NETHERLANDS
INSTITUTE FOR
HUMAN RIGHTS

The Netherlands Institute for Human Rights Follow-up Submission

to the Committee against Torture on the Examination of the Follow-up Report of the Netherlands

August 2014

I. Introduction

1. The Netherlands Institute for Human Rights (hereinafter: the Institute) has taken note of the follow-up report of the Netherlands on the implementation of the Convention against torture and other cruel, inhuman or degrading treatment or punishment (hereinafter: CAT), dated July 2014.[1] The Institute is the A-status accredited national human rights institution of the Netherlands. On the basis of its mandate, expertise, and activities, the Institute wishes to raise a number of issues in this submission. The Institute would welcome the consideration of these issues by the Committee against Torture and its Rapporteur for Follow-up on Concluding Observations when examining the information provided by the government.

II. Reading guide

2. This submission was written on the basis of the concluding observations on the combined fifth and sixth periodic reports of the Netherlands, adopted by the Committee against Torture (hereinafter: the Committee) at its fiftieth session. The Committee identified several issues it would like to receive follow-up information on in paragraph 35.[2] The Institute therefore focused on these topics. In chapter IV of this submission, the title of each topic is followed by the number of the corresponding paragraph in the concluding observations. In addition, this submission begins with a few general remarks about a roundtable meeting organized by the Institute dedicated to the follow-up of these concluding observations.

3. The submission does not provide information on all the issues mentioned in paragraph 35 of the concluding observations. This does not imply that the Institute is of the opinion that the topics it does not comment on are sufficiently implemented by the Netherlands or do not merit further attention of the Committee.

III. General remarks – follow-up by the Netherlands Institute for Human Rights

Roundtable meeting

4. One of the tasks of the Institute is to press for observance of international recommendations on human rights.[3] In the framework of that task, the Institute organized a roundtable meeting on 8 April 2014 dedicated to the follow-up of the concluding observations of the Committee against Torture. The aim of the roundtable meeting was to bring together policy makers, professionals working in the field, NGOs and academics to discuss ways in which the recommendations of the Committee can be implemented in practice. As the concluding observations covered various topics, which could not all be discussed in one meeting, three topics were identified for in-depth discussion in different workshops. After having consulted civil society and policy makers, it was decided to organize workshops on

[1] Follow-up information supplied by the Kingdom of the Netherlands in response to concluding observations CAT/C/SR/1163 of the Committee against Torture, July 2014.
[2] UN Doc. CAT/C/NLD/CO/5-6.
[3] Article 3(i) Netherlands Institute for Human Rights Act.

- detention in the context of immigration, with a specific focus on the recent draft Bill on return and detention (*Conceptwetsvoorstel terugkeer en vreemdelingenbewaring*),
- the use of tasers by the Dutch police force and
- human rights in mental health care, with a specific focus on the use of alternatives for restraint and forced placement.

The meeting was introduced by prof. C. Flinterman, member of the UN Human Rights Committee. He informed the participants about the working methods of the UN treaty bodies, including the Committee against Torture, and the meticulous approach when formulating and adopting concluding observations.

5. The Institute received positive feedback from the participants and considers the roundtable to have been very successful. It created a platform for different organizations and individuals to provide input on how to translate recommendations of the Committee into practice. All three workshops were highly interactive and made up of participants from different backgrounds, including officials from the Ministry of Security and Justice. A brief report of the roundtable and its workshops was produced shortly after the meeting and is publically available.[4]

Structural follow-up through website

6. In addition to the roundtable, the Institute intends to structurally monitor the follow-up of the concluding observations of the Committee against Torture. Therefore, the Institute will look back on a selected number of topics from the concluding observations each year and inform the public through its website on the measures taken by the government since the concluding observations were adopted.

IV. Comments of the Institute based on the concluding observations of the Committee

Right of access to a lawyer (paragraph 10)

Developments in legislation and jurisprudence

7. The Committee expressed its concern 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 recommendation of the Committee was to 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. Since the dialogue between the Committee and the government delegation in May 2013, several developments occurred.

8. Firstly, the EU directive 2013/48/EU on the right of access to a lawyer in criminal proceedings was adopted by the European Parliament and the Council and published on 22 October 2013. The directive should be implemented by 27 November 2016.[5] The negotiations on this directive were the main reason for the delay in the development of

[4] http://mail.mensenrechten.nl/index.php?action=social&c=ad61ab143223efbc24c7d2583be69251.108 (Dutch only).

[5] Directive 2014/48/EU, Article 15.

the national legislation. Therefore, the process to draft and implement national legislation could now go forward as well, as explained in the next paragraph.

9. Secondly, on 13 February 2014 the government published its draft Bill on the implementation of the before mentioned directive (*Wetsvoorstel implementatie richtlijn Recht op toegang raadsman*), and a draft Bill on additional provisions regarding the suspect, counsel and certain restrictive measures (*Wetsvoorstel aanvullingen van bepalingen over verdachte, raadsman en enkele dwangmiddelen*).[6] These draft Bills provide for a right of access to a lawyer during police interrogation, regardless of age. Currently, stakeholders are in the process of advising the government on the draft legislation. These advices could lead to alterations in the draft Bills. The Council of State will then be asked to advise the government, after which the government can yet again make changes to the proposals. Subsequently, the draft legislation will be sent to parliament.

10. Thirdly, aside from these legislative developments, the judiciary took a position on the matter as well. In November 2013 the Advocate-General to the Supreme Court advised it – in light of the adoption of the EU directive and jurisprudence of the European Court of Human Rights – to acknowledge a right to access to a lawyer during police interrogation.[7] The Supreme Court, however, decided differently. On 1 April 2014, it decided that it was not within the competence of the Supreme Court to draw up a general regulation of the right of access to a lawyer, especially given the consequences in terms of policy, organization and finances.[8] It is up to the legislator to swiftly take up this task. The Supreme Court did note, however, that failure to produce such national legislation could lead to a different conclusion in future cases.

11. In conclusion, current practice regarding the right of access to a lawyer has not changed. At the moment, the right of access to a lawyer during police interrogation (*verhoorbijstand*) is still limited to suspects under the age of 18.[9] However, since the publication of the concluding observations of the Committee, concrete steps have been taken to produce national legislation providing for a general right of access to a lawyer during police interrogation.

Exception in the interest of the investigation

12. The Committee furthermore was concerned that the draft Bill (version of 2011) contained 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”. The recommendation of the Committee to the State party was to define in law the

[6] Please note that these draft Bills do not correspond exactly with the earlier published draft Bill on Counsel and Police. The new draft Bills replace the earlier draft Bill on Counsel and Police Interviews.

[7] ECLI:NL:PHR:2013:1424 (Dutch only).

[8] ECLI:NL:HR:2014:770 (Dutch only). The government also referred to this judgment on page 2 of its submission.

[9] Instruction of the Board of Procurators General on (*Aanwijzing rechtsbijstand politieverhoor)*, *Stcrt*. 2010, 4003, to be found at http://www.om.nl/organisatie/beleidsregels/overzicht/opsporing/@155139/aanwijzing-0/ (Dutch only).

circumstances when the right to legal assistance can be restricted to avoid arbitrary limitations of the access to a lawyer.

13. As mentioned above, new draft legislation has been published in February 2014. The draft regulation provides for a similar exception to the right to access to a lawyer during police interrogation. Counsel can be excluded from the interrogation room for two reasons, as also mentioned in the government report: firstly, to prevent serious negative consequences for the life, the freedom, or the physical integrity of a person and secondly, to prevent substantial damage to the investigation.[10] These exceptions are explained in more detail in the draft Ministerial Order on the organization and order of police interrogation (*Besluit inrichting en orde politieverhoor*).

14. In this draft Order the circumstances under which legal assistance can be restricted are defined. Specifically, counsel can be ordered (and when refusing to do so, forced) to leave the interrogation room after violating the following rules and having been warned at least once by the interrogating officer to no avail:[11]

- Counsel will not answer questions on behalf of the suspect, unless both the suspect and the interrogating officer agree;[12]
- Counsel will direct his comments and requests to the interrogating officer;[13]
- Counsel will not exceed the authorizations given to him in the Order and counsel will not use these authorizations unreasonably;[14]
- Counsel will not disturb the order of the interrogation;[15]
- Counsel will not bring means of communication or recording into the interrogation room.[16]

15. The restrictions mentioned in the previous paragraph are not of a temporary nature. This is not in line with the EU directive, which explicitly mentions that derogations from the right to access to a lawyer during interrogation need to be strictly limited in time. The Institute concludes that this shortcoming should be addressed in the final version of the Order.

Caribbean Netherlands

16.The Committee also noted that no advocates are based in Sint Eustatius and Saba and that detained suspects in police custody in Sint Eustatius often sign a waiver to having a lawyer present during the first police interrogation. The Committee recommended the State party to 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.

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[10] Article 28d(2) of Criminal Procedural Code (*Wetboek van Strafvordering*) as added by the draft Bill on the implementation of EU directive 2014/48/EU on the right to access to a lawyer.
[11] Article 9 of the Ministerial Order on the organization and order of police interrogation (hereinafter: the Order).
[12] Article 4(2) of the Order.
[13] Article 5(1) of the Order.
[14] Article 8(1) of the Order.
[15] Article 8(2) of the Order.
[16] Article 8(3) of the Order.

17. According to the information of the Institute, no changes were made in the Caribbean Netherlands in this regard since the Committee's concluding observations. The before mentioned new draft Bills will not apply to the Caribbean Netherlands. Since the Caribbean Netherlands are not part of the EU, the EU directive will not apply there. Therefore, the problems in the Caribbean Netherlands continue to exist.

18. The Institute welcomes to introduction of the draft Bills recognizing a right of access to a lawyer during police interrogation. However, restrictions to access to a lawyer during interrogation should be strictly limited in time. Furthermore, it considers that so far insufficient reasons have been given for the non-recognition of this right in the Caribbean Netherlands. Since this – in light of human rights norms – is equally relevant in the Caribbean part of the country, only extremely weighty reasons could justify such a differentiation.

Detention in the context of immigration (paragraphs 14-16)

19. In the Netherlands, two types of detention of aliens can be identified: detention of asylum seekers and other aliens at the border (*grensdetentie*) for the purpose of preventing unauthorised entry into the country, and regular detention in the context of immigration (*vreemdelingenbewaring*) for the purpose of removal. Since the internal borders are open due to the Schengen agreement, the first only concerns asylum seekers and other aliens entering the Netherlands by plane or ship.

Legislative developments

20. In April 2014, the government announced the withdrawal of the Bill criminalising irregular stay (*Wetsvoorstel strafbaarstelling illegaal verblijf*) in the Netherlands. In its earlier written contribution to the Committee for the dialogue with the government in 2013, the Institute raised the concern that situations of criminal detention on top of alien detention due to this Bill are likely to lead to an extension of the absolute time limit of 18 months in detention. With the withdrawal of the Bill, this risk is fortunately not likely to increase.

21. In December 2013, the government published a draft Bill on return and alien detention (*Conceptwetsvoorstel terugkeer en vreemdelingenbewaring*) for general consultation.[17] The draft Bill creates a new regime for detention in the context of immigration. The Institute is positive about the decision of the government to create a regime for alien detention separate from the criminal regime it is currently part of. However, the Institute still has some concerns with regard to the draft Bill as proposed by the government, which will be further outlined below.

Draft Bill on return and alien detention

22. The principle of using detention as a measure of last resort is explicitly mentioned in the new draft Bill on return and detention, mentioned above in paragraph 21. However, the Institute is concerned about the phrasing of this principle in the Bill. While the Explanatory Memorandum states that detention in the context of immigration is not used,

[17] The government mentions this draft legislation briefly on page 24 of its follow-up submission.

unless there are reasons to do so, the text of Article 80 section J of the Bill[18] implies the opposite.[19] Its phrasing implies detention in the context of immigration to be the standard, rather than the exception. The Institute has advised the government to adjust the wording in this article to adhere to the principle of using detention only as a measure of last resort (*ultimum remedium*).

23. The draft Bill furthermore creates two regimes for detention. Both regimes differ in the degree of restrictions aliens and asylum seekers are submitted to. The less restrictive regime (*verblijfsregime*) should be the standard. The more restrictive regime (*beheersregime*) can be used in case the behaviour of a migrant will pose a risk for order and security in the institution. However, the draft Bill also notes that all aliens who are placed in detention, will be placed in the more restrictive regime upon arrival for a maximum period of two weeks. During this time, the decision will be made in which regime the alien should be placed for the longer term. This is contrary to the notion that alien detention should be without excessive restrictions, as your Committee recommended in its concluding observations (para. 14).This is an unnecessary measure that severely restricts the freedom of newly arriving migrants. This is especially true for migrants detained in border detention, as their stay in detention will mostly not exceed two weeks meaning they may not be placed in the less restrictive regime at all. In addition, the general criteria to be placed in the more strict regime are formulated in the same way as the criteria to impose measures on migrant detainees to punish them or to remain the order and security in a detention centre. The stricter regime involves a more structural restriction of freedom within the detention centre without any time limits, while measures for punishment or to keep order and security involve a more incidental restriction of freedom bound by a strict time limit and periodic supervision. The Institute is concerned about the possibility in the draft Bill to restrict the freedoms of migrant detainees more than necessary.

24. Thirdly, while the Bill provides a framework for a separate regime for alien detention, most of the details have to be worked out in regulations which have not yet been published. It is therefore unclear how the government intends to shape the regime. For example, detailed criteria for being placed in the more restrictive regime are not spelled out in the draft Bill, but will be substantiated in a Ministerial Order (*ministeriële regeling*). The Institute can therefore not assess important parts of the proposed measures.

25. Furthermore, the governors of the detention centres will gain substantial powers under the Bill, without a strong supervisory mechanism. A supervisory mechanism does exist for each detention centre in the form of so-called commissions of oversight (*commissies van toezicht*). However, as noted in our written submission to your Commission in 2013, the Institute has voiced some concerns regarding the functioning of these commissions of oversight. They operate autonomously and barely exchange knowledge and experiences. This may lead to inequality in decisions between different commissions. This can be

[18] This section intends to change the text of Article 59(1) Aliens Act (*Vreemdelingenwet*).

[19] The current phrasing is “Tenzij in een bepaald geval andere maar minder dwingende maatregelen doeltreffend kunnen worden toegepast, kan de vreemdeling (…) in vreemdelingenbewaring worden geplaatst” (“Unless when in a certain situation other but less restrictive measures can be effectively applied, an alien (…) can be placed in alien detention”).

particularly damaging where it concerns decisions on placement in the more restrictive regime. Furthermore, some commissions of oversight only have meetings with the governor of the institution present. This can raise problems with the (perceived) independence of these commissions of oversight. Finally, some commissions of oversight lack knowledge of the relevant human rights norms.

26. In addition, while this Bill intends to improve the situation of regular alien detention (*vreemdelingenbewaring*), it actually deteriorates the situation for migrants detained after being refused entry at the external border (*grensdetentie*). Under the current regulation for this latter type of detention, it is not possible to conduct strip searches or to place someone in isolation as form of punishment. As the draft Bill will nullify this regulation and these types of measures will be possible under the draft Bill, the situation of migrants detained after being refused entry at the external border will deteriorate.

27. Finally, the State Secretary for Security and Justice expressed his commitment to assess in each individual case whether alternatives for alien detention are more suitable, as also mentioned in the follow-up submission by the government (page 24). However, he restricted this to regular alien detention (*vreemdelingenbewaring*), and explicitly excluded detention at the border (*grensdetentie*) from this commitment. The Institute would like to underline that detention of aliens refused entry at the border is just as harmful and alternatives should always be considered.

28. The Institute welcomes the introduction of the draft Bill on return and alien detention, which changes the regime for alien detention. However, it is not in conformity with international law and recommendations to place all migrants in the more restrictive regime upon entry for up to two weeks. It is therefore necessary to take the notion of no excessive restriction as a starting point in detention and only when there are indications of safety risks or concrete behaviour necessitating disciplinary measures, placement in a more restrictive regime – only as a measure of last resort – should be considered. Furthermore, the principle of using detention as a measure of last resort should be enshrined explicitly in the new Bill.

Border detention

29. In its concluding observations, the Committee urged the State party to ensure that the detention of asylum seekers is only used as a last resort, and, where necessary, for as short a period as possible and without excessive restrictions, and to effectively establish and apply alternatives to the detention of asylum seekers.

30. The principle of using detention as a measure of last resort is not used in case of detention at the border. Research of the Institute shows that all asylum seekers who cannot present the right documentation are automatically refused entry at the border.[20] No individual assessment is made as to whether detention is proportionate and/or necessary, nor are individual circumstances of vulnerability, e.g. mental or physical

[20] Netherlands Institute for Human Rights, 'Advies: Over de grens. Grensdetentie van asielzoekers in het licht van mensenrechtelijke normen' (*Advice: Crossing the border. Border detention of asylum seekers in the light of human rights standards*), 19 May 2014. An English version of the summary of this advice can be found at: http://www.mensenrechten.nl/publicaties/detail/34614.

illnesses, age or pregnancy, formally taken into account. For those migrants who seek asylum at the border, detention is an automatic consequence. Their application is processed in a detention centre at Schiphol airport (*Justitieel Complex Schiphol*). Research of the Institute shows that for adults, whether or not traveling with children,[21] no exceptions are made and no individual assessment precedes the decision to detain them. The Institute considers this to be contrary to human rights obligations.

31. The Institute is highly concerned about the lack of individual assessments preceding a decision to detain asylum seekers arriving at the border and their automatic placement in border detention (*grensdetentie*).

Unaccompanied children asylum seekers and children in detention (paragraph 17)

Policy change for (families with) children

32. In May 2014, the State Secretary announced a policy change for migrant (families with) children.[22] Families with children and unaccompanied children seeking asylum will no longer be placed in detention, but in a new restrictive accommodation, which should be ready early 2015. The accommodation will provide some freedom of movement, and privacy for families. However, the location will be fenced off. Employees working at this location will not be wearing uniforms. This accommodation will be used both in the case of border detention ("*grensdetentie*"), as in the case of alien detention shortly before having to leave the country ("*vreemdelingenbewaring*").

Unaccompanied children asylum seekers

33. The Committee noted the information provided by the Netherlands that unaccompanied children asylum seekers continue to be placed in detention centres if there is doubt about their age. The Committee recommended verifying the age of asylum seekers before placing them in detention.

34. While it is true that according to the law it is possible to place asylum seekers in detention as long as their minority is not established, this does not happen in practice.[23] Verification of the age of unaccompanied children asylum seekers before placing them in detention is already standing practice. When in doubt about the minority of the asylum seeker, he or she is not placed in detention.

35. When the return of unaccompanied asylum seekers to their country of origin is foreseen in the next 14 days, they can be detained as well. Currently, this type of detention is facilitated in a youth offenders institution, as is also mentioned on page 30 of the government submission. As there are generally very few unaccompanied asylum seekers detained there and to prevent their isolation, they were allowed to participate in joint activities with the criminal juvenile detainees at the same location. On 22 April 2014, the Council of State decided that this mixture with criminal detainees was not acceptable

[21] For families with children, a policy change was announced in May 2014. This policy change is further explained in paragraph 32 and 40 of this submission.
[22] http://www.rijksoverheid.nl/ministeries/venj/nieuws/2014/05/28/gezinnen-met-kinderen-niet-langer-in-een-cel.html (Dutch only).
[23] This information was verified by the Dutch Council for Refugees (*VluchtelingenWerk Nederland*), which is closely involved in the asylum procedure and sees all asylum seekers.

in light of several children's rights. Measures have been taken since then. Unfortunately the remaining activities for unaccompanied children since then leave much to be desired, as acknowledged by the State Secretary.[24] He announced a policy change (explained below), but until this will take effect, the unaccompanied children will continue to be detained in the youth offenders institutions with limited daily activities.

36. After the policy change mentioned in paragraph 32 will take effect, unaccompanied children who are to be returned to their country of origin within two weeks' time, will be placed in a separate pavilion at the new accommodation once its operational. Until then, however, they continue to be detained at the youth detention centre.

Families with children

37. The Committee was 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. The Committee recommended the Netherlands to take alternative measures to avoid detention of children or their separation from their families.

38. Such alternative measures are taken into account when families are about to be returned to their country of origin. Since 13 September 2013, these families are placed in family accommodation (*gezinslocaties*) instead of detention. In addition, freedom restricting measures may be imposed, such as a duty to report (*meldplicht*).

39. However, at the moment these alternatives are not used for persons refused entry at the external border. Families with children are placed in detention when they are refused entry at the external border. No alternatives are considered and no individual assessment is made. Detention is therefore automatic once a family applies for asylum at the external border. The Institute is concerned about the fact that article 37(b) Convention on the Rights of the Child – which states that the detention of a child 'shall be used only as a measure of last resort and for the shortest appropriate period of time' - is not upheld in case families with children are refused entry at the border.

40. The policy change mentioned in paragraph 32 will not take effect until early 2015. However, for families with children seeking asylum at the external border, an interim solution was found which will take effect from September 2014. From that moment, families with children will be screened at the external border. This screening will examine whether there are possible reasons to refuse entry, such as an implausible family relation or the suspicion of child smuggling or human trafficking. If the screening shows no reason for refusing entry, the family will be transferred to a reception centre in Ter Apel, to start their asylum procedure there. This policy change should lead to significantly fewer families with children in detention at the external borders. As of early 2015, when the new restrictive accommodation is ready, those families with children who are refused entry will be transferred there instead of being held in detention. While this new accommodation is

[24] Letter from the State Secretary of Security and Justice of 28 May 2014, to be found at: http://www.rijksoverheid.nl/bestanden/documenten-en-publicaties/kamerstukken/2014/05/28/brief-tweede-kamer-invoering-screening-en-nieuwe-locatie-voor-kinderen/pers5969ainvoeringscreeningennieuwelocatievoorkinderen-1.pdf (Dutch only)

likely to be preferred over a regular detention centre, it will still concern deprivation of liberty, as the location will be fenced off. Once screening has taken place, it is unclear why those families could not be placed in a more open environment to await the results of their asylum procedure.

41. While it is encouraging that these changes are being made for unaccompanied children and families with children, the Institute is concerned about the lack of measures taken for other, adult asylum seekers in detention at the border. They continue to be automatically detained, without an individual assessment or consideration of alternatives.

42. The Institute welcomes the announced policy change on migrant (families with) children. However, this is still a form of deprivation of liberty and should therefore only be used as a measure of last resort. Furthermore, the Institute remains very concerned about the structural and automatic detention imposed on asylum seekers refused entry at the external border.

Forced internment in mental health care (paragraph 21)

43. In the concluding observations, the Committee expressed its concern 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. Furthermore, the Committee is concerned about the frequent use of solitary confinement, restraints and forced medication which may amount to inhumane and degrading treatment. It recommended the Netherlands to develop alternative measures.

Legislative developments

44. Since 2010, the government has been working on replacing the current Psychiatric Hospitals (Committals) Act (*Wet bijzondere opnemingen in psychiatrische ziekenhuizen*) with two new Bills: the Bill on care and restraint (*Wetsvoorstelzorg en dwang*) and the Bill on compulsory mental health care (*Wetsvoorstel verplichte geestelijke gezondheidszorg*). The Bill on care and restraint was accepted by the House of Representatives on 19 September 2013. The House is still examining the Bill on compulsory mental health care. The Senate decided to await the decision of the House of Representatives on the latter Bill before considering the first, so the Senate will be able to consider both Bills in connection with each other.

Parliamentary roundtable

45. Since the adoption of the concluding observations of the Committee, some developments in this area have taken place. In January 2014, the standing committee on Health, Welfare and Sport of the House of Representatives held a roundtable meeting on the Bill on compulsory mental health care. One of the Commissioners of the Institute participated in the roundtable and informed the parliamentarians about (possible) human rights issues regarding this Bill. It was stated that the Institute welcomes the introduction of the care authorization (*zorgmachtiging*), which introduces prior judicial authorization before means of restraint can be applied. In addition, the Bill improves the legal status of patients and pays particular attention to the quality of compulsory care. However, some concerns remain. Following the regime of the Bill many different kinds of care

professionals are involved. The Institute believes it to be necessary that all stakeholders in the sector know and understand the human rights background of and implications for their work. It is of the utmost importance that the acquisition of this knowledge is supported and facilitated by the government. In addition, the guidelines for the application of restraint should be human rights proof. Further studies are needed to ensure that the Bill is in line with the UN Convention on the Rights of Persons with Disabilities and the UN Convention on the Rights of the Child.

Alternatives
46. As mentioned in chapter III of this submission, in April 2014 the Institute organized a roundtable meeting on the follow-up to the Committee's concluding observations. One of the workshops at that meeting focused on the Committee's recommendations regarding the use of restraint in mental health care. Participants came from the Ministry of Security and Justice, the Health Care Inspectorate, NGOs, patients associations and the academic field. Care professionals actively participated as well. The topic was introduced by two speakers who shared their experience with developing and implementing alternatives to measures of restraint and involuntary placement. The participants discussed several alternatives, such as the use of the 'crisis card' (*crisiskaart*), which is a physical card people may carry to indicate what they would prefer to happen in case of a (psychiatric) crisis. Downside of this crisis card is that it requires acceptance of the care professional involved, as they can choose to put aside the wishes of the patient. Another alternative that is presently being introduced is to step up the care intensity: instead of using restraint, high intensive care will then be given.

47. Many alternatives for restraint have been and are being developed and tried out in (pilot) projects. However, it seems that in practice it is easy to lapse into old habits and use constraining measures. It is therefore essential to maintain the norms and standards developed in these projects, to make those the standing practice.

48. The participants to the round table also discussed why alternatives are not used on a large scale in practice, since it seems they can be implemented relatively easily. The participants identified a number of reasons. Firstly, the large number of initiatives to reduce restraint are not connected and instead remain scattered throughout the field. Secondly, lack of financing plays a role. The third, and probably most important, concerns the mentality of professionals in the field. Staff and management should work structurally on reducing use of restraint, instead of solely looking at it as a project or research initiative. A mentality shift in the field is therefore very much needed. This means that training of professionals and the development and adoption of guidelines reducing restraint should be provided and encouraged. At the same time it has become clear that committed support of an institution's management is essential, in order to secure long-term results of policy and measures reducing restraint.

Research: reduction in restraint, but large differences between facilities
49. The conclusions reached in the Institute's roundtable are largely supported by a recent research report on the use of restraint in the mental health care sector in the Netherlands

between 2008 and 2012.[25] While this research shows that interventions restricting freedom of patients have significantly reduced in number over the last five to seven years, large differences exist between facilities regarding the frequency and duration of these interventions. A clear policy to reduce restraint throughout all layers of mental health institutes is an important prerequisite for success, according to the researchers. Successful facilities are furthermore characterised by the continuity of their policy. These institutes allow space for initiatives aimed at reducing restraint and offer support to staff that would like to develop expertise on this point.[26]

50. The Institute welcomes the search for alternatives to restraint and forced placement in mental health care. However, a mentality change is required to ensure that those alternatives become the general norm. The government should ensure a more structural and coherent proceeds of the various projects that aim to reduce restraint. Furthermore, training of professionals on how they can reduce restraint in practice is necessary. Finally, the management of care facilities need to support policy and measures aimed at limiting restraint.

[25] W. Janssen e.a., 'Zes jaar Argus. Vrijheidsbeperkende interventies in de GGz in 2012 en ontwikkelingen ten opzichte van voorgaande jaren' (*Six years Argus. Interventions restricting freedom in mental health care in 2012 and developments in comparison to previous years*), May 2014, to be found at http://www.ggznederland.nl/uploads/assets/Rapport%20-%20zes%20jaar%20argus%2017062014.pdf.pdf (Dutch only).

[26] Ibid., p. 139.