

NETHERLANDS

CCPR A/37/40 (1982)

92. The Committee considered the initial report (CCPR/C/10/Add.3 and 5) submitted by the Government of the Netherlands at its 321st, 322nd, 325th and 326th meetings held on 21 and 26 October 1981 (CCPR/C/SR.321, 322, 325 and 326).

93. The report was introduced by the representative of the State party who summarized the major characteristics of the legal and political systems of the Netherlands that were relevant to the Covenant. He pointed out that the new Constitution which would probably enter into force in the first half of 1982 would retain the provisions concerning the relationship between domestic law and international law; that, inspired by the International Covenants on Human Rights, it would contain an extensive catalogue of basic rights; that a new article had been included which laid down that the death penalty could not be imposed; that there had been 48 reported cases in which the Netherlands courts had mentioned provisions of the Covenant in their opinion; that, since the report had been prepared, a law had been enacted broadening the field of application of the provisions of the Penal Code relating to racial discrimination; and that a law had been enacted in 1981 creating the office of National Ombudsman with extensive powers to investigate complaints by individuals about improper behaviour on the part of the authorities. He also informed the Committee that several bills and new statutory provisions were under preparation concerning sex discrimination, equal treatment and protection of privacy and that, in the light of the Committee's general comment 4/13, 10/ various studies and affirmative actions were being conducted and undertaken with a view to eliminating any existing distinctions between men and women and to improving the position of disadvantaged groups in society.

94. He stated that the Netherlands Antilles was currently engaged in discussions with the Kingdom of the Netherlands on ways of achieving a new constitutional relationship between the two countries and attached great importance to the right of peoples to self-determination; and that, in the event that the island territories of the Netherlands Antilles opted for independence, the Netherlands Government had agreed to support their recognition as independent States. He pointed out that many of the provisions regarding the rights set out in part III of the Covenant were directly applicable to the Netherlands Antilles and could be applied by the courts without any legislation being required; and that, where legislation was needed to implement the Covenant the legislative texts were expressly mentioned in the report. He explained the reasons for the reservations made by the Kingdom of the Netherlands upon ratification.

95. Members of the Committee praised the high quality of the report which had been prepared in accordance with the Committee's guidelines and had taken account of the general comments adopted

10/ Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 40 (A/36/40), annex VII.

by the Committee at its thirteenth session, but noted, however, that no mention was made of any difficulties encountered in its implementation. They commended the adherence of the Netherlands to the Optional Protocol which had the effect of providing greater protection for the rights of individuals and they asked whether copies of the Covenant in Dutch were readily available to the public; whether the Covenant had been brought to the attention of the police, prison officers and public officials in general as part of their training and whether, in conformity with United Nations resolutions, the Netherlands had established a national commission for the promotion of human rights and, if not, whether there were any private groups for that purpose in the country. More explanation was requested of the consequences of the complex constitutional relationship between the Netherlands and the Netherlands Antilles in international law.

96. Commenting on article 1 of the Covenant, members noted that the legal framework linking the Netherlands and the Netherlands Antilles could not be amended by one country acting unilaterally. Information was requested about the conclusions of the working party referred to in the report concerning the independence of the Netherlands Antilles, and about the results of the round-table conference held in February 1981 between the Netherlands, the Netherlands Antilles and its four island territories concerning self-determination. It was also pointed out that the Netherlands' firm position regarding self-determination could not be reconciled with the economic, political, cultural and military relations it maintained with Israel and South Africa which were extremely hostile to that principle, and it was asked what steps the Netherlands had taken to help the peoples of South Africa, Namibia and Palestine seeking the right to exercise self-determination.

97. As regards article 2 of the Covenant, it was asked whether the statement in the report that the Netherlands legal system left no scope for discrimination on grounds referred to in this article meant that the prohibition of discrimination was held to be a provision relative to the application of the laws but not to their formulation; what obstacles there were to the achievement of equal opportunities for all living in the country, including foreigners and stateless persons; and whether the provision in the Constitution of the Netherlands Antilles that everyone in the territory shall have an equal right to the protection "of his person and property" was broad enough to cover all the aspects of non-discrimination, including the freedom of assembly, religion and association.

98. It was noted that the report indicated that most provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms were directly applicable in the Netherlands but that, in the case of an international agreement, such as the Covenant, which, by its substance, was capable of extending rights to and be applicable to all persons, it was up to the courts to determine whether it contained substantive rights and should therefore be regarded as directly applicable and having binding force on all concerned without the need for any legislation. Members of the Committee asked whether that did not give rise to an element of legal uncertainty for the individual; to what extent civil servants in the lower ranks of the administration could respect the basic rights of the Covenant when the Government itself did not know which provisions of the Covenant were directly applicable; whether any provision of the Covenant had been applied directly; and whether or not the provisions of articles 3, 20 and 26 of the Covenant had third-party applicability. With reference to the statement of the representative that no less than 48 times the provisions of the Covenant had been referred to in court decisions, it was asked whether the Covenant had merely served to confirm the courts' interpretation of domestic provisions or whether the courts had evolved a rule whereby national legislation should be construed in accordance with

the Netherlands international obligations; whether those courts had ever set aside a law as being inconsistent with obligations under the Covenant or the European Convention on Human Rights; and what remedy was available to a person against a court decision that the relevant provisions of the Covenant could not be applied to his complaint. It was also asked whether the Government planned to introduce a system of judicial review of parliamentary enactments under the new Constitution.

99. Information was also requested on whether the Covenant had been referred to in the decisions of the courts of the Netherlands Antilles and on whether it was intended to extend the ombudsman system to the Antilles. Reference was made to the statement in the report to the effect that, if the Governor of the Antilles did not, as he was entitled to do, annul a regulation by an island territory administration restricting the individual in the exercise of basic rights, any individual may institute legal proceedings whereupon the court could declare the regulation inoperative. It was asked whether the court in question was a court in the Antilles or the Supreme Court of the Kingdom of the Netherlands; whether the term "individual" referred only to an alleged victim or whether it was possible for any individual who claimed that a given legislative measure or administrative act was contrary to the Covenant to institute an actio popularis; and whether all the many remedies available, up to and including a petition to the Queen, had to be exhausted before the Government of the Netherlands would hold the Human Rights Committee competent to consider the merits of a case brought by an individual claiming some violation of the Covenant.

100. In relation to article 4 of the Covenant, reference was made to the proposed constitutional amendments on states of emergency permitting derogation from the right of demonstration and the right to profess one's religion or belief other than in buildings and enclosed spaces, and it was asked whether such an amendment would be fully in conformity with the provisions of this article when read in conjunction with article 18 of the Covenant.

101. Commenting on article 6 of the Covenant, members noted the absence in the report of information on any positive measures that might have been taken to protect the right to life and that the Netherlands legislation appeared to be particularly lenient with regard to drug-taking, and wondered whether that approach was not in conflict with this article which requires the right to life to be protected by law. It was asked what measures the Government had taken to reduce infant mortality and what the rate of infant mortality was in the Antilles in comparison with that of the Netherlands. They commended the intention of the Netherlands to abolish the death penalty and asked for what offences the death penalty could still be imposed.

102. As regards articles 7 and 10 of the Covenant, it was noted that the law did not contain a definition of torture and that no mention was made in the report of any legislative provisions designed to give effect to the prohibition of torture or of cruel, inhuman or degrading treatment or punishment, and it was asked whether there was a system of surveillance and control to prevent prisoners from being subjected to ill-treatment; and whether the maximum penalty of nine years was sufficient for ill-treatment resulting in the death of the victim. Clarification was requested on the position in these matters with regard to the Antilles; whether corporal punishment was expressly prohibited under the legislation of the Antilles and whether there was anything comparable to the Netherlands Board of Visitors in the island territories. It was also whether the Netherlands had laws prohibiting a person from being subjected, without his free consent, to medical or scientific

experimentation.

103. Commenting on article 9 of the Covenant, members pointed out that more information was needed with regard to the implementation of this article as well as on how each of the safeguards contained in it was implemented in the legal and judicial system of the Antilles. They asked whether in the case of detention of mentally ill persons, judges would simply make sure that the authorities had not exceeded their competence or whether they would also seek to determine whether the person detained really was mentally ill; and what procedures existed in the Antilles to ensure that persons were not detained unjustifiably in institutions for the mentally ill. Clarification was requested on the proposed constitutional amendments relating to habeas corpus, including the extent of the courts' powers in that matter; whether the examining magistrate could automatically extend the period of detention or whether extension had to be justified by the nature of the investigation; whether detention in cases of arbitrary arrests had resulted in any claims for compensation and whether a person arbitrarily had a statutory right to compensation. Clarification was also requested of article 106 of the Constitution of the Netherlands Antilles relating to the exceptional cases provided for by law under which a person might be detained for specified periods without a court order.

104. With reference to article 11 of the Covenant, it was observed that the procedure described in the report appeared unduly complicated and seemed to be incompatible with this article and some explanations were requested on the matter.

105. In connection with article 12 of the Covenant, reference was made to restrictions imposed on the entry and residence of persons not associated with the Netherlands Antilles, on the basis of certain criteria, in respect of which the Government of the Netherlands had entered a reservation, and it was asked whether there were similar restrictions on the right of inhabitants of the Antilles to settle in the Netherlands and whether any other restrictions were contemplated under this article.

106. As regards article 13 of the Covenant, it was noted that it was possible to apply for an interlocutory injunction to prevent expulsion from the country, and it was asked what results were obtained from such a procedure; whether an alien who had been resident in the Netherlands for less than a year and who was the subject of an expulsion measure could have his case reviewed by the Minister of Justice; and whether, in such cases, the person in question was represented before the Minister of Justice.

107. Commenting on article 14 of the Covenant, members noted that sufficient information was lacking in the report on most of the safeguards stipulated in this article, and it was asked who appointed judges and whether they were irremovable; in which cases citizens could be tried in military courts; whether the Government of the Netherlands agreed that the presumption of innocence concerned not only judges but also all public authorities; and whether the provision under which serious offences committed in the course of their duties by Government officials were tried by the Supreme Court, was also applicable to anyone aiding and abetting such officials. It was also pointed out that the provision of interpretation to the accused who did not understand the Dutch language should be a right and not merely a practice, as mentioned in the report, that could be departed from in certain circumstances.

108. In connection with article 17 of the Covenant, it was asked what the present legal position was

regarding intelligence activities such as telephone tapping; in what circumstances it was possible to derogate from the provisions protecting privacy; which authorities were designed by law to decide on such derogation and what the actual practice was; whether a person who alleged that his rights under this article had been violated was entitled under the Netherlands legal system to sue for moral as well as material damages; and what the computerized recording of personal data referred to in the report involved and what kind of data were recorded.

109. As regards article 19 of the Covenant, reference was made to an instruction issued by the Prime Minister on the freedom of civil servants to express their opinions outside the civil service and it was pointed out that the Covenant required that any restrictions imposed on the freedom of expression should be laid down by law. Information was requested on the “lesser authorities” which may place restrictions on certain forms of the freedom of expression, and on how the Government of the Netherlands intended to distinguish between commercial advertising aimed at prospective buyers and information for the protection of consumers. Confirmation was requested that the Antilles’ Governor’s Decree requiring, inter alia, speeches and radio programmes to be submitted to the local chief of police for approval, three days before the broadcast, though still in force, was not applied in practice.

110. In relation to article 20 of the Covenant, the hope was expressed that a bill against war propaganda, similar to the one submitted to the Antilles Parliament, would be laid before the Netherlands Parliament since this article required that war propaganda should be prohibited by law. Information was requested on the position of the Netherlands Government with regard to the prohibition of any advocacy of national, racial or religious hatred; on how the existence of a fascist party in the Netherlands could be reconciled with its obligations under this article; whether the relevant provisions of the Netherlands Penal Code had ever been applied to persons providing material or other support to the apartheid régime and whether there had been any court decisions on that matter.

111. With regard to articles 21 and 22 of the Covenant, it was asked on what grounds a permit for an open-air meeting could be denied and what remedy was available in such cases; whether the Government of the Netherlands had experienced any difficulty in implementing International Labour Organisation conventions concerning the freedom of trade unions; and whether parties could be formed to promote certain ideologies such as Nazism and racism.

112. Commenting on articles 23 and 24 of the Covenant, members requested more information on the social measures taken for the benefit of the family and of the child and asked whether it was compatible with the Covenant to require the parents’ consent for a person under the age of 21 to marry; whether acceptance of free marriages and homosexual relationships was consistent with the provisions of the Covenant which expressly recognized the family as the natural and fundamental group unit of society and conferred upon the family the right to be protected by society and the State; whether in the event of divorce, alimony was paid by one of the spouses if either husband or wife was unable to work; whether children born of de facto unions enjoyed the same status as legitimate children under the law; what the consequences were if one of the adoptive parents was a foreigner; and what safeguards existed to protect children from pornography. Reference was made to the Civil Code of the Antilles which appeared to protect families resulting from marriage, but not de facto families, and it was pointed out that that situation was particularly prejudicial to women,

who often contributed to running a home or a business without having the right to a settlement when a union was dissolved.

113. In connection with article 25 of the Covenant, it was pointed out that certain limitations on the right to vote, as mentioned in the report, did not appear to be reasonable and hardly justifiable in the light of the provisions of this article, and it was asked whether only certain groups of persons were able to hold certain posts in the civil service and what the position of women was with regard to access to employment in those posts. With reference to the introductory statement of the representative to the effect that the restrictions on appointment and termination of employment of women in the civil service of the Antilles applied only to married women who were not considered bread-winners, it was pointed out that it followed that protection against discrimination was extended only to single women or married women who were bread-winners and it was asked whether that conclusion stemmed from a clearly stated legal provision or from an administrative interpretation.

114. As regards article 27 of the Covenant, it was noted that the report did not contain sufficient information on ethnic, religious and linguistic minorities which certainly existed in view of the country's colonial history and that more information was needed on this matter, as well as on the composition of the population of the Antilles and on how the provisions of this article were dealt with in the legal context of the country.

115. Commenting on questions raised by members of the Committee, the representative of the Netherlands stated that, owing to lack of time, replies to some questions would have to be addressed to the Committee in writing; that the obstacles and difficulties affecting the implementation of the Covenant would be dealt with in subsequent reports; that, in addition to the information reflected in the report concerning publicity given to the Covenant, the Dutch text of the Covenant had been published in the Netherlands Treaty Series; that his Government did not intend to establish a national human rights commission, as recommended by the General Assembly, because the structure of legal and administrative remedies as a whole ensured the proper observance of human rights; that there were several non-governmental organizations in the Netherlands concerned with the protection of human rights; and that the Government was in the process of creating an Independent Advisory Committee to deal with human rights in the area of foreign policy.

116. As to the questions raised concerning the consequences of the constitutional relationship between the Netherlands and the Netherlands Antilles in international law, he pointed out that sovereignty rested with the Kingdom of the Netherlands which was a composite and not a united State, currently consisting of two countries, each having its own legal system. A treaty to which the Kingdom was a party and whose provisions were directly applicable for both countries, as was the case of the Covenant, could therefore be implemented differently in the two countries.

117. Replying to questions raised under article 1 of the Covenant, the representative acknowledged that, under the Charter of the Kingdom, the legal framework linking the Netherlands and the Netherlands Antilles could not be amended unilaterally, but that the Netherlands Government had decided to support recognition of one or more independent States, depending on whether the islands chose to become independent together or separately. He informed the Committee that the representatives of the four island territories in the Working Party had taken different positions

concerning the exercise of the right of self-determination, a principle which had been endorsed by all participants. He explained the position of the representatives of each territory and stated that the Netherlands considered it its right to participate in the adoption of decisions concerning future relations with those islands which preferred to maintain constitutional relations with the Netherlands. He also stated that his Government regarded the problem of South Africa as a human rights problem, condemned the policy of apartheid and believed that all sorts of pressures, including economic measures, should be exerted on the régime of South Africa in order to force it to abide by United Nations resolutions; that it was looking for the most effective manner to participate in the oil embargo, and that it was rendering humanitarian assistance to liberation movements that opposed apartheid. The Namibian problem was a decolonization problem and the continued presence of South Africa in Namibia was regarded by his Government as illegal. It recognized the legal competence of the United Nations Council for Namibia to issue Decree No. 1 relating to the protection of the natural resources of Namibia. As to the Palestinian people, his Government recognized its right to self-determination while at the same time recognizing the right to existence and to security of all States in the region, including Israel.

118. As regards article 2 of the Covenant, he stated that the Netherlands Constitution was not decisive regarding the question of whether Netherlands law fully implemented the non-discrimination clauses of the Covenant; that, according to Netherlands constitutional law, provisions of the Covenant, particularly those of article 2, paragraph 1, articles 3 and 26, could have direct application in the legal order; that his Government was currently analysing national legislation concerning discrimination on grounds of sex or race; and that specific anti-discrimination legislation was necessary in order to guarantee individual freedom and individuality by forbidding any distinctions on unjustified grounds, in particular in public life. He stated that the provision of the Constitution of the Antilles stressing the equal rights to protection of one's person and property should be read in conjunction with other constitutional provisions and seen in the light of the overall constitutional system of the Antilles which assigned direct legal consequences to appropriate treaty provisions in their application to individuals.

119. He also stated that the treaty provisions binding on all persons were both provisions creating rights and imposing obligations; that no law in force in the Kingdom would be applied if it was incompatible with directly applicable treaty provisions; that the judge would first have to determine whether the treaty provision in question was directly applicable and, if so, whether the disputed rule of national law was compatible with the treaty provision; that, to date, there had been no cases in which the courts had found an act to be incompatible with the Covenant; that regulations other than those enacted by the central legislation had sometimes not been applied because of conflict with provisions of the Covenant; and that if the judiciary in last instance denied the direct applicability of a particular provision of the Covenant, there was no further remedy at the national level, and the individual concerned could then appeal to the Human Rights Committee which the Netherlands had recognized as competent to receive and consider individual complaints. He also pointed out that successive Netherlands Governments had rejected the competence of the judiciary to examine whether acts of Parliament were in conformity with constitutional provisions on basic rights, their central argument being that in the field of national law, the central legislature was the final instance for judging the constitutionality of those acts since the procedure for preparing them guaranteed that the relevant problems would be taken into account.

120. Replying to questions concerning the Netherlands Antilles, the representative stated that there were no immediate plans for instituting an ombudsman in the Antilles; that, in his view, a person in the Antilles who had been the victim of a violation of his basic rights recognized in the Covenant could not institute court proceeding except by basing his action on the Civil Code under which an individual is entitled to file suit if an unlawful act resulting in the infringement of his basic rights had been perpetrated against him by the authorities; and that the Queen could not make use of her powers to suspend or annul a Government measure claimed to violate someone's basic rights, if the court did not regard the relevant provision of the Covenant as directly applicable, for lack of incorporation in domestic law.

121. In connection with article 6 of the Covenant, the representative pointed out that the central objective of the Netherlands' policy concerning problems raised by drugs was the prevention and elimination of individual and social risks involved in its use; and that the new legislation, and the law enforcement measures, concentrated on tackling the problem of the drug trade, particularly the trade in drugs involving unacceptable risks. He informed the Committee that the infant mortality rate in the Netherlands was 8.6 million in 1980, whereas it was 15.5 per thousand in 1979 in the Netherlands Antilles; that the death penalty was provided for in cases of offences against State security, breaches of military obligations such as desertion, violence against the sick or wounded, espionage, and treason and voluntary service for the enemy in time of war.

122. As regards questions raised under articles 7 and 10 of the Covenant, he stated that the written consent of the person concerned was required for medical and scientific experimentation to be undertaken; that in the case of a minor or mentally disturbed person, a declaration signed by the legal representative of the individual concerned was required; and that, even if the consent was given, the Minister of Justice was required to decide whether or not the experiment could take place. He also informed the Committee that the Board of Visitors monitored the treatment of inmates and the observance of regulations; that the members of the Board took turns visiting the institutions under their supervision at least once a month and that the inmates could talk with them on those occasions. He also informed the Committee that, in the Netherlands Antilles, the provisions of the Criminal Code concerning ill-treatment of any kind were similar to the relevant provisions of the Netherlands Criminal Code and that, in his opinion, the provisions of the Covenant on this matter were directly applicable although a final decision in this respect was for the courts to make; that every place of detention had a Board of Supervisors, appointed by the Minister of Justice, which received complaints from prisoners and that the information on protection of detainees, given in the Netherlands report, was also generally applicable to detainees in the Antilles.

123. Replying to questions raised under article 9 of the Covenant, he pointed out that a judge ruling on the lawfulness of the detention of a mentally-ill person had to see the individual in person and to seek the opinion of psychiatrists in order to determine whether the detained person was really ill. He also stated that, in cases of pre-trial detention, the magistrate had to determine whether there were sufficient grounds to warrant renewal of the detention or its extension; and that a wrongly detained person could obtain compensation only if he requested it. He informed the Committee that the explanation given in the Netherlands report regarding pre-trial detention was applicable to the Netherlands Antilles and that, with regard to the detention of mentally-ill persons in mental institutions, the Attorney-General of the Antilles was required, within five months of the date of temporary confinement, to request authorization from the Court of Appeal to have that confinement

made definite, in which case it could last only one year with a possible extension by the court. If the court denied the request, the persons concerned must be freed.

124. Regarding article 11 of the Covenant, he informed the Committee that his Government intended to amend the existing legislation so that the judge responsible for deciding the case could also determine whether the debtor was acting with malice or was genuinely unable to fulfil his contractual obligations.

125. In relation to article 12 of the Covenant, he pointed out that there were no restrictions on persons from the Netherlands Antilles who wished to settle in the Netherlands.

126. Replying to questions raised under article 14 of the Covenant, the representative stated that judges were appointed for life by the Queen and that only the Supreme Court could remove them from office under certain conditions which were extremely restrictive; that the cases in which citizens could be tried by military courts were the offences set forth in the Criminal Offences in Time of War Act; and that accessories to Government officials were tried by the ordinary courts and had the possibility of appealing to a higher court. He also informed the Committee that most of the guarantees provided for in this article were covered by the Antilles domestic law and that standard practice and judicial decisions ensured the application of the remaining provisions.

127. In connection with article 17 of the Covenant, the representative stated that intelligence activities were regulated by a law which did not give the intelligence services powers to restrain citizens except in accordance with the regular legal powers recognized by the Criminal Code and the Code of Criminal Procedure; that telephone tapping was supervised by the judges for the purposes of criminal proceedings and, where the requirements of State security were involved, authorization had to be given by the Prime Minister and three other ministers; that the existing law did not contain a general provision on non-material damages but that this right would be provided for in new legislation; that with regard to registration of certain data on such matters as political opinions, religion and private matters, strict requirements were imposed and, in general, data recording could be allowed only for legitimate purposes and within reasonable limits; and that a new institution, the Data Registration Board, would supervise the implementation of the relevant legal provisions.

128. Replying to questions raised under article 19 of the Covenant, he pointed out that the instructions issued by the Prime Minister, on the freedom of expression of civil servants, were guidelines issued in order to assist civil servants in determining the scope of their obligations which were defined in broad and general terms in a Royal Decree concerning the "General Rules for the Civil Service". He explained that the term "lesser authorities" meant every law giving authority in the Netherlands Public Order lower than the central legislation, and that commercial advertising would in future have no explicit constitutional protection but that publicity for the purpose of disseminating ideas would be protected by the Constitution. He also informed the Committee that the Antilles Governor's Decree referred to in the report had been repealed and that accordingly, Antillean legislation now complied fully with article 19 of the Covenant.

129. Turning to questions raised under article 20 of the Covenant, the representative referred the Committee to the Netherlands' latest report to the Committee on the Elimination of Racial

Discrimination which explained why the Netherlands courts had so far been unable to prohibit the political party with racist opinions, and that his Government was aware that the lack of such a prohibition made it difficult to perform certain treaty obligations. He wondered whether the prohibition of that part, given its extremely poor performance in the latest elections, would be the most effective way of reducing its influence. He pointed out that the Penal Code prohibited the provision of financial or other material assistance for activities directed towards racial discrimination against persons on account of their race and that he knew of no case in which that matter had arisen in connection with support for the apartheid system.

130. As regards articles 21 and 22 of the Covenant, he stated that a licence for open-air meetings could be refused only in the interest of public order, that it could not be refused on account of the purpose of the meeting and that, in the event of refusal, it was possible to appeal to the judicial division of the Council of State. The Netherlands Government considered freedom of association to be a fundamental human right and regretted that in some cases it had been obliged to enforce certain measures affecting the principle of free collective bargaining which had been rejected by some of the organizations concerned. As to whether a political party preaching Nazism would be tolerated, the representative referred to his reply summarized in the preceding paragraph and stated that such a party could not be prohibited and that was a case where legitimate constraints on the freedom of association would run counter to the basic features of the Netherlands electoral system.

131. In connection with questions raised under articles 23 and 24 of the Covenant, the representative referred the Committee to his country's report under the International Covenant on Economic, Social and Cultural Rights concerning measures taken by his Government for the protection of the family and the child. As to the concern expressed about current developments in Netherlands society, such as free marriages and homosexuality, and their possible impact on Netherlands legislation, he pointed out that, as far as families with children were concerned, Netherlands legislation considered not the marital status of the parent or parents but the practical situation of the family; and that public authorities and private institutions with a public function were not free to make arbitrary distinctions between persons on such grounds as, inter alia, marital status and homosexuality, because this was an infringement on individual freedom and dignity. He assured the Committee that any legislative modifications that may be adopted to meet changes in social behaviour would not run counter either to the letter or to the spirit of the Covenant. He also stated that a person who was under an obligation to pay alimony but was unable to do so could always apply to the court for reduction or termination of that obligation; and that it was sufficient for the adoptive father to be a Netherlands national. He informed the Committee that though the de facto family as such was not protected by Antillean law, institutions had been set up to give aid to all families, including de facto families, and that children born in that kind of relationship had an enforceable right to financial support from their father.

132. Replying to questions raised under article 25 relating to the Netherlands Antilles, the representative stated that the restrictions on appointment and termination of employment of women in the civil service were not applicable to married women when they contributed to a great extent to the necessary cost of living of the family or to married women who were employed under a labour contract and that, in its efforts to end all forms of discrimination against women, the Antilles Government was reviewing all existing legal provisions which could be considered discriminatory and was taking care that bills and other new measures should not contain any such provisions.

133. As to questions raised under article 27 of the Covenant, he stated that the main ethnic minority groups, which represented over 4 per cent of the population of the Netherlands, were the migrant workers and their families from the Mediterranean countries, Suriname and the Antilles, and the Moluccans and that he could give only estimates of the numbers since registration of the population on the basis of ethnic origin or race was considered to be incompatible with the right to privacy and to be morally unacceptable; that the Government's policy on minorities was based on the recognition that the Netherlands was a multicultural community in which minorities would occupy a permanent place; that many measures had been taken to combat disabilities and discrimination in the various fields as well as in the area of personal relations between members of the various minorities; and that his Government did not view minorities as such as bearers of group rights which needed to be protected, its concern being to protect the rights of the individuals who were members of those groups, an approach fully in conformity with the Covenant. As to minorities in the Antilles, he pointed out that although there were foreigners of various nationalities residing in the country, their numbers were extremely small and that, in any case, domestic law did not prohibit anyone from enjoying his own culture, professing and practising his own religion or using his own language.

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190. The Committee considered the second periodic report of the Netherlands (CCPR/C/42/Add.6) at its 861st to 864th meetings, held on 8 and 9 November 1988 (CCPR/C/SR.861-864).

191. The report was introduced by the representative of the State party who noted that the most important development that had occurred in the Netherlands during the period under review was the revision of the Constitution. While that revision entailed extensive changes, it did not affect the fundamental framework of the Netherlands, which was that of a parliamentary democracy with an independent judiciary and a system of fundamental rights and freedoms, defined and guaranteed by the Constitution. On 1 January 1986, Aruba had acquired autonomous status within the Kingdom of the Netherlands and had since that date become, like the Netherlands Antilles, an autonomous but equal part of the Kingdom.

Constitutional and legal framework within which the Covenant is implemented

192. With regard to that issue, members of the Committee wished to receive information on cases where the Covenant had been directly invoked and where the validity of laws had been tested in the light of the provisions of the Covenant; on factors and difficulties, if any, affecting the implementation of the Covenant; on activities relating to the promotion of greater public awareness of the provisions of the Covenant and the Optional Protocol, particularly in Aruba; and on any special developments in Aruba relating to the implementation of the Covenant since 1 January 1986. Members also wished to know whether the term “statutory regulations”, in article 94 of the Constitution, applied to acts of Parliament; what the distinction was in Netherlands law between self-executing and non-self-executing articles of the Covenant; whether the presence of a large number of foreign workers in the Netherlands was creating difficulties; whether a certain tolerance towards the use of narcotics had created crime control problems in urban areas; whether, as a result of an adverse court decision involving the Covenant, the Government was planning to withdraw its ratification of the Optional Protocol; and whether publicity would be given to the Committee’s consideration of the second periodic report.

193. Referring to Aruba, members asked how it was ensured that international obligations, including those set out in the Covenant, were fulfilled in Aruba; how human rights and fundamental freedoms were safeguarded; what the relationship was between the Co-operation Regulations and the Constitution of Aruba; how the judiciary was organized; whether the people of Aruba had been consulted when Aruba became a separate country within the Kingdom; and whether judges were recruited locally or brought from the Netherlands.

194. In his reply, the representative of the State party said that since many of the provisions of the Covenant containing substantive rights were self-executing and the courts were obliged, under article 94 of the Constitution, to review the validity of acts of Parliament and other statutory regulations in the light of such self-executing provisions, there had been many cases where the Covenant had been invoked. The nature, content and formulation of a provision of the Covenant had to be assessed individually to determine whether or not that provision was “self-executing”. In 1986, 58 judgements by the courts had referred to provisions of the Covenant. Any legislative act

contrary to a provision of the Covenant would become inapplicable and would have to be revised. The covenant had clearly become part of the legal order and its provisions had been applied directly in a number of instances. The Government had no intention to denounce the Optional Protocol, in the creation of which it had played a prominent part.

195. The great influx of foreigners over the past 15 years had resulted in certain difficulties in implementing the Covenant, particularly in respect of non-discrimination, and had made it necessary to conduct certain studies and to adopt new laws. The Government of the Netherlands was also experiencing difficulties in the area of “conflicting fundamental rights” - such as the problem of having to restrict freedom of expression in order to prohibit racial discrimination - and would be interested in learning the Committee’s view on that question. Although the Government’s policy of differentiating between hard and soft drugs had earlier been criticized as being lax and ineffective, experience indicated that the policy had been successful, at least to some extent.

196. Referring to the promotion of greater public awareness of the provisions of the Covenant and the Optional Protocol, the representative noted that the texts of the Universal Declaration of Human Rights and the various conventions and declarations on human rights had been published in a book in Dutch and that a human rights handbook for teachers had also been issued. The Government of the Netherlands also subsidized non-governmental human rights organizations whose activities included publication of material on the implementation of the Covenant. At a conference held at The Hague a week prior to the session, the press had been informed of the provisions of the Covenant and of the procedures that had been followed in preparing and submitting the second periodic report as well as of the Committee’s proceedings.

197. Regarding the status of Aruba, the representative noted that the achievement of human rights and fundamental freedoms, legal equality and proper administration were the responsibility of Aruba and that chapter I of the Aruban Constitution reflected all the rights recognized in the Covenant and provided for judicial review of Aruban legislation. The Supreme Court of the Netherlands served as Aruba’s Court of Cassation. A Minister Plenipotentiary represented Aruba at The Hague and served as a member of the Council of Ministers of the Realm for Aruba. The people of Aruba had been informed of the scope and depth of the Covenant before the introduction of a separate status for Aruba, and were kept informed of developments in that area by the press and other media. A chair in Aruban law had been created in the law faculty in order to increase understanding of such fundamental matters.

Self determination

198. In connection with that issue, members of the Committee asked whether the Netherlands had taken any measures to prevent public and private support for the apartheid régime of South Africa. Members also wished to know whether the aspirations of the people of Aruba for self-determination had been met through the country’s new status as an autonomous and co-equal part of the Kingdom of the Netherlands; whether a movement towards self-determination existed currently in Aruba; and whether Aruba’s level of economic development prior to 1986 had been different from that of the Netherlands.

199. In his reply, the representative of the State party explained that his Government had taken a

number of restrictive measures in respect of trade and commerce with South Africa, which went beyond those provided for in the relevant Security Council resolutions. The import or export of certain products to or from South Africa, as well as all new investments in that country had been forbidden; the Netherlands banks and Government had terminated all financial dealing with South Africa; the Netherlands had denounced its bilateral cultural agreements with South Africa; and, in 1983, entry visas had been made compulsory for South Africans. The Netherlands, at both the national and European levels, encouraged any activity that might facilitate a process of peaceful change in South Africa; at the forty-second session of the General Assembly, the Netherlands had proposed principles for peaceful settlement of the conflict in South Africa, namely, universal suffrage, the geographical unity of the country, the establishment of a democratic pluralist political system, respect for human rights, the protection of minorities and the rule of law.

200. Referring to questions regarding Aruba, the representative recalled that in 1977 the people of Aruba had shown that they wished the island to have a separate status. Since the adoption of its new status, Aruba had managed to acquire greater economic and financial freedom. At a round-table conference in March 1983, it had been decided that all parts of the Kingdom of the Netherlands would have the right to decide their political future and that early in the 1990s a conference would be held to consider whether or not current directions should be modified.

Non-discrimination and equality of the sexes

201. With regard to that issue, members of the Committee wished to know why the process of incorporating the principle of equal treatment in all national legislation would only be completed in 1990; what the obstacles to the immediate observance and implementation of that principle were; and what kind of discrimination based on distinctions between men and women still existed in the Netherlands. Members also wished to know about the current status of the General Equal Treatment Bill, the Bill Providing for Equal Treatment of Men Women in Respect of Non-State Pensions and the Bill to Amend the Criminal Code; they also asked whether the Convention on the Elimination of All Forms of Discrimination against Women had been ratified. Further, they wished to receive information on limitations on the rights of government officials; on any special problems relating to non-discrimination in respect of women in Aruba; on measures being planned or already introduced to guarantee the complete equality of the latter with men; and on the rights of aliens as compared with those of citizens. It was also asked how many complaints concerning expulsion of and discrimination against aliens were before the courts in the Netherlands and the European Commission of Human Rights, and whether there was any conflict between the principle of non-discrimination and the exercise of certain civil and political rights. Referring to views adopted by the Committee in respect of certain cases involving non-discrimination in social benefits, one member asked whether the courts or the Central Appeals Board had handed down any decisions on cases relating to the social security system and whether consideration had been given to amending social security legislation in order to bring it into conformity with article 26 of the Covenant. Another member requested clarification of the term "any other grounds", used in article 1 of the Constitution, and asked for examples of presumed discrimination on grounds of sex falling under criminal law.

202. In his reply, the representative of the State party explained that a compilation of all provisions of parliamentary laws and ministerial decrees establishing distinctions between men and women and

between married and unmarried couples had just been completed; the Government would thus be able to rectify unjustifiable distinctions. The General Equal Treatment Bill, which had been submitted to Parliament in March 1988, was currently under study by a special commission of the Lower House. The Bill on Equal Treatment for Men and Women in Employment was expected to be enacted by the beginning of 1989 and might eventually include, if adopted, a provision designed to ensure equal treatment in respect of pensions. The Bill to amend the Criminal Code had been transmitted to the Government for comments and the process of ratification of the Convention on the Elimination of All Forms of Discrimination against Women was expected to be completed in 1989.

203. Replying to other questions, the representative stated that the only restrictions imposed on the exercise of fundamental rights by civil servants was an obligation to refrain from exercising their rights to freedom of expression, association and assembly, including their right to demonstrate, if that affected the proper performance of their duties or the efficient operation of public services. Foreign nationals who had been legally resident in the Netherlands for at least five years could vote in municipal elections and, with certain restrictions, could be appointed to civil service posts. Some complaints alleging unjustified expulsion had been filed with the European Commission on Human Rights. No statistics regarding nationality were maintained by the courts in respect of cases alleging discrimination. Conflicts between the principle of non-discrimination and the exercise of certain rights and certain freedoms would eventually need to be resolved by the courts on the basis of the General Equal Treatment Act, as adopted.

204. The legislature of the Netherlands had intended to give all persons, notwithstanding their identity and particular status, equal access to public life and had considered it necessary, for example, to prohibit discrimination on grounds of legitimate or illegitimate birth. With regard to the views expressed by the Committee in social security cases brought before it under the Optional Protocol, a memorandum had been submitted on this subject to Parliament on 29 August 1988; the memorandum did not necessarily reflect the final opinion of the Government on the subject since its members were divided on the question of the effect of decisions of the Human Rights Committee and of court decisions adopted pursuant thereto. The matter was a difficult one since it was not sufficient merely to decide to give effect to the provisions of the Covenant, but it was also necessary to ensure that any new legislation was in conformity with the regulations of the European Community.

Right to life

205. With reference to that issue, members of the Committee wished to receive additional information on article 6 to the extent made necessary by the Committee's general comments Nos. 6 (16) and 14 (23), and on the relative rates of infant mortality in the Netherlands and in Aruba. Referring to the subject of euthanasia, which was being broadly debated in the Netherlands, one member asked whether article 6 of the Covenant was being taken into account in the preparation of legislation on that question.

206. In his reply, the representative of the State party said that the death penalty had been abolished in the Netherlands. The level of health care in the Netherlands was high and the entire population had access to a highly developed system of social services. Infant mortality and perinatal mortality

had declined steadily between 1970 and 1987 and currently stood at 7.5 per 1,000 and 9.2 per 1,000, respectively. In Aruba, the infant mortality rate was 16 per 1,000. In all cases where a member of the security forces had occasion to use his weapon, an inquiry was held and the person concerned was prosecuted or disciplined whenever warranted. Cases of euthanasia were still uncommon and had to be declared to the General Prosecutor, who could initiate prosecution proceedings if the strict rules relating to that practice had not been complied with.

Treatment of prisoners and other detainees

207. With regard to that issue, members of the Committee wished to know the current status of the Bill for the Implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; whether the practice of bringing women from Asia and Latin America to the Netherlands for the purpose of prostitution actually existed and, if so, what measures had been taken to prevent the exploitation of such persons by third parties; how the introduction of the principle of habeas corpus in the revised Constitution had improved the observance of rights guaranteed under article 9, paragraph 4, of the Covenant; whether a member of a detainee's family or friend could apply for habeas corpus on his behalf; what the maximum period of pre-trial detention was; and how quickly after an arrest a person's family was informed and a lawyer contacted. Information was also sought on detention in institutions other than prisons and for reasons unconnected with the commission of a crime; in that connection it was asked whether there had been any cases of detention for reasons incompatible with the Covenant or of the use of violence in such institutions; what remedies were available to mental patients without family or acquaintances who were detained against their will; and whether the patient was regularly examined by a doctor with a view to determining whether continued committal was still justified. Members also wished to know whether aliens who entered the country illegally, or asylum seekers, could be detained and whether the conditions of such detention were in keeping with the standards set forth in the Covenant.

208. Additionally, it was inquired what the reasons were for the increase in certain types of crimes in the early 1980s, mentioned in the report; what were the role and functions of the Ombudsman; whether the prison system in the Netherlands was effective in preventing recidivism; and whether the Government was considering withdrawing its reservations to article 10, paragraph 2, of the Covenant.

209. In his reply, the representative of the reporting State said that the Law ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had been adopted. There had been only a very small number of cases in recent years in which the courts had established that women from Asia, Africa and Latin America had been brought to the Netherlands for purposes of prostitution. However, it was true that a number of women had been induced to come on various pretexts and had subsequently become prostitutes. A number of measures had been taken to combat that practice, including moves to increase the penalties for traffic in persons, and to prevent marriages of convenience and false declarations of paternity. Funds had also been provided to a women's association that helped women who had been victimized and the Government sought to ensure that those who had engaged in such practices were prosecuted.

210. Responding to other questions, the representative explained that a person could be held in

custody for two days with one two-day extension for the purposes of the preliminary inquiry and that during these four days he could apply for a provisional injunction to a civil court if he felt that he had been illegally deprived of his freedom. No provision was made in the Netherlands Code of Criminal Procedure for the right to habeas corpus to be exercised by persons other than the detainee or his counsel. Aliens held in detention for reasons of public order or national security could appeal to the district court against the decision to deprive them of their freedom. The maximum period of pre-trial detention was 106 days. When a person was arrested, the family was informed by the police if he so requested, provided that such action did not impede the inquiry. Detainees had the right to choose one or more lawyers at any time after their arrest. The detention of persons under the Lunacy Act was subject to periodic review by medical staff and by the courts. Persons seeking asylum and those who did not possess the necessary travel documents were kept at a special centre at Amsterdam Airport where they were lodged in simple but acceptable accommodations.

211. One of the reasons for the reported increase in crime was the drug problem. In view of the increasing need for prison capacity, it was not always possible to ensure the desired segregation and that was why the reservations to article 10, paragraphs 2 and 3, of the Covenant had to be maintained. The questions of how best to deal with convicted prisoners and how best to implement and adjust the Standard Minimum Rules for the Treatment of Prisoners were under constant review. The role of the Ombudsman was to act as a “watchdog” on behalf of the public to ensure that public administration was being carried out properly. A bureau for the registration and redress of complaints had been established in Aruba.

Right to a fair trial

212. With reference to that issue, members of the Committee wished to know what the concrete basis was for findings of unsuitability resulting in the removal from office of judges; what the average time period was for bringing a criminal case to trial; under what circumstances appeal courts had set aside convictions on grounds of undue delay; whether legal aid was provided in civil cases; and how the principle of presumption of innocence was applied in the Netherlands and in Aruba. Member also wished to receive necessary additional information on article 14 pursuant to the Committee’s general comment No. 13 (21) and on the practice of out-of-court settlement in certain criminal cases as well as the impact of that practice on the work-load of the courts. In the latter connection, it was asked what criteria were used in deciding when to resort to out-of-court settlements and how such decisions were reconciled with the principle of equality before the law and with judicial guarantees provided for under article 14 of the Covenant.

213. In his reply, the representative of the State party stated that judges could be removed from office by the Supreme Court on grounds of permanent unfitness to perform their duties because of illness or infirmity or for other reasons, but that such removal was extremely rare. The average duration of cases dealt with by the courts up to the final judgement was 275 days in 1987. The Netherlands courts generally considered that a case had taken an unreasonable length of time if, within a period of two years, there had been no visible progress in advancing the prosecution. Legal aid was provided in civil cases. The principle of presumption of innocence was basic to Netherlands legal practice.

214. Replying to questions relating to the practice of out-of-court settlements, the representative

explained that such settlements would only be offered in cases where the court was likely to impose a fine and, in cases involving bodily harm, only where no serious injury had been suffered. It was not possible to measure the impact of that practice on the work-load of the courts in terms of savings of time since there were a number of variables that could not be measured.

Freedom of movement and expulsion of aliens

215. With reference to that issue, members of the Committee sought necessary additional information on the position of aliens in the Netherlands as well as in Aruba in accordance with the Committee's general comment No. 15 (27). They also wished to know on what grounds the refusal of a passport could be justified, in which areas a general revision of the Aliens Act appeared to be needed, and when such a revision would be completed.

216. In his reply, the representative of the State party said that the grounds for refusal or withdrawal of travel documents were laid down in the Passports (Interim) Act of 11 February 1988 and were consistent with the provisions of article 12 of the Covenant. The main reasons for the general review of the Aliens Act were to have policy norms for admission established by Act of Parliament rather than by circular, to increase legal protection for aliens and to make the implementation of policy on aliens more uniform. Aliens admitted to Aruba enjoyed the same human rights and fundamental freedoms as Arubans in most respects.

Right to privacy

217. With reference to that issue, members of the Committee requested necessary additional information on article 17 pursuant to the Committee's general comment No. 16 (32). They also wished to know how a person's rights under article 17 were currently guaranteed; for what basic purposes personal data banks could be established and how abuses were prevented; and why the staff of the postal, telegraph and telephone service resorted to the practice of intercepting messages and conversations.

218. In his reply, the representative of the Netherlands explained that a Data Protection Act was expected to enter into force early in 1989, and that a Data Protection (Police Files) Bill had also been presented to Parliament. Pending the enactment of such privacy legislation, the semi-public sector and the private sector had made considerable progress towards self-regulation based on various privacy regulations that had been drawn up by Government bodies, the principal element of which was the right to examine and to correct personal data held in a data bank. The Data Protection Act will provide for the establishment of a separate government body, the Data Protection Registry, to supervise compliance with the law and to prevent abuses, and will also establish procedures for recourse to the courts. A bill on entry into the home was also currently before Parliament. An individual's personal honour and reputation were protected by articles 261-271 of the Criminal Code. The privacy of the telephone and the telegraph might be violated only in cases laid down by law and with the proper authorization. The staff of the postal, telegraph and telephone service were occasionally required to monitor conversations and to read telegraphic messages as part of their quality control and maintenance work.

Freedom of religion and expression; prohibition of propaganda for war and incitement to national

racial or religious hatred

219. In connection with that issue, members of the Committee inquired whether the service performed by conscientious objectors conferred the same rights and benefits as regular military service; what the system of ownership of the media was; whether the new Media Act had come into force; whether any consideration was being given by the Netherlands to withdrawing its reservation to article 20, paragraph 1, of the Covenant, particularly in view of the Committee's general comment No. 11 (19); and why the advocacy of national, racial or religious hatred had apparently not been prohibited by law, as required under article 20, paragraph 2, of the Covenant. Members also wished to know what access the mass media had to decisions adopted by public authorities and to written material used in support of those decisions; and how commercial advertising was regulated. One member also wished to know whether discouragement of commercialism, as a principle underlying the Media Act, did not run counter to freedom of expression.

220. In his reply, the representative of the State party explained that the legal status of recognized conscientious objectors was regulated, as far as possible, in the same way as that of members of the armed forces on compulsory military service. The new Media Act had come into force on 1 January 1988. Newspapers were owned by private companies and the broadcasting system was funded partly by licence fees and partly by revenue from advertising. Regulations concerning radio and television commercials were based on the principle that the media reflected the life of the nation, including its moral and cultural life. Commercials were monitored by a special foundations, which also set the times when they could be broadcast. The reservation to article 20 of the Covenant reflected the fact that it was extremely difficult to formulate a statutory ban on war propaganda so that it did not constitute an undue restraint on freedom of expression. However, there were no practical difficulties in the Netherlands in that regard since the media did not disseminate war propaganda. Article 137 (d) of the Criminal Code made it a criminal offence to incite hatred of or discrimination against persons on grounds of their race, religion or other belief. Government documents were open and accessible to everyone, except where such access was precluded in the interests of the smooth functioning of the Government; the courts were empowered to resolve any conflicts between the authorities and individuals seeking information.

Freedom of assembly and association

221. With regard to that issue, members of the Committee wished to receive further information on the law and practice relating to the establishment and operation of political parties, particularly in respect of grounds on which political parties could be banned.

222. In his reply, the representative of the State party said that political parties were deemed to be legal persons and could be banned if their activities or aims were inconsistent with public order, for example, if they encroached on the liberty of others, violated human dignity or incited to hatred.

Protection of family and children

223. In that connection, members of the Committee wished to know whether there had been any actual cases of children being subjected to physical abuse and, if so, what measures had been taken to prevent such violations; what the remaining differences were between the rights of illegitimate

and legitimate children; why it was planned to restrict the right of Netherlands fathers to recognize their children born abroad; what measures had been adopted to deal with the problem of child care in families with two working parents; why the marriageable age was the same for men and women; and what safeguards there were to protect children from pornography. Referring to communication No. 201/1985, which had been considered by the Committee on 27 July 1988, some members wished to know what had been the reaction of the Government and the public in the Netherlands to the opinions of Committee members holding that the discretionary powers given to the courts to decide on visiting rights upon dissolution of a marriage were too broad.

224. In his reply, the representative of the State party said that the Netherlands had a system of counsellors who were responsible for drawing up reports on cases of child abuse and for assisting and counselling abused children and their families. A bill submitted to Parliament in July 1988 was expected to eliminate virtually all differences between illegitimate and legitimate children. The Government attached great importance to child care and gave tax relief to parents and subsidized local authorities that provided day-care facilities. A criminal case in 1987 involving false recognition of nationality for children from South-East Asia had given rise to public concern about child trafficking and had led to the possible amendment of the law relating to the recognition of paternity abroad. The marriageable age had been harmonized in order to maintain the principle of equality of the sexes, but it was possible to obtain permission to marry before the age of 18, particularly in the case of girls aged 16 to 18 who were pregnant. Pornography was punishable under the Criminal Code and the adoption of more severe provisions aimed at the protection of children was under consideration. There were no plans to restrict the discretionary authority of judges in divorce cases, who usually followed the wishes of both parents in respect of visiting rights.

Right to participate in the conduct of public affairs

225. With regard to that issue, members of the Committee wished to receive additional information on the practice in respect of the disqualification from public service positions of individuals on grounds of political opinion and behaviour, and on the experience, if any, in applying provisions relating to the right of foreign nationals to vote in local elections and to hold local office. Further information was also sought concerning restrictions on the right to vote. In addition, it was inquired whether the residents of the Netherlands Antilles and Aruba had the right to take part in elections to the Netherlands Parliament on the same basis as Netherlands residents.

226. In his reply, the representative of the State party stated that it was possible for persons to be refused appointments in the public service, in the case of confidential posts, only on grounds of doubt as to whether they would faithfully perform their duty as a public servant under all circumstances. In the 1986 municipal council elections, 260,000 foreign nationals had been entitled to participate and 50 foreign nationals had been elected to municipal councils. There had been no indications that giving aliens the right to vote had made any difference to the turnout and voting behaviour of Netherlands nationals. A large number of restrictions on the right to vote had been eliminated since the revision of the constitutional provisions in 1983. The inhabitants of the Netherlands Antilles and Aruba did not have the right to vote in elections to the Netherlands Parliament.

Rights of minorities

227. With regard to that issue, members of the Committee wished to receive information concerning the functions, activities and status of the national advisory and consultative body on minorities policy; the difficulties encountered in implementing the provisions of article 27 of the Covenant; and on possible problems relating to the ethnic minorities of Aruba. Members also wished to know what criteria were used to determine which groups were minorities and, in particular, whether migrant workers and gypsies were considered as such, and whether the Government of the Netherlands imposed restrictions on the freedom of movement of gypsies.

228. In his reply, the representative of the State party said that the function of the national advisory and consultative body on minorities policy was to advise the Government, and that the Minister for Home Affairs had held six meetings with the group during the most recent session of Parliament. The body was still experimental, but the Government intended shortly to submit a bill to Parliament aimed at granting it permanent status.

229. The situation of minorities in the Kingdom of the Netherlands still involved some practical problems, in particular concerning housing, education and health care. There was no majority in Aruba against which “minorities” needed to be protected since Aruba’s population of 60,000 itself consisted of 40 minorities. Caravan dwellers were not considered as belonging to a minority, but the Government intended to give them certain advantages to help them enjoy equal rights within the society. The Government had also taken measures to ensure equal rights and opportunities to certain disadvantaged groups of migrant workers.

General observations

230. Members of the Committee considered that the second periodic report submitted by the Kingdom of the Netherlands was extremely well conceived and contained a wealth of information on the country’s laws and legal institutions and administrative practices. They noted with special appreciation the frank and open attitude of the Government of the Netherlands toward the Covenant and commended the delegation for the sincerity and high quality of the replies to the Committee’s questions and of the comments on some general issues such as the co-ordination between fundamental rights. Members also welcomed the specific measures adopted by the Government of the Netherlands to eliminate apartheid as well as its helpful attitude toward non-governmental organizations. They expressed support for the continuing efforts of the State party to improve human rights in the Netherlands, particularly in respect of the principles of equality and non-discrimination set forth in articles 14 and 26 of the Covenant, respectively, and hoped that all of the Committee’s remaining concerns, especially those relating to the full implementation of the aforementioned principles, would be addressed in the third periodic report.

231. The representative of the State party said that his country attached importance to its discussions with the Committee and would make every effort to deal in its next report with all the questions that had remained unanswered. He assured the Committee that the relevant Ministries and the Parliament would be informed of its opinions and suggestions.

232. In concluding the consideration of the second periodic report of the Netherlands, the Chairman once again thanked the delegation for its co-operation and for the constructive spirit that had marked its dialogue with the Committee. The Kingdom of the Netherlands was exemplary in recognizing

its shortcomings and attempting to remedy them through an ongoing process of legislative review.

CCPR A/56/40 (2001)

82. Netherlands

(1) The Committee considered the third periodic report submitted by the Netherlands (CCPR/C/NET/99/3 and CCPR/C/NET/99/3/Add.1) at its 1928th, 1929th and 1930th meetings, held on 9 and 10 July 2001, and adopted the following concluding observations at its 1943rd and 1947th meetings, held on 19 and 23 July 2001.

A. Introduction

(2) The Committee has examined the comprehensive and detailed report of the Netherlands covering events since the submission of its second periodic report in 1988. It regrets the long delay in submission of the final version of the report. While it appreciates the extensive information provided by the Delegation in respect of the European part of the Kingdom, it notes that the delegation was unable to respond to questions raised by Committee members on the human rights situation in the Netherlands Antilles and Aruba. This has unnecessarily complicated the possibility to engage in a meaningful dialogue on the implementation of the Covenant in these territories. However, the Committee appreciates the timely receipt of the missing responses in writing.

THE EUROPEAN PART OF THE KINGDOM

B. Positive aspects

(3) The Committee welcomes the establishment of an independent National Ombudsman, appointed by Parliament, whose authority is constitutionally anchored and whose mandate extends across national, provincial and municipal governments.

(4) The Committee also welcomes the establishment of the Equal Treatment Commission, set up by the Equal Treatment Act, as an independent body responsible for investigating and assessing cases of alleged discrimination.

C. Principal subjects of concern and recommendations

(5) (a) The Committee discussed the issue of euthanasia and assisted suicide. The Committee acknowledges that the new Act concerning review procedures on the termination of life on request and assisted suicide, which will come into force on 1 January 2002, is the result of extensive public debate addressing a very complex legal and ethical issue. It further recognises that the new law seeks to provide legal certainty and clarity in a situation which has evolved from case law and medical practice over a number of years. The Committee is well aware that the new Act does not as such decriminalize euthanasia and assisted suicide. However, where a State party seeks to relax legal protection with respect to an act deliberately intended to put an end to human life, the Committee believes that the Covenant obliges it to apply the most rigorous scrutiny to determine whether the State party's obligations to ensure the right to life are being complied with (articles 2 and 6 of the Covenant).

(b) The new Act contains, however, a number of conditions under which the physician is not punishable when he or she terminates the life of a person, inter alia, on the “voluntary and well-considered request” of the patient in a situation of “unbearable suffering” offering “no prospect of improvement” and “no other reasonable solution”. The Committee is concerned lest such a system may fail to detect and prevent situations where undue pressure could lead to these criteria being circumvented. The Committee is also concerned that, with the passage of time, such a practice may lead to routinization and insensitivity to the strict application of the requirements in a way not anticipated. The Committee learnt with unease that under the present legal system more than 2,000 cases of euthanasia and assisted suicide (or combination of both) were reported to the review committee in the year 2000, and that the said committee came to a negative assessment only in three cases. The large numbers involved raise doubts whether the present system is only being used in extreme cases in which all the substantive conditions are scrupulously maintained.

(c) The Committee is seriously concerned that the new law is also applicable to minors who have reached the age of 12 years. The Committee notes that the law provides for the consent of parents or guardians of juveniles up to 16 years, while for those 16 and 18 years the parents’ or guardian’s consent may be replaced by the will of the minor provided that the minor can appropriately assess his or her interests in the matter. The Committee considers it difficult to reconcile a reasoned decision to terminate life with the evolving and maturing capacities of minors. In view of the irreversibility of euthanasia and assisted suicide, the Committee wishes to underline its conviction that minors are in particular need of protection.

(d) The Committee, having taken full note of the monitoring task of the review committee, is also concerned about the fact that it exercises only an ex post control, not being able to prevent the termination of life when the statutory conditions are not fulfilled. The State party should re-examine its law on euthanasia and assisted suicide in the light of these observations. It must ensure that the procedures employed offer adequate safeguards against abuse or misuse, including undue influence by third parties. The ex ante control mechanism should be strengthened. The application of the law to minors highlights the serious nature of these concerns. The next report should provide detailed information as to what criteria are applied to determine the existence of a “voluntary and well-considered request”, “unbearable suffering” and “no other reasonable alternative”. It should further include precise information on the number of cases to which the new Act has been applied and on the relevant reports of the review committee. The State party is asked to keep the law and its application under strict monitoring and continuing observation.

(6) The Committee is gravely concerned at reports that newborn handicapped infants have had their lives ended by medical personnel.

The State party should scrupulously investigate any such allegations of violations of the right to life (article 6 of the Covenant), which fall outside the law on euthanasia. The State party should further inform the Committee on the number of such cases and on the results of court proceedings arising out of them.

(7) While it acknowledges that the State party’s Medical Research (Human Subjects) Act 1999 attempts to find a generally acceptable standard and to establish a permanent control system through the Central Committee for Medical Research Involving Human Subjects and the corresponding local

committees accredited by the Central Committee, the Human Rights Committee considers aspects of this law to be problematic (article 7 of the Covenant). It is concerned at the general criterion whereby proportionality is assessed by balancing the risks of the research to the subject against the probable value of the research. The Committee considers that this rather subjective criterion must be qualified by a limitation beyond which the risks are so great to the individual that no measure of expected benefit can outweigh them. The Committee is also concerned that minors and other persons unable to give genuine consent may be subject to medical research under certain circumstances.

The State party should reconsider its Medical Research (Human Subjects) Act in light of the Committee's concerns in order to ensure that even high potential value of scientific research is not used to justify severe risks to the subjects of research. The State party should further remove minors and other persons unable to give genuine consent from any medical experiments which do not directly benefit these individuals (non-therapeutic medical research). In its next report, the State party should inform the Committee of the steps taken and provide it with detailed statistics.

(8) The Committee remains concerned that, six years after alleged involvement of members of the State party's peacekeeping forces in the events surrounding the fall of Srebrenica, Bosnia-Herzegovina, in July 1995, the responsibility of the persons concerned has yet to be publicly and finally determined. The Committee considers that in respect of an event of such gravity it is of particular importance that issues relating to the State party's obligation to ensure the right to life be resolved in an expeditious and comprehensive manner (articles 2 and 6 of the Covenant).

The State party should complete its investigations as to the involvement of its armed forces in Srebrenica as soon as possible, publicise these findings widely and examine the conclusions to determine any appropriate criminal or disciplinary action.

(9) While welcoming the establishment of a network of advisory centres to deal with child abuse, the Committee is concerned at the ongoing high numbers of reported incidents (articles 7 and 24).

The State party should continue to develop strategies designed to prevent child abuse, and investigate where it has occurred. It should also standardize the systems and measures employed by its advisory centres to facilitate these ends.

(10) While welcoming the recent appointment of an independent National Rapporteur on Trafficking in Persons endowed with appropriate investigative and research powers, the Committee remains concerned at on-going reports of sexual exploitation of significant numbers of foreign women in the State party (articles 3, 8 and 26 of the Covenant).

The State party should ensure that the National Rapporteur is equipped with all means necessary to achieve real and concrete improvement in this area. The State party should inform the Committee of progress made in this respect in the next report.

(11) The Committee appreciates the new instructions issued by the Immigration and Naturalization Service aimed at drawing the competent officials' attention to specific aspects of female asylum seekers' statements peculiar to their gender. However, it remains concerned that a well-founded fear

of genital mutilation or other traditional practices that infringe the physical integrity or health of women (article 7 of the Covenant) do not always result in favourable asylum decisions, for example when genital mutilation, despite a nominal legal prohibition, remains an established practice to which the asylum seeker would be at risk.

The State party should make the necessary legal adjustments to ensure that the female persons concerned do enjoy the required protection under article 7 of the Covenant.

(12) The Committee is gravely concerned at the scope afforded to the use of anonymous witnesses in the State party's criminal procedure. The Committee notes that use is made of hearing witnesses in the preliminary examination, prior to the trial, without the accused, counsel or the prosecutor being present. The identity is accordingly known only to the examining magistrate, and is subsequently unknown even to the trial judge. While not excluding the use of anonymous witnesses in appropriate instances, the Committee considers that this practice is too broad and that it raises difficulties in terms of article 14 of the Covenant.

The State party should make greater efforts to safeguard the right of a defendant to a fair trial through means which, while protecting witness identity in appropriate and necessary cases, provide a greater opportunity for the evidence to be tested and contested. The State party should also provide further information on how a decision that a witness should be anonymous is reached, and what appeals against or reviews of such a decision are possible. The State party should show why ordinary means of protecting witnesses, such as police security or witness protection and relocation programmes, are considered inadequate in cases where anonymity is allegedly required on account of threats to the witness.

(13) The Committee is concerned that the State party's law provides for a maximum of 3 days and 15 hours which may elapse between a suspect's arrest and his or her being brought before a judge. The Committee considers that such a period does not satisfy the requirement in article 9, paragraph 3, to be "promptly" brought before a judicial authority.

The State party should amend this aspect of its criminal procedure to comply with the requirements of the Covenant.

(14) The Committee welcomes the State party's recent attempts through legislation and policy to enhance the participation of ethnic minorities in the labour market, including incentives to the private sector to expand the proportion of the workforce made up of ethnic minorities. It notes, however, that these efforts to secure the rights guaranteed under article 27 of the Covenant have yet to show significant results. The Committee is also concerned that children of ethnic minorities are under-represented at higher education levels. The Committee wishes to receive further information of the results in practice that the State party's measures in this regard are aimed at achieving.

THE NETHERLANDS ANTILLES

D. Positive aspects

(15) The Committee welcomes the comprehensive revision of the Netherlands Antilles Civil Code,

removing a large variety of elements discriminating against women. The Committee is also pleased to note the amendments to the Country Ordinances on Income Tax and on Wages and Salaries Tax placing spouses on equal footing. The Committee notes the establishment of a Prisons Supervisory Board with the power to make binding recommendations on complaints by inmates.

E. Principal subjects of concern and recommendations

(16) The Committee is concerned as to the breadth of article 137 of the Constitution which regulates the imposition of a state of emergency without taking into account the limitations imposed by article 4 of the Covenant for exceptional circumstances endangering the life of the nation.

The State party should ensure that its rules on states of emergency are in full conformity with all the requirements of the Covenant.

(17) Despite physical improvements which have been made to the prison facilities, the Committee remains concerned by unlawful conduct on the part of the staff, combined with their failure to control adequately the behaviour of inmates. These problems threaten the capacity of the competent authorities to properly administer the penitentiary system and to respect the rights of inmates (articles 7 and 10).

The State party should undertake the necessary steps to ensure that the prison staff act with the highest professional standards in a manner that ensures that the rights of all inmates are respected.

(18) While welcoming the establishment of a Police Conduct Complaints Committee to receive complaints from members of the public and the establishment of a committee to control the integrity of the police, the Human Rights Committee is concerned that the said authorities do not have the capacity to issue binding determinations. It considers that to act effectively and independently of the Executive, of which the police is a part, the authorities should have the competence to issue binding conclusions as to appropriate remedies or disciplinary measures as the case may be.

The State party should review the limitations on the Authority's powers in the light of the Committee's observations.

(19) The Committee is concerned that there is a sizeable backlog in the revision of outdated and obsolete legislation, in particular in the provisions of the Antillean Criminal Code. The Committee considers that, especially in the area of criminal law, legal certainty and clarity are of particular importance in enabling individuals to determine the extent of liability for specific conduct.

The State party should proceed with the proposed revision of the Criminal Code at the earliest opportunity. In particular, references to the death penalty should be removed.

(20) The Committee is equally concerned by the fact that the legal rules on the right of peaceful assembly contain a general requirement of prior permission from the local police chief.

The State party should ensure that the right of peaceful assembly may be exercised by all in strict

conformity with the guarantees of article 21 of the Covenant.

(21) The Committee notes with regret that the distinctions between legitimate and illegitimate children who have not been recognized by their father, and who accordingly suffer disadvantage under inheritance laws, have not been eliminated.

The State party should remove all distinctions between legitimate and illegitimate children in compliance with articles 24 and 26 of the Covenant.

ARUBA

F. Positive aspects

(22) The Committee commends the State party for the introduction of the State Ordinance Administrative Procedure providing a special objection and judicial appeal mechanism against any administrative decision. The Committee also welcomes fundamental safeguards against unlawful actions by the authorities contained in the revised Code of Criminal Procedure (1997), notably the availability of legal assistance beginning with a suspect's initial contact with the criminal justice authorities. It also appreciates the establishment of universal jurisdiction for the crime of torture. It further welcomes the increased participation of women in Aruba's political life and in the workforce. It also commends the achievement by women of at least as high an educational level as men.

G. Principal subjects of concern and recommendations

(23) The Committee is concerned to ensure that domestic workers, who are often particularly vulnerable to exploitation as non-Aruban nationals, should have strengthened protection under Aruba's labour laws in order to achieve compliance with the provisions of article 26 of the Covenant. A formal right to sue for breach of contract may well be insufficient in the circumstances of the specific employer-employee relationship.

The State party should consider the most appropriate way to ensure adequate legal protection for domestic workers, for example by extending the provisions of the Labour Ordinance to cover this class of workers.

(24) The Committee is disturbed that the State party has still not put in place an appropriate police complaints authority in Aruba, after the State party had admitted that the system established under the Police Complaints Decree did "not function properly in practice" (articles 7 and 26 of the Covenant).

The State party should ensure that the necessary measures to amend and bring into force the revised Decree are taken.

(25) The Committee is concerned that despite the equal protection clause of the Aruban Constitution, the Country Ordinance on Admittance and Deportation still legally distinguishes between the legitimate family of a man born in Aruba with Netherlands nationality and the

legitimate family of a woman born in Aruba with Netherlands nationality.

Although the provision is said not to be applied in practice, the State party should remove this differentiation which is in breach of article 26.

(26) The State party should widely publicize the text of its third periodic report, the written answers it has provided in responding to the list of issues drawn up by the Committee and, in particular, these concluding observations.

(27) The State party is asked, pursuant to rule 70, paragraph 5, of the Committee's rules of procedure, to forward information within 12 months on the implementation of the Committee's recommendations regarding the State party's law on euthanasia (para. 5), the situation on post-natal infanticide (para. 6), the investigation of events surrounding the fall of Srebrenica (para. 7), as well as, for the Netherlands Antilles, the difficulties concerning its prison system (para. 17), and, for Aruba, the implementation of a functioning police complaints authority (para. 24). The Committee requests that information concerning the remainder of its recommendations be included in the fourth periodic report to be presented by 1 August 2006.