

## Meeting NGOs - Committee against Torture

19 November 2018, Palais des Nations, Geneva

Notes NJCM

### Introduction

Thank you very much for the invitation. The NJCM is the Dutch section of the International Commission of Jurists. Our organization has more than 1100 members, mostly Dutch lawyers and law students. Our report was coordinated by volunteers from NJCM and based on input by a range of other Dutch organizations, mentioned in the report.

We support the points made by Amnesty and OSJI today, and in their reports, which cover topics also stressed in our report. Our main overall conclusion that is there is a lack of data nationally, for instance:

- on trafficking victims
- on the use of isolation in immigration detention
- on the use of restrictive measures including isolation in closed youth centers

We consider that the state is failing in its obligation to act in this respect.

Substantively, today we focus on our concerns about **minors**: closed youth care settings, minors in police custody, minors in pre-trial detention, and child trafficking.<sup>1</sup>

### 1. Closed youth care settings (Article 11 CAT)

Eleven percent of Dutch children receive youth care.<sup>2</sup> More than 2700 children are placed in closed youth care. There is no clear policy on when to use last resort measures that further restrict liberty. We are concerned about indications that force, coercion, deprivation of liberty, even isolation cells - are still used regularly. We are also concerned about the fact that there is a lack of exact data on these practices.

The Action Plan 'Care for Youth' 2018 (*Actieprogramma Zorg voor Jeugd*) aims to reduce the use of closed settings and to abolish the use of the isolation cell. We welcome these developments. Still, we stress that there should be legislation also on keeping relevant data, and making these available. The government does not appear to share this need or urgency. Because of the continued absence of national data, we are inclined to believe that the

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<sup>1</sup> Our points are about the European part of the Kingdom of the Netherlands. We are concerned about the lack of information in general with regard to the non-European part.

<sup>2</sup> Of a total of 3.2 million children (below the age of 18).

reports about coercive practices in closed youth settings are more likely indications of a pattern than incidents. We consider that the burden of proof is on the state, to show that these methods are not used, or to justify restrictive measures that have been taken. Providing access to data is part of that burden.

Moreover, in migration detention isolation is still used as a disciplinary measure, which is problematic in itself, and this can be done even to minors.<sup>3</sup>

We join Defence for Children and UNICEF in their recommendation that the government should structurally keep data on the use of measures that restrict the liberty of children in closed youth care settings, make this data public, and develop a clear policy to use restrictive measures only as a last resort.<sup>4</sup>

We are also concerned about the recent findings by the Dutch national rapporteur on human trafficking and sexual violence against children, that a great majority of the girls in closed youth care receive help for trauma caused by sexual violence.<sup>5</sup> The Dutch national Rapporteur has recommended that the Minister of Health creates an obligation to collect data clarifying why these victims are staying in closed settings.<sup>6</sup> We share this recommendation and are looking forward to the response of the minister.

In addition, not all of these girls staying in closed youth care receive help for dealing with their experiences. At this moment 15% has not (yet) received this assistance.<sup>7</sup>

Another problem in closed youth care is the lack of monitoring by *judicial bodies*. The Ombudsperson for children has stressed that a judge should always be involved in a decision on whether to place a child in closed youth care. A child has the right to judicial examination.

However, in practice there is often not even a role for a *custodian* (voogd) after parents have said that they are OK with a closed setting; or when a child was in an open or a semi open setting and the staff has convinced him or her that it is better to go to a closed setting. This is even more troubling considering the fact that many children in these settings have a mild or moderate intellectual disability.<sup>8</sup>

In sum, we advocate for legislation and practice where the Dutch authorities keep and provide data regarding placements, the use of isolation cells and other restrictive measures, incidence of victims of sexual violence in closed settings and data of their treatment. Also, there must be proper judicial *monitoring* of placements in closed youth care settings.

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<sup>3</sup> Wet terugkeer en vreemdelingenbewaring, in text of June 2018.

<sup>4</sup> *Jaarbericht Kinderrechten 2018*, by Defence for Children and UNICEF, p. 20.

<sup>5</sup> 'Meeste meisjes in gesloten jeugdhulp ontvangen hulp voor seksueel geweld', Monitor Slachtofferhulp 2016, published 26 June 2018, see: <https://www.nationaalrapporteur.nl/actueel/2018/meeste-meisjes-in-gesloten-jeugdhulp-ontvangen-hulp-voor-seksueel-geweld.aspx> 13 percent of all minor girls who have become victim of sexual abuse end up in closed youth care.

<sup>6</sup> See p. 104 of the Rapporteur's report.

<sup>7</sup> Various reasons have been offered for this, such as that it is not clear what kind of assistance is needed, or there should first be a personality assessment, etc.

<sup>8</sup> Minors placed in closed youth care facilities on the basis of civil law (the Law on the Youth Care (jeugdwet) enjoy a much lower level of protection than minors placed on the basis of criminal law (the Youth Custodial Institutions Act (Beginselenwet Justitiële jeugdinrichtingen). Access to counsel, for instance, is more limited for minors placed in closed youth care.

## 2. Minors in police custody (Article 11 CAT)

Minors and juvenile suspects are held in police cells even when this is not actually necessary, and for longer periods than appropriate.<sup>9</sup> This practice should cease. And there is no uniform working method of paying attention to age and level of development of minors in police custody.

Three examples:

-After regular working hours, the police treat children as adults. When a child is placed in police detention after 8 pm it has no access to counsel.<sup>10</sup> The child has to wait until the next morning for a lawyer, and is thus treated like an adult.

-The information that children receive in custody is geared towards adults and therefore not always clear to a child.<sup>11</sup>

-and Children are placed in the same cells in which adults are normally placed. This setting is not always appropriate for them.

We argue that in all police interactions with minors, there should be special consideration of the age and level of development of the minor in question. The current policies should therefore be much more differentiated.<sup>12</sup>

## 3. Pretrial detention (Article 11 CAT)

Pre-trial detention and deprivation of liberty of minor suspects must be applied as a measure of last resort and for the shortest appropriate period of time. We note that in practice, this does not appear to be the case.

Research shows that minor suspects face arbitrary decisions on the use of pre-trial detention.<sup>13</sup> What judges consider desirable can strongly differ from one judge to the other. Dutch legislation does not provide any guidelines on how to deal with the 'best interests of the child'-principle.<sup>14</sup> We consider that prosecutors should be more active in proposing alternatives to pre-trial detention.<sup>15</sup>

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<sup>9</sup> As reported by the Dutch lawyers' society working with juveniles, and the Social Legal Defence Centre on Children's Rights (DCI).

<sup>10</sup> The parents are informed that their child is in custody, but this does not remedy the lack of access to counsel after regular working hours.

<sup>11</sup> Related to police custody, we believe that if a child is interviewed there should always be a lawyer. This should also be the case in a situation where a child is arrested and then sent home with the order to return the next day. Currently, upon return the next day the child will not be assigned a lawyer because in that context the suspicion is not considered sufficiently great.

<sup>12</sup> This requires reporting and training of the police officers and it means that for all minors they should report on the measures they have taken.

<sup>13</sup> Y.N. van den Brink, 'De onschuld voorbij? Over de toepassing van de voorlopige hechtenis ten aanzien van minderjarige verdachten in Nederland', FJR 2012/4, afl. 1, p. 5-11; B. Rovers, Kortverblijvers in justitiële jeugdinrichtingen. Achtergrondkenmerken, ketensamenwerking en invulling van verblijf, 's-Hertogenbosch: BTVO 2014; and Y.N. van den Brink e.a., Voorlopige hechtenis van jeugdigen in uitvoering. Een exploratief kwantitatief onderzoek naar rechterlijke beslissingen en populatiekenmerken, Den Haag: WODC 2017.

<sup>14</sup> Van den Brink 2017, p. 219-220.

<sup>15</sup> We consider that, in general, alternatives for pretrial detention are insufficiently used in the Netherlands, but this is particularly problematic when it concerns minors. 80% of the total number of minors (aged 12-18yrs) have not yet been convicted, but are placed in pre-trial detention, *Jaarbericht Kinderrechten 2018*, p. 42.

#### 4. Child trafficking (Article 2 CAT)

The total number of registered child victims of trafficking in 2014 and 2015 combined is 575.<sup>16</sup> But the Dutch National Rapporteur on Trafficking estimates that in those years combined, 2.014 children were trafficked. From the great discrepancy between these numbers, we conclude that most victims remain under the radar. Besides, the Rapporteur estimates that *children* appear nine times more likely to become victims of trafficking than *adults*.<sup>17</sup>

The general public does not dare to report, or does not know how to detect, signs of trafficking. The same applies even to social workers and other professionals (e.g. doctors). They do not see, or do not act on, the warning signs, because they don't dare or because they simply don't notice.

In 2017, a brochure was developed with tips for youth professionals on how to work with the police on these issues.<sup>18</sup> Providing information leaflets, websites and brochures is indeed useful, but they seem insufficient to achieve an attitude change and to achieve the required level of knowledge for all social workers and other professionals.<sup>19</sup>

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<sup>16</sup> Based on the annual report on children's rights in the NL by UNICEF and DCI (see the Dutch NGOs contribution). Child trafficking is currently very topical. Some more information: <https://nos.nl/artikel/2257445-loverboy-3-0-dwingt-nederlandse-meisjes-tot-werk-in-belgisch-bordeel.html> and <https://nos.nl/nieuwsuur/artikel/2258854-rapporteur-bolhaar-minder-strafzaken-maar-niet-minder-mensenhandel.html>. Recently the Dutch news site NOS Nieuwsuur reported that in 2012 the Netherlands Public Prosecution Service recorded 315 cases aimed at the prosecution of traffickers, but in 2017 only 141, meaning a decrease of 55% in six years. The news service had requested this information from the Public Prosecution Service. National Rapporteur Human Trafficking and Sexual Violence against children expressed concern because there is no indication that the problem has decreased. According to his estimation there are more than 6200 victims of trafficking in the Netherlands, on a yearly basis. See News release of November 2018 <https://nos.nl/nieuwsuur/artikel/2258854-rapporteur-bolhaar-minder-strafzaken-maar-niet-minder-mensenhandel.html>

Last week Secretary of State for Asylum cases announced a plan against trafficking, among others planning to send police officers to countries of origin of trafficking. The CKM (Centre for child trafficking and human trafficking) is disappointed, stating that the plan lacks vision, e.g. on how to hinder and stop the clients on the demand side to whom the victims are provided by the traffickers. The Centre considers that too little money is invested, most goes to prosecution of motor gangs and drugs crimes; also, many traffickers now use digital platforms, so investments in a digital approach are warranted. See News release of Nov 13<sup>th</sup>, 2018 <https://nos.nl/artikel/2259180-kabinet-maakt-aanpak-mensenhandel-bekend-plan-mist-visie.html>

<sup>17</sup> According to the Dutch Bureau for Statistics (CBS), in 2015 there were 178.462 minors above the age of 12, with Dutch nationality. There were 133 victims per 100.000, meaning that the likelihood to become victims is 9 times higher for those 12 plus children than for adults). The info from the Monitor, referred to in footnote 3 of the Dutch NGOs contribution (NJCM) is derived from CBS figures: the so-called MSE model used combines several forms of trafficking registration. Our report refers to the estimation that 80% of the victims is female and 20% of the victims is male. According to research by the Dutch Ministry of Health, Welfare and Sport in 2017 the actual percentage of male victims could be much higher, as trafficked men live under the radar more often, since professionals are more alert in case of women. The correct reference is: Aanhangel van de Handelingen, *Kamerstukken II* 2017/18, no.1185 (answers by the Dutch government to questions from Parliament). Recently, the Rapporteur also observed that the discrepancy in reporting by the police between different police regions cannot be explained by the number of inhabitants in those regions: *Slachtoffer Monitor* 2013-2017, 18 October 2018.

<sup>18</sup> By the Dutch Youth Institute and the Dutch Knowledge Centre on Loverboys, with financial support by the Ministry of Health <https://www.nji.nl/nl/Download-NJi/Hoe-zorg-je-voor-goede-samenwerking-met-politie-en-justitie.pdf>; there are also other useful information sets for professionals who are already interested, such as *Handreiking Signalering Mensenhandel voor werkers in de gezondheidszorg*, SOA Aids Nederland, 2014.

<sup>19</sup> An organisation like Comensha, the independent centre for expertise and coordination <https://www.comensha.nl/pagina/over-comensha>, provides trainings, but we consider that this possibility does not reach the majority of professionals potentially dealing with trafficking victims. Achieving a good level of knowledge and an attitude change would only be possible if the education and training should start at the entrance level, as part of the tertiary professional education of social and care workers etc. and then be part of continued education programs.

For the general public what is required is *awareness campaigns* by the Dutch government. For professionals, we need a serious investment in *education* on how to pick up warning signs; and in *training* to achieve a change in attitude.

There is a clear need for the Dutch government to prescribe that professionals receive both training and education regarding trafficking and its symptoms, and about the applicable rules and guidelines on preventing direct danger and respecting professional confidentiality.<sup>20</sup> Of course this presumes that the guidelines on preventing cruel treatment, on reporting and on respecting privacy are clear to all involved.

## **Conclusion**

In conclusion, we consider that more concrete action by the state is needed to address the situation of minors deprived of their liberty and the victims of trafficking, and this includes that the Dutch government keeps and provides data and then acts upon them.

Thank you for your attention.

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<sup>20</sup> While the manner in which this training and education is offered, is up to the educational institutions, the Dutch State should of course back up its requirements with financial resources.