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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Fourth periodic reports of States parties due in 2002

Addendum*

NETHERLANDS

[22 October 2004]

* For the initial report of the Netherlands, see CAT/C/9/Add.1; for its consideration, see CAT/C/SR.46 and 47 and Official Records of the General Assembly, Forty-fifth session, Supplement No. 45 (A/45/44), paras. 435-470.

For the second periodic report, see CAT/C/25/Add.1, CAT/C/25/Add.2, CAT/C/25/Add.5; for its consideration, see CAT/C/SR.210, 211, and 211/Add.1 and Official Records of the General Assembly, Fiftieth session, Supplement No. 50 (A/50/44), paras. 116-131.

For the third periodic report, see CAT/C/44/Add.4 and CAT/C/44/Add.8; for its consideration, see CAT/C/SR.426, 429 and 433 and Official Records of the General Assembly, Fifty-fifth session, Supplement No. 55 (A/55/44), paras. 181-188.

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Introduction

1. This fourth report in the framework of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("the Convention") covers, in accordance with article 19, paragraph 1, of the Convention, the four-year period from 1999 to 2002.

2. The present report deals with new developments in legislation and policy in relation to the implementation of the Convention. These developments are discussed within the context of the existing situation, including changes that have taken place in the reporting period. In addition, further information is given to clarify or supplement information supplied in previous reports. This report also contains a number of responses to the concluding observations made by the Committee in Geneva in May 2000 after examining the third report (A/55/44, paras. 181-188).

3. For the main demographic, economic and social indicators and a description of the Kingdom's constitutional system, reference is made to the core documents of the Kingdom of the Netherlands (HRI/CORE/1/Add.66, 67 and 68). This report deals with the European part of the Kingdom and with Aruba.

PART ONE: NETHERLANDS (EUROPEAN PART OF THE KINGDOM)

I. RESPONSES TO THE CONCLUDING OBSERVATIONS OF THE COMMITTEE

4. The definition of torture as laid down in the Convention has been fully incorporated into Dutch law. For current developments in this respect see article 11.

II. INFORMATION ON NEW MEASURES AND DEVELOPMENTS RELATING TO THE IMPLEMENTATION OF THE CONVENTION

A. Article 2

1. Supreme Court ruling on the 1982 "December murders" in Suriname

5. On 18 December 2001 the Supreme Court handed down a ruling that is relevant to the significance of the Convention against Torture in the Dutch legal order. The ruling relates to what are known as the "December murders" that took place in 1982. On 8 and 9 December in that year, 15 people were shot dead at Fort Zeelandia (Paramaribo) in Suriname, which gained independence from the Netherlands in 1975. Many people believed that the leader of the Surinamese army at that time, Desi Bouterse, was responsible for the murders.

6. In 2000 a preliminary judicial investigation was begun in Suriname into Bouterse's involvement. In the Netherlands, relatives of the victims filed a complaint against Bouterse. On 20 November 2000, the Amsterdam appeal court ordered the Amsterdam public prosecutor to prosecute Bouterse on suspicion of involvement in the murders. The Procurator General at the Supreme Court instituted an appeal in cassation against the decision of the appeal court in the

interests of the uniform application of the law. (The Procurator General at the Supreme Court has special powers to institute such proceedings in order to put certain questions of law to the Court outside normal proceedings.)

7. In its ruling of 18 September 2001, the Supreme Court concluded that it would not be possible to prosecute Bouterse in the Netherlands for the December murders. The Supreme Court's decision centred on its interpretation of the Act implementing the Torture Convention, by means of which the Netherlands' obligations arising from the Convention are met.

8. Pursuant to the Act, both Dutch and foreign nationals can be prosecuted in the Netherlands for acts of torture committed anywhere in the world and whoever the victim may be. The Amsterdam appeal court invoked this provision when it ordered Bouterse's prosecution. The Supreme Council limited the scope of the Act to cases which have connections with Dutch jurisdiction, for example if the suspect (or victim) has Dutch nationality or because the suspect is in the Netherlands. Only in such situations is the Netherlands competent, and in certain circumstances obliged, under the Torture Convention, to institute criminal proceedings. To support this standpoint the Supreme Court relied on statements made in parliament in the past.

9. Another aspect is that the victims were killed. That prompts the question of whether murder or manslaughter can be deemed to be torture. The Amsterdam court of appeal held that this was possible. The Supreme Court nevertheless examined the definition of torture in the implementing Act. The Act defines torture as mistreatment by a government official who has certain motives for his actions, for example the desire to obtain a confession. On the basis of this statutory description the Supreme Court has now decided that manslaughter and murder do not in themselves constitute torture within the meaning of the Act. However, the Act does apply if killing is preceded or accompanied by acts that can be deemed to be torture.

10. Another problem is that the offences in question took place in December 1982, while the Torture Convention came into force in 1984 and the implementing Act was only introduced in 1989. The Supreme Court took the view that the implementing Act may not be applied with retroactive effect, this being prohibited by article 16 of the Dutch Constitution. The Supreme Court found that the Convention did not set aside this constitutional provision. The Court did not answer the question of whether the prohibition is incompatible with unwritten international law. Article 94 of the Dutch Constitution does not allow the courts to pronounce on the question of whether Acts of Parliament or the Constitution are compatible with unwritten international law and therefore on whether the article 16 prohibition is compatible with such law.

11. Since the Act implementing the Torture Convention cannot be applied with retroactive force, the Supreme Court also had to examine the question of whether Bouterse could be prosecuted in the Netherlands for an offence included in the Criminal Code, such as assault resulting in death, which was of course a criminal offence in the Netherlands in 1982. However, the Netherlands has no jurisdiction over any form of assault whatsoever if the offence in question is committed abroad by someone who is not a Dutch national. The December murders cannot therefore be prosecuted here as a form of assault. What is more, according to the Criminal Code the limitation period has now expired on all the degrees of assault defined therein. The longer period of limitation that has applied to acts of torture since 1989 cannot, according to the Supreme Court, be applied in this country with retroactive force. For this reason too a prosecution cannot take place in the Netherlands.

12. With this ruling the Supreme Court has created clarity as to the scope offered by the Act implementing the Torture Convention for prosecuting acts of torture in the Netherlands. The Government will take this ruling into account in its further work on the International Crimes Bill, which will implement the Rome Statute of the International Criminal Court, concluded in 1998.

2. Prosecution of war criminals

13. In its previous report the Government drew the Committee's attention to the special team set up in 1998 to investigate and prosecute war crimes and crimes against humanity (the NOVO team). The team may investigate allegations of torture as specified in the Torture Convention. The NOVO team has been criticized in the Dutch Parliament and in the media because the Public Prosecution Service has yet to institute criminal proceedings as a result of the team's investigations.

14. At present the team is investigating a number of "1F files". The abbreviation 1F refers to article 1F of the Convention relating to the Status of Refugees, which states that the Convention shall not apply to an asylum-seeker "with respect to whom there are serious reasons for considering that he has committed a crime against peace, a war crime, or a crime against humanity". A large proportion of these files relate to Afghans, and the rest to other nationalities.

15. The reason the Public Prosecution Service has not succeeded to date in bringing a person suspected of war crimes or crimes against humanity before the courts lies in the serious practical problems involved in investigating such crimes, particularly the difficulty of tracing and talking to witnesses who are mostly abroad, and persuading them to make a statement, as well as the lapse of time between the commission of the offence and the investigation.

16. The Minister of Justice and the Minister of the Interior and Kingdom Relations asked the University of Utrecht to evaluate the investigation and prosecution of war criminals in the Netherlands. The resulting report, together with a plan for improving investigation and prosecution, was presented to Parliament by the two ministers on 3 April 2002. The report identified a number of shortcomings and noted that certain improvements were possible in the approach taken, but also that this was a highly intractable problem where "success" (in terms of actually trying and sentencing war criminals) could never be guaranteed.

17. The plan of approach adopted most of the report's recommendations, and linked them to a substantial increase in capacity (in fact a doubling of capacity), which had already been announced in December 2001. The measures recommended include improving cooperation and information exchange with the services concerned, strengthening the control of investigations and increasing and safeguarding investigative expertise.

18. Since then the backlog of 1F cases has been dealt with rapidly and on a project basis, assisted by experts (some external) on the countries of origin of suspects. The team is currently more or less at full strength and a variety of investigations have been started that would appear to offer sufficient scope for the successful investigation and prosecution of war criminals.

19. In addition, the Minister of Justice has recently promised Parliament to identify, in the near future, what implications of the establishment of the International Criminal Court is likely to have for investigative and prosecution capacity.

3. International Crimes Act

20. The International Crimes Act was expected to enter into force in the course of 2003. The new Act gathers together the offences defined in the Wartime Offences Act and the Act implementing the Convention on the Prevention and Punishment of the Crime of Genocide. Combining the two creates a single codification of crimes against humanitarian law.

B. Article 3

1. Policy on aliens

21. The general principles of the Dutch policy on aliens remain unchanged. The Netherlands pursues a restrictive policy on admitting aliens, with the exception of refugees. Admission is possible on the following grounds:

(a) International obligations (such as the Convention relating to the Status of Refugees and the human rights conventions);

(b) Substantial Dutch interests;

(c) Compelling reasons of a humanitarian nature.

New Aliens Act

22. The new Aliens Act entered into force on 1 April 2001. It states specifically that a residence permit may be issued to an alien who makes a plausible case that he has good grounds for believing that if he is expelled he will run a real risk of being subjected to torture or to inhuman or degrading treatment or punishment. Although under the old Act a real risk of being subjected to torture also constituted grounds for admission, this was not specifically mentioned in the Act.

23. The main changes in the new Aliens Act relate to asylum procedure:

- Under the old Act, rejected asylum-seekers could lodge an objection and ask for their case to be reconsidered. This administrative objection phase has now ceased to exist. Decisions on applications must be made within six months, and rejected applicants may apply for review through the courts. They may remain in the Netherlands pending the outcome of the review. There is no longer any need to obtain a separate decision to this effect. The abolition of the objections phase makes it important to improve the quality of the decisions on applications issued by the Immigration and Naturalization Service (IND). To this end, asylum-seekers will be given the opportunity to clarify their reasons for seeking asylum and to respond to a stated intention to reject their application (if this intention exists) before it is finalized. The IND will take this response into account in reaching a decision. The decision will make it clear how the alien and the IND view the application, providing a sufficient basis for the courts to rule on the lawfulness of the decision.

- The new Act introduces the possibility of appeal to the Council of State.

- Rejected asylum-seekers will automatically be obliged to leave the Netherlands within a set period. Rejection will also automatically end entitlement to accommodation and other facilities as well as empowering the authorities to evict the persons concerned and expel them from the country.

- The Act provides for a ministerial order extending the normal period for decision-making for certain categories of aliens from 6 to 18 months. This option can be used if a brief period of uncertainty is expected regarding the situation in the country of origin, or if the situation in the country of origin is expected to improve in the short term, or if the number of applications submitted is so large that the IND cannot decide on all of them within the set 6 months.

- Every asylum-seeker whose application is successful will be given the same temporary permit for up to three years, to which a package of entitlements is attached. After three years asylum-seekers may qualify for a permanent residence permit.

- In the new system, all asylum-seekers admitted on a temporary basis have the same rights and entitlements. These entitlements are to a large extent determined by international obligations. Holders of temporary permits are allowed to take paid employment. They are also eligible for student grants and housing. Family reunification is possible, but only for permit holders with an independent income at least as high as social assistance level. As in the old situation, applications must be submitted from another country. If necessary, family ties will be determined by DNA testing.

2. Asylum and deportation

24. The last (third) periodic report stated (para. 4) that since 1994 asylum-seekers have to report immediately to one of the three application centres. Since that report a new application centre has been opened in Ter Apel, bringing the total to four. Two of the centres are in the area bordering on Germany.

3. Detention of aliens pending deportation

25. Aliens may appeal directly to the court against their detention. The current practice is that if an alien does not lodge an appeal, the court examines the case *ex proprio motu* after 10 days. Every 28 days after that, the court will then review the question of whether continued detention is lawful.

C. Article 11

1. Systematic review

26. The care of prisoners is the responsibility of the regional police force managers. Each of these establishes rules concerning the facilities to which prisoners should have access and other matters. There may therefore be differences between the regions.

27. At central level the Minister of the Interior and Kingdom Relations and the Minister of Justice set minimum requirements governing care of arrestees and the furnishing and use of police cells and interview and holding rooms. These requirements are set out in chapter 6 of the Regional Police Forces (Management) Decree (BBRP) and the Police Cell Complex Regulations.

28. In the Decree of 6 December 2000 amending the BBRP, the two police ministers also made it obligatory for the regional police forces to set up an independent police cell supervisory committee charged with monitoring compliance with regulations and with oversight of the accommodation, safety, care and treatment of people detained in police cells. The committees publish an annual report of their findings.

29. Police stations are obliged to report any deaths or attempted suicides of detainees to the Minister of the Interior and Kingdom Relations. The Minister commissioned a study of practice in this area with the aim of generating information providing an insight into:

- The degree to which police forces comply with their obligation to report deaths and suicide attempts;
- The degree to which the reports meet the reporting requirements;
- Whether the report form is useful and user-friendly;
- Ways of preventing deaths and suicides and suicide attempts in police cells.

30. The reason for commissioning the study of current reporting practice was not that there was any suspicion that detainee care in the Netherlands did not meet the quality criteria. Rather, it was the great importance attached by the Government of the Netherlands to professional care of detainees. The study in fact concludes that overall, a satisfactory level of care is provided by the regional forces, but because of the importance of high quality care that the Government continues to seek ways of professionalizing and improving care even further. The current study emphasizes this aim once more.

31. The usefulness and user-friendliness of the specimen reporting form proved to be limited. Overall, the police forces provide a satisfactory level of care, but there are still shortcomings in the procedures. In the next few months, in consultation with representatives of the police consultative bodies and others, the Ministry will examine how the conclusions and recommendations of the report can be implemented. This will probably have an impact on the description of the duties of the police cell supervisory committees.

2. Maximum security prison

32. The report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of 10 September 1998 prompted the Government to commission a study of the policy on psychological care for detainees in maximum security prisons and the manner in which that policy is implemented.

33. As a result of this study a report was published in June 2000 on care in the maximum security prison ("*Zorg in en om de Extra Beveiligde Inrichting*"). The report concluded that

concern for the psychological well-being of maximum-security detainees, as expressed in policy documents, was indeed evident in the day-to-day running of the prison. The Government sees this as recognition that the maximum security prison has an operational system of psychological and psychiatric care, which makes it unlikely that any serious damage to the mental health of detainees would go unnoticed.

34. The Government nevertheless considers it important that an independent study be carried out into the effects of detention under a maximum security regime on the psychological well-being of people who are or have been detained under this regime. The study will last for a year. It involves monitoring disruption of day-night rhythm and other factors among maximum-security detainees and a control group in semi-isolation. The control group is being monitored at present. The monitoring of maximum-security detainees began in May 2002, when renovation work had been completed and the building was in use again, i.e. when the detainees had returned to the maximum security prison.

35. The Government would point out that one of the reasons for renovating the maximum security prison was to improve the well-being of detainees. It is felt that creating opportunities for more natural contact between detainees and staff will improve the atmosphere in the facility. For this reason, a fence has been erected in the exercise yard in such a way that a member of staff coming on duty will have to walk past it and will then have the opportunity to converse with detainees. Before that, the only opportunity for such contact was during cell inspections or when a detainee was being transported, and in these situations two members of staff are always present. Now the fence is in place, one-to-one contact is possible. Initial experience with the fence shows that it does indeed encourage spontaneous contact between detainees and members of staff.

36. Changes have thus been made in the maximum security prison since the CPT report was published on 10 September 1998. However, the maximum security regime has not been changed as a result of the report, the reason being that the information available to the Government relating to the prison's system of psychosocial care does not suggest that detention in the prison causes serious psychological harm.

3. Psychiatric Hospitals Act

37. The Psychiatric Hospitals (Compulsory Admission) Act (*Wet Bijzondere Opnemingen in Psychiatrische Ziekenhuizen; BOPZ*) entered into force in 1994, replacing the Lunacy Act of 1884. The BOPZ provides for the committal and compulsory treatment of psychiatric patients in psychiatric hospitals. This includes psychogeriatric patients (who are treated in psychogeriatric nursing homes) and the mentally ill or disabled, who are likewise treated in specialized institutions. The primary objective of the BOPZ is twofold: to safeguard the legal status of the person committed, while protecting others from someone who poses a danger because of a psychiatric disorder.

38. The Act imposes an obligation to carry out regular evaluations to see if these objectives are being achieved. The first evaluation was completed in 1997. It found no reason for any major changes to the criteria for committal or the structure of the Act. There did however prove to be a need to expand the instruments available under the Act to include a judicial authorization imposing conditions on treatment outside an institution (known as a conditional authorization) and the option of signing an advance psychiatric directive. Following the first evaluation, the Minister of Health, Welfare and Sport and the Minister of Justice issued a position paper announcing the measures to be taken: amendment of the Act on a few technical points and in relation to the complaints procedure, conditional authorization and the advance psychiatric directive option.

39. The technical amendments were approved in 2000. One of these was to clarify the risk criterion in the Act through a detailed definition of its meaning. The bill relating to the complaints procedure was recently adopted by Parliament, while the advance psychiatric directive bill was recently introduced there. Another bill will make it possible to commit persons for observation for a three-week period if there are serious suspicions that they are suffering from a mental disorder and are therefore a danger to themselves. This bill was adopted by Parliament in July 2002.

40. The second evaluation of the Act has now been completed. The government position paper in response to it is in preparation.

PART TWO: ARUBA

I. RESPONSES TO THE CONCLUDING OBSERVATIONS OF THE COMMITTEE

1. Provisions on threatened witnesses

41. During the processing of Aruba's third periodic report the Committee put a number of questions concerning the concept of a "threatened witness". The following is intended to clarify this issue.

42. Article 261 of the Aruban Code of Criminal Procedure (Official Bulletin: AB 1996, No. 75) contains a provision on threatened witnesses, meaning witnesses who cannot be expected to testify in public in view of the serious threats made against them, but whose testimony is important to a criminal case. Article 261 states that such witnesses may be heard in such a way that their identity remains secret. However, their identity may only remain secret if the examining magistrate is convinced that there are indeed grounds that justify anonymity. The identity of the witness is disclosed to the examining magistrate.

43. Guaranteeing anonymity to a witness may, however, never prevent the defence from putting to that witness either its own questions or questions arising from the witness' testimony. It merely ensures that the witness' identity is not disclosed. According to the general principles of criminal procedure in Aruba, a witness' testimony may never serve as evidence in criminal proceedings if the defence has not been given the opportunity to exercise its rights of defence. This is also established case law of the European Court of Human Rights.

44. Furthermore, it is also established case law in Aruba that in criminal proceedings there must always be evidence to support witness statements whose source or reliability the defence has not been able to challenge sufficiently. Otherwise their evidential value is limited.

2. Investigation of complaints against the police

45. In dealing with Aruba's third periodic report the Committee referred to "some allegations of police brutality in Aruba".

46. In practice, complaints relating to police operations may be submitted to the Internal Investigations Bureau (BIZO) of the Aruban Police Force or the Public Service Investigation Agency which investigates offences committed by public servants and cases of gross dereliction of duty, and monitors the way investigating officers and supervisory officials make use of their powers.

47. At the end of 2000, a new set of Instructions and Criteria for Deployment was drafted for the Public Service Investigation Agency. The Procurator General was expected to finalize the draft criteria in 2001. In accordance with these criteria, the Agency will always be called in in the following cases:

(a) Abuse of office;

(b) Use of firearms by police or special investigating police officers leading to death or injury;

(c) Use of firearms by armed officials, leading to death or injury;

(d) Serious physical injuries or death following actions of a police officer or official;

(e) Death of a detainee in police cells or the Aruban Correctional Institution;

(f) Disciplinary investigation into gross dereliction of duty if this cannot be objectively investigated by the superiors of the person concerned.

48. The number of cases referred to the Public Service Investigation Agency from 1997 to 2000 were as follows: 1997: 49; 1998: 96; 1999: 83 and 2000: 60. The slight fall in 2000 compared with 1999 is due to the establishment of the Internal Investigations Bureau within the Aruban Police Force, which deals with straightforward cases involving police officers.

49. The Public Service Investigation Agency's mandate includes all kinds of offences. The table below lists types of offences and numbers in 1999 and 2000.

Table 1

Nature of offences reported to Public Service Investigation Agency

Offences*	1999	2000
Theft/embezzlement (in course of duties)	11	14
Forgery	6	3
Fraud	1	1
Accepting gifts/promises	1	3
Leaking information	7	-
Contravention Government Accounts Ordinance	-	2
Coercion of a public servant	-	1
Obstructing telephone communications	-	1
Defamation	1	3
Libel	1	2
Threatening behaviour	10	11
Assault	13	26
Attempted manslaughter	1	-
Sex offences	2	2
Contravention National Ordinance on Narcotics	-	2
Participating in criminal organization	-	2
Shooting incident (police)	1	-
Death in police cell	1	2
Attempted escape from custody/prison	1	-
Disciplinary investigation	1	3
Other	25	4

Source: Public Service Investigation Agency Annual Report 2000

* It should be noted that several offences may be included in a single investigation and several suspects may be involved.

50. Not all reports lead to the opening of a criminal file. Initial inquiries may reveal that there is no basis for further criminal investigations. Some cases are sent on to other services for processing. The table below gives an overview of results of investigations of cases reported to the Public Service Investigation Agency in 2000. Eighteen per cent of cases resulted in a conviction, and 4 per cent in a disciplinary measure.

Table 2

Results of investigations carried out by Public Service Investigation Agency

Results	1999	2000
Suspects questioned and detained:	12	Suspects questioned: 48 Of which detained: 19
No. of files sent to the Public Prosecution Service	28	36
No. of reports	9	5

Source: Public Service Investigation Agency Annual Report 2000

51. Although an independent complaints committee has existed on paper since 1992 (National Police Complaints Decree, AB 1988, No. 71, as amended by AB 1989, No. 65 and the National Decree establishing a Police Complaints Committee, AB 1992, No. 73), it has never functioned in practice. For this reason a new draft decree has been drawn up. The aim is to create an independent complaints committee that will improve the quality of the police service.

II. INFORMATION ON NEW MEASURES AND DEVELOPMENTS RELATING TO THE IMPLEMENTATION OF THE CONVENTION

Articles 2 and 4

Prevention and criminalization of torture

52. The National Ordinance implementing the Torture Convention (AB 1999, No. 8) came into force in Aruba on 22 June 1999. As well as implementing the Convention as a whole, the Decree elaborates on article 4, which obliges States parties to ensure that all acts of torture, attempts to commit torture and complicity or participation in torture are offences under their criminal law. The definition of torture in the provisions making torture an offence is closely based on that in article 1, paragraph 1, of the Convention.

53. The Aruban Criminal Code (AB 1991, No. GT 50), taken in conjunction with the National Ordinance implementing the Torture Convention, makes anyone who commits the offence of torture criminally liable. Article 3 of the Ordinance states explicitly that articles 44 and 45 of the Aruban Criminal Code do not apply to torture. These articles specify that committing an offence in order to carry out a legal requirement (art. 44) and committing an offence in order to carry out an official order issued by a competent authority (art. 45, para. 1) qualify as general exculpatory grounds. Because these articles are explicitly declared inapplicable to torture, anyone who commits the offence can never invoke the fact that a legal requirement led to the action that falls within the definition of torture and that he should therefore be exculpated. The same applies to persons relying on the fact that they were obeying official orders. In other words, anyone who performs an action that falls within the definition of torture can never contest his or her criminal liability.

54. It should further be noted that criminalization of torture in the National Ordinance may not be interpreted in such a way that an act can only constitute the offence of torture if it actually achieves its aim. According to the Ordinance, the offence of torture has been committed if the act in question can further the purposes listed in article 1, paragraph 1, of the Torture Convention. This means that any act that can support the achievement of those purposes is already a criminal offence and not only at the point where those purposes are actually achieved. In other words, torture does not fall into the category of offences that have to have achieved their aims for the perpetrators to be held criminally liable.

55. For the rest, while the definition of the crime of torture corresponds to that in article 1, paragraph 1, of the Convention, it is also broader. For example, the clause in the Convention reading "punishing him for an act he or a third person has committed or is suspected of having committed" is reduced in the Ordinance to "punishing him". Simply the intention to punish is sufficient to characterize the act of torture; the aim of the punishment is irrelevant. Under the Convention, the punishment must relate to a specific act, while under Aruban law this does not have to be proved. In addition, article 1, paragraph 1, of the Convention refers to public officials or other persons acting in an official capacity. The Ordinance, on the other hand, refers to "a person working in government service in the course of his duties", which also covers persons who are not in the strictest sense public servants or government officials. In this connection, it should also be noted that the persons referred to in article 86 of the Criminal Code automatically come within the scope of the National Ordinance implementing the Torture Convention.[1]

Legislation on custodial sentences and prison facilities

56. Previous reports have referred to the draft legislation on the execution of custodial sentences which is in preparation. The bill aims to completely modernize the law in this area and to strengthen the position of prisoners. Having been twice before the Advisory Council, the bill was introduced in Parliament in early September 2001.

57. A shortage of capacity arose in the Aruban Correctional Institute (KIA) between 1995 and 1997, which increased sharply in 1998. The Public Prosecution Service had to release 106 prisoners due to lack of cell space in the first six months of 1998. A study has shown that this shortage cannot be resolved by seeking alternatives to deprivation of liberty. There is an urgent need to expand capacity at the KIA. The prison is currently holding 223 places. Calculations show that 282 places will be required in 2005 and 326 in 2010.

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[1] Article 86 of the Aruban Criminal Code reads as follows:

> "1. All persons elected in elections called by or pursuant to a statutory provision shall be public servants.
>
> "2. Public servants and judges shall include arbitrators; judges shall include those exercising administrative jurisdiction.
>
> "3. All members of the armed forces shall be deemed to be public servants."

58. In September 1998, plans for the expansion of the KIA were submitted to the Minister of Justice. These devote considerable attention to both eliminating shortages in capacity and rectifying existing structural shortcomings. They also focus on improving the security situation, which in the existing premises leaves much to be desired.

59. Planned improvements include:

(a) A new building for young offenders and women prisoners, and construction of an outdoor exercise yard for women;

(b) Construction of a wing for individual counselling/treatment of prisoners;

(c) Improvement and extension of the workshops.

60. Improvements to security will include:

(a) Construction of a high-security wing within the punishment block;

(b) Alterations to the waiting rooms for incoming prisoners where searches are carried out;

(c) Extension of the outer circular wall so that all buildings accessible to prisoners are located within this wall;

(d) Modifications to the watchtowers.

61. The plans for the new building and alterations to existing buildings cannot be carried out simultaneously since the KIA has to be able to function as well as possible during the construction work. For this reason the plans will be implemented in three stages.

62. See appendix 1* for the different nationalities of prisoners held in the KIA on various reference dates. Appendix 2* contains recent statistics on sex/age, residence permits, types of offence and length of sentence.

Training and information

Aruban Police Force

63. A subject explicitly covered during the training of investigative officers is the significance of human rights in relation to their work. Human rights define the standard of conduct they should observe in the course of their duties in Aruba. This standard applies both directly (through case law) and indirectly (the spirit of the provisions). Under article 4, paragraph 2 (b), of the Interim Decree on Special Investigative Officers (AB 2000, 94) human rights are a standard part of the training curriculum. Article 8, paragraph 2, of the same Decree provides that human rights should also be a standard part of the examination syllabus.

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* Available for consultation at the Office of the High Commissioner for Human Rights.

64. Police training is seen as a vital means of increasing the professionalism of the police force. On this basis there are plans to:

(a) Modernize the training course, in the sense that alongside theoretical training more attention will be paid to practical aspects of police work;

(b) Make the course more flexible, so that it becomes easier to adapt the curriculum to changes in society.

65. This general reform of police training also entails paying increased attention to the human rights instruments to which Aruba is a party, including the Torture Convention, and to the implications of these instruments for the day-to-day work of the police force.

KIA

66. In connection with the extension and structural improvements to the KIA outlined above, an intensive recruitment and training programme will be put in place in order to ensure that sufficient numbers of well-trained personnel will be available when the building work is completed.

Ratification of the Rome Statute of the International Criminal Court (ICC)

67. To supplement observations on this issue in previous reports, it should be noted that the Kingdom of the Netherlands (the Netherlands, the Netherlands Antilles and Aruba) ratified the Rome Statute of the ICC on 17 July 2001. Various forms of cooperation with the ICC have been regulated by the Kingdom Act. The statutory provisions on issues such as extradition, legal assistance and transfer of sentences have been declared applicable by analogy to Aruba wherever possible. Amendment of the Aruban Criminal Code will be required in order to make the crimes listed in the Statute criminal offences in Aruba.
