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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Draft conclusions and recommendations of the Committee against Torture

THE NETHERLANDS

1. The Committee considered the fourth periodic report of the Netherlands (CAT/C/67/Add.4) at its 763rd and 766th meetings (CAT/C/SR.763 and 766), held on 7 and 8 May 2007, and adopted on 14 May 2007, at its 774th meeting (CAT/C/SR/774), the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the submission of the fourth periodic report of the Netherlands (European part of the Kingdom and Aruba) and the information presented therein. The Committee expresses its appreciation for the frank dialogue with the State party's delegation and welcomes the extensive responses to the list of issues in written form (CAT/C/NET/Q/4/Rev.1/Add. 1), including elaborate information on the implementation of the Convention in the Netherlands Antilles, which facilitated discussion between the delegation and members of the Committee. In addition, the Committee appreciates the delegation's oral responses to questions raised and concerns expressed during the consideration of the report.

B. Positive aspects

3. The Committee notes with satisfaction the ongoing efforts undertaken by the State party to combat torture and to guarantee the rights of persons not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment in the Kingdom of the Netherlands, in particular:

- (a) The incorporation of the definition of torture into the domestic legislation of the European part of the Kingdom of the Netherlands;
- (b) The entry into force of an amendment of the Dutch Civil Code in April 2007 which prohibits physical and mental violence “for educational purposes,” including in the family environment;
- (c) The adoption of new legislation on trafficking of human beings in the European part of the Kingdom of the Netherlands in January 2005 and in Aruba in May 2006;
- (d) The National Ordinance AB 1999 No. 8 implementing the Convention against Torture in Aruba and the new National Penal System Ordinance AB 2005 No. 75 of December 2005;
- (e) The establishment of the Internal Investigations Bureau to receive and investigate complaints and reports of ill-treatment by police officers in Aruba;
- (f) The improvement of prison conditions in the Netherlands Antilles, as reported by the State party;
- (g) The notable work undertaken by the NOVO team to bring to justice perpetrators of acts of torture and war crimes;
- (h) The State party’s cautious approach with regard to the use of diplomatic assurances and its policy of not practicing extraordinary rendition of suspects; and
- (i) The State Party’s contributions to the United Nations Voluntary Fund for Victims of Torture.

4. The Committee notes with appreciation the ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women in 2002 and the Rome Statute of the International Criminal Court and the entry into force of its implementing act in the Netherlands in 2003.

5. The Committee also welcomes the assurances given by the State party’s representatives that the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment will be ratified in the second half of 2007.

C. Principal subjects of concern and recommendations

Fundamental safeguards

6. Notwithstanding the State party’s establishment in 2006 of a ‘programme to enhance and strengthen the quality of the performance of police officers and prosecutors’ in the European part of the Kingdom, the Committee is concerned that persons in police detention do not have access to legal assistance during the initial period of interrogation. Similarly, the Committee is concerned that in the Netherlands Antilles, the presence of a lawyer during interrogation is only permitted with the prior authorization of a magistrate.

The State party should review its criminal procedures so that access to a lawyer, as a fundamental legal safeguard, is guaranteed to persons in police custody from the very outset of their deprivation of liberty, particularly where video or audio

recording of interrogations, which cannot in anyway substitute the presence of legal counsel, are not in place.

Non-refoulement

7. The Committee is concerned about the difficulties faced by asylum-seekers in the European part of the Kingdom of the Netherlands in substantiating their claims under the accelerated procedure of the 2000 Aliens Act, which could lead to a violation of the non-refoulement principle provided for in article 3 of the Convention. The Committee is particularly concerned that:

(a) The 48-hour timeframe of the accelerated procedure may not allow asylum seekers, in particular, children, undocumented applicants and others made vulnerable to properly substantiate their claims;

(b) The time provided for legal assistance between the issuance of the report from the first interview and the Immigration and Naturalization Service's decision is allegedly only five hours and that an asylum-seeker may not be assisted by the same lawyer throughout the proceedings;

(c) The accelerated procedure requires asylum-seekers to submit supporting documentation that they are "reasonably expected to possess," leaving a wide margin of discretion in relation to the burden of proof; and

(d) The appeal procedures only provide for a "marginal scrutiny" of rejected applications and that the opportunity to submit additional documentation and information is restricted.

The Committee takes note of the State party's intention to revise the accelerated procedure, notwithstanding which, the State Party should consider the following when reviewing the procedure:

(a) Applications from all asylum-seekers, in particular, children, undocumented applicants and others made vulnerable are processed in such a way that those in need of international protection are not exposed to the risk of being subjected to torture. This may require the State party to establish criteria for cases which may or may not be processed under the accelerated or the normal procedure;

(b) All asylum-seekers have access to adequate legal assistance and may be, as appropriate, assisted by the same lawyer from the preparation of the first interview to the end of the proceedings;

(c) The procedures with regard to required supporting documentations for asylum are clarified; and

(d) The appeal procedures entail an adequate review of rejected applications and permit asylum-seekers to present facts and documentation which could not be made available, with reasonable diligence, at the time of the first submission.

8. The Committee notes with concern that medical reports are not taken into account on a regular basis in the Dutch asylum procedures and that the application of the Istanbul protocol is not encouraged.

The State party should reconsider its position on the role of medical investigations and integrate medical reports as part of its asylum procedures. The Committee also encourages the application of the Istanbul Protocol in the asylum procedures and to provide training regarding this manual to relevant professionals.

Unaccompanied children and young asylum-seekers

9. While taking into consideration the State party's clarification that unaccompanied children asylum-seekers in the European part of the Kingdom of the Netherlands are placed in detention centres only when there is doubt about their age, the Committee remains concerned at the situation of young asylum-seekers.

The State party should take measures to ensure that when the age of an unaccompanied child is uncertain, verification should be made before placing the child in detention. The State party should pay particular attention to the situation of young asylum-seekers and only use detention as a measure of last resort. The State party should provide adequate housing and education for young returnees awaiting expulsion (CRC/C/15/Add.227).

Pre-trial detention

10. The Committee expresses its concern at the excessive length of pre-trial detention and the high number of non-convicted detainees in Aruba and in the Netherlands Antilles.

The State party should take appropriate measures to reduce the length of pre-trial detention and the number of non-convicted detainees and should consider alternative measures to limit the use of preventive detention.

Custody and treatment of arrested, detained and imprisoned persons

11. While acknowledging the effort undertaken to provide suitable facility to house juveniles aged 15 and under and the continuous effort carried out by the State party to improve prison conditions in the Netherlands Antilles, the Committee is concerned about:

- (a) The lack of a separate unit for offenders aged between 16 and 18 who are currently held with either adult offenders or prisoners undergoing psychological observation;
- (b) The reported lack of educational programmes for juveniles held in prison; and
- (c) The slow classification process and allocation of cells where prisoners are currently placed regardless of their age, length of sentence or legal status.

The State party should take measures:

- (a) **To urgently ensure that juveniles are separated from adults offenders;**
- (b) **To provide educational and training programmes to help the social reintegration of juveniles; and**
- (c) **To undertake prompt action to implement a new classification of inmates and allocation of cells.**

Right to complaint

12. The Committee is concerned at the State party's indication that information related to sexual abuse or assault in the Aruban prison rarely reaches the prison board and that victims are not likely to lodge complaints for privacy concerns.

The State party should put in place specific mechanisms to receive complaints of sexual abuse that will ensure the privacy of victims and protect both victims and witnesses against ill-treatment or intimidation as a consequence of the complaint (article 13).

Prompt and impartial investigations

13. The Committee is concerned at the number of reports of assaults committed by Aruban law enforcement officials. It is also concerned that, as reported by the State party, of the forty-nine cases lodged at the Internal Investigations Bureau between 1 September 2005 and 21 March 2007, only two have been dealt with in court and did not lead to a conviction due to insufficient evidence.

The State party should take all appropriate measures to send a clear and unambiguous message to the Police Force and to prison staff that torture, violence and ill-treatment are unacceptable. Similarly, the State party should implement its obligation to investigate promptly, impartially and thoroughly all complaints submitted, to ensure that appropriate penalties are imposed on those convicted. The State party should also ensure that effective measures are put in place to guarantee that those who report assaults by law enforcement officials are protected from intimidation and possible reprisals for making such reports.

Education on the prohibition against torture

14. While noting the different training programmes for police and prison officers in the three constituent parts of the Kingdom which cover human rights and rights of detainees including the prohibition of torture, the Committee regrets that there is no available information on the impact of the training or its efficacy in reducing incidents of torture, violence and ill-treatment.

The State party should ensure that through educational programmes, law enforcement personnel and justice officials are fully aware of the provisions of the Convention. Furthermore, the State party should develop and implement a methodology to assess the effectiveness and impact of these training programmes on the incidence of cases of torture, violence and ill-treatment.

Trafficking

15. While taking positive note of the recent criminalization of trafficking in human beings in Aruba and the State party's domestic effort to prosecute traffickers, the Committee remains concerned at the practice and lack of information about existing mechanisms to effectively prevent trafficking and prosecute traffickers in Aruba.

The State party should reinforce international cooperation mechanisms to fight trafficking in persons, prosecute perpetrators in accordance with the law, and provide adequate protection and redress to all victims.

16. The Committee recommends that, in order to have a clearer view of the situation regarding protection against torture, the State party systematically include in its future reports, data which are disaggregated by age, sex and ethnicity, on:

- (a) The number of asylum applications registered and the number of applications processed respectively under the normal and accelerated procedures;
- (b) The number of applications accepted;
- (c) The number of applicants whose application for asylum was accepted on grounds that they had been tortured or might be tortured if returned to their country of origin and data on asylum granted on grounds of sexual violence; and
- (d) The number of cases of refoulement or expulsion.

17. The Committee requests the State party to provide in its next periodic report detailed statistical data, disaggregated by crime, ethnicity, age and sex, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials and on the related investigations, prosecutions, and penal or disciplinary sanctions. The report should also include statistics on pre-trial detainees and convicted prisoners, disaggregated by crime, ethnicity, age and sex.

18. The Committee invites the State party to submit its core document in accordance with the requirements of the Common Core Document in the Harmonized Guidelines on Reporting, recently recommended by the international human rights treaty-bodies (HRI/MC/2006/3 and Corr.1).

19. The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 11 and 12 above.

20. The State party is encouraged to disseminate widely the reports submitted to the Committee and the conclusions and recommendations, in appropriate languages, through official websites, to the media and non-governmental organizations.

21. The State party is invited to submit its sixth periodic report which should cover all parts of the Kingdom of the Netherlands, in particular, more detailed and comprehensive information on the Netherlands Antilles, by 30 June 2011.
