



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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COMMITTEE AGAINST TORTURE

Thirty-eighth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)\* OF THE 766th MEETING

Held at the Palais Wilson, Geneva,  
on Tuesday, 8 May 2007, at 3 p.m.

Chairperson: Mr. MAVROMMATIS

CONTENTS

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

Fourth period report of the Netherlands (continued)

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\* No summary record was prepared for the second part (closed) of the meeting

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The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER  
ARTICLE 19 OF THE CONVENTION (agenda item 5) (continued)

Fourth periodic report of the Netherlands (continued) (CAT/C/67/Add.4;  
CAT/C/NET/Q/4/Rev.1 and Rev.1/Add.1; HRI/CORE/1/Add.66 and 67 and  
HRI/CORE/1/68/Rev.1)

1. At the invitation of the Chairperson, the members of the delegation of the Netherlands resumed their places at the Committee table.

2. Mr. de KLERK (Netherlands), recalling that the Kingdom of the Netherlands was composed of three fully autonomous entities with regard to the administration of their internal affairs, including the manner in which they implemented international treaties, said that a process of constitutional reforms was currently under way, at the completion of which two of the five islands of the Netherlands Antilles, namely Curaçao and St. Martin, were to acquire the status of autonomous territory. The Kingdom alone would continue to have the power to sign and ratify treaties and international instruments, even if they were applicable to only some of its constituent entities. Two of the three core documents on the territories which made up the Kingdom were rather old, in particular the one concerning the European part of the Kingdom, and the Government had undertaken to update them in the near future.

3. The report and the written replies referred more frequently to the European Convention on Human Rights than to the Convention against Torture because many decisions had been handed down by the European Court of Human Rights on cases of relevance to the Netherlands, and those decisions served as a reference for the courts throughout the Kingdom.

4. With regard to the fight against terrorism and its impact on human rights, he reiterated that, as pointed out in paragraphs 1 to 3 of the written replies (CAT/C/NET/Q/4/Rev.1/Add.1), the Netherlands considered that there could be no derogation from the prohibition of torture, including in the context of the fight against terrorism. As shown by the Government's position in its written comments on the Ramzy case, which was currently before the European Court of Human Rights, the absolute prohibition of torture enunciated in article 3 of the European Convention on Human Rights was in no way called into question by the need to combat terrorism.

5. Moreover, anti-terrorist activities must not exceed the limits set by law, which was why the practice of so-called "rendition", in which suspected terrorists were sent to States which agreed to collaborate with the United States of America in disregard of extradition procedures, had no place in Dutch policy. If the Government were to learn that such renditions had occurred, it would take the necessary measures to put an end to such practices. To date, a number of investigations conducted by bodies of the Council of Europe and the European Parliament had not revealed a single case of illegal transfer in which the Netherlands had been involved. The Government, which had never relied on the diplomatic assurances of another State to determine whether a person awaiting expulsion was at risk of being tortured in the country to which he or she was to be returned, was aware of the limitations of such a method, but it left open the possibility because it might prove useful as part of a set of protection measures.

6. With regard to the case concerning the delivery of poison gas to the Saddam Hussein regime by a Dutch company, he recalled that, as indicated in the written replies (paras. 37, 85 and 86), a Dutch national had been found guilty of participating in an act of genocide for supplying the gas to Iraq; following the incorporation into domestic law in 2006 of Council Regulation (EC) No 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, such trade was now prohibited.

7. The question of the establishment of national prevention mechanisms as a counterpart to the Subcommittee on Prevention set up pursuant to the Optional Protocol to the Convention was still under study, because the situation was complex, and the Netherlands had several inspection bodies, some of which were autonomous vis-à-vis the central government. However, once the matter was addressed, priority attention would be given to the question of effective cooperation between the future mechanism and the Subcommittee.

8. The Rome Statute of the International Criminal Court had been incorporated into domestic law in October 2003 through the entry into force of the International Crimes Act (report, para. 20), which punished serious violations of human rights and international humanitarian law, including crimes against humanity and war crimes. The Act also conferred universal jurisdiction on national courts to try war crimes and acts of torture as well as broad extraterritorial jurisdiction with regard to crimes of genocide and crimes against humanity.

9. In the event of a conflict between the Constitution and the law of treaties, the latter took precedence. Articles 94 and 120 of the Constitution provided that the laws in force in the Netherlands were not applicable if their implementation was incompatible with provisions of treaties which were binding for all persons, and that it was not the task of the courts to verify the constitutionality of international treaties. On the other hand, as international customary law was considered to be part of domestic law, it did not take precedence over national legislation or the Constitution.

10. With regard to the ruling handed down by the Supreme Court in 2001 in the Bouterse case and on the “December murders” which had taken place in 1982 in Suriname (report, paras. 5 to 12), he said that although the case had gone all the way to the Supreme Court, the Chief Public Prosecutor was empowered to introduce an appeal to the Court on a point of law. The appeal had no impact on the outcome of the trial and was merely designed to request the Court to comment on its interpretation of certain fundamental questions of law. He could not speculate on why the Supreme Court had handed down a particular ruling in a given case, and could only refer the Committee to the ruling that had been published. However, he pointed out that the ruling in the Bouterse case was not really up to date anymore because of the passage of the International Crimes Act. As to the question of whether the Convention could be applied retroactively to acts committed prior to its entry into force on 10 December 1984, the Government endorsed the Supreme Court’s conclusion that the Act on the implementation of the Convention against Torture had not had a retroactive effect and that States could not derogate from the principle of non-retroactivity enunciated in article 16 of the Constitution. On a related question, he said that to his knowledge, no application for compensation had been lodged by a family of the victims in that case.

11. Pursuant to the International Crimes Act, Dutch law was only applicable in the following three cases: the alleged perpetrator of acts of torture was a Dutch national; the victim had been tortured abroad but was of Dutch nationality; the alleged perpetrator of acts of torture was not a Dutch national but was present in a territory under the jurisdiction of the Netherlands. Those provisions guaranteed that the Netherlands could not serve as a haven for fugitive torturers.

12. Concerning the Nzapali case, he said that the Rotterdam regional court had ruled that the accusations of torture had been substantiated for only one of the victims, which was why the sentence ultimately imposed had been less severe than the one called for by the prosecutor.

13. On the question of which authority was competent to open an investigation when suspects awaiting trial died in the detention premises of international courts in Dutch territory, he referred to the example of the International Criminal Tribunal for the Former Yugoslavia. In conformity with the agreement between the Netherlands and the United Nations concerning the headquarters of the Tribunal, the host country, the Netherlands, did not exercise its criminal jurisdiction in respect of suspects or accused person in its territory who must be or had been transferred to the Tribunal's detention centres. Consequently, Dutch law, and in particular legislation on the prison system, was not applicable to persons deprived of liberty upon the decision of the Tribunal, and thus Dutch courts were not competent in the case of the death of persons awaiting trial who had been detained in the Tribunal's detention centres. The Registrar of the Tribunal was responsible for the administration of the Tribunal's Detention Unit, an independent facility situated within the Dutch prison complex in Scheveningen. The administration of the Detention Unit was under the sole jurisdiction of the Tribunal, and a number of responsibilities which would usually fall to the prison director had been conferred on the Office for Legal Aid and Detention Matters, which reported to the Registrar or the Deputy Registrar. Since 1995, at the suggestion of the President of the Tribunal, the International Committee of the Red Cross had been in charge of inspecting the Tribunal's Detention Unit, and thus the Dutch prison inspection bodies were not competent to conduct visits there.

14. In March 2006, shortly after the death of Slobodan Milošević, the Registrar of the Tribunal had asked the Government of Sweden to appoint a special group of experts to conduct an independent assessment of the functioning of the Tribunal's Detention Unit. The report produced by the group of experts which had been published in May 2006 following its visit had not been for the host country and had not contained any criticism of it. On the whole, it would appear that the regulations of the Detention Unit had been respected, and in general, the detainees had described their conditions of detention as satisfactory.

15. Dutch soldiers were given a general introduction to a number of international instruments, including the Geneva Convention, and also attended special classes on questions relating to ethics, human rights and the use of force before they went on a peacekeeping mission. A code of conduct had been published for all staff in the Ministry of Defence. Police officers and prison staff received training on the treatment of persons deprived of liberty. The prohibition of torture had an important place in the police training cluster on respect for human rights in the course of their activities. A handbook had been published on the treatment of suspects in custody which included useful guidelines for the everyday work of the police. Prison staff received training in criminal law and relevant rules, including on ethics and conditions for the use of force against inmates.

16. The ethnic diversity of Dutch society was reflected in the composition of the police, 6.4 per cent of whose members were of foreign origin. The objective of the current Government was to increase that percentage. The policy of integrating members of minorities in the police was a matter for the regional police, since needs varied from one region to another. In order to improve mutual understanding between peoples and cultures, visits to other countries had been organized for members of the police, for example to Morocco.

17. The procedure governing complaints of violations by the police was defined in articles 61 to 65 of the 1993 Police Act. All police corps were subject to the same procedure and reported to an independent dispute settlement commission, which must record all oral and written requests which it received. Persons who contested the conclusions of the procedure could enter an appeal with the Ombudsman, who settled most of the disputes referred to him by mediation. In 2005, some 7,000 complaints had been lodged, of which 930 had been referred to the Ombudsman. In 2006, 974 complaints had been submitted to the Ombudsman, who had produced a report on 130 of them. In about 100 cases, he had concluded that the complaint had been well-founded, either in full or in part, and had formulated specific recommendations in 14 instances. The police usually followed up the recommendations.

18. On the questions posed by some members of the Committee regarding violence in Dutch society, he pointed out that the link between those questions and the Convention against Torture was sometimes very tenuous, but he would reply briefly by providing some recent information on points that had been raised.

19. Guidelines had been published in 2005 to prevent and combat violence against elderly persons, and it was planned to monitor the problem as part of the implementation of the Social Welfare Act. The phenomenon was relatively new, and there were no statistics yet on it. With regard to violence against women, the Government had adopted a series of measures to combat domestic violence, from early detection to aid to victims and even treatment for the perpetrators. It planned to set up the requisite infrastructure to promote partnerships between local and regional authorities and to support shelters for battered women and programmes to treat the perpetrators. A bill to impose temporary restraining measures on the perpetrators of domestic violence was to be passed shortly.

20. As to the sexual exploitation of children, the provisions of the Criminal Code prohibiting pornography depicting children had been made more severe and their scope enlarged to include forcing minors to have sexual relations with each other. An amendment to the Civil Code prohibiting the use of force for educational purposes had become operative on 25 April 2007. The text stipulated that parents must refrain from using any form of physical or psychological violence; that would make the provisions of the Criminal Code which punished child abuse more effective, because anyone accused of abusing a child could no longer hope to minimize their responsibility by arguing that they had used corporal punishment for disciplinary reasons.

21. The number of violent incidents of an anti-Semitic or Islamophobic nature had declined in 2005. In conformity with the plan to combat discrimination adopted by the Government in 2003, the police must follow up all incidents of a racist nature and must report them to the Chief Public Prosecutor. A network of offices, which was readily accessible to victims, had been set up for registering complaints of acts of racial discrimination. He noted also that in April 2000, the Netherlands had appointed a national rapporteur on trafficking in persons, and that in 2004, a

plan of action against trafficking had been adopted which provided for a whole arsenal of measures in the areas of prevention, legislation, investigation and prosecution. An information office had been opened on the prostitution of minors, and an information campaign had been launched to encourage the public to report cases of trafficking to the police or to do so anonymously in the context of a television programme which provided for that possibility.

22. Mr. KUIJER (Netherlands), referring to the rights of persons in custody, said that the Dutch Code of Criminal Procedure did not require the presence of a lawyer during police interrogations, but the law provided that a sound or audiovisual recording must be made in some cases. Until recently, a recording was obligatory only for offences of a certain degree of seriousness. However, the Government had decided to extend the requirement to all offences punishable by a sentence of at least 12 years' imprisonment. A recording must also be made when the acts of which the suspect was accused had led to the death of the victim or to serious bodily harm, as well as in cases of sexual violence. All questioning of persons under 12 years of age must also be recorded.

23. In accordance with article 59 of the Code of Criminal Procedure, the maximum duration of custody was three days and 15 hours. The suspect must be brought before a judge by the end of that time period. In the event of court congestion, police custody could be extended to a maximum of ten days.

24. Since 2003, the situation of the special team set up to investigate and prosecute war crimes and crimes against humanity (the NOVO team) had improved considerably. The team now had sufficient means to discharge its duties properly. The members of the Committee who wished to have further information on the question could refer to paragraphs 40 to 45 of the written replies.

25. With regard to the doubts expressed by Ms. Sveaass about the reliability of a 2003 study on the impact of conditions in the maximum-security prison on the mental health of the detainees (report, para. 33), he said that the Government had decided not to rely on that study in formulating its recommendations for improving regulations in such facilities. The authorities had considered that the study had not covered a sufficient number of detainees to reach general conclusions. He also pointed out that the prison administration had stopped conducting systematic body searches on detainees at the maximum-security prison and that now such searches were only authorized when the detainee's behaviour so required or for reasons of security.

26. On the treatment of young offenders, he said that such persons were not grouped as a function of their ethnic origin. Care was simply taken to separate boys and girls, and suspects and convicts.

27. As to the accelerated procedure used for examining asylum requests under the Aliens Act, which had entered into force on 1 April 2001 (report, paras. 22 and 23), it should be borne in mind that that mechanism, which derogated from the regular procedure for the consideration of asylum requests, had been instituted for a more effective processing of requests that did not appear to pose any particular problem. More complex cases were examined under the regular procedure. The decision by the Immigration and Naturalization Service to use the accelerated procedure was subject to a court review, which was an initial guarantee of respect for the rights of the applicant. The use of the accelerated procedure was not automatic and was always based on a case-by-case examination of the situation of the asylum-seekers. Those whose application

was considered under the accelerated procedure had sufficient time to prepare their case and received assistance from lawyers and interpreters. Applicants who upon arrival at the border were physically or psychologically unable to submit a substantiated application could not be summarily returned to their country of origin. In such cases, the application was examined under the regular procedure; concerns expressed in that regard by some of the members of the Committee were thus unjustified. Only 30 per cent of applications for asylum were processed under the accelerated procedure, and of the 3,900 applications reviewed by the Immigration and Naturalization Service, 1,200 had been approved.

28. The Chairperson of the Committee, speaking in his capacity as Country Rapporteur, had expressed concern about how evidence was assessed under the accelerated procedure. Persons whose application was considered under the accelerated procedure were in fact required to show that their situation warranted the granting of refugee status, but the Country Rapporteur would be reassured to learn that the officials at the Immigration and Naturalization Service must investigate the human rights situation in the applicant's country of origin, thereby lightening the burden of proof for the person concerned. The accelerated procedure was not applicable to children under 12 years of age. Asylum applications submitted by minors between 12 and 18 years of age could be considered under the accelerated procedure, but only after an individual examination of the situation of the applicant, and use of the procedure in such cases was by no means automatic. The Government planned to adopt a number of measures to improve the accelerated procedure; the details had not yet been decided.

29. As to the conditions under which minors seeking asylum were held in detention centres, he referred the members of the Committee to paragraphs 66 to 69 of the written replies.

30. It was true that in some port cities of the Netherlands, in particular Rotterdam and Utrecht, old cruise ships had been transformed into holding centres for illegal aliens. Currently there were six such facilities in the country (with a total capacity of about 2,000 places), whose administration was in conformity with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

31. Some members of the Committee had expressed the view that, given the rapid nature of the accelerated procedure, the courts should be empowered to review the decisions. They had argued that new facts which had not been submitted on time during the accelerated procedure might not be taken into account, which would be contrary to the provisions of article 3 of the Convention. Aware of that risk, the Ministry of Justice was currently considering ways of having another body review the decisions.

32. With regard to article 4, paragraph 6, of the General Administrative Law Act, pursuant to which an asylum application could only be reviewed if the applicant invoked a new fact concerning his or her situation in the country of origin, the Government's position was that the provision was not contrary to its international obligations and that the interpretation by the authorities of the notion of "a new fact" was sufficiently broad to be in compliance with article 3 of the Convention. It was worth noting that the Supreme Administrative Court had allowed for an exception to the principle enunciated in that article when the case concerned allegations of abuse.

33. As to the application of the Istanbul Protocol by the Immigration and Naturalization Service, he said that, as such, medical reports submitted by asylum-seekers were not considered

to be evidence because it could not be established with certainty that the bodily harm invoked by the applicant was the consequence of acts of torture or cruel, inhuman or degrading treatment. Accordingly, the Netherlands had decided not to apply the Istanbul Protocol, which in any case was not binding. The Netherlands had not drawn up a list of supposedly “safe” countries of origin, and thus the situation of asylum-seekers was always the subject of a case-by-case examination.

34. Concerning the alleged return to their country of origin of Somali children who had lived in the Netherlands for many years, he had no knowledge of such a case. In any event, the relevant legislation did not permit the expulsion of persons who had lived in the Netherlands for many years.

35. Genital mutilation, which was a grave violation of a person’s physical integrity, was considered to be an act of torture or cruel, inhuman or degrading treatment and was a ground for granting a residence permit.

36. In response to a question about the application of the Schengen and Dublin Agreements, pursuant to which an asylum-seeker could submit only one application throughout the European Union, he said that the Netherlands had received 2,050 complaints under those Agreements from other member States of the European Union, and the Dutch authorities had submitted 3,300 such complaints, of which about 40 per cent had been successful.

37. It had been asked, in particular concerning the case of homosexual Iranians, whether asylum-seekers could be returned to their country of origin if they risked being persecuted on account of their sexual orientation. The case of the Iranians had been difficult to decide, because it had not been easy to establish whether they risked being persecuted solely because of their sexual orientation. Since doubt had persisted, it had been decided not to return them. In general, sexual orientation was taken into account in deciding whether to provide protection to a given category of persons from certain countries. He noted also that there were no statistics in the Netherlands on the number of women who had been granted a residence permit as victims of sexual violence in their country of origin.

38. Ms. PETERSON (Netherlands), referring to the situation in Aruba, recalled that the Constitution which that territory had introduced in 1986 was based on several international human rights instruments, notably the European Convention on Human Rights. Article 1, paragraph 3, of the Constitution prohibited any violation of a person’s physical integrity and authorized derogations from that principle only if provided by law. The Netherlands Antilles and Aruba each had its own lower court, and they had a joint court of appeal. The Supreme Court of The Hague served all three countries. Aruba and the Netherlands Antilles, which were an integral part of the Kingdom of the Netherlands, were thus parties to all United Nations human rights conventions and their protocols. National legislation had given effect to those instruments, and the decisions of the European Court of Justice were applicable in Aruba and the Netherlands Antilles.

39. Pursuant to the Code of Criminal Procedure of Aruba, pre-trial detention could not exceed 116 days. Suspects were placed in police custody for the first ten days and then transferred to prison. During the period of pre-trial detention, the judge reviewed the legality of the detention at regular intervals. In principle, suspects were tried within four months, but exceptionally (for example, if the suspect decided to change his or her lawyer during the trial or if the requisite



documentation was not yet available), that time period could be extended by one or two months. It should be noted that the statistics in the written replies only reflected the situation of the prison population in the month considered, and no conclusions should be drawn on the length of pre-trial detention. Prisoners who appealed their conviction continued to be recorded as detainees awaiting trial.

40. The Aruba Criminal Code specified that any sexual contact with minors 16 years of age or younger was an offence. The involvement of minors aged 16 to 18 in prostitution was also punishable. The new Act amending the Criminal Code, promulgated in May 2006, had made trafficking in women and children for the purpose of prostitution a criminal offence. There did not seem to be any sexual tourism as such in Aruba.

41. Genital mutilation was unknown in Aruba. If a victim of such inhuman practices were to ask for asylum, the authorities would consult with The Hague and with the Branch Office in Caracas of the Office of the High Commissioner for Refugees.

42. If a disciplinary investigation and a criminal investigation were opened on the acts of a police officer, disciplinary and criminal sanctions could in principle be imposed simultaneously. The main disciplinary sanctions were a warning, suspension and dismissal. The usual criminal sanctions were imposed: fines, prison sentences, professional ban etc. The investigations conducted by the Internal Investigations Bureau (BIZO) concerned dereliction of duty and minor offences. More serious offences committed by police officers were investigated by the Public Service Investigation Agency on behalf of the Chief Public Prosecutor. In 2005, an investigation by the Agency had led to the conviction of one police officer for abuse of power, falsification of documents and abuse. He had been sentenced to prison and had been dismissed.

43. It was true that a relatively high proportion of prisoners were of Colombian or Venezuelan nationality. The Colombians imprisoned in Aruba had usually committed drug offences. Aruba was a transit point for drugs which generally came from Colombia and arrived in Aruba via Venezuela. Many Venezuelan prisoners had been convicted of either drug offences, fraud, robbery or, of late, trafficking in persons, which had recently become a criminal offence in Aruba.

44. If a prisoner had been the victim of sexual violence, the prison regulations stipulated that the prison staff must advise the victim to lodge a complaint with the police. If the perpetrator was a member of the prison staff, the victim must contact the Public Service Investigation Agency. However, prisoners often preferred not to lodge a complaint. In any event, the victim received medical and psychological assistance. The question of sexual violence was extensively addressed in training for prison staff. It was somewhat rare for cases of sexual violence to be brought to the attention of the prison administration, and the medical staff and the supervisory authorities had the impression that sexual violence among prisoners or between guards and prisoners was not frequent. In 2006, a sole incident involving another prisoner had been reported, but the victim, who had received the requisite psychological treatment, had refused to lodge a complaint.

45. Ms. THEDORA-BREWSTER (Netherlands), referring to the situation in the Netherlands Antilles, said that human rights training for police officers and prison staff, conducted by the National Institute for Police Training, contained a unit on the human rights of prisoners, including the prohibition of torture. All prisoners were informed of their rights. Human rights

training was monitored and evaluated on the basis of complaints lodged by prisoners; refresher courses were also held. Account was taken of the cultural aspects of prisoners' needs, for example dietary requirements. Language courses, including in Creole, were held to improve communication between prison staff and inmates. The religious and cultural convictions of inmates were respected.

46. Every arrested person had access to a lawyer the day of the arrest, but only a judge could allow the lawyer to be present during an interrogation. The maximum time period for custody was 18 days; if the proceedings lasted longer, the suspect must then be placed in a detention centre. The situation had changed at the detention centre for minors, which was now called "Bon Futuro". There were no longer any minors there who were 15 years old, because they had been placed in a new Government-funded correctional school, where the emphasis was on nutrition, education, medical care, leisure activities and community life.

47. The pre-trial detention centre held two categories of persons: the majority were persons awaiting trial, and the others were persons who had already been convicted and were awaiting placement in a prison to serve their sentence. As to the remand centre, for security reasons it only housed civil servants – police or customs officers, for example – convicted of criminal offences. The name would be changed when the new remand centre was built.

48. One guard had been injured by an inmate in 2005, but prison violence was mostly between inmates. The cells housing four prisoners did not give rise to more violence than the others, since violent acts were usually committed during group activities.

49. Riot squads had not been used in prisons since 2001. Specially trained prison staff was responsible for prison security in the event of a disturbance. If a situation was out of control, a police riot squad would be called in.

50. No sexual violence had been reported to the prison authorities over the recent period. All complaints were treated without delay and in a confidential manner so as to ensure that prisoners were not hesitant about reporting sexual abuse or threats thereof. Likewise, in the case of violence between inmates, the relevant service of the prison administration immediately conducted an internal investigation whose conclusions were sent to the prosecuting authorities, which decided whether or not to institute criminal proceedings. The prison administration could also take disciplinary measures. An inmate who had been brought to court for acts of violence could be sentenced to an additional term of imprisonment. Six cases had been reported to the prosecuting authorities between 1997 and 2007. Additional statistics concerning violence in prison would be contained in the report which would be submitted to the Committee shortly.

51. With regard to the modalities for the grouping of inmates, the classification system currently in force was being modernized. A multidisciplinary team of specialists had conducted a study of the prison population in order to propose a new method for grouping inmates as a function of age, gender, education, nature of the offence and state of health.

52. The CHAIRPERSON (Country Rapporteur) thanked the delegation for its exemplary replies to the questions asked. However, a number of points still needed to be clarified, for example on the Suriname case; although the Netherlands was not bound to request the extradition of an offender if the person was in another country, it was under an obligation to prosecute if the person was within its jurisdiction. Moreover, although it was true that no one

could challenge the decisions of courts, Governments sometimes did so, and the power of the judiciary should not be limitless. As to the Committee, its task was to make sure that a conviction was proportional to the offence; to decide whether a conviction was too lenient or excessively severe, it must have concrete details on any attenuating or aggravating circumstances.

53. It emerged from the information provided that the Netherlands was careful to respect human rights in the context of the fight against terrorism and that it had not conducted any illegal transfers. The Netherlands had also been cautious about diplomatic assurances.

54. Clarification had been sought on the subject of the accelerated procedure, in particular with regard to the most complex cases. However, the absence of criteria, even negative ones, appeared to cause a problem, given the short time period involved. For example, it was conceivable that an asylum-seeker could remain without legal counsel for several days. The time periods should be extended in some cases, and if a person without papers submitted an application for asylum within the requisite time period, there was good reason to conduct a more thorough examination. Article 4, paragraph 6, of the General Administrative Law Act should be reviewed, because facts which could not be submitted within the requisite time period should be treated as new facts.

55. It was surprising that requests for asylum from persons who had come from countries regarded as not safe and whose statements could be readily verified were not examined under the accelerated procedure. The establishment of objective criteria for the applicability of the accelerated procedure might perhaps prevent such inconsistencies.

56. Ms. SVEAASS (Alternate Country Rapporteur) thanked the delegation for the detailed replies and the updated information, notably on the situation of minors at Bon Futuro Prison. Concerning the asylum procedure, she hoped that in the future, medical reports would be taken into consideration when examining requests, since the information which they contained could make a decisive contribution to establishing the veracity of the applicant's statements, especially with regard to allegations of torture. From that perspective, the application of the Istanbul Protocol was essential.

57. Mr. KOVALEV, noting that the Netherlands Antilles and Aruba were independent States because they had their own Constitution, wondered whether they should not each be submitting a report.

58. Mr. MARIÑO MENÉNDEZ sought confirmation that if Aruba or the Netherlands Antilles failed to comply with an obligation under the Convention against Torture, it would incur the international responsibility of the Netherlands. It would also be interesting to know whether the current Government's policy of generalized legalizations covered asylum-seekers whose initial application had been rejected and who had been living in the Netherlands for years awaiting the results of their appeal.

59. Ms. BELMIR, referring to the concluding observations of the Committee on the Rights of the Child on the second periodic report of the State party, submitted in 2004 (CRC/C/15/Add.227), noted that the Committee had been concerned that prejudices and discrimination persisted in society, in particular against children of ethnic minorities and refugee and asylum-seeking children. She asked whether that was still a problem, notably in Aruba. With

regard to the treatment of juvenile offenders, the fact that persons between 16 and 18 years of age were classified as adults was incompatible with international norms, including those enunciated in the Convention on the Rights of the Child. The delegation had indicated that the accelerated asylum procedure was not applicable to children under 12 years of age, which meant that asylum requests submitted by minors between 12 and 18 years of age could be examined under that procedure. Given how difficult it was for an adult to meet the procedure's requirements, especially in terms of the time limit, it was not clear how a minor, even if older than 12, could do so. The fact that medical reports were not taken into consideration was an additional obstacle.

60. Mr. GALLEGOS CHIRIBOGA said that the question of asylum procedures was closely linked to immigration policies, which had become more severe in many countries, particularly in Europe. The imperatives of national security in connection with the terrorist threat must of course be taken into account, but should not prevent States from giving thought to the overall issue of immigration. With regard to trafficking in persons, which was somewhat on the periphery of the Committee's direct concerns but which, given its scope, deserved to be addressed, the Netherlands had adopted an active policy to combat the phenomenon. Some information on how the Netherlands cooperated with other countries would be welcome, since close international cooperation was a pre-condition for combating trafficking and the transboundary criminal organizations which profited from it.

61. Mr. de KLERK (Netherlands) said that, unlike some international treaties concluded by the Netherlands, international human rights instruments, including the Convention against Torture, were applicable throughout the Kingdom, although each State could implement them independently. The State of the Netherlands was answerable for any violation of those instruments, because it was responsible for the defence and foreign policy of the territories of the Kingdom. With regard to the submission of reports, the Kingdom of the Netherlands intended to continue to submit a single report, unless practical constraints made it necessary to prepare separate ones.

62. With regard to asylum-seekers who had been present in the Netherlands for many years, it had already been explained that those persons had submitted their application before the passage of the new Aliens Act and that the applications had thus been examined in accordance with the previous legislation. However, the new Government had decided to legalize their status, subject to compliance with certain criteria.

63. He agreed with Mr. Gallegos Chiriboga that international cooperation was the key to combating trafficking. The Netherlands was a party to virtually all international agreements on the question, not only within the United Nations, but also in the framework of regional bodies, such as the Organization for Security and Cooperation in Europe. There was also a National Rapporteur responsible for the question, who had a considerable network of international contacts.

64. Mr. KUIJER (Netherlands) wished to add a few remarks on the asylum procedures, and in particular the accelerated procedure. No complex case had been examined under that procedure, given that it was up to a judge to decide whether a case was "complex". It was true that there were no criteria expressly defining cases in which the accelerated procedure was applicable, although there were rules for identifying cases in which it was not, namely for children under 12

years of age and for complex cases. It might be useful, as suggested by the Country Rapporteur, to define more precisely the circumstances under which the accelerated procedure must be applied. As to the time period under the accelerated procedure, which was in fact very short, an extension might be envisaged in some cases. The criterion of marginal scrutiny (question 6 in the list of issues) and the application of article 4, paragraph 6, of the General Administrative Law Act would be reviewed in the light of the Committee's comments. Asylum requests submitted by persons from countries that were regarded as not safe were not processed under the accelerated procedure, not because of an inconsistency in the procedure's application, but simply because those cases involved matters of categorical protection, for which the procedures were totally different from the asylum procedure. With regard to taking medical reports into consideration in asylum procedures, it seemed that the reply given had mistakenly created the impression that medical reports were not examined at all, which of course was not the case. When a medical report was provided, it was examined, but it did not have a major impact on the final decision.

65. Mr. de KLERK (Netherlands) thanked the Committee for its useful and constructive comments, which would be taken duly into consideration. As to the next periodic report of the Netherlands, was the delegation correct in assuming that it should be submitted in four years?

66. The CHAIRPERSON said that the date for the submission of the next report of the State party and the Committee's recommendation on whether a separate report should be submitted for the Netherlands Antilles would be contained in the concluding observations concerning the fourth periodic report of the Netherlands, which would be forwarded to the Permanent Mission of the Netherlands after the end of the session.

67. The delegation of the Netherlands withdrew.

The public part of the meeting rose at 5 p.m.

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