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INTERNATIONAL



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1. INTRODUCTION

Amnesty International submits this document in advance the adoption of the List of Issues Prior to Reporting for the eighth periodic report of the Netherlands by the UN Committee Against Torture (the Committee) in November 2021.

The submission highlights Amnesty International's recent work on the asylum procedure and detention in the Kingdom of the Netherlands (with a focus on the Netherlands and Curaçao), unlawful and excessive police use of force and counterterrorism measures.

2. REFOULEMENT (ARTICLES 3 AND 14)

In its previous concluding observations, the Committee against Torture urged the Netherlands to “ensure compliance with the principle of *non-refoulement* set out in article 3 of the Convention.”¹

Amnesty International is concerned about the increasing focus by the Dutch government on forced returns of rejected asylum seekers, return agreements and accelerated asylum procedures, and the increased risk of refoulement associated with these. Amnesty International has documented several cases of forced returns from the Netherlands where the treatment upon return to the country of origin amounted to torture or to cruel, inhuman or degrading treatment or punishment.² In cases of forced return to Sudan and Bahrain, the Netherlands claimed that there was no link between the asylum claim and the torture, mistreatment and imprisonment on false and vaguely formulated charges, despite clear risk factors in the asylum seekers' testimonies.³

Amnesty International collected the testimony of a Sudanese man who was forcibly returned from the Netherlands at the end 2017.⁴ He describes being detained incommunicado by the National Intelligence and Security Service (NISS) for 13 days immediately after his forced return, being beaten and verbally abused, including by being accused of giving Sudan a bad name. Even after carrying out an investigation that concluded that the marks on his body were consistent with his testimony of torture,⁵ the Netherlands refused to recognize the link between the forced return and the abuse suffered, and did not grant any kind of reparation or grant him asylum retrospectively.⁶

A Bahraini asylum seeker deported from the Netherlands in October 2018 was immediately detained upon arrival and has since been subjected to an unfair trial, sentenced to life imprisonment and stripped of his

¹ CAT/C/NLD/CO/7, 18 December 2018, para. 12

² Amnesty International- the Netherlands, *Risico's bij Gedwongen Terugkeer naar Sudan* [Risks with forced returns to Sudan], March 2019, www.amnesty.nl/content/uploads/2019/03/AMN_19_05_Rapport-gedwongen-terugkeer-Sudan.pdf?x43474 and Amnesty International, *Bahrain: Deported Bahraini at risk of ill treatment: Ali Mohamed Al Showaikh*, 2 January 2019, www.amnesty.org/en/documents/mde11/9555/2019/en/

³ Answers to questions to Parliament regarding the article 'Wat er met Ali, Samoal en Ibrahim gebeurde na hun uitzetting', 23 February 2021 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 and Answers to questions to Parliament regarding the news item 'Uitgezette Bahreini zonder eerlijk proces veroordeeld tot levenslang' [Deported Bahreini sentenced to life in prison without a fair trial], 22 March 2019, zoek.officielebekendmakingen.nl/ah-tk-20182019-1979.html

⁴ Amnesty International- the Netherlands, *Risico's bij Gedwongen Terugkeer naar Sudan* [Risks with forced returns to Sudan], March 2019.

⁵ NRC, *Wat er met Ali, Samoal en Ibrahim gebeurde na hun uitzetting* [What happened to Ali, Samoal and Ibrahim after they were deported], 22 January 2021, www.nrc.nl/nieuws/2021/01/22/wat-er-met-ali-samoal-ibrahim-gebeurde-na-hun-uitzetting-naar-soedan-a4028331.

⁶ Answers to questions to Parliament regarding the article 'Wat er met Ali, Samoal en Ibrahim gebeurde na hun uitzetting', 23 February 2021.

nationality based on vaguely formulated 'terrorism' grounds.⁷ Investigation by the Inspection of the Ministry of Justice into the case found that the Dutch Immigration Service had failed to take into account risk factors like his politically active brother.⁸ Amnesty International believes the Netherlands has breached the principle of *non-refoulement* in this case too.

3. DETENTION OF ASYLUM SEEKERS AND OTHER FOREIGNERS BASED ON MIGRATION LAW (ARTICLES 11 AND 16)

In its previous concluding observations the Committee against Torture (the Committee) urged the Netherlands 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.”⁹

Amnesty International continues to be concerned about the draft bill on migration detention. Amnesty International has strong doubts that this bill will take the detention of undocumented migrants and rejected asylum-seekers out of the criminal law realm into the administrative law realm, as the intention of the draft Bill was when it was first introduced in 2013.¹⁰ The bill introduces a restrictive regime, in which people can be locked up in a cell for a maximum of 17 hours a day, with only limited rights to receive visitors (two hours per week) and limited activities outside their cell (7.5 hours per week including sport: 2 x 45 minutes a week). The right to stay in the outside air is limited to one hour per day. Migration detention must, in accordance with international standards, be based on minimum restrictions. Severe restrictions and extensive cell confinement such as those measures outlined in the bill, are therefore disproportionate, as there are less coercive and restrictive means to achieve the same purpose. Amnesty International is concerned that ahead of the adoption of the Bill, this regime has already been introduced and several individuals have been confined in this restrictive regime for months on end.¹¹

⁷ Amnesty International, *Bahrain: Deported Bahraini at risk of ill treatment: Ali Mohamed Al Showaikh*, 2 January 2019 and NRC, *Hier niet welkom, in Bahrain Levenslang [Not welcome here, lifelong detention in Bahrain]*, 4 October 2020, www.nrc.nl/nieuws/2020/10/04/hier-niet-welkom-in-bahrain-levenslang-a4014640.

⁸ Inspection Ministry of Justice, *Uitzetting naar Bahrain [Deportation to Bahrain]*, September 2019, www.prakkendoliveira.nl/images/Uitzetting_naar_Bahrain.pdf and Inspection Ministry of Justice, *Addendum Uitzetting naar Bahrain [Addendum to the report Deportation to Bahrain]*, May 2020, www.prakkendoliveira.nl/images/Addendum_Uitzetting_naar_Bahrain.pdf.

⁹ CAT/C/NLD/CO/7, 18 December 2018, para. 17.

¹⁰ TK 34 309 *Regels met betrekking tot de terugkeer van vreemdelingen en vreemdelingenbewaring (Wet terugkeer en vreemdelingenbewaring)* [Rules regarding the return of aliens and migration detention (Law returns and migration detention)], zoek.officielebekendmakingen.nl/dossier/34309/kst-34309-A?resultIndex=5&sorttype=1&sortorder=4.

¹¹ 'Abdul' was detained in the restricted regime months on end for refusing a two person cell, each time, the penalty was extended by another two weeks. See: Amnesty International, *Isolatie in vreemdelingendetentie [Isolation in migration detention]*, September 2020. www.amnesty.nl/content/uploads/2020/09/AMN_20_26_rapport-isolatie_digitaal.pdf?x10202 p. 19.

Additionally, Amnesty International has strong concerns about a draft addition (*novelle*) to the draft Bill which introduces a collective lock down penalty of up to four weeks, to respond to an individual causing unrest.¹²

During a lock down as proposed in the draft addition (*novelle*), all people on a particular floor of the building, regardless of their involvement in an incident, will be confined to their cell 23 hours a day. In the course of four weeks, they will return to their regular daily activities and relative freedoms in phases. With this draft addition, the regime strays further from administrative detention, and rather than focusing on de-escalation and minimal restrictions in migration detention, the focus will be punitive and on restrictive measures that amount to collective punishments.¹³

Despite strong concerns by the Council of State¹⁴ and Amnesty International,¹⁵ the draft addition has not been brought in line with human rights standards and other recommendations. The grounds for imposing a lock down are vaguely formulated in the draft addition. The draft addition speaks of emergency situations but does not give limitative grounds which may constitute such an emergency. Furthermore, the measure collectively penalizes an entire group of people. Also, the four weeks that it takes to return to the regular regime is disproportionately long, taking away the relative freedoms of an entire floor of people. Sufficient individual disciplinary measures at the detention center staff's disposal (including transfer to the proposed restrictive regime in the draft Bill) would suffice to respond to disruptions. Migrants submitted complaints about a lock down imposed in January 2019. However, the supervisory committee judged these were unfounded, although the complaints were not checked against CAT and/or CPT norms.

Further worries of Amnesty International concern the continued use of solitary confinement in migration detention. In its previous recommendations, the Committee Against Torture recommended that “[t]he legal regime of alien detention is suitable for its purpose and is strictly differentiated from the regime of penal detention and, in particular, solitary confinement is not used as a disciplinary measure against detained asylum seekers and undocumented migrants.”¹⁶ People can be placed in an isolation cell for reasons such as aggression, resistance to deportation, but also punishment for disobeying orders given by detention center staff. In principle, the measures last no longer than two weeks. In practice, when a disciplinary measure imposing solitary confinement expires after 14 days, a new order can be issued for another 14 days. Amnesty documented cases of persons who were placed in isolation for several months, each time based on a new decision. Between 2016 and 2019 there was an increase of 86 per cent in the number of isolation disciplinary measures (from an average of 59 times per month to an average of 110 times a month), while the number of migrants in detention only increased by 30 per cent (330 in 2016 to 430 in 2019).¹⁷

¹² Parliament has not yet voted on the draft addition (*novelle*), awaiting the formation of a new government after elections. TK 35 501-1 *Wijziging van de Wet terugkeer en vreemdelingenbewaring met het oog op het handhaven van de mogelijkheden om maatregelen te nemen ten aanzien van overlastgevende vreemdelingen (35501-1) [Draft addition (novelle) to the draft Law returns and immigration detention regarding the possibility to enforce measures against migrants causing unrest]* www.tweedekamer.nl/kamerstukken/wetsvoorstellen/detail?cfg=wetsvoorsteldetails&qry=wetsvoorstel%3A35501.

¹³ TK 35 501-1 *Wijziging van de Wet terugkeer en vreemdelingenbewaring met het oog op het handhaven van de mogelijkheden om maatregelen te nemen ten aanzien van overlastgevende vreemdelingen (35501-1) [draft addition (novelle) to the draft Law returns and immigration detention regarding the possibility to enforce measures against migrants causing unrest]* www.tweedekamer.nl/kamerstukken/wetsvoorstellen/detail?cfg=wetsvoorsteldetails&qry=wetsvoorstel%3A35501.

¹⁴ Council of State, Advies voorstel van wet tot wijziging van de Wet terugkeer en vreemdelingenbewaring met het oog op het handhaven van de mogelijkheden om maatregelen te nemen ten aanzien van overlastgevende vreemdelingen [advice proposed draft addition (*novelle*) to the draft Law returns and immigration detention regarding the possibility to enforce measures against migrants causing unrest], 22 June 2020, www.raadvanstate.nl/@119776/w16-20-0009-ii/.

¹⁵ 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 overlast gevende vreemdelingen’ [Response Amnesty International to draft addition (novelle) to the draft Law returns and immigration detention regarding the possibility to enforce measures against migrants causing unrest]*, 18 August 2020 www.rijksoverheid.nl/documenten/rapporten/2021/02/02/bijlage-3-advies-amnesty-international-novelle-wetsvoorstel-wtvb.

¹⁶ CAT/C/NLD/CO/7, 18 December 2018, para. 17.

¹⁷ Amnesty International, *Isolatie in vreemdelingendetentie [Isolation in migration detention]*, September 2020, www.amnesty.nl/actueel/gebruik-isolatie-in-vreemdelingendetentie-sterk-toegenomen.

4. CURAÇÃO (ARTICLES 2, 3 AND 16)

In its previous concluding observations, the Committee against Torture (the Committee) urged the Kingdom of the Netherlands to “[a]llow sufficient time for asylum seekers, especially those in the fast-track procedure, to fully indicate the reasons for their application, obtain and present crucial evidence in order to guarantee fair and efficient asylum procedures and ensure the right to appeal, with a suspensive effect, in order to ensure that the legitimacy of applications for protection by refugees and other persons in need of international protection is duly recognized, and refoulement and collective return are prevented;” and to “[p]romptly establish a national asylum determination procedure in Aruba, Curaçao and Sint Maarten that permits a thorough assessment of whether there is a substantial risk that the applicant would be subjected to torture in the country of destination, and ensure that the European Netherlands provides the necessary assistance in establishing such procedures, fully in accordance with article 43 of the Charter for the Kingdom of the Netherlands providing that promotion and protection of human rights is a Kingdom affair”.¹⁸

Amnesty International continues to be concerned about the lack of protection for Venezuelan asylum seekers in Curaçao.¹⁹ In 2019, Curaçao has developed a protection procedure which is based on article 3 ECHR, however, analysis of this procedure has shown several shortcomings.²⁰

Amnesty is concerned about the obstacles to apply for protection. Access to the protection procedure is not guaranteed.²¹ Venezuelans who arrive by boat are intercepted by the coast guard and handed over to the police. The Coast guard is used to discourage illegal migration.²² After their arrival by boat Venezuelans are immediately detained, on the basis of their illegal arrival, in the barracks (SDKK prison) and immediately receive a removal order.²³

The procedure and admission conditions are not laid down in a law, but in policy rules, making it unclear to what extent asylum seekers can derive any rights from it.²⁴ The procedure furthermore states that if a foreigner does not make himself known immediately, that it will affect his credibility.²⁵

The policy rules do not mention access to legal aid. Detained migrants are not informed of their rights, including the right to assistance from a counsel, the right to an interpreter and the right to speak to his or her consul.²⁶

Lawyers and social workers tell Amnesty that they do not always have access to their clients and that they are not or insufficiently informed about their (legal) situation or imminent deportation.²⁷ In November and December 2019, several flights departed from Curaçao with dozens of people on board, including -

¹⁸ CAT/C/NLD/CO/7, 18 December 2018, para. 12.

¹⁹ Amnesty wrote a report in 2018 and is following the developments in Curaçao ever since: Amnesty International, *Detained and deported, Venezuelans denied protection in Curaçao*, September 2018, www.amnesty.org/en/documents/eur35/8937/2018/en/.

²⁰ Commissie Meijers, *CM2006 Notitie aangaande de asielpprocedure op Curaçao*, 22 juni 2020, www.commissie-meijers.nl/nl/comments/581.

²¹ Amnesty International, *Position paper Amnesty International t.b.v. hoorzitting/rondetafelgesprek Rechtshandhaving Caribisch deel Koninkrijk*, 18 December 2019, p. 2, www.amnesty.nl/content/uploads/2019/12/hoorzitting_rondetafelgesprek_Rechtshandhaving_Caribisch_deel_Koninkrijk_d.d._18_december_2019.pdf?x75467.

²² Tweede Kamer der Staten-Generaal, *Vaststelling van de begrotingsstaten van het Ministerie van Defensie (X) voor het jaar 2020*, Verslag van een schriftelijk overleg, 35 570 X, nr. 73, 8 January 2021, www.tweedekamer.nl/kamerstukken/detail?id=2020Z25562&did=2020D53701.

²³ NOS, *Vreemdelingenadvocaten: ‘Curaçao zet Venezolanen collectief uit’*, 27 November 2019, nos.nl/artikel/2312308-vreemdelingenadvocaten-Curaçao-zet-venezolanen-collectief-uit.

²⁴ Commissie Meijers, *CM2006 Notitie aangaande de asielpprocedure op Curaçao*, 22 juni 2020, par. 2.

²⁵ Commissie Meijers, *CM2006 Notitie aangaande de asielpprocedure op Curaçao*, 22 juni 2020, par. 3.

²⁶ Raad voor de rechtshandhaving, *Vreemdelingenbewaring in Curaçao: Een onderzoek van de Raad voor de rechtshandhaving naar de bejegening van in bewaring gestelde vreemdelingen in Curaçao*, June 2020, p. 12 www.raadrechtshandhaving.com/wp-content/uploads/2020/08/Inspectierapport-vreemdelingenbewaring-in-Curaçao.pdf.

²⁷ Amnesty International, *Position paper Amnesty International t.b.v. hoorzitting/rondetafelgesprek Rechtshandhaving Caribisch deel Koninkrijk*, 18 December 2019, p. 2.

according to Curaçao lawyers - many people whose applications for protection have not been processed. Lawyers have not been able to speak to the deportees.²⁸

5. MIGRATION DETENTION IN CURAÇAO (ARTICLES 4, 11 AND 16)

In its previous recommendation, the Committee recommended that “the State party should ensure, including by revising the repatriation and detention of aliens bill, that: (a) Asylum seekers should not be routinely detained and, if necessary, should be detained only as a measure of last resort for as short a period as possible and in facilities appropriate for their status; (b) The administrative detention of foreigners, including in the context of repeated periods of detention, is not of long duration and is fully in line with international human rights standards, including revised deliberation No. 5 of the Working Group on Arbitrary Detention on deprivation of liberty of migrants (A/HRC/39/45, annex); (c) All allegations of ill-treatment of asylum seekers and other foreigners in detention by police officers or prison guards are promptly, effectively and impartially investigated, and that perpetrators are prosecuted and punished; (d) The legal regime of alien detention is suitable for its purpose and is strictly differentiated from the regime of penal detention and, in particular, solitary confinement is not used as a disciplinary measure against detained asylum seekers and undocumented migrants; (e) Asylum seekers and undocumented migrants who are deprived of liberty have adequate access to an independent and effective mechanism for addressing complaints of torture and ill-treatment.”²⁹

Amnesty International is concerned that Curaçao continues to detain foreigners, most of whom are fleeing the humanitarian emergency in Venezuela.³⁰ In Curaçao, migrants are detained solely on the basis of the lack of a residence permit and illegal entry into the country. They do not have access to information, adequate assistance, nor is the procedure to appeal against the detention order understandable.³¹ There is no statutory regulation regarding the detention of asylum seekers, those who apply for protection based on article 3 ECHR are not released.³² Between the beginning of 2019 and 17 December 2019, migration detention was imposed on 523 persons.³³ No information was shared by the government of Curaçao about the number of detained migrants in 2020.

According to lawyers, migrants who were in administrative detention were not only detained in the migration detention facility (the barracks) but also in the adjacent prisons where they stayed next to criminal suspects. Amnesty International visited the barracks in May 2019, and witnessed that the barracks were crowded, with over 20 men sharing the same space while there was bad ventilation, and no activities or leisure materials were offered.³⁴ In the period of Amnesty International’s visit, the men detained in the barracks were locked

²⁸ Amnesty International, *Position paper Amnesty International t.b.v. hoorzitting/rondetafelgesprek Rechtshandhaving Caribisch deel Koninkrijk*, 18 December 2019, p. 2; and NOS, *Curaçao zet tientallen Venezolanen uit, advocaten boos*, 30 November 2019, nos.nl/artikel/2312699-Curaçao-zet-tientallen-venezolanen-uit-advocaten-boos.

²⁹ CAT/C/NLD/CO/7, 18 December 2018, para. 12.

³⁰ Over 5.4 million Venezuelans have left the country, making it one of the largest forced displacement crises in the world, see: United Nations High Commissioner for Refugees (UNHCR), *Venezuela Situation*, www.unhcr.org/venezuela-emergency.html.

³¹ Amnesty International, *Position paper Amnesty International t.b.v. hoorzitting/rondetafelgesprek Rechtshandhaving Caribisch deel Koninkrijk*, 18 December 2019, p. 2.

³² Commissie Meijers, *CM2006 Notitie aangaande de asielprocedure op Curaçao*, 22 juni 2020, par. 7.

³³ Antwoord van Minister Knops op Kamervragen van de leden Groothuizen en Diertens (beiden D66) over het bericht ‘Vreemdelingenadvocaten: «Curaçao zet Venezolanen collectief uit’, 15 januari 2020, zoek.officielebekendmakingen.nl/ah-tk-20192020-1323.html.

³⁴ Amnesty International, *‘Ook Curaçao wil mensenrechten respecteren. Helaas is daar nog geen sprake van’*, Blog, 4 June 2019, www.amnesty.nl/actueel/ook-Curaçao-wil-mensenrechten-respecteren-helaas-is-daar-nog-geen-sprake-van.

up 24 hours a day, and not allowed outside to air.³⁵ According to Dutch Members of Parliament who visited the Barracks in January 2020, the medical, sanitary and privacy conditions are so limited that the situation is inhumane for migrants who must stay there for longer periods of time.³⁶

While the maximum detention period according to the Curaçao legislation is six months, in practice, detention can last over more than a year.³⁷ Lawyers indicate that detention is being imposed and continued while it is clear in advance that there is no prospect of removal.³⁸ At least one Venezuelan who filed for protection was detained for more than two years.³⁹

In June 2019, a case of serious mistreatment took place where guards shot detainees from close range with rubber bullets.⁴⁰

Amnesty International is also concerned about the reports on how minors are being detained in the SDKK prison and in the judicial youth institution.⁴¹

6. UNLAWFUL AND EXCESSIVE POLICE USE OF FORCE (ARTICLES 1, 2, 11 AND 16)

6.1 TASER

In its previous concluding observations, the Committee urged the Netherlands to “Refrain from routine distribution and use of electrical discharge weapons by police officers in their day-to-day policing, with a view to establishing a high threshold for their use and avoiding excessive use of force;” and to “Ensure that electrical discharge weapons are used exclusively in limited situations where there is a real and immediate threat to life or risk of serious injury, as a substitute for lethal weapons and by trained law enforcement officers only;”⁴²

In November 2018 the government has decided to distribute electric discharge weapons (Tasers) to around 17.000 police officers in day to day policing teams across the country. Specialist arrest units are using Tasers since 2011. The use of the Taser in day to day policing has been piloted in three teams. The official evaluation of this pilot concludes that the use of the Taser has not lead to a reduction of the use of firearms

³⁵ Amnesty International, *Position paper Amnesty International t.b.v. hoorzitting/rondetafelgesprek Rechtshandhaving Caribisch deel Koninkrijk*, 18 December 2019, p. 3; Also see: NOS, *Amnesty wil einde aan 'onmenselijke omstandigheden' Venezolanen op Curaçao*, 21 January 2020, nos.nl/artikel/2319639-amnesty-wil-einde-aan-onmenselijke-omstandigheden-venezolanen-op-curaçao.

³⁶ NOS, *Kamerleden: langdurig opsluiten Venezolanen in Curaçao menonwaardig*, 30 January 2020, nos.nl/artikel/2318521-kamerleden-langdurig-opsluiten-venezolanen-in-curaçao-mensonwaardig

³⁷ Koninkrijk.nu (Dick Drayer), *Noodkreet uit de barakken van Curaçao*, 6 January 2020, koninkrijk.nu/2020/01/06/noodkreet-uit-de-barakken/

³⁸ Raad voor de rechtshandhaving, *Vreemdelingenbewaring in Curaçao: Een onderzoek van de Raad voor de rechtshandhaving naar de bejegening van in bewaring gestelde vreemdelingen in Curaçao*, June 2020, p. 22.

³⁹ Koninkrijk.nu (Dick Drayer), *Noodkreet uit de barakken van Curaçao*, 6 January 2020,

⁴⁰ NOS, *Politie Curaçao schiet met rubberkogels in vreemdelingenbarakken*, 10 June 2019, nos.nl/artikel/2288444-politie-curaçao-schiet-met-rubberkogels-in-vreemdelingenbarakken.

⁴¹ Caribisch Netwerk (Kim Hendriksen), *Zorgen om minderjarige vluchtelingen op Curaçao*, 28 October 2019, caribischnetwerk.ntr.nl/2019/10/28/zorgen-om-minderjarige-vluchtelingen-op-curaçao/.

⁴² CAT/C/NLD/CO/7, 18 December 2018, para. 43.

or police dogs.⁴³ Amnesty has concluded in its report on the Taser that there is no operational need for introduction of the Taser.⁴⁴ Dutch use of force scientists have concluded similarly.⁴⁵

Amnesty International's report⁴⁶ and the government evaluation⁴⁷ show that the Taser use is not limited to extreme situations in which there is a real and immediate threat to life or risk of serious injury. On the contrary the weapon has been used against people who try to escape from arrest for a minor offense, while in a police cell or vehicle or already handcuffed.

6.2 USE OF FORCE INSTRUCTIONS

The use of any force by Dutch police, Royal Netherlands Marechaussee and other law enforcement officers, is regulated by the Police Act in combination with an official legal instruction (Ambtsinstructie).⁴⁸ The latter has been revised in January 2021. The use of force instructions do not explicitly prohibit the use of the Taser in drive stun mode. In this modus the weapon can be used to avert an immediate danger to life or serious injury to persons. However, in dart firing mode an electric discharge weapon is allowed to be used against a person who is trying to escape from arrest.⁴⁹

For other weapons and equipment the use of force instructions set a similarly low threshold for the use. For example, it allows police to shoot kinetic impact projectiles to prevent harm not necessarily to a person but merely to property.⁵⁰

Also the instructions for the use of firearms is not in compliance with human rights law as the instruction allows to shoot with the service weapon for the purpose of arresting a fleeing person who has been convicted of, or is suspected for, a crime that warrants a minimum 4-year prison sentence that constitutes a serious violation of physical integrity, or concerns the unlawful presence in a dwelling or in the private premises and has threatened with the use of violence against a person, or is a crime that by its consequence is or may be a threat to society.⁵¹

⁴³Adang et. al, 2018, *The Electric Discharge Weapon In Day To Day Policing? Evaluation Of The Pilot* (Het stroomstootwapen in de basispolitiezorg? Evaluatie van de pilot), Police Academy, p. 56
<https://www.politie.nl/binaries/content/assets/politie/nieuws/2018/00-km/het-stroomstootwapen-in-de-basispolitiezorg-mei-2018.pdf>.

⁴⁴Amnesty International, 2018, A Failed Experiment: The Taser Pilot of the Dutch Police, p. 23:
https://www.amnesty.nl/content/uploads/2018/02/A-Failed-Experiment_The-Taser-pilot-of-the-Dutch-Police.pdf?x10202.

⁴⁵ Adang et. al, 2019, *Police Use of Force in the picture: Are New Weapons Needed?* (Politiegeweld in zicht: Zijn nieuwe gewelddsmiddelen nodig?), Tijdschrift voor de Politie: <https://www.websitevoordepolitie.nl/politiegeweld-in-zicht-zijn-nieuwe-gewelddsmiddelen-nodig/>.

⁴⁶ Amnesty International, 2018, A Failed Experiment: The Taser Pilot of the Dutch Police, p. 11-26 :
https://www.amnesty.nl/content/uploads/2018/02/A-Failed-Experiment_The-Taser-pilot-of-the-Dutch-Police.pdf?x10202.

⁴⁷ Adang et. al, 2018, *The Electric Discharge Weapon In Day To Day Policing? Evaluation Of The Pilot* (Het stroomstootwapen in de basispolitiezorg? Evaluatie van de pilot), Police Academy, p. 29-30
<https://www.politie.nl/binaries/content/assets/politie/nieuws/2018/00-km/het-stroomstootwapen-in-de-basispolitiezorg-mei-2018.pdf>.

⁴⁸ Police Act (Politiewet 2012) article 7: <https://wetten.overheid.nl/BWBR0031788/2021-01-01>; Use of Force Instruction for the Dutch Police, the Royal Netherlands Marechaussee and other law enforcement officers, (Ambtsinstructie): <https://zoek.officielebekendmakingen.nl/stb-2021-46.html>.

⁴⁹ Use of Force Instruction for the Dutch Police, the Royal Netherlands Marechaussee and other law enforcement officers, Article 12 c. Electric Discharge Weapons (Stroomstootwapens): <https://zoek.officielebekendmakingen.nl/stb-2021-46.html>.

⁵⁰ Use of Force Instruction for the Dutch Police, the Royal Netherlands Marechaussee and other law enforcement officers, (Ambtsinstructie), article 11a. 1(d): <https://zoek.officielebekendmakingen.nl/stb-2021-46.html>.

⁵¹ Use of Force Instruction for the Dutch Police, the Royal Netherlands Marechaussee and other law enforcement officers, (Ambtsinstructie), article 7.1b.: <https://zoek.officielebekendmakingen.nl/stb-2021-46.html>.

7. COUNTERTERRORISM

7.1 ADMINISTRATIVE MEASURES CAUSE OF CONCERN (ARTICLE 2)

Amnesty International has observed with concern the growing trend in Europe toward employing administrative measures as a proxy for criminal proceedings and the fair trial guarantees attached to them. A person can be labelled as a threat to national security before any affirmative step toward the commission of a crime has been taken. These administrative initiatives may undermine the presumption of innocence and leave people with fewer and weaker safeguards than they would enjoy in the criminal justice system. Administrative measures are typically applied without prior judicial authorization, and on-going judicial supervision is often perfunctory, as the judiciary generally grants the executive a significant margin of appreciation in matters of national security. The orders are often based on secret information not made available to the affected person or their legal representative, undermining the principle of “equality of arms”.

Amnesty has analysed the Dutch Temporary Administrative Powers Counter-Terrorism Act (2016) (Temporary Powers Act), which provides for the application of a range of administrative measures without the requirement of a reasonable suspicion for persons who “can be associated with” terrorism-related activities or the alleged support of them. Amnesty concluded that the law heavily compromised fair trial guarantees; severely undermined the right to an effective remedy; risked violating the prohibition of discrimination; and threatened an affected person’s rights to freedom of movement, expression, and association; and right to private and family life.⁵² No changes have been made to the law since it was proposed. The law was adopted in the context of the Dutch government’s “Comprehensive Action Programme to Combat Jihadism” and thus threatens to fuel stereotypes that certain people – including Muslims and foreigners – are more inclined to be associated with terrorism-related acts. Such associations create a fertile environment for discrimination and hostility toward particular groups. In April 2020, the Research and Documentation Centre (WODC), which evaluates policy set by the Ministry of Justice and Security, issued an assessment of the Temporary Powers Act (from March 2017-September 2019) and concluded that the government’s stated objectives in adopting and applying the law had not been met. Despite this conclusion the Minister of Justice and Security announced that the government intends to withdraw the temporary status of the Counter Terrorism Act and make it a permanent Act. Amnesty is concerned about the permanent codification of the law and the lack of solid argumentation for this decision.

7.2 PROPOSED BILL TO CRIMINALIZE PERSONS TRAVELLING TO AREAS CONTROLLED BY TERRORIST ORGANIZATIONS

On the 10th of September 2019 a bill passed parliament to make it a criminal offence for persons to travel to areas controlled by terrorist organizations (wet strafbaarstelling verblijf in een door een terroristische organisatie gecontroleerd gebied). The bill would criminalize travelling to an area controlled by a terrorist organization without the permission of the minister. This would entail a restriction of the right to freedom of movement as the proposed bill criminalizes behavior that is not in itself dangerous or illegal: just travelling to and being in a certain place would make you a criminal, whether you had alleged terrorist motives or not. The Council of State concluded in its advice that there is no necessity for the proposed bill and the bill would not be effective to counter terrorism.⁵³ As pointed out by multiple NGOs the proposed bill would endanger NGO staff working in those areas. They would be dependent upon permission from the minister for their

⁵² Amnesty International, Netherlands: Counter-terrorism bills would violate human rights and undermine rule of law, 17 January 2017, <https://www.amnesty.org/download/Documents/EUR3554322017ENGLISH.pdf>.

⁵³ <https://www.raadvanstate.nl/@112846/w16-18-0089-ij/>.

work. This would jeopardize their impartiality, as the organization could be associated with the Dutch government given the received permission.

7.3 STRUCTURAL FLAWS IN THE DUTCH NATIONAL PREVENTIVE MECHANISMS (NPM) (ARTICLE 7)

In its 2018 submission, Amnesty International expressed concerns about the fact that the Netherlands had not taken any additional measures to ensure the effectiveness, pluralism and independence of the NPM. Two years prior, in 2016, the SPT had already criticized the proximity of the central government inspectorates (the Inspectorate of Justice and Security (IJenV) and the Inspectorate of Health and Youth (IGZenJ)) to their ministries, both in their establishment and their functioning.⁵⁴ In its response to the SPT, the Dutch government stated that the independence of the inspectorate was sufficiently safeguarded.⁵⁵ Yet, over the past years, structural flaws in the Dutch national preventive mechanisms have again been reported. In March 2021, a study on the drafting of reports by the Inspectorate of Justice and Security found a number of interventions involving, at the very least, the appearance of undue influence.⁵⁶ In June 2020, the Inspection Council, the alliance of state inspectorates, published a letter with proposals to more firmly entrench the independence of the inspectorates.⁵⁷ In the most recent response to the letter, the state secretary for internal affairs refers to an ongoing evaluation, but does not propose any concrete steps to address the structural flaws.⁵⁸ The Netherlands should respond how it reconciles the reports of undue influence with its earlier statements that the independence is sufficiently safeguarded.

⁵⁴ SPT, Report on the visit made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the purpose of providing advisory assistance to the National Preventive Mechanism of the Kingdom of the Netherlands, 16 March 2016, CAT/OP/NLD/R.1, paras 36-38.

⁵⁵ 'Mensenrechten in Nederland: Reactie op het rapport van het Subcomité aangaande het Nederlandse NPM' ('Human Rights in the Netherlands: Reaction to the report of the Subcommittee regarding the Dutch NPM'), Parliamentary Papers, TK 33826, no. 18, 26 September 2016, p. 3.

⁵⁶ 'Onderzoeksrapport. Naar de totstandkoming van rapporten van de Inspectie Justitie en Veiligheid', Auditdienst Rijk, Ministerie van Financiën, 2021-0000055410, 17 March 2021.

⁵⁷ 'Evaluatie Aanwijzingen inzake rijksinspecties', Bureau Inspectieraad, 11 May 2020.

⁵⁸ 'Brief van de staatssecretaris van binnenlandse zaken en koninkrijksrelaties', TK 2020-2021, 31490 no. 297, 3 February 2021.

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THE NETHERLANDS

SUBMISSION TO THE UN COMMITTEE AGAINST TORTURE 72TH SESSION, 8 NOVEMBER- 3 DECEMBER 2021, LIST OF ISSUES PRIOR TO REPORTING

Amnesty International submits this document in advance the adoption of the List of Issues Prior to Reporting for the eighth periodic report of the Netherlands by the UN Committee Against Torture (the Committee) in November 2021.

The submission highlights Amnesty International's recent work on the asylum procedure and detention in the Kingdom of the Netherlands (with a focus on the Netherlands and Curaçao), unlawful and excessive police use of force and counterterrorism measures.