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HUMAN RIGHTS COMMITTEE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 40 OF THE COVENANT**

**Addendum**

**ANTILLES\* \*\***

[16 January 2008]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited before being sent to the United Nations translation services.

\*\* The Antilles report was entitled "Fourth supplementary report of the Netherlands Antilles" and after consultation with the State party, it was agreed to issue it as an addendum to the fourth periodic report.

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## **Introduction**

1. The report of the Netherlands Antilles is submitted in compliance with article 40 of the International Covenant on Civil and Political Rights, which entered into force for the Kingdom of the Netherlands on 11 March 1979. The general guidelines regarding the form and content of periodic reports (HRI/GEN/2/Rev.2) have been observed as far as possible. The report covers the period from October 1998 to December 2006. It provides an update on issues addressed in the third report (CCPR/C/NET/99/3) and responses to the concluding observations of the Human Rights Committee (CCPR/CO/72/NET) of 27 August 2001.
2. The subjects which were dealt with in the previous reports and remained unchanged in the period covered by this report are not commented upon.

### **I. RESPONSES TO THE CONCLUDING OBSERVATIONS OF THE HUMAN RIGHTS COMMITTEE OF 27 AUGUST 2001**

(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 limitation imposed by article 4 of the Covenant for the proclamation of a state of emergency to 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 (CCPR/CO/72/NET, para. 16).

3. The work on the draft National Ordinance on states of emergency, which was mentioned in the previous report, has been put on hold.

(17) While physical improvements have been made to prison facilities, the Committee remains concerned about 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 administer the penitentiary system properly and to respect the rights of inmates (arts. 7 and 10).

The State party should take the necessary steps to ensure that prison staff act in accordance with the highest professional standards and in a manner that ensures that the rights of all inmates are respected (CCPR/CO/72/NET, para. 17).

4. Reference is made to the comments by the Government of the Netherlands on the concluding observations of the Human Rights Committee (CCPR/CO/72/NET/Add.2) of 4 July 2003.

(18) While welcoming the establishment of the Police Conduct Complaints Committee to receive complaints from members of the public, and the establishment of a committee to monitor 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 are 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 (CCPR/CO/72/NET, para. 18).

5. The Police Conduct Complaints Committee has not been functioning for some time now. The Government intends to revive the Committee and to take its concerns into account in its evaluation. In the meantime complaints can be made to the ombudsman.

(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 (CCPR/CO/72/NET, para. 19).

6. The Criminal Code Review Committee in the Netherlands Antilles completed its work on 15 December 2006. The new draft Criminal Code is currently being submitted to the country's advisory bodies, after which it will be presented to the Parliament of the Netherlands Antilles. It is expected to become law in 2008. The revision will include scrapping the provision on the death penalty.

(20) The Committee is equally concerned 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 can be exercised by all in strict conformity with the guarantees of article 21 of the Covenant (CCPR/CO/72/NET, para. 20).

7. The Government has taken note of the Committee's concern and will take this observation into due consideration.

(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 (CCPR/CO/72/NET, para. 21).

8. The new power of the Dutch courts to rule on paternity has not been adopted in the Netherlands Antilles. In the European part of the Netherlands, a child with no legal father can seek a judicial declaration of paternity. If the court rules that the man summoned to appear is

indeed the father, the child acquires the right to inherit from him and a note to this effect is made in the Register of Births, Deaths and Marriages. In view of the controversy surrounding this change, it has been decided not to introduce the measure in the Netherlands Antilles for the time being. The only course at present open to such children in the Netherlands Antilles is to institute an action for maintenance through the courts. The man designated as the child's father following a court ruling on such an action will be liable only for the child's maintenance.

## II. INFORMATION RELATING TO THE ARTICLES OF THE COVENANT

### Article 1. Right to self-determination

9. Because the population of the five islands making up the Netherlands Antilles wanted to alter the constitutional status of the islands, referendums were held in the period 2000-2005. In the Netherlands Antilles it is possible to hold a non-binding or advisory referendum, whose outcome is regarded as a recommendation to parliament.

10. The referendums were organized and carried out in accordance with United Nations criteria.

11. An overview of the options and results is given below.

#### **St Maarten referendum, 23 June 2000**

Option A	Remain part of the Netherlands Antilles	3.7%
Option B	Become an autonomous country within the Kingdom of the Netherlands	69.9%
Option C	Become part of the Netherlands	11.6%
Option D	Become an independent state	14.2%

*Source:* Administrative and Constitutional Affairs Department.

#### **Saba referendum, 5 November 2004**

Option A	Direct ties with the Netherlands	86.0%
Option B	Part of the Netherlands Antilles	13.2%
Option C	Independence	0.8%

*Source:* Administrative and Constitutional Affairs Department.

**Bonaire referendum, 18 February 2005**

Option A	Remain part of the Netherlands Antilles	15.9%
Option B	Direct ties with the Netherlands	59.5%
Option C	Autonomous country within the Kingdom of the Netherlands	24.1%
Option D	Independence	0.5%

*Source:* Administrative and Constitutional Affairs Department.

**Curaçao referendum, 8 April 2005**

Option A	Become an autonomous country within the Kingdom of the Netherlands	68%
Option B	Become an independent state	5%
Option C	Remain part of the Netherlands Antilles	4%
Option D	Become part of the Netherlands	23%

*Source:* Administrative and Constitutional Affairs Department.

**St Eustatius referendum, 8 April 2005**

Option A	Remain part of the Netherlands Antilles	76.60%
Option B	Direct ties with the Netherlands	20.56%
Option C	Integration with the Netherlands	2.18%
Option D	Independence	0.64%

*Source:* Administrative and Constitutional Affairs Department.

12. A round-table conference in Curaçao on 26 November 2005 initiated the process that will culminate in the islands of the Netherlands Antilles acquiring the status the people had voted for. Many forms of consultation are taking place at official, governmental and political level.

13. The target date for achieving the new statuses was originally 1 July 2007, but during the talks this was changed to 15 December 2008. On that date, the Netherlands Antilles will cease to exist. Curaçao and St Maarten will obtain country status, while Bonaire, Saba and St Eustatius will become “public bodies” within the Netherlands. The Kingdom of the Netherlands will then consist of the Netherlands (with Bonaire, Saba and St Eustatius as public bodies), Aruba, Curaçao and St Maarten.

## Article 2. Non-discrimination

### The administrative courts

14. For decades, the civil courts have helped to expand legal protection against government actions through the case law on unlawful acts that they have developed by handing down judgments under article 1382 of the Civil Code of the Netherlands Antilles.

15. Compared with the Netherlands, administrative justice in the Antilles developed much later than civil and criminal justice. The National Ordinance on Administrative Justice (LAR) did not enter into force until 1 December 2001. The LAR makes it possible to have decisions by administrative authorities reviewed by a court of first instance, and to lodge appeals with the Joint Court of Justice.

16. The LAR satisfies four principles:

(a) *The decision principle.* A decision on an admissible objection, application for judicial review or appeal is given within a reasonable time;

(b) *The defence principle.* Parties must have equal opportunities to defend themselves against one another;

(c) *The impartiality principle.* Courts must be impartial;

(d) *The justification principle.* Reasons must be given for every judicial decision, covering both the facts and legal considerations.

17. The introduction of general provisions on administrative justice means:

- Increased legal protection against unlawful government actions
- Safeguarding of fundamental human rights and freedoms in the Netherlands Antilles
- Greater robustness of public administration
- Harmonization of administrative law and standardization of associated procedural law

18. In other words, the introduction of the LAR offers citizens much better legal protection against government actions. Administrative justice enhances legal certainty, prevents government bodies and officials from acting arbitrarily and contributes to the efficiency, clarity and public awareness of administrative legal protection. It therefore helps to make governance more robust. This new legal protection system enables citizens to submit their complaints to the administrative courts, which generally take a more proactive approach than civil courts; the procedure followed is also far less complicated. Natural or legal persons wanting to appeal against a government decision must, however, be able to demonstrate that their direct interests are at stake. The time limit for lodging appeals is six weeks.



19. Ordinary courts retain the important task of assessing government actions that cannot be considered decisions.

20. Since the LAR entered into force, there have been 829 court cases: 73 in 2002; 129 in 2003; 255 in 2004; 167 in 2005; and 205 in 2006.

### **Article 3. Equal rights of men and women**

21. Reference should be made here to the previous reports in which the Human Rights Committee was informed of the existing statutes incorporating the principle of non-discrimination into the legal system of the Netherlands Antilles.

22. The New Civil Code of the Netherlands Antilles (NBWNA) entered into force on 1 January 2001. It abolished discriminatory provisions against women.

23. The provisions in question were:

(a) Article 154, paragraph 2, regarding the husband's prerogative to decide where the couple are to live in cases of disagreement. Article 83, paragraph 3, of the NBWNA provides, with a view to the equal treatment of men and women, that if the couple fail to agree where they should live, the decision is to be made by court order;

(b) Article 339, paragraph 2, on the father's will prevailing in the event of a difference of opinion concerning parental responsibility. Article 253 (a) of the NBWNA provides that disputes between parents can be put before the court;

(c) Article 75 on the wife adopting her husband's status;

(d) Article 156, paragraph 2, on the husband's obligation to provide housekeeping money. Under article 85, paragraph 2, of the NBWNA, husband and wife bear equal responsibility in this regard;

(e) Article 69 on the child adopting the father's place of residence. Under article 12 of the NBWNA the child adopts the place of residence of the parent with whom it actually resides or has most recently resided;

(f) Article 261 concerning the wife leaving the husband's home during divorce proceedings;

(g) Article 262 on the husband's obligation to make maintenance payments to the wife;

(h) Article 340 on the father in principle administering the child's assets and representing the child in civil matters. Article 253 (i) of the NBWNA provides that these things may in principle be done by both parents jointly or by either parent;

(i) Article 373, paragraph 2, on the moment at which a married woman who has been appointed guardian assumes this legal role;

(j) Article 405 on the moment at which a married woman who has been appointed second guardian assumes this legal role;

(k) Article 416, paragraph 2, preventing married women who have been appointed guardian from renouncing their guardianship;

(l) Article 418, paragraph 2, allowing unmarried women to renounce the duties of guardianship upon marriage;

(m) Article 78 which set the minimum age for entering into marriage at 18 years for men and 16 years for women. Under article 31 of the NBWNA individuals of either sex must attain 18 years of age before marrying.

24. Unlike the Netherlands, the Netherlands Antilles does not have an Equal Treatment (Men and Women) Act. In the Netherlands Antilles, the right to equal treatment is guaranteed, among other things, by the direct operation in our legal system of the ban on discrimination contained in article 26 of the International Covenant on Civil and Political Rights. According to settled case law, article 26 of the International Covenant is sufficiently precise and unconditional for courts to apply directly, in that they investigate whether application of a statutory provision is incompatible with that article and therefore non-binding.

25. In addition, the Convention on the Elimination of All Forms of Discrimination against Women and the accompanying Optional Protocol have been effective in the Netherlands Antilles since 22 August 1991 and 22 August 2002, respectively. Furthermore, the International Convention on the Elimination of All Forms of Racial Discrimination has applied to the Netherlands Antilles since 9 January 1972.

26. Labour Regulation 2000 (Official Journal 2002, No. 67), which replaced Labour Regulation 1952, no longer prohibits night work and hazardous work for women. In this regard, the Netherlands Antilles has also denounced the Convention No. 89 (1948) of the International Labour Organization concerning Night Work of Women Employed in Industry.

27. In addition to article 3 of the Constitution of the Netherlands Antilles, it should be pointed out that, under the provisions of article 43 of the Charter for the Kingdom of the Netherlands, it is the duty of each of the countries to promote observance of fundamental human rights and freedoms, legal certainty and good governance. Under this provision, individuals who believe they have been accorded unequal treatment and have thus suffered discrimination may have recourse to the courts.

28. Under the Criminal Code, discrimination on the grounds of race, religion or conviction is a criminal offence in the Netherlands Antilles. Article 95 (c) of the Criminal Code provides that: "Discrimination or discriminating means every exclusion, limitation or preference which is

intended to prevent or undermine the recognition, enjoyment or exercise on an equal footing of human rights and fundamental freedoms in the political, economic, social or cultural sphere or in other areas of public life or which may have this result.”

29. Furthermore, the Ordinance on Income Tax 1943 (Official Journal 1965, No. 9) and the Ordinance on Salaries Tax 1976 (Official Journal 1995, No. 254) have been amended by the Ordinance of 23 December 1997 so that spouses' earned incomes are no longer taxed jointly. Each spouse is now taxed separately.

#### **Article 6. Right to life**

30. Reference is made to the answer to paragraph 6 above and to previous reports.

31. The Netherlands Antilles is party (through the Kingdom of the Netherlands) to the Second Optional Protocol to the International Covenant on Civil and Political Rights, and to Protocol 6 and Protocol 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

#### **Article 7. Prohibition of torture**

32. Reference is made to previous reports.

33. The Netherlands Antilles is party (through the Kingdom of the Netherlands) to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the associated First and Second Protocols.

34. The Netherlands Antilles is currently following the internal procedures to become party to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

35. In the framework of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has already made several visits to the Netherlands Antilles. The last visit was in June 2007. The CPT is expected to publish its report in late 2007 or early 2008.

36. The National Police Training Institute is in charge of training police officers and prison personnel. During these courses, human rights and other conventions are explained and specific attention is given to the rights of prisoners. The act against torture is also dealt with and all prisoners are informed of these rights. Refresher courses are given to make sure that these rights are always known. Monitoring and evaluation are based on complaints by prisoners.

#### **Article 8. Prohibition of slavery**

37. Title XVIII of the Criminal Code, concerning Crimes against personal freedom, penalizes any forms of unlawful deprivation of liberty or intent thereto. Kidnapping or abducting people

from their homes with the purpose of wrongfully putting these persons in the power of others or putting them in a helpless situation is punishable by a term of imprisonment not exceeding 12 years (article 291 of the Criminal Code). Furthermore, article 1:1 of the Civil Code of the Netherlands Antilles stipulates that personal servitude of whatever nature or under whatever name is not tolerated.

38. Through the Kingdom, the Netherlands Antilles is party to several conventions prohibiting slavery, slave trade and forced labour.

39. The Netherlands Antilles is also working on the implementation legislation needed to become party to several conventions, such as the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime and the Protocol against the Smuggling of Migrants by Land, Sea and Air supplementing the United Nations Convention against Transnational Organized Crime, and the Council of Europe Convention on Action against Trafficking in Human Beings.

#### **Article 9. Right of liberty and security of persons**

40. Reference is made to the previous reports.

#### **Article 10. Treatment of persons deprived of their liberty**

41. The National Ordinance on the Prison System (Official Journal 1996, No. 73) entered into force on 13 August 1999 (Official Journal 1999, No. 116). It sets out the framework governing the rights of prisoners and the powers of prison personnel. It also implements the Standard Minimum Rules for the Treatment of Prisoners contained in Economic and Social Council resolution 663 C (XXIV) of 31 July 1957.

42. The ministerial order that took effect on 9 July 2001 (Official Journal 2001, No. 65) provided instructions on the use of force in the prison system. It sets out the conditions for the use of force (including guard dogs and tear gas canisters) and requires prison personnel to report the use of force.

43. The oral reporting obligation means that the facts and circumstances and their consequences are set down in a written report, which is submitted to the Public Prosecutor within 24 hours.

44. **Medical treatment and services:** A doctor is present in the prison every day to provide medical services. Basic medical care is guaranteed. There used to be 5 nurses, and now there are 11. There are no problems with the treatment and reporting of injuries. Intake and first aid are the responsibility of the nurses. A social worker is present full-time at the Forensic Observation and Counselling Department.

45. **Physical conditions:** The beds and mattresses in the cells have been replaced. The mattresses are now thicker and every inmate has a proper bed. The prison is cleaned every week. A specialized firm sprays insecticide once a month. Protection against sun and wind in the prison has been improved.

46. There are 48 youth cells. Different categories of prisoner are assigned to different blocks as far as possible, e.g. long-term prisoners, working prisoners, police/customs officers, women, serious offenders etc. There is also a block for newcomers and aliens.

47. Religious activities have been expanded since 2002. There is now a spiritual care office. On Saturdays there are activities for Catholics. Activities for various denominations take place throughout the week. There are also prisoners who give Bible lessons to other prisoners. Rooms for visitors have been modified and are now "open".

48. There is an office for dealing with complaints. Whenever a complaint is submitted, the office conducts an internal investigation, which includes questioning prison staff. This is followed by a disciplinary procedure/report. If a criminal investigation has to be carried out, the director can approach the Public Prosecution Service. There is also an appeals committee. If a prisoner does not agree with the decision, he can lodge an appeal with the committee within three days. A prisoners' association was set up in August 2005 to look after the interests of prisoners. It has had a positive effect since its inception. The proportion of incidents among prisoners has fallen substantially, from 52 per cent to 8 per cent.

49. Every prisoner is allowed to receive visitors for half an hour a week. Due to a shortage of personnel, it is not possible to increase this frequency. Family visits are allowed for up to one hour a week. Prisoners are allowed to visit family members who are too old or too ill to come to the prison. There are no restrictions on visits by lawyers. Visitors used to be separated from prisoners by mica glass, but since 2002 visits have taken place around a table in a large hall.

50. There are now activity supervisors, who follow a structured programme.

#### **Article 11. Prohibition of detention for inability to fulfil a contractual obligation**

51. Reference is made to previous reports.

#### **Article 12. Right to leave one's country**

52. Reference is made to previous reports.

53. In recent years, the poor economic and financial situation in the Netherlands Antilles has prompted Antilleans and others to leave the island and settle elsewhere.

54. A large number of minors travelled to the Netherlands. Many of them left the island unaccompanied, without any clear intention of being reunited with their families or spending only a short time abroad.

55. To offer this group some protection and prevent them from going astray, the Government of the Netherlands Antilles decided to take measures in the form of the Guardianship Regulation.

56. The Guardianship Regulation entered into force on 1 August 1999 (Ministerial Decree 3838/JAZ). Minors who are unmarried are not allowed to settle in the Netherlands unless they are accompanied by a parent or guardian; in other words, they must demonstrate that they will be under the authority of an adult, as required by law.

57. Minors wanting to leave the Netherlands Antilles should have a declaration of no objection. This declaration is issued if the Guardianship Council is satisfied that the stay in another country is for the purpose of family reunification or will be of short duration, or if a parent or guardian will be responsible for the minor.

58. If the person exercising parental responsibility will be unable, temporarily or permanently, to take responsibility for the minor during their stay abroad, a declaration of no objection may be issued only if sufficient evidence has been provided that a guardian will be appointed in the country in which the minor is to stay.

### **Article 13. Prohibition of expulsion without legal guarantees**

59. Reference is made to previous reports.

60. The National Ordinance of 26 July 2000 amending the National Ordinance on Admission and Expulsion (Official Journal 1966, No. 17) relaxed policy on the admission of aliens, especially the admission of Dutch people (from Aruba and the Netherlands) subject to the latter Ordinance.

61. This amendment was prompted by the Government's wish to make the labour market more flexible in order to stimulate the economy, and means that admission no longer depends on a temporary residence permit.

62. The amendment abolishes the distinction between Dutch citizens naturalized in the Netherlands Antilles and other Dutch citizens (from Aruba and the Netherlands).

63. The amendment also means that Dutch adults are automatically admitted if they can show to the Minister of Justice's satisfaction that they have:

(a) A certificate of good conduct for the last five years, issued by the competent authority no more than two months before their arrival in the Netherlands Antilles;

(b) A place to live and sufficient means of support.

64. Minor children are automatically admitted if they have Dutch nationality and one of their parents has parental responsibility or has been appointed guardian or second guardian.

65. Upon request, the Lieutenant-Governor should automatically issue a declaration enabling the person concerned to register with the population registry in the island territory concerned.

66. If such a request is rejected, the person concerned may appeal to the Governor of the Netherlands Antilles.

67. In 2001, the various island Governments decided to introduce a grace period for undocumented foreigners who had been residing illegally on the islands.

68. The reasons for introducing this period were that there were a lot of undocumented foreigners residing on the islands and the authorities wanted to obtain an estimate of the exact number. The visibility of these people in the community was necessary to enable the integration process to start and the authorities wanted to measure the socioeconomic and financial effects of having these people participate in the community.

69. During this period these persons were able to register and at the same time apply for a temporary residence permit without receiving any sanction for the fact that they were residing on the island illegally. Registration took place at the office of the local police chief and they had to submit various documents in order to be eligible for a permit. Persons who fulfilled the conditions received a temporary (one-year) residence permit after paying the deposit required by law.

70. On Curaçao 6,152 foreigners were registered during the grace period, of whom 4,948 were already employed.

71. The following table shows the number of nationals from different countries who were registered during this period.

Haiti	1 773
Colombia	1 527
Dominican Republic	1 290
Jamaica	737
Venezuela	263
Guyana	202
Suriname	112
China	67
Others	181

72. On St Maarten 1,308 new requests for temporary residence permits and work permits were processed.

73. The following table shows the number of nationals from different countries who were registered during this period on St Maarten.

Jamaica	311	Antigua	1
Guyana	241	Philippines	5
Dominican Republic	115	Nigeria	4
Haiti	93	Peru	3
Dominica	164	Lebanon	3
St Lucia	93	Finland	1
Trinidad & Tobago	15	Romania	1
India	54	Lithuania	1
Colombia	19	Norway	2
United States	17	New Zealand	1
Netherlands	8	Denmark	1
Britain	21	Singapore	1
Barbados	1	Bolivia	2
St Kitts & Nevis	12	Turkey	3
China	16	Austria	3
Jordan	4	Ecuador	1
France	18	St Vincent	12
Venezuela	3	Sweden	1
Grenada	5	Anguilla	2
Australia	2	South Africa	7
Canada	18	Italy	2
Suriname	17	Hungary	1
Tunisia	1	Germany	2

#### **Article 14. Entitlement to a fair and public trial**

74. Reference is made to the previous reports.

#### **Article 15. Principle of *nulla poena sine preavia lege poenali***

75. Reference is made to the previous reports.

#### **Article 16. Right to recognition as a person before the law**

76. Reference is made to the previous reports.

#### **Article 17. Right to privacy**

77. Further to the previous report it should be noted that the reference to article 368 should be to article 386 of the Criminal Code. Reference can also be made to articles 387 to 389 of the Criminal Code of the Netherlands Antilles.



78. The reference to article 144 of the Code of Criminal Procedure should be to article 155 of the Code of Criminal Procedure, which stipulates that the unlawful entering of a dwelling against the will of the occupant is a criminal offence.

79. Under the Code of Criminal Procedure of the Netherlands Antilles, any person who is guilty of unlawful interference with correspondence to any person is liable to punishment.

80. Title X (article 155 et seq.) of the Code of Criminal Procedure of the Netherlands Antilles lays down the rules on entering dwellings without explicit permission of the occupant as part of an investigation. It must therefore be based on a specific suspicion that a criminal offence has been committed. Entering dwellings is also permissible to monitor compliance with special legislation. An example is the Firearms Ordinance 1930 (Official Journal 1967, No. 169).

81. Under article 145a of the Code of Criminal Procedure of the Netherlands Antilles, anyone who deliberately uses technical means to intercept data communications that are not intended for him, in whole or in part, or for the person on whose instructions he is acting is liable to a term of imprisonment not exceeding one year or a fine of up to 25,000 guilders.

82. Title XIV of the Code of Criminal Procedure sets out the rules on intercepting data communications, including telephone conversations. Under article 168 of the Code of Criminal Procedure, special written authorization is required for intercepting data communications. Authorization is only given if there is a serious suspicion that a person suspected of a crime for which pretrial detention is permitted has ordered or is taking part in the communications (art. 169, para. 2).

#### **Article 18. Freedom of thought, conscience and religion**

83. Further to the previous report it should be stated that the Supreme Court (30 March 1984, Nederlandse Jurisprudentie 1985, No. 350) has ruled that employees are entitled to take a day off to celebrate a religious festival that is not one of the generally recognized Christian festivals, unless the employee's absence on that day is likely to seriously damage the business's interests.

#### **Article 19. Freedom of expression**

84. Reference is made to the previous reports.

#### **Article 20. Prohibition of war propaganda**

85. Reference is made to the previous reports.

#### **Article 21. Right of assembly and Article 22. Freedom of association**

86. Through the Kingdom of the Netherlands, the Netherlands Antilles is party to ILO Convention No. 87 (1948) concerning freedom of association and protection of the right to organize and to the European Social Charter (art. 5).

87. As from 1 August 2000 an amendment of the Civil Code became effective, preventing an employer, under penalty of nullity, from terminating a worker's employment because the worker

is a member of a trade union or has participated in trade union activities, unless these activities were performed during the employee's working hours and the employer had withheld his consent on reasonable grounds.

88. No employee or category of employees is obliged to join a trade union. The right of association exists but not the obligation. Article 1, paragraph 3, of the National Ordinance on Collective Labour Agreements states the following about discrimination: "a clause obliging an employer not to employ or only to employ persons of a certain race, a certain religion or political conviction or members of a certain association is null and void". No rule exists that obliges employers to allow union representatives in the workplace or that entitles trade unions to hold meetings on an enterprise's premises. However the Ordinance on Labour Conflicts obliges employers to negotiate a Collective Labour Agreement with the union that has received the majority of votes in a referendum on union representation. This recognition of a labour union implicitly gives union representatives the right of access to their members on the premises and the right to hold meetings with these members.

89. Table 1 below shows the activities of the Office of the Government Mediator of Curaçao regarding mediations and the number of strikes in the public and private sectors in the period 1990-2005. In both the public and private sectors the number of strikes is decreasing. In the private sector, 13 strikes were recorded in 1998 compared with 12 in the public sector, whereas in 2005 only 6 were recorded in the private sector and 5 in the public sector.

**Table 1**

**Activities of the Office of the Government Mediator in Curaçao, 1990-2005**

Report year	Mediation <sup>a</sup>	Strikes in private sector	Strikes in public sector
1990	163	14	10
1991	200	34	6
1992	332	31	28
1993	303	27	12
1994	318	13	20
1995	203	17	15
1996	171	16	12
1997	262	19	14
1998	238	13	12
1999	169	18	18
2000	246	15	11
2001	240	6	15
2002	266	10	3
2003	318	19	7
2004	130	11	8
2005	204	6	5
Total	3 763	269	196
Average	235	17	12

<sup>a</sup> Number of mediation sessions.

### **The position of civil servants**

90. Based on the Regulation on vacations and exemption from service for civil servants, civil servants can, at their request, unless such is contrary to the interests of their work, be exempted from service with retention of salary in special circumstances. These special circumstances include:

- Public council meetings
- Committee meetings
- Activities for such councils or committees
- Other activities for committees to which the public servant has been appointed, insofar as this cannot be done during leisure time

91. Civil servants who are members of an association of civil servants that is represented in the Civil Service Consultative Committee (CCGO-A) can obtain an exemption from service based on the above-mentioned Regulation and for a maximum of 15 days per year, to participate in meetings of statutory organs of their association, of central organizations or of international organizations. In practice, a number of civil servants are fully exempted from their normal duties in order to allow them to attend to their union work full-time. No legislation or special regulations exist that apply to the formation of organizations by civil servants or other persons employed by the public authorities. The rights provided in this article fully apply to members of the armed forces and the police. There are no separate staff associations. There are no limitations on the right to join or set up a trade union. This means that foreigners who are lawful residents of the Netherlands Antilles may hold positions in a union. No consultation bodies exist at enterprise level in the Netherlands Antilles, but if they did, there would be no restrictions on joining them.

92. The recession and lack of economic growth in the Netherlands Antilles compelled the Government to take measures to tackle the situation. One of them involved bringing together employers and employees in a discussion platform. Within it, parties openly discuss matters with the main aim of achieving consensus on issues pertaining to the labour market, as indicated by ILO Convention No. 87. This platform has been named “Kolaborativo”, which reflects the essential ingredient - collaboration between the two parties. Its biggest achievement was the creation of an arbitration board to deal with disputes regarding dismissal. The creation of a platform to discuss matters such as working conditions and related issues is certainly a big leap forward.

93. The Social and Economic Council advises central government on socioeconomic matters. It consists of six employee members, two representing Bonaire, two representing Curaçao and two representing St Maarten, Saba and St Eustatius jointly. The employee members are appointed on the basis of a written nomination by representative trade union organizations. For each employee member a substitute is appointed on the basis of a written nomination by a representative labour organization other than the one that nominated the member. The representation of labour organizations is based on their membership. The representation issue is not applicable to public service unions, since all of them are represented in the CCGO-A.

94. For employers' organizations similar rules apply, with the exception of the nomination of substitute members, who are nominated by the same organizations as the ones that nominate the members.

95. In 1999, the European Committee of Social Rights observed that the requirements for membership of the tripartite Social and Economic Council were incompatible with the European Social Charter, prompting the Government of the Netherlands Antilles to amend its legislation. The requirements were not in accordance with the Charter because members were required to be residents of the Netherlands Antilles and to possess Dutch nationality. The Government agreed with the Committee on this point and has amended the charter of the Social and Economic Council so that membership is now open to all legal residents of the Netherlands Antilles and is no longer restricted to Dutch nationals (Official Journal 2002, No. 117).

96. Freedom of association, demonstration and assembly is guaranteed by the existence of associations possessing legal personality. To obtain legal personality, these associations have to meet the conditions laid down in the Civil Code of the Netherlands Antilles. Under article 1666 of the Civil Code, an association that has not been set up by the public authorities to act as a legal person must be recognized as a corporate body by the Governor. Under article 1667 of the Civil Code, this involves approving the association's constitution or by-laws.

97. Anyone who participates in an association with the aim of committing crimes is liable to a term of imprisonment not exceeding five years. Anyone participating in an association prohibited by General Ordinance is liable to a term of imprisonment not exceeding six months or a fine of up to 300 guilders.

#### **Article 23. Protection of family and Article 24. Protection of the child**

98. Reference is also made to the initial report of the Netherlands Antilles on the Convention on the Rights of the Child (CRC/C/61/Add.4).

99. Requests for family reunifications between parents and children who are not residing in the same country (i.e. the Netherlands Antilles) can be made in accordance with articles 6 to 14 of the National Ordinance on Admission and Expulsion. These articles govern entry for a temporary stay or a period of residence granted by a residence permit issued by or on behalf of the Minister of Justice. An application for entry must be addressed in writing to the Minister of Justice and supported by reasons. It is then submitted to the Lieutenant-Governor of the island territory where the person in question wishes to stay or reside. The guiding principle of the National Ordinance is that nobody is admitted to the Netherlands Antilles without a residence permit (temporary or otherwise). Entry permits can be issued for a definite or indefinite period in accordance with article 6, paragraphs 1 to 8 of the National Ordinance.

100. When issuing an entry permit, the Government may impose specific conditions concerning the place of residence, the exercise of a specific profession or business, employment with a specific employer, or related to public policy, public order, public safety, public morals or the public interest. Granting entry to the parents implies that entry is also granted to minor children. Terminating the residence of an individual who has been granted entry either by operation of the law or through a permit also entails the termination of residence of the spouse and any minor children.

101. Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, guaranteeing respect for family life, also provides for the reunification of family members.

### **Elimination of discrimination in all matters relating to marriage and family relations**

102. The basic tenets in this respect are as follows:

- Everyone old enough to marry and start a family is entitled to do so, irrespective of race, nationality or religion
- Men and women have the same marital rights
- A marriage can be concluded only with the free and full consent of both partners
- The family is the natural basic unit of society and has the right to be protected by society and the State

103. Book 1 of the New Civil Code of the Netherlands Antilles, dealing with family law and the law of persons (Official Journal 2000, No. 178), entered into force on 15 March 2001.

### **Divorce law**

104. The old divorce law created many problems. The grounds for divorce were: adultery, desertion, receiving a prison sentence of four years or more subsequent to the marriage, and assaulting the spouse in such a way as to endanger life or inflict serious injury.

105. The ground most frequently cited was adultery. However, a spouse who had not committed adultery (or could not be shown to have done so) could block a divorce indefinitely. For this reason, the New Civil Code makes it possible to end a marriage in cases where divorce is opposed by one of the spouses.

106. Under article 150, a divorce may be granted in the case of couples who are not separated, at the request of either spouse or at their joint request. Article 151 provides that divorce may be granted at the request of either spouse on the grounds of irretrievable breakdown of marriage. Under article 154, divorce may also be granted on this ground at the joint request of the spouses.

### **The law of parentage**

107. The law of parentage has been completely revised. The terms legitimate, illegitimate and natural child have disappeared and the distinctions between children born in and out of wedlock have been eliminated as far as possible. A married man who has a family tie with a child may acknowledge the child as his own.

### **Age of majority**

108. The age of majority has been lowered from 21 to 18 (art. 233, Book 1 of the New Civil Code).

**Other changes in the New Civil Code**

109. Several other discriminatory provisions have been abolished in the New Civil Code. One example is the provision giving precedence to the will of the husband within marriage, for example with regard to the location of the marital home. The New Civil Code provides simply that such matters are to be decided in agreement between the spouses, omitting the words “and in the absence of agreement by the husband”.

110. However the law on names remains unchanged. A child born in wedlock or acknowledged by its father takes the name of the father. The Supreme Court has already found that this provision discriminates against mothers (judgment of 23 September 1988, *Nederlandse Jurisprudentie* 1989, No. 740). The case concerned the law on names and the conflict between Dutch law (art. 1:5, para. 2 of the Civil Code) and article 26 of the International Covenant on Civil and Political Rights. At issue was the right of parents to choose a family name for their children and the fact that the right of biological parents to do so is guaranteed by article 26 of the International Covenant, even where the child is acknowledged by the father. Given the many conceivable systems within which such choices may be made, the Supreme Court feels that it is beyond its power to determine the law on this point (judgment of 12 October 1984, *Nederlandse Jurisprudentie* 1985, No. 230), and that it is for the legislature to decide how best to satisfy the principle enshrined in article 26 in this area. The advisory opinion of the Public Prosecution Service on the principle of equality (ban on discrimination) was as follows: even if the existing law on the naming of children is manifestly discriminatory, the Supreme Court has declined to declare it inapplicable as provided for by article 94 of the Constitution. To do so would merely create a legal vacuum, since it would still be unclear what legal rule should apply instead. In view of the widespread debate this ruling is expected to generate, it has been decided not to amend the law on names at this stage.

111. Growing evidence of child abuse came to light on the various islands of the Netherlands Antilles - a problem that can have far-reaching consequences for individuals and society as a whole. In 2000, the Ministry of Welfare, Family and Humanitarian Affairs of the Netherlands Antilles and the Dutch Ministry of Health, Welfare and Sport signed a protocol on the systematic exchange of knowledge and expertise in the field of social development and welfare.

112. Since the Netherlands now has several years' experience with the Advice and Reporting Centre for Child Abuse and Neglect (AMK), it would be a logical step to set up similar centres in the Netherlands Antilles, tailored to the islands' specific needs. Due to unforeseen circumstances, no specific measures have yet been taken. The Minister of Justice recently appointed someone to ensure that the project is given priority. Several meetings with Dutch counterparts and talks with island representatives are already scheduled. The government will do its utmost to ensure that AMKs are soon operating on the islands of the Netherlands Antilles.

**Article 25. Right to take part in public affairs**

113. Reference is made to previous reports.

### **Article 26. Prohibition of discrimination**

114. Unfavourable socio-economic conditions in the Antilles have helped to generate a flow of migrants to the European part of the Kingdom over the years. A small minority of them fall by the wayside due to lack of education, knowledge of the Dutch language and a secure social and emotional environment. Most are young people with no job or skills, who consequently face an elevated risk of turning to crime.

115. The Netherlands wanted to introduce measures mainly aimed at preventing this group of young people from entering the Netherlands or staying there. The Dutch Government drew up a Bill that would allow Antillean youths who have no realistic prospect of a job and are not pursuing any training or studies that would increase their job prospects to be sent back to the Antilles. They would be denied entry to the Netherlands for a specific period or would be admitted only if they met certain conditions.

116. The Antillean Government took the view that this would be incompatible with the International Covenant on Civil and Political Rights, which stipulates that anyone legally residing in the territory of a state has the right to move freely within the territory and decide where they want to live. Although the countries that make up the Kingdom are regarded as separate territories for the purposes of the Convention, article 26 should be taken into account when setting admission requirements. If a distinction based on origin cannot be adequately justified, it constitutes discrimination. That is the case here.

117. The criterion adopted by the Netherlands in the present case - whether or not a person is a Dutch national of Antillean descent - affects solely a limited group of people with Dutch nationality on the basis of their origin and their disadvantaged educational and social status.

118. In 2006, the new Dutch Government decided to withdraw the Bill.

### **Article 27. Minorities**

119. Reference is made to previous reports.

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