

Committee against Torture

Concluding observations on the seventh periodic report of the Netherlands*

1. The Committee against Torture considered the seventh periodic report of the Netherlands (CAT/C/NLD/7) at its 1693rd and 1696th meetings (see CAT/C/SR.1693 and 1696), held on 20 and 21 November 2018, and adopted the present concluding observations at its 1712th and 1715th meetings, held on 3 and 5 December 2018.

A. Introduction

2. The Committee welcomes the dialogue with the State party's delegation and the oral replies and written information provided in relation to the concerns raised by the Committee.

B. Positive aspects

3. The Committee welcomes the ratification of or accession to the following international instruments by the State party:

- (a) The Convention on the Rights of Persons with Disabilities, in 2016;
- (b) Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, in 2015.

4. The Committee also welcomes the State party's initiatives to revise its legislation in areas of relevance to the Convention, including the adoption of:

- (a) Adolescent Criminal Law of 1 April 2014;
- (b) Mandatory Reporting Code (Domestic Violence and Child Abuse) Act, in 2013;
- (c) New Criminal Code, which aims to expand the definition of "victim of domestic abuse" to include partners or companions, in 2015 in Sint Maarten.

5. The Committee further welcomes the initiatives of the State party to amend its policies, programmes and administrative measures to give effect to the Convention, including:

- (a) The adoption of the national action plan "Together against Trafficking in Human Beings," in 2018;
- (b) The establishment of the Inter-country Taskforce in the Caribbean part of the Kingdom of the Netherlands, in response to the 2016 judgement by the Grand Chamber of

* Adopted by the Committee at its sixty-fifth session (13 November to 7 December 2018).

the European Court of Human Rights in the case of *Murray v. The Netherlands* (Application no. 10511/10);

(c) The launch of a three-year programme called “The power of difference” and a campaign “Strike out discrimination,” which aim to prevent ethnic profiling by the police, in 2015;

(d) The appointment of a programme manager by the police to oversee domestic violence and child abuse projects, in 2015;

(e) The adoption of a national action plan on human rights, in 2013;

(f) The conclusion of the Memorandum of Understanding on Human Trafficking and Smuggling and Illegal Immigration by the Netherlands, Aruba, Curaçao, Sint Maarten, and Bonaire, Saba and Sint Eustatius, which sets out an agreement to update the crime pattern analysis every two years;

(g) The establishment of the Commission Supervision Detainee Care by the Ministry of Justice to ensure supervision and investigation of the treatment of persons held in detention facilities, in Curaçao;

(h) The establishment of Trafficking and Migrant Smuggling Taskforce and the appointment of a National Counter Trafficking Coordinator, in Aruba.

C. Principal subjects of concern and recommendations

Pending follow-up issues from the previous reporting cycle

6. In paragraph 35 of its previous concluding observations (CAT/C/NLD/CO/5-6), the Committee requested the Netherlands to provide further information regarding areas of particular concern identified by the Committee in paragraph 10 on ensuring or strengthening the right of access to a lawyer for persons in police custody; in paragraph 23 on conducting, prompt, impartial and effective investigations; and in paragraph 30 on statistics on prosecuting suspects and sanctioning perpetrators of torture or ill-treatment. The Committee expresses its appreciation for the State party’s follow-up response on those matters and the substantive information provided on 31 July 2014 (CAT/C/NLD/CO/5-6/Add.1). In view of that information, the Committee considers that the recommendations included in paragraphs 10, 23 and 30 mentioned above have been partially implemented (see paras. 9, 32 and 56).

Criminalization of torture

7. While noting the State party’s willingness to consider torture as a “manifestly unlawful” crime set forth in section 11 (3) of the International Crimes Act, the Committee is concerned by the absence of specific legislation defining torture in conformity with articles 1 and 2 of the Convention applicable in all the constituent countries of the State party. It also regrets the lack of clear information on whether a crime of torture is not subject to statute of limitation in all constituent countries of the State party. In addition, it is concerned that domestic legislation concerning torture is not harmonized throughout the State party (arts. 1, 2 and 4).

8. The State party should take all necessary measures to promote the adoption of specific national legislation defining torture in line with articles 1 and 2 of the Convention throughout all the constituent countries of the State party. It should also ensure that (a) an order from a superior officer or a public authority may not be invoked as a justification of torture, (b) a crime of torture is not subject to any statute of limitation, and (c) legislation concerning torture is harmonized throughout all constituent countries of the State party.

Fundamental legal safeguards

9. While taking note of the efforts made by the State party to strengthen the right to legal counsel, including by adopting legislative measures to implement the European directive on the right of access to a lawyer (Directive 2013/48/EU) and amending the Code of Criminal

Procedure to provide legal aid to suspects of category C (minor) offences, the Committee is concerned by the continued absence of lawyers in Saba and St Eustatius. In addition, while noting the procedural safeguards in domestic legislation, the Committee regrets information that in practice, persons under police custody are often denied the right to notify a person of their own choosing about their detention (arts. 2, 11, 12, 13 and 16).

10. The State party should ensure, in law and in practice that all detainees are afforded all fundamental legal safeguards from the outset of the deprivation of liberty, including the safeguards mentioned in paragraphs 13 and 14 of the Committee's general comment No. 2. It should take the necessary measures to ensure the adequate access to lawyers particularly in the Caribbean part of its territory and also guarantee the right of detainees to notify a person of their own choosing of their detention, including by providing adequate trainings to police officers.

Non-refoulement

11. While noting the efforts made by the State party to respond to the large influx of asylum seekers and undocumented migrants, including the high number of unaccompanied minors, arriving in its territory, the Committee is concerned at numerous reports alleging that the State party acted in breach of the principle of non-refoulement during the period under review. In this regard, this Committee itself found in *F.B v. The Netherlands* that the State party's expulsion of a foreign national would constitute a violation of the principle of non-refoulement under article 3 of the Convention (see CAT/C/56/D/613/2014). In particular, the Committee is concerned that:

(a) The fast-track asylum procedure for individuals coming from countries designated as "safe" may not allow thorough assessment of their special circumstances;

(b) The exclusion clauses of the 1951 Convention relating to the Status of Refugees are reportedly applied to all Afghans who previously worked for the security service Khad/Wad and that the burden of proof being on the applicants has resulted in effective denial of refugee status to all of these individuals;

(c) The authorities of Curaçao reportedly forcibly returned more than a thousand Venezuelans in 2017 among whom some expressed a fear of being subjected to torture and ill-treatment upon return;

(d) The State party did not provide sufficient information concerning the compliance with the principle of non-refoulement by the Dutch armed forces operating overseas, in particular with regard to the transfer of detainees to countries where there may be a risk of being subjected to torture and ill-treatment;

(e) At the time of signature, ratification or accession to the Convention relating to the Status of Refugees, the State Party did not declare that this Convention extended to all of its constituents countries and that neither Aruba, Curacao nor Sint Maarten has adopted its own refugee and asylum legislation, thereby creating a significant gap in the legal framework concerning protection against refoulement (art. 3).

12. The Committee recommends that the State party adopt all the necessary legislative, administrative and other measures to ensure the compliance with the principle of non-refoulement set out in article 3 of the Convention. In particular, the State party should:

(a) **Allow sufficient time for asylum seekers, especially those in the fast-track procedures, to fully indicate the reasons for their application and obtain and present crucial evidence in order to guarantee fair and efficient asylum procedures and ensure the right to appeal, with a suspensive effect, in order to ensure that the legitimacy of applications for protection by refugees and other persons in need of international protection is duly recognized, and refoulement and collective return are prevented;**

(b) **Promptly establish a national asylum determination procedure in Aruba, Curacao and Sint Maarten that permits a thorough assessment of whether there is a substantial risk that the applicant would be subjected to torture in the country of destination, and ensure that the European Netherlands provides necessary assistance**

in establishing these procedures, fully in accordance with article 43 of the Kingdom's Charter providing that promotion and protection of human rights is a Kingdom affair;

(c) Apply exclusion clauses of the 1951 Convention only when there are serious reasons to believe that a refugee may have been involved in an excludable act and only after a full assessment of the individual circumstances of the case, in accordance with the UNHCR's Guidelines on International Protection on the issue;

(d) Consider extending the territorial application of the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto to all the constituent countries of the State party.

Medical examinations as part of asylum procedure

13. The Committee previously expressed its concern that the State party does not use the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) as a means for establishing a link between the asserted ill-treatment in the asylum application and the findings of actual physical examination. It remains concerned at reports that the medical examination is still conducted to merely assess the applicant's ability to be interviewed, not necessarily looking to identify vulnerable persons such as victims of torture, record any indications as to their claims and provide them with support services (arts. 3 and 10).

14. Recalling the Committee's previous recommendations (see CAT/C/NDL/CO/5-6, para. 12), the State party should take measures to:

(a) Identify asylum seekers with specific needs, especially victims of torture and ill-treatment, as early as possible by ensuring that in all the constituent countries of the State party, during the medical examination as part of asylum procedure, applicants are assessed for not only their capacity to be interviewed but also their health conditions and needs of treatment and support due to torture, ill-treatment or other trauma suffered;

(b) Ensure the application of the Istanbul Protocol in the asylum procedures and provide training to all relevant professionals on monitoring, documenting, reporting and investigating torture and ill-treatment, with a view to providing redress to the victims.

Detention of asylum seekers and undocumented migrants

15. The Committee is concerned at reports of the State party's continued practice of detaining asylum seekers and undocumented migrants in closed facilities. In particular, it is concerned at reports that asylum seekers arriving at Schiphol airport in Amsterdam, especially when subject to deportation pursuant to the Dublin Regulation, are systematically detained without individual assessment of the need for detention and that the number of affected persons has significantly increased in the last two years. In addition, while taking note of the delegation's statement that no foreigner is subject to administrative detention extending beyond 18 months in accordance with article 59 of the Alien Act and article 15 of the EU Return Directive (EU directive 2008/115/EG), the Committee expresses its concern at numerous reports that many asylum seekers and undocumented migrants are repeatedly detained and that the total length of this repeated detention often exceeds the 18-month time limit.

16. Furthermore, the Committee expresses its serious concern about consistent reports that detention conditions of asylum seekers and migrants fail to meet the international standards. While taking note of the Repatriation and Detention of Aliens Bill aiming to differentiate the regime of migration detention from that of criminal detention, it is concerned at reports that migrant detainees are held in cells of heavily guarded institutions with cameras and high walls and are often held in cells with other prisoners under the criminal regime. It is particularly concerned at the reported use of solitary confinement against asylum seekers and migrants who then may have limited access to legal aid and healthcare services. It is further concerned that the abovementioned Bill provides for an even more restrictive regime for all newly arriving migrants for up to two weeks and continues to permit the use of solitary confinement as a disciplinary measure. Lastly, it is concerned that in Curaçao, persons in

need of international protection awaiting deportation, mostly Venezuelans, are detained in closed facilities with appalling living conditions and these persons are subjected to ill-treatment and sexual assaults by police and immigration officials to whom no charges have been brought (arts. 11 and 16).

17. The Committee reiterates its recommendations (see CAT/C/NDL/CO/5-6, paras. 14-16) that the State party should ensure, including by revising the Repatriation and Detention of Aliens Bill, that:

(a) Asylum seekers should not be routinely detained and, if necessary, should be detained only as a measure of last resort, for as short a period as possible and in facilities appropriate for their status;

(b) The administrative detention of foreigners, including in the context of repeated detention, is not of a long duration and is fully in line with international human rights standards, including the Revised Deliberation No. 5 on deprivation of liberty of migrants of the Working Group on Arbitrary Detention;

(c) All allegations of ill-treatment of asylum seekers and other foreigners in detention by police officers or prison guards are promptly, effectively and impartially investigated, and that perpetrators are prosecuted and punished;

(d) The legal regime of alien detention is suitable for its purpose and is strictly differentiated from the regime of penal detention and, in particular, solitary confinement is not used as a disciplinary measure against detained asylum seekers and undocumented migrants

(e) Asylum seekers and undocumented migrants who are deprived of liberty have adequate access to an independent and effective mechanism for addressing complaints of torture and ill-treatment;

(f) Promptly, effectively and impartially investigate all incidents and allegations of torture and ill-treatment of asylum-seekers and migrants in detention, prosecute and, if found responsible, punish the perpetrators; **(g) Independent national and international monitoring bodies and non-governmental organizations regularly monitor all places where asylum seekers and migrants are deprived of their liberty.**

Unaccompanied children asylum-seekers and families in detention

18. While noting the new detention regime for unaccompanied children and families with children awaiting deportation, the Committee remains concerned about reports that both the number of detained families awaiting deportation and that of unaccompanied asylum-seeking children placed in detention have increased during the reporting period. It is also concerned by information that unaccompanied children asylum seekers do not receive sufficient assistance, including legal aid, throughout the asylum procedure (arts. 11 and 16).

19. The State party should take all the measures to avoid detention of children placed in migration detention facilities in all the constituent countries of the State party, including by using alternative measures to detention. It should also ensure that unaccompanied children asylum-seekers have adequate access to appropriate assistance, including legal aid, throughout the asylum procedure.

Training

20. While noting the extensive trainings provided to public officials, including those on the treatment of prisoners, use of force and identification and referral of vulnerable persons among asylum seekers, the Committee regrets the absence of information on the instructions provided for law enforcement personnel at all levels, the overall size of the target group, the percentage of those trained, and the frequency of these trainings. It also notes the lack of information on trainings provided to public officials on the provisions of the Convention in Sint. Maarten (art. 10).

21. The State party should:

(a) **Ensure that education, information and instructions regarding the prohibition against torture are fully included in the training of medical personnel and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment;**

(b) **Ensure that both the Convention and other related international instruments are included in the training, such as the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);**

(c) **Develop and implement training programmes on non-coercive investigation techniques;**

(d) **Develop and implement specific methodologies to assess the effectiveness and impact of training and educational programmes provided to relevant public officials on the provisions of the Convention in terms of reducing the number of cases of torture and ill-treatment.**

The National Agency for the Prevention of Torture (NPM)

22. While noting that the Law Enforcement Council and other relevant inspectorates have their own mandates to visit detention facilities in the Caribbean parts of the Netherlands, the Committee remains concerned that the Optional Protocol remains applicable only to the European part and the national preventive mechanism (NPM) does not have a mandate to conduct regular and routine preventive activities outside the European Netherlands. In this regard, it notes the intention expressed by the delegation to have the Optional Protocol applicable in Curacao as soon as possible. In addition, the Committee is concerned about consistent reports on the NPM's lack of both resources and independence. It is also concerned about information that the NPM does not effectively monitor detention facilities leased to foreign countries and military detention facilities, including those managed overseas (arts. 2, 11, 12, 13 and 16).

23. **The State party should take all the necessary measures to withdraw its declaration on the exclusive territorial application of the Optional Protocol to the European Netherlands and ensure the applicability thereof throughout the State party, including the Caribbean Netherlands. Recalling the Committee's previous recommendations (see CAT/ C/NLD/CO/5-6, para. 28), it should ensure complete financial and operational independence of the NPM, both factual and perceived, including by ensuring a separate budget referring specifically to the NPM, and consider reviewing the current formation of the NPM with a view to bringing it fully in line with the Subcommittee on Prevention on Torture's "Guidelines on national preventive mechanisms" and the Paris Principles. It should also ensure the effective monitoring of all aspects concerning detention facilities leased to foreign countries and military detention facilities including those managed overseas.**

National Human Rights Institutions

24. While taking note of the statement by the delegation of Aruba that draft legislation on establishing an ombudsman and children's ombudsman is awaiting a public debate, the Committee regrets that despite the commitment made by the Governments of Aruba and Curaçao during the universal periodic review in 2012, none of the autonomous territories of the Kingdom has established a national human rights institution. While taking note of the existing human rights mechanisms including the Human Rights Platform and the National Reporting Bureau on Human Trafficking, it also regrets that Sint Maarten does not have any immediate plan to establish such a national human rights institution (arts. 2 and 12).

25. **The Committee reiterates its recommendations (CAT/ C/NLD/CO/5-6, para. 29) that the Governments of Aruba and Curaçao deliver on their commitment and establish separate national human rights institutions as a matter of priority. The Government of St. Maarten should also consider establishing a national human rights institution.**

Pretrial detention

26. While taking note of the available alternatives to pretrial detention, and the ongoing efforts by the Public Prosecution Service and the judiciary to increase the use thereof, the Committee remains concerned at reports of the high percentage of pretrial detainees and the little use of alternatives. It is particularly concerned at reports pointing at the high percentage (80%) of juvenile detainees on remand. It also notes with concern that legislative amendments made by the Netherlands in 2015 and to be adopted by Curaçao further extend the grounds for pretrial detention and that there may not be sufficient safeguards to guarantee that pretrial detention is only used as a measure of last resort. While noting a bill currently being drafted to amend the Code of Criminal Procedure in Aruba, the Committee regrets the lengthy duration of pretrial detention in Aruba and Curaçao as well as the absence of information on the number of their pretrial detainees (arts. 2, 11 and 16).

27. **Recalling the Committee's recommendations (CAT/ C/NLD/CO/5-6, para. 20), the State party should take measures to:**

(a) **Reduce the use of pretrial detention, including and ensure that the decisions imposing pretrial detention are duly substantiated;**

(b) **Use pretrial detention as a measure of last resort, consider alternative measures to its use and observe presumption of innocence;**

(c) **Amend legislation to reduce the maximum duration of pretrial detention and limit the grounds for pretrial detention.**

Detainees suspected or convicted of terrorism charges

28. The Committee is concerned at information that the application of article 20a of the Regulation on classification, placement and transfer of detainees leads to an automatic placement of a person suspected or convicted of terrorism in high security units designated for terrorists, known as TA, without any individual assessment. It notes reports that detainees in the TA are routinely subjected to very restrictive regimes, including limited contact with outside and constant surveillance. It is particularly concerned about reports of prolonged solitary confinement in the TA. It is also concerned at reports of frequent and routine use of full-nudity body searches which occur after, and sometimes also prior to, a detainee meeting in person with outside visitors, including close family members and children, as well as when detainees leave the prison for court or police hearings. It is further concerned at the reported lack of effective complaint mechanisms in the TA as well as the absence of statistical data on the number of complaints filed by detainees of the TA and the nature and outcome thereof (arts. 2, 12, 13 and 16).

29. **The State party should:**

(a) **Ensure that the placement of individuals suspected or convicted of terrorism in the high security units be based on a prior individualized risk assessment and be subjected to regular reviews;**

(b) **Ensure that the individual assessment should be based on specific and objective criteria, including a person's actual behavior, and supported by credible, concrete, complete, and up-to-date information and should determine whether placement in a high-security facility is necessary and proportionate as required by The Netherlands' obligations under international law and standards**

(c) **Ensure that the conditions in the TA are in line with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), in particular concerning solitary confinement and contact with the outside world;**

(d) **Limit the systematic practice of full-nudity body searches to the level necessary for security reasons and ensure that body searches, if necessary, are carried out in a manner respectful of the dignity of a detainee and by officers of the same sex as the detainee concerned;**

(e) **Ensure that detainees in the TA have adequate access to effective complaint mechanisms; and collect and publish statistical data on the number, nature and outcome of the complaints filed by these detainees;**

(f) **Ensure that persons in pre-trial detention on suspicion of terrorist offences awaiting trial at first instance are not held in the TA with those convicted of terrorism offences serving sentences.**

Conditions of detention

30. The Committee is concerned about reports indicating that in the European part of the Kingdom, healthcare services in prisons are inadequate and, in particular, notes that medical screenings of newly arriving detainees are often delayed, traumatic injuries that may come from inter-prisoner violence are not properly recorded and medical professionals are not given a sufficiently active role. In this regard, the Committee regrets that the relevant recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit in 2016 have not been implemented, and further notes with concern the delegation's response indicating the lack of willingness to implement them. Furthermore, it is concerned at reports of the substandard detention conditions in Aruba, Curaçao and Sint Maarten, including poor material conditions, inadequate access to medical care, particularly mental healthcare, and food and insufficient attention paid to vulnerable detainees (arts. 11 and 16)

31. **The State party should conduct a fundamental review of its prison healthcare services, with a view to bringing the system into line with the recommendations made by the CPT (CPT/Inf (2017) 1, para. 55). In particular, it should ensure that medical screenings are promptly and effectively conducted and injuries are properly recorded. It should also ensure that the living conditions of detention facilities in all of its constituent countries are in line with international standards, such as the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).**

Inter-prisoner violence

32. The Committee is concerned about information that in the Caribbean part of the Netherlands, the prevalence of inter-prisoner violence poses a serious threat to the safety of prisoners and the prison administration has not taken effective measures to address this issue. Furthermore, in light of its previous concluding observations (CAT/C/NLD/CO/5-6, para. 23), the Committee regrets the lack of information on the investigations of inter-prisoner violence in Aruba and Curaçao (arts. 12, 13 and 16).

33. **The State party should enhance measures to prevent and reduce inter-prisoner violence, including by improving prison management and strengthening the monitoring and protection of vulnerable prisoners. It should also conduct prompt, effective and impartial investigations of cases of inter-prisoner violence, particularly in the Caribbean part of the Netherlands and in Aruba and Curaçao.**

Persons serving life sentences

34. The Committee takes note of the recent judgment made on the right to hope by the Grand Chamber of the European Court of Human Rights (*Murray vs. The Netherlands*) and the Dutch Supreme Court (Case No. 15/00402, ECLI:HR:2016:1325) finding that a life sentence without a prospect of release may constitute degrading and inhuman treatment in violation of article 3 of the European Convention on Human Rights, and the State party's subsequent establishment of the Advisory Committee on Persons Serving Life Sentences to review life sentences. However, it remains concerned that this review, which takes place after 25 years of detention, is to determine whether to allow life-sentenced prisoners to start reintegration activities and the decision as to granting a pardon is made two more years later. Furthermore, while noting that the Advisory Committee consists of independent experts such as former judges, the Committee is concerned that the final decision is left to the State Secretary (art. 11).

35. **The State party should ensure that prisoners serving life sentences have the prospect of release or reduction of a life sentence, with respect to the right to hope, after a reasonable period of time and that an independent judicial mechanism be established in all of its constituent countries to periodically review the situations of these prisoners. Furthermore, these prisoners should be informed about the possibility of review or reduction of their sentences at the earliest possible time.**

Juvenile justice

36. While taking note of the explanations provided by the delegation, the Committee is concerned that pursuant to the Adolescent Criminal Law and section 77(b) of the Dutch Penal Code, minors aged 16 and 17 may be tried as adults under the ordinary criminal law in cases of grave offences (i.e. homicide) and may be sent to serve their sentence in adult penitentiary institutions. It also regrets the reservation made by the State party concerning article 40 of the Convention on the Rights of the Child, thereby allowing children to be interviewed or interrogated in the absence of a lawyer or their parents, in cases involving minor offences (arts. 11, 12 and 16).

37. **The State party should ensure the full implementation of juvenile justice standards and of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. In particular, it should:**

(a) **Amend its legislation to ensure that minors are not tried under the adult criminal law and do not serve their sentences in adult penitentiary institutions, in accordance with international laws;**

(b) **Ensure that minors are detained as a last resort only and for the shortest possible period and that they are separated from adults and afforded full legal safeguards, particularly the right to legal counsel, and use non-custodial measures for minors who are in conflict with the law;**

(c) **Pursue and improve the training on juvenile justice matters for all professionals involved in the juvenile justice system and ensure that such training covers not only the relevant international standards, including the Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, but also practical and relevant training courses on specific topics such as the conduct of interrogations in respect of juvenile offenders, witnesses or victims.**

Children in closed youth care facilities

38. While taking note of new laws being drafted to guarantee the rights of children concerned and reduce the number thereof, the Committee is concerned about information that the State party places a large number of children (2,710 in 2017), including child victims of sexual violence, in closed youth care facilities, and that these children are subjected to use of force and coercion and even placement in isolation rooms. It also regrets the unavailability of information on the restrictive measures used against these children (arts. 11 and 16).

39. **The State party should redouble its efforts to improve the situations of children held in closed youth care facilities, including by effectively implementing the Action Programme on Youth Help 2018 which was announced by the Ministry of Health, Welfare and Sport and by expediting the drafting of new laws to guarantee the rights of these children. It should take all the necessary measures to protect children against the use of force, coercion and restraint and to investigate into all the allegations of such use. Furthermore, it should provide appropriate protection measures for child victims of sexual violence who are placed in closed youth care facilities, implement appropriate psychosocial and rehabilitation programs for them and collect detailed data on the placement of children in these facilities, as recommended by the Dutch National Rapporteur on Human Trafficking and Sexual Violence against Children.**

Involuntary confinement in mental healthcare institutions

40. While taking note of the steps taken by the State party concerning persons with mental disabilities, such as the passage of the Compulsory Mental Health Care Bill (WVGGZ) and the partially amended Care and Compulsion Bill (WZD), and the plan to close all isolation rooms in twelve large mental health institutions by 2020, the Committee is concerned at the continued high number of involuntary placements in mental healthcare institutions. The Committee regrets the lack of detailed information on the duration of solitary confinement, the use of restraints and the medical supervision over these measures (arts. 11 and 16).

41. **The Committee reiterates its recommendation (see CAT/C/NLD/CO/5-6, para. 21) that the State party should:**

(a) Develop alternative measures to reduce the number of forcibly interned persons with mental disabilities and ensure that involuntary internments in places of deprivation of liberty, including psychiatric and social care institutions, are done on the basis of a legal decision, guaranteeing all effective legal safeguards;

(b) Use restraints and solitary confinement as a measure of last resort when all other alternatives for control have failed, for the shortest possible time and under strict medical supervision, and effectively implement the plan to close all the isolation rooms in twelve large mental health institutions by 2020;

(c) Lower the threshold and improve the quality of outpatient treatment, clarify the criteria for admission of mental healthcare institutions, ensure the basic human rights of patients are not violated.

Electrical discharge weapons (tasers) and pepper spray

42. The Committee notes with concern that despite its previous recommendations against the routine distribution and use of electrical discharge weapons (tasers) by police officers, the State party conducted a pilot testing from February 2017 to February 2018 without clear instructions on their restrictive use. It is particularly concerned at information that during this pilot period, police officers used tasers in situations where there was no real and immediate threat to life or risk of serious injury, including in cases where targeted individuals were already in police custody. It is further concerned about reports of the frequent use of the so-called “stun mode” which is intended to merely inflict pain, and the incidents in which tasers were used against minors as well as persons with mental disabilities in healthcare settings. In addition, the Committee is concerned about information that the use of pepper spray is not regulated fully in line with principles of necessity and proportionality and that the new draft Instructions on the Use of Force is expected to further lower the threshold for using it and to permit its use against vulnerable persons including pregnant women and children (arts. 2, 11 and 16).

43. **Recalling the Committee’s previous recommendations (CAT/C/NLD/CO/5-6, para. 27), the State party should:**

(a) Refrain from routine distribution and use of electrical discharge weapons by police officers in their day-to-day policing, with a view to establishing a high threshold for their use and avoiding excessive use of force;

(b) Ensure that electrical discharge weapons are used exclusively in limited situations where there is a real and immediate threat to life or risk of serious injury, as a substitute for lethal weapons and by trained law enforcement officers only;

(c) Explicitly prohibit the use of electrical discharge weapons and pepper spray against vulnerable persons, including minors and pregnant women, and in healthcare settings, including mental health institutions, and especially prohibit the use of electrical discharge weapons in the custodial settings;

(d) Ensure that the instructions on the use of electrical discharge weapons and pepper spray emphasize the absolute prohibition of torture and the need to respect the principles of necessity and proportionality, fully in accordance with the Convention and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;

(e) Adopt safeguards against misuse of electrical discharge weapons and pepper spray and provide proper training and awareness programmes for the law enforcement personnel;

(f) Monitor and regularly review the use of electrical discharge weapons and pepper spray, and provide the Committee with these information.

Ill-treatment by police based on racial profiling

44. While noting training programmes in place to combat racial profiling by the law enforcement personnel, the Committee is concerned about reports that police continue to target racial minorities during its stop-and-search, leading to degrading treatment. It also regrets the absence of systematic monitoring and recording of how the police is executing its stop-and-search powers (arts. 2, 12–14 and 16).

45. The State party should take measures to monitor and prevent arbitrary stops, searches and arrests based on racial profiling and ensure the correct and effective use of compulsory measures. In this regard, it should conduct a study about this practice with a view to identifying the cause and effective solutions. It should also redouble its efforts to provide the police with adequate trainings and awareness-raising programmes to counter prejudice and stereotypes and regularly assess the impact and effectiveness thereof.

Human trafficking

46. While noting the positive steps taken by the State party, including the study conducted by the Dutch National Rapporteur on human trafficking and the provision of training courses on identifying signs of trafficking for officials of the Ministry of Social Affairs and Employment, the Committee is concerned about the large number of registered child victims of trafficking (2,014 between 2014 and 2015) as well as the reportedly higher number of unregistered victims. While noting several awareness campaigns on labour and sex exploitation, it remains concerned about reports of the low level of awareness among public officials and other professionals, including medical personnel, who may be in contact with victims of trafficking (arts. 2, 12, 14 and 16).

47. The State party should intensify its efforts to:

(a) Prevent and combat trafficking in human beings, especially trafficking of children;

(b) Enhance the training programmes to the police, prosecutors and judges on effective prevention, investigation, prosecution and punishment of acts of trafficking and raise awareness among the relevant public officials of the municipalities as well as the general public on the criminal nature of such acts;

(c) Ensure that cases of human trafficking are investigated, perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and the victims adequately provided with redress, including adequate compensation.

Violence against women

48. While noting the steps taken by the State party to address violence against women, the Committee is concerned about acts or omissions with the consent or acquiescence of State agents in connection with the high incidence of violence against women, in particular domestic violence and honour-related crimes. It is concerned about reports that municipal authorities fail to provide adequate protection measures to victims of these crimes who often have to wait to access support services. The Committee also regrets the absence of recent statistical information on the number of complaints relating to domestic violence and the absence of disaggregated data concerning violence against women in Aruba, Curaçao and Sint Maarten (arts. 2, 13, 14 and 16).

49. The State party should:

(a) Step up its efforts to combat violence against women, particularly domestic violence and honour-related crimes, in all constituent countries of the State

party, including by ensuring adequate protection measures as well as sufficient funding, resources and staffing to this end;

(b) Ensure that all victims of violence against women, including migrants and the indigent, have adequate access to medical and legal services, counselling, safe emergency accommodation and shelters;

(c) Collect comprehensive statistics on all forms of violence against women through acts or omissions by State agents and others that engage the State's responsibility in accordance with the Convention, and provide these to the Committee, indicating how many are charged, prosecuted and punished as torture, ill-treatment or other crimes under the Criminal Code.

Lesbian, gay, bisexual and transgender persons

50. The Committee is concerned at reports that many lesbian, gay, bisexual and transgender persons are subjected to hate crimes because of their sexual orientation or gender identity, and that the alleged perpetrators are not always brought to justice (arts. 2, 12, 14 and 16).

51. The State party should take all necessary measures to protect lesbian, gay, bisexual and transgender persons from threats and any form of violence, including hate crimes. It should also ensure that violence against lesbian, gay, bisexual and transgender persons is promptly, impartially and thoroughly investigated and the perpetrators prosecuted and punished.

Intersex persons

52. The State party is concerned at reports that unnecessary and irreversible surgery and other medical treatment are performed on intersex children without informed consent and impartial counselling. It is concerned that these procedures, which cause long-term physical and psychological suffering, have not been the object of any inquiry, sanction or reparation and that there is no specific legal provisions providing redress and rehabilitation to the victims.

53. The State party should:

(a) Take the legislative, administrative and other measures necessary to guarantee the respect for the physical integrity and autonomy of intersex persons and to ensure that no one is subjected during infancy or childhood to non-urgent medical or surgical procedures intended to decide the sex of the child without his or her informed consent;

(b) Guarantee impartial counselling services and psychological and social support for all intersex children and their parents, so as to inform them of the consequences of unnecessary and non-urgent surgery and other medical treatment to decide on the sex of the child and the possibility of postponing any decision on such treatment or surgery until the persons concerned can decide by themselves;

(c) Guarantee that full, free and informed consent is ensured in connection with medical and surgical treatments for intersex persons and that non-urgent, irreversible medical interventions are postponed until a child is sufficiently mature to participate in decision-making and give effective consent;

(d) Undertake investigation of instances of surgical interventions or other medical procedures performed on intersex persons without effective consent and prosecute and, if found responsible, punish perpetrators. It should also ensure that the victims are provided with redress including adequate compensation.

Redress

54. While noting that the law implementing Directive 2012/29/EU establishing minimum standards for the rights and protection of crime victims has entered into force in 2017, the Committee is concerned at the absence of information on redress, including compensation

measures ordered by the courts or other State bodies and actually provided to victims of torture and ill-treatment or their families in Aruba, Curaçao and St. Maarten (art. 14).

55. **The State party shall ensure in law that victims of torture or ill-treatment obtain full and effective redress and reparation, including compensation and the means for as full rehabilitation as possible. In particular, Aruba, Curacao and Sint Maarten should reinforce their efforts to overcome the difficulties in law and in practice in providing adequate compensation to victims. The Committee draws the State party's attention to its general comment No. 3 (2012) on the implementation of article 14 by States parties, in which it elaborates on the nature and scope of the obligations of States parties under article 14 of the Convention to provide full redress to victims of torture and ill-treatment. The State party should also provide the Committee with information on redress and on compensation measures, including means of rehabilitation, ordered by the courts or other State bodies and actually provided to victims of torture and ill-treatment.**

Data collection

56. While taking note of data provided in the annex to the State party's report, the Committee is concerned at the lack of disaggregated data on the number of complaints, investigations, prosecutions, convictions and sanctions of cases of torture and ill treatment throughout the State party.

57. **Recalling the previous recommendations (CAT/C/NLD/CO/5-6, para. 30), the State party should collect and provide the Committee with detailed statistical data, disaggregated by crime, ethnicity, age and sex, relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions, convictions and penal or disciplinary sanctions of cases of torture and ill-treatment by law enforcement, security, military and prison personnel as well as on means of redress, including compensation and rehabilitation provided to the victims.**

Follow-up procedure

58. **The Committee requests the State party to provide, by 7 December 2019, information on follow-up to the Committee's recommendations on non-refoulement, medical examinations as part of asylum-procedure and the National Agency for the Prevention of Torture (NPM) (see paragraphs 12 (a) and (b), 14 (a) and (b) and 23 above). In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations in the concluding observations.**

Other issues

59. **The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet party.**

60. **The State party is requested to disseminate widely the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations and to inform the Committee about its disseminating activities.**

61. **The Committee requests the State party to submit its next periodic report, which will be its eighth periodic, by 7 December 2022. For that purpose, and in view of the fact that the State party has agreed to report to the Committee under the simplified reporting procedure, the Committee will, in due course, transmit to the State party a list of issues prior to reporting. The State party's replies to that list of issues will constitute its eighth periodic report under article 19 of the Convention.**