



## Convention on the Rights of the Child

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COMMITTEE ON THE RIGHTS OF THE CHILD

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**WRITTEN REPLIES BY THE GOVERNMENT OF THE NETHERLANDS TO THE LIST OF ISSUES (CRC/C/OPSC/NLD/Q/1) TO BE TAKEN UP IN CONNECTION WITH THE CONSIDERATION OF THE INITIAL REPORT OF NETHERLANDS SUBMITTED UNDER ARTICLE 12, PARAGRAPH 1, OF THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY (CRC/C/OPSC/NLD/1)**

[Replies received on 5 December 2008]

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**responses and information about youth policy in the kingdom of the netherlands \***

**Submitted in response to the list of issues under the Optional Protocol on the sale of children, child prostitution and child pornography (crc/c/opsc/nld/q/1) proposed by the committee on the rights of the child on 13 October 2008**

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### Replies to questions regarding implementation

#### of the Optional Protocol

#### 1. Statistical data

**Question:** Please provide (if available) statistical data (including by sex, age group, urban/rural area) for the years 2005, 2006 and 2007 on:

### **(a) Reported cases of sale of children, child prostitution and child pornography, including the follow-up**

Specify the number of reported cases of sale of children, child prostitution and child pornography, with additional information on type of follow-up provided on the outcome of the cases, including prosecution, withdrawals and sanctions and rehabilitation for perpetrators.

**The Netherlands:** In relation to child pornography, we can report as follows.

A large proportion of the criminal investigations conducted in 2006 were launched following tips received from abroad. The Public Prosecution Service's Vice Committee inferred from that year's police statistics that the National Police Services Agency provided 827 documents to police forces in the preparation of cases. In addition, the police forces received 348 items of information from other sources. The numbers quoted here refer to the number of suspects, not to the number of criminal investigations.

Of the 1,061 of cases (suspects) initially reported, 811 led to criminal investigations. Roughly half of these investigations led to a suspect being handed over to the Public Prosecution Service because the police believed that there was sufficient evidence to gain a conviction.

In 2006 a total of 383 cases of child pornography were reported to the Public Prosecution Service.

In 2006 there were 24 registered criminal cases of trafficking in human beings involving minors.

### **(b) Reported cases of children trafficked to and from the Netherlands and Aruba for sexual exploitation.**

Specify the number of reported cases of children trafficked to and from the Netherlands and Aruba, as well as trafficked within the country, for the purpose of sexual exploitation.

**The Netherlands:** See section 3.3 below of this report.

**Aruba:** As stated above, two cases of possession of child pornography came to light on Aruba; both cases led to convictions. No figures are available for this particular offence. It should be noted that Aruba is so tiny that certain abuses would soon come to light. The maximum penalty for the possession or distribution of child pornography is four years or, if on an occupational or habitual basis, six years. If the child pornography were produced on Aruba, more general definitions of sex offences would come into play, for which the maximum sentence is usually up to 12 years. (See also above under section 3)

### **(c) Reported cases of crimes related to child sex tourism and follow-up**

Please give the number of reported cases of crimes related to child sex tourism involving Dutch citizens, with additional information on type of follow-up provided on the outcome of the cases, including prosecution, withdrawals and sanctions for perpetrators.

**The Netherlands:** Crimes related to child sex tourism are not registered separately. It is therefore not possible to provide any statistics on this issue.

### **(d) Recovery assistance and compensation for child victims**

Specify the number of child victims provided with recovery assistance and compensation as indicated in article 9, paragraphs 3 and 4 of the Protocol.

The Netherlands: In this case too, there is no separate registration.

## **2. Optional Protocol in the Netherlands Antilles**

**Question :** Please advise if there are any plans to extend the Optional Protocol to the Netherlands Antilles.

**The Netherlands Antilles:** Yes, the Government is working on the legislation in order to implement the Optional Protocol.

## **3. Children's Ombudsman**

**Question :** Please indicate whether the ombudsman's office or any other independent monitoring mechanism on child rights have the mandate to receive complaints from, or on behalf of, children on violations of the Optional Protocol.

**The Netherlands:** The National Ombudsman does not have any special, more far-reaching, mandate for children. His general mandate is applicable to children, but it is confined to the specific behaviour of an administrative authority in a specific instance. Nor does the National Ombudsman have a mandate to investigate political or policy-related choices or to give a decision on them.

## **4. Plans of action**

**Question:** Please indicate whether the State party has a plan of action in relation to the sale of children, child prostitution and child pornography, and if so, please provide information on the competent authorities responsible for its implementation and coordination.

**The Netherlands:** There is no general plan of action to combat child pornography, child sex tourism, the sale of children and youth prostitution. However, action plans and specific pledges do exist in the various areas involved. A vigorous approach to combating all forms of child abuse is one of the spearheads of government policy. The Interministerial Programme for Youth and Families coordinates the approach, with the Ministry of Justice taking responsibility for aspects relating to the criminal law. However, to combat child abuse successfully, strenuous efforts are required on the part of all the authorities, agencies and professionals involved, as well as close collaboration between them. The Action Plan to Combat Child Abuse (Parliamentary Papers II 2006/07, 31 015, no. 16) creates the necessary preconditions for this integrated and coordinated approach in the short term.

In December 2004, the Government of the Netherlands formulated its first National Action Plan to Combat Trafficking in Human Beings, presenting an integrated and multidisciplinary policy on the subject. The action plan contains 65 specific action points relating to human rights, legislation, prevention, the protection of victims of human trafficking, investigation and prosecution, and research and registration. In February 2006, Additional Measures were adopted, which deal more specifically with certain themes such as prevention and in which the points relating to underage victims of human trafficking and youth prostitution are particularly relevant in the context of this report. The intention of improving the efforts to combat child pornography and child sex tourism, translated into specific actions, was communicated to the Dutch parliament in a letter of 29 April 2008 from the justice minister (see also Parliamentary Papers II 2007/08, 31 200 VI, no. 146).

## 5. Tougher sentencing for child pornography

**Question:** Please indicate whether the recommendation from the Board of Procurators General to apply tougher sentencing in child pornography cases has been followed up.

**The Netherlands:** The child-pornography directive entered into effect on 1 May 2007. There will be an evaluation at the beginning of 2009 to assess the way the directive operates in practice.

It may also be noted that legislation is being drafted that will impose statutory limitations on the scope for imposing alternative sanctions for serious sex offences and crimes of violence (including criminal acts related to child pornography).

## 6. Criminalizing certain kinds of advertising

**Question:** Please indicate if any steps have been taken towards criminalizing the production and dissemination of material advertising the sale of children, child prostitution or child pornography.

**The Netherlands:** Article 9, paragraph 5, of the Optional Protocol is preventive in nature. To date, the Netherlands has implemented it through policy measures. For instance, agreements have been made with newspapers to refuse any advertisements that might encourage the sexual abuse or exploitation of children. In addition, criminal proceedings may be instituted against those who disseminate such material in certain cases on the grounds of incitement to commit an offence.

Under article 8, paragraph 2, of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, States parties are obliged to prevent or prohibit the dissemination of materials advertising the offences established in accordance with the Convention. This provision is also included as a preventive measure geared towards the general public. As part of the implementation of this Convention, work is currently under way to decide whether supplementary legislation is desirable to ban advertisements that might constitute incitement to the sexual exploitation of children.

## 7. Domestic and inter-country adoption and surrogacy

**Question:** Please provide information on the relevant legal framework on domestic and inter-country adoption procedures and surrogacy, including legislation criminalizing offences under article 3 (a)(ii).

**The Netherlands:** Regarding adoption

(a) Statutory framework: Applications for adoption, inter-country or otherwise, are granted only provided the general and specific conditions laid down by law are met. These conditions are based on the following conventions, legislation and regulations:

Convention on the Rights of the Child (ICRC)

The 1993 Hague Adoption Convention (HAC)

Placement of Foreign Children for Adoption Act (WOBKA)

Guidelines on the placement of foreign children for adoption (2000) (ROBKA)

Adoption (Conflict of Laws) Act 2004 (WCAD)

Civil Code, Book I, title 12 (BW)

*Standards 2000* ('Normen2000') version 2 (working methods of the Child Protection Board).

Procedure: As already noted, the Netherlands works in accordance with the 1993 Hague Adoption Convention (HAC), which seeks to serve the child's best interests and to prevent abuses occurring in relation to inter-country adoption. The principles of the HAC are also applied to the adoption of children from non-signatory states. In principle, the only legal way for parents normally resident in the Netherlands to adopt a child is along the lines laid down by the WOBKA and with the permission of the Ministry of Justice (Central Authority). This permission is conditional on certain requirements being met, including following an information course and receiving a

positive recommendation from the Child Protection Board, based on the Board's own investigation of the family. Once the Ministry's permission has been granted, the prospective adoptive parents are required to proceed through the channels of a licensed Dutch adoption agency. Sections 27 and 28 of the WOBKA define certain actions on the part of licence-holders and actual or aspiring adoptive parents as criminal offences: these offences include profit-seeking and adopting a foreign child in the Netherlands without first obtaining permission from the Ministry of Justice.

Aspiring adoptive parents resident in the Netherlands who wish to adopt a child born in the Netherlands are required to follow the same procedure as for inter-country adoption. In other words, they too are required to attend the compulsory information course and in this case too the Child Protection Board investigates the family and must make a positive recommendation. However, the permission of the Ministry of Justice is not required, since the remainder of the "matching" procedure is conducted by the Board itself, along the lines laid down in its protocol Standards 2000.

In cases in which Dutch adoptive parents have adopted a child while resident in another country, if they subsequently apply for recognition of the foreign adoption ruling, or return to the Netherlands, the Adoption (Conflict of Laws) Act applies. The situation will be examined in this light by the Dutch Immigration and Naturalisation Service or by the courts.

#### **The Netherlands:** Regarding surrogacy

A surrogate mother is a woman who has become pregnant with the intention of giving birth to a child on behalf of someone else (the "intended parent"), who wishes to exercise parental responsibility for the child, or to take on the child's care and upbringing on a permanent basis.

If the intended parents have taken on the care and upbringing of the child concerned, they must report this to the executive of the municipality in which the child is resident (section 5 of the Foster Children Act). If the intended parents wish to adopt a child under six months of age who was born to a surrogate mother, they require prior written consent from the Child Protection Board. Failure to obtain this consent is a criminal offence (art. 442a of the Criminal Code; art. 151a of the Criminal Code). Furthermore, in such a case, the Child Protection Board may ask the a court order to appoint a temporary guardian for the child (*voorlopige voogdij*) (art. 1:241, paragraph 3, of the Civil Code).

In all reported cases in which the mother gives her child up to someone else, including relinquishing it in the context of surrogacy in the Netherlands, the Child Care and Protection Board conducts an investigation.

If the child is incorporated into the intended family in accordance with the formal criteria (Standards 2000) and there are no contraindications, the Board can be asked to seek a court order relieving the mother/parents of her/their parental responsibility to pave the way for the assignment of parental responsibility to, and adoption by, the intended parents. In the Netherlands the principle of *mater semper certa est* applies.

If the intention of relinquishing the child to another person was formed not before but during the pregnancy, the situation is as described in chapter 4.1 of the Board's 'Standards 2000' with the accompanying methods and conditions.

When the intended parents are resident in the Netherlands and the surrogate mother is resident in another country, the Parentage (Conflict of Laws) Act is in principle applicable.

Commercial surrogacy is prohibited by law under article 151b of the Criminal Law. This includes a provision making it an offence to provide any professional or commercial mediation in this matter or to publicize the fact that a woman wishes to be a surrogate mother or is available as such.

## **8. International assistance in respect of the Optional Protocol**

**Question:** Please provide information on measures taken to strengthen international assistance in connection with investigative, criminal and extradition proceedings brought in respect of the offences covered by the Optional Protocol.

**The Netherlands:** The Netherlands has launched an initiative within the EU to improve cooperation with the seven EU member States of northwest Europe to clamp down on trafficking in human beings, with special attention being paid to unaccompanied minor aliens from Nigeria. In addition, the Netherlands has taken the initiative to engage in bilateral cooperation with the main countries of origin of the victims of human trafficking (Romania, Bulgaria and Nigeria).

## **9. Special training for professionals**

**Question:** Please indicate whether special training, particularly social and psychological, is provided to persons working in the area of recovery and social reintegration of child victims of the offences under the Optional Protocol.

**The Netherlands:** There are three channels along which professionals working in the field of youth care are equipped to perform their tasks.

A Professionalisation Steering Committee has been set up to further professionalize youth care.

The trend is increasingly to work with methods of proven effectiveness, including specific ways of tackling child abuse. These methods have been (and will continue to be) incorporated into the database of effective methods maintained by the Netherlands Youth Institute. The methods include the proper deployment and preparation of those professionals who are to apply them.

Institutions dealing with the specific problems addressed in the Optional Protocol use peer supervision and coaching, including social

and psychological support.

One aspect of the regional introduction of the action plan to tackle child abuse is education/training for professionals working with families and children. Together with a private company (the Augeo Foundation), the authorities are developing digital training methods for identifying child abuse. Various ministries are working to make awareness of child abuse and domestic violence an integral part of professional training. A national conference was recently held on this subject (8 October 2008).

## **10. Systematic investigation about commercial sexual exploitation in Aruba**

**Question :** Please advise if any systematic investigation has been undertaken to obtain information about the existence of commercial sexual exploitation of children in Aruba.

**Aruba:** A recently conducted analysis about crime and criminal activities in Aruba (*criminaliteitsbeeld onderzoek* 2007) concluded that there are no concrete indications of human trafficking in Aruba. The Public Prosecutor's Office has not brought to trial any cases of human trafficking, nor have there been any complaints submitted in this regard.

## **11. Education concerning sexual exploitation in school curricula**

**Question :** Please advise if education concerning sexual exploitation has been included in the school curricula.

The Netherlands: The Government does not make it mandatory for schools to provide lessons on children's rights (including matters of sexual exploitation as referred to in the Optional Protocol). Since the Government does consider it important for children to be taught about these issues, however, the Ministry provides a grant to the Coalition for Children's Rights, an NGO which disseminates information and teaching materials on the subject.

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