



INHUMAN AND UNNECESSARY

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

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GLOSSARY

AIVD	<i>Algemene Inlichtingen en Veiligheidsdienst</i> : General Intelligence and Security Service
BOT	<i>Bijzonder Ondersteunings Team</i> : Specially trained and heavily armed “support team” used to transport detainees in “high-risk” situations
CPT	Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRM	<i>College voor de Rechten van de Mens</i> : Netherlands Human Rights Institute
CTIVD	<i>Commissie van Toezicht op de Inlichtingen- en Veiligheidsdiensten</i> : Oversight Committee for the Intelligence and Security Services
CvT	<i>Commissie van Toezicht</i> : Supervisory Board (in penitentiary institutions)
DJI	<i>Dienst Justitiële Inrichtingen</i> : Custodial Institutions Agency
EBI	<i>Extra Beveiligde Inrichting</i> : High-security prison
EBV	<i>Extra Beveiligd Vervoer</i> : Extra-secured transport for detainees
ECHR	European Court of Human Rights
GRIP	<i>Gecoördineerde Regionale Incidentbestrijdings Procedure</i> : Criminal Intelligence and Investigation Department
IBT	<i>Intern Bijstands Team</i> : Specially trained “support team” (used in penitentiary institutions)
ICCPR	International Covenant on Civil and Political Rights
IST	<i>Inspectie voor de Sanctietoepassing</i> : Inspectorate for Implementation of Sanctions
IVenJ	<i>Inspectie voor Veiligheid en Justitie</i> : Inspectorate for Security and Justice
KVV	<i>Kiezen voor Verandering</i> : The “Choosing for Change” reintegration/rehabilitation program
MDO	<i>Multidisciplinair overleg</i> : An interdisciplinary consultation body that focuses on detainees in penitentiary institutions
MDO-TA	<i>Multidisciplinair overleg-Terroristenafdeling (TA)</i> : The specialised interdisciplinary consultation body that focuses on detainees at the TA
MIVD	<i>Militaire Inlichtingen en Veiligheidsdienst</i> : Military Intelligence and Security Service
NJCM	<i>Nederlands Juristen Comité voor de Mensenrechten</i> : Dutch section of the International Commission of Jurists
NPM	National Preventive Mechanism
OPCAT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

PI	<i>Penitentiaire Inrichting</i> : Penitentiary Institution
PKK	<i>Partiya Karkerên Kurdistanê</i> : Kurdistan Workers' Party
RSJ	<i>De Raad voor Strafrechtstoepassing en Jeugdbescherming</i> : Council for the Administration of Criminal Justice and Protection of Juveniles
SPT	UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
TA	<i>Terroristenafdeling</i> : The Dutch special high-security detention unit that holds people suspected or convicted of terrorism offences
VERA-2R	Violent Extremist Risk Assessment 2
WODC	<i>Wetenschappelijk Onderzoek en Documentatie Centrum</i> : Scientific Research and Documentation Centre
WMA	World Medical Association

EXECUTIVE SUMMARY AND KEY 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.

KEY RECOMMENDATIONS TO THE GOVERNMENT OF THE NETHERLANDS

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:

1. People in pre-trial detention on suspicion of terrorism offences awaiting trial at first instance should not be held in the TA with those convicted of terrorism offences serving sentences.
2. Persons should be placed in the TA based on an effective individualized risk assessment to determine whether placement in a high-security facility is necessary and proportionate and not based solely on the charges against them or the crime for which they were convicted. Detention in the TA should also be periodically reviewed.
3. Persons in the TA should never be subjected to prolonged solitary confinement in excess of 15 consecutive days, and never be subjected to other security measures without assessing the

necessity and proportionality of those measures.

4. Persons in the TA should be provided with an ability to effectively challenge their initial placement, ongoing detention, and any of the high-security measures used against them to ensure those measures comply with international human rights law and standards.
5. Institutional oversight bodies should be strengthened to ensure that the TA is in compliance with international human rights law and standards, in particular the prohibition against torture and other cruel, inhuman or degrading treatment or punishment.
6. There should be a prompt, thorough, independent, and impartial inspection of the TA's compliance with international human rights law and standards and immediate measures should be taken to ensure the independence and effective functioning of the NPM.

A full set of recommendations are at the end of the report.

METHODOLOGY

Amnesty International and the Open Society Justice Initiative conducted joint research for this report between September 2016 and June 2017. They carried out three joint field visits in The Netherlands in December for nine days, January for 10 days, and April for nine days, and Amnesty International conducted follow-up research in May and June.

Amnesty International and the Open Society Justice Initiative interviewed 50 people for this report, including 19 former detainees who previously had been held in the TA, as well as family members of TA detainees, directors of the two TA units, prosecutors, legal experts, and defence lawyers who have worked extensively on cases of people detained in connection with terrorism-related offences, including lawyers who represented TA detainees, policy makers from the Ministry of Security and Justice, officials from various TA oversight bodies and the probation services, and other individuals with expertise on counterterrorism and detention. The 19 detainees interviewed were held at the TA at different points in time. The majority had been detained after 2014, including four former detainees who had been released in 2017. A small number of former TA detainees were detained prior to 2010. Of the 19 former detainees interviewed, the vast majority included persons who had not been finally convicted. Three were released after being acquitted in the first instance; six were provisionally released while awaiting their trial at first instance; eight were provisionally released after a conviction at first instance and while their appeal was pending, or released after serving their sentence; one was released after being held for extradition, which a court had denied; and one was held at the TA before being extradited to Belgium.

Researchers from Amnesty International and the Open Society Justice Initiative conducted most of the interviews jointly in English. Amnesty International provided interpretation when the interviews were conducted in Dutch.

The researchers conducted the interviews in private and with the full, free, and informed consent of the people being interviewed. Only on a limited number of occasions—and in all of these cases upon request of the interviewee—were the interviews conducted in the presence of a lawyer, family member, or close friend of the interviewee. In many cases the researchers recorded the interviews and transcribed them, and securely stored all those recordings and transcripts. Materials from those interviews are used publicly in this report only with the informed consent of the individuals and subject to any conditions agreed upon with them relating to anonymity.

Researchers for this report contacted former TA detainees through their lawyers, social workers, non-governmental organizations, and other former TA detainees. The 19 former TA detainees interviewed were between the ages of 18 and 34 at the time they were detained in the TA. Two were women and the rest were men. Upon their request, the names of many former detainees have been changed to protect their security and privacy. For the same reasons of respecting their privacy and ensuring their anonymity, this report does not always disclose the location of the interview. A small number of former TA detainees whom Amnesty International and the Open Society Justice Initiative contacted declined to be interviewed because they were in the process of resuming their daily personal lives after being detained in the TA and did not want to recall their experiences there.

To conduct interviews with its government officials, the Ministry of Security and Justice instructed the researchers to submit an official request, which they submitted in January 2017.² The ministry approved those requests in April³ and during the drafting of the report Amnesty International and the Open Society Justice Initiative exchanged emails with those officials to verify the accuracy of the information they provided during their interviews. This verification process did not include sending the officials the full draft report or disclosing confidential information and identities of other people interviewed for the report.

During the course of the research there were detainees imprisoned at the TA Vught who requested that Amnesty International and the Open Society Justice Initiative interview them inside the TA. The Vught TA Director informed the research team that as visitors to the TA all of their conversations with detainees would be monitored and recorded.⁴ Amnesty International and the Open Society Justice Initiative declined to conduct interviews under such conditions. A former TA detainee who tried to contact Amnesty International from a regular prison by phone was also informed by the prison authorities that private conversations were not possible due to special security requirements and that he had to file a request to have the researchers screened prior to a call.⁵ Due to the fact that the call would have been monitored, the research team declined to conduct an interview over the phone.

The research for this report was also based on an extensive review of relevant publicly available materials such as independent research studies of the TA, media reports, official government statements, Dutch domestic laws and legal and administrative decisions, and European and United Nations jurisprudence and standards. Amnesty International and the Open Society Justice Initiative also requested official TA-related statistics and other data from the government as part of this report's research. The government provided some, but not all, of this requested information.

For the purposes of this report the term "prisoner" refers to a person who has been convicted at the final stage of all proceedings without a further chance of appeal and who is serving a prison sentence. The term "detainee" refers to a person who is held pending trial at the first instance or awaiting the further stages of appeal in their case. At the time of writing, the vast majority of people detained in the TA were detainees who had not been convicted at the first instance or people who were awaiting appeal. For that reason, this report generally uses the term "detainee" to describe the people held in the TA.

We thank all those who participated in the research for this report, in particular former detainees, lawyers, and government officials who were willing to share their expertise and insights. This report was researched and written by Jonathan Horowitz, senior legal officer at the Open Society Justice Initiative, and Doutje Lettinga, senior policy officer at Amnesty International The Netherlands. Anique van den Bosch also conducted desk research for the report as a consultant. Julia Hall, expert on counterterrorism and human rights at Amnesty International, provided crucial guidance during the research. The report was reviewed and edited by David Barry, Erika Dailey, James Goldston, Gauri van Gulik, Julia Hall, Amrit Singh, Robert Varenik, and Maggie Maloney and other colleagues from Amnesty International's Law and Policy Program.

2 *Verzoek om interviews en cijfers i.v.m. onderzoek naar Terroristenafdeling* ('Request for interviews and data for research into Terrorism unit'), letter from Amnesty International and Open Society Justice Initiative to the Ministry of Security and Justice, 21 January 2017.

3 Email correspondence with policy maker of the Ministry of Security and Justice, 5 April 2017.

4 Email correspondence with Yola Wanders, Director of *Terroristenafdeling* (TA) Vught, 13 February 2017.

5 Interview with S. in a group interview with T. and Z., 24 May 2017.

1. BACKGROUND

“I don’t think you’ll come out a better person.” – Dutch judge with experience in terrorism-related cases⁶

ORIGIN OF THE SPECIALIZED DETENTION UNIT FOR TERRORISM OFFENCES

The original purpose of The Netherlands’ specialized detention “terrorist wing” (*Terroristenafdeling*, TA) was to separate people suspected and convicted of terrorist offences, as defined under Dutch law, from ordinary detainees and prisoners and to place them in a special, highly monitored “terrorist wing”. These “suspects” include people who have not yet been indicted, as well as those indicted, for terrorism offences.⁷ The government did this with the aim of preventing those suspected of or convicted for terrorism offences from recruiting and “radicalising” people detained in regular prison wings.⁸ This was seen, 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.⁹ As a result, authorities automatically assigned people suspected or convicted of a terrorist offence to the TA without ever assessing if individuals actually posed this or any other threat or if the TA’s security measures were necessary or proportionate in each case. A second 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 a third policy goal of ensuring that those placed in the TA “do not get out worse than they come in”.¹⁰

The then Ministry of Justice (now named the Ministry of Security and Justice) established the TA in 2006, after the arrests of individuals on suspicion of involvement in the killing of the film director Theo van Gogh in 2004. Van Gogh’s killing followed the airing of a documentary he made that many people viewed as being critical and insulting of Islam. The arrests prompted Dutch authorities to reconsider their approach toward addressing violence deemed to be religiously motivated.

Out of a concern that those arrested might try to “radicalise” and recruit other prisoners to engage in similar violent acts, the Minister of Security together with the Minister of Interior announced in 2005 the government’s plan to segregate all individuals “with a terrorist background” from other prisoners.¹¹

⁶ Interview with judge, location undisclosed, 30 March 2017.

⁷ In The Netherlands, a person suspected of a terrorist offence, for which pre-trial detention is permitted, can be detained by the police for a maximum of three days and 18 hours before being brought before an examining judge. The prosecutor can extend this period for an additional three days. During this period a person will be notified of the charges. At the end of this period, the person can be transferred to the TA for pre-trial detention. An indictment can take up to 104 days. In terrorism-related cases, the indictment can be postponed—and the pre-trial detention extended—up to a maximum of two years in addition to the first 104 days of pre-trial detention.

⁸ The Dutch government has defined “radicalisation” as an “an attitude that shows a person is willing to accept the ultimate consequence of a mind-set and to turn them into actions. These actions can result in the escalation of generally manageable oppositions up to a level they [sic] destabilise society due to the use of violence, in conduct that deeply hurts people or affects their freedom or in groups turning away from society”. See ‘Dutch Comprehensive Action Plan to Combat Jihadism’, *Parliamentary Papers 2013-2014*, 29754 no. 253, 29 August 2014, p. 33, https://english.nctv.nl/binaries/def-a5-nctvjihadismuk-03-lr_tcm32-83910.pdf

⁹ ‘Wijziging Regeling selectie, plaatsing en overplaatsing van gedetineerden’ (‘Amendment Regulation selection, placement and transfer of detainees’), *Staatscourant*, no. 181, 18 September 2006, p. 1, <https://zoek.officielebekendmakingen.nl/stcrt-2006-181-p13-SC76901.html> (hereinafter Regulation).

¹⁰ Interview with policy makers from the Ministry of Security and Justice, The Hague, 5 April 2017.

¹¹ ‘Terrorismebestrijding. Brief van de Ministers van Justitie en van Binnenlandse Zaken en Koninkrijksrelaties’ (‘Countering Terrorism. Letter of Ministers of Security and of Interior’), *Parliamentary Papers 2005-2006*, 29754, no. 31, 29 September 2005.

A government advisory body¹² and The Netherlands Custodial Institutions Agency (*Dienst Justitiële Inrichtingen*, DJI) expressed concerns about the establishment of this separate unit, warning that it was an unnecessary, unsubstantiated, and possibly even a counterproductive approach to prevent recruitment in prison.¹³ Both also recommended that people suspected or convicted of terrorist offences should only be placed in the TA based on individual risk assessments rather than automatically assigned to the TA. The Dutch government did not take this advice and opened the first specialized terrorist wing in the high-security prison in Vught in 2006. The second TA was opened in January 2007 in the high-security prison of De Schie in Rotterdam. Those prisons were selected because both already had experience with individuals assessed as posing “heightened” societal or escape risks, illustrating the assumption that individuals suspected or convicted of terrorist offences required extra security measures.¹⁴ In response to a negative evaluation of the TA in 2011 by the independent Research and Documentation Centre (*Wetenschappelijk Onderzoek en Documentatie Centrum*, WODC)¹⁵ and due to the low number of TA detainees in Vught at that time, the State Secretary of Security and Justice announced the government’s plans to close TA Vught. Only TA De Schie would remain open.¹⁶ But at the time of writing both TA Vught and TA De Schie were fully functional and TA Vught had expanded in order to accommodate more detainees. The facility at TA Vught currently has 41 cells spread over five sub-units¹⁷ and TA De Schie has seven cells in one unit,¹⁸ giving the TA a total holding capacity of 48. The number of people passing through the TA was also on the rise. During its first eight years (2006 – 2014) the TA held 80 detainees.¹⁹ The total number of individuals who had gone through the TA between 2006 and April 2017 was 168.²⁰ The TA’s population size is constantly fluctuating, and as of 11 April 2017 it held 25 people.

Parliament’s incremental expansion of Dutch counterterrorism laws may be one of the key factors leading to the expansion of the TA. As of April 2017, there were approximately 386 criminal investigations into 471 people suspected of being involved in “jihadism-related terrorism”, some of whom had not yet been apprehended.²¹ This was up from 80 similar criminal investigations into 110 suspects in 2015.²² This rise in investigations might reflect Dutch authorities’ increased concern about people returning from foreign countries, such as Syria and Iraq, to engage in activities identified under Dutch law as terrorism.²³ Additionally, TA population growth has been, and will continue to be, the 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 criminalise preparatory acts not closely linked to a principal offence. This expansion, for example, has resulted in a woman being detained and convicted for re-tweeting a single tweet that, according to a court, disseminated a message that incited people to fight in Syria,²⁴ and a man being convicted for transferring 1,000 Euros to a childhood friend who travelled to Syria.²⁵

12 Council for the Administration of Criminal Justice and Protection of Juveniles (*De Raad voor Strafrechtstoepassing en Jeugdbescherming*, hereinafter RSJ), *Advice on special detention for terrorists (Advies over de bijzondere opvang voor terroristen)*, 25 September 2006.

13 For a history of the origin of the TA and the unpublished advice of the Dutch Custodial Institutions Agency (*Dienst Justitiële Inrichtingen*, hereinafter DJI), see T. Veldhuis et al., *Terroristen in detentie: evaluatie van de Terroristenafdeling (Terrorists in detention: evaluation of the terrorism department)*, Wetenschappelijk Onderzoek en Documentatie Centrum, (WODC) research centre, 2011.

14 An additional reason for choosing De Schie for the TA was that it was strategically located near the extra-secured courts in Amsterdam and Rotterdam where most terrorism suspects are tried. See T. Veldhuis et al., 2011, p. 43.

15 T. Veldhuis et al., 2011.

16 ‘*Terrorisbestrijding. Brief van de Staatssecretaris van Veiligheid en Justitie*’ (‘Countering Terrorism. Letter of Deputy Minister of Security and Justice’), *Parliamentary Papers 2010/11*, 29754, no. 201, 1 April 2011.

17 Email correspondence with secretariat of Yola Wanders, Director of TA Vught, 20 June 2017; Interview with Yola Wanders, Director of TA Vught, Vught, 23 January 2017.

18 Interview with Rob Janssen, Director of *Terroristenafdeling* (TA) De Schie, Rotterdam, 5 April 2017.

19 ‘*Vragen van de leden Rebel en Marcouch (beiden PvdA) aan de Staatssecretaris van Veiligheid en Justitie over het opsluiten van terroristen (ingezonden 15 januari 2015). Antwoord van Staatssecretaris Teeven (Veiligheid en Justitie) (ontvangen 22 januari 2015)*’ (Questions by MPs Rebel and Marcouch of the Labour Party (PvdA) at 15 January 2015 with reply of State Secretary Teeven at 22 January 2015), *Aanhangsel van de Handelingen 2014-2015*, no. 1105, 22 January 2015.

20 Email correspondence with policy makers from the Ministry of Security and Justice, 12 May 2017.

21 *Bijlage 1: Voortgangsrapportage integrale aanpak jihadisme (Progress Report Dutch Comprehensive Plan to Combat Jihadism)*, 6 April 2017, p. 2. Government agencies contacted could not provide any data on “non-jihadism-related terrorism” criminal investigations.

22 *Bijlage 1: Voortgangsrapportage integrale aanpak jihadisme (Progress Report Dutch Comprehensive Plan to Combat Jihadism)*, 9 November 2015, p. 2.

23 International Centre for Counter-Terrorism (ICCT), ‘The Foreign Fighters Phenomenon in the European Union: Profiles, Threats & Policies’, *ICCT Research Paper*, April 2016, p. 14.

24 Court of The Hague, 10 December 2015 [index number: ECLI:NL:RBDHA:2015:16102].

25 Court of Rotterdam, 18 February 2016 [index number: ECLI:NL:RBROT:2016:1266].

Parliament's expansion of Dutch counterterrorism law is part of a troubling trend across Europe that threatens human rights and fundamental freedoms.²⁶ Terrorist offences also incur enhanced penalties, including longer prison sentences compared with similar crimes under Dutch law not connected to terrorism. These factors could have a bearing on why authorities are insisting on expanding the number of people the TA can hold. Although Dutch criminal law had already been extended to cover a wide range of terrorist-related crimes, new legislative proposals are pending in Parliament that may expand the law even further to include, for example, criminalising the "glorification of terrorism".²⁷

THE TA DETENTION UNIT

The TA is classified as an "extensively secured" unit for detainees posing a "heightened" societal or escape risk.²⁸ It is regulated by the Penitentiary Principles Act as well as Ministerial Directives and Decisions.²⁹ The most important of these directives is the Regulation for Selection, Placement and Transfer (referred to hereinafter as the Regulation), which provides the legal framework for placing individuals in the TA.³⁰ The Act is also the basis for the internal house rules that regulate the day-to-day operations of TA Vught and TA De Schie.³¹

Prison authorities in the TA have exceptional powers to severely restrict the rights of detainees without first conducting an individual assessment of the actual risk posed by each detainee.³² The following descriptions of the TA's rules are illustrative of the many restrictions that prison authorities can place on TA detainees.

Once detainees enter the TA, they have very little out-of-cell time. Prison authorities are allowed to hold detainees in their cells for as much as 150 out of 168 hours per week.³³ This equates to around a maximum of 21.5 hours of in-cell time per day on average, but it can also result in more in-cell time depending on various circumstances. Over time, TA authorities have demonstrated, on a limited basis, a willingness to allow detainees more time for communal sports and recreational activities. In 2010, there were reports that the weekly out-of-cell time for such activities in the TA was 40 hours per week.³⁴ In late June and early July 2017, a detainee reported to his lawyer that at TA Vught the amount of hours he spent outside his cell had gone up from 28 hours a week (average of 20 hours a day in cell) to 32 hours a week (average of 19.42 hours a day in cell),³⁵ while at TA De Schie two detainees reported that the amount of hours detainees were allowed outside their cells went up from 21 hours a week (average of 21 hours a day in cell) to 28 hours a week (average of 20 hours a day in cell).³⁶ However, research for this report indicates that out-of-cell time remained limited and varied on any given day between two and a half hours and five hours depending on the detainee's weekly program and the day of the week. This leaves detainees alone in their cells for roughly 19 to 21.5 hours per day. Sometimes, however, detainees described being held for up to 22 hours per day.³⁷

26 Amnesty International, *Dangerously Disproportionate: The ever-expanding national security state in Europe* (index number: EUR 01/5342/2017), pp. 23-27, available in English and French at www.amnesty.org/en/documents/eur01/5342/2017/en/

27 'Voorstel van wet van het lid Keijzer tot wijziging van het Wetboek van Strafrecht in verband met de strafbaarstelling van de verheerlijking van terrorisme' ('Revision of law proposal of MP Keijzer to amend the Criminal Code to criminalise the glorification of terrorism'), *Parliamentary Papers II* 2016/17, 34446, No. 6 (27 February 2017).

28 Article 13(1)b of the Penitentiary Principles Act (see fn 29 for full name of the Act in Dutch); Article 5 of the Regulation.

29 *Wet van 18 juni 1998 tot vaststelling van een Penitentiaire beginselenwet en daarmee verband houdende intrekking van de Beginselenwet gevangeniswezen met uitzondering van de artikelen 2 tot en met 5 en wijzigingen van het Wetboek van Strafrecht en het Wetboek van Strafvordering alsmede enige andere wetten (Penitentiaire beginselenwet)* (hereinafter Penitentiary Principles Act), 18 June 1998, and 'Memory of Understanding', *Parliamentary Papers*, 1994-1995, 24263, no. 3; *Besluit van 23 februari 1998, houdende vaststelling van de Penitentiaire maatregel en daarmee verband houdende wijziging van enige andere regelingen (Penitentiaire maatregel)* (hereinafter Penitentiary Measure), 23 February 1998. All relevant laws and Ministerial Directives are available at <https://www.commissievantoezicht.nl/wetgeving/gw-dbv/>

30 Regulation.

31 Amnesty International and the Open Society Justice Initiative obtained access to the 2014 TA Vught and TA De Schie house rules: Terrorism Wing of the Penitentiary Institutions De Schie and Vught. (Hereinafter house rules, TA De Schie and TA Vught). We are not aware of more recent house rules for the TA.

32 See Arbitrary and Automatic Placement in the TA, below.

33 Article 21 of the Penitentiary Principles Act allows detainees to participate in activities with other detainees in so-called "regimes with restrictions on communal activities". Article 3, sub 3 of the Penitentiary Measure allows detainees between 18 and 63 hours per week to engage in activities and visits in "regimes with restrictions on communal activities". Over time, the TA has developed into such a regime, allowing detainees to participate in communal activities; but participation in those communal activities remains a privilege, not a right (see fn. 40).

34 T. Veldhuis et al., *Captivated by fear, an evaluation of terrorism detention policy*, 2015, p. 143.

35 Email communication with criminal defence lawyer, 1 August 2017.

36 Email communication with criminal defence lawyer, 25 July 2017.

37 See Excessive Restrictive Confinement, below.

Under international human rights standards, detention for 22 hours or more per day without any meaningful human contact constitutes solitary confinement.³⁸ However, this standard should not be read as implying that prison authorities may hold prisoners in solitude for “only” 21.5 hours a day, certainly not routinely and for prolonged periods. The mental effects of being confined for just under 22 hours a day would surely be similar to those of being so held for 22 hours. Where TA detainees and prisoners are held not for 15 days or less³⁹ but for long months, and at times years, it can safely be concluded that they are subjected to cruel, inhuman or degrading treatment or punishment, and in extreme cases to torture. So, while technically the human rights standard sets the limit for solitary confinement at 22 hours, this report documents cases of several TA detainees who were held just below that limit, and for prolonged periods of time. This extensive level of restrictive confinement, combined with the fact that placement in this regime is automatic, and there is no meaningful access to redress, makes it contrary to human rights standards.

Meaningful human contact at the TA is limited. The TA allows prison authorities to isolate detained persons from others by placing restrictions on detainees’ individual and communal activities outside their cells.⁴⁰ 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.⁴¹ Additionally, when out of their cells, the house rules allow detainees to associate with up to three other fellow detainees from their own unit, never allowing the group to exceed four in total, and there are always more guards supervising activities than detainees in these small groups.⁴²

The TA’s program of out-of-cell activities is generally limited. In addition to taking fresh air in a cage-like facility, alone or in company of a small number of fellow detainees, for at least one hour per day,⁴³ detainees have a limited amount of additional time to participate in recreational activities in communal spaces, including using a computer and other games like table soccer, or cooking alone and eating the food they make.⁴⁴ Detainees are also permitted to participate in physical exercise and sporting activities twice a week for 45 minutes if their health conditions permit.⁴⁵ They can also opt for one-on-one religious counselling and attend religious prayer meetings, as long as authorities determine that it does not pose a risk from a security or health perspective.⁴⁶ TA detainees have no or extremely limited work opportunities and only very few educational opportunities. By law TA detainees are excluded from participating in penitentiary “promotion and plus” programs, which allow other detainees to access a wider set of educational, work, and other activities on the basis of good behaviour.⁴⁷

Human contact with people from outside the prison is restricted and monitored all the time. The house rules for TA De Schie and TA Vught allow detainees to receive a one-hour visit once a week from family members and other people approved in advance by a prison management screening process.⁴⁸ Prisoners can opt for visits with or without a transparent glass wall in a visiting room. If they opt for a visit with the glass wall there is no physical contact. If they opt for a visit without the glass wall, physical contact is still extremely limited. During such visits only a handshake on arrival and departure is allowed. A detainee’s children cannot, for example, sit on the detainee’s lap or hug their parent.⁴⁹ Prison staff monitor all visits, whether they take place with or without a glass wall, and all conversations between detainees and visitors.⁵⁰ After visits without the glass wall, prison staff subject detainees to invasive full-nudity body searches. Detainees are also sometimes subjected to these body searches prior to the visits.

38 Rule 45 of the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules; hereinafter the Mandela Rules); and Interim report to the General Assembly, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/66/268, para. 26. The Mandela Rules, originally adopted in 1955, were revised during 2010-2015. The revised Mandela Rules were adopted by the UN General Assembly on 17 December 2015.

39 Rule 44 of the Mandela Rules.

40 The TA is designated as an “individual regime”, which means that the director of the prison can decide the extent to which an individual is allowed to participate in individual or communal activities. See explanation to Regulation, p.13; Article 22, sub 2 of the Penitentiary Principles Act; house rules, TA De Schie and TA Vught, para. 2.1.

41 Article 11 of the Regulation explains when detainees are placed in an “individual regime” their participation in communal activities can be restricted due to serious risks they pose to themselves or others; as a result of their personality, behaviour, or other personal circumstances; or on the basis of the nature of the offence they committed or are suspected of having committed.

42 House rules, TA De Schie and TA Vught, para. 2.1.

43 Article 24, sub 2, Article 49, sub 1 and sub 3, and Article 55, sub 1 of the Penitentiary Principles Act. House rules, TA De Schie and Vught, para. 3.1.

44 The recreation time in the TA is a minimum of six hours per week. Article 49, sub 1 and 2 of the Penitentiary Principles Act; house rules, TA De Schie and TA Vught, para. 3.5.

45 Article 48 and Article 49 of the Penitentiary Principles Act. house rules; TA De Schie and TA Vught, para. 3.

46 Article 41 of the Penitentiary Principles Act; house rules, TA De Schie and TA Vught, para. 4.1.

47 Article 1e, sub e of the Regulation. See also Article 1, sub j (definition of “plus program”) and sub k (definition of “promotion program”) of the Regulation.

48 House rules, TA De Schie and TA Vught, para. 3.8.

49 House rules, TA De Schie and TA Vught, para. 3.8.1.

50 House rules, TA De Schie and TA Vught, para. 3.8.1.

If detainees opt for a visit behind the glass they are not subjected to the body searches. Additional body searches of the same nature can also take place at the discretion of the prison management for internal security and order reasons.⁵¹ Lawyers can visit their clients in the TA every working day, subject to the condition that the lawyers give one day's advance notice of the visit. The prison director can decide whether these visits take place in a room with a glass wall or one without.⁵²

THE TA'S PRISON POPULATION

As of 11 April 2017, there were 25 detainees in the TA. Twenty-two of them were detainees who had not been finally convicted after going through all stages of appeal. Sixteen of those were awaiting their trial at first instance and the other six had been convicted and were awaiting an appeal. Two were prisoners serving their sentences after final conviction for what Dutch law defines as terrorist offences, and one detainee was going through extradition proceedings.⁵³

Although authorities declined to provide Amnesty International and the Open Society Justice Initiative with disaggregated data on the TA population, citing privacy reasons,⁵⁴ interviews with prison authorities, Public Prosecutors, lawyers, and others made it clear that the vast majority of the TA's detainees were male Muslims suspected or convicted of what the government referred to as "jihadism-related terrorism".⁵⁵

Prison authorities have at times also placed individuals in the TA who were held in connection with terrorism offences which were directed against Muslims. On 27 October 2016, five men were sent to the TA after being convicted at first instance of attempting to burn down a mosque with terrorist intent.⁵⁶ At times, the placement of such detainees together with Muslim detainees resulted in tensions between detainees.⁵⁷

A small number of female Muslim detainees had been placed in the TA too, at times together with men, in apparent breach of international standards.⁵⁸ According to media reports, authorities had been willing to take positive steps to address this serious shortcoming, albeit not promptly. One female detainee said she was transferred to another location only after she made several transfer requests and then filed a complaint.⁵⁹ She said that she and another female detainee were moved the day after a male TA detainee resorted to damaging a prison kitchen in protest of the situation and the prison director's slow response.⁶⁰

Due to the TA's predominantly Muslim population, former detainees and civil society groups have heavily criticized the TA for being discriminatory against Muslims and at times have taken public action to protest the TA for being a "Muslim detention centre".⁶¹ Although this report does not assess whether this is the case or whether terrorism legislation is applied in a discriminatory manner, it is important for the government to recognize that many former detainees interviewed shared the strong belief that the TA was a detention facility that specifically targeted Muslims.⁶² Their time in detention left some

51 House rules, TA De Schie and TA Vught, para. 6.4.

52 House rules, TA De Schie and TA Vught, para. 3.8.2.

53 Email correspondence with policy makers from the Ministry of Security and Justice, 12 May 2017.

54 Email correspondence with policy makers from the Ministry of Security and Justice, 12 May 2017.

55 The Dutch government defines the "jihadist movement" as "the total of (international) networks, groups, cells and individuals that adhere actively to the ideology and strategy of jihadism". *Dutch Comprehensive Action Plan to Combat Jihadism*, 2014, p. 32. In an email exchange with Amnesty International, the National Prosecutor for counterterrorism confirmed that from his experience the large majority of the TA detainee population fell into this category. He explained that only recently had Dutch authorities started registering the number of "jihadism-related terrorism" investigations and prosecutions. There is no public data on other types of terrorism cases. Email correspondence with the National Prosecutor, Counter Terrorism, 3 July 2017. In the past, individual members of foreign groups such as the Tamil Tigers and the Kurdistan Workers' Party (*Partiya Karkerên Kurdistanê*, PKK) were temporarily placed in the TA on terrorism charges and, more recently, so were individuals suspected of right-wing related terrorist offences.

56 'Vier jaar cel voor terroristische aanslag op moskee' ('Four years in prison for terrorist attack on mosque'), *Volkscrant*, 27 October 2017.

57 'Rechts-extremisten en jihadverdachten botsen op Terroristenafdeling' ('Right-extremists and jihadist suspects clash at terrorism wing'), *Volkscrant*, 3 April 2017. See also Court of Overijssel, verdict of 27 October 2016 [index number: ECLI:NL:RBOVE:2016:4137] and Court of Overijssel, verdict of 27 October 2016 [index number: ECLI:NL:RBOVE:2016:4134].

58 Rules 11 and 81 of the Mandela Rules.

59 'Onrust en chaos op de Terroristen Afdeling Vught' ('Disorder and chaos at Terrorist Unit Vught'), *Eén Vandaag*, 24 March 2017, http://justitie.eenvandaag.nl/tv-items/72905/onrust_en_chaos_op_terroristenafdeling_vught

60 'Mohamed B. vernielt keuken na afwijzing verzoek' ('Mohamed B. demolishes kitchen after rejection request'), *NRC Handelsblad*, 3 March 2017.

61 'Discriminatie en lichamelijke vernedering': moslims willen humaner beleid ('Discrimination and physical humiliation': Muslims want more humane policy), *Brabants Dagblad*, 17 May 2016.

62 Interview with P., 6 April 2017; group interview with S., T., and Z., 24 May 2017; interview with K., 23 January 2017; interview with E., 3 January 2017; interview with B., 9 December 2017.

former detainees with a deep sense of injustice resulting from the fact that it was primarily Muslims who were subjected to the TA's restrictive measures, including persons who had never been individually assessed as posing a security risk, had not been tried or convicted, and in some cases people who were subsequently, after a trial, acquitted.⁶³ Some also felt treated unfairly because the treatment in the TA was harsher than the treatment faced by ordinary prisoners who had been convicted of more violent crimes. When authorities did place people who were not Muslims in the TA, many of the Muslim former detainees interviewed interpreted this as an intentional government strategy to counter the critique that the TA and its policies were racist and Islamophobic.⁶⁴

POLICY REFORMS

Over time, the Dutch authorities have increasingly recognized the need to reform the TA. This awareness has led to several planned policy changes that would result in treating TA detainees differently based on their personal profiles. Authorities have commonly referred to this as a new “differentiated approach” (“maatwerk”).⁶⁵

According to policy officers from the Ministry of Security and Justice, the TA's new policy goal of ensuring that those placed in the TA “do not get out worse than they come in”⁶⁶ had resulted in policy makers focusing increasingly on how to reintegrate detainees back into society and, in some cases, using the TA to play a “de-radicalising” role.⁶⁷ This new emphasis on reintegration stemmed from concerns voiced by Dutch Members of Parliament that the TA was an ineffective tool for countering terrorism because it did not offer relevant programs and erred by placing “hardliners” with strong views espousing violence together with detainees who did not share those same views.⁶⁸

Then Deputy Minister for Security and Justice Klaas Dijkhof responded to those concerns in August 2016 by announcing that the TA would remain a high-security prison facility for people suspected and convicted of terrorist offences but that within the TA authorities also would differentiate “hardliner extremists” from “susceptible followers”.⁶⁹ In order to prevent the former from “radicalising” or recruiting the latter, prison authorities have proposed placing TA detainees in separate units. At the time of writing, TA authorities had already begun to accommodate this new approach. The TA Vught Director explained that in contrast to the past, now “TA prisoners are held in five different wings” that appear to contain differentiated levels of restrictive security measures.⁷⁰ In addition, authorities started developing ways to design tailor-made reintegration programs for detainees and, if deemed feasible and relevant, “de-radicalisation” and “disengagement” programs to draw detainees away from their terrorist networks.

Prison authorities said they would make such differentiated decisions and tailor-made programs by forming risk profiles using the “Violent Extremism” assessment tool, known as VERA-2R.⁷¹ Little public information is available about how and to what end authorities have been using VERA-2R, but

63 For example, group interview with S., T., and Z., 24 May 2017.

64 For example, interview with H., 24 January 2017; interview with N., 31 January 2017.

65 See, for example, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter CPT), *Response of the Government of the Netherlands to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to the Netherlands from 2 to 13 May 2016*, p. 17 (hereinafter *Response of the Netherlands to Country Report*, 2017).

66 Interview with policy makers from the Ministry of Security and Justice, The Hague, 5 April 2017.

67 Interview with policy makers from the Ministry of Security and Justice, The Hague, 5 April 2017.

68 ‘Justitiële inrichtingen. Verslag van een algemeen overleg’ (‘Penitentiary Institutions. Report of a general consultation’), 22 January 2015, *Parliamentary Papers* 24587, no. 615, 2 March 2015. These two issues have been raised by members of the Dutch Parliament at different points in time after the publication of several independent studies and evaluations of the TA, which suggested that the TA could have counterproductive effects. T. Veldhuis et al., *Captivated by fear, an evaluation of terrorism detention policy*, 2015; B.A. de Graaf & D.J. Weggemans, *Na de vrijlating. Een exploratieve studie naar recidive en re-integratie van jihadistische ex-gedeteneerden (After release. An explorative study into recidivism and reintegration of jihadist ex-detainees)*, 2015 (English version: D. Weggemans and B. De Graaf, *Reintegrating Jihadist Extremist Detainees*, London: Routledge, 2017); and T. Veldhuis et al., 2011.

69 ‘Terrorisbestrijding. Brief van de Staatssecretaris van Veiligheid en Justitie’ (‘Countering terrorism: Letter of the Deputy Minister of Security and Justice’), *Parliamentary Papers* 29754, no. 392 (12 August 2016).

70 Interview with Yola Wanders, Director of TA Vught, Vught, 23 January 2017.

71 The “Violent Extremism” assessment tool (VERA-2R) is comprised of 34 “risk and protective” factors that specifically assess an individual's dedication to violent extremism and the risk of spreading those views. A VERA-2R judgement results in a score on a scale of low, moderate, and high in the following categories: 1) beliefs and attitudes (ideology), 2) context and intent (affiliations, actions), 3) history and capability (training, network, funds), 4) commitment and motivation, and 5) protective indicators (such as reinterpretation of ideology, family and community support, and rejection of violence). The risk profiles aim to support decision-making of the TA boards. See RAN Prison & Probation Working Group, *Ex post paper 26 ‘Case study Terrorist Wing in Vught’*, November 2015, https://ec.europa.eu/home-affairs/what-we-do/networks/radicalisation_awareness_network/about-ran/ran-p-and-p_en

in one known case a selection officer made a decision not to transfer someone out of the TA Vught after authorities using the VERA-2R tool assessed that the detainee posed a high risk of spreading “extremism”. In that case, the detainee told a prison complaint body to which he had filed a complaint that he was not made aware of the results of the risk assessment and had not spoken to anyone before being assessed.⁷² While this report does not address the human rights issues that arise from the VERA-2R because at the time of writing it was in its initial phase of being used, a prosecutor questioned the value of a tool that aims to create different security regimes and different options for reintegration within the TA on the basis of assessed levels of “radicalisation”, asking rhetorically: “Followers for example would be in a lighter ward than the hardliners. So you have one wing with people you can work with and give a future. But then what signal are you sending to the other wing? But what’s the alternative?”⁷³

This report demonstrates that the Dutch government needs to reform the TA to improve the human rights situation for its detainees and their families. The report also provides several specific recommendations to ensure that the TA complies with The Netherlands’ international human rights obligations. Amnesty International and the Open Society Justice Initiative therefore take positive note of the Ministry of Security and Justice’s commitment to make certain reforms to the TA and the willingness of ministry policy makers and other prison authorities to start instituting some of those reforms. Amnesty International and the Open Society Justice Initiative remain concerned, however, that several aspects of the TA, and the placement procedure in particular, do not appear to be part of those reforms. Additionally, any enacted policy reforms must provide TA detainees with substantive and justiciable rights that go beyond merely providing TA detainees with privileges that remain at the discretion of prison authorities.

72 See RSJ decision 16/2766/GB, 1 December 2016.

73 Interview with prosecutors of the National Prosecution, Rotterdam, 26 January 2017.

2. ARBITRARY AND AUTOMATIC PLACEMENT IN THE TA

“I saw murderers, killers, rapists—people who do the worst things—who get more rights than people in the TA. They treat you like shit there.” – Former TA detainee⁷⁴

Persons suspected or convicted of terrorist offences are automatically assigned to the TA.⁷⁵ This placement system was established by the Regulation on Selection, Placement and Transfer, and is based on a presumption that people suspected or convicted of terrorist offences will try to “radicalise” other prisoners or recruit them to engage in terrorist activities. Based on that assumption, individuals held in connection with the numerous offences defined as terrorist offences in Dutch law automatically end up in the TA’s regime of “enhanced security”,⁷⁶ a regime which holds detainees who are supposed to pose a heightened societal or escape risk, without conducting an individual assessment to ensure that the extra security measures used against them are necessary and proportionate.⁷⁷ In practice, this means that even a person who poses no actual risk can be held in one of The Netherlands’ harshest detention facilities. A health professional on staff at TA Vught prison stated critically: “A person comes in suspected for sending \$100 to Syria and it’s the first time they’re in trouble and they are put in a hard regime.”⁷⁸

It is the responsibility of a selection officer to make a decision whether to place someone in the TA. Selection officers work for the Custodial Institutions Agency and make their decisions on behalf of the Minister of Security and Justice.⁷⁹ Given the automatic nature of the TA placement process the selection officer rarely has to make a formal and well-argued “decision”. This stands in contrast to other penitentiary institutions, where a selection officer is legally bound to determine each detainee’s individual societal and escape risk profile based on different types of information before making a placement decision.⁸⁰

The Regulation on Selection, Placement and Transfer does allow a selection officer the discretion to place a person outside of the TA at the request of the prosecutors or the Criminal Intelligence and Investigation Department (*Gecoördineerde Regionale Incidentbestrijdings Procedure*, GRIP) but this so rarely happens that most people associated with the TA confirmed to the research team that placement is virtually automatic. A GRIP officer interviewed stated that since 2006 the GRIP has provided advice not to place someone in the TA on only five occasions, and of those the selection officer followed their recommendations only three times.⁸¹

74 Interview with I., 3 April 2017.

75 Article 20a, sub a and sub b of the Regulation; Regulation, p. 3. 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”.

76 Article 5 of the Regulation. The Dutch penitentiary system differentiates between five security levels. The TA has an “enhanced security regime”, which is one level below the highest “extreme security regime”. The State Secretary explained in 2011 this was to prevent “the deployment of terrorist activities”. *‘Terrorismebestrijding. Brief van de Staatssecretaris van Veiligheid en Justitie’* (‘Countering Terrorism. Letter of Deputy Minister of Security and Justice’), *Parliamentary Papers 2010/11*, 29754, no. 201, 1 April 2011.

77 In the Dutch penitentiary system, a differentiation is made between low, heightened, and extreme flight and societal risks. Article 5 of the Regulation states that in an enhanced security regime, such as the TA, individuals can be placed as having a “heightened” security risk, whereas a different directive states that individuals with an “extreme” risk profile are placed in the TA. See *Circulaire beleid gedetineerden met Vlucht- en of maatschappelijk risico* (hereinafter *Directive Flight and societal risk detainees*), 5645409/10/DJI, 13 October 2010.

78 Interview with TA health care professional, Vught, 23 January 2017.

79 Article 15 (3) of the Regulation.

80 Article 22 of the Regulation. According to Article 22, sub 2, the selection officer is legally bound to take into consideration the following information for developing a risk profile prior to placement decisions: the nature and background of the offence for which someone is prosecuted or convicted; possible prior detention in The Netherlands or abroad; other information including findings of the Criminal Intelligence and Investigation Department (GRIP).

81 Interview with GRIP officers, Zoetermeer, 5 April 2017.

Law enforcement officials, defence lawyers, former detainees, and others, including probation officers, academics, and advisory bodies, have all criticized the TA placement system for lacking fairness or efficacy, or both.⁸² Many interviewees questioned the assumption that being charged with a terrorist offence was enough to justify subjecting someone to the TA's high-security measures. These measures, analysed in more detail in other sections in this report, include severely restricted confinement in individual cells amounting to or bordering on solitary confinement, often for prolonged periods of time, and guards routinely administering invasive and humiliating body searches. The searches are so debasing that many detainees avoided them by refusing to meet with family members and lawyers in person, opting instead to meet them behind a glass wall or not at all. In order to avoid being subjected to the searches, some detainees even refused to attend court hearings or threatened to do so. Among other issues, the TA's security measures also include the constant monitoring of detainees when they are outside their cells and when they meet with family members. One former detainee explained how the TA had left him "with deep scars". He said: "I can't sleep quietly anymore.... I'm damaged by detention."⁸³

One prosecutor explained that the strict security measures at the TA are not always warranted because the system "doesn't assess the individuals".⁸⁴ Another criticized the blanket use of the TA's security measures, commenting that they might be appropriate for some but were not necessary for everyone.⁸⁵ A lawyer who represented several TA detainees similarly explained that the TA is a unit controlled by a "very strict" regime that holds people "regardless of their threat or their behaviour in prison".⁸⁶ Another lawyer added: "The problem with the TA is that [selection officers] don't look at individual cases. The suspicion of a terrorist offence is sufficient to end up in the TA, even if you're not a threat to society or contamination risk to other detainees.... They basically only look at the label the Public Prosecutor puts on them."⁸⁷ A professor who was a delegate of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) asked rhetorically: "If it appears that someone does not pose a security danger, why not send that person to a normal prison?"⁸⁸

Instead, people should be placed in a high-security detention facility 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 determine whether placement in such a facility is necessary and proportionate, and it should be based on specific and objective criteria, including a person's actual behaviour.

The only legal exception to the TA's automatic placement system is when the prosecution or GRIP provides compelling reasons for why a selection officer should not place someone in the TA.⁸⁹ This exception was created to avoid situations in which a terrorist suspect could potentially come into contact and/or exchange information with TA detainees involved in the same case.⁹⁰ Prosecutors and the GRIP have tried to use this exception for other reasons as well, but they have done so only rarely and their advice has not always been followed. Moreover, a GRIP officer explained that the GRIP was not always consulted for possible counter-indications prior to placing an individual in the TA: "It's not a systematic, automatic check; we're only consulted when doubts arise whether or not to place someone at the TA, for instance from the Public Prosecutor. We then check our files to see what we know about this person. Up until today it has been exceptional that someone is not placed in the TA."⁹¹

One selection officer said he had not seen more than three non-placement recommendations in the past one and a half years.⁹² A different selection officer explained how on three occasions the Public Prosecutor

82 In addition to the sources referenced in this section, see RSJ, *Advice on special detention for terrorists*, 2006; academics Tinka Veldhuis and Daan Weggemans in A. Kouwenhoven, 'De Terroristenafdeling is een snelkookpan' (The terrorist unit is a pressure cooker), *NRC Handelsblad*, 5 November 2014, <https://www.nrc.nl/nieuws/2014/11/05/de-terroristenafdeling-van-justitie-is-ee-snelkoo-1438217-a657066>; M. de Koning, 'Tien jaar protest tegen de Terroristen Afdeling (TA). Actie #Moslimkamp_Vught' ('Ten years of protest against the Terrorist Unit (TA). Action #Muslimcamp_Vught'), *Religionresearch*, 15 May 2017, http://religionresearch.org/closer/2017/05/15/tien-jaar-protest-tegen-de-terroristenafdeling-ta-actie-moslimkamp_vught/

83 Group interview with S., T., and Z., 24 May 2017.

84 Interview with prosecutors of the National Prosecution, Rotterdam, 26 January 2017.

85 Interview with prosecutors of the National Prosecution, Rotterdam, 26 January 2017.

86 Interview with Tamara Buruma, criminal defence lawyer, Amsterdam, 25 August 2016.

87 Interview with Michiel Pestman, criminal defence lawyer, Amsterdam, 30 January 2017.

88 Interview with Anton van Kalmthout, Professor of Tilburg University, Tilburg, 7 April 2017.

89 Article 20a of the Regulation. Under-aged offenders will also not be automatically placed in the TA. Although the law provides the opportunity to place juvenile terrorist offenders aged 16 to 18 in the TA if they meet the criteria, this is decided on a case-by-case basis and only if they are convicted under adult criminal law.

90 Regulation, 2006, p. 2. For examples, see Veldhuis et al., 2011, p. 130, fn 34 and pp. 117-118.

91 Interview with GRIP officers, Zoetermeer, 5 April 2017. This GRIP officer also stated that, given the announced policy changes, more exceptions might be made in the future.

92 Interview with selection officers of the DJI, The Hague, 5 April 2017.

provided reasons for why a person should not be placed in the TA, but the reasons they gave, he said, “couldn’t convince me of placement in a different facility, so the person was placed in the TA”.⁹³

Prosecutors in Rotterdam and The Hague who work on cases of those charged with terrorist offences confirmed that even when they offer compelling reasons to block a person’s placement in the TA, they are ignored: “Our experience has most often been that if we object, they still go to the TA. Our recommendations have been taken on but it’s exceptional—in cases invoking age, and the mentally unstable.”⁹⁴ Another prosecutor explained: “At the moment we don’t have much influence on TA placement. If there are special circumstances—such as mental illness—we can advise the selection officer. We can say he [the detained person] has to be in a different environment.”⁹⁵

The TA does not need to operate this way. The Netherlands’ other high-security detention facility, the *Extra Beveiligde Inrichting* (EBI), requires authorities, before sending detainees there, to carry out an individualized risk assessment which includes an adversarial hearing with the detainee and prior consultation with a selection advisory committee.⁹⁶ The EBI holds prisoners deemed to require particularly secure detention conditions, notably prisoners who have been assessed as posing an “extremely high flight risk and/or whose flight will cause great social unrest”.⁹⁷

2.1 PRESUMPTION OF INNOCENCE

The TA is officially labelled as a detention unit for terrorists, but at the time of writing the TA mostly held people who had not been found guilty of a terrorist offence.⁹⁸ As a result, people who had the right to be presumed innocent until proven guilty were subjected to prison conditions typically reserved for those convicted of serious crimes. This result is a direct function of the TA’s automatic placement system, which throws people who have not even been indicted, individuals awaiting an appeal, and those convicted of serious crimes into the same facility without individual risk assessments, and with the power to subject all of them—without distinction—to a harsh and punitive regime of rules. As Dutch law makes clear, there is no distinction among the different categories of detainees at the TA.⁹⁹ As a result, people held at the TA merely on suspicion of terrorist offences are treated like dangerous individuals who have already been convicted of serious crimes. A lawyer who defended a woman held in the TA during pre-trial detention on suspicion of attempting to join a terrorist organization abroad explained: “People are immediately branded if they are put in the TA. This is a prison within a prison, with different protocols and a heavier regime.... Basically, my client has been convicted already publicly. Everyone now sees her as a terrorist, even if she would be released.”¹⁰⁰

One detainee held in the TA for half a year pending trial, who was then acquitted of all terrorism-related charges, exclaimed: “I am innocent, I knew this since day one. Yet I carry this stigma! It’s strange. I feel as if I’m already convicted, having been in pre-trial detention for six months as a ‘terrorist’ and detained together with individuals convicted of terrorism.”¹⁰¹ Another man who was in the TA for two weeks in pre-trial detention and later also acquitted of all charges said: “You feel like a terrorist if you’re treated that way.”¹⁰² He said that when he was transported to court “they cuffed and blindfolded me with goggles. Three men accompanied me to my cell with my arms handcuffed behind my back as if I was very dangerous.”¹⁰³ Another man held in pre-trial detention for 10 months when he was 19, before being convicted at first instance, said: “Guilty or not guilty, I’m already convicted even though I was still in pre-trial detention.”¹⁰⁴ A former detainee who had been held as a suspect at TA Vught in 2015 for two months and was later transferred to a regular prison to serve his sentence also explained: “As a suspect, I was treated worse in the TA than as a convict in a normal prison where they treated me normal.”¹⁰⁵

93 Interview with selection officers of the DJI, The Hague, 5 April 2017.

94 Interview with prosecutors of the National Prosecution, Rotterdam, 26 January 2017.

95 Interview with prosecutor and researcher of the court of The Hague, The Hague, 27 January 2017.

96 Article 26 of the Regulation; Articles 23, 24 (4 and 5), and 25 (4 and 6) of the Regulation.

97 Article 6 of the Regulation; *Directive Flight and societal risk detainees*, 3 November 2009. For information on what constitutes flight risks and social unrest, see Bunt et al., *Gevangen in de EBI. Een empirisch onderzoek naar de Extra Beveiligde Inrichting (EBI) in Vught (Imprisoned in EBI: An empirical study into the Extra Secured Institution)*, 2013, p.75.

98 As of April 2017, of the TA’s 25 detainees, 16 had not been convicted by a first court and six were pending appeal. Email correspondence with policy makers from the Ministry of Security and Justice, 12 May 2017.

99 Article 21a of the Regulation.

100 Interview with Burhan Kaya, criminal defence lawyer, Eindhoven, 25 April 2017.

101 Interview with N., 31 January 2017.

102 Interview with G., 11 January 2017.

103 Interview with G., 11 January 2017.

104 Interview with T., in group interview with S. and Z., 24 May 2017.

105 Interview with I., 3 April 2017.

2.2 CRITICISM THAT THE TA INCREASES ALIENATION

Sending people to the TA without ever assessing if they pose an actual security risk, and the harsh treatment of those detained in the TA, together with the lack of access it affords to reintegration opportunities, also carries a high risk of further alienating detainees, counter to the principle that the essential aim of the treatment of prisoners should be their social rehabilitation.¹⁰⁶ In this regard some law enforcement officials, as well as former detainees, expressed concerns that the TA's high-security measures run at cross-purposes with the government's stated counterterrorism goal of using the prison to reduce the spread of violence. One prosecutor explained: "My main concern is that people going in are coming out more radicalised, even though our main objective is safety. But, we are worried the TA doesn't do this in the long term.... We believe people in the TA have to become part of society when they leave and we have to bear this in mind when thinking about detention—give them a prospect, but that's not happening now."¹⁰⁷ This was confirmed by a defence lawyer, who said: "In general, people deteriorate in the TA. The TA makes people worse. If they come out, they're damaged and angry. It only makes things worse."¹⁰⁸

A former detainee who was held at TA Vught for two and a half months between 2010 and 2011 said the unit had undermined his confidence in the Dutch rule of law: "It was totally unnecessary to treat us in that way."¹⁰⁹ He said he used to have a close relationship with the police but explained: "Now I don't have any confidence anymore in the police and justice system. I lost my open-mindedness in the TA. I used to be naïve and much more soft. But they took this away from me. That wasn't necessary if they had placed me in a normal prison."¹¹⁰ After the detainee had spent two and a half months in the TA, a court gave a positive ruling on an extradition request, based on a suspicion of membership in an international terrorist organization. At the time of writing, his case was still pending in the court of cassation.

Another former detainee held in pre-trial detention in the TA for almost half a year on charges of, amongst others, "attempting to join a terrorist organization" before he was provisionally released said he recognized the logic of separating individuals suspected of "radicalising" or recruiting other prisoners, but he questioned the necessity and effectiveness of the TA: "Why not place individuals suspected of terrorism in a normal regime? Isolating us from everyone and then in the heaviest regime of The Netherlands...then you're doing something very wrong.... This regime creates a division between us and them: we are together and they [the Dutch authorities] are the enemy."¹¹¹ Another former detainee recommended: "There should be a normal regime for guys who are not yet even put through the court that's humane. [The TA] is a regime that mentally breaks you. It makes you into a terrorist. You're being taught you are a terrorist because they're treating you as one."¹¹²

In an attempt to avoid some of the negative consequences that arose from the TA's system for automatic placement, some prosecutors have gone so far as to consider not charging someone with a terrorist offence, in order to avoid having a person placed in the TA.¹¹³ Another prosecutor asked for a person to be released pending trial because the selection officer refused to honour the prosecutor's advice to place the suspect in a psychiatric facility.¹¹⁴ Judges in a high-profile terrorism case, known as the "Context Case", also took account of the TA's harsh conditions.¹¹⁵ After being held for more than one year at the TA as a suspect awaiting trial, a detainee was granted conditional release by the court after taking into account, amongst other factors, the duration and restrictive measures in TA detention.¹¹⁶

106 Article 10(3) of the International Covenant on Civil and Political Rights (ICCPR): "The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation...."

107 Interview with prosecutors of the National Prosecution, Rotterdam, 26 January 2017.

108 Interview with Michiel Pestman, criminal defence lawyer, Amsterdam, 30 January 2017.

109 Interview with E., 3 January 2017.

110 Interview with E., 3 January 2017.

111 Interview with L., 1 February 2017.

112 Interview with T., in group interview with S. and Z., 24 May 2017.

113 Interview with prosecutors of the National Prosecution, Rotterdam, 26 January 2017.

114 Interview with Public Prosecutor and researcher of the Court of The Hague, The Hague, 27 January 2017.

115 Court of The Hague, 10 December 2015 [index number: ECLI:NL:RBDHA:2015:16102], and Court of The Hague, 21 April 2015 [index number: ECLI:NL:RBDHA:2015:4521].

116 Court of The Hague, 5 October 2015 [index number: ECLI:NL:RBDHA:2015:11473].

2.3 CHALLENGING PLACEMENT IN THE TA

“There were no mechanisms to take you away from the TA. It was a one-way-street.” – Former TA detainee¹¹⁷

Dutch domestic law does not afford TA detainees effective means to challenge their initial placement in the TA. It is also extremely difficult to be transferred to another facility. As a result, most of the former detainees interviewed languished under harsh conditions for the full period of their detention in the TA without ever being assessed as to whether they posed a security risk and whether their placement in the TA was necessary and proportionate, and without being able to effectively challenge the automatic nature of placement in the TA. While it is true that the law provides suspects the opportunity to challenge pre-trial detention before a judge,¹¹⁸ a judge’s ruling on this issue is not based on an evaluation of whether placement in the TA is necessary and proportionate. The judge decides only whether a person should be held on remand; not *where* a person should be held on remand.¹¹⁹ As of May 2017, the average length of time a person had been detained in the TA was approximately five and a half months.¹²⁰

CHALLENGING INITIAL TA PLACEMENT

Detainees are, in principle, allowed to file a complaint and appeal against their initial placement in the TA. This is, however, an entirely ineffective remedy. As a pro forma matter, the first place a detainee could file a complaint is with the selection officer who authorized their placement. But two selection officers recounted that they could not “recall ever changing our placement decisions.”¹²¹ As one defence lawyer explained, this complaint process lacks independence because “the selection officer who decides on the placement is also the same officer who decides on the complaint.”¹²²

A detainee can then appeal to the Council for the Administration of Criminal Justice and Protection of Juveniles (*De Raad voor Strafrechtstoepassing en Jeugdbescherming*, RSJ) which is the highest court of appeal for TA placement complaints and which hands down binding judgments. But such appeals have also been ineffective. A selection officer with one and a half years of experience working on the TA said: “I haven’t seen an RSJ case overturning a TA placement decision.”¹²³ The RSJ’s appeal committee’s role is to rule on whether the selection officer’s placement decisions were fair, reasonable, and based in law.¹²⁴ 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.¹²⁵ Thus, the RSJ appeal has not proven effective in practice, especially for pre-trial detainees attempting to preserve their presumption of innocence by challenging their placement in the harsh and punitive regime of the TA along with persons convicted of terrorist offences.¹²⁶

TRANSFERS TO OTHER FACILITIES

Once placed in the TA, people suspected and convicted of terrorist offences also have no way to effectively challenge their ongoing placement there. Despite one selection officer claiming it is “common for people to be transferred out of the TA”,¹²⁷ and one GRIP officer suggesting that there might be more transfers in the future due to forthcoming reforms,¹²⁸ most of the former detainees interviewed—both those suspected and those convicted of terrorist offences—were held under the TA’s harsh regime for the full period of their detention. One former detainee explained: “They never thought about taking people away from there.... They had no plan [for] what to do with people who were nearing the end of their sentences. There was no transitional phase.”¹²⁹

117 Interview with H., 24 January 2017.

118 Article 71 of the Dutch Criminal Procedural Code.

119 Court of The Hague, 10 December 2015 [index number: ECLI:NL:RBDHA:2015:16102].

120 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.

121 Interview with the selection officers of the DJI, The Hague, 5 April 2017.

122 Interview with criminal defence lawyer, name and location withheld, 4 April 2017.

123 Interview with the selection officers of the DJI, The Hague, 5 April 2017.

124 Interview with members of the RSJ (speaking in their personal capacity), The Hague, 27 January 2017.

125 See, for example, decision RSJ 06/3261/GB, 27 March 2007 and 15/2449/GB, 19 November 2015 and 15/2596/GB, 19 November 2015.

126 See, for example, RSJ decision 15/2596/GB, 19 November 2015.

127 Interview with the selection officers of the DJI, 5 April 2017.

128 Interview with GRIP officers, Zoetermeer, 5 April 2017.

129 Interview with H., 24 January 2017.

Authorities responsible for the operation of the TA do not conduct periodic reviews to determine whether it is necessary for a person to remain in the TA.¹³⁰ This is in contrast to the periodic six-month placement reviews for EBI detainees.¹³¹ When the CPT criticized 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.¹³² The law provides only one category of TA detainees a periodic review after 12 months:¹³³ detainees transferred to the TA after being assessed and suspected of spreading “radicalising” messages and recruiting in an ordinary detention facility.¹³⁴ Extension decisions can be appealed to the selection officer and the RSJ. According to officials interviewed for this report, at the time of writing there were few detainees in the TA who fell into this category and, in practice, no such periodic reviews had taken place.¹³⁵

TA detainees also have a right to make a transfer request to the selection officer every six months.¹³⁶ 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 review the strict necessity of continued placement or to hear the detainee prior to giving a response.¹³⁷ Instead, it is the selection officer who ultimately decides whether to approve the transfer request, in consultation with a monthly interdisciplinary consultation body (*Multidisciplinair overleg-TA*, MDO-TA).¹³⁸ This body was established after an independent review of the TA in 2011 and consists of TA prison directors, a selection officer, a parole officer, the Public Prosecutor’s office, the GRIP, and the National Coordinator for Security and Counterterrorism.¹³⁹ TA detainees thus retain the right to make a transfer request, understanding that in practice, it is most unlikely to be granted.

In the rare cases when detainees have been approved for transfer out of the TA it was when a selection officer had determined that a detainee had somehow become “de-radicalised”.¹⁴⁰ Transfer requests from the prison director or another member of the MDO-TA had also been granted in exceptional cases when a detainee required a kind of specialized medical care that could only be offered in a different penitentiary institution.¹⁴¹ In a few cases that were appealed to the RSJ, the RSJ also stated that in very exceptional circumstances the psychological state of a detainee could make a placement or continued stay in the TA undesirable unless special care was taken to prevent social isolation, but even then the RSJ did not always rule placement decisions unreasonable or unfair.¹⁴² In practice, once a judge determines a detainee should be held in pre-trial detention, most TA detainees do not leave the TA unless their

130 Such a periodic review had been announced by then State Secretary for Security and Justice in response to the recommendations of an independent evaluation of the TA: *Terroristen in detentie; evaluatie van de Terroristenafdeling* (*Terrorists in detention: evaluation of the terrorism wing*), 1 April 2011 (index number: 5685748/11/DSP)). Then, in 2014, an internal, non-published policy memo was produced that provided for a six-months TA placement periodic review. [Shared with Amnesty International and the Open Society Justice Initiative]. However, in practice such reviews have never taken place. The reason given was that the period of detention for most detainees held at that time never exceeded six months. (Email correspondence between selection officer and Amnesty International, 3 May 2017.)

131 Article 26(4) of the Regulation.

132 CPT, *Response of 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*, 4 February 2009, p. 14 (hereinafter *Response of the Netherlands to Country Report*, 2009).

133 Article 26b of the Regulation states that a “selection officer takes a decision on the extension of the stay in a Terrorist Division on detainees as defined in art. 20a under c every twelve months”.

134 Under Article 20a, sub c of the Regulation a selection officer can also transfer a detainee into the TA if that detainee is found to be spreading a message of “radicalisation”, including recruiting, among other inmates in normal prisons. The selection officer performs an individualized assessment for determining whether this person should be transferred to the TA. Interview with selection officers of the DJI, The Hague, 5 April 2017.

135 Interview with the selection officers of the DJI, The Hague, 5 April 2017; interview with GRIP officers, Zoetermeer, 5 April 2017.

136 Articles 18(1) and (4) of the Penitentiary Principles Act; house rules, TA De Schie and TA Vught, para.11.1. Detainees can file a complaint against a rejection of their transfer request to the selection officer within seven days of the decision. The selection officer must respond within six weeks with a reasoned decision. Article 17 of the Penitentiary Principles Act; house rules, TA De Schie and TA Vught, para.11.2.

137 Article 26(3) of the Regulation.

138 Interview with selection officers of the DJI, The Hague, 5 April 2017; interview with GRIP officers, Zoetermeer, 5 April 2017.

139 GRIP officers interviewed also said that a prison’s mental health care specialist may attend the *Multidisciplinair overleg-Terroristenafdeling* (MDO-TA) meetings. Interview with GRIP officers, Zoetermeer, 5 April 2017; email correspondence with selection officer, 21 September 2017. The MDO-TA is a specialized type of *Multidisciplinair overleg* (MDO) made specifically for the TA. The more generalized MDOs are also multidisciplinary bodies made up of a similar composition of officials that meet to provide advice to prison directors.

140 Interview with GRIP officers, Zoetermeer, 5 April 2017. Another example given was the transfer of members of the Tamil Tigers, who were moved to the TA for approximately a month in 2010 for terrorist-related charges before being transferred back to a regular remand centre. It was deemed unlikely that in normal prisons they could recruit others for their armed fight against the state in Sri Lanka.

141 Interview with selection officers of the DJI, The Hague, 5 April 2017.

142 See RSJ decision 06/2595/GB, 31 August 2007 (complaint unfounded) and RSJ decision 12/1289/GB, 17 August 2012 (complaint founded).

charges are dropped; they are conditionally released, acquitted, or extradited; or their sentence is fully served. Detainees serving lifetime sentences could stay until death within the TA.¹⁴³

Transfer opportunities for TA detainees are limited in other ways. 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 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.¹⁴⁴ But even when these conditions are met, such transfers to a normal or less-secured division are prohibited if the person is detained pending extradition, there is a heightened societal risk in case of an escape from prison, or there are indications that the detainee has been spreading “radical” messages or engaging in recruitment during the final year of their TA detention.¹⁴⁵ A detainee can appeal to the RSJ to challenge rejections of their transfer requests by the selection officer, but the criteria for assessing “radicalisation” risks had not been made public at the time of writing. In one case before the RSJ, selection officers appeared to base their assessment on the VERA-2R risk assessment tool. In that case, the selection officer denied the transfer request after making such an assessment and also concluded that the detainee posed a heightened risk of societal unrest if transferred to a less-restrictive facility based on the advice of the prosecution and prison authorities. The detainee explained to the RSJ that he was not made aware of the results of the risk assessment and had not spoken to anyone before being assessed.¹⁴⁶

2.4 INTERNATIONAL HUMAN RIGHTS LAW AND STANDARDS

International human rights standards permit states to subject detainees to restrictive security measures only in exceptional circumstances¹⁴⁷ and only in a necessary and proportionate manner that is based on an individual risk assessment of each detainee.¹⁴⁸ The European Court of Human Rights has held that such an assessment must take into account each detainee’s actual behaviour.¹⁴⁹ Contrary to its obligations under international law, Dutch authorities are failing to conduct such individual assessments to ensure that a person’s placement in the TA under a restrictive regime of high-security measures is necessary and proportionate.

The CPT has raised similar concerns. The CPT has criticized the Dutch government for automatically placing people charged with or convicted of a terrorist offence into the TA. In its 2007 report, the CPT took the “firm view that placement of a prisoner in a department with a high-security regime should be based on a comprehensive individual risk assessment, and should not be an automatic result of the type of sentence imposed”.¹⁵⁰ The CPT again expressed concern in 2017 that “Despite the CPT’s previous recommendation, no comprehensive individual risk assessment was carried out before the initial placement.”¹⁵¹ The DJI¹⁵² and the RSJ¹⁵³ have similarly recommended that placement decisions should

143 The TA holds one detainee who has been convicted to a life sentence. In The Netherlands, a life sentence means lifetime imprisonment unless the Monarch grants a request for pardon. The European Court of Human Rights has ruled against The Netherlands for imposing a life sentence without providing any realistic prospect of release and a possibility of review, which the Court considered inhuman. *Murray v. The Netherlands* (10511/10), European Court of Human Rights (2017).

144 Article 26a, sub a, b, and c of the Regulation. The law states that the detainee must have been finally convicted after exhausting all stages of appeal, and that a minimum of four months must be left of their sentence. However, in a recent case the RSJ decided that in principle the law does not impede on the ability of a TA detainee to be transferred to another facility with access to reintegration and rehabilitation services when the detainee has not been finally convicted, in this particular case due to a pending appeal case scheduled at a date later than the four-month criteria. This decision is binding for future decisions of the selection officer in replacement requests. RSJ decision 16/2766/GB, 1 December 2016.

145 Article 26a of the Regulation.

146 See RSJ decision 16/2766/GB, 1 December 2016.

147 Rule 53 of Recommendation Rec(2006)2 of the Committee of Ministers of the Council of Europe to Member States on the European Prison Rules (adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers’ Deputies) (hereinafter European Prison Rules).

148 For example, the European Prison Rules explain that “restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed” and that “security measures applied to individual prisoners shall be the minimum necessary to achieve their secure custody”. Rules 3 and 51.1 of the European Prison Rules.

149 *Horych v. Poland* (13621/08), European Court of Human Rights (2012), para. 93.

150 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. For the government’s justification see CPT, *Response of the Netherlands to Country Report*, 2009, p. 14.

151 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.

152 For a history of the origin of the TA see T. Veldhuis et al., *Terroristen in detentie: evaluatie van de Terroristenafdeling (Terrorists in detention: evaluation of the terrorism department)*, WODC research centre, 2011.

153 RSJ, *Advies over de bijzondere opvang voor terroristen (Advice on special detention for terrorists)*, 25 September 2006.

be based on individual risk assessments. The government has nonetheless made it clear that the TA's placement criteria will not change.¹⁵⁴

It is also contrary to international human rights law for The Netherlands to hold pre-trial detainees and those convicted of offences together. Everyone has the right to be presumed and treated as innocent unless and until convicted according to law in the course of proceedings that meet at least the minimum prescribed requirements of fairness.¹⁵⁵ The presumption of innocence is a non-derogable rule of human rights law that must always be respected.¹⁵⁶ One way international human rights law protects the presumption of innocence is by requiring that all "accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons".¹⁵⁷ Moreover, detainees should be subjected only to such restrictions as are necessary and proportionate for the investigation or the administration of justice in the case and the security of the institution.¹⁵⁸

Automatic placement in the TA with virtually no possibility to effectively challenge initial placement or to secure a transfer out of the TA undermines the presumption of innocence for unconvicted detainees held in the TA. As the research indicates, selection officers routinely automatically place suspects into a regime that publicly stigmatizes them with the label "terrorist" and treats them identically to people convicted of terrorist offences. Law enforcement authorities explained that the failure to properly separate detainees at the TA was largely due to limited resources, saying that the TA's small detainee population would "require extra facilities to split them up".¹⁵⁹ The European Prison Rules make clear, however, that "prison conditions that infringe prisoners' human rights are not justified by lack of resources".¹⁶⁰

The Netherlands is also failing in its obligations to provide an effective remedy to detainees who seek to challenge their placement in the TA.¹⁶¹ The right to an effective remedy is a fundamental and non-derogable part of international human rights law.¹⁶² The European Prison Rules and the Council of Europe's Guidelines for Prison and Probation Services regarding Radicalisation and Violent Extremism specifically instruct states to ensure that detainees have a right to complain and appeal to an independent body against special security measures, including being placed in high-security prisons or sections of prisons.¹⁶³

Although detainees have access to complaint and appeal procedures that technically would allow them to challenge their initial placement in the TA, these procedures have proven to be perfunctory and thus ineffective. The same is true for transfer requests, which have been denied by selection officers, who enjoy a great deal of discretion in such determinations. The complaint mechanisms provide only a pro forma review of the placement and transfer claims, assessing merely whether the selection officer followed domestic law, rather than rigorously assessing whether the TA's automatic placement system violated broader principles of international human rights law and standards. As this report demonstrates, such a broader legal evaluation is required to ensure that The Netherlands is in compliance with its legally binding international human rights obligations.

Moreover, the lack of a periodic review process to ensure that a detainee's continued placement in the TA is necessary and proportionate indicates an additional human rights shortcoming in the TA system. The European Prison Rules and the Council of Europe's Guidelines for Prison and Probation Services regarding Radicalisation and Violent Extremism provide clear instructions that high-security measures cannot be imposed indefinitely¹⁶⁴ and that the level of security imposed must be reviewed at regular intervals throughout a person's detention.¹⁶⁵ The Council's guidelines specifically require authorities to conduct

154 CPT, *Response of the Netherlands to Country Report*, 2017, p. 17.

155 Article 11 of the Universal Declaration of Human Rights, Article 14(2) of the ICCPR, Article 6(2) of the European Convention on Human Rights, Principle 36(1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

156 UN Human Rights Committee General Comment 32. (The UN Human Rights Committee is a body of independent experts established under the ICCPR for monitoring states' compliance with its provisions.)

157 Article 10(2)(a) of the ICCPR; Rules 11(b) and 111-120 of the Mandela Rules.

158 *Laduna v. Slovakia* (31827/02), European Court of Human Rights (2011) paras 59-74.

159 Interview with prosecutors of the National Prosecution, Rotterdam, 26 January 2017. See also explanation of the government in the memorandum of understanding of the Dutch Penitentiary Principles Act, TK 24 263, No. 3, 11 August 1995.

160 Rule 4 of the European Prison Rules.

161 Articles 3 and 9(4) of the ICCPR; Articles 3(4) and 13 of the ECHR.

162 UN Human Rights Committee General Comment 29, para. 14.

163 Guideline 21 of the Council of Europe, Guidelines for Prison and Probation Services regarding Radicalisation and Violent Extremism, 2 March 2016 (hereinafter Prison Guidelines on Radicalisation and Violent Extremism); Rule 53.7 of the European Prison Rules.

164 Rule 53.4 of the European Prison Rules.

165 Rule 51.5 of the European Prison Rules.

reviews at regular intervals to evaluate the risk prisoners pose.¹⁶⁶ In 2007, the CPT criticized authorities for failing to review how long each detainee needed to stay in the TA: “Detainees should only be held in special high-security units such as terrorist departments for as long as they are deemed to pose a particular risk. Therefore, placement in the departments should be subject to review at regular intervals.”¹⁶⁷ This criticism remains relevant at the time of writing regarding people suspected and convicted of terrorism offences, who are automatically assigned to the TA based solely on the category of their offence.

166 Guideline 20 of the Prison Guidelines on Radicalisation and Violent Extremism. The guidelines’ rules generally apply equally to tried and untried prisoners: “Prisoners, including pre-trial detainees, as well as probationers and conditionally released offenders are the primary subjects of the interventions recommended.” Technically, however, Guideline 20 applies only to those “sentenced.” Article 20: “Regardless of whether prisoners sentenced for terrorist-related crimes are kept in separate prisons or wings or are dispersed across the prison system, the risk they may pose, including the risk of radicalising other prisoners, shall be evaluated individually before their allocation is defined and shall be reviewed at regular intervals.”

167 CPT, *Netherlands Country Report*, 2008, para. 42.

3. EXCESSIVE RESTRICTIVE CONFINEMENT

“If you’re in the TA, you are socially dead. Your contact with the outside world is very limited. It is very extreme. It is like being on another planet, a parallel world.” – Former TA detainee¹⁶⁸

The TA confines detainees in their cells alone for extensive periods of time each day throughout the entirety of their stay. In most cases documented, people said they were held in their cells for periods that varied between 19 and 22 hours per day, with limited physical and social contact in the short time they had out of their cell. The first weeks in the TA were particularly isolating, according to several former detainees, because of a lengthy screening process that caused a delay in detainees being able to meet and call family members. Additionally, at least three former detainees experienced a particularly severe form of restrictive confinement that amounted to prolonged solitary confinement, because they were held in the TA for 22 hours per day or more alone without any, or very little, contact with other detainees and had very limited contact with the outside world for months at a time. Some former detainees described how authorities were willing to relax some of these extreme measures, but this happened on a discretionary basis. Moreover, authorities never made individualized assessments to determine if the routine use of severe confinement measures was necessary or proportionate and there were no effective ways for people to challenge these measures.

When detainees are isolated in their cells for such lengthy periods of time and their human contact with people outside their cells is so severely restricted, international human rights standards require authorities to assess if such restrictive measures are necessary and proportionate prior to applying them. International human rights standards place ever-heavier limitations on the use of “solitary confinement”, which is defined as imprisonment alone for 22 hours or longer a day without meaningful human contact. When those conditions last for 15 consecutive days or longer they constitute “prolonged solitary confinement”, which under international human rights standards is explicitly prohibited as violating the prohibition on torture and other cruel, inhuman or degrading treatment or punishment.¹⁶⁹ These legal issues are discussed in more detail below.

In addition to the TA’s routine use of restrictive confinement, Dutch law permits prison authorities to place detainees in isolation as a disciplinary sanction or a measure to ensure and/or maintain institutional security. As this report focuses primarily on the TA’s use of *routine* security measures, save for one notable case this report does not focus in depth on the use of isolation as a disciplinary or security, or “order”, measure.

3.1 IN-CELL CONFINEMENT

The TA is a unit where people are subjected to severely restrictive confinement rules from the beginning to the end of their detention. Many of the former detainees interviewed for this report said they were held in their cells between 19 and 22 hours per day, depending on the day. The number of hours detainees were held alone in a cell differed largely because different TA directors used their discretion to manage their detainee population. Dutch law allows TA prison authorities to hold detainees in their cells for as

168 Interview with H., 24 January 2017.

169 Rules 43 and 44 of the Mandela Rules.

many as 150 out of 168 hours per week, which averages to just under 21.5 hours a day.¹⁷⁰ Based on these rules, the exact number of hours a detainee is allowed out of their cell can therefore vary during any given day or week.¹⁷¹ People in the TA languish under these conditions for prolonged periods of time due to the limited opportunities detainees have to transfer out of the TA.

A man who was held in TA Vught for five years beginning in 2006 explained the impact that the TA had on him: “If you’re in the TA, you are socially dead. Your contact with the outside world is very limited. It is very extreme. It is like being on another planet, a parallel world. The world is moving on as if you had never existed...the world doesn’t care if you exist or not.”¹⁷² Another former TA detainee released in 2017 after being acquitted of all terrorist charges explained: “The amount of hours inside your cell, the seclusion, the restricted contact you can have with only two or three other detainees. That, and that everything is being controlled.... I would not wish that on anyone.”¹⁷³

Several former detainees recently released from TA Vught described being held for up to 22 hours a day in their cells.¹⁷⁴ One man who was held in pre-trial detention in TA Vught during 2016 said: “When I was brought to my cell, it was extremely lonely.”¹⁷⁵ He explained that the only thing he could see from his window was another wall.¹⁷⁶ He described TA Vught as “very depressing. I really became depressed in the two weeks I was there. It was an extremely bothersome experience.”¹⁷⁷ A former detainee who was held in the TA in its early years even reported being held up to 23 hours in his cell as part of the TA’s routine confinement procedures. This man, who was placed in TA Vught’s old building soon after it was opened in 2006, said: “It was hard at Vught.... We were in our cells 22 to 23 hours a day.”¹⁷⁸ Another interviewee held in Vught for two and a half months from the latter part of 2010 to early 2011 also said he spent on average 22 hours a day in his cell and was allowed only very limited social contact with other detainees: “That was isolation. It was extremely heavy. I had never seen a prison before and then immediately I was placed in the harshest regime.... For me that was extremely heavy.”¹⁷⁹

The situation in TA De Schie was similar. A man detained there in 2015 for two months described being held under a regime that confined him to his cell for 19.5 to 22 hours per day.¹⁸⁰ Two men interviewed, who had been released in 2017 from TA De Schie, agreed with this former TA detainee when he explained: “You’re placed in a basic regime. This means that you get one hour per day to take air, one hour to recreate, and it depends on whether there’s also sports. Two times per week we had sport activities for 45 minutes. In that case you had three hours [per day] outside your cell. Only on the weekends we sometimes had more recreation hours, between one and a half or two hours. For the rest of the time you’re in your cell.”¹⁸¹ The TA De Schie Director said: “In total, they have about 22 and one half hours weekly outside their cells.”¹⁸² This equated to just under 21 hours of cell time each day on average.

A man held in TA De Schie in 2016 and 2017 who was eventually acquitted spent nearly three months in conditions of severely restricted confinement by being placed for up to 22 hours a day in a cell alone. He said: “In the beginning I thought it was not that bad, but after a while it turned out to be a very harsh regime with only two or three hours of out-of-cell time”.¹⁸³ Another former pre-trial detainee, whose case was eventually also dropped by the prosecution, said that the first two days of his detention in 2014 were under additional restrictions imposed by the prosecutor,¹⁸⁴ which made the TA’s routine restriction feel

170 Article 21 of the Penitentiary Principles Act allows detainees to participate in activities with other detainees in so-called “regimes with restrictions on communal activities”. Article 3, sub 3 of the Penitentiary Measure allows detainees between 18 and 63 hours per week to engage in activities and visits in “regimes with restrictions on communal activities”. Over time, the TA has developed into such a regime, allowing detainees to participate in communal activities; but participation in those communal activities remains a privilege, not a right (see fn. 40 and fn. 201).

171 House rules, TA De Schie and TA Vught, para. 2.3.

172 Interview with H., 24 January 2017.

173 Interview with R., 1 June 2017.

174 Interview with I., 3 April 2017; interview with Z., in group interview with S. and T., 24 May 2017; interview with N., 31 January 2017; interview with K., 23 January 2017.

175 Interview with K., 23 January 2017.

176 Interview with K., 23 January 2017.

177 Interview with K., 23 January 2017.

178 Interview with A., 5 December 2016.

179 Interview with E., 3 January 2017.

180 Interview with P., 6 April 2017.

181 Interview with P., 6 April 2017; interview with S., in group interview with T. and Z., 24 May 2017; interview with K., 23 January 2017; interview with E., 3 January 2017.

182 Interview with Rob Janssen, Director of TA De Schie, Rotterdam, 5 April 2017.

183 Interview with R., 1 June 2017.

184 Prosecutors also could impose various temporary restrictions on detainees when they are first arrested, such as limiting contact with other detainees, receiving visits, or otherwise having access to the outside world. In practice, the terms of those extra restrictions varied from a couple of days to a few weeks, increasing the sense of isolation that TA detainees experienced.

even harsher. As a result of these double restrictions: “I was in my cell for 23 hours, except for the time for sports or recreation. But that hour passes extremely fast. You cannot do anything. You are constantly pre-occupied with yourself, especially if you are still placed under restrictions. The only thing you can do is pray. It is like a prison in a prison.”¹⁸⁵

Former 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. Aside from the muffled voices that could barely be heard through the metal doors, a former detainee released in 2015 vividly remembered how silent it was in his cell at TA Vught: “You could only hear the sound of the fan all day that suddenly stopped in the evening. It was really very isolating.”¹⁸⁶ 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 (see below).¹⁸⁷

Although former detainees interviewed provided different descriptions of their cells based on which facility they were held in and when they were held there, according to their accounts cells were generally furnished with a bed, sink, toilet, closet, desk, alarm, and lamp light.¹⁸⁸ Some former detainees in De Schie also mentioned a microwave or a fridge.¹⁸⁹ The cells were described as being around 12 square meters, sometimes including a shower, although this was not standard in De Schie according to several former detainees.¹⁹⁰ Although there always was 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.¹⁹¹ As one former detainee held in De Schie explained: “We saw very little daylight, one hour per day, because the window makes it very dark. You can look outside but you don’t see the light that you need.”¹⁹² Detainees are allowed to rent a television for use inside their cells and can request books from a library.

3.2 LIMITATIONS ON MEANINGFUL HUMAN CONTACT

The isolation that characterizes the TA includes restrictions, both in terms of the amount and in terms of the quality of social interaction and psychological stimulation, on detainees’ contact with outside visitors, including family members, and on detainees’ communal, recreational, and physical exercise activities. The cumulative effect of these restrictions can place significant limitations on the meaningful human contact detainees have with others from outside the TA and with other detainees.

Former 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.¹⁹³ One former detainee who was at TA Vught for two and a half months in 2010 said that he could not call his family or receive visits from them until his eighth week at the TA due to this lengthy screening process. This meant that for two months he was not only confined to his individual cell for around 22 hours per day but also prohibited from contacting and seeing outsiders other than his lawyer.¹⁹⁴ Similar screening procedures applied to phone calls, which were allowed only two or three times per week for 10 minutes each with someone other than a lawyer.¹⁹⁵

After this screening period, former detainees reported that on average they were allowed to meet with outside visitors only once a week for one hour and had to divide their brief calling time among different relatives. Some detainees said that this was not enough time to maintain meaningful intimate

185 Interview with G., 11 January 2017.

186 Interview with K., 23 January 2017

187 Interview with L., 1 February 2017.

188 For instance, interview with N., 31 January 2017; interview with F., 4 January 2017.

189 Interview with R., 1 June 2017; group interview with S., T., and Z., 24 May 2017.

190 Interview with K., 23 January 2017; group interview with S., T., and Z., 24 May 2017.

191 Interview with K., 23 January 2017.

192 Group interview with S., T., and Z., 24 May 2017.

193 House rules, TA De Schie and TA Vught, para. 3.8: in principle, screening procedures should take up to two weeks for a person based in The Netherlands but for people not based in The Netherlands they can take up to two months. House rules allow for a slower process when a detainee lists someone who has already been on another detainee’s list.

194 Interview with E., 3 January 2016.

195 Interview with B., 9 December 2016. At times some detainees were allowed four calls in TA De Schie. Prisoners living under a regular regime were allowed to call whenever they were outside their cells and to receive visits one hour per week. As for lawyer contact, the house rules differed between TA Vught and TA De Schie. The rule in para. 3.9.2 at TA Vught allowed for one call for 10 minutes per week; at TA De Schie the rules in para. 3.9.2 allowed for calls “if necessary and possible”.

relations.¹⁹⁶ 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.”¹⁹⁷ Moreover, all visits and phone calls in the TA are monitored and sometimes recorded, which inhibit some from speaking freely,¹⁹⁸ and physical contact is restricted to a handshake.

The TA’s strict security measures significantly contribute to a deep sense of isolation in other ways. Many former detainees said they refused to meet with their relatives in person to avoid undergoing humiliating and invasive body searches.¹⁹⁹ When detainees did this they were only allowed to see visitors from behind a glass wall,²⁰⁰ which did not allow for any physical contact, which made the isolation even worse.

Additionally, 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.²⁰¹ 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 offers very few stimulating educational and work opportunities with other detainees. Moreover, the house rules do not set out a minimum duration of the daily communal activities program.²⁰² Prison authorities can, on a daily basis, decide to restrict individual detainees from interacting with each other if and insofar as they deem this necessary. 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. But former 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.²⁰³ 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.²⁰⁴

3.3 SOLITARY CONFINEMENT

Some cases documented for this report involved detainees, including people who were awaiting trial, who had been held in the TA alone, without any other detainees present at that time. This resulted in a particularly severe form of isolation. 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. This happened as a result of other female detainees held in the same TA unit having been removed, so this woman was left on her own, separated from the male detainees. She explained that on average she spent 22 hours a day alone in her cell but, she said, when she left her cell during these weeks “you’re all by yourself.... You can yell at other detainees [while taking fresh air] but you can’t see each other.... You don’t see anything, no birds, nothing, only the cameras of course. And there is an office with guards watching you. You only walk back and forth.”²⁰⁵

Another interviewee said that for approximately six months he would usually spend 23 hours a day by himself in TA De Schie. He said that this six-month period started at the end of 2011, when the only other detainee at TA De Schie was transferred to Vught. “I was alone for a long time.... There was just nobody else to place with me”, he said. For 22 hours a day he was in his cell alone. He spent his one hour of recreation time outside of his cell, but he was also alone during this time. The remaining hour of the day, he said, he spent in an outside yard that he shared with detainees from a different high-security prison. The only other meaningful outside human contact he said he had was during his family visits that took place once a week, his psychiatrist visits, which also took place once a week, and his meetings

196 Interview with F., 4 January 2017; interview with K., 23 January 2017.

197 Interview with F., 4 January 2017.

198 See Excessive Monitoring and Surveillance, below.

199 See Invasive Body Searches and Respect for Human Dignity and other Rights, below.

200 House rules, TA De Schie and TA Vught, para. 3.8.1.

201 Article 22, sub 2 of the Penitentiary Principles Act; house rules, TA De Schie and TA Vught, para. 2.1.

202 The director, who received advice from the GRIP on these issues, controlled the group dynamics within the prison with the aim of impeding further “radicalisation”, recruitment, and group bonding. Article 22, sub 2 of the Penitentiary Principles Act and related explanatory memorandum. See also Veldhuis et al., pp. 54-55.

203 Interview with P., 6 April 2017; group interview with S., T., and Z., 24 May 2017; interview with K., 23 January 2017; interview with E., 3 January 2017.

204 House rules, TA De Schie and TA Vught, para. 2.1.

205 Interview with N., 31 January 2017.

with his lawyer. He brought a complaint to the RSJ for being held in these isolating conditions and won, but this did not appear to solve the problem. Late in 2012, he said, he was once again held at the TA without other detainees for two additional months.²⁰⁶

On at least one occasion, authorities placed a man in a single cell for 23 hours a day and did not allow him contact with any other detainees. He was in these conditions for a period of almost two and a half months as an “order measure” to protect him from other TA detainees who, authorities said, posed a threat to the man. 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.²⁰⁷ In this case, the director imposed and extended the isolation despite the option to send this person to other prison facilities in The Netherlands that did not hold people who posed the same risks to his security. If such a transfer had taken place, authorities would not have had to impose isolation as an order measure. His defence lawyer explained: “He was separated from all others. He stayed in his cell for 23 hours per day.” He added that even while his client was in the outer yard with other detainees he was physically separated from them and could not see them. The only contact he had, the lawyer said, was by speaking to the other detainees, without being able to see them, for his limited time in the yard.²⁰⁸ The lawyer said that every two weeks he filed a complaint against the prison director’s decision to extend the order measure, but to no avail. After two and a half months of this isolation, his client was suddenly transferred to a special care unit with little prior notice. His lawyer explained how the solitary confinement had a negative impact on the health of his client, especially during his first weeks at the TA: “At that time, my client had a very difficult time. The first four to six weeks he had no contact with anyone. The screening took so long. There was no contact with the outside world apart from me. He said that he had such a hard time the first weeks he was there that he was contemplating suicide.”²⁰⁹

3.4 DISCRETIONARY IMPROVEMENTS AND POLICY REFORMS

Several former detainees recently released from TA Vught described situations in which prison authorities reduced the intensity of the restrictive confinement by allowing detainees to spend a little more time outside of their cells with other detainees.²¹⁰ One former TA Vught detainee noticed a change in 2015: “We had a weekly schedule. Most of the days it was 22 hours [in your cell]...then you had two days of 21 hours inside the cell. After a while, they changed the schedule. The judges said they wanted to come and look how the TA was. [The prison authorities] gave us some more time to go out of the cell...19.5 hours in the cell. Never more than that.”²¹¹ The same was the case in TA De Schie. Three men released from De Schie in 2017 had noticed a change in the weekly schedule in 2015, when in-cell time on certain days was reduced from 22 hours to 19.5 hours a day. One of them explained that since early 2016 the prison management had introduced a “disengagement” program available for certain groups of detainees and if detainees consented to participate in the program they received extra time out of the cell for recreation and sport. He explained: “Suddenly, after many years of complaints, procedures, and requests which were consistently answered with ‘no, not possible’, we were suddenly allowed more hours.”²¹² This former detainee, like others,²¹³ emphasized that the improvements were based on privileges rather than on rights: “It looked like a favour. It was not a fixed policy on which we could base our demands.”²¹⁴ Additionally, the Dutch government has

206 Interview with C., 7 December 2016; interview with C., 1 September 2016; email correspondence with C., 23 September 2017; and telephone correspondence with C., 25 September 2017.

207 Putting a detainee in isolation as an order measure is possible when, first, it is in the interest of maintaining the order and security in the prison or to ensure that the prison term can be executed without disturbances; second, in light of the seriousness of the behaviour of the detainee; third, in light of the mental and physical condition of the detainee; and fourth, at the detainee’s request and when the director considers this request reasonable and executable. The director can also decide to observe the prisoner 24 hours with camera monitoring for mental or physical health objectives. Articles 5 sub 2-3, 24, and 34a sub1 of the Penitentiary Principles Act; house rules, TA De Schie and TA Vught, paras 7.1 and 7.3; ‘Regeling straf- en afzonderingcel Penitentiare Instellingen’ (‘Directive Punitive and Separation Cell Penitentiary Institutions’), *Staatscourant* 1999, no. 132.

208 Interview and email correspondence with criminal defence lawyer, name withheld, 4 April 2017 and 2 August 2017, respectively.

209 Interview with criminal defence lawyer, name withheld, 4 April 2017.

210 Interview with L., 1 February 2017; interview with O., 4 April 2017.

211 Interview with O., 4 April 2017.

212 Group interview with S., T., and Z., 24 May 2017.

213 Interview with L., 1 February 2017; interview with F., 4 January 2017.

214 Interview with P., 6 April 2017; group interview with S., T., and Z., 24 May 2017; interview with K., 23 January 2017; interview with E., 3 January 2017.

indicated its plan for conducting VERA-2R risk assessments of people held inside the TA that could result in detainees having “more time outside their cells” to engage in “meaningful activities that are appropriate for the person’s risk profile.”²¹⁵

The findings of this report underline that as authorities consider these and other TA reforms they must recognize that restrictive confinement should be used only when it is demonstrably necessary as a security measure and is proportionate, in particular in view of its potential harmful impact on the individuals subjected to it. Moreover, the authorities can subject detainees to conditions that amount to solitary confinement only in exceptional circumstances, and it can never exceed 15 consecutive days.²¹⁶

3.5 DEFICIENT COMPLAINTS PROCESS

“Currently no options exist to complain against the regime. Here is a legal lacuna and there should be an effective access to a remedy.” – De Schie internal complaint committee member²¹⁷

TA detainees do not have an effective way of challenging their day-to-day restrictive confinement. Former detainees said they could file a complaint with internal complaint committees at Vught and De Schie and that they could appeal the committees’ decisions to the RSJ but, they said, these processes proved ineffective.

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.²¹⁸ The committees typically have ruled that such decisions had a legitimate legal basis in the Dutch Penitentiary Principles Act, and opined that the directors’ “hands were tied” by the TA rules.²¹⁹ According to an internal complaint committee member from De Schie, the committee does not normally assess possible conflicts between TA rules and international law unless one of the parties raises such a claim.²²⁰ 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.²²¹ 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.”²²² 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 institutional oversight function.²²³

Detainees can appeal the internal complaint committee’s decisions to the RSJ, which issues binding judgments.²²⁴ Nonetheless, appealing to the RSJ has been ineffective for detainees who wanted to challenge the number of hours they were forced to spend in their cells or the restrictions they faced for those few hours they were allowed outside their cells. Like the internal complaints committees, the RSJ has often failed to strike down actions that were within the purview of the director’s domestic legal authority. The RSJ’s appeal committee, like the internal complaint committee, usually does not automatically assess possible conflicts between TA rules and international law unless one of the parties raises such claims.²²⁵ A CPT member explained that the RSJ also often disregards international prison norms as “soft norms” that 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.”²²⁶ He said this was especially important for preventing detainee abuse.²²⁷

215 CPT, *Response of the Netherlands to Country Report*, 2017, p. 17.

216 See *International human rights law and standards*, in this section below.

217 Interview with members of the De Schie complaint committee, Rotterdam, 16 March 2016.

218 Interview with members of the De Schie complaint committee, Rotterdam, 16 March 2016; interview with members of the Vught complaint committee, Vught, 22 January 2017.

219 Interview with members of the Vught complaint committee, Vught, 22 January 2017.

220 Interview with members of the De Schie complaint committee, Rotterdam, 16 February 2016.

221 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. In addition to ordering the director to take a new decision, the complaint committee can also rule that its own decision replace the squashed decision (Article 68, sub 3b) and that it suffices to squash, partially or fully, the decision (Article 68, sub 3c).

222 Interview with members of the Vught complaint committee, Vught, 22 January 2017.

223 House rules, TA De Schie and TA Vught, paras 10.1 to 10.2; Articles 7 and 60 to 68 of the Penitentiary Principles Act; and Articles 11 to 20 of the Penitentiary Measure.

224 Article 69 of the Dutch Penitentiary Principles Act.

225 Interview with members of the RSJ (speaking in their personal capacity), The Hague, 27 January 2016.

226 Interview with Anton van Kalmthout, Professor of Tilburg University, Tilburg, 7 April 2017.

227 Interview with Anton van Kalmthout, Professor of Tilburg University, Tilburg, 7 April 2017.

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.”²²⁸ 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.”²²⁹ Some former 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.²³⁰ One former 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.

For the man who was held for two and a half months in solitary confinement, the TA’s automatic placement procedure also created insurmountable hurdles for him to challenge the “order measures” that placed him in those conditions. When the internal complaint committee addressed his complaints in an oral hearing after around two and a half months, the committee said the order measures were legitimate to protect the interest and safety of the detainee and because the director had no other options. When the man’s lawyer pointed out that the director could have addressed those concerns by transferring his client to another facility with other prisoners, where the isolation order measure would not have been necessary, the committee stated that adjudicating the placement decision was outside its mandate. This detainee’s lawyer said: “It’s a catch-22. People are placed in a unit that they can’t fight, because it’s an automatic TA placement. But if their safety at the TA can’t be guaranteed there, they can’t be placed somewhere else and the director can hide behind the Regulation.”²³¹

3.6 INTERNATIONAL HUMAN RIGHTS LAW AND STANDARDS

The TA’s routine use of severely restrictive confinement on many detainees and the lack of effective ways people have to challenge those conditions is contrary to international human rights law and standards.

Under international human rights standards, authorities may subject detainees to high-security measures such as severe restrictive confinement only in exceptional circumstances²³² and only in a necessary and proportionate manner based on an individualized risk assessment.²³³ International human rights standards place additional and stricter limitations on the use of solitary confinement, which is defined as the confinement of a person for 22 hours or more a day without meaningful human contact.²³⁴ According to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, under solitary confinement meaningful contact with other people is typically reduced to a minimum; there is both a quantitative and a qualitative reduction in stimuli; and the stimuli and the occasional social contacts that are available are seldom freely chosen, generally monotonous, and often not empathetic.²³⁵

Depending on the specific reason for its application, conditions, length, effects, and other circumstances, solitary confinement can constitute torture or other ill-treatment.²³⁶ Solitary confinement may be used only in exceptional circumstances as a disciplinary measure or as a last resort as an emergency measure to protect other detainees or prison staff. When used as an emergency measure solitary confinement can

228 Interview with L., 1 February 2017.

229 Interview with H., in group interview with W. and S., 24 May 2017; see also interview with P., 6 April 2017; interview with K., 23 January 2017; interview with E., 3 January 2017.

230 Interview with L., 1 February 2017; interview with I., 1 September 2016; group interview with S., T., and Z., 24 May 2017.

231 Interview with criminal defence lawyer, name withheld, 4 April 2017.

232 Rule 53.3 of the European Prison Rules.

233 For example, the European Prison Rules explain that “restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed” and that “security measures applied to individual prisoners shall be the minimum necessary to achieve their secure custody.” Rules 3 and 51.1 of the European Prison Rules. See also *Arbitrary and Automatic Placement in the TA: International human rights law and standards*, above.

234 Rule 44 of the Mandela Rules. See, similarly, Interim report to the General Assembly, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/66/268, para. 26. A group of experts that provided initial guidance on the interpretation and implementation of the Mandela Rules observed that the term “meaningful human contact” has been used to describe “the amount and quality of social interaction and psychological stimulation which human beings require for their mental health and well-being. Such interaction requires the human contact to be face to face and direct (without physical barriers) and more than fleeting or incidental, enabling empathetic interpersonal communication. Contact must not be limited to those interactions determined by prison routines, the course of (criminal) investigations or medical necessity’s Penal Reform International and Human Rights Centre Essex University, *Essex Paper 3: Initial guidance on the interpretation and implementation of the UN Nelson Mandela Rules* (2017), pp. 88-89.

235 Interim report to the General Assembly, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/66/268, para. 25.

236 Interim report to the General Assembly, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/66/268, para. 80; Rule 43 of the Mandela Rules.

be used only when no other measure can provide such protection and strictly for as long as is deemed absolutely necessary and for no longer than a few days.²³⁷ Solitary confinement must not be imposed indefinitely²³⁸ or by virtue of a prisoner's sentence.²³⁹ The Special Rapporteur on torture has also called for an end to the use of solitary confinement in pre-trial detention as a control measure to segregate individuals, protect ongoing investigations, and avoid detainee collusion.²⁴⁰ When solitary confinement is automatically applied against criminal suspects on the basis of the gravity of the imputed crime, the Special Rapporteur has also said that it contradicts the presumption of innocence.²⁴¹ Furthermore, the Special Rapporteur on torture has noted that the practice of solitary confinement is "contrary to one of the essential aims of the penitentiary system, which is to rehabilitate offenders and facilitate their reintegration into society"²⁴²

The UN Human Rights Committee, which is a body of independent experts established under the International Covenant on Civil and Political Rights (ICCPR) for monitoring states' compliance with its provisions, has noted that "solitary confinement is a harsh penalty with serious psychological consequences and is justifiable only in case of urgent need", and that use of solitary confinement other than in exceptional circumstances and for limited periods is inconsistent with the obligation to treat detainees humanely set out in Article 10(1) of the ICCPR.²⁴³

The negative impact that solitary confinement has on detainees is clear. The World Medical Association (WMA), comprised of 111 national medical associations, stated in 2014 that for a significant number of detainees "solitary confinement has been documented to cause serious psychological, psychiatric, and sometimes physiological effects, including insomnia, confusion, hallucinations and psychosis. Solitary confinement is also associated with a high rate of suicidal behaviour. Negative health effects can occur after only a few days, and may in some cases persist when isolation ends."²⁴⁴ Studies have also found that long after the release from solitary confinement, the isolation can lead to "continued sleep disturbances, depression, anxiety, phobias, emotional dependence, confusion, impaired memory and concentration".²⁴⁵

Due to the serious negative effects that solitary confinement has on detainees, prolonged solitary confinement breaches the prohibition on torture and other ill-treatment and, for that reason, the UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) prohibit its use.²⁴⁶ International human rights standards define prolonged solitary confinement as solitary confinement that exceeds 15 consecutive days.²⁴⁷

While not all the former TA detainees interviewed for this report had been held in conditions that met the legal threshold of solitary confinement, the TA imposes on detainees severe restrictive confinement that places significant limitations on their contact with others and does so indefinitely and as a matter of routine, without individually demonstrating that such measures are necessary and proportionate. Such confinement is contrary to international human rights standards, which provide that prisoners should not be subjected to any hardship beyond that inherent in the deprivation of liberty and maintenance of discipline, and should be held in the least restrictive conditions practicable, in line with the

237 For legal support of this position see *Amnesty International, Combating Torture and Other Ill-treatment: A Manual for Action* (2016), pp. 230-231; *Amnesty International, Fair Trial Manual*, Chapter 10.8. See also UN NewsCentre, "Solitary confinement should be banned in most cases, UN expert says," 18 October 2011, <http://www.un.org/apps/news/story.asp?NewsID=40097#.WYNN54grK00>

238 Rule 43 of the Mandela Rules.

239 Rule 45 of the Mandela Rules.

240 Interim report to the General Assembly, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/66/268, paras 73 and 85.

241 UN Special Rapporteur on Torture Juan Mendez, *Preface* (English translation) in Shalev, S., *A Sourcebook on Solitary Confinement*, (London: Mannheim Centre for Criminology, London School of Economics) (Spanish Edition, 2014).

242 Interim report to the General Assembly, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/66/268, para. 79.

243 Article 10(1) of the ICCPR states: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." See Concluding Observations Denmark, UN Doc. CCPR/CO/70/DNK (2000), para. 12. See also *Rosa Espinoza de Polay v. Peru*, HRC, UN Doc. CCPR/C/61/D/577/1994 (1997), para. 8.6.

244 World Medical Association (WMA), *WMA Statement on Solitary Confinement*, adopted by the 65th WMA General Assembly, Durban, South Africa, October 2014, <https://www.wma.net/policies-post/wma-statement-on-solitary-confinement/>

245 Interim Report to the General Assembly, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/66/268, para. 65.

246 Rule 43 of the Mandela Rules. See also UN Human Rights Committee General Comment 20, para. 6; Interim report to the General Assembly, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/66/268, para. 81.

247 Rule 44 of the Mandela Rules; Interim report to the General Assembly, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/66/268, para. 26.

state's obligation to treat detainees humanely and with the aim of rehabilitation. The Mandela Rules explicitly state as a guiding principle: "Imprisonment and other measures which result in cutting off persons from the outside world are afflictive by the very fact of taking from these persons the right of self-determination by depriving them of their liberty. Therefore the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation."²⁴⁸

Several former detainees interviewed for this report had been subjected under the TA to particularly severe restrictive confinement that bordered on, but may not have amounted to, solitary confinement, when detainees were in their cells for up to 22 hours a day in situations that placed significant limitations on their contact with other detainees, family members, and others. These conditions, also contrary to international human rights standards because authorities failed to assess whether such conditions were necessary and proportionate, were especially prevalent in the opening weeks of detention, when detainees had no contact with family members or close friends due to lengthy screening procedures. In many cases former detainees we interviewed were held in those conditions for prolonged periods of time. This included people recently released, who said they stayed in these conditions for between two and six months as pre-trial detainees, others who stayed between one and two years with convictions, and two people convicted for terrorism offences who were held for five years.

The restrictive conditions of detention in the TA, even where they do not precisely meet the definition of solitary confinement, particularly where they are prolonged and combined with heavy restrictions on family visits as described elsewhere in this report, are likely to be in breach of the state's obligation under Article 10(1) of the ICCPR to treat detainees humanely and may amount to cruel, inhuman or degrading treatment, and in extreme cases to torture.

These confinement conditions existed to the extreme in three cases documented in this report, in which detainees had no contact at all, or very little contact, with other detainees and extremely limited contact with people from outside the TA. These three cases appear to have amounted to an unlawful use of solitary confinement because authorities did not individually demonstrate that such measures were absolutely necessary and proportionate. Moreover, these cases are of heightened concern because these conditions lasted for prolonged periods of time well over 15 consecutive days, which human rights standards explicitly prohibit as amounting to torture or other cruel, inhuman or degrading treatment, and also because pre-trial TA detainees were exposed to these conditions.

Amnesty International and the Open Society Justice Initiative documented a willingness on the part of TA prison authorities to increase the amount of time detainees were allowed outside their cells and increase the contact that detainees could have with each other and with outside visitors. This was a positive development. It also appears that the VERA-2R evaluation tool will increasingly be used for determining if individual detainees should be held under less severe restrictions.²⁴⁹ Nonetheless, even under these improved circumstances, at the time of writing the norm at the TA is to subject detainees to restrictive confinement and then to relax those restrictions at the discretion of prison authorities. This runs counter to international human rights standards, which require authorities to conduct an individualized risk assessment to demonstrate that restrictions placed on a detainee or prisoner are necessary and proportionate.

International human rights law and standards also provide that detainees have a right to challenge the TA's routine use of restrictive confinement as a high-security measure. This is part of every detainee's right to an effective remedy, which is a fundamental and non-derogable part of international human rights law.²⁵⁰ The European Prison Rules and the Council of Europe's Guidelines for Prison and Probation Services regarding Radicalisation and Violent Extremism specifically instruct states to ensure that detainees have a right to complain and appeal to an independent body against high-security measures.²⁵¹ Despite this, and for reasons explained above, the internal complaint process and the RSJ appeal process fail to provide effective remedies for such routine restrictive confinement.

248 Rule 3 of the Mandela Rules.

249 CPT, *Response of the Netherlands to Country Report*, 2017, p. 17.

250 UN Human Rights Committee General Comment 29, para. 11.

251 Guideline 21 of Prison Guidelines on Radicalisation and Violent Extremism; Rule 53.7 of the European Prison Rules. With respect to the use of solitary confinement, all cases of such a measure must be subject to judicial supervision and adequate review mechanisms, including the possibility of judicial review. See Concluding Observations of CAT: Denmark, UN Doc. CAT/C/DNK/CO/5 (2007), para. 14; *Ramirez Sanchez v. France* (59450/00), European Court Grand Chamber (2006), para. 145.

The fact that detainees resorted to hunger strikes to protest the ineffectiveness of these complaint procedures was a strong indication of the detainees' inability to access an effective remedy. In those instances, authorities should have responded to those protests by reforming the complaint procedures to ensure TA detainees had a more effective way to challenge their placement and treatment in the TA.

Additionally, and as noted above, authorities are beginning to use the VERA-2R tool to determine what security measures TA detainees should be subjected to, which would likely have an impact on the amount of time they are allowed out of their cells and the amount of meaningful human contact they can have with others. At the time of writing it was unclear precisely how these assessments were being made, but they must be made based on clear and objective criteria and detainees must be allowed to participate in the process and have access to information that allows them to effectively challenge the results, including through the courts.

4. INVASIVE BODY SEARCHES AND RESPECT FOR HUMAN DIGNITY AND OTHER RIGHTS

Former TA detainees reported being routinely and frequently subjected to invasive, full-nudity body searches. These searches are conducted when a detainee meets in person with outside visitors, including close family members, and when detainees leave the prison, for example to attend their court hearings.²⁵² To avoid the searches, many former detainees said they decided to meet their visitors behind a glass wall. When they chose this option, body searches were not conducted. Visits with such physical separation, however, restricted the meaningful contact they could have with close relatives. Some detainees even avoided the humiliating searches by refusing to attend court hearings. Like so many of the other routine security measures at the TA, prison authorities conduct these body searches without making a prior individualized assessment of their necessity and proportionality and there is no way for TA detainees to effectively challenge their use.

4.1 ABUSE OF DIGNITY

During the body searches, TA detainees recalled that they were required to remove all their clothes, including their underwear and socks. Male detainees had to lift their scrotum and 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. At least two guards take part in these routine body searches, but sometimes more are present. These guards inspect 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! Still they want to touch your body with gloves.... [It's] very humiliating!"²⁵³

The majority of former detainees 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.²⁵⁴ One former detainee who was 18 years old when he entered the TA explained what it was like for him the first time to be fully naked in his cell as the guard gave him orders and watched on from the open slit in the cell's closed door: "You're standing there, feeling humiliated with a [guard] watching you. He says: 'Bend three times, lift your scrotum, do this, do that'. If you're doing it quickly he tells you to slow down. This was really deeply humiliating [to have] a man telling you to do this four times [slowly].... I felt anger, humiliation. I felt embarrassed, [and] did not dare to say anything. I did not even dare to look at that [guard] who strip-searched me. Each guard of your unit has conducted such a search on you. And then you have to look at that [man] every day."²⁵⁵

252 These experiences were consistent with the TA's house rules, which allowed prison directors to authorize body searches on detainees when they entered or left the TA, including prior to and after transport to court or police hearings; were placed in an isolation cell; when receiving visitors in a room without a glass wall; and, in the case of TA Vught, in other situations when it was in the interest of maintaining order and security in the TA. See house rules, TA Vught and TA De Schie, para. 3.8.1; Article 29 of the Penitentiary Principles Act. House rules, TA De Schie and TA Vught, paras 3.8.1 and 6.4. The house rules of TA De Schie do not mention the possibility of conducting body searches to maintain order and security.

253 Interview with C., 7 December 2016.

254 Interview with B., 9 December 2016; interview with K., 23 January 2017; interview with G., 11 January 2017.

255 Interview with L., 1 February 2017.

The rules regulating body searches are the same for all TA detainees, regardless of their gender and regardless of the fact that no individual assessment is conducted to determine if the searches are necessary and proportionate.²⁵⁶ In practice, however, a difference appears to exist in TA Vught, where the body searches have occasionally involved touching. One detainee held in both detention facilities in 2011 said: “They even touch you in Vught. When you are naked, they put on gloves, they touch your body.”²⁵⁷ A member of the internal complaint committee of TA Vught confirmed that in contrast to TA De Schie, the body searches in TA Vught could involve touching.²⁵⁸

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.²⁵⁹ There were, however, occasional reports that guards of the opposite sex were present during the body searches.²⁶⁰ One man held in TA De Schie recalled: “One time, when I was brought into the TA, there were three guards present, including a woman. I asked if at least the female guard could leave. That wasn’t permitted. She kept standing there, watching me while I was being strip-searched. That felt very uncomfortable.”²⁶¹ A female former 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.²⁶² This same woman said that having three female guards present at her body search was excessive and she found it “very humiliating”.²⁶³

A former 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.”²⁶⁴

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. The prisoner said: “Half a year after I was set free I was invited by the complaint committee for a hearing to elaborate on my complaint. Then I said ‘Well, never mind’. I did not feel taken seriously.”²⁶⁵ In the meantime, moreover, the guard had been transferred to a different unit.²⁶⁶

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 is held in the TA, the more searches they have to endure. A female former TA detainee who was detained at TA Vught 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.²⁶⁷ A male former detainee said that he was subjected to 12 strip searches in the five months that he was in TA Vught. 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

256 The house rules of both detention facilities state in para. 6.4 that they can “involve, amongst others, the external inspection of the internal holes and entrances of your body”.

257 Interview with C., 7 December 2016.

258 Interview with members of the Vught complaint committee, Vught, 22 January 2016.

259 House rules, TA De Schie and TA Vught, para. 6.4.

260 Interview with Burhan Kaya, criminal defence lawyer, Eindhoven, 25 April 2017.

261 Interview with H., 23 January 2017.

262 Interview with N., 31 January 2017.

263 Interview with N., 31 January 2017.

264 Interview with K., 23 January 2017.

265 Interview with H., 24 January 2017.

266 Interview with Devika Kamp and Bart Stapert, criminal defence lawyers, Amsterdam, 30 January 2017. Copy of complaint submitted on file with Amnesty International and Open Society Justice Initiative.

267 Interview with N., 31 January 2017.

a forced strip search, making it eight.²⁶⁸ 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."²⁶⁹ To avoid additional body searches he said he never met with outside visitors without the glass wall.

A former detainee who was in TA Vught for five years recalled a situation in which he was strip-searched five times in one day: "I had to go to a family visit and had to go to the toilet because I was having stomach problems, and they strip-searched me each time I left and came back. The strip searches built up so much hatred in me that I became indifferent to them."²⁷⁰ He said, "I was strip-searched too many times."²⁷¹ One former 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."²⁷²

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 messages.²⁷³ The TA Vught Director explained that they are also conducted for security purposes when detainees go to court hearings: "I know it's embarrassing. I understand that [but] we also made it clear to judges that everyone coming to the court is clean."²⁷⁴ But TA prison authorities, prosecutors, defence lawyers, and former TA detainees also all similarly reported that no contraband has ever been found during those body searches. This calls into serious question whether the searches are necessary. Both TA prison directors justified the body searches as preempting detainees from smuggling contraband into or out of the prison. "This is the preventive work from the strip searches," said the TA De Schie Director.²⁷⁵ But this is based purely on an unsubstantiated assumption.

According to international standards, body searches are permissible only when absolutely necessary, based on an individual assessment, and if there is a strong and specific suspicion that a person might be carrying contraband.²⁷⁶ The TA does not involve such an individual assessment and body searches are routine, which means that they are not conducted based on a specific suspicion that a particular person might be carrying contraband.

The TA's routine and invasive full-nudity body searches are unique in the Dutch penal system, which also calls into question their necessity. At the EBI specialized high-security detention facility, which serves as a remand centre and a prison, 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.²⁷⁷ 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

268 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. According to the then State Secretary of Justice in 2008, the use of violence should be proportionate and batons can be used only as a last resort. *Reactie van staatssecretaris Albayrak op 11 juni 2008 aan de voorzitter van de tweede kamer n.a.v. de De NOVA-uitzending van 27 mei jl. over de omgang met vreemdelingen in detentiecentra Inzet Intern Bijstands Team* ('Response of the State Secretary of Justice to the Houses of Parliament'), *Parliamentary Papers 2007-2008*, TK 19637, no. 1204, 19 June 2008. Two former detainees interviewed for this 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.

269 Interview with C., 1 February 2017.

270 Interview with A., 5 December 2016.

271 Interview with A., 5 December 2016.

272 Interview with F., 4 January 2017.

273 Interview with Rob Janssen, Director of TA De Schie, Rotterdam, 5 April 2017.

274 Interview with Yola Wanders, Director of TA Vught, Vught, 23 January 2017.

275 Interview with Rob Janssen, Director of TA De Schie, Rotterdam, 5 April 2017.

276 Rule 52 of the Mandela Rules; *Frerot v. France* (70204/01), European Court of Human Rights (2007), paras 41 and 47.

277 This description is not intended to draw any conclusions on the lawfulness of body searches in the regular and EBI facilities.

searches are conducted at random, not routinely,²⁷⁸ and in practice hardly ever after lawyer visits.²⁷⁹ 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.²⁸⁰ But a policy directive regarding detainee transportation rules instructs that prison staff should only conduct body taps,²⁸¹ not body searches, prior to a detainee leaving the facility for police or court hearings.²⁸² This is in contrast to the TA, where detainees are routinely body searched before leaving the TA and returning to the TA for hearings, alongside possible other security measures, including heightened armed transport.²⁸³

4.2 OBSTACLES TO THE RIGHT TO FAMILY LIFE

The body searches also have severe consequences for TA detainees' relationships with their close family members, including spouses and their children. Former detainees said authorities strip-searched them every time they met their family members in person. This did not happen, however, when detainees met visitors behind a glass wall. As a result of this rule, many former detainees said they met their loved ones behind glass to avoid those searches. Many former detainees said that meeting family members under these conditions severely disrupted their ability to have meaningful family relationships. The routine body searches at the TA are therefore not only personally invasive and humiliating, but they exacerbate the isolation and already fragile family situation that the TA rules impose on detainees through limited family visits and calls.

Most former detainees said that, being left to choose between preserving their dignity and having restrictions placed on family visits, they had no other option than to see their family behind glass. Two detainees skipped the family visits entirely to avoid the searches.²⁸⁴ Partners of former detainees also explained how they carried the burden of knowing that their husbands would be automatically strip-searched if they met in person.²⁸⁵ One woman whose husband was held at TA Vught for over two years said: "I can't bear it, doing this to him. So we only had a few of these [open visits]."²⁸⁶

Several former detainees said that no exceptions were made for their children. One person in pre-trial detention at TA De Schie who was later acquitted on all terrorism-related charges said: "I did not receive visits from anyone else but my children. I wanted to spare my parents the pain, but for my children I made an exception. I couldn't miss them for so long.... I really wanted to see them, without them I would not be able to persevere."²⁸⁷ Another detainee explained: "The sole reason why I did not [take visits behind a glass wall] was because it was important for my son to have physical contact with me and not, like in a zoo, watching your dad from behind a glass. Then at least you can play, talk."²⁸⁸ One former detainee said he eventually gave in to the body searches and opted for open visits with his wife because "after a while you discover the value of physical contact with your family".²⁸⁹

But even then, the prison rules prohibit detainees from physically touching the people with whom they meet, save for a handshake upon their meeting and departure. The TA rules even prohibit children from sitting on a parent's lap.²⁹⁰ The father of a baby and a two-year-old toddler questioned the necessity of

278 Interview with prosecutors of the National Prosecution, Rotterdam, 26 January 2017. Inspection VenJ, 'Slechts op bezoek'. *Inspectierapport. Themaonderzoek (Thematic Study 'Only visiting')*, 19 February 2013; Inspection VenJ, *Binnen de muren niet toegestaan. Over het tegengaan van contrabande, niet-integer gedrag en voortgezet crimineel handelen tijdens detentie (Not allowed inside – About countering contraband, non-honourable behaviour and continuing criminal acts during detention)*, February 2017.

279 This description is not intended to draw any conclusions on the lawfulness of these rules in normal prisons. *Inspectie voor Veiligheid en Justitie (IvenJ)*, 'Slechts op bezoek', 19 February 2013.

280 Article 29 of the Dutch Penitentiary Principles Act.

281 Body taps are a less invasive procedure that does not require the detainees to remove his or her clothes.

282 Article 16 of the *Circulaire dienst instructie bestemd voor het vervoer van justitiabelen door DV&O (Directive guidelines regarding transportation of defendants)* No. ZD20140000955/14/DJI, 1 July 2014. This policy of conducting only body taps when prisoners are transported under constant supervision was confirmed in two phone calls with detention facilities in Vught and Almere, 25 April 2016.

283 Terrorism-related court hearings usually took place in special extra-secured court buildings in, among others, Amsterdam-Osdorp, commonly referred to by the detainees as "the bunker". Several former detainees interviewed described how they were handcuffed in a body belt and escorted by at least two members of a specially trained and heavily armed team (*Bijzondere Ondersteuning Team*, BOT) when transported to court in extra-secured vehicles (*Extra Beveiligd Vervoer*, EBV). In consultation with the court and upon request of the prosecution and police, the BOT can also be present during court hearings.

284 Interview with M., 9 February 2016; interview with I., 3 April 2017.

285 Interview with S., wife of TA De Schie detainee, 10 April 2017.

286 Interview with R., wife of TA Vught detainee, 3 April 2017.

287 Interview with R., 1 June 2017.

288 Interview with F., 4 January 2017.

289 Interview with O., 4 April 2017.

290 House rules, TA De Schie and TA Vught, para. 3.8.1.

this rule: “Why is that not possible? Let’s imagine that I would use violence or something. The guards would be here within seconds and subject me to a body search afterwards. I don’t know if it exists because of the risk that the children give me something or I them. It really does not make sense. My kids were far too young to understand this.”²⁹¹ Despite the lack of physical contact he opted for open visits with only his children, explaining: “If my children came, I always chose without glass.... It was already complicated enough for them.”²⁹²

When detainees broke the TA’s prohibition on physical contact with visitors they risked disciplinary sanctions, and prison authorities could immediately end the visit.²⁹³ One former detainee was sanctioned for breaking the rules when his child crawled to him. He said: “I saw my daughter when she was six or seven months old. I wanted to see her without the glass. There were two guards, a video, a two-way mirror, and audio recording. She crawled to me and I was told I can’t touch her. I had to tell [my wife] to take her back. So, at the end of the visit I ran my hand over her head and I was punished with having one month of visits only with glass. It happened again, and I got the same punishment for two months this time. After that, I did the same thing again at the end of the visit. I hugged her [this time] since I knew I would be punished more: three months with glass and one week in isolation.”²⁹⁴ Eventually he decided to only have visits behind the glass wall because his children were unable to understand the rules.

Prison authorities would sometimes use their discretion to allow detainees to have greater physical contact with relatives. For example, the former detainee who decided to meet his wife in person was not punished when he broke the no-touching rules.²⁹⁵ He recalled: “There was a guard who didn’t say anything about it. Just: ‘Don’t do it the next time’. I could only do it when he was around. Sometimes I hugged [my wife and child], but not always.”²⁹⁶ At the time of research, these exceptions appeared to have been made at the whim of the authorities rather than through a formal rule that granted TA detainees permission to engage in physical contact with family members. But these exceptions could also lead to complications. A female family member of a TA detainee in Vught told how his children could not comprehend the TA’s strict security rules. She explained how the three-year-old was allowed to hug his father but not the two older children: “You cannot explain to a five-year-old child, ‘Your father doesn’t want to touch you.’²⁹⁷ Children want to touch his face, his beard, they see his shoes but they are not allowed to touch these. If they try to get to the other side, then you hear someone barking through the speaker, ‘Don’t do that, stay at a distance’.”²⁹⁸

4.3 OBSTACLES TO ACCESS TO JUSTICE

The body searches can also be obstacles to justice. In several instances, TA detainees refused to attend their court hearings to avoid being strip-searched. Nearly all the hearings that former detainees avoided were brief pro forma hearings during which a judge would typically decide whether pre-trial detention should be extended.²⁹⁹ In at least one case, however—the notable *Context* case—judges worried that a defendant’s refusal to attend court might lead to a violation of fair trial rights under Article 6 of the European Convention on Human Rights.³⁰⁰ A Rotterdam prosecutor recalled how at least one detainee “started refusing to go to court and judges worried about an Article 6 violation”.³⁰¹ Lawyers and prosecutors also explained how the Public Prosecutor, judges, and defence lawyers tried to resolve this dilemma by discussing alternatives to the body searches, in particular body scans.³⁰² One lawyer said that after half a year of discussions, the policy had not changed because the alternatives to body searches were “considered too expensive”.³⁰³ Others said the repeated use of body scanners raised

291 Interview with K., 23 January 2017.

292 Interview with K., 23 January 2017.

293 House rules, TA De Schie and TA Vught, para. 3.8.1.

294 Interview with A., 5 December 2016.

295 Interview with O., 4 April 2017.

296 Interview with O., 4 April 2017.

297 This practice seemed to follow the same rules that are applied in normal prisons, where parents can have physical contact with their children who are up to five years old.

298 Interview with D., wife of TA Vught detainee, 13 December 2016.

299 Interview with B., 9 December 2016; interview with O., 4 April 2017. These hearing usually take five to 10 minutes.

300 Interview with prosecutor and researcher of the court of The Hague, The Hague, 27 January 2017; interview with prosecutors of the National Prosecution, Rotterdam, 26 January 2017. Article 6 of the European Convention on Human Rights provides for fair trial rights that entitle everyone to a fair and public hearing.

301 Interview with prosecutors of the National Prosecution, Rotterdam, 26 January 2017.

302 Interview with prosecutors of the National Prosecution, Rotterdam, 26 January 2017; interview with André Seebregts, criminal defence lawyer, Rotterdam, 5 December 2016; interview with Michiel Pestman, criminal defence lawyer, Amsterdam, 30 January 2017.

303 Interview with Michiel Pestman, criminal defence lawyer, Amsterdam, 30 January 2017.

health concerns.³⁰⁴ Judges also considered using video technology³⁰⁵ to conduct hearings, but they deemed this to be an unsuitable alternative because it did not enable sufficient interaction between the court and persons in the TA system. The defendant in the *Context* case who refused to attend his hearing eventually changed his mind after the judge convinced him of the importance of attending his trial.³⁰⁵ The Article 6 issue was avoided due to that particular judge's intervention, but it could easily arise again. A judicial official who was familiar with this issue also said that if the judge had ordered the defendant to attend court, which would have resulted in a forced body search if the person refused to undergo the automatic non-forceful body search, "I didn't know if we could have had a normal conversation after that" in court with the detainee.³⁰⁶

4.4 DEFICIENT COMPLAINTS PROCESS

Despite the severe consequences that body searches have on a detainee's dignity, privacy, family life, and access to justice, TA detainees have no effective means for challenging this treatment. For reasons similar to those explained above in Excessive Restrictive Confinement: *Complaint Process*, the internal complaint mechanism and the RSJ regularly deem complaints by TA detainees inadmissible when they relate to issues that are within the director's purview of authority under Dutch penal law, including administering routine body searches.³⁰⁷

A member of the internal complaint committee for Vught explained how the committee has limited options to rule against body searches because the prison authorities are simply carrying out the laws and policies that politicians made for the TA.³⁰⁸ The member of the committee 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."³⁰⁹

As a consequence of the futile complaint procedure, a few former detainees said they decided not to appeal the internal complaint committee's decisions to the RSJ.³¹⁰ Their scepticism appears warranted. The RSJ is equally ineffective on this issue. The RSJ has regarded the routine body search of a TA detainee prior to and after court visits as a necessary and proportionate interference of Article 8 of the European Convention on Human Rights because it had a legal basis in Dutch domestic law and because the RSJ was convinced that *all* TA detainees posed possible flight risks and could cause great societal unrest.³¹¹ Members of the Vught complaint committee similarly said that when detainees have filed routine body search complaints to the RSJ, the RSJ has considered them reasonable and fair if the director applied them in line with the house rules.³¹²

4.5 INTERNATIONAL HUMAN RIGHTS LAW AND STANDARDS

Body searches are permissible only when absolutely necessary, based on an individual assessment, and if there is a strong and specific suspicion that a person might be carrying contraband.³¹³ Any such searches should therefore be as unobtrusive as possible, strictly limited to situations where there is a concrete security need,³¹⁴ and must avoid humiliation and unnecessarily intruding on a prisoner's privacy.³¹⁵ Body searches that include anal examinations—such as those that occur in the TA—cannot be conducted merely on the presumption that an individual is hiding a prohibited object or substance.³¹⁶ When body searches are conducted in a debasing manner without being absolutely necessary they can amount to a

304 Interview with prosecutors of the National Prosecution, Rotterdam, 26 January 2017.

305 T.B. Trotman, 'De TA: 'terroristen' detaliëd' ('The TA: 'terrorists' behind bars'), *Strafblad* no. 14, 1 October 2016.

306 Interview with judge, location undisclosed, 30 March 2017.

307 Interview with members of the De Schie complaint committee, Rotterdam, 16 March 2016. The TA's routine strip searches finds its legal basis in Article 29 of the Penitentiary Principles Act.

308 Interview with members of the Vught complaint committee, Vught, 22 January 2016.

309 Interview with members of the Vught complaint committee, Vught, 22 January 2016.

310 Interview with K., 23 January 2017; interview with L., 1 February 2017; see also interview with Devika Kamp and Bart Stapert, criminal defence lawyers, Amsterdam, 30 January 2017.

311 RSJ decision 15/3875/GA, 24 June 2016.

312 Interview with members of the Vught complaint committee, Vught, 22 January 2017.

313 Rule 52 of the Mandela Rules; *Frerot v. France* (70204/01), European Court of Human Rights (2007), paras 41 and 47.

314 *Horych v. Poland* (13621/08), European Court of Human Rights (2012), para. 101; *Piechowicz v. Poland* (20071/07), European Court of Human Rights (2012), para. 175; *Frerot v. France* (70204/01), European Court of Human Rights (2007), paras 41 and 47. According to the Mandela Rules, "[i]ntrusive searches, including strip and body cavity searches, should be undertaken only if absolutely necessary". Rule 52.1 of the Mandela Rules.

315 Rule 51 of the Mandela Rules.

316 *Frerot v. France* (70204/01), European Court of Human Rights (2007), para. 47.

violation of the prohibition against inhuman or degrading treatment.³¹⁷ The same is true when they are conducted on a routine basis, too frequently, or in a systematic or collective way on all detainees.³¹⁸ Body searches can also violate a person's right to privacy when carried out unnecessarily.³¹⁹

Moreover, the need for body searches diminishes when a prisoner is under heavy monitoring due to the fact that the monitoring may reduce the necessity of a body search.³²⁰ To safeguard against the unlawful use of invasive body searches, the UN Committee against Torture has also often recommended that states use or seek to develop alternative screening methods such as scans.³²¹ The CPT, Association for the Prevention of Torture, and Penal Reform International have also explained that searches should be carried out in two distinct steps to mitigate the humiliation of nudity: "In order to avoid the person standing completely naked in front of the staff, the detainee should be asked to remove his/her upper clothes and the lower clothes in two separate steps."³²²

Prison authorities must also take into account that an individual's sense of humiliation can be exacerbated when prison authorities enact disciplinary measures, such as confining someone to isolation, as reprisal for an individual's refusal to be subjected to an unwarranted invasive body search.³²³

According to numerous former detainees, the TA's routine and invasive full-nudity body searches are humiliating measures that are not based on "strong and specific reasons" related to a concrete security need. The humiliation that this measure causes over sometimes prolonged periods of time, including, in one case, five years of detention as documented in this report, combined with its lack of an individualized risk assessment, a lack of evidence of previously recovered contraband, and the heavy and constant monitoring of TA detainees by authorities, significantly diminishes any justification that it is absolutely necessary to conduct routine invasive body searches at the TA. For these reasons, the TA's routine and invasive full-nudity body search rules violate the prohibition on cruel, inhuman, and degrading treatment and are also in violation of the right to privacy.

International human rights law also affords detainees the right to family life.³²⁴ Any restriction on this right must be in accordance with the law, pursuant to a legitimate aim, and must be necessary and proportionate.³²⁵ Otherwise, limitations on the right will fall afoul of The Netherlands' international human rights obligations. Former detainees consistently described how the TA's use of body searches each time a detainee wanted to be visited by a relative, such as a child, spouse, or parent, presented a substantial obstacle to meaningful family contact. As described above, authorities do not individually assess detainees to determine whether the body searches are necessary for family visits. As a result, detainees are placed in the unacceptable position of being forced to choose between maintaining their

317 Article 3 of the ECHR: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment"; Article 7 of the ICCPR: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment"; Articles 1 and 16 of the Convention against Torture. See *Frerot v. France* (70204/01), European Court of Human Rights (2007), para. 41. See also *Boodoo v. Trinidad and Tobago*, HRC, UN Doc. C/PR/C/74/D/721/1996 (2002), paras 6.5, 6.7; Concluding Observations of CAT: Qatar, UN Doc. CAT/C/QAT/CO/1 (2006), para. 21; *López-Álvarez v. Honduras*, Inter-American Court (Ser. C) No. 149 (2006), paras 54(12) and 107. See also Rule 54 of the European Prison Rules.

318 *El Shennawy v. France* (51246/08), European Court of Human Rights (2011); *Van der Ven v. The Netherlands* (50901/99), European Court of Human Rights (2003), paras 61-63; *Lorsé and Others v. The Netherlands* (52750/99), European Court of Human Rights (2003), paras 73-74.

319 Article 17 of the ICCPR: Article 17: "1. No one shall be subjected to arbitrary or unlawful interference with his privacy....2. Everyone has the right to the protection of the law against such interference or attacks"; Article 8 of the ECHR: "1. Everyone has the right to respect for his [private life]... 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others." See *Milka v. Poland*, (14322/12), European Court of Human Rights (2015), paras 47-50.

320 *Horych v. Poland* (13621/08), European Court of Human Rights (2012), para. 101.

321 CAT, UN Doc. CAT/C/HKG/CO/4, para. 10; CAT, UN Doc. CAT/C/FRA/CO/4-6, para. 28.

322 The CPT has repeatedly stated to The Netherlands that a full-nudity search is a "potentially degrading measure and that detained persons who are searched should not be required to remove all their clothes at the same time. The person should be allowed to remove clothing above the waist and then put it back on before removing clothing below the waist." CPT, *Netherlands Country Report*, 2017, para. 76. See also Penal Reform International and Association for the Prevention of Torture, *FACT SHEET Body searches: Addressing risk factors to prevent torture and ill-treatment*, in "Detention Monitoring Tool" (Second Edition, 2015), <https://www.penalreform.org/wp-content/uploads/2016/01/factsheet-4-searches-2nd-v5.pdf>, p. 4.

323 *Frerot v. France* (70204/01), European Court of Human Rights (2007), para. 47.

324 Article 17(1) of the ICCPR: "No one shall be subjected to arbitrary or unlawful interference with his ...family...."; Article 8(1) of the ECHR: "Everyone has the right to respect for his...family life...."

325 Article 17(2) of the ICCPR: "Everyone has the right to the protection of the law against such interference or attacks [of Article 17(1)]"; Article 8(2) of the ECHR: "There shall be no interference by a public authority with the exercise of this right [Article 8(1)] except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others." See also *Piechowicz v. Poland* (20071/07) European Court of Human Rights (2012), para. 212. For additional details, see Amnesty International, *Fair Trial Manual*, Chapter 4.4.

personal dignity and having greater access to their families, even though the government has provided no specific reason to justify the limitation on their rights. It is incumbent on the Dutch authorities to ensure that any security measures that place restrictions on family visits are necessary and proportionate, taking into account whether alternative measures are more proportionate.³²⁶

International human rights law also affords TA detainees charged with criminal offences a right to be tried in their presence and to an oral hearing so that they can hear and challenge the prosecution's case and present a defence in person or through counsel of their choice.³²⁷ The European Court of Human Rights has stated that this right to defend oneself is "of capital importance".³²⁸ It reasoned that "it is difficult to see" how a person could exercise the right to defend him- or herself in person, to examine and cross-examine witnesses, and to have the free assistance of an interpreter when necessary "without being present".³²⁹ Human rights law allows, under exceptional circumstances, for a detainee to be represented by counsel rather than appearing in court,³³⁰ but this should not result from the misuse of security measures that deter defendants who would otherwise wish to appear in court.

Moreover, if Dutch authorities do deem it necessary to search the body of a person in accordance with international human rights standards, they must use or develop alternative screening methods to invasive body searches and, if that is not possible, conduct body searches in a manner that minimizes the harm they cause to dignity and privacy.³³¹ The European Prison Rules make clear that the failure to address prison conditions that infringe on prisoners' human rights cannot be justified by lack of resources.³³² Such alternative methods, like all enhanced security measures, must comply with international human rights standards.

Finally, and for the same legal reasons as noted above in Excessive Restrictive Confinement, The Netherlands must provide an effective remedy to detainees who seek to challenge the TA's system of routine invasive body searches. The UN Committee against Torture has interpreted the right to an effective remedy to entail restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.³³³ This includes an obligation on states to ensure that competent authorities promptly, effectively, and impartially investigate and examine the case of any individual who alleges she or he has been subjected to torture or other ill-treatment.³³⁴

326 *Moiseyev v. Russia* (62936/00), European Court of Human Rights (2009), paras 246-247 and 252-259.

327 Article 14(3)(d) of the ICCPR; Article 6 of the ECHR; Article 16(3) of the Arab Charter on Human Rights; Section N(6)(c) of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.

328 *Hermi v. Italy* (18114/02), European Court Grand Chamber (2006), para. 58.

329 *Hermi v. Italy* (18114/02), European Court Grand Chamber (2006), para. 59. See also *Sejdovic v. Italy* (56581/00), European Court Grand Chamber (2006), para. 81.

330 *Guerra de la Escriella v. Colombia*, HRC, UN Doc. CCPR/C/98/D/1623/2007 (2010), para. 9.3.

331 In response to the CPT's recommendation that people searched in Dutch prisons "should not be required to remove all their clothes at the same time," the government said that such a recommendation "may be problematic" but agreed to "review current practices relating to the removal of clothing and to see whether they can be modified." CPT, *Response of the Netherlands to Country Report*, 2017, p. 31-32.

332 Rule 4 of the European Prison Rules.

333 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment General Comment No. 3, para. 2.

334 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment General Comment No. 3, para. 25.

5. EXCESSIVE MONITORING AND SURVEILLANCE

Prison authorities monitor every word and movement of TA detainees when they are outside their cells.³³⁵ This includes watching over, listening into, and recording their visits and phone calls with outsiders.³³⁶ As one defence lawyer explained: “All conversations were recorded outside the cell. There was only privacy in the cell.”³³⁷ Authorities also read the detainees’ incoming and outgoing written correspondence. Detainees do not have the right to be present when their correspondence is opened or censored.³³⁸ Prison authorities engage in this persistent and constant monitoring without ever having individually assessed if doing so is necessary and proportionate. Former detainees and family members interviewed said that this constant monitoring had a significant detrimental impact on their ability to build and maintain family relationships. This is in addition to the strain that body searches put on family relations, as explained above.

Guards have also monitored medical consultations at TA Vught. Six former detainees from TA Vught recalled prison guards being within hearing distance and within sight during personal medical visits. When detainees met with health care professionals behind a glass wall former detainees said they suspected that their conversations also were being recorded. The real and perceived presence of guards during medical visits impeded some detainees’ willingness to speak openly and honestly to health care professionals. While detainees at the TA Vught could, in theory, pose security concerns that might require having guards on call or within sight of medical consultations, including on request of health care professionals, the monitoring as currently conducted appears to be done as a matter of routine and not after authorities individually assessed whether the monitoring was necessary or proportionate.

The main exception to all this routine monitoring was with detainees’ communications with privileged contacts, such as lawyers.³³⁹ But even this exception has been weakened by special legal powers that now allow the Dutch intelligence agency to monitor lawyer-client communications.³⁴⁰

5.1 ARBITRARY DEPRIVATION OF THE RIGHT TO PRIVACY AND FAMILY LIFE

For many detainees, the blanket and routine monitoring of all visits with family members has reduced such visits to superficial encounters, rather than meaningful opportunities for detainees to maintain family relations. One detainee held for more than five months in TA De Schie and TA Vught around

335 TA prison guards also made daily reports on detainees’ behaviour and conversations. These reports were compiled into monthly reports that could be used for transfer request decisions. See Veldhuis et al., 2011, pp. 145 and 148.

336 House rules, TA De Schie and TA Vught, paras 3.8.1 and 3.9.1.

337 Interview with G., 11 January 2017.

338 House rules, TA De Schie and TA Vught, para. 4.5.3.

339 House rules, TA De Schie and TA Vught, para. 4.5.3. Privileged actors included not only lawyers, but also the National Ombudsman, medical inspectors of the Health Inspectorate, members of the Supervision Board (CvT) and RSJ, judicial professionals, probation services, members of the Royal Family, members of Parliament, and the minister or any other person or institution appointed by the minister.

340 Article 25 of the 2002 Law on the Intelligence and Security Services (Wiv 2002) provided an exception for the services to use their special powers to tap, receive, record, and listen in to conversations of actors with privileged status (such as lawyers) for national security purposes, but only after prejudicial authorization of an independent oversight body (*Tijdelijke regeling onafhankelijke toetsing bijzondere bevoegdheden Wiv 2002 jegens advocaten en journalisten* (Temporary rule for an independent review of special powers Wiv 2002 regarding lawyers and journalists), 16 December 2016. On 11 July 2017, the Dutch Senate adopted a new Law on the Intelligence and Security Services (Wiv 2017), which will go into force in January 2018. Pursuant to Article 30(3), obtaining information relating to the confidential communication between a lawyer and client is only allowed after permission is granted by the Court of The Hague. Based on Article 66 of Wiv 2017 [previously Article 38, sub 1 of the Wiv 2002], the intercepted information can also be shared with the prosecution for purposes of criminal investigation or prosecution, but permission from the Court of The Hague is required if the shared information comprises confidential communications between an attorney and a client.

2015 said the monitoring had “a very negative impact” on his relationship with his wife: “You can never discuss personal issues, private affairs, because everything is being tapped and monitored.”³⁴¹ The wife of another TA Vught detainee agreed that the monitoring had a significant chilling effect on what she shared with her husband: “Especially in the beginning we never discussed private affairs, such as family problems, those kind of sensitive issues.”³⁴² She said this included difficult and painful moments in her life. She said eventually they had no choice but to share their feelings even though they knew prison authorities would be listening in: “It’s either sharing or keeping it to yourself. You don’t have any privacy; even your mail is read.”³⁴³ Other detainees said their conversations remained superficial because guards would interrupt them if they mentioned specific names. One former detainee said that when he had conversations with his mother or sister “it was just very formal. I did not ask many personal questions, because I just knew they were watching us; listening in. I just kept it very formal.”³⁴⁴

The results of the monitoring have had devastating family consequences for some former TA detainees. A former detainee who was held in pre-trial detention at the TA explained how the monitoring, combined with the limited family visits and calls, damaged his relationship with his wife:

“At a certain moment in time, you just become strangers. For me it felt as if my life had come to a halt, but for her it continued. That’s a problem that applies to all detainees, but the difference is that we [in the TA] only have one hour of visits per week and that phone calls are being recorded and letters read. You can never just tell each other personal things. So you start not sharing things anymore and well, if you refrain from saying certain things for 13 months, then you start alienating [yourselves] from each other. You just notice the distance. Me and my wife were used to sharing everything, so it had a rather big impact on us.”³⁴⁵

His partner explained:

“We started to grow apart. I could not be who I am when I was with him, neither could he be himself. Because you cannot speak freely. Everything you wrote, everything you said on the phone was recorded and stored. Not that there were so many secrets that I wanted to tell him, but you do not know whether [prison authorities will] make a fuss about it, so you say as little as possible. The visits created more distance between us. If the normal visits could be set up differently in the sense that you could be closer to each other, and if we could have longer time to call, it would all have been different.”³⁴⁶

The strict and lengthy approval protocols for TA visits and calls also has an impact on the ability of TA detainees to maintain relationships with their family members and partners. To be eligible to visit and call a detainee, outsiders must be screened by the GRIP.³⁴⁷ Based on what the GRIP finds, the director can deny a detainee’s request to speak with or meet certain people.³⁴⁸ According to people interviewed for this report, the screening procedures could take up to six weeks. Some detainees even stopped meeting or communicating, or never met or communicated, with close family members because they or their family members did not want to subject themselves or their loved ones to the screenings, monitoring, and other security procedures.³⁴⁹

TA detainees are also not permitted to have unmonitored visits, which restricts possibilities for conjugal visits. This is in contrast to regular prisons with normal security regimes where authorities can permit monthly visits without monitoring for persons detained after three months. The relationship between the detainee and the visitor must be so “sustainable and close” that the visit requires the aim of a strict personal nature.³⁵⁰ Partners of TA detainees who were held for 13 months and for over two years, respectively, told Amnesty International and the Open Society Justice Initiative that the absence of unmonitored visits not only punished the person in the TA but also worked towards destroying a couple’s ability to build a family. One partner explained that even though it was her husband who was convicted, she too was being punished because under the TA’s rules “I don’t have the right to have a child of my own...I didn’t do anything wrong, my husband got a punishment, not me.”³⁵¹

341 Interview with K., 23 January 2017.

342 Interview with R., wife of TA Vught detainee, 3 April 2016.

343 Interview with R., wife of TA Vught detainee, 3 April 2016.

344 Interview with L., 1 February 2017.

345 Interview with F., 4 January 2016.

346 Interview with S., wife of former TA De Schie detainee, 10 April 2017.

347 House rules, TA De Schie and TA Vught, para. 3.8.

348 House rules, TA De Schie and TA Vught, para. 3.8.

349 Interview with M., 9 February 2017; interviews with I., 1 September 2016 and 3 April 2017; interview with F., 4 April 2017.

350 ‘Circulaire Bezoek zonder Toezicht’ (‘Directive Unmonitored visits’), *Staatscourant*, no. 176, 12 September 2000. Inspection VenJ, ‘Slechts op bezoek’, 19 February 2013, p. 30. At the EBI all visits were also monitored.

351 Interview with D., wife of TA Vught detainee, 13 December 2016.

5.2 INTERFERENCE WITH MEDICAL CONFIDENTIALITY

Several former detainees recalled a lack of privacy when they met with medical professionals at TA Vught due to the presence of guards.³⁵² A man held at TA Vught around 2015 and 2016 said: “Guards are present with you when you have a doctor’s visit. I had such a doctor’s visit. In the room was the doctor and three guards and me. You cannot talk in private.” When he asked for privacy with the doctor he was told that “The Hague”, where the government passes legislation and makes policy regarding the TA, “does not permit it”.³⁵³ Another former detainee held in TA Vught around 2014 said: “I talked with a psychiatrist and a general practitioner. That was in the presence of three guards in the cell.”³⁵⁴

When detainees at TA Vught were treated outside their own unit or in a hospital some said they also lacked privacy during consultations with medical professionals. A former detainee from TA Vught explained: “You’re brought handcuffed to the dentist...with the cuffs attached to the belt, which is applied during the treatment. And guards are also there.”³⁵⁵ A former detainee held in Vught after it had just been opened experienced the same: “You’re being handcuffed when visiting the doctor, dentist, for blood samples.... [The guard] who is always escorting you, he is even there during a conversation with the doctor.”³⁵⁶

In addition to these experiences, guards at TA Vught can also observe detainees when they meet health care professionals outside their cells, such as in the visitors’ room or the recreation room.³⁵⁷ For former detainees it was unclear whether conversations in these locations were being recorded: “In Vught, when I met the psychologist, it was behind glass.... There was a microphone and the guard was watching us.... Sometimes, when someone is watching you, even if they cannot hear anything, you feel, ‘I cannot say this, I cannot say that’.”³⁵⁸ A female detainee held in Vught said: “The guards are standing behind the window. It is blinded but you can see them standing.”³⁵⁹ She said she could see the microphone light switched on, “which indicates they are recording” the conversation.³⁶⁰

Some detainees felt inhibited or humiliated sharing personal information with medical staff under these conditions, particularly when the guards who were overhearing the medical consultations were the same ones whom the detainees saw and interacted with on a daily basis. 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: “Everyone is there. The doctor and an assistant and these guards.”³⁶¹ In that setting, she said the doctor “asked me very personal things like ‘Do you have your period? [What] do your faeces look like?’ And there were just men listening. At least two.”³⁶² Under these conditions, she said, “Of course, I didn’t tell anything. I won’t tell this...sitting next to these guards...what it looks like when I go to the toilet or so on. You know, those are very personal things.”³⁶³ This incident occurred, she said, in a special camera-surveilled observation cell which stripped away her sense of privacy further: “I think if there is a camera, there must be a microphone.”³⁶⁴

The lack of privacy may be the result of the house rules providing weaker protections for medical confidentiality compared to other privileged relationships, such as lawyer-client privilege.³⁶⁵ Nonetheless, former detainees held at TA De Schie who were interviewed for this report did not describe having their medical consultations monitored, even though the house rules for both TA’s are similarly formulated. Still, at least one detainee said the general monitoring at TA De Schie created a chilling effect that inhibited him from speaking freely “about my psychological past because I didn’t know if we were recorded”.³⁶⁶

352 Interview with B., 9 December 2016; interview with K., 23 January 2017; interview with L., 1 February 2017.

353 Interview with B., 9 December 2016.

354 Interview with K., 23 January 2017.

355 Interview with B., 9 December 2016.

356 Interview with A., 5 December 2016.

357 Interview with A., 5 December 2016; interview with C., 7 December 2016.

358 Interview with C., 7 December 2016.

359 Interview with N., 31 January 2017.

360 Interview with N., 31 January 2017.

361 Interview with D., 13 December 2016.

362 Interview with D., 13 December 2016.

363 Interview with D., 13 December 2016.

364 Interview with D., 13 December 2016.

365 Compare para. 3.8.2 with para. 4.2 of the House rules, TA De Schie and TA Vught.

366 Interview with P., 6 April 2017.

5.3 ACCESS TO JUSTICE

Although Dutch law requires authorities to respect lawyer-client privilege in prison,³⁶⁷ both lawyers and former TA detainees remain suspicious that guards were able to overhear or record their conversations or that their conversations were being tapped by the intelligence services. Their suspicions are grounded in past breaches. A former TA detainee held in 2016 in De Schie filed a complaint to the internal complaint committee and won after he saw that a recording light was on during a conversation he was having with his lawyer.³⁶⁸ In a separate incident, the defence lawyer of a TA detainee recounted how on one occasion the guards accidentally left a note they took of a conversation he had with his client.³⁶⁹ And in 2015, a court of appeal in The Hague found that the intelligence agencies had unlawfully been tapping attorney-client privileged communications.³⁷⁰ As one of the defence lawyers explained: “You can’t be sure that you are not being tapped.”³⁷¹

In this atmosphere of real and perceived monitoring, a former TA detainee expressed distrust over the respect that the TA has for lawyer-client privilege. His explanation was illustrative of what others also said: “It’s hard to talk to my lawyer. Every room you meet your family in is the same as your lawyer. And in that room there is always a recorder and a white light is on when you’re meeting with your family and you know it’s being recorded. When the lawyer is there, there’s no white light on. They say it’s privileged, but it’s hard to know if it’s true.”³⁷²

The lack of trust that former TA detainees and their lawyers had in the TA’s respect for lawyer-client privilege limited their ability to communicate and forced them to use arduous techniques to protect their conversations. Former detainees said that when they met in person without a glass wall with their lawyers they would whisper to each other to communicate privately so no one could overhear or record their discussions. They could also directly pass each other written legal notes without the guards or other authorities reading them.³⁷³ This was in contrast to when detainees met with their lawyers behind glass, which they often did to avoid being strip-searched. During these types of visits detainees had to speak at audible levels through a microphone or required the assistance of guards to pass a note from one side of the glass wall to the other. A defence lawyer explained: “There is no direct contact between us and the client; everything goes through the guards. We rely on papers a lot. If I want to give a piece of paper to the client, the guards have to open the envelope to see what’s in it, for instance a paperclip.”³⁷⁴ Some found ways to communicate confidentially with their lawyer during visits behind glass by writing notes on paper and then showing the note through the window so the lawyer could read it.³⁷⁵ This avoided having to pass a note through a prison guard.

5.4 INTERNATIONAL HUMAN RIGHTS LAW AND STANDARDS

The constant monitoring of detainees, their family visits, and their correspondence severely interferes with the rights of detainees in the TA and their family members to privacy and family life.³⁷⁶ Such interference can only be done in accordance with the law, to pursue a legitimate aim, and when

367 House rules, TA De Schie and TA Vught, para. 3.8.2.

368 Group interview with S., T., and Z., 24 May 2017.

369 Interview with Devika Kamp and Bart Stapert, criminal defence lawyers, Amsterdam, 30 January 2017.

370 Appeal court The Hague, 27 October 2015 [index number: ECLI:NL:GHDHA:2015:2881]. Additionally, a recent report published by the independent oversight body of the AIVD and the MIVD found that the services had unlawfully listened in to conversations between lawyers and clients as well as between journalists and their sources. Conversations were transcribed and stored without proving this was necessary for national security reasons. *Commissie van Toezicht op de Inlichtingen en Veiligheidsdiensten (CTIVD), Toezichtsrapport 52 over de inzet van bijzondere bevoegdheden jegens advocaten en journalisten door de AIVD en MIVD (Oversight report no. 52 about the use of special powers against lawyers and journalists by the AIVD and MIVD)*, 7 February 2017. From the data in this report it is unclear if the interception also concerned client-attorney conversations in prisons, including the TA.

371 Interview with Michiel Pestman, criminal defence lawyer, Amsterdam, 30 January 2017.

372 Interview with B., 9 December 2016.

373 Interview with D., 13 December 2016.

374 Interview with Michiel Pestman, criminal defence lawyer, Amsterdam, 30 January 2017.

375 Interview with K., 23 January 2017.

376 Article 17(1) of the ICCPR: “1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks”; Article 8 of the ECHR: “1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

necessary and proportionate.³⁷⁷ The European Prison Rules emphasize the importance of family contact and instruct states to ensure that “arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible”.³⁷⁸ The Council of Europe’s Guidelines for Prison and Probation Services regarding Radicalisation and Violent Extremism specifically instruct states to ensure that such supervision is “proportionate to the assessed risk.”³⁷⁹ This essential condition for the interference with the right to family and private life is not met in the TA, as placement there is automatic and no individualized risk assessment is conducted. Dutch authorities thus expose detainees and their families to severe, routine, and persistent monitoring and supervision that significantly interferes with their family life without ever determining if that interference is necessary or proportionate. As a result, some former TA detainees have experienced an unjustified erosion of their family bonds and relationships based on an assumed generalized risk due exclusively to the nature of the charges against them or the crime for which they were convicted.

As part of a state’s duty to protect a detainee’s family life the Commentary to the European Prison Rules also points out that intimate visits, or conjugal visits, are important for maintaining family life and “where possible intimate family visits should extend over a long period, for example, 72 hours.”³⁸⁰ The TA’s rules do not, however, provide an express right to non-monitored visits to enable conjugal visits.

International human rights law and standards also protects a detainee’s medical confidentiality. This protection is necessary for ensuring that detainees retain their right to privacy³⁸¹ and can access their right to the highest attainable standard of physical and mental health.³⁸² The Mandela Rules protect medical confidentiality³⁸³ and stress that states must uphold the confidentiality of medical information, unless maintaining such confidentiality would result in a real and imminent threat to the patient or to others.³⁸⁴ The Commentary to the European Prison Rules similarly informs states that detainees are entitled to “confidential access” to medical consultation and that it is unacceptable for consultation to take place in the presence of non-medical staff.³⁸⁵ The right to medical confidentiality is therefore not being fully respected when prison staff are able to hear or see detainee medical consultations. The CPT has acknowledged that special security measures may be applied to medical consultations under particular situations, but it has nonetheless criticized states when medical consultations have taken place in the presence of prison officers, calling it “not acceptable,” and recommending that “all medical examinations be conducted out of the hearing and—unless the doctor concerned expressly requests otherwise in a particular case—out of the sight of prison officers and other non-medical staff”.³⁸⁶ The CPT said the same should also apply to interviews of prisoners by nursing staff.³⁸⁷

Several former TA detainees described having prison guards at TA Vught in hearing distance or within sight of their medical consultations, and it appeared this occurred as a matter of routine. When this happens, medical confidentiality is breached. This breach was particularly significant for those detainees who censored themselves from sharing medical information with medical staff because of the presence of prison guards. The CPT has criticized The Netherlands for this practice at the TA in the past, explaining that it is unacceptable “in the absence of a comprehensive individual risk assessment”.³⁸⁸ The CPT explained: “such a state of affairs contravenes medical confidentiality and can inhibit the establishment of a doctor-patient relationship.”³⁸⁹

377 Article 8(2) of the ECHR; *Piechowicz v. Poland* (20071/07), European Court of Human Rights (2012), para. 212.

378 Rule 24.4 of the European Prison Rules.

379 Guideline III(b)(3) of the Prison Guidelines on Radicalisation and Violent Extremism [emphasis added].

380 European Prison Rules, pp. 53-54 of the Commentary.

381 See footnote 377 on right to privacy. See also *Piechowicz v. Poland* (20071/07), European Court of Human Rights (2012), para. 212.

382 Article 12(1) of the ICESCR: “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” In a narrow set of circumstances, states can place limitations on the right to health. States can apply limitations only “as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.” Article 4 of the ICESCR.

383 Rule 31 of the Mandela Rules.

384 Rule 32(1)(c) of the Mandela Rules.

385 European Prison Rules, p. 67 of the Commentary.

386 See, for example, CPT, *Report on the visit to the region of Abkhazia, Georgia, carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 April to 4 May 2009* (23 December 2009), para. 36.

387 See, for example, CPT, *Report on the visit to the region of Abkhazia, Georgia, carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 April to 4 May 2009* (23 December 2009), para. 36.

388 CPT, *Netherlands Country Report, 2008*, para. 52.

389 CPT, *Netherlands Country Report, 2008*, para. 52.

The case of the woman who met with a doctor in the presence of male guards also appears to have been contrary to the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), which expressly state that women prisoners have a right to medical confidentiality; that only medical staff should be present during medical examinations unless, in exceptional circumstances, the doctor or prisoner requests the presence of non-medical staff; and that if it is necessary for non-medical prison staff to be present during medical examinations, such staff should be women and examinations should be carried out in a manner that safeguards privacy, dignity, and confidentiality.³⁹⁰

Finally, human rights law affords TA detainees charged with criminal offences the right to be afforded opportunities to communicate and consult with lawyers and to do so in confidence and without interception, which is key to the right to defend oneself.³⁹¹ Former detainees have 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. That the internal complaint committee resolved a complaint where a guard recorded a privileged conversation is a positive sign. Nonetheless, detainees should not be placed in the unacceptable position of having reasonable grounds to suspect that authorities are monitoring their communications with lawyers, outside the very limited exceptions where such monitoring might be permitted under international human rights law and standards.

³⁹⁰ Rules 8, 11.1, and 11.2 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders. Paragraph 14 makes clear that these rules apply to “all categories of women deprived of their liberty, including criminal or civil, untried or convicted women prisoners, as well as women subject to ‘security measures’ or corrective measures ordered by a judge.”

³⁹¹ Article 14(3)(b) of the ICCPR; Article 6(3)(c) of the ECHR; Principle 8 of the Basic Principles on the Role of Lawyers; Rule 61 of the Mandela Rules; Rules 98.2 and 23.4 of the European Prison Rules; UN Human Rights Committee General Comment 32, paras 32-34. See also Section M(2)I and N(3)I of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa; and Principle V of the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas; Articles 8(2)(c) and 8(2)(d) of the American Convention on Human Rights; Article 16(3) of the Arab Charter on Human Rights; Article 7(1)(c) of the African Charter on Human and Peoples' Rights.

6. REINTEGRATION OPPORTUNITIES

“In the TA there is no future perspective, no re-socialisation, no reintegration. There is nothing like that.”
– Former TA detainee³⁹²

The TA was founded largely upon the assumption that people detained there—whether suspected or convicted of terrorist offences—were unfit for or unworthy of benefitting from reintegration opportunities prior to being released that would prepare them for returning to society.³⁹³ In 2008, then Minister for Security and Justice Hirsch Balin and Deputy Minister Nehabat Albayrak conceded that the TA does not focus on reintegration.³⁹⁴ The TA Vught house rules are indicative of the ministry’s decision not to promote reintegration programmes to help detainees return to society: “You’re expected to take individual responsibility for making the best of your detention and your return to society.”³⁹⁵

Penitentiary experts interviewed for this report indicated that such an approach is counterproductive to the Ministry of Security and Justice’s stated goal of using the TA to increase safety and security in The Netherlands. Probation service officials explained that it was “not for nothing” that they prepared people to return to society. “It’s based on science,” they said.³⁹⁶ They pointed out with concern that “the risk of recidivism is much higher without” these reintegration services.³⁹⁷ They said that after four months in detention, a person faces a particularly high risk of losing their job and home, and it is from that point onwards that probationary service officers “look at risks, protective factors, and what can he [a detainee] do in prison to help when he comes out”.³⁹⁸ They added: “We would like to do this at the TA too”³⁹⁹ and recommended that it would be good for probation service officers to get “involved with the TA at an earlier moment”.⁴⁰⁰ Independent researchers have also pointed out that the TA’s lack of focus on reintegration was a missed opportunity for possibly reducing recidivism.⁴⁰¹

Prison authorities typically help detainees re-enter society by developing individualized “Detention and Reintegration plans” for both pre-conviction suspects and convicted prisoners. The plans are developed and updated in consultation with the monthly multidisciplinary meeting groups in prison (MDO), which include the probation services.⁴⁰² The plans aim to prepare detainees for their return to society with communal trainings on issues such as finding employment and housing, dealing with debt, or learning how to cope with aggression.⁴⁰³ But at the time of the research, the TA did not offer such person-specific plans for TA detainees.

392 Quote from S., in a group interview with T. and Z., 24 May 2017.

393 In this chapter we refer to pre-release reintegration services as a general term for programs aimed at preparing detainees for their return to society.

394 *Vragen gesteld door de leden der Kamer, met de daarop door de regering gegeven antwoorden* (‘Questions posed by members of Parliament, with the answers given by the government’), reply by the Minister of Justice and Deputy Minister received at 10 July 2008, Aanhangsel van de Handelingen no. 3017, 2007–2008, pp. 6123-6124.

395 House rules, TA Vught, p. 6. The house rules for TA De Schie contain a slightly different framing: they state that within the applicable regime one receives “the space and possibilities to prepare oneself for a successful reintegration”. House rules, TA De Schie, p. 4.

396 Interview with a Senior Policy Advisor and Manager of the Terrorism, Extremism and Radicalisation Team of the Probation Services (hereinafter TER team), Utrecht, 4 April 2017.

397 Interview with a Senior Policy Advisor and Manager of the TER team, Utrecht, 4 April 2017.

398 Interview with a Senior Policy Advisor and Manager of the TER team, Utrecht, 4 April 2017.

399 Interview with a Senior Policy Advisor and Manager of the TER team, Utrecht, 4 April 2017.

400 Interview with a Senior Policy Advisor and Manager of the TER team, Utrecht, 4 April 2017.

401 T. Veldhuis et al., 2015; B.A. de Graaf & D.J. Weggemans, 2015; and T. Veldhuis et al., 2011.

402 This refers to the more generalized MDO and not the MDO-TA (see footnote 139).

403 Article 1c, sub 1 of the Regulation. See website of the DJI: <https://www.dji.nl/justitiabelen/volwassenen-in-detentie/zorg-en-begeleiding/dagbesteding/index.aspx>

One former TA detainee who was held in pre-trial detention for nearly six months and later acquitted of all charges said that authorities “did nothing, not a single thing” to help prepare her for release.⁴⁰⁴ The limited time TA detainees have outside their cells to engage in communal activities and activities on their own has been one of the main impediments to introducing such tailor-made programs at the TA.⁴⁰⁵ The result is that detainees languish in prison with limited activities. As one former detainee said: “You get bored with watching TV and reading books.”⁴⁰⁶ As discussed above, the only way TA detainees can gain access to reintegration services is in the limited cases where a TA detainee is transferred to a normal prison population. In practice, however, most TA detainees serving sentences are released on probation directly from the TA without ever having had an opportunity to first go to a facility that offers pre-release reintegration programs.⁴⁰⁷

Former detainees also described having had very limited access to education and work opportunities at the TA, which can also facilitate a person’s reintegration into society. In normal prisons and remand centres detainees usually have access to work opportunities for approximately 20 hours per week. This is not the case in the TA, which former detainees said they regretted.⁴⁰⁸ Over time authorities have introduced some in-house courses and possibilities for distance learning at the TA, but former detainees said these opportunities were very limited.⁴⁰⁹ The Vught TA Director also recognized the TA’s work-study shortfalls: “Work and education opportunities aren’t enough.... I’m trying to push for this.”⁴¹⁰ TA prisoners are by law also excluded from penitentiary “promotion and plus” programs, which aim to increase a detainee’s autonomy and sense of responsibility while in prison, characteristics that would be useful as well when a detainee is released.⁴¹¹ These programs were introduced in 2014 in regular prisons to enable convicted prisoners who were behaving well in prison to gain certain liberties and privileges such as more out-of-cell time to participate in various activities, such as work opportunities, and to receive extra visits.⁴¹²

Several former detainees described the difficulties they had after being thrown back into society without having received appropriate assistance prior to release.⁴¹³ The lack of such services is particularly difficult for former TA detainees who carry with them the stigma of being a “terrorist” regardless of whether they were found innocent or guilty, or who were low-risk offenders, or were held in the TA on charges of or having been convicted of non-violent acts. One former detainee said he wished he and other detainees had access to pre-release reintegration services because they would have a better chance of getting a job, and the services could have helped them find housing once released. He said those services would also have given him a feeling that he was working towards a goal, which was important to him because the TA was so isolating.⁴¹⁴

The TA’s routine use of restrictive confinement and the severe restrictions it places on family contact makes reintegration even more difficult. One former TA detainee recommended “more social contact with family” because, he explained, “someday you will be released and you need to stay connected with your family”.⁴¹⁵ A defence lawyer said the biggest problem for detainees was “getting used to society again. There are too many stimuli; they had no contact with people in TA.... The isolation continues afterwards.... They just throw them out, after such a heavy regime.”⁴¹⁶ Prosecutors confirmed this, saying that the isolating environment to which detainees were subjected made reintegration difficult and noted positively that the TA Vught Director had been asking for detainees to have more opportunities

404 Interview with N., 31 January 2017.

405 Interview with policy makers from the Ministry of Security and Justice, The Hague, 5 April 2017; interview with a Senior Policy Advisor and Manager of the TER team, Utrecht, 4 April 2017.

406 Group interview with S., T., and Z., 24 May 2017.

407 The aforementioned decision of the RSJ in footnote 146 may also have a positive impact on the possibilities for TA detainees to participate in the reintegration and rehabilitation services that are offered in regular prison facilities. The RSJ judgment explicitly allowed for the transfer of a detainee to enable him to prepare for his education and work before his upcoming release.

408 Interview with F., 4 January 2017; interview with E., 3 February 2017.

409 Interview with F., 4 January 2017; interview with E., 3 February 2017.

410 Interview with Yola Wanders, Director of TA Vught, Vught, 23 January 2017.

411 Article 1e, sub d of the Regulation. See also Article 1, sub j and sub k of the Regulation. See also website of the Supervisory Board: <https://www.commissievantoezicht.nl/dossiers/DBT/dbt/>

412 ‘Regeling van de Staatssecretaris van Veiligheid en Justitie van 10 februari 2014 houdende wijziging van de Regeling selectie, plaatsing en overplaatsing van gedetineerden in verband met de invoering van promoveren en degraderen van gedetineerden’ (‘Regulation of the Deputy Minister of Security and Justice of 10 February 2014 on the amendment of the Regulation selection, placement and transfer of detainees in light of the introduction of the promotion and downgrading of detainees’), *Staatscourant* 2014, no. 4617.

413 Interview with N., 31 January 2017; interview with F., 4 January 2017.

414 Group interview with S., T., and Z., 24 May 2017.

415 Interview with A., 5 December 2016.

416 Interview with Michiel Pestman, criminal defence lawyer, Amsterdam, 30 January 2017.

that can assist with reintegration.⁴¹⁷ In 2013, the Dutch Inspectorate for Security and Justice (*Inspectie voor Veiligheid en Justitie*, IVenJ) opined that by receiving visits detainees could maintain contact with society, which would also help them prepare for their return to society.⁴¹⁸ It concluded that it “expected that penitentiary institutions should not only offer opportunities for detainees to prepare themselves for return in society via visits, but also stimulate contact with the outside world via visits.”⁴¹⁹

TA detainees have access to probation services after they are released, but this is not an adequate substitute for pre-release reintegration and probation services that could help prepare them for re-entering society as free people.

At the time of writing, Dutch authorities had been willing to take some positive steps to address this serious shortcoming. Recently released detainees from TA De Schie said that beginning in 2016 they received a bit more time out of their cells for activities if they agreed to participate in a training called “Choosing for Change” (*Kiezen voor Verandering*, KVV), which is a disengagement program offered to pre- and post-conviction detainees held for a minimum of eight weeks.⁴²⁰

Policy makers from the Ministry of Security and Justice appear to recognize the value of disengagement programs for people held in the TA. Policy officers explained that they were working on introducing reintegration programs in the TA that are offered in regular prison, in addition to special disengagement programs for terrorist offenders: “We do not want the people placed in the TA to come out worse. We want to have a greater focus on the reintegration in Dutch society.... Therefore, we started to think about a more tailor-made approach.”⁴²¹ The government’s response to the CPT’s 2017 report also stated that it agreed with the CPT’s recommendation that TA detainees should be offered more reintegration activities.⁴²² It is regrettable that the TA was established in the first place without such foresight and that many former detainees will never have benefitted from such reintegration services.

6.1 INTERNATIONAL HUMAN RIGHTS LAW AND STANDARDS

International human rights law and standards require authorities to manage all places of detention with the aim of facilitating the reintegration of detainees into society.⁴²³ The European Prison Rules stress that authorities must ensure that prison conditions “offer meaningful occupational activities and treatment programmes to inmates, thus preparing them for their re-integration into society.”⁴²⁴ The Commentary to the rules explains that detainees should be given every opportunity to develop their skills and personal relationships in ways that will make it less likely that they will re-offend after they are released.⁴²⁵ The Council of Europe’s Guidelines for Prison and Probation Services regarding Radicalisation and Violent Extremism also emphasize the importance of reintegration and instruct states to evaluate the negative impact that security measures can have on reintegration.⁴²⁶ The Special Rapporteur on torture has noted that the practice of solitary confinement in particular is contrary to the penitentiary system’s essential aim of rehabilitation and reintegration.⁴²⁷

Denying detainees at the TA pre-release reintegration services and providing them with only limited work and study opportunities appears to be based on the notion that TA detainees would not benefit from or are not deserving of such services. Such a policy is contrary to the best research on this subject, to international standards regarding best practice, and indeed to the government’s own stated objective of making The Netherlands a safer and more secure country by the very establishment of the TA. The TA’s requirement of confinement to an individual cell and routine restrictions on family contact also hampers reintegration. As

417 Interview with prosecutor and researcher of the Court of The Hague, The Hague, 27 January 2017.

418 Article 2.2 of the Penitentiary Principles Act states that the prison penalty or freedom-restricting measure should serve as much as possible the preparation into society of the person in question.

419 IVenJ, ‘*Slechts op bezoek*’, 19 February 2013.

420 Group interview with S., T., and Z., 24 May 2017. For more information on this training, see <http://www.mpct.eu/wp-content/uploads/downloads/2013/10/Rapport-KvV-DF-Impact-RD-1-juli-2013.pdf>

421 Interview with policy makers from the Ministry of Security and Justice, The Hague, 5 April 2017.

422 CPT, *Response of the Netherlands to Country Report*, 2017, p. 17.

423 Article 10(3) of the ICCPR: “The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation....” Rule 6 of the European Prison Rules: “All detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty.” See also Principle 8 of the Basic Principles for the Treatment of Prisoners, and Rules 107 and 108 of the Mandela Rules.

424 European Prison Rules, p. 5 of the Commentary.

425 European Prison Rules, p. 113 of the Commentary.

426 Guidelines 10 and 22 of the Prison Guidelines on Radicalisation and Violent Extremism.

427 Interim Report to the General Assembly, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/66/268, para. 79.

described above, these general restrictions are unjustified because they are not based on individualized risk assessments. The failure to provide these services is also deeply misguided because it threatens to further isolate already stigmatized detainees, and reinforces the misconception that people suspected of and convicted of terrorist offences cannot go on to play productive roles in Dutch society.

7. INSTITUTIONAL OVERSIGHT

The Netherlands has various inspection bodies with mandates to provide institutional oversight of the TA. Those inspection bodies and procedures, however, either lack independence, lack effectiveness, or avoid focusing on the TA. These shortcomings are in addition to the ineffective individual complaints procedures to which TA detainees have access.⁴²⁸

The IVenJ is The Netherlands' official detention oversight body. It is attached to the Ministry of Security and Justice. The IVenJ reviews issues of security and justice and is authorized to conduct investigations upon request from Parliament, on request of the minister, or on its own initiative, which can include unannounced inspections. The IVenJ purports to be independent but the CPT, the UN Committee against Torture, the RSJ, and human rights groups have all criticized the IVenJ for lacking real and perceived independence.⁴²⁹ In its 2016 report on The Netherlands, the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading treatment or Punishment (SPT) also expressed its "fundamental concern" about the independence of the IVenJ, pointing out that it is housed with its respective ministry and is connected to its ministry "financially, logistically and in terms of supervision," and noted that the IVenJ's work plans are proposed or approved by its minister and visit reports are sent to its minister for review before being publicized.⁴³⁰

Additionally, the IVenJ's recommendations are not binding, and at the time of writing the government was still in the process of implementing the advice that its predecessor body, the Inspectorate for Implementation of Sanctions (*Inspectie voor de Sanctietoepassing*, IST), gave six years ago regarding the TA. The IST had recommended, among other things, that authorities should pay more attention to reintegration and rehabilitation services and provide additional parent-child phone time.⁴³¹ The IVenJ had also conducted an informal "orientation" of the TA approximately two years ago and gave its non-binding and non-public advice to the Deputy Minister for Security and Justice.⁴³² This advice, the details of which are not known to Amnesty International and the Open Society Justice Initiative, was not based on interviews with detainees or former detainees.⁴³³ The IVenJ was scheduled to conduct a more formal and detailed review of the TA by the end of 2017.⁴³⁴

428 See Arbitrary and Automatic Placement in the TA; Excessive Restrictive Confinement; and Invasive Body Searches and Respect for Human Dignity and other Rights, above.

429 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 10 to 21 October 2011* (made publicly available 9 August 2012), pp. 10, 52; Concluding Observations of CAT: Netherlands, UN Doc. CAT/C/NLD/CO/5-6 (2013), para. 28; RSJ, "Letter to the involved organizations in the NPM", 10 November 2014; *Nederlands Juristen Comité voor de Mensenrechten (NJCM)* (Dutch section of the International Commission of Jurists), "Commentary of the sixth periodic report submitted by the Kingdom of The Netherlands on the implementation of the UN Convention against Torture and CIDT", CAT/C/NLD.Q/6 (29 April 2013), p. 6; Netherlands Human Rights Institute (*College voor de Rechten van de Mens*, CRM), Submission to the UN Committee against Torture on the list of issues prior to reporting for The Netherlands, July 2015; Amnesty International, Netherlands: *Submission to the UN Committee against Torture* (EUR 35/2014/2015), pp. 11-12.

430 SPT, *Report on the visit made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the purpose of providing advisory assistance to the National Preventive Mechanism of the Kingdom of The Netherlands*, 16 March 2016, CAT/OP/NLD/R.1, paras 36-38. In its response to the SPT, the Dutch government stated that the independence of the inspectorate was sufficiently safeguarded. '*Mensenrechten in Nederland: Reactie op het rapport van het Subcomité aangaande het Nederlandse NPM*' ('Human Rights in The Netherlands: Reaction to the report of the Subcommittee regarding the Dutch NPM'), *Parliamentary Papers*, TK 33826, no. 18, 26 September 2016, p. 3.

431 Inspectorate for Implementation of Sanctions (IST, merged into the Inspectorate for VenJ), '*Doорlichting P.I. Vught (Evaluation of Penitentiary Institution Vught)*', May 2011, pp. 104, 109.

432 Interview with strategic inspector of the IVenJ, The Hague, 25 January 2017.

433 Interview with strategic inspector of the IVenJ, The Hague, 25 January 2017.

434 Interview with strategic inspector of the IVenJ, The Hague, 25 January 2017.

The IVenJ uses a monitoring framework that is based on international human rights law and standards, but its evaluations of the TA have never carefully analysed possible conflicts with international human rights law and standards, including the prohibition on torture and other cruel, inhuman or degrading treatment or punishment.⁴³⁵ The framework also distinguishes between hard law—that is, law setting out binding obligations—and soft law, such as recommendations and guidelines and other standards. The Inspectorate considers only hard law to be binding and to guide its decisions.⁴³⁶ In practice this means the IVenJ has not relied on the European Prison Rules and other authoritative standards in its judgments on the compliance of the TA with international norms and standards.⁴³⁷ This practice is flawed because these standards provide concrete criteria that states can use to assess whether detention conditions amount to a violation of the prohibition against torture or other cruel, inhuman or degrading treatment or punishment.

Other detention oversight bodies exist, but they have failed to focus on the TA in recent years. The Health Care Inspectorate (IGZ), for instance, could have monitored health conditions and care in the TA but it has not done so. It stated that previous visits to the prison facilities of Vught and De Schie did not give rise to specific concerns that merited further research into the TA in particular.⁴³⁸ This was the IGZ's position despite the CPT having raised general concerns that the IGZ does not play a proactive monitoring role in Dutch detention facilities.⁴³⁹ Having IGZ health experts monitoring the TA could have a potentially useful impact on, for example, addressing the patient-doctor confidentiality concerns documented in this report and the effects of restrictive confinement on detainees.

The Netherlands also has a National Preventive Mechanism (NPM) under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The IVenJ and IGZ, together with the RSJ and the Inspectorate for Youth Care, were appointed to the NPM. The IVenJ is the coordinator of the NPM. In this capacity, the NPM is responsible for monitoring and making preventive warnings when there are risks of torture or other ill-treatment. The NPM has not, however, conducted TA inspections. If it were to do so, then the aforementioned criticisms of its structure and independence by several international and national actors would have to be addressed so that it can fully and effectively discharge its mandate under the OPCAT.⁴⁴⁰ The NPM's reputation has been so badly tarnished that the National Ombudsman decided to step down from its observer role in 2014 and the RSJ also announced that it ceased its participation in NPM activities in 2016.⁴⁴¹ One expert described the NPM as dysfunctional, existing only in name, and lacking the qualities of effectiveness and independence that an NPM would need to supervise the treatment of TA detainees.⁴⁴²

The supervisory boards within each institution, which also function as the internal complaint procedures described above, and the RSJ also perform institutional oversight functions. At the time of writing the supervisory boards at Vught and De Schie had never used their mandate to provide public advice on the TA or on the selection, placement, and transfer procedure.⁴⁴³ The RSJ, which also performs a non-binding advisory function and can give its advice on its own initiative as well as on request, has not published any advice regarding the TA since 2006, when it advised against the automatic selection and placement of individuals suspected and convicted of terrorism without an individual risk assessment to determine if placement in such a strict security regime is appropriate. The RSJ also criticized the TA for lacking clear and objective grounds for complaint and appeal procedures; called for stronger safeguards, including periodic reviews and adversarial hearings prior to placement; and recommended that TA

435 In its evaluation of TA Vught, the IVenJ's predecessor, the IST referred only once to the rights of children to maintain personal relations and direct contact with detained parents, which it based on Article 9(3) of the Convention on the Rights of the Child. IST, *'Doorlichting P.I Vught*, 2011, p. 104. Amnesty International also observed this problem of the Inspectorate not carefully assessing possible conflicts with international human rights law in the IVenJ's inspections of the deportation of foreigners. Amnesty International, *Uitgezet. Mensenrechten in het kader van gedwongen terugkeer en vertrek (Deported. Human rights in the framework of forced returns)*, July 2017.

436 Ministry of Security and Justice, *Toetsingskader Doorlichtingen penitentiaire instellingen. Onderlegger (Monitoring Framework Penitentiary Institutions)*, January 2015.

437 Ministry of Security and Justice, *Monitoring Framework*, p. 3: "[Herein] a differentiation is made between so-called 'hard-law' criteria, such as the Penitentiary Principles Act, Ministerial Directives, established DJI policy documents, etc. and 'soft law' criteria resulting from the European Prison Rules (EPR), the Committee for the Prevention of Torture (CPT) and the Mandela Rules. The 'hard law' criteria are leading for the Inspectorate VenJ. The 'soft law' criteria are used by the IvenJ as a framework or a perspective, but are not included in the formation of judgments."

438 Email correspondence with the Health Care Inspectorate, 21 July 2017.

439 See CPT, *Netherlands Country Report*, 2017, p. 11.

440 See footnotes 430-431 on this same issue.

441 See *Brief van waarnemend Ombudsman (Letter of observing Ombudsman)*, no. 2014 0273, 24 July 2014. The RSJ ceased its participation in the NPM after the Dutch government had largely dismissed the recommendations of the SPT in its response to the SPT's report (TK 33826 no. 18, 26 September 2016).

442 Interview with Anton van Kalmthout, Professor of Tilburg University, Tilburg, 7 April 2017.

443 Interview with members of the De Schie complaint committee, Rotterdam, 16 February 2016; interview with members of the Vught complaint committee, Vught, 22 January 2017.

detainees benefit from more transfer and reintegration opportunities.⁴⁴⁴ As evidenced by this report, Dutch authorities have not implemented most of the RSJ's advice.

The TA had also been subjected to CPT visits. In its 2016 country visit to The Netherlands the CPT repeated many of its criticism from its last visit in 2007 on the TA's automatic placement procedure and, in particular, the lack of a comprehensive individual risk assessment and the lack of effective periodic reviews in the framework of an adversarial procedure. It also reported that it remained unsatisfactory that TA detainees spent most of their time locked in their cells. After its 2007 visit, the CPT also criticized the TA for failures to protect medical confidentiality.⁴⁴⁵ The Dutch government's 2017 response to the CPT agreed that TA detainees should be offered more reintegration activities outside their cells, but, as noted above, other TA-focused recommendations that the CPT made in the past have not been implemented in an effective manner.⁴⁴⁶

7.1 INTERNATIONAL HUMAN RIGHTS LAW AND STANDARDS

The European Prison Rules and the Mandela Rules instruct states to subject their prisons to regular government inspection and independent monitoring.⁴⁴⁷ The Mandela Rules explain that the objective of these inspections is to “ensure that prisons are managed in accordance with existing laws, regulations, policies and procedures, with a view to bringing about the objectives of penal and corrections services, and that the rights of prisoners are protected”.⁴⁴⁸

The Netherlands must significantly improve institutional oversight of the TA. Despite being required to conduct regular inspections, the national bodies that conduct formal TA inspections appear to have done so on an ad hoc basis, with considerable amounts of time passing between each inspection. Moreover, the IVenJ, which has the primary responsibility for inspecting the TA, has been widely criticized for lacking independence. None of the bodies that have conducted TA inspections are tasked with providing binding recommendations, including the CPT. It is clear from the government's unwillingness to take their advice—much of which reflects the concerns of this report—that these monitoring bodies do not have the authority to ensure that the TA is lawfully managed and that the rights of detainees are protected.

444 RSJ, *Advies over de bijzondere opvang voor terroristen* ('Advice on special detention for terrorists'), 25 September 2006.

445 See CPT, *Netherlands Country Report, 2017*. See also CPT, *Netherlands Country Report, 2008*.

446 CPT, *Response of the Netherlands to Country Report, 2017*, p. 17.

447 Rule 9 of the European Prison Rules; Rule 83 of the Mandela Rules.

448 Rule 83 of the Mandela Rules.

8. FULL RECOMMENDATIONS TO THE GOVERNMENT OF THE NETHERLANDS

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 their 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:
 - o access to an effective judicial review of procedures and merits, such as the RSJ;
 - o a right to be heard in person or be represented by one's counsel;
 - o a right to have adequate access to information to challenge the imposed security measures;
 - o 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
 - o 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.



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