



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Ninety-sixth session
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

Concluding observations of the Human Rights Committee

NETHERLANDS

1. The Committee considered the fourth periodic report submitted by the Netherlands (CCPR/C/NET/4, CCPR/C/NET/4/Add.1 and CCPR/C/NET/4/Add.2) at its 2630th and 2631st meetings, held on 14 and 15 July 2009, and adopted at its 2650th meeting, held on 28 July 2009, the following concluding observations..

A. Introduction

2. The Committee welcomes the fourth periodic report of the Netherlands, which gives detailed information on measures adopted by the State party and on its forthcoming plans to further the implementation of the Covenant. The Committee expresses its appreciation for the quality of the written responses to the list of issues and for the responses given orally by the delegation.

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B. Positive aspects

3. The Committee, which notes the sustained attention paid by the State party to the protection of human rights, welcomes the following legislative and other measures:

- (a) The Equal Treatment in Employment (Age Discrimination) Act of May 2004, which bans age discrimination in employment, occupation and vocational training;

- (b) The Temporary Domestic Exclusion Order Act (2009), which allows for the exclusion from the home of perpetrators of domestic violence in situations where there is a serious threat to the victims, including any children;
- (c) The “Everyone Takes Part” Action Programme (2007) aimed at combating ethnic and racial discrimination in access to employment; and
- (d) The National Action Plan to Combat Trafficking in Human Beings of December 2004, as well as the establishment, in 2008, of a Human Trafficking Task Force to support and coordinate the fight against human trafficking through, inter alia, the exchange of best practices and the provision of support to local and regional agencies.

C. Principal subjects of concern and recommendations

4. The Committee notes that the State party maintains its reservation, inter alia, to article 10 paragraphs (1) and (2) of the Covenant. With regard to the reservation to article 10, paragraph 2(a), the Committee takes note of the State party’s statement that, in practice, accused and convicted persons are already detained separately, and welcomes the delegation’s indication that the State party is prepared to reconsider its position in this regard.

The State party should withdraw its reservation to article 10 and should consider withdrawing its other reservations to the Covenant.

5. While acknowledging the State party’s efforts to improve gender parity in access to employment, the Committee notes with concern that the participation of women in the labour market remains considerably lower than that of men, that women remain over-represented in part-time employment and that a significant gender pay gap persists. (art. 3)

The State party should strengthen the implementation of measures to ensure that women enjoy equal access to the labour market and equal pay for work of equal value. The State party should pay particular attention to encouraging mothers of young children to continue in employment by increasing the options available for full-time and part-time child care and appropriate after-school programmes.

6. The Committee notes the low participation of women in public office at senior levels, particularly in the Senate and the Cabinet. The Committee notes that this is also the case in the private sector, with women occupying considerably fewer senior positions. (arts.3, 25 and 26)

While recognizing the different conditions in the public and private sectors, the State party should strengthen its efforts to increase the participation of women in political decision-making positions at all levels, as well as in senior positions in the private sector, by, inter alia, conducting awareness-raising campaigns and encouraging more intensive searches for suitable female candidates.

7. The Committee remains concerned at the extent of euthanasia and assisted suicides in the State party. Under the law on the Termination of Life on Request and Assisted Suicide, although a second physician must give an opinion, a physician can terminate a patient’s life

without any independent review by a judge or magistrate to guarantee that this decision was not the subject of undue influence or misapprehension. (art. 6)

The Committee reiterates its previous recommendations in this regard and urges that this legislation be reviewed in light of the Covenant's recognition of the right to life.

8. The Committee notes that medical experimentation involving minors is currently permissible in the State party in two cases: either where it would be of direct benefit to the child concerned or, instead, where the participation of children is a necessary component of the research and the experimentation is deemed to have a "negligible" effect. Nevertheless, the Committee remains concerned that the law does not contain adequate safeguards in relation to medical experimentation requiring the involvement of children. (arts. 7 and 24)

The Committee reiterates its recommendation that the State party should ensure that minors are not subjected to any medical experiments which do not directly benefit the individual concerned (non-therapeutic research) and that safeguards in general are fully consistent with the rights of the child, including with regard to matters of consent.

9. The Committee notes that under the "accelerated procedure" for the review of asylum applications, claims are evaluated within 48 working hours. The Committee is concerned that both the current procedure and the proposed regular "8-day" procedure may not allow asylum-seekers the opportunity to adequately substantiate their claims and may place them at hazard of being expelled to a country where they may be at risk. (art. 7)

The State party should ensure that the procedure for processing asylum applications enables a thorough and adequate assessment by allowing a period of time adequate for the presentation of evidence. The State party must, in all cases, ensure respect for the principle of non-refoulement.

10. The Committee notes with concern that the 2008 Bill on Administrative Measures for National Security provides that the Minister of the Interior and Kingdom Relations, without any prior judicial review, may direct the exclusion from certain areas or facilities of persons who may be "associated with terrorist activities" or "support of such activities", and also may impose an obligation to report periodically to the police. Violation of the Minister's exclusion order allows for a penalty of up to one year's imprisonment. (arts. 9 and 12)

The State party should reconsider the draft legislation in light of these concerns. Any amendments should ensure that all restrictions on the right to liberty and to freedom of movement are founded on a reasonable suspicion of participation in criminal activity and that all such measures are in conformity with the Covenant, including articles 9 and 12, paragraph 1.

11. The Committee notes that, in the State party, a person suspected of involvement in a criminal offence has no right to have legal counsel present during police questioning. It is only after a public prosecutor has ordered his detention following initial interrogation that a person may consult with counsel. Even then, the lawyer cannot be present during subsequent police

questioning, and police may refuse counsel's request that they cease questioning his client. The Committee notes that the right to counsel is an important safeguard against abuse. (arts. 9 and 14)

The State party should give full effect to the right to contact counsel in the context of a police interrogation. The State party should ensure that a criminal suspect is informed, immediately upon his arrest, that he has a right to legal counsel, and a right not to testify against himself.

12. The Committee is concerned that pretrial detention in the State party may last for up to two years, a situation aggravated by the restricted right of access to counsel. The Committee considers this to be an excessive delay in bringing suspects to trial. (arts. 9 and 14)

The State party should ensure that all persons are tried within a reasonable time and that pretrial detention is not inconsistent with the right to be tried without undue delay as set out in article 14.

13. The Committee notes that, under the Witness Identity Protection Act, the identity of certain witnesses is kept from the defence for reasons of national security. While the defence may put questions to such witnesses through the examining judge, the defence cannot always attend the examination of the witness. Considering the importance of a witness' identity and demeanour in assessing the credibility of his evidence, the ability of an accused person to challenge the case against him is significantly impaired by this law. (art. 14)

The State party should apply the law so as to give full effect to the right of a person to examine, or have examined, the witnesses against him in conformity with article 14 (e) of the Covenant.

14. The Committee is aware that the State party considers wire and telephone tapping to be an important investigative tool. It is concerned that any use of wire and telephone taps should be minimized so that only pertinent evidence is gathered and that a judge should supervise its use. The Committee is further concerned at the finding of the Data Protection Authority that recordings of telephone conversations involving professionals who have a confidentiality duty, especially lawyers, are not safeguarded in a manner that preserves lawyer-client confidentiality. (art.17)

The State party should apply the law on wire and telephone tapping in a manner which is compatible with article 17 of the Covenant and should ensure the exclusion of communications protected by the privilege of confidentiality from tapping.

15. The Committee is concerned that, as part of measures to combat terrorism, local mayors may issue administrative "disturbance orders" under which an individual may be subjected to interference in his daily life. Such interference can include house calls, approaching the individual's acquaintances and repeatedly approaching the person in public. Since disturbance orders do not require judicial authorization or oversight, the Committee is concerned at the risk that their application may be inconsistent with the right to privacy. (art. 17)

The State party should amend its legislation to ensure that its counter-terrorism measures do not conflict with article 17 of the Covenant and that effective safeguards, including judicial oversight, are in place to counter abuses.

16. The Committee notes the State party's intention to abolish the article on blasphemy in the Criminal Code, while at the same time revising its anti-discrimination provisions. (arts. 19 and 20).

The State party should closely monitor any legislative reform in this area to ensure that it is compatible with article 19.

17. The Committee is concerned at the problem of child sexual abuse in the State party. Even with the "Children Safe at Home" Action Plan, the Committee is concerned that the efforts deployed to protect children are inadequate and that many cases of abuse are not reported. (arts. 7 and 24)

The State party should strengthen its efforts to combat child abuse by improving mechanisms for its early detection, encouraging reporting of suspected and actual abuse, and by requiring authorities to take legal action against those involved in child abuse.

18. The Committee is concerned that making the allocation of housing in certain areas subject to additional income qualifications under the 2006 Urban Areas (Special Measures) Act, together with the deliberate housing of low-income persons and families in peripheral and central municipalities, may result in violations of articles 12, paragraph 1; and 26 of the Covenant. (arts. 2, 12, para. 1; 17 and 26)

The State party should ensure that its regulation of access to housing does not discriminate against low-income families and respects the right to choose one's residence.

19. The Committee is concerned at reports that there is discrimination against ethnic minorities including in recruitment and selection in the workplace. (art. 26)

The State party should take active steps to ensure that ethnic minorities have equal opportunity with others in recruitment and selection in the workplace, including:

- (a) Conducting awareness-raising activities on this matter with the private sector;**
- (b) Ensuring that public sector opportunities are adequately advertised within ethnic minority communities; and**
- (c) Conducting suitably broad searches for candidates from ethnic minority communities.**

THE NETHERLANDS ANTILLES

B. Positive aspects

20. The Committee welcomes the development of a national referral system in 2006 for victims of trafficking in need of assistance, which is periodically updated in consultation with the International Organization for Migration and the Human Trafficking Coordination Centre.

C. Principal subjects of concern and recommendations

21. The Committee commends the State party on the amendment to the law allowing for the judicial declaration of paternity in respect of children born out of wedlock. However, it is concerned that children born out of wedlock continue to suffer discrimination through the loss or limitation of their right of inheritance.(arts. 2 and 26)

The State party should amend its legislation with a view to removing all provisions which discriminate against children born out of wedlock in matters of inheritance.

22. The Committee notes with concern that human trafficking is not a separate criminal offence under Antillean law and that trafficking in human beings is addressed by charging under other crimes in the Criminal Code, including false imprisonment and sexual offences. The Committee considers that it is important to criminalize trafficking as a discrete offence as this takes account of the specific elements of trafficking and increases the likelihood of successful prosecutions. (art. 7)

The State party should introduce a separate offence of trafficking in human beings into its Criminal Code.

23. The Committee is concerned at reports that prison conditions in Bon Futuro Prison and Bonaire Remand Prison remain extremely harsh. (arts. 7 and 10)

The State party should ensure as a matter of urgency that conditions in places of detention are improved to meet the standard set out in article 10, paragraph 1.

24. The Committee is, furthermore, concerned about credible reports of physical ill-treatment and verbal abuse by the police at Bon Futuro Prison, Bonaire Remand Prison, and at the prison for irregular migrants ("*Illegalen Barakken*"). (art.10)

The State party should prevent and punish the ill-treatment of detainees by police and other authorities in charge of prisons and should, as a matter of urgency, ensure that prison personnel receive training with regard to the application of the 1955 Standard Minimum Rules for the Treatment of Prisoners.

25. The Committee notes the upcoming establishment of new constitutional arrangements in territories of the Netherlands Antilles.

The State party should ensure that each of the new constitutional arrangements ensures full protection of Covenant rights.

ARUBA

B. Positive aspects

26. The Committee commends the State party on the adoption of the Sexual Offences and Stalking (Criminalisation) Ordinance of 2003, which expands the criminal law protection of minors against sexual abuse. The Committee also welcomes the revision of the Police Order on the Treatment of Detainees to take into account the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

C. Principal subjects of concern and recommendations

27. The Committee is concerned that pretrial detention, as acknowledged by the State party, is lengthy, averaging 116 days and lasting up to a maximum of 146 days, after which the examining magistrate may extend it for a further 30 days. (arts. 9 and 14)

The State party should limit the duration of pretrial detention in line with article 14, paragraph 3(c) of the Covenant and should ensure that the provisions of article 9 are fully respected.

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28. The Committee requests the State party to publish the fourth periodic report and these concluding observations, making them widely available to the general public and to the judicial, legislative and administrative authorities. Printed copies should be distributed to universities, public libraries, the Library of Parliament and other relevant places in each country of the State party. The Committee also requests the State party to make the fourth periodic report and these concluding observations available to civil society and to the non-governmental organizations operating in the State party.

29. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, information on the current situation and on its implementation of the Committee's recommendations given in paragraphs 7, 9 and 23 above.

30. The Committee requests the State party, in its next periodic report due to be submitted by 31 July 2014, to provide information on action taken to implement the remaining recommendations and on its compliance with the Covenant as a whole. In this regard, the Committee also requests the State party to submit a single, consolidated report in respect of all parts of the Netherlands.
