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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>1</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 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

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<sup>1</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.

Prosecution Service. The decision to issue the notice was taken on 17 December 2021,<sup>2</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>3</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)***

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<sup>2</sup> [Twee agenten vervolgd in verband met politie-optreden Malieveld-demonstratie | Nieuwsbericht | Openbaar Ministerie \(om.nl\)](#). (Dutch news item)

<sup>3</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.



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 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>4</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>5</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>6</sup> The duty to provide

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<sup>4</sup> 2020 Annual Report: [Jaarverantwoording politie 2020 | Jaarverslag | Rijksoverheid.nl](#) (Dutch only).

<sup>5</sup> Bulletin of Acts and Decrees 2020, 144.

<sup>6</sup> Article 13, 1988 Code of Conduct.

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>7</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.**

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,

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<sup>7</sup> Annexe to Proceedings, House of Representatives 2021/22, 965.

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>8</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.

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

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<sup>8</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.

tranche of amendments to the Code of Conduct, which entered into force on 1 July 2020.<sup>9</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>10</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>11</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

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<sup>9</sup> Bulletin of Acts and Decrees 2020, 144.

<sup>10</sup> Article 17 of the Code of Conduct.

<sup>11</sup> Decision establishing a Use of Force Review Committee 2020.

skill requirements as described below. This assessment framework is also used by the sector head and the police chief.

<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>12</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

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<sup>12</sup> 2020 Police Annual Report, [Jaarverantwoording politie 2020 | Jaarverslag | Rijksoverheid.nl](#), p. 81 (Dutch only).

(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 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.