



# Annual Report 2016

Annual review of the Dutch National Preventive Mechanism

# Table of contents

<b>1</b>	<b>Monitoring issues</b>	<b>3</b>
	Tension between the need for security and the preservation of liberties	3
	Reducing the use of restraints in care facilities	4
	Placement of youths in closed youth detention centres without authorisation from a juvenile court	4
<b>2</b>	<b>About the National Preventive Mechanism</b>	<b>5</b>
	Activities in 2016	6
	<b>Annexes</b>	
<b>I</b>	NPM consultation participant profile matrix	7



# 1

## Monitoring issues

No one should be treated in a humiliating or degrading manner. This also applies for those detained, cared for or treated under non-consensual conditions or whose freedom has been restricted by the government in any other way. As a part of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)<sup>1</sup>, the Netherlands has appointed various organisations as members of the 'National Preventive Mechanism' (NPM). This 2016 annual report features the NPM assessment of detention conditions and the treatment of people restricted in or deprived of their freedom.

According to the annual report, the rights of those whose freedom has been restricted are generally respected in the Netherlands. The NPM has worked to monitor and issue recommendations on the aspects of care, detention and the repatriation of irregular migrants. Based on the outcomes of these monitoring efforts, the NPM concludes that people whose freedom has been restricted are generally cared for in an adequate and conscientious manner. However, a number of reports and recommendations do call for the further strengthening of human rights at legislative, policy and practical level. The following sections outline the three main focal points of NPM monitoring.

### Tension between the need for security and the preservation of liberties

The NPM is continually vigilant about the tension between security and the preservation of internal liberties and leave opportunities for detainees in penitentiary facilities or forensic institutions. Detainees must have the opportunity to prepare for their return to society. However, there is also a need to ensure security within and outside of the institution. A penitentiary facility or forensic institution must thus continually weigh these two principles when awarding internal liberties and leave to detainees. This causes risks in terms of the smuggling of

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<sup>1</sup> According to Article 3 of the OPCAT, member states are obliged to 'set up, designate or maintain [...] one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment'. These bodies, responsible for conducting site visits within the member state, are referred to as the NPM.



contraband, the integrity of staff members and continued criminal activities during the detention period.

## Reducing the use of physical restraints in care facilities

Some of the patients and clients in facilities for the handicapped or the elderly or in mental healthcare facilities may face restrictions of their freedom in the form of physical restraints or isolation. In view of the fact that such measures can have a negative impact on the quality of life, their use must be limited to a minimum.

Care institutions in the Netherlands must prevent the use of such measures as much as possible or - where they cannot be avoided - apply them in accordance with the principles of proportionality, subsidiarity and efficiency. The NPM has seen these sectors devote a great deal of attention to these aspects over the past few years. However, there is still room for further improvement.

## Placement of youths in closed youth detention centres without authorisation from a juvenile court

As monitoring efforts over the past few years have shown, closed youth detention facilities are still uncertain as to when youths in care may be subjected to freedom restrictions or detention. Care for these young people may be subject to multiple legal regimes. Based on information provided by the closed youth care institutions and the outcomes of unannounced site visits, protocols have been established for the placement of youths without authorisation for closed youth care at four locations. The expectations underlying assessment of these locations were elaborated into three minimum requirements. Seven providers (with a total of fourteen locations) met these minimum requirements. Four providers (with a total of six locations) largely met the minimum requirements, while two failed to meet all requirements. All closed youth care locations currently meet the minimum requirements.

The NPM assumes that the formulation of these three minimum requirements has removed any uncertainty on the conditions for freedom restrictions and detention. The three minimum requirements have been incorporated into the Responsible Youth Care assessment framework, the basis for monitoring of all closed youth care providers.



# 2

## About the National Preventive Mechanism

The Dutch NPM is made up of all organisations with a supervisory or advisory role in the area of people whose freedom has been restricted.

The Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment conducted an advisory visit to the Dutch NPM in 2015. The Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment conducted an advisory visit to the Dutch NPM in 2015. The State Secretary for Security and Justice gave a response on this report. In this response he indicated that the Dutch NPM has been carefully reviewed to consider in what way optimal effectiveness and preparation of the operations of the can be ensured NPM for the future. The current bodies and inspectorates will continue to carry out their NPM duties individually on the basis of their own respective legal remits.

The NPM participants jointly hold all authorisations required of NPMs under the OPCAT<sup>2</sup>. All participants have their own tasks, responsibilities and authorisations in accordance with the law. Some organisations do not take part in the National Preventive Mechanism's periodic consultations. For instance, the Council for the Administration of Criminal Justice and Protection of Juveniles no longer structurally participates in the periodic consultations.

The following organisations take part in the NPM consultations:

- Inspectorate of Security and Justice<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<sup>5</sup>
- Detention Areas Supervisory Commission of the Royal Netherlands Marechaussee

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<sup>2</sup> Parliamentary Papers TK 33826 no. 18.

<sup>3</sup> The Inspectorate of Security and Justice also serves as coordinator of the NPM network.

<sup>4</sup> The sounding board group of the Commissions of Oversight for Penitentiary Institutions represents the Commissions of Oversight during NPM meetings.

<sup>5</sup> The National Centre for the Commissions of Oversight for Police Custody represents the Commissions of Oversight during NPM meetings.



The overview in appendix I describes the authorisations of the various individual organisations.

The organisations collaborate in areas where supervisory authorities overlap. The NPM organisations conduct their monitoring activities on the basis of existing assessment frameworks. The principles on the prevention of torture or other cruel, inhuman or degrading treatment or punishment are a standard component of these assessment frameworks.

## Activities in 2016

Activities in relation to the restriction of freedom and detention are partly carried out within the context of the participants' NPM duties. See the organisations' individual annual reports for further information on their activities outside of the aforementioned key themes.

**Tabel a.** *Activities in relation to restrictions on freedom of movement and detention*

Inspectorate of Security and Justice	<ul style="list-style-type: none"> <li>• <a href="#">Asylum and migration</a></li> <li>• <a href="#">Police</a></li> <li>• <a href="#">Implementation of sanctions</a></li> <li>• <a href="#">Youth</a></li> </ul>
Health Care Inspectorate	<ul style="list-style-type: none"> <li>• <a href="#">Medication safety (Paragraph 4.3)</a></li> <li>• <a href="#">Care and nursing (Paragraph 6.1)</a></li> <li>• <a href="#">Forensic care (Paragraphs 6.2 and 6.3)</a></li> <li>• <a href="#">Care for the handicapped (Paragraphs 6.2 and 6.4)</a></li> <li>• <a href="#">Mental healthcare (Paragraph 6.5)</a></li> </ul>
Inspectorate for Youth Care	<ul style="list-style-type: none"> <li>• <a href="#">Youths in mandatory care</a></li> </ul>
Commission of Oversight for Penitentiary Institutions	<ul style="list-style-type: none"> <li>• Sounding board group annual report</li> <li>• <a href="#">Annual reports by individual commissions</a></li> </ul>
Commission of Oversight for Police Custody	<ul style="list-style-type: none"> <li>• <a href="#">Annual Report by National Centre commissions</a></li> </ul>
Detention Areas Supervisory Commission of the Royal Netherlands Marechaussee	As a result of the Commission's limited staffing levels in 2016, no activities were recorded in the annual report.



# I

## Appendix MPM consultation participant profile matrix

Location <sup>5</sup>	Inspectorate of Security and Justice	Health Care Inspectorate	Inspectorate for Youth Care	Commission of Oversight for Penitentiary Institutions <sup>6</sup>	Commission of Oversight for Police Custody	Detention Areas Supervisory Commission of the Royal Netherlands Marechaussee
Detention centres	V	V		V		
Juvenile detention centres	V	V	V	V		
Forensic care centres <i>criminal law</i>	V	V		V		
Forensic care centres <i>civil law</i>		V		V		
Foreign nationals detention centres	V	V		V		
Follow-up care centres for former detainees	V	v <sup>7</sup>		V		
Police custody <sup>8</sup>	V	V	V		V	
Detention centre KMar	V	v <sup>7</sup>				v <sup>9</sup>
Military detention centre (Stroe)	V	v <sup>7</sup>		V		
Closed mental healthcare institutions <i>criminal law</i>	V	V				
Closed mental healthcare institutions <i>civil law</i>		V				
Closed youth care (Jeugdzorg-plus) <i>civil law</i>		V	V			
Transportation Netherlands police	V	v <sup>7</sup>			V	
Transportation Netherlands Transportation and Support Service	V	v <sup>7</sup>	V	v <sup>10-11</sup>		
Transportation to other countries (by air)	V	v <sup>7</sup>				
Closed care retirement homes		V				
Closed disabled institutions		V				
International Criminal Court <sup>12</sup>						

Note: see the next page for footnotes.



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- <sup>5</sup> 'detention areas'/'locations where people's freedom has been restricted' are not limited to physical locations/buildings, but include all locations from the time of arrest onwards.
- <sup>6</sup> The Commission of Oversight also has a judicial function.
- <sup>7</sup> The Healthcare Inspectorate monitors locations where care is provided or withheld.
- <sup>8</sup> Includes Judicial Police and Railway Police holding locations and mobile police detention complexes.
- <sup>9</sup> The Detention Areas Supervisory Commission of the Royal Netherlands Marechaussee monitors all detention areas managed and used by the Royal Netherlands Marechaussee. In accordance with current working agreements, the Commission of Oversight for Penitentiary Institutions monitors all cells leased by the Royal Netherlands Marechaussee at the Schiphol Detention Centre.
- <sup>10</sup> A special Commission of Oversight has also been established for the Transportation and Support Service. This commission conducts monitoring activities and offers recommendations, but does not handle complaints. Complaints are handled by the relevant penal institution's Commission of Oversight.
- <sup>11</sup> The Commission of Oversight for the Transportation and Support Service does not monitor the Transferium.
- <sup>12</sup> The Red Cross is responsible for monitoring the conditions and treatment of those who have been incarcerated.



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