



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

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**Committee against Torture**  
**Fiftieth session**

**Summary record of the 1147th meeting**

Held at the Palais Wilson, Geneva, on Wednesday, 15 May 2013, at 3 p.m.

*Chairperson:* Mr. Grossman

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(*continued*)

*Combined fifth and sixth periodic reports of the Netherlands (continued)*

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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)*

*Combined fifth and sixth periodic reports of the Netherlands (continued)*  
(CAT/C/NLD/5-6)

1. *At the invitation of the Chairperson, the delegation of the Netherlands took places at the Committee table.*

2. **Mr. van Schreven** (Netherlands), giving an overview of the political structure of the Kingdom of the Netherlands, said that the Kingdom consisted of four parts, namely, the Netherlands — made up of the European territory and its possessions in the Caribbean — and the islands of Aruba, Curaçao and Sint Maarten, and was a single sovereign entity under international law. As such, international treaties were binding on all constituent countries, although each was free to implement them as it saw fit. Some treaty provisions were directly applicable without incorporation into national legislation. Curaçao and Aruba had incorporated the prohibition of torture into their national legislation in 1995 and 1999 respectively. Torture was also prohibited in Sint Maarten. Aruba would be ratifying the Optional Protocol to the Convention against Torture as soon as possible, while Curaçao was examining the changes to prison legislation needed for ratification and Sint Maarten was still assessing the applicability of certain conventions.

3. The Government had announced its intention to ratify the Convention on the Rights of Persons with Disabilities and was considering acceding to its Optional Protocol. The Council of Europe Convention on preventing and combating violence against women and domestic violence had been signed in November 2012 and the parliamentary approval procedure and legislative review were under way in view of ratification. In the European part of the country, bills criminalizing forced marriage, polygamy and female genital mutilation had been drafted while, in the Caribbean part, implementation of the Convention was being considered in relation to the islands' size. The process was expected to take up to two years.

4. The mandate of the National Institute for Human Rights was restricted to the European part of the Kingdom; Curaçao had decided to establish its own institute. The former Equal Treatment Commission had been incorporated in the National Institute, which became responsible for monitoring the implementation of the Anti-Discrimination Act.

5. Replying to questions regarding asylum, he said that all asylum seekers were subject to the eight-day general asylum procedure, which could be extended if further investigation was needed. A decision in an extended procedure had to be taken within six months. Owing to the introduction of a period of rest and preparation prior to the general procedure, asylum seekers had more time than before to substantiate their claim. They were briefed for the procedure and interviewed by both a legal aid worker and the Dutch Refugee Council. Asylum seekers were entitled to 12 hours of free legal assistance, which could be extended to 17 hours in the case of an extended procedure. Any evidence found after a claim had been rejected could be put forward during the appeal, and a second claim could be made if new evidence came to light after the first procedure had ended. Decisions were based on a meticulous assessment of the need for international protection and on a medical examination, which was administered only with the informed consent of the claimant. Rejections were justified in writing and were appealable.

6. The Istanbul Protocol was reflected in the procedure insofar as the assessment of asylum claims took account of claimants' physical and mental health and immigration and medical personnel received special training. Asylum on the grounds of torture was decided primarily on the basis of credibility, not of medical evidence. Residence permits were

categorized according to the broad grounds for international protection; therefore, there were no data on the specific reasons for granting asylum, such as sexual violence or torture. Asylum requests by Iraqi nationals were no longer automatically accepted because the situation had changed in that country; rather, individual requests were decided on the basis of their merits. Almost all claims by Syrian asylum seekers were accepted, except those by active supporters of the Assad regime.

7. There had been slightly more than 20,000 returns in each of the previous two years, including approximately 6,000 forced returns. Many NGO-run projects provided assistance to rejected asylum seekers for a smoother return to their country of origin. Those who tried, but failed, to return voluntarily for reasons beyond their control, were eligible for residence in the Netherlands. Forced return was the only alternative to voluntary return, but measures had recently been introduced to avoid detaining those who refused to leave. Foreign migrants could not be detained for more than 18 months and could not, as a rule, be detained more than once. Anyone who arrived at the border and did not meet entry requirements was denied entry and detained. When an asylum claim was made at the border, the general asylum procedure was launched and detention ended within 8 days, provided that the merits of the claim had been approved. The migrant detention centres differed from regular prisons in that they did not provide opportunities for work or education, since the objective was not to rehabilitate the migrant detainee population. Migrant children could be returned to their country of origin if adequate support was available to them there. In the absence of such support, they could qualify for a residence permit in the Netherlands. A policy had been introduced in March 2011 to limit the detention of migrant children to very specific circumstances.

8. **Ms. Baars** (Netherlands) said that the Government of Aruba was considering establishing an independent human rights institute in the near future. Meanwhile, the Intergovernmental Human Rights Committee was responsible for reporting on the implementation of human rights in Aruba, consulting with the Government and raising public awareness. The numbers of asylum requests had been on the rise since 2010, but no applicants had been detained or forcibly removed from the country.

9. **Ms. Hato-Willem** (Netherlands) said that the detention regimes in Curaçao for foreign nationals and regular offenders differed considerably. Foreign nationals who were not suspected of a criminal offence, whose pretrial detention had ended or who had completed their sentence could be placed in a newly refurbished facility for migrants in an irregular situation. Such migrants spent on average only two days in the facility before returning to their country of origin. There was no programme of activities at the facility, but detainees did enjoy regular breaks.

10. **Mr. van Schreven** (Netherlands), turning to Committee questions about prisons, said that there were strict rules governing the application of pretrial detention, which could not exceed the potential custodial sentence and typically did not exceed 6 months. Moreover, a case must be brought to trial within 102 days. Proposals to increase alternatives to pretrial detention, crafted in cooperation with the judiciary, would be presented to Parliament in 2013. A programme had been implemented in 2012 to shorten the average length of criminal proceedings and encourage swifter judicial action in cases of crimes committed in public spaces, such as hooliganism, or against public servants.

11. Pursuant to an agreement between Belgium and the Netherlands, Belgian offenders could serve their sentence at Tilburg prison, under the jurisdiction of the Belgian authorities and subject to Belgian law. Steps would be taken to reduce the number of inmates and violent incidents there, such as segregating vulnerable detainees and transferring detainees to other Belgian facilities on a voluntary basis.

12. Regarding prison conditions in the overseas territories, he said that the Netherlands had assumed jurisdiction over the courts and corrections facilities of the islands of Bonaire, St. Eustatius and Saba in October 2010. Measures were being phased in to bring the Bonaire prison into compliance with international standards, such as expanding its capacity, hiring and training sufficient staff, segregating minors and adults, providing psychological care in a specialized unit, running literacy training, medical services and recreational activities and designing operational protocols. There was no issue of overcrowding or any known cases of ill-treatment at the Sint Maarten prison and the detainees were well aware of their rights. In fact, there was an inmate association that liaised between detainees and the prison authorities. Moreover, an independent council and a supervisory committee made up of the Governors of the Netherlands Antilles monitored and reported on prison conditions.

13. **Ms. Baars** (Netherlands) said that detention conditions in Aruba were monitored by the Government to ensure compliance with the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. An inspector had been appointed to report to the Minister of Justice and Education, and two experts also gave an annual progress report to the Governor of Aruba. The total prison population as of 27 March 2013 had been 249. Juvenile offenders were encouraged to pursue their education. A written protocol was in place to guard against the ill-treatment of detainees, which included a contact person within the medical service with whom detainees could file a complaint. No official complaints had yet been lodged.

14. **Ms. Hato-Willem** (Netherlands) said that, under the Code of Criminal Procedure of Curaçao, pretrial detention could not exceed, and had to be deducted from, the custodial sentence. The conditions for extending pretrial detention grew increasingly stringent with each renewed request. Suspects could at any time apply for the suspension or termination of their pretrial detention or appeal decisions to extend it.

15. Several alternative procedures had been introduced with a view to reducing or eliminating the use of pretrial detention. Under the so-called Hato trial procedure, suspected drug-runners arrested at Hato airport were issued with a subpoena on the spot and called for trial within a month. In some cases, their passports were confiscated. The authorities in the Netherlands and Germany were also notified when suspected drug-runners travelled there from Curaçao. The Hura sessions, which had been introduced in 2012 and were run by the Public Prosecution Service, dealt with minor offences and generally led to a rapid resolution of cases. In April 2013, a new quick justice procedure had been introduced to despatch cases involving offences carrying maximum prison terms of up to 1 year. Under the new Code of Criminal Procedure, which was still being drafted, restrictions on the use of pretrial detention would be further tightened.

16. Local police only made audiovisual recordings of their interviews with persons suspected of committing serious offences. Those recordings were available to all parties in the criminal procedure.

17. The Sentro di Detenshon i Korekshon Kòrsou correctional facility had a capacity for 730 inmates and currently held 450. Juveniles and young adults up to the age of 24 were housed separately from adult offenders. A further centre for the detention of juvenile delinquents, in which the focus would be on education and rehabilitation, was being built. In 2006, a mandatory social and education programme had been introduced for juvenile offenders.

18. **Mr. van Schreven** (Netherlands) said that the use of forced treatment and coercion in mental institutions was a last resort, and that solitary confinement was strongly discouraged. A bill on mandatory health care currently before parliament allowed for

treatment at home, strengthened the legal position of people with mental disabilities and made a priority of applying the least invasive forms of treatment.

19. Minors and adults had the right to legal assistance before their first substantive interview with the police. Minors also had the right to assistance during the interview itself. The draft bill on legal assistance had been held up pending the outcome of negotiations with the European Union regarding a directive on the same subject. Under the bill, the authorities could deny a suspect's request for legal assistance if the request meant delaying questioning in an exceptional situation, such as where the lives of hostages were at stake. A suspect could subsequently contest such decisions and the courts could decide not to admit as evidence testimony given without legal assistance. In the view of the Government, the right to legal assistance did not extend to persons who were not held in custody. Accused or detained persons in the overseas territories had the right to legal counsel.

20. Unaccompanied minors who sought asylum and were thought to be victims of trafficking were housed in closed shelters for their own safety. They were held pending the outcome of their applications and prepared for integration into Dutch society, should the applications prove successful.

21. No assessments of the outcome of human rights training for public officials were available. One survey of prison staff, however, provided a positive picture of their treatment of detainees and showed that they were aware of the importance of respecting human rights. The authorities attached more importance to the practical implementation of human rights training by law enforcement officials than to their knowledge of specific international treaties and protocols. Tasers were currently used only by arrest teams but a pilot plan for their use by the general police was under consideration.

22. Four agencies acted as independent national preventive mechanisms. The Inspectorate of Security and Justice was one of those mechanisms and acted as coordinator. The fact that the Inspectorate, and hence the mechanisms, came under the eponymous Ministry in no way impinged on their independence. Their mandate extended to the Caribbean part of the Netherlands.

23. In Sint Maarten, specially trained officials dealt with prison violence, where necessary in cooperation with the police. The latest prison riot had taken place in early 2012. An assortment of educational programmes was made available to juvenile detainees on the island.

24. **Ms. Baars** (Netherlands) said that the Aruba Code of Criminal Procedure was being reviewed by the same committee of experts that had reviewed the Criminal Code, which had been approved by Parliament. The reviewed Code of Criminal Procedure should be submitted to Parliament by the end of 2013.

25. Access to a lawyer was provided to all detainees in Aruba from the moment of their deprivation of liberty. Minors and persons accused of serious crimes could not waive that right. There were enough lawyers in Aruba to cover demand. Persons unable to afford to pay for a lawyer were provided with the services of court-appointed counsel. Recordings of police interviews for serious crimes were strongly recommended in Aruba and were available to judges and defendants.

26. There was no formal evaluation of the training courses provided to police and prison staff in Aruba. The independent Public Service Investigation Agency investigated reports of wrongdoing by the police and the Prison Supervisory Board, which was headed by a judge, heard complaints from prisoners.

27. Although Aruba was not known as a destination for sex tourism, the authorities were alert to the issue and worked to ensure the prevention of trafficking in and sexual exploitation of children.

28. **Mr. Bruni** (Country Rapporteur) asked whether legislative amendments were required before the Optional Protocol entered into force in Curaçao and Aruba. He also asked whether those territories had their own national preventive mechanisms, and whether the Caribbean part of the Netherlands would be covered by a national human rights institution. In the absence of efforts to document jurisprudence with regard to grounds for granting asylum, he wished to know on what basis non-refoulement was applied. He asked the delegation to comment on reports that the authorities had failed to properly investigate the use of excessive force and constraint in some cases when forcibly returning aliens to their countries.

29. He asked why asylum seekers were kept in cells 16 hours a day when they had committed no crime and what happened to detainees held in pretrial detention for the maximum 102 days. Were they released? Prison regulations should be translated for inmates who did not understand Dutch. He asked whether 11 out of 29 prison establishments were due to be closed and, if so, whether the closures could lead to overcrowding or violence.

30. He wished to know whether, when it was deemed in exceptional cases that requests for legal assistance could not be met immediately, court-appointed counsel could represent suspects in the interim. Finally, he asked whether the delegation could provide examples of public officials sentenced for having committed acts of torture or ill-treatment.

31. **Ms. Belmir** (Country Rapporteur) reiterated her questions regarding the detention of asylum seekers until it had been determined that they were minors and asked whether human rights considerations constituted an integral element of government policy. It was important for the Committee to know how the training of law enforcement officers influenced their handling of suspects and detainees.

32. **Mr. Mariño Menéndez** said that he would like to know whether international treaties entered into by the Netherlands applied to all territories of the State party, and whether a territory could file a reservation independently. He would also like to know how the mechanisms for obtaining compensation in cases of ill-treatment by government officials worked. He asked whether persons being questioned but not under arrest were informed of their right to remain silent.

33. **Mr. Tugushi** said that the Committee would welcome assurances that the extremely low figures for the arrival of asylum seekers in Aruba did not reflect any inadequacies in the system that might hinder their access to asylum procedures. The Committee would like to see specific figures regarding the length of stay of asylum seekers and migrants in an irregular situation, not just averages.

34. **Ms. Gaer**, referring to the State party's response to question 17 of the Committee's list of issues, expressed surprise at the absence of disaggregated statistics on the ethnic origin of members of the prison population and asked whether any informal studies or other indicators were available that might shed light on the matter.

35. **Ms. Sveaass** asked the delegation to comment on changes to the so-called TBS (*ter beschikking stellen*) system, which had introduced a harsher form of care and punishment for persons in forensic psychiatric institutions. Why did the Netherlands have a high number of inpatient beds in psychiatric hospitals compared to many other countries and were there plans to reduce hospital numbers in exchange for greater focus on social services and community-based care? She requested more information on the "applicable guidelines" on the administration of forced treatments and the use of coercion, restraint and solitary confinement in mental health institutions. She also asked whether the national preventive mechanism visited psychiatric hospitals and what its reports had shown. She reiterated her request for information on investigations into the Brandon case and sought clarification on

inside reports that in every institution around 10 to 15 persons with an intellectual disability were treated in a similar manner.

36. **The Chairperson**, speaking in his capacity as a member of the Committee, expressed concern at the high rates of detention of undocumented aliens. He was also concerned that there was no requirement to give specific grounds for pretrial detention. He sought clarification on reports that in practice asylum seekers only had access to a lawyer the day before their first interview.

37. **Mr. Bruni** (Country Rapporteur) asked whether there had been any prosecutions and convictions of public officials for cases of ill-treatment since the submission of the State party's report and how the victims had been compensated. He sought clarification on the relationship between the Custodial Institutions Inspectorate and the national preventive mechanism. He asked for examples of investigations carried out by the Public Service Investigation Agency in Aruba. He reiterated his question on whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were included in the training of prison staff in Curaçao. Was the Optional Protocol to the Convention applicable in Aruba and Curaçao?

38. **Ms. Belmir** (Country Rapporteur) sought clarification as to which court had primacy in asylum procedures. She asked whether there was legal provision for the requirement of a two-tier decision process in the administration of treatments and medication to patients in psychiatric care, and whether an appeals system against abuse or excesses was in place.

39. **Mr. van Schreven** (Netherlands) said that the scope of the National Human Rights Institute was currently limited to the Netherlands, but might be extended to the Caribbean territories in the future. Everyone had access to a lawyer and free legal aid, where appropriate. It was possible to start an interrogation without the presence of a lawyer in exceptional circumstances, for example in hostage situations, or in cases involving rape or terrorism, but anything said during such interrogations could not be used against the accused.

40. **Ms. Schild** (Netherlands) said that the Netherlands had ratified the Optional Protocol to the Convention in 2010 and its application was limited to the European part of the Kingdom of the Netherlands.

41. **Ms. Philipps** (Netherlands) said that the entity that had international legal authority was the Kingdom of the Netherlands, which was responsible for ratifying international human rights instruments on behalf of all countries of the Kingdom. However, if the legislation required to implement the treaty nationally was not in place in the Caribbean islands, the European part of the Kingdom went ahead with ratification for the European part and the ratification for the other parts occurred at a later date. Curaçao was awaiting some amendments to legislation on the prison system before ratification could go ahead. Curaçao, as a part of the Kingdom of the Netherlands, was a party to a number of human rights treaties adopted by the Council of Europe and to many of the United Nations human rights instruments.

42. **Mr. van Schreven** (Netherlands) said that the TBS system was designed for persons with psychological problems to undergo comprehensive treatment and rehabilitation and be released into society when ready. The Brandon case had shocked the nation and triggered a change in approach to psychiatric patients.

43. **Ms. Croes** (Netherlands) said that the comments given on the position with regard to the Optional Protocol in Curaçao were also applicable to Aruba. Amendments to legislation in Aruba were under discussion.

44. **Mr. van Schreven** (Netherlands) said that tests were in place to establish whether asylum seekers claiming to be minors were the age they claimed to be. Such tests were carried out as quickly as possible so that minors were detained for as short a period as possible; they could not be placed elsewhere until their age was established.

45. **Mr. Hoogendoorn** (Netherlands) said that court decisions formed the line of jurisprudence in asylum proceedings. All complaints of forced return were looked into with full scrutiny and the persons concerned were informed of the outcomes of investigations. It was true that aliens in detention were kept in their cells for 16 hours a day, but amendments to create a more open regime would be considered when preparing the new legal framework on alien detention later in 2013. Asylum seekers usually had access to a lawyer twice before their first interview.

46. **Ms. Schild** (Netherlands) said that human rights were included in the legislation process and it was the responsibility of public officials to report on how the proposed legislation would respect the human rights standards and obligations of the Netherlands. Victims of ill-treatment by the police had recourse to the civil courts to obtain reparation and compensation and the Government followed up claims. While prostitution was legal, enforced prostitution and exploitation for sexual purposes was prohibited under the Criminal Code.

47. **Ms. Philipps** (Netherlands), responding to the request for examples of prosecutions and convictions of public officials for cases of ill-treatment, said that two police officers had been prosecuted and convicted of torture in Curaçao in 2008; a police officer had been convicted of ill-treatment in March 2013; and on 22 May 2013 three police officers would be prosecuted for torture. She confirmed that training provided in Curaçao for prison staff and law enforcement officers took into account the United Nations Standard Minimum Rules for the Treatment of Prisoners.

48. **Ms. Dreessen** (Netherlands) said that, in compliance with legislation on privacy, data on the ethnic background of the prison population was not available, but data disaggregated by country of birth showed that in 2011 almost 55 per cent of inmates were born in the European part of the Netherlands, 7.4 per cent in the Caribbean part of the Kingdom, 7.3 per cent in Suriname, 5 per cent in Morocco and 3 per cent in Turkey. Regarding the concern that there was no requirement to give specific grounds for pretrial detention, she said that the court had a legal obligation to give reasons for its decisions and there was provision to appeal against decisions. Each institution under the TBS system had its own, independent complaint mechanism.

49. **Mr. Bruni** asked the delegation to confirm reports of the planned closures of 11 of the State party's 29 prisons, which would aggravate overcrowding in the remaining facilities.

50. **Ms. Dreessen** (Netherlands) said that the master plan in place provided for the closure of several prisons. It was still at the planning phase and had not yet been discussed in parliament. The prison population had been steadily decreasing and the plan called for a gradual reduction in the number of places in prisons from the current 11,000 to around 10,000, which would come from the transformation of single cells to two-person cells wherever possible. Another measure under consideration was the use of electronic detention, with the wearing of an ankle bracelet to allow a person to work during the day and remain at home at night under curfew. The Netherlands was looking into the use of private contractors to manage prisons, under government supervision, but plans were at an early stage.

51. **Ms. Hato-Willems** (Netherlands) said that no suspect could be questioned without the presence of a lawyer in Curaçao and all suspects were informed of their rights. Witnesses were the only persons allowed to be questioned without the presence of a lawyer.



52. **The Chairman** expressed appreciation for the State party's thorough preparation of its report and responses to the Committee's questions and the frank and open dialogue, which had enriched the Committee's view of the situation in the Netherlands.

*The meeting rose at 5.50 p.m.*