



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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**Written replies by the Government of The Netherlands to the list of
issues (CAT/C/NET/Q/4/Rev. 1)* to be taken up in connection with the
consideration of the fourth periodic report of THE NETHERLANDS
(CAT/C/67/Add.4)**

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EUROPEAN PART OF THE KINGDOM

Article 2

Question 1

Does Dutch law specifically provide that no exceptional circumstances whatsoever may be evoked as a justification of torture?

No.

Question 2

With regard to universal jurisdiction, are there restrictions on the persons that could be prosecuted? If so, please explain.

No.

Article 3

Question 3

Please provide information on the legislative, administrative and other measures that are planned or in place to respond to threats of terrorism, and indicate if, and how, these have affected human rights safeguards in law and practice. In this context, do they provide any exception to the principle of non-refoulement guaranteed in article 3 of the Convention? If so, please provide examples.

1. On Tuesday 20 March 2007 the House of Representatives of the States General passed a bill that will make it possible, among other things, to restrict the freedom of movement of potential terrorists. This is the Administrative Measures (National Security) Bill. The bill introduces the power to impose administrative measures on people who are thought to be connected with terrorist activities. The measures may consist of:
 - (a) A restraining order (prohibiting access to a certain area);
 - (b) A duty to report to the police; or
 - (c) A ban on consorting with certain individuals.
2. Such a measure applies for three months, but may be renewed for a maximum of two years. This is a power of the Minister of the Interior and Kingdom Relations (BZK) and concerns measures that restrict the freedom of movement of the person concerned.
3. Moreover, an administrative authority may reject an application for a grant, permit, exemption etc. or cancel an existing grant, permit, exemption etc. if the activity in question can be linked with terrorist activities or support for them. However, the Minister of the Interior and Kingdom Relations must first issue a certificate of no objection.

Please also indicate if the NOVO team, which investigates and prosecutes war crimes and crimes against humanity, also investigates allegations of terrorism.

4. The NOVO team investigates offences that may constitute war crimes. Where the offences under investigation possibly involve a terrorist element they are included in the investigation, but this is not its main focus.

Question 4

Please elaborate on how the Aliens Act 2000 is compliant with article 3 of the Convention. The Committee is concerned by the risk of violation of the non-refoulement principle when applying the Dutch accelerated asylum procedure. The Committee refers in particular to the following issues:

(a) The limited time available for asylum-seekers to become informed about the procedure and to prepare for it;

(b) The burden of proof imposed on asylum-seekers to substantiate their claim and the particular cases of undocumented asylum-seekers;

(c) The processing of claims by vulnerable asylum-seekers such as traumatised persons who may be unable, including for psychological reasons, to support their case within the 48-framework established by the accelerated procedures.

5. The Dutch Government considers that the asylum procedure is in conformity with the international obligations of the Netherlands. The Dutch courts have ruled that the accelerated asylum procedure does not breach the prohibition of expulsion or return (principle of *non-refoulement*) in article 33 of the Refugee Convention (The Hague Court of Appeal, 31 October 2002, *Rechtspraak Vreemdelingenrecht 2002*, No. 22).

6. Although there are differences between the accelerated asylum procedure as provided for in the Aliens Act 2000 and the normal asylum procedure (e.g. the time limits and the suspensive effect at the appeal stage), the accelerated procedure provides the same safeguards as the normal procedure (e.g. preparation, interviews about identity, nationality and travel route and about reasons for applying for asylum, application for judicial review, appeal, and full legal aid during the proceedings). In addition, the same criteria are applied in deciding on asylum application in the accelerated procedure as in the normal procedure. If the substance of the case is suitable and no further investigation is required, the application for asylum can be disposed of by means of the accelerated procedure. If it becomes clear that more time is needed for investigation than is available under the accelerated procedure in order to decide the matter with due care, the case is immediately transferred to the normal asylum procedure. It should be noted that in the accelerated procedure applications for asylum may be granted as well as refused.

(a) As regards this point, the Government would point out that asylum-seekers receive written information about the asylum procedure from the Immigration and Naturalisation Service (IND) before the start of the procedure. Most asylum-seekers have also spent a few weeks at a reception centre before the procedure starts. During this period they can rest and recover and they receive information about the asylum procedure from the Dutch Refugee Council.

Asylum-seekers can also use this time for example to collect documents that support their asylum account. As already mentioned, they can also arrange to be assisted by a legal adviser throughout the entire procedure. The asylum seeker's legal adviser is entitled to attend the first interview (about identity, nationality and travel route) and the second interview (on the reasons for applying for asylum). During the accelerated asylum procedure the asylum seeker has the opportunity to prepare for the interview with the help of a legal adviser.

(b) As regards the burden of proof, the general principle is that the burden lies on the asylum seeker, as set out in sections 195-197 of the UNHCR Handbook. The asylum seeker must make a plausible case for being granted an asylum residence permit. This is why he is asked during the interview about his reasons for leaving his country of origin. He should also submit data and documents which are relevant to the decision on the application and which it is reasonable to expect him to possess (section 3:2 of the General Administrative Law Act). For their part, the Dutch authorities have an active duty to investigate. The administrative authority is required to obtain information about the facts and interests relevant to its decision (section 4:2 General Administrative Law Act). Applications for asylum are granted even in cases in which an asylum seeker has not lodged documents. The asylum account should be credible and consistent, in keeping with what is known about the general situation in the country of origin and of sufficient merit.

(c) It should be noted in this connection that the individual merits of the asylum application are decisive in determining whether an asylum application can be fast-tracked under the accelerated asylum procedure. If it transpires that more time is needed for investigation than is available under the accelerated procedure in order to decide the matter with due care, the case should be dealt with under the normal asylum procedure.

7. If the medical condition of an asylum seeker is such that it is unclear whether he can be interviewed, the advice of the medical service in the application centre is sought. This advice is followed in practice. In addition, any physical or mental problems of an asylum seeker are taken into account during the accelerated procedure, for example where an applicant is hard of hearing or traumatised. If there is a lack of consistency in the asylum account, the possibility that this is attributable to the mental condition of the applicant is taken into account. Allowance is made for the fact that a statement by the applicant may be affected by whether or not he is traumatised. The caseworkers who interview asylum-seekers have received special training in identifying and dealing with traumas. Reference should also be made to what has been said above at (a).

8. Finally, it should be noted that the coalition agreement of the new government (which took office on 22 February 2007) includes a provision that the accelerated asylum procedure in the Netherlands should be improved. How this is to be done is yet to be determined.

Question 5

With regard to medical reports, there are allegations that in practice such reports are not considered by immigration officials as evidence that can be used to substantiate an application. Reports received from NGOs quote the following statement found in asylum decisions: "The Immigration Authorities have the opinion that medical aspects in general do not play a role when it comes to decision making, since medically speaking one cannot be totally certain about the cause of medical symptoms and/or scars. Also in the present

case, the medical report of Amnesty International does not prove the stated causal link between the said detention and ill-treatment on the one hand, and the asylum-seeker's physical symptoms on the other hand." Please comment. Please also explain to the Committee how the Istanbul Protocol is used in practice in the Netherlands.

9. It is not Dutch policy to assume that a medical examination is necessary in order to substantiate an application. This is partly based on past experience of medical examinations, which merely prolonged the procedure but hardly ever produced clear-cut evidence. The basic criterion is that the asylum account should be plausible. A medical examination can possibly serve to confirm an opinion on the asylum account. A medical examination cannot in general serve to make an otherwise implausible story credible. The Dutch government takes the view that it is impossible to prove through medical investigation whether the physical problems and/or physical signs of harm in the past are really related to the causes alleged by the asylum seeker. Accordingly it does not use medical evidence in a forensic sense in the asylum procedure to prove the statements made by the asylum seeker. The Istanbul Protocol concerning forensic medical examination is not applied in the Dutch asylum procedure.

10. In the Netherlands an asylum seeker may qualify for an asylum residence permit if he has a well-founded fear, in the event of his return, of being excluded from medical care on discriminatory grounds, for example on account of his race or religion, or of being subjected to what constitutes, on account of his state of health, inhuman treatment within the meaning of article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) or if he should be allowed to remain because he has suffered a trauma or been tortured. A residence permit may now therefore be granted without the need for a medical examination. However, the alien concerned may still submit a medical report of his own volition to the IND to substantiate his application. Naturally, a medical examination will be conducted if the applicant's state of health makes this necessary.

Question 6

Please provide detailed information on the "marginal scrutiny test", including procedural elements. Please also explain the principle of "new facts and changed circumstances".

11. It is the established case law of the Administrative Jurisdiction Division of the Council of State that in assessing the decision of the IND on the credibility of the asylum account it must confine itself to "marginal scrutiny". This means that the criterion to be applied is not the court's own opinion on the credibility of the asylum account, but whether the administrative authority acted reasonably in reaching its decision on the account's credibility. The same applies to the IND's view on "the extent to which the applicant's suppositions based on the facts are realistic" (i.e. his suppositions about the treatment that he can expect to receive on return to his country of origin). Whether the facts deemed credible and suppositions deemed realistic by the administrative authority constitute a basis for admission to the Netherlands is fully tested by the courts within the meaning of the relevant international conventions.

12. The Committee has also asked about the principle of new facts and changed circumstances. This principle relates to the testing of a second or subsequent asylum application as though it were a first application. Section 4:6 of the General Administrative Law Act contains a provision for second or subsequent applications. This states that, after a decision rejecting an application, a person submitting a fresh application should indicate any new facts that have emerged or circumstances that have changed. If he is unable to do so, the administrative authority may reject the application without further consideration, by referring to the previous rejection. However, an administrative authority is authorised to deal with the substance of a second or subsequent asylum application even if there are no new facts or changed circumstances.

13. It follows from the case law of the Administrative Jurisdiction Division of the Council of State that the court must immediately examine whether a second or subsequent asylum application was based on new facts or changed circumstances. If this is not the case, the court may not substantively reassess the decision on the second or subsequent asylum application. This is because the courts may never rule on the same case twice (*ne bis in idem* principle).

14. According to the case law of the Administrative Jurisdiction Division of the Council of State, new facts or changed circumstances are:

- (a) Facts or circumstances that have occurred since the previous decision was made;
- (b) Facts or circumstances that could not and accordingly - in view of section 31 of the Aliens Act 2000 - need not have been adduced before the previous decision was made; and
- (c) Documentary evidence of circumstances previously adduced which could not and accordingly - in view of section 31 of the Aliens Act 2000 - need not have been lodged before the previous decision was made.

15. The case law of the Administrative Jurisdiction Division of the Council of State provides for an exception to section 4:6 of the General Administrative Law Act if there are special facts and circumstances relating to the individual case. The risk of prohibited treatment as referred to in article 3 ECHR has been designated as such (ABRvS 24 April 2003, JV 2003, No. 280).

16. It should be noted that the Minister of Justice has informed the House of Representatives that consideration will be given to whether and, if so, how an updated assessment in cases concerning article 3 ECHR can be scrutinised in a manner that is not unduly marginal and without such an assessment, where necessary, being prevented by section 4:6 of the General Administrative Law Act (Parliamentary Papers II, 2006-2007 session, 29 344 and 30 800 VI, No. 62).

Question 7

Please elaborate on the Government's plan to return a large number of asylum-seekers whose applications have been rejected, as noted in the concerns and recommendations of the Committee on the Elimination of Racial Discrimination.

17. The new government which recently took office in the Netherlands has stated in its coalition agreement that the legacy of the old immigration legislation will be cleared up in the near future by means of an arrangement under which people who fulfil a number of objective

criteria are automatically granted a residence permit. As a result of this arrangement, a large group of aliens who submitted an asylum application under the old immigration legislation and are still in the Netherlands are expected to receive a residence permit; in these cases the question of return will no longer be relevant. The details of the arrangement are currently being worked out. Nonetheless, the basic principle of Dutch policy continues to be that a person who is not (or no longer) lawfully resident in the Netherlands must leave the country, whether after expiry of the period for departure or not.

Question 8

Please elaborate on the written protocol on the medical screening of returnees and explain whether such screening includes a psychological assessment of their fitness for travel. If so, please provide detailed information and explain any findings of these assessments.

18. People who are deported from the Netherlands are not usually medically screened. However, there are two procedures (the procedure under section 64 of the Aliens Act 2000 and the fit-to-fly procedure) which are intended to assess a person's medical condition where this is necessary.

19. Section 64 of the Aliens Act 2000 provides that an alien should not be expelled as long as his health or that of any of the members of his family would make it inadvisable for him to travel.

20. Returnees may themselves invoke this section. A situation may also occur in which the official responsible for deporting a returnee has reason to believe that the person concerned is unable to travel. In both of these cases the opinion may be sought of the Medical Assessment Section (BMA) of the IND.

21. Questions are then asked about the returnee's medical condition. They include questions about the nature of the complaints, the nature of the present treatment (or necessary treatment), the length of the treatment, the scope for treatment in the country to which the person is to be deported, whether the person concerned is fit to travel and whether a medical emergency will occur if the treatment is terminated. Not only the physical health but also the mental condition of the returnee are screened.

22. If the Medical Assessment Section considers that the returnee is temporarily unfit to travel, he is allowed to remain in the country lawfully for a short time. Section 64 of the Aliens Act is also applied where discontinuation of the medical treatment would result in a medical emergency and the medical treatment cannot take place in the country of origin. If the Medical Assessment Section expects the medical treatment to last longer than a year, the authorities examine whether the person concerned is eligible for a residence permit on the grounds of medical emergency.

Fit to fly

23. A fit-to-fly test is carried out immediately before departure if the Medical Assessment Section has previously decided that this is necessary. This test involves assessing whether the returnee can be deemed fit to fly in accordance with the guidelines of the International Air

Transport Association. Even if the BMA has not previously stipulated that deportation of the alien is conditional on a fit-to-fly test, there may still be grounds for having the returnee examined by a doctor to determine his fitness to fly.

Article 4

Question 9

Please provide information on the 30-month prison sentence handed down to Sebastian Nzapali, a former Congolese officer convicted of torture committed in the Democratic Republic of Congo in 1994 and 1995. Please identify the penalties provided in Dutch law for crimes of torture or acts amounting to cruel, inhuman or degrading treatment.

Conviction of Sebastien Nzapali

24. Sebastien Nzapali applied for asylum in the Netherlands on 17 May 1998. After an investigation by staff of the Ministry of Foreign Affairs and the IND, Nzapali was granted 1F status. After the Public Prosecution Service had been notified that Nzapali had been granted 1F status, it instituted in due course a criminal investigation into his suspected violations of sections 1 and/or 2 of the Torture Convention Implementation Act and the Convention against torture and other cruel, inhuman or degrading treatment or punishment (CAT).

25. Nzapali was head of the Garde Civile in the province of Bas-Zaïre in 1996. The Garde Civile, part of the Zaïrian armed forces under the late President Mobutu, was charged with police and customs duties, border control and counterterrorism. The Public Prosecution Service argued before the court that in the period from 1 January 1996 to 31 December 1996 Nzapali, while acting in his position of head of the Garde Civile, had inflicted physical and mental pain on two persons in custody with intent to punish them and/or coerce them into doing something and/or out of contempt for their entitlement to human dignity. The Public Prosecution Service requested the court to impose a term of imprisonment of 5 years for torture within the meaning of sections 1 and 2 of the Convention against Torture Implementation Act.

26. Unlike the Public Prosecution Service the District Court considered that the charge of torture had been proved only in respect of one victim. On 7 April 2004 Rotterdam District Court sentenced Sebastien Nzapali to a term of imprisonment of two years and six months. The court held that Nzapali had been guilty on a number of occasions of participating in the commission of torture, which is a crime under section 1, subsection 1 of the Convention against Torture Implementation Act, in the former Zaïre (now known as the Democratic Republic of the Congo) in the period from 1 January 1996 to 31 December 1996.

27. As regards the sentence the District Court held as follows:

“At the time of President Mobutu’s administration in 1996, the defendant was commander of the Garde Civile and stationed in Matadi. He was known to the population and within the Garde Civile by the nickname “Roi des bêtes”. As commander of the Garde Civile the defendant arranged for the suspect, who was working as a customs broker in the port of Matadi, to be arrested by his subordinates/bodyguards. The victim was taken away

by these bodyguards to the premises of the Garde Civile, put into a cell there and systematically abused over a number of days on the instructions of the defendant. The victim, who was in a state of virtual undress, was beaten with a *cordelette* (a closely woven belt) and was used, in his own words, as a punch bag by the bodyguards. The defendant had watched from his balcony. The purpose of this mistreatment was to punish the victim for having refused to clear through customs a car belonging to a friend of the defendant who did not wish to pay the freightage, and thus to coerce the victim into clearing the car after all. After having been mistreated for a few days the victim was brought before the defendant and informed that he would have to arrange for the car to be cleared within 48 hours. Ultimately the victim had to pay the freightage himself.”

28. The court also held that torture is a very serious crime which causes widespread indignation and disquiet not only in Congo but also internationally. It mentioned in this connection the fact that acts of which the defendant had been convicted constituted a breach of the Dutch legal order too, since he had settled in the Netherlands and had, by making an asylum application, indicated that he wished to be (or remain) part of Dutch society. The court held that the defendant’s actions were evidence of a complete lack of respect for the dignity of a fellow human being and warranted the imposition of a long, non-suspended prison sentence.

Statutory maximum sentences

29. Torture is now a criminal offence under section 8 of the International Crimes Act. An official or other person in the service of a government body who commits torture in the performance of his duties is liable to a term of life imprisonment or a term not exceeding twenty years.¹ A fine not exceeding €45,000 may also be imposed. Under section 14 of the International Crimes Act, a defendant who is sentenced to at least one year’s imprisonment may also be deprived of the right to vote and stand for election as a special additional penalty.

30. The International Crimes Act entered into force on 1 October 2003. As the offences of which Nzapali was convicted took place before the entry into force of the International Crimes Act, the Convention against Torture Implementation Act and not the International Crimes Act is applicable to this case.

31. Under section 1 of the Implementation Act an official or other person in the service of a government body who commits torture in the performance of his duties is liable to a term of imprisonment of not more than fifteen years or a category 5 fine. If the offence has resulted in death, the defendant is liable to a sentence of life imprisonment or a determinate sentence not exceeding twenty years.

¹ Under the Dutch criminal law system, the maximum term of imprisonment is specified for each separate offence. There is no fixed minimum sentence. However, there is a minimum term of imprisonment that applies to all offences, namely one day.

Article 5

Question 10

Please provide an update on the entry into force of the International Crimes Act as well as information on “cases brought to justice in the Netherlands under it”.

32. The International Crimes Act entered into force on 1 October 2003. Investigations into war crimes may be instituted on the basis of a “1F file”, a report to the police or other evidence. The abbreviation 1F refers to article 1F of the Convention relating to the Status of Refugees, which states that the Convention shall not apply to an asylum seeker “with respect to whom there are serious reasons for considering that he has committed a crime against peace, or a crime against humanity”.

33. The War Crimes Result Area Team (ROM Team) has investigated various cases.

34. Four cases came straight from 1F files. One of them concerned a suspect from Sierra Leone. The investigation revealed that it involved not just war crimes but also human smuggling. The suspect was convicted of the latter offence in October 2003. The other three cases concerned suspects from Afghanistan. One of these investigations was discontinued after 2½ years as there was insufficient prospect of a conviction. The investigation into the other two suspects was a result of the first investigation. The two 1F suspects concerned were arrested in late 2004 on suspicion of having committed war crimes and torture and have now been convicted. The persons concerned were Hesamuddin H., a former Afghan general, and Habibullah J.

35. In the next case, the earlier mentioned Nzapali, 1F files played a major role in securing conviction: however, what actually triggered the investigation was a report to the police. It was not until two months later that the Public Prosecution Service received the 1F file in question. As described above Nzapali was sentenced in 2004 to a term of imprisonment of two years and six months for having participated in the commission of torture on more than one occasion. The judgment has become final and conclusive. Nzapali was also given a 4-week suspended sentence for use of a forged travel document in contravention of article 231 of the Criminal Code (Rotterdam District Court, 7 April 2004, No. 10/000050-03, LJN No. A07178).

36. 1F files played no role whatever in three cases. In one of these cases the investigation was instituted as a result of a request for the extradition of a suspect from Iraqi Kurdistan (the case has now been disposed of and the suspect deported). The other two cases concern Dutch nationals, Frans van A. and Guus K., suspected of involvement in war crimes abroad.

37. The first of these two cases against Dutch nationals was instituted in November 2003 following questions in parliament prompted by an edition of the *Netwerk* television programme broadcast in November 2003. The suspect had been in the Netherlands for some time and had already given various interviews in regional newspapers before the *Netwerk* broadcast. Lawyers were already preparing to lay an information at the moment when the investigation started. Frans van A. has now been convicted of involvement in genocide through the supply of poison gas to the former regime of Saddam Hussein.

38. Publicity also played a role in the case against the second Dutch national, Guus K., who was suspected of involvement in illicit arms trafficking and the commission of war crimes in Liberia. However, the investigation was actually triggered by information about the suspect that emerged from an investigation into diamond trafficking and money laundering. Much preliminary investigative work had already been done by NGOs, including a report by Global Witness, by the time the investigation started. The United Nations had also placed a travel ban on the suspect. The investigation was already under way when the case attracted media attention. Guus K. has now been convicted.

39. Finally, mention should be made here of the recent fact that Abdullah F., an Afghan, has been arrested on suspicion of involvement in war crimes and that Joseph M., a Rwandan, has been arrested on suspicion of involvement in war crimes and torture, both of which would have a 1F status.

Please also provide information about the results of the evaluation of the NOVO Team conducted by the Minister of Justice and the Minister of the Interior and Kingdom Relations.

40. The evaluation shows that the investigation and prosecution of war crimes is complex not only on account of the nature of the subject matter but also because of the large number of players involved, all of whom have their own particular angle. The general conclusion is that there is sufficient legal scope for investigation and prosecution and that the powers of the authorities do not pose a problem. Those concerned do not view the difficulty of cases, the problems of finding witnesses or the fact that the crimes were committed long ago and in a different country as insuperable problems, but they do consider that these factors put a premium on high quality investigative work.

41. The evaluators believe that the conditions for mounting successful investigations are now fulfilled. In other words, the police and prosecuting team is working well and has the necessary expertise, powers and pioneering spirit as well as a varied network of partners and sufficient resources and facilities. However, the fulfilment of these conditions is still largely dependent on individuals. The challenge in the next few years will therefore be to continue to build on, improve and consolidate what has been achieved to date.

42. On the basis of their findings, the evaluators propose a number of policy measures that could improve how war crimes are tackled. These recommendations have been divided into four categories:

- (a) Staff levels;
- (b) Expertise;
- (c) Cooperation and networking; and
- (d) Continuity assurance.

43. Various recommendations have already been implemented.

44. The investigation and prosecution of war crimes has quickly produced results that are internationally noteworthy. The Netherlands has played a pioneering role in tackling war criminals. This is confirmed by a recent report by Human Rights Watch. Some of the successes and efforts have been described above.

45. At present various other investigations are under way and the team is involved in dealing with the appeals lodged by the defendants in the cases described above who were sentenced to long terms of imprisonment at first instance. The team dealt with 15 requests for legal assistance received in 2006.

Article 7

Question 11

Please describe any anti-discrimination measures that are planned or in place to ensure impartial investigations of allegations of offences pursuant to articles 1 and 16 of the Convention.

46. Article 1 of the Constitution provides that all persons in the Netherlands shall be treated equally in equal circumstances. This article prohibits discrimination on the grounds of religion, belief, political opinion, race or sex or any other grounds. Article 14 of the ECHR, which has been ratified by the Netherlands, also prohibits discrimination.

47. Given the increasing cultural diversity in society, it is more necessary than ever to respond alertly in order to protect population groups from discrimination. Tackling discrimination has therefore been identified as a priority by the Public Prosecution Service.

48. Article 6 of the ECHR sets out the right to a fair trial, and people who consider that they have not been tried by an independent and impartial tribunal established by law may lodge a petition with the European Court of Human Rights. It follows that the right to a fair trial in which equal cases are treated equally is amply safeguarded by the above provisions. If there is any reason to suppose that pending cases involving accusations of torture are not being investigated impartially, it will be decided whether or not an investigation into the allegations should be instituted.

Article 10

Question 12

Please provide detailed information about the human rights training provided by the National Institute for Police Training for law enforcement officials, particularly with regard to the treatment of detainees and the measures in place for the prevention of torture and cruel, inhuman or degrading treatment or punishment. Is similar training available to other public officials? What monitoring and evaluation, if any, is used to assess the impact of training?

49. Dealing with detainees and the rights of detainees are subjects dealt with in police training. These topics are covered above all in the core subjects of property crime and detainee care. As police training involves combined study and work experience, the actual knowledge and skills

are gained both at the police academy and in practical work in the police force itself. The practical work coach ensures that students observe the statutory regulations on the treatment and rights of detainees. This responsibility passes to the police officer's line manager after completion of training. An independent monitoring board also monitors the treatment of detainees by the police.

Article 11

Question 13

According to Dutch legislation, the limited duration of custody for interrogation purposes negates the need for legal assistance. Please indicate if there are plans to amend this provision. If not, please elaborate on any safeguards built into the Dutch legal system to ensure that, in the absence of a lawyer, persons in custody will be protected from ill-treatment or any other unlawful action.

50. An extensive programme to enhance and strengthen the quality of the performance of police officers and prosecutors started in 2006 and will end in 2010. Interrogations of the suspect in the pre-trial stage will be recorded on audio or videotape. An experiment to assess the impact on criminal procedure of a lawyer being present during the first police interrogation will start in 2008. Under existing Dutch criminal procedure, legal assistance is always provided in cases where a suspect is remanded in custody (for a maximum of three days) in the interests of the investigation: i.e. after a maximum of six hours of police interrogation.

Question 14

Please provide updated information on the study of the psychological effects on prisoners of detention under the maximum security regime as referred to in paragraph 34 of the State party's report. Please also comment on the statement that "the information available to the Government relating to the prison system of psychosocial care does not suggest that detention in the prison causes serious psychological harm".

51. A report entitled "The mental condition of prisoners in the Nieuw Vosseveld high security institution and wing for prisoners suitable for limited association in Vught" was published on 10 October 2003. The aim of the report was to assess what long-term effects a stay in the high security institution has on the mental condition of the prisoners. At the time of the study there were generally about 14 prisoners in the high security institution (now 4-6 on average). The wing for prisoners suitable for limited association was included in the study by way of comparison.

52. Partly as a consequence of transfers to other institutions, the number of measurements was too small to establish a causal link between the regime and the mental wellbeing of the inmates. The report does not therefore draw any definite conclusions and instead describes the findings as probable effects. The recommendations made on the basis of the study should be viewed in this context.

53. The strip searches carried out in the high security institution were dealt with as a separate topic. The researchers concluded that the inmates regarded them not only as gratuitously degrading but also as unsafe and harmful. In a judgment of 4 February 2003 the European Court

of Human Rights held that strip searches, in combination with other strict security measures in the high security institution, constituted a breach of the prohibition of inhuman or degrading treatment (article 3 ECHR).

54. As regards the rest of the high security regime, the researchers recommended modifications (allowing for security) in the interests of:

- (a) Promoting personal interaction between the inmates and the prison staff;
- (b) Allowing inmates to have some control over their stay in the institution;
- (c) Ensuring that prison staff are not met with suspicion and hostility.

55. Subject to the restriction that the degree of inmate influence over prison conditions is necessarily limited by the stringent security requirements in a high security institution, the recommendations have been implemented in the following ways:

- (a) The policy on strip searches has been modified in such a way that it no longer differs essentially from standard practice in other penal institutions;
- (b) Each inmate can now earn extra privileges such as telephone calls and visits by means of good behaviour;
- (c) As stated in the previous report, a fence has been erected in the exercise yard which does indeed promote more contact between staff and inmates; improving this contact is a matter that receives constant attention;
- (d) Changes have been made to make the inmates' surroundings more pleasant, for example by introducing plants;
- (e) There is now more encouragement for inmates to take part in the available activities and possible ways of expanding the range of activities are continually studied; thanks to the low occupancy rate of the high security institution, many extra facilities such as extra sport and extra use of the exercise yard can be provided.

56. As regards the psychological damage caused by imprisonment the Dutch Government would make the following observations. It is important to note that as little use as possible is made of the high security institution, as is evident from the low occupancy rate in recent years (only 4-6 inmates since January 2005). These and other measures are used to minimise the possibly adverse effects of the high security regime.

57. The available information about the psycho-medical consultations within the high security institution on inmates who may suffer problems as a result of their imprisonment and are, where necessary, offered the requisite care has not shown that in the long term the regime causes psychological effects (including possible harm) that differ from those seen in other penal institutions. If an inmate of the high security institution has psychological problems he can be transferred (like prisoners in other penal institutions) to the forensic observation wing or to an individual counselling wing.

Question 15

Please provide information about measures taken with regard to holding areas in the time since the last report of CPT and following the incident at Schiphol Airport. Has this incident prompted changes in the Border Holding Area Regime Regulations, and if so please describe these changes.

58. In late 2003 the holding centre director appointed a person to improve the emergency contingency plan for Schiphol-Oost. Moreover, an evacuation exercise was conducted jointly by the Custodial Institutions Agency (DJI) and the Royal Military and Border Police (*Koninklijke Marechaussee*) in early 2004.

59. Following the fire in the cell complex in Schiphol-Oost in October 2005, tighter, updated fire safety regulations were issued to the holding centres. Compliance with these regulations is checked by the municipalities concerned. The installation of sprinkler systems on all prison ships is the most obvious example. Another obvious measure is the deployment of extra staff during night shifts in cases where an adequate sprinkler system has not yet been fitted. Cooperation with the emergency services has also been improved and the safety protocols for the individual holding centres have been tightened up. Large amounts have also been spent on improving the emergency response training of the staff of each holding centre.

60. A safety task force has been established by the Minister of Justice to ensure that the Custodial Institutions Agency:

- (a) Has complete information about the physical safety risks;
- (b) Pursues an effective policy capable of guaranteeing physical safety;
- (c) Responds alertly to signs that the physical safety approach needs to be improved.

61. The recommendations made in the independent inquiry report following the Schiphol fire in 2005 are central to the Safety Programme of the Custodial Institutions Agency. These recommendations are primarily concerned with fire safety. The measures contained in the programme, which deal with the organizational, construction and electronic aspects of safety, focus on improving physical safety. The scope of some of the activities and measures can sometimes extend beyond the issue of physical safety.

62. The function of the task force is to ensure that safety awareness is clearly inculcated within the Custodial Institutions Agency and that safety management is strengthened. This is chiefly the aim of the programme activities that focus on developing instruments, organizational structure and a sense of responsibility, frameworks, schemes and protocols and the internal and external monitoring of the execution of custodial sentences and measures.

Question 16

Please also comment on the concern raised by the Special Rapporteur on the human rights of migrants that rejected asylum-seekers who were held in the Schiphol airport detention centre were allegedly detained in the same area as persons convicted of criminal offences and that men and women were held in the same area and not in separate parts of the premises.

63. An expulsion centre basically serves as a kind of short-stay assembly area prior to (compulsory) deportation. Any removal centre is bound at some point to hold foreign nationals of both sexes (with or without criminal convictions). However, there were different custody regimes for the various categories of people held in the Schiphol-Oost cell complex. People held under a particular regime were in principle assigned to a wing for that regime. Foreign nationals who were not (or no longer) legally resident in the Netherlands, such as asylum-seekers who had exhausted their legal remedies, were not held in the cell complex not because they had not committed and were not suspected of an offence but were instead detained under sections 6 or 59 of the Aliens Act 2000. A different regime applied to them. It is, however, possible that these foreign nationals included people with a criminal record. The sexes are strictly separated, except in the case of a married couple or family.

Question 17

Please inform the Committee of the conditions of detention in the Netherlands for survivors of the Schiphol Airport fire until the investigation was concluded.

64. Each individual survivor was closely monitored through a single national centre to ensure careful and complete registration of all activities relating to that survivor. After the fire the standard daily programme of activities at the holding centre was temporarily modified. The medical service of the Special Facilities Directorate of the Custodial Institutions Agency quickly established which of the foreign nationals had medical complaints as a consequence of the fire.

65. Those of the foreign nationals detained under section 64 of the Aliens Act (“alien detention”) with a view to deportation (see the answer to question 8) were released from detention and either transferred to an asylum-seekers centre or allowed to stay with relatives. Foreign nationals with a criminal conviction who were remanded in custody at the time of the fire and afterwards showed symptoms of posttraumatic stress disorder were transferred to an ordinary remand centre where there would be more and better facilities. Those foreign nationals whose detention was ended on the instructions of the Aliens Division of the District Court but who still had to be interviewed by the National Police Internal Investigations Department could be put up in a hotel at the expense of the Dutch state pending the inquiry, but little use was made of this.

Question 18

With regard to the border detention centre, reports from NGOs allege that unaccompanied children may be held in alien detention for several weeks and that asylum-seekers whose applications have been rejected, including children as part of a family, may be detained for an unlimited period, regardless of whether or not an appeal is lodged. Please comment.

66. Dutch policy is for unaccompanied children to be held in detention at the border only if there is doubt about whether they are still minors. Alien detention with a view to deportation is, in principle, of unlimited duration, but may never exceed what is strictly necessary for the purpose of the detention (i.e. the departure of the alien).

67. Children who are part of a family are not held in detention. They may be placed in detention only if parents who are themselves held in detention indicate that they wish to keep their children with them. As the State Secretary for Justice who recently took office is currently reviewing the policy on minors held in alien detention it is still uncertain to what extent the existing practice will be continued in the longer term.

68. The authorities are required to notify the courts of the imposition of a detention order no later than 28 days after its announcement, unless the foreign national has himself lodged an application for judicial review. The court sits to hear the case no later than the fourteenth day after receipt of the application for review or notification. If the court considers the application or execution of the detention order to be unlawful, it grants the review. In such a case it orders that the measure be ended or the manner of execution altered. The court may also award damages.

69. As long as the authorities consider the detention order to be justified and the court shares this view, the detention can continue. However, it is generally true that the longer a detention order lasts the greater is the interest of the foreign national in being released. The decisions of the courts have generally been based on the assumption that after six months' detention the interest of the foreign national in being released usually outweighs the public interest in continuation of the detention for the purpose of deportation. In certain circumstances, however, this period may be either longer or shorter. Both the courts and the government authorities generally try to ensure that where children are detained the length of the detention is extra short.

Articles 12 and 13

Question 19

Please provide information on the number and the content of complaints from detainees received by the Ombudsman, and describe what follow-up measures are available to them. Please provide information on the findings and the content of the annual report of the police cell monitoring boards and of the study on reporting practice commissioned by the Minister of the Interior and Kingdom Relations.

70. Police cell complexes come under the autonomous powers of the regional police forces. Under article 16a, paragraph 2 (b) of the Regional Police Forces (Management) Decree, the police cells monitoring boards report annually on their work and findings to the regional police

force manager. The police force managers are therefore responsible for adopting the recommendations of the monitoring boards. In general, they do adopt these recommendations. Under article 16a, paragraph 6 of the Regional Police Forces (Management) Decree, the police force manager sends an annual report of the activities and findings of the monitoring board to the Minister of the Interior and Kingdom Relations.

71. Additional information, specifically relating to work of the Ombudsman, will be given during the oral presentation.

Question 20

What measures are planned or in place to ensure that complainants and witnesses are protected against ill-treatment and intimidation and to ensure effective, impartial and expeditious processing of complaints?

72. Detainees may submit any complaints to the relevant police force under chapter X of the Police Act 1993. Complaint handling is a power of the regional police and complaints are therefore dealt with by the force concerned. If the complainants are not satisfied with how their complaint is handled by the police, they may apply to the National Ombudsman.

73. Additional information can be provided during the oral presentation if so wished.

Article 14

Question 21

Please provide information and statistical data on investigations of acts of torture or ill-treatment, if any, and what compensation, including medical rehabilitation, has been provided to victims since the last periodic report.

74. Four investigations into allegations of torture since 2002 are known to the Public Prosecution Service. One of these was the investigation referred to above into the activities of Sebastian Nzapali. For further information about this case, reference should be made to the answer to question 9. No compensation has been paid to the victims in the criminal case against Nzapali. The victims have not joined the proceedings as injured parties.

75. There has also been an investigation into a person suspected of torture and other crimes in the former Yugoslavia. However, this case has been dropped for lack of evidence. The victims have been notified of this decision.

76. In the third case a person was sentenced by The Hague Court of Appeal on 29 January 2007 to twelve years' imprisonment for offences including a violation of section 1 of the Convention against Torture Implementation Act. The defendant, Hesamuddin H. (earlier mentioned in the answer to question 10), was head of military intelligence and deputy minister for state security at the time of the Soviet-backed communist administration in Kabul, Afghanistan, in the period from late 1983 to the end of 1990. The Court of Appeal held that it had been proved that in the course of his duties Hesamuddin H. had committed very serious crimes against three victims, namely participating in torture and violating the laws and customs of war. The Court of Appeal ruled that these crimes constituted a breach of the international legal

order. They also affected the Dutch legal order since Hesamuddin H. had become part of Dutch society following his escape to the Netherlands. No care has been provided to his victims. This is because the victims of this crime are abroad and have not joined the criminal proceedings. Hesamuddin H. has appealed to the Supreme Court in cassation. The cassation proceedings are still pending.

77. The fourth case involves a charge of torture committed in Rwanda (earlier mentioned Joseph M.), which was heard by The Hague District Court on 5 March 2007. As judgment has not yet been given, no further information can yet be provided about this case.

Article 16

Question 22

Please provide information on the facilities provided to aliens awaiting expulsion after a stay permit or asylum has been denied.

78. If the foreign national has been placed in a reception centre while his application for asylum is dealt with, the reception facilities are terminated 28 days after the final refusal of the application. Families with children may remain in the centre for a maximum of 12 weeks after expiry of this period if their departure has not yet been arranged, provided that they actively cooperate in their departure.

79. If an asylum application is dealt with under the accelerated procedure, the reception facilities end directly after the refusal of the application. The foreign national is then expected to leave the country immediately. If a foreign national has not voluntarily left the country in time, he may be detained for the purpose of deportation. Foreign nationals who cannot travel continued to be entitled to these facilities during their recovery period.

80. Reception facilities are not provided for foreign nationals who have not made an application for asylum.

81. Foreign nationals may be helped by the International Organization for Migration (IOM) in the form of support for their voluntary departure and facilities, both administrative and financial, for reintegration in their country of origin under various programmes financed by the Dutch authorities.

Question 23

Please explain the procedures or mechanisms that are planned or in place through which the State party implements the recommendations of the CAT.

82. The focal point for the implementation of recommendations of the Committee against Torture is the Ministry of Foreign Affairs (the United Nations Division in cooperation with the Human Rights Division). The Committee's recommendations to the Netherlands are passed by the focal point to the relevant ministries and departments within these ministries, depending on the nature of the recommendations.

83. The ministries concerned are the Ministry of Justice, the Ministry of the Interior and Kingdom Relations and the Ministry of Health, Welfare and Sport. An interdepartmental meeting may be convened to discuss the recommendations if this is deemed useful.

Question 24

Does the Netherlands envisage ratifying the Optional Protocol to the Convention against Torture? If so, has the Netherlands taken steps to establish or designate a national mechanism which would conduct periodic visits to places of deprivation of liberty with a view to preventing torture and other cruel, inhuman or degrading treatment or punishment?

84. The Netherlands envisages ratifying the Optional Protocol to the Convention against Torture in the second half of 2007. The Kingdom of the Netherlands has a variety of national monitoring boards that periodically visit places of detention which meet the requirements of the national preventive mechanisms under OPCAT. These monitoring boards operate independently and have free access to places of detention. They also cover all types of detention facility.

Question 25

Please indicate whether there are any legislative, administrative, judicial or other measures that are aimed at preventing or prohibiting the production, trade, export and use of equipment specifically designed to inflict torture or cruel, inhuman or degrading treatment. If so, please provide information about its content or implementation. If not, please indicate whether the adoption of such legislation is being considered.

85. These matters are regulated by Council Regulation (EC) No 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment. This regulation is directly applicable in the Member States and constitutes the legislation in force in the Netherlands in this field. The regulation has been implemented by a ministerial order which was issued on 20 October 2006 imposing a ban and/or other restrictions on the import and export of certain goods that could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.

86. Sanctions to be applied in the event of violations of the ministerial order are provided for in the national law on economic crimes. The Minister of Economic Affairs is empowered to execute the order and has delegated this authority to the relevant customs department.

Question 26

The Committee wishes to receive from the State party an overview of major developments since 2001, as well on the implementation of the Convention in its non-metropolitan regions.

87. Possible new major developments not covered in the answers above and below will be included in the oral presentation in Geneva.

ARUBA

Article 1

Question 27

Please describe the contents of the article of the National Ordinance implementing the Convention against Torture (AB 1999, No. 8) which incorporates into Aruban law the definition of torture provided in the Convention. Please elaborate on how the definition is compliant with article 1 of the Convention.

88. How the definition of torture provided for in the Convention is implemented in Aruban law, i.e. in the National Ordinance implementing the Convention against Torture (AB 1999, No. 8), is explained in detail in the explanatory memorandum to the ordinance. The main aspects of this implementation that are discussed in the explanatory memorandum were already dealt with in document CAT/C/44/Add.4, Nos. 78-87 and Nos. 91-95, as well as in document CAT/C/67/Add.4, Nos. 52-55. The following additional points should be made. The definition of torture in Aruban criminal law is broader than strictly necessary under the Convention. It is in fact based on the existing criminal law system of Aruba, in particular the existing definitions of assault and the types of participation in a crime (in particular inciting the commission of an offence). Torture is presently defined under Aruban law in terms of assault, for which purpose there must be the causing of severe pain as well as one of the characteristics of assault required by the Convention. In addition, the assault must have been committed, incited or intentionally allowed by a person in the service of a government body and acting in the course of his duties. As previously indicated, intentionally causing great fear or another form of mental distress is equated with assault (and hence causing severe pain).

89. The reason why the definition of torture is based on that of assault is that acts covered by article 1 of the Convention against Torture were already subject to far-reaching penalties under Aruban criminal law.

90. The concept of “public official” or “person acting in an official capacity” is defined in Aruban legislation as “a person working in the service of a government body in the course of his duties”. This definition is broader than that of the word “public servant”, which is also frequently used in Aruban criminal legislation. According to the explanatory memorandum, the reason for this definition is that it “makes clear that the operation of the present bill covers not only public officials within the meaning of the Criminal Code of Aruba but also the holders of public office who cannot be deemed to be public servants within the meaning of the Criminal Code, for example government ministers. In addition, the bill also covers persons other than public officials who act in an official capacity, as they are described in article 1 of the Convention against Torture. An example could be a doctor in private practice who is called in by a government body to carry out unnecessary medical operations on detainees.” The criterion is therefore that every person who carries out a task in the service of a government authority is covered by the operation of the criminal provision, irrespective of whether a formal hierarchical (official) relationship exists between the person concerned and the authority.

Article 3

Question 28

In the light of the lack of formal asylum and protection procedures in Aruba and the current practices with respect to the detention and deportation of illegal migrants, please explain how immigration legislation and practice are compatible with article 3 of the Convention.

91. Legislation is currently being prepared to incorporate the non-refoulement principle of article 3 of the Convention in immigration legislation. However, the principle is already being applied in asylum practice and policy.
92. The Minister of Justice has issued an instruction to the immigration and Guarda Nos Costa officers (border control authorities) that the asylum committee must be informed immediately a person indicates that he or she wishes to apply for asylum.
93. Upon their arrival asylum-seekers have to report to the Head of Immigration for a first intake/evaluation. The Head of Immigration sends the results of this evaluation to the asylum committee, which then conducts a further analysis. In a number of cases the UNHCR in Caracas has been contacted to share and evaluate information. The asylum committee sends its findings to the Minister of Justice, who takes the final decision.
94. For the past four years Aruba has had an average of about three to four asylum applicants a year.

Applications for 2006/07 asylum year

Date of application	Date of interview	Decision	Age	M/F	Nationality
09.03.2006 Withdrew the application and left of her own accord	27.03.06		26	F	Belgian
20.06.2006 Negative decision, no appeal lodged and left of his own accord for Colombia on 07.07.2006	26.06.2006	19.07.2006	51	M	Colombian
24.07.2006 Negative decision, no appeal lodged, still in Aruba, cannot be deported (as the 11-month period under Cuban immigration law has expired), intends to go to the USA and has applied for a green card	25.07.2006	28.07.2006	44	M	Cuban
25.07.2006 Born in the European part of the Kingdom of the Netherlands. Residence in Aruba unknown, did not report for the interview and has not left			50	M	Dutch

95. None of these people was a migrant such as a minor or unaccompanied minor, none was disabled, elderly, pregnant or a single parent with children, and none had been tortured, raped or endured severe psychological, physical or sexual violence.

Date of application	Date of interview	Decision	Age	M/F	Nationality
31.01.2007 Refugee “sur place” application	05.02.2007	Pending	32	M	Venezuelan

96. In none of these cases was the “refoulement” principle of article 3 of the Convention violated.

97. Persons who have already been detained under the immigration legislation (namely article 19 paragraph 1 (a): L.T.U. AB 1993 No. GT 33 “persons who have entered the country in violation of the immigration law” and (b) “persons who have been admitted on a temporary permit, if they are discovered after the validity of the temporary permit has expired or the permit has been revoked for other reasons”) may be deported by order of the Minister of Justice unless they apply for asylum. They are allowed to await the outcome of the asylum procedure in detention until the court has ruled in their case.

Article 11

Question 29

Please provide information on the implementation of the revised instructions and criteria for the deployment of investigations for alleged offences committed by police officers, including statistical data on the offences reported and investigated since the State party’s last appearance before the Committee.

98. Dereliction of duty and offences committed by police personnel can be investigated in two ways, namely by means of an internal police investigation under disciplinary law or by means of a criminal investigation. Cases of dereliction of duty and minor offences are investigated by an independent unit of the Aruban Police Force, namely the Internal Investigations Bureau (BIZO), which operates under the direct control of a public prosecutor of the Public Prosecution Service. More serious offences are investigated by the Public Service Investigation Agency.

99. The precise division of responsibilities between the Internal Investigations Bureau and the Public Service Investigation Agency is based on the National Decree to regulate the Duties of the Public Service Investigation Agency (ASB 2000 No. 13), which entered into force on 1 March 2000. Under article 3, paragraph 1 of this National Decree the investigative duties of the Public Service Investigation Agency are:

(a) To investigate criminal offences committed or caused by holders of public office and investigating officers;

(b) To investigate offences committed either by public servants other than investigating officers or committed in the exercise of a public service responsibility by persons working for a public body or by persons in charge or in the service of legal entities under public law or of legal entities under private law that are more than half owned by Aruba as well as of institutions that are dependent on a public body for more than half of their budgeted expenditure;

(c) To investigate the facts of instances of dereliction of duty by the public servants and persons referred to at a) and b) if such investigation concerns serious dereliction of duty and the head of department under whom the public servant or person comes cannot reasonably be expected to institute the investigation himself or if the investigation is necessary in the course of a disciplinary investigation against public servants in positions of authority.

100. A criminal investigation as referred to at 1 and 2 above includes:

(a) Investigating offences that are continued after the public servant or other person ceases to hold the office concerned on the basis of which the Public Service Investigation Agency was competent to perform the investigation; and

(b) Investigating other perpetrators of and accessories to the offences referred to at 1 and 2.

101. Investigations into acts, omissions or conduct of staff of the Public Service Investigation Agency itself are also, in principle, performed by the Agency, albeit under the direction of a public prosecutor specially designated for this purpose by the Procurator General. This is because it is a condition of such investigations that there should be a sufficient distance between the public prosecutor in charge of the case and the Agency.

102. It follows from the above that minor cases are dealt with by the Internal Investigations Bureau. Examples are thefts, embezzlement, common assault and threatening behaviour.

103. More serious cases are referred to the Public Service Investigations Agency. These always include in any event the use of firearms by the police leading to injury or death, the use of firearms by public servants leading to injury or death, serious physical injuries or death following actions by a police officer, the death of a detainee in police cells or prison, and all abuses of office. Examples of abuses of office are accepting bribes, abuse of authority (for instance, threatening to arrest a person unless he performs certain transactions under civil law) and unlawful entry into a dwelling and unlawful seizure of goods.

104. The Public Service Investigations Agency can also be used to investigate minor abuses of office, serious offences committed by public servants other than abuses of office, and escapes or attempted escapes where there are indications that a public servant is involved.

105. Cases connected with the deployment of the arrest team (AT), a special unit used in particular to arrest suspects who are armed and dangerous, are in principle referred to the Internal Investigations Bureau (BIZO) for an investigation into the facts. The public prosecutor decides on the basis of the results of the investigation of the facts whether a further criminal investigation by the Public Service Investigation Agency is necessary.

106. In practice, however, the Public Service Investigation Agency never carries out disciplinary investigations.

107. The Public Service Investigation Agency submits an annual report of its activities to the Procurator General. The annual reports for 2003-2005 (the annual report of 2006 had not been completed when the present report was written) show the following picture:

Shooting incident (police) resulting in injury/death			
2002	2003	2004	2005
5	1	1	-

Injury/death of prisoner in police or prison cell			
2002	2003	2004	2005
3	-	-	-

108. The following figures for the period from 1 September 2005 to 21 March 2007, which are based on those of the public prosecutor responsible for directing the Public Service Investigation Agency and the Internal Investigations Bureau, are also important:

109. Number of cases investigated by Internal Investigations Bureau (absolute): 49

110. Number of cases investigated by the Public Service Investigation Agency (absolute): 33 (These figures relate to the number of reported cases, not the number of suspects.)

111. The majority of these cases involved assaults by police officers or other uniformed officials with responsibilities for public order and security (37 reports). Since 1 September 2005 there have also been three shooting incidents and one death of a prisoner in his cell.

112. The shooting incidents and cell death, as well as property offences committed by police officers in that period, were all matters for investigation by the Public Service Investigation Agency. With two exceptions, all the assaults are being dealt with by the Internal Investigations Bureau.

113. It should be noted for the record that the new National Decree regulating the Police Code of Conduct and Police Instructions on the Use of Force entered into force on 29 October 2005 (AB 2005 No. 66). This national decree combines the former National Decree on the Use of Force and Security Searches by the Police (AB 1988 No. 60) and the National Decree on the Police Code of Conduct (AB 1988 No. 67). The new national decree adopts almost all the provisions of its predecessors, albeit arranged in a rather different system. Some provisions on the use of force by marine units have also been added to make up for a previous lack of rules on this subject. In essence, these provisions arrange for the police powers to be transferred to marine units.

114. The establishment of the Internal Investigations Bureau (BIZO) in the Aruban Police Force (KPA) was announced in an internal order of 12 September 2000. One of the duties of the Internal Investigations Bureau is to carry out thorough and objective investigations into complaints and reports against staff of the Aruban Police Force (KPA). The Internal

Investigations Bureau distinguishes between disciplinary and criminal investigations, which come within the competence of the chief of police and the Public Prosecution Service respectively (see above).

115. The investigations carried out by the Internal Investigations Bureau have three aims:

- (a) To safeguard and protect the integrity of the police force;
- (b) To assure the public that their interests are safeguarded by demonstrating that the police force does not tolerate unlawful acts by its staff and will take action to deal with them;
- (c) To protect any employee from unjust, incorrect and unfounded complaints, reports and information.

116. The following table shows the number of disciplinary and criminal cases investigated by the Internal Investigations Bureau in the 2000-2006 period. As the Bureau did not undertake criminal investigations until 2005, figures are available only for the years 2005 and 2006.

Year	Disciplinary investigations	Criminal investigations
2000	4	0
2001	29	0
2002	30	0
2003	21	0
2004	30	0
2005	23	15
2006	12	33

Basis for and results of internal investigations

117. The basis for carrying out a disciplinary investigation into an alleged dereliction of duty by a public servant is laid down in the National Decree on Substantive Public Service Law, which defines what is meant by the offence of dereliction of duty. The disciplinary penalties that can be imposed for proven dereliction of duty vary in severity from a written reprimand to dismissal. These disciplinary penalties are also laid down in the national ordinance referred to above.

118. By contrast, a criminal investigation is based on Aruba's Criminal Code and Code of Criminal Procedure. Like any other individual, an employee of the Aruban Police Force who is suspected of a criminal offence can be prosecuted and tried in accordance with the provisions included in the codes referred to above.

119. To date, seven police officers have been dismissed as a consequence of disciplinary investigations conducted by the Internal Investigations Bureau. However, nothing can yet be said about the criminal investigations conducted by the Internal Investigations Bureau since only two of these cases have been dealt with in court. These cases have been dropped for lack of sufficient evidence against the suspected police officers.

Question 30

As requested by the Committee in its concluding observations, please provide information and statistics on current pre-trial and convicted prisoners, disaggregated by gender and geography.

120. The new National Penal System Ordinance (AB 2005 No. 75) was announced on 16 December 2005. It was still under consideration by the Aruban parliament at the time the report was prepared. The national ordinance has not yet entered into force as the implementing bill is not yet ready. However, in anticipation of its entry into force the custodial institution is already operating a set of internal rules based on the ordinance. The content of the National Penal System Ordinance was dealt with in document CAT/C/44/Add.4, Nos. 75-77.

(Statistics can be found in the annex on page 31)

Question 31

How do the provisions of the Aruban Code of Criminal Procedure relating to witnesses as explained in the report of the State party guarantee protection as provided by Article 13 of the Convention?

121. Article 13 of the Convention states that steps must be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given in torture cases. It was already explained in document No. CAT/C/67/Add.4, Nos. 41-44, that the legal rules on witnesses against whom threats have been made can be of use in this context. In cases where a witness is threatened in order to deter him from giving evidence, the investigating judge can provide, either on the application of the public prosecutor or at the request of the witness, that the witness should be heard in such a way that his identity is entirely concealed. In this way it is possible to prevent reprisals against the witness. However, this arrangement provides a solution only in serious cases, i.e. cases in which the witness feels so threatened in respect of the testimony he is to give that it is reasonable to fear for his life, health or social functioning or that of another person. The question is then whether there are other safeguards that can prevent the intimidation of complainants and witnesses.

122. The most important safeguards are provided by a combination of statutory provisions:

(a) Complaints against police officers, public servants and other officials are made to the Public Service Investigation Agency, which operates independently of the police and under the direct authority of the Procurator General; this reduces the risk of intimidation where complaints are filed, and statements by witnesses are also in principle not made to the police;

(b) The right of individuals to complain to the independent courts if a complaint lodged with the police is not dealt with (art. 15, Code of Criminal Procedure);

(c) The supervision by the public prosecutor, as the person in charge of criminal investigations and as a member of the Public Prosecution Service (which is independent of the police), of the handling of complaints; the public prosecutor can thus monitor the progress made in handling complaints;

(d) The public prosecutor can arrange to have witnesses heard by the investigating judge in the course of a preliminary judicial examination (art. 221 et seq. Code of Criminal Procedure); in such cases the police are not involved in interviewing the witnesses;

(e) Aruba does not yet have a separate offence for statements that can adversely affect the freedom of persons to give evidence. However, a Committee for the Review of the Criminal Code, which was established in February 2007, has presented a preliminary draft of a new Aruban Criminal Code to the Aruban Minister of Justice. This preliminary draft is expected to be presented to the Council of State and the Aruban Parliament in the course of 2007. Article 2.17.15. of the draft makes provision for a special offence as referred to here. This article reads as follows:

- (i) Anyone who intentionally conveys a message to a person orally, by gestures, in writing, in pictures or by computerised means for the manifest purpose of influencing the freedom of that person to make a statement truthfully in the presence of a judge or public servant and who knows or has good reason to suspect that such a statement will be made shall be liable to a term of imprisonment not exceeding four years or a category 4 fine;
- (ii) A judge or, as the case may be, person in the service of an international court that derives its jurisdiction from a convention to which the Kingdom is party shall be equated with a judge or public servant;
- (iii) Paragraph 1 of this article also applies when a person is interviewed in a manner as described in article 2.8.3, even if the evidence is not given under oath.

123. Detainees' existing right of complaint serves as a safeguard against intimidation within the penal system designed to prevent complaints to the police. Detainees have the right to complain to a supervisory committee about their treatment by the prison staff. The committee members can freely contact the detainees and hear their complaints. The Court of Justice and the Public Prosecution Service also inspect the prison, generally twice a year (art. 627 Code of Criminal Procedure).

Annex

Statistics relating to list of issues No. 30

Annual overview of prison inmates	2005 (%)	2006 (%)	2007 (%)
Young people aged 14-18	2.2	3.3	1.7
Adult men	90.2	86.5	88.6
Adult women	7.6	10.2	9.7

Occupancy rate per wing on 1 March 2007

Detention wing	
Not yet convicted	9
Total	9
Remand centre wing	
Appeal	8
Appeal in cassation	3
Not yet convicted	67
Convicted	33
Total	111
Youth wing	
Appeal in cassation	1
Not yet convicted	14
Convicted	4
Total	19
Punishment wing	
Appeal	7
Appeal in cassation	18
Convicted	93
Total	118
Women's wing	
Appeal	1
Appeal in cassation	1
Not yet convicted	12
Convicted	8
Total	22
Total	279

Overview by nationality	2005 (%)	2006 (%)	2007 (%)
US citizen	1.2	0.2	1
British national (overseas)	0.2		
Citizen of Dominica	0.2	0.2	
Citizen of Trinidad and Tobago	0.2	0.2	
Brazilian	0.6	0.6	
Chinese	0.2		
Colombian	10	6.4	9.5
Citizen of the Dominican Republic	3.3	3.4	3.2
Citizen of Guinea Bissau	0.2	0.2	
Jamaican	0.2	0.9	2.1
Dutch	70.3	72.9	74.1
Dutch (Bonaire)	0.5	0.2	
Dutch (Curacao)	1.8	4.1	1
Dutch (the Netherlands)	1.5	1.8	1
Dutch (St. Martin)		0.2	
Peruvian	0.2		
Puerto Rican	0.2	0.2	
Surinamese	1.8	1.3	
Venezuelan	7.4	6.6	7.5

Offences in 2005	Number	Percentage
Contravention of Narcotics Ordinance	108	27.8
Burglary	88	22.7
Theft	35	9
Robbery	21	5.4
Contravention of Firearms Ordinance	11	2.8
Attempted manslaughter/Assault	10	2.6
Theft/Handling stolen goods	10	2.6
Attempted manslaughter	7	1.8
Aggravated assault	7	1.8
Forgery of documents	6	1.5
Embezzlement	6	1.5
Sexual abuse	6	1.5
Complicity in murder	6	1.5
Handling stolen goods	6	1.5
Robbery/Extortion	5	1.3
Armed assault	5	1.3
Attempted theft	5	1.3
Murder/manslaughter	4	1
Complicity in manslaughter	4	1
Attempted murder/manslaughter	4	1

Offences in 2005	Number	Percentage
Rape	3	0.8
Fraud	3	0.8
Violence/aggravated assault	3	0.8
Manslaughter	2	0.5
Perjury	2	0.5
Contravention of Narcotics Ordinance/money laundering	2	0.5
Threatening behaviour/assault	2	0.5
Criminal damage	2	0.5
Kidnapping	2	0.5
Attempted aggravated assault	2	0.5
Fatal traffic accident	2	0.5
Kidnapping/extortion	1	0.3
Fraud/forgery of documents	1	0.3
Complicity in murder/manslaughter	1	0.3
Arson	1	0.3
Extortion/threatening behaviour/assault	1	0.3
Robbery/contravention of Firearms Ordinance	1	0.3
Joyriding	1	0.3

Offences in 2007	Number	Percentage
Contravention of Narcotics Ordinance	19	19.4
Burglary	15	15.3
Contravention of Firearms Ordinance	8	8.2
Burglary/handling stolen goods	6	6.1
Robbery	6	6.1
Extortion	6	6.1
Violence	6	6.1
Theft	5	5.1
Forgery of documents	5	5.1
Embezzlement	4	4.1
Attempted manslaughter/assault	4	4.1
Complicity in threatening behaviour	3	3.1
Human smuggling	2	2
Fraud/forgery of documents	1	1
Aggravated assault	1	1
Complicity in manslaughter	1	1
Complicity in attempted manslaughter	1	1
Attempted manslaughter/attempted assault	1	1
Attempted aggravated assault	1	1
Robbery/contravention of Firearms Ordinance	1	1
Manslaughter	1	1
