

NETHERLANDS

CAT A/45/44 (1990)

435. The Committee considered the initial report of the Netherlands (CAT/C/9/Add.1) at its 46th and 47th meetings held on 25 April 1990 (CAT/C/SR.46 and 47).

436. The report was introduced by the representative of the Netherlands who, stating that a report on the Netherlands Antilles would be provided at a later date, informed the Committee of the autonomy that both the Netherlands Antilles and Aruba enjoyed within the constitutional framework of the Kingdom of the Netherlands. He recalled the role played by his country in the elaboration of the Convention, particularly in the original Declaration against Torture, which had been a joint Dutch-Swedish initiative.

437. The representative pointed out that the greatest difficulty in drafting Dutch legislation to implement the Convention had been the formulation of a suitable definition of the offence of torture. In order to satisfy its obligations under the Convention, the Netherlands had chosen to promulgate a separate act dealing with the offence of torture. Further problems had arisen regarding the obligation to establish universal jurisdiction, but those had been overcome and the principle had now been incorporated into Dutch legislation.

438. The representative from Aruba introduced the part of the report relating to the island, pointing out that Aruba had acquired its “status aparte” in January 1986, and had implemented its own Constitution and other legislation in accordance with the Charter, the highest source of law in the Kingdom of the Netherlands. He stated that although there was no specific regulation in the Aruban judicial system with respect to torture, the Constitution contained provisions making torture a criminal offence, and many articles of national law contained provisions to protect individuals against torture and other cruel, inhuman and degrading treatment.

439. The members of the Committee welcomed the report and thanked the representatives of the Netherlands for their short but succinct oral presentations. They felt, however, that although the report could be regarded as a pertinent analysis of the Convention, and reflected parliamentary discussion of its implementation, it lacked statistical data and illustrations of the practical application of the Convention within the country.

440. Members then asked, in general, whether the reference in the report to officials in the service of a foreign power meant a post in the foreign Civil Service, and whether this involved the application of extra-territorial law. Clarification was sought on paragraph 17 of the report, which suggested that the Convention’s description of prohibited acts invited interpretations based on analogy. They also wished for information on the expediency principle in the country’s legislation and the implication that the Public Prosecution Department could decide not to prosecute certain for reasons of public interest. Clarification was also requested on paragraph 18 of the report that torture was not an offence unless the victim was deprived of his liberty. It was noted that, under article 44 of the Criminal Code, being a police officer was regarded as an “aggravating circumstance” in the

abuse of authority and clarification was sought on that point. Finally, it was asked how the text of the Convention was disseminated in the Netherlands.

441. With reference to article 1 of the Convention, members requested further clarification of the definition of torture within Dutch legislation. It was asked why, when ratifying the Convention, the Government had made a reservation on article 1 regarding lawful sanctions. It was further asked how the problem of incompatibility between the Convention and domestic law could be resolved, since this was a general problem and not just applicable to the Netherlands.

442. Members noted that under articles 42 and 43 of the Criminal Code persons obeying orders would not be liable to punishment and, since that would be incompatible with article 2 of the Convention, clarification on that point was sought.

443. Turning to article 4 of the Convention, members wished to know the maximum term of imprisonment for offences carrying a life sentence. It was noted that no prosecutions for torture had occurred in the Netherlands since the Second World War, and confirmation of that was requested. Information was also sought on whether allegations of police brutality had occurred, and, if so, the response to such allegations.

444. It was asked why the Netherlands had decided not to make a reservation on paragraph 1 (c) of article 5 of the Convention if, as stated in paragraph 39 of the report, it was contrary to Dutch legal tradition to establish criminal jurisdiction on the basis of the nationality of the victim, and therefore the relevant provision of the Convention had not been implemented.

445. With reference to article 6, it was asked what were the conditions in which pre-trial detention or provisional arrest for the purposes of extradition could be suspended, and how such conditions served to guarantee the availability of the person concerned.

446. Clarification was requested on whether article 7 of the Convention gives effect to the aut dedere aut judicare principle, as was implied in paragraph 47 of the report.

447. Turning to article 8, further information was requested on the statement in paragraph 49 of the report that extradition may only take place pursuant to a treaty.

448. Members requested an elaboration of the brief information supplied on article 10 of the Convention, particularly on the training of police officers, prison personnel, the military and medical doctors in the treatment of prisoners; whether such training was provided in medical faculties in all universities and, if so, the number of hours spent on such teaching; who was responsible for such teaching; and whether it was provided at the pre- or post-graduate levels.

449. Precise information was requested on article 11 of the Convention, particularly on prison regulations and custody and treatment of prisoners. It was also asked whether incommunicado detention existed in the Netherlands and under which circumstances, and the length of pre-trial detention. Information was sought on the circulars to prison governors referred to in paragraph 59 of the report.

450. With reference to article 12 of the Convention, it was asked whether officials of the Public Prosecution Department would be obliged to obey illegal instructions given to them by government officials.

451. With regard to article 13 of the Convention, members requested further information on the post of Ombudsman, how he was appointed, and whether the post was parallel to other authorities or could be considered as an appeals body. They also wished to know whether judgement had been received on the case currently before the European Court of Human Rights concerning the acceptance of anonymous statements in courts in the Netherlands. It was asked why the creation of a new identity for a threatened witness would be unacceptable in the Netherlands, as was stated in paragraph 68 of the report. Clarification was sought on the statement contained in paragraph 69 of the report, that it was criminal to make explicit threats.

452. Turning to article 14 of the Convention, members asked for further information on the moral and medical aspects of rehabilitation of torture victims, other than financial compensation; whether applications had been made to the Criminal Injuries Compensation Fund, and whether they had been successful.

453. With reference to article 15 of the Convention, members wished to know whether or not that article was considered a sufficient juridical basis for the exclusion of evidence obtained under duress and, if so, how that was noted in law.

454. Members raised several questions on how the Convention was implemented in Aruba and considered that the report on the island lacked precise information on most of the articles of the Convention. A more detailed report was requested by 1 September 1990, to allow for its consideration by the Committee at its next session in November 1990, together with the report to be submitted concerning the Netherlands Antilles.

455. In response to the general questions raised by members of the Committee, the representative confirmed that the definition of a public official was related to the obligation to establish extra-territorial jurisdiction, and that so far the notion had been defined only with respect to Dutch law. He stated that an interpretation by analogy was not permitted under Dutch law, that under Constitutional law the Government and Parliament together made up the legislature, and “in the opinion of the Government” meant in the opinion of the legislature. With reference to the expediency principle, he pointed out that the Convention did not require mandatory prosecution for torture and States could rely on the expediency principle if that was the basic principle of their legal system. However, he could not imagine any case where prosecution for acts of torture could be excluded on the grounds of public interest. He informed the members that the deprivation of liberty had been formulated under domestic law in order to ensure that such deprivation had been legally and not illegally ordered. With regard to article 44 of the Criminal Code, he stated that paragraph 76 of the report fully explained the meaning of that provision in relation to aggravating circumstances and that by their very nature, the offences in question could be committed only by public officials. He stated that the text of the Convention was disseminated through the Official Journal.

456. Turning to article 1 of the Convention, the representative stated that, with regard to the

definition of torture, his country had tried faithfully to translate the language of the Convention into language with which practitioners of domestic law were familiar. One difficulty had been the use of “such as” (notamment) in article 1, and he referred members to the report for a full account of the Netherlands’ attempt to solve that problem. He said that his Government understood that the term “lawful sanctions” in paragraph 1 of article 1 of the Convention applied to sanctions which were lawful not only under national but also under international law. The purpose of its declaration, which was not a reservation, was to strengthen the Netherlands’ obligation under the universal jurisdiction principle, especially because of the uncertainty of the Convention’s provisions regarding forms of corporal punishment. He said that perhaps the question of incompatibility between the Convention and domestic laws of States was insoluble, since interpretations by States would, in all good faith, lead to different results. Indeed, a definitive answer to that question might make the task of drafting international treaties impossible.

457. With reference to article 2 of the Convention, the representative suggested that there may have been an error in translation in paragraph 32 of the report, since the original English text cited those articles of the Criminal Code which provided a defence on the grounds of orders from a superior officer, but not in the case of acts of torture.

458. With regard to article 4 of the Convention, the representative stated that the maximum duration of imprisonment, where provisions existed for life sentences, was limited to 20 years. For offences where no provision existed for life sentences, the maximum term was 15 years. He confirmed that there had been no prosecutions for torture in the Netherlands since the Second World War. He could not claim that there had never been instances of police brutality to obtain evidence, although he stressed that no prosecutions for offence had occurred. Any complaints received regarding police misconduct related to street violence or involved corruption or falsification of records, but not physical violence.

459. Turning to article 5 of the Convention, and in particular paragraph 1 (c), the representative stated that the Netherlands understood that the obligation to establish jurisdiction on the basis of passive personality only existed if it was thought appropriate by the State party. That was contrary to the basic principle of Dutch law, although the universality principle had been introduced in his country to cover fully the scope of the application of the principle of passive personality.

460. With reference to article 6, the representative stated that the measures to guarantee availability of persons when pre-trial detention had been suspended included the surrender of a passport and regular attendance at a police station.

461. In connection with the question of aut dedere aut judicare, the representative said that article 7.1 of the Convention contained a reference to the cases contemplated in article 5 of the Convention, which linked the cases to non-extradition to another party and not to any third State. That was not found in any similar convention, and he believed that that provision of the Convention against Torture thus represented a step forward in legal clarity.

462. Turning to article 8 of the Convention, the representative pointed out that paragraph 51 of the report clearly stated that the Netherlands accepted the Convention as the necessary legal basis required by its Constitution for extradition to other parties of the Convention.

463. With regard to article 10 of the Convention, the representative said that medical ethics were taught both at university and through seminars at human rights institutes. He agreed that the information provided on that article was short, but that was because as there had been no cases of torture for so long, practical problems had not been encountered. He added that recruitment standards for police and prison personnel were very high and involved a two-year training period. Prison staff were expected to maintain good relationships with detainees on a one-to-one basis. Possible intimidation of detainees was avoided by ensuring that there were always two prison officers present during the examination of a detainee or suspect. Members were informed that the Government fully supported Dutch doctors who, when working in foreign countries, refused to cooperate with authorities asking for fitness certificates to enable torture to be perpetrated. In November 1986, the Ministry of Foreign Affairs issued a formal declaration to the effect that it was a violation of the Principles of Medical Ethics proclaimed by the General Assembly of the United Nations in 1982 for medical personnel to participate in the certificate of fitness of prisoners. A copy of the declaration was provided for members.

464. In response to questions raised under article 11, the representative stated that the maximum period of pre-trial detention was 102 days, after which the case must be brought to court, and that such detention was under the constant scrutiny of the judiciary who ensured that detainees were seen within four days of arrest and then at regular intervals. Incommunicado detention did not exist in the Netherlands. Prisoners could be isolated for limited periods not exceeding 14 days, but solely as a disciplinary measure which in no way affected their right to communicate with lawyers, family or international bodies. The circulars referred to in paragraph 59 provided information on the Convention in language accessible to the layman.

465. With reference to the question raised under article 12, the representative explained that that was a theoretical problem as such a case had never occurred, but if it ever did it would mean the immediate political death of the minister involved in issuing such instructions; in practice the provision was seldom applied to individuals and only to the issuance of general instructions.

466. With reference to article 13, the representative stated that the Ombudsman was appointed by Parliament following an open election of candidates and that the post carried its own budget and therefore the Ombudsman was financially independent. He informed the members that the Netherlands had been convicted of a breach of article 6 of the European Convention on Human Rights, under a decision passed on 20 November 1989 by the European Court of Human Rights. With regard to the creation of a new identity for witnesses, he said that that would be totally unacceptable in the Netherlands, as it would be considered a gross violation of human rights to force a person to change his identity in order to testify in court.

467. With regard to article 14, the representative stated that as the Netherlands had had no cases of prosecution for torture, the question of moral and medical rehabilitation had not arisen. However, it did have experience of dealing with persons suffering from serious offences committed against them, either through war or acts of terrorism, and such experience would be available if necessary. Applications had been made to the Criminal Injuries Compensation Fund, but only by individuals against other individuals not against public officials, and they usually related to medical expenses of the victim.

468. With reference to article 15 of the Convention, the representative stated that the specific exclusion of evidence obtained through acts of torture was because, in addition to no such acts having occurred, Dutch legislation already contained a provision under article 338 of the Criminal Procedure Act that stated that only legally acquired evidence was admissible in court.

469. In response to questions and the request for an additional report made regarding Aruba pursuant to rule 67, paragraph 2, of the Committee's rules of procedure, the representative agreed that a further report on Aruba would be submitted together with the report on the Netherlands Antilles in time for the next session of the Committee against Torture.

470. In concluding their consideration of the report, the members of the Committee thanked the representatives for the detailed response to questions raised. They noted that torture did not occur in the Netherlands and that there had been no allegations of police brutality in obtaining evidence, and they believed that few countries could make such a claim. They wondered, however, whether the Netherlands had not placed restrictions on articles 1 and 4 of the Convention and suggested it might be useful for the Government of the Netherlands to examine those articles once again. The members believed that the discussion had been a fruitful one.

CAT A/46/46 (1991)

154. The Committee considered the initial report of the Netherlands Antilles (CAT/C/9/Add.2) and the additional report of Aruba (CAT/C/9/Add.3) at its 63rd and 64th meetings, held on 15 November 1990 (CAT/C/SR.63 and 64).

155. The reports were introduced by the representatives from those two autonomous parts of the Kingdom of the Netherlands.

156. The representative from the Netherlands Antilles provided information on the social and legal structure of the islands. He pointed out that the judiciary, the executive power and the legislature of the islands were governed by the same principles as were found in the Constitution of the Netherlands. The independence of the judiciary was guaranteed by the Constitution of the Netherlands Antilles. Judges were appointed for life. The Supreme Court of the Netherlands had the power of cassation in the Netherlands Antilles. Torture was not prohibited as such by the Constitution or by the Criminal Code of the Netherlands Antilles. However, certain provisions of the Constitution, the Criminal Code and the Code of Criminal Procedure dealing with the protection of the person contained measures which included the prevention and punishment of acts of torture. A draft Code of Criminal Procedure was now before the Parliament of the Netherlands Antilles and the commission that had drafted it would soon embark upon a revision of the Criminal Code. In that revision, consideration would be given to the need to introduce a provision whereby torture as such was expressly rendered punishable. In this connection, special attention would be given to universal jurisdiction in respect of torture and a study would be made to determine to what extent it was necessary to add the prohibition of torture in the Criminal Code.

157. Efforts were being made by the Netherlands Antilles to create and develop mechanisms for discharging obligations arising under treaties and statutes, and a number of priority measures had recently been taken to optimize the operation of the police force and to improve the prison system, and to exercise closer supervision over both. The Public Prosecutor's Office was required to examine every complaint concerning police behaviour, to condemn every form of torture and to institute criminal proceedings if torture occurred. Any interested party could file a suit with an independent court if the prosecution had not done its work properly. Victims of torture were entitled to seek redress by suing the State for damages both under the Code of Criminal Procedure and in a civil action for tort. The Netherlands Antilles provided requesting States with judicial assistance even in the absence of a treaty and it was making every effort to meet its obligations under the Convention within the limits of its capabilities as a developing country.

158. The representative from Aruba noted that the legal and judicial structure of the island were almost the same as those of the Netherlands Antilles. While the Constitution of Aruba did not expressly prohibit torture, it contained provisions under which torture would be considered a criminal offence. The relevant provisions of the Penal Code and the Code of Criminal Procedure of Aruba were considered in accordance with the provisions of the Convention although they did not make explicit mention of torture. However, the Aruban Government had set up a special commission recently which was studying whether to establish torture as a criminal offence in a separate act or in a new article of the Penal Code. The recognition of universal jurisdiction in cases

involving torture would also be considered. The Aruban Government was planning to enact legislation along more or less the same lines as the legislation of the Netherlands and would inform the Committee as soon as the new legislation had been adopted. Police Ordinances also formed an important part of Aruba's legal system and since 1986, when a national police force was established, new organs had been set up to settle matters relating to the police and the prison system. In the selection and training of both police and prison personnel increasing emphasis was being placed on proper behaviour, particularly in the treatment of prisoners. Special training programmes had also been introduced, and the new Prison Act that was under preparation would give prisoners the right to complain to a judge about their treatment by prison staff.

159. Members of the Committee thanked the representatives of the Netherlands Antilles and Aruba for the comprehensive and interesting oral introductions to the reports of their Governments.

160. With regard to the Netherlands Antilles, questions were raised in respect of the legal structure of the country. It was asked, in particular, whether there was a clear separation between the judicial, executive and legislative branches and how the Queen of the Netherlands, who was responsible for appointing judges, was assisted in her task. In that connection, details regarding the status of judges and, in particular, of the Attorney-General were requested. It was also asked whether the Queen played the role of a constitutional council or a supreme court in the country.

161. Referring to article 2 of the Convention, members of the Committee welcomed the establishment in the Netherlands Antilles of the commission assigned to undertake a general review of the Criminal Code and the Code of Criminal Procedure and wished to know more about its composition, its status and its programme of work. They wished to know also whether any violations of article 3 of the Constitution on the protection of nationals and foreigners had been recorded and how information on the prohibition of torture was disseminated. Concerning rules governing the interrogation of suspects, it was asked how long they could be held in pre-trial detention, by whom such detention could be ordered and what the rights of suspects were, in particular, with regard to informing their relatives of their detention and visits by a doctor and a lawyer. It was also inquired what the instructions to prison guards were in cases of riots and whether there was in the Netherlands Antilles a standing military force and, if so, what measures were taken to protect civilians from the military.

162. In respect of article 3 of the Convention, members of the Committee wished to know what the scope of the laws of the Netherlands Antilles on extradition was, especially with regard to non-refoulement, who the members of the commission that had been appointed to revise the Admission and Expulsion Act were, and whether foreigners subject to extradition procedures could lodge appeals and, if so, to whom.

163. Turning to article 4 of the Convention, members of the Committee stressed the importance of a precise definition of torture in domestic law and its classification as a specific crime and requested information on the exact nature of the offences covered by the articles of the Criminal Code of the Netherlands Antilles relating to torture. It was also asked whether the death penalty or corporal punishment applied in the country.

164. Members of the Committee also stressed the importance of the principle of universal

jurisdiction, which was essential in order to guarantee the implementation of articles 5 and 7 of the Convention. In addition, they wished to know whether the Netherlands Antilles would take necessary measures to ensure the implementation of article 6, paragraph 1, of the Convention, what procedure was followed to institute proceedings in cases of criminal offences which fell within the jurisdiction of courts in the Netherlands Antilles and whether persons facing the death penalty could be extradited.

165. With regard to article 8 of the Convention, members of the Committee observed that the constitutional provision making the extradition of aliens possible only pursuant to a treaty was not in conformity with the provisions of that article.

166. Referring to article 9 of the Convention, members of the Committee wished to know how the Netherlands Antilles provided judicial assistance to other countries, in practice, and how requests for judicial assistance would be affected by the revision of the Code of Criminal Procedure.

167. With reference to articles 10 and 11 of the Convention, information was requested regarding the education of medical personnel specifically about the prohibition of torture and concerning legal provisions relating to the prison system and conditions of detention.

168. In connection with articles 12 and 13 of the Convention, details were requested on the cases, referred to in the report, involving police officers under investigation and the outcome of that investigation.

169. In respect of article 14 of the Convention, clarification was sought about the direct responsibility of the State for acts of torture perpetrated by a public official. It was also asked whether the provisions relating to redress applied to foreigners and how victims of acts of torture could obtain compensation.

170. With reference to article 15 of the Convention, members of the Committee wished to know whether there had been any cases in the Netherlands Antilles in which confessions or evidence had been obtained by coercion and what legal provisions there were in respect of the admissibility of evidence and confessions.

171. With regard to Aruba, members of the Committee asked for further details on the way judges were appointed and on their relationship with the executive. Referring to article 2 of the Convention, they wished to know whether corporal punishment was practised in Aruba and whether there was a standing military force and, if so, whether there were special regulations relating to its activities.

172. Referring to articles 13 and 14 of the Convention, members of the Committee wished to receive further information on measures taken in Aruba to allow prisoners to file complaints with judges and asked what provisions had been made for the medical rehabilitation of victims of torture.

173. Replying to questions raised by members of the Committee, the representative from the Netherlands Antilles stated that the judicial, executive and legislative powers were independent. The only exception to that principle was provided for in article 50 of the Charter for the Kingdom,

according to which the Queen could suspend or repeal any act or measure that was contrary to the law. The Attorney-General was independent in that his powers were defined by law and the Minister of Justice could not give him any instructions contrary to the law.

174. In connection with article 2 of the Convention, the representative informed the Committee that the revision of the Code of Criminal Procedure and the Criminal Code was being carried out by a joint commission composed of prosecutors and court officials from Aruba and the Netherlands Antilles and a university professor from the Netherlands. The Code of Criminal Procedure was being fully revised, whereas the Criminal Code was simply being amended to include provisions on torture. He also provided detailed information concerning procedures for arrest and custody and stated that interrogations had to be conducted in accordance with the provisions of the Code of Criminal Procedure. Complaints against police officers could be made to a specially established commission or filed with a member of the police or a court. There was no separate army in the Netherlands, the Netherlands Antilles and Aruba but, rather, one army for the entire Kingdom. The Code of Conduct for Military Personnel applied to the Kingdom as a whole.

175. Referring to article 4 of the Convention, the representative stated that although an article of the Criminal Code provided for the death penalty in case of treason, it would soon be repealed. There had been no executions in the Netherlands Antilles during the present century.

176. With reference to articles 5 to 8 of the Convention, the representative indicated that extradition measures in the Netherlands Antilles were ordered by the Supreme Court, which took account not only of national laws but also of international treaties. In the absence of an extradition treaty, article 8 of the Convention applied. If the person whose extradition was requested could face the death penalty, extradition was not granted.

177. In connection with articles 10 and 11 of the Convention, the representative explained that doctors were particularly aware of the question of the protection of human rights, that in penal institutions, minor and adult prisoners were kept in separate quarters and that convicted and accused persons were not held in the same prison.

178. With reference to article 15 of the Convention, the representative stated that there had not been any cases in the Netherlands Antilles of evidence obtained under torture. In the event of non-compliance with legal procedures, the evidence obtained was regarded as unlawful and those responsible for violating those procedures would be prosecuted.

179. In her reply, the representative of Aruba stressed that most Aruban institutions and laws were the same as those of the Netherlands Antilles, of which Aruba had been a part until 1 January 1986.

180. Referring to articles 13 and 14 of the Convention, the representative indicated that, pending the establishment of the Complaints Commission, complaints against members of the police were lodged with an independent judge in accordance with the Code of Civil Procedure. The question of complaints by detainees was dealt with in a bill now before Parliament. The corresponding act should enter into force in Aruba within one year. The representative added that, if necessary, a person who had been subjected to torture would be cared for by specialists from the Netherlands.

Concluding observations

181. In conclusion, members of the Committee thanked the representatives of the Netherlands Antilles and Aruba for their cooperation. They noted with satisfaction that both countries adequately implemented the Convention and hoped that existing legislative gaps would be filled by provisions that were in keeping with those of the Convention.

CAT A/50/44 (1995)

116. The Committee considered the second periodic report of the Netherlands (CAT/C/25/Add.1, 2 and 5) at its 210th and 211th meetings, held on 25 April 1995 (CAT/C/SR.210 and 211), and adopted the following conclusions and recommendations.

A. Introduction

117. The Kingdom of the Netherlands submitted its three reports (European part of the Kingdom, Antilles and Aruba) partly on time.

118. The Committee thanks the three respective Governments for their comprehensive reports. The reports were not accompanied by the core document providing general information on the State party, as required in the Committee's guidelines (CAT/C/14), but apart from this, they met all the reporting requirements of the Convention.

119. The Committee listened with interest to the oral reports and clarifications of the representatives of the three parts of the Kingdom.

120. The Committee wishes to thank the delegation for its reports and for the spirit of openness and cooperation in which the dialogue was conducted.

B. Positive aspects

121. The Committee notes with satisfaction that it has received no information about alleged perpetration of torture in any of the three parts of the Kingdom.

122. The Committee also notes that both Antilles and Aruba are preparing special laws to incorporate fully the provisions of the Convention in domestic law.

123. The Committee also notes with satisfaction that, according to the oral information given, force - physical or pharmacological - is no longer used in connection with the expulsion of asylum seekers.

C. Subjects of concern

124. With regard to the European part of the Kingdom of the Netherlands, the Committee has questions about the way in which compensation provisions apply in practice.

125. With regard to the Netherlands Antilles and Aruba, the Committee is concerned that the new penal legislation appears not to be in force yet and thus it is not clear whether the provisions of the Convention are part of the domestic law.

126. With regard, in particular, to the Netherlands Antilles, the Committee is concerned about the severeness and the relatively high number of cases of police brutality which are described in the

Government's report, as well as by information provided to the Committee by non-governmental organizations. The Committee is particularly concerned about the apparent failure of the Netherlands Antilles authorities to investigate fully and deal with such cases.

127. With regard, in particular, to Aruba, the Committee recognizes that conditions in detention places are far from being satisfactory and notes that the Government has acknowledged that it is aware of this situation.

D. Recommendations

128. The Netherlands Antilles and Aruba should give high priority to speeding up the procedure for the adoption of the act which will incorporate the provisions of the Convention in domestic law.

129. The Netherlands Antilles should take strong measures to bring to an end the ill treatment which reportedly occurs in police stations and to ensure that such allegations are speedily and properly investigated and that those who may be found guilty of acts of ill treatment are prosecuted. In this regard, the Committee would appreciate receiving data concerning the number of investigations by the public prosecutor and the outcome of them.

130. Aruba should take steps to change the situation with regard to conditions in police and prison premises and especially to shorten the period of 10 days in police custody which is allowed under the law.

131. Finally, the Committee is pleased that the Netherlands has agreed to provide in writing additional information in response to the questions on the compensation for victims of torture which were raised by the Committee. The Committee would also appreciate receiving additional information on whether or not the public prosecutor initiated an investigation to prosecute General Pinochet when he was on the territory of the Netherlands and therefore under its jurisdiction. If the answer is yes, the Committee would like to know on what grounds the investigation was initiated.

CAT A/55/44 (2000)

181. The Committee considered the third periodic report of the Netherlands (CAT/C/44/Add.4 and 8) at its 426th, 429th and 433rd meetings on 11, 12 and 16 May 2000 (CAT/C/SR.426, 429 and 433), and adopted the following conclusions and recommendations.

1. Introduction

182. The Committee notes with satisfaction the third periodic report of the Netherlands (European part of the Kingdom, Antilles and Aruba), which conforms to the general guidelines for the preparation of periodic reports as to content and form.

183. The Committee thanks the three Governments concerned for their comprehensive reports as well as for the oral reports and clarifications made by the delegations, which displayed a spirit of openness and cooperation.

184. The Committee welcomes the three accompanying core documents which, although not submitted within the prescribed time, facilitated the examination of the reports.

185. The Committee regrets that no Aruba delegation could be present during the examination of the reports. However, the Committee appreciates the written information and answers provided by Aruba to the Committee.

2. Positive aspects

186. The Committee particularly notes with satisfaction the following:

- (a) That it has received no information about allegations of torture in the State party;
- (b) As of early 1999, a special National War Criminals Investigation Team has been set up and made operational in the Netherlands (European part), to facilitate the investigation and prosecution of war crimes, which can include torture as specified in the Convention;
- (c) The State party's contributions to the United Nations Voluntary Fund for the Victims of Torture;
- (d) Clarifications by the representative of the State party with regard to the non-prosecution of General Pinochet when he was on the territory of the Netherlands. While regretting the lack of prosecution, on the grounds of non-feasibility, the Committee notes with satisfaction that the State party representative has affirmed that immunity from prosecution does not at present hold under international human rights law;
- (e) The Netherlands Antilles and Aruba have both recently made the act of torture punishable in criminal legislation, as a separate criminal offence, and have also established the principle of universal jurisdiction;

(f) The Netherlands Antilles has established a National Investigation Department to investigate allegations of breach of authority by public servants and a public Complaints Committee on police brutality. In addition, several short and medium-term measures have been taken to ameliorate conditions in prisons;

(g) The assurances that, despite privatization of prisons in the Netherlands Antilles, the State's obligations under the Convention continue to apply;

(h) Measures taken in the Netherlands Antilles to ensure that officials visit the prisons once a week.

3. Subjects of concern

187. The Committee expresses its concern about:

(a) Allegations of police actions in the Netherlands (European part), involving illegitimate body searches, inadequate deployment of female officers, and some excessive use of force by the police in connection with crowd control;

(b) Allegations of inter-prisoner violence, including sexual assault in Koraal Specht prison in the Netherlands Antilles;

(c) The daily use of a riot squad as a means of prisoner control in Koraal Specht prison in the Netherlands Antilles;

(d) Some allegations of police brutality in Aruba and the absence of information, including statistics, regarding the prison population.

4. Recommendations

188. The Committee recommends that:

(a) Measures be taken in the Netherlands (European part) to fully incorporate the Convention in domestic law, including adopting the definition of torture contained in article 1 of the Convention;

(b) Despite improvement already made in the Netherlands Antilles, effective measures should continue to be taken to bring to an end the deplorable conditions of detention at Koraal Specht prison;

(c) The practice of controlling prison discipline by the use, on a virtually daily basis, of riot squads, in the Netherlands Antilles should be reviewed and, in particular, efforts should be made to develop alternative means to prevent inter-prisoner violence. Such means should include the proper training of prison personnel;

(d) Relevant statistics should be provided to the Committee, disaggregated by gender and

geography.