



INHUMAN AND UNNECESSARY

**HUMAN RIGHTS VIOLATIONS IN DUTCH HIGH-SECURITY
PRISONS IN THE CONTEXT OF COUNTERTERRORISM**

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Open Society Justice Initiative

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EXECUTIVE SUMMARY AND RECOMMENDATIONS

“This regime creates a division between us and them: we are together and they [the Dutch authorities] are the enemy.” – Former TA detainee¹

Violent attacks across Europe, in particular during the last decade, have taken hundreds of lives and caused injuries to hundreds more individuals. These attacks require an effective response from governments, and indeed, governments have the duty to protect people from this wanton violence. Upholding the right to life and enabling people to live freely, to move freely, to think freely: these are essential tasks for any government.

However, governments across Europe have broadly moved from the view that it is the role of governments to provide security so that people can enjoy their rights, to the view that governments must restrict people’s rights in order to provide security. In addition to structural, sweeping counterterrorism laws, many European states also have substantially reviewed their approach to how and where people suspected or convicted of terrorism-related offences are detained. This report looks at how The Netherlands, out of fear that such detainees might “radicalise” and recruit others by espousing extremist views and encourage violent acts of terrorism, developed a special detention unit (*Terroristenafdeling*, TA) in 2006. This detention unit holds people who are suspected of terrorism offences as well as those convicted of these offences and is governed by harsh security measures and separates people from the general prison population.

This report documents a number of serious breaches of human rights and other concerns with the Dutch TA and provides a series of recommendations to bring it in line with The Netherlands’ international human rights obligations. Failure to reform current TA policies and practices raises concern about violations of detainees’ human rights and even the TA’s effectiveness in preparing the detainees for life after detention. It is possible that someone suspected, not convicted, of an entirely non-violent crime, like posting something online, could end up being detained alone for up to 22 hours a day for the duration of their stay without ever being allowed to hold their child or have other meaningful human contact with the outside world.

The information contained in the report supports the notion that such special high-security regimes can be counterproductive by treating people in a manner that causes them significant harm—and potentially makes them ill-equipped to return to society as fully functioning and contributing members of society. These findings are based on interviews with 19 former TA detainees, as well as former TA detainee family members, prison authorities, prosecutors, judges, defence lawyers, policy makers, representatives of oversight bodies and probation services, and others familiar with the TA.

The first specialized high-security TA detention unit for terrorist suspects and convicts opened in The Netherlands in 2006 at a prison facility in Vught (*Penitentiare Inrichting Vught*). Another one was created in 2007 at the De Schie prison in Rotterdam (*Penitentiare Inrichting De Schie*).

The Dutch government is aware of the human rights concerns associated with the TA and is demonstrating a willingness to make some reforms. TA prison authorities occasionally increase the amount of time detainees are allowed outside their cells and the amount of contact that detainees can have with each other and with outside visitors. Authorities are also beginning to use risk assessment

¹ Interview with L., 1 February 2017.

tools to differentiate between TA detainees who are “leaders” and those who are “followers” to determine which security measures they should be subjected to, and are developing ways to design tailor-made reintegration programs for detainees and, if deemed feasible and relevant, “de-radicalisation” and “disengagement” programs.

These appear to be positive developments, but they are insufficient and undermined by the fact that at the time of writing the norm within the TA was to subject detainees to severe restrictive confinement and then to relax those restrictions at the discretion of prison authorities. The new risk assessments are also made only *after* a person is placed into the high-security TA prison. This is in contrast to international human rights standards that require authorities to conduct an individualized risk assessment to demonstrate that restrictions placed on a detainee are necessary and proportionate *before* imposing such restrictions. Moreover, while these risk assessments might result in the reduction of security measures for some TA detainees, they did not appear to serve the primary function of determining whether the TA's security measures were necessary and proportionate for each detainee. It was also unclear precisely how these new assessments were being made, but they must be made based on clear and objective criteria set out in regulations which are publicly available and predictable, be part of a formal decision-making process which provides for effective participation by the detainee, and permit detainees to have access to information that allows them to effectively challenge and judicially appeal the results.

AUTOMATIC PLACEMENT, NO INDIVIDUAL ASSESSMENT

Under Dutch law, authorities automatically assign people suspected or convicted of terrorist offences to the TA without an individual assessment regarding whether they actually pose a threat of “radicalising” or recruiting other detainees or present a significant threat of violent or other antisocial behaviour. In the absence of such an assessment, there is no consideration of whether the TA's security measures are necessary or proportionate for that individual. Instead, authorities impose high-security measures on people as a matter of routine based on an assumed generalized risk associated exclusively with the nature of the charges against them or the crime for which they were convicted. As a result of overly broad definitions for what constitute “terrorist offences” and an ever-expanding set of counterterrorism laws, these charges can even include non-violent offences such as sending inciting tweets. The absence of an individualized risk assessment is one of the TA's main deficiencies and is a violation of The Netherlands' human rights obligations. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) raised similar concerns in 2007 and again in 2017 when it criticized the Dutch government for automatically placing people charged with, or convicted of, a terrorist offence into the TA.

One result of this system of automatic placement is that even a person who poses no actual security threat can be held in one of The Netherlands' harshest detention regimes. Security measures include confining people in individual cells for prolonged periods of time and limiting their contact with others when they are outside their cells, conditions that can amount to solitary confinement; administering frequent and routine invasive full-nudity body searches; monitoring to such an extent that it has turned family visits into merely superficial encounters; jeopardizing or breaching medical confidentiality and limiting lawyer-client confidentiality; and, finally, severely limiting detainees' access to work, education, and the reintegration opportunities which exist for other prisoners.

The TA's automatic placement system does not distinguish between people who are suspected of having committed terrorist offences and people who have been convicted of terrorist crimes. Persons suspected of involvement in such acts are thus placed into a regime that publicly stigmatizes them with the label “terrorist” and treats them identically to persons who are held there convicted of serious crimes. This seriously undermines the right of suspects to be presumed innocent until proven guilty. It is a particularly troubling characteristic of the TA because, at the time of writing, most of the people in the TA were only suspected of committing a crime, without having yet been convicted by a court of first instance, which can last for up to 27 months under Dutch criminal law relating to terrorism offences.

NO EFFECTIVE REMEDY

Another major failing of the TA is that people held there do not have effective ways to challenge their initial placement in the TA, and once inside it is near impossible for people to get transferred to a different facility with a less harsh regime. As a result, The Netherlands is failing to provide an effective

remedy for detainees who seek to challenge their initial and ongoing placement in the TA. Authorities responsible for the operation of the TA do not even conduct periodic reviews to determine whether it is necessary for a person to remain in the TA. Moreover, internal complaint mechanisms and their appeal body, the Council for the Administration of Criminal Justice and Protection of Juveniles (*De Raad voor Strafrechtstoepassing en Jeugdbescherming*, RSJ), did not provide TA detainees with effective ways to challenge the TA's routine use of harsh security measures.

RESTRICTIVE CONFINEMENT

One of the harshest security measures that authorities subject people to within the TA, without an individual assessment of whether it is necessary or proportionate, is confining them in a cell alone for extensive periods of time on a daily basis and providing them with only limited meaningful human contact during the hours they are allowed to leave the cell. People interviewed for this report described how they were confined to their cells for between 19 and 22 hours a day, depending on their daily schedule. In addition to confinement in their individual cells for prolonged periods, the absence of a meaningful process to get a transfer out of the TA meant that people were held in the TA under these conditions for extended periods of time. As of May 2017, the average length of time a person had been detained in the TA was approximately five and a half months. In some cases the restrictions on social contact imposed on detainees appeared to be in breach of the state's obligation to treat detainees humanely or of the prohibition of torture and other cruel, inhuman or degrading treatment. In three particularly troubling cases, the time that detainees spent alone amounted to prolonged solitary confinement—that is, they were held for 22 hours per day or more without meaningful contact with others in excess of 15 days, in violation of international human rights standards which explicitly identify prolonged solitary confinement as amounting to torture or other cruel, inhuman or degrading treatment or punishment. One woman, who was eventually acquitted of all charges, said she spent 10 consecutive weeks and then another three consecutive weeks cut off from other detainees during her more than five months of detention at TA Vught from 2016 to 2017.

INVASIVE FULL-NUDITY BODY SEARCHES

Invasive, full-nudity body searches are another of the TA's routine and harsh security measures. Authorities conduct these searches frequently and without assessing on a case-by-case basis if a detainee poses a threat that would make such searches necessary. Invasive body searches occur after, and sometimes also prior to, a detainee meeting in person with outside visitors, including close family members and children, as well as when detainees leave the prison for court or police hearings. The TA internal rules state that as far as possible body searches should be conducted by guards of the same sex as the detainee and in a designated closed room. There were, however, occasional reports that guards of the opposite sex were present during the body searches. In one case documented a female former detainee about to be strip-searched by female guards had to protest the presence of a male staff member before he moved out of sight.

The searches—which have never resulted in the discovery of contraband, according to prison officials—are so frequent and so humiliating that many detainees avoid them by refusing to meet with family members in person, opting instead to meet them behind a transparent glass wall or not at all. During these visits, the glass wall prevents detainees from having any physical contact, even with their children, which is already severely limited when detainees have in-person visits. Some detainees have even refused to attend court hearings, or threatened to do so, to avoid the invasive searches.

International human rights law and standards prohibit such searches unless they are absolutely necessary, based on an individual assessment, and unless there is a strong and specific suspicion that a person might be carrying contraband. Any such searches should therefore be as unobtrusive as possible, strictly limited to situations where there is a concrete security need, and must avoid humiliation and unnecessarily intruding on a detainee's privacy. Contrary to these obligations and standards, the TA's routine and invasive full-nudity body search rules violate the prohibition on cruel, inhuman or degrading treatment and are also in violation of the right to privacy.

EXCESSIVE MONITORING

Prison authorities also monitor every word and movement of TA detainees when they are outside their cells, including watching over, listening into, and recording their visits and phone calls with family members. For many TA detainees, the routine and constant monitoring and supervision prevented them from discussing personal and private family issues during visits and calls with loved ones. The TA's other security measures, such as the full-nudity body searches that took place after, or prior, to family visits and the prohibition on meaningful physical interactions during those visits, also had a negative impact on their family life. The compounded effect was that such visits became mere superficial encounters and had a significant detrimental impact on the detainees' ability to build and maintain family relationships, including with their children. Several former detainees also recalled a lack of privacy when they met with medical professionals at TA Vught due to the presence of guards, apparently in breach of medical confidentiality. A female TA detainee who had been in TA Vught gave a particularly troublesome account of having to discuss personal information with a female doctor in the presence of male guards at the door. Former detainees and defence lawyers also consistently described how the TA's monitoring and supervision measures, as well as the legal powers and past practices of intelligence services, raised suspicions that authorities were not respecting lawyer-client confidentiality, which in turn hampered their ability to communicate with a lawyer. Authorities must seek to provide conditions where this does not occur and detainees and their lawyers are confident that lawyer-client confidentiality is being respected.

OVERSIGHT

The Netherlands must also significantly improve independent oversight of the TA, in line with international human rights standards. International human rights standards require regular and independent inspections of detention facilities. Our research indicates that currently operating inspection bodies, such as the Netherlands' National Preventive Mechanism (NPM) and the Inspectorate of Security and Justice, are not sufficiently independent, lack effectiveness, avoid focusing on the TA, or inspect the TA but not on a regular basis and without carefully analysing possible conflicts with international human rights law and standards. It is also clear from the government's unwillingness to take into account these bodies' criticisms—or the CPT's direct concerns—that these monitoring bodies do not have the authority to ensure that the TA is managed in a manner that complies with international human rights law and standards.

The Dutch government needs to urgently address the TA's human rights shortcomings, especially now that figures indicate the number of detainees subjected to the TA's harsh regime is increasing. In its first eight years (2006 – 2014) the TA held 80 detainees. But between 2006 and April 2017 the total number of individuals who had gone through the TA was 168. These figures indicate that the number of people passing through the TA is on the rise, which in part is likely a result of investigators and prosecutors relying on overly broad definitions of what constitutes a "terrorist offence" and an ever-expanding set of counterterrorism laws that also include non-violent offences.

By addressing the concerns in this report and ensuring that all detainees in the Dutch criminal justice system are treated in compliance with international human rights law and standards, The Netherlands would be establishing penal policies that respect human rights and are effective in enabling detainees to prepare for reintegration into society.

RECOMMENDATIONS

Amnesty International and the Open Society Justice Initiative call on Dutch authorities to promptly take necessary steps to ensure that people detained as suspects of terrorism-related offences and people convicted of terrorism-related offences are not subjected to unnecessary and disproportionate security measures. In particular:

TO THE MINISTRY OF SECURITY AND JUSTICE

1. Take the necessary measures to ensure that under the Penitentiary Principles Act; Regulation on Selection, Placement and Transfer; House Rules of TA De Schie and TA Vught; and other relevant laws, regulations, and policies:
 - a. Persons in pre-trial detention on suspicion of terrorist offences awaiting trial at first instance are not held in the TA with those convicted of terrorism offences serving sentences.
 - b. Persons are placed in the TA based only on an individualized risk assessment and not based solely on the charges against them or the crime for which they were convicted. Such an assessment should be based on specific and objective criteria, including a person's actual behaviour, and supported by credible, concrete, complete, and up-to-date information and should determine whether placement in a high-security facility is necessary and proportionate as required by The Netherlands' obligations under international law and standards. TA detainees should be provided the right to appear in person, receive relevant information that authorities use to make this assessment, and present information relevant to this assessment prior to their placement in the TA.
 - c. Placement decisions are periodically reviewed by an independent and impartial entity that permits the detainee to meaningfully participate in the review.
 - d. TA detainees are not subjected to the use of restrictive confinement, including restrictive confinement amounting to solitary confinement, save for the exceptions provided in international human rights law and standards.
 - e. TA detainees are never subjected to prolonged solitary confinement in excess of 15 consecutive days.
 - f. TA detainees are provided with opportunities for adequate meaningful human contact, including physical contact, with their children and spouses or intimate partners in particular.
 - g. TA detainees are not subjected to invasive strip searches of their bodies, where an individualized assessment has not determined that they are absolutely necessary and proportionate in light of a concrete security need. This assessment should take into account alternative monitoring measures that would diminish the need for a body search. Authorities should also seek out and employ alternative methods for conducting searches that are not inherently humiliating and, if a body search is nonetheless deemed necessary in a particular instance, the detainee should be asked to remove their upper clothes and lower clothes in two separate steps to avoid complete nudity.
 - h. TA detainees are not subjected to the routine use of monitoring and surveillance, especially of their family visits, when an individualized assessment has not determined it is necessary and proportionate to do so.
 - i. TA detainees are allowed to enjoy their right to medical confidentiality during medical consultations, examinations, and treatment. All medical examinations of detainees ought generally to be conducted out of the hearing and out of the sight of prison staff.
 - j. Female TA detainees are afforded gender-appropriate treatment, including that non-medical male staff, including male guards, are excluded from any areas of the facility where medical consultations with female detainees are taking place; and that if detainees are subjected to body searches it is only by and in the presence of staff of the same sex. Additionally, men and women should not be detained in the same facility, female detainees should be attended and supervised only by women staff members, male staff should not hold front-line positions in places where females are housed in the TA, and male staff should not enter the part of the TA holding women unaccompanied by a female member of staff.

- k. TA detainees are allowed to exercise their right to communicate privately with their lawyer, as provided under international human rights law and standards, and authorities should take steps to deter suspicion that lawyer-client privilege is not being respected by, for example, providing a special lawyer-client meeting room where they cannot be monitored or listened in on and can converse and directly share notes or other correspondence without being separated by a transparent glass wall and without needing the assistance of a guard.
 - l. TA detainees are provided access to reintegration services, including work, education, and leave opportunities, aimed at facilitating their return to wider society. Any restrictions on access to these opportunities must be only what is necessary and proportionate based on an individual risk assessment.
 - m. TA detainees are provided an effective remedy via a complaints procedure that allows detainees to effectively challenge their initial placement, ongoing placement, and any of the high-security measures used against them, such as restrictive confinement, body searches, and monitoring. This remedy must provide, in particular:
 - access to an effective judicial review of procedures and merits, such as the RSJ;
 - a right to be heard in person or be represented by one's counsel;
 - a right to have adequate access to information to challenge the imposed security measures;
 - an assessment of whether the security measures are compatible with The Netherlands' international human rights obligations, including the body of international standards on the treatment of detainees and prisoners; and
 - an evaluation of the necessity and proportionality of security measures by taking into account alternative security measures that could be used effectively and would be less intrusive.
 - n. The above recommendation on an effective remedy should apply equally to security measures imposed, and reintegration opportunities that are denied, as a result of the VERA-2R "risk profiles" assessment or other similar tools used to inform decisions about detainee differentiation and tailor-made programs.
2. Ensure that internal complaint committees at TA De Schie and TA Vught provide detainees the ability to effectively challenge high-security measures imposed upon them, such as restricted confinement, body searches, and monitoring, in accordance with the recommendation on effective remedies above.
 3. Ensure that TA complaint procedures and institutional oversight bodies evaluate the TA's compliance with international human rights law and standards, in particular the prohibition against torture and other cruel, inhuman or degrading treatment or punishment, without such issues needing to be formally raised by detainees or others.
 4. Prison authorities should collect and record detailed data on the use, reasons, types, and duration of solitary confinement and other forms of severely restrictive confinement of persons held in TA facilities. The same should be done with body searches. This must be done while respecting detainees' right to privacy.

TO THE MINISTRY OF FOREIGN AFFAIRS AND MINISTRY OF SECURITY AND JUSTICE

1. Invite the SPT to carry out a regular visit that includes an assessment of the TA.
2. Extend an open invitation to the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism to visit the TA.

TO MEMBERS OF PARLIAMENT

1. Call for a prompt, thorough, and independent inspection of TA Vught and TA De Schie by a group of relevant experts regarding TA compliance with international human rights law and standards.
 - a. Ensure that relevant specialists are part of this group, including civil society and human rights entities, officials from the Health Care Inspectorate or other health care inspection specialists to address medical concerns such as the confidentiality concerns documented in this report, and persons with expertise with transition and reintegration of persons from prison back into society.
 - b. This inspection could be conducted by the NPM only once the government complies with its international obligations regarding the NPM's structure and independence.
2. Call on the government to institute reforms that ensure the NPM is capable of conducting an independent, thorough, and effective oversight function that includes the periodic monitoring of the TA.
3. Submit new law proposals and/or call on the Minister of Security and Justice to make the necessary changes to the Penitentiary Principles Act; Regulation on Selection, Placement and Transfer; House Rules of TA De Schie and TA Vught; and other relevant laws, regulations, and policies to ensure the measures in Recommendation 1 to the Ministry of Security and Justice are implemented.

TO THE COUNCIL FOR THE ADMINISTRATION OF CRIMINAL JUSTICE AND PROTECTION OF JUVENILES (RSJ)

1. Ensure that persons suspected and convicted of terrorist offences have the ability to effectively challenge by appeal to the RSJ their initial placement, ongoing detention in the TA, and any of the high-security measures used against them, such as restricted confinement, body searches, and monitoring, in accordance with the recommendation on effective remedies above. A person should have a direct right to appeal to the RSJ after the initial placement decision is made.
2. Evaluate whether individual complaints may involve human rights violations, in particular the prohibition on torture and other cruel, inhuman or degrading treatment or punishment, without such issues needing to be formally raised by a detainee or others. The RSJ should follow a similar practice in its institutional oversight function.
3. Use the RSJ's advisory function to renew its previous calls for reforms, in particular the calls for individual risk assessments prior to placing individuals in the TA and for periodic reviews of continued detention therein.

INHUMAN AND UNNECESSARY

HUMAN RIGHTS VIOLATIONS IN DUTCH HIGH-SECURITY PRISONS IN THE CONTEXT OF COUNTERTERRORISM

In response to violent attacks in Europe during the past decade, governments have reconsidered their approach to how and where they detain people suspected or convicted of terrorism-related offences. This report focuses on The Netherlands, and exposes human rights concerns related to that country's special high-security detention unit (Terroristenafdeling, TA) for this group of detainees.

Based on interviews with former detainees, prison authorities, prosecutors, judges, defence lawyers, policy makers, and others familiar with the TA, this report reveals that authorities automatically assign people to the TA without individually assessing whether they actually pose a threat that justifies the routine use of high-security measures. As a result, people suspected of even non-violent offenses can be exposed to extreme measures, including confinement in individual cells for prolonged periods; limited contact with other detainees; frequent and routine full-nudity body searches; intrusive monitoring of family visits; breaches of medical confidentiality and limitations on lawyer-client confidentiality; and, finally, severe limitations on their access to work, education, and reintegration opportunities. The TA also suffers from inadequate oversight and TA detainees lack effective ways to resolve complaints about their harsh treatment.

Amnesty International and the Open Society Justice Initiative call on the Dutch government, as a matter of urgency, to make comprehensive amendments to relevant TA policies and legislation to ensure that no person is detained in violation of their human rights. Human rights-compliant detention policies and practices, with adequate oversight and complaint mechanisms, also contribute to the goal of protecting public security.

