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Chairperson: Mr. Iwasawa

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The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant
(agenda item 7) (*continued*)

Fourth periodic report of the Netherlands (CCPR/C/NET/4 – English, CCPR/C/NLD/4 – French, CCPR/C/NET/4/Add.1 and 2, CCPR/C/NLD/Q/4 and Add.1)

1. *At the invitation of the Chairperson, the delegation of the Netherlands took places at the Committee table.*

2. **Mr. Hirsch Ballin** (Netherlands) explained that the delegation represented the three distinct countries that made up the Kingdom of the Netherlands: the Netherlands, the Netherlands Antilles and Aruba. Dutch society encompassed a diverse range of ideologies, beliefs, lifestyles and value systems. That diversity was seen as an asset, and the Netherlands Government regarded it as being in the interests of both individuals and society as a whole that everyone should have the freedom to develop and uphold their own values subject to respect for the Constitution and for the fundamental rights of others. That was an important achievement of a modern, free and pluralistic society. It was therefore vital that the tensions to which that type of pluralism could give rise should be seen against the background of fundamental rights, democracy and the rule of law. The Government was aware of the dilemmas which social changes sometimes posed and had therefore taken a wide range of measures to promote tolerance by fostering dialogue and mutual acceptance among persons, cultures and religions. Human rights were not self-evident, however, and in a changing society an approach that was sometimes cautious and sometimes interventionist was needed. In recent years, the Netherlands had been confronted with situations in which it had been necessary to balance human rights appropriately.

3. **Mr. Piar** (Netherlands), speaking on behalf of the Netherlands Antilles, said that it might be the last time that the State which he represented would address the Committee as a federation of five islands, since it was due to be dismantled in 2010, when Curaçao and Sint Maarten would become two independent countries within the Kingdom of the Netherlands, while Bonaire, Saba and Sint Eustatius would become public bodies in the Netherlands. The constitutional reform had therefore absorbed most of the attention of the Government of the Netherlands Antilles, which had not neglected its Covenant obligations, however. Since the submission of the fourth periodic report, the Parliament had adopted a law on protecting children against pornography, prostitution and sexual violence, and it expected to have before it, by October 2009, the much awaited new Criminal Code, which contained provisions inter alia on juvenile offenders and human trafficking. In addition, with financial help from the Netherlands, improvements had been made to detention centres. New police and prison personnel had been recruited and trained and rules of conduct relating to arrest procedures had been established.

4. With regard to human trafficking, the information published in the relevant 2009 report of the United States Department of State was out of date. Although the Netherlands Antilles admittedly did not yet have specific legislation on human trafficking, a number of trafficking cases had been tried before the courts. There were plans to ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime once the new Criminal Code had been adopted. Lastly, the Kingdom's three Ministers of Justice had signed a cooperation agreement on trafficking in persons and illegal migration, which included prevention and protection of victims. The authorities also worked closely with their counterparts in Suriname on those issues.

5. **Mr. Pietersz** (Netherlands), speaking on behalf of Aruba, explained that the island which he represented — the smallest legal entity in the Kingdom — had been independent

of the Netherlands since 1986. Its young Constitution was based on the principal international human rights instruments, including the Covenant. In the past two decades, the Kingdom of the Netherlands had ratified many new international instruments, which the authorities in Aruba took into account when developing legislation and policies. That was not always an easy task for such a small country, however, which rarely had the expertise and manpower required to implement those instruments. Important improvements had nevertheless been made. Aruba's Criminal Code had been completely revised and updated and the new version, which was due for adoption by the end of 2009, provided for a complete reform of the juvenile justice system. Human smuggling had been made a criminal offence in 2002 and the concept of human trafficking had been expanded to include forced labour and organ removal. Although a study conducted in 2007 had found no evidence of trafficking of persons taking place in Aruba, even as a transit country, the authorities remained very vigilant. An interdepartmental and interdisciplinary working group had formulated an anti-trafficking plan for 2008–2010 and, as stated previously, the three Ministers of Justice had signed a cooperation agreement on the subject in February 2009. Conditions of detention in the island's prison and in police stations had improved significantly, not only in material terms but also with regard to detainees' rights. Furthermore, training on treatment of detainees had been provided to staff, in cooperation with the Netherlands.

6. **The Chairperson** invited the delegation to respond to questions 1 to 14 in the list of issues.

7. **Mr. Hirsch Ballin** (Netherlands) said that he would supplement the written replies with some information on counter-terrorism legislation, access to employment, the asylum procedure and combating trafficking in persons. On the subject of counter-terrorism, since primary importance was given to preventing terrorist attacks, it had been necessary to amend the law. The systematic inclusion of anti-terrorism legislation in general criminal law and criminal procedure was the best means of safeguarding the rights of suspects, since the principles of the proper administration of justice would thus continue to apply in full. A commission to prepare an evaluation of Dutch anti-terrorism legislation has just published its recommendations, on which action would be taken in the near future.

8. With regard to access to employment, the Netherlands had the second highest labour participation rate in Europe: in 2008, nearly 75 per cent of the population was in paid employment, compared to 58 per cent in 1995. For those over 55 years of age, the rate had risen to 47 per cent, after falling to 37 per cent in 1995 (as against 62 per cent in 1970) as a result of early retirements. In view of the changing demographics, the rising trend must be sustained, and to that end women could make a significant contribution. The employment rate among women had risen from 44 per cent in 1995 to almost 66 per cent in 2008 as a result, in particular, of various measures designed to help them reconcile family life with professional life. As for non-Western immigrants, the employment rate had risen from 41 per cent in 1998 to 56 per cent in 2008, also as a result of various government measures. Factors such as age or a lower level of education, together, regrettably, with discrimination, explained why there were fewer immigrants on the labour market.

9. In 2008, the number of asylum-seekers had virtually doubled compared with 2007: 13,400 persons, over half from Afghanistan, Iraq or Somalia, with a category-based policy still in effect for nationals of the latter two countries. In 2008, a total of 6,610 residence permits had been granted to asylum-seekers. Parliament currently had before it a legislative proposal on improved asylum procedures. The accelerated procedure for processing applications would be replaced by an eight-day "general procedure" and legal assistance would be strengthened. Reception facilities would also be improved and asylum-seekers would be offered a medical check, the results of which would be taken into account during processing. Lastly, the scope of the *ex nunc* principle would be broadened to allow courts to

take account of all available facts and circumstances. The new procedure was expected to enter into effect in the second half of 2010.

10. Combating human trafficking at both the national and international levels was a priority for the Netherlands. The foremost consideration must be prevention and the protection of victims, irrespective of whether they were Dutch nationals or foreigners in an irregular situation. Victims from abroad were entitled to receive a residence permit either in exchange for cooperating with the police or on humanitarian grounds, where their circumstances were particularly distressing. The number of reported cases was increasing (around 700 in 2007, as against 600 in 2006), probably as a consequence of increased vigilance on the part of the authorities and organizations. Almost all those convicted of trafficking had been given prison sentences and the penalties had recently been raised from 6 years to 8 years in prison, 10 years if two or more persons had acted in concert, 15 years if serious bodily injuries had been caused and 18 years if the victim died. A special taskforce representing various relevant organizations had been established in 2008 to supplement the activities already undertaken in the framework of the 2004 national action plan against human trafficking and the 2006 supplementary measures plan.

11. **Mr. Piar** (Netherlands), speaking on behalf of the Netherlands Antilles, said that he would respond to the Committee's questions on counter-terrorism, gender parity in employment, the prohibition of slavery and of forced or compulsory labour, liberty and security of person, treatment of persons deprived of liberty and protection against arbitrary expulsion of aliens.

12. The Criminal Code did not define terrorism but did list crimes that were treated as terrorist offences. Moreover, an order which had recently entered into force criminalized terrorist acts and attempts and preparations to commit such acts.

13. Hitherto, issues of gender parity in employment had been regulated on the basis of case law, although the new book 7 of the Civil Code, which was expected to become law before the end of 2009, would provide a legal basis for protecting gender parity. The authorities had furthermore undertaken to devise a policy on guaranteeing unhindered access for young persons and adults to the labour market in Curaçao, whereas, in Sint Maarten, they were looking for ways to make the labour market more flexible while maintaining employment protection. It was noteworthy that the labour participation rate for women had risen, while that for men had remained at much the same level.

14. Although human trafficking was not yet a criminal offence per se, it was prosecuted by the courts in the same way as other offences under the Criminal Code, such as kidnapping and coercion or trafficking of migrants, which had been a criminal offence since 2003. For example, article 260 of the Code prescribed a penalty of up to five years' imprisonment for selling women or minors. A special working group had been established in Curaçao in 2004 and in Sint Maarten in 2007 to deal with human trafficking. A hotline had been set up on the two islands, information campaigns had been conducted and training had been provided to immigration personnel, providers of victim support, consular offices and media staff. The Office of the Public Prosecutor had drawn up instructions to help identify and tackle cases of trafficking and the police had also established a special team. Moreover, a national referral system for victims had also been developed in 2006, in cooperation with the Human Trafficking Coordination Centre (COMENSHA).

15. Any suspect held in police custody was automatically assigned a lawyer, whose fees were paid by the State. The number of persons in pretrial detention was relatively high, because most cases involved defendants accused of such a serious affront to public order as to necessitate pretrial detention; the duration of pretrial detention could not exceed 116 days, however. All complaints from persons in detention were investigated by the internal affairs unit of the prison and inmates could also submit complaints to the supervisory

committee and the Public Prosecution Service. Since 2008, prison personnel and the riot brigade had received training in dealing with inmates. As far as conditions were concerned, prison overcrowding remained a problem, although a master plan for prison renovation had been drawn up and security had been improved.

16. The Netherlands Antilles was not a party to the 1951 Convention relating to the Status of Refugees, although instructions on how to deal with asylum-seekers had been issued in keeping with the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Asylum-seekers had the right to stay and to work on the island while their application was being considered by the Venezuela bureau of the Office of the United Nations High Commissioner for Refugees (UNHCR).

17. **Mr. Pietersz** (Netherlands), speaking on behalf of Aruba, said that civil and political rights were protected under chapter I of the Constitution of Aruba, article 1, paragraph 22, of which stipulated that statutory regulations would not be applied if their application was incompatible with the provisions of the chapter. That unique provision in the Kingdom's legal system allowed the courts to ensure that domestic statutory provisions safeguarded the fundamental rights set out in the Constitution. Hence, it was the Constitution which offered the main legal safeguards required by the Covenant. The reform under way of the Criminal Code had already been mentioned, but it must be noted also that a completely new Civil Code had entered into force in 2002; with the introduction of the new book 1, a number of discriminatory provisions (the law of persons and family law) had been repealed. Those major reforms illustrated how even the smallest jurisdictions were required continually to codify international human rights case law and to apply international norms. Thus, following the events of 11 September 2001, Aruba had been obliged to introduce counter-terrorism measures in order to avoid becoming a safe haven for terrorists. In 2004, a national order had entered into force criminalizing the commission of terrorist acts and participation in or financing of terrorist organizations. The relevant provisions allowed for no derogations from ordinary criminal law and criminal procedure, which applied without distinction to all suspects, whether they were terrorists or ordinary criminals. In principle, Aruban criminal law did not permit suspects to be held for a period of two years during a preliminary judicial investigation, since the maximum duration of pretrial detention was 116 days (in certain cases, a 30-day extension could be granted by an investigating judge, at the request of the Public Prosecution Service). Moreover, according to article 1.5 of the Constitution, trials must be conducted within a reasonable time frame and the relevant provisions of the European Convention on Human Rights were also applied.

18. With regard to the international crime of contemporary forms of slavery and forced or compulsory labour, in 2006, the Parliament of Aruba had amended the Criminal Code and other laws to bring them into line with the relevant international law and had thus made human smuggling a criminal offence, incorporating forced labour and forced organ removal in the provisions on human trafficking. New provisions had entered into force in 2003, expanding protection for minors against sexual abuse and considerably increasing the penalties for promoting sexual abuse of minors by third parties and for trafficking in children. An interdepartmental and interdisciplinary committee had been formed in 2007 to deal with the issues of human trafficking and people smuggling and an action plan for 2008–2010 had been developed providing for various measures to prevent such offences and to assist in supporting potential victims. There were no indications that Aruba was in any way affected by human trafficking, however. The Public Prosecution Service had never brought a human trafficking case to trial, nor had the police or the victim support bureau ever received a complaint about such a matter. The authorities were nevertheless aware of the possible risks of trafficking in the prostitution sector (escort services) and the service sector (domestic workers, hotel staff, shops and restaurants). A study would be carried out

in the near future to determine whether trafficking did indeed occur in those sectors and, if so, how extensive the problem was.

19. Since the visit to Aruba in 2007 of a delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, considerable progress had been made with regard to physical conditions of detention in police stations and at Aruba's prison. The authorities had improved the procedures for treatment of detainees to bring them into line with the Committee's standards. All the Committee's recommendations on the Aruba prison had been acted upon, except for one on improving prison facilities which would be put into effect by mid-August 2009. Furthermore, the Police Order on the Treatment of Detainees had been completely revised and amended in keeping with the Committee's recommended norms. Under the new police registration system (ACTPol), all information on detainees, such as the notification of relatives or a third party and requests for a doctor or a lawyer, would be recorded. The system would be operational by the end of 2009. Training courses were also developed for the police and for prison staff.

20. The goal of the authorities in Aruba was to limit the duration of police custody to 48 hours. Representatives of the Public Prosecution Service, the police and the prison service were working to resolve the practical problems delaying the achievement of that goal. The period of police custody could only be extended beyond 48 hours if the investigation urgently required it. The decision to extend custody and the reasons for doing so would be recorded in the detainee module of the ACTPol system.

21. **The Chairperson** thanked the Netherlands delegation and invited the members of the Committee to ask their supplementary questions.

22. **Mr. Bhagwati** asked what time frame the authorities of the State party envisaged for the withdrawal of the reservations made to article 19, paragraph 2, and article 20, paragraph 1, of the Covenant. Were periodic reviews undertaken of the possibility of withdrawing those reservations and what was the position of the Netherlands Government on the subject? Mr. Bhagwati said that he wished to know, in particular, whether the authorities of the State party considered that there were still legitimate grounds for not withdrawing the reservations to such important articles of the Covenant. He also wished to know what the status and the objectives of the political reform project were.

23. The Committee's concerns about the duration of the asylum review procedure should be allayed by the adoption of new provisions which would give asylum-seekers more time to explain their situation. Mr. Bhagwati would welcome confirmation that action would be taken to that end. He would also be glad to know what stage the process for the adoption of the new Aliens Bill had reached and the date on which the law was expected to enter into force. Mr. Bhagwati asked whether a woman seeking asylum in the Netherlands for fear of being subjected to domestic violence in her home country could be accorded refugee status. In particular, did the risk of being subjected to genital mutilation in the country of origin constitute grounds for granting asylum in the Netherlands? If not, the delegation should explain why not. The delegation should also explain the criteria used by the authorities to make asylum decisions. It was true that the Netherlands policy on asylum was generous, since half of all asylum-seekers were reportedly granted refugee status, however, clarifications on all those matters would still be welcome. Lastly, it was very important for asylum-seekers to have access to legal advice and, if necessary, legal aid; Mr. Bhagwati wished to know what had been done in that respect.

24. **Sir Nigel Rodley** said that, throughout his career in international human rights protection, he had met a large number of eminent Dutch nationals, including several special rapporteurs on the question of torture, and had thus seen how committed the Netherlands was to human rights and the remarkable results which it had scored in that area. In that

context, the presentation just delivered by the head of the Netherlands delegation had left him somewhat perplexed. Having said that human rights were not self-evident and that the Netherlands had had to balance human rights appropriately in recent years, the head of delegation had used language which was out of keeping with the more clear-cut position normally taken by the Netherlands authorities to the promotion of human rights. Admittedly, means of ensuring the observance of human rights must be modified to some extent to take account of threats to collective values such as national security and, in some situations — states of emergency — it might even be necessary to derogate from some rights. However, it was not just a matter of “striking the right balance”; States parties to the Covenant were explicitly required to observe the principles of necessity and proportionality when restricting the exercise of certain Covenant rights.

25. With regard to counter-terrorism, the Committee was well aware of the difficulties confronting many States, including the Netherlands. Sir Nigel Rodley still wished for clarifications of a number of issues, however. On the subject of detention on the grounds of reasonable suspicion, which could last up to two years, he wanted to know how it differed from ordinary pretrial detention of persons who had been charged. In particular, what was the burden of proof requirement in either case and was it possible to keep a person in pretrial detention without charge for two years on the grounds of reasonable suspicion?

26. **Sir Nigel Rodley** wished to know what “terrorist intent” meant, as he had not found any definition of it apart from the one contained in the non-official translation of a Netherlands law stating that terrorist intent meant: serious intimidation of the population or a part of the population of a country; illegally forcing a government or an international organization to carry out or to refrain from carrying out any act; and tolerating certain actions — which had not been defined — or seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of the country or of an international organization. Sir Nigel Rodley said that he would be grateful if the Netherlands delegation could provide the Committee with an authorized translation of the law concerned.

27. Clarifications would also be welcome on the new legislation providing for the inclusion of biometric data in Netherlands travel documents. Some non-governmental organizations claimed that a national database would be established using that information. Would the information be included in the passport, was it already used in identity cards, to what end was it used, what would happen to the data afterwards and what access would the persons concerned have to it? In any event, the State party must ensure that the right to privacy was safeguarded.

28. With regard to telephone tapping, which seemed to occur rather frequently, the situation also called for clarification. Although telephone tapping by the police was probably subject to authorization by the courts, the same was surely not the case for the security services. The Netherlands delegation should provide information on the safeguards in place and the limits set in that regard.

29. Information would also be welcome on the power of the authorities to use disturbance orders, which apparently were not targeted only at terrorists and were not systematically authorized by the courts. In particular, what guarantees existed to protect persons likely to be subject to such measures from the reactions of those around them?

30. The Council of Europe Commissioner for Human Rights had made several recommendations in the report which he had issued following his visit to the Netherlands in September 2008, and Sir Nigel Rodley would be glad to know what the State party’s position was on those recommendations.

31. With regard to the asylum procedure, Sir Nigel Rodley asked whether it also applied to persons seeking protection against return to a country where they risked being subjected

to torture. In many countries, the procedure only applied to persons who feared persecution within the meaning of the 1951 Convention relating to the Status of Refugees; however, the provisions of the Covenant and, indeed, those of the Convention for the Protection of Human Rights and Fundamental Freedoms must be interpreted as meaning that consideration must be given to cases where there was a genuine risk of being subjected to torture. Was it therefore possible that a foreigner in an irregular situation who could have been subjected to torture was covered neither by the asylum procedure nor the procedure for dealing with foreigners in an irregular situation?

32. Also on the subject of the asylum procedure, the extension of the time limit for the “accelerated” procedure from two to eight days was not sufficient, given the difficulties that victims of torture or ill-treatment often had explaining what had happened to them. Sir Nigel Rodley wished to know what would distinguish the normal, extended procedure from the new, eight-day review procedure. In paragraph 51 of the written replies it was stated that the decisive factor in choosing between the two procedures would still be whether the Immigration and Naturalization Department could satisfy the due care criteria in reaching a decision in the “general” asylum procedure. If not, and if further investigation was necessary, the case would be assigned to the extended procedure. Hence, the officer making the decision was the one who also decided which procedure to follow (“general” or “extended”), without having any specific criteria on which to assess the merits of the case; that situation was problematic.

33. Lastly, Sir Nigel Rodley wished to receive fuller information on the detention of asylum-seekers. He had understood that detention was not systematic, although non-governmental organizations maintained quite the reverse. He would therefore welcome assurances about the procedure under which the Netherlands authorities could detain asylum-seekers, together with information about the proportion of asylum-seekers in detention. He also wanted to know what measures existed to ensure that a foreigner in an irregular situation was not in fact an asylum-seeker.

34. **Ms. Wedgewood**, returning to the matter of reservations to the Covenant which had been raised by Mr. Bhagwati, said that she was perplexed about the reservation entered to article 10 of the Covenant. As stated in the text of the reservation, the Kingdom of the Netherlands took the view that ideas about the treatment of prisoners were so liable to change that it did not wish to be bound by the obligations set out in paragraph 2 and paragraph 3 of article 10, referring, respectively, to the need to segregate accused persons from convicted persons and accused juvenile persons from adults, and to the necessity of affording treatment to prisoners with the essential aim of ensuring their reformation and social rehabilitation. Those provisions were fairly self-evident, however, and there was no doubt that the Netherlands reservation to them was not applied in practice. In Ms. Wedgewood’s view, that fully justified a withdrawal in good and due form of the reservation to article 10.

35. With regard to countering terrorism and observing the rights guaranteed by the Covenant, the Witness Identity Protection Act of 2004 stated that identity must be “protected during hearings held before an investigating judge to determine the reliability of information” and that “in criminal cases, the defence has the right to question witnesses”. Thus, it seemed to be possible to question anonymous or partially anonymous witnesses. It was generally recognized in common-law and Roman-law systems that the identity of a witness must be known in order to establish whether the witness had reason to lie, was credible and really could have witnessed the events in his or her testimony. In certain circumstances, anonymity could be maintained, although the scope of the 2004 Act was so broad as to call for a considerable degree of critical scrutiny.

36. The fact that detention without charge or trial could last for 6 days on the orders of a public prosecutor, 14 days by a decision of an investigating judge, 90 days pursuant to a

court decision, with the possibility of an extension, and as much as 2 years or more by a decision of a preliminary court, was difficult to reconcile with the right to be tried without undue delay as guaranteed in article 14 of the Covenant. In all circumstances, even exceptional circumstances, investigations must proceed swiftly. It was worrying that a person could be held in pretrial detention for two years as a terrorist suspect, and having access to the file changed nothing; all persons must be tried without delay.

37. On the subject of euthanasia, the figures provided (1,886 cases in 2004 and 1,933 in 2005) seemed rather high. Ms. Wedgewood wished to know why the decision was taken by only one doctor, why others, such as church representatives or a mediator, were not consulted and, above all, why the matter was not reviewed by a court. In her opinion, a more stringent procedure for euthanasia was needed. Although ending the life of seriously ill newborns was not euthanasia in the strict sense of the term, it nevertheless raised legal and ethical issues.

38. With regard to medical experiments, in its previous concluding observations the Committee had recommended that the State party should “remove minors and other persons unable to give genuine consent from any medical experiments which do not directly benefit these individuals (non-therapeutic medical research)”. The State party, in its report (para. 83), had rejected that recommendation on the grounds that “medical advances in diseases or impairments affecting children or decisionally incapacitated adults depends on research being done on that group of patients”. The Committee’s recommendation had in no way been intended to impede such research when it benefited the subject. By deciding to disregard the Committee’s recommendation, did the Netherlands not run the risk of giving too much latitude to the medical profession?

39. On the subject of access to a lawyer, it was astonishing that a suspect’s lawyer could not be present during all police interviews, that the only way for the interviewee to have the lawyer present was by remaining silent and that, apparently, even if the lawyer was present, he or she was not allowed to interrupt. It was difficult to reconcile such restrictions with the role of a lawyer, and she would welcome the delegation’s comments on that subject.

40. The use of racial profiling was a key issue for all societies and had been debated for quite some time in the Netherlands. Pending an answer, Ms. Wedgewood wished to know whether the authorities acknowledged that the police used racial profiling.

41. **Ms. Motoc** drew attention to the important role played by the Netherlands in the promotion of human rights. Her comments would focus on questions 4 and 7 in the list of issues. With regard to gender parity, she asked what measures had been taken, for example, to guarantee fair pay and what had been done to allow women with children to continue working. Many sources claimed that migrants were subjected to gender-based discrimination at work. The report of the Council of Europe Commissioner for Human Rights, Mr. Hammarberg, showed, among other things, that many of the cases dealt with by the body which had been set up pursuant to a European Union directive involved discrimination of that kind and Ms. Motoc wished to know what action had been taken in response. She also wished to know what the status was with regard to the order on domestic violence of January 2009. Had the Netherlands experienced an increase in cases of female genital mutilation, as had happened in all European countries which hosted migrants, and did it have a position on the subject?

42. In spite of some genuine improvements, the criminal law on human trafficking was still seriously flawed, inasmuch as it did not contain a definition of labour exploitation. The delegation might provide information as to whether jurisprudence had been developed in that area. The Netherlands had enacted legislation to regulate prostitution which, although praised by some, still attracted a number of criticisms. Municipal authorities could issue work permits for sex workers and did so with great facility. It had been suggested to the

Netherlands that it should improve the procedure for issuing permits in order to exercise tighter control over the sex industry, particularly in relation to exploitation of minors, and the Government appeared to be open to that idea. It would be helpful to know what had been done to reduce the number of trafficking cases in the Netherlands.

43. **Mr. O'Flaherty** said that he wished to congratulate the Netherlands on its contribution to human rights across the world and on its international leadership in that domain. The large delegation reflected the diversity of the Kingdom of the Netherlands, including as it did representatives from the Netherlands Antilles and Aruba.

44. It was astonishing that the Netherlands persisted in failing to guarantee the assistance of a lawyer during police interviews, notwithstanding the criticisms of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Committee against Torture and the Council of Europe Commissioner for Human Rights. Could the delegation perhaps explain why the Netherlands considered that the presence of a lawyer during a police interview was not necessary, particularly given the need to prevent acts of violence, and, more generally, to ensure respect for the rights guaranteed by the Covenant to persons deprived of liberty?

45. A pilot study had been carried out on authorizing the presence of a lawyer in a limited number of cases. According to the information available to the Committee, major restrictions on access to a lawyer allegedly remained in effect. The delegation might be able to explain why that was the case. Information would furthermore be welcome on how matters stood in the Netherlands Antilles and Aruba with regard to the presence of a lawyer during police custody. As far as audio-visual recording of interviews was concerned, it would be helpful to have a better understanding of how the system worked in practice in the three territories of the Kingdom, for example, in what situations recordings were or were not required.

46. Very clear replies had been given to the questions on the treatment of persons deprived of liberty in Aruba. By contrast, the replies describing the situation in the Netherlands Antilles did not provide the requested information. The information provided in annex IV of the written replies under the question about how many complaints were made against prison staff referred to complaints made against the police. Mr. O'Flaherty wished to know how many complaints had been made against prison staff and what follow-up there had been.

47. As for inappropriate conduct by police officers, paragraph 100 of the written replies called for clarification. It stated on the one hand that serious cases were subject to criminal prosecution and on the other that, in general, disciplinary measures were taken. The information regarding compensation needed to be clarified, as it did not provide the Committee with a full picture of the situation. Annex IV contained statistics on complaints made against the police, including the nature of the complaints, but gave no indication of the outcome. Information would be welcome on that subject.

48. With regard to conditions in detention facilities, the replies on Aruba were very useful. The replies on the Netherlands Antilles mentioned plans and programmes to improve prison conditions which, at first sight, seemed very encouraging. However, according to the report of the European Committee for the Prevention of Torture, the prison system in general and Bon Futuro Prison in particular had been criticized by many. The report contained recommendations on resolving the most pressing problems which, for the most part, did not need a programme but could be acted upon immediately, such as the installation of call-bells in cells, rat extermination and clean-up of waste. In addition to health conditions, which were now said to be good, the Committee had criticized the quality of prison food, the lack of regular meal times and understaffing. Some of those problems could be resolved quickly and it would be helpful to know what had been done to

date to improve the situation in Bon Futuro prison following the Committee's visit. Concerns had also been expressed about the Bonaire remand prison, in particular about the urgent need to provide prisoners with outdoor exercise and to resolve the problem of a shortage of beds which meant that some prisoners were sleeping on the floor. Those problems should also be resolved without any need for long-term planning.

49. With regard to the information on the future constitutional reform in the Netherlands Antilles, Mr. O'Flaherty asked what was being done to take account of the human rights commitments of the territory and what action would be taken to guarantee that each of the new entities would have an effective human rights regime. The information received showed that the Constitution of Aruba provided substantial safeguards for human rights protection; the Constitution could possibly serve as a model for the constitutions of the new countries.

50. Further details were needed on the provision under which an individual could be subject to "disturbance orders" and daily surveillance as a means of preventing terrorism and the national security (administrative measures) law. In particular, he wished to know whether it was appropriate to use administrative tools rather than criminal law mechanisms to combat terrorism, given the seriousness of the matter and the fact that the administrative framework did not guarantee the same level of human rights protection as the criminal law system. It would be especially useful to know on what legal grounds and in what circumstances a local mayor could apply that administrative measure, how the mayor's jurisdiction over the police was exercised in such cases and what mechanisms existed to ensure that the measure was applied in keeping with human rights. How did the Netherlands guarantee that administrative measures to protect national security were applied strictly in the framework of counter-terrorism? The delegation could perhaps indicate whether those measures could be applied to minors and, if so, whether guarantees were in place to protect their guaranteed rights. The Council of Europe Commissioner for Human Rights had strongly criticized the National Security (Administrative Measures) Bill (paragraph 176 of his report). He wished to know whether some of that criticism had been taken into account in the Bill that was about to be adopted.

51. **Mr. Perez Sanchez-Cerro** said that a recent public survey had shown that the Netherlands population was largely in favour of the reinstatement of the death penalty and he therefore wished to know what the Government intended to do, since if it yielded to public opinion, it would be in breach of its Covenant obligations. The length of time that asylum-seekers could be held was very worrying. The Netherlands was supposed to apply European norms, which had established maximum time limits in that regard. It would be interesting to hear the delegation's comments on the subject and on the reasons why the Netherlands had still not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Netherlands still had no national human rights institution that met the requirements of the Paris Principles, and the Committee wished to know what the country intended to do about the matter. The Netherlands had not ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment either. Did it intend to do so in the near future?

52. **Mr. Salvioli** said that, according to Amnesty International, complaints from migrants about ill-treatment during detention were not always investigated impartially and thoroughly. Statistics on the number of registered complaints, the number of inquiries opened and on the number of persons tried and convicted would be welcome. He also wished to know whether the State party intended to create a mechanism that would guarantee genuinely effective processing of such complaints.

53. **The Chairperson** proposed a brief suspension of the meeting to allow the delegation to prepare its answers to the questions asked.

The meeting was suspended at 5.10 p.m. and resumed at 5.35 p.m.

54. **Mr. Hirsch Ballin** (Netherlands) said that he wished to stress first and foremost that when he had spoken in his opening statement about trying to strike the right balance with regard to human rights protection, he had not meant that it was necessary to make compromises at the expense of certain human rights, but, on the contrary, that efforts were needed to reconcile all human rights, even when protection of some could conflict with the protection of others; for example, respect for religion or for the political opinions of all must be guaranteed without unduly restricting the right to freedom of expression. It was not a matter of placing some rights above others but rather of doing everything possible to ensure the full realization of human rights as a whole. That was the cornerstone of all the Government's policies.

55. Turning to the questions on the asylum procedure, Mr. Hirsch Ballin said that the authorities were required to identify cases covered by the Geneva Convention relating to the Status of Refugees but that the grounds on which the right to asylum was accorded under Netherlands asylum legislation were broader in scope than those set out in the Convention and included the genuine risk of being subjected to torture in the country of return. The relevant provisions of the European Convention on Human Rights and of the Council of the European Union directive 2004/83/CE were also taken into account when determining whether or not a person could be returned to his or her country of origin; in that way, no one was neglected.

56. Several members of the Committee had expressed concern about asylum-seekers being held by the authorities. That measure only applied to persons subject to an expulsion order who were waiting to be returned and generally for a short period of time. Asylum-seekers whose applications were under consideration enjoyed complete freedom of movement and the structures where they stayed pending a final decision bore no resemblance to closed facilities.

57. Although he considered the asylum procedure provided for under the 2000 Aliens Act to be consistent with the European Convention on Human Rights, the Minister of Justice, supported by several non-governmental organizations which he had consulted, saw the need for some improvements and had recently submitted proposals to the Parliament for amendments to the Act. The Minister envisaged replacing the 48-hour procedure for taking a decision with an 8-day procedure or, if more time was needed for investigation, to apply the "extended" procedure. Asylum-seekers would be guaranteed access to the services of a lawyer free of charge and account would be taken of information in their medical history. The procedure also included access to legal remedies.

58. A question had been asked about the powers of the authorities to maintain law and order. Those powers were in fact strictly regulated by law and were exercised in very specific and limited circumstances.

59. Equal pay for men and women was provided for by law. The Government's website offered complete information on the subject, and Equal Pay Day was celebrated every year to encourage all stakeholders to demonstrate vigilance in that regard. The evolution of the pay gap was assessed year by year using data collected by labour inspectors, and the Government took steps to reduce disparities that were identified. Various programmes to encourage women with children to work were carried out, providing for increased child-care services, part-time work arrangements, etc. If the Committee wished, more detailed information on those programmes could be submitted to it in writing at a later date.

60. With regard to labour exploitation, the Minister of Justice, jointly with the Minister for Social Affairs and Labour, was currently gathering data to assess the scale of the problem. On the subject of prostitution, since the 2000 Act had not been adequate to protect those vulnerable to exploitation in the sex industry, a new bill on that form of exploitation

had been tabled before Parliament as a means of offering victims better protection. Pending its adoption, the police would continue to conduct inspections in brothels and the existing legislation would continue to apply, including regulation B9, which had been mentioned in the written replies (paras. 60 and 61) and which granted victims of trafficking residing illegally in the Netherlands access to a temporary residence permit, assistance, medical care and psychological support.

61. Compared to many other European Union countries and the rest of the world, detention without charge and trial in the Netherlands was tightly regulated: it was only authorized for serious offences or where there was a risk of repeat offending. The suspect was held in police custody, further to a police decision, for 9 hours following arrest; police custody could be extended to 6 days by a decision of a public prosecutor and then 14 days by a decision of an investigating judge. In both cases, the decision must be based on reasonable suspicion. In terrorism cases, a confidential procedure could be used. Pretrial detention could be extended for the purposes of the investigation, although that only happened in 8 per cent of cases, only 2 per cent of which necessitated an extension beyond the 120-day limit; in the vast majority of cases, no extension was needed.

62. The identity of witnesses was protected without prejudice to the rights of the defence, inasmuch as the process did not prevent a defence lawyer from questioning a witness whose identity was concealed; the only difference compared to an ordinary hearing was that instead of addressing the witness directly, the lawyer asked questions through the investigating judge. Measures had been taken to improve due process guarantees, for example, using video recordings where the suspect was particularly vulnerable – a minor, a person who was psychologically fragile, etc. Moreover, the importance of various guarantees pertaining to the lawyer's participation in interviews had been stressed in a recent ruling of the European Court of Human Rights, and the necessary action would be taken to give full effect to the ruling.

63. **The Chairperson** thanked the delegation for its supplementary replies and invited it to continue the dialogue with the Committee at a subsequent meeting.

The meeting rose at 6.10 p.m.