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PART 2

## **PART 2 : VISIT TO ARUBA**

**CONTENTS OF PART 2**

<b>I.</b>	<b>INTRODUCTION .....</b>	<b>4</b>
<b>A.</b>	<b>Dates of the visit and composition of the delegation.....</b>	<b>4</b>
<b>B.</b>	<b>Establishments visited.....</b>	<b>4</b>
<b>C.</b>	<b>Consultations held by the delegation .....</b>	<b>5</b>
<b>D.</b>	<b>Cooperation between the CPT and the Aruban authorities.....</b>	<b>5</b>
<b>E.</b>	<b>Immediate observations under Article 8, paragraph 5, of the Convention.....</b>	<b>5</b>
<b>II.</b>	<b>FACTS FOUND DURING THE VISIT AND ACTION PROPOSED .....</b>	<b>6</b>
<b>A.</b>	<b>Police establishments.....</b>	<b>6</b>
1.	Preliminary remarks .....	6
2.	Ill-treatment.....	7
3.	Conditions of detention.....	10
a.	introduction.....	10
b.	situation encountered in the establishments visited.....	11
4.	Safeguards against ill-treatment by the police .....	13
a.	introduction.....	13
b.	the right to notify a third party of one’s detention.....	14
c.	access to a lawyer .....	14
d.	access to a doctor.....	16
e.	information on rights .....	17
f.	custody records .....	17
g.	complaints procedures .....	18
<b>B.</b>	<b>Foreign nationals detained under aliens legislation .....</b>	<b>19</b>
1.	Preliminary remarks .....	19
2.	Ill-treatment.....	20
3.	Conditions of detention at the “Centro pa detencion di ilegalnan” for immigration detainees .....	20
4.	Safeguards against the ill-treatment of foreign nationals detained under aliens legislation .....	22

<b>C. Aruba Correctional Institute - KIA</b> .....	<b>25</b>
1. Preliminary remarks.....	25
2. Ill-treatment.....	25
3. Conditions of detention.....	27
a. material conditions.....	27
b. regime .....	28
4. Health care services .....	29
a. introduction.....	29
b. medical care in general .....	30
c. medical facilities and records .....	31
d. medical screening on admission / prevention of violence .....	31
e. medical confidentiality .....	32
f. psychiatric and psychological care .....	32
g. suicide/self-harm.....	33
h. hunger strikes.....	33
5. Other issues.....	34
a. staff.....	34
b. drug-related issues .....	34
c. discipline.....	35
d. contact with the outside world.....	38
e. complaints and inspection procedures.....	38

**APPENDIX I:**

LIST OF THE CPT'S RECOMMENDATIONS, COMMENTS AND REQUESTS FOR INFORMATION.....	39
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**APPENDIX II:**

LIST OF THE AUTHORITIES AND OTHER PERSONS WITH WHOM THE CPT'S DELEGATION HELD CONSULTATIONS .....	48
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## I. INTRODUCTION

### A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT carried out a visit to Aruba from 4 to 7 June 2007<sup>1</sup>. The visit formed part of the CPT’s fourth periodic visit to the Kingdom of the Netherlands<sup>2</sup>.

2. The visit was carried out by the following members of the CPT:

- Mario FELICE (Head of the Group)
- Tim DALTON
- Ann-Marie ORLER.

They were supported by Caterina BOLOGNESE, from the CPT’s Secretariat, and were assisted by:

- Eric DURAND, medical doctor, former Head of medical services at Fleury-Mérogis Prison, France (expert)
- Manuel MADURO (interpreter)
- Karel THIJS (interpreter)
- Minerva WILLEMS-HIEROMS (interpreter).

### B. Establishments visited

3. The delegation visited the *Korrektie Instituut Aruba* (or ‘KIA’, the prison on Aruba), as well as the police stations at Oranjestad, Noord and San Nicolaas. It also visited the ‘Centro pa detencion di ilegalnan’ for immigration detainees.

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<sup>1</sup> The CPT’s previous visit to Aruba took place in June-July 1994, as part of an ad hoc visit to the Kingdom of the Netherlands (including Aruba and the Netherlands Antilles). The report on that visit has been published on the CPT’s website ([www.cpt.coe.int](http://www.cpt.coe.int)).

<sup>2</sup> The visits to the Kingdom in Europe and the Netherlands Antilles are dealt with separately (see Parts 1 and 3 of this report).

**C. Consultations held by the delegation**

4. In the course of the visit to Aruba, the delegation met Rudy CROES, Minister of Justice, Nico JÖRG, Solicitor-General, Hans MOS, Chief Public Prosecutor, Peter DE WITTE, Chief of Police, and Laurence PASKEL, Director of Government Security<sup>3</sup>. At the end of the visit to the Kingdom of the Netherlands, part of the delegation also attended a meeting in The Hague with the competent authorities.

A list of the authorities and other persons active in the CPT's fields of interest with whom the delegation held consultations is set out in Appendix II.

**D. Cooperation between the CPT and the Aruban authorities**

5. The cooperation received by the delegation during the visit to Aruba was excellent and in full compliance with the provisions of the Convention. The delegation had rapid access to the establishments it wished to visit, to the documentation it wanted to consult and to individuals with whom it wished to speak. In this context, the Committee would like to highlight the excellent assistance provided by Angélique PETERSEN, liaison officer to the CPT for Aruba.

**E. Immediate observations under Article 8, paragraph 5, of the Convention**

6. On the occasion of the concluding meeting with the Minister of Justice on 7 June 2007, the delegation made an immediate observation, in pursuance of Article 8, paragraph 5, of the Convention, requesting that the cellblock at Oranjestad Police Station and the disciplinary cell at San Nicolaas Police Station be immediately taken out of service.

It also requested to be informed, within one month, of the measures taken to improve the material conditions and the regime at the 'Centro pa detencion di ilegalnan' for immigration detainees.

These immediate observations, and other matters, were reiterated to the competent authorities in The Hague at the end of the CPT delegation's visit to the Kingdom of the Netherlands, on 14 June 2007, and in writing on 11 July 2007.

7. By fax of 22 June 2007, the Aruban authorities informed the CPT of the measures taken in response to the above-mentioned immediate observations concerning Oranjestad and San Nicolaas Police Stations. Further information on all of the points raised by the delegation was provided by letter of 25 September 2007. These responses have been taken into account in the drafting of the present report.

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<sup>3</sup> *'Cuerpo Especial Arubano'* (CEA).

## II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

### A. Police establishments

#### 1. Preliminary remarks

8. Under the Code of Criminal Procedure (CCP) of Aruba, which entered into force in 1997, the rules for detaining persons are as follows<sup>4</sup>:

Persons suspected of having committed a criminal offence may be held (*aangehouden*) by the police for questioning for a maximum of six hours. However, as the night hours between 10 pm and 8 am are not counted<sup>5</sup>, this initial period may in fact last up to 16 hours (see CCP Article 80, paragraph 1).

Thereafter, if the needs of the investigation so require, the person may be placed in police custody (*in verzekering gesteld*) for a maximum period of two days, on the decision of a prosecutor (*officier van justitie*) or of an assistant prosecutor (*hulpofficier van justitie*, who can also be a senior police officer) reporting to the prosecutor in writing or orally as soon as possible and within 24 hours (see CCP Article 83, paragraphs 1 and 4, and Article 87, paragraph 1). However, if the investigation urgently requires it, police custody may be extended by the prosecutor for a further maximum period of eight days (see Article 87, paragraph 2).

CCP Article 89, paragraph 1, provides that, as soon as possible - and in any case within 24 hours - from the beginning of the enforcement of such an extension, the suspect must be brought before the investigating judge (*rechter-commissaris*). Thus the legal maximum period before a person deprived of liberty is brought before a judge amounts to three days and 16 hours.

9. At the end of the period of police custody, the investigating judge may, upon the prosecutor's request, remand the person in detention (*bewaring*, see CCP Article 92) for a period of eight days, renewable once (Article 93). Thereafter, the prosecutor may apply to the judge for an order of pre-trial imprisonment (*gevangenhouding*) of 60 days' maximum duration. This period may be extended for up to 30 days, and, in the case of more serious offences, for 30 days longer again (see Articles 95, 98, 100 and 101).

CCP Articles 94 and 99 suggest that detention and pre-trial imprisonment are measures which are to be enforced in a remand prison (*huis van bewaring*). The maximum period of custody on police premises would therefore be the initial period of apprehension for questioning (up to 16 hours) followed by 10 days (two plus eight) of police custody. Afterwards, detention, if continued, must be enforced at a remand prison, that is at KIA.

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<sup>4</sup> Cf CPT/Inf(96) 27 at paragraph 181, for a description of the legislation in force at the time of the CPT's visit in 1994.

<sup>5</sup> Indeed, in accordance with CCP Article 80, paragraph 1, persons are not questioned during those hours. If they *are* questioned, the period of questioning is counted.

10. During the visit, the CPT's delegation also interviewed persons detained under the Aliens legislation who had spent seven or eight days at a police station prior to being transferred to the 'Centro pa detencion di ilegalnan' for immigration detainees (see part B).

The comments and recommendations in the current chapter on police establishments apply equally in respect of the detention of persons pursuant to legislation or regulations other than the criminal law. Moreover, as the CPT already stated in its report on the visit carried out in 1994<sup>6</sup>, the material environment and regime in a police station will often, if not always, be inappropriate for the detention of persons under aliens legislation. In this respect, none of the police stations visited in 2007 (see paragraphs 18 to 23) was appropriate for the detention of persons pursuant to legislation or procedures applicable to aliens.

## **2. Ill-treatment**

11. The CPT's delegation heard no allegations of physical ill-treatment from persons interviewed who were in police custody at the time of the visit. However, during interviews with prisoners at KIA, the CPT's delegation received several credible allegations of physical and verbal ill-treatment by the police. The allegations consisted mostly of slaps and punches to the head, as well as kicks to the body, and insults of persons at the time of their apprehension and after they had been brought under control. A smaller number of allegations of physical ill-treatment also concerned the period of detention at a police station, in particular during interrogations. Recent statistics provided by the Landsrecherche and the Internal Investigations Agency of the Police (see paragraph 40) also indicate that ill-treatment by the police is by no means a rare phenomenon.

**The CPT recommends that the Aruban authorities adopt a vigorous policy to combat police ill-treatment. Such a policy should include a formal statement, by the highest competent political authority, to law enforcement officials, reminding them that:**

- **the rights and dignity of persons in their custody must be respected; and**
- **the ill-treatment of such persons will be the subject of severe sanctions.**

**The CPT further recommends that police officers be regularly reminded, through training and instructions, that no more force than is reasonably necessary should be used when effecting an apprehension. More particularly, law enforcement officials must be trained in preventing and minimising violence in the context of an apprehension. For cases in which the use of force nevertheless becomes necessary, law enforcement officials need to be able to apply professional techniques which minimise any risk of harm to the persons whom they are seeking to apprehend.**

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<sup>6</sup> See CPT/Inf(96) 27 at paragraph 183, subparagraph 2.

12. The delegation also received a number of consistent allegations of the use of a “chill room” on the upper floor of Oranjestad Police Station. Before being interviewed, suspects were allegedly locked for several hours, without covers, in an interrogation room cooled to very low temperatures by an air-conditioning unit operating at the most powerful setting. Such a practice would clearly exert considerable physical discomfort as well as pressure on a detained person; it could certainly be considered as amounting to inhuman treatment. **The CPT recommends that the Aruban authorities take the necessary measures to ensure that law enforcement officials do not resort to such unacceptable practices.**

13. During the visit the CPT’s delegation met a woman at Noord Police Station whose right hand was handcuffed to one of two rings fixed to the wall in a waiting/interrogation room. The position of the rings did allow her to be seated, albeit uncomfortably. From the delegation’s discussions with police officers present, it transpired that such handcuffing was a routine practice - irrespective of any risk of absconding - pending the person’s transfer into a cell in the detention block, which would generally take some 45 minutes.

In the Committee’s view, there can be no justification for routinely shackling detained persons to a fixed object; such a practice could clearly amount to degrading treatment. **The CPT recommends that the Aruban authorities put an end to that practice. Persons taken into police custody should not be left handcuffed to rings fixed to a wall and instead should be accommodated without delay in rooms/cells offering appropriate security conditions. Further, the rings fixed to the wall at Noord Police Station - and any other police station where they might exist - should be immediately removed.**

14. Lengthy detention in police premises was an issue of major concern in the report on the CPT’s visit to Aruba in 1994. The authorities’ decision to reduce the period from twenty to ten days was welcomed by the Committee. However, it also emphasised that periods of detention of up to ten days in police premises would still be far too long, from the perspective of preventing ill-treatment. Although the CPT found that this principle would hold irrespective of the material conditions prevailing, the situation was certainly exacerbated by the fact that those conditions could readily be described as inhuman and degrading (see CPT/Inf (96) 27 at paragraphs 187 to 190).

In the course of the 2007 visit, the CPT’s delegation found that material conditions in police stations were still deplorable and detained persons were never offered outdoor exercise (see section 3). Moreover, many persons were being held in police stations for the full 10 days permitted by criminal law and, on occasion, even longer. By way of example, at Noord Police Station, the delegation met a person who had been in detention for 13 days. The CPT’s delegation also met minors who were kept at police stations for 10 days or more. Custody registers attested to the fact that such lengthy periods of police detention appeared by no means exceptional, but rather the norm.



The CPT therefore reiterates its view that it is highly questionable, to say the least, to resort routinely to lengthy detention on police premises. It is widely acknowledged that the period immediately following apprehension, and prior to the first appearance before a judge, is when the risk of abuse is greatest. Continued detention on police premises even after the person concerned has been presented before a judge also poses risks of intimidation and pressure. To prolong such periods beyond the duration which is strictly necessary for the purposes of an investigation is to expose persons deprived of their liberty to an undue risk of ill-treatment. In view of the number of allegations received, this risk is not negligible.

In its interim response to the CPT's report on the first visit to Aruba, the Aruban Government had endorsed the view that 10 days in a police cell is too long. It had decided to examine the scope for reducing this period<sup>7</sup>. However, in its follow-up report, the Government explained that a working group had examined the matter, but that the police and prison authorities had opposed it essentially for practical reasons associated with conducting investigations (keeping suspects close at hand to be interviewed, ensuring separation of certain suspects from one another) and taking into consideration the shortage of staff in the police service and at KIA.

The CPT does not consider such reasoning to be sound and would contend that many simple investigative acts involving the suspect can be - and are - conducted within a short period of time. And yet most persons detained, including minors, are held on police premises for 10 (or even 13) days, irrespective of the complexity of the case. A situation which might possibly be justified for exceptionally complicated cases becomes a standard practice, with no requirement to justify, in each individual case, the need for longer placement in police custody. It is untenable, in the CPT's view, to organise police custody in such a way as to subordinate the essential interests of detained persons to general practical considerations.

**The Committee calls on the Aruban authorities to re-examine the system of detention on police premises with a view to substantially reducing its duration.** Transfer to remand house premises could, for instance, reasonably occur immediately after a person's presentation before a judge, if the judge approves the prolongation of the person's detention.

15. In this connection, the role of judicial scrutiny of custody (*in verzekeringstelling*) should also not be underestimated. When persons detained by law enforcement agencies are brought before judicial authorities, this provides a valuable opportunity for such persons to indicate whether or not they have been ill-treated. Further, even in the absence of an express complaint, the judge will be in a position to take action in good time if there are other indicia (e.g. visible injuries; a person's general appearance or demeanour) that ill-treatment might have occurred.

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<sup>7</sup> See Interim Response in CPT/Inf(96) 27, at page 64.

16. As outlined in paragraph 8 above, in Aruba the first opportunity for judicial scrutiny of custody is provided when a suspect is brought before the judge within 24 hours from the extension of custody ordered by the prosecutor.

Although CCP Article 87, paragraph 2, stipulates that a custody extension of up to eight days may be ordered by the prosecutor only in case the investigation urgently requires it, in practice, regardless of the complexity of the case, custody extensions ordered by the prosecutor were always for the eight-day maximum duration - a period which is very long, in the Committee's view.

Moreover, when the investigating judge reviews the prosecutor's decision to prolong custody, the scope of that review would appear to be somewhat limited. In particular, CCP Article 89, paragraph 2, expressly stipulates the possibility that the investigating judge may find that the extension was unlawful, in which case he or she must order the suspect's immediate release. No specific mention is made of a possibility for the judge to *reduce* the duration of the extension of custody; nor did the CPT's delegation receive any indication of such a reduction ever occurring.

In the CPT's opinion, it is a highly questionable practice for prosecutors routinely to order the maximum possible period of extension of custody under CCP Article 87, paragraph 2, a provision which should only apply in cases of urgent necessity. This practice is all the more undesirable as the eight-day period is not further scrutinised by the judge after the first hearing, and as the protection afforded by other safeguards would also appear to be weak (see paragraphs 25 to 40 below).

**The CPT recommends that the Aruban authorities take the necessary steps to put an end to this practice. As envisaged by the law, extension of police custody beyond two days should be the exception, not the rule. Further, when an extension is granted, it should be for the shortest time possible, consistent with the legitimate interests of the investigation; any decision to extend police custody beyond two days should be grounded in writing and the investigating judge should be empowered not only to declare the extension unlawful but also to reduce its duration.**

### 3. Conditions of detention

#### a. introduction

17. It would appear useful to reiterate the minimum standards recommended by the CPT for conditions of detention in police cells.

All police cells should be clean, of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, cells should enjoy natural light. Further, cells should be equipped with a means of rest (e.g. a fixed chair or bench), and persons obliged to stay overnight in custody should be provided with a clean mattress and clean blankets (or sheets, in warmer climates).

Persons in police custody should be allowed to comply with the needs of nature when necessary, in clean and decent conditions, and be offered adequate washing facilities. They should have ready access to drinking water and be given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day. Whenever persons are held for more than 24 hours, they should be provided with appropriate personal hygiene items and be offered outdoor exercise every day.

b. situation encountered in the establishments visited

18. In all three establishments visited, the ventilation was very poor and the cells were extremely hot, and there was little or no access to natural light and inadequate access to water. Detained persons had to sleep on a concrete slab (at best with a wooden covering) and were provided with neither a mattress nor bed sheets. Further, there was no call-bell system and no outdoor exercise was offered. In short, the living conditions in the three police stations visited were seriously sub-standard.

19. The detention block at Noord Police Station was of recent construction and had only become operational several months prior to the visit. It consisted of one bare multi-occupancy cell (measuring some 20m<sup>2</sup>) and 12 cells for individual use. Each single-person cell contained a concrete plinth and measured just over 5m<sup>2</sup>, not including the partitioned toilet and shower. No mattress or other bedding or towel were provided. None of the cells benefited from any natural light, as they had no windows; if windows had been included in the design of the corridor facing the cells, they would clearly have provided natural light and ventilation. The only illumination came from neon lighting in the connecting corridor, which was never switched off. No opportunity for outdoor exercise was provided, although there was space outside the building which could be transformed into an exercise area. According to the officer in charge, insufficient staff would be available to supervise periods of outdoor exercise. At the time of the visit, two persons were being held, one of whom had spent 13 days in such conditions.

20. As regards Oranjestad Police Station, there was no evidence of the upgrading work said to have been effected after the CPT's visit in 1994<sup>8</sup>. In 2007, the cell block was directly adjacent to the administrative block and consisted of 20 cells for individual use, with seven persons (one woman and six men) detained at the time of the visit.

The conditions found were extremely poor; the cell area was filthy and infested with rats - acknowledged by officers on duty - and cockroaches. The sanitary facilities did not function properly - a deficiency compounded by serious problems with the drainage system - and as a result the corridors were constantly covered in water and urine. Access to lighting and ventilation were totally inadequate: there was no artificial lighting in the cells; the floor and walls were patchy; and a powerful stench pervaded the area. Constant loud noise also emanated from the air-conditioning unit cooling the administrative offices adjacent to the cell block.

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<sup>8</sup>

The cell area was described in detail at paragraphs 198 to 203 of the report (CPT/Inf(96) 27).

21. One person was detained at San Nicolaas Police Station<sup>9</sup> at the time of the CPT's visit there. Since the previous visit in 1994, refurbishing work had been undertaken to repair the plumbing and add wooden coverings to the concrete plinths in the women's multi-occupancy cell. However, persistent drainage problems meant stagnant water and consequently a problem with mosquitoes. An intercom system was installed, connecting the cell area to the office block, but it was not physically accessible to detained persons. Further, a new exercise yard was never used due, apparently, to a lack of staff, which meant detained persons would spend 10 to 13 days without ever going outside. Finally, the 'cachot' or disciplinary cell was dungeon-like with almost no air or light (artificial or natural); the walls were stained with human excrement, the in-cell sanitary facility was broken and dirty and the cell had no functioning water supply. Although the delegation was informed by staff on duty that this cell was rarely used, custody records indicated that it was in regular use, for periods of several days at a time, and that, on occasion, minors were placed in it.

22. The poor material conditions observed in the police stations in Aruba, including the recently constructed cellblock at Noord, could readily be described as degrading. At the end of the visit, the CPT's delegation invoked Article 8, paragraph 5 of the Convention, and requested that the cells at Oranjestad Police Station and the disciplinary cell at San Nicolaas Police Station be immediately taken out of service<sup>10</sup>.

By fax of 22 June 2007, the Aruban authorities informed the CPT that the private office of the Minister of Justice had carried out an inspection of Oranjestad and San Nicolaas police stations on 11 June, and had noted a number of serious deficiencies in the police stations' installations. The Minister of Justice had ordered the closure of the disciplinary cell at San Nicolaas Police Station and issued instructions to the Directorate of Public Works and the Technical Inspections Service. As a result, a number of the problems identified had already been remedied and the aforementioned bodies would be taking further action to resolve the remainder of the issues.

By further letter of 25 September 2007, the authorities informed the CPT that the police cells in Oranjestad had been closed down on 31 August 2007, and persons previously detained there were transferred to Noord and Santa Cruz Police Stations. Further to a survey, funds<sup>11</sup> had been secured for extensive refurbishing of all four police stations on Aruba to begin in the near future. In particular, intercom systems would be installed, and mattresses purchased, for all cell blocks.

23. The Committee welcomes the vigorous steps undertaken by the Aruban authorities in response to the delegation's immediate observations. **The CPT requests confirmation from the Aruban authorities that all police cells have been refurbished in accordance with the minimum standards outlined in paragraph 17 above; the Committee would like to receive a detailed account of the measures taken. Further, the CPT recommends that the authorities ensure, through regular maintenance and inspections, that such minimum standards are sustained in all the police stations.**

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<sup>9</sup> For a description of the cell area, see paragraphs 204 to 205 of the report on the CPT's first visit to Aruba (CPT/Inf (96) 27).

<sup>10</sup> These immediate observations were formalised in writing by letter of 11 July 2007.

<sup>11</sup> AWG 384, 641.00

#### 4. Safeguards against ill-treatment by the police

##### a. introduction

24. Persons who are deprived of their liberty by the police should be afforded a range of key safeguards to protect them against potential ill-treatment by the police.

The CPT attaches particular importance to the right of persons deprived of their liberty to inform a close relative or another person of their choice of their situation; the right of access to a lawyer; and the right of access to a doctor. These rights should apply from the very outset of the person's deprivation of liberty, i.e. as from the moment in which the person is obliged to remain with the police. Persons should also be adequately informed of the possibility to avail themselves of these rights, and it should be possible to verify the operation of these safeguards by consulting police custody records.

25. In Aruba, two general legal provisions should be noted which govern the enjoyment of rights by persons deprived of their liberty by the police. One is Article I.5-5 of the Aruban Constitution, which provides that detained persons may be restricted in their fundamental rights insofar as the exercise of those rights is incompatible with the deprivation of liberty. The other is Article 90 of the CCP, which further provides that no undue restrictions are permitted except for reasons of public order. Article 90.2 also specifies that a prosecutor may determine restrictions, e.g. on access to reading materials or the possibility to receive visits from, or correspond with, particular persons. Such restrictions are clearly to be determined on a case-by-case basis and an appeal may be lodged against them. These provisions favour the enjoyment of rights, and consider their denial as the exception rather than the rule; as such, they are indicative of a positive approach.

However, in practice, the police's main reference text relevant to the exercise by detainees of their fundamental rights is Police Order (*Korpsorder*) No. 10/2004 on Arrested Persons. This text - which is essentially a catalogue of police responsibilities, as opposed to a positive statement of rights - would appear to be more restrictive, and at odds with the aforementioned general principles.

**The CPT recommends that the Aruban authorities draw up regulations governing the rights of arrested or detained persons which are in line with Article I.5-5 of the Aruban Constitution and Article 90 of the CCP, as well as with the recommendations set out below.**

b. the right to notify a third party of one's detention

26. As was the case at the time of the previous visit to Aruba<sup>12</sup>, no right to notify a third party of one's detention is explicitly provided for in the criminal procedure<sup>13</sup> or in police regulations. The form on information of rights signed by apprehended persons reflects the content of CCP Article 82 to the letter and also makes no mention of the possibility to notify a third party.

The CPT's delegation was informed by the Aruban authorities that, in practice, every apprehended person is permitted to make a telephone call, unless it is contrary to the interests of an ongoing investigation. It was not clear whether a decision not to allow notification could be taken by the police or required a decision by a prosecutor or judge. In the case of minors, their parents or guardians have visiting rights analogous to those of the lawyer<sup>14</sup>. Such visiting rights would presuppose that parents or guardians are, in practice, notified of a minor's detention.

27. Many persons interviewed by the CPT's delegation about their detention in police premises perceived themselves as being held incommunicado, as they allegedly had not been permitted to inform anybody about their detention. Further, there was no record in any police registers attesting to a practice of allowing a person to make a phone call or to have a close friend or relative informed by the police.

**28. The CPT calls upon the Aruban authorities to ensure that all persons deprived of their liberty by the police, for whatever reason, are granted the right to notify a close relative or third party of their choice about their situation as from the very outset of their deprivation of liberty.**

**The exercise of this right could be made subject to certain exceptions designed to protect the legitimate interests of the police investigation, provided those exceptions are clearly circumscribed in law and made subject to appropriate safeguards (i.e. the decision to delay to be recorded in writing with the specific reasons therefore, and to require the approval of a senior police officer unconnected with the case at hand or a public prosecutor) and strictly limited in time.**

c. access to a lawyer

29. As already stated above,<sup>15</sup> it is during the period immediately following apprehension - and, a fortiori, during which the individual is subjected to police questioning under an investigation procedure - that the risk of intimidation and ill-treatment is at its greatest. Consequently, the possibility for persons taken into police custody to have access to a lawyer during that period is a fundamental safeguard against ill-treatment.

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<sup>12</sup> See the report on the CPT's first visit to Aruba (CPT/Inf(96) 27) at paragraph 212.

<sup>13</sup> Cf CCP Article 82.

<sup>14</sup> See CCP Article 482, in conjunction with 70, as well as Section 6.4 of Police Order No. 10/2004.

<sup>15</sup> See paragraph 14, subparagraph 3.

The right of access to a lawyer must include the right for any person deprived of liberty to talk to his lawyer in private upon being admitted into the police station. The person concerned should, in principle, be entitled to have a lawyer present during any interrogation. Naturally, the fact that a detained person has stated that he wishes to have access to a lawyer should not prevent the police from beginning to question him on urgent matters before the lawyer arrives. Provision could also be made for the replacement of a lawyer who impedes the proper conduct of an interrogation, on the understanding that such a possibility should be strictly circumscribed and subject to appropriate safeguards.

30. Aruban criminal procedure provides that every suspect who is brought to a place for questioning must, immediately thereafter, and in any case before any questioning begins, be informed of his right to be assisted by a lawyer, and, if he cannot afford a lawyer, of his right, if he is placed in custody (*in verzekeringstelling*), to have one provided to him free of charge<sup>16</sup>.

The CPT's delegation was informed by the Aruban authorities that no right is granted for a lawyer to be present at his or her client's interrogation by the police. In practice, it would appear that, if the suspect already has a lawyer, he or she would be called by the police after the interrogation.

31. The CCP provides that the lawyer has the right to unhindered access to his or her client, including consultations in private and confidential correspondence<sup>17</sup>. However, in case of serious suspicion that it would hinder the course of justice, access to a lawyer may be restricted or denied by the prosecutor<sup>18</sup> for a maximum period of eight days.

The CPT has serious reservations about this provision<sup>19</sup>. The Committee is aware that, in a number of countries, it is possible, exceptionally, to delay for a certain period a detained person's access to a lawyer of his choice on the grounds that this is necessary to protect the legitimate interests of the police investigation. Provisions of this kind should in no case result in the right of access to a lawyer being denied during the period in question. Whenever such a provision is applied, access to another lawyer should be arranged. Although certain arrangements would appear to be possible in Aruba under the CCP<sup>20</sup>, the relevant provisions do not explicitly provide that, in such cases, access to another lawyer is, in practice, ensured without delay.

32. As concerns persons who avail themselves of the right to free legal aid, the CPT's delegation was informed by the Aruban authorities that, although in principle the duty lawyer roster system should allow for access to a lawyer on the same day as the person's placement in police custody, duty lawyers often did not turn up.

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<sup>16</sup> CCP Article 82, paragraph 1c.

<sup>17</sup> CCP Article 70, paragraph 1.

<sup>18</sup> Or, later, during the judicial investigation, by the investigating judge. See CCP Article 70, paragraph 2.

<sup>19</sup> Indeed the Committee had also expressed reservations with regard to a similar provision in the former CCP applicable at the time of the visit in 1994.

<sup>20</sup> See CCP Articles 59, 62, 63 and 70.

33. **The CPT recommends that the Aruban authorities ensure - if necessary by amending the relevant legal provisions - that all persons arrested have the right of access to a lawyer from the very outset of, and throughout, their deprivation of liberty, including during any interrogation.**

Further, the CPT recommends that the Aruban authorities take the necessary steps to ensure the effectiveness of the system of legal aid for persons detained by the police who are not in a position to pay for a lawyer.

d. access to a doctor

34. According to Section 5.7 of the Police Regulation on Arrested Persons (Police Order Nr. 10/2004), when a person in police custody asks to see a doctor, the duty police officer must call one or organise for the person to be sent to hospital. Further, the same section provides that the duty police officer is responsible for ensuring that any person showing signs of injuries is not incarcerated before being seen by a nurse or doctor.

In practice, however, the CPT's delegation observed that access to a doctor was difficult, if not impossible. No doctor had visited Oranjestad Police Station since the beginning of 2007. Further, the delegation met a person at Oranjestad Police Station to whom access to his regular blood pressure medication, and to a doctor, had been denied. Indeed, quite apart from the numerous allegations of denial of access to a doctor during police detention, it was apparent from discussions with officers on duty, that it was very rare that a doctor would be called. Moreover, police officers would "investigate" whether the person requesting a doctor really needed to see one. This state of affairs is not acceptable.

35. **The CPT recommends that the Aruban authorities take the necessary steps - including through the allocation of adequate funds - to ensure that persons deprived of their liberty by the police have effective access to a doctor from the very outset of their deprivation of liberty. In particular:**

- a request by a detained person to see a doctor should be granted; it is not for police officers, nor for any other authority, to filter such requests;
- a person taken into police custody should have the right to be examined, if he so wishes, by a doctor of his own choice, in addition to any medical examination carried out by a doctor called by the police (it being understood that an examination by a doctor of the detained person's own choice may be carried out at his own expense);
- all medical examinations should be conducted out of the hearing and - unless the doctor concerned expressly requests otherwise in a given case - out of the sight of police staff;
- the results of every examination, as well as any relevant statements by the detained person and the doctor's conclusions, should be formally recorded by the doctor and made available to the detainee and his lawyer;
- the confidentiality of medical data is to be strictly observed, without prejudice to the right of the person concerned to make reference to that medical data; and
- the police station records should indicate the date and time of requests to see a doctor, when a doctor is called and when the doctor has visited.



e. information on rights

36. Persons taken into police detention should be expressly informed, without delay and in a language which they understand, of their rights, and in particular the right to notify a third party of their detention, the right of access to a lawyer and the right of access to a doctor.

37. A standard notification form, available in Dutch, Papiamentu, English, and Spanish, was in use at the police establishments visited. In accordance with CCP Article 82, it was used before the beginning of questioning, and it referred to the right to remain silent, the right to legal counsel and the right to have a lawyer assigned free of charge in the event of custody (*in verzekeringstelling*). The form requires the signature of the arresting officer and the arrested person. In the event that the arrested person refuses to sign, the refusal is also noted on the form.

The use of such a form marks a significant improvement compared to the situation found during the CPT's first visit to Aruba<sup>21</sup> and the Committee would commend the authorities for this improvement. However, two fundamental rights, namely to inform a third person of one's choice of one's detention, and the right of access to a doctor, are notably absent from the form.

**The CPT calls upon the Aruban authorities to ensure that all persons detained by the police - for whatever reason - are fully informed of their above-mentioned fundamental rights, including to inform a third person of their choice of their detention, and to have access to a doctor, as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). This should be ensured by provision of clear verbal information at the very outset, to be supplemented at the earliest opportunity (that is, immediately upon arrival at police premises) by provision of the written notification form, which should be revised in accordance with the foregoing remarks.**

f. custody records

38. The CPT's delegation noted that police records were not rigorously completed. In particular, certain events, such as visits from lawyers, were not systematically recorded.

The CPT considers that the fundamental guarantees of persons taken into police detention would be reinforced if a single and comprehensive custody record were to be kept for each of these persons. In this record would be entered all aspects of custody and all measures taken in connection with it: when and for what reason(s) the custodial measure was taken; when the person arrived on police premises; when he/she was informed of his/her rights; whether he/she showed signs of injuries, health problems, mental disorder, etc.; in which cell(s) he/she was placed; when fed; when questioned; when he/she requested to see a doctor and when a doctor was called; when he/she had contacts with and/or visits from close relatives, a lawyer, a doctor or a representative of the consular services; when transferred; when brought before a prosecutor; when remanded to prison or released, etc.

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<sup>21</sup> See CPT/Inf(96) 27, at paragraphs 222 and 223.

**The CPT recommends that comprehensive custody records including the aforementioned information be introduced and diligently kept at police stations in Aruba. Further, for various questions (e.g. personal effects confiscated; having been informed of one's rights and having availed oneself of or waived them; having been able to inform a close relative or another third party), the detainee's signature should be required and, if necessary, its absence duly accounted for.**

g. complaints procedures

39. Another effective means of preventing ill-treatment by law enforcement officials lies in the diligent examination by the competent authorities of all complaints of such treatment brought before them and, where evidence of wrongdoing emerges, the imposition of appropriate disciplinary and/or criminal penalties. This will have a very strong deterrent effect. Conversely, if the relevant authorities do not take effective action upon complaints referred to them, those minded to ill-treat persons deprived of their liberty will quickly come to believe that they can act with impunity.

In this connection, the CPT considers that the persons responsible for overseeing and carrying out investigations into possible ill-treatment by law enforcement officials should be independent from those implicated in the events. Further, such investigations should offer guarantees of effectiveness, promptness and expeditiousness.

40. Two bodies were competent to carry out investigations into misbehaviour by members of the Police Corps of Aruba (KPA): the *Landsrecherche* and the *Bureau Interne Zaken en Onderzoeken* (the KPA Internal Affairs and Investigations Bureau or 'BIZO'). Both could carry out investigations into criminal offences, and the BIZO could also conduct disciplinary investigations. In 2006 the BIZO conducted 30 investigations into ill-treatment potentially constituting a criminal offence, whereas the *Landsrecherche* conducted two investigations in the same period. Between 2000 and 2007, disciplinary investigations into ill-treatment by members of the KPA had resulted in seven dismissals.

Further, an Independent Police Complaints Committee was originally established by governmental decree on 26 March 2002. However, it was inactive, due to a position left vacant, and complaints were dealt with by the BIZO. Since the visit, the Committee has learned that the Minister of Justice had reactivated this body. The CPT welcomes this development **and trusts that the necessary resources will be allocated to the Independent Police Complaints Committee to enable it to strengthen the effectiveness of the complaints system in Aruba.**

## **B. Foreign nationals detained under aliens legislation**

### **1. Preliminary remarks**

41. Aruban legislation foresees the detention of irregular migrants<sup>22</sup>. Detention orders issued by the Border Guard authority (*Warda Nos Costa*<sup>23</sup>), which is responsible for detaining and deporting aliens, are of an indefinite duration but they must be notified to the Attorney-General within four days. However, pursuant to Aruban case-law, the maximum duration of detention of irregular migrants has been set at 90 days and, on that basis, the Border Guard authority has developed a practice of releasing a foreigner after 60 days of detention on the condition to report regularly to the Border Guard authority.

**The CPT invites the Aruban authorities to consider developing further the use of alternative, non-custodial, measures for irregular migrants.**

42. The CPT considers that, in those cases where it is deemed necessary to deprive persons of their liberty for an extended period under aliens legislation, they should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation and staffed by suitably qualified personnel.

The Aruban authorities have established a specific centre<sup>24</sup>, the ‘Centro pa detencion di ilegalnan’ for holding immigration detainees, adjacent to KIA.

However, despite assurances from the authorities that aliens were not held in law enforcement premises overnight, the CPT’s delegation encountered numerous persons who had spent some considerable time - seven or eight days - in a police station<sup>25</sup> before being transferred into custody at the Centre. Such a practice should cease. **The CPT recommends that the Aruban authorities ensure that irregular migrants are not detained in police cells for extended periods, i.e. any time longer than is necessary to arrange their transfer to the Centre.**

43. Expulsion decisions, issued by the Attorney-General, could be appealed with suspensive effect, but the CPT’s delegation was informed that, in practice, very few appeals were lodged.

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<sup>22</sup> Article I.5 1 f) of the *Staatsregeling* (Constitution) of Aruba (like Article 5 (1) (f) of the European Convention of Human Rights) explicitly allows the “lawful detention of persons to prevent their effecting an unauthorized entry into the country or of persons against whom action is being taken with a view to deportation or extradition.”

<sup>23</sup> Part of the ‘*Instituto Alarma y Seguridad Aruba*’ (‘IASA’, the Aruban Emergency and Security Services), under the responsibility of the Ministry of Justice.

<sup>24</sup> Cf the situation found during the CPT’s previous visit, in 1994, in CPT/Inf(96) 27, at paragraph 183.

<sup>25</sup> Particularly in the case of persons attempting to cross the borders. Those already present on the territory were brought directly to the Centre.

## 2. Ill-treatment

44. It should be stated at the outset, that the CPT's delegation heard no allegations of physical ill-treatment of detained persons by supervisory staff of the 'Centro pa detencion di ilegalnan' for immigration detainees.

The delegation did, however, receive allegations of several occasions of verbal harassment and disrespectful behaviour by one staff member towards a particular person who was detained at the establishment for nearly two months. **The CPT recommends that staff working at the Centre be reminded that disrespectful, aggressive or insulting behaviour will not be tolerated and will be severely sanctioned.**

## 3. Conditions of detention at the 'Centro pa detencion di ilegalnan' for immigration detainees

45. With an official capacity of 60 places, the 'Centro pa detencion di ilegalnan' for immigration detainees was accommodating 16 persons, seven women and nine men, at the time of the visit. The Centre's 24 cells were arranged in two, two-storey wings facing one another across a large yard. The women were held in four cells on the upper level of one wing and the men in four cells on the ground floor. Whereas the majority of persons had been detained at the Centre for 6 days, a small number had been detained for several weeks and one as many as nine weeks.

46. As regards material conditions at the Centre, the cells were generally intended for holding one or two persons, and were of an adequate size for such an occupancy level<sup>26</sup>. Nevertheless, at the time of the visit, one ground floor cell and one upper level cell each held three persons. Even if such an arrangement were made at the detained persons' request, the small upper level cell in particular was overcrowded as a result. The metal-bar cell doors ensured that there was adequate natural light and some aeration, and the artificial lighting could be switched on and off by the cell occupants.

However, the cells were dirty and infested with cockroaches and mosquitoes. Dirty mattresses on the cell floors were the only furnishings. The in-cell sanitary facilities were partially partitioned and the shower could be activated by the occupants of the cell. Unfortunately, due to the inadequate plumbing arrangement, whereby the toilet consisted of a hole in the cement floor of the shower, the shower drains were often blocked and unusable. As a result, a powerful smell emanated from the drains.

Sheets were provided and washed by detainees themselves. Towels and some basic personal hygiene products were provided by the Centre, if detained persons did not have their own.

As there were no call-bells, detained persons had to call out to staff across the yard to obtain their attention.

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<sup>26</sup> Approximately 10m<sup>2</sup> on the upper-level and 14m<sup>2</sup> on the ground floor.

47. No regime activities of any description were on offer at the Centre. Detainees were confined to their cells for 22 hours a day and allowed to go into the exercise yard for one hour in the morning and one in the afternoon. The yard contained nothing but a few broken chairs.

48. At the official talks held at the end of the visit, the CPT's delegation drew attention to the shortcomings as regards material conditions and the absence of regime activities at the Centre. By letter of 25 September 2007, the Aruban authorities responded that they considered the Centre to be a temporary facility falling short of the requisite standards. An assessment was under way to determine whether it was financially feasible to refurbish and improve the Centre or to move the facility to a new location. In the meantime, new beds had been ordered and were delivered to the Centre and the period of outdoor exercise had been extended to a total of three hours per day: two hours in the morning and one in the afternoon.

49. The CPT welcomes the spirit of cooperation demonstrated by this response and trusts that acceptable conditions of detention will be provided to immigration detainees without further delay. Should persons continue to be detained at the current premises, **the CPT recommends that the Aruban authorities take urgent steps to ensure that:**

- **the in-cell sanitary facilities are promptly repaired and refurbished so as to provide hygienic conditions;**
- **all detainees are allocated a bed and provided with a clean mattress and clean bedding;**
- **all cells are fitted with call-bells;**
- **all detainees are provided with the necessary products and equipment to keep their accommodation clean, as well as with products for personal hygiene (i.e. toilet paper, soap, tooth paste, toothbrush, etc.).**

Further, as concerns regime, **the CPT recommends that:**

- **all detainees be allowed to spend a large proportion of the day outside their cells;**
- **steps be taken to introduce recreational opportunities, such as access to television, radio, reading material and sports. The longer the period for which persons are detained, the more developed should be the activities which are offered to them.**

50. The staff of centres for immigration detainees have a particularly onerous task. Firstly, there will inevitably be communication difficulties caused by language barriers. Secondly, many detained persons will find it difficult to accept the fact that they have been deprived of their liberty when they are not suspected of any criminal offence. Thirdly, there is a risk of tension between detainees of different nationalities or ethnic groups.

Consequently, the CPT places a premium upon the supervisory staff in such centres being carefully selected and receiving appropriate training. Staff should possess both well-developed qualities in the field of interpersonal communication and cultural sensitivity, given the diverse backgrounds of the detainees; at least some staff members should have relevant language skills. Further, they should be taught to recognise possible symptoms of stress reactions displayed by detained persons and to take appropriate action.

The staff working at the Centre were employed by the Government Security agency (“CEA”<sup>27</sup>) and had a strictly supervisory role; they had no say in policy and perimeter decisions, such as issues of access to urgent medical assistance - these were responsibilities of the Border Guard authority. CEA staff were, however, the staff members who had regular contact with persons detained at the Centre. At the time of the visit, mixed-gender staffing was the norm at the Centre, which is a positive measure. Nevertheless, staff members had not received specific training to deal with the particular needs of foreign nationals detained under aliens legislation. **The CPT recommends that the Aruban authorities remedy this lacuna in the light of the above remarks.**

51. As regards medical care, no medical screening was carried out of new arrivals at the Centre. The CPT considers that the carrying out of such screening is in the interests of both detainees and staff, and is also a preventive public health measure. Such screening should be performed by a doctor or by a qualified nurse reporting to a doctor.

Moreover, it appeared that access to a doctor was being unnecessarily delayed. The delegation was told that when a detained person requested to see a doctor, staff on duty at the Centre would first contact the Border Guard authorities and, if necessary, the person would be transferred to hospital for consultation and treatment. The delegation received a number of complaints from the majority of detainees that their requests to see a doctor had gone unheeded. It was also informed that funding for medication was lacking and as a result CEA staff members had on occasion helped detainees by paying for their prescription medication.

**The CPT recommends that systematic medical screening of all immigration detainees, including for transmissible diseases, be introduced. Such screening should be carried out in a way that respects medical confidentiality. Further, there should be a daily presence of a person with a recognised nursing qualification, and access to acute medical and dental care and appropriate psychological/psychiatric assistance should be available.**

#### **4. Safeguards against the ill-treatment of foreign nationals detained under aliens legislation**

52. In the CPT’s view, immigration detainees (whether asylum-seekers or not) should be entitled, as from the outset of their deprivation of liberty, to inform a person of their choice of their situation and to have access to a lawyer and to a medical doctor. Further, immigration detainees should be expressly informed, without delay and in a language they understand, of their rights and the procedure applicable to them. To this end, all immigration detainees should be systematically provided with a document setting out this information; the document should be available in the languages most commonly spoken by those concerned and, if necessary, the services of an interpreter should be made available. The persons concerned should attest that they have been informed of their rights, in a language they can understand.

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<sup>27</sup> *Cuerpo Especial Arubano.*

53. It would appear that immigration detainees do not benefit from the full protection of the safeguards outlined in paragraph 52 above. In particular:

- there is no right guaranteed to inform a person of one's choice of one's detention. Indeed most persons interviewed by the delegation perceived themselves as being held incommunicado;
- although access to free legal assistance was, by law, limited to Aruban citizens, the delegation did come across instances in which free legal aid was provided to foreign nationals who could not afford a lawyer. Nevertheless, most persons interviewed by the delegation complained of delays of three days or more in obtaining access to a lawyer;
- apart from a copy of the detention order in Dutch, information on rights and procedures was not provided to all detainees in a language they understood;
- the assistance of an interpreter was also not provided. Several persons complained to the delegation of considerable problems communicating with the lawyer, or understanding documentation.

**The CPT recommends that the Aruban authorities take the necessary steps to ensure that all persons held under aliens legislation are afforded the fundamental safeguards, as outlined in paragraph 52 above.**

54. Moreover, persons detained at the Centre had no contact with the outside world. No visits were allowed and no telephone was available for detainees at the Centre. Clothes and money could be delivered to detained persons.

**The CPT recommends that immigration detainees be allowed to maintain contact with the outside world during their detention, and in particular to have access to a telephone and to receive visits from relatives and representatives of relevant organisations.**

55. The asylum procedure followed in Aruba provides for a first interview and evaluation by the Immigration Service, which then sends this evaluation to the Asylum Committee<sup>28</sup>, which conducts a further analysis, including further interviews, if necessary, and usually consults the UNHCR office in Caracas (Venezuela). The Asylum Committee then sends its findings to the Minister of Alien integration, Policy and Admission, who takes a final decision on the asylum request. Since 2003, an average of three to four asylum applications were lodged per year, none successful at the time of the visit.

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<sup>28</sup> Established by Ministerial Decree in 2003, this ad hoc Committee is composed of legal advisers from the Police department, the Department of Alien integration, Policy and Admission, the Department of Foreign Affairs and the Immigration authorities.

56. In the course of the visit to the Centre, the CPT's delegation encountered a number of persons who had indicated their wish to seek asylum, but who appeared to have received no information about whether their case was being considered. Further, information gathered by the delegation indicated that officials entrusted with handling asylum application cases have not been provided with appropriate training in this field.

The CPT notes that the Minister of Justice has issued instructions<sup>29</sup> to the Immigration department and to officers of the Border Guard authority (*Warda Nos Costa*) that when persons indicate upon arrival in Aruba that they are refugees and they wish to apply for asylum, the asylum committee must be informed at once. This is a positive step.

However, in order to ensure that those who might wish to do so can take full benefit of the asylum procedure and, more generally, to ensure that no foreign national is sent to a country where he/she runs a risk of being subjected to torture or inhuman or degrading treatment or punishment, it is essential that the Aruban authorities implement in full the safeguards referred to in paragraphs 52 to 54. **Further, officials entrusted with handling asylum applications should be provided with appropriate training.**

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<sup>29</sup> Dated 8 December 2005.



## C. Aruba Correctional Institute - KIA

### 1. Preliminary remarks

57. Since the previous visit in 1994<sup>30</sup>, the capacity and actual occupancy of the *Korrektie Instituut Aruba* (or 'KIA') had considerably increased. With an official capacity of 310 places<sup>31</sup>, KIA accommodated 277 prisoners, 231 of them sentenced and 46 on remand. There were 247 male and 25 female adult prisoners; five prisoners were under 18 years old, all of them male.

A number of structural changes had also occurred since the previous visit, including the construction of new units for juveniles and for women. However, certain potentially very beneficial facilities and units were not in use, largely due to a shortage in staff.

### 2. Ill-treatment

58. Most prisoners at KIA had no complaints about the manner in which they were being treated by staff. However, the CPT's delegation did receive a few allegations of physical ill-treatment.

59. In **Case A**, a prison officer was alleged to have punched an inmate, R.E., in the left side of the jaw on 2 April 2007. The prisoner's medical file showed that he was seen by the prison doctor, who noted pain in the left temporal area.

At the end of the visit, the delegation requested information about any action taken with regard to this incident. By letter of 25 September 2007, the authorities informed the CPT that disciplinary proceedings were under way.

60. In **Case B**, E.G., a prisoner with a psychiatric condition, had set fire to his cell and threatened staff with a knife on 18 November 2006. The prisoner was allegedly violently beaten by a group of six prison officers, and after falling unconscious, handcuffed behind his back and taken to hospital for treatment to his jaw. Medical evidence was available which was consistent with the allegation. The report of the hospital's emergency services to the KIA health services states that the patient had been severely ill-treated at KIA, resulting in possible fracture of the jaw, the left forearm and the right arm. An examination showed a deformation to the left arm, with an open wound and oedema; a deformation to the right arm, painful to the patient; pain to the head, swollen right eye, with a haematoma and an open wound on the right eyebrow; and open wounds to the lips. Further, X-rays confirmed a fracture of the left forearm, which was subsequently placed in a cast.

The prison doctor examined the prisoner on his return to KIA the same day and filed a report to the Minister of Justice dated 19 November 2006. At the end of the visit, the CPT's delegation was informed that an investigation by the *Landsrecherche* into this incident was under way. **The CPT wishes to be kept informed of the results of the investigation.**

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<sup>30</sup> See CPT/Inf(96) 27, paragraphs 233 to 326.

<sup>31</sup> Or 390 places, counting units in the prison which were unused at the time of the visit.

61. In the light of the cases outlined above, the Committee wishes to recall that the State is under a duty to provide care for all persons deprived of their liberty in prison, and that the frontline in providing such care rests with prison officers. The authorities must not only undertake a proper investigation into allegations of ill-treatment, but also institute measures to ensure that all prison officers and managers understand why ill-treatment is unacceptable and unprofessional and that, furthermore, it will result in severe disciplinary sanctions and/or criminal prosecution.

**The CPT recommends that concrete measures are taken to eradicate ill-treatment of prisoners by prison staff at KIA, including through improved management and supervisory mechanisms.**

62. The delegation received numerous allegations of inter-prisoner violence, during which prison officers were said to have remained passive when they should have intervened; in some of these cases, such an attitude allegedly exacerbated the situation. On other occasions involving incidents of inter-prisoner violence, there were allegedly no prison officers present or even close at hand.

The CPT wishes to emphasise that the duty of care which is owed by the prison authorities to prisoners in their charge includes the responsibility to protect them from other prisoners who might wish to cause them harm. The prison authorities must act in a proactive manner to prevent violence by inmates against other inmates.

Addressing the phenomenon of inter-prisoner violence and intimidation requires that prison staff be alert to signs of trouble and both resolved and properly trained to intervene when necessary. The existence of positive relations between staff and prisoners, based on the notions of dynamic security and care, is a decisive factor in this context; this will depend in large measure on staff possessing appropriate interpersonal communication skills. It is also obvious that an effective strategy to tackle inter-prisoner intimidation/violence should seek to ensure that prison staff are placed in a position to exercise their authority in an appropriate manner. Consequently, the level of staffing must be sufficient (including at night-time) to enable prison officers to supervise adequately the activities of prisoners and support each other effectively in the exercise of their tasks. Both initial and ongoing training programmes for staff of all grades must address the issue of managing inter-prisoner violence.

**The CPT recommends that the prison management develop a strategy to address the problem of inter-prisoner violence, in the light of the foregoing remarks. It would like to be informed of the measures planned in this respect.**

### 3. Conditions of detention

#### a material conditions

63. Material conditions at the previously visited sections at KIA were, for the most part, satisfactory<sup>32</sup>. The notable exceptions concern the disciplinary cells, addressed at paragraph 90 and, to a lesser extent, the admissions section, which was malodorous, due to drainage problems.

64. The new women's section grouped all female prisoners together, with no separation between remand and sentenced prisoners, or adults and minors, though no female minors were held at the time of the visit. The unit consisted of a long hall with, on one side, 19 cells on two floors and, on the other side, the staff control room, a dining/sitting area equipped with tables and chairs, an activities room, including fitness machines and, on the upper level, two disciplinary cells (described at paragraph 90).

Each cell measured less than 9m<sup>2</sup><sup>33</sup> - not counting the partly partitioned sanitary annexe consisting of a shower, toilet and washbasin - and was occupied by up to three persons. As in the rest of the prison, each cell was closed off (on the doorway side) by floor-to-ceiling bars, offering virtually no privacy. The cells were furnished with triple bunk beds and good-quality bedding and in-cell artificial lighting was good. The openings in the concrete structure provided sufficient natural light to the section, but insufficient ventilation (and no possibility to see outside the building).

One cell had been fitted with air-conditioning in order to allow a prisoner, who was due to give birth, to keep her child with her; it was not clear until what age the child would be allowed to remain in the prison with its mother.

65. The new juveniles' section was of much the same design as the women's section, only smaller, with 12 ordinary and two disciplinary cells. The sports equipment in the activities room was broken.

66. **The CPT reiterates its recommendation<sup>34</sup> that the maximum capacity of cells be progressively reduced to two prisoners, including in the new women's and juveniles' sections. Further, the authorities should explore the possibility of improving ventilation in the women's and juveniles' sections, and of allowing prisoners to maintain some degree of privacy in cells throughout the prison. It would also be desirable for women and juveniles to be able to look outside when in their cells.**

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<sup>32</sup> See the descriptions in the report on the CPT's previous visit (CPT/Inf(96) 27), at paragraphs 236 to 240.

<sup>33</sup> Roughly the same size as cells in the older cellblocks accommodating adult male prisoners.

<sup>34</sup> See the report on the CPT's previous visit (CPT/Inf(96) 27), at paragraphs 238 and 250.

67. As noted above, certain potentially very beneficial facilities and units were not in use, due to a shortage in custodial and other qualified staff: the CPT's delegation noted the new forensic psychiatric support unit (FOBA<sup>35</sup>), a new seclusion unit, the dentistry facilities, an activities room for women and juveniles, and the new visiting area - all of them of recent construction or renovation, yet they were not in use.

**The CPT recommends that efforts be made to ensure that all facilities at KIA are brought into service.**

b. regime

68. During their time in prison, prisoners need to prepare for release into the community and to feel confident that they will be capable of leading a life away from crime. A regime which provides for varied activities, as part of an individualised custody plan, is a vital component in the preparation for release, as well as being beneficial for the running of the prison.

Considerably more time was spent out-of-cell than prisoners were allowed at the time of the previous visit in 1994. Facilities for outdoor exercise were also spacious and in good condition. Nevertheless, a common complaint from prisoners concerned the lack of activities on offer. This was the case particularly for adult men, who spent most of their time in a state of enforced idleness. 109 prisoners worked in various jobs in and around the prison. Limited spaces were available for activities such as sports, English classes and religious education. Although the regime for juveniles was somewhat more structured than that offered to adult prisoners, it lacked activities of vocational value.

**The CPT reiterates its recommendation that activities for prisoners be further developed, with a view to ensuring that all prisoners (including those on remand) can spend a reasonable part of the day (i.e. 8 hours or more) outside their cells engaged in purposeful activities of a varied nature: work, preferably with vocational value; education; sport; recreation/association. In particular, young prisoners must be offered a full programme of educational, recreational and other purposeful activities.**

69. Two prisoners were serving life sentences at the time of the visit, and 26 inmates were serving long sentences of 10 to 22 years' duration. Yet such prisoners, who formed over 12% of the sentenced prisoners, did not appear to benefit from a richer regime than the rather meagre one on offer to all prisoners; nor did they benefit from adequate psychological support.

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<sup>35</sup> 'FOBA' stands for '*Forensische Observatie- en Begeleidingsafdeling*'. Consisting of 10 ordinary and 1 disciplinary cell, this had formerly been the women's section of the prison.

Long-term imprisonment can have a number of desocialising effects upon inmates. In addition to becoming institutionalised, long-term prisoners may experience a range of psychological problems (including loss of self-esteem and impairment of social skills) and have a tendency to become increasingly detached from society, to which almost all of them will eventually return. In the view of the CPT, the regimes which are offered to prisoners serving long sentences should seek to compensate for these effects in a positive and proactive way. The prisoners concerned should have access to a wide range of purposeful activities of a varied nature (work, preferably with vocational value; education; sport; recreation/association). Additional steps should be taken to lend meaning to their period of imprisonment; in particular, the provision of individualised custody plans and appropriate psychological and social support are important elements in assisting such prisoners to come to terms with their period of incarceration and, when the time comes, to prepare for release. Moreover, the provision of such a regime to life-sentenced prisoners enhances the development of constructive staff/inmate relations and hence reinforces security within the prison.

**The CPT recommends that the Aruban authorities develop a policy vis-à-vis life-sentenced and other long-term prisoners, in the light of the foregoing remarks.**

#### 4. Health care services

##### a. introduction

70. The general health insurance system of Aruba did not cover foreign nationals detained at KIA. Although some efforts were made not to exclude indigent prisoners from access to medication, the low budgetary allocations for prison health care services in general meant that access - particularly to specialist care - posed considerable difficulties for all prisoners, but especially for those who were not covered by the public scheme.

The act of depriving a person of liberty always entails a duty of care which calls for adequate provision of health care services. **The CPT recommends that the Aruban authorities ensure that all prisoners are guaranteed the provision of care - including specialist care - required by their state of health; this implies that the funds allocated to prisons should be sufficient to enable health care services to be provided free-of-charge to prisoners who do not have the necessary resources to pay for them themselves.**

b. medical care in general

71. A prison health care service should be able to provide medical treatment and nursing care, as well as appropriate diets, physiotherapy, rehabilitation or any other necessary special facility, in conditions comparable to those enjoyed by patients in the outside community. Provision in terms of medical, nursing and technical staff, as well as premises, installations and equipment, should be geared accordingly.

In this context, it must be pointed out that the CPT's delegation received many complaints from prisoners at KIA concerning delays in access to medical care generally. It would appear that low staffing led to situations in which the nursing staff were made to assume certain responsibilities pertaining to the doctor.

72. At the time of the visit, the health care team was composed of one general practitioner, who attended the prison three half-days per week, and two full-time nurses (one male, one female), both of whom had a psychiatric qualification. It is planned to recruit a third nurse in 2008.

Given the size and profile of the prison population, **the CPT recommends that the presence of a doctor be increased to ensure daily consultations on weekdays (preferably to the equivalent of one full-time doctor) and that the complement of nurses be increased to five.**

73. Between the hours of 4 pm and 7 am on weekdays, and for the entire weekend, no healthcare staff was present, although the doctor and the two nurses were on-call<sup>36</sup> in case of emergencies. Such a situation is not acceptable and places both staff and prisoners at risk. **The CPT reiterates its recommendation<sup>37</sup> that someone qualified to provide first aid, preferably with a recognised nursing qualification, should always be present in the prison, including at night.**

74. The provision of specialist care was often subject to lengthy delays, if it was available at all. The problems with the provision of psychiatric and psychological care are discussed at paragraphs 79 to 81. Further, no dentist was present. The general practitioner diagnosed the problem and arranged dental care - mostly extractions - at a dental surgery.

In the light of the evident needs of the establishment, **the CPT recommends that a dentist be recruited, on a part-time basis, to provide dental care at KIA.**

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<sup>36</sup> It should be noted that the doctor received no additional remuneration for after-hour visits to the prison and that the same doctor was also on-call for the four police stations and the Centre for immigration detainees.

<sup>37</sup> See CPT/Inf(96) 27, paragraph 285.

c. medical facilities and records

75. The CPT is pleased to note the considerable progress made as regards the infirmary<sup>38</sup> and prisoners' medical records<sup>39</sup>.

The infirmary, conveniently located next to the medical service, was clean and well-furnished and stocked. It contained a room with four beds for the medical supervision of unstable prisoners, and a glass-partitioned room for consultations with the psychiatrist or the psychologist.

Individual medical files contained extensive information and were kept in compliance with the confidentiality of patients' medical data.

d. medical screening on admission / prevention of violence

76. Prompt medical screening of newly arrived prisoners is essential, to evaluate the risk of suicide and to prevent the spread of transmissible diseases. The CPT would also recall that prison health-care services can make a significant contribution to the prevention of ill-treatment of detained persons, through the systematic recording of injuries.

The individual medical files at KIA showed that the screening of newly arrived prisoners was not always carried out within 24 hours, but sometimes only several days, after a prisoner's arrival. Further, this screening did not include screening for transmissible diseases.

**The CPT recommends that every newly admitted prisoner be properly interviewed and physically examined by a medical doctor (or by a fully qualified nurse reporting to a doctor) as soon as possible after his admission; save for exceptional circumstances, the interview/examination should be carried out within 24 hours of admission. Further, this examination should include screening for transmissible diseases (TB, HIV, etc).**

77. The CPT considers that the file drawn up after the examination of a prisoner who shows signs of injury should contain:

- i) a full account of statements made by the person concerned which are relevant to the medical examination (including the description of his/her state of health and any allegations of ill-treatment);
- ii) a full account of objective medical findings based on a thorough examination; and
- iii) the doctor's conclusions in the light of i) and ii).

In his conclusions, the doctor should indicate the degree of consistency between allegations made and the objective medical findings; this will enable the relevant authorities to properly assess the information set out in the record.

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<sup>38</sup> See CPT/Inf(96) 27, paragraphs 289 to 291.

<sup>39</sup> See CPT/Inf(96) 27, paragraphs 292 to 293

The same approach should be followed whenever a prisoner is medically examined following a violent episode in prison. If a prisoner so requests, a certificate containing the above-mentioned information should be made available to the prisoner and to his/her lawyer.

**The CPT recommends that the medical screening procedure be brought in line with the above precepts and that a separate register be established for recording lesions observed on newly admitted prisoners or sustained by prisoners while detained at KIA.**

e. medical confidentiality

78. Medical confidentiality, a fundamental principle of the carer-patient relationship, was not observed, as custodial staff were present during prisoners' consultations with the nurse and they regularly distributed medication to prisoners. **The CPT recommends that medical consultations and the distribution of medicine be organised in such a way as to respect confidentiality. All medical examinations of prisoners (whether on arrival or at a later stage) should be conducted out of the hearing and - unless the health-care staff concerned requests otherwise in a particular case - out of the sight of prison officers. Further, medication should be distributed by a health-care staff member.**

f. psychiatric and psychological care

79. In principle, a psychiatrist attended KIA once a month; however, the delegation noted that he had not visited for several months. The lack of provision of psychiatric care was essentially a budgetary issue. Another problem was one of conflict of roles, as the psychiatrist would not treat persons for whom he had issued a psychiatric assessment in the context of criminal proceedings, and there was apparently no alternative psychiatrist on whose services the establishment could rely.

A psychologist attended the prison once every two months, which was clearly insufficient. A psychiatric and forensic observation and assistance centre (FOBA<sup>40</sup>) within the prison, with a capacity to hold 10 prisoners, had recently been established. However, due to a shortage of staff, both medical and custodial, the FOBA had not been brought into service. In theory, prisoners could receive acute psychiatric treatment at the PAAZ Unit at Oduber Hospital, but resort to hospitalisation was very infrequent.

80. According to the prison's medical staff, a considerable proportion of prisoners at KIA suffered from psychiatric and/or behavioural or addiction-related problems. The provision of psychiatric and psychological care to prisoners was clearly inadequate.

The CPT recalls that obliging prisoners to stay in an establishment where they cannot receive appropriate treatment due to a lack of suitable facilities is an unacceptable state of affairs which could amount to inhuman and degrading treatment.

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<sup>40</sup> In other parts of the Kingdom, such centres also fulfil treatment functions.



81. **The CPT recommends that the Aruban authorities ensure, without further delay, that prisoners who require psychiatric and/or psychological care have access to it.**

In particular, **urgent measures must be taken to secure the necessary staffing for the FOBA, including the frequent, regular presence of a psychiatrist.**

Further, **for those prisoners who require psychiatric and/or psychological care but who would not require admission to a facility such as the FOBA, the CPT recommends that the Aruban authorities take the necessary steps to provide outpatient psychiatric services which are sufficient to meet their needs. In this connection, an establishment of the size of KIA should be able to rely on the regular presence of at least a part-time psychiatrist and a part-time psychologist.**

g. suicide/self-harm

82. Although no suicides had occurred at the prison for the previous three years, health-care staff pointed to an increase in cases of self-harm and suicide attempts.

Prison health care services should ensure that there is adequate awareness of the prevention of suicide throughout the establishment, and that appropriate procedures are followed whenever a prisoner has been identified as a suicide risk and/or has committed acts of self-harm. Medical screening on arrival, and the reception process as a whole, has an important role to play in this context. **The CPT recommends that the Aruban authorities develop a policy for the prevention of suicide and the management of incidents of self-harm at KIA.**

h. hunger strikes

83. There were no written instructions or guidelines at KIA regarding the standard procedure to follow in case a prisoner or a group of prisoners went on hunger strike. The delegation was informed that a group of prisoners had gone on hunger strike for a period of three weeks in 2005.

In the CPT's view, clear written instructions should be available in prisons on the steps to be taken in the event of a hunger strike<sup>41</sup>. Such instructions should provide, inter alia, for careful and regular supervision by the health care staff and should forbid the use of punitive measures against hunger strikers.

**The CPT therefore recommends that the Aruban authorities develop and adopt a written protocol on hunger strikes, reflecting the above-mentioned approach.**

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<sup>41</sup> See e.g. the World Medical Association Declaration on Hunger Strikers (Pilanesberg, South Africa, 2006).

## 5. Other issues

### a. staff

84. The Committee is concerned by the low number of prison officers working at KIA prison: 172.5 staff were employed at the time of the visit (105 of whom as custodial staff), with 44 posts vacant and a projected total of 280 staff members required. 11 to 13 staff members were generally on duty at night. Besides the negative effects on prisoners' quality of life, the low staffing situation led to excessive overtime, stress and absenteeism. Moreover, the CPT's delegation observed that staff members were not positively engaged with prisoners.

By letter of 25 September 2007, the competent authorities informed the CPT that the Aruban Ministry of Justice had decided - despite the current bar on government recruitments - to reinforce staff at KIA through the recruitment of 15 new staff members. The selection process was under way. The authorities also outlined the development of a training programme designed to permit the establishment to fulfil its "correctional" function. In this respect, technical assistance and support from the Netherlands Prisons Administration had been requested. By January 2008, three quarters of KIA's staff would have been through the first module of this training.

**The CPT recommends that the Aruban authorities pursue efforts to move away from a purely *custodial* culture of prison management. Such efforts would best be complemented by the further development of regime activities offered to inmates (see paragraphs 68 and 69).**

### b. drug-related issues

85. According to members of the health care team, a significant proportion of the inmate population were regular users of drugs (essentially marijuana and cocaine), which apparently circulated without great difficulty throughout the prison.

The widespread availability of illicit drugs within a prison is bound to have very negative repercussions on all aspects of prison life, and may undermine the motivation of prison officers. **The CPT recommends that the Aruban authorities vigorously pursue their efforts to prevent trafficking in drugs at KIA.** However, the Committee would stress that **it would be highly undesirable for new measures adopted vis-à-vis drug trafficking to unduly restrict prisoners' contacts with the outside world or to limit the regime activities or association possibilities offered to them.**

86. The delegation was informed that screening for drug use was carried out on admission to the prison or on re-admission after prisoners returned from leave, in accordance with a urine test protocol appended to the house rules. This protocol provides that the prisoner shall be required to urinate in a cup under the supervision of a designated staff member, who then carries out the urine test in the presence of the prisoner. If the prisoner is not able to urinate, he or she is placed in confinement for four hours. Failure to provide a urine sample after four hours will be considered to be a refusal to cooperate and will be followed by disciplinary sanctions (temporary confinement and loss of permission to use the telephone and to receive visits).

**The CPT would like to be informed whether prisoners have an opportunity to contest the results of such tests - pending which a disciplinary punishment would be suspended - or to provide a legitimate medical explanation for a positive drug-test result.**

87. The presence in prison of inmates with drug-related problems gives rise to a number of particular difficulties for the prison authorities. These include health and security issues, as well as the choice of forms of assistance which are to be offered to the prisoners concerned, and a policy to prevent drug addiction problems from spreading to other inmates.

In addition to an appropriate therapeutic programme, a full range of activities should ideally be offered to all prisoners treated for drug abuse, including vocational training leading to the acquisition of a recognised qualification. This will increase the inmate's possibilities to lead a socially adapted life after release. Of course, the provision of paid work and appropriate leisure and sports activities are also important elements in the rehabilitation of prisoners with drug problems. Further, a comprehensive drugs strategy must also include measures to prevent inmates from becoming drug users.

**The CPT recommends that the Aruban authorities take the necessary measures to increase the level of support to drug-addicted prisoners, in the light of the above remarks.**

c. discipline

88. The disciplinary procedure made provision for a hearing by the adjudicator (the prison director)<sup>42</sup> before any disciplinary sanction was imposed. However, prisoners were in fact merely questioned by the head of internal security. Further, the disciplinary decision was not provided in writing to the prisoner, who was therefore not informed of the possibility to appeal against the decision. **The CPT recommends that the above-mentioned procedural deficiencies are rectified.**

The delegation also heard several allegations and found disciplinary records attesting to the use of collective punishments when the perpetrator of an offence had not been identified. Any form of collective punishment is unacceptable. **The Committee calls on the Aruban authorities to put an end to the use of collective punishment at KIA.**

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<sup>42</sup> The written disciplinary record always referred to the prisoner being heard prior to a decision being taken.

89. The CPT's delegation noted that the disciplinary sanction of solitary confinement was, in many cases, imposed for the maximum period of 14 days, extended to that of 28 days in the case of a repeat offence. The delegation also noted that solitary confinement was invariably accompanied by the corollary punishment of loss of permission to use the telephone and to receive visits, a practice which is contrary to the Revised European Prison Rules<sup>43</sup>.

**The CPT recommends that the Aruban authorities review the approach being followed at KIA as regards disciplinary sanctions, in order to ensure that they are always proportional to the offence, and that punishment does not amount to a total prohibition of family contact. The Committee also invites the Aruban authorities to reconsider the maximum punishment for a repeat offence; at present it is very high.**

90. Conditions of detention in the *disciplinary unit*, a recent construction, left much to be desired. The unit suffered from drainage blockages resulting in unhygienic conditions. Further, no call bells were available and no staff were stationed in the disciplinary unit. As prison staff would only visit the unit at shift changes or to bring meals, this meant that in case of an emergency, the prisoners would have to make a lot of noise in order to attract attention from another section of the prison or from someone who happened to be passing through the adjacent courtyard.

The five cells were hot and humid by day and the lack of ventilation was not helped by the metal sheets sealing the cells almost entirely. Inmates were required to sleep on foam mattresses on the floor and they were allowed no bed sheets or shirt for the duration of their punishment. As a result, prisoners complained of being cold during the night and lacked protection from mosquitoes.

By letter of 25 September 2007, the authorities informed the CPT of the efforts which had been made to improve material conditions in the disciplinary unit: the drainage problems had been resolved, additional ventilation units and a call-bell system had been installed, and the cells had been fitted with a bed. The CPT welcomes these improvements.

The two disciplinary cells in the *women's unit* were in a good state of repair. However, the cells offered no access to natural light and, due to the concrete structure and lack of ventilation, temperatures in the cell were often very high. Persons held in a disciplinary cell were not allowed bed sheets nor, allegedly, any clothing other than underpants for the duration of their punishment.

**The CPT recommends that the Aruban authorities take urgent action to remedy the remaining material deficiencies in the disciplinary cells in the women's unit. Further, all prisoners subject to the disciplinary sanction of solitary confinement should be allowed adequate clothing and a bed sheet.**

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<sup>43</sup> See Rule 60.4.

91. Although the disciplinary records specified that the inmate would continue to benefit from outdoor exercise, inmates serving punishment in the disciplinary unit or in one of the disciplinary cells in the women's unit never went outdoors for the duration of their punishment. Men were provided daily access to an airing cell which was double the size of an ordinary disciplinary cell and was better ventilated as the cell bars were not covered by a metal sheet.

By letter of 25 September 2007, the authorities informed the CPT that it was not feasible, for the time being, to give detainees in disciplinary cells access to the exercise yard for one hour a day. In particular, they mentioned that it is not advisable, for the sake of order, peace and security, to allow access to the exercise yard together with the rest of the mainstream population. Instead, KIA management intended to modify the airing cell in order to give it more of an "open air" character. However, in the CPT's view, it is doubtful whether any modification to the airing cell would enable it to offer "outdoor exercise" in the real sense of the term.

The lack of outdoor exercise for prisoners placed in a punishment cell was criticised by the CPT already in the report on the 1994 visit<sup>44</sup>. **The CPT calls upon the Aruban authorities to ensure, without further delay, that all prisoners subject to the disciplinary sanction of solitary confinement are offered at least one hour of proper outdoor exercise per day.** It goes without saying that such prisoners could be offered outdoor exercise separate from the rest of the regular inmate population.

92. The house rules required the prison director to inform the doctor (and the supervisory committee) as soon as it is decided that a prisoner would remain in a disciplinary cell for longer than 24 hours. In practice, prisoners placed in a disciplinary cell were visited every two days by a nurse. However, certain persons detained in the disciplinary unit complained that they were seen by a doctor only four days after they had requested such a consultation.

The Committee wishes to stress that a prison's health-care service should be very attentive to the situation of prisoners placed in disciplinary cells (or any other prisoner held under conditions of solitary confinement). In this regard, **the CPT recommends that every disciplinary placement be immediately brought to the attention of the health care service. Further, a medical practitioner or a qualified nurse reporting to such a practitioner should visit, daily, prisoners held under conditions of solitary confinement and provide them with prompt medical assistance and treatment at the request of such prisoners or the prison staff.**

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<sup>44</sup> See CPT/Inf(96) 27, paragraph 266.

d. contact with the outside world

93. Numerous prisoners, particularly foreigners, complained of insufficient access to the telephone. Although telephone calls to personal relatives are allowed at least three times per month and for a maximum of 10 minutes at a time<sup>45</sup>, certain prisoners alleged that they were only allowed to telephone once per month. Several foreign prisoners said they had not been able to contact their families at all since their admission to the prison two weeks before, and they did not believe their families had been notified of their whereabouts during their 10-day police custody.

The prison management confirmed that technical difficulties prevented the prison from providing more extensive access to the telephone, but that these difficulties would be resolved in the coming months. **The Committee would like to receive information concerning the new arrangements for access to a telephone.**

e. complaints and inspection procedures

94. A Supervisory Committee was competent to receive complaints from prisoners at KIA, usually transmitted to it by a social worker. In theory, its members could visit prisoners at any time<sup>46</sup>, but in practice, a member visited the prison every two weeks and the Supervisory Committee met with the Director every month. The Supervisory Committee could bring issues of concern to the attention of the Minister of Justice, who appoints the members of the Supervisory Committee. Most members, except the presiding judge, effectively served on the Supervisory Committee on a voluntary basis. **The CPT recommends that the role and effectiveness of the Supervisory Committee are strengthened through the provision of adequate funding and the introduction of means (such as a secure letterbox system) allowing prisoners to have confidential access to the Committee as well as individual hearings whenever appropriate.**

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<sup>45</sup> See KIA House Rule No. 3.8.1.

<sup>46</sup> See KIA House Rule No. 3.7.2. Information about the role of the Supervisory Committee was provided to inmates through the house rules and the admissions procedures

## APPENDIX I

### **LIST OF THE CPT'S RECOMMENDATIONS, COMMENTS AND REQUESTS FOR INFORMATION**

#### **A. Police establishments**

##### **Ill-treatment**

##### recommendations

- the Aruban authorities to adopt a vigorous policy to combat police ill-treatment. Such a policy should include a formal statement, by the highest competent political authority, to law enforcement officials, reminding them that the rights and dignity of persons in their custody must be respected, and that the ill-treatment of such persons will be the subject of severe sanctions (paragraph 11);
- police officers to be regularly reminded, through training and instructions, that no more force than is reasonably necessary should be used when effecting an apprehension. More particularly, law enforcement officials must be trained in preventing and minimising violence in the context of an apprehension. For cases in which the use of force nevertheless becomes necessary, law enforcement officials need to be able to apply professional techniques which minimise any risk of harm to the persons whom they are seeking to apprehend (paragraph 11);
- the Aruban authorities to take the necessary measures to ensure that law enforcement officials do not resort to unacceptable practices such as using a “chill room” (paragraph 12);
- the Aruban authorities to put an end to the practice of routinely shackling detained persons to a fixed object. Persons taken into police custody should not be left handcuffed to rings fixed to a wall and instead should be accommodated without delay in rooms/cells offering appropriate security conditions. Further, the rings fixed to the wall at Noord Police Station - and any other police station where they might exist - should be immediately removed (paragraph 13);
- the Aruban authorities to re-examine the system of detention on police premises with a view to substantially reducing its duration (paragraph 14);
- the Aruban authorities to take the necessary steps to put an end to routine extensions of police custody for the maximum possible period of eight days. As envisaged by the law, extension of police custody beyond two days should be the exception, not the rule. Further, when an extension is granted, it should be for the shortest time possible, consistent with the legitimate interests of the investigation; any decision to extend police custody beyond two days should be grounded in writing and the investigating judge should be empowered not only to declare the extension unlawful but also to reduce its duration (paragraph 16).

## **Conditions of detention**

### recommendations

- the Aruban authorities to ensure, through regular maintenance and inspections, that the minimum standards outlined in paragraph 17 are sustained in all the police stations (paragraph 23).

### requests for information

- confirmation that all police cells have been refurbished in accordance with the minimum standards outlined in paragraph 17 and a detailed account of the measures taken (paragraph 23).

## **Safeguards against ill-treatment by the police**

### recommendations

- the Aruban authorities to draw up regulations governing the rights of arrested or detained persons which are in line with Article I.5-5 of the Aruban Constitution and Article 90 of the CCP, as well as with the recommendations set out in paragraphs 28, 33, 35, 37 and 38 (paragraph 25);
- the Aruban authorities to ensure that all persons deprived of their liberty by the police, for whatever reason, are granted the right to notify a close relative or third party of their choice about their situation as from the very outset of their deprivation of liberty. The exercise of this right could be made subject to certain exceptions designed to protect the legitimate interests of the police investigation, provided those exceptions are clearly circumscribed in law and made subject to appropriate safeguards (i.e. the decision to delay to be recorded in writing with the specific reasons therefor, and to require the approval of a senior police officer unconnected with the case at hand or a public prosecutor) and strictly limited in time (paragraph 28);
- the Aruban authorities to ensure - if necessary by amending the relevant legal provisions - that all persons arrested have the right of access to a lawyer from the very outset of, and throughout, their deprivation of liberty, including during any interrogation (paragraph 33);
- the necessary steps to be taken to ensure the effectiveness of the system of legal aid for persons detained by the police who are not in a position to pay for a lawyer (paragraph 33);



- the Aruban authorities to take the necessary steps - including through the allocation of adequate funds - to ensure that persons deprived of their liberty by the police have effective access to a doctor from the very outset of their deprivation of liberty. In particular:
  - a request by a detained person to see a doctor should be granted; it is not for police officers, nor for any other authority, to filter such requests;
  - a person taken into police custody should have the right to be examined, if he so wishes, by a doctor of his own choice, in addition to any medical examination carried out by a doctor called by the police (it being understood that an examination by a doctor of the detained person's own choice may be carried out at his own expense);
  - all medical examinations should be conducted out of the hearing and - unless the doctor concerned expressly requests otherwise in a given case - out of the sight of police staff;
  - the results of every examination, as well as any relevant statements by the detained person and the doctor's conclusions, should be formally recorded by the doctor and made available to the detainee and his lawyer;
  - the confidentiality of medical data is to be strictly observed, without prejudice to the right of the person concerned to make reference to that medical data; and
  - the police station records should indicate the date and time of requests to see a doctor, when a doctor is called and when the doctor has visited(paragraph 35);
- the Aruban authorities to ensure that all persons detained by the police - for whatever reason - are fully informed of the fundamental rights outlined in paragraph 24, including to inform a third person of their choice of their detention, and to have access to a doctor, as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). This should be ensured by provision of clear verbal information at the very outset, to be supplemented at the earliest opportunity (that is, immediately upon arrival at police premises) by provision of the written notification form, which should be revised in accordance with the remarks in paragraph 37 (paragraph 37);
- comprehensive custody records to be introduced and diligently kept at police stations in Aruba. For various questions (e.g. personal effects confiscated; having been informed of one's rights and having availed oneself of or waived them; having been able to inform a close relative or another third party), the detainee's signature should be required and, if necessary, its absence duly accounted for (paragraph 38).

comments

- the CPT trusts that the necessary resources will be allocated to the Independent Police Complaints Committee to enable it to strengthen the effectiveness of the complaints system in Aruba (paragraph 40).

**B. Foreign nationals detained under aliens legislation**

**Preliminary remarks**

recommendations

- the Aruban authorities to ensure that irregular migrants are not detained in police cells for extended periods, i.e. any time longer than is necessary to arrange their transfer to the Centro pa detencion di ilegalnan (paragraph 42).

comments

- the Aruban authorities are invited to consider developing further the use of alternative, non-custodial, measures for irregular migrants (paragraph 41).

**Ill-treatment**

recommendations

- staff working at the Centro pa detencion di ilegalnan to be reminded that disrespectful, aggressive or insulting behaviour will not be tolerated and will be severely sanctioned (paragraph 44).

**Conditions of detention at the 'Centro pa detencion di ilegalnan' for immigration detainees**

recommendations

- the Aruban authorities to take urgent steps to ensure that:
  - the in-cell sanitary facilities are promptly repaired and refurbished so as to provide hygienic conditions;
  - all detainees are allocated a bed and provided with a clean mattress and clean bedding;
  - all cells are fitted with call-bells;
  - all detainees are provided with the necessary products and equipment to keep their accommodation clean, as well as with products for personal hygiene (i.e. toilet paper, soap, toothpaste, toothbrush, etc.)(paragraph 49);

- as concerns regime:
  - all detainees to be allowed to spend a large proportion of the day outside their cells;
  - steps to be taken to introduce recreational opportunities, such as access to television, radio, reading material and sports. The longer the period for which persons are detained, the more developed should be the activities which are offered to them (paragraph 49);
- the Centre's staff to receive specific training to deal with the particular needs of foreign nationals detained under aliens legislation (paragraph 50);
- systematic medical screening of all immigration detainees, including for transmissible diseases, to be introduced. Such screening should be carried out in a way that respects medical confidentiality. Further, there should be a daily presence of a person with a recognised nursing qualification, and access to acute medical and dental care and appropriate psychological/psychiatric assistance should be available (paragraph 51).

### **Safeguards against the ill-treatment of foreign nationals detained under aliens legislation**

#### recommendations

- the Aruban authorities to take the necessary steps to ensure that all persons held under aliens legislation are afforded the fundamental safeguards, as outlined in paragraph 52 (paragraph 53);
- immigration detainees to be allowed to maintain contact with the outside world during their detention, and in particular to have access to a telephone and to receive visits from relatives and representatives of relevant organisations (paragraph 54);
- officials entrusted with handling asylum applications to be provided with appropriate training (paragraph 56).

### **C. Aruba Correctional Institute - KIA**

#### **Ill-treatment**

#### recommendations

- concrete measures to be taken to eradicate ill-treatment of prisoners by prison staff at KIA, including through improved management and supervisory mechanisms (paragraph 61);
- the prison management to develop a strategy to address the problem of inter-prisoner violence, in the light of the remarks in paragraph 62 (paragraph 62).

#### requests for information

- the results of the investigation into the alleged ill-treatment of the prisoner E.G. (paragraph 60);
- the measures planned to address the problem of inter-prisoner violence (paragraph 62).

#### **Conditions of detention**

##### recommendations

- the maximum capacity of cells to be progressively reduced to two prisoners, including in the new women's and juveniles' sections. Further, the possibility of improving ventilation in the women's and juveniles' sections, and of allowing prisoners to maintain some degree of privacy in cells throughout the prison, to be explored (paragraph 66);
- efforts to be made to ensure that all facilities at KIA are brought into service (paragraph 67);
- activities for prisoners to be further developed, with a view to ensuring that all prisoners (including those on remand) can spend a reasonable part of the day (i.e. 8 hours or more) outside their cells engaged in purposeful activities of a varied nature: work, preferably with vocational value; education; sport; recreation/association. In particular, young prisoners must be offered a full programme of educational, recreational and other purposeful activities (paragraph 68);
- a policy vis-à-vis life-sentenced and other long-term prisoners to be developed, in the light of the remarks in paragraph 69 (paragraph 69).

##### comments

- it would be desirable for women and juveniles to be able to look outside when in their cells (paragraph 66).

#### **Health care services**

##### recommendations

- the Aruban authorities to ensure that all prisoners are guaranteed the provision of care - including specialist care - required by their state of health; this implies that the funds allocated to prisons should be sufficient to enable health care services to be provided free-of-charge to prisoners who do not have the necessary resources to pay for them themselves (paragraph 70);

- the presence of a doctor to be increased to ensure daily consultations on weekdays (preferably to the equivalent of one full-time doctor) and the complement of nurses to be increased to five (paragraph 72);
- someone qualified to provide first aid, preferably with a recognised nursing qualification, always to be present in the prison, including at night (paragraph 73);
- a dentist to be recruited, on a part-time basis, to provide dental care at KIA (paragraph 74);
- every newly admitted prisoner to be properly interviewed and physically examined by a medical doctor (or by a fully qualified nurse reporting to a doctor) as soon as possible after his admission; save for exceptional circumstances, the interview/examination should be carried out within 24 hours of admission. This examination should include screening for transmissible diseases (TB, HIV, etc) (paragraph 76);
- the medical screening procedure to be brought in line with the precepts outlined in paragraph 77 and a separate register to be established for recording lesions observed on newly admitted prisoners or sustained by prisoners while detained at KIA (paragraph 77);
- medical consultations and the distribution of medicine to be organised in such a way as to respect confidentiality. All medical examinations of prisoners (whether on arrival or at a later stage) should be conducted out of the hearing and - unless the health-care staff concerned requests otherwise in a particular case - out of the sight of prison officers. Further, medication should be distributed by a health-care staff member (paragraph 78);
- the Aruban authorities to ensure, without further delay, that prisoners who require psychiatric and/or psychological care have access to it (paragraph 81);
- urgent measures to be taken to secure the necessary staffing for the FOBA, including the frequent, regular presence of a psychiatrist (paragraph 81);
- for those prisoners who require psychiatric and/or psychological care but who would not require admission to a facility such as the FOBA, the Aruban authorities to take the necessary steps to provide outpatient psychiatric services which are sufficient to meet their needs. In this connection, an establishment of the size of KIA should be able to rely on the regular presence of at least a part-time psychiatrist and a part-time psychologist (paragraph 81);
- a policy for the prevention of suicide and the management of incidents of self-harm at KIA to be developed (paragraph 82);
- the Aruban authorities to develop and adopt a written protocol on hunger strikes, reflecting the approach outlined in paragraph 83 (paragraph 83).

## **Other issues**

### recommendations

- the Aruban authorities to pursue efforts to move away from a purely *custodial* culture of prison management. Such efforts would best be complemented by the further development of regime activities offered to inmates (see paragraphs 68 and 69) (paragraph 84);
- the Aruban authorities to vigorously pursue efforts to prevent trafficking in drugs at KIA (paragraph 85);
- the necessary measures to be taken to increase the level of support to drug-addicted prisoners, in the light of the remarks in paragraph 87 (paragraph 87);
- the deficiencies concerning the disciplinary procedure mentioned in paragraph 88 to be rectified (paragraph 88);
- an end to be put to the use of collective punishment at KIA (paragraph 88);
- the approach being followed at KIA as regards disciplinary sanctions to be reviewed, in order to ensure that they are always proportional to the offence, and that punishment does not amount to a total prohibition of family contact (paragraph 89);
- urgent action to be taken to remedy the remaining material deficiencies in the disciplinary cells in the women's unit. Further, all prisoners subject to the disciplinary sanction of solitary confinement should be allowed adequate clothing and a bed sheet (paragraph 90);
- the Aruban authorities to ensure, without further delay, that all prisoners subject to the disciplinary sanction of solitary confinement are offered at least one hour of proper outdoor exercise per day (paragraph 91);
- every disciplinary placement to be immediately brought to the attention of the health care service. Further, a medical practitioner or a qualified nurse reporting to such a practitioner should visit, daily, prisoners held under conditions of solitary confinement and provide them with prompt medical assistance and treatment at the request of such prisoners or the prison staff (paragraph 92);
- the role and effectiveness of the Supervisory Committee to be strengthened through the provision of adequate funding and the introduction of means (such as a secure letterbox system) allowing prisoners to have confidential access to the Committee as well as individual hearings whenever appropriate (paragraph 94).

comments

- it would be highly undesirable for new measures adopted vis-à-vis drug trafficking to unduly restrict prisoners' contacts with the outside world or to limit the regime activities or association possibilities offered to them (paragraph 85);
- the Aruban authorities are invited to reconsider the maximum punishment for a repeat offence; at present, it is very high (paragraph 89).

requests for information

- whether prisoners have an opportunity to contest the results of urine tests for drug use - pending which a disciplinary punishment would be suspended - or to provide a legitimate medical explanation for a positive drug-test result (paragraph 86);
- the new arrangements for access to a telephone (paragraph 93).

**APPENDIX II**

**LIST OF THE AUTHORITIES AND OTHER PERSONS  
WITH WHOM THE CPT'S DELEGATION HELD CONSULTATIONS**

**A. Aruban authorities**

- Mr H.R. (Rudy) CROES Minister of Justice
- Mr Rolando BERNADINA Adviser, Minister of Justice
- Mr Peter de WITTE Chief of Police
- Mr Lambertus KROZENDIJK Police Commissioner
- Ms Jeannette RICHARDSON-BAARS Police Inspector
- Ms Golda CANDELARIA Police Inspector, Head of the Internal Investigation Bureau
- Mr Emilio GEERMAN Interim Director, Aruba Correctional Institute
- Mr Laurence PASKEL Director of Government Security (*Cuerpo Especial Arubano*)
- Mr Roy LACLÉ Acting Head of Section, Border Guard Authority (*Warda Nos Costa (IASA)*)
- Ms Angélique PETERSON Adviser, Department of Foreign Affairs, CPT liaison officer
- Mr Ezzard CILIÉ Head of the PAAZ (Psychiatric ward of the General Hospital)
- Mr Hendrikus van GALEN Psychiatrist
- Mr Nico JÖRG Solicitor General
- Mr Hans MOS Chief Public Prosecutor
- Mr Frans van DEUTEKOM Public Prosecutor
- Mr Marcel MADURO Director of the Public Service Investigation Agency (*Landsrecherche*)
- Mr Ferdinand GERARD Judge, Chairman of the Prison Supervisory Board

**B. Persons active in the CPT's fields of interest**

- Mr Chris LEJUEZ Lawyer
- Ms Eline LOTTER-HOMAN Lawyer
- Mr Rudi OOMEN Lawyer