THE RIGHTS OF VICTIMS OF VIOLENCE IN PRE-TRIAL AND IMMIGRATION DETENTION

REPORT ON THE NETHERLANDS
THE RIGHTS OF VICTIMS OF VIOLENCE IN PRE-TRIAL AND IMMIGRATION DETENTION

Photo cover by Martin Roemers/Panos Pictures. Shadows are cast across an empty prison cell in the Netherlands.


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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 report 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.

Victims’ rights, as envisaged in European Directives, should apply to all victims regardless of their status. However, guaranteeing those rights to victims who are in detention can prove challenging. This report analyses the extent to which the European legal framework on victims’ rights is implemented effectively in relation to victims in detention in the Netherlands. In doing so, it considers the rights as enshrined in Directive 2004/80/EC of 29 April 2004 relating to compensation for crime victims (Directive 2004/80/EC), and Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime. While the report makes reference to the general detention regime, it focuses on individuals who are held in pre-trial and immigration detention and who are victims of violence, either by detention staff or by other detainees. The report pays special attention to cases of potential torture and ill-treatment perpetrated by detention staff.

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Acronyms

Al Amnesty International
ApKMao Official Instruction for the Police, the Royal Netherlands Marechaussee and Other Investigating Officers (Ambtsinstructie voor de politie, de Koninklijke marechaussee en andere opsporingsambtenaren)
Awb General Administrative Law (Algemene wet bestuursrecht)
Bij Principles for Juvenile Institutions Act (Beginsemwet justitiële jeugdinrichtingen)
BvT Principles for Nursing Facilities Act (Beginsemwet verpleging ter beschikking gestelden)
CAT Committee against Torture
CCP Dutch Code of Criminal Procedure (Wetboek van Strafverordening)
CPT European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CTA Commission of Oversight for Police Custody (Commissie van Toezicht Arrestantenzorg)
CTA Commission of Oversight for Penitentiary Institutions (Commissie van Toezicht)
CvT Detention Areas Supervisory Commission of the Royal Netherlands Marechaussee (Commissie van Toezicht Detentieplaatsen Koninklijke Marechaussee)
DIZ Individual Affairs Division (Divisie Individuele Zaken)
DII Custodial Institutions Agency (Dienst Justitiële Inrichtingen)
Draft Law Draft Law on Repatriation and Immigration Detention (Wet Terugkeer en Vreemdelingenbewaring)
ECHR European Convention for the Protection of Human Rights and Fundamental Freedoms
EPR European Prison Rules
EU European Union
Gpi Instruction on violence in penal institutions (Geweldsinstructie penitentiaire inrichtingen)
IBT Internal Assistance Team (Intern Bijstand Team)
ICCPR International Covenant on Civil and Political Rights
Executive Summary

Research and Methodology

Over a period of six months, REDRESS identified, contacted and interviewed key stakeholders in relation to pre-trial and immigration detention, including ministry authorities, members of National Preventive Mechanism (NPM), NGOs operating in the field, lawyers, prosecutors and former detainees. They were consulted and interviewed on how victims of violence in pre-trial and immigration detention (Victim Detainees) access their rights as victims in practice in the Netherlands, both through the complaint mechanism specific to detained persons, and through the regular penal system. REDRESS also extensively reviewed reports by NGOs, academics and the NPM, legal texts and decisions in the Netherlands, and the reports of international and regional anti-torture bodies. The aim of the research was to determine how victims’ rights, which should extend to all victims, apply in practice to victims in detention. While the report makes reference to the research was to determine how victims’ rights, which should extend to all victims, apply in practice to victims in detention. While the report makes reference to the

Main Findings

The Netherlands has adopted a strong framework on victims’ rights within its domestic criminal system. Victims of crimes have to be informed of their rights in criminal proceedings from an early stage: they have a right to participate in criminal proceedings and obtain legal representation; their needs are taken into account in a holistic manner; they can seek compensation; and they have a right to protection, following an individual risk assessment. This system appears generally in line with European Union Directive 2012/29/EU. However, the way in which these rights are implemented is inadequate in relation to victims of crime who are in pre-trial and immigration detention, for the reasons set out below.

Firstly, in the Netherlands there are no specific laws governing the rights of Victim Detainees. Currently, pre-trial detainees, post-conviction and immigration detainees are governed by the same legal regime. Specific legal provisions exist for police cells and cells managed by the Royal Marechaussee, border detention centres, tortist wings, juvenile institutions and mental and health institutions. A draft law is presently being discussed to provide a separate legal regime for immigration detention centres.

Secondly, the right to information for Victim Detainees is conducive to violations of their rights while in detention. While detainees enjoy an array of rights, there are concerns over the wide discretion of the directors of detention centres to restrict these rights and impose disciplinary measures, including solitary confinement. This discretion is exercised without adequate monitoring mechanisms and devoid of a proper individual assessment of detainees, which may lead to cases of ill-treatment or even torture. This is especially the case with regard to refugees or migrants who may have suffered trauma in their home country and in the migration process, or to detainees with psychological disorders.

Additionally, while Victim Detainees can file complaints against decisions taken by the directors of the detention centres, often they do not have a full understanding of the complaint mechanisms specific to each detention centre. By law, the detention centre staff have an obligation to
provide detainees with information about their rights in a language they understand. In practice, the provision of information is often partial, inadequate or simply does not take place.

Thirdly, the remedies available to Victim Detainees, whether in the regular criminal system, complaint mechanisms specific to detention centres, or disciplinary claims against detention staff, do not adequately protect the rights of Victim Detainees.

In the Netherlands, Victim Detainees can file criminal complaints before the police and national prosecutors. However, even if they learn about their right to do so, Victim Detainees may be reluctant to approach the police as they might have lost trust in the system or may not want to be perceived as victims by other detainees.

The complaint mechanisms specific to detention centres (complaint committees of the Supervisory Committee) are inadequate to address allegations of ill-treatment by detention staff: the scope of the mandate of the complaint committees is limited; no individual assessments of the complaints are made; the time limit to file a complaint is only one week; compensation measures ordered by the complaint committees often do not reflect the harm suffered; appeals are not available in relation to border immigration centres; and there appears to be a lack of communication between the complaint committees and the office of the national prosecution or the police. Additionally, there seems to be lack of effective complaint mechanisms for persons detained in terrorist wings of detention centres, as well as a lack of data available on the nature and number of complaints made. These are but some concerns over the adequacy of the complaint mechanisms.

Disciplinary procedures against detention staff members lack in transparency. There is a tendency to relocate detention staff against whom there exist serious complaints from detainees rather than initiate their investigation and eventual prosecution.

The case of detainees who have suffered harm in a detention centre in another EU country is another matter for concern. Directive 2004/80/EC was transposed into domestic law in the Netherlands, and victims of crimes which happened in another EU country but have their residence in the Netherlands may file a complaint in the Netherlands. The criterion of residency leaves the potential case of undocumented migrants without an avenue to complain.

Finally, the NPM is currently not in a position to operate in the most effective way. In the Netherlands, the NPM consists of a number of supervisory bodies. Recently, two of these bodies ceased to engage with the NPM as a result of disagreements with the way it operates. Its work has come to a standstill as a result. The remaining members are still active, and a report on the years 2017 and 2018 is currently in preparation. International and regional anti-torture bodies, as well as other NGOs have criticized the absence of a clear mandate of the NPM as well as its lack of independence, due to its institutional and financial links with the Ministry of Justice and Security.

Recommendations

Recommendations will be addressed in a separate document ("The Rights of Victims of Violence in Pre-Trial and Immigration Detention: Policy Guidance Note for the Netherlands"), the Policy Guidance Note, which will aim at proposing possible solutions and recommendations to bring the Dutch system in full compliance with EU Directives 2004/80/EC and 2012/29/EU.

REDDRESS presents below some preliminary recommendations. They are set out in more detail in the Policy Guidance Note which was prepared after further consultations with stakeholders.

1. In relation to the right to information and communication, that:
   - Dutch authorities should ensure that all detainees be formally and clearly informed of all of their rights and obligations, without delay or exceptions. More specifically, practical and user-friendly information on the rights of detainees as victims, should be developed.
   - The 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 through a diversity of media in a language and format that the detainee understands.

2. In relation to complaints, 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, the Istanbul Protocol, is followed in cases of allegations of ill-treatment by detainees;
   - Strengthen the complaint proceedings by accepting a video or an audio recording as an admissible form of complaint;
   - Revise the time limits for the filing of complaints before the CvT complaint committees (lengthen), responses by the directors (set) and decisions by the complaint committees (set);
   - 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 in CvT complaint proceedings and appeals;
   - 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;
   - 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;
   - 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 for detention staff and make them more transparent and accessible;
   - 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.

3. In relation to NPM and NGO access to detention centres, that the Netherlands should:
   - Separate the monitoring bodies from government institutions; establish a clear legislative mandate for the NPM with a yearly budget, as recommended by the SPT;
   - Ensure that the NPM conducts thorough and independent monitoring of detention places, and incorporates international human rights standards in its instructions and assessments.
• Amend Dutch law to enable the NPM to cooperate with civil society actors and institutions with human rights mandate, as suggested by the SPT;
• 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 to be taken by NGOs for access to detention centres and detained persons;
• Make it possible by law for NGOs to challenge a refusal to grant access, or a failure by the DJI to respond to a request within 90 days, before Dutch administrative courts.

4. Right of Victim Detainees to Access to and Support from Victim Support and Health Care Services:
• A permanent focal point for victims should be established in all detention centres to inform Victim Detainees of their rights. This focal point should be acquainted with victims’ rights, penitentiary laws and domestic criminal laws;
• Alternatively, existing victim support institutions in the Netherlands should be provided with the means to establish a unit dealing with the rights of Victim Detainees in such a way as to not jeopardise their current mandate.

5. Right of Victim Detainees to Health Care:
• All suspects and detainees, including immigration detainees, should 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.

6. Access of Victim Detainees to an Individual Needs Assessment and Protection:
• A vulnerability assessment should be carried out prior to the detention of immigrants and regularly during detention, including for detention in terrorist wings;
• Dutch authorities should take specific measures to ensure the individual assessment and protection of Victim Detainees, including in the context of complaints before the CvT complaint committees;
• Penitentiary laws and the Draft Law should provide for a systematic individual needs assessment and protective measures for alleged victims of ill-treatment;
• Specific measures of protection applicable before the complaint committees of the CvT should be listed in penitentiary laws and the Draft Law;
• Assessments made by doctors should be systematically followed by all detention staff and the director of the detention centre.

7. Right of Victim Detainees to an Effective Remedy:
• The Netherlands should 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;
• The Netherlands should publicise anonymised data on redress awarded to victims by criminal courts in cases of crimes committed in detention.

8. Training of Practitioners on the Rights of Victim Detainees:
• The Netherlands should provide 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;
• The Netherlands should provide for training of detention staff on victims’ rights specifically in relation to violence suffered in detention in a holistic manner.
Foreword

This report examines the rights of victims of violent crimes in pre-trial and immigration detention in the Netherlands. This includes inter-detainee violence, as well as cruel, inhumane or degrading treatment, torture and other acts of violence committed by detention staff. While the main focus of the report is on pre-trial and immigration detention, standards in post-conviction detention were also explored, when relevant to this study.

There are no specific provisions in Dutch law related to access to criminal justice and reparations for Victim Detainees. Therefore, this report explores the general penal system in the Netherlands and its effectiveness in addressing the specific vulnerabilities of detainees, and their risk of suffering violence committed either by State agents, inmates, or others.

Specifically, the report analyses complaint mechanisms and disciplinary proceedings, finding that they fail to address violent crimes committed in detention, and the resulting needs of victims. Consequently, there is a gap in Dutch law as it exists today, which will be addressed with recommendations in Country-Specific Guidance Notes which will be published separately.

As there are no broad statistics on violence in detention in the Netherlands, our research relies on desk-based research, Interviews with stakeholders, and case studies.

The Dutch judicial system is a monist system. Accordingly, the Netherlands is bound by the provisions of international treaties ratified by the country, including the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (UNCAT), the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. In the case of conflict between an international agreement binding on the Netherlands and national legal regulations, the former prevails. European Union Directives are implemented into national law through the use of implementing legislation carried out by national legislatures. Where Directives are not implemented in such a manner, or where national law breaches a Directive, direct effect may cause the Directive to be applicable nonetheless. Directives 2004/80/EC and 2012/29/EU are implemented into Dutch law respectively through the Damages Fund for Violent Crimes Act (Wet schadefonds geweldsmisdrijven) and the Act of 14 April 2016, Amending the Code of Criminal Procedure to Supplement the Right to Speak of Victims and Families in Criminal Proceedings and Amending the Criminal Injuries Compensation Fund Act to Expand the Possibility of Payment to Survivors (Wet van 14 april 2016 tot wijziging van het Wetboek van Strafvoering ter aanvulling van het spreerrecht van slachtoffers en nabestaanden in het strafproces en wijziging van de Wet schadefonds geweldsmisdrijven ter uitbreiding van de mogelijkheid van uitkering aan nabestaande).

1 Immigration and pre-trial detainees who are victims of violence, degrading treatment, and/or torture at the hands of authorities, under Article 3 ECHR. This may include beatings, slapping, kicking, invasive forced strip searches, urination on the victim; see: European Court of Human Rights, Selimou v. France, no. 21803/94, 28 July 1999.
2 Constitution of the Kingdom of the Netherlands (Constitution), Articles 90-95.
3 For a brief explanation of the issue, see: VAN DER SCHYFF (G) and MEUWSE (A), “Dutch Constitutional Law in a Globalizing World”, in Utrecht Law Review, 2 March 2013.
4 Constitution, Article 94.
5 Treaty on the Functioning of the European Union, Article 288.
6 European Court of Justice, Van Zuylen v. Home Office, Case no. 41/74, 4 December 1974.
7 Aliens Act 2000 (Vreemdelingenwet 2000 – Vw), Articles 56 and 59: foreigners who try to enter the country through illegal ways or do not have the required legal documents allowing them to stay in the Netherlands are ordered to leave the country. If they do not cooperate with the national authorities, then they can be placed in immigration detention. The conditions of detention of aliens are set out in Pbw, Articles 59a and 59b. These conditions are criticised for being prison-like. See: European Committee for the prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), “Report to the authorities of the Kingdom of the Netherlands on the visits carried out to the Kingdom in Europe, Aruba, and the Netherlands Antilles by the [CPT] in June 2007”, 5 February 2008 (CPT 2008 Report), paras. 61: “Report by the Commissioner for Human Rights, Mr Thomas Hammarberg on his visit to the Netherlands, 21-25 September 2006”, 11 March 2009.
8 Dutch Institutions Agency (Dienst Justitiële Inrichtingen – Dji) website, at https://www.dji.nl/uitspraken/vreemdelingen-in-bewaring/glij-en-de-vreemdelingentafel.aspx; “For immigration detention, the same legal framework is used as for the prison system, namely the Penitentiary Principles Act.”
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10 Dutch Institutions Agency (Dienst Justitiële Inrichtingen – Dji) website, at https://www.dji.nl/uitspraken/vreemdelingen-in-bewaring/glij-en-de-vreemdelingentafel.aspx; “For immigration detention, the same legal framework is used as for the prison system, namely the Penitentiary Principles Act.”
12 Dutch Institutions Agency (Dienst Justitiële Inrichtingen – Dji) website, at https://www.dji.nl/uitspraken/vreemdelingen-in-bewaring/glij-en-de-vreemdelingentafel.aspx; “For immigration detention, the same legal framework is used as for the prison system, namely the Penitentiary Principles Act.”
13 Detainees suspected or convicted of a terrorist offence in the Netherlands are automatically placed in the terrorist wing of a prison (Terroristenafdeeling – TAI). Juveniles are placed in juvenile institutions, under the Principles for Juvenile Institutions Act (Beginselwet justitiële jeugdinrichtingen – Bjj). There also exist special care institutions for detainees who need mental and health care, under the Principles for Nursing Facilities Act (Beginselwet verzorging ter beschikking gestelden – BVt).
14 The same legal framework is applicable in the Dutch Caribbean which are special municipalities (Bonaire, Sint Eustatius and Saba) and autonomous countries (Aruba, Curaçao and Sint Maarten) within the Kingdom of the Netherlands. The government of the Netherlands ensures the public administration of the special municipalities, while the autonomous countries have their own systems. However, the Netherlands continues to be responsible for the protection of human rights and good governance in these countries. Therefore, despite the distinct legal systems, the Netherlands is involved in supporting the judiciary in these countries.
15 On 19 June 2018, the House of Representatives adopted a Draft Law on Repatriation and Immigration Detention (Wet Terugkeer en Vreemdelingendebanning – Wet RV) to replace the rules regarding the immigration detention in the Pbw and
Detainees enjoy an array of rights. Among others, they have the right to: send and receive documents; receive visitors weekly for at least one hour; make phone calls with people outside for ten minutes at least once a week; pray according to their beliefs; possess a pencil and a notebook, and make use of the library of the institution; do physical exercise; enjoy recreation activities and spend at least one hour in the open air on a daily basis. The directors of detention centres may suspend some of these rights in whole or in part as a form of disciplinary punishment where a detainee is involved in acts that endanger the order or safety in the institution or endanger the undisturbed execution of the deprivation of liberty. Medical care is only free when provided by doctors affiliated with the prison. According to the KCE Report 293, "every judicial institution (detention centres, remand prisons and detention centres for foreign nationals) has a medical service consisting of a manager, some judicial nurses, some judicial doctors, and some administrative staff." There are no provisions in the specific to urgent attendance by a doctor in case of an injury sustained as a result of violence suffered while in detention. In case of emergency, detainees are sometimes taken to a nearby hospital. The Committee against Torture (CAT) expressed concerns over the inadequacy of health-care services in detention centres. It noted that "medical screening of newly arriving detainees are often delayed, traumatic injuries that may come from inter-prisoner violence are not properly recorded and medical professionals are not given a sufficiently active role." It underscored that the situation in Aruba, Curacao and Sint Maarten was inadequate, especially in relation to mental care, "with insufficient attention paid to vulnerable detainees." Under their ‘duty of care’ Directors of detention centres are responsible for the protection of the detainees’ mental and physical conditions. Where necessary, including in the case of an attempt to inflict self-harm, they can order observance of a detainee by cameras, or request reports about the condition of the detainee on regular basis (for example, once per hour). The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) recommended that the right to privacy be respected when camera surveillance is used in cells.

In cases of inter-detainee violence, Directors of detention centres may decide to impose a disciplinary punishment upon the detainees. This decision is made after examining a report prepared by prison officials about the incident. Directors can send detainees to punishment cells for a maximum of two weeks, deny them visits for a maximum of four weeks, deprive them of participating in one or more activities for a maximum of two weeks, refuse or limit leave, or impose a fine not more than twice the value of their weekly allowance. More than one punishment may be imposed concurrently. They are immediately executed in full or in part. The CAT underscored the prevalence of inter-detainee violence in the Caribbean part of the Netherlands, posing "a serious threat to the safety of prisoners", and indicated that "the prison administration has not taken effective measures to address the issue." An Inspector of the Inspectorate Jerv has confirmed that a detention centre recently established in the Caribbean Netherlands was found to be "compatible in regime and culture" to the detention centres in the mainland by the Law Enforcement Council (Raad voor de Rechtshandhaving).

In the Netherlands, a detainee’s rights to health care, education and legal aid are limited. The administrations of penitentiary institutions where migrants are held are under no legal obligation to report the use of solitary confinement to a lawyer. Further, the CAT has expressed concerns regarding the reported use of solitary confinement against asylum seekers and migrants, which results in reduced access to legal aid and healthcare services. However, directors of detention centres can decide to physically restrain a detainee in solitary confinement for a maximum of twenty-four hours if this restriction is necessary to avoid a serious danger to the detainee, or for the health or security of others. When making this decision, the director must give notice without any delay to the doctor or his replacement as well as the surveillance committee. There is no obligation to notify a judicial authority, the counsel of the detainee, or a family member of the detainee, of such placement. The director can decide to extend the twenty-four hour maximum period after consultation with the doctor or his replacement.

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services. Similarly, it has underlined the “use of force and coercion and even placement in isolation rooms” of children, and regretted the “lack of detailed information on the duration of solitary confinement, the use of restraints and the medical supervision of those measures” in nursing institutions.

According to the Stichting LOS (National Foundation for the Support of Undocumented Migrants), in the first half of 2017, isolation in Rotterdam Detention Centre was used 158 times (98 times in the detainee’s own cell and 60 times in a punishment cell). In the first half of 2017, placement in punishment cells constituted 36.8% of all disciplinary measures imposed upon detainees in the Detention Centre of Rotterdam, 62% in the Detention Centre of Zeist, and 71.4% in the Detention Centre of Schiphol.

Solitary confinement is often imposed by force by detention staff. It can be accompanied by physical use of force against the detainees. For safety reasons, the detainees are made to undress in front of the detention staff, sometimes repeatedly, and sometimes kept undressed in their cells. This creates a feeling in the detainees of anguish, and of being degraded.

For instance, upon his arrival at the Zeist Detention Centre (immigration detention), one of the interviewees was made to undress in front of ten detention staff and bent down for one minute, holding his private parts with his hand, so as to show his anal cavity. He was given a pyjama and placed in an isolation cell. He felt cold the whole time and stated that no explanation was offered to him, or his placement in an isolation cell. He later learnt that this was because of his suicidal tendency.

The National Ombudsman has also confirmed that solitary confinement is inappropriate as a form of punishment. The CAT stated that the “legal regime of alien detention [should be] strictly differentiated from the regime of penal detention”, expressed concern over the use of solitary confinement as a disciplinary measure for asylum seekers and undocumented migrants, and added that it should not be used as a disciplinary measure against them.

The Draft Law will change very little to these conditions of detention, as it will keep the wide discretionarype power of detention centres’ directors to impose disciplinary punishment upon the detainees. Lastly, the CAT expressed concerns over the treatment of immigration detainees in Curaçao, where migrants are being subjected to “ill-treatment and sexual assault by police and immigration officials, against whom no charges have been brought”.

The Rights of Persons in Cells Managed by the Police or Royal Marechaussee

The ApKMao provides for the circumstances in which officials from the police and Royal Marechaussee may use force (including firearms and tear gas), and handcuffs, and sets out the provisions governing the deportation of foreign nationals. It also provides for the detention conditions in facilities managed by the police and Royal Marechaussee: there should be sleeping facilities in which to eat and drink in accordance with religious or other beliefs, sanitary facilities, provision of necessary medical care, and information on the rules of the police cell complex. Detained persons should also have access to fresh air at least twice a day. Rules are to be established by the police chief on smoking, relaxation, access to the telephone and receiving visitors. In case of death or suicide of a detainee, the chief of police has to immediately notify the Public Prosecutor’s Office.

At the request of the detained person – or of their own accord if the detainee is a minor, officials should inform a family member or co-habitant of the detention “as soon as possible”, or the embassy or consulate for non-residents.

Detainees are to be searched “by scanning and searching their clothing” for items that may pose a threat to the detainee or others, and dangerous objects are kept by the officials. This search is to be performed “as far as possible” by a person of the same sex as the detainee, and the search is recorded in a report to the superior. A detainee should only be made to undress in limited circumstances. Such circumstances could include where a full body search is necessary, where a body cavity search has been ordered by the prosecutor (although this can only be done after a hearing in a language the detainee understands, and the search is to be performed by a doctor), or if the detainees’ clothing presents a risk to safety or a health hazard. Replacement clothing has to be provided if the original clothing is confiscated. Confiscated items have to be recorded and a copy provided to the detainee. Camera monitoring may be imposed subject to permission by the prosecutor. Medical assistance must be provided in case of need and the doctor of choice should be contacted when such a request is made. Instructions of doctors should be followed by the officials and be recorded. The official should operate regular checks on the well-being of the detained person (at least every two hours). In case of a transfer of the detainee to another facility, the detainee should be provided with any prescribed medicine and any medical reports that have been prepared.

The Rights of Detainees in Border Accommodation Centres (Grenslogies)

The Rrg provides foreigners in Border Accommodation Centres (grenslogies) with broader rights than individuals in detention centres. Individuals in grenslogies may only be subject to restrictions which are “absolutely necessary”. This notion is not defined in the rules. With due observance of the restrictions and orders, foreigners in grenslogies may circulate freely within the confines of the institution, send and receive documents (subject to their examination by the authorities), make phone calls at their own expenses and receive visitors in allocated rooms for this purpose. They have a right to shelter, and can only be placed in isolation if the detainee requests it, or it is necessary to ensure the detainee does not flee, or to maintain safety and order in the detention centre. Placement in isolation can only be enforced as long as this is “absolutely necessary”.

The Rights of Detainees in TA

The detention regime in TA is more strict than regular detention regimes, and is designed to separate people suspected or convicted of terrorist offences from other detainees and prisoners.
It involves additional measures, such as the screening of visitors, a glass partition between the detainee and visitors, the monitoring of telephone conversations, checking mail, strip body searches, and ‘daily long-term detention’ in a cell (comparable to solitary confinement). 86 By contrast, in other wings, the policy is to conduct frisk searches rather than strip searches prior to the detainee leaving the facility. 87

Detainees consider body searches as being so humiliating, that they sometimes refuse to meet their family members or lawyers in person so as to not be subject to such searches. Some even refused to attend court hearings. No contraband has ever been found. 88 In its latest review of the Netherlands, the CAT found the use of full-nudity body searches, which occur often before and after detainee contact with outside visitors, very concerning. 89

Concerns that the strip searches violate Article 8 ECHR have been rejected by Dutch courts. The Council for the Administration of Criminal Justice and Protection of Juveniles (De Raad voor Strafrechtstoepassing en Jeugdbescherming – RSJ) regards the routine body search of a TA detainee prior to and after court visits as a necessary and proportionate interference with Article 8, because it has a basis in Dutch domestic law and because all TA detainees pose a possible flight risk and that this would cause great societal unrest. 90 However, routine humiliating searches performed without suspicion or absolute need may also violate the prohibition against inhuman or degrading treatment under Article 3 ECHR. 91 Rule 4 of the European Prison Rules (EPR) states that prison conditions that infringe prisoners’ human rights are not justified by lack of resources.

Within a TA, it is standard to place detainees in very restrictive confinement, which can then be adjusted at the discretion of the prison authorities. Prolonged solitary confinement constitutes a violation of human rights, at least in excess of 15 days, especially without individual risk-assessment, amounts to inhuman or degrading treatment under Article 3 ECHR. 92 The Committee against Torture had expressed particular concern at the use of prolonged solitary confinement in the TA in the Netherlands. 93

Strict monitoring controls are applied over what the detainees say and do, providing them with limited privacy or access to reintegration opportunities available to other prisoners. 94 The restrictions on family visits, such as separation by a glass partition if a strip search is refused or limitation of physical contact to a handshake, severely impacts detainees’ ability to exercise their right to privacy and family life. Further, as detailed by the CAT, individuals in TA are often subjected to particularly restrictive regimes, whereby contact with the outside world is limited and surveillance is constant. 95

There is no effective complaint mechanism, as directors of detention centres have wide discretion to implement such measures. Such conditions increase alienation, lead to deep psychological and physiological damage, and go against international human rights standards. 96 The CAT has expressed concern regarding this lack of effective complaint mechanism in the TA as well as the lack of data available both on the nature of complaints and the number being made. 97

The regime is overseen by the Inspectorate for Justice and Security (Inspectie Justitie en Veiligheid – Inspectator JenV) and NPM more broadly (see below). According to the CPT, authorities must demonstrate that the restrictions are necessary and proportionate with an individual risk assessment before they are imposed. 98 However, at the time of writing, the practice is that authorities automatically assign people suspected or convicted of a terrorist offence to the TA without ever assessing if the individuals actually posed this threat or if the TA’s security measures were necessary or proportionate in each case. 99

A sounding board (klankbordgroep) “composed of representatives of the Prosecutor, the selection officer, the prison administration (national and local) and the Dutch intelligence services, [meet] monthly to discuss the situation of the persons currently in [TA]. Every six months, the sounding board officially [reviews] the case of the persons placed in these units. However, the persons concerned [are] not informed prior to the meeting. [Do] not have the possibility to be heard (directly or through a representative) and [are] not notified of the decision taken.” 100

In practice, the authorities responsible for a TA do not conduct the periodic review, as most detainees remain in TA for less than six months. When the CPT criticised the government for this, the Dutch authorities responded that “a regular review has little to no added value” because the TA placement criteria (suspicion or conviction of terrorist activity) were “static,” 101 only the third criterion (spreading messages of radicalisation during detention) enabled for a review after 12 months. 102

The CPT has recommended the regular review of decisions to make placements into a TA involving the concerned detainees. 103 Guidance 21 of Prison Guidelines on Radicalisation and Violent Extremism and Rule 53.7 of the EPR establish that, with respect to the use of solitary confinement, all cases must be subject to judicial supervision and adequate review mechanisms, including the possibility of judicial review. Dutch law currently only provides for pre-trial judicial evaluation, and such evaluation only concerns the decision of whether or not to hold on remand, not where to hold on remand. 104

Detainees may send a complaint to the selection officer responsible for their placement, but the chances of reversal are minimal: a detainee can then appeal to the RSJ, but such appeals have also been ineffective, with the RSJ routinely upholding decisions on the basis that there is no conflict between international law and Article 20a of the Regulation on Selection, Placement and Transfer of Detainees (Regelgeving selectie, plaatsing en overplaatsing van gedetineerden). 105

Detainees placed in TA can apply every six months for transfer to a less restrictive regime unless: (i) there is an imminent planned extradition; or (ii) there is an increased risk of societal harm in case of escape; or (iii) it is determined by a selection officer that the detainee has proclaimed or disseminated a message of radicalization before or during detention, including conducting recruitment activities. 106

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The harsh detention conditions of the TA regime have been heavily criticized by the CPT and the CAT. Reform has, however, been very slow and piecemeal, one example being a discretionary informal policy of allowing detainees more time outside their cells.\(^{124}\)

The detention conditions in TA could result in violation of several fundamental rights of detainees, such as the presumption of innocence, the right to privacy and family life, and the right not to be subject to inhuman and degrading treatment. Appeal and complaint mechanisms are deficient, and oversight bodies lack independence and effectiveness. There is a dire need for reform in this area.

### The Rights of Detainees Under Other Instruments

Several other instruments regulate detention conditions in detention centres in the Netherlands, including pre-trial and immigration detention. These include: the Ministerial Decree on privacy of prisoners and detainees when sending and receiving documents, the Circular on the items which can be provided to the officials of the detention centres,\(^{125}\) Rules and regulations exist to cover specific situations, such as hunger strikes,\(^{126}\) suicide\(^{127}\) and use of mechanical means to restrain detainees.\(^{128}\) Some of these documents are not binding,\(^{129}\) provide the officials with the discretionary powers, or are to be read in conjunction with the rules of the detention centres.\(^{130}\)

Upon using force against a detainee, a detention employee must “immediately” inform the director of the penitentiary institution in writing.\(^{131}\) The notification should include the reasons for the use of violence, the measure used, and its consequences.\(^{132}\) There is no provision to allow a detainee to allege that force has been used against them, other than through the complaint mechanism. In case of bodily injury “of more than minor significance” following the use of force by a detention employee, the head of the Custodial Institutions Department and the public prosecution services must be notified,\(^{133}\) and the director of the prison “must seek advice from a doctor as soon as possible.”\(^{134}\)

Restraining methods may be used against detainees. Authorised methods include a helmet or a foam helmet, padded gloves, a mouth guard, wrist-straps on the waistband, anklets with spacers, handcuffs of a type approved by the Ministry of Justice, and the use of restraint beds.\(^{135}\) If the condition of the detainee requires it, several of these mechanical means may be used to restrain the detainee.\(^{136}\) Detainees must receive regular food and drink when restrained and, if possible, must be given the opportunity to eat and drink for themselves;\(^{137}\) be given the opportunity to shower at least once a day, and be provided with clean clothes;\(^{138}\) and be provided with a urinal or bedpan.\(^{139}\) If unable to do any of this themselves, the detainees must be provided assistance.\(^{140}\)

Detention in National Law

There is no specific provision in Dutch law governing the rights of victims of violence committed in pre-trial or immigration detention. The Dutch Constitution prohibits discrimination under any circumstances, and states that all individuals shall enjoy equal rights, regardless of race, sex or any other factor.\(^{141}\) As a result, the general penal framework relating to victims of crime also applies in theory to persons in detention (whether pre-trial or immigration) when they are victims of a crime. This section will explore this general regime in relation to the rights of victims of criminal offences and to what extent they apply to Victim Detainees.

Since the 1970s, victims’ rights have been increasingly recognised and protected in the Dutch criminal justice system, particularly with the amendment of the Dutch Code of Criminal Procedure (Wetboek van Strafverordening – CCP) in 2011. Directives 2004/80/EC and 2012/29/EU have had a heavy influence in this regard. The rights recognised in the CCP include the right to obtain information,\(^{142}\) the right to participate in criminal proceedings,\(^{143}\) the right to be heard on harm/sentence,\(^{144}\) and the right to financial compensation.\(^{145}\)

Dutch law defines a victim as a natural or legal person who has suffered financial loss or other damage as a direct result of a criminal offence, and the family members of a person whose death was directly caused by a criminal offence.\(^{146}\)

\(^{124}\) At 2017 Report, p. 15.

\(^{125}\) For a detailed list of Ministerial Decrees, Circulars and Instructions regulating theuseattheprisonestations,includingimmigration detention centres, see: http://meldpuntenreëleninrichten.nl/


\(^{127}\) Regulations for punishment and isolation cells in detention centres.

\(^{128}\) Suicide Policy (Suicidebeleid).\(^{129}\)

\(^{129}\) The DII prepared a document which is supposed to serve as a guideline in execution of the disciplinary punishments at the penitentiary institutions. This is not a binding document for the administrations of these institutions. See: https://www.commissieverantwoordelijk.nl/nieuwslijst/3748/.

\(^{130}\) The use of mechanical means of restraint is not meant to limit detainees’ freedom, but to avoid serious danger to the health or safety of the detainee or that of others.\(^{131}\) When it has been decided to use a mechanical means of restraint, it should restrict as little as possible the detainee’s exercise, drinking ability, urinating and discharging bodily functions.\(^{132}\) It must also be possible for the detainee to be easily and quickly restrained, and therefore the device used should not contain any sharp, rough or pointed areas, the proper use of the means of restraint must not cause physical damage or discomfort that lasts longer than necessary, and the means of restraint must be easily cleared.\(^{133}\) It is for the Director of the institution to decide on the manner in which the decision is made and recorded with regard to the commencement, continuation and termination of the application of the mechanical means of restraint.\(^{134}\)

\(^{135}\) The Custodial Institutions Agency (Dienst Justitiële Inrichtingen – DII) published a Code of Conduct for its personnel, temporary workers, seconded staff, volunteers and other external parties.\(^{136}\) According to the principle of “respect”, violence towards detainees and between the detainees at the detention centres, including threats and intimidation, is prohibited.\(^{137}\)

\(^{136}\) The RSJ has also published standards to regulate the treatment of individuals placed in detention.\(^{137}\) These were prepared by reference to the EPR standards and CPT recommendations,\(^{138}\) and the provision of security at the detention centres is the responsibility of the government.\(^{139}\)

\(^{137}\) Ibid, Article 3.

\(^{138}\) Ibid.

\(^{139}\) Ibid, Article 4.

\(^{140}\) Ibid, Article 5.

\(^{141}\) DII, Code of Conduct (Gedragscode), November 2016, p. 4. It should be noted that this document is not specifically prepared in order to prevent ill-treatment in the detention centres. It rather aims to set the standard for conduct of the personnel. It is not a binding document. Furthermore, it neither specifies which acts amount to crimes nor mentions the consequences of commission of violence at the detention centres.

\(^{142}\) Ibid, Article 9(1).

\(^{143}\) Ibid, Article 9(2).

\(^{144}\) Ibid, Article 9(3).

\(^{145}\) Ibid, Article 9(4).

\(^{146}\) Regulations on the application of authorized mechanical means in penitentiary establishments (Regeling toepassing mechanische middelen in penitentiaire inrichtingen), Annex.

\(^{147}\) Ibid.

\(^{148}\) Ibid.

\(^{149}\) Ibid.

\(^{150}\) Ibid.

\(^{151}\) Ibid, Article 3.

\(^{152}\) Ibid.

\(^{153}\) Ibid.

\(^{154}\) Ibid.

\(^{155}\) Ibid.

\(^{156}\) Ibid.

\(^{157}\) Ibid.

\(^{158}\) Ibid.

\(^{159}\) Ibid, Article 11.

\(^{160}\) Ibid, Article 10.

\(^{161}\) Directive 2004/80/EC relating to compensation to crime victims.

\(^{162}\) Ibid, Article 23.

\(^{163}\) Constitution, Article 1.

\(^{164}\) Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, Article 3.

\(^{165}\) Ibid, Article 1.

\(^{166}\) Ibid, Article 11.

\(^{167}\) Directive 2004/80/EC relating to compensation to crime victims.
The public prosecutor is responsible for ensuring victims are treated appropriately, and both the police and public prosecutor must keep victims informed of the progress of their case to allow them to exercise their other rights. These other rights include the right to inspect and obtain copies of the case documents of relevance to the victim, to request that the public prosecutor add relevant documents to the case file, to have legal representation and the assistance of an interpreter, to make a Victim Impact Statement in court (in cases of serious offences) about the impact of the criminal offence(s), and to join the criminal proceedings as an injured party and claim compensation. Some of these rights also apply to surviving relatives of victims and parents/carers of minor victims. While victims have a right to examine criminal files, in practice this does not happen regularly.

2.2. The Right to Information

This section focuses on the existing regime governing the notification of rights in the specific context of victims of violent crimes suffered in pre-trial and immigration detention. The purpose is to gain an understanding of the provisions and measures in place to ensure that victims understand their rights during the proceedings from the time they first contact the police or public prosecution service (including before victimisation).

2.1. The Stage of the Provision of Information to Detainees

There are no provisions specific to victims in detention, nor is there a specialised entity providing advice or support to Victim Detainees. Therefore, in most cases, Victim Detainees access information about their rights as victims through their lawyers. Information about the victims’ rights as enshrined in the penal framework is not provided at the start of their detention.

In the general criminal law provisions, victims have the right to receive information about their rights starting from their first contact with the police or the public prosecution service, and throughout the legal process against the suspect. Information is provided “as early as possible” and includes, among other things, information about their rights and support available to them. The police officer, as the most common first point of contact with the victim, will offer victims a form that requests them to indicate if they do not want to be contacted by victim support services.

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The default position is that the Victim Support Netherlands (Slachtofferhulp Nederland), the Sexual Violence Centre (Centrum Seksueel Geweld) or Safe Home (Veilig Thuis), as applicable, will contact victim to ask if they need support. This applies irrespective of nationality or residence. The precise manner in which a victim wishes to participate in the proceedings is determined once the public prosecutor decides to proceed with a case. At that stage, victims will be asked to fill in a form indicating which rights they wish to invoke.

Eleven ‘help-desks’ (slachtofferloketten) in the Netherlands (one per region) have been designed to enhance proper cooperation between different bodies involved in the assistance of victims (police, public prosecutor and victim support officers). However, these help-desks exclude assistance to Victim Detainees. Victim Support Netherlands considers that the provision of information to Victim Detainees is outside of the scope of its mandate. Should they receive calls from detainees, they would refer them to other organisations operating in detention centres. Victim Support Netherlands has stated this would apply to pre-trial detainees, immigration detainees, and convicted persons in detention.

Upon arrest, suspects of crimes are notified immediately of the following rights:

- Right to know the reasons for arrest or detention;
- Right to communicate without restrictions; and
- Right to have legal representation and the assistance of an interpreter;
- Right to make a Victim Impact Statement in case the suspect is convicted; and
- Right to request evidence of a violation of their rights and support available to them.

The police officer, as the most common first point of contact with the victim, will offer victims a form that requests them to indicate if they do not want to be contacted by victim support services.
• Right to legal assistance before the first interrogation, free of charge;
• Right to interpretation;
• Right to inspect procedural documents;
• Right to know the time period before being referred to an investigating judge;
• Right to request the lifting or suspension of the pre-trial detention;
• Right to notify a person of their deprivation of liberty;
• Right to notify a consular post of their deprivation of liberty.

An interviewee (immigration detainee) stated that when he was placed in detention after failing to perform a weekly visit to the police station, he was taken into custody. His partner did not find out that he had been taken into custody until one week later.158 The CAT expressed concerns over the continued absence of lawyers in Saba and Sint Eustatius, and more generally about the denial in practice of the right to notify a person of one’s own choosing about one’s placement in detention.159

In addition, they may see a doctor if they are injured during detention.160

Suspects are notified of their rights at various stages of the criminal proceedings, including at the moment of their placement in custody and pre-trial detention.161 As such, upon entering a detention centre, detained persons should be informed of their rights under the Pbw,162 including the right to file complaints.

2.2. The Format of the Provision of Information

Under the regular penal system, victims are provided information and support by victim support organisations, or, in the case of Victim Detainees, through their lawyers.157

Suspects are notified of their rights as suspects in writing.168 Detained persons, including immigration detainees, are informed of their rights in writing.159 Specifically, detainees must be informed of their right:260

• To submit objections or petitions to their placement, transfer, or termination of participation in a conditional freedom programme;
• To turn to the Monthly Commissioner of the Supervisory Committee;
• To submit complaints or appeals.

2.3. The Type of Information Provided to Victim Detainees

Under the general criminal system, victims of crimes (whether detained or not) can call the help-desk and ask questions about their case, seek advice, guidance or a referral to other services.163 The Netherlands has also developed an online portal to provide victim services (including information about rights and procedures, online forms for compensation or victim impact statements etc.).164 However, this information is available in a limited number of languages, and there are no help desks specific to detainees, or in detention centres.

Victim Support Netherlands and the Centre for Sexual Violence (in the past seven years) have not received any cases from detainees.165 Further outreach of these centres should be made within detention centres, to familiarise detainees with their existence and their role.

VICTIM SUPPORT ORGANISATIONS PROVIDE:

• Information, advice and support on victims’ rights, including access to procedures for compensation, and on their role in criminal proceedings, including preparation for attending hearings;
• Information about or direct referral to relevant existing specialised relief organisations;
• Emotional and, where available, psychological support;
• Advice on financial and practical issues in connection with the offence;
• Advice on the risk and prevention of secondary and repeated trauma, intimidation and retaliation.

The investigating officer must provide the victim with information about:

• Support they are entitled to, including medical care, psychological care and alternative housing;
• Complaint procedure, criminal procedures, and the role of victims;
• Protective measures and procedure;
• Access to advice, including legal advice and the applicable conditions;
• Compensation procedures;
• Interpretation and translation procedures;
• Measures and procedures or arrangements to protect the interests of victims in another EU state if the offence was committed in that other EU state;
• Complaint procedures if the competent authority does not respect victims’ rights in the context of criminal proceedings;
• Contact details for communication about the case;
• Available restorative justice provisions;
• Cost reimbursement procedures for participation in criminal proceedings.

Once the procedure is initiated, the public prosecutor has to inform victims of the following rights:166

• If the criminal investigation is suspended or terminated;
• If there is a decision not to prosecute the offence;
• The arrest of a suspect;
• The commencement and continuation of the prosecution, including the imposition of a sentence;
• The nature of the accusations;
• The place, date and time of the hearing;
• The final verdict;
• Appeals or decisions not to appeal.

Victims of crimes should also be informed by the public prosecutor of the release or escape of a suspect or
convicted person, and of any protective measures taken as a consequence. Detainees should also be informed of their obligations under the Pbw. Such obligations include:

- Detainees are obliged to follow the orders of the director of the institution in which they are held, insofar as those orders are necessary in the interest of maintaining order or safety in the establishment, and in allowing their deprivation of liberty to be unobstructed; 
- Detainees are obliged to carry proof of identity and show it at the request of an official or employee; 
- Detainees must allow medical interventions to be undertaken if, in the opinion of a doctor, that action is absolutely necessary to avert danger to the health or safety of the detainee or of others.

2.4. The Right of Victim Detainees to Interpretation and/or Translation

The Right of Detainees to Interpretation/Translation

The notification to suspects of crimes of their rights should be provided in a language that the suspect understands, free of charge. The documents informing suspects about their rights have been translated into 29 languages.

The Right of Suspects to Interpretation/Translation

Upon entering a detention centre, detainees (including immigration detainees) must be informed of their rights and obligations under the Pbw “as far as possible” in a language they understand. The Pbw also provides that this should be done in writing.

Detained foreign nationals (including immigration detainees) must also be informed of their right to inform a consular representative of their country of their detention upon entering the detention centre. Consular intervention may facilitate communication between the foreign detainee and the Dutch authorities.

2.5. Measures Taken to Overcome Communication Barriers

In the criminal system, “appropriate measures” have to be taken to assist victims in making legal claims, including filing complaints before the Complaint Committees. Detainees also consult their lawyers on a regular basis and can obtain information about their rights through them. This is insufficient, as for instance, immigration lawyers may not be fully familiar with the rights of victims in the criminal system.

2.6. The Provision of Information in Practice and the Identification of Barriers

A major obstacle to Victim Detainees obtaining information about their rights as victims in criminal proceedings is the absence of a permanent help-desk or support organisation to provide information specific to their needs. Victim Detainees have to turn to their lawyers or call an external organisation. They may also mention their concerns to the Month Commissioners, or the National Ombudsman, when they visit the detention centres.

Furthermore, the CAT expressed concerns in 2013 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. The CAT advised the Netherlands to inform detainees, through the Custodial Institutions Inspectorate, about the possibility and procedure for filing a complaint against detention personnel for torture or ill-treatment. The CAT noted that there are “major obstacles” toVictim Detainees obtaining information about their rights. These include the lack of clarity regarding the policy to provide information about their rights, as well as the need for a clear strategy to inform detainees about the availability of complaint procedures.

In detention centres, brochures exist in various languages to inform detainees of their rights. It is unclear what the practice is in relation to illiterate detainees, or when a detainee speaks a language in which the brochure does not exist. In juvenile institutions, brochures are simplified to make it easier for juveniles to understand. However, an interviewee from Defence for Children considers that it does not fully take into account their individual situations, vulnerabilities, or mental capabilities.

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2.6. The Provision of Information in Practice and the Identification of Barriers

information is provided to victims may vary according to their specific needs and personal circumstances, as well as the nature and type of the offence. It must be accurate, detailed and understandable.

The extent to which this requirement is followed in practice by the authorities is unclear. One of the interviewees – who was detained at the Schiphol detention centre – stated that he approached the border police at the Schiphol Detention Centre after he was threatened in the corridor of the detention centre by a guard. After he filed a complaint, the police did not inform him of his rights as a victim in criminal proceedings, including his right to be assisted by a lawyer. In order to follow-up on his case, he contacted the police. The police told him that they had forwarded the case to the prosecution services. He had to contact the prosecution services himself to enquire on the status of his case. After his phone call, he received a formal notification that the case would not be pursued because of the lack of evidence.

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The CPT is satisfied that the procedure for providing information to suspects about their rights upon arrest is mostly followed in practice. People are verbally informed of their rights and given a leaflet containing a comprehensive list of their rights. These leaflets are also available in other languages for non-Dutch speakers.

However, one of the interviewees (an immigration detainee) stated that the detention staff never provided him with information about his right to complain. He was placed in an isolation cell upon his arrival at the detention centre, after going through a strip search. He later learnt of the complaint mechanism through NGOs Stichting Vluchtelingen Werk and Stichting LOS. As a result, he filed two complaints beyond the time limit.

Another interviewee stated that he was apprehended at Schiphol airport. He was not told he was being taken to an immigration detention centre, but rather to a place where he would be able to sleep and eat. He was not immediately informed of his right to contact a lawyer. He was not notified of the rules of the detention centre, and learnt about the complaint mechanism by himself one week after his arrival at the Schiphol Detention Centre, through other detainees. He later asked for the House Rules of the detention centre, to become fully informed. He obtained them in English, which he is able to read and understand.

The CPT has noted the possibility to delay the notification of rights should be more precisely circumscribed. More generally, in its most recent observations on the Netherlands, the CAT made a specific recommendation for the State to ensure that asylum seekers and undocumented migrants in detention have adequate access to independent and effective mechanisms for addressing complaints of alleged torture and ill-treatment.

This section is focused on the existing mechanisms aimed at preventing harm being caused to detainees and at ensuring that detention conditions are adequate. Violence is prevalent in detention facilities and it is worse for those in pre-trial or immigration detention because these groups are more vulnerable than those held in other forms of detention. These facilities have fewer basic services because they are considered “short-term”, although in reality such detention can last for extended periods. Further, privatisation of detention centres has in some cases led to less oversight by States, a reduction of safeguards and the obstruction of access to justice and remedies.

### 3.1. The National Preventive Mechanism

In December 2011, after the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) by the Netherlands on 28 September 2010, the Dutch Ministry of Justice and Security established a network of national institutions tasked with monitoring and supervising how individuals in prisons and detention centres are treated.

The NPM consists of a network of three bodies: Inspectorate JenV, the Health and Youth Care Inspectorate (Inspectie Gezondheidszorg en Jeugd – IGJ or IGJ) and the RSJ. These bodies operate individually according to their respective mandates and collaborate on common matters.

In addition, four bodies have been designated as the associates of the NPM: the National Ombudsman (who ceased to cooperate in 2014), the Commission of Oversight for Penitentiary Institutions (Commissie van Toezicht – CvT), the Commission of Oversight for Police Custody (Commissie van Toezicht Arrestantenzorg – CTA) and the Detention Areas Supervisory Commission of the Royal Netherlands Marechaussee (Commissie van Toezicht Detentieplaatsen Koninklijke Marechaussee – CvTM) (Associate Commissions). The Associate Commissions can participate in NPM meetings and share their concerns and views.

The CPT further noted in 2017 that the RSJ decided to stop its participation in NPM activities after the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) Report on the Netherlands included an expression of concern about the lack of independence of the NPM.

According to the CAT, there are concerns that the NPM mandate limits its monitoring and preventive activities to the European Netherlands, and does not cover its overseas countries and territories. Further, the CAT expressed its concern about consistent reports detailing the lack of independence and resources of the NPM. Lastly, the Committee expressed its concern that the NPM does not effectively monitor detention facilities leased to foreign countries, or military detention facilities, including those managed overseas.

The SPT had expressed similar concerns in 2016, and had recommended that the NPM should visit all places of detention, including social care institutions, military detention centres and facilities used for arrest, transfer and removal of detainees.

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201 CPT 2017 Report, para. 25.
202 Ibid.
203 Ibid.
204 Interview with a victim.
205 Interview with a victim.
207 CAT 2018 CO, para. 17.
3.2. Access of the NPM to Places of Detention

Each associate commission monitors the conditions and treatment of detainees in detention centres in the Netherlands.219 Member institutions of the NPM can access detention centres, including immigration detention centres, across the country and conduct searches in their field of activity.220 Inspectors of monitoring bodies can enter any detention centre, request information, and inspect and make copies of data and documents.220 Inspectors can exercise their powers as far as reasonably necessary for the performance of their duties.220 Everyone needs to cooperate fully with inspectors.221 For instance, as part of its review of the compliance of the National Police with the legislation and the guidelines regarding its duty of care for detained individuals, the Inspectorate JenV and IGJ, in cooperation with the Associate Commissions, inspected all National Police units over 2014 and 2015.222

The Inspectorate JenV

As a rule, the Inspectorate JenV announces its visits for investigation.223 However, it may carry out unannounced visits if the nature of the investigation requires it.224 The nature of visits organised by the Inspectorate JenV will depend on its annual program,225 and on identified risks in the justice and security domain.226 The work program is drawn up periodically by the Inspector General after policy-makers and other stakeholders have given their views.227 Every visit is organised in the context and for the purpose of an investigation that will be published in the form of a report.228

The Month Commissioners of the CvT

The Month Commissioners (Maandcommissarissen) of the CvT visit detention centres on a regular basis to speak to detainees.229 Visits are organised at least once a month, but in practice occur once a week.230 The administrations of detention centres have to inform the detainees of these visits.231 As a result of their visits, the Month Commissioners can initiate mediation between detainees, and between detainees and staff.232

3.3. The Mandate of the NPM

The NPM is a network of national authorities tasked with ensuring that detainees, including individuals in immigration detention, are treated with dignity, and are not subject to humiliating and degrading treatment. The NPM has three main roles: visiting incarceration centres, advising the national authorities on how to improve services provided at these centres, and taking initiatives to improve the existing legal framework.233

In March 2016, the SPT reported that the NPM is “largely invisible”, as it is not provided with a legislative mandate, specifically allocated resources or systematic cooperation with stakeholders.234 The SPT noted that the function of the NPM was limited to monitoring the detention centres, and that other functions, such as advocacy, raising awareness, commenting on legislation or capacity-building were underdeveloped.235

The Inspectorate JenV

The Inspectorate JenV also coordinates the NPM.236 It monitors the quality of the services provided by the national authorities through announced and unannounced investigations in the fields of law enforcement, enforcement of sentences, juvenile detention, asylum and migration, and national security.237 To this end, it can conduct performance reviews, thematic investigations (such as risk analyses), and incident investigations. While all three types of inspections can be conducted by the Inspectorate JenV on its own initiative, investigations can also be requested by the NPM, the Ministry of Security and Justice.238 For example, the Inspectorate JenV investigated allegations of a security leak and cover-up culture at the Vught Detention centre.239

The Inspectorate JenV inspects the quality of the services provided and compliance with laws in detention centres. Among other issues, it looks at internal security, including the prevention and management of violence and aggression.240

The Inspectorate JenV assesses whether detention centres have an active policy to prevent and respond to violence, threats and intimidations.241 This assessment is made through looking at the fitness and skills of employees; whether personnel act in line with the Dil guidelines; whether use of force is proportionate; whether employees or detainees consider the environment is safe; whether the institutions are equipped with adequate personnel and cameras; and whether there is a policy for the protection of employees.242

The RSJ

The RSJ has two main roles. The first role is to advise the Minister of Justice and Security and the State Secretaries for Justice and Security, and for Health, Welfare and Sports, on the functioning of the criminal law system and the protection of juveniles. This can be performed at the request of the Minister or State Secretaries or on its own initiative.243 Its second role is the administration of justice, including reviewing the decisions regarding the complaints made by detainees and prisoners as well as the officials working at these institutions.244 To fulfill its mandate, the RSJ can pay announced or unannounced visits to any detention centre. These visits can be conducted at the request of Minister, or on its own initiative.245

The IGJ

The quality of the medical and youth care in penitentiary institutions across the country is monitored by IGJ. The IGJ can conduct risk-based monitoring and incident inspections at the request of the Minister of Health, Welfare and Sport or on its own initiative.246 The IGJ can access juvenile
detention centres and interview the personnel of the institution and the detainees as well as review documents at the institution.243 At the end of the inspection, a report is prepared and presented to the Minister.244

In a recent risk-based supervision, IGJ visited the TAs of the Rotterdam and Vught Detention centres.245 The IGJ concluded that the care given to detainees in the TA does not differ from the care that is given to other detainees.246 However, it made some recommendations such as to include a doctor in the implementation of the ‘suicidal behaviour in detention guideline’, further investing in requesting medical data before entry of the detainees in the TAs, and additional rooms with a glass wall for medical consultations.247 It must be noted, however, that the CPT has criticised the IGJ for “not taking an active role in monitoring health care in prison”.248

The CvF

The main task of the CvF is the supervision of detention centres to ensure their compliance with national and international rules and standards. To this end, the CvF appoints the members of the Complaint Committees of detention centres.249 In addition, Month Commissioners visit penitentiary institutions on a regular basis to speak to the detainees.250

The CvT’s tasks are aimed at controlling the manner in which deprivation of liberty is practiced in the detention cells and police complexes (the latter is for shorter detentions) as well as the means of transport used by the police.251 The CvT may interview any person in relation to its investigation.252 Such visits may be planned or unannounced, and they can be conducted in the aftermath of a specific incident or in accordance with the regular schedule.253 The CvT reports its finding to the official responsible for the detention and submits a copy of its report to the Chief of Dutch National Police.254 Subsequently, the Chief of Dutch National Police presents the report to the Minister of Security and Justice.255

The CvTM

The CvTM is a body formed by the Ministry of Defence, responsible for supervising places of detention used by the Royal Netherlands Marechaussee, including cells for short-term stay, and vehicles used to transport detainees.256 In this respect, it ensures compliance of detention facilities under the management of the Marechaussee with existing regulations.257 The CvTM reports to the Detention Centre Directors and the Ministry of Defence.258 The CvTM does not deal with the individual complaints of detainees.

The National Ombudsman

The Ombudsman is an independent and impartial body mandated to investigate allegations of wrongful government practices.259 It withdrew from the NPM network in 2014 due to concerns about its functioning, structure and independence.260 The mandate of the National Ombudsman is to investigate the manner in which an administrative body has behaved towards an individual in a particular matter.261 The National Ombudsman acts once a written request concerning a matter has been received.262

There are, however, particular circumstances in which the National Ombudsman is not permitted to investigate the matter outlined in a submitted request. These include, but are not limited to:263

• Circumstances in which a matter that is part of the general government policy, including the general policy for the maintenance of the law and order, or the general policy of the governing body concerned;
• Generally binding regulations;
• Conduct in respect of which a complaint or an appeal can be lodged, unless that conduct consists of not taking a decision in time, or in respect of which a complaint or appeal procedure is pending;
• Conduct in respect of which an administrative court has rendered a decision.

3.4. The Composition of NPM Institutions

The Inspectorate JenV is a ministerial authority, linked to the Ministry of Justice and Security.264 It is located in the same building as the Ministry of Justice and Security.265

The RSI operates under the umbrella of the Ministry of Justice and Security and the Ministry of Health, Welfare and Sports.266 It is located in The Hague.267

The IGJ is a governmental institution under the Ministry of Health, Welfare and Sport. It is responsible for supervising public health in the Netherlands.268

The CvVs are set up by Pbw Article 7 to supervise ‘judicial institutions’ (prisons, detention centres, immigration centres, juvenile detention centres, or institutions for forensic care). Each institution has a dedicated supervisory committee, the members of which are appointed by the Ministry of Justice for a term of five years.269 They include a judge, a lawyer, a medical expert, and a social worker.

Similarly, the CTA is a body established by law, with a supervisory committee for each regional police unit (ten in total). Like the CvF, it is independent, but its four members are appointed by the Ministry of Justice and Security on the recommendation of the regional mayor and prosecutor.270

243 Youth Act (Jeugdwet), Article 9.1.
246 Ibid., p. 3.
247 Ibid.
248 Ibid.
249 Ibid.
250 Ibid.
251 Ibid.
252 See: Inspectorate JenV website, at https://www.inspectie-jenv.nl/organisatie-
 253 Ibid., Article 9:22.
254 Ibid.
255 Ibid.
256 Ibid.
257 Ibid.
258 Ibid.
261 Ibid., Article 9:18(1).
262 Ibid.
263 Ibid.
264 Ibid.
265 See: https://www.inspectie-jenv.nl/organisatie.
267 Ibid.
268 See: https://english.igj.nl/.
269 See: https://www.commissievanoverheid.nl/commissie/naam.
270 Ibid., Article 2, see also: http://www.beschermverantwoording.nl/cta/wat-doet-de-ctas/.
The NPM is not organised to receive complaints from detainees. Each prison or detention centre has its own Complaint Committee. This includes immigration detention centres. Members of these Committees are appointed by the CvT.[275] Complaint Committees hear complaints raised by detainees in the detention centres against “decisions taken by or on behalf of the director”. The procedure will be explained further below.

There is no complaint mechanism in the NPM specific to persons placed in police custody, although there exist separate complaint committees handling complaints against the behaviour of police officials and officials of the Royal Marechaussee.[276]

### 3.6. The Independence of the NPM

The NPM members and associate commissions appear independent from the staff and officials in charge of detention centres. There is however concern as to their independence from ministerial authorities.

The constitution of the NPM as a network by the Dutch government has been criticized by some of its member institutions. The Dutch National Ombudsman, in its letter of withdrawal, and the RSI, in two different letters, expressed concern with respect to the autonomy and functioning of the NPM.[277] It raised issues as to its structure, the lack of cooperation among its constituent organisations, the limited independence of the inspectorates from national authorities, and NPM’s lack of vision.[278]

The RSI made the same remarks in an open letter in 2014.[279] The RSI stated that the current form of the NPM is not conducive to achieving its targets; that the NPM should take the form of a unified body; and that the differences between members and Associate Commissions should be removed. The RSI also announced it would no longer attend NPM meetings, nor submit any legal opinions or reports unless legally obliged to do so.[280] Active members of the NPM meet on average four times per year and exchange the findings of their visits or research. While each member normally produces yearly reports, a combined report for the years 2017 and 2018 is currently in preparation.[281]

On 1 January 2016, the Dutch government published Instructions on the State Inspectorates (Instructions).[282] According to this document, the supervisory tasks are separate from the administrative tasks; inspection reports must be forwarded to Parliament by the Minister without modification; and the Minister is not authorised to make judgments or give advice about findings in the reports. Following the publication of the Instructions, ministers are no longer in a position to give verbal instructions to the inspectors and all instructions must be in written form.[283] Publishing of the Instructions can be considered as an attempt to enhance the independence and impartiality of the national authorities tasked with monitoring detention centres. It would also make the institutions, reporting procedures and reports more transparent.

The problems undermining the NPM’s legitimacy are in large part due to the absence of a specific legislative instrument that designates and regulates the NPM and its activities. The inspectorates operate under the General Administrative Law Act, which provides the legal mandate for supervisory bodies, as the basis for NPM work.[284] Additionally, each member of the NPM looks to its own foundational text as the legal basis for further NPM activities.[285] In March 2017, the Bureau Inspecteraad (Council of the Office of Inspections) issued guidelines for the State inspectorates, but they do not constitute a legislative framework and are not extensive.[286] Further, they concern some, but not all, NPM members. The SPT remarked that the inspectorates’ proximity to the Ministry of Justice and Security, both in their establishment and in their functioning, seriously hinders their credibility.[287] Inspectorates are linked to their respective ministries financially, geographically, logistically, and hierarchically.[288] The inspectorates’ work plans are submitted to their respective ministers for approval, and visit reports issued after inspections are submitted to the ministry for review before publication.[289] An Inspector from the Inspectorate JenV has confirmed that the review is merely factual.[290]

Based on the above, the SPT recommended in 2016 that the Netherlands should clearly separate the monitoring bodies from government institutions so that they can perform their duties completely autonomously, in line with the NPM guidelines.[291] It also recommended that the NPM further cooperate with civil society actors and institutions with a human rights mandate.[292] The CPT also recommended that the Dutch government ensure the independence and effective functioning of the NPM.[293] However, in its 2018 submissions to the CAT, Amnesty International pointed out that the Netherlands had not taken into account the criticism made by the SPT.[294]

While the inspectorates claim that in practice they function independently and without interference, the SPT noted that there is an appearance of partiality, worsened by the lack of a separate legal basis for the NPM.[295]

According to Amnesty International’s submissions to the CAT, the Inspectorate JenV has “insufficiently elaborated on how human rights standards, including recommendations of relevant international human rights bodies such as the Commission or the CPT, have been used to assess whether detention conditions amount to a violation of the prohibition against torture or other cruel, inhuman or degrading treatment or punishment”.[296] In addition, in the context of the TA specifically, Amnesty International considers that the Inspectorate JenV has avoided inspecting the TA with the aim of preventing human rights abuses, or at least has not done so on a regular basis, and has not carefully analysed possible conflicts with international human rights law and standards.[297] Notwithstanding the introduction of the 2016 ministerial regulation, Amnesty International has questioned the Inspectorate JenV’s institutional independence. The government seems unwilling to address the criticisms of the Inspectorate JenV’s oversight of the TA.[298] Nonetheless, discussions are
underway on possible avenues to address the concerns over the lack of independence of the NPM.308

3.7. Access of Civil Society Organisations to Places of Detention

NGOs may organise visits to detainees provided they respect the House Rules, that is, provided their visits are compatible with the maintenance of order and safety in the facility, the protection of public order and good morals, the protection of the rights and freedoms of others, and the prevention or detection of criminal offences.309 Visits of NGOs and journalists to detention centres and detainees are subject to the approval of the administrations of these institutions.310 The director of the detention facility may decide to supervise meetings where one of the above stated interests is at stake.311 While there is no specific provision related to the terms under which NGOs may visit detention facilities, there is provision for the director of an institution to give the opportunity to detainees to hold a meeting with members of the media.312 The DJI website enables certain NGOs to be in contact with immigration detainees and to visit them, although it does not clearly define under which conditions.313

Detention facilities cooperate with voluntary organisations who contribute to the maintenance of a humane detention environment.314 These voluntary organisations are not meant to conduct monitoring activities within the detention facility, even though, given their presence and the type of interaction they have with detainees, they can facilitate dialogue and constitute a safe interlocutor for detainees to talk to.315 Their activities include helping detainees in their reintegration process, providing religious services, acting as reading buddies, visitor buddies, and mental health care assistance.316 According to the DJI, if an individual or organisation wishes to carry out an investigation within a certain division of the Custodial Institutions, they must request permission from the director of the relevant sector.317

In practice, NGOs are not always granted access to detention centres. Requests can be done by sending a written request to the DJI in advance of the visit, stating the purpose of the NGO, and of the visit. The request is then considered by the DJI—presumably in consultation with the concerned director—and a written reply is sent to the NGO. A refusal to grant access can be brought before the National Ombudsman.318 Clear criteria should be established by law for access of NGOs to detention centres. The DJI should be more transparent in the manner in which it grants or denies such access.

4. COMPLAINTS

This section focuses on the existing regime governing the right to make complaints and, to the extent it exists at all, the procedure available to victims of violent crime suffered in pre-trial and immigration detention. The purpose is to gain an understanding of the provisions in place to ensure that detainees are able to file formal complaints when they have suffered any physical, mental or emotional harm from whatever party.

4.1. The Right of Victim Detainees to File Complaints

Access of Detainees to Victims’ Right to Complain in the Regular Penal System

There are no provisions specific to criminal complaints by detainees in Dutch law. We will therefore focus on the general regime for the filing of complaints by victims.

Victims of crimes may file a complaint by way of a declaration before the investigating authority (the police).319 The Declaration or Complaint is recorded by the authorities and the victim receives a copy of it.320 If the victim does not speak Dutch, free translation of the document is provided for them in a language which they understand.321

Where the prosecutor takes a decision not to prosecute, or to discontinue the prosecution, the victim has the possibility to challenge the decision by filing a complaint to the Court.322 Alternatively, they can bring the case before the civil courts, should they decide to seek only damages.

Some crimes can only be prosecuted following the filing of a complaint. In such cases, the only person who is entitled to file the complaint is the person against whom the offence was committed.323 The complaint must be filed within three months starting on the day on which the complainant was aware of the commission of the offence.324 The complainant can withdraw the complaint within eight days from the date of the filing.325 Violent crimes are treated differently and must be prosecuted even when no complaint has been made.

In addition, any person who has knowledge of a serious offence is obliged promptly to report the offence to an investigating officer.326 Any person who has knowledge of any criminal offence can file a report or a complaint.327 This is especially relevant in the context of detention, where detention staff, doctors and nurses in detention centres, and all other persons involved in the handling of detainees, as well as fellow inmates, are under this obligation to report knowledge of any offence committed in detention.

Offences committed by or involving a civil servant or public administrative bodies should be reported promptly by their peers, as soon as they acquire knowledge of the offence.328 Any criminal offence of which public officials are aware must be reported verbally or in writing to the competent civil servant, either by filing the report in person or by another person who has been given special written power of attorney for that purpose.329 All public prosecutors and assistant public prosecutors are competent and obliged to receive the complaint.330 The complaint consists of a report and a request for prosecution.331 Complainants may withdraw complaints.332

307 Designation of Victims’ Rights, Section 3.1.
308 Ibid.
309 Ibid.
310 Ibid.
311 Criminal Code (Wetboek van Strafrecht), Article 64.
312 Criminal Code, Article 67.
313 CCP, Article 160.
314 CCP, Article 161.
315 CCP, Article 162.
316 CCP, Article 163(1).
317 CCP, Article 164(1).
318 CCP, Article 165(1).
319 Ibid.
320 Ibid.
321 Ibid.
322 Ibid.
Complaint Mechanisms for Persons in Detention

In the Dutch legal system, there is only one complaint procedure for individuals in detention irrespective of the type of detention institution. The system will not change once the Draft Law is passed. Individuals in detention centres may complain about decisions taken by, or on behalf of, the director of the prison or the detention centre at the institution where they are being held, as well as any failure of the director to take a decision. Complaints are raised before the CJV Complaint Committees.

Complaints must be submitted within seven days of the time that detainees become aware of the decision they wish to complain about (14 days for detainees in border detention centres). If the complaint is due to an act of negligence or an omission, the time bar does not apply. In practice, complainants are provided with a form by the administrations of the detention centres, but as there is no formal requirement for a notice of complaint, a simple piece of paper recognisable as a complaint is admissible. If complainants do not have sufficient command of the Dutch language, they can submit the complaint in another language. In order to be found admissible, a complaint needs to be accurate, clear and understandable. This requirement extends, amongst others, to details such as the date of the incident and the reasons for the complaint.

When a complaint is withdrawn, it is not heard by the Complaint Committee. No exceptions are provided for in case of allegations of torture or ill-treatment. However, a withdrawal does not prevent the complainant from submitting a new complaint on the same grounds. After the complaint is found admissible, a hearing is held in which the parties are allowed to elaborate on their positions. In practice, Complaint Committees generally do not invite officials of detention centres to these hearings, even if they are involved in the events or decisions about which complaints are filed.

Both the complainant and the detention centres’ administrations may appeal the decision of the Complaint Committees before the Appeals Committee. The Regulations for border detention facilities do not provide for the right to appeal the decisions of the Complaint Committee. The appellate body is the RSJ. Where it deems it necessary to do so, the RSJ holds hearings and invites the parties to tell their stories and present their evidence. These hearings take place in the detention centres, and there is no requirement for them to be public. However, the RSJ publishes its decisions and reports (respecting confidentiality of the complainant).

The decisions of the Complaint Committees can be annulled by the RSJ. If this happens, the RSJ will request that the director take a new decision based on its recommendations.

Disciplinary Mechanisms

The DJI is the government institution responsible for the enforcement of custodial sentences in the Netherlands. It is responsible for the care of pre-trial and immigration detainees. Its Individual Affairs Division (Divisie Individuele Zaken – DIz) is responsible for the initial placement in detention, transfers, objections and appeals against any DIz decisions and sentence extensions.

The DIz has an official complaints desk available on its website for complaints arising from the actions of staff members of detention centres. These are complaints arising from the actions of staff members in detention centres falling under the DIz in the Netherlands (including special care centres and juvenile institutions). Any employees of detention centres can be the subject to a complaint, including those of juvenile detention centres and medicalised detention centres. As soon as the DIz receives the complaint, they send an official confirmation of receipt to the complainant and the official complaint is officially registered and forwarded to the director of the institution to which the complaint relates. Once the director receives the complaint, s/he is obliged to make a decision within six weeks of receipt of the complaint. An extension of four additional weeks may be added in exceptional circumstances. The DIz does not specify what is meant by exceptional circumstances. The DIz website provides an official complaint form in Dutch but does not provide a translation of this document in any other language.

No appeals can be lodged against the way a complaint is handled. However, challenges can be addressed to the National Ombudsman to request an opinion on the matter. Opinions issued by the National Ombudsman are not binding.


There are no fees required for detainees to file complaints before Complaint Mechanisms.

4.2. Fees and Legal Aid for Detainees

in the House of Representatives or a Member of the Parliament has to decide whether to take the case forward or not.

As a result, there can be a debate in the House of Representatives or a Member of the Parliament can ask a question about the issue.

4.3. The Complaint Bodies

The national police records complaints of victims, including Victim Detainees. This may cause problems, as Victim Detainees may distrust, or be intimidated by the authorities as a result of ill-treatment by prison guards. As an example, following the disappearance of his necklace from his belongings after being taken into custody, one of the interviewees – an immigration detainee – decided against filing a complaint to the police, as he would have had to go to the same police station where he had been taken into custody.

The national prosecution services consider the complaint and decide whether to take the case forward or not.

Legal Aid for Suspects of Crimes

The Legal Aid Board must be informed of the arrest of vulnerable suspects and suspects of serious crimes (crimes sanctioned by at least 12 years’ imprisonment), for them to appoint a legal counsel. Suspects of crimes which require pre-trial detention benefit from the same right. Suspects of less serious crimes may choose to access a lawyer before interrogation, but they would have to cover the lawyers’ fees, unless they are eligible for legal aid.

The CVT Complaint Procedure

The complaint Committee tasked with the handling of complaints, including when they relate to conduct that can constitute a criminal offence.

The CVT appoints the chairman of the complaint Committee and the chairman appoints the members.

While detention centres and prisons are being administered by the DJI, the members of the Complaint Committees are appointed by the CVT. There are doubts that sufficient guarantees are in place to ensure the independence of the Complaint Committees from the executive body. For example, although DJI and CVT do not have organic ties and are apparently independent from each other, the members of the CVT are appointed by the Minister of Security and Justice for five years. This only amplifies the Ombudsman’s and CPT’s concerns about independence among members of the NPM.

Legal Aid for Victims of a Criminal Offence

Victims, including Victim Detainees, may be represented by a lawyer while reporting a criminal offence and during an interview with the police and throughout the judicial process, and may have the assistance of an interpreter. Victims, including Victim Detainees, are not automatically entitled to free legal assistance, unless they earn below a certain amount or are victims of a violent crime, rape or sexual assault.

The national Ombudsman has the authority to issue legally binding judgements or decisions. It can only issue opinions and reports with recommendations that it submits to the government.

4.4. The Regular Penal System

The regular penal system has its foundation in the Dutch Constitution and the laws that implement the rights of victims.

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4.4 The Circumstances of the Victims in the Complaint Procedures

Before the CvT Complaint Committees

There are no specific provisions in the PbW in relation to the particular circumstances of the victim, such as gender, vulnerability, illiteracy or speech impairment.

Complainants are allowed to submit their complaints in languages other than Dutch. Translation support may be provided in other phases of the process. The CvT provides brochures explaining the complaint procedure in English, Arabic, German, French and Turkish. The RSJ provides appeals forms for detainees on its website. These forms are only available in Dutch language. In practice, interpreters are not available in all penitentiary institutions. Translation services via the telephone are used during proceedings. At the hearings before the RSJ, the complainants are also provided with the translation service via the telephone. Both the RSJ and the CvT provide specific forms for juveniles, immigrants and disabled persons in special detention facilities (juvenile, immigration or psycho-medical facilities).

In the Regular Penal System

An individual needs assessment is performed at the first contact with victims, to identify specific protection needs, and determine the need for special measures during the preliminary investigation, the judicial investigation, and the hearing. Victims vulnerabilities are taken into account by the prosecutor, police officers or any other investigating officer.

4.5 The Right to Complain after the Transfer of the Detainee

Victims of crimes which happened in another European Union member state may file complaints in the Netherlands. They can do so if the Netherlands is their place of residence, provided that they did not have the opportunity to file a complaint in the country of the offence or, in cases of serious offences, under the national law of the country in which the offence took place, they did not wish to file a complaint in that country. The criterion of residence leaves undocumented migrants without an avenue to complain.

When the complaints are transferred to another detention centre, Complaint Committees are reluctant to decide outstanding complaints. When detainees are represented by lawyers, the complaint procedure is more likely to be followed through, once the detainee has left the penitentiary institution. Complaints by former detainees are declared inadmissible. At the level of the RSJ, even if the detainees are transferred to other detention centres, cases are kept open and decisions are eventually taken.

4.6 Investigations after Filing of Complaints

There is no public data available to determine whether complaints normally lead to the opening of an investigation against those responsible. The most recent the CAT report 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. In particular, the CAT expressed its concern about the lack of data available on:

- Violent against women in Aruba, Curacao and Sint Maarten;
- The nature, number and outcomes of complaints filed by TA detainees; and
- The placement of children in juvenile detention centres.

4.7 The Prosecution of Detention Officers for Violence Committed against Victim Detainees

Stakeholders state that the administrations of detention centres sometimes terminate the contracts of detention officers, rather than initiate prosecution. Alternatively, they transfer them to another detention centre.

An Inspector at the Inspectorate JenV has confirmed that when the Inspectorate identifies that a crime was committed in detention, the Inspectorate would inform the director of the detention centre, the relevant CvT and, where necessary, the head of the prison service at the DIJ, or the police. A senior public prosecutor within the national office of the public prosecution service stated that, in the last two years, there appear to have been no cases referred by the RSJ to the public prosecution about violence by detention staff against detainees. While such referral is in theory possible – or even mandatory in case of serious offences – it is not done in practice. In addition, should an offence come to the attention of the public prosecutor, s/he would, among other criteria, take into account any disciplinary measure imposed on the staff to determine whether prosecution is necessary and desirable. In cases of serious crimes, the prosecutor would proceed to prosecute the offence, regardless of whether a disciplinary measure has been previously imposed on the perpetrator/staff.

4.8 Obstacles to Prosecution Following Allegations of Abuse

Research shows that there are multiple obstacles that may stifle the investigation or prosecution of cases in which there are allegations of abuse. These include:

- In relation to administrative complaints, the fact that the complaint procedure is limited in scope to decisions of directors of detention centres, or their failure to take action;
- The procedure is of an administrative nature;
- In relation to acts that could constitute crimes, the fact that the regular penal system does not take into account the position of vulnerability of detainees and therefore, does not facilitate their ability to file a criminal complaint in case of abuse suffered in detention;
- 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 lack of awareness of criminal laws of detention staff;
- The lack of communication between the complaint mechanisms and the police and prosecution authorities;
- 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; and
- The lack of witnesses to violent incidents.

Regarding detainees in TA, as mentioned earlier, such detainees may also file complaints, but the procedure is ineffective, arbitrary, and lacks independence.
5. THE RIGHT TO PROTECTION

This section focuses on identifying measures available to protect victims and their families from secondary and repeat victimisation, intimidation and retaliation, including the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying. For example, under the EU Directives, the right to protection includes measures such as avoiding contact between victims and the offenders within institutions, conducting interviews promptly and keeping them to the minimum necessary, allowing victims to be accompanied by a legal representative, etc.

5.1. The Rights of Victim Detainees to Protection

There is no provision specific to the protection of Victim Detainees during criminal proceedings. Under Dutch law, all victims are assessed individually by an investigator, in order to protect them against secondary victimisation, repeated victimisation, intimidation and retaliation. A European protective order may be requested by victims of crimes committed in another European country. Protective measures are also provided for witnesses or other individuals who “assisted the authorities charged with the detection and prosecution of criminal offences”. Protective measures are provided for by the Code of Criminal Procedure, the Designation of Victims’ Rights (Aanwijzing slachtoffersrechten), and the Decree on Victims of Criminal Offences (Besluit slachtoffers van strafbare feiten). They are set out in section 5.2.

5.2. Protective Measures in the Complaint Procedures

5.2.1. In the CvT Complaint Procedure

Complaints are not handled publicly, and the Complaint Committee may decide to hear the director of the institution and the complainant in different sessions. A member of a CvT has confirmed that this usually happens when the Director and the detainee are in two different detention centres. In practice, the complainant is sometimes relocated to another detention centre. For the detention staff accused of an offence, suspension of the staff could in theory be imposed where the allegation is sufficiently serious and corroborated by other, external and independent, evidence.

5.2.2. In the Regular Penal System

Measures, such as limiting contact or preventing the suspect from accessing certain locations, may be imposed. Victims may be interviewed in rooms adapted for that purpose, by professionally trained persons, if possible by the same person, and in cases of sexual or gender-based violence, by a person of the same sex. Interviews involving children are audio-visually-recorded. Strict confidentiality and closed sessions of hearings and debates may be observed should the nature of the case or age of the victim require it, for example, in the case of child victims of sexual abuse. Use of technology to avoid contact between victim and defendant at trial may be arranged.

5.3. The Authority Responsible for Providing Protective Measures

Under the regular penal system, the investigating authority is responsible for assessing the needs of the victim, and the public prosecution services for providing updates on those needs. The public prosecution service is then responsible for requesting and implementing protective measures.

To avoid further trauma, the principle of proportionality is observed when conducting forensic medical examinations.

Avoiding pressing questioning of the victim.

In the Netherlands, certain protective measures may be waived if they cannot be realised due to operational limitations; if the victim needs to be interviewed urgently; if the victim or a third party may suffer harm as a result; or if the legal proceedings may be prejudiced. Protective measures should not harm defence rights.

When filing a complaint a victim may keep certain identity information confidential, either by omitting it from the declaration or complaint, or by recording it separately. The identity of the victim may remain undisclosed, where there is fear for the personal safety of the victim or there are other “serious obstacles”, and the address in the declaration may be different from the actual address of the victim. The investigating judge may also allow the victim to make a “limited anonymous declaration”, should further protection be required.

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85 Designation of Victims’ Rights, Section 6.2
86 Designation of Victims’ Rights, Section 6.3
87 Designation of Victims’ Rights, Section 6.4
88 Designation of Victims’ Rights, Article 11
89 Designation of Victims’ Rights, Article 12
90 Designation of Victims’ Rights, Article 13
91 Designation of Victims’ Rights, Article 14
92 Designation of Victims’ Rights, Article 15
93 Code of Criminal Procedure, Article 226(4)
94 Designation of Victims’ Rights, Section 10.7
95 Code of Criminal Procedure, Article 226(8)(2).
96 Ibid.
97 Ibid.
6. INDIVIDUALISED NEEDS ASSESSMENTS

6.1. Individualised Needs Assessment for Victims of Crimes

Individual Assessment in the Regular Penal System

In the regular penal system, victims’ needs assessments are carried out by the investigating authority and public prosecution services. The assessment seeks to identify specific needs so that adequate protection can be provided. Factors taken into account to assess the needs are: the personal characteristics of the victim; the type of offence; the nature of the offence; the circumstances in which the offence was committed; and the damage suffered by the victim. In carrying out the assessment, particular attention is paid to:

- Victims who have suffered significant damage as a result of the seriousness of the offence;
- Victims of criminal offences motivated by prejudice or discrimination that may in particular relate to their personal characteristics;
- Victims whose relationship with and dependence on the suspect made them particularly vulnerable.

In addition, when the police determine that a person is particularly vulnerable to repeated victimisation, intimidation, or discrimination that may in particular relate to their personal characteristics;

- “Victims who have suffered significant damage as a result of the seriousness of the offence;”
- “Victims of criminal offences motivated by prejudice or discrimination that may in particular relate to their personal characteristics;”
- “Victims whose relationship with and dependence on the suspect made them particularly vulnerable.”

In the regular penal system, victims’ needs assessments are carried out by the investigating authority and public prosecution services. The assessment seeks to identify specific needs so that adequate protection can be provided.

Individual Assessment in the CvT Complaint Procedure

There does not seem to be any specific framework for assessing the particular vulnerabilities of victims under the complaint procedure. Indeed, the same complaint procedure applies for all the different types of detention facilities. There is a brochure summarising the different procedures which are available to a detainee if s/he wants to file a complaint. This brochure is available in Dutch and in some other languages, and is therefore already available in an accessible form to at least some of the foreigners held in immigration detention centres.

The Inspectorate JenV evaluates the way in which complaints are handled by the detention facility’s administration.

These criteria do not contain a vulnerability screening of the complainant. Neither the Pbw nor the informative brochure for complaints mention a vulnerability assessment for complainants.

Individual Assessment of Detainees Upon Arrival at the Detention Centre

The Inspectorate JenV has designed a framework for the assessment of detention centres. This document provides criteria for the assessment of the treatment of detainees and the prevention of violence against or among them. Detainees must be screened upon arrival for care needs, safety and health care management risks and any reasons why they should not be placed in a multi-person cell. To this end, the following steps, among others, are taken:

- External information is checked upon registration on safety and other risks relating to the detainee, and the relevant services and departments are notified;
- Medical screening within 24 hours of arrival of the detainee. This includes identifying contraindicated drugs and an assessment of suicide risks;
- Within 24 hours of arrival, an interview takes place on personal attention points and possible contraindicated drugs or situations;
- An observation and findings form is completed on this basis within three working days of arrival;
- The detainee is screened within ten working days of arrival on the security level, risk to fellow prisoners and risk of self-harm;
- The detainee is screened within ten working days of arrival by the case manager on housing, income, day care, healthcare, identity papers and possible debt problems. This information is processed onto a digital platform.

Individual Assessment of Detainees Placed in TA

The CAT Report details concerns with the automatic placement of a person suspected or convicted of terrorism in high security units without an individual assessment. This system is based on a presumption that people suspected or convicted of terrorist offences will try to ‘radicalise’ other prisoners or recruit them to engage in terrorist activities. The decision of whether or not the presumption applies, falls to a ‘selection officer’ of the DJI. The decision is rarely well-reasoned, and is more of an automatic process, only occasionally receiving recommendations from the Criminal Intelligence and Investigation Department to place detainees outside the TA. The presumption allows the authorities to place detainees in the highest security regime without individual assessment or judicial oversight.

Drawing attention to the extraordinary nature of these kinds of facilities, the CPT reported that, before placing a detainee in an extra-security facility, an extensive risk assessment must be performed. However, there is no distinction under the Rrg between suspects and those already convicted. This means that suspects detained in TA are treated as if they were convicted terrorists, undermining their right to be presumed innocent until proven guilty, and violating Article 10(1)(a) of the ICCPR.

6.2. The Training of Detention Officials to the Needs of Vulnerable Victim Detainees

The DJI and the RSJ have published documents on standards for the treatment of the detainees. Individual needs assessment is one of the elements of proper detainee treatment.

In its evaluations criteria, the Inspectorate JenV specifies that detention centres must treat detainees respectfully and humanely and that the employees of detention facilities should be trained on these standards. The personnel of detention centres are trained by the DJI.
It is worth noting that the training guide of the DJI does not provide for specific training on victims’ rights. It is worth noting that the training guide of the DJI does not provide for specific training on victims’ rights. Specific training is provided to DJI employees who are part of reception teams. The training allows future employees to learn about the welfare and health of individuals. Simulations with actors and practice during the training teach interventions to enable the employee to respond to the needs of the victim in specific situations.

However, the most recent CAT concluding observations stress the need to provide increased training to all professionals involved in the monitoring, documenting, reporting and investigating of torture and ill-treatment. In particular, the report expresses concern at the lack of information available on the instructions provided to law enforcement personnel at all levels. It stresses the need to ensure that information and instructions on the prohibition against torture are provided to those involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

Education should also be provided to personnel about other relevant international instruments, for example the United Nation Standard Minimum Rules for the Treatment of Prisoners. Training should also be provided on non-coercive investigation techniques and on the appropriate use of electronic weapons against detainees.

Regarding those working directly with juveniles, the CAT recommended improving specific training on juvenile justice matters including information on relevant international standards. It also recommended that the Netherlands should develop and implement methodologies to assess the effectiveness of this training and education. More generally, the Netherlands should develop a training of all detention staff on victims’ rights in the Dutch system and how this applies to detainees when they allege violations of their rights.

Similarly, to conduct a proper individual assessment, detention centre staff should be trained 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. For instance, the CAT expressed concerns that the Netherlands “does not use the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) as a means for establishing a link between claims of ill-treatment in the asylum application and the findings of actual physical examination”.

The CAT deplored that the medical examination is “not used in order to identify vulnerable persons, such as victims of torture”. 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”. 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.

80% of the external security services at the detention centres are provided by a private security company, G4S. In addition, it is interesting to note that members of the Internal Assistance Team (Intern Bijstand Team – IBT), which are responsible for order and safety in detention centres receive an initial training of only 72 hours and a subsequent 48 hours per year follow-up. The training teachings are not always followed in practice.

6.3. The Access of Victim Detainees to Victim Support Services

There are no victim support services specifically catering for detainees.

In the general penal system, victim support organisations provide victims with assistance, advice and information free of charge. They support the victims at every step of the criminal procedure, from the filing of complaints to prosecution, and including claims for compensation. However, neither Victim Support Netherlands, nor the Centre for Sexual Violence have contact with, or outreach in, detention centres.

It is unclear whether representatives of the Legal Aid Board are present in all detention centres. They are meant to provide victims with basic legal services. There are concerns about the provision of legal aid services in Caribbean territories such as Saba and St Eustatius. Whilst the CPT found that the presence of medical staff and specialised doctors was generally adequate in Dutch detention centres, they do not play a role in monitoring welfare.

In the complaint procedure specific to detention centres, the complainant detainee has the right to be assisted by a legal assistance provider or “other confidential adviser”. Further, where a consultation between a detainee and their legal advisor is monitored for security reasons, this may not result in a breach of confidentiality.
7. COMPENSATION

This section focuses on the right of Victim Detainees to claim compensation from the offender whilst in pre-trial and immigration detention or later.

7.1. The Procedure for Compensation of Victims of Violent Crime in Pre-Trial and Immigration Detention

Under Dutch law, a victim has the right to present a claim for compensation (schadevergoeding) in parallel to the criminal trial and thus has the ability to join the criminal proceedings as a civil claimant or “injured party” (benedeelde partij).473 Heirs of the victim may claim compensation in case of death of the victim.474 The Public Prosecutor supports victims in their claim for compensation.475 Where the Public Prosecutor does not join the civil claim, victims may still request compensation.476 Where a victim is not known or does not request compensation, the public prosecution service may require the convicted person to contribute to the care of any victims.477

The compensation claim itself is a civil claim governed by tort law, but is processed by the criminal court as if it were a criminal trial and thus has the ability to join the criminal trial and thus has the ability to join the criminal proceedings in parallel to the criminal trial.478

The main advantage of a compensation order (schadevergoedingsmaatregel) issued in this manner is that it is enforced by the State.479 Other advantages include the possibility of advance payment from the State and the speed at which some claims are determined.480 If the offender does not comply with the compensation order within eight months, the State will make an advance payment to the victim, subject to a maximum of 5,000 Euros and the Central Judicial Collection Agency (Centraal Justitiële Incassobureau) will then seek to recover the compensation amount from the convicted person.481

Appeals on decisions rejecting the compensation claim may be lodged by victims.482 Where the Prosecution does not appeal the case, the victims must bring their appeal to the civil courts.483 According to the CAT, there are concerns surrounding the absence of information on redress, and in particular the lack of information on compensation measures ordered and actually provided to victims in Aruba, Curacao and Sint Maarten.484

7.2. The Right to Compensation Outside of Criminal Proceedings (i.e. Disciplinary Proceedings)

Complaint Committees may annul decisions of directors485 and substitute them with their own decisions.486 If the consequences of the annulled decision cannot be reversed, the Committee will determine whether compensation may be offered to the complainant.487 Compensation awards made by Complaint Committees are small.488

7.3. The Right to Compensation Absent the Identification of a Perpetrator

In the regular penal system, the civil claim will only be found admissible if: the defendant was convicted; and the damage or loss was directly inflicted on the victim through the offence.489

The Dutch government has also established a Criminal Injuries Compensation Fund, granting victims of violent crimes compensation, if certain requirements are met:490 if they are victims of an intentional violent crime or of sexual abuse; the crime took place in the Netherlands; the victim sustained serious physical and/or psychological injuries; and the damage will not be reimbursed in any other way. This fund aims to compensate victims for their injuries such as, for example, the medical costs incurred as a result of the injuries, or loss of income caused due to a disability. Detained victims could claim this benefit, as it applies to “anyone who has suffered physical or mental harm as a result of a violent crime committed intentionally”.491

Victims of violent crimes suffered in another EU member state, but who have their “habitual residence” in the Netherlands can apply for compensation to the Compensation Fund.492 The Fund then forwards the application to the authorities of the concerned Member State.493

Payment of damages from the compensation fund for victims of violent crimes is not tied to a finding of guilt, nor to the imposition of a punishment or measures. Compensation is awarded when there are objective indicators clearly showing the cause and circumstances of the violent crime.494

7.4. The Average Amount of Compensation


According to the CAT, there are concerns surrounding the absence of information on redress, and in particular the lack of information on compensation measures ordered and actually provided to victims in Aruba, Curacao and Sint Maarten.484

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In another case, a detainee sustained a knee injury as a result of the application of a leg clamp during a struggle with the detention staff. While the Complaint Committee had originally awarded a 10 Euro compensation to the detainee, the RSJ decided not to award compensation, as it applies to “anyone who has suffered physical or mental harm as a result of a violent crime committed intentionally”.491

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stating that the awards it orders are “not intended as compensation”. It stated that “only if the damage can be established in a simple way can compensation aspects be taken into account in the amount of the allowance awarded”. It added that “the damage [was] not easily assessed in this case” and decided to let civil courts determine the adequate amount for compensation in the case. 489 This case leaves the question open as to what happens when civil or criminal courts are not seized of a case (as is the case for the vast majority of allegations). Victims are then left without adequate compensation. This is in violation of victims’ right to redress. 490

The CAT also expressed concerns over the “absence of information over redress, including compensation measures ordered by the courts or other State bodies and actually provided to victims of torture and ill-treatment and their families in Aruba, Curaçao and Sint Maarten” 491

7.5. Fees Involved for Unsuccessful Compensation Claims

No fees are involved if the claims for compensation prove unsuccessful, unless the person is not entitled to free legal assistance (which, when granted to the victim, extends for the length of the proceedings).

490 UNCAT, Article 14.
491 CAT 2018 CO, para. 54.
Law on the Quality of Complaints about and Disputes over Care (Wet kwaliteit, klachten en geschillen zorg – Wkgz)
Legal Aid Act (Wet op de rechtsbijstand)
Model House Rules for Detention Centres (Regeling model huisregels penitentiaire inrichtingen)
Penitentiary Measure (Penitentiaire maatregel)
Protocol on Force-Feeding and -Drinking (Protocol Eet-Drinkstaker), January 2013
Official Instruction for the Police, the Royal Netherlands Marechaussee and Other Investigating Officers (Ambtsinstructie voor de politie, de Koninklijke marechaussee en andere opsporingsambtenaren)
Regulation on Selection, Placement and Transfer of Detainees (Regeling selectie, plaatsing en overplaatsing van gedetineerden)
Regulation on the Complaint Procedure for Police Duties of the Royal Netherlands Marechaussee 2004 (Ambtsinstructie voor de politie, de Koninklijke marechaussee en andere opsporingsambtenaren)
Regulation on the Designation of Legal Person for Victim Support (Regeling Aanwijzing rechtspersoon slachtofferhulp)
Regulations of the Committee for Petition and Citizen Initiatives (Reglement voor de commissie voor de Verakozen enige de Burgerinitiatieven)
Regulations on the application of authorized mechanical means in penitentiary establishments (Regeling toepassing mechanische middelen in penitentiare inrichtingen)
RSI Institutional Law 2015 (Instellingswet Raad voor strafrechtstoepassing en jeugdbescherming 2015)
Suicide Policy (Suicidebeleid)
Youth Act (Jeugdwet)
Domestic Case Law:
CvT Complaint Committee Noord-Holland, location Schiphol, Case no. DS 2013/056
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- CuTM website, https://www.defense.nl/organisatie/marechaussee
- CTA website, http://www.toezichtarrestantenzorg.nl
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- RSJ website, https://www.rsj.nl
- Victim Support Netherlands website, https://www.slachtoffershulp.nl

For a detailed list of Ministerial Decrees, Circulars and Instructions regulating the rules at the penitentiary institutions, including immigration detention centres, see: http://meldpuntvreemdelingendetentie.nl/overige-wet-en-regelgeving