

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 19 OF THE CONVENTION**

**Concluding observations of the Committee against Torture**  
*(Extracts for follow-up of CAT/C/NLD/CO/5-6)*

**THE NETHERLANDS**

(...)

**C. Principal subjects of concern and recommendations**

(...)

**Right of access to a lawyer**

10. The Committee notes that the right of access to a lawyer is regulated by the instruction of the Board of Procurators General of 1 April 2010. It also observes that the draft Bill on Counsel and Police Interviews is being prepared. However, the Committee is concerned about the practice of restricting the right of access to a lawyer during police interrogation only to suspects under the age of 18 and anyone accused of a crime carrying a prison sentence of six years or more. The Committee is also concerned that the draft Bill contains an exception to the effect that the request for legal assistance can be denied if such legal assistance is “contrary to the interests of the investigation” which may lead to arbitrary restrictions of this right by the Public Prosecution’s Office. The Committee also notes that there are no advocates based in Sint Eustatius and Saba (Caribbean Netherlands) and that detained suspects in police custody in Sint Eustatius often sign a waiver to having a lawyer present during the first police interrogation (art. 2).

**The State party should:**

**(a) Review, in all parts of the Kingdom, its criminal procedures and practice with a view to guaranteeing to persons in police custody an access to a lawyer from the moment of deprivation of liberty;**

**(b) Consider timely adoption of the draft Bill on Counsel and Police Interviews to allow all suspects of an indictable offence, whether detained or not, to rely on access to and assistance from a lawyer at an earlier stage in the proceedings;**

**(c) Define in law the circumstances when the right to legal assistance can be restricted to avoid arbitrary limitations of the access to a lawyer.**

(...)

## **Detention of asylum and foreigners based on migration law**

14. The Committee is concerned at reports that asylum seekers arriving at Amsterdam's Schiphol airport are systematically detained for average duration of 44 days due to a failure to comply with the necessary visa requirements, which, for example, prompted a hunger strike by 19 detainees on 30 April 2013 and the incidents of suicide in protest against detention. Their grounds for stay are processed according to the Dublin II Regulation procedure and they remain detained until its outcome (arts. 11 and 16).

**The Committee urges the State party to ensure that the detention of asylum seekers is only used as a last resort, and, where necessary, for as short period as possible and without excessive restrictions, and to effectively establish and apply alternatives to the detention of asylum seekers.**

15. The Committee is concerned that the maximum time limit of 18 months for administrative detention of foreign nationals who await expulsion or return to their country of origin, based on article 59 of the Alien Act and article 15 of the EU Return Directive (EU directive 2008/115/EG) is not strictly observed in practice. There have been reports of about 30 per cent of aliens being administratively detained repeatedly for periods longer than 18 months because of apprehensions by the police after the release from their first detention due to absence of valid residence permit.

**The Committee recommends that the State party:**

**(a) Scrupulously observe the absolute time limit for the administrative detention of foreign nationals, including in the context of repeated detention;**

**(b) Avoid, wherever possible, the accumulation of administrative and penal detention, in excess of the absolute time limit of 18 months of detention of migrants under migration law.**

16. The Committee further notes with concern that the legal regime in alien detention centres is not different from the legal regime in penal detention centres. The reports received by the Committee with regard to the confinement in cell for 16 hours, the absence of day-activities, the use of isolation cells, handcuffs and strip searches of aliens detained under migration law who await expulsion to their home country have been of particular concern (arts. 11 and 16).

**The Committee urges the State party to ensure that the legal regime of alien detention is suitable for its purpose and that it differs from the regime of penal detention. The State party is also urged to use alien detention as a last resort and where necessary, for as short period as possible and without excessive restrictions, and to effectively establish and apply alternatives to such detention.**

## **Unaccompanied children asylum seekers and children in detention**

17. The Committee notes the State party's information that unaccompanied children asylum-seekers continue to be placed in detention centres in the European part of the Kingdom if there is doubt about their age. The Committee is also concerned about the reports by the European Committee for the Prevention of Torture regarding families with children, who await expulsion, being detained longer than the maximum limit of 28 days (arts. 3 and 11).

### **The Committee recommends that the State party:**

- (a) Verify the age of an unaccompanied child, if uncertain, before placing the child in detention. Such detention should be used as a last resort;**
- (b) Take alternative measures to avoid detention of children or their separation from their families;**
- (c) Ensure that unaccompanied minors can enjoy the rights guaranteed by the Convention on the Rights of the Child, to which the Kingdom of the Netherlands is a party.**

(...)

## **Forced internment in mental health care**

21. The Committee is concerned at the high numbers of persons with mental and psychosocial disabilities who are held in mental health care institutions on an involuntary basis, often for a lengthy period of time. The Committee is further concerned at the frequent use of solitary confinement, restraints and forced medication which may amount to inhumane and degrading treatment. Taking into account the information received during the consideration of the report on plans regarding mental health care, the Committee remains concerned at the lack of focus on alternatives to hospitalization of persons with mental and psychosocial disabilities. Finally, the Committee is concerned about the frequent lack of effective and impartial investigation of the excessive use of restrictive measures in mental health-care institutions (arts. 2, 11, 13 and 16).

### **The Committee recommends to the State party to:**

- (a) Develop alternative measures to reduce the number of forcibly interned persons with mental and psychosocial disabilities and ensure that involuntary internments in places of deprivation of liberty, including psychiatric and social care institutions, are done on the basis of a legal decision, guaranteeing all effective legal safeguards;**
- (b) Strengthen the possibilities for appeal of decisions and effective access to complaint mechanisms for interned persons;**

**(c) Use restraints and solitary confinement as a measure of last resort when all other alternatives for control have failed, for the shortest possible time and under strict medical supervision;**

**(d) Undertake effective and impartial investigations into incidents where the excessive use of restrictive measures resulted in injuries and/or death of the interned persons;**

**(e) Provide remedies and redress to the victims.**

(...)

### **Prompt, independent and thorough investigations**

23. While welcoming the clarification on the mechanisms of investigation of ill-treatment and abuse of prisoners (paras. 73-77 of the report), the Committee is concerned at the absence of any indication of the impact of the measures to reduce cases of ill-treatment in detention facilities, including immigration detention centres. The Committee is also concerned about the lack of independent, impartial and effective investigations of inter-prisoner violence in Aruba and Curaçao (arts. 12, 13 and 16).

#### **The Committee recommends that the State party:**

**(a) Inform it about measures to ensure prompt, impartial and effective investigations into all allegations of torture and ill-treatment in detention facilities, including immigration detention centres, and measures to bring the perpetrators to justice and compensate the victims appropriately;**

**(b) Assess the impact of those measures in reducing the cases of ill-treatment in all detention facilities and update the Committee accordingly;**

**(c) Undertake independent, impartial and effective investigations of inter-prisoner violence in Aruba and Curaçao and facilitate request for compensation, including by family members of the inmates.**

(...)

### **Date collection**

30. In light of its previous concluding observations (para. 17), the Committee regrets the State party's response 'that the Government is unable to provide information as data are not registered in a way that would allow the production of the statistics' (para. 89 of the report) on complaints, investigations, prosecutions, convictions and sanctions of cases of torture and ill treatment by law enforcement, security, military and prison personnel. The Committee observes with concern the State party's response that the law does not allow for the collection of such data (arts. 2, 12, 13 and 16).

**The Committee recommends that the State party:**

**(a) Establish a national system for the collection of data including through research studies to facilitate analysis of the implementation of the Convention;**

**(b) Provide the Committee with detailed statistical data, disaggregated by crime, ethnicity, age and sex, relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions, convictions and penal or disciplinary sanctions of cases of torture and ill-treatment by law enforcement, security, military and prison personnel, domestic and sexual violence, crimes with racist motives, ethnic composition of the detainee population including the representation therein of Antilleans, Moroccans, Roma, Sinti and Turks, as well as on means of redress, including compensation and rehabilitation provided to the victims.**

(...)

35. The Committee requests the State party to provide, by 31 May 2014, follow-up information in response to the Committee's recommendations related to (a) ensuring or strengthening the right of access to a lawyer for persons in police custody, (b) conducting, prompt, impartial and effective investigations, and (c) statistics on prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, as contained in paragraphs 10, 23, and 30 of the present concluding observations. In addition, the Committee requests follow-up information on detention of asylum seekers and foreigners based on migration law and forced internment in mental health care, including "providing remedies and redress to the victims", as contained in paragraphs 14-17 and 21 of the present concluding observations.