



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

Distr.: General
13 June 2013
English
Original: French

Committee against Torture
Fiftieth session

Summary record of the first part (public)* of the 1144th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 14 May 2013, at 10 a.m.

Chairperson: Mr. Grossman

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The meeting was called to order at 10 a.m.

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

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

1. *At the invitation of the Chairperson, the delegation of the Netherlands took places at the Committee table.*
2. **Mr. van Schreven** (Netherlands) explained that he was addressing the Committee on behalf of the Kingdom of the Netherlands, which comprised the Netherlands, including the Caribbean Islands of Aruba, Curaçao and Sint Maarten. Each of those four countries enjoyed autonomy with respect to the implementation of international commitments, but that situation in no way affected the Kingdom's duty to apply the Convention. The Netherlands strove to promote international and national respect for the Convention provisions. Many of the priorities in national policies to combat trafficking and other forms of exploitation, violence in the family and violence against children reflected the standards embodied in the Convention.
3. In April Parliament had debated the detention of aliens. The Dutch Government, aware that such a measure should be used only as a last resort, had decided to reduce the capacity of detention facilities from 2,500 to 1,000 places and to advocate alternative solutions. It would also be presenting to Parliament a bill introducing a separate regime for alien detainees, which was distinct from that applied in the criminal justice system, and would thus embody in law a difference that already existed in practice.
4. The year 2012 had seen the opening of the Netherlands Institute for Human Rights in compliance with the Paris Principles. The mandate of the National Rapporteur on Trafficking in Human Beings and on Sexual Violence against Children had been strengthened in 2009 and 2012 and expanded in order to combat child pornography. One of the Government's priorities in the judicial sector was to protect and guarantee crime victims' rights at all stages, for example by streamlining compensation procedures.
5. **Ms. Baars** (Aruba) said that in 2012 the Aruban Parliament had adopted a new criminal code introducing a new juvenile justice system, where courts could order the placement of juvenile delinquents in a closed centre, under a measure called a "PIJ". Another innovation had been the opening of a centre for the care and rehabilitation of young recidivist drug addicts. Those measures should make it possible to impose the requisite penalties while the persons concerned received adequate treatment and care in order to facilitate their subsequent reintegration into society.
6. Aruba ensured that detainees' rights were respected in accordance with the principles defined by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The Police Order on Detainees had been revised in 2009 and 2012 to take account of the decision of the European Court of Human Rights in the case *Salduz v. Turkey*. It guaranteed the right to consult a lawyer prior to the first police interview. An instruction concerning the use of force by prison staff had been adopted in 2012. Police officers and the staff of the Correctional Facility had received training in detainee treatment.
7. An interdepartmental, multidisciplinary task force had been set up in Aruba in 2007 to counter human trafficking and people smuggling. It had devised a comprehensive action plan and introduced a number of preventive measures and victim assistance schemes. In addition, a national coordinator had been appointed and a memorandum of understanding signed with the ministers of justice of the other countries in the Kingdom.

8. **Ms. Hato-Williams** (Curaçao) said that a new criminal code had entered into force in Curaçao in 2011 and that the Code of Criminal Procedure was being revised. The detention centre in Barber had been completely remodelled and the renovation of the centre in Rio Canario would be completed in 2014. One wing of the Kòrsou correctional facility was reserved for young people between the ages of 16 and 24. The facility boasted a new external inmates' reception building and a new, fully equipped, fitness centre.

9. In 2012 the Office of the Public Prosecutor had set up a fast-track justice system (Hustisia Rapido (HURA)) to settle cases concerning minor offences. Human trafficking had been criminalized in 2011.

10. **Mr. Bruni** (Country Rapporteur) asked whether it was true that the procedure for adopting the bill on counsel and police interviews had been interrupted by the participation of the Netherlands in the negotiations surrounding a European Commission draft directive on the right of access to a lawyer. He requested details of the provisions governing legal assistance in the Caribbean part of the Netherlands and of the circumstances in which the police were authorized by law to refuse the presence of a lawyer during questioning if it deemed that presence to be contrary to the interests of the inquiry.

11. What conclusions had been drawn from the comparative studies of alternatives to pretrial detention conducted in 2011? Had any measures been adopted as a result? He also requested details of the membership and functions of the prison inspectorate and of provisions to guarantee the independence of that composite body. Did the competence of the Netherlands Institute for Human Rights extend to Aruba and Curaçao? What inspection mechanisms to prevent ill-treatment existed in prisons in Bonaire, Sint Eustatius and Saba?

12. He would like the Netherlands delegation to comment on allegations by NGOs that the detention regime in administrative detention centres was the same as that in prisons and that aliens who were not the subject of any legal proceedings could be locked up in a cell for as long as 16 hours a day. He was reliably informed that asylum seekers arriving at Amsterdam airport were automatically placed in detention. Had a maximum limit on detention been set and was there any guarantee that the persons concerned could receive medical treatment? The fast-track, eight-day procedure for processing asylum applications might prove difficult for asylum seekers who were unable to gather the necessary documentation on time. All comments on that point would be welcome. He asked about the number of forced returns in previous years, drawing the delegation's attention to the moral and physical injury which could be occasioned by that measure, especially in the case of forced expulsions to Iraq. In that connection, he wished to know if the Netherlands monitored the situation of expellees after their return.

13. The delegation might indicate whether any information had been gathered on cases where mechanical restraints had been misused to punish minors in young offenders' institutions, and comment on allegations that abuse, in the shape of forced medication, was frequent in Dutch psychiatric hospitals.

14. He wished to know whether, in Aruba, the revised version of the Code of Criminal Procedure, which was designed to reduce the length of proceedings, had entered into force and whether the Internal Investigations Bureau (BIZO) and the Aruban police had investigated complaints against members of the police force. Did prison staff in Curaçao receive training in the Standard Minimum Rules for the Treatment of Prisoners? Despite moves to improve security in the Bon Futuro prison, one detainee had been murdered in 2011. Had an investigation been held and what new measures had been adopted? He invited the delegation to supply data on the prison population in Caribbean prisons, the only ones in the Kingdom to be overcrowded. What action had been taken on the CPT recommendations concerning the reduction and suppression of violence among detainees in those prisons? Were any measures lined up to prevent prison overcrowding and the upsurge

in violence which might stem from plans to close 11 of the country's 20 prisons for financial reasons.

15. **Ms. Belmir** (Country Rapporteur) asked what was meant by the term "national" in Dutch law and enquired about the scope of "national" institutions' mandate. It was unclear whether the applications filed with the European Court of Human Rights were directed against Aruba or the Netherlands. It seemed that citizens of the Caribbean part of the Kingdom were treated differently to citizens resident in the European part. Some clarification of nationality issues would therefore be helpful. She wished to know which body was responsible for dealing with disciplinary matters within the judiciary. She also wished to know if it was possible to appeal against fast-track procedures and whether the Supreme Court was the court of last instance for immigration cases.

16. She believed that the euthanasia of newborn babies and infants was authorized in the Netherlands and would like some clarification of that issue. She also requested the delegation to provide details of the implementation of the 1994 Equal Treatment Act, especially of the constitutional review of compliance with its provisions. What was done in practice to take account of the vulnerability of certain population groups, especially with regard to legal assistance? Fearing that the growth of databanks affording an opportunity for ethnic profiling would give rise to abuses, invasion of privacy and affronts to dignity, she invited the delegation to comment on that subject. According to some reports, insufficient heed was paid to human rights when laws and policies were formulated in the Netherlands. She was surprised at the lack of a well-organized, coherent training programme to familiarize civil servants with human rights mechanisms, in particular the Convention against Torture, and the way they operated. She requested additional information in that respect.

17. She would like clarification with regard to the detention conditions of persons with disabilities, especially any measures to segregate them. She would be grateful for some information regarding the independence and impartiality of investigations into complaints of torture in detention centres. She wished to know if the beneficiaries of victims of the fire at the detention centre at Schipol airport in 2005 had received compensation. She also requested details of the conditions on which migrants' families could be returned when they refused to leave the territory voluntarily. She was puzzled by the State party's justification of the detention of unaccompanied minors when there were doubts about their age. She urged the Government to redouble its efforts to combat the trafficking and sexual exploitation of minors, especially in the Caribbean parts of the Kingdom. She would welcome the provision of more detailed statistics on that situation.

18. **Mr. Tugushi**, noting that some of the entities forming the national mechanism to prevent torture responded to ministries, wondered how independent they were. He asked the delegation to provide some clarification in that respect and to say if any measures were being contemplated to remedy the situation. He also invited the delegation to supply some information on progress with plans to reform the prison system, which would lead to the closure of several prisons. Was the Government still planning to hand over the management of some detention centres to private companies? In a recent report, the Advisory Committee on Alien Affairs (ACVZ) had drawn attention to the shortcomings of reception centres for asylum seekers and had made some recommendations. It would be interesting to know what follow-up the Government intended to give to that report. In view of the relatively high suicide rate in Dutch prisons compared with other European countries, he asked what measures the State party planned to take to curb that phenomenon.

19. **Ms. Sveaass**, referring to paragraphs 43 and 44 of the report, said that the health check mentioned in the Istanbul Protocol should make it possible to assess not only asylum seekers' state of health but also to prove, where appropriate, that they had been subjected to torture in their country of origin. They could use those findings to obtain compensation in

the event of their return. In view of the fact that the State party intended to equip the police forces with tasers, she pointed out that the Committee had frequently warned against the use of such weapons because of the risks they posed for the physical and mental health of persons thus immobilized. All comments on the matter would be welcome.

20. The delegation could perhaps say whether the State party intended to ratify the Convention on the Rights of Persons with Disabilities and, if so, if it intended to enter any reservations.

21. She wished to know if the 4,000 young persons with disabilities who had been placed in quasi-detention centres in 2009 without charge and who had then been transferred to alternative protective settings had received an apology or compensation for the injury suffered. She also wished to know how many minors had been the subject of a hospital order (“TBS”, involuntary commitment under adult criminal law) and if, when it concerned minors, there was a time limit. She also asked how often means of restraint, such as handcuffs and straitjackets, were used to control minors, if their use was always recorded and whether the State party intended to ban their use on young people under 18 years of age.

22. She requested the delegation to describe the State party’s position on the recommendations made by the CPT after its visit to the Netherlands in 2011 regarding the segregation of some detainees, including that of psychiatric patients, in some cases for lengthy periods of time. In her opinion, segregation, including in forensic health services, should not be imposed on persons with a low intelligence quotient (IQ) and should be avoided at all costs when the person had a disability, irrespective of his or her IQ.

23. **Mr. Mariño Menéndez** asked whether it was the provisions of the American Convention on Human Rights or those of the European Convention on Human Rights which applied in Aruba and Curaçao. Could audiovisual recordings of questioning be used as prosecution evidence? Could a court demand to see them? He also wished to know what action had been taken on compensation claims from victims of pretrial ill-treatment, whether asylum seekers could benefit from an open prison regime pending a decision on their case, and who was authorized to take that decision. The delegation might outline the criteria to be met in order to benefit from the special regime sometimes granted to asylum seekers from vulnerable minority groups. Were those decisions taken by the executive? Was a special asylum policy applied to Syrian nationals?

24. With regard to violence against women and trafficking in women, additional information, backed by statistics, on the number of prosecutions and sentences and the type of sentences handed down in cases related to illegal prostitution would be welcome. Did the State party intend to ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence?

25. **Ms. Gaer** asked the delegation to supply the Committee forthwith with the statistics requested in paragraph 17 of the list of issues. In particular, she wished to know the proportion of Roma, Sinti, Moroccans, Turks and Antilleans among the total number of persons in pretrial detention, or serving a sentence in the Netherlands. She likewise wished to know which communities were worst affected by trafficking and whether attacks on members of the LGBT community had been investigated and resulted in any convictions and, if so, what sentences had been imposed. She would appreciate additional information on the situation and origin of victims of child pornography and sexual tourism.

26. Were prison staff in Aruba and the Caribbean Netherlands trained to contain riots and acts of violence in prisons? In default of a complaint mechanism for denouncing acts of sexual violence in Aruban prisons, were victims able to turn to a trusted third party without fear of reprisals? She likewise wished to know whether in Curaçao, Bonaire, Sint Maarten and Aruba young detainees could study and, if so, what subjects were taught.

27. **The Chairperson**, referring to the bill on counsel and police interviews described in paragraph 4 of the report under consideration, asked if the State party had defined criteria for deciding whether the presence of a lawyer was contrary to the interests of the inquiry and who (the prosecution service, the courts or the police) was authorized to take such a decision. He wished to know if the State party was contemplating steps to ensure that placement in detention was always used as a last resort and that, in practice, aliens were not held in detention for more than 18 months, as was often the case according to civil society organizations. Were the Dutch authorities concerned by the fact that 40 per cent of detainees were awaiting decisions? Did they intend to remedy the situation? Was it true that asylum seekers did not meet their lawyer until the day before their first hearing?

28. He wished to know whether measures were taken to obtain the consent of the person concerned when a person needed medical treatment in a psychiatric hospital and what the legal precedents were in that area. Was the Convention directly applicable in all parts of the Kingdom? Lastly, was it true that, in the event of a serious recidivism, the juvenile criminal law bill would oblige courts to impose prison sentences and, if that was the case, what were the reasons for that decision?

29. **Mr. Bruni** (Country Rapporteur) asked whether juvenile detainees were always separated from adults in Curaçao and whether the programme for training police officers in the treatment of detainees had been evaluated and considered effective because, for example, it had led to a reduction in the number of detainees' complaints and the number of prison suicides and had curbed violence among prisoners and attacks on prison staff.

30. **Ms. Belmir** (Country Rapporteur) asked what justification there was for not allowing offenders suffering from mental disorders and placed under a "TBS" order — in which case they were declared partially responsible for the crime they had committed — to follow treatment the whole time they were serving their sentence, rather than only after some years had elapsed.

The public part of the meeting rose at noon.