HUMAN RIGHTS COMMITTEE

Hendriks v. the Netherlands

Communication No. 201/1985

27 July 1988

VIEWS

Submitted by: Wim Hendriks, St.

Alleged victim: The author

State party concerned: The Netherlands

Date of communication: 30 December 1985 (date of initial letter)

Date of decision on admissibility: 25 March 1987

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 27 July 1988,

Having concluded its consideration of communication No. 201/1985, submitted to the Committee by Wim Hendriks, St. under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party concerned,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol*

1. The author of the communication (initial letter of 30 December 1985 and subsequent letters of 23 February, 3 September and 15 November 1986 and 23 January 1988) is Wim Hendriks, a Netherlands citizen born in 1936, at present residing in the Federal Republic of Germany, where he works as an engineer. He submits the communication on his own behalf and on behalf of his son, Wim Hendriks, Jr., born in 1971 in the Federal Republic of

Germany, at present residing in the Netherlands with his mother. The author invokes article 23, paragraph 4, of the Covenant, which provides that:

"States Parties ... shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage ... and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children."

He claims that this article has been violated by the Courts of the Netherlands which granted exclusive custody of Wim Hendriks, Jr. to the mother without ensuring the father's right of access to the child. The author claims that his sons's rights have been and are being violated by his subjection to one-sided custody; moreover, the author maintains that his rights as a father have been and are being violated and that he has been deprived of his responsibilities vis-a-vis his son without any reason other than the unilateral opposition of the mother.

2.1 The author married in 1959 and moved with his wife to the Federal Republic of Germany in 1962, where their son Wim was born in 1971. The marriage gradually broke up and in September 1973 the wife disappeared with the child and returned to the Netherlands. She instituted divorce proceedings and on 26 September 1974 the marriage was dissolved by decision of the Amsterdam District Court, without settling the questions of guardianship and visiting rights. Since the child was already with the mother, the father asked the court, in December 1974 and again in March 1975, to make a provisional visiting arrangement. In May 1975, the Court awarded custody to the mother, without, however, making provision for the father's visiting rights; co-guardianship was awarded to the ex-wife's father on the ground that Mr. Hendriks was living abroad. Early in 1978, the author requested the Child Care and Protection Board to intercede in establishing contact between his son and himself. Because of the mother's refusal to co-operate, the Board failed in its efforts and advised the author to apply to the Juvenile Judge of the Amsterdam District Court. On 16 June 1978, the author requested the Juvenile Judge to establish a first contact between his son and himself and subsequently to make a visiting arrangement. On 20 December 1978, the Juvenile Judge, without finding any fault on the part of the father, dismissed the request on the grounds that the mother continued to oppose any such contact. In this connection, the Juvenile Judge noted:

"That in general the court is of the opinion that contact between a parent who does not have custody of a child or children and that child/those children must be possible;

"That, although the court considers the father's request reasonable, the 'mother cannot in all conscience agree to an access order or even to a single meeting between the boy and his father on neutral ground, despite the fact that the Child Care and Protection Board would agree and would have offered guarantees;

"That, partly in view of the mother's standpoint, it is to be expected that the interests of the boy would be harmed if the court were to impose an order."

2.2 On 9 May 1979, the author appealed to the Court of Appeal in Amsterdam, arguing that the mother's refusal to co-operate was not a valid ground for rejection of his request. On 7

June 1979, the Court of Appeal confirmed the lower Court's judgement:

"Considering ... as its main premise that in principle a child should have regular contact with both parents if it is to have a balanced upbringing and be able also to identify with the parent who does not have custody,

"That cases may arise, however, where this principle cannot be adhered to,

"That this may particularly be the case where, as in the present instance, a number of years have passed since the parents were divorced, both have remarried, but there is still serious conflict between the parents,

"That, in such a case, it is likely that an access order will lead to tension in the family of the parent who has custody of the child and that the child can easily develop a conflict of loyalties,

"That a situation such as that described above is not in the interests of the child, it being irrelevant which of the parents has caused the tension, since the interests of the child - the right to grow up without being subjected to unnecessary tension - must prevail,

"That, in addition, the father has not seen the child since 1974 and the child now has a harmonious family life and has come to regard the mother's present husband as his father."

2.3 On 19 July 1979, the author appealed on points of law to the Supreme Court, arguing that the grounds for a rejection could only lie in exceptional circumstances relating to the person of that parent "as certain to be a danger to the health and moral welfare of the child or to lead to a serious disturbance of his mental balance, whereas in the present case it has not been stated or established that such exceptional circumstances exist or have existed". On 15 February 1980, the Supreme Court upheld the Court of Appeal's decision, noting that "the right of the parent who does not have or will not be awarded custody of the child to have access to that child must never be lost sight of but - as the Court rightly judged in this case - the interests of the child must ultimately be paramount". The author therefore states that he has exhausted domestic remedies.

2.4 The author contends that the Netherlands courts did not correctly apply article 161, section 5, of the Netherlands Civil Code, which stipulates that "on demand or on application of both parents or of one of them, the judge may lay down an arrangement regarding contact between the child and the parent not granted custody of the child. If such arrangement has not been laid down in the divorce judgement .... it may be laid down at a later date by the Juvenile Judge". In view of the "inalienable" right of the child to have contact with both his parents, the author contends that the Netherlands courts must grant visiting rights to the non-custodial parent, unless exceptional circumstances exist. Since the Courts did not make an arrangement for mutual access in his case and no exceptional circumstances exist, it is argued that Netherlands legislation and practice do not effectively guarantee the equality of rights and responsibilities of spouses at the dissolution of marriage nor the protection of children, as required by article 23, paragraphs I and 4, of the Covenant. In particular, the

author notes that the law does not give the courts any guidance as to which exceptional circumstances might .serve as a justification for the denial of this fundamental right of mutual access. For the psychological balance and harmonious development of a child, contact with the parent who was not granted custody must be maintained, unless the parent in question constitutes a danger to the child. In the case of his son and himself, the author contends that, although the Netherlands courts ostensibly had the best interests of the child in mind, Wim junior has been denied the opportunity of seeing his father for 12 years on the insufficient ground that his mother opposed such contacts and that court-enforced visits could have caused psychological stress detrimental to the child. The author argues that every divorce entails psychological stress for all parties concerned and that the courts erred in determining the interests of the child in a static manner by focusing only on his protection from tension, which, moreover, would not be caused by the father's misconduct but by the mother's categorical opposition. The author concludes that the courts should have interpreted the child's best interests in a dynamic manner by giving more weight to Wim junior's need to maintain contact with his father, even if the re-establishment of the father-son relationship might initially have given rise to certain difficulties.

2.5 Having regard to article 5, paragraph 2 (a), of the Optional Protocol, the author states that on 14 September 1978 he submitted an application to the European Commission of Human Rights, and that consideration of the matter by that body was completed with the adoption of the Commission's report on 8 March 1982. On 3 May 1984, the author submitted a separate application to the European Commission on behalf of his son. On 7 October 1985, the Commission declared the case inadmissible, rations personae.

2.6 The author therefore requested the Human Rights Committee to consider his communication since he had exhausted domestic remedies and the same matter was not pending before another procedure of international investigation or settlement.

3. By its decision of 26 March 1986, the Committee transmitted the communication, under rule 91 of its provisional rules of procedure, to the State party concerned, requesting information and observations relevant to the question of the admissibility of the communication.

4.1 In its submission under rule 91, dated 9 July 1986, the State party contests the author's standing to submit an application on behalf of his son, adding that:

"The family relationship between Hendriks, St. and Hendriks, Jr. does not in itself provide sufficient grounds to assume that the son wishes the application to be submitted ... Even if Mr. Hendriks did have the right to submit an application on behalf of his son, it is doubtful whether Hendriks, Jr. could be regarded as a 'victim' within the meaning of rule 90, paragraph 1 (b), [of the Committee's provisional rules of procedure]. The Government of the Netherlands wishes to stress that the Netherlands authorities have never prevented Wim Hendriks, Jr. from contacting his father of his own accord if he wished to do so. The Government of the Netherlands would point out in this respect that Mr. Hendriks, St. met his son in 1985 and entertained him at his home in the Federal Republic of Germany."

4.2 With respect to the compatibility of the communication with the Covenant, the State party contends that article 23, paragraph 4, of the Covenant

"does not seem to include a rule to the effect that a parent who has been divorced must have access to children from the marriage if those children are not normally resident with him/her. If the article does not lay down such a right, there is no need to explore the question of whether this right ... has actually been violated."

4.3 With respect to the exhaustion of domestic remedies, the State party observes that there is nothing to prevent the author from once again requesting the Netherlands courts to issue an access order, basing his request on "changed circumstances", since Wim Hendriks, Jr. is now over 12 years old, and, in accordance with the new article 902 (b) of the Code of Civil Procedure which came into force on 5 July 1982, Wim Hendriks, Jr. would have to be heard by the Court in person before a judgement could be made.

5.1 In his comments dated 3 September 1986, the author states that the decision of the Supreme Court of the Netherlands of 24 February 1980 effectively prevents him from re-entering the domestic recourse system.

5.2 With regard to the question of his standing to represent his son before the Committee, the author submits a letter dated 15 November 1986, countersigned by his son, forwarding a copy of the initial letter of 30 December 1985 and of the comments of 3 September 1986, also countersigned by his son.

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant. The Committee decided on the admissibility of the Communication at its twenty-ninth session, as follows.

6.2 Article 5, paragraph 2 (a), of the Optional Protocol precludes the Committee from considering a communication if the same matter is being examined under another procedure of international investigation or settlement. The Committee ascertained that the case was not under examination elsewhere. It also noted that prior consideration of the same matter under another procedure did not preclude the Committee's competence as the State party had made no reservation to that effect.

6.3 Article 5, paragraph 2 (b), of the Optional Protocol precludes the Committee from considering a communication unless domestic remedies have been exhausted. In that connection, the Committee noted that, in its submission of 9 July 1986, the State party had informed the Committee that nothing would prevent Mr. Hendriks from once again requesting the Netherlands courts to issue an access order. The Committee observed, however, that Mr. Hendriks' claim, initiated before the Netherlands courts 12 years earlier, had been adjudicated by the Supreme Court in 1980. Taking into account the provision of article 5, paragraph 2 (b), in fine of the Optional Protocol regarding unreasonably prolonged remedies, the author could not be expected to continue to request the same courts to issue an access order on the basis of "changed circumstances", notwithstanding the procedural

change in domestic law (enacted in 1982) which would now require Hendriks, Jr. to be heard. The Committee observed that, although in family law disputes, such as custody cases of that nature, changed circumstances might often justify new proceedings, it was satisfied that the requirement of exhaustion of domestic remedies had been met in the case before it.

6.4 With regard to the State party's reference to the scope of article 23, paragraph 4, of the Covenant (para. 4.2 above), i.e. whether the provision in question laid down a right of access for a divorced parent or not, the Committee decided to examine the issue with the merits of the case.

7. On 25 March 1987, the Committee therefore decided that the communication was admissible. In accordance with article 4, paragraph 2, of the Optional Protocol, the State party was requested to submit to the Committee, within six months of the date of transmittal to it of the decision on admissibility, written explanations or statements clarifying the matter and the measures, if any, that might have been taken by it.

8.1 In its submission under article 4, paragraph 2, of the Optional Protocol, dated 19 October 1987, the State party contends that article 23, paragraph 4, of the Covenant does not provide for a right of access to his/her child for a parent who has been divorced and whose children are not normally resident with him/her. Neither the travaux preparatoires nor the wording of the said article would seem to imply this. The State party further affirms that it has met the requirements of article 23, paragraph 4, since the equality of rights and responsibilities of spouses whose marriage has been dissolved through divorce is assured under Netherlands law, which also provides for the necessary protection of any children. After the divorce, custody can be awarded to either the mother or the father. The State party submits that:

"In general, it can be assumed that a divorce occasions such tensions that it is essential to the child's interest that only one of the parents be awarded custody. In cases of this kind, article 161, paragraph 1, of book 1 of the Civil Code provides that, after the dissolution of a marriage by divorce, one of the parents shall be appointed guardian. This parent will then have sole custody of the child. The courts decide which parent is to be awarded custody after a divorce. This is done on the basis of the interests of the child. One may therefore conclude that, by these provisions, Netherlands law effectively guarantees the equality of rights and responsibilities of parents after the dissolution of marriage, bearing in mind the necessary protection of the child."

The State party adds that it is customary for parents to agree, at the time of the divorce, on an access arrangement between the child and the parent who was not awarded custody. The latter, in accordance with article 161, paragraph 5, of the Civil Code, can request the Court to decide on an access arrangement.

8.2 The State party further explains that, if the Committee should interpret article 23, paragraph 4, of the Covenant as granting a right of access to his/her child to the parent who was not awarded custody, it would wish to observe that such a right has, in practice, developed in the Netherlands legal system:

"Although not laid down explicitly in (the Netherlands) legislation, it is assumed that the parent not awarded custody has a right of access. This right derives from article 8, paragraph 1, of the European Convention on Human Rights, which lays down the right to respect for family life. The Netherlands is a party to this Convention, which thus forms part of the Netherlands legal system. Article 8 ... moreover is directly applicable in the Netherlands, thus allowing individual citizens to institute proceedings before the Netherlands courts if they are deprived of the above right."

8.3 With regard to the possible curtailment of access to the child in cases where this is deemed crucial to the child's interests, the State party refers to a judgement of the Supreme Court of the Netherlands of 2 May 1980, the relevant passage of which reads:

"The right to respect for family life, as laid down in article 8 of the European Convention on Human Rights, does not imply that the parent who is not awarded custody of his or her minor children is entitled to contact with them where such contact is clearly not in the children's interest because it would cause considerable disturbance and tension in the family in which they are living. To recognize such an entitlement on the part of the parent not awarded custody would conflict with the children's rights under article 8 of the Convention."

This, it is stated, is a case where the "necessary protection of any children", within the meaning of article 23, paragraph 4, of the Covenant, was the overriding interest at stake. The State party adds that the Lower House of parliament is debating a bill concerning the arrangement of access in the case of divorce. The bill proposes that the parent who is not awarded custody after divorce be granted a statutory right of access and puts forward four grounds on the basis of which access could be denied in the interests of the child, to wit, if:

"(a) Access would have a seriously detrimental effect on the child's mental or physical well-being;

"(b) The parent is regarded as clearly unfit or clearly incapable of access;

"(c) Access otherwise conflicts with the overriding interest of the child;

"(d) The child, being 12 years of age or older, has been heard and has indicated that he has serious objections to contact with his parent."

8.4 Inasmuch as the scope of a parent's right of access to his/her child is concerned, the State party indicates that such a right is not an absolute one and may always be curtailed if this is in the overriding interests of the child. Curtailment can take the form of denying the right of access to the parent not awarded custody or restricting access arrangements, for example by limiting the amount of contact. The interests of the parent not awarded custody will only be overruled and access denied if that is considered to be in the child's interests. However, if the parent who was awarded custody reacts to access arrangements in such a way as to cause considerable disturbance in the family in which the child is living, the parent who was not awarded custody may be denied access. Applications for access can thus be turned down, or access rights revoked, if this is deemed to be in the overriding interests of the child.

8.5 The State party further recalls that the above considerations were all applied in deciding whether the author should have access to his son. This led to the denial of access by every court involved.

8.6 The State party concludes that article 23, paragraph 4, of the Covenant has not been violated and contends that the obligation to ensure the equality of rights and responsibilities of spouses at the dissolution of marriage, referred to in that provision, does not include an obligation to ensure the right of access in the form of an access arrangement. Alternatively, if the Committee should interpret the above provision as encompassing that right, it states that the Netherlands legal system already provides for the right in question. In the author's case, the right ,was assumed to exist, yet its exercise was denied in the interests of the child. The necessary protection of the child upon dissolution of the marriage made it impossible for the complainant to exercise his right of access.

9. In his comments dated 23 January 1988, the author claims that article 161, paragraph 5, of the Netherlands Civil Code should have been interpreted as requiring the judge in all but exceptional cases to ensure continued contact between the child and the non-custodial parent. He concludes that, in the absence of a clear legal norm under Netherlands law affirming that a parent-child relationship and parental responsibility continue, the Netherlands courts, in the exercise of uncontrolled discretion, violated his and his son's rights under the Covenant by denying his applications for visiting rights.

10.1 The Human Rights Committee has considered the present communication in the light of all information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol. The facts of the case are not in dispute.

10.2 The main question before the Committee is whether the author of the communication is the victim of a violation of article 23, paragraphs 1 and 4, of the Covenant because, as a divorced parent, he has been denied access to his son. Article 23, paragraph 1, of the Covenant provides for the protection of the family by society and the State:

"The family is the natural and fundamental group unit of society and is entitled to protection by society and the State".

Under paragraph 4 of the same article:

"States parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children."

10.3 In examining the communication, the Committee considers it important to stress that article 23, paragraphs 1 and 4, of the Covenant sets out three rules of equal importance, namely, that the family should be protected, that steps should be taken to ensure equality of rights of spouses upon the dissolution of the marriage and that provision should be made for the necessary protection of any children. The words "the family" in article 23, paragraph 1,

do not refer solely to the family home as it exists during the marriage. The idea of the family must necessarily embrace the relations between parents and child. Although divorce legally ends a marriage, it cannot dissolve the bond uniting father - or mother - and child~ this bond does not depend on the continuation of the parents' marriage. It would seem that the priority given to the child's interests is compatible with this rule.

10.4 The courts of the States parties are generally competent to evaluate the circumstances of individual cases. However, the Committee deems it necessary that the law should establish certain criteria so as to enable the courts to apply to the full the provisions of article 23 of the Covenant. It seems essential, barring exceptional circumstances, that these criteria should include the maintenance of personal relations and direct and regular contact between the child and both parents. The unilateral opposition of one of the parents, cannot, in the opinion of the Committee, be considered an exceptional circumstance.

10.5 In the case under consideration, the Committee notes that the Netherlands courts, as the Supreme Court had previously done, recognized the child's right to permanent contact with each of his parents as well as the right of access of the non-custodial parent, but considered that these rights could not be exercised in the current case because of the child's interests. This was the court's appreciation in the light of all the circumstances, even though there was no finding of inappropriate behaviour on the part of the author.

11. As a result, the Committee cannot conclude that the State party has violated article 23, but draws its attention to the need to supplement the legislation, as stated in paragraph 10.4.

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*/ The text of an individual opinion submitted by Messrs. Vojin Dimitrijevic and Omar El Shafei, Mrs. Rosalyn Higgins and Mr. Adam Zielinski is reproduced in appendix I to the present annex. The text of an individual opinion submitted by Mr. Amos Wako is reproduced in appendix II.

Appendix I

Individual opinion: submitted by Messrs. Vojin Dimitrijevic and Omar El Shafei, Mrs. Rosalyn Higgins and Mr. Adam Zielinski, pursuant to rule 94, paragraph 3, of the Committee's provisional rules of procedure, concerning the views of the Committee on communication No. 201/1985, Hendriks v. the Netherlands

1. The great difficulty that we see in this case is that the undoubted right and duty of a domestic court to decide "in the best interests of the child" can, when applied in a certain way, deprive a non-custodial parent of his rights under article 23.

2. It is sometimes the case in domestic law that the very fact of a family rift will lead a non-custodial parent to lose access to the child, though he/she has not engaged in any conduct

that would per se render contact with the child undesirable. However, article 23 of the Covenant speaks not only of the protection of the child, but also of the right to a family life. We agree with the Committee that this right to protection of the child and to a family life continues, in the parent-child relationship, beyond the termination of a marriage.

3. In this case, the Amsterdam District Court rejected the father's petition for access, although it had found the request reasonable and one that should in general be allowed. It would seem, from all the documentation at our disposal, that its denial of Mr. Hendriks' petition was based on the tensions likely to be generated by the mother's refusal to agree to such a contact - "even to a single meeting between the boy and his father on neutral ground, despite the fact that the Child 'Care and Protection Board would agree and would have offered guarantees" (decision of 20 December 1978). Given that it was not found that Mr. Hendriks' character or behaviour was such as to make the contact with his son undesirable, it seems to us that the only "exceptional circumstance" was the reaction of Wim Hendrlks junior's mother to the possibility of parental access and that this determined the perception of what was in the best interests of the child.

4. It is not for us to insist that the courts were wrong, in their assessment of the best interests of the child, in giving priority to the current difficulties and tensions rather than to the long-term importance for the child of contact with both its parents. However, we cannot but point out that this approach does not sustain the family rights to which Mr. Hendriks and his son were entitled under article 23 of the Covenant.

Vojin Dimitrijevic

Rosalyn Higgins

Omar El Shafei

Adam Zielinski

Appendix II

Individual opinion: submitted by Mr. Amos Wako. pursuant to rule 94. paragraph 3 of the Committee's provisional rules of procedure, concerning the views of the Committee on communication No. 201/1985, Hendriks v. the Netherlands

1. The Committee's decision finding no violation of article 23 of the Covenant in this case is predicated on its reluctance to review the evaluation of facts or the exercise of discretion by a local court of a State party.

2. Although I fully appreciate and understand the Committee's opinion in this matter and, in fact, agreed to go along with the consensus, I wish to put on record my concerns, which are. twofold.

3. My first concern is that, though the Committee's practice of not reviewing the decisions of local courts is prudent and appropriate, it is not dictated by the Optional Protocol. In cases where the facts are clear and the texts of 811 relevant orders and decisions have been made available by the parties, the Committee should be prepared to examine them as to their compatibility with the specific provisions of the Covenant invoked by the author. Thus, the Committee would not be acting as a "fourth instance" in determining whether a decision of a State party's court was correct according to that State's legislation, but would only examine whether the provisions of the Covenant invoked by the alleged victim have been violated.

4. In the present case, the Committee declared the communication of Mr. Hendriks admissible, thus indicating that it was prepared to examine the case on the merits. In its views, however, the Committee has essentially decided that it is unable to examine whether the decisions of the Netherlands courts not to grant the author visiting rights to his son were compatible with the requirements of protection of the family and protection of children laid down in articles 23 and 24 of the Covenant. Paragraph 10.3 of the decision reflects the Committee's understanding of the scope of article 23, paragraphs 1 and 4, and of the concept of "family". In paragraph 10.4, the Committee underlines the importance of maintaining permanent personal contact between the child and both his parents, barring exceptional circumstances; it further states that the unilateral opposition by one of the parents - as apparently happened in this case - cannot be considered such an exceptional circumstance. The Committee should therefore have applied these criteria to the facts of the Hendriks case, so as to determine whether a violation of the articles of the Covenant had occurred. The Committee, however, makes a finding of no violation on the ground that the discretion of the local courts should not be questioned.

5. My second concern is whether the Netherlands legislation, as applied to the Hendriks family is compatible with the Covenant. Section 161, paragraph 5, of the Netherlands Civil Code does not provide for a statutory right of access to a child by the non-custodial parent, but leaves the question of visiting rights entirely to the discretion of the judge. The Netherlands legislation does not contain specific criteria for withholding of access. Thus the question arises whether the said general legislation can be deemed sufficient to guarantee the protection of children, in particular the right of children to have access to both parents, and to ensure equality of rights and responsibilities of spouses at the dissolution of a marriage, as envisaged in articles 23 and 24 of the Covenant. The continued contact between a child and a non-custodial parent is, in my opinion, too important a matter to be left solely to the judge to decide upon without any legislative guidance or clear criteria, hence the emerging international norms, notably international conventions against the abduction of children by parents, bilateral agreements providing for visiting rights and, most importantly, the draft convention on the rights of the child, draft article *6,* paragraph 3, of which provides| "a child who is separated from one or both parents has the right to maintain personal relations and direct contacts with both parents on a regular basis, save in exceptional circumstances". Draft article 6 his, paragraph 2, provides similarly.' "a child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents ...".

6. The facts of this case, as presented to the Committee, do not reveal the existence of any

exceptional circumstances that might have justified the denial of personal contacts between Wim Hendriks junior and Wim Hendriks senior. The Netherlands courts themselves agreed that the father's application for access was reasonable, but denied the application primarily on the grounds of the mother's opposition. Although the Netherlands courts may have applied Netherlands law to the facts of this case correctly, it remains my concern that that law does not include a statutory right of access nor any identifiable criteria under which the fundamental right of mutual contact between a non-custodial parent and his or her child could be denied. I am pleased that the Netherlands Government is currently contemplating the adoption of new legislation which would provide for a statutory right of access and give the courts some guidance for the denial of access based on exceptional circumstances. This legislation, if enacted, would better reflect the Spirit of the Covenant.

Amos Wako