



Kingdom of the Netherlands

Permanent Representation of  
the Kingdom of the Netherlands  
to the United Nations Office and  
other International Organizations  
in Geneva

NV: GEV-PA 99/2022

The Permanent Mission of the Kingdom of the Netherlands to the United Nations and other international organisations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and, with reference to the Communication of 29 March 2022 (AL NLD 4/2022) of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, has the honour to inform the Office as follows.

The Kingdom of the Netherlands first wishes to reiterate its full support and appreciation for the mandates of the Special Rapporteurs and Working Groups. It gives serious consideration to their views. The Kingdom will always seek to respond and actively engage with UN mandate holders and has extended a standing invitation to all UN special procedures. The Kingdom is open to dialogue with its international partners on the protection of human rights in the Netherlands, in a spirit of self-reflection and with a view to improving the implementation of human rights.

In this context, the Kingdom appreciates the opportunity provided by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to respond to his Communication in which he requests further clarification and investigation in compliance with the Netherlands' international legal obligations pertaining to the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, in response to the Communication of the Kingdom of the Netherlands dated 10 March 2022. The Kingdom of the Netherlands would like to apologise for responding after deadline and is grateful for the opportunity to have this response included in the final report.

The Permanent Mission of the Kingdom of the Netherlands to the United Nations and other international organisations in Geneva avails itself of the opportunity to renew to the Office of the High Commissioner of Human Rights the assurances of its highest consideration.

Geneva, 20 July 2022



*Office of the High Commissioner for Human Rights  
Palais des Nations  
CH-1211 Geneva 10*

## **Response to the Communication of 29 March 2022 (AL NLD 4/2022) of the Special Rapporteur on Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment**

The questions in the Special Rapporteur's Communication of 29 March 2022 are a follow-up to the Special Rapporteur's Communication of 10 January 2022. The government of the Netherlands ('the government') would like to take this opportunity to respond to these follow-up questions as well. On certain points, the government refers to its response of 10 March 2022, in which it discussed both the general context and the legal framework that governs the use of force by authorised officers in the Netherlands. For the sake of completeness the government would point out that the additional facts discussed below were provided by the police and in some cases by the Public Prosecution Service. The government would emphasise that it is not up to the Dutch government to assess the facts.

### **1) Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations, preliminary observations and concerns**

The government wishes to respond to a number of points set out in the Communication of 29 March 2022. This concerns matters that have been rendered incompletely or incorrectly. The Special Rapporteur has based his statements on video footage of a number of incidents. This footage only shows part of the police operation. Following on from the previous Communication, the government therefore considers it important to provide further context.

The government agrees with the Special Rapporteur that transparency and accountability are of manifest importance when exercising the power to use force. At the same time, in certain cases it can provide only limited information, for instance in view of an ongoing criminal investigation. The same applies to ongoing internal review procedures by the police following the use of force.

### **General remarks**

The present five cases aside, the government would emphasise that the Special Rapporteur's comment that 'no criminal prosecutions at all appear to have been initiated in 2020' is incorrect. The Public Prosecution Service's 2020 annual report shows that at least one incident involving the use of force led to prosecution.<sup>1</sup> It is clear from the same report that with regard to a number of cases it was not yet clear whether prosecutions would be brought. As regards the cases that led to prosecution in 2021, the government would refer to the response to question 4.

### **Information on the various cases**

#### **Case 1, Eindhoven (24 January 2021)**

In his communication, the Special Rapporteur discusses the incident in Eindhoven where a water cannon was used. The Special Rapporteur notes that – on the basis of the footage – it would appear that the woman was not given first aid.

The police have stated that at the time they were not immediately able to provide first aid. The reason for this was as follows. During that incident, the riot police (*Mobiele Eenheid*) had to de-escalate the situation. As a result, the situation was not sufficiently safe for the police officers to provide first aid. In the end, the woman and her companion walked away independently. Once the situation was safe again, the general commander of the Large-Scale and Special Operations Staff (SGB0) ordered personnel to find the injured woman and her companion so that they could talk to them about what had happened. The woman and the man were eventually found and the police spoke with them.

#### **Case 2, Malieveld, The Hague (14 March 2021)**

As regards both the criminal investigation and the internal review procedure that were started following the incident at the Malieveld field in The Hague, the Special Rapporteur said in his Communication 'that this did not happen in a timely and proactive manner on the prosecutor's or the police service's own initiative, but only after 373 applications and 142 lodged criminal complaints had been received by the police, and more than nine months after the incident'. In response the government would emphasise that the police's internal review procedure was started in accordance with the applicable legislation, following the reports on the use of force submitted by the police officers in question. This

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<sup>1</sup> [2020 Annual Report of the Public Prosecution Service](#) (in Dutch).

review is completely separate from the criminal complaints which were lodged later and was not prompted by those criminal complaints.

The day after the incident, 15 March, the Public Prosecution Service consulted directly with the police (Security, Integrity and Complaints Division ('VIK')) about the events of the previous day. Anyone who wished to lodge a criminal complaint was given the opportunity to do so, and numerous criminal complaints were lodged from 15 March onwards. During the consultation with VIK it was decided that they would investigate and create an overview of what transpired, under the auspices of the Public Prosecution Service. It is correct that the Public Prosecution Service may also start a criminal investigation *ex proprio motu*, but in order to do so the facts and circumstances must first be ascertained.

It was also decided that VIK would take stock of the criminal complaints, prioritising incidents in which civilians were injured. VIK created a timeline of the events. All camera footage was examined, and the official reports of findings of all police officers involved were made available to the Public Prosecution Service. VIK investigated whether it was possible to identify which incident or which police officer each criminal complaint concerned. The demonstration was so massive that identifying who was involved in what incident took a great deal of time. However it is not true that the Public Prosecution Service waited nine months to start investigating.

#### **Case 4, Amsterdam (2 January 2022)**

Case 4 concerns a police operation that took place in Amsterdam on 2 January 2022. According to the Special Rapporteur it concerned a 'peaceful protester sitting alone on the ground with his legs crossed'. In fact, however, it was a police operation in response to a demonstration that had been banned by the mayor before it began. Despite the ban, which was communicated widely via national, local and social media, thousands of people turned up, including the man who can be seen in the footage.

At a certain point it was decided by the 'tripartite consultation' (consisting of the mayor, the Public Prosecution Service and the police) that the situation on Museum Square posed unacceptable risks to public health. The mayor then decided to have Museum Square cleared. This is the context in which case 4 took place. Various riot squad commanders ordered the man to leave the square, but to no avail. The man was then warned that the police would use force if he did not cooperate. Only when it became clear that the man did not intend to cooperate even after that warning did the police actually use force.

#### **Cases 3 and 5, Amsterdam**

Cases 3 and 5 are related to case 4 as they all took place during the same demonstration in Amsterdam. When the crowd were ordered to leave Museum Square, there was a line of riot police in position. This was in accordance with agreements made beforehand, with a view to preventing the demonstration from moving and spreading and becoming dynamic, which had been specifically banned by the mayor beforehand.

Immediately after the order to leave Museum Square had been issued, thousands of demonstrators moved in the direction of the riot police line and at a certain point they breached the line (by pushing and walking). The mayor, Public Prosecution Service and police then gave the riot police the order to break formation, so as to be able to guarantee the demonstrators' safety. This did not succeed immediately, however, because the riot police were being set upon from both sides. In order to guarantee the riot police's safety and ensure safe passage for the demonstrators, the arrest unit of the riot police and dog handlers were deployed. It is within this context that cases 3 and 5 took place.

It is important to note that case 5 concerns a man who was walking in an area in which the police had specifically said he was not allowed to walk. The police gave the man a warning and only when the man did not heed that warning did they resort to the use of force. In case 3 the police also gave a warning before proceeding to use force.

## **2) Please provide further information on the current state of investigations into each of the five incidents of police violence documented through video evidence.**

#### **Case 1, Eindhoven (24 January 2021)**

As indicated in the government's Communication of 10 March, this incident is the subject of a criminal investigation. The Public Prosecution Service has since decided to prosecute one of the water cannon operators. This decision could not be taken any earlier on account of the extraordinary nature of this case, as well as its sensitivity and complexity. The Public Prosecution Service first weighed and assessed all relevant aspects before deciding to prosecute.

Because the police's internal review procedure found the use of force to be professional, as indicated before the police did not start a fact-finding investigation or a disciplinary investigation.<sup>2</sup> It should be noted that this (the internal review procedure) is a review by the employer. The water cannon operator was, however, spoken to with a view to learning lessons from the use of force. Lessons were also learned from the evaluation reports drawn up by the Institute for Safety, Security and Crisis Management (COT) following the 'curfew riots'.<sup>34</sup> It cannot be ruled out that the results of the criminal investigation may give cause to start a disciplinary procedure.

### **Case 2, Malieveld, The Hague (14 March 2021)**

Following this incident, the Public Prosecution Service decided, in December 2021, to prosecute two police officers for assault. The police officers have since been summonsed to appear at a hearing on 29 June 2022. This hearing is a pre-trial review, as the police officers' lawyers have indicated that they wish certain investigative activities to be carried out and wish to have witnesses examined by the examining magistrate. A third police officer, who deployed the dog, will not be prosecuted. The Public Prosecution Service announced this on 28 April 2022. The government considers it important to note that the person who was waving a jump lead around will be prosecuted for attempted serious assault, threatening behaviour, insult and illegal possession of a weapon. The Public Prosecution Service announced this on 1 January 2022.

In addition to the criminal investigation, which is led by the Public Prosecution Service, the police have also conducted an internal review of the use of force at the demonstration in The Hague. The government commented extensively on this in its Communication of 10 March. Pending the conclusion of the criminal investigation, no disciplinary measures have been taken as yet against the officers in question. Generally speaking, a criminal investigation and a disciplinary investigation can be conducted simultaneously, as these are two separate investigations. However, the decision can also be made to wait until the criminal investigation has been concluded before starting the disciplinary investigation. This is because, under certain conditions, information from the criminal investigation may also be used in the disciplinary investigation. As the criminal investigation is still ongoing, no further comment can be made on this, except to note that various conversations have been held with the two police officers to educate them on the use of force.

### **Cases 3, 4 and 5 Amsterdam, 2 January 2022**

The report on the use of force in case 3, i.e. the deployment of the police dog, was registered by the assistant public prosecutor and taken under investigation. The internal review procedure has not yet been completed and is still to be processed by the Use of Force Review Committee. The Special Rapporteur's conclusion that 'this case does not appear to have been transmitted to the Investigation Department of the Public Prosecutor' is incorrect. In this case the Public Prosecution Service was notified of the use of force. When an instance of the use of force is registered, the Public Prosecution Service is notified if:

- the use of force resulted in serious bodily injury or death, or if there are serious reasons to assume that the use of force resulted in serious bodily injury;
- a firearm was used, resulting in bodily injury;
- the use of force gives reason to do so, in the view of the officer in question.

The purpose of such notification is to give the Public Prosecution Service the opportunity to investigate, or order the investigation of, the force used, especially when the use of force has resulted in bodily injury or death. The European Court of Human Rights (ECtHR) requires that, pursuant to Article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms, an adequate investigation be conducted into the use of force by the police resulting in death.<sup>5</sup>

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<sup>2</sup> A fact-finding investigation is conducted when there is information available that suggests there may be a problem. That is then investigated further. A disciplinary investigation is conducted when there is a reasonable suspicion of dereliction of duty.

<sup>3</sup> The 'curfew riots' refers to the riots in Eindhoven and Den Bosch following the introduction of a curfew during the pandemic.

<sup>4</sup> For the report (in Dutch) see: [Ongekende ongeregelheden Eindhoven \(cot.nl\)](https://www.cot.nl/ongekende-ongeregeldheden-eindhoven)

<sup>5</sup> Explanatory Memorandum to the Decree of 11 May 2020, amending the Code of Conduct for the Police, Royal Military and Border Police and other Investigating Officers, the Special Enforcement Officers Decree, and the Police Data Decree in connection with the review of procedures for reporting the use of force.

The reports on the use of force in cases 4 and 5 were entered by the assistant public prosecutor into the relevant record-keeping system in accordance with the applicable rules and were not referred to the internal review process. The government would emphasise that no complaints were received or criminal complaints lodged in any of the three cases relating to incidents in Amsterdam.

**3) Please explain what steps have been taken, or are still foreseen, both in general and in relation to each of the five individual cases raised in my communication (Cases 1 – 5), to ensure that criminal and disciplinary investigations and sanctions for police brutality are not limited to the direct perpetrators only, but are also extended to the responsible superiors, as well as to other officers, who were present at the scene but failed to intervene**

Before discussing the possible prosecution of superior officers in the various cases, the government would first like to outline the context as provided by the relevant legislation.

#### **Operations led by a superior officer – legal framework**

If a police officer operates under the command of a superior officer who is present on the scene, the subordinate police officer may use force only on the specific order of that superior officer (article 5 of the Code of Conduct). It is only possible to deviate from this rule if the superior officer has determined otherwise beforehand or if the subordinate officer cannot reasonably be expected to wait for such an order.

In cases where force has been used under the command of a superior officer who was present on the scene and that force was used following a specific order from that superior officer, it is the superior officer who reports the use of force. Therefore, in such cases, in addition to a review of the use of force by the police officer, a review is also conducted of whether the superior officer, in giving the order, acted in accordance with section 7, subsections 1 and 7 of the Police Act 2012 and the Code of Conduct (see also the response to question 6). The superior officer can thus also be involved in the learning process. Another option is to consider discussing the actions in a wide context – with other police officers who were present at the scene – in order to learn lessons from the use of force and review police operations (large learning circle). These experiences can later serve as input for the comprehensive professional skills training (IBT).

#### **Criminal sanctions**

The response to question 2 discussed the ongoing criminal investigations. The Public Prosecution Service has indicated that these investigations have not led to any suspicion that offences were committed by superior officers.

**4) In the view of the unrealistic low number of criminal or disciplinary proceedings initiated compared to the reported statistical frequency of the use of force by the Dutch police (0,22% in 2020), please explain what steps have been taken, or are still foreseen, in order to ensure that in the future, internal oversight mechanisms of the police, but also the Public Prosecution Service refrain from unwarranted leniency with regard to police violence and instead effectively review and rigorously enforce compliance with international standards governing the use of force through preventative and corrective measures.**

On the basis of the figures concerning proceedings initiated following the use of force,<sup>6</sup> the Special Rapporteur concludes that the numbers are unrealistically low. However, it is unclear to the government on what grounds that assertion is being made and what, in the Special Rapporteur's view, would be a realistic number.

#### **Figures on the use of force in 2021 and the police's internal review procedure**

The figures on the use of 2021 have now been published, and the government is pleased to provide the Special Rapporteur with this additional information. In 2021 there were 30,046 instances of the use of force, 3,558 of which led to the use of force being registered, which means that these instances are reviewed by the chief of police. So far, 2,270 police officers have had their use of force in 2021 reviewed. A number of reviews had not yet been

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<sup>6</sup> These statistics relate to the police's internal review procedure following the use of force.

completed by the end of 2021 and will continue in 2022. Of the incidences reviewed over 2021, 90% (2,279) were found to be professional and 10% (231) were found not to be professional. Thirteen cases gave rise to disciplinary measures against a police officer. That is not to say, however, that nothing was done in the other 218 cases. If a review of the use of force results in negative findings, this may lead to various further steps, such as an in-depth discussion with the officer in question, improvement measures or the start of a procedure leading to a disciplinary measure. A tailored approach is adopted in this respect, and decisions are made on a case-by-case basis about what steps are appropriate and how best to learn lessons from a particular situation. Learning lessons from the use of force is also a key aspect of this. A review of the use of force can lead to the establishment of a small or large 'learning circle'. A small learning circle can involve the individual police officer, an instructor and an assistant public prosecutor. A large learning circle can involve the team, an instructor and the team leader. If the operation took place under the command of a superior officer who was present on the scene, that superior officer may also be involved in the learning process. The learning circle can also be drawn wider, at national level even, which could lead, for instance, to general changes to training programmes.

There are various processes in place to ensure optimisation of the internal review procedure. The police are currently, on their own initiative, having the new registration method evaluated. This evaluation will encompass all aspects of the process of reporting, accountability, review and learning lessons from the use of force by the police. It is being conducted by the Police Academy in collaboration with the University of Groningen. The results are expected in the second half of 2022.

### **Investigations concerning the Emergency Deployments Team**

For the sake of completeness, the government would also refer the Special Rapporteur to the figures on investigations by the National Criminal Investigation Department following the use of force by investigating officers, which are included in the annual report of the Public Prosecution Service. In 2021, 45 investigations were assigned to the Emergency Deployments Team (TSI) of the National Criminal Investigation Department.<sup>7</sup> Four investigations were, in consultation with the Public Prosecution Service, halted or handed over to the police (local security, integrity and complaints divisions) because close scrutiny revealed they did not meet the criteria for investigation by the National Criminal Investigation Department. In four other cases the investigation by the National Criminal Investigation Department is still ongoing. In 10 of the 45 cases the National Criminal Investigation Department has been completed, but the Public Prosecution Service has not yet finished its assessment. In 26 cases the Public Prosecution Service decided not to prosecute. In the vast majority of these cases, the Public Prosecution Service found that the actions of the investigating officer in question were lawful (in accordance with the rules governing the use of force) or that the investigating officer could invoke a ground for immunity from criminal liability (such as self-defence). In one case, successful mediation took place and the decision was made not to prosecute, on policy-related grounds. In one case the Public Prosecution Service prosecuted an investigating officer for dangerous driving (section 5 of the Road Traffic Act 1994).<sup>8</sup>

In view of the above, the government does not agree with the assertion that there have been an 'unrealistic low number of criminal or disciplinary proceedings'. The Special Rapporteur also speaks of the 'reported statistical frequency of the use of force by the Dutch police'. The government does not agree with this either. The Dutch police use force in 0.12% of all incidents that they attend.<sup>9</sup>

**5) In the light of the observations made in the present letter, please further explain what steps have been taken, or are still foreseen, to ensure that all operating police officers, especially members of the riot police, are easily identifiable to the public, at a distance, through the display of ID number or similar means.**

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<sup>7</sup> TSI investigates the actions of investigating officers in incidents that involve deaths or serious injuries. This concerns people who have died or suffered serious injuries due to the use of firearms, in police custody, after the use of force by the police or after a pursuit.

<sup>8</sup> [2021 Annual Report of the Public Prosecution Service](#) (in Dutch).

<sup>9</sup> [2021 Annual Report of the Dutch Police](#) (in Dutch). See also: [Figures on the use of force in 2021: more incidents where police had to use force](#) (in Dutch).

As set out in its Communication of 10 March, the government considers it 'undesirable for plain-clothes police officers to act as anonymous representatives of a police organisation. They should be identifiable individuals and should therefore identify themselves to members of the public without being asked to do so. Since 1988 Dutch police officers have had a statutory duty to identify themselves. The duty to provide identification is currently set out in article 2, paragraphs 1 and 2 of the Code of Conduct and applies to police officers operating either in plain clothes or uniform. Article 2 requires uniformed police officers to identify themselves when asked. Before acting in their capacity as police officers, plain-clothes officers must identify themselves by means of their police ID, without being asked to do so. This does not apply if exceptional circumstances make it impossible. Such circumstances include those in which special units are deployed on account of their specific objectives (observation and special assignments). In addition, operating as an arrest team, or as part of the riot police, when swift action is required, may mean that identification is not always expedient. The government understands that even in such situations, including those involving the riot police, it may be important for officers to identify themselves. For example, if members of the public wish to complain or lodge a criminal complaint after the event.'

This is in part the reason why the government said in its Communication of 10 March that it intended to discuss this with the police. It is important to note that the safety of individual police officers must also be taken into account during public order disturbances. These days, police officers are often filmed while performing their duties. Although in certain cases this may contribute to establishing the truth, unfortunately there are also individuals, or groups of individuals, who film police officers with malicious intent, such as the desire to intimidate the police officers in question. The footage is then posted on social media, for instance, along with intimidating or threatening messages or calls to actions, such as a request to find out the officer's home address, or the address of their children's school. This can amount to taking the law into one's own hands, or making wrongful accusations of unlawful action. Motives for the latter vary. It can be intended to ensure that the police officer in question becomes unable or afraid to do their job. It is also possible that the aim has nothing to do with the individual police officer, but instead with a general wish to hamper police operations, for instance. In any case it is important, when developing policy on police officers being identifiable, to take these new developments into account.

Lastly, the government would emphasise again that police officers must report any use of force to the assistant public prosecutor. This report must state whether the officer in question identified themselves before taking action, so that this is subject to a retrospective check. Once a police officer has reported the use of force, that officer's details are known and in the event that a complaint is made or a criminal complaint is lodged it can be ascertained which police officer was involved.

**6) In the light of the observations made in the present letter, please further explain what steps have been taken, or are still foreseen to discontinue the use of service dogs, horses and other unnecessary disproportionate, or otherwise unlawful force and coercion in response to unauthorized assemblies and other forms of civil disobedience**

With reference to its Communication of 10 March, the government would emphasise once more that police horses – unlike police dogs – are not deployed as an instrument of force. Police horses are deployed to maintain public order as they are eminently suitable for dispersing a crowd and therefore help de-escalate the situation.

Police dogs can be deployed as an instrument of force under strict conditions. The government would emphasise that section 7 of the Police Act 2012 sets out the principles of proportionality, subsidiarity, reasonableness and moderation that apply to the use of force. In practical terms, therefore, a police dog may only be deployed as an instrument of force if this is absolutely necessary and the aim cannot be achieved by other, less drastic methods. As indicated in the government's Communication of 10 March, the second tranche of amendments to the Code of Conduct entered into force on 1 July 2022. It includes extra deployment criteria for the use of police dogs as an instrument of force. If a dog is deployed as an instrument of force, such use will be reviewed after the fact in terms of lawfulness and professional standards. Following review, lessons can be learned on two levels: by the individual police officer in light of the specific incident and by the organisation as a whole.

The government wishes to add the following to the response in its Communication of 10 March. The study dedicated to the significance of police patrol dogs for the tasks of the police has now been completed. It reviewed all cases involving the use of police dogs as an instrument of force in 2020 (both records and registrations of the use of force). In

addition, the police recently adopted a vision document ('Koers politiehonden'; 'Guidelines on police dogs'), to foster further professionalisation and harmonisation of the entire scope of tasks relating to police dogs. Animal welfare, the safety of civilians, increasing the power to catch criminals in the act, and safeguarding the legitimacy of police operations are all important guiding principles. The police are now working on the basis of this new vision document. The findings of the study of the deployments in 2020 are included in this vision document and are being used to further develop the deployment of police dogs.

**7) Please explain what steps have been taken, or are still foreseen, to publicly declare and implement, on all levels of the operational, investigative and judicial process, of a strict and transparent 'zero tolerance' policy with regard to police brutality. If no such steps have been taken, please explain how this is compatible with the international legal obligation of the Netherlands to take effective measures with a view to preventing the occurrence and re-occurrence of acts of torture and other cruel, inhuman or degrading treatment or punishment.**

The Netherlands is a state governed by the rule of law, where the use of force by the police is regulated by legislation. The use of force is a last resort and no-one may be subjected to inhuman, degrading or cruel treatment. Important frameworks and guarantees have been established to prevent such treatment, as described in the government's Communication of 10 March 2022.

The government considers the use of force by police officers to be a last resort, only permitted if it is strictly necessary and with due regard for the principles of proportionality, subsidiarity, reasonableness and moderation. These principles are enshrined in law and form the basis for derived regulations. In the event of disproportionate use of force by the police, criminal proceedings can be brought before an independent court.

It is important to note that on 1 July 2022 the Use of Force (Investigating Officers) Act entered into force (Bulletin of Acts and Decrees 2022, no. 203). It introduced a new offence specifically in the case of investigating officers: culpable breach of the rules governing the use of force resulting in bodily injury or death. This sends a clear message to investigating officers that they must abide by the rules governing the use of force and that if they do not, they can be prosecuted. In addition, the Act provides that all cases against investigating officers who have used force in the line of duty will be heard by the same court: Central Netherlands District Court. These cases are thus heard by judges who are specialised in reviewing the use of force by the police, which helps ensure that due care is exercised when dealing with incidents involving the use of force.

**8) Please provide detailed information on the existing mechanisms, if any, to ensure victims are granted prompt and adequate redress, reparation and rehabilitation, in compliance with article 14 of the CAT, including the measures taken to ensure non-recurrence.**

One of the hallmarks of a modern police force is that citizens feel heard and seen. This helps affirm the police's legitimacy and foster trust and is all the more important in the case of citizens who – for whatever reason – have been affected by the use of force by the police.<sup>10</sup> In accordance with the applicable international law standards, the Dutch system contains various checks and balances in order to ensure that, where necessary, adequate independent investigations are conducted into the use of force by the police. There are various ways in which citizens can express their objection to police operations and claim compensation for any damage they may have suffered.

First of all, in certain cases citizens can lodge a criminal complaint against a specific police operation in which force was used. In such cases the public prosecutor decides how the criminal complaint should be dealt with. If a criminal investigation is conducted, citizens/victims who have suffered damage may join the criminal proceedings as an injured party and apply to the criminal court for compensation. In principle, medical costs are covered by compulsory health insurance. Victims of intentionally committed violent offences who have suffered serious injuries may also claim compensation from the Criminal Injuries Compensation Fund.

If the Public Prosecution Service decides not to prosecute a police officer, parties with a direct interest can submit a complaint to the Court of Appeal under article 12 of the Code of Criminal Procedure (*Wetboek van Strafvordering*) if they disagree with the public prosecutor's decision not to prosecute. If such a complaint is upheld by the appeal court,

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<sup>10</sup> Parliamentary Papers, House of Representatives, 2021/22 session, 34641, no. 27.



the public prosecutor has to carry out further investigations of the case or to prosecute the officers in question.

Individuals can also submit a claim for compensation to the police if they believe that a wrongful act has been committed. There is a special division tasked with handling compensation claims. Besides claiming compensation, individuals can also submit a complaint about the way they have been treated by the police. In the first phase of the complaints procedure, the police speaks with the person who submitted the complaint, to see whether the complaint can be addressed to the latter's satisfaction in that way. If that is not the case, an independent complaints committee is asked to advise on the complaint, after which the competent authority makes a decision on the complaint. Complaints are dealt with according to a different procedure from the one used for compensation claims. If the person who submitted the complaint is not satisfied with the outcome of the complaints procedure, they can submit a complaint to the National Ombudsman.

Lastly, the person in question can turn to the civil court and claim compensation on account of a wrongful act by a government authority. The government would note that if a citizen joins criminal proceedings in order to claim compensation for damage suffered this already constitutes them holding the police liable under civil law.<sup>11</sup>

**9) Please provide your assessment of the likely long-term societal effects of policies aiming to suppress large-scale civil disobedience and political dissent through intimidation and violence rather than tolerance and dialogue.**

In a democratic state governed by the rule of law, there is room for social unrest and political differences. Criticism and a degree of distrust are essential elements of a thriving democracy. Fundamental rights, such as freedom of expression and the right to protest, give scope for people to demonstrate. In order to do justice to those fundamental rights, government authorities must listen, and act appropriately, so that any feelings of dissatisfaction will serve to strengthen our democracy.

Police operations<sup>12</sup> and the actions of the local competent authorities are aimed at de-escalation and dialogue and not at repression through force and intimidation. That basic principle is set out in the handbook drawn up by the municipality of Amsterdam, entitled 'Demonstreren "Bijkans heilig"' ('Demonstrating is "almost sacred"'),<sup>13</sup> which was distributed to all Dutch municipalities.

**Appendix – the government's Communication of 10 March 2022**

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<sup>11</sup> Parliamentary Papers, House of Representatives 2021/22, 34641, no. 27, pp. 41-42 (Appendix).

<sup>12</sup> See also the Police Act 2012 and the Code of Conduct for the Police, Royal Military and Border Police and other Investigating Officers.

<sup>13</sup> See: [Handbook 'Demonstrating is "almost sacred"' - Municipality of Amsterdam](#) (in Dutch).



*Permanent Representation of the Kingdom of the  
Netherlands to the United Nations Office  
and other International Organizations in Geneva*

NV: GEV-PA 32/2022

The Permanent Mission of the Kingdom of the Netherlands to the United Nations and other international organisations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and, with reference to the Communication of 10 January 2022 (UA NLD 1/2022) of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, has the honour to inform the Office as follows.

The government of the Kingdom of the Netherlands ('the government') first wishes to reiterate its full support and appreciation for the mandates of the Special Rapporteurs and Working Groups. It gives serious consideration to their views. The government will always seek to respond and actively engage with UN mandate holders and has extended a standing invitation to all UN special procedures. The government is open to dialogue with its international partners on the protection of human rights in the Netherlands, in a spirit of self-reflection and with a view to improving the implementation of human rights. In this context, the government appreciates the opportunity provided by the Special Rapporteur to respond to his concerns and questions regarding the use of force by law enforcement officers against protesters since January 2021.

The government has responded positively to the request of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment to visit the Netherlands and looks forward to welcoming the Special Rapporteur. The visit will provide an excellent opportunity for dialogue with all relevant actors and a further exchange of information and views.

The Permanent Mission of the Kingdom of the Netherlands to the United Nations and other international organisations in Geneva avails itself of the opportunity to renew to the Office of the High Commissioner of Human Rights the assurances of its highest consideration.

Geneva, 10 March 2022



*Office of the High Commissioner for Human Rights*

## **Response to Communication of 10 January 2022 (UA NLD 1/2022) of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment**

### **General context**

The government takes the view that it is important to describe the legal and administrative context of the matters in question before responding to the questions of the Special Rapporteur. The government holds the right to freedom of peaceful assembly in high regard and protects this right in accordance with Article 21 of the International Covenant on Civil and Political Rights (ICCPR), Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and article 9 of the Dutch Constitution. Under Dutch law, restrictions of this right are only allowed where strictly necessary to protect health, in the interest of traffic and to combat or prevent disorder. The right to peaceful assembly is further detailed in the Public Assemblies Act (*Wet openbare manifestaties*). The Act empowers the mayor to impose conditions and restrictions on groups of protesters. It also empowers the mayor, as a last resort, to order the cancellation of or end a protest. During the COVID-19 pandemic, conditions were imposed to protect public health – for example, protesters had to stay 1.5 metres apart – and public order.

During demonstrations, the police operate under the authority of the mayor when maintaining public order. The mayor is accountable to the municipal council for his/her decisions and an interested party can submit an application for judicial review of the mayor's decisions to the administrative court. If the police act to uphold the legal order through the criminal law, this is done under the authority of the public prosecutor.

The task of the mayor, and the police acting under their authority, is to facilitate and protect the right to demonstrate as far as possible. However, the competent authority always has to reconcile a number of interests arising from the local situation. In most cases, there is close cooperation between the police and the demonstration organisers. The police move among the demonstrators rather than confronting them. However, in exceptional circumstances it may also become necessary for the police to use force to restore public order. In such situations they are expected to take resolute action and the use of force is permissible provided this takes place in accordance with the applicable legislation. Important guarantees are in place to this end, more specifically the Police Act 2012 (*Politiewet 2012*) and the Code of Conduct for the Police, Royal Military and Border Police and Other Investigating Officers (*Ambtsinstructie voor de politie, de Koninklijke Marechaussee en andere opsporingsambtenaren*; the Code of Conduct). Police officers are professionals who are trained in the use of force. They know the situations in which they are permitted to use force and indeed sometimes must use force in order to carry out their duties.

Below, the government will outline the legislative framework that applies to the use of force by the police and describe the role of the Public Prosecution Service (*Openbaar Ministerie*) and the National Criminal Investigation Department (*Rijksrecherche*; the Investigation Department) in investigating violent incidents. It will then answer the questions put by the Special Rapporteur.

### **Legislative framework for the use of force**

The Netherlands is a state governed by the rule of law, where the use of force by the police is regulated by legislation. The use of force is a last resort and no-one may be subjected to inhuman, degrading or cruel treatment. Important frameworks and guarantees have been established to prevent such treatment, as described below.

The ICCPR (Articles 6 and 7), the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment and the ECHR (Articles 2 and 3) constitute the main human rights frameworks governing the proportionate use of force by police officers. In

accordance with the requirements set out in these instruments, rules for the proportionate use of force by police officers are laid down in national legislation.

Situations may arise in which police officers who are authorised to use force are compelled to actually do so in order to carry out their duties. This is part of the resolute action required of them.

Section 7 of the Police Act 2012 establishes a statutory basis for the authority to use force. Further provisions are laid down elsewhere, for example in the Code of Conduct. Together they constitute a uniform set of national rules on the use of force by the police. Section 7, subsections 1 and 7 of the Police Act 2012 read as follows:

1. Police officers appointed for the performance of police tasks are authorised to use force or measures to restrict liberty in the lawful execution of their duties if, bearing in mind the risks that accompany the use of force, this is justified in light of the intended aim and this aim cannot be achieved in any other way. Where possible, a warning must be issued prior to the use of force.  
(...)
7. The exercise of the powers referred to in subsections 1 to 6 must be reasonable and measured, in relation to the intended aim.

Police officers are therefore permitted to use force only when the objective justifies that use (proportionality) and cannot be achieved in any other way (subsidiarity). If possible, a warning must be given before force is used. In addition, the force used must be reasonable and measured in relation to the objective. In training and in practice, the guiding and decisive principles are proportionality, subsidiarity, reasonableness and moderation. In performing their statutory duties, police officers must respect and protect human dignity.

Under section 9 of the Police Act 2012, a code of conduct for the police and the Royal Military and Border Police must be drawn up by order in council. This must include rules for the implementation of sections 6 and 7 of the Police Act (see section 9, subsection 3 of the Police Act 2012). Chapter 2 of the Code of Conduct that has been drawn up contains deployment criteria and detailed rules governing the use of force and measures restricting liberty. If the use of force is required in a specific case, the police officer in question must consider, in addition to the limits laid down in the Code of Conduct, whether the use of force or a measure restricting liberty meets the requirements of proportionality and subsidiarity. These principles are decisive in any use of force; every police officer who is authorised to use force must be fully aware of them and actively apply them in all situations. The Code of Conduct also stipulates that the use of force is exclusively reserved to police officers who have been authorised by law to use it, provided they are performing the task for which the authorisation was given and are trained in the use of the means of force in question.

### **Investigation of the use of force by police**

The use of force against persons by the authorities, which may have serious consequences, constitutes an infringement of fundamental rights. Precisely because of its monopoly on the legitimate use of force, the government attaches the greatest importance to thorough investigation of incidents involving the use of force by police officers, to establish whether they acted in accordance with the rules governing such use of force. This is even more relevant in cases where the use of force has resulted in serious bodily injury or death. Such investigations must be thorough, prompt and independent. Consequently, they must be carried out under the authority of officials who are independent of those who have used force in the performance of their duties. In investigating and reviewing cases where force authorised by the authorities has been used, these officials must avoid any appearance of bias.

Under the Code of Conduct, every incident involving the use of force occurring in the Netherlands must be reported to the assistant public prosecutor for review. On 1 July 2020 the first tranche of amendments to the Code of Conduct entered into force (Bulletin of Acts and Decrees 2020, 144). These amendments included a reform of the entire procedure for reporting, registering and reviewing the use of force, enabling the police organisation to learn lessons from such incidents. The procedure is described in greater detail in the answer to question 8.

In accordance with Article 2 of the ECHR, the internal review procedure is followed by an independent investigation if the incident in question involved the use of firearms by police officers resulting in bodily injury or death, or any other use of force by police officers resulting in serious bodily injury or death.

The Instructions for Investigating Police Use of Force (*Aanwijzing handelwijze geweldsaanwending (politie)ambtenaar*; Government Gazette 2006, 143), issued by the

Public Prosecution Service, establish the procedure to be followed in response to the use of firearms by investigating officers resulting in bodily injury or death, or any other use of force by officers resulting in serious bodily injury or death. The National Criminal Investigation Department is responsible for investigating such incidents, under the authority of the public prosecutor. The Investigation Department falls directly under the authority of the Board of Procurators General – part of the Public Prosecution Service and not of the police organisation – and is therefore completely independent of the police in its investigations.

It is not only in the interests of victims and their families that the circumstances and lawfulness of the use of force must be thoroughly investigated; it is equally important for the transparency of the police organisation and for society's confidence in the functioning of the police and its credibility.

The Investigation Department's inquiries can in certain cases lead to prosecution of the police officer(s) in question by the Public Prosecution Service. Under section 124 of the Judiciary (Organisation) Act (*Wet op de rechterlijke organisatie*), the Public Prosecution Service is responsible for upholding the legal order through the criminal law and for other statutory duties. Under article 9, paragraph 1 of the Code of Criminal Procedure, the public prosecutor is responsible for instituting criminal proceedings. The Public Prosecution Service is the only body in the Netherlands that can institute such proceedings.

The Public Prosecution Service can, however, dispose of less serious offences through other forms of settlement. Some cases referred by the police to the Public Prosecution Service are not prosecuted because there is not enough evidence or the act committed is not a criminal offence. If the Public Prosecution Service decides not to prosecute a police officer, parties with a direct interest can submit a complaint to the Court of Appeal under article 12 of the Code of Criminal Procedure (*Wetboek van Strafvordering*) if they disagree with the public prosecutor's decision not to prosecute. If such a complaint is upheld by the appeal court, the public prosecutor has to carry out further investigations of the case or to prosecute the officers in question.

In addition to the investigation by the Investigation Department under the supervision of the public prosecutor, every Regional Unit of the police force also has a division responsible for security, integrity and complaints (*Veiligheid, Integriteit en Klachten*; VIK). These divisions coordinate disciplinary investigations of police officers and, under the supervision of the Public Prosecution Service, conduct criminal investigations into cases not involving serious bodily injury or death. Additionally, members of the public who have complaints against police officers can file a complaint with the police chief (head of the Regional Unit). Finally, members of the public can also file a complaint with the National Ombudsman.

To conclude, in accordance with current international standards, a variety of checks and balances have been built into the Dutch system which allow for effective and independent investigation of the use of force by the police, where necessary. As described above, such incidents may be investigated in a number of ways: through the internal review procedure, a criminal investigation conducted under the authority of the Public Prosecution Service, a disciplinary investigation conducted by the VIK, complaints proceedings under article 12, complaints to the police chief and a complaint to the National Ombudsman. Please see the answer to question 8 for a more detailed description of internal and external review procedures following the use of force. The answer to question 9 discusses the scope for a criminal investigation and the Investigating Officers (Use of Force) Act.

## **Answers to the questions**

### **1) Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations, preliminary observations and concerns**

The government considers the description of the different cases, as set out in the allegation letter of 10 January 2022, to be partially incorrect and incomplete.

The passage regarding these incidents in the Special Rapporteur's protest note is based on video footage of a number of incidents. Only part of the police operation is recorded in this footage. In its response, the government therefore believes it is important to provide further information on the incidents and the force used in an effort to disperse protesters. That information is given below.

### **Malieveld, The Hague, 14 March 2021**

The description of the incident on the Malieveld field in The Hague contains factual errors,

in particular the following passage in the Communication of 10 January (under General Context, page 2): 'Footage appeared showing riot police indiscriminately hitting protesters with their batons, shooting in the air and throwing tear gas at the crowd. The riot police used powerful water cannons (...). No allegations have been received regarding any injuries that may have been sustained by police officers themselves'.

The police have stated that a single warning shot – not several – was fired by a police officer who felt seriously threatened by the situation. No tear gas was used in this incident and the water cannon was deployed at low velocity, in other words a low-pressure stream was directed upwards, not directly at the crowd, with the intention of dousing the protesters. This is part of a phased intervention by the riot police (*Mobiele Eenheid*). Dousing/soaking the crowd is often enough to encourage people to go home. Finally, several police officers were in fact injured in this incident.

### **Eindhoven, 24 January 2021**

This concerns the use of a water cannon during a demonstration and large-scale rioting following the introduction of an evening curfew in the Netherlands, one of the restrictions imposed in response to the pandemic. The deployment of a water cannon was part of riot police operations ordered by a superior officer and with the permission of the competent authority – in this case the mayor. No further comment can be made at this point as the use of a water cannon against this individual is the subject of an ongoing criminal investigation.

### **Amsterdam, 2 January 2022**

The three incidents in Amsterdam all took place during a large-scale police operation in connection with the 'Together for the Netherlands' (*Samen voor Nederland*) demonstration. The mayor had banned the demonstration on the grounds that it had not been possible to reach agreement with the organisers on holding the event in a safe and orderly manner, and in accordance with the public health measures in force on that date.

In addition, the police had reliable information that certain persons and groups, including militant, anti-government groups (*defendgroepen*), intended to commit acts of violence under the pretext of demonstrating. On 2 January – in conjunction with the prior ban on demonstrating – Museum Square and its direct neighbourhood had also been declared a security risk area.<sup>14</sup> This is an area designated by the mayor where there is a risk to public safety, for example as a result of public order disturbances, or where there are serious concerns that such disturbances will occur because of the presence of weapons. Despite the ban, around 10,000 people turned up. The police were ultimately forced to take action, partly because the demonstrators refused to comply with the order to leave the area and were ignoring coronavirus restrictions. In addition, some demonstrators committed acts of violence towards the police, as a result of which several police officers sustained injuries.

**2) Please provide detailed information on the ongoing prosecution of the two law enforcement officials charged with excessive use of force during the Malieveld rally (case 2 above), in addition to the precise outcome of the judicial process and what steps, if any, have been taken against the responsible superiors, as well as against other officers, who were present at the scene but failed to intervene.**

The government would emphasise that the investigation conducted by the Public Prosecution Service into police use of force during the demonstration on Malieveld in The Hague on 14 March 2021 found the overwhelming majority of the incidents to be lawful. Two officers seen on the video footage have been charged by the Public Prosecution Service on account of their actions during the demonstration. The Public Prosecution Service considered the force they used to be disproportionate.

In this situation the demonstrator was waving a jump lead around, refused to drop it, ran after police horses with the manifest aim of injuring mounted police officers and/or their horses and eventually threw the jump lead in the direction of a member of the riot police. At this point a police dog handler attempted to arrest the demonstrator with the aid of his dog. He also used his baton. The officer could not get the suspect under control as the latter had grabbed the dog by the ears. Two members of the riot police then came to the aid of the

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<sup>14</sup> Under article 151b of the Municipalities Act, the mayor can designate an area as a security risk area in the event of a public order disturbance caused by the presence of weapons, or if there are serious concerns that such disturbances may occur. In a security risk area, the public prosecutor is empowered to issue a stop and search order.

officer in question, hitting the man with their expandable batons. After this the handler decided to deploy the dog again to make contact with the suspect's leg, causing injuries. The police officers then hit the man again with their expandable batons, several times, and he ceased to resist.

The suspect suffered multiple injuries for which he was treated in hospital. As stated above, the Public Prosecution Service considered the force which the officers used to detain the suspect to be disproportionate. Following this police operation, 373 applications to lodge a criminal complaint were received by the police. Ultimately, 142 persons actually lodged a criminal complaint. A notice of summons and accusation was issued to the dog handler and the riot police officer by the Public Prosecution Service. The decision to issue the notice was taken on 17 December 2021,<sup>15</sup> after careful consideration of all the relevant facts revealed in the investigation. The Public Prosecution Service is currently waiting for the examining magistrate's scheduling of a further investigation. The Public Prosecution Service will take a decision on whether or not to prosecute the arrested suspect. In a third, separate case, investigations are ongoing and no decision on prosecution has been taken.

In addition to the criminal investigation under the authority of the Public Prosecution Service, the police also conducted an internal review of the use of force at the demonstration in The Hague. The report of the use of force on this occasion was registered with the assistant public prosecutor (who is a member of the police force). The Use of Force Review Committee, described in the answer to question 8, advised the police chief on the issue. In reviewing the use of force, the committee distinguished between two phases. In the first phase, the committee concluded that the deployment of the police dog when arresting the man was lawful and professional. The blow administered by the riot police officer in this phase was considered unprofessional because it was unnecessary. In the second phase of the arrest, the committee deemed the renewed deployment of the police dog to be no longer proportionate. The remaining use of force in this phase was considered to be lawful and professional. The police chief adopted the committee's advice. Pending the conclusion of the ongoing criminal investigation, no disciplinary measures have as yet been taken with regard to the officers involved.

**3) Please provide detailed information on whether any of the other cases of police brutality discussed above have given rise to disciplinary or criminal sanction against the involved officers and their superiors, as well as redress and compensation of the victims and, if not, how this is compatible with the international human rights obligations of the Netherlands.**

***Case 1 (Eindhoven, 24 January 2021)***

The use of force in this case was reviewed internally. The assistant public prosecutor registered the use of force report and the Use of Force Review Committee advised the police chief to regard the actions in question as professional. The police chief adopted this recommendation. No exploratory or disciplinary investigation was therefore started.<sup>16</sup> In addition, a criminal complaint was lodged against the operator(s) of the water cannon and the driver of the vehicle on which it was mounted in respect of this incident, claiming attempted manslaughter, attempted serious assault and assault. The Investigation Department is investigating this case. No further comment can be made on ongoing investigations.

***Case 3, 4 and 5 (Amsterdam, 2 January 2022)***

The use of force report in case 3, relating to the deployment of the police dog, was registered by the assistant public prosecutor. Since the internal review procedure has not yet concluded, no further comment can be made.

**4) Please provide detailed country-wide statistical and other relevant information about the number of police officers whose conduct during the management of assemblies has been the subject of disciplinary or judicial review since January 2020, including the**

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<sup>15</sup> [Twee agenten vervolgd in verband met politie-optreden Malieveld-demonstratie | Nieuwsbericht | Openbaar Ministerie \(om.nl\)](#). (Dutch news item)

<sup>16</sup> An exploratory investigation is begun if available information indicates there is an issue that should be investigated. A disciplinary investigation is begun if there is reasonable suspicion of dereliction of duty.

**outcome of each review and, in case of misconduct, the exact sanctions imposed.**

In the Netherlands, a state governed by the rule of law, the police organisation must account for any use of force by the police in a number of ways, including in its annual reports. These reports include figures on the number of incidents involving the use of force for each Regional Unit and type of weapon.<sup>17</sup> In addition, the police organisation reports on internal reviews of the use of force. Since January 2019 – in anticipation of the first tranche of amendments to the Code of Conduct<sup>18</sup> – the police have employed a new procedure for reporting, registering, reviewing and providing feedback on the use of force. In 2020 there were 17,005 incidents in which the police used force. These involved 27, 271 individual acts involving the use of force. Of these, 3,262 led to the use of force being registered and to review by the police chief concerned. Of the 3,262 registrations, 3,026 were deemed ‘professional’ and 236 ‘unprofessional’. The figures for 2021 are expected to be published in May 2022, when they are presented to the House of Representatives.

Specific figures on the number of *criminal* prosecutions relating to the policing of demonstrations since 2020 cannot be generated. The data contained in the registration systems of the Public Prosecution Service cannot be filtered in such a way as to enable a distinction to be made between police operations at demonstrations and those in other contexts. The same applies to police registration systems. No reliable figures relating specifically to the use of force during demonstrations and/or the number of disciplinary investigations arising from police operations in this context can be extracted from police systems.

**5) Please explain what steps have been taken, or are still foreseen, to ensure that all operating police officers are easily identifiable to the public through the display of ID-number or similar means, and to hold to account perpetrators of police brutality and their superiors, to provide victims and their families with adequate redress and rehabilitation, and to prevent recurrence in the future.**

The government regards it as undesirable for plain-clothes police officers to act as anonymous representatives of a police organisation. They should be identifiable individuals and should therefore identify themselves to members of the public without being asked to do so. Since 1988 Dutch police officers have had a statutory duty to identify themselves.<sup>19</sup> The duty to provide identification is currently set out in article 2, paragraphs 1 and 2 of the Code of Conduct and applies to police officers operating either in plain clothes or uniform. Article 2 requires uniformed police officers to identify themselves when asked. Before acting in their capacity as police officers, plain-clothes officers must identify themselves by means of their police ID, without being asked to do so. This does not apply if exceptional circumstances make it impossible. Such circumstances include those in which special units are deployed on account of their specific objectives (observation and special assignments). In addition, operating as an arrest team, or as part of the riot police, when swift action is required, may mean that identification is not always expedient.<sup>20</sup>

The government understands that even in such situations, including those involving the riot police, it may be important for officers to identify themselves. For example, if members of the public wish to complain or lodge a criminal complaint after the event. The government plans to discuss this issue with the police authorities.

As stated above, police officers are obliged to report every incident involving the use of force to the assistant public prosecutor. This report must state whether the officer in question identified themselves before taking action, so that this is subject to a retrospective check.

**6) In particular, please explain what steps have been taken, or are still foreseen, to discontinue the use of service dogs, horses and unnecessary, disproportionate or otherwise unlawful force and coercion in response to unauthorized assemblies and other forms of civil disobedience.**

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<sup>17</sup> 2020 Annual Report: [Jaarverantwoording politie 2020 | Jaarverslag | Rijksoverheid.nl](#) (Dutch only).

<sup>18</sup> Bulletin of Acts and Decrees 2020, 144.

<sup>19</sup> Article 13, 1988 Code of Conduct.

<sup>20</sup> Annexe to Proceedings, House of Representatives 2021/22, 965.



First, the government wishes to emphasise that police horses – unlike police dogs – are not deployed as a weapon. Police horses are deployed to maintain public order as they are eminently suitable for dispersing a crowd and therefore help de-escalate the situation.

In the Netherlands police horses and dogs should be deployed only after careful consideration and with restraint in situations where it is responsible to use them. Before deployment starts, the police assess whether the objective to be achieved – maintaining public order and safety – justifies the risk to human beings and animals. Attention to safety is the hallmark of the use of police horses and dogs. Both have been demonstrated in practice to de-escalate the situation during operations to restore public order. The effect is to encourage some of those causing the disturbance to leave the location of their own volition. Without their deployment, the police would be obliged to use force against a larger group of rioters with the risk of escalating the situation and increasing the force used by police against rioters and vice-versa.

As stated, police dogs are deployed as a weapon. Section 7 of the Police Act 2012 sets out the principles of proportionality, subsidiarity, reasonableness and moderation that apply to the use of force. In practical terms, therefore, a police dog may only be deployed as a weapon if this is absolutely necessary and the aim cannot be achieved by other, less drastic methods. In addition, article 15 of the Code of Conduct applies. Under this article the deployment of a police dog or a dog belonging to an arrest and support team (AOT) is only permitted under the direct and constant supervision of a handler. For the deployment of an AOT or the riot police, prior permission must be sought from the competent authority. In addition, handler and dog, as a combination, must be in possession of a certificate showing they meet the requirements set out in the inspection regulations laid down pursuant to the Police Dogs Order.<sup>21</sup> The second tranche of amendments to the Code of Conduct is expected to enter into force on 1 July 2022 (Bulletin of Acts and Decrees 2021, 46). This will update and clarify the deployment criteria governing the use of force and measures to restrict liberty. Also included are extra deployment criteria for the use of police dogs. If a dog is deployed as a weapon, such use will be reviewed after the fact in terms of lawfulness and professional standards. Following review, lessons can be learned on two levels: by the individual police officer in light of the specific incident and by the organisation as a whole.

To improve professional standards over the entire spectrum of police dog deployment, the police are currently examining the role of police dogs in the performance of their duties. The focus is on the question of what works well and what requires improvement; the study is reviewing all cases involving the use of police dogs in 2020, on the basis of interviews and police records.

Relevant developments with regard to the deployment of police horses and dogs are closely monitored. To date, no suitable alternative has been found for crowd control, crowd management and riot control. In such situations the deployment of these animals has a greater de-escalating effect than any other method.

**7) Please provide information on any investigations which may have been undertaken, including their results and any remedial measures planned or taken, regarding systematic shortcomings and other factors that may be conducive to the reported broader pattern of police brutality and the alleged prevalence of impunity in the Netherlands.**

The government wishes to emphasise that there is no pattern of excessive use of force by police officers in the Netherlands, as is also clear from the annual figures on use of force and internal review. See too the answer to question 4. Individual cases of suspected or alleged unlawful or disproportionate actions by police officers are followed up. In this connection, please see the answers to questions 2 and 3. The government has every confidence in the Dutch legal system, which contains sufficient safeguards. For this reason, the government does not recognise the alleged 'prevalence of impunity' in the Netherlands.

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<sup>21</sup> Article 24 of the Police Weapons and Equipment Decree, article 15 of the Code of Conduct, section 22 of the Police Act 2012, and the Police Dogs Order.

The government confirms the importance of thorough investigation of incidents involving the use of force. As stated above, the police have employed a new procedure for reporting, registering, reviewing and providing feedback on the use of force since January 2019, in anticipation of the first tranche of amendments to the Code of Conduct, which entered into force on 1 July 2020.<sup>22</sup> Learning from incidents involving the use of force plays a prominent role in the amended version. The new procedure is currently being comprehensively evaluated to see where improvements might be possible. An evaluation report is expected to be published in the course of 2022 addressing the entire reporting process, enabling the police to improve the reporting and review procedures and further raise professional standards.

In addition, the various weapons that the police are empowered to use will be subject to investigation and evaluation.

**8) Please provide detailed information on the procedures according to which incidents of use of force are reported by police officers and standards and modalities used by the Review Committee to determine the necessity, proportionality and legality of the force used. Please also explain what type of disciplinary or other remedial action has been taken, by which authority, and in how many cases since January 2021, whenever the Committee has found that a particular case displayed "shortcomings" in the use of force. Please further explain how the institutional and personal independence of the internal oversight mechanisms are ensured in practice.**

#### **Internal review**

Under the Code of Conduct every individual use of force has to be reported to the assistant public prosecutor, who decides whether the report should be registered. This is the case if the use of force has resulted in death or bodily injury of more than minor significance, if a firearm has been used or if, in the opinion of the assistant public prosecutor, the use of force warrants registration.<sup>23</sup> The Code of Conduct tasks the police commissioner with reviewing incidents involving the use of force by officers of the national police force that have been registered by the assistant public prosecutor. The police commissioner has delegated this responsibility to the heads of the Regional Units (police chiefs). The sector head investigates the incident and advises the police chief on the decision as to whether professional standards have been breached. In addition, each Regional Unit has set up a committee which also advises the police chief regarding the decision on the incident in question. Every advisory committee has at least one external member who has never worked as a police officer or for any of the directly allied organisations in the justice system. External members are expected to provide a community and 'civilian' viewpoint and to contribute to the objectivity of the committee's recommendations. The internal members of the committee can have no involvement with the officer in question or in the incident being reviewed.<sup>24</sup>

The committee's primary task is to assess whether the use of force was lawful and complied with the applicable skill requirements, which together determine whether professional standards have been met. To this end, the committee bases its conclusions on the statutory framework and the skill requirements as described below. This assessment framework is also used by the sector head and the police chief.

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<sup>22</sup> Bulletin of Acts and Decrees 2020, 144.

<sup>23</sup> Article 17 of the Code of Conduct.

<sup>24</sup> Decision establishing a Use of Force Review Committee 2020.

<b>Statutory framework (section 7 Police Act 2012, Code of Conduct)</b>	<b>Skill requirements</b>
1. Lawful performance of duties	Respectfulness
2. The aim justifies the force used, bearing in mind the associated risks and dangers.	Predictability and reliability
3. If possible, a warning was given before the use of force.	De-escalation
4. Subsidiarity: the force used was the least drastic means.	Duty of care
5. Proportionality: the force used was proportionate to the intended aim.	Courage not over-confidence
6. The weapon has been handed in, the police officer is trained in the use of force and the Code of Conduct and the Police Act were complied with.	

The purpose of the internal review is to render proper account to society and government with regard to the statutory power to use force. In addition, it aims to enable broader lessons to be learned from the use of force, for individual officers and the team, or even the entire organisation.

Figures relating to cases reviewed by police chiefs since January 2021 are not yet available. The 2021 figures are expected to be presented to the House of Representatives in May 2022 and will at that point become public. As already stated in the answer to question 4, in 2020 3,262 individual acts involving force were registered and reviewed by the competent police chief. Of these, 3,026 were deemed 'professional' and 236 'unprofessional'. In six cases there was reason to begin disciplinary proceedings against the police officer in question.

Following internal review, which may run in parallel with the Public Prosecution Service's investigation, the police organisation can itself decide to take disciplinary measures against an officer. The police organisation reports on the number of disciplinary investigations and measures imposed in its annual report.<sup>25</sup> The Public Prosecution Service may decide, depending on the severity of the incident, that these measures are sufficient to dispose of the case, and will then refrain from further prosecution.

### **The Public Prosecution Service**

Alongside the police internal review, an incident may be reported to the Public Prosecution Service (mostly the more severe instances of the use of force). The police commissioner informs the public prosecutor that an incident has been registered if the use of force resulted in death or serious bodily injury, if there is a serious risk that the use of force may have resulted in serious bodily injury, if a firearm was used resulting in bodily injury or if, in the opinion of the police commissioner, the incident warrants informing the Public Prosecution Service. In such cases it is the responsibility of the public prosecutor to determine whether the police officer in question acted lawfully. An incident can also come before the public prosecutor if a member of the public lodges a criminal complaint regarding the use of force against them. For more details, please see the section above entitled 'Investigation of the use of force by police'.

The Public Prosecution Service has ultimate responsibility for deciding whether an officer is to be prosecuted and which offences it will put before the independent criminal court. This decision on prosecution is taken by the public prosecutor.

**9) Please provide detailed information on the measures taken to ensure that police officers found to have used excessive force are held to account and subjected to sanctions commensurate with the gravity of their offence. In particular, please explain how the currently ongoing revision of the Dutch penal code, through the creation of a separate offence for police officers 'contravening the rules governing the use of force' (schenden van de geweldsinstructie) will affect the criminalization and potentially applicable disciplinary and criminal sanctions for police brutality, and how the extremely short envisaged maximum sentence of three years is compatible with the potential gravity of the crime of torture or other cruel, inhuman or degrading treatment or punishment.**

As described in the section on the investigation of the use of force by police, the Netherlands attaches the greatest importance, in light of police powers in this respect, to

<sup>25</sup> 2020 Police Annual Report, [Jaarverantwoording politie 2020 | Jaarverslag | Rijksoverheid.nl](#), p. 81 (Dutch only).

thorough investigation of the use of force by the police to establish whether officers acted in accordance with the rules governing such use of force, particularly if bodily injury or death has been the result. Such investigations are the responsibility of the Investigation Department and at present take place within the framework of a regular criminal investigation. In such an investigation, the key question is whether the investigating officer concerned has committed a criminal offence, while the officer has to be deemed a suspect before certain investigative powers may be exercised. The new Use of Force (Investigating Officers) Act (Bulletin of Acts and Decrees 2021, 233), which will enter into force this year, introduces a new investigation framework: the fact-finding investigation (*feitenonderzoek*).

The idea underlying such an investigation is that the yardstick for evaluating the use of force by investigating officers must be the correct one. If in the performance of their duties an investigating officer uses force, this may be classified as a general violent offence such as assault or manslaughter. However, investigating officers are authorised to use appropriate force. In some cases this is even expected of them. While a member of the public may withdraw from dangerous circumstances to avoid having to use force in self-defence, investigating officers are expected to take action in order to resolve the situation. In a fact-finding investigation, the key question therefore is whether force was used in accordance with the rules governing the use of force. In such an investigation the officer is not deemed to be a suspect. The victim and their relatives enjoy the same rights as they would in a regular criminal investigation, so that their position is safeguarded. Such rights include the right to see the case file.

If the fact-finding investigation establishes that the officer did not act in accordance with the rules governing the use of force, the Public Prosecution Service can institute a regular criminal investigation in which the officer will be designated a person suspected of committing a criminal offence. If there is doubt from the outset as to the lawfulness of the investigating officer's actions (for example, because there are clear indications that the officer can be held culpable for acting disproportionately) the Public Prosecution Service may decide to waive the fact-finding investigation and proceed directly to a criminal investigation.

Transparency regarding the use of force by the authorities and their accountability in this respect are concepts that are inseparable from the government's monopoly on the legitimate use of force in a democratic state governed by the rule of law. It is therefore of the utmost importance that the Public Prosecution Service thoroughly investigates the use of force by police officers and then takes appropriate measures. If the Public Prosecution Service decides to prosecute an officer, the public prosecutor is then responsible for determining which criminal offence the officer will be charged with. These are the same criminal offences that members of the public can be charged with and include (serious) assault (article 302, Criminal Code), which carries a maximum sentence of eight years, and manslaughter (article 287, Criminal Code), which carries a maximum sentence of 15 years. In addition, the Use of Force (Investigating Officers) Act (Bulletin of Acts and Decrees 2021, 233) introduces a new offence specifically in the case of investigating officers: culpable breach of the rules governing the use of force resulting in bodily injury or death. This new offence applies in cases where a breach of these rules was due to a culpable error of judgment or failure to exercise due care on the part of the investigating officer, a situation in which prosecution for a general crime of violence such as assault or manslaughter will often be less appropriate in light of their duties. By definition, these duties put them in situations where they are obliged to exercise their power to use force. The obligation to take action in accordance with the relevant duty-of-care rules justifies an assessment that departs from that given to general crimes of violence and for this reason the offence carries a lower maximum sentence (three years). This does not apply in situations where the officer deliberately breaches the rules governing the use of force in inflicting bodily injury. In such a case, there is no justification for a legal status for investigating officers under the criminal law that differs from that of everyone else, given the seriousness of the officer's conduct and the accusations laid against them. A more appropriate choice, in such circumstances, would be prosecution for a general criminal offence such as (serious) assault or manslaughter, which both carry heavier sentences.