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## Convention on the Rights of the Child

### COMMITTEE ON THE RIGHTS OF THE CHILD

### CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES 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

### Initial reports of States parties due in 2007

### THE NETHERLANDS

[24 September 2007]

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### Introduction

The Netherlands signed the Optional Protocol on 7 September 2000 and ratified it on 23 August 2005. The Optional Protocol entered into force on 23 September 2005. The Dutch translation is published in the Dutch Treaty Series (*Tractatenblad* 2001, No. 130). The date of ratification is published at [www.kinderrechten.nl](http://www.kinderrechten.nl), the website of the children's rights collective (*Kinderrechtencollectief*) offering extensive information about children's rights to children, parents and professionals. The website is subsidized by the Dutch government.

### I. PROHIBITION AGAINST TRAFFICKING IN CHILDREN, CHILD PORNOGRAPHY AND CHILD PROSTITUTION

#### A. Criminal acts

#### General framework of sexual offences legislation

1. Sexual offences legislation should always reflect a balanced consideration of the dual interests of protecting individuals from violations of physical integrity and from violations of privacy. In the context of combating sexual abuse and sexual exploitation of

children, Dutch legislation tends to favour the interests of protecting physical integrity. In recent decades, in particular, sexual offences legislation has been modified to offer greater protection to those who need it. Specifically, recognition of the vulnerability of the individual child has led to tighter laws. However, sexual offences legislation must also be practicable and enforceable.

2. There is an obvious connection between child pornography and the sale, exploitation and sexual abuse of children. When children are sold it is often for the purposes of prostitution and other sexual services. Sexual exploitation of children is defined as profiting from sexual services rendered by minors or from child prostitution, pornographic performances featuring children or child pornography. Using such services constitutes child sexual abuse.

**3. Dutch legislation on sexual abuse, prostitution, trafficking in human beings, child pornography and adoption, viewed as a whole, criminalizes the behaviours addressed in the Optional Protocol. Under Dutch sexual offences legislation, the age of sexual consent is 16. Engaging in sexual contact with a person aged 16 and older is not, as a rule, an offence, unless it is done against the person's will, under duress or by means of violence or the threat thereof (arts. 242 and 246 of the Criminal Code).**

4. Child sexual abuse is an offence under articles 240b and 244 to 250a of the Criminal Code. Sexual contact with a child under the age of 12 is an offence in all cases (arts. 244, 247 and 249). Sexual contact with children aged 12 to 16 is an offence, except when it can be regarded as normal sexual contact, i.e. voluntary contact that is considered typical for people of that age. The age limit is 18 for sexual contact in specific circumstances, such as abuse of a relationship of authority, deception, sex within a relationship of dependence, or sexual exploitation for the purpose of prostitution (arts. 248a, 248b, 249 and 273f). The same applies to other types of sexual services (arts. 248a and 248c) and child pornography (art. 240b).

5. Trafficking in human beings is also a criminal offence under Dutch law (art. 273f Criminal Code), and entails forcing people, by any means, to make themselves available for the purpose of performing sexual or other services or to make their own organs available for transplantation. Human trafficking is a form of exploitation. The aforementioned criminal provision serves to combat human trafficking and, in doing so, to protect the mental and physical integrity and personal liberty of individuals.

## **Trafficking in children**

6. The sale of children is a form of human trafficking. When human trafficking offences are committed with respect to a child, this is considered trafficking in children. The Optional Protocol's provisions on this point are implemented via the Act implementing international instruments to combat people smuggling and trafficking in human beings. This Act entered into force on 1 January 2005 and also implements the United Nations Convention against Transnational Organized Crime and two of its supplementary protocols: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, as well as a number of EU measures: the Council Framework Decision on combating trafficking in human beings, the Council Directive defining the facilitation of unauthorized entry, transit and residence, the Council Framework Decision on the strengthening of the legal framework to prevent the facilitation of unauthorized entry, transit and residence, and the Council Framework Decision on combating the sexual exploitation of children and child pornography. The intention exists to evaluate the Act in a few years' time, with a particular focus on the most important amendment of the Criminal Code that it contains: the expansion of the scope of the definition of human trafficking to include socioeconomic exploitation (it previously only covered sexual exploitation).

7. Action against trafficking in children is coordinated within the structures in place for combating human trafficking. At ministerial level, the Inter-ministerial Committee on Trafficking in Human Beings, representing the Ministries of Justice, Foreign Affairs, the Interior and Kingdom Relations, Social Affairs and Employment, and Health, Welfare and Sport, holds regular meetings. Criminal investigations are coordinated by the Expertise Centre for Human Trafficking and People Smuggling (EMM) of the National Crime Squad, which acts as the information centre for operational cooperation. The EMM receives information from agencies that are involved in oversight, inspection, investigation and assistance with regard to human trafficking. The police and the Public Prosecution Service each have coordination structures with links between them to optimize the exchange of information. The police are served by the National Experts Group on Trafficking in Human Beings and the Public Prosecution Service by the Human Trafficking Portfolio Managers Committee, chaired by the Procurator-General responsible for dealing with trafficking in human beings. In the Dutch context, there is constant consultation between the ministries, the police and the Public Prosecution Service, non-governmental organizations and research organizations. This occurs on an ad hoc basis, since there is no specific coordination structure set up for this.

8. In December 2004, the Dutch Government drafted the first National Action Plan to Combat Trafficking in Human Beings. The plan approaches policy on trafficking in human beings from an integrated multidisciplinary perspective. It contains 65 concrete points of action in the areas of human rights, legislation, prevention, protection of victims, investigation and prosecution, and research and registration. In February 2006, additional measures to the National Action Plan were adopted, addressing a number of themes more specifically, such as prevention and, of particular relevance to this report, minors who are victims of human trafficking and youth prostitution. Elements from the National Action Plan and the Additional Measures are incorporated into various sections of this report. Most of the action points have been carried out. In 2004, combating human trafficking and people smuggling was made one of the six national priorities in the investigation and prosecution of organized crime. In connection with that, the Board of Procurators General has amended the "human trafficking directive", which sets out policy guidelines for the purposes of investigation and prosecution and in which specific attention is paid to minors who are victims of human trafficking. The directive sets out procedures for dealing with minors who are victims and discusses specific forms of human trafficking.

9. The fact that the Dutch Government attaches great importance to combating human trafficking is also evidenced by its appointment of an independent National Rapporteur on Trafficking in Human Beings, supported by the Office of the National Rapporteur, in April 2000. The Netherlands was the first country to do so. The National Rapporteur has deliberately opted for a broad approach to the subject, from prevention and assistance to investigation and prosecution, at both national and international levels. The National

Rapporteur issues regular reports of findings and gives advice on a regular basis, both formally and informally. In the Netherlands, exploitation of minors as prostitutes is regarded as trafficking in human beings and is therefore one of the National Rapporteur's areas of investigation.

## **Youth prostitution**

10. Trafficking in human beings in general, related forms of exploitation and profiting from such acts are criminal offences under article 273f, paragraph 1 of the Criminal Code. The most serious forms of exploitation include those which jeopardize an individual's physical integrity, such as sexual exploitation and organ removal. The criminal offences in article 273f of the Criminal Code carry a maximum prison sentence of six years or a fifth-category fine. A number of aggravating circumstances are listed in article 273f, paragraphs 3 to 6.

11. Article 273f, paragraph 1, subparagraphs 2 and 5 specifically address the protection of children. When children are involved, the methods of coercion listed in paragraph 1, subparagraph 1 need not be used for an act to be punishable under criminal law. Subparagraph 2 specifically criminalizes trafficking in children. Subparagraph 5 covers sexual exploitation of children and removal of a child's organs. Article 273f, paragraph 1, subparagraph 8 addresses the matter of profiting from the sexual exploitation of children and removal of a child's organs. Exploitation is defined more specifically in article 273f, paragraph 2, and includes at any rate profiting from the prostitution of others, other forms of sexual exploitation, forced or compulsory labour or services, slavery or practices comparable to slavery or servitude.

12. Child prostitution is criminalized in article 248b of the Criminal Code. This article is the tailpiece of the approach to combating youth prostitution. There are various penal provisions making it an offence to have sexual contact with minors under the age of 16 (arts. 244, 245 and 247). In addition, article 248b makes it an offence for persons to have sexual contact, as clients, with 16 and 17-year-old prostitutes. The prostitute's age is an objective criterion in this

provision, which means it is not necessary to establish that the offender acted intentionally or negligently, but only to prove the objective circumstance of the prostitute's age. Protection of the victim is the main objective here. This offence carries a maximum prison sentence of four years or a fourth-category fine.

13. The National Consultative Committee on Prostitution, which meets regularly (6 to 8 times a year) and includes representatives of NGOs and the Ministry of Justice, also addresses the issue of youth prostitution. There is also a consultative committee on youth prostitution, made up of NGOs involved in the Youth Prostitution Platform, which meets four times a year.

14. The Expertise Unit on Youth Prostitution (formerly: National Information Unit on Youth Prostitution) was launched in February 2005 with funding from the Ministries of Justice and Health, Welfare and Sport and is part of Movisie. This Unit collates, processes and disseminates information on such topics as municipal policy, prevention activities and assistance initiatives. It also keeps the problem of youth prostitution on the public agenda, advises on how to approach the issue and cultivates expertise by identifying and describing good practices. In the course of time, ways to guarantee that this function is sustained will be explored.

15. The Expertise Unit on Youth Prostitution has determined that the registration of minors who engage in prostitution, either voluntarily or through coercion, is not optimal. The Foundation against Trafficking in Women is currently setting up a centralized youth prostitution register at the request of the Ministries of Justice and Health, Welfare and Sport. The register is expected to generate a more accurate, comprehensive, national picture of the nature and extent of youth prostitution in the Netherlands.

## **Child pornography**

16. An important amendment to Dutch sexual offences legislation entered into force on 1 October 2002. The primary aim was to enhance the protection afforded to minors against forms of sexual abuse. The new legislation implements the Council of Europe Convention on Cybercrime and the ILO Convention No. 182 (1999) on the Worst Forms of Child Labour Convention and is also relevant to the obligations under the Optional Protocol.

17. The most important changes served to tighten the ban on child pornography (art. 240 b, Criminal Code):

(a) Criminalization of virtual child pornography;

(b) Age-limit to which the ban applies raised from 16 to 18;

(c) The word "stocks" replaced with "possesses";

(d) Explicit ground for immunity from criminal liability for possession of child pornography for the purpose of research, education or therapy repealed. The general grounds for immunity from criminal liability, e.g. absence of substantive illegality, still apply to those circumstances.

18. This legislation also criminalizes deliberate attendance at pornographic performances involving children or screenings of pornographic films involving children at dedicated venues (art. 248c, Criminal Code). The application of extraterritorial jurisdiction was expanded to cover Dutch nationals and permanent residents of the Netherlands who sexually abuse or otherwise exploit minors outside the Netherlands (arts. 5 and 5a).

19. Article 240b, paragraph 1 of the Criminal Code makes it an offence to distribute, publicly exhibit, manufacture, import, convey in transit, export or possess pornographic images of persons under the age of 18. It is up to the court to decide on the apparent age of any person depicted in the pornographic images. Thus the actual age of the person concerned need not be proven. This penal provision also applies to virtual child pornography. Consequently, it is no longer necessary to prove that a real child was involved in

the production of the pornographic material. Images of a real person who looks like a child also fall under this definition. Criminal offences involving child pornography carry a maximum prison sentence of four years or a fifth category fine.

20. Under article 240b, paragraph 2, making an occupation or a habit of any of the offences in article 240b, paragraph 1, is an aggravating circumstance. In such cases, the maximum sentence is six years. Legislation is currently in preparation to raise the maximum sentence to eight years (more details below).

21. Dating from 2002, this legislation was recently evaluated. The first evaluation shows that, generally speaking, the changes in the law have created more and better tools for combating sexual exploitation and sexual abuse of children, and in particular child pornography. However, the evaluators also observed a number of problems with the approach to child pornography, mainly of an organizational and prosecutorial nature. They point to the incredible expansion of digital technology and the opportunities for dissemination that the Internet offers. People can view child pornography images in relative anonymity at any time. Possession occurs on a larger scale and the nature of the material is more depraved than a decade ago. In the evaluators' view, adequate digital expertise, sufficient capacity and international cooperation are required to improve the effectiveness of the strategy and of the investigation and prosecution of offenders not just of end users, but also of those who produce and disseminate material through networks.

22. In 2005, the Digital Technology Department of the Dutch Forensic Institute conducted a large-scale study, by order of the Ministry of Justice, into ways of and barriers to investigating child pornography on the Internet. This study will be repeated every two years. As a consequence of this report, new legislation is being prepared that will raise the maximum prison sentence for making an occupation of the production, dissemination or possession of child pornography from six to eight years. This change in the law will expand the scope of the specific power to use technical equipment to record confidential communications to cover child pornography. In the case of crimes punishable by a maximum prison sentence of at least eight years, law enforcement officers have the power to enter a suspect's home without his/her permission to, for example, install a device on the suspect's computer to trace his/her communications with others. Raising the maximum sentence also demonstrates that the legislature considers the systematic production, dissemination and possession of child pornography to be a serious criminal offence.

23. As of March 2006, there are two websites where Internet-based child pornography can be reported: *Meldpunt Kinderporno op Internet*, an independent private foundation that has been receiving funding from the Ministry of Justice since 1998, and *Nationale Meldpunt Cybercrime*, the reporting website managed by the Netherlands Police Services Agency (KLPD), which has a specific child pornography reporting function. The KLPD checks incoming reports and, if necessary, closes down offending websites. In addition to the KLPD's powers to cut off access to IP addresses, a research committee will be created this year to examine the effectiveness of the blocking/filtering of child pornography on the Internet within Dutch national borders.

24. Given the rapid changes taking place on the Internet and the new possibilities for abuse of this medium, in order to use criminal law effectively to combat child pornography on the Internet, it is essential to regularly assess the tools and methods of investigation and prosecution that are in place to ensure they are up to date. Lawmakers face the challenge of ensuring that child pornography legislation remains digital-proof and enforceable. This entails, among other things, constant monitoring of developments in judicial practice and taking international developments into account in the legislative decision-making process. With regard to the latter, reference is made to the new Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, which is near completion. During the negotiations on this Convention, the Netherlands initiated in-depth discussion on whether the definition of the offence of "possessing" child pornography is adequate in the face of modern methods of obtaining access to child pornography on the Internet without actually saving it onto one's own computer. The Netherlands posed the question of whether "obtaining access to" child pornography should be criminalized along with "possession". A large number of member States have come out in favour of adding accessing child pornography to the list of criminal offences in the Convention, which is thus more comprehensive than existing international instruments. The phrase: "knowingly obtaining access, through information and communication technologies, to child pornography" has been added to the list of offences. This offence has been included in the convention as an option. The convention also includes other criminal provisions aimed at countering relatively new, mainly Internet-related forms of child abuse, such as "grooming". The Netherlands plans to approve and implement the convention quickly after its adoption.

## **Illegal placement of children with a view to adoption**

25. Illegal adoption occurs incidentally in the Netherlands. The Ministry of Justice oversees the prevention of illegal placement of foreign children and improvements in handling the cases that arise. Agreements will be made with all organizations concerned with this issue.

## **B. Penalties**

### **Custodial sentences and fines**

26. Article 9 of the Criminal Code contains an exhaustive list of the penalties laid down in Dutch criminal law that may be imposed on adults (persons of the age of criminal responsibility) after the charge is found proven and it has been determined both that the act is a criminal offence and that the offender is criminally liable. The Netherlands has a system of maximum prison sentences and maximum fines. The longest non-life prison sentence is 30 years.

27. The court is free to impose whatever sentence it deems appropriate between the general minimum and the specific maximum. Below is an overview of the specific maximum sentences that apply to the crimes relevant in this context:

Sexual exploitation 6 years/€67,000

Organ trafficking 6 years/€67,000

Offences punishable under the Organ Donation Act 1 year/€16,750

Forced labour 6 years/€67,000

Illegal adoption mediation for profit 6 months/€6,700

Illegal mediation without a profit motive €6,700

Abduction (across Dutch borders) 12 years/€67,000

Wrongful removal of a minor 6 years/€16,750

Child prostitution 6 years/€67,000

Child pornography 4 years/€67,000

28. There are six categories of fines in Dutch criminal law:

First category: €335

Second category: €3,350

Third category: €6,700

Fourth category: €16,750

Fifth category: €67,000

Sixth category: €670,000

### **Aggravating circumstances**

29. In general, when a person convicted of a crime commits a similar crime within five years of the prison sentence being declared final and conclusive, the statutory maximum sentence is increased by one-third.

30. For sexual exploitation, organ trafficking, forced labour and child prostitution:

Committed by two or more persons 8 years/€67,000

Victim under age 16 8 years/€67,000

Committed by two or more persons and victim 10 years/€67,000 under age 16

Causing grievous bodily harm or life endangerment 12 years/€67,000

Causing death 15 years/€67,000

31. For child pornography:

Making an occupation or habit of the offence 6 (will become 8) years/€67,000

Causing grievous bodily harm or life endangerment 12 years/€67,000

Causing death 15 years/€67,000

No specific mitigating circumstances have been identified.

32. It is worth noting that the Board of Procurators General (the national executive board of the Public Prosecution Service) recently drafted a directive on child pornography, launching a policy of recommending tougher sentencing in child pornography cases. The directive offers a framework to help public prosecutors draft their sentencing recommendations in child pornography cases and ensures that court judges are better informed about the background of the sentencing recommendation. The aim of the directive is to ensure that sentences imposed in child pornography cases are more appropriate to the gravity of the offences and public sentiment about crimes of this nature.

### **Additional punishments**

33. Criminal legislation allows courts to deprive a person convicted of a sexual offence or deprivation of liberty (human trafficking) of certain rights as an additional punishment. For example, if the offender committed the crime within the context of his or her job, the court may disqualify him or her from practicing that profession.

### **Statute of limitations**

34. Limitation periods are based on the maximum prison sentence.

For minor offences 2 years

For offences carrying a prison sentence of no more than 3 years 6 years

For offences carrying a prison sentence of more than 3 years 12 years

For offences carrying a prison sentence of more than 10 years 20 years

For offences punishable by life imprisonment no limitation period

35. The period of limitation for sexual abuse, prostitution, human trafficking and child pornography is at least 12 years and, as a rule, commences the day after the criminal offence is committed. However, in cases of sexual and other forms of exploitation and sexual abuse of children, the limitation period does not begin until the day the victim turns 18.

36. A period of limitation may be interrupted by a prosecutorial act. In such cases, the limitation period starts anew from that point. The maximum period of limitation due to interruption is twice the statutory duration of the period.

## **Legal persons**

37. Article 51 of the Criminal Code makes provision for prosecuting legal persons, persons who ordered the commission of a crime and those who exercised de facto control over the prohibited act. According to case law, both the failure of a natural person who exercised de facto control and the circumstance that the legal person profited from the criminal act are relevant to determining whether a legal person may be assumed to have participated in a crime. The deciding factor is whether the act can be attributed to the legal person.

38. Those who order others to commit offences and those who exercise de facto control over prohibited conduct are involved in the criminal act committed by the legal person, regardless of whether they officially are executives, directors or owners of the legal person. A person who is subordinate to the management may also be deemed to exercise de facto control.

39. Under article 51, paragraph 2 (3), of the Criminal Code, prosecution of the legal person does not rule out the possibility of prosecuting the person who exercises de facto control and/or the person who ordered the commission of the offence. Article 51, paragraph 2, provides that the penalties and non-punitive orders laid down in the law may, if relevant, be imposed on a legal person. In article 51, paragraph 3, companies without legal personality, partnerships, shipowning companies and special funds are equated with legal persons.

40. Under article 23, paragraph 7, of the Criminal Code, a fine may be imposed up to the maximum of the category immediately above. For example, a legal person can be fined up to €670,000 for selling a child (the maximum fine that may be imposed on a natural person for this offence is €67,000).

## **Attempting to commit a crime, participation and complicity in a crime**

41. Dutch criminal law contains general provisions concerning attempted crime, participation in a crime and complicity in a crime. Article 47 of the Criminal Code criminalizes causing a person to commit a crime, joint perpetration of a crime and inciting a person to commit a crime. Article 48 criminalizes complicity in a crime. Article 45 e criminalizes the attempt to commit a crime. Article 46a criminalizes attempting to induce another to commit a crime.

## **C. Adoption**

42. The Netherlands complies with The Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, which is aimed at preventing malpractice. The principles of the Convention are also applied in relation to non-contracting States. The only way to adopt a child legally is in accordance with the Act containing rules concerning placement in the Netherlands with a view to adoption and with consent in principle from the Ministry of Justice. Prospective adoptive parents have to take an information course, undergo family screening by the Child Protection Board and seek mediation by a Dutch licensed adoption agency. In some cases and under certain conditions, it is possible to adopt a child through aliens law.

## **II. PENAL/CRIMINAL PROCEDURE**

### **Jurisdiction**

43. Under articles 2 and 3 of the Criminal Code, Dutch criminal law generally applies to anyone who commits a criminal offence within the territory of the Netherlands or on board a Dutch ship or aircraft outside the Netherlands. Article 5 establishes the State's jurisdiction over Dutch nationals for offences committed outside the Netherlands. The general requirement that an offence be punishable under both Dutch law and the law of the country in which the crime was committed ("double criminality") has not applied to sexual exploitation and sexual abuse of children since 1 October 2002 or to non-sexual exploitation of children and trafficking in children's organs since 1 January 2005 (art. 5, para. 1, subpara. 3). As a general rule, Dutch criminal law is not applicable to non-Dutch nationals who commit criminal offences outside the Netherlands. However, since 1 October 2002, it does apply to persons habitually resident in the Netherlands who commit offences outside the Netherlands involving sexual exploitation or sexual abuse of children. On 1 January 2005 this was extended to non-sexual exploitation of children and trafficking in children's organs. The requirement of double criminality does not apply in such cases (art. 5a).

44. Under Dutch criminal law, jurisdiction does not as a rule depend on the victim's being a Dutch national. Hence, the Netherlands has not made use of the optional jurisdiction clause in the Optional Protocol. As stated above, the Netherlands has jurisdiction over

Dutch nationals who commit criminal offences outside its territory and has the right to prosecute them. The Netherlands also has the authority to extradite its citizens.

## **Extradition**

45. The Council Framework Decision on the European arrest warrant and the surrender procedures between member States is the basis for the surrender of persons within the EU. Under the Dutch Extradition Act, extradition is conditional on the existence of a treaty. The Netherlands has multilateral and bilateral extradition treaties with a great many countries. To comply with article 5, paragraph 2, of the Optional Protocol, the Extradition Act has been supplemented by the Optional Protocol. This makes extradition possible to States parties to the Optional Protocol with which the Netherlands has no extradition treaty. In cases where no specific extradition treaty applies to a concrete extradition request, the Netherlands may invoke the grounds for refusal set out in the Extradition Act.

## **Seizure, confiscation and closure of premises**

46. Dutch criminal law provides ample scope for seizure and confiscation. Articles 94 et seq. of the Code of Criminal Procedure allow seizures in the interest of establishing the truth or to prove illegally obtained advantage, complying with a forfeiture order and removal from circulation, and protecting the right of recovery in respect of a fine or an obligation to pay a sum of money to the State to deprive the person concerned of the proceeds of crime. A forfeiture order, removal from circulation and deprivation of proceeds of crime are forms of confiscation, which are regulated under Criminal Code articles 33 et seq., 36b et seq. and article 36e in conjunction with articles 511b et seq. of the Code of Criminal Procedure. General powers of investigation and of criminal financial investigation provide sufficient scope for investigating goods to be seized or confiscated (arts. 126 et seq., Code of Criminal Procedure). It bears mentioning that there is no public law provision for banking secrecy in Dutch law, i.e. banks and other financial institutions may not invoke client confidentiality in order to avoid their statutory obligation to provide information on their customers to law enforcement authorities. Dutch law of criminal procedure does not provide for reversal of the burden of proof, but it does allow the burden of proof to be divided on the basis of a "balance of probabilities".

47. The subject of international cooperation in the confiscation of goods is discussed below.

48. In the interests of compliance with the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, amendments were made to the Enforcement of Criminal Judgments (Transfer) Act (sects. 13 et seq.) and the Code of Criminal Procedure (arts. 552t, 552y and 552z). The Act sets out how the Netherlands enforces part or all of a confiscation order issued in a foreign state and how to transfer enforcement of a Dutch confiscation order to a foreign state. Articles 552t et seq. of the Code of Criminal Procedure provide for the international transfer and acceptance of confiscation proceedings. In accordance with section 2 of the Act, the Netherlands may accept the transfer of enforcement of foreign criminal judgments and take provisional measures to that end only on the basis of a treaty. The Optional Protocol could provide the required legal basis in the Netherlands' relationship with States parties to the Optional Protocol with which it does not have an appropriate treaty.

49. A legal person can be dissolved if its aims contravene public order, or prohibited and dissolved if its activities contravene public order. In such cases, the Public Prosecutor can submit a request to the court to dissolve and/or prohibit the legal person. Continuing the activities of a prohibited legal person is a criminal offence. The aims or activities of the legal person are deemed to contravene the public order only if they are in breach of the generally accepted principles of our legal order. Although there is no case law on this issue, it is likely that proceedings against a legal person engaged in offences such as those set out in article 3, paragraph 1 of the Optional Protocol would lead to prohibition and dissolution.

## **III. PROTECTION OF THE RIGHTS OF VICTIMS**

### **Legislation**

50. The legal status of victims, including the young, is established by the Code of Criminal Procedure and by the victim support guideline, which sets out the policy of the Board of Procurators General for the Public Prosecution Service and the police. There are two specific guidelines regarding the treatment of victims of sexual offences and human trafficking: one on the investigation and prosecution of cases of sexual abuse and another on the approach to human trafficking and other forms of exploitation in prostitution. Dutch victims' policy is grounded in three fundamental rights: the right to proper and, if necessary, personal treatment, the right to be informed about progress in the case against the suspect and the right to be informed about obtaining compensation and taking full advantage of a compensation arrangement in the context of criminal proceedings. A bill aimed at strengthening the position of the victim in the criminal justice process by enshrining a number of victims' rights in law is currently before parliament. Apart from the rights mentioned above, the bill includes the right to examine documents in the action, the right to add documents to the case file, the right to be assisted by counsel, the right to an interpreter and the right to speak at the hearing.

### **Reporting a crime**

51. When reporting a crime to the police, young victims (and their legal representatives) are entitled to special treatment by the police. The victim is given the opportunity to express his or her opinion on the facts and circumstances of the criminal offence. The police officers pay extra attention to these accounts when the victims involved are young. The victim support organization (*Slachtofferhulp*), specialized in helping young victims and allowing them to express what they need, is called in at an early stage.

### **Information provision**

52. When a young victim or his legal representative reports a crime, the police are obliged to provide them with general information about the procedure, compensation and victims' rights. If desired, the police will refer the young victim and/or his legal representative to the victim support organization. The police and the Public Prosecution Service will keep them informed about progress in the case against the suspect.

## **Victim protection**

53. In the Netherlands, it is possible for a person to report a crime without his/her address being recorded in the file. The victim may, for example, choose to designate the police station or the victim support organization as his/her place of residence.

54. In the Netherlands, interviews with victims in the preliminary judicial investigation phase of a case are not held in public. If a young victim must be examined as a witness at the trial, the judge may order a closed court hearing in order to protect the victim's privacy. Likewise a victim who is summoned to appear as a witness may request a closed court hearing (art. 269, Code of Criminal Procedure). If in the opinion of the examining magistrate a witness is under threat, the magistrate may order that the victim's identity be concealed on demand of the public prosecutor (art. 226a).

55. Intimidating a witness is a criminal offence in the Netherlands (art. 285a, Criminal Code). If a suspect (or persons instructed by him) intimidates a young victim and/or his family, they may file a report with the police and, if necessary, receive protection.

56. The criminal justice process in the Netherlands is designed to prevent direct confrontation between victims and defendants at public hearings. If a judge is of the opinion that a witness should be questioned more closely, he will usually refer the case to the examining magistrate. The victim will then not be examined at a public hearing, but in the presence of the defence, which will be given the chance to submit questions for the victim or to question the victim directly.

## **Interviewing victims**

57. Minor victims of sexual offences and child trafficking are questioned by specially trained investigating officers. A child-friendly interviewing studio can be used when questioning sex crime victims aged 4 to 12. As a rule, a behavioural expert is usually present to intervene if necessary. An audio and/or video recording must be made of the interview to prevent the victim from having to undergo questioning several times. The written statement may be used as evidence.

58. Young victims may have a lawyer present at the interview. However, it is more common for the victim to bring along a confidential adviser, such as a victim support worker. A child's parents are usually not admitted, because they could interfere with the process of establishing the truth.

59. If a preliminary judicial investigation takes place, the examining magistrate (sometimes referred to as an investigating judge) decides whether third parties will be admitted to the interview with the victim (art. 187c, Code of Criminal Procedure). In the Netherlands it is common practice to avoid questioning victims, especially children, at public hearings.

## **Victims' rights in criminal proceedings**

60. In serious cases, young victims may draft a statement about the impact of the crime. This statement is added to the case file. It is customary for the judge to read out the statement in court. Besides the victim may choose to exercise his/her right to speak at the hearing. Victims aged 12 and older have this right in all cases. Minors under the age of 12 have the right to speak if they are sufficiently able to understand their own interests (Code of Criminal Procedure, art. 336 and directive on the right to speak and victims' written statements). Victims are entitled to have an interpreter.

## **Support and assistance**

61. Young victims can receive emotional, practical and legal assistance from the victim support organization, whose employees are trained to assist and counsel young victims. Victim support can also assist by preparing the child for the hearing, helping him or her write a statement and fill in the criminal injuries compensation form, and by helping the victim prepare for exercising the right to speak at the hearing. Victim support can also offer assistance to a young victim's parents or other family members. The national victim support organization is subsidized by the Ministry of Justice.

## **Compensation**

62. In cases involving less serious offences where the perpetrator is known and the victim wants compensation, an attempt is made to make a compensation arrangement with the perpetrator before the hearing. The Public Prosecution Service can propose a compensation arrangement in lieu of prosecution (a so-called transaction, art. 74, Criminal Code). If the case is heard in criminal court, the victim or his/her authorized representative may join the proceedings to claim compensation (art. 51a, Code of Criminal Procedure) on condition that the claim is straightforward and there is a direct relationship between the offence with which the defendant is charged and the damage suffered. The victim can claim compensation for both material damage and suffering. If the court grants the compensation claim, it may also make what is known as a compensation order, whereby the State assumes responsibility for recovering the compensation from the perpetrator in the victim's stead. If the court finds the compensation claim inadmissible, the victim has the option of civil action. Victims of serious violent or sexual crimes are entitled to state-subsidized legal assistance.

63. If a young victim of a serious violent crime cannot otherwise obtain compensation, he/she may apply for partial compensation from the Criminal Injuries Compensation Fund (Criminal Injuries Compensation Fund Act).

## **Public Prosecution Service**



64. The Public Prosecution Service's directive on human trafficking designates cases involving minors as an explicit priority. The directive states that victims under 18 should be questioned by certified officials who have received special training.

## **Youth care**

65. Since the Youth Care Act came into force, the provinces and metropolitan regions are responsible for the Youth Care Offices in their area and the availability of sufficient and varied forms of care. This includes care for boys and girls who are victims of any kind of exploitation and who qualify for youth care. Youth care services are designed to offer assistance for the specific problems experienced by the target group (e.g. the effects of exploitation). The services are provided based on the client's specific problems, behavioural and otherwise. Although most youth care services are aimed at a broad group, there are some specialized programmes, such as the "Valor" project run by the Hoenderloo Group aimed at girls who have been victimized by "lover boys" (pimps who recruit new girls by feigning romantic interest in their victims, all the while fostering an emotional and financial dependence that ultimately leads to prostitution). The Youth Care Office can refer clients for mental health services if necessary.

66. The Asja house is a shelter for girls and young women who wish to escape forced prostitution. Asja is funded from a special-purpose grant for women's assistance allocated to the municipality of Leeuwarden and is open to victims of youth prostitution from all over the country. Since Asja has limited capacity, it is often difficult to find suitable accommodation for non-Dutch minors who, as a rule, enter the country through the asylum procedure, but receive a regular residence permit after filing a police report. The Ministries of Justice and Health, Welfare and Sport are working on a solution to this problem.

67. Pilot projects are currently being developed to prevent minor asylum seekers at risk of falling prey to human traffickers from disappearing into prostitution.

68. The "Pretty Woman" project in Utrecht is an example of an initiative in which municipal and provincial youth care services have joined forces. "Pretty Woman" offers information, individual assistance and group assistance to girls and young women who have, had or are in danger of having high-risk contact with boys and young men who force girls and women into prostitution.

69. From 2002 to 2006 runaways with very serious behavioural problems were, in some cases, placed in young offenders' institutions. In April 2005, the Government decided that responsibility for young people who had been placed in these institutions under civil law would be transferred from the Ministry of Justice to the Ministry of Health, Welfare and Sport. The capacity required to look after young people with serious behavioural problems will be created within three years, partly by converting a number of young offenders institutions, and partly by creating new intersectoral care services.

## **IV. PREVENTION OF TRAFFICKING IN CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY**

70. Prevention is an important part of the National Action Plan to Combat Trafficking in Human Beings. After all, prevention of any crime is always preferable to dealing with the crime after the event. This is all the more true for human trafficking, in which the victim's rights are inevitably violated. The Action Plan includes, among other things, measures aimed at educating potential victims and identifying early signs. The additional measures include specific preventive measures aimed at potential victims under the age of 18.

71. In relation to its work on minor victims of human trafficking, the Expertise Unit on Youth Prostitution has compiled a list of educational and preventive activities concerning youth prostitution and lover boys. Lover boys are pimps who use seduction techniques to charm girls and eventually persuade them to prostitute themselves. This is viewed as human trafficking in the Netherlands and, as such, is punishable under the Criminal Code. In addition, various other initiatives have been taken for the purposes of prevention and victim assistance. The Expertise Unit on Youth Prostitution was launched in February 2005 as the National Information Unit on Youth Prostitution to provide information, collate facts and figures and introduce good practices.

72. There are special activities aimed at educating girls who are at risk, including providing teaching packs, educational theatre, resistance training, information for parents and information aimed at migrants and unaccompanied minor asylum seekers. This information is available through a website. The Association of Netherlands Municipalities has developed information packs about the lover boy issue, describing projects and strategies being carried out by support organizations and local authorities. Many municipalities are providing information about lover boys and victim assistance in fulfillment of their preventive tasks under the Public Health (Preventive Measures) Act and the Social Support Act. Municipalities that do not yet have a strategy in place can obtain information and advice from Movisie, a knowledge centre of which the Expertise Unit is a part. A diverse offering of assistance has been developed, which includes compulsory, voluntary, residential, non-residential and outreach contact and contact with fellow victims.

73. The Expertise Centre for Human Trafficking and People Smuggling provides training courses on human trafficking to the police and other concerned parties, devoting special attention to minor victims. The Centre uses a list of warning signs, compiled in close cooperation with experts from the field, which includes signals that indicate a minor is involved in prostitution. In addition, interviews with minors are conducted by a specially trained investigating officer.

74. Employees of the Child Protection Board and young offenders institutions are properly trained to recognize and respond adequately to indications of the criminal offences covered by the Optional Protocol and assist the victims. The Child Protection Board has its own protocol which requires interdisciplinary consultation whenever there is suspicion that offences of this nature have been committed.

75. The demand side of human trafficking also needs attention. This entails raising awareness among employers and clients in the Netherlands that trafficking in human beings is illegal and teaching them to look out for possible signs that a person is a victim of trafficking. The ban on brothels was lifted in 2000, partly in order to curb human trafficking in the sex industry and protect minors.

from sexual abuse. Allowing prostitution businesses to operate under strict conditions makes it possible to regulate licensed establishments. In cooperation with *Misdaad Anoniem* ("crime anonymous"), the Foundation against Trafficking in Women and the police, the Ministry of Justice launched a public information campaign in January 2006 encouraging people to report crimes anonymously. The aim is to educate the public on how to recognize signs of human trafficking and encourage them to report abuses. This campaign has led to actual investigations and has truly raised public awareness.

76. In the spring of 2006 the Ministries of Economic Affairs and Justice and the business community jointly launched a major public information campaign to educate children and their carers about the risks and dangers of certain types of Internet use, such as webcam misuse.

77. The production and dissemination of material advertising the sale of children, child prostitution or child pornography is, as such, not a criminal offence in the Netherlands. However, action by the criminal justice authorities to tackle the offences described in the Optional Protocol can also extend to those who advertise such offences. Moreover, disseminating this kind of material may be punishable, as it may constitute soliciting an offence (if, among other things, the solicited offence is actually committed) or public incitement to commit a criminal offence. Advertising the sale of children or children's organs or mediation in illegal adoption would appear to be a theoretical issue in the Netherlands, but advertising child prostitution and child pornography is not. The Netherlands has no other specific measures of a non-legislative nature targeting the production and dissemination of such material.

78. With a grant from the Ministry of Health, Welfare and Sport in 2005, a module about lover boys was added to the widely used information pack for pre-vocational secondary school students entitled "Long live love" published by SOA Aids Nederland (Dutch expertise centre for HIV/AIDS and other sexually transmissible diseases). Prevention and resistance are the main aims of the publication. Local municipal health services encourage schools to use this teaching pack. The Ministry of Health, Welfare and Sport recently set up a new programme - Young People and Sexual Health - which is aimed at improving sex education and young people's resistance. An extra five million euros has been earmarked for this programme.

79. Schools have the opportunity to develop activities that are in keeping with the Optional Protocol. For example, as part of the public safety strategy, the sexual harassment prevention project (PPSI) provides support for schools. The website [www.ppsi.nl](http://www.ppsi.nl) provides information about issues like lover boys. PPSI is part of the website [www.schooleveiligheid.nl](http://www.schooleveiligheid.nl), a systematic information and advice service funded by and administered under the auspices of the Ministry of Education, Culture and Science.

80. The certificate of good conduct (VOG in Dutch) is another prevention-based method of combating child abuse. The VOG is a declaration issued by the Minister of Justice which is requested for a specific purpose. It states that after considering the interests of the person requesting the certificate, he/she is not considered a risk to society with respect to the purpose for which the VOG was requested. Judicial data and criminal records are used (section 28, Judicial Data and Criminal Records Act). The VOG system uses different screening profiles for different jobs. Each screening profile looks for specific offences. Candidates for jobs that involve working with children are, of course, screened for sexual offences. In principle, the VOG will not be issued to anyone who has committed a sexual offence in the previous 20 years. People who work in education are required by law to obtain a VOG, and some volunteer organizations have made it mandatory for their volunteers.

## **V. INTERNATIONAL ASSISTANCE AND COOPERATION**

81. At the international level, the Netherlands is active both bilaterally and multilaterally. In its bilateral contacts, the emphasis is on working with victims' home countries and cooperation aimed at suppressing criminal networks. Minor victims of human trafficking are a high priority in these bilateral agreements.

82. The EU Action Plan on trafficking in human beings, adopted in December 2005, contains several agreements aimed at improving international cooperation between operational services and NGOs, and improving the exchange of information and good practices. The Netherlands plays an active role in this. In addition, combating trafficking in human beings is one of the EU's priorities in the battle against organized and serious crime. The aim of these priorities is to dismantle criminal networks and block human trafficking routes in the EU, in cooperation with third countries. Europol and the EU's Police Chief Task Force fulfill an important role in these efforts and the Netherlands actively seeks cooperation with them.

83. Within the United Nations system, the Netherlands supports UNICEF and ILO programmes such as the International Programme on the Elimination of Child Labour aimed at suppressing trafficking in children and prostitution. The programmes are run in Central and Southern Asia, China, the Mekong region and in several African countries.

84. The OSCE Ministerial Council of 2006 adopted decision No. 15/06 combating sexual exploitation of children. This September the Netherlands will be taking an active role in the follow-up expert meeting on improving law enforcement's response in order to combat sexual exploitation of children on the Internet.

85. Finally, the Netherlands finances a programme run by the NGO ECPAT (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes) implementing multi-stakeholder training on combating trafficking in children for sexual purposes, with activities in six Eastern European countries.

86. For other forms of cooperation, reference is made to Chapter VII.

## **VI. OTHER INTERNATIONAL INSTRUMENTS**

87. The following international instruments are relevant to the Netherlands in relation to the issues covered by the Optional Protocol: the United Nations Convention against Transnational Organized Crime and its protocols (the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air), the ILO Convention No. 182 (1999) on Worst Forms of Child Labour Convention; the Council of Europe Convention on

Cybercrime; the Council of Europe Convention on Action against Trafficking in Human Beings; and the EU's Council Framework Decision on combating trafficking in human beings; Council Directive defining the facilitation of unauthorized entry, transit and residence; Council Framework Decision on the strengthening of the legal framework to prevent the facilitation of unauthorized entry, transit and residence, and Council Framework Decision on combating the sexual exploitation of children and child pornography.

88. The Netherlands was an active participant in the negotiations for the new Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. The convention has a multidisciplinary character and addresses a wide range of topics that concern the protection of children from sexual exploitation and sexual abuse in general. In addition to the penal provisions (such as those discussed above), there are preventive and protective measures, procedural provisions, intervention measures, and measures concerning national coordination and international cooperation.

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