



POLICY GUIDANCE NOTE

THE RIGHTS OF VICTIMS OF

VIOLENCE IN PRE-TRIAL AND

IMMIGRATION DETENTION

POLICY GUIDANCE NOTE ON THE NETHERLANDS

REDRESS

Ending torture, seeking justice for survivors

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About REDRESS

REDRESS is an international human rights organisation that represents victims of torture to obtain justice and reparations. We bring legal cases on behalf of individual survivors, and advocate for better laws to provide effective reparations. Our cases respond to torture as an individual crime in domestic and international law, as a civil wrong with individual responsibility, and as a human rights violation with state responsibility.

Through our victim-centred approach to strategic litigation we can have an impact beyond the individual case to address the root causes of torture and to challenge impunity. We apply our expertise in the law of torture, reparations, and the rights of victims, to conduct research and advocacy to identify the necessary changes in law, policy, and practice. We work collaboratively with international and national organisations and grassroots victims' groups.

About the VVCD Project

The Policy Guidance Note is part of a wider European Union-funded project (Victims of Violent Crimes in Detention), aimed at improving access to justice for victims of violent crimes suffered in pre-trial and immigration detention by ensuring full compliance with relevant EU Directives. The project covers six European Union countries (the Netherlands, Belgium, Croatia, Hungary, Italy and Sweden). The project is conducted in partnership with Fair Trials Europe (the project coordinator), the Centre for Peace Studies, the Hungarian Helsinki Committee, Antigone and Civil Rights Defenders.

This Policy Guidance Note follows a report published in March 2019 by REDRESS on the rights of victims of crimes in pre-trial and immigration detention in the Netherlands (*REDRESS Report*).¹ Drawing from the report, from international and European standards identified by the project's consortium of NGOs, cases, reports by international committees, and consultations with key stakeholders in the field, the Policy Guidance Note addresses policy recommendations to relevant authorities in the Netherlands. In doing so, it considers the rights as enshrined in Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims (*2004 EU Directive*), and Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime (*2012 EU Directive*), and how these are being implemented in the Netherlands. These policy recommendations advocate for changes in the legal framework in the Netherlands to make it more effective in protecting the rights of detainees who have suffered violence whilst being held in pre-trial and immigration detention. They are accompanied by a Bill of Rights aimed at informing detainees of their rights as victims while in detention.

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This project was funded by the European Union's Justice Programme (2014-2020)

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¹ REDRESS, "The Rights of Victims of Violent Crimes in Pre-Trial and Immigration Detention: Report on The Netherlands", March 2019 (*REDRESS Report*), available at: https://redress.org/wp-content/uploads/2019/03/Report-on-the-Netherlands_digital.pdf.

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Acronyms

ACHPR	African Commission on Human and Peoples' Rights
Bij	Principles for Juvenile Institutions Act (<i>Beginselenwet justitiële jeugdinrichtingen</i>)
BvT	Principles for Nursing Facilities Act (<i>Beginselenwet verpleging ter beschikking gestelden</i>)
CAT	Committee against Torture
CCP	Dutch Code of Criminal Procedure (<i>Wetboek van Strafvordering</i>)
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CTA	Commission of Oversight for Police Custody (<i>Commissie van Toezicht Arrestantenzorg</i>)
CvT	Commission of Oversight for Penitentiary Institutions (<i>Commissie van Toezicht</i>)
CvTM	Detention Areas Supervisory Commission of the Royal Netherlands Marechaussee (<i>Commissie van Toezicht Detentieplaatsen Koninklijke Marechaussee</i>)
DJI	Custodial Institutions Agency (<i>Dienst Justitiële Inrichtingen</i>)
Draft Law	Draft Law on Repatriation and Immigration Detention (<i>Wet Terugkeer en Vreemdelingenbewaring</i>)
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
EPR	European Prison Rules
EU	European Union
Gpi	Instruction on violence in penal institutions (<i>Geweldsinstructie penitentiaire inrichtingen</i>)
HRC	Human Rights Committee
IBT	Internal Assistance Team (<i>Intern Bijstand Team</i>)
ICCPR	International Covenant on Civil and Political Rights
IGJ	Health and Youth Care Inspectorate (<i>Inspectie Gezondheidszorg en Jeugd</i>)
Inspectorate JenV	Inspectorate for Justice and Security (<i>Inspectie Justitie en Veiligheid</i>)
NPM	National Preventive Mechanism

OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
Pbw	Penitentiary Principles Law (<i>Penitentiaire beginselenwet</i>)
Rrg	Border Accommodation Regime Regulations (<i>Reglement regime grenslogies</i>)
RSJ	Council for the Administration of Criminal Justice and Protection of Juveniles (<i>De Raad voor Strafrechtstoepassing en Jeugdbescherming</i>)
Rtap	Regulation on the Supervision of Police Custody (<i>Regeling toezicht arrestantenzorg politie</i>)
SPT	Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
TA	Terrorist Wings (<i>Terroristenafdeling</i>)
UN	United Nations
UNCAT	Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment

RIGHT OF VICTIM DETAINEES TO INFORMATION AND COMMUNICATION

The 2012 EU Directive provides for the right of victims to receive information at all stages of the criminal procedure.²

As persons deprived of their liberty, detainees are in a situation of specific vulnerability. The CPT has emphasised that “it is axiomatic that rights for persons deprived of their liberty will be of little value if the persons concerned are unaware of their existence.”³ Thus, in order for detainees to exercise their rights, they first need to be informed of what those rights are, as well as their entitlement to make a complaint if their rights are violated, and the procedure for doing so.

It is crucial that detainees are informed of their rights as soon as possible following the commencement of detention and not at a later stage.^{4,5} For instance, the UN Standard Minimum Rules for the Treatment of Prisoners of 2015, the Mandela Rules, provide that upon admission, every prisoner shall be promptly provided with written information about: the prison law and applicable prison regulations; their rights, including authorised methods of seeking information, access to legal advice, including through legal aid schemes, and procedures for making requests or complaints; their obligations, including applicable disciplinary sanctions; and all other matters necessary to enable prisoners to adapt themselves to the

life of the prison.⁶ The SPT recommends that information be communicated in a clear and easily understandable way, such as through posters displayed in all places of detention, including rooms and cells, and by distributing factsheets.⁷ With respect to juveniles, the UN Rules for the Protection of Juveniles Deprived of their Liberty of 1990 (Havana Rules), require that all juveniles be given a copy of the rules governing the detention facility and a written description of their rights and obligations in a language they understand ‘on admission’, together with the address of public or private agencies and organisations which provide legal assistance.⁸ All information provided about avenues of complaint – whether upon arrival in a place of deprivation of liberty or at a later stage – should also be available in languages which persons deprived of their liberty understand.⁹

At regional levels, the European Prison Rules (EPR) provide that prisoners should be informed about their rights in writing and orally at admission and “as often as necessary afterwards.”¹⁰ The African Commission Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (African Commission Guidelines or Luanda Guidelines) require such information to be provided orally and in writing “[a]t the time of their arrest.”¹¹

UN and regional standards all require that information be provided in a language understood by the detainee. The CPT for instance recommends that information be

² 2012 EU Directive, Articles 1, 3-7.

³ CPT, Report to the Government of Turkey, 1999, para. 26.

⁴ HRC, General Comment No. 35, Article 9 (Liberty and security of person), 2014, para. 58; Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas (IACHR Principles and Best Practices), 2008, Principle V.

⁵ UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by UN general Assembly Resolution no. 43/173, 9 December 1988 (UN Body of Principles), Principle 13.

⁶ Mandela Rules, Rule 54.

⁷ SPT, Visit to Ukraine, UN Doc CAT/OP/UKR/3, 18 May 2017, para. 44.

⁸ Havana Rules, paras. 24-25.

⁹ CPT, 27th General Report, p. 27.

¹⁰ EPR, Rule 30.2.

¹¹ Luanda Guidelines, Guideline 5.

available in a range of languages, and that particular attention be paid to ascertain that the information provided is understood by prisoners with reading difficulties and foreign nationals.¹² Finally, prisoners with sensory disabilities should be provided with information in a manner appropriate to their needs.¹³

In the Netherlands, criminal law, penitentiary laws and the Draft Law on Immigration Detention and Return (*Draft Law*) provide for the right to information of victims, suspects, and detainees.¹⁴ The law provides that detainees are informed of their rights and obligations upon entry in the detention centre, whether they are at a penitentiary detention centre or an immigration detention centre.¹⁵

In practice, information on the right to complain is not easily accessible to detainees, interpreters are not available at all times and the forms and brochures are available in a limited number of languages and do not take into account the individual situations of detainees.¹⁶ In particular, it is unclear what the practice is in relation to illiterate detainees or detainees who do not speak any of the available languages.¹⁷

The CAT expressed concerns over the lack of clarity regarding the Netherlands' strategy to inform detainees about the available complaint procedures against detention personnel for alleged torture or ill-treatment.¹⁸ The CAT advised the Netherlands to inform detainees, through the Inspectorate JenV, about the possibility and procedure for filing a complaint of alleged torture and ill-treatment in detention facilities against the respective categories of detention personnel; to make such information available and widely publicised, including by displaying it in all places of detention.¹⁹

¹² CPT, 26th General Report of the CPT, 2016, p. 32.

¹³ HRC, General Comment No. 35: Article 9, 2014, para. 58.

¹⁴ See: REDRESS Report, pp. 22ff.

¹⁵ *Ibid.*

¹⁶ *Ibid.*, p. 26.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

We recommend that Dutch authorities should ensure that all detainees be formally and clearly informed of all of their rights and obligations, including their rights within the complaint procedure and their rights as victims under criminal law without delay and without exceptions. More specifically, practical and user-friendly information on the filing of criminal complaints in case of ill-treatment, and generally on the rights of detainees as victims, should be developed.

We recommend that detention centre staff should provide information on support and legal avenues available in case of ill-treatment or any form of violence, to all detainees, upon arrival at the detention centre, and without delay. Detainees should be frequently reminded of this information, both individually and collectively through a diversity of media (oral, written, audio-visual, etc) and formats (pamphlets, comic books, posters, videos, oral communications). They should be provided in a language that the detainee understands, without exceptions, and in specific formats for illiterate detainees, or detainees with a mental, physical or other disability.

To achieve these recommendations, a specific training on how to deliver information about rules and rights should be established by the DJI, police and Royal Marechaussee (see below), and the contact of detainees with the police should be facilitated by detention staff and neutral organisations present in detention centres, should they wish to file a complaint, criminal or other (see below).

RIGHT OF VICTIM DETAINEES TO FILE A COMPLAINT

The 2012 EU Directive provides for the right of victims to file complaints in a language which they understand.²⁰ The 2004 and 2012 EU Directives provide for access to compensation in cross-border situations. This includes the right to submit an application in the Member State of residence, for harm suffered as a result of a crime committed in another EU country.²¹ Once a procedure is initiated, victims enjoy, beside the right to continuous information in a language which they understand, an array of rights: the right to be heard;²² right to a review in the event of a decision not to prosecute;²³ the right to safeguards in the context of restorative justice services;²⁴ the right to legal aid;²⁵ the right to reimbursement of expenses;²⁶ and the right to have their property returned.²⁷ The rights to protection, to an individual needs assessment and to redress will be addressed further below.

International standards guarantee individuals in detention the right to complain about ill-treatment and torture through relevant complaint mechanisms.²⁸ Specific rules also grant pre-trial detainees and asylum-seekers the right to have access to impartial and independent complaint mechanisms.²⁹ Complaint mechanisms should be independent and impartial and should be vested with the

²⁰ 2012 EU Directive, Article 5.

²¹ 2004 EU Directive, Article 1; 2012 EU Directive, Article 17.

²² 2012 EU Directive, Article 10.

²³ 2012 EU Directive, Article 11.

²⁴ 2012 EU Directive, Article 12.

²⁵ 2012 EU Directive, Article 13.

²⁶ 2012 EU Directive, Article 14.

²⁷ 2012 EU Directive, Article 15.

²⁸ UNCAT, Article 13; ACHPR, Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa, 2008 (Robben Island Guidelines), paras. F.17 and 18; Mandela Rules, Rule 56.

²⁹ Robben Island Guidelines, para. 7.C; European Measures of Detention of Asylum Seekers, Recommendation 19.

authority to carry out an effective investigation and have remedial powers.³⁰ Detainees should have access to such mechanisms without censorship, reprisal or any other form of prejudice.³¹ The CPT requires States with regards to detained migrants that they "have avenues open to them, both internally and externally, and be entitled to confidential access to an appropriate complaints authority."³² Direct and confidential access to complaints bodies should be secured, for example, by installing locked complaint boxes accessible to complainants in appropriate locations, to be opened only by persons specially designated to ensure the confidentiality of the complaints. Staff who have persons deprived of their liberty directly in their charge should not be in a position to filter complaints.³³

The SPT recommends that detainees be empowered to submit complaints directly and confidentially to administrators in places of detention, to higher-level authorities, as necessary, and to authorities with remedial powers.³⁴ More sensitive and serious complaints should be submitted, by a separate internal procedure, directly to the person in charge of the establishment. In the CPT's view, external complaint bodies must maintain oversight of internal complaint mechanisms.³⁵ The proper handling of complaints made by persons deprived of their liberty, irrespective of the place or situation in which they are held and the legal framework applicable to their deprivation of liberty, requires the observance of certain basic

³⁰ Robben Island Guidelines, para. D.40; Mandela Rules, Rule 56.3.

³¹ EPR, Rule 70.4; Mandela Rules, Rule 56.3. See also: SPT, Visit to Ukraine, UN Doc CAT/OP/UKR/3, 18 May 2017, para. 72.

³² CPT, Report on the visit to the United Kingdom, 2012, para. 136.

³³ CPT, 27th General Report, p. 27.

³⁴ SPT, Report on the Visit to Ukraine, 18 May 2017, para. 44.

³⁵ CPT, 27th General Report, p. 26.

principles: availability, accessibility, confidentiality/safety, effectiveness and traceability.³⁶ Finally, third parties such as family members should be able to lodge complaints on behalf of the detainee.³⁷

States have an obligation to exercise due diligence to prevent, investigate, prosecute and punish acts of torture and other forms of ill-treatment, or to provide sufficient redress, in cases where they knew or had reasonable grounds to believe that such acts had been committed.³⁸ Investigations should be “prompt, impartial, independent and thorough.”³⁹ Detainees should receive within “a reasonable time, a reasoned answer to their complaint.”⁴⁰

Dutch law (penitentiary laws, the Draft Law and the CCP) provides for the right of detainees to complain.⁴¹ Rules are laid out in relation to the type of decisions, actions or omissions that can be subject to a complaint, time limits, appeals and procedural guarantees.⁴² The laws and procedures are not as transparent when it comes to disciplinary proceedings against detention staff.⁴³

In practice, complaints before the CvT complaint committees are not handled publicly, the complainant or the accused staff are sometimes relocated to other units or detention centres, and the suspension of the detention staff accused of an offence could in theory only happen where the allegation is sufficiently serious and corroborated by other, external and independent, evidence.⁴⁴ The RSJ provides appeals forms for detainees on its website.⁴⁵ These forms are only available in the Dutch language. In practice, interpreters are not available

in all penitentiary institutions. Translation services via the telephone are used during proceedings. Referrals between the CvT complaint mechanisms and the national prosecution services are rare, although no data is available.⁴⁶

Prisons have Prisoners’ Committees composed of prisoners elected by their peers who can raise concerns with the prison management. The CPT considered this to be a good practice which could be replicated in other countries.⁴⁷ However, the CAT expressed concern at the lack of disaggregated data available regarding the number of complaints, investigations, prosecutions, convictions and sanctions in cases of torture and ill-treatment.⁴⁸ It advised the Netherlands to ensure that all allegations of misconduct by the detention personnel are duly assessed and investigated, including cases of intimidation or reprisals as a consequence of the complaints of ill-treatment.⁴⁹ In the context of immigration detainees, the CAT reiterated the recommendation that all allegations and incidents of ill-treatment be promptly, effectively and impartially investigated, prosecuted and punished.⁵⁰

In the Netherlands, multiple obstacles may stifle the investigation or prosecution of cases in which there are allegations of abuse. These include:⁵¹

- In relation to administrative complaints, the fact that the complaints procedure is limited in scope to decisions of directors of detention centres, or their failure to take action;
- The short time-limit to submit complaints;
- The procedure is of an administrative nature;
- The fact that the ability of Victim Detainees to file a criminal complaint in case of abuse suffered in detention is not facilitated;

⁴⁶ *Ibid.*, pp. 40-42.

⁴⁷ CPT, Report on the Visit to the Netherlands, 2017, para. 80.

⁴⁸ CAT 2018 CO, para. 56.

⁴⁹ CAT 2013 CO, para. 22.

⁵⁰ CAT 2018 CO, para. 17.

⁵¹ REDRESS Report, pp. 40-42.

- The absence of victim support institutions at detention centres;
- The fact that disciplinary rules for detention centre staff are not made public, which raises doubts as to the effectiveness and impartiality of disciplinary procedures;
- The lack of strong methods to enable each individual detainee to fully understand their rights;
- The possible lack of awareness of criminal laws by detention staff;
- The lack of communication between the complaint mechanisms and the police and prosecution authorities in relation to acts that may constitute criminal offences;
- The fact that directors of detention centres are heavily involved in the complaint procedure before the Complaint Committee, which may prove intimidating to Victim Detainees thereby deterring them from filing complaints;
- The lack of witnesses to violent incidents in detention and difficulties obtaining other evidence;
- The complaint procedure for detainees in terrorist wings is ineffective, arbitrary, and lacks independence.

We recommend that the Netherlands should:

- Ensure that the UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) is followed in cases of allegations of ill-treatment by detainees, including that a doctor should visit the detainee immediately after the alleged ill-treatment;
- Strengthen the complaint proceedings in accepting a video or an audio recording as an admissible form of complaint;
- Extend in penitentiary laws and the Draft Law the one-week time limit to file complaints against decisions taken by the directors of detention centres;

- Provide in penitentiary laws and the Draft Law for possible interruptions of the time limit to file complaints;
- Amend penitentiary laws and the Draft Law to take into account victim vulnerabilities in filing and considering complaints;
- Include a specific provision in the CCP for an individual assessment of Victim Detainees and establish a non-discrimination clause;
- Strengthen the right to access to a lawyer for Victim Detainees while preparing complaints before the CvT complaint committees or appeals before the RSJ;
- Ensure that the lawyer is granted, when authorised by the Victim Detainee, full access to the medical records of the Victim Detainee;
- Ensure that the lawyer is properly remunerated for assisting Victim Detainees before the CvT complaint committees and RSJ;
- Systematically compel the official allegedly responsible for the punishable act to appear at the hearing before the CvT complaint committee and RSJ in case of allegations of violence on a detainee – while providing for possible measures of protection;
- Set a time limit for the directors of the detention centres to respond to the complaint and the appeal. Where the response is not received on time, it should be deemed inadmissible;
- Set time limits for the CvT complaint committees and the RSJ to issue a ruling on the complaint or on the appeal;
- Ensure that the personnel of CvT complaint committees and RSJ are regularly trained on international human rights standards and apply them in their decision-making process by making express references to them;
- Provide in-person interpreters at the hearings before the CvT complaint committees and the RSJ in cases of allegations of ill-treatment, where feasible;

- Establish an appeal system against first instance decisions in the context of complaints against decisions of directors of border lodges (grenslogies);
- Establish clear obligations for the prison directors and all monitoring bodies to notify the Office of the Public Prosecutor when they encounter serious allegations of ill-treatment or other acts that could constitute criminal offences;
- Strengthen disciplinary rules and mechanisms against detention staff and make them more transparent and accessible by publishing disciplinary decisions;
- Make disciplinary complaint forms accessible in more languages on the website of the DJI and inform detainees of their existence;
- Provide for an appeal mechanism against decisions in disciplinary proceedings, available to complainants;
- Include a specific provision on the rights of Victim Detainees in the CCP and subsidiary laws and regulations, and extend these rights to all victims of crimes present or detained in the Netherlands, including undocumented migrants who have suffered harm as a result of an intentional crime while detained in another EU country, without requiring that they be “habitual residents” in the Netherlands.

MONITORING MECHANISMS AND NGOS

According to the CPT, it is inadvisable for national preventive mechanisms or similar monitoring bodies to directly deal with formal complaints. Where the same institution is designated to handle complaints and to monitor places of deprivation of liberty, both functions should be kept separate, and each should have its own staff.⁵²

Further, civil society and in particular NGOs should be recognised as ‘necessary watchdogs’ against ill-treatment in detention,⁵³ and their access to places of detention should be encouraged and facilitated by the State.⁵⁴

In the Netherlands, the effective processing of allegations of ill-treatment is undermined by the lack of independence, legitimacy and cooperation among the constituent organisations of the NPM. This lack of independence has been noted by the CAT, the SPT, the National Ombudsman and the RSJ.⁵⁵ NGOs may organise visits of detention centres and to detainees.⁵⁶ However, authorisations for these are largely left to the discretion of prison directors and the DJI, without clear and objective guidance as to how authorisation is granted.⁵⁷ While refusals of access can be brought before the National Ombudsman, it is unclear whether he can compel the DJI to provide access.⁵⁸

We recommend separating the monitoring bodies from government institutions, to ensure the required independence and impartiality, and establishing a clear

legislative mandate for the NPM with a yearly budget, as recommended by the SPT. It should be provided with a distinct mission and able to conduct advocacy, monitoring, awareness-raising and capacity-building functions, as well as gain the ability to comment on legislation.

The NPM should conduct thorough and independent monitoring of detention places, and should incorporate international human rights standards in its instructions and assessments.

We also recommend that Dutch law be amended to enable the NPM to cooperate with civil society actors and institutions with human rights mandate, as suggested by the SPT.

Further, penitentiary laws and the Draft Law should provide for objective, clear and transparent criteria to enable NGOs access to detention centres and detained persons. The DJI should develop clear guidelines on the steps for NGOs to request access to detention centres and detained persons.

NGOs should be allowed by law to challenge refusals to grant access, or a failure by the DJI to respond to a request within 90 days before administrative courts.

⁵² CPT, 27th General Report, p. 26.

⁵³ APT and ODIHR, “Monitoring Places of Detention: a Practical Guide for NGOs”, 2002, p. 3.

⁵⁴ Robben Island Guidelines, para. D.42.

⁵⁵ REDRESS Report, pp. 33-34.

⁵⁶ Ibid., pp. 34-35.

⁵⁷ Ibid.

⁵⁸ Ibid.

RIGHT OF VICTIM DETAINEES TO ACCESS TO AND SUPPORT FROM VICTIM SUPPORT AND HEALTH CARE SERVICES

The 2012 EU Directive provides for the right of victims to access to and support from victim support services, free of charge, before, during and after proceedings.⁵⁹ These services include the provision of information, advice and support relevant to the rights of victims, information about referral to relevant specialist services, emotional and psychological support, practical advice including in relation to secondary and repeat victimisation, intimidation and retaliation.⁶⁰

In relation to victims, the ACHPR states that “special measures” should be taken to provide access for victims in places of detention to redress mechanisms,⁶¹ such as the “establishment of clinics with staff trained in providing trauma counselling; the use of legal advice centres or mobile law clinics; the development of outreach programmes to ensure all victims can access redress; and support of relevant civil society initiatives and community based organisations assisting victims.”⁶²

In the Netherlands, victim support services do not operate in detention centres. It does not fall within their mandate, and they do not presently have the capacity to establish focal points in detention centres.⁶³ While penal law, penitentiary rules and the Draft Law provide for access to

a legal advisor, it is unclear whether representatives of the Legal Aid Board are present in all detention centres.⁶⁴

A permanent focal point for victims, akin to Victim Support Netherlands or Centrum Seksueel Geweld, should be established in all detention centres to inform Victim Detainees of their rights. This focal point should be fully trained on victims’ rights, penitentiary laws and domestic criminal laws.

Alternatively, existing victim support institutions in the Netherlands should be provided with the financial, material and human means to establish a unit dealing with the rights of Victim Detainees in such a way as to not jeopardise their current mandate.

⁵⁹ 2012 EU Directive, Articles 8-9.

⁶⁰ *Ibid.*

⁶¹ ACHPR, General Comment No. 4 on the African Charter on Human and Peoples’ Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment, 2017, para. 22.

⁶² ACHPR, General Comment No. 4 on the African Charter on Human and Peoples’ Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment, 2017, para. 25.

⁶³ REDRESS Report, p. 25.

⁶⁴ *Ibid.*

RIGHT OF VICTIM DETAINEES TO HEALTH CARE

The 2012 EU Directive provides that “during criminal investigations [...] medical examinations are kept to a minimum and are carried out only where strictly necessary for the purposes of the criminal proceedings.”⁶⁵ However, in the case of Victim Detainees, this provision should be interpreted in light of international standards on detainees’ rights.

Detainees should be properly examined by health care services as soon as possible after their detention and thereafter as necessary, under conditions guaranteeing medical confidentiality.⁶⁶ Access to health care should take place with no discrimination on the basis of the legal situation of the detainee.⁶⁷ As such, access to a medical doctor should also be provided to migrant detainees from “the very outset,”⁶⁸ and pre-trial detainees should enjoy such access prior to the commencement of questioning by officials.⁶⁹ The CPT emphasises that the initial examination should take place even in temporary detention facilities, and should occur within 24 hours of admission.⁷⁰

A complete medical examination including the proper recording of injuries is an important safeguard against ill-treatment and for combating impunity.⁷¹ It should seek

to detect and treat both physical and mental illnesses,⁷² and psychological assistance and psychiatric care should be provided to immigration detainees.⁷³ It should also serve as an initial needs assessment, designed to: detect any previous signs of ill-treatment or indication that prisoners may have been treated violently; uncover any psychological or other stress brought on by the deprivation of liberty; identify the risk of suicide or self-harm and withdrawal symptoms resulting from the use of drugs, medication or alcohol; and undertake all appropriate individualised measures or treatment.⁷⁴

With respect to female detainees, such examination should also detect the reproductive history of the detainee and any former sexual violence.⁷⁵ States should provide female detainees with gender-specific health care,⁷⁶ and a female medical practitioner should examine female detainees when such request is made.⁷⁷ Asylum seekers should be screened ‘at the outset’ of detention to identify trauma in order to provide them with “appropriate treatment [medical and psychological] and conditions.”⁷⁸ This is particularly relevant for vulnerable categories.⁷⁹ They should be provided with appropriate care.⁸⁰ Every juvenile who is ill, complains of illness or demonstrates symptoms of physical or mental difficulties, should be

⁶⁵ 2012 EU Directive, Article 21(d).

⁶⁶ Mandela Rules, Rule 30. See also: UN Body of Principles, Principle 24.

⁶⁷ EPR, Rule 40.3; UN Committee on Economic, Social and Cultural Rights, General Comment 24: The Right to the Highest Attainable Standard of Health (Article 12), 2000, para. 34. See also EPR, Rule 43.1; European Measures of Detention of Asylum Seekers, Recommendation 13; IACHR Principles and Best Practices, Principle X.

⁶⁸ CPT, 19th General Report of the CPT, 2009, paras. 81-82.

⁶⁹ African Commission Guidelines, Guideline 9.3.

⁷⁰ CPT, 23rd General Report of the CPT, 2013, para. 73; CPT, 26th General Report of the CPT, 2016, p. 38.

⁷¹ CPT, 26th General Report of the CPT, 2016, p. 16; SPT, Visit to Ukraine, UN Doc CAT/OP/UKR/3, 18 May 2017, para. 32.

⁷² EPR, Rule 40.4.

⁷³ CPT, Factsheet, Immigration Detention, p. 8.

⁷⁴ EPR, Rule 42.3; Mandela Rules, Rule 30. See also Havana Rules, para. 50.

⁷⁵ UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), 16 March 2011, Rule 6.

⁷⁶ Bangkok Rules, Rules 10.1 and 10.2.

⁷⁷ Bangkok Rules, Rules 10.1 and 10.2; African Commission Guidelines, Guideline 32.b. v.

⁷⁸ European Measures of Detention of Asylum Seekers, Recommendations 12-13.

⁷⁹ *Ibid.*

⁸⁰ CPT, Factsheet, Immigration Detention, pp. 8-9.

examined promptly by a medical officer.⁸¹ Authorities should put measures in place to identify and properly address the specific health needs of LGBTI people.⁸²

Medical examinations should be carried out impartially and confidentially by appropriate health care providers.⁸³ In particular, police and other law enforcement officials should never be present in the examination room as their presence could discourage detainees who have been ill-treated from saying so and, more generally, it is detrimental to the establishment of a proper doctor-patient relationship.⁸⁴ In the CPT's view, a request by a detained person to see a doctor should always be granted; it is not for police officers, nor for any other authority, to filter such requests.⁸⁵

The SPT recommends that medical services in criminal justice institutions be placed under the authority of the Ministry of Health, as that helps ensure the same standard of health care as that received by persons not in detention and ensures the independence of prison medical services.⁸⁶ The CPT also supports this approach.⁸⁷

Health care officials should report to the prison director whenever they consider that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.⁸⁸ Should health care officials detect any sign of ill-treatment or torture "they shall document and report such cases to the competent medical, administrative or judicial authority."⁸⁹ The CPT requires medical authorities to report allegations of ill-treatment to an independent body able to investigate into the

matter.⁹⁰ The CPT and Mandela Rules suggest that such a reporting obligation should be automatic, and regardless of the wishes of the person concerned.⁹¹ It should be accompanied by effective safeguards to protect the detainee and others from possible reprisals.⁹² Similarly, officials or other persons who have reasons to believe that ill-treatment has happened should report the matter "to their superior authorities and, where necessary, to other authorities or organs vested with reviewing or remedial powers."⁹³

Dutch law provides for the right of suspects and detainees, whether in the context of immigration, pre-trial or post-conviction, to see a doctor and receive health care.⁹⁴ However, medical care is only free when provided by doctors affiliated with the prison,⁹⁵ and although practice is that generally doctors are made available upon request, in some detention centres officials act as a filter for requests to see a doctor.⁹⁶

The CPT found that in the Netherlands, doctors do not play a role in monitoring welfare in detention centres,⁹⁷ and the CAT expressed concerns over the inadequacy of health-care services in detention centres.⁹⁸ In this respect, the CAT recommended that the Netherlands conduct a fundamental review of its prison health-care services, with a view to bringing the system in line with the recommendations made by the CPT.⁹⁹ Furthermore, the CAT highlighted that "it should ensure that medical screening is promptly and effectively conducted and

injuries are properly recorded. It should also ensure that the living conditions of detention facilities in all of its constituent countries are in line with international standards."¹⁰⁰ Finally, the CPT recommended that "steps be taken, including at legislative level, to ensure that the role of health-care staff vis-à-vis persons held in solitary confinement is reviewed."¹⁰¹

We therefore recommend that the Netherlands take necessary measures to ensure that:

- **All suspects and detainees, including immigration detainees, be provided with medical attention from the outset of their detention, and prior to the commencement of any questioning;**
- **It should be clearly provided that detention staff cannot act as a filter for requests to see a doctor;**
- **Health care staff should visit detainees placed in solitary confinement immediately after their placement in isolation, and thereafter at least once per day, and provide them with the adequate medical assistance and treatment;**
- **Doctors who identify signs of ill-treatment on persons in detention should immediately and systematically alert the relevant authorities.**

⁸¹ Havana Rules, Rule 51.

⁸² SPT, Ninth Annual Report, 2016, para. 77.

⁸³ IACHR Principles and Best Practices, Principle IX.3. See also SPT, Visit to Ukraine, UN Doc CAT/OP/UKR/3, 18 May 2017, paras. 57-58, 60.

⁸⁴ CPT, Report to the Netherlands, 2017, para. 23; Istanbul Protocol, para. 124.

⁸⁵ CPT, Report to the Netherlands, 2017, para. 22.

⁸⁶ SPT, Visit to Ukraine, UN Doc CAT/OP/UKR/3, 18 May 2017, para. 27.

⁸⁷ CPT, Report to the Netherlands, 2017, para. 63.

⁸⁸ Mandela Rules, Rule 33.

⁸⁹ Mandela Rules, Rule 34.

⁹⁰ CPT, 23rd General Report of the CPT, 2013, para. 78. But see SPT, Visit to Ukraine, UN Doc CAT/OP/UKR/3, 18 May 2017, paras. 57-58, 60 (health professionals should immediately report suspicions of torture and ill-treatment to the appropriate authorities, with the consent of the detainee).

⁹¹ CPT, 23rd General Report of the CPT, 2013, para. 77. See also CPT, Report to the Netherlands, 2017, para. 59; Mandela Rules, Rule 34.

⁹² CPT, 23rd General Report of the CPT, 2013, para. 80; Mandela Rules, Rule 34; Bangkok Rules, Rule 7.3.

⁹³ UN Body of Principles, Principle 7.

⁹⁴ REDRESS Report, pp. 15 ff.

⁹⁵ *Ibid.*, p. 14.

⁹⁶ *Ibid.*, p. 23.

⁹⁷ *Ibid.*, p. 48.

⁹⁸ *Ibid.*, p. 14.

⁹⁹ CPT/Inf (2017) 1, para. 55.

¹⁰⁰ CAT 2018 CO, para. 31.

¹⁰¹ CPT 2017, Report para. 73; See also CPT/Inf (2011) 28, paras. 62 and 63.

ACCESS OF VICTIM DETAINEES TO AN INDIVIDUAL NEEDS ASSESSMENT AND PROTECTION

The 2012 EU Directive provides for the right of victims to protection and an individual needs assessment.¹⁰² This includes protection from secondary and repeat victimisation, from “intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying.”¹⁰³ To achieve this, victims have a right to avoid contact between them and the offender;¹⁰⁴ a right to protection during the investigation;¹⁰⁵ a right to protection of privacy;¹⁰⁶ right to an individual needs assessment and protection tailored to these needs.¹⁰⁷ International standards also provide victims of abuse such as torture and ill-treatment with a right to protection against reprisals, intimidation and harassment as a consequence of filing a complaint.¹⁰⁸

While in the Netherlands, criminal procedural law provides for an individual needs assessment and the protection of victims, it is unclear how these are exercised in practice for victims in detention.¹⁰⁹ Before the CvT complaint mechanisms, some measures of protection are provided

for, but there is no specific framework on the individual needs assessment.¹¹⁰ In practice, complainants are sometimes relocated to other detention centres.¹¹¹ The Inspectorate JenV evaluates the way in which complaints are handled by the detention facility’s administration, but these criteria do not contain a vulnerability screening of the complainant. Neither the Pbw nor the informative brochure on complaints mention a vulnerability assessment for complainants.¹¹²

The CAT deplored the fact that medical examination is not used in order to identify vulnerable persons. It recommended that this assessment should be done to establish “their health condition and need for treatment and support as a result of torture, ill-treatment or other trauma suffered.”¹¹³ While arguably this recommendation was formulated in the context of the asylum procedure, the Istanbul Protocol should also be followed in the context of allegations of ill-treatment in detention centres.¹¹⁴

In addition, detainees must in principle be screened upon arrival at the detention centres to assess individual needs.¹¹⁵ However, this is not done for detainees suspected of terrorism, as they are automatically placed in the terrorist wings of detention centres.¹¹⁶ In this respect, the CPT recommended that an extensive risk assessment should be carried out before placing a detainee in an extra-secure facility.¹¹⁷

¹¹⁰ *Ibid.*, pp. 43, 45.

¹¹¹ *Ibid.*, p. 43.

¹¹² *Ibid.*, p. 45.

¹¹³ *Ibid.*, p. 46.

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

¹⁰² 2012 EU Directive, Articles 18-24.

¹⁰³ 2012 EU Directive, Article 18.

¹⁰⁴ 2012 EU Directive, Article 19.

¹⁰⁵ 2012 EU Directive, Article 20.

¹⁰⁶ 2012 EU Directive, Article 21.

¹⁰⁷ 2012 EU Directive, Articles 22-24.

¹⁰⁸ UN Basic Principles of Justice for Victims of Crime and Abuse of Power, General Assembly Resolution no. 40/34, 29 November 1985, para. 6(d); UNCAT, Article 13; Report of the Committee against Torture, 39th session (5-23 Nov. 2007) A/63/44, regarding Benin (para. 32 (10)); regarding Uzbekistan (para. 37(6)(d)); Costa Rica (para. 40(12)); General Assembly Resolution no. 55/89, 4 December 2000, para. 3(b); International Convention for the Protection of All Persons from Enforced Disappearance, 20 December 2006, Article 14(1); the principle of protection is also present in the rules of procedures of most international and hybrid tribunals (ICC, IRMCT, ECCC, SCSL, etc.).

¹⁰⁹ REDRESS Report, pp. 43ff.

In relation to children, the CAT recommended that the Netherlands should “take all necessary measures to protect children against the use of force, coercion and restraint and to investigate all allegations of such use. The State Party should also provide appropriate protection measures for child victims of sexual violence who are placed in closed youth care facilities, implement appropriate psychosocial and rehabilitation programmes for them and collect detailed data on the placement of children in such facilities, as recommended by the Dutch National Rapporteur on Human Trafficking and Sexual Violence against Children.”¹¹⁸

We recommend that a vulnerability assessment be carried out prior to the detention of immigrants and regularly during detention. This assessment should weigh the suffering that detention can bring to each migrant. The Draft Law should ensure that restricting and punitive measures are not imposed on vulnerable detainees, or Victim Detainees.

We also recommend that Dutch authorities take specific measures to ensure the individual assessment and protection of Victim Detainees. This assessment should be both medical and psychological.

A specific framework for the identification and assessment of vulnerabilities of Victim Detainees before the complaint committees of the CvT should be established in penitentiary laws and the Draft Law.

Penitentiary laws and the Draft Law should provide for a systematic individual needs assessment and protective measures for alleged victims of ill-treatment.

The individual needs assessment should be performed by persons who are independent from the detention centre.

Specific measures of protection applicable before the complaint committees of the CvT should be listed in

¹¹⁸ CAT 2018 CO, para. 39.

penitentiary laws and the Draft Law. Such measures could include, but not be limited to: temporarily relocating an alleged offender to a different unit or detention centre, ordering a suspension measure, and following-up regularly with the Victim Detainee on existing threats or concerns for personal safety.

An extensive individual needs and risk assessment should be performed on suspects of terrorism before placing them in terrorist wings.

Assessments made by doctors should be systematically followed by all detention staff and the director of the detention centre.

RIGHT OF VICTIM DETAINEES TO AN EFFECTIVE REMEDY

The 2012 EU Directive provides for the right of victims to receive ‘adequate compensation’.¹¹⁹ Victims of abuse, including torture and ill-treatment, have a right to adequate, appropriate and effective forms of reparation,¹²⁰ including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.¹²¹ Reparations should be adequate, effective and prompt.¹²² Compensation is not considered to be appropriate, on its own, to remedy the harm suffered by victims of torture and ill-treatment.¹²³

It is insufficient for authorities to provide only individual forms of reparation, such as compensation, to individual victims for violations that stem from structural problems in detention centres. In such cases, States should also address these structural problems. Reparations should be provided to victims of torture and ill-treatment for acts and omissions which can be attributed to the State.¹²⁴ Hence, should a State

¹¹⁹ 2012 EU Directive, Article 16.

¹²⁰ ICCPR, article 2(3); UN Convention Against Torture, Article 14; UN Committee Against Torture, General Comment No.3 on the implementation of Article 14 by State parties, November 2012; ACHPR, General Comment No. 4 on the African Charter on Human and Peoples’ Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment, 2017, para. 23; UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2005, para. 18.

¹²¹ UN Basic Principles and Guidelines, paras. 12, 18, 23; UN CAT, ‘General Comment No. 3: Implementation of Article 14 by States Parties’, UN Doc. CAT/C/GC/3, 13 December 2012, paras. 2, 6, 18.

¹²² UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2005, para. 11(b).

¹²³ CAT, General Comment No. 3, 2012, para. 9.

¹²⁴ ACHPR, General Comment No. 4 on the African Charter on Human and Peoples’ Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment, 2017, para. 33. According to the Human Rights Committee a state is responsible for the actions of third parties when ‘take appropriate measures or to exercise due diligence to

not take appropriate measures to prevent inter-detainee violence it would be responsible to provide reparations to the victim. Furthermore, victims of torture and ill-treatment are entitled to reparations whether or not the perpetrator has been identified.¹²⁵

The CvT complaint committees can only award minimal financial reparations, that do not adequately reflect the harm suffered, and reverse decisions taken by prison directors.¹²⁶ In the criminal system, the CAT expressed concerns that in the Netherlands there is an absence of information on redress. It recommended that the Netherlands ensures by law that victims of torture or ill-treatment obtain full and effective redress and reparation, including compensation and the means for a full rehabilitation as much as possible.¹²⁷

We recommend that the Netherlands amend its practice, both before criminal courts and the CvT complaint committees, and existing guidelines for compensation by the CvT complaint committees, to adequately reflect the gravity of the offence and suffering of the Victim Detainees and make possible other forms of reparations, such as guarantees of non-repetition and rehabilitation when necessary.

prevent, punish, investigate or redress the harm caused’ by their acts. See, UN Human Rights Committee, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 2004, para. 8.

¹²⁵ UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2005, para. 9; ACHPR, General Comment No. 4 on the African Charter on Human and Peoples’ Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment, 2017, para. 33.

¹²⁶ REDRESS Report, p. 50.

¹²⁷ CAT 2018 CO, paras. 54-55.

We also recommend that the Netherlands publicise anonymised data on redress awarded to victims by criminal courts in cases of crimes committed in detention, in order to ensure that victims of torture and ill-treatment obtain full and effective redress.

TRAINING OF PRACTITIONERS ON THE RIGHTS OF VICTIM DETAINEES

The 2012 EU Directive provides for the training of officials and practitioners likely to come into contact with victims to “increase their awareness of the needs of victims and to enable them to deal with victims in an impartial, respectful and professional manner.”¹²⁸

The CPT recommends that prison staff should be trained to document and interpret injuries as well as ensure full knowledge of the reporting obligations and procedures.¹²⁹ In respect of asylum seekers, refugees and migrants, the CPT stated that detention officials should be taught to “recognise possible symptoms of stress reactions displayed by detained persons (whether post-traumatic or induced by socio-cultural changes) and to take appropriate action.”¹³⁰

Furthermore, in relation to authorities involved in assessing asylum claims, the training should cover the technique of interviewing persons who may have been ill-treated.¹³¹ With regards to the specific case of women, the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, (Bangkok Rules), require that “prison staff shall be made aware of times when women may feel particular distress, so as to be sensitive to their situation and ensure that the women are provided appropriate support.”¹³² While this is recommended in the context of asylum seekers, this recommendation is also relevant in relation to detention staff working in proximity with detainees.

¹²⁸ 2012 EU Directive, Articles 25 and 26.

¹²⁹ CPT, 23rd General Report of the CPT, 2013, para. 82.

¹³⁰ CPT, 19th General Report of the CPT, 2009, para. 89.

¹³¹ *Ibid.*

¹³² Bangkok Rules, Rule 13.

In the Netherlands, penitentiary laws and the Draft Law do not provide for the training of officials involved in detention centres. The DJI and the RSJ have published documents on standards for the treatment of the detainees.¹³³ The training guide of the DJI does not provide for specific training on victims’ rights.¹³⁴ The CAT recommended that training should be increased for all personnel involved in the monitoring, documenting, reporting and investigating of torture and ill-treatment.¹³⁵

We recommend that the Netherlands provides training for all detention centre staff to detect and integrate in their work the special needs of migrants or asylum seekers who may have suffered torture or ill-treatment in their country of origin.

We also recommend that the Dutch authorities provide for training of detention staff on victims’ rights specifically in relation to violence suffered in detention.

These trainings should be conducted in a holistic manner and should:

- **Ensure that detention staff are trained to detect trauma of immigration detainees and fully understand the needs of each category of detainee, both in relation to immigration detention and pre-trial detention;**
- **Develop skills to identify victims of inter-detainee violence or victims of violence by other detention staff;**

¹³³ REDRESS Report, p. 46.

¹³⁴ *Ibid.*, p. 47

¹³⁵ *Ibid.*

- **Stress the obligation to report offences perpetrated in detention as soon as the staff acquire knowledge of the offence;**
- **Include a training on victims’ rights generally for all personnel involved in the monitoring, documenting, reporting and investigating of torture and ill-treatment.**

These trainings should be performed by the DJI on a regular basis, before and after dispatching detention staff. Information on the frequency of trainings, number of detention staff that benefited from training, and impact and progress indicators should be publicly provided on a regular basis.

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