



**Optional Protocol to the
Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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**Subcommittee on Prevention of Torture and Other Cruel,
Inhuman or Degrading Treatment or Punishment**

**Visit to the Netherlands for the purpose of
providing advisory assistance to the national
preventive mechanism: recommendations and
observations addressed to the State party**

Report of the Subcommittee*

Addendum

Replies of the Netherlands,*****

* In accordance with article 16 (1) of the Optional Protocol, the report of the Subcommittee was transmitted confidentially to the State party on 16 March 2016. On 23 September 2016, the State party requested the Subcommittee to publish the report, in accordance with article 16 (2) of the Optional Protocol.

** On 23 September 2016, the State party requested the Subcommittee to publish its replies, in accordance with article 16 (2) of the Optional Protocol.

*** The present document is being issued without formal editing.

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I. Introduction

A. Comments and recommendations — statutory basis

1. The Subcommittee notes in its report that, although the States parties are themselves responsible for determining the institutional format of their national preventive mechanisms (NPMs), it is imperative for this format to be fully compliant with all the requirements specified in the OPCAT and the NPM Guidelines formulated on this basis. The Subcommittee believes a separate legislative text for the NPM to be crucial in regulating NPM-specific functions, the NPM mandate, the relationship between NPM members and other bodies such as the Netherlands Institute for Human Rights, and other issues to be regulated in line with part IV of the OPCAT. The Subcommittee therefore recommends enacting a separate statutory basis for the NPM. The legislation to be drafted for this purpose should also regulate the privileges and immunities of NPM members and persons working for the NPM, and guarantee protection for persons who provide information to the NPM.

2. To implement the OPCAT obligations, the following organisations were together designated as the Dutch NPM in 2011: the Sanctions Implementation Inspectorate, the Repatriation Supervisory Committee and the Public Order and Safety Inspectorate (these three organisations have now been subsumed into the Security and Justice Inspectorate (IVenJ)), the Healthcare Inspectorate (IGZ) and the Youth Care Inspectorate (IJZ) (as independent supervisory authorities) and the Council for the Administration of Criminal Justice and Protection of Juveniles (RSJ) (as an advisory body). The following organisations have also been designated as NPM observers: the Focus Group for Custodial Institutions Supervisory Committees (Klankbordgroep CvT's), the National Centre for Police Custody Supervision Committees (Landelijk Centrum Commissies van Toezicht op de Arrestantenzorg), the Royal Military and Border Police (KMar) Custodial Institutions Supervisory Committee and the National Ombudsman (NO)¹ (see the Explanatory Memorandum on the Formation of the Dutch NPM).²

3. The OPCAT regulates the independence and powers of an NPM, but leaves the States parties free to determine its institutional format. An important consideration in the choice of format of the Dutch NPM is that the Netherlands already has a comprehensive and effective system for monitoring the treatment of persons in custody. To avoid increasing the regulatory burden, it was decided not to establish a new supervisory authority but instead to rely on a number of existing prison visiting and advisory bodies. The Netherlands has thus developed a mechanism that not only allows for visits to custodial institutions but also ensures that those visits are conducted effectively by persons with specific expertise. Moreover, NPM members and observers have ample knowledge to advise the Government authorities on improving custody conditions, existing policy and future legislation.

4. An important role within the Dutch NPM is assigned to the Focus Group for Custodial Institutions Supervisory Committees, the National Centre for Police Custody National Supervision Committees and the KMar Custodial Institutions Supervisory Committee as NPM observers. The supervisory committees in each branch consist of specialists (with backgrounds in fields such as the judiciary, the legal and medical professions, youth work and management) and have the expertise which is, in principle,

¹ The National Ombudsman announced its withdrawal from the Dutch NPM network as an observer in September 2014.

² Parliamentary Papers 31 797 (R1871), no. 1/A.

required only of NPM members themselves (and not of the observers). As the committees visit the custodial institutions and other places of detention very regularly, sometimes even weekly, their knowledge of what happens in these institutions on a day-to-day basis is second to none. Through their monitoring and recommendations, the committees can assist the Dutch NPM members in discharging their monitoring task, submitting proposals and making comments and suggestions about existing or draft legislation.

5. Together, the various NPM members and observers have all the powers which NPMs are required to have under the OPCAT, namely:

- The power to regularly examine the treatment by the authorities of persons deprived of their liberty with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;
- The power to make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;
- The power to submit proposals and observations concerning existing or draft legislation.

6. The Dutch NPM has now been in existence for almost five years. During this period the network has taken shape and consideration has been given to how the different members and observers can cooperate most effectively. For example, the three national inspectorates are now working together much more closely. In practice, however, it has become apparent that the various NPM members have differing views on what degree of collaboration is feasible within the network.

7. This is mainly because the advisory role of the Security and Justice Inspectorate (IVenJ), the Healthcare Inspectorate (IGZ) and the Youth Care Inspectorate (IJZ) is of a different nature, due to their statutory tasks such as making recommendations with regard to supervision, than the advisory task of the RSJ. This task of the RSJ is to make recommendations in more general terms about benefit and necessity of policy and legislation. Therefore, the advisory task of the RSJ is formally separated from the judicial function of the RSJ. However the advisory role of the IVenJ, the IGZ and the IJZ is merely supportive to their supervisory task.

8. Following the Subcommittee's visit and the discussion prompted by the report's recommendations, a careful reassessment took place on how to maximise the effectiveness and continuity of the Dutch NPM. In light of this reassessment the Netherlands has chosen to reform the NPM as follows. Each of the NPM members currently designated will perform their NPM task separately, adhering to their own statutory roles.

9. Given the independent role the visiting bodies enjoy based on the OPCAT, I ought to exercise restraint and the Government should not prescribe the way in which the network should cooperate. To do justice to the obligations stemming from OPCAT, the Government believes the cooperation could at least consist of submitting research reports for the annual report and briefing one another. These reciprocal briefings will supplement the work that the NPM members and observers do individually. In most cases their individual powers are limited to one specific field. So working together will enable the NPM members to look beyond their own areas of responsibility and identify matters in need of attention.

10. The requirements for the specific functions and the mandate of the NPM that stem from the OPCAT are already contained in separate framework acts, rules and regulations for each individual body. Therefore, a separate statutory basis is unnecessary. For an explanation on how the separate bodies fulfil their NPM-tasks, I refer to the explanatory

memorandum on the approval of the OPCAT (Parliamentary Papers 31797 (R 1871), nr. 1/A).

B. Comments and recommendations — visibility and collaboration

11. The Subcommittee notes in its report that the Dutch NPM focuses on monitoring places of detention and that its other functions such as advocacy, capacity building, commenting on legislation and awareness-raising are underdeveloped. It also states that the NPM is largely invisible and, with the exception of the NPM Annual Report, publishes no documents. According to the Subcommittee, the collaboration between the NPM's members depends on their readiness and availability to work together. The Subcommittee therefore recommends articulating a unified vision of how to prevent inhuman or degrading treatment or punishment, a vision that takes into account the best practices and other experiences accumulated by all national mechanisms that monitor human rights and places of detention. The Netherlands should also clarify the status of the NPM-associated observers and consider giving them a more prominent role in relation to the NPM. Furthermore, the visibility of the Dutch NPM should be raised by coordinating public awareness campaigns, producing materials in various languages for detention personnel, detainees and civil society, and by informing the organisations concerned.

12. The Government endorses the Subcommittee's finding that there is further scope for improving collaboration within the NPM and that — in addition to monitoring places of detention — the NPM could put greater emphasis on preventing inhuman or degrading treatment or punishment by providing information and organising public awareness campaigns. The Government has already described above how the Netherlands wishes to shape collaboration within the NPM in the future. The Government trusts that the changes being made will further clarify the roles of the participating organisations and any collaboration between them.

13. It should also be noted that the NPM system is becoming embedded in the fabric of society. As far as visibility is concerned, it is up to the NPM members, as independent institutions, to develop their own vision on this. The Government has called on them to do so. Involving civil society actors (such as the National Ombudsman and the Netherlands Institute for Human Rights) and external stakeholders is a matter for the NPM members. In the Government's opinion, the new structure provides sufficient scope for this. The NPM Annual Report is submitted to the House of Representatives of the States General each year. It is then up to the House to decide whether substantive debates should be held on the investigations and recommendations contained in that report.

C. Comments and recommendation — independence

14. The Subcommittee states in its report that the independence of the various NPM members is inadequately guaranteed. It therefore recommends creating a separate mandate for the NPM. According to the Subcommittee, legislation is also necessary for this purpose.

15. All NPM members and observers are independent in functional and operational terms. For example, the national inspectorates have the scope, on the basis of their programme of work and their professional expertise, to gather information and form an opinion, report and advise on it. Similarly, the RSJ, in its capacity as an adviser, is completely independent of any organisation in the criminal justice system, and the supervisory committees in each branch operate independently of the Ministry of Security and Justice, the custodial institutions, the police and the Defence organisation. The Ministry of Security and Justice does not have any substantive input in the NPM Annual Report,

which it simply forwards to parliament for consideration, possibly accompanied by a policy response.

16. It is important to note that the recently adopted Directions on National Inspectorates contain rules and substantive limitations on a minister's power to issue directions to their inspectorate. The Directions also make explicit mention of the independence referred to above. In the Government's opinion, the independence of the NPM members is sufficiently guaranteed.

II. Recommendations

A. Comments and recommendations — coverage

17. The Subcommittee recommends that the Netherlands ensure the applicability of the OPCAT in the Netherlands in the Caribbean. It states that the Netherlands does not monitor places of detention in the Netherlands which are leased by other States and that the military detention centres are not monitored by the NPM. The Subcommittee therefore recommends that the NPM should also monitor conditions in institutions leased by other States. The other States should; preferably, themselves also carry out monitoring in such institutions, after which the NPMs of both countries should enter into a dialogue.

The Netherlands in the Caribbean

18. The OPCAT has been approved for the Kingdom as a whole, but the Protocol applies only to the European part of the Netherlands (see Dutch Treaty Series 2010, 273). As regards the Netherlands in the Caribbean (Bonaire, Sint Eustatius and Saba), it was noted in a previous policy response to a report of the European Committee for the Prevention of Torture (CPT) — in the run-up to the constitutional reforms which took effect on 10 October 2010 (and which are described in the report) — that it had been decided in 2008 that the legislation of the Netherlands Antilles should initially be retained as far as possible. It was also agreed that legislative restraint was necessary to avoid imposing an undue burden on the Netherlands in the Caribbean.

19. Nonetheless, it goes without saying that the human rights conventions — and hence the prohibition on torture and other cruel, inhuman or degrading treatment or punishment — also apply in the Netherlands in the Caribbean. It should be noted that responsibility for monitoring compliance in the Netherlands in the Caribbean rests with the Law Enforcement Council ('the Council'), which was established by act of parliament on 7 July 2010 (Kingdom Act establishing the Law Enforcement Council). In performing its monitoring duties, the Council is obliged to make use of the services of the Dutch national inspectorates. In 2012 the Council and the Security and Justice Inspectorate reached agreement about how the latter would be involved in the Council's investigations. To strengthen the collaboration — including the collaboration with other Dutch NPM members and observers — consideration will be given in the next few months to whether it would be desirable or indeed practicable, in cases when the agenda contains items relevant to the Council, to treat it as an NPM member or invite it to participate.

Places of detention leased to other States

20. The following points should be made about the monitoring of places of detention leased to other States. The Netherlands concluded treaties with Belgium in 2009 and Norway in 2015 under which it put two Dutch prisons at their disposal, one to each of them for the enforcement of Belgian and Norwegian criminal sentences. The treaties provide that sentences are to be enforced in accordance with the domestic law of Belgium and Norway;

consequently, the relevant provisions of Belgian and Norwegian law apply to sentences enforced within these institutions. Decisions on such matters as the prison regime and the legal status of the prisoners are made on the basis of Belgian or Norwegian law, as the case may be.

21. This is different from the situation in which responsibility for enforcing sentences is transferred to another country. Under the arrangements at issue here, the Netherlands does not assume responsibility for the enforcement of sentences from Belgium or Norway. This remains the express responsibility of the other State concerned. Moreover, each prison is managed by a Belgian or Norwegian governor, under whose direction and responsibility Dutch staff carry out the day-to-day tasks associated with the enforcement of Belgian and Norwegian sentences. Therefore, in line with the relevant treaties, Dutch legislation is not applicable to detention following the enforcement of Belgian and Norwegian prison sentences in prisons on Dutch territory. In those instances, the legal basis for detention is the Belgian or Norwegian sentence. Article 4 of the OPCAT compels the States parties to allow visits “to any place under its jurisdiction and control where persons are or may be deprived of their liberty”. This does not apply to detention facilities rented out by the Dutch government to Belgium and Norway.

22. Naturally, the enforcement of Belgian and Norwegian sentences in the Netherlands can be permitted only if observance of fundamental human rights is guaranteed and there is adequate monitoring. That is indeed the case. Belgium and Norway are party to all relevant human rights conventions, and human rights also enjoy statutory and constitutional protection in both countries. In consequence, the competent Belgian and Norwegian monitoring authorities and other bodies can perform all their tasks and fully exercise their powers in relation to persons in custody in Dutch territory. The treaties with Norway and Belgium explicitly provide that persons in custody may apply to their competent national authorities to lodge complaints or pursue legal actions. This ensures that the legal protection applicable to individuals held in prisons in those countries also applies to persons in custody in the Netherlands.

23. It follows that the Dutch NPM is not competent to advise the Belgian and Norwegian authorities or make recommendations to them. As a party to the OPCAT, Norway has its own national preventive mechanism, which is authorised under article 4(1) of the OPCAT to monitor the enforcement of Norwegian judgments in the Netherlands. Although Belgium has not yet ratified the OPCAT, it is a party to the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. In that context, the Dutch prison leased to Belgium was visited by the CPT in October 2011.

Military facilities

24. The monitoring of all locations used and managed by the Royal Military and Border Police (KMar) for the purpose of holding individuals in detention is regulated in the KMar Custodial Institutions Supervisory Committee Order. The Committee’s task is to monitor the treatment of persons held in military detention centres and the enforcement of the custody rules in such institutions. The Committee may, either on request or on its own initiative, make recommendations for improvements and provide information to the Minister of Defence.

B. Comments and recommendations — financial position

25. The Subcommittee recommends that the NPM be given the financial resources and human resources it requires, over and above the existing budgets of the individual NPM members.

26. At present, NPM activities are funded from the existing budgets of the individual NPM members and observers. The Subcommittee would like the Government to make available a separate budget for NPM activities. Given the current structure of the network of bodies that receive financial contributions for the execution of their tasks, the Government does not believe this to be necessary. After all, the activities performed by the various NPM members and observers in connection with their OPCAT responsibilities are so closely intertwined with their own tasks that it would not be useful to distinguish between them.

III. Conclusion

A. Final comments/recommendations

27. The Subcommittee requests that the Netherlands publish the report on its visit to the Dutch NPM.

28. Once the Subcommittee has received the Government's response, the report and the Government's response will be made public by being sent to the House of Representatives.
