



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Secret
CPT (2007) 71
PART 3

PART 3 : VISIT TO THE NETHERLANDS ANTILLES

CONTENTS OF PART 3

I.	INTRODUCTION	4
A.	Dates of the visit and composition of the delegation.....	4
B.	Establishments visited.....	4
C.	Consultations held by the delegation	5
D.	Cooperation between the CPT and the authorities of the Netherlands Antilles.....	5
E.	Immediate observations under Article 8, paragraph 5, of the Convention.....	6
II.	FACTS FOUND DURING THE VISIT AND ACTION PROPOSED	7
A.	Police establishments.....	7
	1. Preliminary remarks.....	7
	2. Ill-treatment.....	8
	3. Conditions of detention.....	9
	4. Safeguards against ill-treatment by the police	13
B.	Foreign nationals detained under aliens legislation	15
	1. Preliminary remarks.....	15
	2. Ill-treatment.....	15
	3. Conditions of detention at the “Illegalen Barakken” for immigration detainees	16
	4. Safeguards against the ill-treatment of foreign nationals detained under aliens legislation	18
C.	Prisons.....	19
	1. Preliminary remarks.....	19
	2. Ill-treatment.....	19
	3. Material conditions	22
	a. Bon Futuro Prison.....	22
	b. Bonaire Remand Prison	23
	4. Regime	24
	5. Staff.....	24

6.	Health care services	25
a.	general medical care at Bon Futuro Prison.....	25
b.	psychiatric and psychological care at Bon Futuro Prison.....	27
c.	health care at Bonaire Remand Prison	27
7.	Correctional Emergency Response Team	28

APPENDIX I

LIST OF THE CPT'S RECOMMENDATIONS, COMMENTS AND REQUESTS FOR INFORMATION	30
--	----

APPENDIX II

LIST OF THE AUTHORITIES AND OTHER PERSONS WITH WHOM THE CPT'S DELEGATION HELD CONSULTATIONS.....	38
--	----

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 the Netherlands Antilles from 7 to 13 June 2007¹. The visit formed part of the Committee's fourth periodic visit to the Kingdom of the Netherlands².

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 WILLEM S-HIEROMS (interpreter).

B. Establishments visited

3. The delegation paid a follow-up visit to Bon Futuro Prison, including the Police Detention Unit (Block No. 1). It also visited Barber, Punda, and Rio Canario police stations, as well as the "Illegalen Barakken" for immigration detainees. Further, the CPT's delegation visited, for the first time, the Remand Prison and Kralendijk and Rincon police stations on the island of Bonaire.

¹ The CPT's four previous visits to the Netherlands Antilles took place in June 1994, December 1997, January 1999 and February 2002. The reports on those visits have been published on the CPT's website (www.cpt.coe.int).

² The visits to the Kingdom in Europe and to Aruba are dealt with separately (see Parts 1 and 2 of this report).

C. Consultations held by the delegation

4. During the visit to the Netherlands Antilles, the delegation met David DICK, Minister of Justice, Lizanne RICHARDS-DINDIAL, Lieutenant Governor of Curaçao, Dick PIAR, Attorney General of the Netherlands Antilles, and Carlos CASSERES, Acting Chief Commissioner of Police of Curaçao. The delegation also held talks with Fred WIEL, the Ombudsman for Curaçao. 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 non-governmental organisations with which the delegation held consultations is set out in Appendix II.

D. Cooperation between the CPT and the authorities of the Netherlands Antilles

5. The cooperation received by the delegation during the visit to the Netherlands Antilles was, on the whole, very good. The Committee would like to express its gratitude for the assistance provided to the delegation by Joan BREWSTER, liaison officer to the CPT for the Netherlands Antilles. The delegation had rapid access to the documentation it wanted to consult and to individuals with whom it wished to speak.

Access to the establishments visited was, in most cases, immediate. However, on the first day of its visit to Bon Futuro Prison, the delegation was made to wait some 45 minutes before gaining access to the establishment. Indeed the staff guarding the gate was apparently unaware of the CPT's mandate and the ongoing visit to the Netherlands Antilles. The CPT trusts that the authorities of the Netherlands Antilles will take steps to ensure that such a delay is not encountered during future visits. This should involve the dissemination of relevant information on the Committee's mandate and working methods to all the staff concerned.

6. The principle of co-operation set out in the Convention is not limited to steps taken to facilitate the task of a visiting delegation. It also requires that decisive action be taken, including at the highest political level, to improve the situation in the light of the Committee's key recommendations.

After this fifth visit to the Netherlands Antilles, the CPT notes that much remains to be done and that the authorities need in particular to invest greater efforts to tackle the systemic deficiencies in the prison service, and to provide decent conditions of detention for aliens at the "Illegalen Barakken" and for persons held on police premises. Consequently, the Committee has been obliged to reiterate many of its recommendations, some of which are of very long standing. Having regard to Article 3 of the Convention, the CPT urges the authorities of the Netherlands Antilles to intensify their efforts to improve the situation in the light of the Committee's recommendations.

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

7. At the concluding meeting with the authorities in Willemstad, on 13 June 2007, the CPT's delegation made an immediate observation, in pursuance of Article 8, paragraph 5, of the Convention, requesting that all the cells at Kralendijk Police Station be immediately taken out of service and remain so until refurbished.

It also requested to be informed, within six weeks, of the measures taken to improve the material conditions and the regime at the "Illegalen Barakken" for immigration detainees.

The delegation further requested that the disciplinary cells in the male section of Bon Futuro Prison not be used until the very serious material deficiencies observed were remedied.

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.

8. By letter of 25 September 2007, the authorities informed the CPT of measures taken in response to the points raised by the delegation. These responses have been taken into account in the drafting of the present report.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Police establishments

1. Preliminary remarks

9. Under the Code of Criminal Procedure (CCP) of the Netherlands Antilles³, persons suspected of having committed a criminal offence may be held by the police for questioning for a maximum of six hours. However, as the night hours between 10 pm and 8 am are not counted⁴, this initial period may in fact last up to 16 hours⁵. Thereafter, if the needs of the investigation so require, the person may be placed in police custody for a maximum period of two days, on the decision of a prosecutor or of an assistant prosecutor⁶ reporting to the prosecutor in writing or orally as soon as possible and within 24 hours⁷. However, if the investigation urgently requires it, police custody may be extended by the prosecutor for a further maximum period of eight days⁸.

As soon as possible - and within 24 hours - after the beginning of such an extension, the suspect must be brought before the investigating judge⁹. Thus the legal maximum period before a person deprived of one's liberty is brought before a judge amounts to three days and 16 hours.

10. The maximum period of custody on police premises set by the CCP is 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 prison¹⁰. Nevertheless, according to relevant regulations and case-law, the maximum period varied from one establishment to the other: it could be shorter (e.g. at Punda) or it could also be extended to 18 days (e.g. at Kralendijk Police Station and at the Police Detention Unit or "Block 1" at Bon Futuro).

In the CPT's view, periods of detention of 10 and - all the more so - 18 days in police premises are far too long, from the perspective of preventing ill-treatment. It is widely acknowledged that the period immediately following arrest and prior to the first appearance before a judge represents the period 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. Further, such a situation is certainly not helped by the fact that conditions in some of these establishments are deplorable (see, e.g. paragraph 21).

The Committee recommends that the authorities of the Netherlands Antilles re-examine the system of detention on police premises with a view to substantially reducing its duration.

³ The *Wetboek van Strafvordering* (P.B. 1996, no. 164) entered into force in 1996.

⁴ 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.

⁵ See the Code of Criminal Procedure of the Netherlands Antilles (CCP), Article 80, paragraph 1.

⁶ In Dutch, a *hulpofficier van justitie*, who can also be a senior police officer.

⁷ See CCP Article 83, paragraphs 1 and 4, and Article 87, paragraph 1.

⁸ See CCP Article 87, paragraph 2.

⁹ See CCP Article 89, paragraph 1.

¹⁰ See CCP Articles 94 and 99, together with Article 5, paragraph 16 of the Prisons Laws (*Landsverordening beginselen gevangeniswezen*).

2. Ill-treatment

11. Most persons interviewed on police premises by the CPT's delegation stated that they had been treated well by police officers. However, the delegation did hear allegations of physical ill-treatment. Moreover, several persons (men and women) interviewed at Bon Futuro Prison and Bonaire Remand Prison, and at the "Illegalen Barakken" made credible allegations of physical ill-treatment and verbal abuse by the police. These 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. In certain less recent cases, the persons concerned alleged being hit on the arms or in the loins with batons.

Several persons apprehended at home alleged that a large number of policemen wearing masks had used excessive violence to force their entry and to effect the arrest, including rough physical treatment of family members present. Such allegations concerned arrest operations by police in Bonaire and by officers attached to a special "zero tolerance" unit in Curaçao. A few persons alleged being blindfolded, and ill-treated, in the course of an arrest either in the street or at home.

12. The CPT recommends that the authorities of the Netherlands Antilles 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 Committee 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. In particular, 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.

13. The CPT has strong objections to law enforcement officials blindfolding apprehended persons. This practice in itself will have an unjustifiably intimidating effect on the persons concerned and will hamper the identification of those responsible if and when instances of ill-treatment arise. For similar reasons, the Committee disapproves of the practice of law enforcement officials wearing masks when performing arrests.

The CPT recommends that the authorities of the Netherlands Antilles prohibit the blindfolding of apprehended persons. Further, only exceptional circumstances could justify measures to conceal the identity of law enforcement officials performing arrests. Where such measures are applied, appropriate safeguards must be in place in order to ensure that the officials concerned are accountable for their actions (e.g. by means of a clearly visible number on the uniform). The Committee would like to receive detailed information on the rules governing the wearing of masks by police officers in the course of their duties.

3. Conditions of detention

14. The five new cells at Punda Police Station, in Willemstad, had been operational since 2005¹¹. Due to the absence of an exercise yard and of natural light in the cells, the cells were only used for short periods of detention. Whereas staff on duty indicated that persons could be held for up to two days at the station, the central authorities informed the delegation that persons would be held only for a number of hours, at most overnight.

Each of these windowless cells was for single occupancy and measured over 7 m², including the half-partitioned sanitary facilities, consisting of a toilet, shower, sink and mirror. The cell furnishings included a concrete plinth, a thin mattress and a fixed table and stool. There was no call-bell; instead persons detained had to call out through a small opening in the metal cell-door to attract - via two audio-video devices monitoring the hallway outside the cells - the attention of officers stationed at some distance from the cell block. No-one was detained at the station at the time of the visit. Some cells were filthy, infested with mosquitoes and gave off a strong odour; the mattresses were very dirty and unfit for use, and the in-cell artificial lighting was not working in one of the cells. Staff on duty explained that the cells were cleaned once per week.

The CPT recommends that the authorities of the Netherlands Antilles take the necessary measures to ensure that cells at Punda Police Station are kept in a satisfactory state of cleanliness and are fitted with a call-bell. Further, persons detained there should be provided with a clean mattress.

15. The Police detention facility at Rio Canario was described in the report on the CPT's visit to the Netherlands Antilles in 1997¹². It had been renovated in 2005 and fitted with a number of special toilets for use by suspected "body-packers". According to regulations, the facility could hold, for up to 8 days, criminal suspects who were subsequently remanded in police custody. At the time of the visit, two women had been held in separate cells for two days.

Despite the recent renovations, there still appeared to be insufficient ventilation in the cells, which were very hot (29°C) and humid (57%) at the time of the delegation's visit after 11pm at night. **The CPT recommends that the authorities of the Netherlands Antilles make efforts to improve ventilation in the cells at the Rio Canario police detention facility.**

16. The delegation observed that, since the previous visit in 1997, closed-circuit video surveillance cameras (CCTV) had been installed in all the cells, ostensibly as a measure against self-harm or suicide. In the absence of call-bells, the CCTV certainly allowed detained persons to attract the attention of custodial officers, who were stationed in an office at some distance from the cell area. However, persons taking a shower were nearly in full view on the monitors, although the positioning of the camera in the cell could give them the impression that they were able to shower in privacy.

¹¹ The CPT had visited the very poor facilities formerly in use at Punda during the visit in 1994 (see CPT/Inf(96) 1, paragraphs 34 and 35).

¹² See CPT/Inf(98) 17, paragraphs 48 to 51.

As a matter of principle, the CPT has no objection to the use of CCTV for keeping detention areas under surveillance. However, the privacy of detained persons must be observed when they use the toilet and when washing themselves. It should also be noted that bright artificial lighting was permanently switched on, apparently in order for the CCTV to be able to pick up any movement by the persons detained. Such lighting would be difficult to sleep by during night-time hours.

The CPT recommends that the authorities of the Netherlands Antilles take the necessary measures to modify the CCTV and lighting arrangements at the Rio Canario police detention facility, in the light of the foregoing remarks. Further, the CCTV system must not be allowed to replace the regular inspection of cells by members of staff to ensure the safety of detained persons.

17. Rincon Police Station (in Bonaire) was visited for the first time and was holding one person. Despite not often being in use, the four cells, each measuring just over 8 m², were in a good state of repair and cleanliness, including the in-cell sanitary facilities consisting of a toilet and shower. However, no opportunity for outdoor exercise was provided; further, the cells were very hot (31°C at the time of the visit in the early afternoon), had poor ventilation, very little access to natural light, and had no call-bells, requiring the occupant to bang on the cell door to attract the attention of officers on duty.

The CPT recommends that an opportunity for at least one hour of daily outdoor exercise be provided for persons detained longer than 24 hours at Rincon Police Station. Further, efforts should be made to improve ventilation in the cells, which should also be fitted with call-bells.

The delegation also received allegations from several prisoners at Bonaire Remand Prison that they had been held at Rincon Police Station while the premises had been left unattended for hours. **It goes without saying that police officers should always be present when anyone is detained at a police station.**

18. The Bon Futuro Police Detention Unit or “Block 1” had not undergone any significant changes since the visit in 2002¹³. At the time of the visit in 2007, the 15 cells accommodated 29 male detainees, of whom 8 were prisoners from Bon Futuro who were placed in Block 1 for their own protection from other inmates in the prison. Most persons who had been remanded in police detention had been held in Block 1 for longer than a week, some of them for close to six weeks.

Although the material conditions of the Block had somewhat aged since 2002, they remained on the whole reasonable. However, **the CPT reiterates its recommendation that persons held for a prolonged period in Block 1 should be offered the possibility of additional forms of activities (e.g. reading matter, radio/television).**

¹³ See CPT/Inf(2002)30, paragraphs 21 to 24.

19. The delegation noted some improvements at Barber Police Station compared to the time when it was last visited in 1994¹⁴. For example, cells were no longer occupied by more than two persons at a time; and detained persons were provided with a mattress and with an opportunity of daily access to an outdoor area.

However, the delegation once again found the cells to be very poorly ventilated and unbearably hot (most detainees placed their mattress on the floor where the air was slightly cooler than on the plinth provided), and to be lacking a call-bell system, making it very difficult for detained persons to attract the attention of staff¹⁵. Moreover, the cells still had little, if any, access to natural light, they were dirty, infested with mosquitoes and, according to some detainees, mice. The shower was activated from outside the cell twice a day but only for a few minutes, and in at least one cell the plumbing was leaking. Several complaints were also received of food often being delivered very late. In short, conditions at Barber Police Station remained unacceptable.

Five persons were detained at the time of the visit, each in an individual cell. The delegation was informed that, due to the difficult conditions, including the heat, the legal maximum period of detention at Barber Police Station was 7 days. Nevertheless, the delegation met a 17-year-old boy there who had been held for 9 days; one other person met was a prisoner held separate from Bon Futuro Prison for his own protection and who had been at Barber Police Station for six weeks.

20. By letter of 25 September 2007, the authorities informed the Committee of extensive plans to refurbish the entire police station, including ventilation and call bells in the cellblock. The authorities do not, however, indicate a time frame within which the refurbishment will be carried out. The CPT welcomes the plans to refurbish Barber Police Station **and would like to receive confirmation that the deficiencies noted in the foregoing paragraph will be remedied without further delay. Further, the Committee recommends that, until the deficiencies observed are remedied, the cells should only be used for very short periods of detention.**

21. At the time of the delegation's visit to Kralendijk Police Station (Bonaire) two of the six cells were in use. Although the cells were designed for one person only, one of the cells was accommodating three persons during the night¹⁶, two of whom were required to sleep on dirty mattresses¹⁷ on the floor. The cells were filthy and in the one holding three detainees the walls and floors were heavily stained by excrement; moreover, the sanitary facility was not working. In the absence of a call-bell, detainees had to make considerable noise in order to attract the attention of staff located in the offices downstairs. In short, the conditions of detention were appalling. Further, according to regulations in force, persons could be detained there for up to 18 days, during which time no opportunity for outdoor exercise was provided.

¹⁴ See the report on that visit (CPT/Inf(96) 1), at paragraphs 29 to 33.

¹⁵ At the end of the visit, the delegation urged the authorities of the Netherlands Antilles to remedy these deficiencies. These observations were confirmed in writing by letter of 11 July 2007.

¹⁶ During the day, they were usually held at the adjacent Remand Prison, but one of them had remained at the Police Station on the day of the visit.

¹⁷ It should be noted that although the mattresses were apparently fairly new, they were unsuitable for use in police cells as they could not easily be cleaned.

At the end of the visit, the delegation invoked Article 8, paragraph 5, of the Convention and requested that all the cells at Kralendijk Police Station be immediately taken out of service, until they were properly refurbished. By letter of 25 September 2007, the authorities informed the Committee that the cells had been thoroughly cleaned and painted, new mattresses had been provided and, where necessary, the sanitary facilities had been repaired. Five out of the six cells had since been in service, the sixth one awaiting the installation of sanitary equipment.

The CPT welcomes the vigorous steps taken by the authorities of the Netherlands Antilles to remedy the serious deficiencies at Kralendijk Police Station. **The Committee recommends that the authorities of the Netherlands Antilles ensure that a call-bell system is installed and that an opportunity for at least one hour of daily outdoor exercise is provided for persons detained longer than 24 hours at Kralendijk Police Station.**

22. During the visit in 2007, the CPT's delegation was informed that the renovation of Philipsburg Central Police Station in Sint-Maarten¹⁸ would be completed in October or November of 2007. The delegation was also shown plans for the construction of a new police detention block to be built outside of the perimeter of Bon Futuro Prison, providing a capacity for 120 persons and more reasonably sized exercise yards than the rather small one currently provided for inmates in Block 1.

The Committee would like to receive up-to-date information concerning the above-mentioned renovation/construction plans, including an account of detention conditions, occupancy levels and average/maximum periods of detention at Philipsburg Central Police Station.

23. **Finally, the CPT trusts that the necessary steps will be taken to ensure, through regular maintenance and inspections, that the Committee's minimum standards¹⁹ are observed and sustained in all police stations in the Netherlands Antilles.**

¹⁸ This establishment was the subject of an immediate observation at the end of the visit in 2002. See CPT/Inf(2002) 30 (Part 2), at paragraphs 6 and 11 to 20, and the authorities' Response (CPT/Inf(2003) 39 Part II), at page 28.

¹⁹ See, e.g. the Report on the CPT's first visit to the Netherlands Antilles (CPT/Inf(96) 1), at paragraph 27. See also *The CPT's standards - "Substantive" sections of the CPT's General Reports* (CPT/Inf/E (2002) 1), page 8.

4. Safeguards against ill-treatment by the police

24. The CPT's delegation examined whether persons deprived of their liberty by the police could, in practice, avail themselves of certain key safeguards against potential ill-treatment²⁰. A significant proportion of persons interviewed - either in police custody or in prison - alleged that, while in police custody they had experienced delays of several days before being allowed to inform a close relative or another person of their choice of their situation, to have access to a lawyer or to have access to a doctor.

The Committee recommends that the authorities of the Netherlands Antilles take the necessary steps to ensure that persons deprived of their liberty by the police are able to benefit from the above-mentioned rights from the very outset of their deprivation of liberty, i.e. as from the moment at which they are obliged to remain with the police.

25. As regards, in particular, access to a lawyer, the delegation received many complaints from persons who had relied on the assistance of a duty lawyer paid by the Government and who claimed never to have spoken with or even seen the lawyer before being brought before the judge.

In the CPT's view, for as long as there is not an effective system of free legal aid for indigent persons at the stage of police custody, any right of access to a lawyer will remain, in most cases, purely theoretical.

As noted above (see paragraph 10), 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 greatest. Consequently, an effective right of access to a lawyer during that period is a fundamental safeguard against ill-treatment. The possibility of access to a lawyer will have a dissuasive effect on those minded to ill-treat detained persons; moreover, a lawyer is well placed to take appropriate action if ill-treatment actually occurs.

The Committee recommends that the authorities of the Netherlands Antilles review, in consultation with the Bar Association, the system of legal aid for persons in police custody who are not in a position to pay for a lawyer, so as to ensure that such persons can in practice have access to a lawyer from the very outset of police custody. Practical arrangements should be made to ensure that *ex officio* lawyers meet their clients while in police custody.

²⁰

These were elaborated in the report on the visit in 1994 (see CPT/Inf(96) 1, at paragraphs 43 to 63), and examined again during the subsequent visit in 1997 (see CPT/Inf(98) 17, at paragraphs 53 to 56).

26. Persons should also be adequately informed of the possibility to avail themselves of the above-mentioned rights. Interviews with detained persons and staff on duty indicated that information about access to a lawyer and to a government appointed lawyer was generally provided promptly. However, such information - which was detailed on an information sheet requiring the detained person's signature - still failed to include the right to have a close relative or other person notified of one's arrest, and the right to have access to a doctor²¹.

The CPT calls upon the authorities of the Netherlands Antilles to ensure that all persons deprived of their liberty by the police are informed of their rights, including the right to have a close relative or other person notified of one's arrest and the right to have access to a doctor. Such persons should, in particular, be provided with a written form setting out their rights in a straightforward manner.

27. It should be possible to verify the operation of the above-mentioned safeguards by consulting police custody records. In this respect the delegation observed that recording practices varied considerably from one police station to another; none provided a comprehensive custody record allowing the operation of safeguards to be consistently reviewed for each person detained on the premises.

A single and comprehensive custody record could register 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 was he/she given food; when questioned; when he/she had contacts with and/or visits from close relatives, a lawyer, a doctor or a representatives of the consular services; when transferred; when brought before a prosecutor; when remanded or released, etc.). **The CPT therefore reiterates its recommendation²² that the authorities of the Netherlands Antilles consider the possibility of drawing up such an individualised custody record for use at all police stations.**

²¹ This same situation was observed during the visit in 1997 (see CPT/Inf(98) 17, paragraph 55).

²² See the report on the visit carried out in 1994 (CPT/Inf(96) 1), at paragraph 60.

B. Foreign nationals detained under aliens legislation

1. Preliminary remarks

28. As already indicated in previous reports²³, the CPT considers that persons deprived of their liberty for an extended period under aliens legislation 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.

Obviously, such centres should provide accommodation which is adequately furnished, clean and in a good state of repair, and which offers sufficient living space for the numbers involved. Further, care should be taken in the design and layout of the premises to avoid as far as possible any impression of a carceral environment. As regards regime activities, they should include outdoor exercise, access to a day room and to radio/television and newspapers/magazines, as well as other appropriate means of recreation (e.g. board games, table tennis). The longer the period for which persons are detained, the more developed should be the activities which are offered to them.

29. The situation of foreigners detained under aliens legislation in the Netherlands Antilles had not changed significantly since the CPT's previous visit in 1997 to the "Illegalen Barakken", an immigration detention facility located close to Bon Futuro Prison²⁴.

According to information provided by the authorities at the outset of the visit, persons were detained at the "Illegalen Barakken" for one week at most, before being deported; exceptionally, a longer stay would occur if the person concerned was uncooperative in the identification process. That said, when the delegation visited the establishment²⁵, it interviewed eight out of the 12 detainees present, and those eight persons had spent between six and 12 weeks in detention.

2. Ill-treatment

30. It should be stated at the outset, that the CPT's delegation heard no allegations of physical ill-treatment of detained persons by staff working at the "Illegalen Barakken". However, one person interviewed alleged having been struck by police officers at the time of the apprehension. Clearly, **the CPT's recommendations in paragraph 12 above apply equally with regard to apprehensions by the police pursuant to the aliens legislation.**

²³ See the report on the 1994 visit (CPT/Inf (96) 1), at paragraph 15, and the report on the visit in 1997 (CPT/Inf (98) 17), at paragraph 57.

²⁴ See CPT/Inf (98) 17, paragraphs 57 to 61.

²⁵ The delegation visited the men's section on 9 June and the women's section on 11 June 2007.

3. Conditions of detention at the “Illegalen Barakken” for immigration detainees

31. Men and women were detained at the “Illegalen Barakken” in two separate dormitories, each with an official capacity of 26 persons (although there were beds sufficient for 24 in the men’s dormitory and 22 in the women’s). Three women and nine men were being held when the delegation visited the premises. Thus the facility was not overcrowded at the time of the visit. However, in interviews, the delegation was told that the number of persons detained had recently exceeded the number of beds available in both the women’s and the men’s sections, requiring several persons to sleep on the floor or to share a bed.

Further, even if operating at its official capacity (i.e. one person per bed), the facility would be overcrowded. In the CPT’s view, each dormitory (measuring around 88m²) would not provide satisfactory living space for more than 20 persons.

The CPT calls on the authorities of the Netherlands Antilles to ensure that the number of persons held at the “Illegalen Barakken” never exceeds the number of beds available. Further, efforts should be made to keep occupancy levels to a maximum of 20 persons in each dormitory.

32. The dormitories were still not equipped with a call system, making it very difficult, especially at night, to attract the attention of staff (who were located at some distance in a separate building). Further, the metal roof over the women’s dormitory reportedly leaked inside when it rained. The delegation also received several complaints about the quality of the food, which was provided by the prison kitchen, and the prohibition of buying one’s own food.

The sanitary facilities were in a poor state of repair and cleanliness: in the men’s sanitary annex two out of three showers and one out of three toilets were working; whereas one out of three showers and one out of three toilets were working in the women’s sanitary annex, where faulty plumbing was also causing water to stagnate in front of the window, attracting mosquitoes.

Further, detainees were still not offered any activities apart from watching a television set, which was the property of one detainee.

Finally, as was the case in 1997, foreigners were not offered any outdoor exercise, even in cases of detention lasting several months. This situation is totally unacceptable.

33. At the end of the visit, the delegation made an immediate observation under Article 8, paragraph 5, of the Convention, requesting to be informed of action taken to improve material conditions and the activities offered at the “Illegalen Barakken”²⁶. By letter of 25 September 2007, the authorities informed the CPT that a few of the problems with the sanitary facilities had been solved, and that, one month previously, a plan²⁷ had been established in order to address the remainder of the issues.

The CPT calls upon the authorities of the Netherlands Antilles to take steps as a matter of urgency to remedy the shortcomings outlined in paragraph 32 above, and to provide persons detained at the “Illegalen Barakken” with adequate material conditions, activities and at least one hour of daily outdoor exercise.

34. 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 “Illegalen Barakken” were employees of a private security company and had a strictly supervisory role, involving no interaction with detainees; they had not received specific training to deal with the particular needs of foreign nationals detained under aliens legislation. **The CPT recommends that the authorities of the Netherlands Antilles address this issue in the light of the above remarks.**

35. Medical care was provided by the health care service at Bon Futuro Prison, by the doctor employed by the police, or the staff could call upon any doctor in the case of an emergency. However, no medical screening was carried out on new arrivals at the “Illegalen Barakken”. 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.

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

²⁶ This request was confirmed in writing by letter of 11 July 2007.

²⁷ With a cost estimate of AWG 80,900.

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

36. 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.

37. It would appear that immigration detainees did not benefit from the full protection of the safeguards outlined above. In particular:

- the possibility to inform a person of one's choice of one's detention was limited to persons who could afford to purchase a telephone card;
- access to free legal assistance was limited to citizens of the Netherlands Antilles, and the delegation met several foreigners who could not afford a lawyer and were, as a consequence, not provided with any legal assistance;
- the delegation received a number of complaints from detainees that they had had to wait several weeks before their request to see a doctor was granted.
- certain information on rights and applicable procedures was provided on the 30-day detention order, which, however, was often served several days after the person's detention.
- information on the right to appeal against the detention order was not provided; and
- detention continued, in practice, after the expiry of the detention order, without the order being formally renewed.

The CPT recommends that the authorities of the Netherlands Antilles take the necessary steps to ensure that all persons held under aliens legislation are afforded all the fundamental safeguards outlined in paragraph 36 above.

38. Finally, detainees' contact with the outside world was limited to one or two phone calls of two or three minutes' per day, provided one had money to pay for a phone card. No visits were allowed, except from a lawyer.

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

C. Prisons

1. Preliminary remarks

39. The CPT's delegation visited Bon Futuro Prison (formerly Koraal Specht), an establishment visited by the CPT on four previous occasions²⁸. Since the visit in 2002, the prison's capacity had increased to 704, with the addition - outside the main perimeter of the establishment - of a new section for women and a new section for male working prisoners²⁹. On 6 June 2007, the Prison held 590 inmates, 242 on remand (226 male and 16 female) and 348 sentenced (323 male and 25 female). More than a quarter of the inmate population was under 25 years of age, four of them minors (all 17).

The delegation also visited Bonaire Remand Prison, situated in a two-storey building adjacent to Kralendijk Police Station, on the island of Bonaire. Following a Justice Ministry review of all places of detention, the establishment had been closed down in 2000 and was reopened in 2005. With a theoretical capacity of 53 places, Bonaire Remand Prison officially operated at a maximum capacity of 27 places, due to a shortage in staff. On 11 June 2007, 29 men were accommodated, two of whom, however, spent the night at the next-door police station³⁰. The population was a mixture of sentenced and remand prisoners distributed between the ground and first floor levels of the prison, but not according to any apparent classification criteria. Seven inmates were under 21 years old, but none of them minors.

2. Ill-treatment

40. It should be stated at the outset that the delegation heard no allegations of ill-treatment by staff at *Bonaire Remand Prison*. Indeed, staff-prisoner relations were generally good and the atmosphere in the establishment appeared to be relaxed.

41. The same could not be said of *Bon Futuro Prison*, where - with the notable exceptions of the women's unit and the forensic psychiatric support unit (or FOBA³¹) - positive relations between staff and prisoners were clearly lacking. Instead, the maintenance of control appeared to be overdependent on the presence of a Correctional Emergency Response Team (CERT), which frequently intervened in the prison, in order to re-establish order through the use of force. Specific recommendations concerning the CERT are made in section 7.

During the visit, the CPT's delegation received several allegations of physical ill-treatment of prisoners by staff, most of them involving an intervention by members of the CERT. Two examples follow.

²⁸ See the CPT's reports on its visits to the Netherlands Antilles in 1994 (CPT/Inf(96) 1, paragraphs 64 to 153), 1997 (CPT/Inf(98) 17, paragraphs 7 to 41), 1999 (CPT/Inf(2000) 9, paragraphs 8 to 46) and 2002 (CPT/Inf(2002) 30 (Part 2), paragraphs 26 to 70).

²⁹ The CPT's delegation did not visit the section for male working prisoners.

³⁰ See paragraph 21 and footnote 16 above.

³¹ 'FOBA' stands for '*Forensische Observatie- en Begeleidingsafdeling*'.

42. In **Case A**, C.N., a prisoner detained in Block 6, alleged that on 16 March 2007 he had had a scuffle with a prison officer, after which, once he was already brought under control, he was heavily beaten by a number of CERT officers. As a result, his nose and one finger were broken and his arm was badly bruised and swollen. He was then allegedly brought to the disciplinary unit, where the staff on duty refused to admit him before he was examined by a doctor.

The prisoner's medical file records the incident as a case of use of force, noting that the prisoner, who was seen at the infirmary after an intervention by the CERT, presented an oedema on the arch of the right eyebrow, a cut to the left nasal region, three bruises of the inner side of the right fore-arm, as well as cuts in the region of the outer edge of the right palm. The patient was sent to hospital due to a suspected fracture of the hand. An X-ray confirmed a displaced fracture of the fifth bone of the right hand. On the prisoner's return from hospital, the infirmary issued a certificate against the use of handcuffs.

The authorities informed the CPT³² that the Complaints, Supervision and Monitoring Agency had conducted an inquiry into the incident referred to in Case A, further to which a request to initiate a criminal investigation was lodged, on 21 March 2007, with the Prosecutor-General. **The CPT would like to be informed of the results of that investigation.**

43. In **Case B**, the prisoners R.W. and J.M. alleged that, on 19 May 2007, during an argument with a prison officer, the officer had hit them with a padlock, injuring J.M.'s hand and R.W.'s nose. They alleged that, shortly thereafter, a group of CERT officers came to the Block, took them both to see the doctor, then to a disciplinary cell, where the officers beat J.M. in a corner of the cell and threatened R.W. with similar treatment. They further alleged that while in disciplinary confinement, which lasted until 2 June 2007, they were not seen by a doctor.

The medical files of the two prisoners, containing observations prior to the prisoners being brought to the disciplinary unit, are consistent with the relevant allegations:

R.W.'s medical file records the use of force by staff on 19 May 2007, after which the prisoner was examined at the infirmary and presented haematoma on the abdomen, a wound to the nose and an oedema of the occipital region.

The medical file of J.M. notes the recourse to force by staff on 19 May 2007, after which the prisoner was examined at the infirmary. A medical report on injuries was completed, noting bruises to the outer side of his hands. A certificate for disciplinary placement was signed by the doctor.

44. The situation observed at Bon Futuro Prison is indicative of an alarming negative trend compared to the Committee's findings during the visit in 2002, when no allegations of ill-treatment were received³³.

³² By letter of 25 September 2007.

³³ See CPT/Inf(2002) 30 (Part 2), paragraph 30. The findings in 2002 compared favourably to those of the CPT's visits in 1994, 1997 and 1999 to Bon Futuro Prison (then Koraal Specht). See, respectively, CPT/Inf (96) 1, paragraphs 67 and 68, CPT/Inf(98) 17, paragraphs 9 and 10, CPT/Inf(2000) 9, paragraphs 10 and 11.

The CPT wishes to recall that the State is under a duty to provide safe custody for all persons deprived of their liberty in prison, and that the frontline responsibility in providing such custody 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 - including those belonging to special security units such as the CERT - 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 be taken to eradicate ill-treatment of prisoners at Bon Futuro Prison by prison or CERT staff, in the light of the foregoing remarks, including through improved management, staff training and supervisory mechanisms.

45. Moreover, the phenomenon of inter-prisoner violence had increased. The number of lesions recorded annually during detention (i.e. not on admission) appeared to have doubled since 2002. Further, the delegation received allegations of inter-prisoner sexual violence, most incidents of which were not reported. One homicide occurred in 2004 and another in 2005. During the visit, the delegation received various accounts of stabbings, including one, in 2006, of a prisoner in Block 1 who had been placed there for his own protection. Since the visit, the CPT has learned that another death by stabbing occurred in October 2007.

At the end of the visit, the CPT's delegation had an opportunity to express its serious concerns with regard to the problem of inter-prisoner violence at Bon Futuro Prison³⁴. In response, the authorities of the Netherlands Antilles indicated³⁵ that they intended to install cameras (so-called "speed domes") which would record any movement on the wing, and they expected that such a measure would have a preventive influence on prisoners' behaviour.

46. The CPT has grave concerns about the levels of violence at Bon Futuro Prison, an establishment which was clearly dangerous and unsafe for both prisoners and staff. It is noteworthy, in this context, that approximately 30 fire-arms were confiscated during searches carried out since 2003.

The CPT must recall 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 Committee accepts that technology, such as video-cameras, can be useful in an effort to reduce violence. However, ensuring safety in prison will, above all, require adequate staffing levels in detention areas, greater contact, and the development of positive relations, between inmates and staff, based on the notions of dynamic security and care (see also section 5 on staff).

The CPT calls on the authorities of the Netherlands Antilles to adopt a proactive strategy to prevent violence by inmates against other inmates at Bon Futuro Prison, in the light of the foregoing remarks.

³⁴ These were confirmed in writing by letter of 11 July 2007.

³⁵ By letter of 25 September 2005.

3. Material conditions

a. Bon Futuro Prison

47. The CPT's delegation gained a favourable impression of the new women's section, which had been in operation since June 2006. The 17 cells for 3 or 4 persons were arranged in two units and opened on to a large rectangular exercise yard. The staff's office, the 3 disciplinary/observation cells, two activity rooms and the doctor's consultation room were also arranged around the exercise yard. Each cell was equipped with adequate furniture (beds, chairs and lockers) and a sanitary annex in good condition (comprising a sink, toilet and shower). Whereas cells for up to 3 persons (measuring 13 m²) offered sufficient living space, those for up to 4 persons (measuring 14.5 m²) were small for such an occupancy. Although this deficiency was greatly alleviated by the fact that prisoners had access to the exercise yard for most of the day, the larger cells should not accommodate more than three persons. From every third cell, detainees had access - by reaching between the cell bars - to a call-bell button on the wall outside.

48. Conditions in the Blocks in the main perimeter of Bon Futuro Prison had not undergone major structural changes since the visit in 2002. The CPT would merely note again that certain Blocks were strewn with rubbish and were infested with rats.

Further, no call-bell system was in place in the wings or in the FOBA. However, the CPT has since learned³⁶ that instructions have been issued to have a call bell system installed. The Committee welcomes this development **and trusts that all of the abovementioned deficiencies shall be remedied without delay. In particular, every cell, including in the women's section, should be fitted with a call-bell.**

49. As regards, more particularly, the disciplinary unit, at least two of the cells at the far end had insufficient access to natural light and poor artificial lighting. The cells were also very poorly ventilated (due to the panelled windows), and above all contained an in-cell shower/toilet combination which did not allow for hygienic conditions to be maintained.

At the end of the visit, the delegation made an immediate observation under Article 8, paragraph 5, of the Convention, requesting that the disciplinary cells not be used until all the aforementioned deficiencies had been remedied. By letter of 25 September 2007, the authorities informed the CPT that the use of the disciplinary cells had resumed after the necessary repairs were made to the artificial lighting, the showers, the ventilation, and to address the infestation of vermin. Moreover, cleaning products were being regularly provided and the wing was being painted. The CPT welcomes the measures taken. Nevertheless, **the Committee recommends that the design of the sanitary facilities be changed so that the toilet is separate from the shower.**

³⁶ By letter of 25 September 2007.

50. One common complaint in interviews throughout the prison was the lack of quality and variety in the food provided. Indeed meals appeared to be largely based on starches and to be lacking in fresh vegetables and fruit. Meal times were also clearly designed to be organised in accordance with the low levels of staffing; the last meal of the day was served at 15h30, for example.

The CPT recommends that the authorities of the Netherlands Antilles make efforts to improve the nutritional quality and variety of food provided to inmates at Bon Futuro Prison. Further, regular meal times should be distributed more evenly throughout the day.

b. Bonaire Remand Prison

51. Detention at ground floor level at Bonaire Remand Prison offered reasonably good material conditions, including access, during the day, to an area adjoining the cells with a partly opened roof. However, this area was not sufficient for outdoor exercise purposes. The situation on the first floor was arguably worse, as the only area accessible to prisoners apart from their cells was an adjoining aerated hall area also used for hanging out laundry. The CPT was informed³⁷ that, in the short term, an exercise yard would be built, for which the budget had been approved. **The CPT calls on the authorities of the Netherlands Antilles to ensure, without undue delay, that prisoners at Bonaire Remand Prison are given an opportunity of at least one hour's daily outdoor exercise.**

A further concern was that the Prison did not possess sufficient beds for the inmates present. Certain prisoners were therefore obliged to sleep on a mattress on the floor for months. This is unacceptable.

The CPT should also point out that the multi-occupancy cells on either floor at Bonaire Remand Prison were not sufficient in size (upstairs 12 m², and downstairs 13.5 m²) to accommodate more than 3 persons each. Together with the one adequately sized individual cell at ground floor level, this would bring the Prison's maximum capacity to 40 (as opposed to the official theoretical capacity of 53).

The Committee recommends that:

- **each prisoner be provided with a bed; and**
- **no more than three persons be accommodated in each multi-occupancy cell at Bonaire Remand Prison.**

³⁷ By letter of 25 September 2007.

4. Regime

52. Neither of the two establishments visited offered anything resembling a programme of purposeful activities to prisoners. If anything the bleak situation encountered during the visit to Bon Futuro Prison in 2002³⁸ had worsened: despite certain activities (clothes manufacturing and upholstery) being on offer, the situation of enforced idleness for most of the day affected the vast majority of prisoners. Further, no regular activities were on offer at Bonaire Remand Prison, apart from watching television. This is a wholly unsatisfactory state of affairs.

The CPT is, therefore, pleased to learn that ‘implementing regimes and adequate day-time programmes’ for prisoners will form an integral part of the prison system reform³⁹ foreseen under the Netherlands Antilles Security Plan.

Certainly the inability of the prison service to provide purposeful activities, linked to an individualised treatment plan, is to a large extent related to chronically low staffing levels. However, some minimal programme should nevertheless be possible, as it is not acceptable to leave prisoners to their own devices for months at a time. As prisoners look forward to release into the community they need to be prepared for that life, to possess a degree of self-worth and to feel capable of leading a life away from crime. A regime which provides for varied activities is a vital component in the preparation for release, as well as being beneficial for the running of the prison. The aim should be to ensure that all prisoners (including those on remand) 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.

The CPT calls on the authorities of the Netherlands Antilles to take the necessary steps to ensure that appropriate regime activities for prisoners are developed and sustained, in the light of the foregoing remarks.

5. Staff

53. The totally inadequate numbers of prison officers at *Bon Futuro Prison* in contact with inmates meant that staff were not in control of prisoners within the establishment. Staff numbers were particularly low⁴⁰ at night, when prisoners were locked up in their cells, but, similarly, very few prison officers were in contact with prisoners on Saturday afternoons/evenings and Sundays during the day⁴¹ when prisoners were not confined to their cells.

The situation at *Bonaire Prison* was not much better, as, with a total of 16 staff members (including the Director), working in shifts of at most 5 persons strong, it was difficult to supervise two quite distinct detention areas.

The CPT calls on the authorities of the Netherlands Antilles to remedy the staff shortages in both establishments as a matter of priority.

³⁸ See CPT/Inf(2002)30 (Part 2), at paragraphs 42 and 43.

³⁹ Requiring a budget of well over ANG 160 million, according to the authorities (See letter of 25 September 2007).

⁴⁰ Thirteen officers were on night-shift duty during the visit, although this figure was allowed to be as low as nine.

⁴¹ 27 officers were on duty during the visit, although this figure could be as low as 16.

6. Health care services

- a. general medical care at Bon Futuro Prison

54. The medical service at Bon Futuro Prison continued to benefit from a generally good standard of facilities⁴².

It was still the case, however, that the medical unit had no dedicated outdoor exercise yard and that, as a result, prisoners placed there were not offered daily outdoor exercise. **The CPT recommends that such a possibility be offered to prisoners if their state of health permits.**

Further, although injuries or illnesses requiring emergency treatment were a somewhat frequent occurrence, the medical service did not have at its disposal an emergency room in which to place persons pending their transfer to hospital. **The authorities of the Netherlands Antilles should explore the possibility of providing the medical service with an additional room for emergency care.**

55. As regards medical staff resources, the Committee must, once again, point out that the equivalent of a full-time doctor's position was still not secured. At the time of the visit, the regular presence of the two part-time doctors combined amounted to around 18 hours per week. In the CPT's view, an establishment of the size of Bon Futuro Prison should ideally benefit from the equivalent of two full-time doctors. **The CPT reiterates its recommendation that efforts be made to secure, as an initial minimum, the equivalent of a full time doctor's position.**

The CPT is pleased to note that the nursing staff had increased since the previous visit to 7 nurses and two assistants. However, the positions of two additional assistants (in dentistry and pharmacy) were budgeted but not filled. **The CPT recommends that efforts be made to fill these posts.**

No healthcare staff was present between the hours of 10 pm⁴³ and 7 am on weekdays, and for the entire weekend. Such a situation is not acceptable. The delegation was informed that no night or weekend presence was organised due to a lack of security arrangements during those times. **The CPT recommends that someone qualified to provide first aid, preferably with a recognised nursing qualification, should always be present in the prison, including at night.**

The situation as regards dental care had, apparently, greatly deteriorated. Although the needs of the establishment would call for the equivalent of a half-time dentist's position, only half a day of weekly presence was organised. **The CPT recommends that every effort be made to recruit a dentist to the equivalent of a half-time position.**

⁴² See the CPT report on its visit in 2002, CPT/Inf(2002) 30, at paragraphs 53 to 58.

⁴³ The delegation was informed that, as of 1 July 2007, the last shift would end at 8 pm.

56. Prompt medical screening of newly arrived prisoners is essential to prevent the spread of transmissible diseases and for recording injuries in good time. The CPT notes that medical screening was generally carried out up to 4 weeks after the prisoner's arrival; this is not acceptable.

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.

57. On a more positive note, the CPT welcomes the more rigorous recording of injuries in the incidents register. Generally, the medical service also appeared to ensure a good respect for medical confidentiality.

58. The situation of prisoners unsuitable for continued detention calls for some comment. Typical examples of such prisoners are those who are the subject of a short-term fatal prognosis, who are suffering from a serious disease which cannot be properly treated in prison conditions, who are severely handicapped or of advanced age. The continued detention of such persons in a prison environment can create an intolerable situation.

The CPT notes that although at Bon Futuro Prison the possibility existed for such persons to be released, the process was extremely difficult and lengthy. One such prisoner had died of AIDS in 2007. It would appear that certificates issued by the doctor for unsuitability of continued detention often received no follow-up. **The CPT recommends that existing procedures be improved so as to allow prisoners unsuited for continued detention to benefit from alternative measures without unnecessary delay.**

59. As regards the role of the health-care staff in the context of disciplinary placements, the delegation observed that disciplinary placement decisions were signed off by the prison doctor.

A prison's health-care service should certainly be very attentive to the situation of prisoners placed in disciplinary cells (or any other prisoner held under conditions of solitary confinement). However, medical practitioners working in prisons act as the personal doctors of prisoners, and ensuring that there is a positive doctor-patient relationship between them is a major factor in safeguarding the health and well-being of prisoners. Consequently, under no circumstances should prison doctors be obliged to certify that prisoners are fit to undergo punishment⁴⁴.

The Committee recommends that the authorities of the Netherlands Antilles ensure that prison doctors are not required to certify that prisoners are fit to undergo punishment.

⁴⁴ This point was also recognised in the recently adopted Committee of Ministers' Recommendation Rec (2006) 2 on the European Prison Rules.

b. psychiatric and psychological care at Bon Futuro Prison

60. A psychiatrist attended Bon Futuro Prison (apart from FOBA, see paragraph 59) on a half-time basis. However, prisoners did not benefit from psychological care (one psychologist attended only the FOBA unit). In the CPT's view, an establishment of the size of Bon Futuro Prison should be able to rely on the services of at least one full-time psychologist. **The CPT recommends that a full-time psychologist be recruited as soon as possible for Bon Futuro Prison.**

61. The forensic psychiatric support unit (or "FOBA"⁴⁵) at Bon Futuro Prison was developed in order to cater for certain problematic prisoners in the absence of more appropriate hospital surroundings. A psychiatrist held consultations at the FOBA for one morning per week and saw new admissions and held progress meetings another morning per week. The psychologist generally attended the FOBA one day per week, but was on long-term sick-leave at the time of the visit. A social worker also paid weekly visits to the FOBA.

Although positive in many respects⁴⁶, the FOBA did present several significant shortcomings. In particular,

- the lack of a 24-hour nursing presence on this Unit;
- the distribution of medication by non-medical FOBA staff (well-trained, motivated and well-intentioned though they might be);
- the separation between the prison medical file and the FOBA psychiatric file;
- the use of involuntary treatment in a prison environment, involving, at times, an intervention and manual restraints by the CERT; and
- the placement, by doctors, of prisoners in isolation cells in a prison context.

The CPT recommends that the authorities of the Netherlands Antilles remedy the above-mentioned shortcomings.

c. health care at Bonaire Remand Prison

62. Since the long leave of absence of the nurse⁴⁷ at Bonaire Remand Prison, the organisation of health care at the prison was all but absent. Although a doctor was on call, no systematic medical screening was carried out, no medical file was opened or kept for prisoners, no nurse was present, no doctor's or infirmary room was available and medication was simply stored in an unlocked cupboard, accessible for all prison officers.

This situation could be described as a dereliction of duty. An inadequate level of health care can lead rapidly to situations falling within the scope of the term "inhuman and degrading treatment".

The CPT recommends that urgent steps be taken to redress the absence of organised health care at Bonaire Remand Prison, in the light of the foregoing remarks. In particular, the establishment should be visited daily by a nurse.

⁴⁵ 'FOBA' stands for *Forensische Observatie- en Begeleidingsafdeling*.

⁴⁶ See also the report on the visit in 2002 (CPT/Inf(2002) 30), at paragraph 57.

⁴⁷ A prison guard who had a nursing qualification.

7. Correctional Emergency Response Team

63. The CPT had commented on the Correctional Emergency Response Team (CERT) in its report on the 2002 visit⁴⁸, when the CERT had only recently been established. During the visit in 2007, it was clear that the CERT - composed of 16 members, 3 of whom were women - had developed into a generally feared force whose primary task was to compensate for the lack of appropriate control in the prison (see paragraph 46), by means of frequent, armed, and often physically violent, interventions.

The CPT reiterates its recommendation⁴⁹ that the authorities of the Netherlands Antilles pay particular attention to the professional training of the CERT members and the supervision of their activities.

As regards, in particular, training, **the CPT recommends that CERT members be provided with both initial and ongoing training that has a human rights dimension - and with a training manual.**

Concerning supervision, **clear operating rules should be established for the CERT, covering the criteria and responsibility for deployment and the chain of command, particularly when the police are also involved.**

64. **The Committee further recommends that the authorities of the Netherlands Antilles:**

- **establish written selection criteria for the CERT. The selection process should involve the participation of a person independent from the prison and preferably with a qualification in psychology;**
- **consider measures - such as creating a much larger pool from which CERT members could be drawn⁵⁰ - to allow for rotation and reduce the likelihood of unhealthy corporate cultures developing.**

65. Interviews with both prisoners and staff indicated that CERT staff were perceived as being uninterested in finding a peaceful solution to a conflict. In one incident which occurred a few months prior to the visit, prisoners in the women's block had allegedly refused to return to their cells in protest against a collective punishment. It was alleged that the subsequent intervention by CERT staff was disproportionately violent: that CERT members made no attempt to discuss the matter first, but they used pepper spray on the women and dragged them (even by the hair) back into the cells.

In the CPT's view, all avenues of mediation should be exhausted before force is resorted to in prison. **The CPT recommends that a policy and protocol on this subject be developed, and that a team of persons be trained in mediation skills.**

⁴⁸ See CPT/Inf(2002) 30 (Part 2) at paragraphs 64 to 68.

⁴⁹ See CPT/Inf(2002) 30 (Part 2), paragraph 67.

⁵⁰ Foreseen under the Bon Futuro Security Plan (April 2007).

66. Moreover, pepper spray is a potentially dangerous substance and should not be used in confined spaces. Even when used in open spaces, the CPT has serious reservations; if exceptionally it needs to be used, there should be clearly defined safeguards in place. For example, persons exposed to pepper spray should be granted immediate access to a medical doctor and be offered an antidote. Pepper spray should never be deployed against a prisoner who has already been brought under control. Further, it should not form part of the standard equipment of a prison officer.

The CPT recommends that the authorities of the Netherlands Antilles draw up a clear directive governing the use of pepper spray, which should include, as a minimum:

- **clear instructions as to when pepper spray may be used, which should state explicitly that pepper spray should not be used in a confined area;**
- **the right of prisoners exposed to pepper spray to be granted immediate access to a doctor and to be offered an antidote;**
- **the qualifications, training and skills of staff members authorised to use pepper spray;**
- **an adequate reporting and supervisory mechanism with respect to the use of pepper spray.**

APPENDIX I

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

A. Police establishments

Preliminary remarks

recommendations

- the authorities of the Netherlands Antilles to re-examine the system of detention on police premises with a view to substantially reducing its duration (paragraph 10).

Ill-treatment

recommendations

- the authorities of the Netherlands Antilles 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
 - the ill-treatment of such persons will be the subject of severe sanctions (paragraph 12);
- 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. In particular, 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 12);
- the blindfolding of apprehended persons to be prohibited. Further, only exceptional circumstances could justify measures to conceal the identity of law enforcement officials performing arrests. Where such measures are applied, appropriate safeguards must be in place in order to ensure that the officials concerned are accountable for their actions (e.g. by means of a clearly visible number on the uniform) (paragraph 13).

requests for information

- detailed information on the rules governing the wearing of masks by police officers in the course of their duties (paragraph 13).

Conditions of detention

recommendations

- the necessary measures to be taken to ensure that cells at Punda Police Station are kept in a satisfactory state of cleanliness and are fitted with a call-bell. Further, persons detained there should be provided with a clean mattress (paragraph 14);
- efforts to be made to improve ventilation in the cells at the Rio Canario police detention facility (paragraph 15);
- the necessary measures to be taken to modify the CCTV and lighting arrangements at the Rio Canario police detention facility, in the light of remarks in paragraph 16. Further, the CCTV system must not be allowed to replace the regular inspection of cells by members of staff to ensure the safety of detained persons (paragraph 16);
- an opportunity for at least one hour of daily outdoor exercise to be provided for persons detained longer than 24 hours at Rincon Police Station. Further, efforts should be made to improve ventilation in the cells, which should also be fitted with call-bells (paragraph 17);
- persons held for a prolonged period in Bon Futuro Police Detention Unit to be offered the possibility of additional forms of activities (e.g. reading matter, radio/television) (paragraph 18);
- until the deficiencies mentioned in paragraph 19 are remedied, the cells at Barber Police Station only to be used for very short periods of detention (paragraph 20);
- a call-bell system to be installed at Kralendijk Police Station and an opportunity for at least one hour of daily outdoor exercise to be provided for persons detained longer than 24 hours at this police station (paragraph 21).

comments

- police officers should always be present when anyone is detained at a police station (paragraph 17);
- the CPT trusts that the necessary steps will be taken to ensure, through regular maintenance and inspections, that the Committee's minimum standards are observed and sustained in all police stations in the Netherlands Antilles (paragraph 23).

requests for information

- confirmation that the deficiencies observed at Barber Police Station and noted in paragraph 19 will be remedied without further delay (paragraph 20);

- up-to-date information concerning the renovation/construction plans referred to in paragraph 22, including an account of detention conditions, occupancy levels and average/maximum periods of detention at Philipsburg Central Police Station (paragraph 22).

Safeguards against ill-treatment by the police

recommendations

- the necessary steps to be taken to ensure that persons deprived of their liberty by the police are able to benefit from the rights mentioned in paragraph 24 from the very outset of their deprivation of liberty, i.e. as from the moment at which they are obliged to remain with the police (paragraph 24);
- the authorities of the Netherlands Antilles to review, in consultation with the Bar Association, the system of legal aid for persons in police custody who are not in a position to pay for a lawyer, so as to ensure that such persons can in practice have access to a lawyer from the very outset of police custody. Practical arrangements should be made to ensure that *ex officio* lawyers meet their clients while in police custody (paragraph 25);
- the authorities of the Netherlands Antilles to ensure that all persons deprived of their liberty by the police are informed of their rights, including the right to have a close relative or other person notified of one's arrest and the right to have access to a doctor. Such persons should, in particular, be provided with a written form setting out their rights in a straightforward manner (paragraph 26);
- the authorities of the Netherlands Antilles to consider the possibility of drawing up an individualised custody record for use at all police stations (paragraph 27).

B. Foreign nationals detained under aliens legislation

Ill-treatment

recommendations

- the CPT's recommendations in paragraph 12 to apply equally with regard to apprehensions by the police pursuant to the aliens legislation (paragraph 30).

Conditions of detention at the “Illegalen Barakken” for immigration detainees

recommendations

- the authorities of the Netherlands Antilles to ensure that the number of persons held at the “Illegalen Barakken” never exceeds the number of beds available. Further, efforts should be made to keep occupancy levels to a maximum of 20 persons in each dormitory (paragraph 31);
- steps to be taken as a matter of urgency to remedy the shortcomings outlined in paragraph 32, and to provide persons detained at the “Illegalen Barakken” with adequate material conditions, activities and at least one hour of daily outdoor exercise (paragraph 33);
- the lack of training for staff at the “Illegalen Barakken” to be addressed, in the light of the remarks made in paragraph 34 (paragraph 34);
- systematic medical screening of all immigration detainees, including for transmissible diseases, to be introduced in accordance with the remarks in paragraph 35. Such screening should be carried out in a way that respects medical confidentiality. Further, there should be a daily presence at the “Illegalen Barakken” of a person with a recognised nursing qualification, and access to acute dental care and appropriate psychological/psychiatric assistance should be available (paragraph 35).

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

recommendations

- the necessary steps to be taken to ensure that all persons held under aliens legislation are afforded all the fundamental safeguards outlined in paragraph 36 (paragraph 37);
- immigration detainees to be allowed to maintain contact with the outside world during their detention, and in particular to receive visits from relatives and representatives of relevant organisations (paragraph 38).

C. **Prisons**

Ill-treatment

recommendations

- concrete measures to be taken to eradicate ill-treatment of prisoners at Bon Futuro Prison by prison staff or members of the Correctional Emergency Response Team (CERT), in the light of the remarks made in paragraphs 41 and 44, including through improved management, staff training and supervisory mechanisms (paragraph 44);
- the authorities of the Netherlands Antilles to adopt a proactive strategy to prevent violence by inmates against other inmates at Bon Futuro Prison, in the light of the remarks in paragraphs 45 and 46 (paragraph 46).

requests for information

- the results of the investigation into the alleged ill-treatment of the prisoner C.N. (paragraph 42).

Material conditions

Bon Futuro Prison

recommendations

- the design of the sanitary facilities in the disciplinary unit to be changed so that the toilet is separate from the shower (paragraph 49);
- efforts to be made to improve the nutritional quality and variety of food provided to inmates at Bon Futuro Prison. Further, regular meal times should be distributed more evenly throughout the day (paragraph 50).

comments

- the CPT trusts that all of the deficiencies mentioned in paragraphs 47 and 48 will be remedied without delay. In particular, every cell, including in the women's section, should be fitted with a call-bell (paragraph 48).

Bonaire Remand Prison

recommendations

- the authorities of the Netherlands Antilles to ensure, without undue delay, that prisoners at Bonaire Remand Prison are given an opportunity of at least one hour's daily outdoor exercise (paragraph 51);
- each prisoner to be provided with a bed (paragraph 51);
- no more than three persons to be accommodated in each multi-occupancy cell at Bonaire Remand Prison (paragraph 51).

Regime

recommendations

- the necessary steps to be taken to ensure that appropriate regime activities are developed and sustained for prisoners at Bon Futuro Prison and Bonaire Remand Prison, in the light of the remarks in paragraph 52 (paragraph 52).

Staff

recommendations

- the authorities of the Netherlands Antilles to remedy the staff shortages in both Bon Futuro Prison and Bonaire Remand Prison as a matter of priority (paragraph 53).

Health care services

Bon Futuro Prison

recommendations

- prisoners placed at the medical unit in Bon Futuro Prison to be offered daily outdoor exercise if their state of health permits (paragraph 54);
- efforts to be made to secure, as an initial minimum, the equivalent of a full time doctor's position (paragraph 55);
- efforts to be made to fill the budgeted positions of two additional assistants (in dentistry and pharmacy) (paragraph 55);

- a person qualified to provide first aid, preferably with a recognised nursing qualification, always to be present in the prison, including at night (paragraph 55);
- every effort to be made to recruit a dentist to the equivalent of a half-time position (paragraph 55);
- 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 (paragraph 56);
- existing procedures to be improved so as to allow prisoners unsuited for continued detention to benefit from alternative measures without unnecessary delay (paragraph 58);
- the authorities of the Netherlands Antilles to ensure that prison doctors are not required to certify that prisoners are fit to undergo punishment (paragraph 59);
- a full-time psychologist to be recruited as soon as possible for Bon Futuro Prison (paragraph 60);
- the shortcomings observed at the FOBA and outlined in paragraph 61 to be remedied (paragraph 61).

comments

- the possibility should be explored of providing the medical service with an additional room for emergency care (paragraph 54).

Bonaire Remand Prison

recommendations

- urgent steps to be taken to redress the absence of organised health care at Bonaire Remand Prison, in the light of the remarks made in paragraph 62. In particular, the establishment should be visited daily by a nurse (paragraph 62).

Correctional Emergency Response Team (CERT)

recommendations

- particular attention to be paid to the professional training of the CERT members and the supervision of their activities (paragraph 63);
- CERT members to be provided with both initial and ongoing training that has a human rights dimension - and with a training manual (paragraph 63);

- clear operating rules to be established for the CERT, covering the criteria and responsibility for deployment and the chain of command, particularly when the police are also involved (paragraph 63);
- the authorities of the Netherlands Antilles:
 - to establish written selection criteria for the CERT. The selection process should involve the participation of a person independent from the prison and preferably with a qualification in psychology;
 - to consider measures - such as creating a much larger pool from which CERT members could be drawn - to allow for rotation and reduce the likelihood of unhealthy corporate cultures developing (paragraph 64);
- a policy and protocol on conflict resolution to be developed and a team of persons to be trained in mediation skills (paragraph 65);
- a clear directive governing the use of pepper spray to be drawn up, which should include, as a minimum:
 - clear instructions as to when pepper spray may be used, which should state explicitly that pepper spray should not be used in a confined area;
 - the right of prisoners exposed to pepper spray to be granted immediate access to a doctor and to be offered an antidote;
 - the qualifications, training and skills of staff members authorised to use pepper spray;
 - an adequate reporting and supervisory mechanism with respect to the use of pepper spray (paragraph 66).

APPENDIX II

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

A. Authorities of the Netherlands Antilles

Mr David DICK	Minister of Justice
Ms Lizanne RICHARDS-DINDIAL	Lieutenant Governor of Curaçao

Ministry of Justice of the Netherlands Antilles

Mr Edsel GUMBS	Head of the National Security Department (VNA)
Mr Glen MINGELI	Head of the National Detective Department (<i>Landsrecherche</i>)
Mr Pedro VAN DER BIEZEN	Head of the Immigration Department
Mr Robert ANTONIUS	Director of the Directorate of Justice
Ms Joan THEODORA-BREWSTER	Deputy Director, Directorate of Justice

Judicial authorities

Mr Dick PIAR	Attorney General of the Netherlands Antilles
Ms Giselle VEEN-JONKHOUT	Public Prosecutor of Curaçao

Prison and Correctional Services

Mr Bartholomeo ANDREA	Acting Director, Bon Futuro Prison
Mr Franklin VICTORIA	Acting Director, Bonaire Prison
Ms Charette PINEDO	Acting Director, Government correctional institute (GOG)

Netherlands Antilles Police Force

Mr Carlos CASSERES	Acting Chief Commissioner of Police, Curaçao
Mr Jan VAN DER STRATEN	Acting Chief Commissioner of Police, Bonaire
Mr Franklin GIRIGORIE	Chief Inspector of Police, Curaçao
Mr Ademar DORAN	Chief Inspector of Police, St. Maarten
Mr Albert SCHOOP	Chief Inspector of Police, Curaçao
Mr Jules ILARIO	Inspector of Police, Curaçao
Mr Reggie HUGGINS	Inspector of Police, Curaçao

Other authorities

Mr Fred WIEL	Ombudsman for Curaçao
Mr Chester PETERSON	Vice-president, Supervisory Committee of Bon Futuro Prison
Mr Waldi OOSTBURG Mr Urvin PICUS	Director, Capriles Psychiatric Clinic Deputy Director, Capriles Psychiatric Clinic
Mr Marcel PINEDO	Director, Brasami Rehabilitation Centre

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

Ms Jacqueline MARTIS	President, Amnesty International Curaçao
Prof. Jan REIJNTJES	University of the Netherlands Antilles, Adviser to the Dutch Caribbean Human Rights Committee
Ms Adaly RODRIGUEZ	President, Dutch Caribbean Human Rights Committee
Mr Eldon SULVARAN	Lawyer