 3.

[66] The monitoring framework of the Inspectorate of Justice and Security (IJ&V) distinguishes between so-called hard law and soft law and explains that the Inspectorate only considers hard law to be binding and determining its decisions.

[67] See *Brief van waarnemend Ombudsman* (Letter of observing Ombudsman), no. 2014 0273, 24 July 2014. The RSJ ceased its participation in the NPM after the Dutch government had largely dismissed the recommendations of the SPT in its response to the SPT's report (TK 33826 no. 18, 26 September 2016).

7. RECOMMENDATIONS TO THE NETHERLAND AUTHORITIES

Amnesty International recommends that the State party:

Dutch migration detention

- Identify alternatives to the detention of asylum-seekers at all border posts, including Schiphol International Airport.
- Take additional measures to prevent any unnecessary, excessive or otherwise arbitrary detention of asylum-seekers at all border posts, including Schiphol International Airport.
- Implement a comprehensive individual screening procedure to determine the necessity and proportionality of detention for each adult asylum-seeker.
- Provide sufficient safeguards to the prevention of unnecessary damage to the health of the individual caused by the detention.
- Ensure guarantees are in place for a prompt, thorough judicial review of each decision to deprive an individual of his or her liberty on migration grounds.
- Clarify which measures have been taken, or will be taken, to reduce lengthy migration-related detention.
- Provide updated statistics on the incidence of repeated detention (separating figures of border detention of asylum-seekers and detention for the purpose of removal).
- Outline which measure have been taken, or will be taken, to prevent repeated detention.
- Ensure that migrant children are never detained. Provide alternatives to detention for children and young adults.
- Ensure that migrant children – irrespective of age – are treated in a manner that conforms to the Convention on the Rights of the Child. In particular abolish the possibility of placing children aged 13 and older in isolation cells.
- Ensure by law or through regulations that detention of vulnerable individuals, such as victims of torture and persons with serious physical or mental health problems, is prevented.
- Prevent the use of solitary confinement, and ensure that the use of isolation cells does not amount to solitary confinement. Ensure by law or through regulations that solitary confinement is not used as a disciplinary measure.

The protection of asylum-seekers in Curacao

Recommendations to the Kingdom of The Netherlands:

- Ensure that human rights of migrants, asylum-seekers and refugees are guaranteed in all its constituent countries.

Recommendations to the Government of Curaçao:

- Guarantee the rights of asylum-seekers and refugees in need of international protection.
- Ensure that the detention of asylum seekers is exceptional and only used a last resort, as set out in international human rights law and standards. Ensure that in all decisions relating to children, the best

interests of the child is a primary consideration. Children must not be separated from their parents and/or legal guardians unless it is for their own safety or otherwise in their best interest. Alternatives to detention must be applied to the entire family.

- Ensure that allegations of ill-treatment, including excessive use of force or any other form of abuse are investigated promptly, thoroughly and impartially by an independent body.

Use of force by the police

- Suspend the use of electro-shock weapons - not only by the pilot teams, but by all units, and to withdraw all the weapons which have so far been distributed.
- Refrain from widespread distribution of electro-shock weapons in day-to-day policing;
- Revise the instructions for the use of electro-shock weapons, in particular: to prohibit the use in drive-stun mode and to limit the use of electro-shock weapons to situations of serious threats to life or of serious injury.
- Provide regulation so that if kinetic impact weapons are introduced such weapons can only be used against persons who pose a serious threat to the safety of other persons. Refrain from introducing kinetic impact projectiles releasing pepper spray or dye upon impact and weapons firing multiple projectiles at a time.
- Do not let the revised Ambtsinstructie(d) in its current version enter into force.
- Redraft the Ambtsinstructie with due consideration to the principles of necessity and proportionality. Ensure that the instruction sets clear criteria and thresholds for the use of force in general and specified separately for each type of weapon. Ensure that the Ambstinstructie is in line with the principles of necessity and proportionality as well as with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- Revise the training of police officers accordingly, in particular to give much more consideration to alternative means and methods that avoid the use of force.
- Create an official and formalized framework, ideally in formal legislation but at the very least through a ministerial decision, that limits police interventions in mental health institutions to actual emergency situations where there is a serious risk to life and limb of persons. Additionally, prohibit police interventions that serve the sole purpose of assisting health staff in handling an unruly or agitated patient.

Dutch high-security prisons in the context of counterterrorism

- Amend all relevant laws, regulations, and policies to ensure that the placement of persons in the TA is based on a prior effective individualized risk assessment and is subject to periodic reviews. The initial placement and ongoing detention in the TA can occur only if it involved no torture or other ill-treatment, is absolutely necessary and proportionate, and based on an assessment of a person's individualized behavior.
- Ensure that TA detainees are not subjected to conditions equivalent to prolonged solitary confinement, and never impose other security measures without assessing whether they are absolutely necessary and proportionate.
- Reform the TA individualized complaint procedures to ensure detainees can effectively challenge their initial placement, ongoing detention, and any of the high-security measures used against them, including the underlying risk assessment profiles, to ensure those measures comply with the Convention.
- Strengthen the independence and human rights expertise of institutional oversight bodies to ensure that the TA is in compliance with the prohibition against torture and other ill-treatment.

Administrative stripping of nationality in the context of counterterrorism

- Amend the provisions in The Netherlands Nationality Act on the revocation of Dutch citizenship in the interest of national security to ensure effective safeguards against abuse. In particular, introduce appeal procedures to allow for the effective challenge of decisions, including for dual nationals abroad who may not be able to lodge an appeal within the statutory periods, throughout which the affected persons should continue to be

considered a national and be able to represent themselves or via a lawyer of their choice. Ensure that there is a right to an effective remedy available where a decision is found unlawful or arbitrary, including the possibility of restoration of nationality;

- Periodically publish disaggregated statistical data on the use of counterterrorism measures, including the types of powers used, the duration of their application, and the amount of nationality stripping decisions together with the dual nationality and ethnic origin of the affected person, as well as on the number of appeals lodged and their outcomes.

National Preventive Mechanism

- Take additional steps to ensure the complete independence and effective functioning of the NPM, including by increasing its visibility as a separate, autonomous entity that actively involves civil society actors and other institutions in its work, to guarantee its full compliance with OPCAT and the NPM Guidelines, with due consideration to the Principles relating to the Status of National Institutions ("the Paris Principles").
- Increase the human rights expertise of the NPM network to ensure that it adequately and proactively reviews the compliance of Dutch law, policy and practice with the Convention and its Optional Protocol.

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CONTACT US


info@amnesty.org


+44 (0)20 7413 5500

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THE NETHERLANDS

SUBMISSION TO THE UNITED NATIONS COMMITTEE AGAINST TORTURE

65TH SESSION, 12 NOVEMBER- 7 DECEMBER 2018

Amnesty International submits this briefing to the United Nations (UN) Committee against Torture (the Committee) ahead of its examination of The Netherlands' seventh periodic report on the implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention).

This briefing describes Amnesty International's main concerns regarding the implementation of the Convention by The Netherlands, based on the organization's most recent research. It focuses in particular on violations of the Convention in Dutch migration detention; the failure of the Kingdom of The Netherlands to protect refugees, asylum seekers and migrants in Curaçao; the use of electro-shock weapons in day-to-day policing and the lack of effective accountability; non-compliance of the use of force instructions of the Dutch police with the Convention; structural flaws in the Dutch National Preventive mechanism; the lack of legal safeguards and effective remedies in administrative counterterrorism measures; and violations of the Convention in the Dutch special high-security detention units that hold people suspected and convicted of terrorism offences.

INDEX: EUR 35/9232/2018
OCTOBER 2018
LANGUAGE: ENGLISH