



# Annual Report 2013

Activities of the Dutch National Preventive Mechanism

**The Netherlands**

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# Introduction

The year 2013 was the third year the members and associates operated as the Dutch National Preventive Mechanism (NPM). This annual report views the activities of the members and the additional associates on the conditions of detention and treatment of detainees in 2013. The NPM concludes that the rights of persons deprived of their freedom in the Netherlands are generally respected adequately. On behalf of the other Dutch NPM members and associates, I hope this third annual report will be valuable to the Subcommittee on Prevention of Torture of the UN and to those concerned about people, deprived of their liberty.



Gertjan Bos  
*Head of the Inspectorate of Security and Justice,*



# 1 Context

In the framework of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), several organizations have been appointed as members of the 'national preventive mechanism' (NPM) in the Netherlands. One of the tasks of the NPM is reporting its findings to the Subcommittee on Prevention of Torture (SPT) of the United Nations. In this annual report of 2013 the NPM reports on the conditions of detention and treatment of detainees. This report starts with describing the context of the NPM and its members. A summary of the activities of the NPM in 2013 follows.

## 1.1 Optional Protocol to the Convention Against Torture (OPCAT)

The OPCAT was the first treaty to establish a dual international and national system for the prevention of torture and other cruel, inhuman or degrading treatment. At the international level, OPCAT established the Subcommittee for the Prevention of Torture (SPT) and at the national level the protocol requires States to have in place a 'national preventive mechanism'. The scope of OPCAT is deliberately broad. States Parties must allow the SPT and the NPM to carry out visits to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence.

The OPCAT appoints three mandates to the SPT. First of all visiting places where people are, or could be, detained. Secondly supporting and advising the National Preventive Mechanisms (NPM's) and making recommendations to the States Parties with a view to strengthening the capacity and the mandate of the NPMs. And finally cooperation with the relevant United Nations organs and mechanisms as well with the international, regional and national institutions or organisations working towards the strengthening of the protection of all persons who are deprived of their liberty.

Article 3 of OPCAT requires States Parties to 'set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment'. These domestic visiting bodies are referred to as the national preventive mechanism (NPM). Each country signatory to the OPCAT agreement is requested to designate the assignment of NPMs in their own way. Some States have identified existing bodies to take on the preventive NPM mandate; other States have created new bodies to take on this role. There are as many NPM models as there are States Parties, each NPM reflecting the traditions of its country.

The Netherlands signed the OPCAT in May 2005 but did not ratify it until September 2010. In December 2011 the Dutch government chose to implement it using a gradual and incremental approach by only appointing existing organizations as members of the National Preventive Mechanism. This resulted in the appointing of multiple members of the NPM with one organization, the Inspectorate of Security and Justice (IVenJ), coordinating them.

Each individual participant of the NPM network has their own responsibility and tasks for activities and judgement. The Inspectorates have incorporated the principles of preventing torture and other cruel, inhuman or degrading treatment or punishment in their assessment framework. The Commissions of oversight for penitentiary institutions have the note 'Framework for civil monitoring of the implementation of sanctions and measures' and the brochure Proper treatment both offered by the Council for the Administration of Criminal Justice and Protection of Juveniles (RSJ) as an auxiliary for their functioning. In 2013, the network started to formulate a mission and vision for the NPM, besides the mission and vision for each individual organization, to strengthen the NPM-network. This declaration aims to clarify the formal framework of the NPM and to lay out a working and communication infrastructure to enhance collaboration. This will be incorporated in the annual report of 2014.

## 1.2 The Dutch National Preventive Mechanism

The NPM of the Netherlands is made up of the following bodies:

- Inspectorate of Security and Justice (IVenJ).
- Health Care Inspectorate (IGZ).
- Inspectorate for Youth Care (IJZ).
- Supervisory Commission on Repatriation (CITT)<sup>1</sup>.
- Council for the Administration of Criminal Justice and Protection of Juveniles (RSJ).

The additional associates include:

- Commissions of oversight for penitentiary institutions.
- Commissions of oversight for police custody (CTA).
- Detention Areas Supervisory Commission of the Royal Netherlands Marechaussee.
- National ombudsman.

The Inspectorate of Security and Justice coordinates de the NPM network. The purpose of coordination is to promote cohesion among the NPM members, to facilitate a collective understanding of OPCAT and its requirements and to encourage collaboration between a wide-ranging group of organizations and sharing experiences among them. At the same time, however, the independence of individual members is respected, as is their ability to set their own priorities for monitoring detention. Through working with all of the NPM members, the

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<sup>1</sup> The CITT was abolished on 1 January 2014. The supervisory role of the CITT has since been transferred to the IVenJ.

coordinator is able to gain an overview of all the monitoring activities and possible gaps in regulatory oversight.

Additionally the IVenJ communicates with other (inter)national bodies. This is done by acquiring information about monitoring activities from all the members and associates. The IVenJ combines that information as coordinator. The NPM network publishes the annual report of the National Preventive Mechanisms of the Netherlands on the basis of acquired information.

#### *Member and associate profiles*

The duties and authorities are listed in a summary of the relevant supervisory domains for the participants of the NPM network. A more detailed description of the organizations is listed in appendices 2 and 3.

Figure 1: Matrix member profiles

Location <sup>2</sup>	Legend:									
	A: Competence of advice O: Competence of oversight I: Competence of investigation S: Competence of supervision P: Competence, but no activities : No competence									
	NPM-Network	Inspectorate of Security and Justice	Council for the Administration of Criminal Justice and Protection of Juveniles <sup>3</sup>	Health Care Inspectorate	Inspectorate for Youth Care	Commissions of oversight for penitentiary institutions <sup>4</sup>	Commissions of oversight for police custody	National ombudsman	Detention Areas Supervisory Commission of the Royal Netherlands Marechaussee	
Detention centers		S	A	S		A, O		I		
Juvenile detention centers		S	A	S	S	A, O		I		
Forensic care centers <i>criminal law</i>		S	A	S		A, O		I		
Forensic care centers <i>civil law</i>				S		A, O		I		
Foreign nationals detention centers		S	A	S		A, O		I		
Demo centers <sup>5</sup>		S	A	P <sup>6</sup>				I		
Police custody <sup>7</sup>		S		S	S		A, O	I		
Detention center KMar		S	A <sup>8</sup>	P <sup>6</sup>				I	A, O <sup>9</sup>	
Military detention center (Stroe)		S	A	P <sup>6</sup>		A, O		I		
Closed mental health institutions <i>criminal law</i>		S		S					10	
Closed mental health institutions <i>civil law</i>				S					9	
Closed Youth Care (Jeugdzorg-plus) <i>civil law</i>				S	S					
Transportation homeland police		S	A	P <sup>6</sup>			11	I		
Transportation homeland (DV&O: Transportation and Subsidy Service)		S	A	P <sup>6</sup>	S	A, O <sup>12-13</sup>		I		
Transportation to other countries (flight)		S		P <sup>6</sup>				I		
Closed care retirement homes				S				I		
Closed disabled institutions				S						
International Criminal Court <sup>14</sup>										

<sup>2</sup> This is not only a location (building), but any place at the moment of the arrest.

<sup>3</sup> The Council has also legal power.

<sup>4</sup> The Commission has also legal power.

<sup>5</sup> DEMO centers are: Stichting DOOR, vereniging Exodus, Stichting Moria en Stichting Ontmoeting. They provide follow up care to former detainees.

<sup>6</sup> The IGZ can supervise when care is given or denied.

<sup>7</sup> Including the mobile police custody and police custody by the judicial police and railway police.

<sup>8</sup> As far as concerning detention of foreigners

<sup>9</sup> The Detention Areas Supervisory Commission of the Royal Netherlands Marechaussee has asked the commission of oversight Complex Schiphol to supervise the cells rented by the KMar from the police at Schiphol.

<sup>10</sup> De National ombudsman has no competence, except closed mental health in academic hospitals.

<sup>11</sup> The CTA had no competence in 2013, but will oversee the transportation by the police.

<sup>12</sup> There is a special commission of oversight for DV&O. This commission oversee and advice, but not handle complaints. Complaints are handled by the Commission of oversight of the specific detention center.

<sup>13</sup> The Commission of oversight for DV&O does not investigate Transferium.

<sup>14</sup> The Red Cross is responsible for monitoring detention conditions and treatment.

### *Member-specific developments*

The NPM-network has created more awareness for the subject of torture and inhumane or degrading treatment or punishment on those who are deprived of their liberty since the appointing December 2011. The network further ensures that activities are better coordinated and implemented.

The CITT was a member in 2013 and therefore mentioned separately in this annual report. The supervisory role of the CITT has been transferred to the IVenJ in 2014. In line with this responsibility the Inspectorate VenJ prepares the supervision of the entire foreign domain on a more permanent basis. This is not only the detention and repatriation, but the entire immigration process.



## 2 Activities 2013

In 2013 the network had three meetings to coordinate their activities, share their findings and start to formulate a mission and a vision. The NPM participants not only carried out individual research in their own expertise, but also improved the collaboration through joint activities. An example is the visit of the participants to a police station. In December 2013 the participants of the NPM network visited the police headquarters in Amsterdam. The visit was an introduction to the care for detainees prior to the research monitoring of police custody. The police station, including 48 cells and eight interrogation rooms, was built in 1941. The cells are divided over a total of three levels with an observation cell on each floor. Police cells are single cells of normal size. The cells appeared clean. Due to the type of detainees (suspects of serious offences) there is a lot of movement and it can be hectic. The visit has given the NPM insight in the process of detaining detainees and their living conditions of. This chapter describes the activities of the participants of the NPM network in 2013.

### 2.1 Adult detention

#### *Penitentiary institutions*

##### **Advise**

In 2013 the Council for the Administration of Criminal Justice and Protection of Juveniles (RSJ) issued 15 advisory reports, several of which dealt with (proposed) government policy regarding the implementation of liberty deprivation. In relation to OPCAT the following of these are mentioned here.

Firstly, the Council reacted to a proposal of the Dutch State Secretary for Security and Justice regarding the placement of short term prisoners. According to this proposal, short term detainees are not given the opportunity to perform work and are offered “more limited” reintegration activities. The Council deems the exclusion of a group of detainees from work to be unlawful. Furthermore, the Council believes that re-integration activities are very important for short term detainees as well. Many of them live on the ‘fringe’ of society (homeless, addicted). These detainees in particular may benefit from (after-care) activities aimed at housing, debts, income and care. Although the Council regrets that the proposal qualifies short term detainees for reintegration “to a more limited degree”, it does support the fact that the mentioned after-care activities are offered at all.

Secondly, the Council issued a recommendation on the concept Master Plan Custodial Institutions Agency 2013-2018, offered to Parliament by the State Secretary of Security and Justice on 22 March 2013. The Master Plan contains a considerable package of measures on the prison system, the detention under hospital order and (other) forensic care, the juvenile correctional institutions, the national services and the head office of the Custodial Institutions Agency (DJI). The Council misses a survey of and a vision on the (underlying) drastic

adjustments, relative to the detention objectives, such as resocialisation of detainees and reducing recidivism. The Council has great concern for such aspects of the Master Plan as:

- The potential length and execution method of ('bare') electronic detention.
- The large-scale application of multiple cell occupancy in custodial institutions. 20 hrs. a day lock-up of persons in preventive custody in combination with a limited activity program without work, (partial) abolition of the evening and weekend program for all regimes.
- The abolition of phased detention.

Because of the combined measures from the Master Plan, the Council believes that the social climate in the custodial institutions and the possibilities for many detainees to resocialise and to gradually return to society will deteriorate considerably.

Thirdly, the Council advised the State Secretary of Security and Justice on a proposal regarding the introduction of a system of promotion and degradation in the prison system. Implications of this proposal threaten to carry the negative effects of the Master Plan even further. According to this system, detainees are offered a simple basic program. Based on their commitment and motivation, they can be 'promoted' to a so-called plus program which contains the possibility to assign individual liberties and responsibilities aimed at resocialisation. Besides the introduction of this system of promotion and degradation, the proposal also contains a second drastic amendment, i.e. the abolition of the system of total community within the prison system. As a result, the detainees spend many more hours in their cell than they do at present. According to the Council, these two amendments will lead to a far-reaching austerity of the detention situation which will seriously obstruct the possibilities for resocialisation. The Council's objections are in outline:

- The majority of the detainees will actually remain in the basic program and never participate in the plus program.
- The basic program is so austere that the resocialisation objective as laid down in the Custodial Institutions Act cannot be carried out anymore. There is hardly any time left for a proper preparation for the return to society.
- A system of promotion / degradation is especially not suited for detainees with a 'minor mental disability'. These persons should be offered a customized program.

Another proposal related to the Master Plan was the concept for a draft bill on electronic detention, about which was separately advised in May 2013. The Council positively evaluates the introduction of electronic detention as one of the measures in the Master Plan to replace (suspended) preventive custody and prison sentences, as this prevents detention damage. The Council is of the opinion that electronic detention should not be applied without any kind of support (like for instance care or training), a possibility left open by the proposal. The Council is also positive about intensifying electronic supervision for minors in order to suspend preventive custody earlier and more often. However, by implementing electronic detention (and the contraindications used), a vulnerable group stays behind in the institutions.

## **Research**

In recent years, the Inspectorate VenJ has visited all penitentiary institutions (PI) and forensic psychiatric centers in the Netherlands. The Inspectorate has incorporated the principles of preventing torture and other cruel, inhuman or degrading treatment or punishment in their assessment framework. Overall, the detainees are treated human. A positive finding is that PI's have taken a lot of improvement measures, for example PI Vught and PI Amsterdam-Over Amstel. For example in the PI Vught the instructions regarding acting in emergencies are clarified and once again brought to the attention of employees. The PI Amsterdam-Over Amstel has made organizational changes for greater uniformity in operational management. To increase the effectiveness of reports and research, in 2013 the Inspectorate VenJ began with (semi-) unannounced interim monitoring. This means that the visit is not or only on short notice communicated to the facility. The experience with this form of supervision is positive. It gives a good picture of the state of affairs and has no negative consequences for the duration of the study.

## **Awareness**

The NPM network has sought to increase awareness of the NPM Opcat perspective among the Commissions of oversight for penitentiary institutions, aiming to generate input for the Dutch NPM annual report. To this end, in 2012, the sounding board, Inspectorate VenJ and RSJ asked the Commissions (through the DJI) to formulate a general conclusion on the NPM Opcat subject in their annual reports and pay attention to things that are going well and things that could still be better organized concerning this subject. Unfortunately, at the end of 2013 it was found that this adjustment had hardly been processed in the 2012 annual reports. In 2014, the NPM shall make a new appeal to the Commissions in this respect by introducing a more adequate caption in the format for the Commissions' annual reports.

## **Monitoring police custody**

### **Regular monitoring**

The Commissions of oversight of police custody have monitored police custody in 2013 by paying 773 unannounced visits to approximately 400 locations. The locations vary from single cells (mostly in police stations) for short-term custody of maximum 6 hours to large complexes for long-term custody of several days. The commissions talked to 689 persons in police custody and were present at large events with temporary cells (such as football games or music festivals) and at clearing exercises. Every visit resulted in a report that was sent to the responsible executive and the central division of the national police. Furthermore, every separate commission has made an annual report and discussed this with the Chief Constable of the regional or central division. More information can be found in paragraph 2 of appendix 3.

### **Subject-specific inspection**

Police custody is one of the core tasks of the police. On an annual basis the police holds around 200,000 persons in police custody in over 2000 estimated cells. The IVenJ has not yet monitored police cells, but the Dolmatov-case revealed that police custody has vulnerabilities. The Committee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CPT) also discovered, during the visit to the Netherlands in 2011, that the police has no accurate figure of the total number of police cells and that not all police cells are built according to the rules. Also policies with regards to police custody differ per police region and are dependent on the local setting. Police cells are monitored on a regional level by an independent committee (Commissions of oversight police custody) which consists of volunteers. The annual reports by these committees are often not published. These are causes to start a research for police custody.

The IVenJ, IGZ and IJZ conduct a research for police custody in cooperation with CTA. The main research question is: How is custody taken care of by the police and at what places? The inspection bodies focus not only on the period in police custody but also the arrest, transport to and from a police station, incarceration, detention and release/transfer to (penitentiary or medical) institution. Important aspects are the legal rights of the person, his/her treatment by the police, safety, staff and organization and exchange of information about (vulnerable) detainees. In 2013 the preparation for this research started, including the development of an assessment framework. The assessment framework has been built on the basis of (inter)national legislation, instructions and standards and a pilot research of several police and holding cells. The visits will be conducted in 2014, the report is foreseen in the beginning of 2015.

## **2.2 Youth in detention and care**

On the youth domain five inspectorates collaborate closely in Collaborative Youth Supervision (STJ). These are: Inspectorate of Security and Justice, Youth Care Inspectorate, the Inspectorate of Education (IvhO), Health Care Inspectorate and Inspectorate of Social Affairs and Employment (ISZW). Three of these five inspectorates are also member of the NPM network. In 2013 the members of NPM conducted research to the treatment and punishment of youth, this is mentioned below. Also, the Children's Ombudsman conducted a research to the quality of reports on which government officials base their decision to remove children from their home situation. Some NPM members also have co-monitored the juvenile detention centers en institutions for 'youth care plus'. These activities are mentioned below.

### **Juvenile detention centers**

The IJZ, IGZ and the IVenJ co-monitor the judicial youth detention centers as an NPM member. They carried out audits in two judicial juvenile detention centers and performed several follow-up audits in 2013. These audits focused on the legal position of juveniles, the social intercourse of interaction, internal security, protection of society and social reintegration, and some associated organizational aspects. The Inspectorate has incorporated the principles of preventing torture and other cruel, inhuman or degrading treatment or punishment in its assessment framework.

Overall, the young detainees are treated human. The visits to the juvenile detention centers showed the physical resilience of the staff and regular failure of the activities for juveniles as stumbling points. The cause is the shortage in the amount of staff. Due to (planned) contraction in staff, positions are not always fulfilled. The sector is also working with temporary workers. The inspectorates see this development as a risk. A positive finding is that judicial juvenile detention have taken a lot of improvement measures, for example the juvenile detention centers Amsterbaken and Den Hey-Acker. The safety and sense of safety in Den Hey-Acker are among others increased by resiliencetraining for personnel.

### *Youthcare-plus*

In 2013 the quality of care in the institutions for 'Youthcare-plus' has been monitored by IJZ, together with IvhO and IGZ. Youthcare-plus is a very intensive form of specialized youth care started in 2008 that can restrict the freedom of the juvenile to prevent withdrawal from the needed help. Since care program was under construction since 2008, the supervision is incrementally implemented in the period 2008 to 2014. This implies investigation on three themes in all institions during this period. This incrementally investigation is focused for example on the monitoring of the fundamental rights of the youth in care. Important themes of investigation are:

- Proportionate use of measures that reduce freedom, such as 'holding', time out-procedures and restriction of communication.
- The extent to which youngsters can enter an official complaint.
- Respectful treatment of youngsters.
- Treatment and care of young people by well-trained practitioners and professionals.

During the first step of the monitoring of the quality of care in the institutions for 'youthcare-plus' (2009-2010), the investigation focused on the safety and legal position of the juvenile. The focus in the second step (2010-2011) was on social environment and cooperation with the school. The monitoring of both steps show almost all institions scored sufficient. Improvements of institutions that scored insufficient were monitored and retested. Retests were also performed in 2013. All institutions now meet the necessary requirements of steps 1 and 2, concluding juveniles are treated human on the monitored aspects.

In 2013 the third and final step was monitored: the phase-based monitoring program of youth care plus institutions, which focuses primarily on the content of the treatment. Except for a few exceptions, all institutions meet the requirements. However, this still requires the necessary efforts to implement the improvement measures formulated by the inspectorates for the offered program and the coordination within the chain.

Reports of institutions not yet assessed and retests based on the research in 2013 will follow in 2014. A final report with an overview of the entire incremental supervision of the last few years will appear in 2014 after the fulfillment of the monitoring of step 3.

## 2.3 Detention and repatriation of irregular migrants

### *Detention*

The Detention Areas Supervisory Commission of the Royal Netherlands Marechaussee has undertaken several activities in 2013. It has conducted an inspection of the (at the time) newly built detention facility in the vicinity of Schiphol Airport (Justitieel Complex Schiphol). During this inspection the Commission has, amongst other aspects, taken note of the interior of the cell blocks. At the time of the inspection, the interior of the cells of the facility did not fully meet the relevant requirements and were therefore not in use by the Royal Netherlands Marechaussee (KMar). In 2013 the Commission has, furthermore, conducted an inspection of the detention facility of the Royal Netherlands Marechaussee in Coevorden. This inspection led the Commission to conclude that the facility meets the relevant requirements. It recommended, however, every guard to be fully trained in in-house emergency responses.

### *Research death of Alexander Dolmatov*

On 17 January 2013, the Russian citizen Alexander Dolmatov was found lifeless in his cell in the Rotterdam Detention Centre, where he resided in connection with his intended deportation to Russia. The State Secretary for Security and Justice asked the Inspectorate of Security and Justice (IVenJ) to investigate whether the Dutch government had acted with due care<sup>15</sup>.

Viewed together, the IVenJ and IGZ came to the conclusion that various organizations in the immigration chain acted negligently at various times. This also applied to those who were involved in the legal assistance and medical care provided to Mr. Dolmatov after he had been placed in detention. The IVenJ and IGZ made recommendations to the legislator and executives in the immigration process. The IGZ has also taken measures for improvement.

The IVenJ was unable to assess whether more careful actions by the Dutch government could eventually had resulted in a different outcome. It did establish, however, that Mr. Dolmatov was wrongly placed in immigration detention, that, with respect to the legal assistance provided, actions were not taken in accordance with laws and regulations and that the medical care provided was inadequate. The negligent actions taken by the Dutch government could not only be attributed to the acts or omissions by officials, but also to the dependence of - and faith in - the systems, procedures and forms that support these officials in their decisions in this chain. The IVenJ had found that, in practice, the systems, procedures and forms often contained superficial, unclear and sometimes even incorrect information and that they are insufficiently consistent with each other, regarding accuracy and up-to-dateness. A cause for concern was the fact that the chain partners involved knew about most of these system omissions. Following the report, the government has made an improvement plan. The IVenJ will monitor its progress.

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<sup>15</sup> This information derives mainly from a translation of the IVenJ-report on the website of the Dutch government at: <http://www.government.nl/news/2013/04/12/teeven-takes-measures-after-dolmatov-inspectorate-report.html>

## *Repatriation*

In 2013 the CITT has researched the repatriation of foreign nationals. The commission has observed 31 planned repatriation operations, of which two joint return operations organized by FRONTEX, the border control agency of the EU, nine flights to countries of origin and in 20 cases the CITT observed the ground process on the airport of departure. The general conclusion of the CITT is that the repatriation is being conducted in a humane way. Another conclusions of the Commission is that the number of transfer moments in the return chain is too high. This increases the risk of errors in the transfer of files. The Commission concludes that limiting the number of transfer moments improves the efficiency in the return chain and thus yields cost savings. Each year the Commission has a few subjects of special interest. In 2013 this was, among others, the exchange of medical data in the repatriation process of foreign nationals. If medically necessary, a nurse or doctor accompanies the foreigner during the repatriation. For a humane repatriation of a foreign national, it is necessary for the nurse or doctor to have medical background information about the foreigner such as the medical diagnose and the prescribed medication. The conclusion is that a start has been made to improve the provision of medical information, but there is not yet a comprehensive and thus secured process of transfer of medical background information. The contents of the medical background information vary from a short summary of the most important conditions to a complete copy of the medical file of the foreigner.

## **2.4 Umbrella activities**

### *Research and solving problems by the National ombudsman*

In 2013 the National ombudsman handled complaints, which involves not only doing research and writing reports but also solving problems by calling government officials, non-governmental organizations, lawyers and intermediating between the accuser and the concerning organization. In 2013 the National ombudsman and the Children's Ombudsman were deeply concerned about the detainment conditions of asylum seekers, especially families with children and children without parents. The National ombudsman focused on medical need of detained asylum seekers and published a report on this matter<sup>16</sup>. The National ombudsman concluded that too much attention is being paid on safety, costs and management instead of on needs and the psychological experiences of asylum seekers. The Children's Ombudsman demanded in the political arena that no asylum seeking child should be placed directly in detention, since this is a direct violation of the UN Convention of the Rights of the Child.

### *Meeting 'quality of supervision'*

The Sounding Board Group Commissions of oversight for penitentiaries organized a National meeting for the Commissions of oversight in November 2013 on the subject of 'The quality of supervision'. This meeting of the Sounding Board Group and members of the Council for the Administration of Criminal Justice and Protection of Juveniles (RSJ) was – as in 2012 – attended

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<sup>16</sup> Report National ombudsman 2013/125

by more than 200 members of Commissions of oversight for Correctional institutions. The reactions of commission members in response to this national meeting yielded building blocks for the note 'Quality Development Commissions of oversight'. On the occasion of this meeting the RSJ offered the commissions a concept for assessment criteria, as an auxiliary instrument towards their supervisory activities.

#### *Conference on placement of convicts*

On November 21 the RSJ held a conference on the placement of convicts titled 'Am I in the right place?' (Zit ik hier wel goed?) attended by about 350 officials and other persons in some way involved in (re)placing convicts in correctional institutions, amongst whom members of the NPM network. The meeting dealt with problems and dilemma's in finding the best possible place for every convict as seen from different angles. Subjects were, among others, placement in solitary confinement, individualization and the international perspective of the European Court for Human Rights. One of the objectives of this meeting was to recognize and discuss risks of ill-treatment in policy and practice.





# 3 Appendices

## Appendix 1: list of abbreviations

CITT	Supervisory Commission on Repatriation (Commissie Integraal Toezicht Terugkeer)
CPT	Committee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CTA	Commission of oversight for police custody (Commissies van Toezicht op de Arrestantenzorg)
DJI	Custodial Institutions Agency (Dienst Justitiële Inrichtingen)
DV&O	Transportation and Subsidy Service (Dienst Vervoer en Ondersteuning)
FTE	Full time equivalent
IGZ	Health Care Inspectorate (Inspectie voor de Gezondheidszorg)
IJZ	Inspectorate for Youth Care (Inspectie Jeugdzorg)
IND	Immigration and Naturalisation Service (Immigratie- en Naturalisatiedienst)
IVenJ	Inspectorate of Security and Justice (Inspectie Veiligheid en Justitie)
Ivho	Inspectorate of Education (Inspectie van het Onderwijs)
ISZW	Inspectorate of Social Affairs and Employment (Inspectie Sociale Zaken en Werkgelegenheid)
KMar	Royal Netherlands Marechaussee (Koninklijke Marechaussee)
LC CTA	National Centre for the commissions of oversight for police custody (Landelijke Commissie voor de Commissies van Toezicht Arrestantenzorg)
NPM	National Preventive Mechanism
OPCAT	Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment of Punishment
PI	Penitentiary institution
RSJ	Council for the Administration of Criminal Justice and Protection of Juveniles (Raad voor de Strafrechtstoepassing en jeugbescherming)
SPT	Subcommittee for the Prevention of Torture
STJ	Collaborative Youth Supervision (Samenwerkend Toezicht Jeugd)

## Appendix 2: member profiles

### 1. Inspectorate of Security and Justice (IVenJ)

#### Introduction

One of the tasks of the IVenJ is supervising the implementation of sanctions with a view to a visible improvement of the effectiveness and quality of the implementation of sanctions. The IVenJ advises the Ministry of Security and Justice with respect to ensuring the appropriate implementation of sanctions. In this, the IVenJ is independent in its assessments, transparent in its methods and professional in its knowledge, skills and conduct. When carrying out an investigation, the IVenJ receives no instructions concerning the method to be used, the judgment it forms and its reporting thereof. The IVenJ is interlocutor of the CPT.

#### Staff

In December 2013 a total of 59 fte (full time equivalent) worked at the IVenJ, of which around 10 inspectors are involved with NPM-related functions on a regular basis.

#### Work method

The IVenJ performs its tasks through inspection surveys and has four different forms of research. First, a screening of an institution, in which the institution or center is examined. Secondly a subject-specific inspection, which is an inspection of specific aspects of detention, for example 'solitary confinement' or 'food'. Third an incident-based investigation; either at its own initiative or upon the request of for example the Minister. Finally a follow-up research; after a given period of time, to find out if the institution is performing better.

One year after the publication of a report the IVenJ checks via a short visit to what extent the recommendations have been implemented satisfactory.

Each inspection is conducted by at least two inspectors. Screenings require a couple of weeks, i.e. one week's preparation, one week for the actual visit and a few weeks for reporting. The time required for subject-specific visits depends on the nature of the subject and the number of institutions involved in the inspection. During visits meetings are normally held with:

- The board or the unit or location director.
- Members of (specialised) staff and/or employees.
- Detainees/probation service clients.
- And for the Custodial Institutions Agency: the monitoring board.

#### Reporting

Following a visit, the IVenJ drafts a report of its visit/minutes of meetings. The institution which has been visited is given two weeks to respond to factual inaccuracies in the report/minutes. Within two weeks the draft report is amended and adopted by the Chief Inspector. The IVenJ submits the adopted report to the Minister/State Secretary. The Minister, who is not allowed to intervene in the text, sends the report to Parliament. In general the Minister adds his own viewpoint in writing about which recommendations will be implemented and which not and for what reasons. Six weeks after the report has been sent to the Minister/State Secretary, the report is posted on the IVenJ website ([www.ivenj.nl](http://www.ivenj.nl)).

## 2. Healthcare Inspectorate (IGZ)

### Introduction

The Dutch Health Care Inspectorate (IGZ) promotes public health through effective enforcement of the quality of health services, prevention measures and medical products. It advises the responsible Ministers and applies various measures, including advice, encouragement and coercion, to ensure that health care providers offer only 'responsible' care. The IGZ investigates and assesses in a conscientious, expert and impartial manner, independent of party politics, and unaffected by the current care system.

### Staff

The Health Care Inspectorate consists of 537 employees (including 200 inspectors). Of these, 30 are regularly involved in NPM-related functions.

### Field of activities

The field in which the Health Care Inspectorate performs its work comprises some 40,000 individual care providers and organizations. Some 1.3 million people work in the Netherlands' health care system, of whom 800,000 are qualified medical practitioners. The Inspectorate's work covers four main areas: public and mental health, curative care, nursing and long-term care, and pharmaceuticals and medical technology.

### Working method

Reports of incidents, unsatisfactory situations and ongoing shortcomings play an important role in the Inspectorate's supervisory and enforcement activities. Some reports may prompt the Inspectorate to take immediate enforcement action. All reports form an important source of information regarding the quality of care. If the Inspectorate receives a report which suggests serious shortcomings in the quality of care, or less serious shortcomings which are nevertheless of a structural, ongoing nature, the Inspectorate will take enforcement action. The measures available range from advice and encouragement to correction and coercion. The Inspectorate analyses all incoming reports, using the results to underpin its opinions regarding the quality of care in the various sectors of the health care system. The Inspectorate may also investigate the reports further during its inspection visits.

In the interest of efficiency and effectiveness, the Inspectorate does not investigate all incoming reports itself. It may request the health care provider concerned to conduct an internal investigation and to submit a report. However, the Inspectorate does impose certain conditions with regard to the quality and thoroughness of the internal investigation. In certain circumstances, the Inspectorate will instigate its own investigation further to an incoming report. It will do so:

- In the case of an extremely serious situation with exceptionally high risk.
- If the Inspectorate believes that its own investigation will improve quality within a particular health care sector in one fell swoop.
- If the health care provider concerned is not considered capable of conducting a satisfactory internal investigation.
- If the analysis offered by the health care provider does not meet the required standards.

## **Reporting**

Virtually all reports produced by the Inspectorate are made public under the national Freedom of Information Act. The reports can therefore be accessed by anyone who wishes to consult them. In the case of reports concerning specific health care institutions, there is no statutory obligation to publish, but the Inspectorate will generally do so in accordance with its policy of 'proactive publication'. This simply means that the Inspectorate does not wait until it is asked for information about a health care institution, but makes the inspection reports available on its website as soon as they have been finalized. This policy has been in place since 1 July 2008 and applies to the inspection reports on health care institutions in most sectors. Each report remains on the Inspectorate's website for a period of three years.

Inspection reports relating to individual health care providers, or those which concern events which are subject to criminal or disciplinary proceedings, are not 'proactively' published.

### **3. Inspectorate for Youth Care (IJZ)**

#### **Introduction**

The Inspectorate for Youth Care, in Dutch *Inspectie Jeugdzorg (IJZ)*, monitors the quality of youth care and compliance with legislation. IJZ was established by law in 1988. Organizationally it falls under the Ministry of Healthy Welfare and Sports and in substantive terms it operates independently.

Through its supervisory activities the Inspectorate for Youth Care stimulates facilities to provide proper and safe care, education and treatment of children in the youth care sector and also promotes support for the parents and care-providers of these children. Furthermore, through its supervisory activities the Inspectorate helps to ensure that society can be confident that children and parents receive timely and appropriate assistance and care from the institutions and professionals in the youth care sector. The Inspectorate provides an independent verdict on the quality of youth care services that is relevant to the professionals, the institutions, government and citizens and that helps to improve youth care services. The motto of the Inspectorate for Youth Care is: 'Towards visible quality in youth care!'

#### **Staff**

A total of 47 fte worked in 2013 at the Inspectorate for Youth Care, 23 of which are inspectors. All of them are involved with NPM-related functions. Nine of them on a regular basis. Also the Collaborative Youth Supervision (STJ) is an organizational part of the IJZ. STJ has five fte permanent staff, including two inspectors and ten posted inspectors from the inspectorates in 2013.

#### **Field of activities**

On the basis of five different statutes the Inspectorate for Youth Care supervises the following organizations:

- Child welfare offices (including assessment, case management, voluntary youth services, family guardianship, custody and probation).
- Child welfare service providers (including open residential facilities and youthcare Plus).
- Juvenile detention centres.

- Licensees for intercountry adoption.
- Reception facilities for unaccompanied foreign minors.
- The Child Care and Protection Board.
- Schippersinternaten (residence for children whose parents regularly travel for work reasons, like children of bargemen and children of showmen).

The supervision on the organisations for Youthcare- plus and the juvenile detention centres is NPM-related.

### **Work method**

The Inspectorate conducts general supervision on the institutions and thematic supervision, in which she systematically investigates a specific aspect within a specific a type of care (such as residential care or foster care).

In addition, the Inspectorate also supervises the quality of care before, during and after emergencies. Institutions are required to report emergency cases to the Inspectorate. The Inspectorate will investigate the quality of care after receiving the emergency notification. When necessary, it will take enforcement action.

The inspectors also monitor the youth care institutions in the region by means of Inspectorate visits. These visits may address issues such as weak points in the risk profile, complaints and indications of shortcomings, reports of emergencies as well as the implementation of improvement measures. For this supervision the Inspectorate has modernized its assessment framework and renamed it 'Reliable youth care' ('Toetsingskader verantwoorde hulp voor jeugd'). For the supervision of Juvenile detention centers and Youthcare-plus separate assessment frameworks are used.

Each supervisory activity is carried out by at least two inspectors. The duration of thematic supervision or supervision of emergency cases depends on the nature, gravity and content of the issue and varies from several weeks to several months. The thematic supervision and emergency supervision normally consists of the following phases: the preparation (this involves drawing up a plan of action, the central questions and a testing framework), a study of the policies of the institution, and visits to the institution(s) in question. During visits to the institutions the inspectors talk to children and young people, group leaders, behavioural experts, team leaders and the management. All supervision contains unexpected elements. The sort and number of unexpected elements depends on the specific circumstances.

### **Reporting**

All reports by the Inspectorate are actively publicized by offering them to the relevant member of the government, who will sent the report to the relevant representative body, for example the national Parliament and placement on the website of the Inspectorate for Youth Care. In addition, each year the Inspectorate issues an Annual Report in which it reports on its monitoring activities in the past year and provides a brief report on the developments in youth care.

#### *4. Supervisory Commission on Repatriation (CITT)*

##### **Introduction**

The Supervisory Commission on Repatriation, in Dutch the Commissie Integraal Toezicht Terugkeer (CITT), is an independent commission that was founded in 2007 after some incidents occurred during the expulsion of former asylum seekers to the Republic of Congo and Syria. Parliament wanted closer supervision on the whole return process, which eventually resulted in the CITT. The CITT was abolished on 1 January 2014. The supervisory role of the CITT has since been transferred to the IVenJ. The CITT supervised until 2014 the return process of aliens who don't have a legal basis for staying in the Netherlands and are returned to their country of origin or a third country, voluntary or by force. The supervision has been to ensure that the return process is correctly executed and to give advice to improve the quality of the integral return process. The Commission is independent in its judgment, transparent in its methods, and professional regarding knowledge, skills and attitude. Special attention has been given to the safe and humane return of aliens, but also to the effectiveness and efficiency of the integral return process.

##### **Staff**

The Commission had three members, who each chair a chamber dedicated to a special area within the return process. Each chamber had a maximum of five chamber members. The commission was supported by a small administrative staff, which falls under the Ministry of Security and Justice.

##### **Field of activities**

The chamber return facilities has been dealing with the international cooperation regarding return, which includes the travel documents issued by the authorities of countries of origin, and the cooperation within FRONTEX, the border control service of the EU. The chamber return chain has been focusing on the cooperation between the departments and services dealing with return on the locations where aliens are held in detention or custody. The chamber expulsion has been supervising during forced return flights to the countries of origin. This can be individual flights, or charter flights organized by the Netherlands, or with several EU countries together via FRONTEX.

##### **Work method**

The CITT has been supervising the return process and how the return policies are executed by the services involved. The CITT has spoken with the responsible State Secretary, directors of services, but also with the men and women working in the locations where aliens are held in detention. The CITT also received data from the responsible services and observed repatriations. For the latter, observers are selected for their knowledge of the return process or their medical or psychological expertise.

The CITT has been selecting the repatriation flights of aliens on the basis of different criteria, for example whether the returnee is expected to resist deportation, whether there are special circumstances like the return of families with young children or returnees with health problems. Also flights with high (political) risk are monitored. The return flights combined

with other European countries have all been observed. When the CITT observe repatriations, it works according to an inspection form to ensure that all relevant aspects of the repatriation are observed. These aspects are the briefing, boarding, use of force, transfer of the returnee to the authorities of the country of origin and so forth. This has also been discussed with the KMar in workshops where direct feed back can be given on points of improvement. The inspection form can be found on the website of the CITT, so a maximum of transparency is achieved. The use of this form also makes it possible to compare different flights that are observed by different observers.

### **Reporting**

The CITT delivered an annual report to the responsible State Secretary and Ministers. In the annual report are suggestions to improve the return process. The report is sent to Parliament by the State Secretary for Security and Justice with the comments of the State Secretary. The annual report is discussed in Parliament.

The annual report and the reaction of the State Secretary for Security and Justice are published on the website of the CITT.

## ***5. Council for the Administration of Criminal Justice and Protection of Juveniles (RSJ)***

### **Introduction**

The Council is an independent body carrying out two law-assigned tasks: administering justice and giving advice on youth protection and the enforcement of sentences and non-punitive orders. The Council has been established in 2001, combining its two predecessors (CRS, 1953 and CAJK, 1955).

### **Mission**

By administering justice and producing advisory reports, the Council sees to it that the government, in developing as well as enforcing measures concerning criminal justice and juvenile protection, acts in a legally correct way and according to principles of proper treatment. Proper treatment is a leading concept in this mission statement. The Council has elaborated on the concept of proper treatment in the publication 'Proper treatment, principles for dealing with detainees' (updated 2012).

### **Staff**

The Council consists of sixty members, amongst whom are experts on penitentiary law and science, juvenile and family law and behavioral sciences, as well as members of the judiciary, public administration, advocacy and medical doctors. The Council being an independent body, members have no ties with any ministry or service dealing with matters concerning the Council's competence.

## **Field of activities**

### *Advice*

The Council advises the Minister of Security and Justice and other Ministers, solicited as well as unsolicited, on policy implementation and the application of rules in the following areas:

- The enforcement of sentences and non-punitive orders.
- Youth protection.

Many advisory reports concern the improvement of implementation practice but the Council also deals with matters of principle or issues in process of policy-making. About fifteen advices appear every year. Major advisory reports in 2013 were:

- Detainees with a minor mental impairment.
- Promotion and degradation in the prison system.
- Master Plan 2013-2018 National Agency of Correctional Institutions.
- Placement of short term prisoners.
- Electronic detention.

The Council combines data from scientific sources with information obtained by visits to custodial institutions (to which end the Council has a right of access to these institutions), interviews and expert meetings. As a follow-up to, or inspiration for its advices the Council organises a conference for policymakers and academics about every year. The latest conference (March 29, 2012) concerned meaningful activities in penal institutions.

### **Administration of Justice**

The Council on appeal reviews decisions made regarding persons serving a custodial sentence or detention order: prisoners, hospital order patients and juveniles held in correctional or custodial care institutions.

The Council also reviews decisions made by an institution's governor, medical treatment provided by an institution's doctor or decisions made by an assignment officer or the Minister of Safety and Justice. Matters on which the Council may be asked to rule are for instance:

- Placement and transfer.
- Disciplinary punishments and measures.
- Medical care by the institution's doctor.
- Refusal to grant leave.

The Council gives judgement according to law (particularly the Custodial institutions act, the Hospital orders (framework) act and the Youth custodial institutions (framework) act) and principles of reasonableness and fairness. No further appeal existing, the Council's decisions are binding.

## **Cooperation**

The Council has good working relations with several other NPM-participants, in particular with the Inspectorate of Security and Justice, the Inspectorate for Youth Care and the Commissions of oversight for Penitentiaries. Another relationship worth mentioning is the one with the European Committee against Torture and inhuman or degrading treatment or punishment (CPT). The CPT receives a copy of each of the Council's advices and the Council meets with the CPT's committees at the occasion of their regular visits to the Netherlands.

## **Work method**

### *Advice*

The Council collects information necessary for advice by study of literature and data from scientific sources, interviews, visits to relevant institutions, inspection reports and other sources. Visits to penitentiary institutions are aimed at a general inquiry into the application of sanctions and detention circumstances, not in order to review the local situation but to be able to make recommendations towards national government policy makers. The Council focuses on improving policy and practices rather than on reporting bad practice. Advisory reports are being drafted by subcommittees consisting of members and one or two staff employees (advisors) and determined by either one of the Council's three sections or by the Council's Board. About one half of the advisory reports are issued on demand of the government; the other half is chosen by the Council itself. The yearly program is drafted after consultation of stakeholders as well as the relevant ministries.

### *Administration of Justice*

This task is dealt with by committees of appeal, consisting of three members and a staff employee (secretary). The committee's chairman is an active member of the judiciary.

## **Reporting**

The Council issues an annual report concerning its accomplishments but, not being a supervisory body, does not report about individual visits to institutions.

### *Advice*

Advisory reports are published in the official Government Paper (Staatscourant) and at [www.rsj.nl](http://www.rsj.nl); summaries are available in English.

### *Administration of Justice*

- Data base: A data base containing all decisions relevant for jurisprudence is available on the Council's website.
- Periodical bulletin: About eight times a year a bulletin of the most important new decisions is issued to a mailing list as well as on the Council's website.

## Appendix 3: associates

### 1. Commissions of oversight for penitentiaries

#### Introduction

In the Netherlands are 69 Commissions of oversight for the penitentiary institutions (prisons, juvenile detention centres, forensic care institutions and detention centres for aliens; in Dutch ‘Commissies van toezicht’). These commissions supervise the manner in which persons serving a custodial sentence or detention order are treated.

#### Staff

Commissions of oversight vary in size from six to fifteen members, the average number of members is 10. They are appointed for a maximum term of five years with the possibility of re-appointment for two terms of 5 years. By law it is required that various groups of professionals are represented in the commissions of oversight (e.g. physicians, judges, lawyers).

#### Field of activities Supervision

Members of the commissions of oversight have access to the institution at all times. Relevant information concerning detainees should be provided to the commission members at any time. All documents that concern the way in which custodial sentences and enforcement measures are imposed may be viewed. Generally supervisory councils should be actively informed of the important facts and circumstances within the institutions by the Board of directors of the penitentiary institute. Practically all commissions of oversight have a monthly commissioner who frequently visits the institution and with whom detainees have contact. He/she collects complaints from inmates and first tries to solve them by mediation.

#### Complaints

Detainees can submit complaints to the Commissions of oversight in the following two ways:

- Oral or written (‘sprekersbriefje’) complaints directly to the monthly commissioner.
- Or using special documents (‘klachtformulier’) for making complaints in relation to article 60 Custodial Institutions Act about decisions (or the absence of a requested decision) by the Direction.

#### Advisory role

Commissions of oversight can make recommendations towards (A) it’s own “Board of directors” and/or (B) towards the Minister of Security and Justice directly. They actively perform their advisory role to the Board of directors of the penitentiary institution.

## **Sounding Board**

The Sounding Board Group Commissions of oversight for penitentiaries ('Klankbordgroep Commissies van Toezicht') is a delegation of members from commissions of oversight for penitentiaries. The Sounding Board Group was founded in 2009 and has periodically (monthly) personal communication with the Ministry of Security and Justice throughout the year. The aim of the Sounding Board Group is collecting and making an inventory of national 'main problems' and trying to solve them, and safeguarding the independent position and working from the separate commissions of oversight for penitentiaries. The Sounding Board works together with a so-called 'Knowledge Centre ('Kenniscentrum CvT') and judicial authorities like the RSJ and IVenJ. Every month the Knowledge Centre publishes a newsletter. The Sounding Board introduced house rules and a protocol concerning her responsibilities, role and work method. In November 2013 the Sounding Board organized a National meeting about interpersonal conduct within penitentiary institutions. This meeting was attended by more than 200 members of Commissions of oversight for penitentiaries.

## **Reporting**

The annual reports 2013 of the Commissions of oversight for penitentiaries will be published on the website of the "Dienst Justitiële inrichtingen" of the Ministry of Security and Justice.

## ***2. Commissions of oversight for police custody***

### **Introduction**

Until December 31st 2012 the police of the Netherlands consisted of 25 independent regional police forces and the Netherlands Police Agency (KLPD). In each of the Netherlands' 26 police regions as well as for the KLPD there was a Commission of oversight.

In 2013 the police organization has changed significantly. Since January 1<sup>st</sup> 2013 the 25 police forces have been joined in one organization, the National Police of the Netherlands. The organization is divided in 10 regional divisions and one central division. For the Commissions these changes meant that their number has been reduced to ten Commissions of oversight for police custody (further referred to as: the Commission), one for each regional division.

However, their objective as well as their independent position have not changed.

The Commission supervises the treatment, the accommodation conditions and the stay of persons taken into custody who are under the supervision of the police, and the observation of the related regulations. The Commission functions as an independent body and does not receive any instructions from others (such as the police) with regard to its work method, its views, and reports. The Commission was established on the basis of the principle that citizens and persons taken into custody may have more confidence in the police when the care for detainees is supervised independently, which increases the legitimacy of the police actions.

### **Mission**

The objective of the Commission is to contribute to a sound, professional care for persons who are taken into custody by the police through the tasks it performs. The tasks of the commission include in any case:

- Supervising the housing, safety, care and treatment of persons taken into custody in police cells and policecell complexes.
- Offering an annual report to the Commissioner about its work.
- Offering advice to the Commissioner, whether requested or non-requested, and providing information about matters concerning police cell complexes.

### **Staff**

In each of the Netherlands' 10 regional divisions is a Commission of oversight for police custody. Since the central division has only very few policecells there is no separate commission for this division. The few cells the division does have are overseen by the regional commission of the region in which these are situated. Each commission has at least five members. These members do not work for the police or at any other bodies that are directly involved in the police. The Commission is supported by a secretariat.

In 2013 a national center for the commissions (LC CTA) has been introduced, consisting of 4 of the 10 chairmen of the commissions. Its task is to ensure the quality of the oversight on police custody, for example through developing criteria of quality and frequency of visits. The LC CTA represents the 10 CTA's in national consults, including the consult with all NPM participants and organizes joint meetings to exchange experiences or visions.

### **Field of activities**

Supervising the treatment, the accommodation conditions and the stay refers to persons who are held in premises used by the police, irrespective of the grounds and irrespective of the place in these premises where this deprivation of liberty is taking place.

### **Work method**

In order to carry out its tasks, the members of the Commission inspect the policecells (any location the police use to hold people in custody), and the other rooms in the police buildings where persons taken into custody (can) stay (such as the lawyers' room, recreation yard etcetera).

The Commission members visit the cell complexes and police stations without any prior announcement, on different days and at different hours. They speak with persons taken into custody and police staff and have free access to the detainee registers. During a visit the rooms where persons taken into custody stay regularly are inspected. When persons who have been taken into custody are present during the visit, the member will speak with a few of them in order to hear about the treatment and the care. Things that are unclear or shortcomings which can be solved on site are usually discussed immediately with the manager. A written report of each visit is drawn up, which is discussed at the periodical meeting of the commission. At least one time a year the Commission has consultations with the case holder of care for detainees of the executive of the regional or central division. During these meetings remarkable findings, possible points for improvement and any current matters and changes in the operability of cell complexes and police stations are discussed. The police offer requested and non-requested information to the Commission. Moreover, the Commission can offer requested and non-requested advice to the Commissioner and provide information regarding the police cells in question and the care for detainees in the region.

## **Reporting**

Every year the independent commission reports its findings – without interference of third parties – to the Commissioner. The Commission makes recommendations through this annual report. The Commissioner then gives his reaction to the annual report and the recommendations.

The annual reports, one of each of the 10 commissions and one of the LC CTA will be published through the press and by offering the annual reports to various persons/organizations, including the Security Region and the Minister of Security and Justice.

### ***3. Detention Areas Supervisory Commission of the Royal Netherlands Marechaussee***

#### **Introduction**

On 23 November 2007, the Regulation on the Detention Areas Supervisory Commission of the Royal Netherlands Marechaussee (RNLM, in Dutch Koninklijke Marechaussee) became effective. The Regulation provides for a Supervisory Commission exercising supervision over the detention areas used and managed by the Royal Netherlands Marechaussee. Following the appointment of its members by the Minister of Defence, the Supervisory Commission began its activities on 1 January 2008.

#### **Staff**

The Commission comprises four members, including the chairman, and is supported by a secretary from the Royal Netherlands Marechaussee.

#### **Field of activities**

The Commission carries out periodic inspections and meets twice yearly to discuss its findings. The number of locations where the Supervisory Commission carries out its work has been reduced to two, namely the Schiphol detention center and Coevorden.

#### **Work method**

The Commission inspects whether the detention spaces are used in accordance with the guidelines and assesses whether the relevant regulations are observed. The Commission also inspects the structural state of repair of the spaces, checks whether the technical facilities are functioning, whether logs are being kept, whether the work instructions are being observed, the state of maintenance and cleanliness, and whether there are regulations in place with regard to medical and other forms of care. In addition, the Commission establishes whether a contingency plan is in place (e.g. in the event of fire) and whether this plan is practiced regularly.

The Supervisory Commission focuses primarily on the cells in which arrested persons and aliens are detained for periods longer than six hours and where they also spend the night. This requires the RNLM to provide specific facilities and care because the people detained fall directly under the duty of care of the RNLM. The Supervisory Commission checks whether the RNLM looks after its detainees in a responsible manner. In addition, the Royal Netherlands Marechaussee uses so-called holding areas and holding rooms. These rooms are used exclusively for the detention of persons for periods of no more than six hours. If, for the

purposes of investigation, these persons have to be held for a longer period, they are transferred to other locations (police station or another RNLM post) where they can be detained for the night. Given their use (short stays of less than 6 hours and not during the night), the detention areas and holding rooms are not part of the scope of supervision of the Commission. In performing its supervisory tasks, the Commission is, however, indirectly informed of the use of holding areas and holding rooms. If deemed desirable or necessary by the Commission, it will include its findings regarding these areas in its report. The Commission performs its inspections on the basis of a checklist, in order to ensure that the inspections are performed according to the same standard, irrespective of the individual tasked with carrying out the inspections. This working method enhances the objectivity and continuity of the supervision.

### **Reporting**

The Commission presents its findings to the Minister of Defence in an annual report.

## **4. National ombudsman**

### **Introduction**

The National ombudsman of the Netherlands is an independent institution which exists to give individuals the opportunity to lodge complaints about the practices of government with an independent, expert body. The institution and its role are enshrined in the Dutch Constitution. The Ombudsman oversees complaints procedures, initiates investigations on his own initiative, and has the power to take a wide range of measures that can help guarantee effective access to human rights. As a High Council of State, the institution is independent of the executive and judicial powers of government. However, the National ombudsman is appointed by the Parliament for a period of six years and receives his budget from the Parliament. The National ombudsman works alongside existing provisions, such as the Parliament, the courts and internal complaints procedures.

The National ombudsman institution was established in order to give individuals the opportunity to submit complaints about the practices of government to an independent, expert body. It was established by the National ombudsman Act of 1981 and enshrined in the Constitution in 1999. Its powers of investigation and procedures are governed by the General Administrative Law Act, Chapter 9, title 9.2.

### **Staff**

The National ombudsman is supported by an office employing around 170 staff members (150 FTE) at the time of writing.

### **Field of activities**

The National ombudsman acts as a backstop protection for the legal rights of detainees. He is normally competent to investigate complaints about situations outside the jurisdiction of inspectorates and other institutions. These include, for instance, situations where the complaint is not about a decision, but about actual behavior or treatment or where the complainant is a third party. In addition, the National ombudsman can have a preventive role,

for example, by issuing recommendations on the basis of complaints or by conducting investigations on his own initiative.

### **Working methods**

The Constitution lays down that ‘the National ombudsman shall investigate, on request or of his own accord, actions taken by central government administrative authorities and other administrative authorities designated by or pursuant to Act of Parliament’. In the course of his investigations, he has the power to:

- Conduct on-site visits.
- Order administrative authorities to appear.
- Order complainants, witnesses and experts to appear.
- Hold hearings under oath.
- Require the provision of verbal information.
- Demand access to all relevant documents.
- Demand access to confidential documents.
- Conduct formal hearings.

### **Reporting**

The National ombudsman sends an annual report of his activities to the Parliament. In reports on individual cases or on investigations conducted on his own initiative, he can make recommendations. If the relevant administrative authority refuses to follow such recommendations, the National ombudsman may inform the Parliament of its failure to take action and so obtain a political opinion on the matter.

