



International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

List of issues in relation to the report submitted by the Netherlands under article 29, paragraph 1, of the Convention*

I. General information

1. Please provide information about the process of preparation of the report, including consultations with different organs of the State party, civil society actors and other relevant stakeholders which might have taken place.
2. As the ratification of the Convention and the acceptance of the competence of the Committee under articles 31 and 32 by Kingdom of the Netherlands have been made with regard to the European part of the Netherlands and the Caribbean part of the Netherlands (the islands of Bonaire, Sint Eustatius and Saba), please indicate whether it is envisaged to extend the ratification and the acceptance of the competence of the Committee under articles 31 and 32 to Aruba, Curaçao and St Maarten. In addition, please indicate whether any of the legal or other provisions referred to in the report are not applicable to the Caribbean part of the Netherlands and, if that is the case, please detail the relevant provisions which apply.
3. Taking into consideration that the Core Document was submitted by the Kingdom of the Netherlands for the European part of the Kingdom in 1995, please provide updated information about the status of the Convention vis-à-vis national law and indicate whether the provisions of the Convention can be directly invoked before and applied by courts or other relevant authorities. Please also provide additional updated information about the two complaints referred to in paragraph 23 of the report, with an indication of whether any of the provisions of the Convention were invoked by the complainants and/or applied by the relevant authorities.
4. In relation to paragraph 24 of the report, please provide concrete examples of measures taken by the State party to combat the crime of enforced disappearance. Please also provide information about the activities carried out by the International Crimes Task Force with regard to enforced disappearances (para. 25 of the report). Please also provide information relevant to enforced disappearances with regard to the annual international

* Adopted by the Committee at its fifth session (4-15 November 2013).



crimes reporting letter to the House of Representatives mentioned in paragraphs 28-30 of the report.

II. Definition and criminalization of enforced disappearance (arts. 1-7)

5. Please indicate whether legal and/or administrative measures exist to guarantee that no derogation to the right not to be subjected to enforced disappearance is made under exceptional circumstances, whether a state of war or a threat of war, internal political instability or any other public emergency. Please also indicate whether any legislation and/or practices concerning terrorism, emergency situations, national security or other grounds that the State party may have adopted have had any impact on the effective implementation of the Convention, in particular the prohibitions stemming from articles 1 and 16 (arts. 1 and 16).

6. Please provide information about applicable law with regard to the conducts described in article 6, paragraph 1 (a), of the Convention, including ordering, soliciting, inducing, attempting to commit, being accomplice or participating in an enforced disappearance or other conducts which by virtue of their nature are similar to those mentioned (art. 6).

7. Please indicate whether domestic law provides for disciplinary sanctions, including disqualification, for those persons convicted of enforced disappearance. Please also provide information about the different categories of fines that could be imposed to persons convicted of enforced disappearance under section 8a of the International Crimes Act (art. 7).

III. Judicial procedure and cooperation in criminal matters (arts. 8-15)

8. In relation to article 10, paragraph 2, of the Convention, please provide information about the existing legal or other measures to: (a) carry out a preliminary inquiry or investigation to establish the facts should the State party have taken the measures referred to in article 10, paragraph 1, of the Convention; and (b) notify the States referred to in article 9, paragraph 1, of the Convention of the measures taken in pursuance of article 10, paragraph 1, of the Convention, including detention and the circumstances warranting detention, and on the findings of its preliminary inquiry or investigation, indicating whether it intends to exercise jurisdiction (art. 10).

9. Please indicate whether military authorities are competent under domestic law to investigate and/or try alleged cases of enforced disappearance. If so, please provide information about applicable legislation (art. 11).

10. In relation to paragraph 38 of the report, please provide information about the specific rules for the investigation of cases of enforced disappearance laid down by the Disposal of Criminal Complaints Instructions. In addition, please indicate whether there are any departments or officials within the police forces, the Public Prosecution services or other relevant agencies specifically trained to start investigations of cases of alleged enforced disappearance. In this respect, please also indicate whether the said or any other authorities responsible for investigating cases of alleged enforced disappearances may: (a) start investigations ex officio; and (b) be subject to any limitations which may restrict their access to places of detention where there are grounds to believe that a disappeared person may be present. Furthermore, and in relation to paragraphs 21, 22, 57 and 58 of the report, please provide more information about the relevant legal provisions and/or principles that guide prosecutors when deciding whether or not cases should be investigated and/or prosecuted (arts. 11 and 12).

11. Please comment on the compatibility of section 16 of the International Crimes Act, which excludes criminal prosecution for certain categories of persons, with articles 9, paragraph 2, and 11 of the Convention. Please also indicate whether a denial of extradition could be based on this or other provisions related to immunity granted to certain categories of persons and/or officials (arts. 9, 11 and 13).

12. Please indicate whether mechanisms exist for the protection of complainants, relatives of the disappeared person, their representatives, witnesses and other persons participating in the investigation of an enforced disappearance or any person with legitimate interest requesting information in terms of article 18, paragraph 1, of the Convention against any kind of ill-treatment, intimidation or sanction. Please also provide information about the measures provided for by law to ensure that persons suspected of having committed an enforced disappearance are not in a position to influence and/or obstruct the progress of an investigation by means of pressure or acts or intimidation or reprisal aimed at the complainant, witnesses, relatives of the disappeared person or their defence counsel, or at persons participating in the investigation. In this respect, please also indicate whether domestic law provides for suspension from duties during an investigation when the alleged offender is a public official. Please also specify whether there are any procedural mechanisms in place to exclude a security or law enforcement force, civil or military, from the investigation into an enforced disappearance when one or more of its officials are accused of committing the offence (arts. 12 and 18).

IV. Measures to prevent enforced disappearances (arts. 16-23)

13. In relation to article 16 of the Convention, please provide the following information: (a) the competent authorities to determine the expulsion, return, surrender or extradition of persons; (b) the mechanisms and criteria applied in the framework of procedures of expulsion, return, surrender or extradition to evaluate and verify the risk that a person may be subjected to enforced disappearance; and (c) whether it is possible to appeal a decision on expulsion, return, surrender or extradition and, if so, please indicate before which authorities, what are the applicable procedures and whether they have suspensive effect (art. 16).

14. Please indicate whether there is any legal provision that specifically prohibits secret or unofficial detention. Please also provide detailed information about the domestic law in force in the Netherlands to prevent unlawful detention or enforced disappearance as mentioned in paragraph 69 of the report. In doing so, please also provide information about: (a) the conditions under which orders of deprivation of liberty may be given and by which authorities; (b) the legal or other measures requiring prompt notification of and access to lawyers, doctors, family members and, in the case of foreign nationals, to consular representatives, indicating whether these apply from the outset of the deprivation of liberty; (c) whether any conditions and/or restrictions apply to the measures indicated in (b); (d) the guarantees for any person with a legitimate interest to bring proceedings before courts in order to decide on the lawfulness of a detention as provided for in article 17, paragraph 2 (f), of the Convention; and (e) the existing national legislation and practice to ensure the reliable verification of the release of persons deprived of their liberty (arts. 17 and 21).

15. Please provide information about the National Preventive Mechanism (NPM) designated by the State party under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, including on the current structure, composition, powers, functioning and territorial competence of the bodies designated as NPM; whether these bodies have competence to visit all places of deprivation of liberty, irrespective of their nature; and whether they have sufficient financial, human and technical resources to carry out their mandate effectively. If there are mechanisms to

inspect prisons other than those comprising the NPM, please also provide similar information about them (art. 17).

16. Please provide detailed information about the content of the computerized registers of deprivations of liberty and persons in custody kept by the Custodial Institutions Agency (para. 69 of the report). With regard to this Agency, please also indicate: (a) whether it centralizes and stores all information relating to the deprivation of liberty of persons covering their entire time in custody from arrest until release; and (b) whether it keeps registers concerning all persons deprived of liberty, whatever the nature of the place of deprivation of liberty and/or the territory where they are held (i.e. European or Caribbean part of the Netherlands) (art. 17).

17. Please indicate whether domestic law guarantees to any person with a legitimate interest access to the information referred to in article 18, paragraph 1, of the Convention. In this respect, please also indicate whether any restrictions to the right to information enshrined in article 18 apply and, if so, please: (a) comment on their compatibility with article 20 of the Convention and other relevant international human rights standards; (b) provide information on their nature and duration; (c) provide information on the existing measures to guarantee that any person with legitimate interest has access to a prompt and effective judicial remedy to obtain information without delay and indicate whether such guarantees can be suspended or restricted in any circumstances; and (d) provide information on existing means of appeal against the refusal to disclose information on persons deprived of their liberty. In addition, and in relation to article 19 of the Convention, please provide information on applicable legislation with regard to the use of personal information which may be collected and/or transmitted within the framework of the search of a disappeared person (arts. 18, 19 and 20).

18. Please provide information about the procedures used to obtain genetic data or medical information. Please also provide information about the Netherlands Forensic Institute referred to in paragraph 65 of the report and, in doing so, please indicate whether this Institute, or any other State party organ, keeps a national DNA database that may be relevant to identify victims of enforced disappearance (arts. 19 and 24).

19. Please provide information about the legislative or other measures taken to prevent and impose sanctions for the conducts described in article 22 of the Convention (art. 22).

20. Please indicate whether the State party provides training on the Convention in terms of its article 23 to law enforcement personnel, civil and military; medical personnel; public officials and any other persons who may be involved in the custody or treatment of any person deprived of liberty, in particular members of the police, the Public Prosecution Service and the judiciary. In doing so, please also indicate the nature and frequency of the training provided as well as the authorities in charge of facilitating such training (art. 23).

V. Measures for reparation and protection of children against enforced disappearance (arts. 24 and 25)

21. Please indicate whether domestic legislation provides for a definition of victim which is in line with article 24, paragraph 1, of the Convention. Please also provide detailed information about the Victim Support Directive and the relevant provisions of the Code of Criminal Procedure regarding victims (para. 70 of the report) as well as on the relevant sections of the Disposal of Criminal Complaints Instructions with regard to the treatment of victims of international crimes (para. 53 of the report) (art. 24).

22. In relation to paragraph 72 of the report, please provide detailed information on: (a) the legal or other measures adopted to guarantee the right to the truth of victims of

enforced disappearance in terms of article 24, paragraph 2, of the Convention and indicate whether victims can participate in proceedings; and (b) the relevant procedures in place for obtaining compensation, including who would be responsible for providing it, and indicate whether, besides compensation, domestic law provides for other forms of reparation for the persons who have suffered harm as the direct result from an enforced disappearance in line with article 24, paragraph 5, of the Convention. In addition, and if relevant, please update the information provided in the Core Document submitted in December 1995 for the European part of the Kingdom with regard to compensation for victims and rehabilitation (HRI/CORE/1/Add.66, paras. 212-241). In this respect, please also indicate whether the Criminal Injuries Compensation Fund and the National Victim Support Association referred to in paragraphs 234-237 of the said Core Document are still operative and, if so, please provide updated information about their functioning, available resources, territorial presence, and activities they perform which may be relevant in terms of article 24, paragraphs 4- 5, of the Convention (art. 24).

23. Please provide information about applicable law with regard to the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in matters such as social welfare, financial matters, family law and property rights (art. 24).

24. Please specify the content, including penalties, of articles 279, 280 and 282 of the Criminal Code (para. 73 of the report). Please also provide information on the relevant criminal provisions to be applied with regard to the conducts described in article 25, paragraph 1 (b), of the Convention (art. 25).

25. Please provide information on the procedures in place to review, and if necessary annul, any adoption or placement of children that originated in an enforced disappearance. If such procedures have not been set up so far, please indicate whether there are any initiatives to bring national legislation into line with article 25, paragraph 4, of the Convention. In addition, please: (a) elaborate the information provided in paragraph 73 of the report concerning Dutch law making provision for account to be taken of the special interest of children who are victims of enforced disappearance; and (b) indicate whether domestic law provides for the right of children who are capable of forming their own views to express those views freely in all matters which are affecting them, especially those related to enforced disappearance (art. 25).
