



# Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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## Committee against Torture Sixty-fifth session

### Summary record of the 1696th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 21 November 2018, at 3 p.m.

*Chair:* Mr. Modvig

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*The meeting was called to order at 3 p.m.*

**Consideration of reports submitted by States parties under article 19 of the Convention** *(continued)*

*Seventh periodic report of the Netherlands (continued)* (CAT/C/NLD/7; CAT/C/NLD/QPR/7)

1. *At the invitation of the Chair, the delegation of the Netherlands took places at the Committee table.*
2. **Mr. Girigorie** (Netherlands), speaking on behalf of the Government of Curaçao, said that the National Ordinance of 13 October 1995 implementing the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment criminalized torture or inhuman or degrading treatment and provided for imprisonment of up to 15 years or a fine of up to 100,000 guilders, or about US\$ 55,000, for anyone convicted of the offence. Persons found guilty of causing death through torture faced possible life imprisonment or a fine of up to 100,000 guilders.
3. There was no record of how many times the Convention had been invoked in court. It had last been invoked in 2013, when three police officers had been convicted of torture and inhuman and degrading treatment and sentenced by the court of first instance. However, their convictions had subsequently been quashed on appeal.
4. Immigrants were not placed in isolation in Curaçao. The right of all persons to have access to a lawyer from the moment they were deprived of their liberty was regulated by article 48 of the Curaçao Code of Criminal Procedure. The Public Prosecutor's Office had issued a number of instructions to guarantee that right. While detained migrants had access to a court-appointed lawyer, those awaiting deportation did not, as they were not suspects in a criminal case. However, their consulates could arrange legal representation for them. Suspected terrorists who refused to cooperate could feasibly be refused legal assistance in the interest of national security. That said, legal assistance had yet to be refused in a single case. Curaçao had around 200 lawyers serving a population of 160,000.
5. The police could not interrogate suspects who were under 18 years of age or considered vulnerable adults without the presence of an appropriate adult, such as a parent, guardian or family member, even where the suspect requested otherwise. All other suspects had the right to, but could choose not to, inform a family member or third party of their detention. Where suspects were in the armed forces, the police informed their immediate superiors. Where suspects were foreign nationals, the police informed the relevant embassy or high commission. No person in custody had ever been denied their right to contact a third party or made any complaint in that regard.
6. The police employee who had been a suspect in the Victoria case had been acquitted of human and sex trafficking but convicted of illegal possession of a firearm and breach of official secrecy, dismissed from the police force and sentenced to 200 hours of community service. Investigators had subsequently received training on human and sex trafficking. The victims had filed a civil complaint but had not been granted compensation. With regard to the FLAGGS cases, three perpetrators had been convicted of sex trafficking and three police officers had been convicted of perjury, which carried a lesser sentence than human or sex trafficking. Nonetheless, those officers had been dismissed from the police force and sentenced to 12 months' imprisonment. Two further investigations into human trafficking were ongoing. The victims were receiving the necessary support.
7. In principle, Curaçao always opted into human rights treaties ratified by the Netherlands. However, it was still transposing Dutch Antillean law into Curaçao law and did not yet have the implementing legislation required to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which it intended to do as soon as possible.
8. The establishment of a national human rights institution was under way. The task had been entrusted to the Ombudsman to ensure impartiality.

9. The Health Care Inspectorate, an independent body, carried out annual inspections of detention centres. The Public Prosecutor's Office and judges also inspected prisons twice a year. With respect to life imprisonment, prisoners who had served 20 years could have their cases reviewed before the court of appeal and be released subject to five-yearly re-evaluations and other conditions. The practice of solitary confinement had been stopped several years ago. There had been two deaths in custody between 2013 and 2018; both were of natural causes.

10. Tasers and pepper spray were not used in Curaçao. Body searches were regulated by article 78 of the Code of Criminal Procedure. Invasive body searches were performed only where there was strong evidence that they were necessary. Such searches were performed by medical experts in an appropriate setting. Police officers and prison staff were given comprehensive training in, and were required to pass an examination on, the appropriate use of force. Immigration officers also received training on their human rights obligations. Training was not currently provided on violence on the basis of ethnicity, sexual orientation or gender. Victim identification and referral, on the other hand, did form part of police training. Law enforcement personnel at all levels were familiar with the process for referring victims of traumatic events to the Victim Support Foundation. The effectiveness of the various kinds of training had not yet been assessed.

11. No government agency or independent investigatory or monitoring body had ever received any complaint of undocumented immigrants being sexually assaulted. Ill-treatment of such persons was investigated internally. The media had reported one alleged case of sexual assault, but there had been insufficient detail to justify launching an investigation.

12. The new Code of Criminal Procedure was undergoing final amendments and would be submitted to the Advisory Council for review. Barring any objections, it would then be tabled before Parliament. Suspects could be detained in police custody for up to 48 hours without being brought before an examining magistrate.

13. Between January and July 2018, a total of 344 undocumented migrants had passed through the migrant detention centre of Curaçao. A total of 1,085 had passed through the centre in 2017. Conditions in the centre were not comparable to those of criminal detention facilities. The migrants were held in an open area rather than in cells and had constant access to a public phone. Between January and April 2018, a number of undocumented migrants had been temporarily held in an unused police detention centre owing to lack of capacity.

14. **Mr. de Weever** (Netherlands), speaking on behalf of the Government of Sint Maarten, said that the mandate of the national human rights institution of the Netherlands did not extend to the Caribbean part of the Kingdom. While Sint Maarten did not have the human and financial resources to establish its own institution, a number of robust institutions guaranteed fundamental human rights in the country: they included the Human Rights Platform, an interministerial working group that compiled human rights reports and advised ministries on human rights obligations, and the National Reporting Bureau on Human Trafficking, which identified, reported, and addressed instances of human trafficking.

15. The security forces of Sint Maarten did not use Tasers or pepper spray. X-ray machines and body scanners were used for body searches. Regarding the training of public servants other than law enforcement officials, Sint Maarten prioritized training for frontline personnel. In 2016, the Department of Foreign Relations had hosted a training seminar on mainstreaming human rights into policy frameworks and related matters. The Constitution of Sint Maarten prohibited discrimination on any basis. Efforts had been made to raise awareness among law enforcement agents of discrimination based on race, ethnicity and sexual orientation.

16. Conditions of pretrial detention were prescribed by law. The length of detention depended to some extent on capacity. Regarding alternative measures, the Government had recently approved the relaunch of electronic surveillance mechanisms. Persons held in custody could also post bail.

17. Sint Maarten was relatively isolated from the Venezuelan crisis. While it was not a party to the Convention relating to the Status of Refugees, it worked closely with the Office of the United Nations High Commissioner for Refugees to find suitable destination countries for asylum seekers who had been granted refugee status. The Minister of Justice granted or denied applications for temporary residence permits on humanitarian grounds on a case-by-case basis. Asylum seekers who entered Sint Maarten legally were not detained but were obliged to report their whereabouts. Those who entered the country illegally and sought asylum after being arrested were held separately from suspected or convicted criminals. Restraints were used on asylum seekers only where they behaved aggressively. Detained migrants were no less entitled to legal counsel than any other detainee. They also received legal assistance, of which the cost was borne by the Ministry of Justice, if they could not afford their own lawyer.

18. Sint Maarten was considering using proceeds seized from criminal activities to fund reparation to victims. Until a definitive decision had been made, the Government would continue to subsidize non-governmental organizations that provided victim support.

19. Sint Maarten had made a concerted effort to address the concerns of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment regarding the detention centres in Philipsburg and Pointe Blanche. The Ministry of Justice had established action plans for different parts of the justice system, including detention and remand centres. A committee had also been put in place to monitor progress and ensure that the Subcommittee's concerns were addressed. In fact, significant progress had been made towards addressing concerns around health care. For instance, a sick bay had been opened at the Pointe Blanche detention centre. There were also plans to expand prisons and improve inmates' access to education.

20. The Justice Academy of Sint Maarten — established as part of the Government's extensive efforts to address the use of force in detention centres — trained law enforcement agents in the application of the Convention. There were currently no reports of excessive use of force in detention centres.

21. The juvenile justice system had been overhauled to protect the best interests of the child. Electronic surveillance could be used as an alternative to juvenile detention and sentences for persons under 16 years of age could not exceed two years. In serious cases, persons aged 16 to 17 years received maximum sentences of four years. The Government would explore the possibility of amending the age of legal majority, which was currently 16 years.

22. All prisoners had the right to file a complaint with the Prison Supervisory Board, the police or the Ombudsman. Complaints were considered private and could not be subjected to mail-monitoring.

23. Since Sint Maarten had not experienced any cases of violence based on race or ethnicity, the Government had not launched any specific campaign in that area. Since 2013, five allegations of abuse in foster-care institutions had been received. One allegation of sexual abuse had been reported to the police and the children concerned had been removed from the institution. Of the remaining allegations, all of which related to physical abuse, investigations into three were ongoing and the investigation into the other one had been abandoned for lack of evidence.

24. Under the Constitution of the Netherlands, children born in Sint Maarten to parents from whom they could not derive their nationality could submit a request to obtain Dutch nationality at the age of 18 years.

25. Sint Maarten did not currently have a medical research policy in relation to intersex persons.

26. Nobody had ever been detained on suspicion of terrorism in Sint Maarten. However, the Government was considering introducing an advanced passenger information system in a bid to prevent possible future terrorist attacks.

27. **Mr. van Dam** (Netherlands), speaking on behalf of the Government of Aruba, said that torture was defined in articles 1 and 8 of the National Ordinance on International

Crimes. An English translation of those articles would be submitted to the Committee within the next 48 hours. The court of first instance had convicted six prison guards of torture in the only such case brought between 2013 and 2017. However, the court of appeal had annulled the court's decision and convicted the defendants of ill-treatment.

28. Undocumented migrants had access to lawyers and were not placed in isolation. Aruba had 112 lawyers serving a population of 120,000. Migrants convicted of crimes were interviewed by the Attorney General's Office before they could be deported.

29. In Aruba, domestic violence fell within the realms of relational violence, which also included violence in the workplace and in schools. In early 2018, safe houses had been established as part of a partnership between care providers, the criminal justice system and other actors to prevent relational violence and reduce reoffending rates.

30. The Government had continued to raise awareness of human trafficking via social media, posters and flyers. It had established procedures to actively identify persons vulnerable to trafficking, such as adult entertainers, and inform them of their rights, the risks they faced and the resources available to them. Moreover, it had introduced a register of all persons who acted as guarantors for foreigners entering the country, in order to curb the entry or transit of potential victims.

31. The Optional Protocol to the Convention against Torture would be ratified as soon as the necessary implementing legislation had been enacted. In any case, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the inspection bodies of the Netherlands visited the correctional facility annually to monitor detention conditions and review policies.

32. A public debate was due to be held on a bill to establish an ombudsman and a children's ombudsman in Aruba. Consideration was also being given to the creation of an independent human rights institution similar to the one in the Netherlands.

33. The cases of persons sentenced to life imprisonment were reviewed after 20 years and every 5 years thereafter to determine if the sentence still served a reasonable purpose, taking account of such considerations as the status of the victim and the risk of reoffending.

34. Prison personnel in Aruba were authorized to use pepper spray in self-defence, but only in specific circumstances and following thorough training. No Tasers were used.

35. Regarding the enforcement of the principle of non-refoulement, all asylum seekers were allowed to remain in Aruba for the duration of the asylum procedure. Persons who did not qualify for protection under the 1951 Convention relating to the Status of Refugees were not returned to countries where they ran a risk of being subjected to torture. Asylum seekers were not kept in detention centres; the treatment of migrants in an irregular situation was governed by the National Ordinance on Admission and Expulsion of Foreigners. Handcuffs had been used in some cases when a migrant had attempted to flee. Several individuals had been held for administrative purposes pending their transfer to the criminal justice system. Migrants in an irregular situation were not placed in isolation. There were no known cases of torture being used against detained migrants. A new administrative custody centre with a capacity of 35 migrants had been constructed and was being expanded. Each unit in the centre had its own bathroom and lavatory and the bedding was changed daily. Detainees were served three meals a day. The centre had recreation facilities, as well as an outdoor space that could be accessed at specific times.

36. Human rights were an essential part of the training programme for judges, prosecutors and lawyers. The Training and Study Centre for the Judiciary provided in-service training for judges and prosecutors on such issues as torture and inhuman treatment. Training in the latest relevant jurisprudence was provided on an annual basis. Aruban civil servants took part in human rights training at the Academy for Legislation in the Netherlands. Information materials were provided on the issue of violence against minorities, including on grounds of sexual orientation or gender. The effectiveness of training in trafficking in persons and migrant smuggling had resulted in Aruba being upgraded from Tier 2 to Tier 1 in the 2018 Trafficking in Persons Report by the United States Department of State.

37. In the past 20 years, only one order of committal to a psychiatric institution had been questioned by a psychiatrist. Forced committal lasted five weeks, with a possibility of extension for a further five weeks. Cases of solitary confinement and forced administration of medication were recorded. In principle, the Attorney General was required to visit the clinic every few months. The continued appropriateness of committal was assessed daily by the attending psychiatrist. The same rules applied to the provision allowing for addicts who exhibited antisocial behaviour to be placed in a rehabilitation facility. A dialogue was held with patients to ascertain whether they were able to control aggressive or suicidal impulses so as to avoid placing them in isolation if possible.

38. The guarantees built into the procedures on pretrial detention were sufficient. A person had to be brought before a judge within 72 hours. Under the Code of Criminal Procedure, the examining judge was responsible for determining the lawfulness of detention. Pretrial detention orders were appealable. As for juvenile justice, the Juvenile Criminal Code provided for the possibility of applying the ordinary Criminal Code to minors, depending on the individual's circumstances. Conversely, in certain circumstances, juvenile punishments could be imposed on young adults up to the age of 23 years, as compared to 21 years in the Netherlands. The authorities were exploring alternatives for juvenile offenders, such as the use of electronic tags or admission to an open detention centre where they would attend school or work during the day and report back to the detention facility at night. The courts could impose special measures for the benefit of a juvenile offender's development or when a juvenile had diminished mental capacity or a mental disorder. Juvenile offenders could be held in pretrial detention if the offence was serious enough, but they were held separately from adult prisoners.

39. The measures taken to reduce inter-prisoner violence included the organization of daily activities in such a way as to limit interaction between detainees in the corridors. The Supervisory Committee, an independent body that acted as a complaints mechanism for prisoners, had stipulated that solitary confinement should not exceed 14 days. Since body cameras had become part of the equipment of the internal assistance team, the number of complaints of excessive use of force against handcuffed prisoners filed with the Supervisory Committee had fallen dramatically.

40. Asylum seekers who indicated that they were victims of torture or ill-treatment were eligible for appropriate support; however, there had been no such cases thus far. Medical examinations were carried out on migrants when there were signs that one might be required. Medical information could be used in cases where an asylum application was based on a claim of past persecution and physical harm or where the applicant belonged to a protected social group. Prison doctors drafted guidelines and procedures for the entire staff providing inmate care, which included not only medical staff but also psychologists, social workers and activity supervisors. All detainees underwent a basic screening and blood test upon admission; should there be any suspicion of disease, a personal and family history was also recorded. Depending on the type of disease, other tests could be ordered, including various types of scan and urine tests. All information pertaining to visits to the medical unit was recorded. Solitary confinement was applied as a disciplinary measure only in specific circumstances and in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and national prison law; a doctor checked the condition of detainees prior to their placement in solitary confinement.

41. **Mr. Riedstra** (Netherlands) said that, under the Charter for the Kingdom of the Netherlands, each of the constituent countries had an obligation to promote the realization of fundamental rights and freedoms. Data on the number of cases of human rights violations brought against public officials and other statistics requested by Committee members would be provided in writing; however, the Government was not in a position to provide data on the publication of torture-related judicial decisions. The Netherlands had not provided information on article 15 because it always enforced the principle that unlawfully obtained evidence was inadmissible.

42. Regarding the definition of torture, it should be noted that the International Crimes Act contained two definitions, one based on the Rome Statute of the International Criminal Court and the other on the Convention. There were no substantive differences between the Act and the Convention, and the Dutch Criminal Code criminalized all forms of

participation in torture. A person convicted of the offence of torture was liable to life imprisonment, as well as a fine of up to €83,000. The Government was of the view that the maximum fine, which was the same for all the most serious crimes, was commensurate with the seriousness of the offence, given that, in practice, persons convicted of an international crime received long prison sentences, never only a fine. As for the harmonization of criminal law, it should be noted that the Joint Court of Justice of Aruba, Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba was responsible for hearing cases in first instance and on appeal. Accordingly, the procedural law of the autonomous countries and special municipalities needed to be as similar as possible for the Court to function properly.

43. A wide range of organizations, including the police, the Royal Netherlands Marechaussee, the Immigration and Naturalization Service, the labour inspectorate and the Victim Support Foundation, were involved in combating trafficking in persons in the special municipalities. The latter had an annual budget for related projects that was used chiefly for training and shelters. However, when the funds allocated to the special municipalities were not fully used, they could be transferred to the autonomous countries. A conference on human trafficking was held every three years. An additional independent investigation into trafficking in the special municipalities had not been deemed necessary because of their small size. Nevertheless, the special municipalities were working on a new crime pattern analysis system that was due to be finalized shortly. The mechanism for reporting crimes anonymously, formerly known as “M”, was now called “NL Confidential”; under it, some 20,000 reports were registered each year and all were taken seriously and followed up on by the police.

44. Concerning the national preventive mechanism, it was worth noting that a comprehensive system had been in place long before the ratification by the Netherlands of the Optional Protocol to the Convention. To fulfil the obligations under the Optional Protocol, a previous Government had designated that comprehensive system of inspectorates to serve as the national preventive mechanism. Each entity within the mechanism was independent and had its assigned responsibilities. The Ministry of Justice had called on the network to improve cooperation, which could be done, he believed, by jointly contributing to the annual report and improving the exchange of information. He agreed with the findings of the Subcommittee on Prevention of Torture that, in addition to monitoring facilities, more attention should be paid to prevention. The Optional Protocol had been ratified for the entire Kingdom but applied only to the European part of the Netherlands so as to avoid overburdening the special municipalities; nevertheless, the ban on torture and ill-treatment in the special municipalities was monitored by the Law Enforcement Council. In 2012, the Council and the Justice and Security Inspectorate had reached an agreement on the role of the Inspectorate in the Council’s monitoring activities.

45. On the question of which mechanism was responsible for inspecting prisons that had been leased to other countries, from September 2015 to September 2018, when Norway had leased a prison in the Netherlands, the Norwegian national preventive mechanism had been authorized to visit the prison.

46. It should be noted that life sentences were the harshest penalty in the Dutch justice system and, as such, were imposed only for the most serious offences. However, in order to comply with the ruling of the European Court of Human Rights that there must be a prospect of release, a number of steps had been taken to ensure that life sentences could continue to be imposed. For example, an independent body had been set up to determine whether, after 25 years, a person serving a life sentence was ready to begin preparing for a possible return to society. The body also provided advice on applications for early release. After 27 years, a life sentence could be re-examined through the pardon procedure. The Supreme Court had ruled that the enforcement of life sentences in the Netherlands met the requirements of article 3 of the European Convention on Human Rights.

47. The basic training of all Dutch military personnel included training in military criminal law, human rights and the laws of armed conflict. Dutch military law provided for the competence of the Netherlands to prosecute offences, including torture, committed by Dutch military forces irrespective of where they were committed. Moreover, the directives issued by the Chief of Defence, which applied to all military deployments, included an

obligation to report all violations of the laws of armed conflict. While there was no reason in principle why supervisory organs could not visit areas where military operations were taking place, the security situation usually precluded such visits. Complaints against Dutch military personnel could be submitted in accordance with the operation's procedures and legal framework. Under Dutch civil law, foreign nationals could sue the Government of the Netherlands in the Dutch courts for wrongful acts committed by the Government, including acts committed abroad.

48. There were no private security programmes or private detention centres or any plans to establish any. The Netherlands did not transfer persons to another State if there was the possibility of a violation of article 3 of the Convention. In 2016, over 14,650 staff of the Custodial Institutions Agency had received training on the Convention, 30 per cent more than in the previous year. In 2017, the equivalent of nearly 13,500 full-time staff had received training. Owing to staff turnover, it was not possible to give an exact percentage of personnel who had been trained. The aforementioned training was designed for professionals in direct contact with persons deprived of their liberty. Other civil servants received appropriate training on fundamental rights. To the best of his knowledge, the effectiveness of the training with regard to torture prevention was not assessed. That being said, excessive use of force was not a widespread phenomenon in custodial institutions in the Netherlands.

49. It was not clear what was behind the upward trend in the number of involuntary placements in psychiatric institutions. One explanation was a relapse after premature release. The authorities were exploring ways to refine release policies. The Compulsory Mental Health Care Bill and the Care and Compulsion Bill would enter into force on 1 January 2020. Both bills aimed to enhance the care of patients with a mental disorder. Important elements included early reporting of mental disorders and keeping patients in their habitual environment as long as possible. More important, however, were the efforts to avoid the application of involuntary measures by encouraging municipalities to develop policies for persons who were unable to manage their own lives. In addition, 12 large mental health institutions had signed a manifesto undertaking to close all seclusion rooms by 2020; several partners had since joined the initiative. Care providers were required to report the use of involuntary measures, including seclusion, to the Health Care Inspectorate.

50. Alternatives to pretrial detention included restraining orders and mandatory treatment. The new law on counter-terrorism did not change the duration of pretrial detention, which could in all cases be ordered on the grounds of suspicion. However, it was only possible to hold persons for a prolonged period when there were serious grounds for believing that they had committed a very serious terrorism-related offence. A judge reassessed pretrial detention orders every 10 days.

51. Regarding the punishment of terrorists, it should be noted that the prison system in the Netherlands, including wings for terrorists, met international standards and was monitored by independent national and international bodies. The separate wings for persons suspected or convicted of terrorism-related offences were intended to prevent recruitment and the spread of radicalization in ordinary custodial settings. However, it had become evident that those held in terrorist wings did not form a homogenous group: they ranged from hardened extremists to impressionable followers. Therefore, a differentiated placement policy had been adopted whereby followers were separated from extremists to avoid further radicalization. A detainee's status was determined using risk profiles, which were based on an assessment instrument introduced in 2016. The risk profiles were also used to determine the appropriate security measures to be taken in respect of each detainee and to develop tailored reintegration programmes for roll-out during detention and following release. The programme of daytime activities had been expanded to 26 hours a week and detainees considered suitable for inclusion in a group were eligible for an additional 10 hours of work, thus providing more time outside their cell to devote to reintegration. The law did not provide for extended isolation, and the "individual regime" applied in terrorist wings was not comparable to isolation. Generally, detainees in terrorist wings took part in group activities. The practice of solitary confinement as a disciplinary measure was not entirely compliant with the Nelson Mandela Rules, which did not allow for extensions, but it was in line with the part of the 21st General Report of the European

Committee for the Prevention of Torture devoted to solitary confinement of prisoners and with the relevant decisions of the European Court of Human Rights. A report on complaints by prisoners, including those held in terrorist wings, was published annually.

52. In response to a number of questions raised by Committee members, he wished to clarify that detained persons, including migrants and persons in solitary confinement, had access to a lawyer, who was permitted to attend and participate in police questioning. Decisions to refuse access to a lawyer were taken with the authorization of the Public Prosecutor, and there was no known case of legal aid having been denied. The Dutch Government would be deciding in 2019 whether and under what circumstances Tasers should be included in the regular armament of the police. Pepper spray was regulated and could not be used against vulnerable persons. Strip searches were conducted in exceptional circumstances only, as defined in article 47 (3) of the new bill on return and immigration detention, when body scanners were unavailable and an immediate on-the-spot strip search was warranted for security reasons. The Custodial Institutions Agency had prepared guidelines on the diagnosis and treatment of suicidal behaviour in detention, according to which all prison personnel had a responsibility to detect signs of suicidal behaviour and to notify medical staff, who would proceed with diagnosis and treatment. Isolation was used only as a last resort. Two ministers had resigned over the fire at the immigration detention centre at Amsterdam Schiphol airport and some of the victims, in addition to redress, had received residency permits and psychological treatment.

53. Wide-ranging efforts were under way to address domestic violence, including a programme entitled “Violence has no place in the home”, which had been developed jointly by a number of ministries and entities at the national and municipal levels. There were six shelters for male victims of domestic abuse, with a capacity of 40. Honour-related violence was punishable but was assimilated with various criminal offences, which was why it was not possible to extract from registers the number of prosecutions and convictions directly tied to such violence. The police had set up an advisory unit on honour-related violence.

54. No figures were available on the number of complaints made against special intervention teams in places of detention. Such complaints had, however, led to disciplinary and punitive action in a number of cases. The Health Care Inspectorate strictly oversaw the health care provided in prisons, and the Government saw no reason to transfer the supervision of health-care provision to the Ministry of Health. Medical staff in prisons did not wear the blue uniforms of regular prison officers, but rather light-coloured uniforms, which made stains more apparent.

55. Individual assessments of the needs of victims of crime, including victims of torture and ill-treatment, had been carried out since June 2018, when amended working methods had been introduced for the police and the public prosecution services.

56. The bill to establish a procedure for determining statelessness would be presented to parliament in the coming months and was expected to enter into force in 2020. The procedure would be open to all persons regardless of their migration status, place of birth, income or age.

57. Following the conclusions of a special committee with broad expertise, the Medical Research Act had been amended in 2017 to allow for the approval of non-therapeutic research by the Central (Ethical) Committee on Research Involving Human Subjects. In accordance with the International Covenant on Civil and Political Rights and the European Convention on Human Rights, no participants in medical research were subject to torture or other cruel, inhuman or degrading treatment.

58. Border detention was often the only effective way to prevent the illegal entry of persons who did not fulfil the requirements set out in the Schengen Borders Code. The Aliens Act 2000 allowed for the detention of asylum seekers in such cases for up to four weeks, after which, if no decision had been reached by the Immigration and Naturalization Service, the person must be released from detention. Unaccompanied minors were not automatically detained if they applied for asylum on arrival. Families with children were assessed immediately and only detained if doubts arose as to the identities of the minors. Adequate medical care was provided in all border detention facilities. If removal was not possible owing to an individual’s medical state, he or she was released from detention.

59. Administrative detention was only applied as a measure of last resort. As of 13 September 2013, all the alternative measures established in the Aliens Act 2000 had been in use. The most frequently employed were the requirement to report regularly to the authorities and the requirement to stay within a certain area of the Netherlands.

60. Accommodation was provided in open family centres for families with minor children whose asylum applications had been rejected. The Repatriation and Departure Service aimed to assist such families to leave the Netherlands voluntarily. Where voluntary return could not be achieved, forced removal might be authorized, including prior detention in a child-friendly location for the shortest time possible. If a person who could not be removed and had thus been released continued to remain illegally in the territory of the State, repeated detention might be in order, but the State must show that either new circumstances or the passage of time justified a renewed attempt at forced removal. It would be difficult to gather aggregated statistics on repeated detention, given the wide range of different situations in which it was possible.

61. The new bill on return and immigration detention, currently before the Senate, provided for a number of improvements for detained migrants, including fewer hours behind closed doors. It accorded them the right to have access to a lawyer when placed in isolation. The use of handcuffs was restricted to an absolute minimum and isolated detention was limited to situations where the migrant caused a severe security threat. Body searches had been all but eliminated by the introduction of the body scan in 2014. When exceptional circumstances justified a body search, it must be carried out by personnel of the same sex as the detainee.

62. Under the Dublin III Regulation, all applicants, including victims of torture, could ask for the medical status to be taken into account at any time up until their transfer took place. Legal assistance was provided free of charge during the appeal procedure. With respect to protection against indirect refoulement, the Netherlands generally applied the principle of inter-State trust, according to which the only reason for not transferring the applicant to the receiving State would be that there were substantial grounds for believing that there were systemic flaws in the asylum procedure or the reception conditions. The lodging of an appeal against the rejection of an asylum application had an automatic suspensive effect.

63. It was the conviction of the Government that the Netherlands should not be a safe haven for persons found guilty of serious violations of human rights. Individuals excluded from being granted asylum under article 1 (F) of the 1951 Convention relating to the Status of Refugees would not, however, be removed if that would constitute a breach of article 3 of the European Convention on Human Rights. If excluded, individuals still had access to legal aid and urgent health care. Since 1992, article 1 (F) had been invoked in the Netherlands around a thousand times.

64. The Government did not keep records on how often medical reports had been submitted during asylum procedures. Two kinds of medical checks were available: examinations to assess whether the asylum seeker was in need of special safeguards during the reception or asylum procedure, and examinations that could support the credibility of the asylum claim. In any event, every asylum seeker underwent a medical assessment at the beginning of the asylum procedure to assess his or her general state of health. Depending on the medical professional's conclusions, a more extensive medical assessment might be undertaken. The medical team included mental health-care professionals. Whether medical research into signs of torture was required was decided on a case-by-case basis, and the associated costs were borne by the State.

65. **Mr. Hani** (Country Rapporteur) said he hoped that the Optional Protocol to the Convention would soon enter into force for Bonaire, Saba and Sint Eustatius.

66. As the Committee's general comment No. 4 recommended that legal assistance should be guaranteed to all asylum seekers, it would be helpful to obtain clarification on whether access to a lawyer was guaranteed to migrants who were awaiting deportation. Legal assistance would be particularly crucial if they wished to appeal their expulsion order.

67. The Committee appreciated the difficulties the State party faced as a country that received a high number of migrants. He wondered whether the authorities in Curaçao and Sint Maarten had asked the Government of the Netherlands for help in establishing a procedure for determining the status of refugees.

68. He would welcome further details regarding the State party's use of a police station in Curaçao for the detention of individuals. Such establishments were often ill-suited for accommodating detainees for any length of time.

69. He was concerned about the lack of protections in place for asylum seekers who arrived in Sint Maarten. Did the State party have a system for detecting victims of torture among the influx of arrivals? He would be grateful for more information on how the practice of non-refoulement was implemented in practice.

70. Regarding medical research, he wished to know whether the same set of provisions would be applied in all four constituent countries of the Kingdom. He wondered whether the age of majority in Aruba, Curaçao and Sint Maarten was 18, in line with the recommendations of the Committee on the Rights of the Child. How did the Government obtain informed consent for participation in medical research from children or those with reduced physical or mental capacities?

71. The State party might find it beneficial to streamline its legislative provisions on torture through the creation of a comprehensive anti-torture law encompassing definitions, preventive measures and the full range of penalties. Did the legal system of the State party currently ensure that offences of torture were not subject to a statute of limitations?

72. Evidence collected by the Subcommittee on Prevention of Torture, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and civil society indicated that the national preventive mechanism needed to be reviewed. Efforts should be made to assess the problems experienced and remedy the current mechanism's lack of independence, efficiency and resources.

73. He wished to clarify whether the judicial mechanism used to review the cases of detainees serving life sentences did so after 20 or 25 years, and whether the ultimate decision to release a detainee rested with the judiciary or the executive branch.

74. While he appreciated the replies provided regarding pepper spray, his question had been whether it was used in day-to-day policing, and whether any specific norms were in place to limit its use.

75. With respect to the participation of the armed forces of the Netherlands in overseas operations, he had not heard any mention of measures taken to uphold the Convention. It would be useful to know whether places of detention run by the army existed outside the national territory and, if so, how the Convention was applied in them.

76. He would welcome further details on the conditions of detention imposed on individuals convicted of terrorism offences. A harsh prison regime risked radicalizing such individuals even further.

77. He would like to know whether medical examinations were carried out in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) and whether the right to an appeal with suspensive effect was upheld in all cases.

78. The Committee had received reports that the ill-treatment of intersex persons routinely went unpunished in the State party and that no compensation was provided to victims. Could the delegation comment on the action it took against homophobic abuse and hate crimes, particularly when they occurred in places of detention?

79. **Ms. Zhang** (Country Rapporteur) said that she would like to know more about the training provided to law enforcement officers, prosecutors and judges in Aruba and Curaçao with respect to the Convention, the Nelson Mandela Rules, the Istanbul Protocol and the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules). The Committee recommended that the four constituent countries should set up assessment mechanisms to optimize the results of such training.

80. The reasons given for the increase in the number of cases of involuntary admissions were not compelling, and the underlying causes of that increase should be analysed in greater detail. In the Committee's view, the threshold for outpatient treatment should be lowered, the quality of the treatment improved, and the number of involuntary admissions reduced. The Committee was very concerned at the number of injuries and deaths in detention centres in the Caribbean part of the Netherlands and would welcome further detailed information in that regard, particularly on the outcome of the corresponding investigations and the extent to which the perpetrators of torture and ill-treatment had been punished.

81. She would appreciate further information on the specific constraints relating to pretrial detention, and on the reforms under way in that area. It was important to reduce the prevalence of pretrial detention, and the prosecution service should consider the use of alternative measures. She was pleased to see that the practice of solitary confinement in Aruba had ended. She wished to know more about the use of repeated detention since 2010, and would welcome any statistics the State party could provide in that respect. The situation in the area of procedural guarantees for minors was regrettable, in Aruba and elsewhere, with minors being tried under ordinary criminal law and detained alongside adults in prisons. The practice of detention of minors should be reduced, the use of alternative measures increased, and the juvenile criminal code amended to ensure that minors under the age of 18 were tried under juvenile criminal law only.

82. She wished to receive the statistical data requested in paragraph 21 of the list of issues (CAT/C/NLD/QPR/7). She would also appreciate more information on the issue of compensation under article 14 of the Convention, and on how the State party planned to overcome the obstacles to addressing the problem of racial profiling. The Committee was concerned at a number of aspects of detention in high-security prisons. For example, when placing suspected or convicted terrorists in such prisons, there was no individual assessment of the risk of radicalization or immediate threat of inciting other detainees, or of whether the measures met the criteria of necessity or proportionality. Detainees in high-security prisons lacked effective remedies; were sometimes held for over five months in violation of their rights; and often had to undergo intrusive full-body searches. In addition, suspected terrorists were not housed separately from convicted terrorists.

83. **Ms. Belmir** said that it was important for the State party to improve the harsh conditions in the detention centres for migrants awaiting expulsion, in order to safeguard their fundamental rights.

84. **Mr. Rodríguez-Pinzón** said that he wished to know how it was possible to carry out a detailed medical examination on asylum seekers within the short time provided for. He would also appreciate clarification of the time limit in Aruba for bringing an arrested person before the courts — was it 72 hours or 48 hours?

85. **The Chair** said that he was still waiting to hear about the situation regarding prison health care in the European Netherlands.

*The meeting was suspended at 5.25 p.m. and resumed at 5.35 p.m.*

86. **Mr. Girigorie** (Netherlands), speaking on behalf of the Government of Curaçao, said that in Curaçao it was not a requirement to have legal representation when lodging a complaint or appeal based on administrative issues, for migrants and citizens alike. Regarding undocumented migrants awaiting return to their country of origin, the relevant consulate was in charge of all their needs, including legal representation.

87. Curaçao was required to offer protection under the principle of non-refoulement, and had therefore introduced a protection application process in 2017, which was currently under review by the Netherlands Immigration and Naturalization Service. The practice of detaining migrants in police cells late at night when migrant detention facilities were closed had been discontinued, and the migrant detention centre was being extended to ensure greater capacity. More information would be provided in writing on the issues of training and the ill-treatment of detainees. Alternatives to pretrial detention included "quick justice" and electronic surveillance, and were used in particular for minors. Juveniles were tried under the juvenile justice system, except for serious crimes such as murder, when they

could be tried under ordinary criminal law; in prison, however, they were housed separately from adults.

88. **Mr. de Weever** (Netherlands), speaking on behalf of the Government of Sint Maarten, said that in Sint Maarten juveniles — defined as young persons between the age of 12 and 18 — were not detained with adults and were punished in accordance with the provisions of the Juvenile Criminal Code. The Kingdom of the Netherlands would be consulted for assistance in asylum matters, and in the meantime the relevant guidelines would be followed.

89. **Mr. van Dam** (Netherlands), speaking on behalf of the Government of Aruba, said that while persons were usually brought before the courts within 48 hours, that period could be extended by 24 hours if necessary. Further information on non-refoulement would be sent to the Committee in writing. Young persons up to the age of 21 were detained separately from adults, in the juvenile detention unit. Comprehensive training on instruments such as the Nelson Mandela Rules was provided at all levels of the judicial system, including for those working in correctional facilities.

90. **Mr. Riedstra** (Netherlands) said that the prescribed time limit for conducting medical examinations on asylum seekers could be extended if necessary. In cases where an application for asylum was rejected, the applicant could lodge an appeal, which automatically had a suspensive effect. Third-country nationals were never detained for more than 18 months. There were currently no foreign nationals in the migrant detention centre in Bonaire. The Convention relating to the Status of Refugees and the European Convention on Human Rights applied in full in the Caribbean Netherlands. The prison system in the Netherlands, including the specialized high-security facility for detainees suspected or convicted of terrorist offences, met international requirements and was monitored by independent national and international supervisory bodies. A personal risk analysis was carried out for detainees in those facilities, who had access to a complaints mechanism and the right to appeal. With regard to the situation concerning prison health care in the European Netherlands, strict supervision of the medical care provided in prisons was carried out by the Health Care Inspectorate. Reviews of life sentences were carried out by an independent committee, chaired by a former judge, whose members were professional experts; the resulting decision was made at ministerial level. The police programme on racial profiling would be continued until the end of 2019, while the focus on diversity and combating discrimination would continue beyond that. The application of ordinary criminal law to juveniles aged 16 and 17 was an exceptional measure provided for under the Criminal Code; it was not used lightly, and all aspects of the relevant cases were taken into consideration, including the principle of the best interests of the child. He agreed that the underlying causes of the increase in involuntary internment should be studied in greater detail. Supplementary information in relation to the Committee's questions would be submitted in writing within 48 hours.

91. **Mr. Girigorie** (Netherlands), speaking on behalf of the Government of Curaçao, said that the reason undocumented migrants were detained in a holding centre was because the previous system of ordering them to appear before the immigration authorities on a given date had not worked: they had simply not turned up. Work was being carried out to improve conditions in the holding centre.

92. **The Chair** thanked the delegation for its diligent participation in the dialogue and said that any further replies to questions should be sent in writing within 48 hours in order to be taken into account in the Committee's concluding observations.

*The meeting rose at 6 p.m.*