Dutch NGOs contribution to the List of Issues prior to the submission of the Seventh Periodic Report by the Netherlands to the UN Committee against Torture

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INTRODUCTION

This document contains a list of issues prior to the submission of the Seventh Periodic Report by the Netherlands to the UN Committee against Torture (hereafter: the Committee). This report was created with input and effort on the part of a wide variety of organizations and individuals (hereafter: the NGO coalition). The NGO coalition is grateful to the members of the Committee for the opportunity to contribute to the Committee's work and to voice our concerns. The NGO coalition aims to provide the Committee with information which will enable it to make its dialogue with the Dutch government as effective and useful as possible. Since the NGOs are all based in the European part of the Kingdom, this document almost exclusively deals with the situation in the European part of the Kingdom.

ARTICLE 2

1. The NGO coalition is concerned that the following issues may constitute a violation of article 2 of the Convention, since they show neglect of the governments' responsibility to ensure that the proper measures are taken to prevent acts of torture. The NGO coalition respectfully requests the Committee to include them on the List of Issues Prior to Reporting.

Investigation of alleged cases of torture

2. The Committee against Torture (hereafter: 'the Committee') has previously requested the Netherlands to investigate alleged cases of torture.[1] Dutch prison authorities, in particular, have an obligation to report and investigate the use of violence by detention personnel in both regular prison facilities and immigration detention.[2] Despite this obligation there has not been much data available concerning alleged cases of torture even though this was explicitly requested by the Committee.[3] However, this lack of data does not lead to the conclusion that there is no torture or ill treatment in the Netherlands.

3. This seeming non-existence of torture and ill-treatment could be a consequence of the following issues. Firstly lawyers rarely start procedures claiming their client has been tortured. Additionally prison authorities, and institutions such as the 'Commissie van Toezicht' (the Supervisory Commission) and the 'Raad voor Strafrechtstoepassing en Jeugdbescherming' (Council for the Administration of Criminal Justice and Protection of Juveniles, hereafter: 'RSJ'), the judicial institution for complaints concerning the Dutch prison system, avoid the use of terms such as 'torture', 'cruel, inhuman or degrading treatment or punishment' or 'ill treatment'.

4. As the Committee noted previously, there is no specific information on the invocation of the Convention against Torture (hereafter: 'the Convention' or 'the CAT') before national courts.[4] Lawyers seem to mostly invoke the European Convention on Human Rights, and the CAT is hardly invoked before prison authorities in immigration detention. When it is invoked, the Supervisory Commission and the RSJ tend to neglect it.[5]

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[1] *Concluding observations on the combined fifth and sixth periodic reports of the Netherlands, adopted by the Committee at its fiftieth session,* CAT/C/NLD/CO/5-6, § 22(20 June 2013).
[2] Article 35 § 3 Principles of Penal Detention Act (Penitentiaire beginselenwet) and article 9 Instruction for the Use of Violence (Geweldsinstructie).
[3] *Supra* n. 1, § 8.
[4] *Ibid.*, § 9.
[5] RSJ 31 May 2012, 12/298/GA and 12/334/GA, and RSJ 31 December2011, 11/1681 GA AO14. In these two cases, the complaints about a violation of article 3 of the Convention were not dealt with by the RSJ. After these

Please ask the Dutch State to indicate how the Dutch government will show more initiative with respect to researching and investigating alleged violations of the CAT within the prison system.

Access to legal counsel

5. While in police custody, undocumented migrants should get the possibility to contact a lawyer and contact an acquaintance. In spite of this, it seems that quite often the lawyer in question is unable to visit promptly, or has no access to the relevant information concerning the legal position of the person concerned. Additionally the NGO coalition is concerned about the right to access to a lawyer for migrants in solitary confinement. The authorities do not automatically notify the appointed lawyer of the migrant when their client is placed in isolation and reports of migrants communicating with their lawyers after being placed in solitary confinement are rare. There is a proposal for a new law about the policy for migrants in immigration detention, but this proposal does not have any provision for warning the lawyer of the prisoner that his client is put in isolation.[6] There are also instances of family members and acquaintances trying to get in contact with someone they know to be in detention, but not getting any information. Oftentimes they are also not allowed to visit their friend or relative in police custody and to bring them clothes or other items.

Please ask the Dutch State to provide information on how the Dutch government safeguards the access to a lawyer for migrants during solitary confinement.

Please ask the Dutch State to indicate who is responsible for the decision concerning the right to visitors while in police custody.

Please ask the Dutch State to indicate which elements constitute the aforementioned decision and what the balance is between these elements.

Please ask the Dutch State to provide information about the incorporation of the right to access to a lawyer in the provisions of the proposed new law considering the immigration detention regime.

decisions, the lawyer sent the complaints to the National Ombudsman to judge the complaint about the violation of the Convention. On 12 December 2012 the Ombudsman sent a letter (nr. 2012.12185) to the chairman of the RSJ, asking if the RSJ as a member of the NPM considers judging complaints of violation of the Convention against torture as part of its competence. The chairman of the RSJ responded on 25th January 2013, and confirmed that this was the case. Also See: Commissie van Toezicht KC 2013/032 (08 August 2013) When five persons went into a hunger strike in the detention centre at Schiphol Airport in 2013, the supervisory commission refused to discuss possible violations of the CAT, even after this was specifically mentioned in the complaints

[6] Legislative proposal '*Wet terugkeer en vreemdelingenbewaring*', Law of return and immigration detention, not yet entered into force (http://www.internetconsultatie.nl/vreemdelingenbewaring, last accessed 19-06-2015).

ARTICLE 3

6. The NGO coalition is concerned the following issue may constitute a violation of article 3 of the Convention, since it seems to indicate that the current system concerning refoulement might be inadequate. The NGO coalition respectfully requests you include it on the List of Issues prior to Reporting.

Non-refoulement

7. As it stands now legislation does not easily allow taking into account evidence that is provided after a first asylum procedure has come to an end.[7] The consequence is that people who could be in danger of refoulement are not recognized as a refugee, because the evidence to prove this status was not available at the time of their first asylum procedure.

8. The Dutch immigration authorities generally do not initiate investigations in cases where asylum seekers claim to be tortured, even when their claim is supported by physical injuries such as scars. Investigations on alleged cases of torture are instead initiated by the lawyers of the asylum seekers. The investigations initiated by lawyers are usually performed by the NGO 'instituut voor Mensenrechten en Medisch Onderzoek' (institute for Human Rights and Medical Assessment, hereafter: iMMO). These reports have the possibility to strongly impact the asylum procedure, as evidenced by relatively new jurisprudence of the Council of State.[8]

9. There is however a pattern of cases in which a second application for asylum is started but eventually rejected based on the argument that the asylum seeker should have brought forward the results of these reports in the first procedure.[9] Moreover, there are reports of requests for funding of the iMMO-investigations that have been refused by the governmental organisation which deals with the financing of such researches, the COA (Centraal Orgaan Opvang Asielzoekers), making it difficult for asylum seekers and their lawyers to organize such forensic investigations.[10] In accordance with a new EU directive, it was announced that from 20 July 2015, if the immigration authorities would think it would be 'relevant', a medical examination would be mandated.[11] It remains to be seen how this new policy will be executed however.

10. The NGO coalition is concerned about the general asylum procedure (i.e. decision on application within eight days, preceded by a rest/preparation period of minimally six days) since there is a risk that asylum seekers with complex cases will not have enough time to prepare their cases. This may result in the rejection of the application based on an incomplete investigation of their case. Moreover, the Immigration Authorities have not established criteria on the basis of which they will decide to deal with a case in the extended asylum procedure, instead of in the general asylum procedure.

[7] Article 4:6 Awb , available in English at http://www.rijksoverheid.nl/documenten-en-publicaties/besluiten/2006/06/21/engelse-tekst-awb.html (last accessed 24-06-2015)
[8] Council of State, nr. 201208171/1/V1, JV 2014/120 [ECLI:NL:RVS:2014:600] (19 February 2014); Court of Utrecht, AWB 14/19324 (2 October 2014); Court of Zwolle, AWB 12/36284, *JV* 2014/336 (3 September 2014); Court of Rotterdam, AWB 14/12949 (27 June 2014).
[9] See for example: Council of State, nr. 201400245/1/V1, JV 2014/390, [ECLI:NL:RVS:2014:3306], § 2.5 (29 August 2014).
[10] Court of Arnhem, AWB 14/7468 [ECLI:NL:RBDHA:2015:1931] (10 February 2015).
[11] See Explanatory Memorandum on the amendment of the Aliens Act 2000, *Kamerstukken II* 2014/15, 34088, nr. 6 (available in Dutch).

11. There is also some concern about the asylum policy regarding countries of origin. Currently the basis for the asylum policy on a country of origin is an official report (*ambtsbericht*)). The NGO coalition is of the opinion that the policy on countries of origin, needs to be based on various sources including the UNHCR and human rights organizations with relevant knowledge of the situation. This is also a requirement in the Directive on Asylum Procedures (Procedurerichtlijn 2013/32/EU) and jurisprudence of the European Court of Human Rights.[12]

Please ask the Dutch State to enhance the possibility of a complete review of prior asylum decisions in instances where new evidence is provided in a new asylum request.Please ask the Dutch State to ensure that the policy regarding countries of origin will be based on a broader variety of sources.

Please ask the Dutch State to indicate how the medical examination preceding the interviews in the asylum procedure can contribute to establishing whether an individual has suffered torture or cruel, inhuman or degrading treatment or punishment.

Please ask the Dutch State to indicate how the Dutch government will show more initiative in starting medical investigations in cases of alleged torture.

[12] See for example: ECtHR, 23 May 2007, app no. 1948/04 (Salah Sheek vs the Netherlands) § 136.

ARTICLE 10

12. The NGO coalition is concerned the following issue may constitute a violation of article 10 of the Convention, since it seems that the level of education of training of certain employees might be inadequate. The NGO coalition respectfully requests you include it on the List of Issues prior to Reporting.

Education and training of staff working in detention centres

13. In two immigration detention centres, so called 'Extra Zorg Afdelingen' (Extra Care Departments) have been created. With easy access to observation or isolation cells and the implementation of specials measures, such as the use of rip-proof clothing, the risks of the detained causing physical harm to themselves have been minimised. However, less attention seems to be paid to the issue of mental health and the sufficient training of personnel in detention centres in dealing with persons with psychiatric problems. For instance, putting the detained in an observation cell or isolation cell, when they are difficult to handle is seen mainly as a 'management issue'.

Please ask the Dutch State to clarify the educational requirements for staff hired for and/or working at detention facilities, where people with mental health issues are held, specifically on their knowledge of these issues.

Please ask the Dutch State to provide information on the instructions and methods that are applied with regard to the use of isolation or observation cells and other coercive measures, specifically to what extent an independent medical viewpoint is part of the decision making process.

ARTICLE 11

14. The NGO coalition is concerned the following issues may constitute a violation of article 11 of the Convention, since it seems that the review of practices concerning detention may be inadequate. The NGO coalition respectfully requests you include it on the List of Issues Prior to Reporting.

Immigration detention

15. Undocumented migrants are often repeatedly put in immigration detention. Although the restriction of a maximum detention period of 18 months is respected, repeated periods of detention often lead to detention periods much longer than that.[13] According to Dutch law undocumented migrants should only be detained as a last resort.[14] However, in practice the measure of detention is regularly applied, either to prevent migrants from entering the territory or in order to facilitate their expulsion, without considering less radical alternatives. A new regime for immigration detention has been proposed since 2013. This proposal has gotten a lot of comments from different civil society organizations. This has not taken the form of a legislative proposal however so the present immigration detention rules still apply.

16. Due to the implementation of the recast Reception Conditions Directive the Netherlands has made some small changes in its legislation concerning the detention of asylum seekers. Despite those changes, the NGO-coalition observes that the Dutch Government still systematically detains asylum seekers without any form of prior review and therefore does not meet the principle that the detention of asylum seekers is only to be used as a last resort. To hold an asylum seeker in detention is only allowed if less coercive alternative measures cannot be applied. In addition, it appears that the legislation is contrary to Article 8 of the recast Reception Conditions Directive and recital (15) of the preamble thereto, which holds that an applicant for international protection may be detained only under very clearly defined exceptional circumstances and subject to the principle of necessity and proportionality. The Dutch Government does not examine whether the total measure or the duration of detention is necessary and proportional. The Secretary of State has in fact stated that the detention of aliens at the border is always necessary, because it is in the interest of the Netherlands to assess the application for international protection before an alien is allowed access to the Dutch territory.[15] The NGO coalition notes with concern that the proposed legislation still offers the possibility of systematically detaining asylum seekers during the examination procedure conducted at the border. Furthermore, an individual assessment prior to the measure of detention is not included, or at the least it is very limited.

17. 22% of the notifications at the Immigration Detention Hotline in 2014 were about access to health care. Often the care that the person needed before being put in immigration detention was not continued and in other cases, access to hospitals was delayed. When a person refuses to be handcuffed during the hospital visit, access to the hospitals is often impossible. When people are

[13] Nationale Ombudsman, *Vreemdelingenbewaring: Strafregime of Maatregel om uit te zetten*, 7 August 2012 (2012/105), p. 18, available at: https://www.nationaleombudsman.nl/uploads/2012-105_-_vreemdelingenbewaring.pdf (last accessed: 24-06-2015).

[14] According to Article 15 (1) of the Return Directive (2008/115/EC) a 'third-country national who is the subject of return procedures' should only be kept in detention if other sufficient but less coercive measures cannot be applied effectively in a specific case. See also: Vreemdelingencirculaire 2000 (A)6/5.3.3.3.

[15] See TK (Second Chamber, Dutch Parliament), 2014-2015, 34 088, nr. 6, p. 42.

released, they often experience difficulties to continue the health care, including planned hospital visits. An additional ten percent of the notifications at the Immigration Detention Hotline in 2014 were about contacts with the outside world. The rules to make an appointment for a visit are complicated and sometimes appointments are not registered so that the visitor is not allowed in. Paper and pencils are not allowed into the visiting room. The room is not designed for informal contact, there is a barrier between the person and the visitor. Private visits are not allowed, even not with partners. Most of the internet is not accessible, and contact via internet is not allowed. Phone calls have to be made with a contracted company (Teleo) and are more expensive than calls with pre-paid cards. Even calls with free numbers, such as the Immigration Detention Hotline, cost 8ct per call.

18. During a collective hunger strike in 2013,to protest the circumstances of their detention in the detention centre at Schiphol Airport (*Justitieel Complex Schiphol*), detainees were systematically placed in solitary confinement. In the first six months of 2014, there were also seven detainees put in solitary confinement and/or constantly monitored by CCTV cameras because they were on hunger and/or thirst strike. There is no medical reason whatsoever for isolating hunger- and thirst strikers and/or monitoring them by CCTV cameras.[16] The use of isolation in this context instead seems to be a punitive measure, which, again, may have an opposite effect,[17] and may even lead to a psychosis or lasting psychiatric problems.[18] Since there are no valid medical reasons for the use of solitary confinement in case of a hunger strike the NGO-Coalition is also concerned this use of solitary confinement may constitute a violation of article 2and 16 of the Convention.

19. To our concern, medical doctors are involved in placing detainees in solitary confinement. They do not only advise the director of the detention centre when there is a medical indication for isolating their patients, but they also offer advice about the 'isolation fitness' of the persons in question when there is a disciplinary measure taken by the director. This may result in a serious breach in the doctor – patient relation, which is based on confidentiality and trust. In the Netherlands, there is a clear distinction by law between the roles of a medical practitioner and a medical advisor,[19] which notably does not exist in the Dutch Penitentiary Principles Act. Not only is this contrary to article 26 (1) of the European Prison Rules of 2006, but also against principle 1 of the UN Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture, and other cruel, inhuman or degrading treatment or punishment.[20]

20. Moreover, the NGO coalition refers to the viewpoint of the World Medical Association (WMA) in October 2014, stating: 'A physician´s role is to protect, advocate for, and improve prisoners´

[16] Johannes Wier Stichting (2000) *Honger naar recht; honger als wapen* (26 May 2015) available at: https://www.johannes-wier.nl/bijzondere-dossiers/honger-en-dorststaking/ (last accessed 18-6-2015).
[17] Council of Europe, '*Report to the Government of the Netherlands on the visit to the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 October 2011'*, 9 August 2012.
[18] *Ibid.*, § 58.
[19] WGBO, Civil Code (*Burgerlijk Wetboek*), book 7, Art. 446.
[20] Council of Europe, *European Prison Rules 2006*, Adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies. United Nations, *Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Adopted by General Assembly Resolution 37/194 of 18 December 1982.

physical and mental health, not to inflict punishment. Therefore, physicians should never participate in any part of the decision-making process resulting in solitary confinement.' [21]

21. For doctors and persons of medical staff in the Dutch prison system, both in immigration detention and detention for persons convicted for criminal offences, there is no distinction between the role of treating patients and the role of advising. That is at odds with the rules of conduct for doctors outside the prison system. In this respect, a legislative adjustment is necessary.

22. The NGO coalition holds the opinion that the use of isolation in immigration detention, considering the potentially detrimental health effects, should be avoided as much as possible. The NGO coalition is therefore concerned about the recent figures showing that, relative to the number of migrants placed in immigration detention, there is no decrease in the number of detainees placed in solitary confinement, particularly for medical reasons.[22]

23. Additionally the NGO coalition is concerned about the use of solitary confinement as a means of punishments to unacceptable behaviour, like for example fighting, insulting guards, having drugs or other forbidden commodities in the cell, refusing to share the cell with others and preventing the extradition by aeroplane by behaving in an inappropriate way.[23] The NGO coalition finds the use of isolation cells to punish unwanted behaviour disproportionate. It also does not fit the nature of the detention, since immigration detention is not based on criminal offences but a purely administrative measure in order to prevent a migrant from hiding while organizing the extradition.[24]

Please ask the Dutch State to provide information on the instructions and methods that are used to make sure that the measure of detention is only applied in exceptional circumstances, and if it is absolutely necessary, that it is used proportionately and non-discriminatory.

Please ask the Dutch State to provide information on the progress of the proposal law for the new regime on immigration detention.

Please ask the Dutch State to indicate how access to health care is ensured and continued during and after the detention, and how hospital visits during detention are made possible in a dignified way.

Please ask the Dutch State to provide information explaining the increase of the use of solitary confinement.

[21] Recommendation nr. 9 of the Statement on Solitary Confinement of the World Medical Association (WMA), adopted in October 2014.
[22] Werkgroep Gezondheid en Zorg in Vreemdelingendetentie, *Isolatie in Vreemdelingendetentie.* Amsterdam/Utrecht: Amnesty International, Dokters van de Wereld, Meldpunt zorg in vreemdelingendetentie (LOS) (2015), p. 30-31.
[23] In 2014 a significant number of persons confined in immigration detention centres were put in solitary confinement as a measure of good order and security, and in particular on medical grounds: Werkgroep Gezondheid en Zorg in Vreemdelingendetentie, *Isolatie in Vreemdelingendetentie.* Amsterdam/Utrecht: Amnesty International, Dokters van de Wereld, Meldpunt zorg in vreemdelingendetentie (LOS) (2015), p. 30-31.
[24] A similar recommendation was made by the Nationale ombudsman, *Vreemdelingenbewaring: strafregime of maatregel om uit te zetten*, report 2012/105, p. 35, (August 2012) and by the Werkgroep Gezondheid en Zorg in Vreemdelingendetentie, *Isolatie in Vreemdelingendetentie.* Amsterdam/Utrecht: Amnesty International, Dokters van de Wereld, Meldpunt zorg in vreemdelingendetentie (LOS) (2015), p. 17.

Please ask the Dutch State to provide information about the legislative and policy measurements that have been put into place to ensure the prevention of the use of solitary confinement, particular on medical grounds and by means of punishment.

Please ask the Dutch State to provide information about the safeguards that have been put in place to ensure the rights of persons in hunger strikes under the Convention, particularly in relation to the monitoring by CCTV cameras.

Please ask the Dutch State to clarify the role of medical doctors in immigration detention centres, particularly their ability to sufficiently improve physical and mental health, and to protect and advocate the rights of persons in solitary confinement.

Maximum Security Prison (*Extra Beveiligde Inrichting 'EBI'*) in Vught

24. In 2013 a report put together by a collaboration between the Erasmus University in Rotterdam and the Research and Documentation Centre (a research department of the Ministry of Security and Justice, in Dutch: *Wetenschappelijk Onderzoek- en Documentatiecentrum* or *WODC*) concerning the functioning and the different 'costs' (financial, legal and, vis-à-vis inmates and prison staff, immaterial) of the EBI was published.[25] The report described the inception of the maximum security prison and explained that the main raison d'être of the EBI was to be found in the prevention of hostage-takings and escapes from the prison.[26] This notion arguably warranted a stricter prison regime than was implemented in regular prisons throughout the Netherlands. The EBI's prison regime has been criticised on a number of occasions, for instance for the unnecessary (and therefore irrational) and very frequent body searches that inmates were subjected to. Moreover, prisoners were not allowed to receive visits in a room without a glass partition separating them from their visitors.[27] However, these concerns have been somewhat alleviated by relaxations in the regime, moderating the frequency of body searches and allowing prisoners direct contact (without separation by a glass partition) with close family-members once a month.[28]

25. It might be submitted that an issue with respect to the Convention especially arises with regard to the lack of security experienced by the EBI's inmates.[29] Two violent incidents that occurred in the EBI (in 1999 and in 2011[30]) can serve to illustrate the problem. In 1999, a row between two detainees resulted in the loss of life of one of the parties involved. The incident occurred in the open-air yard and prison staff did not arrive on the scene until after the damage had been done. In a second violent incident in 2011, the prison staff refrained from entering the open-air yard at all. The reluctance of prison staff to intervene in quarrels between inmates is influenced considerably

[25] For an English summary of the report, cf. (https://www.wodc.nl/onderzoeksdatabase/evaluatie-van-de-extra-beveiligde-inrichting-ebi.aspx, last accessed 18-06-2015).
[26] Cf. H.G. van de Bunt, F.W. Bleichrodt, S. Struijk, P.H.P.M. de Leeuw & D. Struik, *Gevangen in de EBI; Een empirisch onderzoek naar de Extra Beveiligde Inrichting (EBI) in Vught*, Den Haag: Boom Lemma Uitgevers 2013, pp. 38 and further.
[27] H.G. van de Bunt, F.W. Bleichrodt, S. Struijk, P.H.P.M. de Leeuw& D. Struik, *Gevangen in de EBI; Een empirisch onderzoek naar de Extra Beveiligde Inrichting (EBI) in Vught*, Den Haag: Boom Lemma Uitgevers 2013, pp. 92-96.
[28] *Ibid*., pp. 85-91 and 92-96.
[29] As is evidenced by fragments of interviews with inmates, *supra* n. 22, e.g. on p. 164.
[30] *Ibid.*, p. 165.

by a provision in their working instruction which stipulates that for emergencies other than those specifically described:

> '(1) Your personal safety and that of the staff come first; (2) In such a situation, policy states that no persons (prisoners and/or members of staff) must be added to the emergency (due to the risk of hostage-taking).'[31]

26. This provision, thus, strongly relies on the policy theory on which the EBI is founded which gives absolute, first priority to the minimisation of hostage-takings and breakouts. While prisoners are now allowed to have contact with close family-members without a glass partition once a month and the frequency of intrusive body searches has been reduced to fit a more humane regime, this working instruction remains unchanged. Regardless of the fact that the aforementioned provision can be characterised more as a general guideline than as a 'hard-law' command, it does discourage prison staff from actively intervening to cater for a safe and secure environment. In this context, it is noteworthy that the European Court of Human Rights has on occasion ruled that State parties are under an obligation to take measures to ensure the safety of inmates of state prisons, in order to avoid violating article 3 (the prohibition of torture and inhuman and degrading treatment or punishment) of the European Convention on Human Rights.[32] Bearing in mind the recommendations made by the authors of the report,[33] it seems feasible to argue that the regime at the EBI as it is, falls short of satisfying the standards set by the Convention.

Please ask the Dutch State to provide information on the detention policy in the EBI and the instructions given to the detention personnel in the EBI.

Please ask the Dutch State to indicate how the security of the detainees is being safeguarded in light of the violent incidents that occurred in 1999 and 2011.

[31] *Ibid*., p. 166.
[32] ECtHR, 10 February 2011 app. no. 44973/04 (Premininy/Russia),. In para. 73 the Court states that: ' (…) it has been the Court's constant approach that Article 3 imposes on States a duty to protect the physical well-being of persons who find themselves in a vulnerable position by virtue of being within the control of the authorities, such as, for instance, detainees (…)'.
[33] *Supra* n. 21, p. 6.

ARTICLES 13 AND 14

27. The NGO coalition is concerned the following issue may constitute a violation of articles13 and 14 of the Convention, since it seems that the access to legal redress in immigration detention may be inadequate. The NGO coalition respectfully requests you include it on the List of Issues Prior to Reporting.

Access to legal redress

28. Through the Immigration Detention Hotline it has come to the NGO coalition's attention that undocumented migrants in immigration detention never get a document stating the prison rules. This document is also not available in the facilities. Documents to file complaints about the detention conditions are available, but they are not actively brought to the attention of the detainees which leads to a lack of awareness with respect to the complaint procedure. It is also come to the attention of the NGO coalition that Inspection Committees who answer complaints often try to mediate by visiting the detainee in his cell and try to convince them to accept this meeting as an answer to his complaint. Complaints of people who are already released are not answered at all. About fifteen percent of the notifications that are received through the Immigration Detention Hotline are about the handling of complaints. When complaints are declared well-founded, the compensation is often negligible.

Please ask the Dutch State to provide information on how the Dutch government ensures that the prison rules and the documents concerning the complaint procedure are available for detainees in immigration detention.

Please ask the Dutch State to provide information on how the Dutch government ensures that all complaints are formally and satisfactory answered.

ARTICLE 16

29. The NGO coalition is concerned the following issues may constitute a violation of articles16 the Convention. The NGO-Coalition respectfully requests you include them on the List of Issues prior to Reporting.

Strip searches

30. When a migrant arrives at a detention centre, this person is generally subjected to a body search.[34] Commonly this search is carried out in the form of a strip search. According to several reports strip searches are also carried out with regard to people who are placed in isolation.[35]

31. It has come to the attention of the NGO coalition that several detainees in hunger strike at the Detention Center Schiphol complained about their solitary confinement, and reported they were subjected to a strip search prior to isolation. The Supervisory Commission (*Commissie van Toezicht*) declared that these complaints were founded, however these decisions avoided to examine possible violations of the Convention, although this was specifically mentioned in the complaints. The investigation about the alleged use of preceding strip searches were dismissed as unfounded, but the research was rather superficial and did not involve questioning the guards of the cell who were involved in the placement of the hunger strikers in these isolation cells.[36]

32. The NGO coalition was alarmed by an incident concerning the use of the strip search method on a female asylum seeker at the Detention Centre Zeist on 7 March 2012.[37] While she had history of sexual abuse, she was subjected to a forced strip search by two male and two female guards and subsequently placed in an isolation cell. Her complaints about the incidents, including a complaint about the forced removal of her tampon, were dismissed as unfounded by both the Supervisory Commission and the RSJ (Council for the Administration of Criminal Justice and Protection of Juveniles).[38] The official investigation following the complaints did not include any interrogation of the guards in question and an official report about the use of violence[39] went missing.

33. In a letter dated 5 June 2013 the State Secretary for Security and Justice introduced the body scan as a replacement of the strip search[40], a development welcomed by the NGO coalition. However, since this announcement reports of the use of strip searches preceding the placement of persons in

[34] The right of the Director of the institution to carry out a body search is based on Article 29 Penitentiary Principles Act (*Penitentiaire Beginselenwet)*.
[35] See for example: *Supra* n. 13, p. 16 and *Supra* n. 6, p. 6.
[36] Decision of the *Commissie van Toezicht*, 8th of August 2013, Case number KC 2013/032, *www.commissievantoezicht.nl/uitspraken-zoeken.*
[37] The incident was broadcasted on Dutch television on 18 June 2013 ('De vijfde dag'), in which it was put in scene and performed by professional actors. A DVD of this transmission will be send to the Committee on request.
[38] Beroepscommissie of the Council for the Administration of Criminal Justice and Protection of Juveniles, 17 April 2013, Case 2013/1964/GA-eindbeslissing, JV 2013/245. It should be noted that the complaint was based on violation of article 3 of the European Convention on Human Rights (torture or inhuman or degrading treatment or punishment), not article 3 or 16 of the CAT.
[39] A so-called 'report of the use of violence' (*geweldsrapportage*), which is required if employees of the prison used violence on a detainee.
[40] Letter of the State Secretary for Security and Justice to the chairman of parliament (Tweede Kamer) on 5 June 2013, Reference 382119, ve13001762, 1 July 2013, 19367, nr. 1698 ve13001388.

isolation cell continued to reach the coalition partners. Concerning the incident of a strip search that took place on 7 March 2012 the coalition wishes to raise its concerns not only regarding incident itself, but also with respect to the fairness of the complaints procedure that followed. Articles 3, 11, 13 and 16 of the Convention might have been infringed upon.

34. Furthermore, the NGO coalition wishes to emphasise that, in many cases, there does not seem to be a security need for these strip searches, since generally the detainees have already been frisked at the police stations, where they were held before being transported to a detention centre. The NGO coalition is of the opinion that there should be a convincing security need for a strip search, since by its very nature a strip search is always felt as being degrading. Unnecessary strip searches can be regarded as 'cruel, inhuman or degrading treatment or punishment' as meant by Article 16 of the Convention. The negative impact of a strip search is seen as worse when carried out by persons of the opposite sex.[41]

Please ask the Dutch State to clarify the issue of the abolition of the use of strip searches, in favour of the use of a body-scan, and the legal and policy measurements put into place for the protection of the rights of persons undergoing unnecessary strip searches or body scans in administrative detention, particular those in hunger strikes and in a vulnerable position.

Life imprisonment

35. The NGO coalition would like to draw the Committee's attention to the issue of life imprisonment within the penal system in the Netherlands. In particular, we are concerned that the implementation of lifelong incarceration can confine individuals to a state of complete hopelessness which may constitute inhumane treatment under the present convention.

36. The European Court of Human Rights (hereafter: 'ECtHR') ruled in the case *Vinter vs. the UK* that in order to comply with Article 3 ECHR, a life sentence shall be de jure and de facto reducible: this means that the prisoner can be said to have a prospect of release and a possibility of (executive or judicial) review. Moreover, the prisoner 'is entitled to know, at the outset of his sentence, what he must do to be considered for release and under what conditions, including when a review of his sentence will take place or may be sought.'[42]

37. In the case of the Netherlands, the issue of whether or not the implementation of life imprisonment is compatible with the provisions of the ECHR has been discussed at the national level on several occasions. Under Dutch law, release is only possible if a life prisoner is pardoned by the executive (by royal decree, with an advisory role for the judiciary).

38. Under the penal system in the Netherlands, it is the responsibility of the prisoner serving the life sentence to request to be reviewed for pardon; there is no fixed moment for this. In the past thirty

[41] The European Court of Human Rights qualifies a strip search performed by a guard of the opposite sex as an 'inhuman or degrading treatment or punishment' which violates article 3 of the European Convention of Human Rights (ECHR 24 July 2001, no. 44558/98, *Valasinas against Lithuania*, § 17).
[42] ECtHR 9 July 2013, appl.nos. 66069/09, 130/10 and 3896/ and 10 (Vinter others/UK),, par. 122.

years, this has only been granted twice (a conditional release in 1986 and a compassionate release of a terminally ill person in 2009). Meanwhile, there has been a sharp increase in life sentencing in the Netherlands; by 2013 there were 32 life prisoners in the Netherlands, of which eight had already been in prison for more than twenty years.[43] In theory, the government's policy with regard to pardoning life prisoners includes an assessment of various factors such as the risk of recidivism, age and medical condition. In the same policy it is stated, however, that lifers do not qualify for interventions aimed at preparing a successful reintegration into society because there is, in principle, no question of returning to society – in principle, life imprisonment means spending the rest of one's life in prison.[44] In practice, researchers state, there is really no prospect of release and it is unclear what arguments a prisoner must bring forward to be considered for release.[45] Lifers are also separated from other prisoners.

39. In view of the above, we doubt whether the penal system in the Netherlands meets the minimum standards outlined in the case of *Vinter vs. the UK* by the ECtHR with regard to life imprisonment.

Please ask the Dutch State to provide information on the safeguards that are in place and the practice with respect to the possibility of pardon in the case of life imprisonment.

Domestic violence

40. Undocumented migrants who are victims of domestic violence often find it difficult to file complaints and to leave their situation, because they are oftentimes afraid of the police and have no place else to go. Shelters for victims of domestic violence are often reluctant to accept these women, because they don't get compensated for it and it is difficult to solve the legal situation of the victim satisfactorily.

Please ask the Dutch State to provide information on how the Dutch government ensures proper safeguards for undocumented migrant women in domestic violence situations.

Waiting period for legal abortion

41. In the Netherlands there is a mandatory waiting period after a meeting with a doctor before a woman is allowed an abortion.[46] This waiting period is not dictated by medical necessity but only serves the purpose to underline the fact that abortion should not be available as automatic recourse.

[43] W. van Hattum, 'Levenslang "post Vinter"', *Nederlands Juristenblad* 2013, no. 29, p. 1960.
[44] Letter of the State Secretary and the Minister of Justice, *Kamerstukken II* 2009/10, 32 123 VI, nr. 10, p. 3. See also the current Secretary of State in a letter to Parliament, *Kamerstukken II* 2011/12, 24 587, nr. 464: 'Life imprisonment means imprisonment for life', and the former Minister of Justice, in *Kamerstukken II* 2003/04,28 484, nr. 34, pages 30-31: "(…) lifelong. That means just for the rest of life."
[45] W. van Hattum, 'Levenslang "post Vinter"', *Nederlands Juristenblad* 2013, no. 29, p. 1963. See also J. Claessen, 'Life imprisonment means one's entire life! But will this last?', 2014, http://law.maastrichtuniversity.nl/newsandviews/life-imprisonment-means-ones-entire-life-but-will-this-last/#_ftn1.
[46] Article 3 (1) of the *Wet afbreking zwangerschap*.

42. We note with concern that motivated precisely by this rationale the waiting period may be considered to be as inhuman and degrading to women. Also, it reinforces the negative stereotype that women cannot make decisions with regard to their reproductive rights themselves or without consulting a medical specialist first.

43. Furthermore, when the law was evaluated it appeared that the majority of women and medical experts agreed on the need to eliminate the mandatory waiting period and instead allow as much time as it is required depending on each individual case, which might be more or less time.[47]

44. In addition, the World Health Organisation argues against the mandatory waiting periods for two reasons: they can have the effect of delaying care, which can jeopardize women's ability to access safe and legal abortion services and demeans women as competent decision-makers.[48]

45. Recalling previous statements by the Committee on this subject where it voiced its support for the removal of any obstacle, like mandatory waiting period, for women to have access to safe abortion[49], we kindly call on the Committee to put this issue on the agenda in its consultation with the representatives of the Netherlands.

Please ask the Dutch State to indicate the efforts that the Dutch government has undertaken to evaluate/amend the current law and remove the obstacle of a waiting period.

[47] Evaluatie Wetafbreking zwangerschap, Commissie evaluatie regelgeving, ZonWw, 2005, p. 13.
[48] *Safe Abortion: technical and policy guidance for health systems*, Second edition, World Health Organisation, 2012, p. 96.
[49] CAT Concluding Observations: Bolivia, para. 23, U.N. Doc. CAT/C/BOL/ CO/2 (expressing concern that women seeking to terminate pregnancies resulting from rape must obtain judicial authorization and urging the state to eliminate unnecessary barriers to abortion).

ARTICLE 17 OPTIONAL PROTOCOL

The NGO coalition is concerned the following issue may constitute a violation of articles17 of the Optional Protocol to the Convention, since it seems that the level of independence of the NPM maybe inadequate. The NGO coalition respectfully requests you include it on the List of Issues prior to Reporting.

National Prevention Mechanism

46. The Dutch National Prevention Mechanism (NPM) consists of five organisations, three of which cannot be considered independent. The Inspectorate of Security and Justice (*Inspectie voor Veiligheid en Justitie*), the Health Care Inspectorate (*Inspectie voor de Gezondheidszorg*, hereafter: 'IGZ'), and the Inspectorate for Youth Care (*Inspectie voor Jeugdzorg*) are ministerial organizations, housed in the Ministry, and falling under political responsibility of the Ministry. It seems then that the NPM is not in accordance with the requirements noted in the concluding observations of the Committee Against Torture, especially the required financial and operational independence.[50] The organisational independence is also not guaranteed, since the responsible ministry has to give approval to proposals to these inspections to do research or write reports while acting as part of the Dutch NPM.

47. It seemed that at least on two occasions, the ministry involved (the Ministry of Safety and Justice), refused to give permission to do research on the issue of life imprisonment, and the issue of solitary confinement in detention in case of a hunger/thirst strike. When the Dutch Association of Asylum Lawyers (hereafter: VAJN) filed a complaint about the use of solitary confinement in case of hunger strikes in March 2014 at the secretariat of the NPM, and asked for an investigation, nothing happened.[51] The National Ombudsman has informed the VAJN that it left the NPM due to its disfunctionality.

48. The NGO coalition does not share the ministerial viewpoint that these three ministerial inspections, in acting as a part of the NPM, act and judge independent from their ministries.[52]

Please ask the Dutch State to provide information on the relationship between three Inspectorates which are part of the NPM and the Ministries concerned.

Please ask the Dutch State to indicate the efforts that the Dutch government has undertaken to make the NPM more independent.

[50] *Supra* n. 1, § 28.
[51] The VAJN will send the complaint independently from this report to the Committee.
[52] Letter of State Secretary to the chairman of Parliament, 4 November 2014, *Antwoorden Kamervragen over het terugtrekken van de Nationale Ombudsman uit het Nationaal Preventie Mechanisme*, kenmerk 567735.