



**SUBMISSION TO THE UN COMMITTEE AGAINST TORTURE**

# **ILL-TREATMENT IN THE CONTEXT OF COUNTERTERRORISM AND HIGH-SECURITY PRISONS IN THE NETHERLANDS**

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# INTRODUCTION: CONVENTION VIOLATIONS IN DUTCH HIGH-SECURITY PRISONS IN THE CONTEXT OF COUNTERTERRORISM (ARTICLES 2, 12, 13, AND 16, AND PARAGRAPH 32 OF THE LIST OF ISSUES PRIOR TO REPORTING)

1. The Open Society Justice Initiative and Amnesty International submit this briefing to the United Nations (UN) Committee against Torture (the Committee) ahead of its examination of The Netherlands' seventh periodic report on the implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention), at its 65<sup>th</sup> Session (November – December 2018).
2. This submission focuses on our concerns over the implementation of Article 16, including in combination with Articles 2, 12, and 13 (and paragraph 32 of the List of Issues Prior to Reporting-LOIPR), of the Convention by The Netherlands at two special high-security detention units holding people suspected and convicted of terrorism offences (*Terroristenafdeling*, or TA). Additionally, we are concerned that for some detainees at the TA the security measures exposed them to heightened risks of Article 1 violations. Dutch authorities have sought to address some of these concerns through various policy reforms, which is welcome, but those reforms remain insufficient overall.
3. This submission is based on the findings from the Open Society Justice Initiative and Amnesty International report *Inhuman and Unnecessary: Human Rights Violations in Dutch High-Security Prisons in the Context of Counterterrorism* (October 2017).

## BACKGROUND

4. The TA is classified as an “extensively secured” unit for detainees posing a “heightened” societal or escape risk. It is regulated by the Penitentiary Principles Act as well as Ministerial Directives and Decisions.<sup>1</sup> The most important of these directives is the Regulation for Selection, Placement and Transfer (referred to hereinafter as the Regulation)<sup>2</sup>, which provides the legal framework for authorities to automatically assign people in the high-security TA based solely on the crime they are suspected or convicted of committing and not on an individual assessment of the risks they might pose. The Act is also the basis for the internal house rules that regulate the day-to-day operations of the two TAs.
5. The Dutch government opened the first specialized high-security terrorist wing in the prison in Vught in 2006. The second TA was opened in January 2007 in the prison of De Schie in Rotterdam. The original purpose of the TA was to separate people suspected and convicted of terrorist offences, as defined under Dutch law, from ordinary detainees and prisoners, with the aim of preventing the former from recruiting and “radicalising” people detained in regular prison wings. This was seen by the Dutch Government, and is still seen, as necessary for the general security of Dutch society and specifically for the maintenance of order and security in penal institutions.
6. Another stated goal was to monitor the TA population to gain knowledge and develop expertise in dealing with people suspected and/or convicted of terrorist offences. More recently the TA developed an additional policy goal of ensuring that those placed in the TA “do not get out worse than they come in”.<sup>3</sup>

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<sup>1</sup> All relevant laws and Ministerial Directives are available at <https://www.commissievantoezicht.nl/wetgeving/gw-dbv/>

<sup>2</sup> ‘Wijziging Regeling selectie, plaatsing en overplaatsing van gedetineerden’ [‘Amendment Regulation selection, placement and transfer of detainees’], *Staatscourant*, no. 181, 18 September 2006, <https://zoek.officielebekendmakingen.nl/stcrt-2006-181-p13-SC76901.html> (hereinafter Regulation).

<sup>3</sup> Interview with policy makers from the Ministry of Security and Justice, The Hague, 5 April 2017. See also Minister for Legal Protection, Response to the report of Amnesty International and Open Society Justice Initiative, *Inhuman and Unnecessary: Human Rights Violations in Dutch High-Security Prisons in the Context of Counterterrorism*, 8 February 2018, p. 4, <https://www.rijksoverheid.nl/documenten/kamerstukken/2018/02/07/reactie-op-het-rapport-van-amnesty-international-%E2%80%98inhuuman-en-onnodig.-mensenrechtenschendingen-op-de-terroristenafdeling%E2%80%99>

7. As of late 2018, TA Vught had 41 cells spread over five sub-units and TA De Schie had seven cells in one unit, giving the TA a total holding capacity of 48.<sup>4</sup> The number of people passing through the TA has been on the rise. During its first eight years (2006 – 2014) the TA held 80 detainees. The total number of individuals who had gone through the TA between 2006 and April 2017 was 168.<sup>5</sup> The TA's population size is constantly fluctuating, and as of 11 April 2017 it held 25 people.

## **AUTOMATIC PLACEMENT INTO HIGH-SECURITY DETENTION UNITS (ARTICLES 12, 13, AND 16)<sup>6</sup>**

8. The Open Society Justice Initiative and Amnesty International are concerned that The Netherlands is failing to respect its obligations under Articles 12, 13, and 16 of the Convention at its two special high-security detention units that hold people suspected and convicted of terrorism offences. We are also concerned that The Netherlands has failed to draw the Committee's attention to these detention units in its Seventh Periodic Report (14 September 2017), a notable omission given that the units are a hallmark feature of The Netherlands' anti-terrorism response and their use has ramifications for the NL's compliance with the Convention.
9. In the TA, detainees have been subjected to security measures that on their own, or in combination, amount to cruel, inhuman or degrading treatment or punishment under Article 16 of the Convention.<sup>7</sup> These measures have included confining detainees alone in a cell for 19 to 22 hours a day, with limited contact with others when they are allowed outside their cells. In the limited amount of time detainees were permitted outside their cells, including during family visits, they were under constant surveillance, providing them with limited relief from the general conditions of isolation. In three cases, our organizations documented conditions of isolation that amounted to prolonged solitary confinement. Guards have also subjected detainees to routine and frequent humiliating invasive full-nudity body searches that were conducted in clear contravention of the prohibition on torture and other cruel, inhuman or degrading treatment, although for reasons explained below this policy appears to be undergoing reform starting in late 2017. We are concerned that for some detainees, the TA security measures exposed them to heightened risks of Article 1 violations due to their prolonged and frequent use. Detainees are also unable to effectively challenge the TA's rules and procedures, as required under Articles 1, 12, 13, and 16, when those rules and procedures result in allegations of torture and other ill-treatment. Institutional oversight of the TA is also insufficient.
10. International human rights law permits the use of high-security detention measures only under exceptional circumstances when they are necessary and proportionate. These limits protect people from exposure to measures, such as body searches and isolation, that may otherwise breach the absolute prohibition on torture and other ill-treatment. Despite the requirements of necessity and proportionality, the TA's legal framework allows the authorities to automatically place individuals suspected or convicted of terrorist offences under Dutch law in a high-security facility, without ever assessing if it is necessary and proportionate to do so.<sup>8</sup> As a result, a person posing no actual risk, and even those who have never been convicted of a crime, can be held under the TA's strict high-security regime. The state also does not provide a periodic review process for detentions in

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<sup>4</sup> Inspectorate for Justice and Security (IJenV), *The Terrorist Units in the Dutch prisons. Plan of Action* [De Terroristen Afdelingen in de Nederlandse gevangenissen. Plan van Aanpak], September 2018, <https://www.inspectie-ijenv.nl/Publicaties/plannen-van-aanpak/2018/09/19/de-terroristen-afdelingen-in-de-nederlandse-gevangenissen---plan-van-aanpak>

<sup>5</sup> Email correspondence with policy makers from the Ministry of Security and Justice, 12 May 2017. The government has not published more recent figures on the number of TA detainees.

<sup>6</sup> For detailed factual and legal references to this section see "Arbitrary and Automatic Placement in the TA" in Open Society Justice Initiative and Amnesty International, *Inhuman and Unnecessary: Human Rights Violations in Dutch High-Security Prisons in the Context of Counterterrorism* (October 2017), p. 20-28.

<sup>7</sup> The accounts from detainees in this submission are from former detainees interviewed for the report by Open Society Justice Initiative and Amnesty International, *Inhuman and Unnecessary: Human Rights Violations in Dutch High-Security Prisons in the Context of Counterterrorism* (October 2017).

<sup>8</sup> Article 20a, sub a and sub b of the Regulation, <https://zoek.officielebekendmakingen.nl/stcrt-2006-181-p13-SC76901.html> Under Article 20a, sub c of the Regulation a selection officer can also place a third category of detainees into the TA when a detainee in a regular prison is found to be "communicating or spreading a message of radicalisation, understood as including amongst others recruitment activities that conflict with public order and security and/or the order or security of the [penitentiary] institution".

the TA, and only very limited ways to transfer out.<sup>9</sup> Therefore, exposure to these conditions can last for prolonged periods of time.<sup>10</sup> The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in its 2008 and 2017 reports has also criticized the Dutch government for automatically assigning people to the TA based solely on the category of their offence, and for failing regularly to review the necessity and proportionality of such placement.<sup>11</sup>

11. As a result of these and other criticisms, The Netherlands has demonstrated a willingness to undertake some reforms.<sup>12</sup> Most significantly, prison authorities issued a new regulation in late 2017 that significantly narrowed the circumstances in which authorities could perform full-nudity body searches. Authorities are also beginning to use individualized risk assessment tools to differentiate between categories of detainees, which may result in more out-of-cell time and contact with others, and more re-integration opportunities for some. However, as explained below, these risk assessment tools remain insufficient and are only employed *after* automatic placement in the high-security facilities. Authorities are also rewriting the TA's in-house rules that regulate TA detainees' daily rights and restrictions. It will be imperative that those rules and any other reforms ensure TA compliance with the Convention.

## RECOMMENDATION

- Amend all relevant laws, regulations, and policies to ensure that the placement of persons in the TA is based on a prior effective individualized risk assessment and is subjected to periodic reviews. The initial placement and ongoing detention in the TA should occur only if it involved no torture or other ill-treatment, is absolutely necessary and proportionate, and based on an assessment of a person's individualized behaviour.

## RESTRICTIVE AND PROLONGED SOLITARY CONFINEMENT (ARTICLES 1 AND 16)<sup>13</sup>

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<sup>9</sup> Authorities responsible for the operation of the TA are not legally required to conduct periodic reviews to determine whether it is necessary for a person to remain in the TA. This is in contrast to the periodic six-month placement reviews for detainees in the Dutch high-security *Extra Beveiligde Inrichting* (EBI) facility, The EBI holds prisoners who have been assessed as posing an "extremely high flight risk and/or whose flight will cause great social unrest" (Art. 6 of the Regulation). When the CPT criticised the government for this, the Dutch authorities were dismissive, and responded, in part: "A regular review has little to no added value" because the TA placement criteria were "static" and therefore there was nothing substantive to review. The law provides only one category of TA detainees a periodic review after 12 months: detainees transferred to the TA after being assessed and suspected of spreading "radicalising" messages and recruiting in an ordinary detention facility. Extension decisions can be appealed to the selection officer and the RSJ. TA detainees also have a right to make a transfer request to the selection officer every six months. But the selection officers rarely approved these and it is unclear how selection officers should evaluate these requests. Also, and in contrast to the EBI rules, there is no statutory obligation for the selection officer to hear the detainee prior to giving a response on a transfer request. TA detainees are not eligible to be transferred to a less secure unit, save for a very narrow rule that permits them to be transferred to a such a prison after having served one-third of their sentence and when a minimum of four months and a maximum of one year is left of their sentence. See more details see, Open Society Justice Initiative and Amnesty International, *Inhuman and Unnecessary: Human Rights Violations in Dutch High-Security Prisons in the Context of Counterterrorism* (October 2017), p. 24-26.

<sup>10</sup> See also paragraph 18 below.

<sup>11</sup> CPT, *Report to the authorities of the Kingdom of The Netherlands on the visits carried out to the Kingdom in Europe, Aruba, and The Netherlands Antilles by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in June 2007* (made publicly available on 30 January 2008) (hereinafter *Netherlands Country Report, 2008*), para. 42, <https://rm.coe.int/168069780d>. For the government's justification see CPT, *Response of The Netherlands to Country Report, 2009*, p. 14, <https://rm.coe.int/1680697810>; CPT, *Report to the Government of The Netherlands on the visit to The Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 to 13 May 2016* (made publicly available 19 January 2017) (hereinafter *Netherlands Country Report, 2017*), para. 47, <https://rm.coe.int/16806ebb7c>. For the government's justification see CPT, *Response of The Netherlands to Country Report, 2017*, p. 17, <https://rm.coe.int/pdf/168074bf06>.

<sup>12</sup> "Countering terrorism: Letter of the Deputy Minister of Security and Justice" [*Terrorisbestrijding. Brief van de Staatssecretaris van Veiligheid en Justitie*], Parliamentary Papers 29754, no. 392 (12 August 2016). See also, CPT, *Response of The Netherlands to Country Report, 2017*.

<sup>13</sup> <sup>13</sup> For detailed factual and legal references to this section see "Excessive Restrictive Confinement" in Open Society Justice Initiative and Amnesty International, *Inhuman and Unnecessary: Human Rights Violations in Dutch High-Security Prisons in the Context of Counterterrorism* (October 2017), pp. 29-38. Additionally, the Committee has raised concerns with people being held in solitary confinement and in conditions of isolation "that are similar to those prevailing in solitary confinement." It has urged states to use such measures "only in exceptional cases as a measure of last resort, for as short a time as possible." It has also called for a "ban on solitary confinement regimes in prisons, such as those

12. One of the harshest security measures that authorities subject people to within the TA, without individually assessing 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 our report described how they were confined to their cells for between 19 and 22 hours a day, depending on their daily schedule. The extent to which individual detainees are allowed to participate in out-of-cell activities with others remains a privilege, not a right, and can change from day to day.
13. The isolation that characterizes the TA includes restrictions, in terms of both the amount and the quality of social interaction and psychological stimulation, on detainees' meaningful contact with outside visitors, including family members, and on detainees' communal, recreational, and physical exercise activities. The cumulative effect of these and other restrictions can place significant limitations on the meaningful human contact detainees have with others from outside the TA and with other detainees. Additionally, many detainees said they refused to meet with their relatives in person to avoid undergoing humiliating and invasive body searches. (See below.) When detainees refused to undergo those searches for in-person meetings, their only means of seeing relatives was through a glass wall, which did not allow for any physical contact, and which compounded their sense of isolation.
14. The first weeks in the TA were particularly isolating, according to several detainees, because of a lengthy screening process that caused a delay in detainees being able to meet and call family members. Detainees said they were not, for example, allowed family visits until after authorities had conducted background checks on the people with whom a detainee wanted to meet. This screening could take up to two months. Similar screening procedures applied to phone calls. Other than calls with their lawyer, detainees were only allowed two or three calls per week for 10 minutes each.
15. After this screening period, detainees were allowed to meet with outside visitors once a week for one hour and had to divide their brief calling time among different relatives. Moreover, all visits and phone calls in the TA are monitored and sometimes recorded, which inhibits some from speaking freely. Physical contact has been restricted to a handshake or, depending on the discretion of prison authorities, to a brief hug. Many detainees and family members said that these restrictions jeopardised their ability to build and maintain meaningful intimate relations. One detainee explained how the superficial contact he could have with his wife resulted in him becoming alienated from her: "You don't have any connection anymore with your family. You live in parallel worlds that come together in this single hour."
16. Detainees described how, when in their cells, they had extremely limited visual and verbal contact with the other detainees or the outside world. The cells were made of solid walls, preventing prisoners from seeing or having direct contact with those in adjacent cells. The doors were also solid, save for a slit that guards opened to conduct unannounced inspections or to hand detainees their food trays. When detainees tried to communicate with each other through the slit they risked sanctions that included reductions in how much they could participate in communal activities. Although cells had a window with natural light, some detainees reported that their windows were shaded for privacy reasons and sometimes with a view only of a brick wall that prohibited detainees from seeing the sky. The cells were generally furnished with a bed, sink, toilet, closet, desk, alarm, and lamp light. These and other accommodations do not, however, overcome the concerns we have with the TA's use of restrictive and prolonged solitary confinement.
17. Prison authorities have the discretionary authority to determine on a daily basis whether, to what extent, and with whom a detainee is allowed to participate in group activities during the time outside their cell. These activities provide important, though limited, opportunities to reduce the negative effects of the TA's isolation by allowing detainees to have some meaningful human contact. Generally, TA detainees said they were allowed one hour outside their cells in the open air and one to two hours per day to participate on a voluntary basis in activities such as table soccer, computer games, praying with an imam, cooking, or participating in fitness activities. Outside these activities, the TA had offered very few stimulating educational and work opportunities

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in super-maximum security detention facilities" and has urged states to place a total ban on solitary confinement of more than 15 days. UNCAT, *Concluding observations on the combined third to fifth periodic reports of the United States of America*, 19 December 2014, para. 20 and UNCAT, *Concluding observations on the fifth periodic report of Israel*, 3 June 2016, para. 25.

with other detainees. Detainees said the time they needed to clean their cells, make phone calls, or take a shower if a detainee's cell did not provide one, was charged against this out-of-cell time for communal activities. Moreover, detainees could talk with only a maximum of three other detainees from their own unit, and they were always accompanied by more guards than detainees.

18. In addition to confinement in their individual cells for prolonged periods, and other isolating factors such as limitations on reintegration, work, and education opportunities,<sup>14</sup> the absence of a meaningful process to get transferred 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.<sup>15</sup> In some cases the severe restrictions on social contact imposed on detainees appeared to be in breach of the Convention prohibition of cruel, inhuman or degrading treatment or punishment.
19. In three particularly troubling cases that our report documented, 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 that 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 was kept in conditions equivalent to isolation when the other female detainees had left the TA. As a result, she spent 10 consecutive weeks and then another three consecutive weeks cut off from other detainees during over five months of detention at TA Vught from 2016 to 2017.
20. As noted above, the Dutch government is aware of the human rights concerns associated with the TA's excessive use of restrictive confinement and has demonstrated a willingness to make some reforms. Authorities are beginning to use risk assessment tools to differentiate between TA detainees who are “leaders” and those who are “followers” to determine which security measures they should be subjected to, which may result in more out-of-cell time and contact with others. They are also developing ways to design tailor-made reintegration programs for detainees and, if deemed feasible and relevant, “de-radicalisation” and “disengagement” programs. The ministry has indicated a willingness to explore whether a detainee's daily program can be extended to at least 32 hours per week; this would appear to allow a TA detainee to spend approximately 4.5 hours a day, on average, out of his or her cell with other detainees or, depending on the individual detainee's risk profile, alone.<sup>16</sup>
21. These appear to be positive developments, but they are insufficient and undermined by the fact that at the time of writing this submission 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 is particularly concerning that at the time of writing the maximum time a detainee can spend out of the cell under the most lenient circumstances is still minimal, not exceeding 4.5 hours a day on average.<sup>17</sup> It was unclear precisely how these new assessments were being made, but under international human rights law and standards 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. (See paragraphs 25-29 for more information on effective remedies under Articles 12 and 13.)

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<sup>14</sup> See “Reintegration Opportunities” in Open Society Justice Initiative and Amnesty International, *Inhuman and Unnecessary: Human Rights Violations in Dutch High-Security Prisons in the Context of Counterterrorism* (October 2017), pp. 53-56.

<sup>15</sup> Email correspondence with policy makers from the Ministry of Security and Justice, 12 May 2017. The median was 49 days. These numbers are based on all 168 detainees held in the TA between 2006 and April 2017. The government has not published more recent figures on the average length of detention time.

<sup>16</sup> Minister for Legal Protection, Response to the report of Amnesty International and Open Society Justice Initiative, *Inhuman and Unnecessary: Human Rights Violations in Dutch High-Security Prisons in the Context of Counterterrorism*, 8 February 2018, p. 3. See also paragraph 11 above.

<sup>17</sup> Minister for Legal Protection, Response to the report of Amnesty International and Open Society Justice Initiative, *Inhuman and Unnecessary: Human Rights Violations in Dutch High-Security Prisons in the Context of Counterterrorism*, 8 February 2018, p. 3.



## RECOMMENDATION

- Ensure that TA detainees are not subjected to conditions equivalent to prolonged solitary confinement, and never impose additional security measures without assessing whether they are absolutely necessary and proportionate.

## INVASIVE FULL-NUDITY BODY SEARCHES (ARTICLE 16)<sup>18</sup>

22. Invasive full-nudity body searches had been one of the TA's routine and harsh security measures. As noted above, positive reforms appear to be underway. On 31 October 2017, one of the high-security facilities, TA Vught, published a new internal policy on the use of body searches. It states that authorities will no longer conduct fully nude body searches prior to and after transporting detainees outside the facility or after detainees have contact with outside visitors where there is no "heightened risk", in the sense that the detainee may have had contacts with society. The new policy states that the body searches will instead take place at random and that authorities will perform a "body tap" on clothed detainees and detainees will need to walk through a metal detector without setting it off. If the detainee's risk profile changes during their detention in the TA, routine body searches can be used. Also, it can take up to six weeks before the prison authorities have made individual risk assessments upon which they can base their decisions; up until that time newly arriving detainees will still be subjected to the routine strip searches after meeting visitors in person and prior to, and after, being transported outside prison. The government informed Amnesty International that the same rules have been introduced in TA De Schie.<sup>19</sup> At the time of writing, Amnesty International and the Open Society Justice Initiative had not assessed the implementation of this policy, how risk assessments are being made, or to what extent individual detainees can effectively appeal the risk assessment or the subsequent decision on the applicable body search policy.
23. Ensuring that these reforms are properly implemented is critical for ensuring respect for Article 16 of the Convention. These reforms must ensure that authorities conduct invasive body searches only when they are absolutely necessary and proportionate, and based on an individual's behaviour. For the benefit of the Committee, this section provides a description of how the body searches were initially administered up until at least 31 October 2017 and the Article 16 concerns they raised:
- a. Authorities conducted these searches frequently and without assessing on a case-by-case basis if a detainee posed a threat that would make such searches necessary. Invasive body searches occurred 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 left the prison for court or police hearings. The searches—which have never resulted in the discovery of contraband, according to prison officials—not only caused detainees to refuse meeting family members in person,<sup>20</sup> some detainees also refused to attend court hearings, or threatened to do so, to avoid the invasive searches.
  - b. During the body searches, TA detainees recalled that they were required to remove all their clothes, including their underwear and socks. They were made to bend over and expose their anus so guards could visually inspect the body cavity to determine whether they were concealing any objects. Male detainees had to lift their scrotum too. At least two guards took part in these routine body searches, but sometimes

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<sup>18</sup> For detailed factual and legal references to this section see "Invasive Body Searches and Respect for Human Dignity and Other Rights" in Open Society Justice Initiative and Amnesty International, *Inhuman and Unnecessary: Human Rights Violations in Dutch High-Security Prisons in the Context of Counterterrorism* (October 2017), pp. 39-46. Additionally, the Committee has recommended that states should "ensure that full body searches are conducted only when strictly necessary and when proportionate to the intended objective," and has expressed concerns with the use of "routine full body searches when a detainee has been in contact with the outside world," as well as the "frequent or even systematic use of full body searches." The Committee has also recommended that states should "ensure that such body searches, when deemed absolutely necessary, are conducted in conditions that respect prisoners' dignity." See, UNCAT, *Concluding observations on the seventh periodic report of France*, 10 June 2016, para. 27-28; and UNCAT, *Concluding observations on the third periodic report of Belgium*, 3 January 2014, para 16.

<sup>19</sup> Email of 8 January 2017 from the Dutch Ministry of Justice and Security.

<sup>20</sup> See paragraph 13 above.

more were present. These guards also inspected the detainee's hair, mouth, and the backsides of their ears, as well as their clothes. One detainee held in TA Vught between 2011 and 2013 explained the humiliation and distress the searches caused: "When they strip-searched me, at that moment I preferred to die over the strip searches. It is... very difficult to explain it. It is just...it feels like you are being raped. There were four or five [guards] in the room.... You have to bend over, spread your cheeks.... They look inside. There is nothing on your body!" Another detainee who was subjected to body searches after visits from his wife and child explained the impact that these repetitious body searches had on him: "[I]t's the deepest humiliation you can imagine. It's just sexual intimidation, that's it. If you have to bend your knees, turn circles, and show all entrances, that cuts rather deep...especially if it happens every week." The majority of detainees interviewed for our report said they felt deeply humiliated by the body searches. This was especially true when the guards of their unit conducted the body searches. Detainees said this triggered a heightened sense of humiliation, to the point that they were too embarrassed to even look the guards in the eye afterwards.

- c. 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. The government stated in response to questions from Members of Parliament that such incidents are regrettable "in light of security concerns sometimes necessary".<sup>21</sup> A female TA detainee protested the presence of men as she was about to be strip-searched at TA Vught. Eventually, she said, the men moved out of sight before three female guards conducted the full-nudity body search. This same woman said that having three female guards present at her body search was excessive and she found it "very humiliating".
- d. A detainee also alleged being sexually harassed when he was being held in TA De Schie in 2015. He was 20 years old at the time. He recounted how a guard from his unit insisted on watching him get strip-searched by other guards after a visit from his family. When he refused to be searched under those conditions, the guard threatened to place him in an isolation cell. The detainee eventually conceded and was searched. He explained: "Then he just stood there, with his arms crossed, watching me being strip-searched. The other guard sat down and then started leafing through a porn magazine that was lying there on the table. While I was being strip-searched! That was an extremely disturbing experience. I was very shocked." Together with his lawyer the detainee filed a complaint against the warden, but the internal complaint committee took up the case only after he had been released from the TA. Ultimately, the individual decided not to pursue the case because the slow pace of the complaint process indicated to him that the authorities did not take his complaint seriously. (See paragraphs 25-29 for more on effective remedies under Articles 12 and 13.)
- e. Prison authorities and detainees commonly referred to the body searches as "visitations" ("*visitaties*") and noted that they were frequent and routine. The longer a detainee was held in the TA, the more searches they had to endure. A female TA detainee who was detained at TA Vught from 2016 to 2017 for five and a half months pending trial noted that she had undergone at least 24 body searches for the 12 hearings that she said she attended at a police office. This was in addition to the body searches she had to undergo prior to and after court hearings, when she was transported between different TA units in separate buildings at Vught, and when entering the TA for the first time. A male detainee said that he was subjected to 12 strip searches in the five months that he was in TA Vught during 2015 and 2016. He was 18 years old at the time. While recalling the number of times he was searched, he explained: "The body searches are standard if you go to court and return. I went three times to court, so six body searches. Also when I entered [the TA for the first time], so seven. Then there was a forced strip search, making it eight. And another one prior to a transport to a medical post for a body scan, that's nine. They also did another strip search of all of us, just after the attacks in Paris. I don't have a clue why. I was also strip-searched twice because of a hearing at the police office, so that's twelve." To avoid additional body searches he said he never met with outside visitors without the glass wall.

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<sup>21</sup> Minister for Legal Protection, Response to the report of Amnesty International and Open Society Justice Initiative, *Inhuman and Unnecessary: Human Rights Violations in Dutch High-Security Prisons in the Context of Counterterrorism*, 8 February 2018.

- f. Prison authorities stated that the TA's system of body searches is primarily performed to ensure security within the TA. The TA De Schie Director cited the routine body searches as a way to protect staff members and detainees, and to prevent people from spreading "radicalizing" messages.<sup>22</sup> But TA prison authorities, prosecutors, defence lawyers, and TA detainees also all similarly reported that no contraband has ever been found during those body searches. This called into serious question whether the searches were necessary. Both TA prison directors justified the body searches as pre-empting detainees from smuggling contraband into or out of the prison. But this was based purely on an unsubstantiated assumption.
- g. 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.<sup>23</sup> 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 violated the prohibition on cruel, inhuman or degrading treatment and are also in violation of the right to privacy.
- h. The TA's routine and invasive full-nudity body searches were unique in the Dutch penal system, which also calls into question their necessity. At the *Extra Beveiligde Inrichting* (EBI) specialized high-security detention facility, which serves as a remand centre and a prison for high-risk detainees, body searches occur in a similarly routine fashion after a detainee has contact with the outside world. But they are distinct from the TA body searches because the detainees held in the EBI have already been individually assessed as posing specific societal or escape risks that, in the eyes of authorities, necessitate heightened security measures. EBI detainees are also subjected to periodic reviews to determine whether those security measures are necessary or whether the detainee should be transferred back to the normal prison population. Prison authorities also carry out body searches at regular Dutch detention facilities without specialized security measures. But those searches are conducted at random, not routinely, and in practice hardly ever after in-person lawyer visits. Dutch law also allows authorities to conduct body searches in regular prisons and other detention facilities on a discretionary basis before and after a detainee leaves the facility. But a policy directive regarding detainee transportation rules instructs that prison staff should only conduct body taps, not body searches, prior to a detainee leaving the facility for police or court hearings. This is in contrast to the TA, where detainees were routinely body searched before leaving the TA and returning to the TA for hearings, alongside possible other security measures, including heightened armed transport.

24. As noted above, we have seen positive reforms in response to the criticisms of the invasive body searches (See paragraph 22 above.) To date we have not however been able to review to what extent the implementation of the new policy complies with the Convention.

## RECOMMENDATION

- TA detainees should not be subjected to strip searches where an individualized risk assessment has not concluded 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 preclude 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 total nudity.

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<sup>22</sup> The Open Society Justice Initiative and Amnesty International have expressed elsewhere their concerns about how governments define "radicalizing" behavior in the countering terrorism context. See, Open Society Justice Initiative, *Eroding Trust: The UK's PREVENT Counter-Extremism Strategy in Health and Education*, 2016; Amnesty International and others, *Joint written statement submitted by Amnesty International and other NGOs to the UN Secretary General on the "Plan of Action to Prevent Violent Extremism"*, Human Rights Council, 31<sup>st</sup> session, February 2016.

<sup>23</sup> See footnote 19 above.

## NO EFFECTIVE REMEDY (ARTICLES 12 AND 13)<sup>24</sup>

25. Another major failing of the TA is that people held there do not have effective ways to challenge the rules and procedures when those rules and procedures result in allegations of torture and other ill-treatment. Although The Netherlands has an extensive complaints and appeals system in place for detainees to challenge a placement decision in the TA and the subsequent routine use of security measures, in practice it does not provide TA detainees an effective remedy. A TA detainee can challenge their placement by filing a complaint to the “selection officer”, who is the same official that authorizes their initial placement. But this is a formalistic procedure that, even in the appeals phase, has rarely resulted in placement decisions being overturned.<sup>25</sup> Once inside the TA 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 have not even conducted periodic reviews to determine whether it is necessary for a person to remain in the TA.
26. 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), do not provide TA detainees with effective ways to challenge the TA’s routine use of harsh security measures.
27. The internal complaint committees often deem complaints inadmissible when the treatment that a detainee complains of is within the director’s purview of authority, such as limiting the number of hours of outside contact, restricting interactions with detainees outside their cells, or regulating the number of hours detainees are required to stay in their cells. The same has been true for the invasive body searches.<sup>26</sup> The committees typically have ruled that such decisions had a legitimate legal basis in the Dutch Penitentiary Principles Act, without assessing possible conflicts between TA rules and international law unless one of the parties raises such a claim. This deficiency is particularly troubling if a detainee fails to specifically mention in a complaint that the TA’s conditions rise to the level of torture or other cruel, inhuman or degrading treatment or punishment. The internal complaint process also lacks effectiveness if a prison director dismisses the committee’s advice when it orders the director to make a new decision, even though Dutch law tries to prevent this from happening.<sup>27</sup> As one of the members of the Vught committee said: “We can tell the director ‘review your decision...’, but then the director can take the same decision.” Every Dutch detention facility has these internal complaint committees. They fall under the mandate of the Supervisory Board (*Commissie van Toezicht*, CvT), which also performs an oversight function over these institutions.
28. Detainees can appeal the internal complaint committee’s decisions to the RSJ, which issues binding judgments. Nonetheless, the RSJ, like the internal complaints committees, has similarly often failed to strike down actions that were within the purview of the director’s domestic legal authority. The RSJ too, has not automatically assessed possible conflicts between TA rules and international law unless one of the parties raises such claims. A CPT member explained that the RSJ also often disregards international prison norms as “soft norms” that

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<sup>24</sup> For detailed factual and legal references to this section see sub-sections “Challenging placement in the TA” (pp. 24-26) and “Deficient complaints process” (pp. 34-35 and 44) in Open Society Justice Initiative and Amnesty International, *Inhuman and Unnecessary: Human Rights Violations in Dutch High-Security Prisons in the Context of Counterterrorism* (October 2017). Additionally, the Committee has urged states to ensure that detention in solitary confinement is conducted under strict judicial oversight and control. UNCAT, *Concluding observations on the sixth periodic report of Spain*, 29 March 2015, para 17. See, also, UNCAT, *Concluding observations on the combined third to fifth periodic reports of the United States of America*, 19 December 2014, para. 20.

<sup>25</sup> Two selection officers interviewed for our report recounted that they could not “recall ever changing our placement decisions”, and one of them said “I haven’t seen an RSJ [an appeal body] case overturning a TA placement decision”. Open Society Justice Initiative and Amnesty International, *Inhuman and Unnecessary: Human Rights Violations in Dutch High-Security Prisons in the Context of Counterterrorism* (October 2017), p. 24. Additionally, the RSJ’s role is to rule on whether the selection officer’s placement decisions are fair, reasonable, and based in law. Within these parameters, the RSJ has repeatedly supported TA placement decisions for no other reason than saying it was properly grounded in Article 20a of the Regulation and that Article 20a was not in conflict with international law. See, for example, RSJ decisions 06/3261/GB, 27 March 2007; 15/2449/GB, 19 November 2015; and 15/2596/GB, 19 November 2015. RSJ decisions are available at <https://puc.overheid.nl/rsj/>

<sup>26</sup> A member of the internal complaint committee of Vught clarified: “Only in very exceptional individual cases, for instance when a detainee asserts that his medical condition does not enable him to bend his knees for the body searches, we can review those cases.” Interview with Amnesty International and the Open Society Justice Initiative, 22 January 2016.

<sup>27</sup> Article 68, sub 3a of the Penitentiary Principles Act states that the prison Director must take the committee’s advice into account when it orders the Director to make a new decision. The complaint committee can also decide to replace the Director’s decision or squash the decision in full or in part. (Article 68, sub 3b and c).

are not binding. The member was critical of that approach: “If you want to take human rights seriously, you should also take those norms seriously.”<sup>28</sup> He said this was especially important for preventing detainee abuse.

29. For many former detainees interviewed, this lack of an effective remedy made them feel powerless. One said: “In Vught, the regime is designed in such a way that if they decide anything, you can’t do anything against it. Anything they want goes.” From their perspective, they learned that the only productive way they could challenge the rules was by ceasing to cooperate, going on hunger strike, or protesting: “We first sent a lot of letters, filed complaints, used our lawyer to contest the regime, but nothing worked.” Some detainees said they went on hunger strike either individually or collectively as a last resort after complaints against the TA’s rules proved to be ineffective. One detainee who was released from TA Vught at the end of 2016 explained that he went on hunger strike to pressure authorities to give him more time with other prisoners. As a result, he was placed in an isolation cell for seven days as an “order measure”<sup>29</sup>.

## RECOMMENDATION

- Reform the TA individualized complaint procedures so detainees can effectively challenge their initial placement, ongoing detention, and any of the high-security measures used against them, including the underlying risk assessment profiles, to ensure those measures comply with the Convention.

## NO EFFECTIVE OVERSIGHT (ARTICLE 2)<sup>30</sup>

30. The Netherlands must also significantly improve independent oversight of the TA. International human rights standards, including the prohibition against torture and other ill-treatment, require regular and independent inspections of detention facilities. Our report explained in detail that currently operating inspection bodies, such as The Netherlands’ National Preventive Mechanism (NPM) and the Inspectorate of Justice and Security (IJenV), are not sufficiently independent, lack effectiveness and relevant human rights expertise, have avoided focusing on the TA, or inspect the TA but not on a regular basis with the aim to prevent human rights abuses, and without carefully analyzing possible conflicts with international human rights law and standards.<sup>31</sup> These concerns remain valid despite a ministerial regulation that came into force in 2016 that the government claims enhanced the IJenV’s independence.<sup>32</sup> The regulation does not sufficiently address the inspectorate’s lack of institutional and financial independence or its appearance of partiality. It is also clear from the government’s unwillingness to address these bodies’ criticisms—or the CPT’s direct concerns in its 2008 and 2017 reports<sup>33</sup>—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, including provisions of the Convention.

31. After we published our report in October 2017, the Health and Youth Care Inspectorate (IGZenJ) conducted an inspection of the TA for the first time. This was a remarkably late undertaking given that other national and

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<sup>28</sup> Interview with Anton van Kalmthout, Professor of Tilburg University, Tilburg, 7 April 2017.

<sup>29</sup> Dutch law permits prison authorities to use isolation as an order measure for this purpose of maintaining order, security, and safety in a prison, which they interpret as including protecting the safety of detainees from other detainees. When isolation is used as an order measure in this way, the director can impose and extend the isolation each time for up to two weeks, but such an order measure cannot be used for periods longer than what is strictly necessary. Articles 5 sub 2-3 and 24 of the Penitentiary Principles Act.

<sup>30</sup> For detailed factual and legal references to this section see “Institutional Oversight” in Open Society Justice Initiative and Amnesty International, *Inhuman and Unnecessary: Human Rights Violations in Dutch High-Security Prisons in the Context of Counterterrorism* (October 2017), pp. 57-59. Additionally, the Committee’s General Comment No. 2 states that Article 2 guarantees include, *inter alia*, “the need to establish impartial mechanisms for inspecting and visiting places of detention and confinement.” UNCAT, *General Comments No. 2 on the implementation of article 2 by States parties*, 24 January 2008, para. 13. The Committee has also called on states to establish effective and independent oversight mechanisms in places of detention to ensure prompt, impartial and effective investigation into all allegations of violence and abuse. See, UNCAT, *Concluding observations on the combined third to fifth periodic reports of the United States of America*, 19 December 2014, para. 19; and UNCAT, *Concluding observations on the fifth periodic report of China*, 3 February 2016, para. 29.

<sup>31</sup> For additional concerns about the NPM, see submission by Amnesty International to the Committee ahead of its examination of The Netherlands’ seventh periodic report on the implementation of the Convention at the 65th session, <https://www.amnesty.org/en/documents/eur35/9232/2018/en/>

<sup>32</sup> *Regulation for determination of instructions on government inspections* [Regeling vaststelling Aanwijzingen inzake de rijksinspecties], 30 September 2015, no. 3151041, available at <http://wetten.overheid.nl/BWBR0037073/2016-01-01>

<sup>33</sup> See paragraph 10 above.

international actors had already expressed concerns about the TA. The inspectorate concluded that the TA's high-security measures did not impede or slow TA detainees' access to adequate care and that healthcare service conformed to Dutch law, but failed to specifically address our report's concerns with patient-doctor confidentiality,<sup>34</sup> and did not monitor other security measures, such as how body searches and the amount of time a detainee was relegated to a cell, affected his or her mental health.<sup>35</sup>

32. The Inspectorate of Justice and Security was scheduled to conduct a formal and detailed review of the TA by the end of 2017. This did not occur, but in September 2018 it published its Action Plan for an upcoming TA inspection. The decision to delay the IJenV inspection was reportedly taken to grant prison authorities time to implement a revised set of house rules.<sup>36</sup> Based on its Action Plan, the Inspectorate's review will not however assess whether the placement and selection procedure complies with international human rights law. Instead, it will focus on whether detainee treatment, conditions of confinement, and the TA's reintegration process complies with the Penitentiary Principles Act.<sup>37</sup> This narrow mandate is insufficient for adequately assessing whether the rights of TA detainees are protected in law and practice. Any thorough review must assess whether the TA's placement procedures, security and risk assessment measures, allocation of work, education, and rehabilitation opportunities, and individual complaints mechanisms meet international human rights law and standards. The IJenV must also include in its evaluation the extent to which the government has implemented in an effective manner the recommendations of the CPT and other authoritative human rights bodies.

## RECOMMENDATIONS

- Oversight bodies, including the Government Inspectorates (IJenV and IGZenJ), the TA's supervisory bodies, and the Dutch NPM, should be strengthened to ensure that their mandate includes the function of ensuring that the TA is in compliance with the prohibition against torture and other ill-treatment.
- The IGZenJ should monitor whether authorities are respecting the detainees' right to medical confidentiality during medical consultations, examinations, and treatment. All medical examinations of detainees must be conducted out of the hearing of prison staff and, unless the medical professional concerned requests otherwise in a particular case, out of the sight of such staff.<sup>38</sup>

## COMPLAINTS AND SECURITY MEASURES DATA

33. We take note of the Committee's interest in obtaining from The Netherlands data on the number of complaints filed relating to torture and other ill-treatment and how those complaints were resolved.<sup>39</sup> The Netherlands did not provide the Committee with any such data as it relates to the TA and, moreover, the research from our report revealed that no comprehensive statistical data is available on the number of complaints, or the nature of the complaints, lodged by TA detainees.

34. We also take note of the Committee's interest in statistics on the government's use of isolation in certain detention facilities.<sup>40</sup> We therefore draw the Committee's attention to the fact that neither the Dutch government

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<sup>34</sup> Several former detainees interviewed for our report recalled a lack of privacy when they met with medical professionals at TA Vught due to the presence of guards. Open Society Justice Initiative and Amnesty International, *Inhuman and Unnecessary: Human Rights Violations in Dutch High-Security Prisons in the Context of Counterterrorism* (October 2017), p. 49.

<sup>35</sup> *Research report on the 'terrorism' units at penitentiary institution Vught and penitentiary institution Rotterdam [Rapportage onderzoek op terroristenafdelingen PI Vught en PI Rotterdam]*, 12 July 2018, <https://www.igj.nl/documenten/rapporten/2018/07/12/rapportage-onderzoek-igj-op-terroristenafdelingen-pi-vught-en-pi-rotterdam>; Meeting with three representatives of the Health Inspectorate to discuss the findings of the report, 15 August 2018.

<sup>36</sup> IJenV, *The Terrorist Units in the Dutch prisons. Plan of Action*, September 2018, p. 5.

<sup>37</sup> IJenV, *The Terrorist Units in the Dutch prisons. Plan of Action*, September 2018, p. 7.

<sup>38</sup> For legal support of this position, see Amnesty International, *Fair Trial Manual*, Chapter 4.5, p. 55.

<sup>39</sup> Committee against Torture, *List of Issues prior to submission of the seventh periodic reports of the Netherlands*, 14 January 2016, paras. 21, 26, and 33.

<sup>40</sup> Committee against Torture, *List of Issues prior to submission of the seventh periodic reports of the Netherlands*, 14 January 2016, para. 15. The Committee has also called on other states to "compile and regularly publish comprehensive disaggregated data on the use of solitary confinement." See, UNCAT, *Concluding observations on the combined third to fifth periodic reports of the United States of America*, 19

nor the prison authorities or the TA Supervisory Boards have published or, to our knowledge, even collected statistics on the number of times isolation has been used, its duration of use, or the justification for its use against individuals as a punitive or order measure to restore order and safety in the TA. The same is true for security measures where prison authorities use force, such as in instances of forcible body searches.<sup>41</sup>

## RECOMMENDATION

- Collect, record and publish 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.

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December 2014, para. 20; UNCAT, *Concluding observations on the sixth periodic report of Spain*, 29 March 2015, para 17; and UNCAT, *Concluding observations on the fifth periodic report of Israel*, 3 June 2016, para. 25(c).

<sup>41</sup> Detainees have been forcibly strip-searched when they have refused a routine strip search or when they have resisted being placed in isolation. In these situations, the director of a detention facility can call in a specially trained "support team" (*Intern Bijstands Team*, IBT) that consists of emergency guards who take over from regular guards. The director can call in this team when less violent measures are unsuccessful at de-escalating tensions between staff and detainees or among detainees and if there is the risk of violence. Two former detainees interviewed for our report recounted how they were forcibly and violently strip-searched by the IBT prior to being placed in an isolation cell; both incidents occurred in early 2016 at TA Vught.

