

# **Contribution pertaining to the List of Issues Prior to Reporting on the Kingdom of the Netherlands to the UN Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

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## Introduction

This contribution report is written by (academic) experts and civil society organisations. The Dutch Section of the International Commission of Jurists (hereinafter ‘NJCM’) coordinated this contribution. The issues discussed in the report contain the main concerns of the involved organisations. The report does not intend to be comprehensive.

The contribution addresses seventeen issues. Our questions are formulated at the end of every section and in the next section, highlights of the report, all our questions are presented in one overview. After the introduction and the highlights, the report is structured in the following way. In the first six sections, we discuss the issues on the rights of migrants and asylum seekers. The seventh section concerns the National Prevention Mechanism and section eight until twelve are related to criminal law issues. Thereafter, section thirteen until seventeen address the following topics: secure youth care facilities, involuntary confinement, use of force by the Dutch police, ethnic profiling and gender related violence.

This contribution briefly addresses the impact of the governmental measures taken in light of the COVID 19 pandemic (section VI). For most issues in the report, the consequences of the pandemic on the short and/or long term are unclear or yet unknown and are therefore not taken into account. However, we would like to emphasize that the lack of attention for this topic in our contribution does not mean that we believe this should not be addressed in the List of Issues Prior to Reporting (hereafter LOIPR).

In addition, the report focuses on the European part of the Kingdom, the Netherlands. Only section XI on Point Blanche’s prison and section XII on juvenile justice in the special municipalities (BES islands) focus completely on the Dutch Caribbean. In other sections we briefly address the Dutch Caribbean. The reason for this limited attention is a lack of expertise among the compilers of this contribution. It does not mean that there are less (urgent) issues in the Dutch Caribbean or the special municipalities than in the Netherlands.

### The structure of the Kingdom of the Netherlands

The Kingdom consists of four constituent parts, namely Aruba, Curaçao, St Maarten and the Netherlands. All four countries have their own constitution, government and parliament. The islands Bonaire, Saba and Sint Eustatius (hereinafter ‘BES islands’) also located in the Caribbean, are the so-called special municipalities of the Netherlands since 2010. The BES islands therefore fall within the constitutional framework of the Netherlands. In this document the terms Caribbean Netherlands or Dutch Caribbean are used to mean those parts of the Dutch Kingdom situated in the Caribbean meaning all the islands: Aruba, Bonaire, Curaçao, Saba, St. Eustatius, St. Maarten and not merely those islands which are special municipalities of European Netherlands.

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## **Highlights of the report**

This report elaborates on seventeen issues that we hope the Committee against Torture (hereafter CAT) will address in the LOIPR for the state report of the Kingdom of the Netherlands. This section highlights the questions we have addressed in this contribution. The context of each question will be explained in the specific sections.

### Post return monitoring of expelled asylum seeker

*We question:*

- why the Dutch government has expelled Sudanese asylum-seekers despite serious indications of unlawful detention and torture by the Sudanese authorities upon return.
- why the government does not conduct any post-monitoring of expelled asylum seekers.

### Forensic medical examination in asylum procedures

*We question:*

- why the government often refuses to conduct forensic medical examinations of asylum seekers, mainly based on the argument that the applicant has given inconsistent, incoherent or vague statements despite clear signs of harm.
- why the government does not clearly motivate why it is not relevant to arrange for forensic medical examination of asylum seekers.
- to what extent the Dutch government guarantees the principle of equality of arms, when it does not compensate the asylum applicant for the costs of the forensic medical report in cases where such a report initiated by an asylum seeker leads to a positive outcome of the asylum proceedings.

### Solitary confinement in detention centre

*We question:*

- whether the Dutch government has made sufficient efforts to make the use of solitary confinement as a disciplinary measure in immigration detention as restricted as possible.
- whether the practice of placing migrants who refuse a shared cell in solitary confinement and of imposing such measures consecutively are proportionate.
- whether the Dutch government has made adequate efforts to provide for guarantees, such as legal remedies and medical supervision, after imposing such measures.

### Use of restraints during transportation from immigration detention centre

*We question:*

- how the government will ensure that the regulations and the no-handcuffs policy of transportation of persons in immigration detention are not only laid down in legislation, but will also be embedded in practice.

### Lockdown in the immigration detention centre

*We question:*

- to what extent the introduction of the possibility of a lockdown in immigration detention in the Return and Immigration Detention Act is in line with the prohibition of inhuman or degrading treatment as set out in the Convention.

Deterioration of circumstances in immigration detention during the COVID-19 crisis

*We question:*

- whether the application of anti-COVID-19 measures in immigration detention has been proportional and why the Dutch government has not introduced less coercive measures for this group of people.

National Prevention Mechanism

*We question:*

- how the Dutch government indicates its efforts to ensure the complete financial and operational independence of the NPM, both factual and perceived.
- the refusal of the Dutch government to withdraw their declaration on the exclusive territorial application of the OPCAT to the European Netherlands, hence the refusal to monitor all places of deprivation of liberty throughout the Kingdom of the Netherlands – including the Dutch Caribbean.

Pre-trial Detention

*We question:*

- whether the Dutch government has taken adequate measures to reduce the use of pretrial detention and whether it does enough to stimulate the use of alternative measures. In addition, we question how the government plans to improve substantiation of pretrial detention.
- how the government will further improve the reasoning in cases of pretrial detention and how many juvenile detainees were placed in pretrial detention from 2018.

Terrorist Wing

*We question:*

- when the government will follow up on the recommendations of the CPT and other organisations and change its policy regarding the placement of detainees on the T.W, in particular with regard to the individual risk assessment and to providing objective criteria for reassessment by law.

Lifelong imprisonment

*We question:*

- why the Dutch government leaves the decision of starting rehabilitation activities and the decision of granting pardon in the case of life imprisonment to the discretion of the administrative power.

Ill-treatment in Point Blanche's prison

*We question:*

- if the government of St Maarten takes adequate measures to tackle the issues in Point Blanche's prison and whether there is a clear roadmap to implement the measures.
- whether the Dutch government takes enough action to support the government of St. Maarten to tackle the issues in Point Blanche's prison.

Juvenile detention on the BES-islands

*We question:*

- how the government is monitoring the situation regarding the juvenile detention on the BES-islands, what the indicators are for a re-evaluation and how the indicators will be measured.
- how non-custodial alternatives for juveniles in detention are promoted in the BES-islands.

### Secure youth care facilities

*We question:*

- what action the government takes to provide the most appropriate care for children in order to prevent a placement in a secure youth care facility and how it will continue the downward trend of placements of 2020.
- how the government ensures the prevention of children under 12 years being placed in secure youth care facilities.
- how the Dutch government will ensure that the placement of children in secure youth care is a matter of last resort. In this regard we also would like to know how better alternatives are developed and provided.
- how the government guarantees that children are only staying in secure youth care facilities for the shortest possible period of time.
- how the ambition to stop the use of isolation rooms in youth care institutions will be put into practice in 2022 and ask the government what specific measures have been taken in 2020 to enable staff to use alternatives and de-escalation methods instead of isolation.
- how the government will ensure that deprivation of liberty will not take place in residential open youth institutions.

### Involuntary confinement in mental health care institutions

*We question:*

- how the two new laws will contribute to less coercion and a more tailored healthcare.
- what measures the government has taken to close all the isolation rooms in 12 large mental health institutions by 2020 (CO 41 of December 2018) as this has not yet been put into practice.

### Use of force by the Dutch Police

*We question:*

- how the new legal instruction on the regulation of the use of force and equipment for the Dutch police fits in the concluding observation of 2018 of the Committee, particularly with regard to
  - refraining the use of electrical discharge weapon in the day-to-day policy;
  - the exclusively use of electrical discharge weapons in limited situations where there is a real and immediate threat to life or risk of serious injury; and
  - the prohibition of the use of electrical discharge weapons and pepper spray against vulnerable persons.
- how the use of a service weapon and of rubber bullets is in line with Principle 9 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

### Ethnic profiling

*We question:*

- what kind of measures the government takes in developing and using data and algorithmic models and what kind of safeguards there are enshrined in Dutch law to prevent ethnic profiling.
- what the government holds back from adopting its policy to make ethnicity no longer a ground in their decision making during Mobile Security Monitoring -checks on legal residence.

- how the Dutch government guarantees that the complaint procedure is transparent and fair and how it will adopt the proposed framework of the National Ombudsman.

Gender related violence

*We question:*

- whether the Netherlands will adopt measures to come to a gender-sensitive approach to domestic violence.
- whether there is sufficient coordination between the responsible instances to combat violence against women without a coordinating body.
- whether there is enough data and monitoring available for adequate policies to combat violence against women without a coordinating body especially in relation to the effects of the anti-COVID-19 measures.
- To what extent the collected data is sufficient to combat gender related violence, including violence against women, especially in relation to the effects of the corona measures.
- whether there is statistical data available on violence against women in the Dutch Caribbean.

## I. Post-return monitoring of expelled asylum seekers

The Dutch Ministry of Justice and Security has in many cases expelled asylum seekers who, despite indications of the risk of harm upon return, were subjected to inhumane treatment by the authorities of the receiving country. Cases of at least sixteen expelled Sudanese asylum seekers in the last years illustrate this.<sup>1</sup> Under Dutch law there is no obligation for the government to monitor asylum seekers after their return to countries of concern. However, the recent expulsions of asylum seekers raise the question whether the Dutch state, by refraining to integrate post-return monitoring in its policies, is in breach of the principle of non-refoulement under article 3 of the Convention.<sup>2</sup> Also, there is a lack of transparency of the Dutch authorities about what happens with the persons that are expelled to countries and regions of concern. The Dutch Immigration and Naturalisation Service (IND) has repeatedly disregarded submitted evidence of claims.<sup>3</sup> The lack of policies on post-return monitoring is especially worrisome at this time, as the IND announced in 2020 to reassess hundreds of asylum permits that have been issued to Sudanese refugees, holding that the security situation has improved, although we seriously doubt whether that is the case.<sup>4</sup>

In the case of Sudan, the government is aware of irregularities regarding expulsions, including the risk of intimidation, unlawful detention and ill-treatment, and that it is difficult to find information about returnees.<sup>5</sup> Nevertheless, the government maintains that the general situation in Sudan is safe enough to proceed with expulsions.<sup>6</sup> The State Secretary for Justice and Security sees no reason for post-return monitoring and emphasised that the government does not have a legal obligation to monitor expulsions after completion of the asylum and return procedures. Furthermore, the State Secretary stated that monitoring has no value as it is usually impossible to link events after the return to the asylum procedure in the Netherlands. She also pointed out that monitoring is undesirable for diplomatic relations.<sup>7</sup>

<sup>1</sup> Amnesty International, *Risico's bij gedwongen terugkeer naar Sudan* [Risks with expulsions to Sudan], March 2019, p. 8 (available at: [https://www.amnesty.nl/content/uploads/2019/03/AMN\\_19\\_05\\_Rapport-gedwongen-terugkeer-Sudan.pdf?x10542](https://www.amnesty.nl/content/uploads/2019/03/AMN_19_05_Rapport-gedwongen-terugkeer-Sudan.pdf?x10542)); UK Home Office, Country Policy and Information Note, June 2018 p. 13-25 (available at: <https://www.justice.gov/eoir/page/file/1086211/download>); Trouw, *Vluchtelingenwerk herkent signalen martelingen Soedanezen* [Dutch Refugee Council recognizes signals torture Sudanese], 22 January 2021, (available at: <https://www.trouw.nl/nieuws/vluchtelingenwerk-herkent-signalen-martelingen-soedanezen-b1d0c9e2/>); Several of them claimed that when they arrived after expulsion, they were interrogated and ill-treated by the Sudanese National Intelligence and Security Service (NISS, now General Intelligence Service – GIS). Their experiences vary from torture to months of detention. The IND has repeatedly disregarded evidence of these claims, see NRC Handelsblad, *Soedanezen uitgezet ondanks aanwijzingen voor marteling* [Sudanese expelled despite indications of torture], 22 January 2021 (available at: <https://www.nrc.nl/nieuws/2021/01/22/soedanezen-uitgezet-ondanks-aanwijzingen-voor-marteling-a4028833>) and NRC Handelsblad paper version, *Wat er met Ali, Samoal, Ibrahim gebeurde na hun uitzetting naar Soedan* [What happened to Ali, Samoal, Ibrahim after their expulsion to Sudan], 22 January 2021, (available at: <https://www.nrc.nl/nieuws/2021/01/22/wat-er-met-ali-samoal-ibrahim-gebeurde-na-hun-uitzetting-naar-soedan-a4028331>); The case of a Bahraini refugee who was expelled and who upon return received a life sentence after an unfair trial, is also illustrative, see Amnesty International, *Door Nederland uitgezette vluchteling krijgt zonder eerlijk proces levenslang in Bahrein (update)* [Refugee deported by the Netherlands gets life imprisonment in Bahrain without fair trial (update)], 4 June 2020 (available at: <https://www.amnesty.nl/actueel/nederland-uitgezette-vluchteling-oneerlijk-proces-levenslang-bahrein>).

<sup>2</sup> See CAT, Concluding observations on the combined sixth and seventh periodic reports of Denmark, CAT/C/DNK/CO/6-7, §20-21 (available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/017/75/PDF/G1601775.pdf?OpenElement>).

<sup>3</sup> Amnesty International, *Risico's bij gedwongen terugkeer naar Sudan* [Risks with expulsions to Sudan], March 2019, p. 18 (available at: [https://www.amnesty.nl/content/uploads/2019/03/AMN\\_19\\_05\\_Rapport-gedwongen-terugkeer-Sudan.pdf?x10542](https://www.amnesty.nl/content/uploads/2019/03/AMN_19_05_Rapport-gedwongen-terugkeer-Sudan.pdf?x10542)); NRC, *Nederland brengt onschuldigen in levensgevaar* [The Netherlands puts innocent people at risk], 27 January 2021 (available at: <https://www.nrc.nl/nieuws/2021/01/25/nederland-brengt-onschuldigen-in-levensgevaar-a4029035>).

<sup>4</sup> *Besluit van de Staatssecretaris van Justitie en Veiligheid van 12 januari 2020, nummer WBV 2020/1, houdende wijziging van de Vreemdelingencirculaire 2000* [Decision of the State Secretary of Justice and Safety of 12 January 2020, number WBV 2020/1, on the amendments of the Immigration Circular 2000], *Staatscourant* 2020, 3262 (available at: <https://zoek.officielebekendmakingen.nl/stcr-2020-3262.html>); VPRO Argos, *Verblijfsvergunningen Soedanezen op de tocht* [Residence permits Sudanese at risk], 17 June 2020, (available at: <https://www.vpro.nl/argos/lees/nieuws/2020/verblijfsvergunningen-100-soedanezen-op-de-tocht.html>).

<sup>5</sup> Ministry of Foreign Affairs, *Algemeen Ambtsbericht Sudan van oktober 2019* [Country Report on Sudan October 2019] October 2019, (available at: <https://www.rijksoverheid.nl/documenten/ambtsberichten/2019/10/04/algemeen-ambtsbericht-sudan-van-oktober-2019>)

<sup>6</sup> Immigration Circular 2000, para. C/26.4.1 (9 April 2021).

<sup>7</sup> Ministry of Justice and Safety, *Antwoorden Kamervragen over het uitzetten van asielzoekers naar Soedan* [Answers to the questions to Parliament on the expulsion of asylum seekers to Sudan], 22 February 2021 (available at: <https://www.rijksoverheid.nl/documenten/kamerstukken/2021/02/23/antwoorden-kamervragen-over-het-bericht-wat-er-met-ali-samoal-ibrahim-gebeurde-na-hun-uitzetting-naar-soedan>).



**We question why the Dutch government has expelled Sudanese asylum-seekers despite serious indications of unlawful detention and torture by the Sudanese authorities upon return.**

**We also question why the government does not conduct any post-monitoring of expelled asylum seekers.**

## II. Forensic medical examinations in asylum procedures

Despite serious and clear signs that an asylum seeker might be a victim of torture or serious harm, the IND refuses in many instances to arrange forensic medical examinations for asylum applicants, *mainly* because the applicant has given inconsistent, incoherent, vague, and therefore, in their opinion, not credible statements.<sup>8</sup> The wide discretion of the IND to reject asylum cases on the basis of such statements,<sup>9</sup> may lead to decisions that are in breach of the principle of non-refoulement, as these traumas and medical conditions are often at the root of such inconsistencies.<sup>10</sup>

Although, the IND does not disclose how many times it has arranged for forensic medical examinations, the institute for Human Rights and Medical Assessment (iMMO) receives on average 145 requests per year (measured between 2012 and 2020) for forensic medical examinations after the IND has refused to initiate such examinations itself.<sup>11</sup>

In some instances the IND has abstained from motivating in its decision-making why it has not arranged for such examinations despite signs of torture or serious harm.<sup>12</sup> Besides, the IND also fails to meet its legal obligation to inform asylum seekers about the option to arrange for a forensic medical examination at their own initiative.<sup>13</sup>

When the government considers that the medical examination is not relevant, the asylum applicant can arrange for the examination himself but at his own costs.<sup>14</sup> If this report leads to the granting of the asylum

<sup>8</sup> See the following recent cases: District Court Den Haag NL18.7451, 15 July 2020, ECLI:NL:RBDHA:2020:6543, para. 37; District Court Den Haag 10 March 0.10956, ECLI:NL:RBDHA:2021:2189, para. 24-25; District Court Den Haag, 18 February 2021, ECLI:NL:RBDHA:2021:1381, para. 18.

<sup>9</sup> A. M. Reneman and Y. Al Tamimi, *Identification of asylum seekers with special reception and procedural needs in the Dutch asylum procedure* (Migration Law Series) 2018, Amsterdam Centre for Migration and Refugee Law, p. 85-115, in particular: p. 91-92; A.M. Reneman, *Forensic medical reports in asylum cases: The view of the European Court of Human Rights and the Committee against Torture*, 2020, Netherlands Quarterly of Human Rights, 38(3), 206-228; ECtHR 9 March 2010, Appl. no. 41827/07 R.C. v. Sweden, para. 52, 53; ECtHR 6 December 2012, Appl. No. 29946/10, D.N.W. v. Sweden, ECLI:CE:ECHR:2012:1206JUD002994610, I. v. Sweden, appl. 61204/09, 5 September 2013, ECLI:CE:ECHR:2013:0905JUD006120409, in particular para. 67; ECtHR 19 September 2013, Appl. No. 10466/11 R.J. v. France, ECLI:CE:ECHR:2013:0919JUD001046611. CAT; General Comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, 9 February 2018, para. 41); IUK et al v. Denmark No 703/2015 (CAT, 20 June 2018) CAT. Concluding observations on the 7th periodic report of the Netherlands, adopted by the Committee at its 1712th and 1715th meetings, 3-5 December 2018, 18 December 2018, CAT /C/NLD/CO/7, para. 14.

<sup>10</sup> A. Terlouw and A. Keunen, *Welwillende actieve houding staatssecretaris verwacht bij uitvoering medisch onderzoek* [Benevolent and active attitude expected from the State Secretary in the execution of medical examinations], 2020, Asiel- & Migrantenrecht (9), p. 481; A. M. Reneman, and Y. Al Tamimi, *Identification of asylum seekers with special reception and procedural needs in the Dutch asylum procedure* (Migration Law Series), 2018, Amsterdam Centre for Migration and Refugee Law, p. 92; M. Reneman *Forensic medical reports in asylum cases: The view of the European Court of Human Rights and the Committee against Torture*, 2020, Netherlands Quarterly of Human Rights, Vol. 38(3), p. 206-228 (available at: <https://journals.sagepub.com/doi/pdf/10.1177/0924051920939879>).

<sup>11</sup> iMMO, *Jaarverslag 2019* [Year Report 2019], April 2020, p. 11 (available at: <https://www.stichtingimmo.nl/wp-content/uploads/2020/05/Jaarverslag-iMMO-2019.pdf>); Lawyers usually send a case to iMMO if they think that the IND has made a mistake, see A. M. Reneman and Y. Al Tamimi, *Identification of asylum seekers with special reception and procedural needs in the Dutch asylum procedure* (Migration Law Series), 2018, Amsterdam Centre for Migration and Refugee Law, p. 92.

<sup>12</sup> District Court Den Haag NL18.7451, 15 July 2020, ECLI:NL:RBDHA:2020:6543 para. 37; District Court Den Haag 10 March 0.10956, ECLI:NL:RBDHA:2021:2189, para. 24, 25.

<sup>13</sup> A. M. Renemane, J. Lange and J. Smeekes, *Medische waarheidsvinding en geloofwaardigheids-beoordeling in asielzaken, Interpretatie en waardering van medische rapporten door de IND* [Medical truth finding and credibility assessment in asylum cases, Interpretation and evaluation of medical reports by the IND] 2016, Asiel-& Migrantenrecht (10), p. 460.

<sup>14</sup> According to Dutch Policy, Article 4.4.4 Immigration Circular 2000 (C): If the IND considers the investigation to be irrelevant, the foreign national can arrange a forensic medical investigation at his own initiative and expense.; see also Art. 18 sub 1 and 2 RAPD.

application, the IND must initially financially compensate the applicant for initiating the examination.<sup>15</sup> However, in practice the IND only compensates by the courts' demands,<sup>16</sup> meaning that there is a high probability that, as many cases do not reach court proceedings, relevant reports are structurally not compensated for.<sup>17</sup> This is a breach of the principle of equality of arms in a judicial procedure.<sup>18</sup> If these examinations are not compensated, there might ultimately be a lack of financial means – for the organization concerned and/or the asylum seeker - to execute the examinations, seriously putting at risk a reasonable opportunity for presenting an asylum case with objective evidence.

**We question why the government often refuses to conduct forensic medical examinations of asylum seekers, mainly based on the argument that the applicant has given inconsistent, incoherent or vague statements despite clear signs of harm.**

**We question why the government does not clearly motivate why it is not relevant to arrange for forensic medical examination of asylum seekers.**

**We question to what extent does the Dutch government guarantee the principle of equality of arms, when it does not compensate the asylum applicant for the costs of the forensic medical report in cases where a such a report initiated by an asylum seeker leads to a positive outcome of the asylum proceedings.**

### III. Solitary confinement in immigration detention

The Dutch government continues the insufficiently restricted and disproportionate use of solitary confinement in immigration detention as a disciplinary measure. Under Dutch law, persons in immigration detention are allowed to be placed in solitary confinement for up to 14 days when necessary to maintain the order or safety within the detention centre or for their own protection.<sup>19</sup> However, the government uses this power more broadly than the Convention allows for.<sup>20</sup> This follows firstly from the high number of reports of the use of this measure in immigration detention. Whilst in 2019 approximately 3780 persons were placed in immigration detention,<sup>21</sup> that same year from January until November 1176 reports were made of the application of solitary confinement in immigration detention.<sup>22</sup> Furthermore, most often (approx. 27% of

<sup>15</sup> Senate, *Wijziging van de Vreemdelingenwet, Memorie van Antwoord* [Amendments to the Aliens Act, Response Memorandum] 22 June 2015, 34 088, p. 14 (available at: [https://www.eerstekamer.nl/behandeling/20150622/memorie\\_van\\_antwoord/document3/f=vjzskahi6bh6.pdf](https://www.eerstekamer.nl/behandeling/20150622/memorie_van_antwoord/document3/f=vjzskahi6bh6.pdf))

<sup>16</sup> iMMO, *Jaarverslag 2019* [Year Report 2019], April 2020, p. 16 (available at: <https://www.stichtingimmo.nl/wp-content/uploads/2020/05/Jaarverslag-iMMO-2019.pdf>).

<sup>17</sup> Between 2012 and 2020, from the 667 reports that iMMO has issued, 339 persons were granted asylum. It is, however, unknown to what extent these reports have contributed to this outcome, because when the IND issues a positive decision, they do not state their reasons for doing so. iMMO, *Jaarverslag 2019* [Year Report 2019], April 2020, p. 13 and 16 (available at: <https://www.stichtingimmo.nl/wp-content/uploads/2020/05/Jaarverslag-iMMO-2019.pdf>).

<sup>18</sup> In art. 18 RAPD it is inter alia stated that relevant forensic medical reports are paid by public means. If a report is initiated by an asylum seeker, the IND may acknowledge its relevance after it has been submitted in the procedure; A.M. Reneman and Y. Al Tamimi, *Identification of asylum seekers with special reception and procedural needs in the Dutch asylum procedure* (Migration Law Series), 2018, Amsterdam Centre for Migration and Refugee Law, p. 97.

<sup>19</sup> Penitentiary Principles Act, articles 23(1) and 24(1), 50(1) and 50(1)(a).

<sup>20</sup> As a reaction to the reports cited in this text, the government has stated that persons in the immigration detention regime are only put in solitary confinement exceptionally and for the shortest period possible; Letter to parliament from the State Secretary of Justice and Safety, 11 September 2020, 2958529, p. 3-5 (available at: <https://www.rijksoverheid.nl/documenten/rapporten/2020/09/14/tk-bijlage-beleidsreactie-op-rapport-grenzen-aan-vreemdelingenbewaring-over-het-regime-in-vreemdelingenbewaring>).

<sup>21</sup> Ministry of Justice and Safety, *Rapportage Vreemdelingenketen Periode januari – december 2019* [Report Immigration Chain Period January – December 2019], April 2020, p. 45 (available at: <https://www.rijksoverheid.nl/documenten/rapporten/2020/05/25/tk-bijlage-rapportage-vreemdelingenketen-2019>).

<sup>22</sup> Amnesty International, Dokters van de Wereld and Stichting LOS, *Isolatie in Vreemdelingendetentie* [Isolation in Immigration Detention], September 2020, p. 43 (available at: [https://www.amnesty.nl/content/uploads/2020/09/AMN\\_20\\_26\\_rapport-isolatie\\_digitaal.pdf?x52822](https://www.amnesty.nl/content/uploads/2020/09/AMN_20_26_rapport-isolatie_digitaal.pdf?x52822)); Both reports point to the fact that some of the reports of solitary confinement are about the same person.

the above number of reports in 2019<sup>23</sup>) solitary confinement in immigration detention is used against persons who refuse to stay in a shared cell.<sup>24</sup> This is standard procedure.<sup>25</sup> Reasons for refusing such cells, aside from privacy, may lie in traumas, language barriers and personality disorder.<sup>26</sup> This strongly points towards the disproportional use of solitary confinement.

Also, according to national policies, the government is allowed to impose several disciplinary measures consecutively.<sup>27</sup> In practice and especially in the case of migrants refusing a shared cell, this policy has led to several cases in which persons were kept in solitary confinement for sometimes up to 11 months.<sup>28</sup> While the persons in these cases were granted so-called ‘time outs’ for a few days,<sup>29</sup> these can hardly compensate for the harmful effects of living in isolation for a prolonged period. It is therefore questioned whether the current laws and regulations sufficiently guarantee the use of solitary confinement as a measure of last resort.

### **Insufficient safeguards**

After the measure of solitary confinement is imposed, insufficient safeguards are in place. Whilst there is the possibility to file a complaint, in practice it has proven that it is difficult to effectuate. Migrants are often not properly informed about the option of complaining, their lawyer is not automatically notified about the decision to impose the measure and there is only a relatively short time to submit a complaint.<sup>30</sup> Also, as a complaint does not suspend the measure and the period to decide on complaints is four weeks, the person may be kept in isolation for an unnecessarily long period while waiting for the decision.<sup>31</sup> Furthermore, in the case of persons refusing to share a cell, there is no systematic medical supervision of the migrant.<sup>32</sup> It is only available when the person asks for it or when an employee of the detention centre deems it necessary.

The use of solitary confinement in immigration detention is also illustrative for the continuing concerns about the punitive and excessively restricting character of the detention regime.<sup>33</sup> Parliament is currently in the process of approving a new bill that aims to correct this. It is, however, seriously doubted whether this bill will take away the punitive character of immigration detention<sup>34</sup> and whether it will be able to adequately prevent the use of solitary confinement in immigration detention.<sup>35</sup>

**We question whether the Dutch government has made sufficient efforts to make the use of solitary confinement as a disciplinary measure in immigration detention as restricted as possible.**

<sup>23</sup> Amnesty International, Dokters van de Wereld and Stichting LOS 2020, p. 46

<sup>24</sup> The National Ombudsman, *Grenzen aan Vreemdelingenbewaring* [Boundaries to Immigration Detention], 6 February 2020, p. 13 and 18 (available at: <https://www.nationaleombudsman.nl/nieuws/onderzoeken/2020002-onderzoek-naar-de-uitvoering-van-vreemdelingenbewaring>).

<sup>25</sup> Leidraad straffen en ordemaatregelen [Disciplinary punishments & order measures, 2015, §10.a (available at: <https://www.rijksoverheid.nl/documenten/wob-verzoeken/2020/04/06/bsluit-op-wob-verzoek-inzake-straf--en-ordemaatregelen-in-vreemdelingenbewaring>).

<sup>26</sup> Amnesty International, Dokters van de Wereld and Stichting LOS 2020, p. 21; The National Ombudsman 2020, p. 20.

<sup>27</sup> Leidraad straffen en ordemaatregelen [Disciplinary punishments & order measures, 2015.

<sup>28</sup> The National Ombudsman 2020, p. 18; Amnesty International, Dokters van de Wereld and Stichting LOS 2020, p. 16 and 22.

<sup>29</sup> See RSJ R-19/3638/GA 10 July 2020. The national jurisprudence usually finds that the measure was proportionate, especially when providing for such time outs.

<sup>30</sup> Amnesty International, Dokters van de Wereld and Stichting LOS 2020, p. 68.

<sup>31</sup> Amnesty International, Dokters van de Wereld and Stichting LOS 2020, p. 68.

<sup>32</sup> The National Ombudsman 2020, p. 20.

<sup>33</sup> The National Ombudsman 2020, p. 11.

<sup>34</sup> A. Busser, R. Oosterhuis and T. Strik, *Vreemdelingendetentie (I) Detentie-omstandigheden onder huidig regime en onder wetsvoorstel getoetst aan internationale normen* [Immigration detention (I) Detention conditions under the current regime and under the proposed bill assessed against international standards] 2020, *A&MR* 2020, VOL. 8, p. 316-323.

<sup>35</sup> The National Ombudsman 2020, p. 13; the above reports have also included statistics from Detention Centre Rotterdam, where the regime as set out in this new bill has been applied.

**We question whether the practice of placing migrants who refuse a shared cell in solitary confinement and of imposing such measures consecutively are proportionate.**

**We question whether the Dutch government has made adequate efforts to provide for guarantees, such as legal remedies and medical supervision, after imposing such measures.**

#### **IV. Use of restraints during the transportation of persons in immigration detention**

In the Netherlands, restraints, e.g. handcuffs, are applied often when detained undocumented immigrants are transported to locations such as a hospital, a courthouse or a consulate.<sup>36</sup> Whilst this is allowed when an individual risk assessment shows that restraints are necessary and that the risks of injuries are minimal,<sup>37</sup> it seems that the use of restraints while transporting undocumented immigrants has been applied as a standard procedure.<sup>38</sup> When restraints are used without a prior sufficient risk assessment, this may result in inhuman or degrading treatment.

Over the years, a number of organisations have concluded that transport escorts are using restraints on the detainees without a proper individual risk assessment.<sup>39</sup> In 2019, the Immigration Detention Hotline received 40 phone calls in which restraints during transport were mentioned. Also, yearly, a number of complaints are lodged and are found justified by the Council for the Administration of Criminal Justice and Protection of Juveniles (*Raad voor Strafrechtstoepassing en Jeugdbescherming*).<sup>40</sup> Especially with transport to public places, like a hospital, immigrants experience their treatment as humiliating, degrading and unjust.<sup>41</sup> As a result, some undocumented immigrants refrain from going to the hospital.

The Council for the Administration of Criminal Justice and Protection of Juveniles has stated that a ‘no handcuffs unless’- policy must be enforced while deciding on the application of restraints.<sup>42</sup> Also, the National Ombudsman has recommended that the Dutch government stop the use of restraints during transport, unless there is a flight risk.<sup>43</sup> The Secretary of Security and Justice responded to the National Ombudsman by saying that this recommendation had already been adopted in the legislation.<sup>44</sup>

**We question how the government will ensure that the regulations and the no-handcuffs policy of transportation of persons in immigration detention are not only laid down in legislation, but will also be embedded in practice.**

<sup>36</sup> Transport regulations are based on article 35 of the Penitentiary Principles Act, (*Penitentiaire beginselenwet*) and article 10 of the Violence Instruction for Penitentiary facilities (*Geweldsinstructie penitentiaire inrichtingen*).

<sup>37</sup> RSJ 21 November 2011, C11/1555/GA.

<sup>38</sup> Exact numbers are not known.

<sup>39</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Transport of detainees*, [CPT/inf (2018)24], June 2018, p.1 (available at: <https://rm.coe.int/09000016808b631d>, Amnesty International, *The principle of minimum restriction in the alien detention regime*, February 2018).

<sup>40</sup> See: RSJ 1 July 2019, R-18/1314/GA, RSJ 1 June 2018, 17/3938/GA, RSJ 20 July 2017, KC 2.017/033, RSJ 22 May 2014, KC 2015/005 (available at: [https://puc.overheid.nl/rsj/doc/PUC\\_308428\\_21/1/](https://puc.overheid.nl/rsj/doc/PUC_308428_21/1/)).

<sup>41</sup> Amnesty International, *Geen cellen en handboeien! Het beginsel van minimale beperkingen in het regime vreemdelingendetentie*, [No cells and handcuffs! The principle of minimum restrictions in the regime of immigration detention], 20 February 2018, p. 9 (available at: [https://www.amnesty.nl/content/uploads/2018/02/AMN\\_18\\_05\\_Rapport-Geen-cellen-en-handboeien\\_DEF\\_web.pdf](https://www.amnesty.nl/content/uploads/2018/02/AMN_18_05_Rapport-Geen-cellen-en-handboeien_DEF_web.pdf)).

<sup>42</sup> RSJ 15 February 2008, 07/3110/GA and RSJ 10 January 2020, R-19/2236/GA.

<sup>43</sup> The National ombudsman, ‘Medical care undocumented immigrants’ *Medische zorg vreemdelingen*, 2013/125, 3 October 2013, p. 4.

<sup>44</sup> Secretary of Justice and Security & Minister of Health, Welfare and sports, ‘Letter to parliament regarding the healthcare of undocumented immigrants’, The Hague, 28 November 2013.

## V. Lockdown in immigration detention

The Dutch Secretary of Justice and Security has proposed an amendment to the Return and Immigration Detention Act, granting the director of a detention centre the legal power to apply a lockdown for all the detainees in case of serious order and safety problems.<sup>45</sup> This amendment is problematic, as it will enshrine the possibility of a lockdown in the law, normalizing the use of a measure that amounts to collective punishment, which is not in line with the principles of proportionality and subsidiarity. It is also not in line with the European Prison Rules and the Dutch Custodial Institutions Law, which states that a detainee should not be punished for something he cannot be held accountable for.<sup>46</sup> The possibility of a lockdown will also further diminish the intended administrative nature of immigration detention.<sup>47</sup>

The proposed lockdown measure allows a director of a detention centre to lock large groups or even all asylum seekers and other foreigners, in their cells for a maximum of 23 hours a day for a total period for four weeks.<sup>48</sup> During this period their freedom of movement and their daily activities will be limited to one hour in fresh air. Such a measure is, at the least, in breach of the principles of proportionality and subsidiarity. Both the Advisory Division of the Council for the Administration of Criminal Justice and Protection of Juveniles<sup>49</sup> and the Administrative Jurisdiction Division of the Council of State<sup>50</sup> have made recommendations on the amendment and advocate for one that is less intrusive.

**We question to what extent the introduction of the possibility of a lockdown in immigration detention in the Return and Immigration Detention Act is in line with the prohibition of inhuman or degrading treatment as set out in the Convention.**

## VI. Deterioration of circumstances in immigration detention during the COVID-19 crisis

During the COVID-19 crisis, regulations and measures were put in place by the Dutch government that significantly aggravated the circumstances in which immigrants are being held in detention. This is worrisome, because even prior to the pandemic, immigration detention facilities in the Netherlands were regularly criticised by relevant national and international organisations as being prison-like and not in accordance with the administrative nature of immigration detention.<sup>51</sup>

<sup>45</sup> Lower House of Parliament, Kamerstukken II, 2019-2020, 35501 no. 2.

<sup>46</sup> Article 60(3) European Prison Rules and article 51(5) Custodial Institutions Act.

<sup>47</sup> Amnesty International, *Reactie van Amnesty International bij de 'Wijziging van de Wet terugkeer en vreemdelingenbewaring met het oog op handhaven van de mogelijkheden om maatregelen te nemen ten aanzien van overlastgevende vreemdelingen*, [Reaction from Amnesty International on the Amendments on the Return and Immigration Detention Act], 18 August 2020, p. 5, (available at: <https://www.amnesty.nl/content/uploads/2018/06/Amnesty-International-Wet-Terugkeer-en-Vreemdelingenbewaring-6-juni-2018.pdf?x77707>); European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Standards 2011, p. 65 *A prison is by definition not a suitable place in which to detain someone who is neither convicted nor suspected of a criminal offence*.

<sup>48</sup> Revisjara Oosterhuis, *Isolatie in vreemdelingendetentie*, [Isolation in Immigration Detention], September 2020, p. 69, (available at: [Rapport-Isolatie-Webversie-2020.pdf](https://www.revisjara.nl/documenten/rapporten/2020/09/30/novelle-wetsvoorstel-wet-terugkeer-en-vreemdelingenbewaring) ([meldpuntvreemdelingendetentie.nl](https://www.revisjara.nl/documenten/rapporten/2020/09/30/novelle-wetsvoorstel-wet-terugkeer-en-vreemdelingenbewaring))).

<sup>49</sup> Council for the Administration of Criminal Justice and Protection of Juveniles, *Advies Novelle wetsvoorstel Wet Terugkeer en Vreemdelingenbewaring*, 15 September 2020, [Advice Novella on the Bill on the Return and Immigration Detention Act], (available at <https://www.rsj.nl/documenten/rapporten/2020/09/30/novelle-wetsvoorstel-wet-terugkeer-en-vreemdelingenbewaring>).

<sup>50</sup> Lower House of Parliament, Kamerstukken II, 2019-2020, 35501 no. 4.

<sup>51</sup> See for instance: CAT, *Concluding observations on the seventh periodic report of the Netherlands*, (CAT/C/NLD/7), 18 December 2018, p. 4-5 (available at: [https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/NLD/CAT\\_C\\_NLD\\_CO\\_7\\_33166\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/NLD/CAT_C_NLD_CO_7_33166_E.pdf)); Committee on Economic, Social, and Cultural Rights (CESCR), *Aanbevelingen op basis van het Internationaal Verdrag inzake Economische, Sociale en Culturele Rechten*, [Recommendations based on the International Treaty on Economic, Social and Cultural Rights], 19 November 2010, UN Doc. E/C.12/NL/CO/4-5; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Government of the Netherlands on the visit to the Netherlands*, CPT/Inf (2012) 21, 9 August 2012, p. 25 (available at: <https://rm.coe.int/0900001680697829>); The National Ombudsman, *Grenzen aan vreemdelingenbewaring. Een onderzoek naar de uitvoering van vreemdelingenbewaring*, [Boundaries to immigration detention], 2020/002, 6 February 2020 (available at:

In the Netherlands, most undocumented immigrants are held in the detention centre in Rotterdam (these are mostly male adults). Since 9th March 2020, the detainees in immigration detention in Rotterdam have faced various measures with the aim of preventing and limiting the spread of the coronavirus. Most impactful was the measure to limit the time outside their cell to about 3-4 hours per day.<sup>52</sup> Before the COVID-19 crisis this was 10-12 hours per day.<sup>53</sup> During the pandemic there is access to the outside courtyard for one hour a day, which is the minimum required by law.<sup>54</sup> The remaining two or three hours, detainees are allowed in the common spaces of their department. Very rarely, extra hours were allowed in specific departments for a limited number of weeks.

When COVID infections were detected, entire departments were quarantined, reducing the time outside the cell to one hour in open air for periods of two to (over) ten days.<sup>55</sup> Also, the sports halls and the creative activities room have been closed, with only very few exceptions. At the same time, the standard use of multiperson cells were not altered and visits and the ability to receive goods were limited.<sup>56</sup>

These measures significantly increased the ‘pains of imprisonment’ for this population, including limited social interactions, reduced activity and environmental input, and further loss of autonomy and control.<sup>57</sup> The impact on the mental and physical well-being of the detainees can therefore be akin to solitary confinement.<sup>58</sup> In this regard, detainees have reported to the Immigration Detention Hotline (operated by LOS Foundation) almost on a daily basis about these measures and the severe impact it had on them.<sup>59</sup> Following these reports, the organization called for the suspension of detainment of migrants awaiting extradition in letters to the Dutch government and the CPT.<sup>60</sup> The government has not responded yet.

<https://www.nationaleombudsman.nl/system/files/onderzoek/Rapport%202020-002%20Grenzen%20aan%20vreemdelingenbewaring.pdf>;

Amnesty International, ‘*Het recht op vrijheid. Vreemdelingendetentie: het ultimatum remedium-beginsel*, [The right to freedom. Immigration detention: the ultimatumremedium-principle], February 2018 (available at: [https://www.amnesty.nl/content/uploads/2018/02/AMN\\_18\\_08\\_Rapport-het-recht-op-vrijheid\\_DEF\\_web-1.pdf?x14056](https://www.amnesty.nl/content/uploads/2018/02/AMN_18_08_Rapport-het-recht-op-vrijheid_DEF_web-1.pdf?x14056)); Amnesty International, ‘*Geen cellen en handboeien! Het beginsel van minimale beperkingen in het regime van vreemdelingendetentie*, [No cells and handcuffs! The principle of minimal restrictions in the regime of immigration detention], February 2018 (available at: [https://www.amnesty.nl/content/uploads/2018/02/AMN\\_18\\_08\\_Rapport-het-recht-op-vrijheid\\_DEF\\_web-1.pdf?x14056](https://www.amnesty.nl/content/uploads/2018/02/AMN_18_08_Rapport-het-recht-op-vrijheid_DEF_web-1.pdf?x14056)).

<sup>52</sup> Oosterhuis, *Isolatie in vreemdelingendetentie* [Solitary confinement in immigration detention], *Journaal Vreemdelingenrecht*, 2020-12, p. 62.

<sup>53</sup> DJI, *Informatieblad vreemdelingenbewaring* [Information leaflet immigration detention], 2 July 2020 (available at: <https://www.dji.nl/justitiabelen/documenten/publicaties/2020/07/02/informatieblad-vreemdelingenbewaring>).

<sup>54</sup> Article 49 sub 1 jo. sub 3 Pbw <https://maxius.nl/penitentiaire-beginselenwet/artikel49>.

<sup>55</sup> Based on phoned-in reports by detainees to the Immigration Detention Hotline (part of LOS Foundation) and letters from the director addressed to detainees, seen by staff members of the Hotline.

<sup>56</sup> Also see footnote 52. Multiperson cells are still the norm as confirmed in this response to questions from Members of Parliament (See *Questions from member Van Nispen (SP) to the Minister for Legal Protection about corona infections in the prison system (submitted January 15, 2021)* (available at: <https://zoek.officielebekendmakingen.nl/ah-tk-20202021-1632.html>)). Visits were forbidden from March 9th to June 22rd, and after that only one visitor was allowed, behind a screen (see DJI: visit and leave is possible again at all locations, June 2020 (available at: <https://www.rijksoverheid.nl/actueel/nieuws/2020/06/15/dji-bezoek-en-verlof-kan-weer-op-alle-locaties>)). Immigration detention followed one week after other institutions allowed visitors again). Receiving goods was allowed again on July 13, but only by mail and following instructions about size and addressing the package, a significant impediment for this population and their contacts, who used to be able to hand over goods in the reception area of the detention centre.

<sup>57</sup> G. Sykes, *The Society of Captives. A study of a maximum security prison*, NJ: Princeton University Press, 1958/2007.

<sup>58</sup> World Health Organization, *Prisons and Health*, 2014 p. 28 (available at: [https://www.euro.who.int/\\_data/assets/pdf\\_file/0005/249188/Prisons-and-Health.pdf](https://www.euro.who.int/_data/assets/pdf_file/0005/249188/Prisons-and-Health.pdf)); Amnesty International a.o., ‘*Isolatie in vreemdelingendetentie*’, [Solitary confinement in immigration detention], September 2020, p. 30-41 (available at: <https://meldpuntvreemdelingendetentie.nl/wp-content/uploads/Rapport-Isolatie-Webversie-2020.pdf>).

<sup>59</sup> Oosterhuis, *Isolatie in vreemdelingendetentie* [Solitary confinement in immigration detention], *Journaal Vreemdelingenrecht*, 2020-12, p. 62-65.

<sup>60</sup> Immigration Detention Hotline, *Dringende oproep aan de Tweede Kamer tot vrijlating vreemdelingen i.v.m. het coronavirus*, [Urgent appeal to the Second Chamber for the release of undocumented immigrants regarding the coronavirus], 16 March 2020 (available at: [Oproep-Tweede-Kamer-vrijlating-vreemdelingen.pdf](https://www.immigrationdetention.nl/oproep-tweede-kamer-vrijlating-vreemdelingen.pdf) (meldpuntvreemdelingendetentie.nl)); Immigration Detention Hotline, *Brief aan de Commissie voor Justitie en Veiligheid met inbreng voor het schriftelijk overleg over corona gerelateerde maatregelen in de migratie keten*, [Letter to the Committee for Justice and Security with input for the written consultations about the measures regarding the coronavirus in the migration chain], 30 March 2020 (available at: [Kamervragen-schriftelijk-overleg-over-corona-gerelateerde-maatregelen-migratieketen-1.pdf](https://www.immigrationdetention.nl/kamervragen-schriftelijk-overleg-over-corona-gerelateerde-maatregelen-migratieketen-1.pdf) (meldpuntvreemdelingendetentie.nl)); Immigration Detention Hotline, *Brief aan het Europese Comité ter voorkoming van Foltering en voorkoming van Onmenselijke of Vernederende Behandeling of Bestrafing (CPT) over de actuele situatie van vreemdelingendetentie in Nederland*, [Letter to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) about the current situation of immigration detention in The Netherlands], 17 April 2020 (available at: [Letter-to-CPT-Principles-Covid-19-1.pdf](https://www.immigrationdetention.nl/letter-to-cpt-principles-covid-19-1.pdf) (meldpuntvreemdelingendetentie.nl)); Immigration Detention Hotline a.o., *Gezamenlijke*

**We question whether the application of anti-COVID-19 measures in immigration detention has been proportional and why the Dutch government has not introduced less coercive measures for this group of people.**

## VII. National Prevention Mechanism

The Dutch National Prevention Mechanism (hereinafter: NPM) is a body that cannot be regarded as independent and objective as is foreseen in the OPCAT. In the case of the Netherlands, the NPM consists of a network structure in which solely government organisations take part. The two organisations that execute an NPM task, the Inspectorate Security and Justice (*Inspectie Veiligheid en Justitie*) and the Inspectorate Health Care and Youth (*Inspectie voor Gezondheidszorg en Jeugd*), are ministerial organizations, of which the Inspectorate Security and Justice is housed in the Ministry of Justice and Security which further compromises the independency, and falling under political responsibility of the same Ministry.<sup>61</sup>

As the Dutch NPM consists of a network, the government should ensure the network is allocated a specifically earmarked budget and to align the mechanism with the guidelines on NPM's with the SPT and Paris Principles. The Netherlands has failed to do so.<sup>62</sup> The fact that the Inspectorates Security and Justice and Health Care and Youth have been reluctant to deploy additional activities with regard to the NPM besides their regular tasks might be related to this omission.<sup>63</sup> Difficulties of communication between the different monitoring mechanisms and the lack of joint output and overall vision have been acknowledged by NPM representatives.<sup>64</sup> This inadequate structure of the NPM has in recent years resulted in the withdrawal of the participation of several organisations that were involved in the NPM network.<sup>65</sup>

In addition, the Dutch government has not taken any measures to withdraw its declaration on the exclusive territorial application of the OPCAT to the European part of the Kingdom since the last Concluding Observations of the Committee against Torture.<sup>66</sup>

**We question how the Dutch government indicates its efforts to ensure the complete financial and operational independence of the NPM, both factual and perceived.**

**We question the refusal of the Dutch government to withdraw their declaration on the exclusive territorial application of the OPCAT to the European Netherlands, hence the refusal to monitor all**

*oproep aan de Tweede Kamer en Staatssecretaris van Justitie en Veiligheid Broekers-Knol tot vrijlating vreemdelingen in detentie*, [Joint call to the Second Chamber and the Secretary of Justice and Security for the release of undocumented immigrants in detention], 5 May 2020 (available at: [https://www.nationaleombudsman.nl/system/files/bijlage/2014-07-24%20Inspectie%20Veiligheid%20en%20Justitie%20over%20NPM\\_0.pdf](https://www.nationaleombudsman.nl/system/files/bijlage/2014-07-24%20Inspectie%20Veiligheid%20en%20Justitie%20over%20NPM_0.pdf)).

<sup>61</sup> Letter from the National Ombudsman to the head of Inspection Security and Justice mr. J.G. Bos, dd. 24 July 2014, p. 2 (available at: [https://www.nationaleombudsman.nl/system/files/bijlage/2014-07-24%20Inspectie%20Veiligheid%20en%20Justitie%20over%20NPM\\_0.pdf](https://www.nationaleombudsman.nl/system/files/bijlage/2014-07-24%20Inspectie%20Veiligheid%20en%20Justitie%20over%20NPM_0.pdf)).

<sup>62</sup> Concluding Observations on the 7th periodic report of the Netherlands, adopted by the Committee at its 1712th and 1715th meetings, 3-5 December 2018, 18 December 2018, CAT/C/NLD/CO/7, para. 23.

<sup>63</sup> Letter from the National Ombudsman to the head of Inspection Security and Justice mr. J.G. Bos, dd. 24 July 2014, p. 2 (available at: [https://www.nationaleombudsman.nl/system/files/bijlage/2014-07-24%20Inspectie%20Veiligheid%20en%20Justitie%20over%20NPM\\_0.pdf](https://www.nationaleombudsman.nl/system/files/bijlage/2014-07-24%20Inspectie%20Veiligheid%20en%20Justitie%20over%20NPM_0.pdf)).

<sup>64</sup> CPT, Report to the Government of the Netherlands on the visit to the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 19 January 2017, p. 11 (available at: <https://rm.coe.int/16806ebb7e>).

<sup>65</sup> Letter from the Council for the Administration of Criminal Justice and Protection of Juveniles, 10 November 2014 (RSJ/100/2306/14/Avb/HE); Letter from the National Ombudsman to the head of Inspection Security and Justice mr. J.G. Bos, dd. 24 July 2014, (available at: [https://www.nationaleombudsman.nl/system/files/bijlage/2014-07-24%20Inspectie%20Veiligheid%20en%20Justitie%20over%20NPM\\_0.pdf](https://www.nationaleombudsman.nl/system/files/bijlage/2014-07-24%20Inspectie%20Veiligheid%20en%20Justitie%20over%20NPM_0.pdf)).

<sup>66</sup> In their last annual report, the NPM-network specifically underlines the fact that the network was founded only for the European part of the Netherlands. See: NPM, *Jaarverslag 2019* [Annual Report 2019], 30 November 2020, p. 9 (available at: <https://www.rijksoverheid.nl/documenten/kamerstukken/2020/11/30/tk-aanbieding-jaarverslag-2019-nationaal-preventie-mechanisme>); Concluding Observations on the 7th periodic report of the Netherlands, adopted by the Committee at its 1712th and 1715th meetings, 3-5 December 2018, 18 December 2018, CAT /C/NLD/CO/7, para. 22.

**places of deprivation of liberty throughout the Kingdom of the Netherlands – including the Dutch Caribbean.**

### **VIII. Pretrial detention**

In the Netherlands there is an extensive use of pretrial detention. Over the last years the percentage of pretrial detainees as part of the whole population of imprisoned persons has remained high and even increased from 42.9% in 2014 to 44.3% in 2019.<sup>67</sup> These figures are double to the use of pretrial detention in other EU countries (22% on average).<sup>68</sup> Moreover, in 2020, in 4584 cases compensation was awarded to persons who were unlawfully detained.<sup>69</sup> Recent figures on juvenile detainees on remand have not been published.<sup>70</sup> The over-use of pre-trial detention raises questions about whether it is only applied as a measure of last resort and how it corresponds with the presumption of innocence.<sup>71</sup>

In addition, the defence often needs to provide the information that is needed for suspending the pre-trial detention.<sup>72</sup> This is also illustrated in three recent cases handled by the European Court for Human Rights.<sup>73</sup> The court ruled in these cases that it was insufficiently motivated why pre-trial detention was necessary. Although legal practitioners noted that some recent court decisions imposing pretrial detention have been better substantiated,<sup>74</sup> it is too early to argue that there is a change in the Dutch legal culture. The use of pretrial detention and the lack of trust to use alternative measures remains dominant.<sup>75</sup>

**We question whether the Dutch government has taken adequate measures to reduce the use of pretrial detention and whether it does enough to stimulate the use of alternative measures. In addition, we question how the government plans to improve substantiation of pretrial detention.**

**We also question how the government will further improve the reasoning in cases of pretrial detention and how many juvenile detainees were placed in pretrial detention since 2018.**

<sup>67</sup> 2019 Statistics Netherlands, published on 13 August 2020 (available at: <https://www.cbs.nl/nl-nl/nieuws/2020/33/in-2019-meer-mensen-gedeteneerd#:~:text=Op%2030%20september%202019%20waren,met%20dezelfde%20dag%20in%202018.&text=Het%20aantal%20gedetineerd%20stijgt%20weer,8%2C8%20duizend%20in%202016>).

<sup>68</sup> According to SPACE statistics the European average is 22% (see: <https://www.coe.int/en/web/prison/space>); Martufi & Peristeridou, *The Purpose of Pre-trial detention and the Quest for Alternative*, 2020 European Journal Of Crime, Criminal Law and Justice, p. 154.

<sup>69</sup> Minister for Justice and Security, *Letter to Parliament*, 22 February 2021, in order to respond to questions raised by MP Van Dam (available at: <https://www.rijksoverheid.nl/documenten/kamerstukken/2021/02/22/antwoorden-kamervragen-over-het-verrekenen-van-schadevergoeding-ogv-artikel-6-1-13-wetboek-van-strafvordering>).

<sup>70</sup> Most recent figures are from 2018 from the years 2013-2017. In 2017, 202 children were placed in pre trial detention for on average 47 days: Custodial Institutions Agency (DJI), *DJI in getal 2013-2017* [DJI in figures 203-2017] 31 August 2018 (available at: <https://www.rijksoverheid.nl/documenten/rapporten/2018/08/31/dji-in-getal-2013-2017>).

<sup>71</sup> Boone, Jacobs & Lindeman, *Alternatieven voor voorlopige hechtenis in Europa en Nederland: De advocaat als onterechte sleutelhouder*, [Alternatives for pretrial detention in The Netherlands, the defence attorney as a unjustified keyholder], *Delikt en Delinkwent*, 2019/12, p. 1-2.

<sup>72</sup> Montaigne Centrum voor Rechtsstaat en rechtspleging, *Wie past de schoen? De snelrechtgrond in de praktijk. Evaluatie van de wet uitbreiding gronden voorlopige hechtenis*, [Who fits the shoe? The Ground for Summary Justice in Practice, Evaluation of the Law on Additional grounds for pretrial detention], 2020, Utrecht University, p. 28.

<sup>73</sup> European Court of Human Rights, 9 February 2021, cases Maassen (10982/15), Hasselbaink (73329/16) and Zohllandt (69491/16).

<sup>74</sup> For example Buruma referred in his article ‘Voorlopige Hechtenis, een buikpijndossier’, [Pretrial detention, a problematic case] to Hof Den Bosch, 18 March 2021, ECLI:NL:GHSHE:2021:910 and Rechtbank Noord-Holland, 25 March 2020, ECLI:NL:RBNHO:2020:2285. (available at: <https://www.njb.nl/blogs/voorlopige-hechtenis-een-buikpijndossier/>).

<sup>75</sup> According to SPACE statistics the European average is 22% (see: <https://www.coe.int/en/web/prison/space>); Martufi & Peristeridou, *The Purpose of Pre-trial detention and the Quest for Alternatives*, 2020 European Journal Of Crime, Criminal Law and Justice, p. 154 and Montaigne Centrum voor Rechtsstaat en rechtspleging, *Wie past de schoen? De snelrechtgrond in de praktijk. Evaluatie van de wet uitbreiding gronden voorlopige hechtenis*, 2020, [Who fits the shoe? The Ground for Summary Justice in Practice, Evaluation of the Law on Additional grounds for pretrial detention], Utrecht University, p. 29-30.



## IX. Terrorist Wing

In the Netherlands, detainees are automatically placed on the Terrorist Wing (hereafter: T.W.) if they are suspected of or convicted of a terrorist crime. Detainees can also be placed on the T.W. if they proclaim or disseminate a message of radicalisation before or during their detention, including recruitment activities.<sup>76</sup>

Jurisprudence of the Council for Criminal Justice and Youth Protection (RSJ) shows that detainees are still automatically placed on the T.W. if they fall under one of the categories of Article 20a Regulation selection, placement and transfer detainees (RSPOG). Whether the detainees actually pose a threat when it comes to radicalising or recruiting fellow prisoners, or that they pose a significant threat due to violent or other anti-social behaviour, is not examined.<sup>77</sup> Therefore it is not adequately assessed whether the safety measures are truly necessary and proportionate given the circumstances for that particular detainee.

The absence of an individual risk assessment is one of the main weaknesses of the T.W. After the visit of the CPT to the T.W. in 2007 and 2016, it was reported that the placement of a detainee in an extra-secure facility should only take place after an extensive risk assessment and not automatically on the basis of the punishment imposed. In addition, the placement must be regularly assessed.<sup>78</sup> The Netherlands has not followed the recommendations of the CPT. A risk assessment, the so-called Violence Extremism Risk Assessment version 2 Revision (VERA-2R), occurs, but only after the detainee has already been placed on the T.W.<sup>79</sup>

Although there is a possibility to re-assess the placement after a convicted detainee has served one third of his sentence and his sentence remains at least four months and at most one year, it does not apply to detainees who are placed on the T.W. because of proclaiming or spreading a message of radicalisation.<sup>80</sup> In addition, Article 26a of the RSPOG does not specify which circumstances the Selection Officer should consider when reassessing.<sup>81</sup> There are no objective criteria for the reassessment provided by law.<sup>82</sup>

**We question when the government will follow up on the recommendations of the CPT and other organisations and change its policy regarding the placement of detainees on the T.W, in particular with regard to the individual risk assessment and to providing objective criteria for reassessment by law.**

<sup>76</sup> Regulations on the selection, placement and transfer of detainees, article 20a.

<sup>77</sup> Council for Criminal Justice and Youth Protection 29 January 2019, 18/1736/GB (available at: [https://puc.overheid.nl/rsj/doc/PUC\\_265523\\_21/1/](https://puc.overheid.nl/rsj/doc/PUC_265523_21/1/)). See also RSJ 27 January 2020, 19/5106/GB (available at: [https://puc.overheid.nl/rsj/doc/PUC\\_301871\\_21/1/](https://puc.overheid.nl/rsj/doc/PUC_301871_21/1/)).

<sup>78</sup> Report to the authorities of the Kingdom of the Netherlands on the visits carried out to the Kingdom in Europe, Aruba, and the Netherlands Antilles by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 30 January 2008, para. 42 (available at: [CPT/Inf \(2008\) 2](https://rm.coe.int/16806ebb7e)); CPT, Report to the Government of the Netherlands on the visit to the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 19 January 2017, para. 47 (available at: <https://rm.coe.int/16806ebb7e>).

<sup>79</sup> Inspectorate Security and Justice (*Inspectie Veiligheid en Justitie*), *De Terroristen Afdelingen in Nederland* [The Terrorist Units in the Netherlands] 16 September 2019, p. 29-30 (available at: <https://www.inspectie-jenv.nl/Publicaties/rapporten/2019/09/16/de-terroristen-afdelingen-in-nederland>).

<sup>80</sup> Regulations on the selection, placement and transfer of detainees, article 26a.

<sup>81</sup> Report to the authorities of the Kingdom of the Netherlands on the visits carried out to the Kingdom in Europe, Aruba, and the Netherlands Antilles by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 30 January 2008, para. 42 (available at: [CPT/Inf \(2008\) 2](https://rm.coe.int/16806ebb7e)).

<sup>82</sup> Regulations on the selection, placement and transfer of detainees, article 26a.

## X. Life imprisonment

The prevalence of administrative power over judicial power in the case of life imprisonment is highly problematic.<sup>83</sup> Since the establishment of the Dutch Advisory Committee tasked with reviewing persons serving life sentences in 2016, the Dutch Minister for Legal Protection has ignored every positive advice of the Committee.<sup>84</sup> Therefore, there is no genuine perspective of release, which would then be in conflict with the judgments as mentioned above. Illustrative is a case earlier this year, when a judge ruled that there were insufficient arguments to withhold the prisoner pardon. The Minister was obliged to pardon the prisoner,<sup>85</sup> as it exhausted all legal measures.<sup>86</sup>

A review to determine whether or not to allow life-sentenced prisoners to start rehabilitation activities is applied after 25 years of detention. The Committee advises the Minister for Legal Protection to grant a prisoner pardon at the start of the activities that are aimed at rehabilitation.<sup>87</sup> The Minister can choose to adopt or ignore this advice. In case the Minister adopts the advice, together with the Public Prosecutor and the judge, that imposed the sentence, they advise the King of the Kingdom of the Netherlands in his decision to grant pardon to a prisoner.<sup>88</sup>

Due to the fact that the Minister continues to ignore the advice of the committee, members of the Committee consider resigning. The members seriously doubt that their advice is not taken seriously and they therefore question whether their efforts are still worthwhile.<sup>89</sup>

**We question why the Dutch government leaves the decision of starting rehabilitation activities and the decision of granting pardon in the case of life imprisonment to the discretion of the administrative power.**

## XI. Ill-treatment in Point Blanche's Prison

In 2019, the court of St. Maarten found that inter-prisoner violence and intimidation in the prison Point Blanche created a pattern of violence over time, which ultimately led to a cruel and inhuman punishment.<sup>90</sup> Since then, multiple plans - like the Strategic plan - have been developed by the prison to improve the situation. These plans were described as ambitious and necessary, but it remains uncertain whether and

<sup>83</sup> See the separation of powers: <https://prodemos.nl/kennis-en-debat/publicaties/informatie-over-politiek/wat-is-een-rechtsstaat/de-scheiding-der-machten/> and also: Jacques Claessen *Waarom gratieverlening niet in handen dient te liggen van de bestuurlijke macht* [Why the process of granting pardon can't be placed in the hands of the administrative power], 26 Januari 2021 (available at: <https://www.nederlandrechtsstaat.nl/forum/id335/26-01-2021/waarom-gratieverlening-niet-in-handen-dient-te-liggen-van-de-bestuurlijke-macht.html>).

<sup>84</sup> See ECHR *Murray v. The Netherlands* and the Dutch Supreme Court Case No. 15/00402, ECLI:HR:2016:1325. And: Jelmer Kos, *Toch gratie voor moordenaar café 't Koetsiertje* [A pardon for the killer café 't Koetsiertje], 20 January 2021 (available at: <https://www.nrc.nl/nieuws/2021/01/20/toch-gratie-voor-moordenaar-cafe-t-koetsiertje-a4028386>); <https://www.volkskrant.nl/nieuws-achtergrond/levenslang-gestraft-cevdet-y-zesvoudig-moordenaar-van-t-koetsiertje-krijgt-zeldzame-gratie-bbaefd6f/>).

<sup>85</sup> Jelmer Kos, *Toch gratie voor moordenaar café 't Koetsiertje* [A pardon for the killer café 't Koetsiertje], 20 January 2021 (available at: <https://www.nrc.nl/nieuws/2021/01/20/toch-gratie-voor-moordenaar-cafe-t-koetsiertje-a4028386>).

See also: <https://www.volkskrant.nl/nieuws-achtergrond/levenslang-gestraft-cevdet-y-zesvoudig-moordenaar-van-t-koetsiertje-krijgt-zeldzame-gratie-bbaefd6f/>

<sup>86</sup> The Hague court, 19 January 2021, ECLI:NL:GHDHA:2021:73.

<sup>87</sup> State Secretary for Security and Justice, 25 November 2016, Besluit Adviescollege Levenslanggestraften [Decision Board of Advisory Life-sentenced].

<sup>88</sup> Article 122 sub 1 of the Constitution. See also: <https://www.rechtspraak.nl/Themas/Levenslang>.

<sup>89</sup> Het onderzoeksbureau, *Een levenslange gevangenisstraf: doodgaan achter de tralies?* [Life imprisonment: dying behind bars?] 9 April 2021 (available at: <https://www.nporadio1.nl/podcasts/het-onderzoeksbureau/52680/4-een-levenslange-gevangenisstraf-doodgaan-achter-de-tralies>).

<sup>90</sup> *Gerecht in eerste aanleg van Sint Maarten* [Court of first instance of St. Martin], 29 October 2019, ECLI:NL:OGEAM:2019:143, paras 4.6-4.10 (available at: <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:OGEAM:2019:143>).

when these measures indicated in the plan will actually be effectuated.<sup>91</sup> The Ministry of Justice of St. Maarten lacks the capacity to make the necessary adjustments and there has been no explicit indication from the government that they intend to carry out these plans.<sup>92</sup> Nevertheless, the primary responsibility to uphold human rights in the prison Point Blanche lies first and foremost with the government of St. Maarten.

Because there is a lack of action from the government of St. Maarten, the Dutch government has a secondary responsibility to improve the situation based on article 43 of the Statute of the Kingdom of the Netherlands. This was confirmed in the case *Corallo v. The Netherlands* at the European Court of Human Rights.<sup>93</sup> St. Maarten is an autonomous country within the Kingdom of the Netherlands,<sup>94</sup> but guaranteeing the enjoyment of fundamental freedoms and human rights<sup>95</sup> is a responsibility of the Kingdom as a whole.<sup>96</sup> As a consequence, when freedoms and rights are at stake in a constituent part of the Kingdom, it is, as a matter of last resort, possible to intervene in that particular part.<sup>97</sup> The Dutch government has, however, not intervened and stated that it will keep insisting St. Maarten to take measures to improve the situation.<sup>98</sup> At this point the situation in Point Blanche seems to call for more adequate action by the Dutch government.<sup>99</sup>

**We question if the government of St Maarten takes adequate measures to tackle the issues in Point Blanche’s prison and whether there is a clear roadmap to implement the measures.**

**We question whether the Dutch government takes an active stance to support the government of St. Maarten to tackle the issues in Point Blanche’s prison.**

## XII. Juvenile detention on the BES-islands

In August 2020 the first juvenile criminal code went into effect on Bonaire, St. Eustatius and Saba (BES-islands) that enabled a separation between juveniles and adults in detention.<sup>100</sup> Although this is a positive development, it remains possible to place a juvenile, that is older than 16 years, with adults for a period of three months in case of a shortage of juvenile detention places.

The Department of advice of the Council of State has been critical about this provision and asked the government for clarification.<sup>101</sup> The Minister of Security and Justice replied that the provision is still needed as at this moment it can only be indicated in time if it is necessary to invoke the provision.<sup>102</sup> The Minister

<sup>91</sup> Commission of Progress Sint Maarten, *Zevenendertigste rapportage aan het ministerieel overleg over de periode* [Thirty-seventh rapport to the ministerial consultation about the period 1 January – 1 July], 1 January 2020 – 1 July 2020, August 2020, p. 7 (available at: <https://www.rijksoverheid.nl/documenten/rapporten/2020/09/01/37e-voortgangsrapportage-sint-maarten>).

<sup>92</sup> *Ibid.*

<sup>93</sup> National Human Rights Institute, *Communication with regard to the execution of the judgement of the European Court of Human Rights in the case of Corallo v. The Netherlands*, 26 February 2019 (available at: <https://mensenrechten.nl/nl/publicatie/5c751b88e19c2154958b1048>).

<sup>94</sup> Statute for the Kingdom of the Netherlands, art. 1.

<sup>95</sup> Statute for the Kingdom of the Netherlands, art. 43 (1).

<sup>96</sup> Statute for the Kingdom of the Netherlands, art. 43 (2).

<sup>97</sup> H.G. Hoogers, *Fundamentele rechten, rechtszekerheid en deugdelijkheid van bestuur* [Fundamental rights, legal certainty and decency of the administration], Text and Comments Constitution and Statute, Comment on article 43 of the Statute for the Kingdom, 1 July 2018 (available at: [https://www.navigators.nl/document/idpassb76720ae3cea4466974503c687e3025c?ctx=WKNL\\_CSL\\_583](https://www.navigators.nl/document/idpassb76720ae3cea4466974503c687e3025c?ctx=WKNL_CSL_583)).

<sup>98</sup> State Secretary for the Interior and Kingdom Relations, Letter to parliament, 11 September 2020, 35 300 IV, no. 73 (available at: <https://zoek.officielebekendmakingen.nl/kst-35300-IV-73.html>).

<sup>99</sup> National Human Rights Institute, *Communication with regard to the execution of the judgement of the European Court of Human Rights in the case of Corallo v. The Netherlands*, 26 February 2019 (available at: <https://mensenrechten.nl/nl/publicatie/5c751b88e19c2154958b1048>).

<sup>100</sup> Official Gazette, *Besluit van 16 juli 2020, houdende vaststelling van regels voor de tenuitvoerlegging van het jeugdstrafrecht op Bonaire, Sint-Eustatius en Saba (Besluit tenuitvoerlegging jeugdstrafrecht BES)* [Resolution of 16 July 2020, laying down rules for the execution of juvenile criminal law on Bonaire, St. Eustatius and Saba (BES Juvenile Criminal Law Execution Decree)], 2020, 288, 16 July 2020 (available at: [stb-2020-288.html](https://stb-2020-288.html)), article 5 paragraph 3.

<sup>101</sup> Council of State (RvS), *Besluit tenuitvoerlegging jeugdstrafrecht BES* [Implementation juvenile criminal code BES act], 17 June 2020, (available at: <https://www.raadvanstate.nl/adviezen/@120674/w16-20-0074-ii/#highlight=jeugdtdententie>).

<sup>102</sup> *Ibid.*

also stated that the consequences of the law will be monitored and that the outcome of the monitoring might be a cause for re-evaluation of the law after a reasonable amount of time (which has yet to be determined).<sup>103</sup>

**We question how the government is monitoring the situation on the BES-islands, regarding juvenile detention, what the indicators are for a re-evaluation and how the indicators will be measured.**

**We also question how non-custodial alternatives for juveniles in detention are promoted in the BES-islands.**

### XIII. Secure youth care facilities

#### Measure of last resort

In the Netherlands the deprivation of liberty of children in secure (closed) youth care centres is not used as a measure of last resort. This is visible in two ways. First, there are too many children placed in secure youth care centre. In 2019 there were 1.707 children placed in secure youth centre (1.720 in 2018), of which 1.382 unique children<sup>104</sup> (1.433 in 2018).<sup>105</sup> In 2020 a surprising decrease of 18% of the placements had been made, as 1.366 children were placed in a secure youth care facility of which 1.128 unique children.<sup>106</sup> The reason for this decrease is not completely clear. It could be that there are more alternatives to secure youth care, but it could also be a consequence of the COVID-19 crisis. During the last year children and their wellbeing were less visible for authorities due to the strict anti-COVID-19 measures (e.g. schools were closed and sport and community activities were cancelled). In this regard it is important to note that the inspection for Health and Youth care noticed in March 2021 that due to the pandemic more forensic health care (GGZ) is needed for young adults and children below the age of 15. The inspection warns that waiting lists will lengthen for children in need of specialised forensic care and treatment.<sup>107</sup> This means that there is a real risk that more care for children is needed in the near future.<sup>108</sup>

In addition, it is worrisome that there are still children below the age of 12 placed in secure care facilities, as there is a lack of alternatives.<sup>109</sup> Over the last four years 4% of the children placed in closed youth care were aged below twelve.<sup>110</sup>

**We question what action the government takes to provide the most appropriate care for children in order to prevent a placement in a secure youth care facility and how it will continue the downward trend of placements of 2020.**

<sup>103</sup> Council of State (RvS), *Besluit tenuitvoerlegging jeugdstrafrecht BES* [Implementation juvenile criminal code BES act], 17 June 2020, (available at: <https://www.raadvanstate.nl/adviezen/@120674/w16-20-0074-ii/#highlight=jeugddetentie>).

<sup>104</sup> Unique children are children who are not placed more than one time in a secure youth centre in that particular year.

<sup>105</sup> Youth Care the Netherlands, *Jeugdhulpplus Plaatsings- en uitsroomgegevens 2020* [Placement and outflow data 2020] (available at: <https://www.jeugdzorgnederland.nl/wp-content/uploads/2021/04/JeugdzorgPlus-2020-2.pdf>).

<sup>106</sup> Youth Care the Netherlands, *Jeugdhulpplus Plaatsings- en uitsroomgegevens 2020* [Placement and outflow data 2020] (available at: <https://www.jeugdzorgnederland.nl/wp-content/uploads/2021/04/JeugdzorgPlus-2020-2.pdf>).

<sup>107</sup> Inspectie Jeugd en Gezondheidszorg (IGJ), *Factsheet: onvoldoende tijdige en juiste hulp voor jongeren met ernstige psychische problemen* [Factsheet: insufficient timely and correct help for young people with serious psychological problems] 15 March 2021 (available at: <https://www.igi.nl/zorgsectoren/jeugd/publicaties/publicaties/2021/03/15/factsheet-onvoldoende-tijdige-en-juiste-hulp-voor-jongeren-met-ernstige-psychische-problemen>).

<sup>108</sup> Youth Care the Netherlands, *Forse daling jongeren in JeugdzorgPlus in 2020* [Significant decrease in youth in Youth Care Plus in 2020] 8 April 2021 (available at: <https://www.jeugdzorgnederland.nl/actueel/forse-daling-jongeren-in-jeugdzorgplus-in-2020/>).

<sup>109</sup> Gedragwetenschappers duiken in dilemma's van de gesloten jeugdhulp [behavioral scientists psychologist diving into dilemmas of the closed youth care] June 2020 (available at: <https://www.brancheszorgvoorjeugd.nl/content/uploads/2020/08/Rapportage-Masterminds-Gedragwetenschappers-Final.pdf>).

<sup>110</sup> Youth Care the Netherlands, *Jeugdhulpplus Plaatsings- en uitsroomgegevens 2020* [Placement and outflow data 2020] (available at: <https://www.jeugdzorgnederland.nl/wp-content/uploads/2021/04/JeugdzorgPlus-2020-2.pdf>).

**We also question how the government ensures that children under 12 years are not being placed in secure youth care facilities.**

Second, there is a lack of safeguards to place children in residential youth care when the parents agree with the placement.<sup>111</sup> This is also called ‘voluntary placement’. In these cases, the municipal executive directly makes a request for placement in residential youth care to a judge. The requirement of a youth protection order by the Child Protection Board (Raad voor de Kinderbescherming) is not needed in ‘voluntary’ placement, as it is only required in cases of ‘non-voluntary’ placements. Part of the youth protection order is an assessment of the personal and family circumstances of the child, which is a safeguard to ensure that the placement of a child in secure youth care is a measure of last resort. The lack of control by the Child Protection Board in ‘voluntary placement’ cases is worrisome. Besides the procedure, children who are already ‘voluntary’ placed have less safeguards in closed youth care. For those children it is for example not possible to use the dispute settlement procedure and they cannot make a request to withdraw the order.<sup>112</sup>

**We question how the Dutch government will ensure that the placement of children in secure youth care is a matter of last resort. In this regard we also would like to know how the government develops and provides better alternatives to secure youth care.**

### Shortest possible period of time

Children in closed youth care settings are not staying there for the shortest possible period of time. In 2020 43% of children stayed longer than six months in a closed youth care setting. This number has approximately remained the same over the last 4 years.<sup>113</sup> One of the reasons for this problem is that the outflow of children to other (lighter) forms of care is not adequate. Due to long waiting lists at the Child Protection Board, Safe at Home (Veilig Thuis) and waiting lists for placement in open youth care and mental health (GGZ) institutions some children spent more time in closed residential youth care than needed.<sup>114</sup>

**We question how the government guarantees that children are only staying in secure youth care settings for the shortest possible period of time.**

### Isolation in closed youth care settings

In the Netherlands, repression measures in residential youth care centres are still applied too often.<sup>115</sup> The Youth Inspectorate carried out research in 2019 and concluded that, within the space of only a few weeks, 860 cases in 10 of the 12 residential youth care centres demonstrated the use of isolation rooms.<sup>116</sup> In 2018

<sup>111</sup> Youth act, Article 6.1.2.

<sup>112</sup> M.P. de Jong-de Kruijf, *Legitimiteit en rechtswaarborgen bij gesloten plaatsing van kinderen. De externe rechtspositie van kinderen in gesloten hulp gezien vanuit kinder- en mensenrechtenperspectief* [Legitimacy and legal guarantees in the closed placement of children. The external legal position of children in closed care from a children's and human rights perspective] Boom juridisch, 2019.

M.P. de Jong-de Kruijf, *Gesloten jeugdhulp zonder kindbeschermingsmaatregel: het kind goed af?* [Closed youth care without a child protection measure: the child well off?] FJR 2018/6

<sup>113</sup> Youth Care the Netherlands, *Jeugdhulpplus Plaatsings- en uitstroomgegevens 2020* [Placement and outflow data 2020] (available at: <https://www.jeugdzorgnederland.nl/wp-content/uploads/2021/04/JeugdzorgPlus-2020-2.pdf>)

<sup>114</sup> Inspectie Jeugd en Gezondheidszorg (IGJ), *Onvoldoende tijdige en juiste hulp voor jongeren met ernstige psychische problemen*, [Insufficient timely and adequate help for young people with serious psychological problems] March 2021, p. 2' S.M. de Valk, *Under Pressure. Repression in Residential Youth Care* (2019)

<sup>115</sup> Academische werkplaats, *“Ik laat je niet alleen” Een gezamenlijk onderzoeksproject naar het verminderen van gedwongen afzonderen in JeugdzorgPlus* [“I will not leave you alone” A joint research project into reducing forced isolation in JeugdzorgPlus, 31 May 2019 (available at: <https://www.jeugdzorgnederland.nl/wp-content/uploads/2019/06/20190531-AWRJ-Ik-Laat-Je-Niet-Alleen-Eindrapportage.pdf>); Health and Youth Inspectorate, *Factsheet Terugdringen vrijheidsbeperkende maatregelen* [Fact sheet Reducing freedom-restricting measures] (available at: <https://www.jeugdzorgnederland.nl/wp-content/uploads/2019/06/DEF-IGJ-Factsheet-Terugdringen-vrijheidsbeperkende-maatregelen-003.pdf>).

<sup>116</sup> De Volkskrant, *Kinderen in de gesloten jeugdzorg te vaak opgesloten* [Children are too often locked up in closed youth care] 23 August 2019 (available at: <https://www.volkskrant.nl/nieuws-achtergrond/kinderen-in-de-gesloten-jeugdzorg-te-vaak-opgesloten-bed25fab/>).

the Minister of Health stated that the use of isolation rooms in youth care institutions will end in 2022.<sup>117</sup> However, at this moment the use of isolation rooms is only reduced by a small number of institutions such as the Koppeling in Amsterdam and Transferium in Alkmaar.

**We question how the ambition to stop the use of isolation rooms in youth care institutions will be realised in 2022 and ask the government what specific measures have been taken in 2020 to enable staff to use alternatives and de-escalation methods instead of isolation.**

#### **Use of deprivation of liberty in open settings**

A deep concern is the unlawful use of custodial measures restricting liberty of children in open institutions. Examples of measures are restrictions on the use of phones or laptops, compulsory placement in their own room, locking the door of their own room and compulsory urine tests.<sup>118</sup> Law does not permit the use of these measures in open institutions.<sup>119</sup> It is worrying that there is no clear policy on prevention of the use of control and disciplinary measures in open youth institutions, foster care and there is no monitoring available on the use of custodial measures in open institutions.

**We question how the government will ensure and monitor that deprivation of liberty will not take place in residential open youth institutions.**

### **XIV. Involuntary confinement in mental health-care institutions**

On 1 January 2020 two new laws entered into force replacing the *Wet Bijzondere Opnemng Psychiatrische Ziekenhuizen* (BOPZ) (Special admission to Psychiatric Hospitals). The purpose of these new laws is to apply less coercion and a more tailored healthcare in mental health-care institutions.<sup>120</sup> However, it is doubtful whether this purpose has been met.

In advance of the implementation of the laws, there has been a sharp increase of coercive measures. In 2019 the measures were applied over 30.500 times, which is an increase of 11% in comparison to 2018.<sup>121</sup> According to psychiatrists, this increase might be caused to anticipate the two new laws and to avoid the expected the heavier workload as a consequence of new laws.<sup>122</sup> In addition, in the first half year of 2020, the number of forced admissions rose sharply. About 5,000 times decisions to an acute compulsory admission or an obligation to take medication were taken. This is an increase of almost 11 percent compared

<sup>117</sup> RTL Nieuws, *Kind in jeugdzorg nog te vaak opgesloten in 'traumatiserende isoleercel'* [Child in youth care still too often locked up in 'traumatizing isolation cell'] 23 August 2019 (available at: <https://www.rtlnieuws.nl/nieuws/nederland/artikel/4823346/jeugdzorg-jeugdzorgplus-isoleer-afzondering-opgesloten-kind>).

<sup>118</sup> Defence for children, *Uithuisgeplaatst. En dan? Een onderzoek naar de toepassing van vrijheidsbeperkende maatregelen in zorginstellingen voor kinderen* [Placed out. And then? An investigation into the application of freedom-restraining measures in care institutions for children] 2019 (available at: <http://www.defenceforchildren.nl/media/3544/uithuisgeplaatst-en-dan-webversie.pdf>); AKJ, *AKJ deelt zorgen over toepassing vrijheidsbeperkende maatregelen* [AKJ shares concerns about the application of freedom-restraining measures] 6 March 2019 (available at: <https://www.akj.nl/akj-deelt-zorgen-over-toepassing-vrijheidsbeperkende-maatregelen/>).

<sup>119</sup> The use of measures restricting liberty is only allowed in secure youth care. Youth Act article 6.

<sup>120</sup> Second Chamber, Kamerstukken II, Memorie van toelichting, 2009-2010, 32399 no. 3 (available at: <https://zoek.officielebekendmakingen.nl/kst-32399-3.html>).

<sup>121</sup> NRC, *'Aantal dwangmaatregelen in GGZ steeg lange tijd niet zo snel'*, [Number of coercive measures has for a long time not raised so much as now] (available at <https://www.nrc.nl/nieuws/2020/02/03/aantal-dwangmaatregelen-in-ggz-steeg-nog-niet-zo-snel-a3989071>). NJCM is not aware of the figures for 2020.

<sup>122</sup> NRC, *'Aantal dwangmaatregelen in GGZ steeg lange tijd niet zo snel'*, [Number of coercive measures has for a long time not raised so much as now] (available at <https://www.nrc.nl/nieuws/2020/02/03/aantal-dwangmaatregelen-in-ggz-steeg-nog-niet-zo-snel-a3989071>). NJCM is not aware of the figures for 2020.

to the same period last year (4,470).<sup>123</sup> According to psychiatrists, this increase is caused as a result of higher administrative workload due to the new law. In some cases it takes too long to arrange admission by the public prosecutor, which makes a crisis measure is the only solution left.<sup>124</sup>

The new law on Compulsory Mental Health Care concerns psychiatric patients (*Wet verplichte geestelijke gezondheidszorg; Wvvggz*). According to health care providers, the new law creates a heavy administrative burden causing delays and resulting in patients receiving less care because of insufficient capacity for outpatient treatment.<sup>125</sup> This in turn leads to a deteriorating situation for the patient, which requires more coercive measures.<sup>126</sup>

The other new law Care and Compulsion (*Wet zorg en dwang (Wzd)*) concerns the elderly and mentally disabled persons. In contrast to the *Wvvggz*, some coercive measures can be taken by a ‘*zorgverantwoordelijke*’ (someone responsible for the provision of care) and do not need to be approved by a judge.

**We question how the two new laws will contribute to less coercion and a more tailored healthcare.**

**We also question what measures the government has taken to close all the isolation rooms in 12 large mental health institutions by 2020 (CO 41 of December 2018) as this has not yet been realised.**

## XV. Use of force by the Dutch police

In February 2021 a new legal instruction (*ambtsinstructie*) on the regulation of the use of force and equipment available to the Dutch Police came into force,<sup>127</sup> which lack safeguards on the use of electrical discharge weapon & pepper spray and the use of service weapons and rubber bullets.

### Electrical discharge weapon and pepper spray

The instruction makes it possible for the police to use an electrical discharge weapon in the case they want to arrest someone who is likely to have a weapon ready for use, or who is trying to evade his arrest.<sup>128</sup> The instruction does not describe what the reason for the arrest must be. This means that the police can use an electrical discharge weapon against any person who does not cooperate in his or her arrest. It does not matter how big or minor the offence is.<sup>129</sup> As a consequence the use of electrical discharge weapons is not limited

<sup>123</sup> De Volkskrant, *Flinke toename acute gedwongen opnamen psychiatrie, experts wijzen naar 'kapotte wet'* [Significant increase in acute compulsory admission to psychiatry, experts point to "broken law"] 1 September 2020 (available at: <https://www.volkskrant.nl/nieuws-achtergrond/flinke-toename-acuut-gedwongen-opnamen-psychiatrie-experts-wijzen-naar-kapotte-wet~bd48ef54/>).

<sup>124</sup> NRC, ‘*Aantal dwangmaatregelen in GGZ steeg lange tijd niet zo snel*’, [Number of coercive measures has for a long time not raised so much as now] (available at <https://www.nrc.nl/nieuws/2020/02/03/aantal-dwangmaatregelen-in-ggz-steeg-nog-niet-zo-snel-a3989071>). NJCM is not aware of the figures for 2020.

<sup>125</sup> Both laws have been amended already on 8 December 2020 in order to simplify implementation and to fix technical inaccuracies and omissions. See: Second Chamber, *Koninklijke Boodschap*, 2020-2021, 35567, nr.1 (available at: [https://zoek.officielebekendmakingen.nl/kst-35667-1.html#related\\_documentsAnchor](https://zoek.officielebekendmakingen.nl/kst-35667-1.html#related_documentsAnchor)).

<sup>126</sup> NRC, ‘*Grote onvrede bij GGZ: directeuren dreigen te stoppen*’, [Great Dissatisfaction at Mental Health Care: Directors threaten to quit] 24 mei 2020 (Available at <https://www.nrc.nl/nieuws/2020/05/24/kwaliteit-ggz-zorg-onder-druk-a4000663>); NRC, ‘*Je kunt niet van patiënten verwachten dat zijn hun eigen behandeling overzien*’ [One cannot expect patients to oversee their own treatment] (available at: <https://www.nrc.nl/nieuws/2020/02/05/zeven-brieven-in-twee-dagen-a3989480>).

<sup>127</sup> Decree of 26 January 2021, amending the Official Instruction for the police, the Royal Netherlands Marechaussee and other investigating officers, the Police Armaments and Equipment Decree and the Police Travel, Accommodation and Removal Expenses Decree in connection with the amendment and introduction of regulations regarding the use of force and restraint measures (available at: <https://zoek.officielebekendmakingen.nl/stb-2021-46.html>).

<sup>128</sup> Decree of 26 January 2021, Official Instruction for the police, article 12 c.

<sup>129</sup> Dutch Bar Association, *consultatie Besluit wijziging ambtsinstructie voor de politie in verband met de wijziging en invoering van voorschriften omtrent het gebruik van geweldmiddelen en vrijheidsbeperkende middelen* [consultation Decree on the amendment of the official instructions for the police in connection with the amendment and introduction of regulations regarding the use of means of force and restraining means] 10 July 2018 (available at: <https://www.internetconsultatie.nl/ambtsinstructie/reactie/103098/bestand/>).

to a real and immediate threat to life or risk of serious injury. In addition, the instruction does not prohibit the use of the electrical discharge weapons in cases against persons who are already under control of the police.<sup>130</sup> We are worried about this low threshold.

Furthermore, the new instruction does not prohibit the use of pepper spray, tasers and the deployment against vulnerable persons.<sup>131</sup> In the old instruction pepper spray was not allowed against persons younger than 12 years or older than 65 years, pregnant women and persons with health issues.<sup>132</sup> In the new instruction an individual police officer needs to consider whether the use of pepper spray is proportionate and necessary.<sup>133</sup> There is no clear framework in which a police officer must act.<sup>134</sup>

**We question how the new legal instruction fits in the concluding observation of 2018 of the Committee, particularly with regard to:**

- **refraining the use of electrical discharge weapon in the day-to-day policy;**
- **the exclusive use of electrical discharge weapons in limited situations where there is a real and immediate threat to life or risk of serious injury; and**
- **the prohibition of the use of electrical discharge weapons and pepper spray against vulnerable persons.**

### **Service weapons and rubber bullets**

The new instruction of 2021 added a new ground relating to scenarios in which the police are allowed to use the service weapon. An officer is allowed to use a firearm when a person does not cooperate in his or her arrest and is suspected of a criminal offence with a prison sentence of at least four years and 1) affect the psychical integrity or 2) is unlawfully in a house or in a yard or 3) could be a threat to society.<sup>135</sup> These requirements are very broad, as it for example allows the use of firearms against someone who is a suspect of burglary with violence. Furthermore, it means that a firearm can be used when the threat is already gone or when the suspect flees and pushes the police aside.<sup>136</sup> In these cases there is not an imminent threat to life or risk of serious injury. This means that a firearm can be used in cases where it is disproportionate.

<sup>130</sup> Dutch National Human Rights Institute, *Wetgevingsadvies van het College over de Ambtsinstructie voor de politie* [Legislative advice from the Board on the official instructions for the police] 17 July 2019 (available at: <https://mensenrechten.nl/nl/publicatie/38648>).

<sup>131</sup> Dutch Bar Association, *consultatie Besluit wijziging ambtsinstructie voor de politie in verband met de wijziging en invoering van voorschriften omtrent het gebruik van geweldsmiddelen en vrijheidsbeperkende middelen* [consultation Decree on the amendment of the official instructions for the police in connection with the amendment and introduction of regulations regarding the use of means of force and restraining means] 10 July 2018 (available at: <https://www.internetconsultatie.nl/ambtsinstructie/reactie/103098/bestand>); Senate, *Verslag Wijziging van het Wetboek van Strafrecht in verband met het opnemen van een specifieke strafuitsluitingsgrond voor opsporingsambtenaren die geweld hebben gebruikt in de rechtmatige uitoefening van hun taak en een strafbaarstelling van schending van de geweldsinstructie* [Report, Amendment to the Criminal Code in connection with the inclusion of a specific criminal exclusion ground for investigating officers who have used force in the lawful performance of their duties and criminalize violation of the instruction of violence] 26 March 2021, p. 12 (available at: [https://www.eerstekamer.nl/behandeling/20210325/verslag\\_van\\_een\\_nader\\_schriftelijk\\_2/document3/f=/vllhic1vii0zx.pdf](https://www.eerstekamer.nl/behandeling/20210325/verslag_van_een_nader_schriftelijk_2/document3/f=/vllhic1vii0zx.pdf)).

<sup>132</sup> Former official Instruction for the police, article 12a. lid 2

<sup>133</sup> Decree of 26 January 2021 Official Instruction for the police, article 12a.

<sup>134</sup> Dutch Bar Association, *consultatie Besluit wijziging ambtsinstructie voor de politie in verband met de wijziging en invoering van voorschriften omtrent het gebruik van geweldsmiddelen en vrijheidsbeperkende middelen* [consultation Decree on the amendment of the official instructions for the police in connection with the amendment and introduction of regulations regarding the use of means of force and restraining means] 10 July 2018 (available at: <https://www.internetconsultatie.nl/ambtsinstructie/reactie/103098/bestand>).

<sup>135</sup> Decree of 26 January 2021 Official Instruction for the police, article 7.

<sup>136</sup> Amnesty International, *Amnesty briefing i.v.m. wijziging ambtsinstructie voor politie, koninklijke marechaussee en buitengewoon opsporingsambtenaren* [Amnesty briefing amending of official instructions for police, royal marechaussee and extraordinary investigation officers] 9 July 2018 p. 6. (available at: [https://www.amnesty.nl/content/uploads/2018/10/Amnesty-briefing-wijziging-ambtsinstructie\\_9-juli-2018.pdf?x81110](https://www.amnesty.nl/content/uploads/2018/10/Amnesty-briefing-wijziging-ambtsinstructie_9-juli-2018.pdf?x81110)).



Furthermore, the possibility of using 'rubber bullets' is extended in the new legal instruction.<sup>137</sup> In the instruction, the use of 'rubber bullets' is among others permitted against people who disturb public order and cannot immediately be arrested, temporarily disarmed, or flagged in order to detain him later. This threshold is very low and we have seen in other countries that the use of rubber bullets can lead to severe injuries.<sup>138</sup> Although the police are currently not allowed to use rubber bullets,<sup>139</sup> the Minister of Justice can adjust this power of the police without permission of the parliament.

**We question how the use of a service weapon and of rubber bullets is in line with Principle 9 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.**

## XVI. Ethnic profiling

### The police

Although ethnicity is in theory no longer a ground for police checks since a policy change in 2017,<sup>140</sup> there are doubts about the effectiveness of the policy and whether in practice the Dutch government takes adequate measures to prevent ethnic profiling. An interview-based research from 2019 showed that many police officers are not aware of the new policy and that they even do not understand why ethnic profiling is an issue.<sup>141</sup> In response to this research, the House of Representatives adopted a motion. In this motion, the government was requested to monitor how many of the police officers are aware of measures and tools to combat ethnic profiling. Furthermore, the government was requested to explain how this develops over time, and to report on this to the House of Representatives.<sup>142</sup> In this regard, we would like to know how the government is monitoring the effectiveness of the policy of 2017 and what measures have been taken to prevent arbitrary stops, searches and arrests on the basis of ethnicity.

Furthermore, the Dutch police uses predictive policing based on data and algorithmic models in order to assess the risk that a crime will be committed by a certain person or at a certain location. Based on this information, the police takes action. Research on a project in the city of Roermond has shown that stereotypes and prejudices significantly affect these models.<sup>143</sup>

**We question what kind of measures the government takes in developing and using data and algorithmic models and what kind of safeguards there are enshrined in Dutch law to prevent ethnic profiling.**

<sup>137</sup> Decree of 26 January 2021 Official Instruction for the police, Article 11.

<sup>138</sup> Control Alt Delete, *Wat staat er in de nieuwe ambtsinstructie?* [What does the new official instruction say?] (available at: <https://controlealdelete.nl/dossier/wat-staat-er-in-de-nieuwe-ambtsinstructie>).

<sup>139</sup> Decree Police Armaments and Equipment (available at: <https://wetten.overheid.nl/BWBR0032136/2020-09-01>).

<sup>140</sup> Politie, *Handelingskader proactief controleren* [Action Framework proactively checking], version 1.9, 27 October 2017 (available at: <https://www.politie.nl/binaries/content/assets/politie/nieuws/2017/00-km/handelingskader-proactief-controleren-versie-1.9.1-dd-27-oktober2017.pdf>).

<sup>141</sup> Kuppens and Ferwerda, *De politieaanpak van etnisch profileren in Amsterdam. Een onderzoek naar effecten, criteria en meetbare indicatoren* [The police approach to ethnic profiling in Amsterdam. A study of effects, criteria and measurable indicators], 2019 p. 48-52 (available at: <https://bureaubeke.nl/publicaties/de-politieaanpak-van-etnisch-profileren-in-amsterdam/>).

<sup>142</sup> The House of Representatives, Motion of member Azarkan, 8 June 20210 2019-2020 29 628 nr. 957 (available at: <https://www.tweedekamer.nl/kamerstukken/detail?id=2021Z03886&did=2021D08423>).

<sup>143</sup> Amnesty International, *We sense trouble; automated discrimination and mass surveillance in predictive policing in the Netherlands*, 2020 (available at: [https://www.amnesty.nl/content/uploads/2020/09/Report-Predictive-Policing-RM-7.0-FINAL-TEXT\\_CK-2.pdf?x72534](https://www.amnesty.nl/content/uploads/2020/09/Report-Predictive-Policing-RM-7.0-FINAL-TEXT_CK-2.pdf?x72534)).

## The Royal Marechaussee

While the police has at least taken action against ethnic profiling in their policy and practices, the Royal Marechaussee (*Koninklijke Marechaussee*) stayed behind. Although the government prohibits ethnic profiling by the Royal Marechaussee, they use a less strict definition than the police. Non-discrimination is the basic principle for the checks by the Royal Marechaussee, but someone's appearances (including ethnicity), in combination with different objective indicators or information, can be an indicator in risk profiles and a ground for selecting decisions for *Mobiel Toezicht Veiligheid* -checks (Mobile Security Monitoring) by the Royal Marechaussee.<sup>144</sup> As a consequence, ethnic profiling by the Royal Marechaussee occurs – for example during Mobile Monitoring Security-checks on legal residence. During those checks, the Royal Marechaussee investigates the identity, nationality and status of residence of persons crossing the Dutch border from other European countries. This is a different type of check than the usual border checks, in which everyone has to show their passport.

According to civil society organisations, international human rights law and Dutch national law, using ethnicity as an indicator in risk profiles and selection decisions is ethnic profiling, regardless whether used in combination with other objective indicators.<sup>145</sup>

**We question what the government holds back from adopting its policy to make ethnicity no longer a ground in their decision-making during Mobile Security Monitoring -checks on legal residence.**

## Complaints

In March 2021, the National Ombudsman released a report, which concludes that 75% of citizens who experienced ethnic profiling do not file a complaint.<sup>146</sup> There are various reasons for this. Some citizens have been fostering the idea that the government and society will not take action on the problem of ethnic profiling, while others have no confidence in impartial complaint handling procedure and again others have the feeling that they are never able to 'win' against the government. According to the Ombudsman, the biggest problem is that the burden of proof is placed on the civilian who is filing a complaint. The Ombudsman argues it is impossible to prove and therefore this cannot be expected from citizens.<sup>147</sup> The Ombudsman advocates to place the burden of proof on the concerned government agency and it has developed a framework for the complaint procedure of ethnic profiling.

**We question how the Dutch government guarantees that the complaint procedure is transparent and fair and how it will adopt the proposed framework of the National Ombudsman.**

<sup>144</sup> Mobile Security Monitoring checks contains the supervision of persons who travel to the Netherlands from another Schengen country at the Belgian and German borders; Aanhangel van de Handelingen [Parliament Annex to Reports], 2016-2017, nr. 1900, p. 2 (available at: <https://zoek.officielebekendmakingen.nl/ah-tk-20162017-1900.pdf>); Aanhangel van de Handelingen [Parliament Annex to Reports], 2017-2018, nr. 2340, p. 3 (available at: <https://zoek.officielebekendmakingen.nl/ah-tk-20172018-2340.pdf>).

<sup>145</sup> PILP, *Etnisch profileren, tijd voor oplossingen!* [Ethnic profiling, time for solutions!], 4 October 2014 (available at: <https://pilpnjcm.nl/dossiers/etnisch-profileren/>).

<sup>146</sup> The National ombudsman, *Verkleurde beelden. Hoe moet de overheid omgaan met klachten over etnisch profileren?* [Discolored images. How should the government deal with complaints about ethnic profiling?], 30 March 2021 (available at: [https://www.nationaleombudsman.nl/system/files/bijlage/Verkleurde%20Beelden-%20klachtbehandeling%20etnisch%20profilieren%20DEF\\_1.pdf](https://www.nationaleombudsman.nl/system/files/bijlage/Verkleurde%20Beelden-%20klachtbehandeling%20etnisch%20profilieren%20DEF_1.pdf))

<sup>147</sup> Ibid.

## XVII. Gender related violence

Violence against women is still a big issue in the Netherlands.<sup>148</sup> Every eight days, a woman is killed in the Netherlands based on her gender<sup>149</sup> and in 2019 alone, 23 women were killed by their ex-partner or current partner.<sup>150</sup> This sections addresses three issues with regard to gender related violence: gender-neutral policies, a coordinating body and, lastly, data collection.

### Gender-neutral policies

The Dutch government opts for a ‘gender neutral’-approach in its policies. This approach is a threat to the protection against domestic violence.<sup>151</sup> Gender-neutral policies which aim to combat violence against women bear the risk of leading to blind spots in protection and support, as violence against women is not recognised as a gender-based form of violence.<sup>152</sup>

During the last decade, several (inter)national human rights parties have urged the Netherlands to adopt a gender-sensitive approach.<sup>153</sup> The Dutch government is however unwilling to adopt such an approach. In March 2021 the responsible Dutch Secretary of State did for example not make any commitments for a gender sensitive policy and only stated that he would be willing to talk to Statistics Netherlands (‘*Centraal Bureau voor de Statistiek*’) to get a better view on the role of gender in domestic violence cases.<sup>154</sup> This motion has been adjourned.<sup>155</sup>

**We question whether the Netherlands will adopt measures to come to a gender-sensitive approach to domestic violence.**

### A Coordinating Body

The Netherlands does not have a coordinating body for gender related violence, which is often violence against women. There is a fragmented policy in which instances insufficiently work together. This leads to

<sup>148</sup> See for domestic violence in particular: M. Akkermans e.o. for CBS and WODC, Prevalentiemonitor Huiselijk Geweld en Seksueel Geweld 2020 [Prevalencemonitor Domestic Violence and Sexual Violence 2020] (available at: <https://www.cbs.nl/nl-nl/publicatie/2020/51/prevalentiemonitor-huiselijk-geweld-en-seksueel-geweld-2020->); Verwey Jonker Institute, *Kan huiselijk geweld en kindermishandeling echt stoppen? Kwestie van lange adem* [Can domestic violence and child abuse actually be stopped? A matter of patience], November 2020, p.8: More than half of the families in which partner violence or child abuse has been reported at *Veilig Thuis* still experience serious or frequent violence after one and a half years (available at: <https://www.verwey-jonker.nl/publicatie/kwestie-van-lange-adem/>)

<sup>149</sup> De Volkskrant, *In Nederland is vrouwenmoord een probleem, net als in de rest van Europa. Maar hier gaat niemand de straat op* [Femicide is a problem in the Netherlands, just like in the rest of Europe. But nobody goes on to the streets here] 7 March 2021 (available at: <https://www.volkskrant.nl/nieuws-achtergrond/in-nederland-is-vrouwenmoord-een-probleem-net-als-in-de-rest-van-europa-maar-hier-gaat-niemand-de-sstraat-op~bcc5b2bc/>).

<sup>150</sup> House of Representatives, Report on General Debate Domestic Violence, 4 March 2021 2020-2021 28 345 nr. 250, p. 35.

<sup>151</sup> Group of experts on Action against Violence against Women and Domestic Violence (GREVIO), Baseline Evaluation report Netherlands, 20 January 2020, p. 6, 15 (available at: <https://www.coe.int/en/web/istanbul-convention/-/grevio-publishes-its-report-on-netherlands>).

<sup>152</sup> Ibid.

<sup>153</sup> Committee on the Elimination of Discrimination against Women (CEDAW), *Concluding observations of the Committee on the Elimination of Discrimination against Women; The Netherlands*, 5 February 2010 CEDAW/C/NLD/CO/5, paras 10-11; Committee on the Elimination of Discrimination against Women (CEDAW), *Concluding observations on the sixth periodic report of the Netherlands*, 24 November 2016 CEDAW/C/NLD/CO/6, paras 22-23; GREVIO, Comments submitted by Netherlands on Grevio’s final report on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline report), 20 January 2020, appendix p. 3-6; Regioplan, *De relatie tussen gender en geweld tegen vrouwen & huiselijk geweld: een analyse* [The relationship between gender and violence against women & domestic violence] 2021, p. 44: The government asked an external party to do research on the adoption of this recommendation. This external party (‘Regioplan’) provided for concrete recommendations in January 2021 in which the central government has to prioritize gender-neutral policy as a first essential step; National Human Rights Institute, *letter Algemeen Overleg kindermishandeling en huiselijk geweld* [General debate child abuse and domestic violence], 2 February 2021 (available at: <https://mensenrechten.nl/nl/publicatie/601ad0831e0fec037359c84f>).

<sup>154</sup> House of Representatives, Report on General Debate Domestic Violence, 4 March 2021 2020-2021 28 345 nr. 250, p. 45.

<sup>155</sup> The House of Representatives, Motion of members Worsdorfer and Bergkamp, 25 February 2021 2020-2021 28 345 nr. 249 (available at: <https://www.tweedekamer.nl/kamerstukken/detail?id=2021Z03897&did=2021D08434>).

gaps in the overall direction of policies and to uncoordinated data collection. In turn, the monitoring of policy and implementation is hindered as it is impossible to determine the effectiveness of policies.<sup>156</sup>

The recommendation of GREVIO to create a coordinating body was rejected by the Dutch government. The main argument is that various ministries have a different role in tackling violence against women, and that a coordinating body is therefore unnecessary. The Ministry of Justice and Security focuses on the approach under civil law, administrative law and criminal law; The Ministry of Health, Welfare and Sport focuses primarily on care and assistance for victims and the Ministry of Education, Culture and Science focuses on prevention and underlying causes of gender-based violence.<sup>157</sup>

Furthermore, the central government has placed the responsibility for protection for violence against women and domestic violence within the municipalities and therefore municipalities have the freedom to decide how to implement their responsibilities and how to allocate resources.<sup>158</sup> While the national government is of the opinion that this makes it possible to develop an approach that aligns to local needs, the Netherlands Institute for Human Rights and Valente (the umbrella organisation for organisations providing shelter) point out to the need for nationally coordinated policy in order to ensure that all parties have a clear view on how to tackle domestic violence and that there are agreements everyone must adhere to.<sup>159</sup>

The nationally coordinated program ‘Violence belongs nowhere’ (*‘Geweld hoort nergens thuis’*) is of temporary nature (2018-2021). Moreover, recently published research that was done on domestic violence and sexual violence commissioned by the government misses relevant data that is needed to coordinate and monitor policy and implementation, for example on the relationship between victims and perpetrators.<sup>160</sup> Nevertheless, the responsible Secretary of State is convinced that there is no need for a national body as there is sufficient coordination.<sup>161</sup>

**We question whether there is sufficient coordination between the responsible instances to combat violence against women without a coordinating body.**

**We question whether there is enough data and monitoring available for adequate policies to combat violence against women without a coordinating body.**

<sup>156</sup> Group of experts on Action against Violence against Women and Domestic Violence (GREVIO), Baseline Evaluation report Netherlands, 20 January 2020, p. 6, 15, 16 (available at: <https://www.coe.int/en/web/istanbul-convention/-/grevio-publishes-its-report-on-netherlands>) p. 16; College voor de Rechten van de mens [National Human Rights Institute], letter Algemeen Overleg kindermishandeling en huiselijk geweld [General debate child abuse and domestic violence], 2 February 2021 (available at: <https://mensenrechten.nl/nl/publicatie/601ad0831e0fec037359c84f>); Regioplan, De relatie tussen gender en geweld tegen vrouwen & huiselijk geweld: een analyse [The relationship between gender and violence against women & domestic violence] 2021, p. 16.

<sup>157</sup> GREVIO, Comments submitted by Netherlands on Grevio’s final report on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline report), 20 January 2020, letter and appendix pp. 5.

<sup>158</sup> GREVIO, Comments submitted by Netherlands on Grevio’s final report on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline report), 20 January 2020, letter and appendix pp. 3-6.

<sup>159</sup> Valente, Letter AO Huiselijk Geweld 8 februari 2021, 2 February 2021 (available at: <https://www.valente.nl/nieuws/algemeen-overleg-tweede-kamer-over-huiselijk-geweld>); National Human Rights Institute, letter *Algemeen Overleg kindermishandeling en huiselijk geweld* [General debate child abuse and domestic violence], 2 February 2021 (available at: <https://mensenrechten.nl/nl/publicatie/601ad0831e0fec037359c84f>).

<sup>160</sup> National Human Rights Institute, letter *Algemeen Overleg kindermishandeling en huiselijk geweld* [General debate child abuse and domestic violence], 2 February 2021 (available at: <https://mensenrechten.nl/nl/publicatie/601ad0831e0fec037359c84f>).

21 February 2021 (available at: <https://mensenrechten.nl/nl/publicatie/601ad0831e0fec037359c84f>); M. Akkermans e.o. for CBS and WODC, *Prevalentiemonitor Huiselijk Geweld en Seksueel Geweld 2020* [Prevalencemonitor Domestic Violence and Sexual Violence 2020] (available at: <https://www.cbs.nl/nl-nl/publicatie/2020/51/prevalentiemonitor-huiselijk-geweld-en-seksueel-geweld-2020->).

<sup>161</sup> House of Representatives, Report on General Debate Domestic Violence, 4 March 2021 2020-2021 28 345 nr. 250, p. 19, 20. ;The House of Representatives, Motion of member Van der Hul, 25 February 2021 2020-2021 28 345 nr. 241 (available at: <https://www.tweedekamer.nl/kamerstukken/detail?id=2021Z03886&did=2021D08423>). This motion to appoint a national rapporteur for monitoring, action and national direction for domestic violence was rejected.

## Data collection

As a result of the fact that data is acquired in an uncoordinated fashion, there is insufficient data on violence against women in the Netherlands in general and in three specific areas that will be discussed below. The lack of adequate data is problematic, because this makes it difficult to monitor the gendered nature of violence and implement effective policies.<sup>162</sup>

Firstly, the government does not have a clear picture of the effects of corona measures on domestic violence during the global pandemic.<sup>163</sup> This is problematic, as other countries report an increase in domestic violence numbers and this is to be expected in the Netherlands too.<sup>164</sup> Moreover, women experience barriers in seeking help in particular during the curfew.<sup>165</sup>

Secondly, the police do not record data about gender, the relationship between victims and perpetrators and the type of violence, but only insofar as information is relevant for criminal investigations.<sup>166</sup> Judicial bodies are not designed for reporting or research purposes and the Dutch government is not willing to alter this, in order to prevent that this will lead to pressure of recording, there would be an administrative burden and the implementation would be lengthy and costly.<sup>167</sup>

Thirdly, while the Human Rights Committee mentioned in 2019 that it received ‘growing reports’ of women being subjected to inhumane and degrading treatment in the Dutch Caribbean and reports that the authorities fail to protect victims and prosecute perpetrators, there is no data available.<sup>168</sup>

**We question to what extent the collected data is sufficient to combat gender related violence, including violence against women, especially in relation to the effects of the corona measures.**

**We question whether there is statistical data available on violence against women in the Dutch Caribbean.**

<sup>162</sup> Group of experts on Action against Violence against Women and Domestic Violence (GREVIO), *Baseline Evaluation report Netherlands*, 20 January 2020, p. 7, 16, 17, 20 (available at: <https://www.coe.int/en/web/istanbul-convention/-/grevio-publishes-its-report-on-netherlands>); National Human Rights Institute, letter *Algemeen Overleg kindermishandeling en huiselijk geweld* [General debate child abuse and domestic violence] 21 February 2021 (available at: <https://mensenrechten.nl/nl/publicatie/601ad0831e0fec037359c84f>); House of Representatives, Report on General Debate Domestic Violence, 4 March 2021 2020-2021 28 345 nr. 250, p. 35 36, 41.

<sup>163</sup> NRC, ‘*Bekijk de pandemie ook met een genderblik*’; *Neem genderblik mee in bestrijding pandemie Renée Römken hoogleraar* [‘Also view the pandemic from a gender perspective’; Take the gender perspective into account to combat the pandemic Renée Römken] 13 July 2020 (available at: <https://www.nrc.nl/nieuws/2020/07/12/bekijk-de-pandemie-ook-met-een-genderblik-a4005728>); Het Parool, *Weer zijn vrouwen de sigaar* [Women are again the ones suffering], 8 October 2020: This article states that the number of reports of partner violence at Veilig Thuis are not trustworthy during the pandemic.

<sup>164</sup> See among others: António Guterres, ‘Remarks on the International Day for the Elimination of Violence against Women’, 25 November 2020 (available at: <https://www.un.org/sg/en/content/sg/speeches/2020-11-25/remarks-international-day-for-elimination-of-violence-against-women>); House of Representatives, Report on General Debate Domestic Violence, 4 March 2021 2020-2021 28 345 nr. 250, p. 31-32.

<sup>165</sup> Valente, Letter *AO Huiselijk Geweld* 8 February 2021, 2 February 2021 (available at: <https://www.valente.nl/nieuws/algemeen-overleg-tweede-kamer-over-huiselijk-geweld>).

<sup>166</sup> GREVIO, *Comments submitted by Netherlands on Grevio’s final report on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence* (Baseline report), 20 January 2020, appendix, p. 5-6.

<sup>167</sup> Ibid.

<sup>168</sup> Human Rights Committee, *Concluding observations on the fifth periodic report of the Netherlands*, 22 August 2019 CCPR/C/NLD/CO/5, paras. 26-27.