

# TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

## HUMAN RIGHTS COMMITTEE

### 96<sup>TH</sup> SESSION

### THE KINGDOM OF THE NETHERLANDS, 4<sup>TH</sup> REPORT 14 AND 15 OF JULY 2009

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### Key facts<sup>1</sup>

Ratification	Reservations	Party to Optional Protocols	Other core treaties ratified	Date of previous examination, submission of present report
1978	Articles 10,12,14,19 and 20	1 <sup>st</sup> OP (individual communications) – 2 <sup>nd</sup> OP (death penalty)	ICESCR, CAT, CRC, CEDAW, CRPD, CERD	9-27 July 2001, 30 July 2008

### Opening remarks by the delegation of the Netherlands

The delegation of the Netherlands was led by Mr Hirsch Ballin, Minister of Justice. He was supported by a large high-level delegation consisting of representatives of the Ministry of Justice, Ministry of Foreign Affairs, Ministry of Health, Welfare and Sport, Ministry for Youth and Families, Ministry of Social Affairs and

<sup>1</sup> The information in this table is sourced from the Office of the High Commissioner for Human Rights (OHCHR), and is available at [www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx](http://www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx).

Employment, Ministry of the Interior and Kingdom Relations, and the Permanent Mission to the UN in Geneva.<sup>2</sup>

Mr Hirsch Ballin expressed in his brief opening statement his appreciation for the work of the Committee and emphasised that the Netherlands ‘will take full notice of questions, suggestions and remarks made’. He highlighted that the Netherlands has continued to implement the rights arising from the Covenant since the last periodic session and that the recommendations of the Committee have played an important role in this context. He underscored that a main feature of Dutch society is its social diversity and that pluralism is an essential characteristic of the Dutch democratic State. He pointed to the fact that tensions sometimes arise from this pluralism. Fundamental rights, democracy, and the rule of law serve as guidelines on how to deal with these tensions. He argued that the Netherlands have been confronted in the last years with some challenges regarding the ‘balancing of human rights’.

Additionally, Mr Hirsch Ballin highlighted several issues that were addressed in the list of issues and the written replies, which were submitted late on 5 May 2009. He explained that the counter-terrorism legislation is incorporated into the existing legal framework and that a commission has been created to evaluate counter-terrorism measures. He outlined further that the employment rate of the Netherlands is the highest in Europe and that 65.9 percent of women are in employment. He added that various measures have been taken to improve the employment rate of non-western immigrants. Mr Hirsch Ballin informed the Committee that the review of asylum applications will be extended from 48 hours to eight days from the second half of 2010 to give asylum seekers more time to substantiate their claims. He added that there have been serious improvements with regards to reception facilities. Furthermore, he underscored that human trafficking is one of the declared priorities and that the Netherlands are taking a victim-centred approach, meaning victims are entitled to residency and legal support. In 2007, 700 cases, 100 more than in 2006, were reported. Mr Hirsch Ballin explained the increase by an increase of attention. He stated that the criminal code has been revised and that penalties have been increased for human trafficking. Moreover, a task force on human trafficking was established in 2008 and the Netherlands are committed to raise the issue in the EU discussions.

### Overview of key issues in the Netherlands

The following overview addresses two of the Committee’s concluding observations that require follow-up on implementation within one year.<sup>3</sup> It also contains three areas of recommendations that were discussed at length. Each recommendation is assessed according to how they were addressed in the examination, including the initial views of the State, questions and comments by the Committee, and responses provided.

Mr Hirsch Ballin showed a high degree of cooperation and provided answers to most questions to the satisfaction of the Committee. Some replies had to be submitted in writing after the session, mainly due to time constraints, and only few questions remained unanswered

In response to Mr Hirsch Ballin’s opening statement, Committee member, Mr Nigel Rodley expressed some disappointment as he is normally ‘used to a strong human rights discourse with the Netherlands and was looking for that in the opening presentation’. According to Sir Nigel the statement that human rights are not self-evident and that the Netherlands faced challenges regarding the balancing of human rights expressed defensiveness rather than assertiveness, despite the fact that the Netherlands has been vital in the development of human rights laws. Sir Nigel underscored that the protection of human rights is not a simple balancing process. In response to this criticism Mr Hirsch Ballin argued that the implementation of human rights obligations is not a mere balancing task and he admitted that his opening speech was too narrow. He explained further that the balancing of conflicting human rights is increasingly a challenge and that he did not

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<sup>2</sup> List of delegation available at <http://www2.ohchr.org/english/bodies/hrc/hrcs96.htm>

<sup>3</sup> CCPR/C/NLD/CO/4 available at <http://www2.ohchr.org/english/bodies/hrc/hrcs96.htm> para 29

intend to imply that human rights are balanced against something else in the Netherlands. He underscored that human rights are the cornerstone of Dutch domestic and foreign policy.

### Equal rights of men and women

*The State party should strengthen the implementation of measures to ensure that women enjoy equal access to the labour market and equal pay for work of equal value. The State party should pay particular attention to encouraging mothers of young children to continue in employment by increasing the options available for full-time and part-time child care and appropriate after-school programs.<sup>4</sup>*

*While recognizing the different conditions in the public and private sectors, the State party should strengthen its efforts to increase the participation of women in political decision-making positions at all levels, as well as in senior positions in the private sector, by, inter alia, conducting awareness-raising campaigns and encouraging more intensive searches for suitable female candidates.*

Ms Iulia Motoc claimed that despite the efforts of the Dutch Government to improve gender parity in access to employment a significant gender pay gap still persists. Moreover, the participation of women in the labour market remains considerably lower than that of men, and women remain over-represented in part-time employment as the system does often not allow women with children to work full time.. She also questioned what approach the Government takes in order to increase the number of women in senior positions in the private sector.

Mr Hirsch Ballin outlined that the labour investigator looks at this issue each year and the Government is currently working hard to lower the difference, which can be partly explained as an effect of age differences. The Government aims to bring 50,000 women into the work force, especially those with children, and closely collaborates with municipalities on this project. Regarding women in more senior positions, Mr Ballin responded that there have been various initiatives such as ‘talent to the top’, a programme to promote women in senior positions and that 25% of women workers are employed at a managerial level.

Ms Motoc pointed also to the discriminating practice of one Dutch political party that prohibits women from participating in the party. She was interested in what the Government does to encourage women’s participation in political parties. Mr Hirsch Ballin stated that this party only has two seats out of 150 seats in the parliament and all other parties encourage women’s participation. Furthermore, a Supreme Court ruling is expected in 2010 regarding this party.

Mr Michael O’Flaherty pointed to the long waiting lists for child and youth care. Mr Hirsch Ballin stated that the waiting periods of longer than nine weeks shall be reduced by the end of the year.

### Right to life

*The Committee reiterates its previous recommendations with regards to euthanasia and assisted suicides and urges that this legislation be reviewed in light of the Covenant’s recognition of the right to life.<sup>5</sup>*

Ms Ruth Wedgewood expressed concern at the extent of euthanasia and assisted suicides in the Netherlands. She criticised that under the *Law on the Termination of Life on Request and Assisted Suicide* a physician can terminate a patient’s life without any independent review by a judge or magistrate to guarantee that this decision was not the subject of undue influence or misapprehension.<sup>6</sup> She underscored that old people are impressionable and that the judiciary or an ombudsman should be involved as the decision is as procedurally demanding as the death penalty. Sir Nigel supported this view and argued that the criteria for euthanasia cases

<sup>4</sup> CCPR/C/NLD/CO/4 available at <http://www2.ohchr.org/english/bodies/hrc/hrcs96.htm> para. 5

<sup>5</sup> CCPR/C/NLD/CO/4 available at <http://www2.ohchr.org/english/bodies/hrc/hrcs96.htm> para 7

needed to be stricter. He added that the examination should be more *pre-hoc* than *post-hoc*. Mr Krister Thelin also supported the idea to include the judiciary in the examination of euthanasia cases.

Mr Hirsch Ballin responded that each case is examined by an independent three-head committee, which is composed of professionals from the medical, legal and ethical fields. These three-head committees are examined by regional committees and a national commission monitors the regional committees. If the commission disagrees with a decision, the case will be given to the public prosecutor. The conclusion of the commission is normally coherent with the decision of the committees. In 2008 there were only 10 cases that needed further examination.

### Treatment of persons deprived of liberty

*The State party should give full effect to the right to contact counsel in the context of a police interrogation. The State party should ensure that a criminal suspect is informed, immediately upon his arrest, that he has a right to legal counsel, and a right not to testify against himself.*<sup>7</sup>

*The State party should ensure that all persons are tried within a reasonable time and that pre-trial detention is not inconsistent with the right to be tried without undue delay as set out in Article 14.*<sup>8</sup>

Ms Wedgwood and Mr Michael O'Flaherty expressed concern, as previously expressed by the Committee against Torture, that a person suspected of involvement in a criminal offence has no right to have legal counsel present during police questioning. Mr O'Flaherty stated that a pilot study showed that there are notable restraints on the access to lawyers. It is only after a public prosecutor has ordered his/her detention following initial interrogation that a person may consult with counsel. Even then, the lawyer cannot be present during subsequent police questioning, and police may refuse counsel's request that they cease questioning his client. Mr O'Flaherty questioned why the Netherlands persist that there is no need for the presence of a lawyer during police questioning taking into account the prevention of abuse. Ms Wedgwood underscored that the right to counsel in the Covenant means the rights to a lawyer and is an important safeguard against abuse.

In response Mr Hirsch Ballin stated that there are different traditions in States and that the Committee allows comparing practices. He argued that communications with lawyers early in the interrogation process has intensified. Due to a recent court ruling the police will allow lawyers in certain cases. Mr Hirsch Ballin will address the issue in parliament this summer and will send a translated copy of the letter presented to the parliament to the Committee.

Sir Nigel and Ms Wedgewood were concerned that pre-trial detention in the Netherlands may last for up to two years, a situation aggravated by the restricted right of access to counsel.

Mr Hirsch Ballin answered that there are only few cases in which pre-trial detention can be applied and that the Netherlands compares to the rest of the EU in only being applied when there is the assumption that a serious crime was committed or when there is a threat of repetition. Regarding the procedure, Mr Hirsch Ballin explained that during the first six to nine hours a police officer decides on the detention. For the first three days a police officer with special training decides on the custody and after this period only the examining judge can decide whether an arrested individual can be detained without a trial for up to 90 days. After 90 days a public hearing in a court has to follow. The only exemption to this rule is if the detention is based on terrorism allegations. Only the court can decide on an extended pre-trial custody. 92 % of the pre-

<sup>6</sup> Though a second physician must give an opinion, but this can be obtained from a telephone hotline

<sup>7</sup> CCPR/C/NLD/CO/4 available at <http://www2.ohchr.org/english/bodies/hrc/hrcs96.htm> para. 11

<sup>8</sup> CCPR/C/NLD/CO/4 available at <http://www2.ohchr.org/english/bodies/hrc/hrcs96.htm> para 12

trial detentions end within the 90-days framework and only 2 % last longer than 120 days. Mr Hirsch Ballin reiterated that access to justice is ensured as it is a Constitutional requirement.

### Counter-terrorism

*The State party should reconsider the draft legislation in light of these concerns. Any amendments should ensure that all restrictions on the right to liberty and to freedom of movement are founded on a reasonable suspicion of participation in criminal activity and that all such measures are in conformity with the Covenant, including articles 9 and 12(1).<sup>9</sup>*

*The State party should amend its legislation to ensure that its counter-terrorism measures do not conflict with article 17 of the Covenant and that effective safeguards, including judicial oversight, are in place to counter abuses.<sup>10</sup>*

*The State party should apply the law on wire and telephone tapping in a manner which is compatible with article 17 of the Covenant and should ensure the exclusion of communications protected by the privilege of confidentiality from tapping.<sup>11</sup>*

Mr O’Flaherty asked the Dutch delegation how the Government ensures that administrative measures targeted to combat terrorism such as the 2008 *Bill on Administrative Measures for National Security* are not used in other cases than terrorist activities. The bill provides that a local mayor, lacking any judicial review, may direct the exclusion from certain areas or facilities of persons who may be ‘associated with terrorist activities’ or ‘support of such activities’. It also may impose an obligation to report periodically to the police. Violation of the mayor’s exclusion order allows for a penalty of up to one year’s imprisonment. He also expressed concern that, as part of measures to combat terrorism, local mayors may issue administrative ‘disturbance orders’ under which an individual may be subjected to interference in his daily life.<sup>12</sup> Disturbance orders do not require judicial authorization or oversight. Mr O’Flaherty questioned if such administrative measures are appropriate to address terrorism. Sir Nigel expressed concern that these disturbance orders are not only applied to terrorists but also to homeless people and juveniles. He added that the application of these orders may be inconsistent with the right to privacy. Sir Nigel criticized further that an individual that is arrested on suspicion of terrorism can be held for up to two years in detention. He was interested to know how this kind of detention differs from ordinary detention and if there is the possibility to extend detention after two years of imprisonment.

Mr Hirsch Ballin responded that any anti-terrorism measures are appropriate and are incorporated under the Dutch criminal framework. He added that the Dutch Government ‘would not like to see that mayors act outside their sphere of competence.’ He explained that a commission has been installed to evaluate the current counter-terrorism measures and its findings were presented this summer.

Sir Nigel pointed to the high rate of telephone tapping and expressed concern on the findings that professionals with a duty to respect confidentiality, such as lawyers and doctors, have been subject to such tappings. Mr Hirsch Ballin admitted that there has been a high number of phone taps. He explained that there are high standards of evidence for a conviction and wire taps are an important means of investigation. Only judges can issue this measure to prevent abuse and the police have detailed instructions on its use. Furthermore, the police or public prosecutors do not have the power to act on their own account. Security services can tap phones, but each tapping is examined by the Minister of Interior.. However Mr Hirsch Ballin

<sup>9</sup> CCPR/C/NLD/CO/4 available at <http://www2.ohchr.org/english/bodies/hrc/hrcs96.htm> para 10

<sup>10</sup> CCPR/C/NLD/CO/4 available at <http://www2.ohchr.org/english/bodies/hrc/hrcs96.htm> para 15

<sup>11</sup> CCPR/C/NLD/CO/4 available at <http://www2.ohchr.org/english/bodies/hrc/hrcs96.htm> para 14

<sup>12</sup> Such interference can include house calls, approaching the individual’s acquaintances and repeatedly approaching the person in public

acknowledged that a few mistakes have happened in the past and that the confidentiality between lawyers and their clients must be ensured, explaining why numbers dialed by lawyers are not longer recorded.

### Protection against arbitrary expulsion

*The State party should ensure that the procedure for processing asylum applications enables a thorough and adequate assessment by allowing a period of time adequate for the presentation of evidence. The State party must, in all cases, ensure respect for the principle of non-refoulement.*<sup>13</sup>

Mr Bhagwati and Sir Nigel were concerned that both the ‘accelerated procedure’ for the review of asylum applications, when claims are evaluated within 48 working hours, and the proposed regular ‘eight day’ procedure may not allow asylum seekers to adequately substantiate their claims and may place at risk of being expelled to an unsafe country. Sir Nigel emphasised that also eight days might not give asylum seekers enough time to articulate their claims, in particular if they are traumatised or victims of torture. He added that it might be problematic that the deciding official may also decide whether to apply the general or accelerated procedure, and that there are no clear criteria on which procedure to apply.

Mr Hirsch Ballin explained that the Dutch asylum legislation goes beyond the 1961 Refugee Convention as it includes the protection against arbitrary expulsion. He stated that even though current legislation is in line with international obligations, new legislation was necessary to create one system for all. Regarding the new eight day procedure, he stated that it is a result of an extensive review, and that the change from 48 hours to eight days to review an application was welcomed by NGOs, who had lobbied for a longer review period. Once the new procedure is introduced there will be an assessment of whether the eight days are sufficient. The new legislation also ensures access to lawyers and includes medical aspects. Mr Ballin stated that he was confident to get the support of the majority of parliament for the new proposals.

Mr Jose Perez Sanchez-Cerro pointed to the lengthy periods of detention for asylum seekers. In reply Mr Hirsch Ballin argued that there is no detention of asylum seekers in the Netherlands. Only when the asylum status is not granted can individuals be detained. He outlined further that there might be confusion as there are centres for asylum seekers, but they are not detention facilities.

### Other issues

Mr O’Flaherty expressed great surprise that no representatives of Dutch civil society were present during the examination before the Committee and stated that is ‘extraordinary’ for a developed country. He asked the delegation what measures are and will be taken to ensure greater civil society participation. He suggested that the Government could cover travel expenses to ensure participation in Geneva. The Committee discussed also following issues besides those mentioned above; the State’s remaining reservations on Article 10 in particular paragraphs (1) and (2) related to the treatment of persons deprived of liberty,<sup>14</sup> medical experimentation on minors, the storage of biometric data on passports, the protection of the identify of witnesses, sexual abuse of children, female genital mutilation, human trafficking, access to housing for low-income families, the right to choose one’s residency, juvenile detention, religious discrimination, freedom of expression, human rights education, and discrimination against ethnic minorities, in particular in the workplace.

The Committee also questioned whether the Government plans to create a national human rights institution. Mr Hirsch Ballin informed the Committee that it is a priority of the Government and the Ministers of the Interior and Justice are currently working on an appropriate bill and to present to parliament. The existing Committee for Equal Treatment will be in charge of setting up the national institution. Moreover, Mr Hirsch

<sup>13</sup> CCPR/C/NLD/CO/4 available at <http://www2.ohchr.org/english/bodies/hrc/hrcs96.htm> para 9

<sup>14</sup> The Netherlands highlighted that despite the reservations with regard to article 10 (2) (a) in practice accused and convicted persons are already detained separately. The delegation announced that they will consider their position regarding this reservation.

Ballin announced that the approval procedure for the Optional Protocol on Torture is underway and that the Netherlands are prepared to reconsider the reservations to Article 10 of the Covenant.

### Conclusions and next steps

The chairperson thanked the delegation and commended the high level and high qualification of the members of the delegation. She stated that the delegation did its best to respond to the Committee's questions. Mr Hirsch Ballin concluded by saying that he is looking forward to a continued collaboration with the Committee in the coming years and that the Government will 'take care' of everything the Committee addressed. In the concluding observations the Committee expressed its appreciation for the quality of written replies to the list of issues and the responses given orally by the delegation. It also welcomed a variety of legislative measures aimed for the protection of human rights and requested the Netherlands to submit the next periodic report by July 2014. This report should be a single, consolidated report in respect of all parts of the Netherlands.

### Opening remarks of the Netherlands Antilles

The delegation of the Netherlands Antilles was headed by Mr Piar, Attorney-General of the Netherlands Antilles. He was supported by Ms Shaida van Triest from the Prosecutors Office, Ms Els from the Directorate of Labour Affairs, Ms Theodora-Brewster from the Directorate of Judicial Affairs, and Ms van der Veen from the Directorate of Foreign Relations. Mr Piar informed the Committee that it will be probably the last time that the Netherlands Antilles addresses the Committee as the definite date for the dismantling of the Netherlands Antilles will be in 2010. The delegation of the Netherlands Antilles tried to answer all questions of the Committee and was open for dialogue. Mr Piar emphasised in this opening statement that the criminal code has been under review and that the new criminal code addresses issues such as human trafficking and child protection. He underscored that recruitment and training for the police has taken place. He expressed disagreement with the fact that the US put the Antilles on the watchlist regarding human trafficking. Mr Piar stated that the Antilles are not part of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons*, however some cases have been brought to justice and the justice ministers of the Netherlands Antilles, the Netherlands and Aruba signed a memorandum of understanding to increase anti-trafficking cooperation in January 2009. Furthermore, the Antilles work closely with Suriname on this issue and welcome all recommendations of the Committee.

### Overview of key issues Netherlands Antilles

The following overview addresses one of the five Committee's concluding observations following the examination on the basis of those themes that the Committee requested follow-up on implementation within one year.<sup>15</sup> It is assessed according to how it addressed in the examination, including the initial views of the State, questions and comments by the Committee, and responses provided.

Overall Mr Piar and his delegation provided often detailed answers to the questions posed by the Committee, even when not directly targeted towards the Netherlands Antilles and showed a high level of cooperativeness. The Netherlands Antilles acknowledged criticism by the Committee and admitted that there is still room for improvement in several areas.

Despite the fact that only few questions were addressed directly to the Netherlands Antilles, Mr Piar highlighted several issues about which Committee members expressed general concern or directed questions towards the Netherlands. Mr Piar emphasised that there is a high number of pre-trial detentions, and that this issue needs further investigation.. He emphasised that the pre-trial period is limited. He underscored that prison staff receive training on the treatment of inmates and all complaints on ill-treatment are followed up.

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<sup>15</sup> CCPR/C/NLD/CO/4 available at <http://www2.ohchr.org/english/bodies/hrc/hrcs96.htm> para 29

He admitted that prison overcrowding is still a concern but that a master plan to tackle the issue has been drawn up. Mr Piar stated that the criminal code of the Netherlands Antilles does not define terrorism, but an ordinance on terrorist offences went into force. There is also new draft legislation on the protection of gender in the labour market, which will come into force this year. He added that the degree of women in the labour market has risen significantly. Furthermore, he explained that human trafficking is not a criminal offence, but is trialled on the basis of other offences, such as people smuggling.<sup>16</sup> He underscored that a working group on human trafficking has been established and awareness and information campaigns have been conducted. Moreover, a trafficking and smuggling team was set up within the police force.

### Treatment of persons deprived of liberty

*The State party should ensure as a matter of urgency that conditions in places of detention are improved to meet the standard set out in article 10(1).<sup>17</sup>*

*The State party should prevent and punish the ill-treatment of detainees by police and other authorities in charge of prisons and should, as a matter of urgency, ensure that prison personnel receive training with regard to the application of the Standard Minimum Rules for the Treatment of Prisoners (1955).<sup>18</sup>*

Mr O'Flaherty was concerned with the appalling conditions in places of detention. He pointed to the report by the European Committee on the Prevention against Torture, which was highly critical in particular of conditions in Bon Futuro and Bonaire Remand prisons, and argued that the recommendations in the report could be immediately implemented without the implementation of specific programmes, such as improved nutrition, hygiene, more beds, and outdoor exercise. Mr Piar admitted that the situation in the Bon Futuro Prison is 'not the best', mainly because of limited financial and material resources, but stated that with the help of the Netherlands the situation in detention centres and prisons will improve.

Mr Sanchez-Cerro pointed to the Committee against Torture's concerns and credible reports of physical ill-treatment and verbal abuse by the police at Bon Futuro Prison, Bonaire Remand Prison, and at the prison for irregular migrants ("*Illegalen Barakken*"). Mr O'Flaherty questioned whether the Antilles had any information on how many complaints have been filed against prison staff. Ms Theodora-Brewster outlined that the complaints in prisons between 2007 and 2009 have reduced significantly, particularly complaints regarding food, damage to personal belongings and medical facilities. She outlined further that complaints against prison guards have decreased because of training courses for prison staff. Moreover, a monitoring group was set up, which meets on a weekly basis with all stakeholders to discuss detention conditions. She emphasised that an external review of the prison facilities took place in May 2009 and that there are no barriers for NGOs to review detention facilities. A special unit regarding complaints against police officers was established and the number of complaints received will be conveyed to the Committee in writing.

Mr O'Flaherty also wondered if there was any measure for compensation if disciplinary measures are taken by police and prisons staff against detained individuals. Mr Piar stated that according to the code of criminal procedures compensation can be requested for legal or illegal detention and it is up to a judge to decide on his issue. Furthermore, he added that in the Netherlands Antilles access to a lawyer during a first interrogation is not mandatory, but new guidelines have been drafted recently to be in line with international treaties.

### Other issues

<sup>16</sup> which is a criminal offence since 2003

<sup>17</sup> CCPR/C/NLD/CO/4 available at <http://www2.ohchr.org/english/bodies/hrc/hrcs96.htm> para 23

<sup>18</sup> CCPR/C/NLD/CO/4 available at <http://www2.ohchr.org/english/bodies/hrc/hrcs96.htm> para 24

Mr O'Flaherty commended the amendment to the law allowing for the judicial declaration of paternity in respect to children born out of wedlock. He however remained concerned that children born out of wedlock continue to suffer discrimination in matters of inheritance. Mr Piar argued that the current legislation on paternity reflects the family structure of the Antilles, but that advice is needed from the advisory council<sup>19</sup> regarding the legislation and amendments are likely on basis of the council's recommendations. The Committee also suggested that any new constitutional arrangements in the territories of the Netherlands Antilles should be in line with the obligations of the Covenant. The Committee noted that human trafficking is not a criminal offence under Antillean law and recommended to introduce it as separate offence as it takes account of the specific elements of trafficking and therefore increases the likelihood of successful prosecutions.

Juvenile detention was addressed by Mr Baghwati but was not reflected in the concluding observations. Mr Baghwati was interested in the difference of the new juvenile crime compared to the previous one in the Antilles. Ms Theodora-Brewster explained that the new criminal code will overhaul the approach to young offenders and contains new elements using Dutch law as a basis. According to the new code, young offenders can only be detained without a trial for a maximum of ten days, there is no life imprisonment for minors, and cases can end without a trial. She added that the establishment of a young offender's institution is of high priority for the Government. Mr Piar responded to the question on the status of a human rights website by Mr O'Flaherty that the information is currently compiled and will be put on the Government site by the end of the year.

### Conclusions and next steps

At the end of the review Mr Piar thanked the Committee and stated that he hopes for further assistance by the Committee to implement the Covenant.

### Opening remarks by the delegation of Aruba

The delegation of Aruba was led by Mr Pietersz, Attorney-General of Aruba. He was supported by a small delegation consisting of Ms Peterson from the Department of Foreign Affairs and Mr Bernadina from the Ministry of Justice.

Mr Pietersz outlined briefly that in 1986 Aruba became a separate constitutional entity in the Kingdom of the Netherlands and that the relatively young Constitution is based on international instruments. He argued that Aruba often lacks the manpower and expertise to implement all human rights instruments ratified by the Kingdom. He highlighted that the criminal code has been completely revised and shall be adopted by the end of this year, also modernising existing juvenile criminal law. Moreover, he underscored that in 2002 modern forms of slavery were made a criminal offence. Even though there have been no concrete indicators for trafficking in Aruba, the authorities recognised the need to stay vigilant and decided to study risk sectors such as escort services and domestic workers. In February 2009 a memorandum of understanding was signed on human trafficking, smuggling and illegal immigration. Additionally, an inter-disciplinary committee has been formed to combat trafficking and a master plan has been drawn up. Moreover, the training of officials and awareness campaigns on trafficking haven taken place and a telephone helpline was set up.

Mr Pietersz highlighted further that in 2008 and 2009 the conditions of prisons and detention centres improved and trainings on the treatment of detainees have been conducted with the help of the Dutch Government. Thus almost all recommendations of CPT regarding the treatment of detainees have been implemented and the last one will be realised by end of August this year. Regarding the treatment of detainees

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<sup>19</sup> The advisory council assists the Government in the preparation of legislation. The Government sends every draft ordinance for advice to the advisory council. Only after the advisory council has made its recommendations is the draft ordinance sent to parliament.

by the police, Mr Pietersz outlined that Police Order on the Treatment of Detainees was revised to take into account the standards of the European Committee for the Prevention of Torture. New aspects include the notification of families and lawyers, better access to medical services and training for the police. Furthermore, police custody is limited to two days and can only be extended if really necessary. The new system will be in place by the end of 2009.

Mr Pietersz informed the Committee that a new civil code went into force in 2002 and that discriminatory practices have been abolished. In 2004 a national ordinance on terrorist activities went into force and no distinction between detainees is made regardless the reason they are held. The pre-trial period is limited to 116 days and an extension is possible. He admitted that the detention can be lengthy but only if it was reviewed and approved by an independent judge. Trials have to take place within a reasonable time according to the Constitution. Overall, the Aruban delegation showed openness to dialogue with the Committee.

### Overview of key issues in Aruba

No direct questions were posed to the Aruban delegation. However the delegation made some general remarks on questions that were posed to the Netherlands regarding juvenile detention, violence against women and child abuse. Mr Pietersz pointed to recent developments regarding juvenile detention, where 12 to 18 years olds will be only detained if no other sanctions are available and if it is unavoidable for the investigation. Each individual case is discussed by 'various boards'. Moreover, young offenders are not detained in the same institution as young people with behavioural problems. Young offenders are given the opportunity to complete school and formation programmes have also been set up. He underscored that 80% of cases involving young offenders are dealt with by other means than detention. Furthermore, statutory instruments on violence against women were integrated in the new criminal code and pre-trial detention is made possible on grounds of violence against women. Mr Pietersz outlined that a sexual offence and stalking ordinance went into force and penalties have been increased and definitions modernised to strengthen the legislative framework to protect children against abuse. In 2005 a child support centre for abused children became functional.

The Committee was in particular concerned about the length of pre-trial detention, as acknowledged by the State party, which averaged 116 days and lasted up to a maximum of 146 days, after which the examining magistrate may extend it for a further 30 days. The Committee therefore recommended that:

*The State party should limit the duration of pre-trial detention in line with article 14(3)(c) of the Covenant and should ensure that the provisions of article 9 are fully respected.<sup>20</sup>*

### Conclusions and next steps

The Aruban delegation argued that even though the Committee had no specific questions for the delegation it is still determined to work with the Committee closely on the protection and promotion of human rights. Mr Pietersz suggested a close collaboration between the three countries of the Kingdom of the Netherlands and argued that a national human rights institution could be an important vehicle for cooperation as well as human rights education.

*Last revised and updated: 3 September 2009.*

<sup>20</sup> CCPR/C/NLD/CO/4 available at <http://www2.ohchr.org/english/bodies/hrc/hrcs96.htm> para 27

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## **ABOUT THE PUBLICATION**

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