



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

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COMMITTEE AGAINST TORTURE
Thirty-eighth session
Geneva, 30 April – 18 May 2007

**List of issues to be considered during the examination of the fourth periodic
report of NETHERLANDS (CAT/C/67/Add.4)**

EUROPEAN PART OF THE KINGDOM

Article 2

1. Does Dutch law specifically provide that no exceptional circumstances whatsoever may be invoked as a justification for torture?
2. With regard to universal jurisdiction, are there restrictions on the persons who could be prosecuted? If so, please explain.

Article 3

3. Please provide information on the legislative, administrative and other measures that are planned or in place to respond to the threats of terrorism, and indicate if, and how, these have affected human rights safeguards in law and practice. In this context, do they provide any exception to the principle of non-refoulement guaranteed in article 3 of the Convention? If so, please provide examples. Also, please indicate if the NOVO team, which investigates and prosecutes war crimes and crimes against humanity, also investigates allegations of terrorism.

4. Please elaborate on how the Aliens Act 2000 is compliant with article 3 of the Convention. The Committee is concerned by the risk of violation of the non-refoulement principle when applying the Dutch accelerated asylum procedure. The Committee refers in particular to the following issues:

- (a) the limited time available for asylum seekers to become informed about the procedure and to prepare for it;

(b) the burden of proof imposed on asylum seekers to substantiate their claim and the particular cases of undocumented asylum seekers;

(c) the processing of claims by vulnerable asylum-seekers such as traumatized persons who may be unable, including for psychological reasons, to support their case within the 48-hour framework established by the accelerated procedures.

5. With regard to medical reports, there are allegations that in practice, such reports are not considered by immigration officials as evidence that can be used to substantiate an application. Reports received from NGOs quote the following statement found in asylum decisions: "*The Immigration Authorities have the opinion that medical aspects in general do not play a role when it comes to decision making, since medically speaking one cannot be totally certain about the cause of medical symptoms and/or scars. Also in the present case, the medical report of Amnesty International does not prove the stated causal link between the said detention and ill-treatment on the one hand, and the asylum seeker's physical symptoms on the other hand.*" Please comment. Please also explain to the Committee how the Istanbul Protocol is used in practice in the Netherlands.

6. Please provide detailed information on the "marginal scrutiny test", including procedural elements. Please also explain the principle of "new facts and changed circumstances."

7. Please elaborate on the Government's plan to return a large number of asylum seekers whose applications have been rejected, as noted in the concerns and recommendations of the Committee on the Elimination of Racial Discrimination¹.

8. Please elaborate on the written protocol on the medical screening of returnees and explain whether such screening includes a psychological assessment of their fitness for travel. If so, please provide detailed information and explain any findings of these assessments.

Article 4

9. Please provide information on the 30-month prison sentence handed down to Sebastian Nzapali, a former Congolese officer convicted of torture committed in the Democratic Republic of the Congo in 1994 and 1995. Please identify the penalties provided in Dutch law for crimes of torture or acts amounting to cruel, inhuman or degrading treatment.

Article 5

10. Please provide an update on the entry into force of the International Crimes Act as well as information on cases brought to justice in the Netherlands under it. Please also provide information about the results of the evaluation of the NOVO Team conducted by the Minister of Justice and the Minister of the Interior and Kingdom Relations.

¹ CERD/C/64/CO/7, para 14.

Article 7

11. Please describe any anti-discrimination measures that are planned or in place to ensure impartial investigations of allegations of offences pursuant to articles 1 and 16 of the Convention.

Article 10

12. Please provide detailed information about the human rights training provided by the National Institute for Police Training for law-enforcement officials, particularly with regard to the treatment of detainees and the measures in place for the prevention of torture and cruel, inhuman or degrading treatment or punishment. Is similar training available to other public officials? What monitoring and evaluation, if any, is used to assess the impact of training?

Article 11

13. According to Dutch legislation, the limited duration of custody for interrogation purposes negates the need for legal assistance. Please indicate if there are plans to amend this provision. If not, please elaborate on any safeguards built into the Dutch legal system to ensure that, in the absence of a lawyer, persons in custody will be protected from ill-treatment or any other unlawful action.

14. Please provide updated information on the study of the psychological effects on prisoners of detention under the maximum security regime as referred to in paragraph 34 of the State party's report. Please also comment on the statement that "the information available to the Government relating to the prison system of psychosocial care does not suggest that detention in the prison causes serious psychological harm."

15. Please provide information about measures taken with regard to holding areas in the time since the last report of European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and following the incident at Schiphol Airport. Has this incident prompted changes in the Border Holding Area Regime Regulations? If so, please describe these changes.

16. Please also comment on the concern raised by the Special Rapporteur on the human rights of migrants², namely, that rejected asylum seekers who were held in the Schiphol airport detention centre were allegedly detained in the same area as persons convicted of criminal offences and that men and women were held in the same area and not in separate parts of the premises.

17. Please inform the Committee of the conditions of detention in the Netherlands for survivors of the Schiphol Airport fire until the investigation was concluded.

² E/CN.4/2006/73/Add.1, para 231.

18. With regard to the border detention centre, reports from NGOs allege that unaccompanied children may be held in alien detention for several weeks and that asylum seekers whose applications have been rejected, including children as part of a family, may be detained for an unlimited period, regardless of whether or not an appeal is logged. Please comment.

Articles 12 and 13

19. Please provide information on the number and the content of complaints from detainees received by the Ombudsman, and describe what follow-up measures are available to them. Please provide information on the findings and the content of the annual report of the police cell supervisory committees and of the study on reporting practice commissioned by the Minister of the Interior and Kingdom Relations.

20. What measures are planned or in place to ensure that complainants and witnesses are protected against ill-treatment and intimidation and to ensure effective, impartial and expeditious processing of complaints?

Article 14

21. Please provide information and statistical data on investigations of acts of torture or ill-treatment, if any, and what compensation, including medical rehabilitation, has been provided to victims since the last periodic report.

Article 16

22. Please provide information on the facilities provided to Aliens awaiting expulsion after a stay permit or asylum has been denied.

Article 22

23. Please explain the procedures or mechanism that are planned or in place through which the State party implements the recommendations of the Committee against Torture.

Other

24. Does the Netherlands envisage ratifying the Optional Protocol to the Convention against Torture? If so, has the Netherlands taken steps to establish or designate a national mechanism which would conduct periodic visits to places of deprivation of liberty with a view to preventing torture and other cruel, inhuman or degrading treatment or punishment?

25. Please indicate whether there are any legislative, administrative, judicial or other measures that are aimed at preventing or prohibiting the production, trade, export and use of equipment specifically designed to inflict torture or cruel, inhuman or degrading treatment. If so, please provide information about its content or implementation. If not, please indicate whether the adoption of such legislation is being considered.

26. The Committee wishes to receive from the State party an overview of major developments since 2001, as well as information on the implementation of the Convention in its non-metropolitan regions.

ARUBA

Article 1

27. Please describe the contents of the article of the National Ordinance implementing the Convention against Torture (AB 1999, No 8) which incorporates into Aruban law the definition of torture provided in the Convention. Please elaborate on how the definition is compliant with article 1 of the Convention.

Article 3

28. In the light of the lack of formal asylum and protection procedures in Aruba and the current practices with respect to the detention and deportation of illegal migrants, please explain how immigration legislation and practice are compatible with article 3 of the Convention.

Article 11

29. Please provide information on the implementation of the revised instructions and criteria for the deployment of investigations for alleged offences committed by police officers, including statistical data on the offences reported and investigated since the State party's last appearance before the Committee.

30. As requested by the Committee in its concluding observations³, please provide information and statistics on current pre-trial and convicted prisoners, disaggregated by gender and geography.

³ A/55/44, paras.181-188.

Article 13

31. How do the provisions of Aruban Code of Criminal Procedure relating to witnesses as explained in the report of the State Party⁴ guarantee protection as provided by Article 13 of the Convention?

NETHERLANDS ANTILLES

Article 13

32. Please provide an update on steps that have been taken to implement the respective recommendations of the Committee against Torture⁵ and the Human Rights Committee⁶, namely, to improve prison conditions, train prison personnel and enforce decisions reached by the Police Conduct Complaints Committee.

⁴ Paras. 41- 44.

⁵ A/55/44, paras. 181-184.

⁶ CCPR/CO/72/NET, paras. 17-18.