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

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Committee against Torture

Consideration of reports submitted by States parties under article 19 of the Convention

Sixth periodic report of States parties due in 2011, submitted in response to the list of issues (CAT/C/NLD/Q/6) transmitted to the State party pursuant to the optional reporting procedure (A/62/44, paras. 23 and 24)

The Netherlands** *** ****

[3 January 2012]

* The present document supersedes document CAT/C/NLD/6 dated 13 September 2012.

** The fourth periodic report of the Netherlands is contained in document CAT/C/67/Add.4; it was considered by the Committee at its 763rd and 766th meetings (CAT/C/SR.763 and 766), held on 7 and 8 May 2007. For its consideration, see CAT/C/NET/CO/4.

*** In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited.

**** Annexes can be consulted in the files of the secretariat.

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I. Introduction

1. The Kingdom of the Netherlands is using the new optional reporting procedure adopted by the Committee at its thirty-eighth session and thus submitting this report under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment on the basis of the list of issues adopted by the Committee at its forty-third session (CAT/C/NLD/Q/6).

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

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

II. Replies to the issues raised by the Committee against Torture

Reply to the issues raised in paragraph 1 of the list of issues (CAT/C/NLD/Q/6)

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

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

Information about the rights of suspects

5. This concerns the codification of the obligation to provide information to suspects on their rights, pursuant to the case law of the European Court of Human Rights (ECtHR), and the requirements that have to be met to ensure a fair trial. A suspect has the right to be informed of the offence of which he is accused, the right to legal assistance and the right to

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

Right of access to an independent medical doctor

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

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

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

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

Reply to the issues raised in paragraph 2 of the list of issues

10. Since 24 December 2010, the Netherlands has been bound by the provisions of EU Directive 2008/115 (Directive on common standards and procedures in Member States for returning illegally staying third-country nationals). Article 15, paragraphs 5 and 6, state that detention for the purposes of removal must not exceed 6 months and can be extended by a maximum of 12 months. Dutch practice conforms with these provisions (which are directly enforceable). These provisions will be anchored in Dutch law. A bill to this effect is currently being considered by the House of Representatives and the Senate.

Reply to the issues raised in paragraph 3 of the list of issues.

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

Reply to the issues raised in paragraph 4 of the list of issues

12. Children appear before the children’s judge (*kinderrechter*). The Code of Criminal Procedure contains a separate title with procedural rules specially formulated for cases

involving children. These rules are also applied in cases, as referred to by the Convention on the Rights of the Child, involving children who were 16 or 17 years old when the offence leading to prosecution was committed.

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

14. It should be noted that the children's judge in the Netherlands exercises great restraint in imposing penalties or orders from adult criminal law. In 2006, 2007 and 2008, such penalties or orders were imposed on 108, 103 and 104 children, respectively. This represents 1.4 per cent, 1.3 per cent and 1.2 per cent of all convictions of minors. In most cases, children who have received an adult sentence reach the age of majority before the sentence is enforced. In accordance with recent legislation, when a hospital order ('TBS'; a treatment order under adult criminal law) is imposed on a minor by the children's judge, the sentence can be carried out at a young offenders' institution, i.e. outside the adult system, until the person turns 21. This amendment to the law was introduced to comply with CRC recommendations concerning this matter.

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

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

Reply to the issues raised in paragraph 5 of the list of issues.

17. The Netherlands is in the process of establishing a national institute of human rights. The new Netherlands Institute for Human Rights will be independent and will operate in accordance with the Paris Principles. The Senate approved the bill establishing this institute on 22 November 2011. The Institute will open its doors in 2012.

Reply to the issues raised in paragraph 6 (a) of the list of issues

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

Reply to the issues raised in paragraph 6 (b)of the list of issues

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

Reply to the issues raised in paragraph 6 (c)of the list of issues

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

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

Reply to the issues raised in paragraph 6 (d) of the list of issues22. All asylum seekers are assigned free legal assistance, and all interviews take place in the presence of an interpreter. As regards the continuity of legal assistance, please see the relevant passage in the annexed summary of the amended asylum procedure.

Reply to the issues raised in paragraph 6 (e) of the list of issues

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

Reply to the issues raised in paragraph 6 (f) of the list of issues

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

Reply to the issues raised in paragraph 6 (g) of the list of issues

25. Please see the relevant passage in the annexed summary of the amended asylum procedure, and the reply to the issues raised in paragraph 11 of the list of issues.

Reply to the issues raised in paragraph 7 of the list of issues.

26. The country reports on Iraq, drawn up and published by the Ministry of Foreign Affairs, indicate that the violence and human rights situation in parts of Iraq or in the country as a whole have been a cause of concern for many years. At the same time, they also show that the situation has improved significantly compared with 2006 and 2007. In the light of this information, there is no reason to conclude that the nature and intensity of the violence in Iraq is such that any expulsion to this country would constitute a violation of article 3 of the European Convention on Human Rights (ECHR), or of any of the other relevant conventions. Moreover, the European Court of Human Rights expressed its view that the situation in Iraq was exceptional as long ago as 2009 in its judgment *F.H.* v. *Sweden* (20 January 2009). The European Court of Human Rights was of the opinion that,

although the general security situation in Iraq, and in Baghdad, was uncertain and problematic, it was not so acute that Iraqi citizens who were returned would face a real risk of treatment contrary to article 3 of ECHR simply through being there.

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

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

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

Reply to the issues raise in paragraph 8(a) of the list of issues

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

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

32. Since 1 July 2010 some 7,710 asylum applications have been admitted to the eight-day general asylum procedure for processing. Of these, circa 3,780 have been finalized – 1,650 (21 per cent of the total) were rejected and almost 2,140 (28 per cent of the total) were granted. In the first six months following the introduction of the improved asylum procedure, 49 per cent of applications were finalized in the general procedure. The remaining 51 per cent were processed in the extended asylum procedure. A comparison of these results with those recorded six months before the improved asylum procedure came into force shows that finalization has increased by 20 percentage points. In the first half of 2010, some 1,970 applications were finalized under the application centre procedure, about 29 per cent of the total (around 950, or 14 per cent, were rejected and 1,020, or 15 per cent, granted)). The main effect can therefore be seen in the increase in numbers of applications granted rapidly.

Reply to the issues raise in paragraph 8(b) of the list of issues

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

Reply to the issues raise in paragraph 8(c) of the list of issues

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

Reply to the issues raise in paragraph 8(d) of the list of issues

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

36. In 2010 a total of 11,770 aliens who were not legally entitled to residence are known to have left (this covers all categories, not just former asylum seekers). Of these, 3,780 people left of their own accord (under supervision), while 7,990 persons underwent forced return.**Reply to the issues raised in paragraph 9 of the list of issues**

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

Reply to the issues raised in paragraph 10 of the list of issues

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

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

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

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

Reply to the issues raised in paragraph 11 of the list of issues

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

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

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

45. Moreover, the Dutch Government believes that the added value of this sort of investigation in helping to determine the outcome of an asylum procedure is very limited, as it is impossible to make definite pronouncements about the reasons behind the asylum seeker's physical or mental state. Accordingly, a medical report on e.g. scars cannot be decisive if the account as a whole is implausible. In the Dutch Government's opinion, in the light of Dutch asylum policy the asylum seeker's interests are best served if he is enabled to make the fullest and most accurate account possible in support of his asylum application and – where applicable – if mitigating factors relating to his statements are taken into account.

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

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

Reply to the issues raised in paragraph 12 of the list of issues

Audio and video recording

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

distinction is made between audio, video and optional recordings of the interviews of suspects, witnesses and informants.

49. An audio recording is mandatory if:

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

50. A video recording is mandatory if:

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

Optional recording

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

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

Consultation assistance

53. The Police Interviews (Legal Assistance) Instructions (2010A007) of the Public Prosecution Service have been in force since 1 April 2010. The instructions lay down rules safeguarding the right of an arrested suspect to consult a lawyer before being interviewed by the police. This right stems from recent case law of the European Court of Human Rights (ECtHR). This form of legal assistance is described in the instructions as ‘consultation assistance’. Both minor and adult suspects are entitled to such assistance. Consultation assistance consists of a meeting of the suspect with a lawyer before the first ‘substantive’ interview of the suspect by the police. A substantive interview is an interview in which a suspect is questioned about his involvement in a criminal offence. The consultation with the lawyer generally takes place in person at a police station. In principle, a telephone conversation is sufficient only in category C cases (minor offences for which pretrial detention is not permitted).

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

Interpretation and translation

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

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

Reply to the issues raised in paragraph 13 (a) of the list of issues57. Following the recommendations made by the CPT and other parties in 2008, recommendations were made regarding the specifically procedural nature of the aliens' detention regime. The recommendations concluded that this regime should be distinguished from a penitentiary regime for persons detained under the criminal law. In response to the CPT's report the Dutch Government endorsed this principle. However, it should be taken into account that in situations in which it is necessary to deprive people of their liberty – even for reasons other than criminal acts – it is inevitable that the way in which this happens will in some ways resemble the way in which offenders are detained. For example, certain necessary security and management measures associated with the external appearance and regime typical of detention facilities will be unavoidable.

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

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

Reply to the issues raised in paragraph 13 (b) of the list of issues

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

Reply to the issues raised in paragraph 13 (c) of the list of issues

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

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

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

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

- Securing responsible medical care and a permanent process of improvement: an internal auditing system is to be set up, and a quality system to describe and standardize 21 new work processes.
- Hygiene and prevention: detention centres operate according to hygiene guidelines and guidelines on infectious diseases. People are also provided with information on this subject via interpersonal discussion, informative materials and posters.
- Psychological care: since 2009, psychologists working in detention centres have formed a network to monitor and discuss the quality of the professional mental health care they provide at the centres. Agreements are made on care policy, the qualitative framework and assessing professionalism.

Reply to the issues raised in paragraph 14 (a) of the list of issues 65. Since 10 March 2011, there has been limited scope for placing unaccompanied minors in aliens' detention. Unaccompanied aliens younger than 18 years can only be detained if they meet the following criteria (in addition to the standard conditions):

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

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

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

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

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

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

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

Reply to the issues raised in paragraph 14 (b) of the list of issues68. In the Netherlands, various measures are taken to prevent minor asylum seekers from disappearing. There is 24-hour staffing in centres where minor asylum seekers are held. Doors are operated by key cards and cameras are in place. Minors are assigned guardians within 24 hours of arrival, and they are warned about the risks of trafficking. Refugee centre employees are trained to recognize signs of trafficking. If an unaccompanied asylum seeker arrives at the national airport, representatives of the organizations involved will be extra alert to signs of trafficking.

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

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

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

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

Reply to the issues raised in paragraph 15 of the list of issues

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

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

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

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

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

Reply to the issues raised in paragraph 16 of the list of issues

Criminal law provisions

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

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

of an obvious pattern of offences by the same offender or group of offenders). This provision came into effect on 1 May 2011.

Instructions on Discrimination

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

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

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

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

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

Programme of action to tackle discrimination

85. At the beginning of July 2011, supplementary criminal-law measures were submitted to the House of Representatives within the context of the programme of action aimed at tackling discrimination. The changes are aimed primarily at improving and simplifying the procedure for lodging criminal complaints of discrimination, improving investigation practice, increasing sentences and having the Public Prosecution Service adapt its Instructions on Alternative Sanctions.

Reporting discrimination and lodging criminal complaints

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

(1) Improving and simplifying the crime reporting process and taking a more service-oriented approach in order to improve the quality of official reports of criminal complaints;

(2) Improving communication about the progress and disposal of complaints (as part of the Victims' Status (Legal Proceedings) Act, which came into effect on 1 January 2011);

(3) Offering more channels for lodging criminal complaints (e.g. the internet). The Rotterdam-Rijnmond regional police force is currently running a pilot project in which victims can lodge criminal complaints with the police in specially designed rooms equipped with a webcam and a 3D screen. In future, it will be possible to lodge complaints online for more offences. The technology for video conference hearing is also available for lodging criminal complaints.

Use of investigative tools

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

Sanctions

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

Reply to the issues raised in paragraph 17 of the list of issues

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

Reply to the issues raised in paragraph 18 of the list of issues.

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

Reply to the issues raised in paragraph 19 of the list of issues

91. Since 2007 the process of return as a whole has been monitored by the Repatriation Supervisory Committee (CITT). It has made recommendations in its annual report on four occasions for improving the implementation of the return process. The annual reports discuss issues such as the way in which expulsions take place and how aliens are treated by escorts from the Royal Military and Border Police (KMar) throughout the process. In its 2008 report the CITT observed:

92. 'Expelling resisting and disruptive aliens to their countries of origin requires a mix of professional judgment, an operational approach, the ability to defuse situations, and concern to subdue heated emotions (both of the person being expelled and of bystanders

(other passengers)). [….] Although it was established that the escort teams discharged their duties correctly, it emerged that fixed teams, who had taken the most recent escort commander training courses, [….] gave the best performance. This was evident, in particular, in their firm, professional and well-coordinated approach, which came across as highly thorough. It was recommended that preference be given to fixed escort teams who have taken the most recent, most relevant training courses and work well together.

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

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

95. In the 2010 annual report the Committee concluded that 'in general, the expulsion process is carried out humanely and with due care […] Expulsions are generally carried out by the KMar escort teams, who are properly equipped and well trained, in an appropriate manner.' The CITT also noted that 'this year, too, FRONTEX charter flights have proved successful in expelling larger groups of aliens, one reason being that the Government, as the charterer, is able to manage the entire removal process appropriately. Moreover, the Committee noted that Dutch escort teams measure up in every respect to foreign teams performing the same task. This good performance relates not only to discipline and behaviour in situations where they are required to act, but equally to their presentation and appearance (clothing etc.)'. In the report the CITT also states that several charter flights to Iraq inspected by the CITT used the body cuff in a correct and humane manner.

Reply to the issues raised in paragraph 20 of the list of issues.

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

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

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

99. In this context, it is also important to mention that by Act of 20 December 2007 (Bulletin of Acts and Decrees 2007, 575) minors may not be sentenced to life imprisonment, in compliance with the recommendations of the Committee on the Rights of the Child, in so far as they relate to life sentences for minors.

Steps taken to improve the regime in youth detention facilities

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

Introduction of the YOUTURN method and recognized behavioural interventions

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

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

103. Parental participation is a core element of the method and parents are even more closely involved in their child's stay at a young offenders' institution than before. This is to ensure that juveniles return to a more stable home environment and are consequently less likely to revert to old behaviour patterns. A new sectoral strategy for parental participation was completed in May 2011. The young offenders' institutions have a wide range of activities to encourage parental involvement, such as recognized family-oriented behavioural interventions. It is standard practice to invite parents to regular meetings on the juvenile's prospects and progress and involve them in the drafting of applications for leave and participation in training programmes.

Screening and psychiatric care

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

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

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

ForCa

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

Personnel

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

109. In 2010, 32 per cent of group staff were HBO graduates (cf. 26 per cent in 2008). In 2011 over 350 members of staff will receive an HBO degree. In addition, the young offenders' institutions have formed partnerships with the institutions of higher professional