

A FAILED EXPERIMENT

THE TASER-PILOT
OF THE DUTCH POLICE





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Foreword

It is required by recognized international human rights rules and standards as presented in the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials that police agencies have at their disposition a range of means to respond to difficult situations in a differentiated manner.¹ Thus, Amnesty International is not outright opposed to the use of electro-shock weapons² in law enforcement in all cases. **However, the current use of electro-shock weapons as well as the governing regulations in The Netherlands raise serious concerns and therefore Amnesty International calls the Dutch police to:**

- **suspend the use of electro-shock weapons by all police units currently using them until a suitable legal and operational framework for their use has been set up that is in line with the obligations of The Netherlands under international human rights law and standards and – until this is done – to withdraw all electro-shock weapons distributed;**
- **refrain from widespread distribution of electro-shock weapons in day-to-day policing;**
- **cease any police interventions in mental health institutions in all situations and circumstances that do not amount to immediate life threatening emergencies (e.g. hostage situations).**

Amnesty International furthermore urges the Dutch government to create a legislative framework governing the use of force that gives due consideration to the obligations of The Netherlands under international human rights law, in particular to regulate, in formal legislation, the use of force in line with the UN Basic Principles on the Use of Force and Firearms, including the use of firearms and the use of electro-shock weapons, as well the overall conditions and criteria for police interventions in mental health institutions.

This briefing sets out the background to the current pilot project conducted by the Dutch police on the general deployment of electro-shock weapons in day-to-day policing (I.). It further provides a summary of the Amnesty International's main findings regarding the human rights concerns of the first pilot phase as well as the overall set up of the project and its interim evaluation (II.). These findings are then more in detail explained and elaborated in section III., followed by a conclusion and some recommendations (IV.).

1 In 2015, Amnesty International, The Netherlands, has developed 'Use-of-Force: Guidelines for the Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials', that further explain the concrete measures required to ensure that the use of force is resorted to in a lawful and human rights compliant manner in full respect of the UN Basic Principles.

2 Electro-shock weapons such as the Taser X2 are also sometimes referred to as "conducted energy devices" (CED), "conducted energy weapons" (CEW) or "electrical discharge weapons" (EDW). This briefing - addressing the possible introduction of the Taser X2 in day-to-day policing in the Netherlands - uses the term "electro-shock weapon", which is the English translation of for "stroomstootwapen", i.e. the term used in the Dutch legislation and policing documents.

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I Background

In May 2011, the Dutch police started the use of electro-shock weapons (at that time the Taser X26) by selected special units (in particular: arrest teams). On 1 February 2017, a pilot project commenced with a view to deciding on whether electro-shock weapons should be generally deployed for day-to-day policing (Basispolitiezorg – BPZ). 4 teams were selected to carry out the pilot project: Two ordinary patrolling police units (Amersfoort and Zwolle, the latter of which has also recently been equipped with an extendible baton – a weapon that has now been decided for general distribution in day-to-day policing BPZ), a dog unit in Rotterdam, and a support unit in the police region of North-Netherland. In total 320 officers were certified in the use of the weapon. The four units were given the recently developed Taser X2.³ The evaluation period is scheduled to end on 1 February 2018, while the temporary authorisation for the pilot teams to use the weapon runs until 31 January 2019; unless a decision to the contrary is taken, these four teams will continue to use the weapon beyond the evaluation phase for another year.

It does not seem to be entirely clear what is the actual objective of the intended generalized distribution of electro-shock weapons in day to day policing: Actually, during the initial conception of the pilot project, the Minister of Justice and Security⁴ gave two reasons to the parliament:⁵ one would be the reduction of the need to resort to more serious means such as the use of firearms; and the other one was that electro-shock weapons could help police officers to deal with persons who are resistant to pain against whom the use of pepper spray or a baton would not be effective.⁶ This latter objective was also highlighted in a statement issued by the police when announcing the start of the pilot project.⁷ In addition to this, in the same statement, the police expressed the hope that this weapon could contribute to reduce injuries among police officers.

On 24 November 2017, an interim report was published, covering the first six months of the pilot project (February to August 2017).⁸ The findings in that report are particularly worrying and are the reason that Amnesty comes forward with this briefing.

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- 3 Please note that the 45 officers of North-Netherland were trained at a later stage during the pilot phase, they started use only at the end of August 2017 and therefore there is no data yet for this unit for the period contemplated in this briefing.
 - 4 In the previous governments the responsible Minister for the Police was the Minister of Security and Justice. With the start of the new government (autumn 2017) the name was changed to 'Justice and Security' which is the name used in this briefing.
 - 5 Interim report: Tussenrapportage pilot stroomstootwapen, Otto Adang (redactie), Sjef Orbons, Bas Mali, Kim Vermeulen, September 2017; p. 3. https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2017Z16292&did=2017D34095.
 - 6 Worryingly, objectives formulated later were much more vaguely without establishing any concrete operational benefit: "contributing to controlling and reducing the violence with which police is confronted on a daily basis" - Tweede Kamer, 29628 nr. 686, Brief van de minister van Justitie en Veiligheid, 1 February 2017 (letter announcing the pilot project).
 - 7 Nieuwsbericht Politie over start proef stroomstootwapen, 1 feb 2017: <https://www.politie.nl/nieuws/2017/februari/1/00-politie-begint-proef-met-stroomstootwapen.html>
 - 8 Tussenrapportage pilot stroomstootwapen, Otto Adang (redactie), Sjef Orbons, Bas Mali, Kim Vermeulen, September 2017.

Amnesty International has for many years closely followed the use of electro-shock weapons across the world and repeatedly highlighted two main human rights concerns,⁹ which are also shared by other international bodies:¹⁰

Firstly, the risks involved for the health and lives of those exposed to the use of electro-shock weapons are underestimated. These risks apply especially to individuals particularly vulnerable to adverse reactions from electro-shocks such as pregnant women, elderly, people suffering from heart disease or asthma, as well as people under the influence of drugs and/or medication – the last of these being one of the groups most likely to be actually targeted with an electro-shock weapon. Despite authorities as well as the manufacturer Axon (formerly Taser International) having repeatedly tried to deny that electro-shock weapons have been the direct cause of death, in too many cases the use of electro-shock weapons must at least be considered having had a contributory effect to the death of a person – often in combination with existing risk factors.¹¹

Extract from:



Instructor and user: Warnings, Risks & Release Agreement



WARNING *CUMULATIVE EFFECTS.* CEW [conducted energy weapons] exposure causes certain effects, including physiologic and metabolic changes, stress, and pain. In some individuals, the risk of death or serious injury may increase with cumulative CEW exposure. Repeated, prolonged, or continuous CEW applications may contribute to cumulative exhaustion, stress, cardiac, physiologic, metabolic, respiratory, and associated medical risks which could increase the risk of death or serious injury. Minimize repeated, continuous, or simultaneous exposures.

PHYSIOLOGIC AND METABOLIC EFFECTS. CEW use causes physiologic and/or metabolic effects that may increase the risk of death or serious injury. These effects include changes in blood chemistry, blood pressure, respiration, heart rate and rhythm, and adrenaline and stress hormones, among others. In human studies of electrical discharge from a single CEW of up to 15 seconds, the effects on acid/base balance, creatine kinase, electrolytes, stress hormones, and vital signs were comparable to or less than changes expected from physical exertion similar to struggling, resistance, fighting, fleeing, or from the application of some other force tools or techniques. Some individuals may be particularly susceptible to the effects of CEW use.

- 9 The human rights impact of less lethal weapons and other law enforcement equipment, 13 April 2015, Index number: ACT 30/1305/2015, available at: <https://www.amnesty.org/en/documents/act30/1305/2015/en/>; USA: 'Less than lethal?' The use of stun weapons in US law enforcement, 16 December 2008, Index number: AMR 51/010/2008, available at: <https://www.amnesty.org/en/documents/AMR51/010/2008/en/>.
- 10 See for instance The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT/Inf(2010)28-part. And in: Report to the Government of the United Kingdom on the visit to the United Kingdom, CPT/Inf (2009) 30, available at: <https://rm.coe.int/1680698700>.
- 11 A recent study carried out by Reuters has confirmed many of the risks Amnesty International had already been mentioning and provides great clarity as to how electro-shock weapons can contribute to serious health problems and even death in conjunction with other factors, <https://www.reuters.com/investigates/special-report/usa-taser-database/>.

These susceptible individuals include the elderly, those with heart conditions, asthma or other pulmonary conditions, and people suffering from excited delirium, profound agitation, severe exhaustion, drug intoxication or chronic drug abuse, and/or over-exertion from physical struggle. In a physiologically or metabolically compromised person, any physiologic or metabolic change may cause or contribute to sudden death.

⚠ WARNING

CARDIAC CAPTURE. CEW exposure in the chest area near the heart has a low probability of inducing extra heart beats (cardiac capture). In rare circumstances, cardiac capture could lead to cardiac arrest. When possible, avoid targeting the frontal chest area near the heart to reduce the risk of potential serious injury or death. Cardiac capture may be more likely in children and thin adults because the heart is usually closer to the CEW-delivered discharge (the dart-to-heart distance). Serious complications could also arise in those with impaired heart function or in those with an implanted cardiac pacemaker or defibrillator.

https://taser.cdn.prismic.io/taser%2F87b87fb3-1a7e-4de1-bc15-537536ee5f50_instructor-and-user-exposure-release.pdf

And secondly, the very nature of electro-shock weapons presents a high risk of mission creep, i.e. being used in an inappropriate manner or being misused or even being abused for cruel, inhuman or degrading treatment or torture: electro-shock weapons are relatively easy to handle, but leave almost no traces on the person and the serious suffering caused to the person is not really being visible to the officer. As a result, this may lead to police officers resorting too easily and quickly to this weapon, without sufficiently reflecting whether the situation actually justifies the use of this weapon and without considering alternative options that cause less suffering and present a lower level of risk. And there is also a risk of over-use, i.e. when the weapon has already been resorted to in a particular instance, there is a risk of repeated use to keep the person under control.

Preventing this risk from materializing requires a wide range of measures to be taken by legislators and law enforcement authorities. In view of these risks Amnesty International has constantly called on governments and law enforcement authorities to only allow the use of electro-shock weapons in situations of serious threats to life or of serious injury in order to avoid the use of firearms,¹² and not to consider it as a simple enforcement tool to obtain compliance.

In this regard it is important to clarify that Amnesty International is not outright opposed to the use of projectile electro-shock weapons in law enforcement in all cases. However, in view of the serious risks mentioned above, it is crucial that a range of measures is taken by the authorities to limit their use and as far as possible prevent these risks actually materializing.

¹² This is also the recommendation of the The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in its 20th report: *CPT/Inf(2010)28-part*: “70. In the CPT’s view, the use of EDW should be limited to situations where there is a real and immediate threat to life or risk of serious injury. Recourse to such weapons for the sole purpose of securing compliance with an order is inadmissible.” As well as in: Report to the Government of the United Kingdom on the visit to the United Kingdom, CPT/Inf (2009) 30, available at: <https://rm.coe.int/1680698700>, para. 12: “The CPT considers that the criteria for any use of electro-shock weapons by police officers at least closely correspond those governing the use of firearms;...”

In the Netherlands, Amnesty International has also closely followed the use of electro-shock weapons, in particular the present pilot project, and reviewed the interim report. At the start of the pilot in February 2017 Amnesty provided comments on the insufficient level of regulation in place for the pilot project and pointed to the risk of mission creep and risks posed to health in particular when used against individuals identifiable as likely to be vulnerable to adverse reactions from electro-shock weapons.¹³ Following media reports on the use of the Taser X2 against a man in a separation cell of a mental health institution with the aim of administering medication, Amnesty demanded the suspension of the use of electro-shock weapons pending evaluation of the incident and the establishment of stricter regulation.¹⁴

This briefing sets out the main human rights concerns relating to this project, but also in relation to the overall approach of the Dutch police in relation to the use of force.

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- 13 Amnesty International Netherlands public position, 1 February 2017:
<https://www.amnesty.nl/wat-we-doen/landen/nederland/het-gebruik-van-stroomstootwapens-in-nederland>.
The UN Committee against Torture in its 2013 report on the Netherlands has expressed similar concerns and recommended the government to “refrain from flat distribution and use” of electro-shock weapons and stated that such weapons “should be used exclusively in extreme limited situations where there is a real and immediate threat to life or risk of serious injury, as a substitute for lethal weapons.” UN Committee against Torture, CAT/C/NLD/CO/5-6, 20 June 2013, para 27;
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/NLD/CO/5-6&Lang=En.
- 14 Amnesty International Netherlands public position, 5 September 2017:
www.amnesty.nl/actueel/amnesty-eist-opschorting-gebruik-stroomstootwapen-politie

II Summary of Amnesty International findings

- 1) **The pilot teams used electro-shock weapons far too often and this in situations that do not justify such use:**
 - in situations that do not correspond to the underlying idea of their generalized introduction, they are used contrary to the official ministerial instructions ('geweldsinstructie') and to the manufacturer's safety instructions: in short, electro-shock weapons appear rather as the first tactical option to obtain compliance;
 - against the most vulnerable persons such as persons with mental disabilities or undergoing a situation of mental disorder or crisis;
 - against persons who are already under control, including those who are already handcuffed;
 - in violation of the principle of necessity as other options such as de-escalation, mediation, temporary withdrawal etc. do not seem to have been attempted or considered;
 - in situations that do not seem to present an imminent threat or danger of death or serious injury, therefore violating the principle of proportionality.

- 2) **The electro-shock weapons are often used in drive-stun mode, a mode in which the weapon is held against the body of an individual without firing the projectiles, and which is intended to cause pain without incapacitating the target/individual;** therefore in many instances it is unlikely to be effective and in many cases amounts to cruel, inhuman or degrading treatment; moreover, in view of its limited effectiveness, use in this mode implies a higher risk of repeated or prolonged discharge and therefore further increased risks for the health and life of the person.

- 3) **The instructions ("geweldsinstructie") issued by the Minister of Justice and Security themselves are insufficient and inappropriate:**¹⁵ they merely describe four types of very general situations in which the electro-shock weapon may be used, but do not provide for any decision making criteria as to when a situation may / may not warrant the use of the weapon. Moreover, they do not regulate how the weapon is to be used, what are the situations where it should not be used at all, and what precautions are to be taken before using the weapon - which amounts to a serious failure to reduce the risks of causing death or serious injury, as well as a failure to address the risk of mission creep or inappropriate or abusive use of electro-shock weapons.

- 4) **As confirmed by the interim evaluation report, the training is inadequate and too short in view of the complexity of the weapon;** in particular it does not contain sufficient scenario based exercises, nor does it provide information regarding the health risks involved in the use of the weapon and the precautions to be taken in view of these risks.

15 In fact, this document, though legally binding, is not a formal law: It has been issued by the Ministry of Justice and Security, thus by an executive power. As such - and as the title "Geweldsinstructie" ("Use of force instructions") would normally imply - they should give more precision to the general police law establishing the police power to use force and in that way serving to implement this law in practice. In their current form, these instructions seriously fail in this regard, leaving it to the training and police practice to determine on the concrete use of electro-shock weapons.

- 5) **The overall set up of the pilot project is inadequate and highly problematic;** in particular, it is not based on a clear definition of the operational gap to be filled by the new weapon (that is, the type of situations encountered by the police in which the electro-shock weapons would help to reduce harm and injury to anyone involved, while enabling the intervention to attain its objectives in a necessary and proportionate manner).
- 6) **The interim evaluation is itself inadequate and incomplete; in particular:**
- it did not evaluate whether the use of electro-shock weapons was actually justified in the different situations in which they were used (incl. assessing whether those situations might have exemplified the risk of mission creep) or whether the use of electro-shock weapons in those cases was in line with the ministerial instructions;
 - it relies heavily on personal accounts from the officers who have resorted to the weapon and from the person against whom they were used; the data recorded by the weapons themselves were not retrieved and reviewed for the report and were not matched against the personal accounts;
 - it fails to assess the appropriateness of the ministerial instructions for ensuring that electro-shock weapons are only used for a legitimate purpose, when necessary and proportionate, and in an appropriate manner.
- 7) **There is no effective accountability for the use of electro-shock weapons by police officers.** The reporting system on the use of force contains no explicit requirement for police officers to explain their decision in the light of the principles of proportionality and necessity, nor are these principles effectively being used in reviewing police use of force (in this instance: the use of electro-shock weapons). This becomes particularly evident by the fact that even the most obvious cases of abusive use of electro-shock weapons – the use of drive-stun mode on persons who are already handcuffed – have not been taken up at any level – not by the police authorities in their internal reviewing process, nor by oversight or judicial authorities, nor at political level by the parliament or the ministry. This seriously undermines accountability for the use of force and fosters impunity for excessive use of force.

III **Amnesty International findings**

1) **Too frequent use of electro-shock weapons**

- **Electro-shock weapons are resorted to far too often and in situations that do not justify such use.**
 - While the interim report does not provide any analysis as to whether the use of the electro-shock weapon was justified in the different situations, the report contains sufficient worrying information to allow for the conclusion that the electro-shock weapon is simply used as a tool to obtain compliance and is not recognised as a dangerous weapon that should only be used when the situation has reached a minimum threshold of imminent danger.

- **Electro-shock weapons were used too often and in situations that do not correspond to the underlying idea of their generalized introduction, but rather as the first tactical option to obtain compliance, contrary to the official instructions ('geweldsinstructie') as well as and the manufacturer's safety instructions.**
 - During the interim reporting period of only 6 months, with 275 officers already certified and allowed to use the weapon,¹⁶ the electro-shock weapon was resorted to 167 times in different ways (including drawing, warning the individual of the intent to use it, arcing or discharging etc.) in 158 different situations (in some situations there was more than one use). Compared to this, the recorded overall use of firearms (including drawing, warnings and firing shots) of the entire police in The Netherlands (with approximately 34.000 officers being equipped with a firearm)¹⁷ was only 753 times during the entire year 2015; this contradicts seriously the explanation that electro-shock weapons should reduce the need to use firearms.¹⁸
 - More precisely, in view of the objective of reducing the need to resort to a firearm, it is surprising and worrying that the units from Amersfoort and Zwolle resorted to the electro-shock weapons 32 and 31 times respectively (with 4/9 actual discharges); a high number when compared to the recorded incidence of use of a firearm: Police in these two locations had made use (incl. drawing, warning, warning shots etc.) of a firearm less than 10 times over the entire year 2015 and not a single shot was fired at a person during that period.¹⁹ Unfortunately, the interim report fails to review this aspect and to assess whether there are indications that electro-shock weapons are used too easily by these teams.
 - Among the 32 dart-firing discharges, in more than half of the situations (17 times), additional discharges were made with an average of 2.4 additional discharges in these 17 cases – despite the explicit recommendation in the safety instructions of the Axon company that the number and duration of exposures be minimized.²⁰

16 This number does not include the 45 officers of the support-unit from North-Netherlands, who only started the use at the end of the interim-report-period and therefore cannot be taken into consideration for the period after the interim report.

17 Number of firearm certified officers in 2015: <https://data.overheid.nl/data/dataset/cijfers-omtrent-schietvaardigheid-politie-2015>

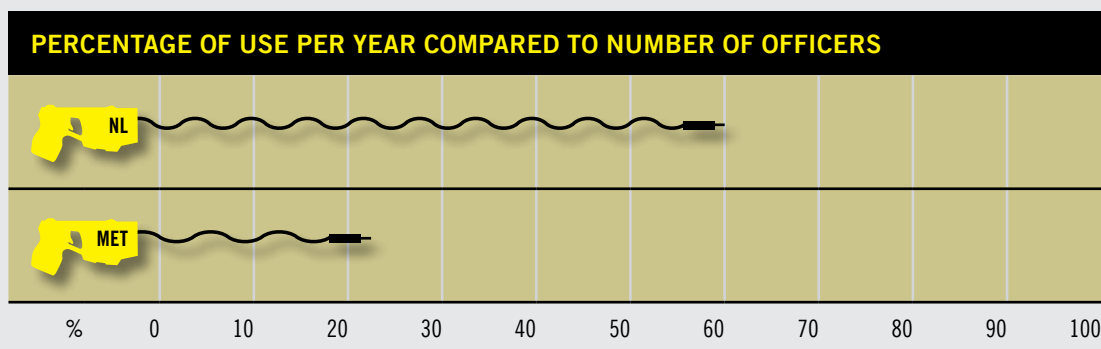
18 While these data are not as such, publicly available, the Dutch media outlet NOS did an freedom of information request and received data from 2014 and 2015: <https://nos.nl/artikel/2108382-agenten-trokken-vaker-hun-pistool-maar-schoten-minder.html>.

19 See: <https://nos.nl/artikel/2108427-hoe-vaak-gebruikten-agenten-in-jouw-gemeente-vorig-jaar-geweld.html>.

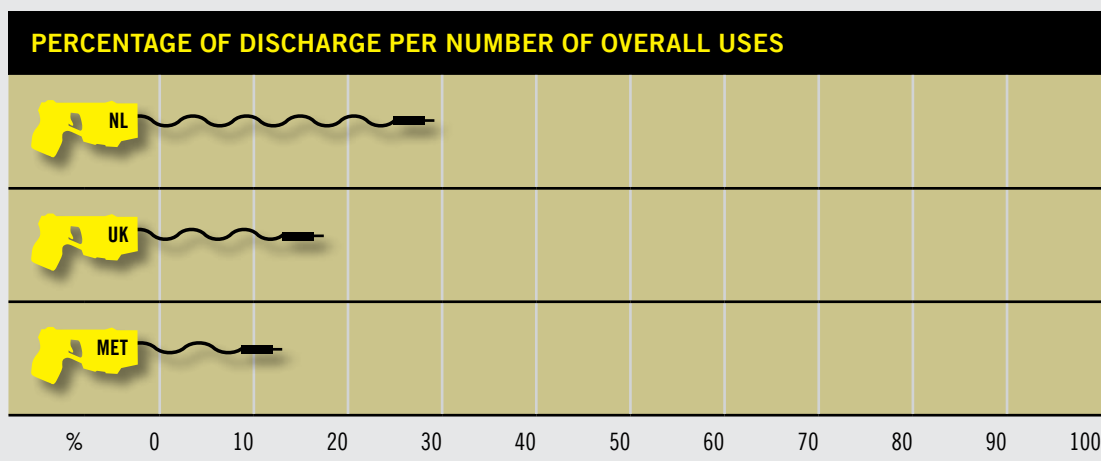
20 See Annex 8 of the interim report.

As a means of illustration to which extent the high numbers of uses during the pilot phase is worrying, one may compare this with the situation in another western-European country, the United Kingdom:²¹

Compared to a total of 167 uses in the course of 6 months with 275 trained officers in the Netherlands, the Metropolitan police in London with ~4600 trained officers²² resorted to the electro-shock weapon 2072 times during the entire year of 2016.²³ This means that the pilot teams used the weapon more than twice as often (2.66 times) as officers from the Metropolitan police (MET).



Out of the 167 uses, 49 (=29%) were actual discharges. In comparison: In the United Kingdom, in 2016, only 17% were discharges (and even less in the Metropolitan police only: 13%).²⁴



In view of these numbers, it is quite surprising that in his cover letter to parliament accompanying the interim report, the Minister of Justice and Security concluded that the use of the electro-shock weapon “grosso modo” corresponds to the situation in the United Kingdom.²⁵

21 The numbers from the United Kingdom are used for these illustration purposes, because it is the country that provides the most detailed and up-to-date statistics on use of electro-shock weapons and makes them publicly available.

22 <http://news.met.police.uk/news/additional-officers-to-be-trained-in-use-of-taser-247387>.

23 <https://www.gov.uk/government/statistics/police-use-of-taser-x26-conducted-energy-devices-statistics-england-and-wales-1-january-to-31-december-2016-data-tables>.

24 <https://www.gov.uk/government/statistics/police-use-of-taser-x26-conducted-energy-devices-statistics-england-and-wales-1-january-to-31-december-2016-data-tables>.

25 Brief Minister van Justitie en Veiligheid, Tweede Kamer, Kamerstukken 29628 nr. 747, 24 November 2017, p. 8; “Taking into account the limited numbers of uses in the Netherlands to date, these percentages grosso modo correspond with the experience gained in the Dutch pilot so far.” www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2017Z16292&did=2017D34095.

- **Electro-shock weapons were used against the most vulnerable members of the society: mentally disturbed persons in mental health institutions**

- Another serious concern is the fact that 11 cases concerned police interventions in mental health institutions with a view to control a patient.²⁶ This has already been highlighted as problematic in the interim report and also led to a decision of Parliament in December 2017 to temporarily prohibit the use of electro-shock weapons in such institutions until the final decision concerning the general deployment of electro-shock weapons to all police officers. However, this decision is only temporary and also falls short of addressing the more general problem of police intervening in such institutions at all, including the fact that at current stage there seems to be no formal legal base for the police to intervene with the use of force in such institutions at all.²⁷ The interim report lists in Annex 6, 27 cases of electro-shock weapons' use in special circumstances, including at least 23 cases in which the person was already in some form of custody of an institution, a number of them in mental health institutions. These include for example case no.17: "Locked up, mentally disturbed man had to receive medicine. Very aggressive. Use of shield procedure met heavy resistance from the man. 4x stun mode used to break resistance".

These incidents sadly confirm what the Council of Europe's Committee for the Prevention of Torture earlier stated in 2016 after its visit to the Netherlands with regard to police interventions in mental health institutions:²⁸

"In the CPT's view, such interventions are inappropriate and frightening for the patient concerned as well as for other patients observing them. Moreover, police officers are not trained to manage psychiatric patients and their presence and use of force could well result in a patient being traumatised. Psychiatric establishments should have a sufficient number of properly trained staff to manage agitated patients with psychiatric disorders. It is particularly problematic to remove agitated psychiatric patients from a psychiatric setting to police custody. The CPT recommends that the Dutch government puts an end to the practice of involving police officers or private security guards in managing agitated patients in psychiatric establishments. Further, all nursing staff in psychiatric establishments should be trained in the appropriate ways of managing agitated patients and refresher courses should be organised at regular intervals."

In any case, being exposed to an electro-shock weapon can only add to the trauma of a heavy handed police intervention, which is particularly serious and harmful to persons who are already undergoing a difficult mental situation (in some cases even a psychosis) and may also increase the risk of causing death or serious injury.²⁹

26 Antwoorden op Kamervragen, Tweede Kamer der Staten Generaal, 2017Z17469, 20 december 2017.

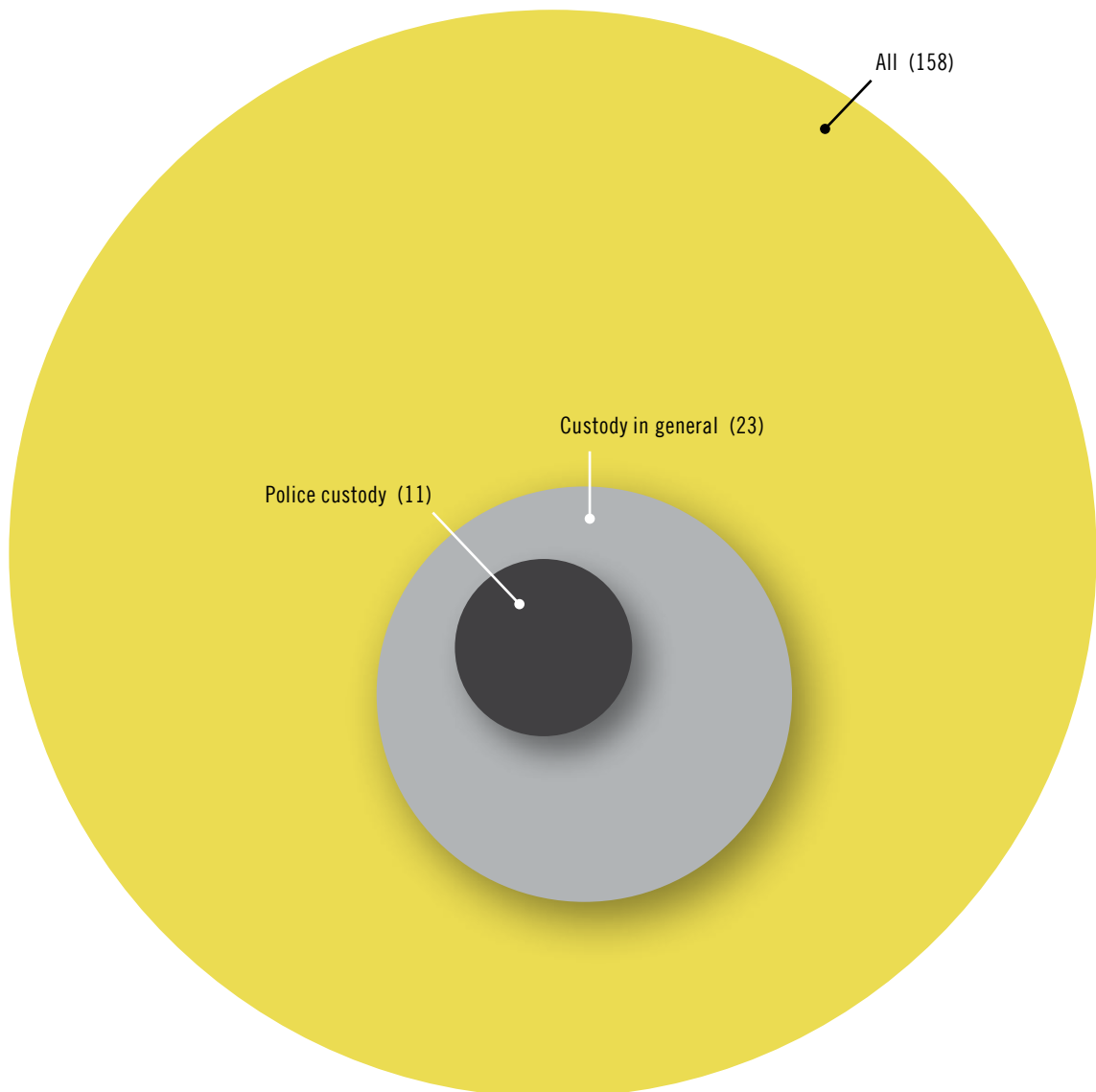
27 While there seems to be a covenant between the police and the mental-health sector (GGZ) that police interventions should only take place when the case amounts to a serious '112'-call-situations, this apparently is not respected in practice as can also be established through cases described in Annex 6 of the interim report.

28 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, Adopted on 11 November 2016, p. 55.

29 See European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment: *CPT/Inf(2010)28-part: "79. [...] The use of EDW [= electrical discharge weapons] on people who are delirious or intoxicated is another sensitive issue; persons in this state of mind may well not understand the significance of an advance warning that the weapon will be used and could instead become ever more agitated in such a situation. Deaths during arrest have been attributed to these medical conditions, in particular when EDW have been deployed. Therefore, particular caution is warranted and the use of EDW should be avoided in such a case and, in general, in situations where EDW might increase the risk of death or injury."* See also: Elish Angiolini, Report of the Independent Review of Deaths and Serious Incidents in Police Custody, UK Home Office, published October 2017, p. 9 ; "National policing policy, practice and training must reflect the now widely evident position that the use of force and restraint against anyone in mental health crisis or suffering from some form of drug or substance induced psychosis poses a life threatening risk." www.gov.uk/government/uploads/system/uploads/attachment_data/file/655401/Report_of_Angiolini_Review_ISBN_Accessible.pdf.

A particularly disturbing case is a situation in which darts were fired in a police cell against a mentally disturbed person undergoing a psychosis and resisting taking medication; after the medication was administered, drive-stun mode was used several times, seeking to obtain pain compliance in order to be able to retrieve the darts (Annex 6, incident no. 8). This case is particularly illustrative of the serious risk of mission creep in the use of electro-shock weapons.

- **Electro-shock weapons were used against persons already under some sort of control or even handcuffed**
 - ─ Out of 158 situations in which electro-shock weapons were used, (at least) 23 – i.e. almost one in six cases – occurred when the person was already in some sort of custody (in a police cell or car or in a mental health institution). In eleven of these cases the person was under the direct control of the police, i.e. in a police station or a police car.³⁰
 - ─ Already among these cases at least in three cases (no. 4, 7 and 9 of Annex 6) there was use against a person who clearly appears to have been handcuffed – a situation in which the use of an electro-shock weapon is very likely to amount to cruel, inhuman or degrading treatment.



³⁰ See the list of cases presented in Annex 6 to the interim report.

- **Violation of the principles of necessity and proportionality**

Unfortunately, the report does not provide an analysis concerning the justification of the use of the electro-shock weapon in the 27 cases of Annex 6 or in any of the other situations; however, already the superficial and basic information given by the officers who had used the weapons leaves serious doubts regarding the justification of use of the electro-shock weapon.

When resorting to the use of any type of force, police officers must respect the principles of necessity and proportionality, enshrined both in Dutch law³¹ and in international human rights law.^{32/33} This means that force should only be used when there is no other option to achieve a legitimate objective, and that the amount of force should not exceed what is necessary to achieve that objective (necessity). Furthermore, the harm caused by the amount of force used should not outweigh the harm to be prevented by that use of force (proportionality). Violations of these principles in the use of force are likely to amount to cruel, inhuman or degrading treatment and therefore to violate article 3 of the European Convention of Human Rights.³⁴

It is crucial to see these principles as cumulative requirements: The fact that police are facing a difficult situation in which it might be necessary for them to resort to the use of some sort of force is not sufficient to justify the concrete force used in that situation. There needs to be a concrete assessment regarding the degree of force used in comparison with other available means and options (in view of the principle of necessity) as well as with the potential harm that can be caused by the force used (in view of the principle of proportionality). When it comes to the use of electro-shock weapons, clearly the serious risks involved in the use of this weapon, including causing death or serious injury, must be taken into consideration when comparing it to other means available, and when balancing these risks against the harm the police seek to prevent. However, this understanding seems to be lacking at the level of the authorities in The Netherlands, as demonstrated by a number of cases in which they justified the use of electro-shock weapons – including in drive-stun mode – on a person already in a separation cell for the purpose of administering medication.³⁵

31 Art. 7 Police Act: (1) The police official appointed to perform police duties will be authorized, in the lawful discharge of their duties, to use force or means restricting freedom, if - considering the dangers involved in this use - the intended result justifies this, and if this result cannot be achieved in another way. If possible, a warning must be issued prior to the use of force. (5) The exercise of powers, referred to in paragraphs one to four inclusive, must be reasonable and moderate in proportion to the intended result.

32 For the details of these principles under international human rights law, see the explanation with further references in: Amnesty International, The Netherlands: 'Use of force: Guidelines for implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials', 2015, Introduction, p. 17. See also European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in its 20th report: CPT/Inf(2010)28-part: "69. The CPT considers that the use of electric discharge weapons should be subject to the principles of necessity, subsidiarity, proportionality, advance warning (where feasible) and precaution."

33 Please note that the Dutch police, in some instances Dutch jurisprudence as well as other reports such as this interim report or other similar documents also use other terms, such as: subsidiarity, reasonableness, balance - which in one way or the other present elements of the principles of necessity and proportionality. For the sake of clarity, in line with the Dutch Police Act as well as the jurisprudence of the European Court of Human Rights, this report only uses the terms necessity and proportionality, which are sufficient to cover all the relevant considerations when assessing the use of force.

34 European Court of Human Rights, Case of Anzhelo Georgiev and others v. Bulgaria (Application no. 51284/09), judgment, of 30 September 2014: "66. The Court notes that Article 3 does not prohibit the use of force in certain well-defined circumstances. However, such force may be used only if indispensable and must not be excessive [...]. When a person is confronted by the police or other State agents, recourse to physical force which has not been made strictly necessary by the person's own conduct diminishes human dignity and is in principle an infringement of the rights set forth in Article 3 of the Convention."

35 See for instance the following communication of the Minister of Justice and Security, Brief Minister van Justitie en Veiligheid, Tweede Kamer, Kamerstukken 29628 nr. 733, 25 September 2017: "On 12 September 2017 has the public prosecutor informed that he reached the conclusion that the concerned police officer acted in accordance with the instructions on the use of electro-shock weapons. The use of the electro-shock weapon was in this case necessary and proportionate in order to bring the patient in a safe manner under control with the objective to ensure the administration of the medication he needed. This was not possible to be achieved with less harmful means."

Overall, in 23 incidents, the person was already in custody of an institution – either in police custody or in a health institution. In such a setting, it must be seriously questioned why there had not been any other option to solve the situation – in some instances even simply by a temporary withdrawal, closing the door in order to allow the person to somewhat calm down (e.g. in the incidents no. 16 and 17 the person was already in his hospital cell, in the incidents no. 6, 7, 10 in a police cell). Not considering other non-violent and / or less harmful options violates the principle of necessity.

Furthermore, in these 23 cases, arrest was not (anymore) the purpose of the police intervention given that the person was already in custody (this includes situations in which the arrest was already completed). For situations outside arrests, even the ministerial instructions themselves require at least a minimum level of threat: “ter afwendig van direct dreigend gevaar voor eigen of eens anders lijf” / “against an imminent threat for the [police officer’s] own body or [that] of another person”. However, in some of the cases in Annex 6 the situations do not appear to even meet such a low level of risk (explanations given by the police officers were for instance: “suspect³⁶ did not want to cooperate” – see no. 12, 25 – or “was ready to throw plastic cups with urine at the officers” – no. 25 and similarly no. 21). Therefore, in these instances, the use of electro-shock weapons must be considered a violation of the already unacceptably low standard set out in the ministerial instructions – and certainly of the principle of proportionality, given that – as in other cases (e.g. no. 3 and 11) – the level of risk appeared to be very low, or even hypothetical. And notably, none of the situations would have justified the use of a firearm.

Overall, even beyond the 23 cases of persons in some form of custody, it must be seriously questioned whether there was an actual threat justifying the use of an electro-shock weapon. In a very questionable formulation the report highlights that “almost 1 out of 5” persons against whom electro-shock weapons were used, in whatever form (incl. warning), were armed.³⁷ This includes vague reference to “including a broomstick” and “in three cases a firearm was involved”. The report did not describe the seriousness of the threat which the police officers or other persons were facing; even when a firearm “was involved”, no information was provided whether the firearm was in the hands of or within reach by the person or was used in any sort of threatening manner. **More importantly, however, this means that in over 80% of the cases, the persons against whom the electro-shock weapons were used, were NOT armed in any way and it must be questioned whether in all these circumstances there was no way of resolving the situation other than through using an electro-shock weapon – a question to which the interim report fails to give any answer.**

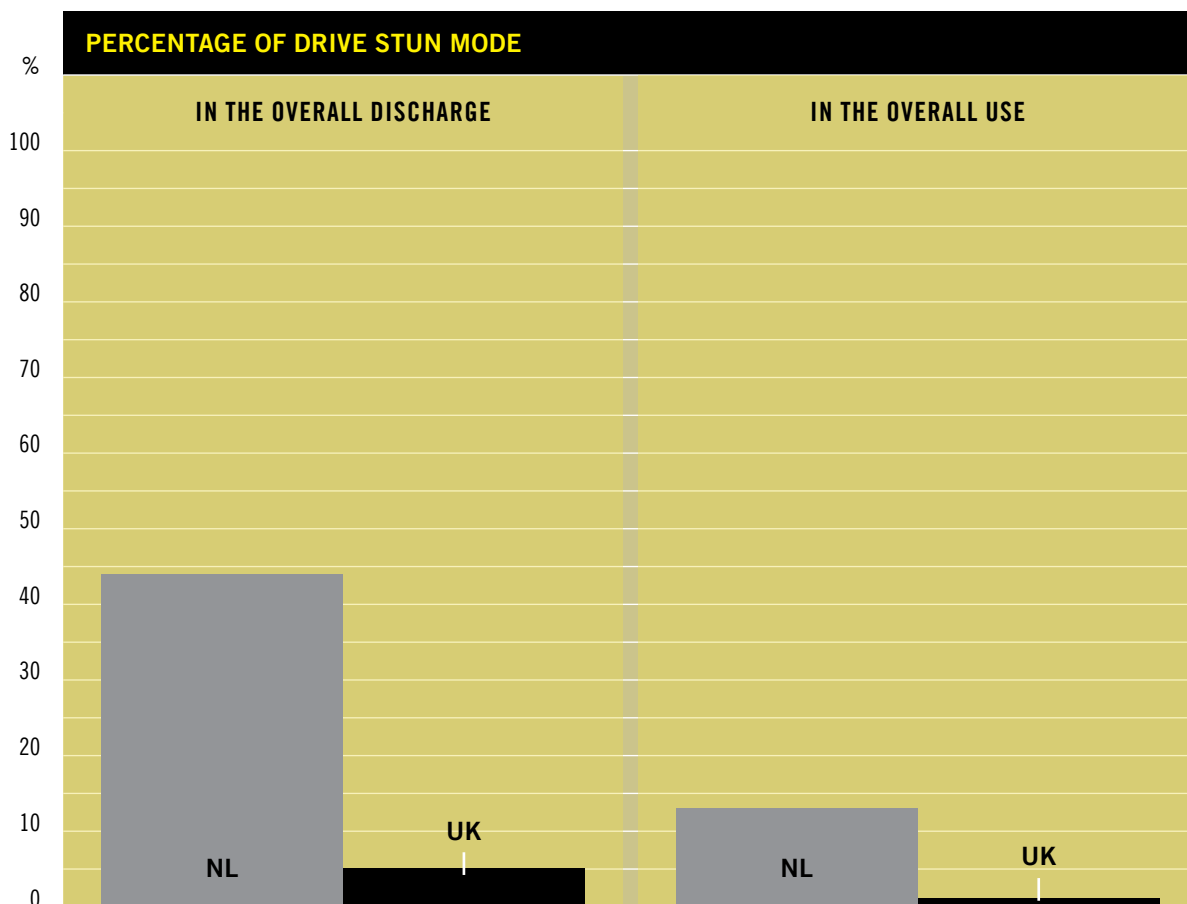
36 The term “suspect” is used in the official accounts, even if there was no offence at issue but it was only an agitated patient in a mental health institution.

37 Page 25 of the interim report.

2) Alarming high numbers of use in drive-stun mode

Drive-stun mode is a mode that is unlikely to be effective, that in many cases amounts to cruel, inhuman or degrading treatment, and that – in view of its limited effectiveness – implies a higher risk of repeated or prolonged discharge.

44%, i.e. almost half of all discharges (22 out of 49) were in drive-stun mode, 13% of the overall use. In contrast, and to illustrate to which extent these numbers are very alarming, in the United Kingdom only 5% of the discharges (98 out of 1.910) and less than 1% (98 out of 11.294) of the overall use of electro-shock weapons in 2016 were made in drive-stun mode. Here again, it stands in surprising contrast to these numbers that the Minister of Justice and Security concluded that the use of the electro-shock weapon “grosso modo” corresponds to the situation in the United Kingdom.³⁸



³⁸ Brief Minister van Justitie en Veiligheid, Tweede Kamer, Kamerstukken 29628 nr. 747, 24 November 2017, p.8; “Taking into account the limited numbers of uses in the Netherlands to date, these percentages grosso modo correspond with the experience gained in the Dutch pilot so far.”

https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2017Z16292&did=2017D34095.

Please note also that the letter arrives at a somewhat different percentage: (8%) 155 (instead of 98) out of 1.910 discharges, as it includes angled drive-stun mode (57 times used). However, this mode is different from (full) drive-stun mode, as the angled drive-stun mode only seeks to complete the electric circuit when one dart missed the subject. This mode is still incapacitating and would therefore have to be included in the dart-firing mode. However, even 8% (UK) compared to 44% of drive-stun mode use (NL) cannot not really be considered to be “grosso modo” the same.

Amnesty International has for a long time called for a total prohibition of drive-stun mode: This mode is not incapacitating, it only works by inflicting serious pain, which is of limited effectiveness in actually obtaining compliance, possibly even making a person more angry and therefore worsening the situation.³⁹ This in turn leads to prolonged and/or repeated discharges further increasing the risk of causing serious health problems to the person. An aspect that is even more worrying, considering that this mode – contrary to the dart firing mode, in which the current is cut off after 5 seconds – does not have such an automatic cut off point that would limit the length of the discharge.⁴⁰

The limited effectiveness was also confirmed in the interim report: On average, when used in drive-stun mode, there were 2,6 discharges; in three cases, the pilot teams discharged the electro-shock weapon in drive-stun mode even 5, 6 and 7 times! The justification for this repeated discharge was that the individual was not brought under control, but continued to resist.⁴¹

The manufacturer's instructions are very clear in this regard: "Drive-stun mode may not be effective on emotionally disturbed persons or others who may not respond to pain due to a mind-body disconnect. Avoid using repeated drive-stuns on such individuals if compliance is not achieved."⁴²

Furthermore, across the world, this mode is frequently misused for ill-treatment and even torture.⁴³ The interim report is also quite critical about the frequent use of drive-stun mode by the pilot teams. It rightly points out that this use cannot be considered an appropriate response to those situations the police were actually hoping to resolve with electro-shock weapons: i.e. situations in which a person is resistant to pain (thus, situations in which it does not make sense at all to apply a weapon in a way that is supposed to obtain compliance through pain).⁴⁴

Furthermore, this mode does not correspond to the other objective for which electro-shock weapons are supposed to be distributed in the Dutch police: incapacitating a dangerous suspect from a distance without resort to more dangerous means such as a firearm. In the close contact situation in which the drive-stun mode is applied, the use of a firearm is no option and this mode therefore cannot reduce the need to resort to the use of a firearm.

Thus, overall, this mode is useless for the objectives stated by the Dutch police and it should be prohibited for all the above mentioned reasons.

39 The interim report itself refers to a finding from the US-American Police Executive Research Forum (PERF) and Community Oriented Policing Services: "Using the ECW to achieve pain compliance may have limited effectiveness and, when used repeatedly, may even exacerbate the situation by inducing rage in the subject". <http://www.policeforum.org/>.

40 Interim report, p.22.

41 Interim report, p.23.

42 https://taser.cdn.prismic.io/taser%2F87b87fb3-1a7e-4de1-bc15-537536ee5f50_instructor-and-user-exposure-release.pdf .

43 The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in its 20th report is indeed very critical of drive-stun mode: CPT/Inf(2010)28-part: "78. [...] The CPT has strong reservations concerning this latter mode of use. Indeed, properly trained law enforcement officials will have many other control techniques available to them when they are in touching distance of a person who has to be brought under control." See also: European Court of Human Rights, Case of Anzhelo Georgiev and others v. Bulgaria (Application no. 51284/09), judgment, of 30 September 2014: "76. [...] The Court further points out with respect to the use of electroshock weapons that the CPT, in its 20th General Report (see paragraph 41 above), expressed strong reservations in particular in respect of the use of electrical discharge weapons used in contact mode, as the ones that allegedly have been used on the second and third applicants. The Court, like the CPT, considers that properly trained law enforcement officers have many other control techniques available to them when they are in touching distance of a person who has to be brought under their control."

44 Interim report, p.42: "The drive-stun mode is used very frequent but has limited effectiveness and is controversial. Suspects who are under stress seem to notice little of the pain stimulus exerted with the stun mode. The use of the stun mode contradicts the argumentation used and rationale for the necessity of introducing an electro-shock weapon: a weapon with which, other than by administering a pain stimulus, suspects who are not or less susceptible to pain stimuli can be brought under control from a safe distance."

3) Inadequate and inappropriate ministerial instructions

The instructions (“geweldsinstructie”) themselves are inadequate and inappropriate. While in other countries the instructions for the use of electro-shock weapons correspond at least to a small booklet,⁴⁵ stating the “dos and don’ts”, highlighting the risks, and mentioning the precautions to be taken to mitigate these risks, the ministerial instructions in the Netherlands are less than one page, limited to broadly determining four situations in which the use of an electro-shock weapon can be contemplated. They fall short of a number of basic elements which instructions for such a complex weapon should include⁴⁶ and they are not in compliance with international human rights standards:

- They do not contain any prohibitions as to when the weapon may not be used (e.g. in an environment of inflammable liquids or gas, or on persons already under control). This absence is particularly worrying given the high risk of abusive use of this weapon (mission creep).
- They do not formulate an acceptable threshold of danger required for permitting the use of electro-shock weapons. They only establish a certain threshold in the case of settings outside arrest (letter 2d), where the threshold required is an imminent threat of any form of bodily harm - a threshold that is still too low considering the serious risks involved in the use of electro-shock weapons.⁴⁷ But with regard to a person to be arrested for an offence, no threshold of danger is required: the mere fact that the person is seeking to escape arrest permits use of the electro-shock weapons (letter 2b of the instructions).⁴⁸ As set out in international human rights standards, the use of electro-shock weapons – in view of the serious risks involved – should only be permitted in life threatening situations in order to avoid the resort to use of a firearm.⁴⁹ In addition, in situations where the risk is potential self-harm of a person, the use of an electro-shock weapon must – as a rule – be considered to be excessive and it should only be permissible in the most extreme and exceptional circumstances.

45 United Kingdom:
<https://www.app.college.police.uk/app-content/armed-policing/conducted-energy-devices-taser/#operating-requirements>;
North South Wales (Australia):
https://www.police.nsw.gov.au/___data/assets/pdf_file/0007/456523/TASER_Use_Public_Information.pdf.

46 The need for well elaborated instructions has also been highlighted by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in its 20th report: CPT/Inf(2010)28-part “75. Following any decision to issue EDW, the authorities concerned must ensure that detailed instructions are disseminated within the services which will have such weapons at their disposal.”

47 The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in its 20th report: CPT/Inf(2010)28-part: “70. In the CPT’s view, the use of EDW should be limited to situations where there is a real and immediate threat to life or risk of serious injury.”

48 This is also a problem in the instructions for the specialized arrest teams using the Taser X26 since 2011: the instructions for these teams in the context of an arrest also allow for the use of an electro-shock weapon without establishing any threshold of danger. See the ‘richtlijnen pilot arrestatie team’, 2.2.: “The use of the electro-shock weapon is only permitted...b. to arrest a person who tries to evade or has evaded their arrest, being brought before the public prosecutor or any other lawful deprivation of liberty”. At least, and in clear contrast to the instructions for the pilot teams, outside arrest situations, arrest teams may only use the electro-shock weapon for life threatening situations: “The use of the electro-shock weapon is only permitted... c. for the purpose of ending an immediately life-threatening situation.”

49 The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in its 20th report shares this view: CPT/Inf(2010)28-part: “70. In the CPT’s view, the use of EDW should be limited to situations where there is a real and immediate threat to life or risk of serious injury. Recourse to such weapons for the sole purpose of securing compliance with an order is inadmissible.” The UN Committee against Torture in its 2013 report on the Netherlands stated that such weapons “should be used exclusively in extreme limited situations where there is a real and immediate threat to life or risk of serious injury, as a substitute for lethal weapons.” (UN Committee against Torture, CAT/C/NLD/CO/5-6, 20 June 2013, para 27).

- The ministerial instructions on the use of electro-shock weapons do not formulate any requirements for precautions to be taken, nor do they caution officials concerning specific risks for vulnerable groups (such as pregnant women, elderly, persons under the influence of drugs or alcohol etc.) or regarding the risks involved in repeated use.⁵⁰
- While they mention both the dart-firing and the drive-stun mode, they fail to mention the fundamental difference between the two, creating the false impression as if there is no fundamental difference in the nature and effect of these two modes, and that they can be used at the discretion of the officer. They do not caution with regard to the limited effectiveness and the risks involved in drive-stun mode, let alone completely prohibit that mode.

The interim report provides an explanation for the very cursory formulation of the instructions, stating that it was considered that the general requirements for the use of force – necessity and proportionality – should be sufficient to govern the use of electro-shock weapons.⁵¹ However, the human rights problems presented above under 1 and 2 provide sufficient evidence that broad regulations that give maximum discretion to police without any framing of criteria, conditions, obligatory precautions and clearly formulated prohibitions lead to weapons being used far too easily and with insufficient concern for the harm they might cause.

Moreover in view of the high risk of mission creep (i.e. an abusive use of electro-shock weapons), instructions must be as precise and clear as possible. Overall, the ministerial instructions are not only inadequate to ensure lawful and human rights-compliant use of electro-shock weapons; they also leave the police officials concerned in an unacceptable limbo as to what is expected from them, leaving them to bear the entire burden of the responsibility for the use of electro-shock weapons.

50 Here again, this is quite surprising, given that in the electro-shock weapon instructions for arrest teams, such restrictions and precautions are well included: See the 'richtlijnen pilot arrestatie team': "10. The electro-shock weapon will not be used on: a. persons who are visibly younger than 12; b. women who are visibly pregnant, or c. people who are visibly suffering from respiratory disorders or other serious health problems; 11. When using the electro-shock weapon, the dangers that could be created by the presence of highly flammable or explosive substances should explicitly be taken into account. Account should also be taken of the risks that a possible fall of the person on whom the electro-shock weapon is used may have; 12. Hitting a person's head or neck with the electro-shock weapon should be prevented as much as possible; 13. Deliberately flashing the laser pointer of the electro-shock weapon in a person's eyes is not allowed; 14. The electro-shock weapon will be used to deliver a maximum of three discharges of five seconds each to a person." Even the instructions for the use of pepper spray regulate the use in more detail than the current instructions for electro-shock weapons (See: Ambtsinstructie no. 12a-c on the use of pepper spray).

51 Interim report, p. 11.

4) **Insufficient training**

The 2-day training was found to be insufficient. The interim report itself stated that the training did not sufficiently take into account the complexity of the weapon.⁵² It criticized insufficient scenario based training and that training did not provide participants with fundamental information about the health risks involved in the use of electro-shock weapons, in particular with regard to certain vulnerable groups, nor did it give information about the risks of prolonged or repeated discharges or other particular risks as explained in the safety warnings by the manufacturer. As a result, recommendations as formulated by the manufacturer in order to mitigate risks were not part of the training either. The interim report itself recommends adding an extra day of training in order to include more scenario based exercises as well as specific instructions on the problems related to the use of drive-stun mode and other health risks involved in the use of the electro-shock weapon. While there seems to be a decision taken to provide the pilot teams with an extra day of training, it remains worrying that the use of the electro-shock weapon by the pilot teams will continue beyond the evaluation period ending on 1 February 2018, without ascertaining that all officers have undergone sufficient and adequate training.⁵³

52 Interim report, p.42: "The two-days-training was too short. It pays too little attention to the complexity of the use of this weapon, the need to integrate this weapon into the range of other means for the use force and the potential health risks involved. There is a need for follow-up training and integration of the electro-shock weapon into the general use-of-force training."

53 It is also important to note that each Taser-device functions very differently. It is therefore crucial that members of arrest teams who were trained on the Taser X26 undergo a full new training should they be given the X2 at any point.

5) Poor set-up of the pilot project without a clearly defined operational gap

Overall, the set up of the pilot project appears to be poor and highly problematic. Whether a new weapon should be introduced in policing should not simply depend on the availability of a weapon. It should depend on the existence of an actual operational need with a view to improve policing, while reducing harm and injury to anybody involved. This would require an in-depth assessment of the type of situations police officials are facing, how these have been dealt with in the past, whether this was unsatisfactory and whether improvement should be made at other levels (e.g. training, instructions) or whether shortcomings can indeed be addressed by the new weapon. A theoretical thinking process based on subjective feelings by police officers that a weapon might help in certain situations is completely insufficient in this regard. The situations contemplated for the use of the weapon must be of sufficient effective relevance in daily policing work to justify the heavy investment (equipment and training), and the related operational benefits must outweigh the risks a specific weapon presents (in terms of harm and injury as well as in terms of inappropriate or abusive use). In fact, a highly sophisticated weapon such as the Taser X2 with serious risks of causing harm, requiring a high level of training, and even then being liable to inappropriate or abusive use, that would help police in only a very small number of situations should not be deployed.

Particular attention should, for instance, have been given to the expectation by the Dutch police that the electro-shock weapon might help against (violent? or simply non-complying?) persons resistant to pain against whom the use of a baton or pepper spray would not be effective. This reasoning is very difficult to follow: If a police officer had already tried a baton or pepper spray, then this means he/she is already too close to the person to apply the incapacitating dart-firing mode, while the drive-stun mode would not work either given the pain resistance of the person.

This can only mean that police officers envisage using the electro-shock weapons in scenarios in which they simply assume - maybe from the behaviour of the person - that the person might be resistant to pain.

This seriously increases the risk of excessive use of electro-shock weapons, in particular against mentally disturbed persons.

It furthermore puts in doubt whether these possible scenarios are sufficiently relevant in actual police practice to justify the introduction of a sophisticated weapon that bears considerable risks of causing death or injury and of being misused or resorted to in an abusive manner.

It appears that no such analysis of the actual operational gap was done. There is no report publicly available that reviews the current situation of the use of force in The Netherlands, possible deficiencies found as well as their underlying causes, and identifying to what extent electro-shock weapons would present a possible solution to any problems identified (including reducing the risk of death and injuries).⁵⁴ Nor does the interim report or any other document on the pilot project refer to such an analysis. It should also be noted that the Dutch police (although one single force for the past five years) does not have a single and uniform process for registering/recording the use of force and only very little data are made public. This seriously hampers not only internal evaluation and learning but also external accountability and oversight by oversight bodies, parliament, academia, journalists and parliament.

⁵⁴ In 2012, a report was published about the use of pepper spray and the baton: Kruize/Grueter, "Police weapons in perspective – On the use and effectiveness of pepper spray & baton" While that report had a very specific focus on two types of weapons and was now issued a few years ago, it provides nevertheless very useful insight on a range of issues related to the use of force. Therefore, it would have been advisable to update the analysis and to broaden it on the use of force in general, in order to determine where precisely electro-shock weapons would fit in the current policing practice (and where not) and what would be the measures required for a good and human rights compliant introduction of such a weapon.

The fact that a large part of the interim report actually looks at the – highly subjective – expectations of officers regarding the electro-shock weapons, confirms that objective operational needs and gaps have not been sufficiently identified and analysed.

In the light of the sparse analyses and data available it is even more incomprehensible that it was decided for the interim evaluation of the pilot project not to use automatically recorded data from the weapon and to match these against the information given by the officers who used it.

Furthermore, the fact that two of the units chosen for the pilot project in the past almost never used firearms, is another indicator that the stated objectives such as reducing the need to resort to a firearm have not been linked to the operational reality.

When it comes to the expectations of the police mentioned earlier (see above Background and footnote no. 5), that electro-shock weapons might contribute to reduce the number of injuries of police officers, this is another aspect that was not assessed prior to the start of the project. In fact, in order to determine whether electro-shock weapons might serve this purpose, one would have to review the number and type of injuries sustained by the police in The Netherlands as well as the circumstances in which this occurred, and to evaluate to what extent having an electro-shock weapon would have enabled the prevention of such injuries in a lawful, necessary and proportionate manner. During the pilot project it would then have been necessary to review the different cases of use of an electro-shock weapon as to whether they corresponded to the scenarios contemplated in which there was a risk to police officers of sustaining injuries and whether a police officers was injured or not.

Furthermore, recently, there has been a decision to distribute another weapon – the extendible baton – to all police units, without this decision yet being implemented (except for the pilot unit from Zwolle). Carrying out a pilot project on electro-shock weapons before the implementation of this decision means that the conclusions regarding the actual operational benefit of the electro-shock weapon will not be valid any more after the distribution of the extendible baton. It is difficult to understand why the pilot project was started before there has been sufficient analysis as to what extent the extendible baton in fact already addresses a range of problems police officers are facing.

Furthermore, findings between three (or later) four fundamentally different groups participating in the pilot are not comparable, and therefore cannot be used cumulatively, nor can they be extended to the general policing reality in The Netherlands.

6) Inadequate and incomplete interim evaluation

While some of the relevant findings and conclusions of the report have been mentioned in the preceding sections, overall the interim report contains serious shortcomings:

— The interim report formulates answers to eight sub-questions that are only partly relevant to the idea of a pilot project and in part fails to answer some of them: e.g. a large part of report dealt with the expectations of the potential users, but the report did not check among the users whether they found their expectations were met (an element that would have been particularly interesting for those who applied drive-stun mode). The report commented on the (subjective) “security feeling” of officers, but did not analyse what factors actually affected their “security feeling” (which may well lie outside the matter of weaponry) – leaving aside the fact that anyhow no weapon should ever be introduced simply for the purpose of giving a “comfort blanket” to police officers. It also failed to respond to another question posed, as to how the electro-shock weapons changed the behaviour of police officers (are they more prone to resort to the electro-shock weapon, and less to attempt de-escalation?) – see question 5.⁵⁵

— The report assesses neither whether the use of the electro-shock weapon was justified and appropriate in the circumstances, nor whether the technical use of the weapon was appropriate (including being in line with the manufacturer’s recommendations). While the overall justification for use was not assessed at all, regarding the technical use, there is some description about the target area of the darts and the statistical data of repeated shots, but it falls short of making a concrete analysis to identify any failures that would require correction.

This is a major short coming for such a pilot project: The likelihood of a weapon being used in an unjustified or inappropriate manner should clearly form part of the risk assessment to be made before deciding about the deployment of such a weapon.⁵⁶ This would also have to include the assessment whether the ministerial instructions were respected (this was at least in some instances not the case, see above), whether these instructions were found to be appropriate or would require revision, whether training was appropriate or would have to be adapted, etc. A worrying detail here is that the report – without formulating any concern or criticism – explains that in three cases no medical attention was provided for the person “because only drive-stun mode was used”.⁵⁷ Depending on the frequency and length of the discharge, this might well have caused health problems and not ensuring medical assessment is therefore not acceptable.

— The report furthermore did not review the different cases as to what extent it would have been possible to resolve the situations in another way (sometimes maybe simply by closing the door of a confinement cell waiting for the person to calm down?). It therefore does not permit any conclusion to be drawn regarding the actual operational benefit of the electro-shock weapon compared to the existing means and methods of resolving a situation.

55 “5. Wat is de invloed van de invoering en toepassing van het stroomstootwapen op het optreden en veiligheidsgevoel van politiemedewerkers in gevaarsituaties?” = “What is the influence of the introduction and use of the electro-shock weapon on the behaviour and security feeling of police employees in situations of danger?”

56 This is surprising considering that this element was indeed part of earlier evaluation reports, for instance the evaluation of the pepper spray (“Spray!” Een nieuw geweldmiddel voor de Nederlandse politie. O.M.J. Adang & J. Mensink, Elsevier bedrijfsinformatie, 's-Gravenhage, 2001) – see the summary of the report in Kruize/Gruter, Politiele bewapening in perspectief, p. 135: The evaluators expressed their concern about the fact that a number of police officers considered the use of pepper spray appropriate also in situations of passive resistance or only verbal aggression. In view of the likelihood of mission creep they recommended particular efforts in monitoring of the use of pepper spray. - In another evaluation “Spray met visie, visie op spray” – Afsluitende onderzoeksrapportage van ‘Het Pepperspray Project’ Otto Adang, Jos Mensink en Carin Esman, p.22, the criticism is voiced that pepper spray is used too easily in situations in which there has been no violence and in which it would have been possible to deal with the situation in a different manner (p.21), thus violating the principles of subsidiarity (i.e. necessity) and proportionality and calling for particular attention by superior officers, p.22: “The control of the use of pepper spray, especially regarding possible reckless use and its use in particular circumstances, requires continued attention by superiors.”

57 Interim report, p.26

- The report relies mainly on the accounts of police officers and persons targeted. The evaluators did not retrieve and review the data records of the electro-shock weapons themselves. This means the evaluation heavily depends on the personal accounts of those involved with all the risks of memory being affected by a highly stressful situation (leaving aside the risk of police officers embellishing their intervention or exaggerating the aggressiveness of the person). Retrieving and reviewing the data would have allowed confirmation of the number of discharges as well as their duration, information that persons involved in stressful situations will not necessarily recall with precision. This information would have served to confirm or contradict the personal accounts as well as to draw conclusions regarding the degree of risk for the person targeted with the weapon - in particular in view of the use in drive-stun mode which does not have an automatic cut off point.
- The report fails to assess the appropriateness of the regulations to ensure that electro-shock weapons are only used for a legitimate purpose, and when necessary and proportionate as well as in an appropriate manner, or whether they are in need to be improved. This is particularly surprising given the considerable difference between the instructions for the pilot teams and the much more detailed instructions for arrest teams.⁵⁸
- The effectiveness of the electro-shock weapons is not fully assessed: While it is mentioned that after nine out of 32 dart shots a second shot was necessary, the effectiveness of the second shot was not assessed. Nor did the fact that one out of three shots did not have the incapacitating effect (which amounts to a 28% failure rate!) lead to any conclusions in the report. With regard to the use of drive-stun mode, the report provided the information that officers explained repeated discharge by the fact that the person was not brought under control after the first discharge(s) and continued to resist. However, this fact did not lead to any conclusions reading the effectiveness of the weapon.
- Without sufficient foundation, the interim report is very positive about the effectiveness to dissuade of the electro-shock weapon when it is used without being discharged.⁵⁹ Beside the fact that the percentage of actual discharges is much higher as for instance in the United Kingdom (see above, section 1), this conclusion is premature given that the report did not proceed on a case by case analysis, including identifying whether there would have been other means to resolve the situation (and whether these other means were attempted – without result - or not at all). The success in solving the situation can therefore not automatically be attributed to the fact that the officers involved were equipped with an electro-shock weapon. They might well have been able to resolve the situation without.
- The interim report did not review and consider any internal reporting and assessment of use of force through the internal control system of the police as established in article 17 of the police regulation on the use of force.⁶⁰
- Overall, Amnesty International is particularly alarmed that the report - and subsequently the Minister of Justice and Security⁶¹ as well as the Dutch police⁶² - seem to be satisfied that the electro-shock weapon successfully helped to obtain compliance and to resolve situations, despite the serious risks and shortcomings presented above.

58 See above, footnotes 48 and 50.

59 In a similar vein, as soon as the interim report was published, the Dutch police published a statement that threatening with an electro-shock weapon avoids violence, that police officers are satisfied with with the electro-shock weapon and that electro-shock weapons have a deterring effect: Politie, Dreigen met stroomstootwapen voorkomt geweld, persbericht, 24 november 2017 <https://www.politie.nl/nieuws/2017/november/1/dreigen-met-stroomstootwapen-voorkomt-geweld.html>.

60 Ambtsinstructie: Article 17 (1) "The official who resorted to the use of force reports the facts and relating circumstances as well as any resulting consequences immediately to his superior."

61 Brief Minister van Justitie en Veiligheid, Tweede Kamer, Kamerstukken 29628 nr. 747, 24 November 2017.

62 Politie, Dreigen met stroomstootwapen voorkomt geweld, persbericht, 24 november 2017. <https://www.politie.nl/nieuws/2017/november/1/dreigen-met-stroomstootwapen-voorkomt-geweld.html>.

7) Weak accountability for the use of electro-shock weapons

There is no effective accountability for the use of electro-shock weapons. As far as can be seen from available public information, only two cases (one also involving the use of a firearm) were investigated (one by the Rijksrecherche, a police oversight body, the other one by the public prosecutor). Otherwise, Amnesty International is not aware of any other cases currently under review to determine whether the use of the electro-shock weapon served a legitimate purpose, and was necessary and proportionate – although at the very least all 49 cases of actual discharges and all other non-discharge incidents among the incidents contained in Annex 6 of the interim report would require an in-depth analysis with regard to whether the police intervention and the use of the electro-shock weapon was justified.

In this regard it is particularly worrying that the most evident abusive use of an electro-shock weapon, the discharge in drive-stun mode on a person who is already handcuffed (cases no. 4, 7 and 9 in Annex 6), has not triggered any reaction from any of the authorities, be it the police themselves, the prosecutor, the Rijksrecherche, the Ministry or the Parliament. There has been no investigation into these cases, no public statement condemning or prohibiting this practice and no other measures were taken to prevent this from re-occurring.

The reporting on the use of the electro-shock weapon and the explanation of the reason for using electro-shock weapons appears to be extremely vague and does not really allow for a proper assessment of what has happened, what other option was available to the police to resolve the situation, and whether other options were considered and discarded with or without justification. The reporting system does not require police officers to explain how the principles of necessity and proportionality had guided their action. It seems here, that these principles – though written down in the police act – do not lead to holding police officers accountable if they did not respect them. This again supports the above mentioned criticism of inadequate instructions: instructions must give concrete life to the principles established in law and then serve to measure police behaviour against them. The abstract formulation of principles in law without any further precision in operational instructions necessarily leads to accountability being ineffective and fostering impunity for excessive use of force.

Conclusion and recommendations

Overall, the current deployment of electro-shock weapons with inadequate instructions and training, with no consideration given to the risks involved in the use of the weapon (incl. the safety warnings and instructions from the manufacturer), and with no proper evaluation in place as to whether any of the situations actually warranted the use of the electro-shock weapons must be characterized as extremely reckless and unacceptable. Furthermore, beyond the conclusions for the use of electro-shock weapons, these serious shortcomings reflect also an overall concept regarding the use of force that falls short of basic human rights rules and standards as well as recognized good policing standards across the world.

For all the above mentioned reasons, Amnesty International calls on the Dutch authorities to:

- immediately suspend the use of electro-shock weapons - not only by the pilot teams, but by all units, and to withdraw all the weapons which have so far been distributed;⁶³
- to refrain from widespread distribution of electro-shock weapons in day-to-day policing;
- revise the instructions for the use of electro-shock weapons, in particular: to prohibit the use in drive-stun mode and to limit the use of electro-shock weapons to situations of serious threats to life or of serious injury;
- revise the general instructions on the use of force, in line with the principles of necessity and proportionality as well as with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials in general;⁶⁴
- include in the final evaluation of the pilot project a comprehensive analysis as to the lawfulness of the use of the electro-shock weapons in each situation, including the respect of the principles of necessity and proportionality, as well as to which extent the electro-shock weapon has actually closed an actual, and not just a perceived, operational gap that could not be addressed by other means;
- revise the training of police officers accordingly, in particular to give much more consideration to alternative means and methods that do not imply the use of force, such as de-escalation, mediation, negotiation and alternative tactical options such as putting an operation on hold or even temporary withdrawal when there is no imminent risk of death or serious injury to anybody;
- create an official and formalized framework, ideally in formal legislation or at least a ministerial decision, that limits police interventions in mental health institutions to actual emergency situations where there is a serious risk to life and limb of persons and to prohibit police interventions for the sole reason of assisting health staff in handling an unruly or agitated patient. The currently existing covenant between the police and the mental health sector ggz is not sufficient in this regard and also not respected in practice.⁶⁵

63 Indeed, the deployment of arrest teams requires a life-threatening situation and therefore it is more likely that the electro-shock weapon will only be used in situations of an acceptable threshold. However, other important shortcomings remain valid also for these teams - in particular the possibility on the spot to use the electro-shock weapon for the purpose of carrying out an arrest in situations that do not amount to a threat to life or of serious injury (2.2.b of the instructions, see above, footnote 48), the non-prohibition of drive-stun mode, the weak accountability for the use of electro-shock weapons, as well as the unregulated and excessive intervention by police in mental health institutions.

64 Amnesty International recommends to the Dutch authorities to use its publication 'Use of force: Guidelines for implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials' as a benchmark for the establishment of this framework.

65 See above, footnote 27.