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REPLIES TO THE LIST OF ISSUES (CCPR/C/AUS/Q/5) TO BETAKEN UP IN CONNECTION WITH THE CONSIDERATION OF THE OF THE FOURTH PERIODIC REPORT OF THE NETHERLANDS (CCPR/C/NET/4; CCPR/C/NET/4/Add.1; CCPR/C/NET/4/Add.2) *

[5 May 2009]

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

* Annexes to the written replies can be consulted in the Secretariat file.

The Kingdom of the Netherlands

Written replies to the list of issues regarding the International Covenant on Civil and Political Rights

raised in connection with

the fourth periodic report of the Netherlands (CCPR/C/NET/4)

the sixth periodic report of Aruba (CCPR/C/NET/4/Add.1)

the fourth periodic report of the Netherlands Antilles (CCPR/C/NET/4/Add.2)

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Annexes:

Constitutional and legal framework within which the Covenant is implemented

A 1

The Kingdom of the Netherlands wishes to maintain its reservations to the ICCPR for the time being. The reasons of making these reservations remain unimpaired. Regarding the reservation to Article 12 can be mentioned that currently the preparations for the political reforms of the Kingdom are ongoing.

A 2

The Netherlands: The ICCPR was cited in 148 cases in 2006, 152 cases in 2007 and 163 cases in 2008. The legal fields to which these cases related were tax law, criminal law, administrative law, social assistance and social security, immigration law and commercial law.

Netherlands Antilles: The provisions of the ICCPR are not often invoked in civil, criminal or administrative cases. Below are two examples of cases in which they were invoked.

Civil case: judgment of the Court of First Instance sitting in Curaçao of 28 January 2009 (EJ 2008/497). A group of non-union employees claimed the ‘same pay’ (…) ‘as union members’, invoking, among other things, the prohibition of discrimination in article 26 ICCPR. The Court dismissed the claim on the ground that unequal pay was not unacceptable according to the criteria of reasonableness and fairness. Although support for the principle of equal pay for equal work in equal circumstances (unless there is an objective justification for unequal pay) can be found in treaty provisions such as article 26 ICCPR and article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Court held that the principle was not decisive and that the differentiation was not prohibited by statute or treaty provision. Another consideration in this case was that the difference in pay was small and the benefit to the union members was offset by the fact they had to pay union dues.

Criminal case: judgment of the Supreme Court of 6 November 2007 (no. 02474/06A). The defendant was convicted of a drug offence under a national ordinance and given an 18 months’ suspended prison sentence, subject to a special condition that he must not leave Curaçao during the two-year operational period of the suspended sentence (this amounted to a travel ban on the drug courier). The Supreme Court quashed the judgment as it considered that this specific condition had no express statutory basis and was impermissible in the light of provisions such as article 12 ICCPR and article 2 of Protocol No. 4 to the European Convention on Human Rights (ECHR) ‘as, in view of the length and the extent of the restriction of the defendant’s liberty of movement, it would not be fitting for society to impose such a condition on the defendant.’

Counterterrorism measures and respect for rights guaranteed in the Covenant

A 3

The Netherlands: The comparatively recent Dutch legislation on counterterrorism is contained for the most part in three criminal statutes.
1) The Crimes of Terrorism Act of August 2004 added a number of terrorist crimes to the Criminal Code pursuant to the EU Framework Decision on combating terrorism. These are existing offences that may carry a heavier sentence if committed for the purpose of terrorism. The Crimes of Terrorism Act also introduced the offences of recruiting for and conspiring to commit a serious terrorist offence.
2) The Witness Identity Protection Act introduced rules under which information provided by the intelligence and security services may be used in criminal trials. It provides for a criminal procedure under which the identity of witnesses is protected in a hearing before an examining magistrate to assess the reliability of the information. In criminal cases the defence retains the right to question witnesses, albeit in different ways.

3) The Investigation and Prosecution of Crimes of Terrorism (Extended Powers) Act has expanded the scope for the exercise of procedural powers in criminal cases. Application of the powers is no longer dependent on suspicion and is now possible simply where there is evidence of a terrorist offence. Under the Act it is also now possible to order a remand in custody on suspicion of a terrorist offence (see also below). Moreover, certain documents in the case file may be kept secret for longer.

Also pending before parliament is the National Security (Administrative Measures) Bill, which has not yet become law (contrary to the suggestion in the question). Under the bill the minister concerned may impose an administrative measure on a person who can be shown to be linked to terrorist activities or support for such activities. Such a measure may involve a reporting obligation or an order banning the person from being in certain places or in the vicinity of certain persons.

Dutch law has no statutory definition of 'terrorism'. However, pursuant to the EU Framework Decision mentioned above, article 83 of the Criminal Code does contain a definition of the term 'terrorist offence'. According to this definition, such an offence is a serious crime (e.g. murder, hostage-taking and arson) committed for a 'terrorist purpose'. The Code then goes on to define what must be understood by a 'terrorist purpose' (cf. article 83a Criminal Code).

In Dutch criminal procedure the term 'terrorist offence' is also a basis for some derogations from the general rules on the application of the criminal law. It should be noted at the outset that it was decided in the Netherlands after careful consideration that terrorist activities should be punished within the system of the general criminal law. Recent changes in the law have therefore always been based on the premise that they should be capable of inclusion in the existing criminal law. It is precisely this requirement that ensures that any derogations are properly considered and based on sound reasoning.

The derogations from existing criminal procedure are in fact limited. The criteria for application of the special investigative powers (infiltration, observation and telephone tapping) have been broadened. However, the precise statutory framework for the exercise of the powers ensures that the requirements of accessibility and foresee ability and the principles of proportionality and subsidiarity are fulfilled. In addition, persons suspected of terrorist offences can be kept in custody for longer on the basis of a suspicion. However, the law still requires a reasonable suspicion. The suspect will be properly informed about the reasons for the suspicion. And the longer the deprivation of liberty lasts the stricter are the standards applied by the review court to the information on which the suspicion is based. The deprivation of liberty is reviewed at various times. The suspect is brought before the examining magistrate who reviews the lawfulness of the custody within three days and fifteen hours of his arrest. The available information is assessed when the investigating judge has to decide whether to issue an order for remand in custody. Both the investigating judge and the public prosecutor are required by law to order the release of the suspect once they consider that the grounds for the remand in custody have ceased to apply. The suspect may also apply to the district court for termination of the remand in custody. Appeal lies against any decision refusing such an application. It follows from the above that the rules governing the remand in custody of persons suspected of terrorist offences can be deemed to be in accordance with the requirements resulting from articles 9 and 14 ICCPR.

Special attention should be drawn to the change in the law allowing certain court documents to be kept secret for longer. As noted occasionally in the past, the manner in which this change in the law has been framed has given the unjustified impression that it is also intended to allow a longer period of pre-trial detention than was possible under the law as it stood. This is not the case. The Dutch rules on pre-trial detention are as follows. After a person has been arrested, detained in police custody (deprivation of liberty for a maximum of six days on the order of the public prosecutor) and remanded in custody (for a maximum of 14 days on the order of the

investigating judge) the court in chambers may make an order for detention. This order can result in deprivation of liberty for a maximum of 90 days. If there is to be an extension of the pre-trial detention after this, criminal proceedings must be instituted in court. The trial judge may extend the pre-trial detention and then stay the trial. Such a hearing is said to be pro forma. The maximum term of 90 days does not therefore always mean that the 90 days' detention is immediately followed by a substantive hearing of the criminal case. However, this peremptory rule does mean that the suspect can no longer be refused access to all the documents in the case file, since such access is obligatory once a notice of summons and accusation has been issued. To allow for certain court documents to be kept secret for longer in complicated terrorist investigations, it has therefore been decided that the moment at which only the trial judge can decide on the extension of the pre-trial detention should be postponed for a maximum of two years. During that period the court in chambers continues to decide on the pre-trial detention. Under Dutch criminal procedure the court in chambers is the judicial body charged with taking various interim decisions, subject to observance of the rights of the other parties to the proceedings (forwarding of documents and hearing of parties).

The law provides that when a court sits in chambers to hear such applications for extension of custody cases it must consist of three judges and its deliberations must always be held in public. It follows that with the exception of the court documents this procedure does not differ radically from the normal procedure of summonsing the defendant in court. In such a case the examination in court can also be stayed for periods of not more than three months at a time in a pro forma hearing. The defence also has various ways in which it can raise the subject of the progress of the investigation and at the same time apply for termination of the pre-trial detention. It should also be emphasised that notwithstanding the possibility of keeping certain court documents secret the case file must always contain sufficient information to justify any decision on the continuation of the pre-trial detention. It is therefore not the case that the suspect is kept in ignorance during the pre-trial detention of the grounds for suspicion against him. As the preliminary judicial investigation progresses, the public prosecutor will be expected to provide an ever more cogently argued case. Lengthening the period during which the court in chambers can decide on applications for extension of the pre-trial detention does not therefore affect the suspect's position in any essential way, at least as far as the legal protection against pre-trial detention is concerned. The arrangements are based on the desirability of making it possible for certain court documents to be kept secret for longer in the interests of the investigation. This possibility is in turn limited by the requirement that the court documents that are present in the case file must always justify the deprivation of liberty. There is no reason to assume that this special arrangement does not comply with the requirements of articles 9 and 14 ICCPR.

Netherlands Antilles: The National Ordinance on the Criminalisation of Terrorism, financing of Terrorism and Money Laundering (Official Bulletin 2008. no. 46) implements in particular the International Convention for the Suppression of Terrorist Bombings, the International Convention for the Suppression of the Financing of Terrorism and the recommendations adopted by the Financial Action Task Force. In addition, it implements conventions relating to money laundering, in particular the Convention against Transnational Organised Crime. The National Ordinance provides that terrorist acts and attempts and preparations to commit such acts are criminal offences. Attempt and preparation are criminalised only in so far as the terrorist offences concerned carry a prison sentence of eight years or more. Preparations for terrorist offences include the financing of terrorism. Participation in an organisation which aims to commit terrorist offences is also a criminal offence (article 146a of the Criminal Code). Finally, the National Ordinance criminalises a number of acts closely associated with the combating of terrorism, namely exposure to ionising radiation, sabotage of computer networks and contamination of soil, water and air (articles 167c to 167f and 179a and 179b of the Criminal Code). The maximum prison sentences vary from three months to 15 years and the maximum fines from NAF 10,000 to NAF 1 million. The National Ordinance has also been extended to include provisions on money laundering. Title XXXA provides that a person found guilty of

money laundering is liable to a maximum term of imprisonment varying from 4 to 12 years and a maximum fine varying from NAF 25,000 to NAF 1 million.

Article 84a of the Criminal Code does not define terrorism, but does define what crimes are treated as terrorist offences.

The government of the Netherlands Antilles considers that the present National Ordinance on the Criminalisation of Terrorism, financing of Terrorism and Money Laundering does not infringe the rights laid down in the ICCPR and that the limitations contained in the National Ordinance come within the scope of the ICCPR.

Aruba: The relevant legislation in Aruba is the National Ordinance of 12 August 2004 amending the Criminal Code (Official Bulletin 1991 no. GT 50), which provides that terrorism, the financing of terrorism and related acts are criminal offences (Official Bulletin 2004 no. 51). The National Ordinance states that in order to tackle effectively offences committed for terrorist purposes and terrorist organisations that commit such offences it is desirable for provisions to be included in the Criminal Code of Aruba criminalising the commission of and participation in terrorist activities, participation in terrorist organisations and the financing of such activities and organisations.

Aruban legislation does not, in principle, permit suspects to be held for a period of two years during the preliminary judicial investigation. Under Aruban criminal procedure no distinction is made between suspects, regardless of the offence of which they are suspected. A suspect may be held on remand for a maximum of 146 days before being brought before the court. The normal period is 116 days. However, in a preliminary judicial investigation an extension of 30 days may be granted by the examining magistrate on the application of the Public Prosecution Service. In cases involving terrorism the preliminary judicial investigation often tends to be rather protracted. The Public Prosecution Service should institute proceedings in such cases on a pro forma basis and apply to the trial judge for an extension (either for a fixed or an indeterminate period). It is up to the trial judge to decide whether to grant the request. The time spent in pre-trial detention is therefore dependent on the length of the investigation. Pre-trial detention can therefore be lengthy, but only if it has been reviewed and expressly approved by an independent judge. In addition, the Constitution of Aruba provides that trial must take place within a reasonable time (article 1.5). The provisions of the ECHR also play a role.

The ECHR has effect within Aruba. However, this does not mean that all its provisions have direct effect. Only those provisions that can be directly applied by the court in a specific case without additional measures by the government authorities have direct effect. The rights and freedoms recorded in the ECHR generally have direct effect in so far as they have been ratified.

Equality between men and women, and principle of non-discrimination

A 4

The Netherlands: 154,000 women were unemployed, which was 18,000 fewer than the previous year. This meant that 4.5% of the female workforce was jobless. 145,000 men were unemployed in the period from November 2008 to January 2009, which were 8,000 more than the previous year. The unemployment rate among men was therefore 3.4%. The difference between the unemployment rates of men and women is therefore continuing to diminish.

Statistical data Annexe II(a)

Aims of equal treatment of men and women in the labour market

The efforts to increase women’s participation in the labour market and to encourage their economic independence are part of government policy. The aim is for 65% of women to be in

employment and 60% of women to be economically independent in 2010. A person is considered to be economically independent if he or she earns at least 70% of the net minimum income. Views on parenthood explain why the vast majority of women in the Netherlands have (small) part-time jobs. Only 12% of women with two children work more than 24 hours a week.

The Equal Opportunities Monitor shows that women's participation in the labour market rose from 53% in 2005 to 57% in 2007. These rates are for jobs of at least 12 hours a week. The latest figures show that the level of participation rose again to 59% in 2008. 43% of women were economically independent in 2006. According to the Social and Cultural Planning Office (SCP), most of the targets will not be achieved at the current rate of progress. Women's participation in the labour market rose again in 2008, particularly due to the very good economic performance in the first half of the year. The prospects for 2009 and 2010 are very uncertain in view of the present economic crisis.

Approach
To increase the number of women in employment and the number of hours they work, the government will focus on improving women's terms and conditions of employment in the coming years. This will involve achieving three aims:
1. work must pay;
2. improving the scope of the combination of work and care;
3. improving the distribution of employment.
The Equal Opportunities Monitor systematically records to what extent and at what rate the number of women in work and the number of hours they work are increasing. The aim is to ensure that the labour market participation of Dutch women, as expressed in hours, is brought up to the European average as quickly as possible.

The Ministry of Social Affairs and Employment (SZW) has adopted the following three themes for its policy on equal rights and gender mainstreaming:
- greater labour market participation of women;
- equal pay for men and women;
- work must pay.

Greater labour market participation of women
The Lisbon objectives endorsed by the Netherlands are as follows:
- an average employment rate of 70% in 2010;
- an average employment rate for women of 60% in 2010. The national target is 65% in 2010;
- an average employment rate of 50% for elderly in 2010.

The Netherlands already meets the first two objectives as it has achieved rates of 72.4% and 66% respectively.

The government will engage the Association of Netherlands Municipalities (VNG) in getting single parents on social assistance benefit into employment. Single parents with children under the age of 5 will be exempt from the obligation to seek work. This measure is based on the following principles:
1) the exemption will be designed in such a way that the single parent is offered the prospect of deferred reintegration into the labour market;
2) the exemption will be granted on request for a maximum of six years, and
3) the exemption will be linked to an obligation imposed by the municipality to undergo training.[1]

Equal pay for men and women

[1] *Samen aan de slag. Bestuursakkoord rijk en gemeenten,* The Hague, 4 June 2007, p.46

Women still earn less than men. In its coalition agreement the government included the effort to end gender inequality. During a high level meeting on employment between the government, the social partners and the VNG, agreements were made on this subject with the social partners. As the Ministry of Social Affairs and Employment (SZW) is responsible for policy on equal pay, its budget includes targets for reducing the pay gap in both the public and the private sector. The public sector targets were determined in consultation with the Minister of the Interior and Kingdom Relations.

A survey of pay differentials conducted by the Labour Inspectorate in 2006 ('The labour market position of workers in 2006') showed that the corrected gender pay gap has narrowed to 6.5% (from 7.4%) in the private sector and to 2.6% in the public sector (from 2.9%).

Work must pay
Where both partners work and the partner with the lower salary earns €4,475 he or she is entitled to the maximum supplementary combination tax credit of €700. This fixed amount is a good incentive to seek work, but not a reason to work longer hours. This is why the income-dependent part of the supplementary combination tax credit is to be strengthened, without scaling back the supplementary combination tax credit for higher incomes. The supplementary combination tax credit is to rise by 3.1% of income above the level of €4,542. The maximum of the supplementary combination tax credit will be gradually increased during this government's term of office. The maximum income-dependent supplementary combined tax credit will be €850 in 2009, €985 in 2010 and €1,570 in 2011. The ceiling will be reached in 2011 at an income of €31,122. The limitation on the transferability of the general tax credit is important. The coalition agreement provides that the transferability of the general tax credit will be phased out gradually over a period of 15 years from 1 January 2009.

Netherlands Antilles: A draft of Book 7 of the Civil Code regarding labour agreements has been completed and sent to all relevant stakeholders for their comments and suggestions. Their suggestions will be taken into account. Book 7 is expected to become law before the end of 2009.

An example of a proposed change concerns the gender pay gap in paragraph 4 of article 7:646. For some years legal protection in gender-related issues was granted by case law developed by the Joint Court of Justice in the absence of legislation. The new article 7:646 of the draft will now provide a legal basis for gender protection in labour issues. Article 7:646 is in keeping with articles 1, 2, 18 and 19 of the draft Ordinance on Equal Treatment in the Netherlands Antilles. Not only are indirect discrimination and direct discrimination defined, but the exceptions made in articles 18 and 19 for the preferential treatment of women employees (positive gender discrimination) will form an integral part of the legal protection of women employees. It follows that the case law on gender equality will finally be codified.

Currently all stakeholders, including the representatives of employees and employers, are in the process of designing a labour market policy for Curaçao. The main aim is to achieve a labour market that provides full employment opportunities for young people and adults by improving labour productivity and creating a competitive and skilled workforce able to compete globally. Gender equality within the different sectors is part and parcel of this process. The basic aim of the Kolaborativo forum, in which representatives of the social partners and the government of Curaçao meet to discuss matters such as labour market policy, working conditions and other issues related to good terms and conditions of employment, is to achieve consensus on issues of national importance. The name Kolaborativo has been chosen to reflect the essential ingredient, which is collaboration between the government and the organisations that represent employers and employees.

On Sint Maarten a tripartite committee consisting of representatives of the unions, the employers' organisation and the island government was formed to mediate between the parties in the Labour Summit Joint Committee. The parties resolved to seek and discuss ways of making the labour market on the island more flexible while guaranteeing employee protection. It was agreed that attention would be paid to the local and Antillean labour market and to the use of short-term contracts, especially for women employees, by the different industries.

The system of labour administration of the Netherlands Antilles, especially Sint Maarten and Curacao, has been under review since August 2008. This review is being carried out under the guidance of the ILO's sub regional office in Trinidad & Tobago with the assistance of labour law experts from Barbados. Most Antillean labour laws have already been translated from Dutch into English to facilitate the work of these experts.

Statistics

Curaçao

The number of male jobseekers fell sharply between 2005 and 2008, reflecting a large drop in unemployment among men. Unemployment among women was also 6.8% lower in 2008 than in 2005. In absolute terms the number of men in work rose faster than the number of women in work in 2008. This was also true in relative terms. The 2007 Labour Force Survey shows that women, particularly in the 35-44 age group, are twice as likely to be unemployed as men, even though women in Curaçao are slightly better educated. As regards long-term unemployment, far more women than men in the 25-54 age group are unemployed. However, in the 55-and-over age group there is a substantial increase in the proportion of unemployed men and a substantial decrease in the proportion of unemployed women. A possible explanation for this is that older men in Curaçao still tend to look for work whereas women do not. It seems that among those with a mid-to-high level of education more men than women are likely to be long-term unemployed, whereas it is the other way around in the case of men and women with only elementary education. The main reason cited by women for being long- term unemployed was that 'foreigners are taking the jobs'. Men, on the other hand, stated that the high demands in the labour market and the mismatch between job requirements and education were the main reasons for being long-term unemployed. Analysis on the basis of educational attainment shows that among people with only elementary education men are more likely to cite the fact that foreigners are taking the jobs and women to cite their age as the main factor contributing to their unemployment. Men with a higher education level (mostly secondary education) attribute their unemployment to the bad state of the economy whereas women in the same category cite their relative lack of work experience as the main reason.

It is worth noting that the degree of participation of women has risen since 1996 while that of men has remained at much the same level. More women than men in relative terms are joining the labour market. This is an interesting fact in the light of the human rights conventions and UN Millennium Development Goal no. 3, namely promoting the equal access of men and women to the labour market.

Statistical data: Annexe II(b)

Bonaire

The trend on Bonaire is the same as on Curaçao, although the difference between men and women is small. However, an important difference is that the number of male jobseekers on Bonaire has remained almost constant, whereas the number of female jobseekers has risen slightly in the past two years. It should be noted that on the whole the extent to which women participated in the labour market rose between June 2000 and October 2004 whereas men's participation fell. However, a new trend has been in evidence since 2004. The extent of women's participation in the labour market has fallen slowly since 2004, whereas that of men has risen.

Statistical data: Annexe II(c)

Sint Maarten
The number of men and women in employment on Sint Maarten rose by around two thousand between 2003 and 2007. As the number of jobseekers in both categories declined the working population rose by 1,000, the increase being divided almost equally between men and women. The unemployment rate for both men and women decreased.

Statistical data: Annexe II(d)

Aruba: Equal pay for public servants is guaranteed by law. A law (1989 GT 26) guaranteeing an equal minimum wage for both sexes applies in the private sector. Discrepancies in wages other than the minimum wage may occur in the private sector. According to Aruba's Central Bureau of Statistics other factors have to be taken into account, such as differences in the level of education, hours worked and experience. The Employment and Research Department needs to examine this question further.

In total 36,022 people were employed in the private sector in December 2006. Of these 17,333 were women (48.1%) and 18,689 were men (51.9%).

Statistical data: Annexe II(e)

Most jobs on Aruba are full-time posts. Part-time work is relatively uncommon. Aruba does not yet have a fully-fledged policy on part-time work.

Right to life

A 5

The Netherlands: An evaluation study of the Termination of Life on Request and Assisted Suicide (Review Procedures) Act was presented to the government and sent to parliament in May 2007. The evaluation was carried out by a large number of researchers who work for the Utrecht University Medical Centre, the Free University, the University of Amsterdam, the Erasmus Medical Centre of the University of Rotterdam and Statistics Netherlands. An important aim of the study was to identify trends in medical decisions about the termination of life. It was also intended to gain a more thorough understanding of how the Act, which has been in force since 2002, works in practice.

The study's main finding is that the Act works adequately, and is largely achieving its aims. These aims are as follows:
1) greater legal certainty for physicians: the law should be clear and physicians should know what to expect in terms of oversight, enforcement and sanctions. Their views on legal certainty and predictability are important. The survey shows that the majority of physicians and their professional organisations consider that legal certainty has increased. This has had a positive effect on their willingness to notify instances of euthanasia and hence the extent to which the notification can be reviewed;
2) transparency of end-of-life decisions and public scrutiny: the notification rate (i.e. the percentage of cases in which a physician reports a case of euthanasia to the review committee) is an indication of this. The evaluation survey shows that the notification rate has risen very considerably;
3) safeguarding, monitoring and promoting the care with which medical decisions about termination of life on request are taken and the quality of such decisions: of particular importance in this connection are the statutory due care criteria. The evaluation shows that in the notified cases of termination of life on request physicians almost always comply with the due care criteria. This means that the aim of improving the quality of decision-making and the exercise of due care has to a large extent been achieved.

The government communicated its views on the evaluation in a letter to parliament of 14 November 2007 (see Annexe I). Basically it concluded that the findings did not warrant any substantial policy changes. Nor was there any reason to amend the Act. As customary in such cases, the government discussed its views with parliament. In keeping with the study's recommendations the Netherlands will focus on improving physicians' knowledge of the drugs to be administered and ensuring that institutions such as hospitals and nursing homes formulate and communicate their policies.

The Termination of Life on Request and Assisted Suicide (Review Procedures) Act sets out the following due care criteria:
a) the physician must be satisfied that the patient's request is voluntary and well- considered;
b) the physician must be satisfied that the patient's suffering is unbearable and that there is no prospect of improvement;
c) the physician must inform the patient of his or her situation and prognosis;
d) the physician must discuss the situation with the patient and come to the joint conclusion that there is no other reasonable solution;
e) the physician must consult at least one other physician with no connection to the case, who must then see the patient and state in writing that the attending physician has satisfied the due care criteria listed at a) to d);
f) the physician must exercise due medical care and attention in terminating the patient's life or assisting in his/her suicide.
The physician must fulfil these requirements. If a patient is unable to make decisions on account of his or her diminished capacity, the first due care criterion cannot be fulfilled since this requires a voluntarily and well-considered request. Nor is it the case that the criteria are met if there is only one physician involved: at least two physicians must satisfy themselves independently of each other that there is a voluntary and well-considered request on the part of the patient. Under articles 293 and 294 of the Criminal Code, a criminal offence is committed if the due care criteria are not fulfilled.

Prohibition of torture and inhuman and degrading treatment and punishment

A 6

The Netherlands: A decision will be made in the application centre only if the case can be given due consideration within the given time. If this is not possible, additional investigations will be carried out during the extended procedure. Objections must be lodged within 24 hours of the decision in the case of the accelerated procedure and within four weeks of the decision in the case of the extended procedure. In the extended procedure, objections have the effect of suspending the decision, unlike those in the accelerated procedure. However, an alien may apply to a district court for an injunction. Both the alien and the State Secretary may appeal to the Administrative Jurisdiction Division of the Council of State against the judgment of the district court. Such appeal does not suspend the effect of the decision. The courts do not make a full assessment of the credibility of the asylum seeker's story, but instead assess whether the law and policy have been properly applied and sometimes whether the policy itself is reasonable. If there is no objective proof of the asylum seeker's story, responsibility for assessing its credibility rests with the authorities. Nevertheless, the courts have a responsibility to test the legitimacy of this assessment. The test applied by the court is whether the authorities' decision could have been reached reasonably. The court also assesses without limitations whether there is a ground for granting a residence permit, in the light of the qualification in the Geneva Convention, article 3 ECHR and article 7 of the Covenant. The Dutch authorities would emphasise that people are not being returned to their country of origin in breach of article 3 ECHR and article 7 of the Covenant.

The Salah Sheekh case was noteworthy because the European Court of Human Rights (ECtHR) held a complaint to be admissible when the alien himself was already in possession of a residence permit, albeit not because there was a risk of a breach of article 3 ECHR. There was therefore no direct risk of a forced return at that time. Following the judgment, a ground was added to the issue of Mr Salah Sheekh's residence permit, namely section 29, subsection 1 (b) of the Aliens Act (which transposes article 3 ECHR into Dutch law).

In the summer of 2008 the government presented detailed proposals to improve the asylum procedure as a result of the implementation of the coalition agreement, policy program, the evaluation of the Alien Act 2000 and the criticism of the interested parties. These proposals were approved by parliament end of 2008. The applicable legislation procedure is currently in process. The aim of the proposals is to improve the exercise of due care in decisions in the accelerated procedure without slowing the procedure and to reduce the length of the extended procedure while continuing to ensure that due care is exercised. Under the new system the accelerated procedure will be known as the 'general asylum procedure' and will take, in principle, eight days rather than the current 48 hours. Alternate days will be set aside for the activities of the Immigration and Naturalisation Service (IND) and for the asylum seeker and his or her legal representative.

More time will be allocated for legal assistance and every effort will be made to ensure its continuity. Just as in the old situation, no substantive criterion will be applied in order to determine what cases should be dealt with in the general procedure and what cases in the extended procedure. The decisive factor will still be whether the IND can satisfy the due care criteria in reaching a decision in the general asylum procedure. If not and further investigation is necessary, the case will be assigned to the extended procedure. The ex nunc review by the courts will be expanded to enable the courts to take account of all relevant facts and circumstances.

The policy on persons claiming to be subjected to persecution on the basis of gender is laid down in the Aliens Act Implementation Guidelines 2000, paragraph C2/2.11. Gender-based persecution in itself is not explicitly recognised as a ground for asylum in the sense that the mere fact that an asylum seeker is female and is exposed to gender-based persecution does not constitute a ground for asylum. However, Dutch asylum policy is gender-sensitive and differences in position between men and women are always taken into consideration. Admission policy allows scope for issuing a regular residence permit on the grounds of domestic or honour-based violence. Such violence can also be invoked by asylum seekers as a reason for seeking asylum. Under the country-specific asylum policy, increasing attention is being paid to the possibility of obtaining protection from domestic violence from the authorities in the country of origin. The number of cases in which asylum seekers invoke domestic violence is still small. If a risk of honour-based violence were shown to exist in the country of origin this could be a ground for granting asylum in the Netherlands. And a greater focus on honour-based violence in the Netherlands has increased the attention given by the Dutch authorities to the same problem in asylum seekers' countries of origin. Extra attention is therefore being paid to this issue in country reports and in the Aliens Act implementation guidelines.

Prohibition of slavery or forced or compulsory labour

A 7

The Netherlands: The Minister of Justice announced that a bill would be submitted to parliament to increase the maximum penalties. The proposed amendment would increase the maximum term of imprisonment for trafficking in human beings from 6 to 8 years. Moreover, the sentence would be raised to 10 years if two or more persons act in concert, to 15 years if serious bodily injury has been caused and to 18 years in the case of death. Owing to the higher sentences, the preparation of this offence will also become a criminal offence (article 46 Criminal Code).

National Action Plan to combat Trafficking in Human Beings and Human Trafficking Task Force : In December 2004, the Dutch government adopted the National Action Plan to combat Trafficking in Human Beings. The plan has an integrated multidisciplinary approach and contains a total of 65 concrete action points dealing with a wide range of issues. Measures to supplement the plan were introduced in February 2006. These relate mainly to underage victims of human trafficking and youth prostitution. The National Action Plan and the supplementary measures are being put into practice with good effect.

To provide fresh impetus, a Human Trafficking Task Force was established at the beginning of 2008. This is chaired by the procurator general with responsibility for coordinating the fight against human trafficking. The task force brings together representatives of both national and local government and of relevant agencies and services, including the police. Its main responsibilities are to identify and remove obstacles at an early stage, ensure the exchange of best practices and support local and regional measures for combating human trafficking.

Law enforcement: In April 2006 the Board of Procurators General formulated guidelines on investigating and prosecuting the crime of human trafficking, giving top priority to cases involving sexual exploitation, underage victims and trafficking in human organs. Very harsh forms of labour exploitation involving inhumane working conditions and violations of fundamental human rights are also given a high priority. Investigations are not limited to persons suspected of the offence of trafficking itself, but extend to people who facilitate such offences by providing transport, accommodation, false identity papers etc. The guidelines were updated in November 2008.

Awareness-raising: In January 2006 a national campaign was launched under the name ‘Schijn Bedriegt’ (Appearances Deceive) with the aim of raising awareness of victims of human trafficking both among the general public and more specifically among prostitutes’ clients. The campaign accompanied the launching of the Anonymous Tip-off Line, which enables callers to report evidence of human trafficking without divulging their names. The 2006 campaign produced a good many useful anonymous tips, some of which led to formal investigations. 18 October 2007, the first EU Anti-Trafficking Day, saw the launch of another public awareness campaign in the Netherlands entitled ‘Mensen zijn geen handelswaar’ (People are not merchandise).

With regard to the issue of child sex tourism, the Dutch Ministry of Foreign Affairs funds projects by UNICEF and NGOs, notably in Cambodia. These include a project by ECPAT Netherlands to induce tour operators to approve and implement a code of conduct designed to prevent and discourage child sex tourism. To this end ECPAT is teaming up with local NGOs in Thailand, the Philippines, Gambia, the Dominican Republic and Brazil and helping them build capacity to wage awareness campaigns and lobby tour operators, hotel resorts and others.

To raise awareness of labour exploitation, the Ministry of Social Affairs and Employment published a brochure focusing on the risks of coercive forms of labour exploitation. It has been widely circulated and is being translated into many languages as victims are often illegal immigrants who cannot read Dutch.

Reflection period and temporary residence permits (B9 regulation): The B9 regulation is a residence regulation in the Aliens Act implementation guidelines 2000 (Chapter B9) for victims of human trafficking. It applies to foreign nationals and not to Dutch victims of human trafficking or victims who are legally resident in the Netherlands as EU citizens. The B9 regulation regulates the residence status and access to services (social assistance, medical care and income) for foreign nationals. Dutch nationals and other citizens of the EU derive their right of residence and access to facilities from their nationality and from Community law.

If there is even the slightest evidence that a person residing illegally in the Netherlands is a victim of human trafficking he or she is given the opportunity to use the three-month reflection period offered by the B9 regulation. During this reflection period the victim can remain in the Netherlands, receive medical care and basic social services and make a considered decision as to whether or not to cooperate with the investigation and prosecution of the human traffickers. Residence in the Netherlands beyond this reflection period is conditional on the victim filing a formal complaint or otherwise cooperating with the police investigation and the prosecution. The temporary residence permit will last for the duration of the investigation and the trial. In very distressing cases, the State Secretary of Justice also has the option of granting a victim of human trafficking a residence permit on purely humanitarian grounds, for instance if it is clear that the person is a victim but is too scared to cooperate with the investigation.

The option of invoking this discretionary power existed before, but was rarely used. In 2007 organisational changes were implemented at the Immigration and Naturalisation Service (IND) and procedures agreed with care providers to ensure that more humanitarian cases are submitted to the State Secretary for decision. Victims can now apply for continued residence in the Netherlands at the end of the B9 period. In 2006 the policy was changed such that if a criminal prosecution results in a conviction for human trafficking the victim can be offered the right to continued residence in the Netherlands. This also applies if the victim cooperates in a human trafficking case and the suspect has been charged with this crime, but is ultimately convicted for another offence. Continued residence is also possible if the case results in an acquittal but the victim has been in the Netherlands for three years or longer on the basis of a B9 permit. Since 1 January 2008, a victim of human trafficking who has resided in the Netherlands for three years on the basis of a B9 permit may ask the IND to assess if he/she is eligible for continued residence, even if the criminal case is still pending. Whether other victims should be returned to their country of origin is assessed after expiry of the B9 permit. Victims returning to their country of origin can make use of return programmes that are funded by the government and implemented through the Dutch branch of the IOM (International Organisation for Migration). IOM Netherlands will contact organisations in the home country and, if necessary, help the victim find accommodation and other forms of support.

Statistical Data: Annexe IIIa

Netherlands Antilles: The broad concept of human trafficking is not yet a criminal offence by a separate article in the Netherlands Antilles. Cases of human trafficking are currently tackled by prosecuting for other offences such as false imprisonment and sex offences as defined in the Criminal Code. Under article 260 of the Criminal Code, the selling of women and minors of the male sex is an offence carrying a maximum prison sentence of five years. People smuggling was made a criminal offence in the Netherlands Antilles in 2003. People smuggling (article 203a Criminal Code) occurs when people assist others for gain to obtain illegal entry into or residence in the Netherlands Antilles. In other words, immigrants are helped to enter the country illegally in return for payment. Under the amendments to the Criminal Code currently in preparation, human trafficking occurs when legal or illegal migrants fall into the power of others as a result of either coercion or deception. The aim of human trafficking is exploitation. When the new Code enters into force (scheduled for late 2009), the UN Conventions on this subject will also be ratified for the Netherlands Antilles.

The anti-trafficking efforts of the Netherlands Antilles were intensified in 2004 when a working group was established on Curaçao. Since 2005 this working group has been in close contact with the IOM. The working group consists of governmental and non-governmental agencies at both central and island level. The central government members are the Directorate of Judicial Affairs (Coordinator), the Public Prosecution Service, the Directorate of Foreign Relations, the Directorate of Labour Affairs, the Directorate of Social Development, the Directorate of Public Health and the Customs Authority. The government of Curaçao is represented by advisers to the

Lieutenant Governor, the Medical Public and Healthcare Service and the Bureau of Women's Affairs. The private and semi-governmental organisations represented on the working group are Contrasida Caribbean, the Caribbean Association for Feminist Research and Action (CAFRA), the Victim Support Bureau, the Centre for Women's Development (SEDA), the mental health foundation Amnesty International, Fundashon Perspektiva i sosten Integral (PSI) Skuchami and the Foundation for the Protection of Children. The NGO members are the Fundación Lazos de Integration Cultural and the Fundación Solidaridad ku Migrante. Finally, the Consuls of the Dominican Republic, Venezuela and Colombia and the Coastguard for the Netherlands Antilles and Aruba also participate in the working group.

On Sint Maarten anti-trafficking efforts are led by the Anti-trafficking in Persons (ATIP) Windward Islands Foundation, which was established in 2007. The foundation comprises representatives of organisations on Sint Maarten (including the Public Prosecution Service and the Security Service) and Bonaire (representatives of the Security Service, the immigration service and the police).

Various awareness-raising and capacity-building projects have been carried out in cooperation with the IOM. These included setting up an information campaign using posters and brochures in the different languages and public service announcements on radio and television promoting the hotline the Netherlands Antilles has established on Curaçao and Sint Maarten. The IOM also provided training in the form of regional meetings where expertise and best practices could be learned from other Caribbean countries.

On Curaçao national training courses have been arranged for immigration personnel, providers of victim support, consular officers working on Curaçao and media staff. The working group on Curaçao also helped the other islands to set up their working group and give them the capacity to train the relevant agencies on their islands. In 2005 workshops on human trafficking were held on Sint Maarten for various stakeholders in the community. The Women's Desk, in collaboration with the IOM, hosted a 3-day workshop in 2006 for law enforcement personnel, the Public Prosecution Service, customs, the Coastguard, Safe Haven and members of a focus group from Sint Maarten, Saba and Sint Eustatius. Information sessions to raise awareness of human trafficking among the various organisation and interested persons took place on Saba and Sint Eustatius in the beginning of 2007.

Investigation and prosecution: The Public Prosecutor's Office has made the fight against human trafficking and people smuggling one of its policy priorities. Instructions to help in identifying and tackling cases of human trafficking were drawn up in 2006 and updated and expanded in 2007. After a mini-conference on human trafficking and people smuggling held on Aruba in June 2008 and follow-up sessions at Kingdom level, the Curaçao police force set up a human trafficking/people smuggling project team. The head of the criminal investigation department has been appointed as the team's leader and coordinator. Training is also given to detectives on the project team. The information gathered in respect of human trafficking and people smuggling is passed to the Regional Information Coordination & Expertise Centre (Infodesk).

Sint Maarten is an attractive destination for migrants for economic reasons. The IOM estimates the number of illegal migrants on the island at 15,000. The police have been asked to draw up a plan, in collaboration with the Immigration Service, the Medical and Public Healthcare Service, the Tax Administration, the Labour and Social Affairs Service and the Public Prosecution Service, for a structured approach to the problems in the sex industry (checks on permits, people employed in the industry and the establishments themselves).

In cooperation with COMENSHA (Human Trafficking Coordination Centre), the Netherlands Antilles developed a national referral system in 2006 for victims of trafficking in need of

assistance. This referral system is periodically updated in consultation with the IOM and COMENSHA.

Recent statistical information: The cases brought to the attention of the Netherlands Antilles working group involved victims from Colombia, Cuba and the Dominican Republic. For various reasons not all of the cases resulted in criminal proceedings. In some cases, for example, the victims did not want to press charges.

In 2005 an Indian national was arrested on charges that he had forced three female domestic staff to work at his home in deplorable conditions, without pay or holidays. The labour office on St Maarten was involved in helping the women to get the money that was owed to them. The Indian national was fined $20,000. The IOM was contacted to help the women return to their respective countries.

In 2007 three women from the Dominican Republic ran away from a brothel on St Maarten because they were being mistreated. They stated that the club owner had raped and assaulted them. They had also not been paid. Their passports had been confiscated by the owner and they were not allowed to leave the club. The club owner was sentenced to three years' imprisonment, six months of which were suspended. The women were placed in a refuge and, after making statements, were repatriated to their country of origin. The ATIP Foundation provided the women with some necessities for their journey home.

On Curaçao there was a case concerning a corrupt immigration official and an owner of a hotel which doubled as a brothel. The women in the case had entered Curaçao on visas obtained on the application of the hotel owner. The charges in this case were people smuggling, corruption and forgery. Both defendants were sentenced by the court to twelve months' imprisonment.

Immediate aid is available to victims on all islands of the Netherlands Antilles. The victim is given a temporary residence permit on humanitarian grounds while the investigation is under way.

Trafficking and sale of children: The Public Prosecution Service is not aware of any systematic investigation into the commercial sexual exploitation of children in the Netherlands Antilles. Two large-scale crime surveys have been conducted in recent years: the Baseline study of criminality and law enforcement on Curaçao and Bonaire (Faber Organisatie Vernieuwing, 2007) and an investigation into organised crime and law enforcement in St Maarten (WODC, 2007). They included research into domestic violence and trafficking in human beings. Nothing in the findings/results of these studies indicates the presence of any significant level of commercial exploitation.

In the second half of 2004, the IOM carried out an exploratory study of human trafficking in the Caribbean. This study refers (on p. 102) to a previous IOM report which indicates that trafficking in children may take place in Curaçao. According to that report, a brothel owner would obtain a child to order. The children, usually girls from the Dominican Republic between the ages of 8 and 12, would be flown to Curaçao where they would be handed over to the client for his exclusive use. The family of the girls were reported to cooperate fully and the girls were returned home after a week. The average cost of such transactions is said to be US$ 2,200 and the sexual abuse is reportedly put on video and sold on the black market (source: key informant interview). The Public Prosecution Service could not verify this information because the IOM source (apparently only one source) was not traceable. Local investigations have not produced any evidence of such practices.

Protection/special treatment of child witness/victim: The identity of child victims is not protected. Child victims are referred to the Victim Support Bureau for aftercare. In case of

domestic violence and sexual abuse of a minor, refuge can be provided if necessary. Children who are abused by their parents or carer or by a third party are protected by the supervision law, which places the child under the supervision of the children's judge. They can be placed in a residential care home or foster home.

Between 2003 and 2007 the Juvenile and Vice Police Squad questioned child victims in a child-friendly room in the office of a child therapist. Since 2007 there has been a special child-friendly room for these interviews at the office of the Juvenile and Vice Police Squad. If the victim is under the age of 12, the interview is recorded (audio and video), and a transcript is added to the case file. Children aged 12 and over receive special treatment in that their statements are recorded in a report by the police and by the examining judge. This means that child witnesses are not questioned in court in the presence of the accused.

Prevention of exploitation of children: Training is arranged free of charge through the working group on human trafficking. Cases of pornographic pictures on the internet reported by the Child Protection Agency are investigated by the police and sent for identification to the police database in the Netherlands that specialises in child pornography. (There is no monitoring or inspection of the internet to discover child pornography.)

Recent cases: Cases are dealt with in a creative manner. An offender was charged with sexual penetration and illicit sex when pornographic pictures of a 13-year-old victim were found on his computer during a criminal investigation. A new case involving a mother selling the sexual services of her 9-year-old daughter to an adult man of Dutch nationality residing on the island will be tried in early 2009. As child trafficking as such is not a criminal offence, the case will be prosecuted as sexual abuse of a minor.

Aruba: The Aruban Parliament approved amendments bringing the Aruban Criminal Code and other laws into line with international treaties. The amendments entered into force in May 2006 (Official Bulletin 2006, no 11), making people smuggling a criminal offence and amplifying the scope of the article about human trafficking by incorporating i.a. forced labour and organ removal. The Criminal Code therefore specifically prohibits trafficking in persons, including sexual exploitation, labour exploitation and organ removal, and people smuggling.

Under Article 286a of the Code human trafficking, including trafficking in women and children, is an offence and carries a maximum sentence of 6 years' imprisonment or a fine of 100,000 florins (paragraph 1). This can rise to 8 years' imprisonment if the crime is committed by two or more persons in concert or the victim has not yet reached the age of 16 (paragraph 3), to 10 years' imprisonment if the crime is committed by two or more persons in concert and the victim has not yet reached the age of 16 (paragraph 4), to 12 years' imprisonment if the crime results in serious physical injury or fears for the life of another person (paragraph 5) or to 15 years' imprisonment if the crime causes death (paragraph 6).

In 2007 an interdepartmental and interdisciplinary committee was formed to combat trafficking in persons (TIP) and people smuggling. At the end of 2008 the Committee presented several initiatives for the training of government officials, for victim support, for the establishment of a telephone helpline and emergency refuge, and for the funding of these initiatives. The first interdisciplinary training session on victim support was held on 27 and 28 January 2009 for the members of the TIP Committee, police officers of the Serious Crimes Unit and members of the Prostitution Inspection Team.

On Aruba the Victim Support Bureau (Bureau Slachtofferzorg) of the Ministry of Social Affairs can provide assistance to victims of trafficking in the form of shelter, medical care, and assistance. The Bureau provides assistance to victims of all criminal acts and works on a 24/7 basis. It will also be in charge of the helpline for victims of human trafficking. A TIP-specific

policy is being developed in cooperation with the TIP Committee. No requests for accommodation or assistance have been made to date.

There are no concrete indications of trafficking in persons in, to or from Aruba, nor is information available that Aruba is a country of origin, transit or destination for international human trafficking (conclusion of the 2007 Analysis about Crime and Criminal Activities in Aruba, Criminaliteitsbeeldanalyse Aruba 2007). The Aruban Public Prosecution Service has not yet brought to trial any cases of human trafficking, nor have any complaints about this crime been submitted to the police or the Victim Support Bureau.

However, the TIP Committee is aware that there are possible risks of human trafficking in the prostitution sector (escort services) and the service sector (domestic workers, hotels, shops / restaurants). Further study should indicate if trafficking in persons does indeed occur in the aforementioned risk sectors and, if so, to what extent.

Aruba is not known as a source of or destination for child sex tourism. To date, no foreign paedophiles have been prosecuted or deported/extradited, nor has the transfer to Aruba been demanded of Aruban nationals suspected of such crimes. Aruba attaches great importance to its reputation as a family-oriented tourism destination and closely monitors conditions for prostitution.

Liberty and security of the person and right to a fair trial

A 8

The Netherlands: In the Netherlands a suspect is entitled to legal assistance under article 28, paragraph 1 of the Code of Criminal Procedure. Article 28, paragraph 2 provides that a suspect should be given as much opportunity as possible to communicate with his counsel whenever he requests. According to the case law of the Supreme Court (HR 22 May 1983, NJ 1984, 805 and HR 13 May 1997, NJ 1998, 152), this does not mean that a lawyer must in all cases be permitted to be present during police questioning. However, the statutory system does mean that a suspect must be assigned counsel under the duty lawyer rota after the public prosecutor (or assistant public prosecutor) has ordered his detention in police custody following police questioning. Before the questioning during the detention in police custody, counsel has the opportunity to consult with the suspect and to advise him on his legal position. Article 28, paragraph 2 does not give a suspect an independent and unqualified right to have contact with his counsel whenever he wants. By invoking his right to remain silent under article 29 of the Code of Criminal Procedure a suspect creates a situation in practice in which he is given the opportunity to consult with his counsel, unlike a suspect who is prepared to answer the questions put to him during questioning.

A pilot project in which defence counsel have the opportunity to be present during police questioning in homicide cases as defined in Title XIX of the Criminal Code was started on 1 May 2008. The project will run until 30 April 2010, after which evaluation will take place. The findings of this evaluation will be taken into account in the current review of the Code of Criminal Procedure. The Minister of Justice informed Parliament on 16 April 2009 that a bill is in the making in which suspects of a crime in police custody have access to a lawyer preceding the police interrogation. The police shall soon be obliged as well to inform the suspect of the possibility of legal assistance, including the possibility of legal consultation. Furthermore the suspect shall be informed of his rights explicitly. The verdict of the ECHR Court in the case of Salduz vs Turkey has been taken into consideration.

Netherlands Antilles: When a suspect is detained in police custody, he is assigned a lawyer automatically. The costs are paid out of public funds, even if the suspect is more than able to pay them himself. When counsel is assigned automatically in this way, the suspect is given the opportunity to express a preference for a particular lawyer and his wishes are taken into account

wherever possible. Naturally, a suspect is free to appoint, at his own expense, one or more lawyers of his own choosing. If a suspect wishes to waive his right to assignment of counsel, this is recorded in writing in a standard form that is available in Dutch, Papiamento, Spanish, English and French. Suspects are also always informed of their rights by means of leaflets in several languages. The Public Prosecution Service strictly monitors compliance with the statutory provisions and is represented for this purpose by the duty public prosecutor, who can be reached 24 hours a day, 365 days a year. If the police were to resort to illegal practices, the Public Prosecution Service would not hesitate to institute criminal proceedings where necessary. There have indeed already been cases in which it has intervened in this way.

The law provides that a suspect may be kept in pre-trial detention for a maximum of 116 days (146 days in exceptional cases) before his case is heard by a court. A suspect may not be kept in police cells for longer than 18 days. In practice, this maximum may be exceeded if there is a cell shortage in the remand prison. In such cases the court reduces the sentence in accordance with fixed criteria.

The assertion that the Netherlands Antilles has a relatively high proportion of unconvicted prisoners needs some qualification. Criminal proceedings and hence pre-trial detention in fact last for a much shorter time than in the Netherlands. For example, the average lead time of a criminal appeal was 181 days in 2008.[2] As the law enforcement authorities have staff shortages, relatively few cases for which pre-trial detention is not necessary are referred to the Public Prosecution Service. In view of the islands' crime statistics, the Public Prosecution Service has no choice but to give greater priority to prosecuting the more serious offences (often violent crime). Over the years the average term of imprisonment imposed on appeal has therefore remained constant at about five years. Most of these cases involve defendants accused of offences which constitute such a serious affront to the legal order that pre-trial detention is appropriate and indeed almost inevitable. This is why the number of people in pre-trial detention is so high in relation to the total number of suspects (i.e. unconvicted persons). As the defendants often use every remedy, including cassation, to contest these stiff sentences, they retain the status of prisoner on remand for some considerable time. This is because the judgment in their case has not yet become final and unappealable. An appeal in cassation can sometimes last up to eighteen months. Both before and during pre-trial detention (and even after the lodging of an appeal!) the court may assess the grounds for such detention of its own volition under its procedural powers. During the criminal proceedings a suspect may request the court to suspend or terminate pre-trial detention.
Aruba: A detainee who indicates that he wishes to consult a lawyer will not be questioned until the lawyer arrives, unless the gravity of the case dictates otherwise. A record of the detainee's request for a lawyer, the lawyer's name and the consultation is entered in the detainee module of the ACTpol registration system. Article 48, paragraph 4 of the Code of Criminal Procedure provides that the lawyer is not entitled to be present when the suspect is questioned by the investigating officer. A suspect may, at his request, speak to his lawyer before the start of the police questioning.

The Procurator General intends to limit police custody to two days. At present representatives of the Public Prosecution Service, the police and the prison service are working to solve the practical problems that are delaying the implementation of this new policy.

It should be emphasised that the two-day period will only be extended if the investigation urgently requires this. The decision to extend the period of detention beyond two days and the reasons for doing so are recorded in the detainee module of the ACTpol police registration system, which contains all relevant information about individual detainees.

[2] The average lead time of a criminal case at first instance is not known at present.

A 9

The Netherlands: The Ministry of the Interior and Kingdom Relations is consulting with the police about the possibility of commissioning a study of the police's use of ethnic profiling. Points provisionally singled out for study are existing legislation and the practice and effectiveness of ethnic profiling by the police in the Netherlands. This leads on to the main question of whether and if so how the police can make responsible and effective use of ethnic, racial or religious profiling within the national and international statutory framework.

Treatment of persons deprived of liberty

A 10

Netherlands Antilles: The prison personnel have received training in the treatment of inmates since 2008. Almost all members of the riot team have undergone training and completed the prison work training course. The aim is for all staff who work with inmates to undergo training.

All complaints of inmates are investigated by the prison's Internal Affairs Unit. Inmates can also submit a complaint to the Supervisory Committee and the Public Prosecution Service. Any complaints are dealt with immediately. There is also a scheme that sets out the procedures for dealing with complaints. 25 complaints about police conduct were received in 2006, 19 in 2007 and 30 in 2008.

Statistical Data Annexe IV

Complaints that are judged to need further investigation are referred to the Public Prosecution Service. Whether a criminal prosecution is brought is a matter for the Public Prosecution Service to decide on the basis of the findings of the investigation. No compensation is usually paid. However, compensation is paid for any damage caused by the police action. In general, disciplinary measures are taken.

Aruba: To ensure that inmates are treated properly the management of the ICN (Aruba's prison, formerly known as the Korrektie Instituut Aruba or KIA, now renamed the Instituto Correcional Nacional or ICN) has decided that prison personnel should undergo training in order to put the service on a more professional footing. The management are currently preparing a training plan in collaboration with the Custodial Institutions Agency (DJI) in the Netherlands. Some prison staff have already taken a course at the Forensic Observation and Guidance Unit (FOBA) in Curaçao. In addition, three prison staff have taken a course in practical prison work at Bon Futuro Prison in Curaçao.

The inmates are able to lodge complaints with the supervisory committee. The committee discusses these complaints once a month in a meeting with the ICN management. Any inmate wishing to file a complaint against a staff member with the Special police Department for the investigation of crimes committed by government officials (Landsrecherche), which resorts directly under the Procurator General is given the opportunity to do so.

The Aruba Police Force (APF) has adopted a vigorous policy to combat police misconduct. The rules and regulations on the treatment of detainees have been set out since 2004 in the Police Order on Detainees (Korpsorder 10/2004). This order has now been revised to comply with CPT regulations. In the coming months the revised order will be communicated to police personnel through brief instructions on particular topics and through training.

The Police Order on Detainees reminds police personnel of the rights and dignity of persons in custody. Cases of possible ill-treatment of detainees must therefore be reported immediately to the watch commander or to the senior officer in charge. This can be done by the victim or the victim's doctor, family or lawyer or by a police officer.

Severe sanctions are imposed if the Police Internal Affairs Unit (BIZO) concludes that the behaviour of the officer(s) constitutes ill-treatment. BIZO will also concentrate more of its efforts on education and prevention, combined with enforcement and punishment. Steps have already been taken in cooperation with the competent authorities in the Netherlands to establish a training programme for personnel in direct contact with persons in police custody.

During basic training at the police college recruits are given intensive training in the proper techniques for apprehending suspects with minimum force. This training is repeated on a yearly basis for all police personnel. To improve the standard of training still further, a police instructor has been trained in the Netherlands in how to teach practical police skills for minimising the use of force. As part of the ongoing training programme (funded by the Aruban Development Fund (FDA)) which will start in 2009, he will instruct police personnel in the use of proper techniques to avoid excessive force when making arrests.

A 11

Netherlands Antilles: Prison overcrowding is not much of a problem at present. The undocumented inmates stay in the barracks for a fairly short period and the number of inmates in the prison blocks is kept within the permitted limit. A master plan has been drawn up for the renovation of the barracks in which the illegal immigrants are kept. Parts of the barracks are being refurbished and a new building is being added. This new building will be an area where inmates can exercise in the fresh air and there will also be space for recreation and worthwhile daytime pursuits. The project is currently being put out to public tender. Work can start as soon as the contract has been awarded. A plan which forms part of the overall plan for the prison has been drawn up for the treatment and care of the inmates. This includes training for the prison guards. A plan to increase security in the prison has been implemented since last year. This involves the deployment of more personnel (24 hours a day, 7 days a week) and the installation of closed circuit TV cameras.

Aruba: It should be noted that the government decided to close the centre for undocumented foreign nationals (Centro pa Detencion di Illegalnan - CDI) as conditions in the centre were unsatisfactory. The government intends to build a completely new facility for the detention of illegal immigrants. Plans are currently being drawn up for such a centre, which will comply with international standards and provide more recreational facilities. Funds have been allocated for this project and a location has been found at Oranjestad.

As regards the prison, it should be noted that since the construction and refurbishment work in 2005 there has been no further overcrowding at the ICN. Violence among the inmates hardly ever occurs. Fights occasionally break out, mainly among young inmates, but the authorities take swift action. The inmates involved are then dispersed in such a way that they do not often come into contact with each other. As far as suicide is concerned, there was one attempted case in 2007 which was due to personal circumstances. The attempt was frustrated as a result of good surveillance by the prison staff, who acted in accordance with service instructions.

The management team is visiting the wings with increased regularity in order to instruct and coach personnel. The team is informed daily of any problems involving inter-prisoner violence and tries as much as possible to keep problem prisoners separated from other prisoners. The ICN has now expanded its range of activities for remand prisoners. This has helped to separate prisoners more and thus minimise interprisoner violence.

Another way of solving this problem is to provide varied day programmes, job training and courses. Nevertheless the management team continues to be confronted with self-styled ‘gang members’ who share a history prior to imprisonment. These gang members are kept separate wherever possible, subjects to the constraints of infrastructure and capacity.

To comply with CPT standards and recommendations, the ICN has made a number of improvements. For a detailed description of the measures taken, reference can be made to the Aruba section of the Kingdom's report to the CPT of January 2009.

The following measures have been taken to improve the quality of the prison infrastructure:
- more daily activities and programmes have been developed so that prisoners are not confined to their cells for long periods;
- ceiling ventilators have been installed and some ventilation units have been removed to provide extra airflow and daylight in cells;
- the cell doors directly facing the command posts have been partially covered by metal plates to increase privacy.

A 12

Netherlands: Dutch policy provides that rejected asylum seekers and illegal aliens may be detained on grounds of public policy or national security with a view to arranging their repatriation. This type of detention can only be used as a measure of last resort and may not last longer than is strictly necessary to arrange for the return of the person concerned. Detention may also be used where people are refused entry at the border. A person who has been detained may appeal against the measure. If he or she does not appeal, an automatic appeal takes place within 28 days. In accordance with the EU return directive (published 24-12-2008) the Netherlands apply a limited period of detention which may not exceed six months. This period may be extended only (for a period not exceeding a further twelve months)in cases where regardless of all reasonable efforts the removal operation is likely to last longer owing to: a lack of cooperation by the third country national concerned or delays in obtaining the necessary documents from third countries.

In the Dutch system, a decision to detain an alien is taken by the Aliens Police or by the Royal Military and Border Police. According to Dutch legislation, they are required to weigh the interests of the alien and the interests of the state against each other. The law gives them primary responsibility for making this assessment. By law, it is the task of the courts to determine whether the detention can reasonably be deemed justified in the light of all the interests involved. Dutch immigration law allows for the detention of unaccompanied minors and families with underage children, but the principle that detention should be a measure of last resort is applied even more strictly in such cases. Detention should also take place in special centres. Families with children are detained in centres that have special facilities for children, and unaccompanied minors may only be detained in youth custody centres.

Recently, special policies have been introduced to avoid detaining families with children wherever possible. As part of these policies, families with children may only be held in detention for relatively short periods. If entry is refused at the border, detention may take place only if the asylum application can be dealt with by the accelerated procedure. In such a case, the detention may only last for a maximum of four weeks after the asylum application has been processed. In cases where there is no refusal of entry, detention is limited to the last stage of the preparations for expulsion and may last for a maximum of fourteen days.

Wherever possible, the detention of children is avoided in the Netherlands and use is made of alternative forms of reception or custody. Unaccompanied minor asylum seekers are detained in a youth custody centre. Like every other minor in the Netherlands, children present illegally in the Netherlands are entitled to services such as education and medical assistance. The education programme for children in detention with their families pending expulsion from the Netherlands may be temporarily modified, mainly for practical reasons.

Statistical Data Annexe V

Protection against arbitrary expulsion of aliens

A 13

The Netherlands: Statistical data will be provided as soon as possible.

Netherlands Antilles: Although the Netherlands Antilles is not a party to the 1951 Convention relating to the Status of Refugees, it is party to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and CAT. In keeping with these conventions the Minister of Justice has issued instructions on how to deal with persons requesting asylum. Asylum seekers are permitted to await the outcome of the consideration of their petition by the office of the United Nations High Commissioner for Refugees (UNHCR) in Venezuela. In the meantime they are issued with a residence permit and work permit. Whatever the findings of the UNHCR, these people are either sent to another country (if UNHCR grants the petition and looks for another country which is party to the 1951 Convention) or returned to their own country (if UNHCR rejects the petition).

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Requests for asylum by four persons – one from Sudan (Curaçao), one from China (St Maarten), one from the United States (Bonaire) and one from Lebanon (Bonaire) – were withdrawn.

Juvenile justice

A 14

The Netherlands: Juvenile criminal law applies to children aged 12 to 18 and is contained in articles 77a to 77hh of the Criminal Code. Criminal procedure in relation to the 12-18 age group is regulated in articles 487-505 of the Code of Criminal Procedure. The Young Offenders' Institutions Framework Act contains rules governing the implementation of custodial sentences for minors.

The basic rule is that juvenile criminal law applies to young people under the age of 18. However, the courts can apply adult criminal law to people who have committed an offence at the ages of 16 or 17 (article 77b Criminal Code). This is done only in exceptional cases where the court considers this to be warranted by the seriousness of the offence, the personality of the offender or the circumstances surrounding the commission of the offence. The age at the time of the offence determines whether adult law can be applied to minors. Most of these offenders reach the age of majority during the trial. The number of minors convicted under adult law has declined since 2005.

Statistical Data Annexe VII(a)

Minors who are convicted under adult law are placed in a custodial institution for adults. This seldom happens in practice as almost all minors who are convicted under adult law reach the age of majority by the time the sentence starts. No minors are currently detained in a forensic psychiatric centre (known previously as a secure psychiatric institution). Eight minors were committed to a custodial institution in 2008. Three of them were in pre-trial detention and a further three were detained for several days for failing to pay a fine. Two minors were transferred from a young offenders' institution to an adult custodial institution after they had been convicted under adult law.

The basic principle governing the detention of children is that a custodial sentence should be used in juvenile law only as a last resort. Of the 69,000 young people in the 12-18 age group who were questioned by the police in 2007, 1,653 eventually received a custodial sentence (in some

cases partially suspended). In the majority of cases (67.8%) the length of these youth custodial sentences was less than three months. The number of young people admitted to a young offenders' institution for a criminal offence has declined since 2005.

Statistical Data Annexe VII(b)

In relative terms more young people are held in pre-trial detention after arrest by the police in the Netherlands than in other countries. Pre-trial detention provides an opportunity to quickly assess the problem of the young persons and provide them with the necessary compulsory community-based care and supervision (after release or final judgment). On average three quarters of the young people held in pre-trial detention return home after 36 days. The introduction on 1 February 2008 of legislation on measures to influence the behaviour of young people has increased the scope for starting such measures while the young person is still in pre-trial detention.

As regards measures adopted by the Netherlands to eliminate the practice of detaining children and juveniles with behavioural problems in young offenders' institutions pending their admission to a youth treatment centre, it should be noted that the amended Youth Care Act entered into force on 1 January 2008. Under this Act young people who have been convicted of an offence and given a custodial sentence and young people who have behavioural problems and are committed to an institution under a civil law order are to be placed in separate institutions. For the treatment of the latter category special places are being created in secure youth care centres. For this purpose new facilities are being created and existing young offenders' institutions are being converted into secure youth care centres. To increase the capacity of these centres, the separation will be carried out in stages between 2008 and 2010. The first to be admitted to these centres will be the most vulnerable young people.

Netherlands Antilles: Only minors aged 12 and over can be prosecuted, tried and sentenced. A child under 12 who has committed a crime may be arrested and kept in custody for questioning for a maximum of 6 hours. The court is required to investigate the possibility of suspending the pre-trial detention of minors (article 484 Code of Criminal Procedure). Special conditions may be attached to such a suspension. The great majority of underage suspects are not convicted under adult law, but held under an indefinite detention order. Much use is also made of suspended prison sentences that are conditional on performance of an alternative sanction such as a community service order, together with professional supervision. Title X of the new draft Criminal Code will introduce a complete overhaul of juvenile criminal law. This will provide for a number of specific sentences and non-punitive orders for young offenders (youth penalty system) and for rules on their enforcement. For example, it will be possible under the new juvenile criminal law to offer offenders the chance to accept settlement penalties and participate in projects.

Pre-trial detention is applied only to minors suspected of the most serious offences, for example robberies, homicide and attempted homicide, possession of firearms, false imprisonment, rape, serious cases of burglary and escape after a conviction. Owing to staff shortages and the lack of statutory powers to impose the right kind of sanctions on children, the Public Prosecution Service is unable to prosecute first offenders and young people suspected of relatively minor offences. In the case of serious offences the Public Prosecution Service is obliged – once again because of the lack of adequate statutory powers – to apply certain provisions mainly intended for adults. This is possible under the criminal law.

Statistical Data Annexe VII(c)

Custodial institutions: there are 3 custodial institutions for minors. First, the open institution for young offenders (the GOG or Government Correctional Facility), which also has a low-security

(detention) wing. Second, the 'Hamaka' youth wing of the Brasami facility (a low-security institution for persons with drug abuse issues). And, third, Bon Futuro Prison where minors aged 16 and 17 can be held together with adults, and the FOBA (Forensic Psychiatric Observation and Guidance Unit of Bon Futuro Prison) where minors can be placed separately from adults.

Minors between the ages of 12 and 15 can be placed in the Brasami and GOG youth institutions both during pre-trial detention and after sentencing. Young people aged 12 to 15 can sometimes be placed in the FOBA Unit of Bon Futuro Prison because of its facilities, in particular the possibility for observation by a psychologist and psychiatrist with a view to the preparation of a report for use in court. Minors between the ages of 12 and 15 can also be placed in the FOBA during pre-trial detention if no place is available in Brasami or GOG. After being sentenced, such minors are always placed in GOG or Brasami. The GOG provides a small vocational school for minors with learning difficulties. But most of the minors at GOG and Brasami attend high school, pre-vocational secondary school (VSBO) or vocational school (SBO) outside the institution and are part of the regular education system.

16 and 17-year-olds can be placed in the youth institutions of Brasami and GOG if space is available. But minors who pose a real security risk to the community are placed in Bon Futuro Prison together with adults. They can also be admitted to the FOBA Unit.

Statistical Data Annexe VII(d)

The Public Prosecution Service seeks to keep pre-trial detentions of minors to a minimum. The aim is to release them after 10 days of police custody. In such cases the examining magistrate will issue an order conditionally suspending the detention. The main purpose of the 10 days of pre-trial detention is to give the Guardianship Council the opportunity to meet the minor's social needs (schooling, family circumstances, etc.).

The following measures to improve the juvenile justice system deserve the greatest priority:

- the introduction and enforcement of juvenile criminal law;
- the opening of a young offenders' institution: at the request of the Minister of Justice, experts from the Dutch Ministry of Justice visited the Netherlands Antilles in November 2008 to conduct a feasibility study for plans for placement in a youth protection and custody institution;
- the setting up of a youth probation unit to ensure that young people (aged 12 to 17) who have been in contact with the criminal justice system can be supervised upon their return to society;
- Sino Fono/HALT (mechanism for settling cases involving relatively minor offences without recourse to the courts); the 'Sino Fono Project' involves the introduction of extrajudicial measures for the disposal of criminal cases in anticipation of the introduction of the new juvenile criminal law. Where young people in the 12-17 age group commit relatively minor offences, the police may decide to drop charges rather than prosecuting the offender. The emphasis is on the imposition of on-the-spot penalties (including compensation) supplemented by supervision of the young person. This project is comparable to the Dutch HALT project and is being prepared by the Curaçao police force, the Guardianship Council and the Public Prosecution Service.
  By preventing first offenders from slipping into a life of crime and committing more serious offences, this project is expected to reduce the need to apply pre-trial detention;
- the police, the Education Inspectorate and the Directorate of Youth Development should join forces to enforce compulsory education and compulsory youth training.

Aruba: Young people between the ages of 16 and 18 who come into contact with the criminal justice system are in principle treated in accordance with the Aruban Criminal Code. The

penalties for young people are set out in articles 40-41m. Young people may never be sentenced to life imprisonment.

Young offenders between the ages of 16 and 18 can at present be tried under adult law in exceptional circumstances. However, the new draft Criminal Code raises the threshold for treating young offenders between the ages of 16 and 18 as adults.

Statistical Data Annexe VII(e)Aruba

Under Aruban criminal law, a young person aged 12-18 may be detained only if no other appropriate sanctions are available. Detention may thus be imposed only as a last resort. Each case is discussed at a brief conference between the Guardianship Board, the Rehabilitation and Child Protection Board, the Police Youth and Sexual Offences Unit, the Public Prosecution Service and the investigating officer. The conference decides on the best way of dealing with the case in light of the young person's interests and development. It opts for detention only if this unavoidable in the interests of the investigation or because of the seriousness of the offence. As a rule, young offenders are not detained in the same institution as young people who have been institutionalised for behavioural problems.

The Child Protection Unit handles criminal cases involving children and adolescents and, with a view to prevention, cases of minors with developmental and relationship problems that have been reported by parents, guardians or carers.

Alternatives to detention are increasingly being used for children who come into contact with the law. Almost 80% of the cases involving juvenile offenders are now dealt with by alternative means.

Public Prosecution Service Alternative Sanction (TOM) hearings have been held at the office of the Rehabilitation Board since September 2004. TOM hearings are an initiative of the Public Prosecution Service in collaboration with the Rehabilitation and Child Protection Board. Cases involving certain kinds of criminal offence are settled in these hearings so as to ease the burden on the courts and Aruba's prison (ICN) as much as possible. The hearings are comparable to those at which community service and alternative sanctions are imposed on juvenile offenders in the Netherlands. They are held only in cases involving criminal offences for which the public prosecutor would normally demand a sentence of no more than three months' imprisonment. The people who may attend a TOM hearing are the suspect (accompanied by a lawyer and/or, in the case of a minor, his or her parents), the victim, the public prosecutor, a legal officer and staff of the Rehabilitation Board.

The public prosecutor makes a proposal to the defendant at the TOM hearing which can be regarded as a conditional decision not to prosecute. The defendant must comply with these conditions for a given operational period. If the defendant fails to comply with the conditions, the case can be brought to court.

ICN
Aruba's prison recently underwent alterations, during which the entire youth wing was refurbished and enlarged to provide 36 places for young offenders on pre-trial detention. The maximum age for placement in the young offenders' wing is currently 21. Juvenile inmates are offered the opportunity to complete school through independent study. At present, the ICN is working to improve the measures to prepare young prisoners (up to the age of 20) for their return to society. To this end, contacts have been established with young offenders' institutions in the Netherlands where ICN staff will undergo training.

ICN had 20 young prisoners aged 17 and under in 2006. The number rose to 28 in 2007 and remained constant in 2008.

Centre for young people with serious behavioural problems (Orthopedagogisch centrum)
The open wing of this facility has been operational for some time and the closed wing will also become operational soon. The closed wing can accommodate eight or nine young people. This group will live under strict rules, attend school and receive appropriate treatment. Its members will not be allowed to move about freely, but will be supervised closely and treated by a team of ten group leaders who are still to be appointed. This intensive treatment will be provided on an individual basis in an environment where there is permanent surveillance.

A secure wing will also be opened within two years. This will accommodate ten young people placed there by court order. They will be under constant surveillance and will live in an area shut off from the other wings and be subjected to a very strict regime adapted to each individual. They will not be allowed to leave the premises. The Education Department will establish and run a special needs school on site that will provide them, as well as the young people in the closed and open wings, with education adapted to their needs. Ultimately there will be about 50 young people at two sites – 40 in closed wings and 10 in the secure wing – and about 32 in the open wing.

The introduction of the new Criminal Code will completely revise and modernise juvenile criminal law. Essentially, the principal sentences for young offenders in the 12-18 age group will be youth detention, community service or other alternative sanction, and a fine. An alternative sentence may consist of a community service order or period of study or a combination of the two. Additional punishments are confiscation of possessions and disqualification from certain rights. Non-punitive orders that may be imposed under the new code are placement in a youth protection and custody institution, imposition of a behaviour order, withdrawal of goods from circulation, confiscation of the proceeds of crime and an order for payment of compensation. Youth custody orders, alternative sanctions and fines may all be imposed conditionally.

Youth custody may not exceed a term of 1-2 years, depending on the age of the minor (under 16 or 16 and over). The maximum fine that may be imposed is AFL 5,000. The term of community service or another alternative sanction may not exceed 240 hours. Placement in a youth protection and custody institution will basically be for two years, but this period may be extended for two years at a time. Special facilities will have to be created for the implementation of youth custody and the non-punitive order of placement in a youth protection and custody institution. Legislation for the execution of these sanctions must also be drafted.

In special cases, it will be possible to apply adult law to a minor who is 16 or over, namely where the court considers this to be warranted by the seriousness of the offence, the personality of the offender or the circumstances surrounding the commission of the offence. Conversely, the court may try people aged between 18 and 21 in accordance with the rules of juvenile criminal law if it considers this to be warranted by the personality of the offender or the circumstances surrounding the commission of the offence.

The new criminal code also provides that people under the age of 18 cannot be sentenced to life imprisonment. If the court applies adult law to young persons aged over 16 it may not impose a sentence of life imprisonment. Under the new code custodial sentences will remain a measure of last resort. To this extent these provisions do not differ from the present situation.

Placements in a youth protection and custody institution will in principle be for a term of two years, but this period may be extended. Such a placement order involves a substantial expansion of juvenile criminal law. The conditions for imposition of the order are that pre-trial detention is possible for the offence concerned, that a placement order is necessary for the security of persons

or goods and that the placement is in the interests of the further development of the young person concerned. The order can in principle be extended to four years and in exceptional circumstances to six years.

A behaviour order involves the young person's participation in a community-based or residential programme. Such an order lasts for 6-12 months and may be extended once for the same term.

It should also be noted that the possibility of dropping charges rather than bringing a prosecution will be extended so that the police can refer young offenders who have committed relatively minor offences to a HALT centre where they can perform an alternative sanction to avoid a criminal record.

Violence against women

A 15

The Netherlands: Mention should be made here of the Temporary Domestic Exclusion Order Act (exclusion orders for perpetrators of domestic violence). By introducing separate legislation, the government intended to create ways of imposing temporary exclusion orders on perpetrators of domestic violence in situations where there is an acute threat to the victims and/or any children. This new piece of legislation, which came into force on 1 January 2009, allows mayors to impose a ten-day exclusion order. After the ten days, the mayor may decide to extend the order by another four weeks. The order restraining the perpetrator from entering the home may also be used in child abuse cases. The people involved will receive professional help during the ten-day period.

The police recorded a total of 64,822 incidents of domestic violence in all police regions in 2007. This was 3% higher than in 2006. In 7 out of 10 cases the victim of domestic violence is the perpetrator's partner or former partner. A criminal complaint was lodged with the police in 24,920 of the 64,822 recorded incidents. This resulted in 16,502 arrests. 1,185 of the arrested suspects were brought before the public prosecutor or the examining magistrate.

35 municipalities are designated as regional authorities and receive a special-purpose grant for women's refuges. About 35 organisations operate some 100 refuges in these municipalities. 11,346 clients made use of them in 2007.

Freedom of religion and belief, freedom of expression, and protection of religious minorities

A 16

The Netherlands: The Municipal Anti-Discrimination Services Bill was recently passed in the House of Representatives (Parliamentary Papers 1, 2008/09, 31 439, no. A). This legislation obliges municipalities to provide their residents with access to an anti-discrimination service in their own area where every person who feels discriminated against on any ground whatever can obtain assistance in lodging a complaint. The service is available to people of Muslim background. The network of anti-discrimination services is planned to cover the entire country by 2009. Their central tasks will be providing assistance to victims of discrimination, recording reports of discrimination and providing information on discrimination. Hence, a public information campaign will be launched in 2009 to alert victims of discrimination to the possibility of filing reports. Local and regional anti-discrimination bureaus and the former National Bureau against Racial Discrimination have joined forces and pooled their expertise to form a new national association called Art. 1, after the first article of the Dutch Constitution. This article guarantees equal treatment and prohibits discrimination on any ground whatsoever. The local and regional anti-discrimination bureaus are members of Art. 1. This organisation makes it possible to develop and share knowledge of discrimination and how to combat it.

Efforts are being made within Dutch integration policy to scale back the attention paid to Islam to realistic and manageable proportions since not all integration issues are connected with religion. In addition, the authorities are holding regular consultations with religious and belief organisations. One of the subjects discussed by the Minister for Housing, Communities and Integration with Muslim umbrella organisations in these consultations has been Islamophobia. The Minister is also promoting a Dialogue on religion and society. The aim is to promote meetings and lasting contact between people of different faiths and beliefs (including non-religious beliefs). Often these meetings are about specific (local) problems, issues and experiences. Another aim of the dialogue is to contribute to a broader and deeper knowledge of all beliefs. Everyone is welcome to participate, regardless of their origin and religious or other belief.

There are no general legal restrictions on the wearing of religious symbols or clothing in public places. As mentioned in par. 238 of the fourth Dutch report, the former government concluded in the policy document 'Fundamental rights in a plural society' that there was no need to regulate the wearing of clothing that might express religious views, such as headscarves, unless urgently required for reasons of functionality, safety or the exercise of authority in an impersonal manner. In keeping with this view, however, some restrictions do apply to specific situations. For the sake of proper functionality, public officials are not allowed to wear clothing that covers their entire face, because they need to be able to communicate openly with members of the public when providing government services. The Minister of the Interior and Kingdom Relations issued a circular on this subject, published in the Government Gazette (Staatscourant 2008, 120). Headscarves may be worn by public officials. The Minister also expressed her intention in a letter to parliament of issuing clothing regulations for uniformed police officers, for reasons of safety and the clearly neutral exercise of authority (Parliamentary Papers II 2009/09, 29628 no. 109). Police officers will not be allowed to wear any clothing or symbols that could call into question their neutrality, such as headscarves, crosses or yarmulkes. These restrictions are compatible with the ICCPR since they are prescribed by law and are necessary for the reasons specified, which fall into the categories of public safety and order referred to in article 18(3) ICCPR.

Public-authority schools may not, in principle, prohibit the wearing of religious symbols. See article 23, paragraph 3 of the Constitution. However, a public-authority school may prohibit the wearing of all headwear or all jewellery, for example in the interests of safety. Headscarves may be dangerous because they may snag on a protrusion or easily catch fire during a practical lesson and a chain or necklace with a cross may cause injuries during gym lessons. Clothing that covers the face may be prohibited not only in the interests of safety and, possibly, identification as well, but also in the interests of teaching. However, the wearing of symbols may not be prohibited at public-authority schools simply because they are religious. This is possible at private schools, albeit subject to strict conditions.

Private schools may prohibit the wearing of headscarves and other religious symbols only if this is necessary to uphold their identity in the light of their objectives. Such a decision may not be taken lightly and must be part of a consistent policy. This involves protecting a fundamental right of another person (freedom of education) which may, subject to certain conditions, infringe the freedom of religion. It follows that any such infringement must be in proportion to the interests involved (requirement of proportionality). A private school may prohibit religious symbols or clothing only if this is necessary in order to uphold its identity and is consistent with its overall policy. The exception for private schools is contained in the Equal Treatment Act (sections 5 and 7). Finally, private schools may, like public-authority schools, apply neutrally worded clothing rules that are necessary in the interests of safety or teaching.

Relationship with ICCPR

The scope for prohibiting religious symbols as described above is in keeping with the limitations of freedom of religion under article 18 (3) ICCPR.

A 17

The Netherlands: There is no such proposal. In a debate in Parliament in 2004 on the necessity of mutual respect for different cultures and religions, the then Minister of Justice announced that, if necessary, he would introduce new legislation on the subject of religious hatred and blasphemy. This announcement drew much criticism in Parliament. Indeed, several political parties made clear that in their view the provision on blasphemy (article 147 of the Criminal Code) should actually be abolished. They argued that the anti-discrimination provisions in articles 137c-137e of the Criminal Code were sufficient protection against religious hatred. In response, the then Minister of Justice commissioned research by Nijmegen University into the historical background of article 147 and its role as an instrument in preventing religious hatred in contemporary society. In their report published in December 2006, the researchers provided a masterly overview of the academic literature on freedom of expression, the historical background of article 147 Criminal Code and the national and international case law. They concluded that it would not be desirable either to initiate new legislation or to abolish article 147. In its response to the conclusions of the report of the Research and Documentation Centre (WODC) in October 2007, the government decided to retain article 147 of the Criminal Code together with the anti-discrimination provisions (Parliamentary Papers II 2007-2008, 31 200 VI, no. 8). It also pointed to its comprehensive policy on preventing radicalism (as laid down in the Polarisation and Radicalisation Action Plan 2007-2011, Parliamentary Papers II 2006-2007, 29 754, no. 103). However, the debate about the desirability of retaining article 147 continued in Parliament. A majority of MPs were in favour of its abolition. As a result, the government announced on 31 October 2008 that it intended to abolish article 147 and enact a revised version of the anti-discrimination provision in article 137c Criminal Code (Parliamentary Papers II 2008-2009, 31 700 VI, no. 33).

A 18

The Netherlands: Combating anti-Semitism is part of the general policy of preventing and combating discrimination. The main aim is to improve the arrangements for handling complaints by members of the public. To this end the Ministry of Justice is fostering cooperation between the Public Prosecution Service, the police, the municipalities, the Equal Treatment Commission and the anti-discrimination services.

Criminal prosecution is the final instrument. The following measures have been taken in this connection.
1) A study of the sentences imposed in discrimination cases has been carried out.
2) It was agreed in the 2007 police performance contracts that the police forces should include anti-discrimination policy in their annual plan, appoint a regional liaison officer for discrimination cases, implement the anti-discrimination directive, hold periodic consultations with the Public Prosecution Service, the anti-discrimination services and the local authorities, put discrimination on the agenda of the regional tripartite consultations and improve the registration system.
3) An anti-discrimination handbook has been prepared within the Public Prosecution Service and anti-discrimination support centres have been set up at 11 regional public prosecutor's offices. Each is staffed by a specially trained public prosecutor. In addition, a new anti-discrimination directive came into force on 1 December 2007.
4) Steps are being taken to improve the registration system.
5) Investments are being made in anti-discrimination services. An extra €6 million a year was earmarked in 2006 for the establishment of a nationwide network of anti-discrimination services. This money has also been used to put the anti-discrimination services and the various centres of expertise on a more professional footing. A Bill was presented for this purpose in mid-2008.

Specific attention must be paid to anti-Semitic chanting at football matches and demonstrations. Efforts are being made to stop this chanting and punish the perpetrators on the basis of video evidence. Nationwide agreements about racist/discriminatory chanting at football matches have been made as part of the policy to combat football hooliganism and violence.

Protection of the family

A 19

The Netherlands: The Netherlands considers that its present family migration policy complies with the requirements stemming from international obligations. This national policy is limited by these international obligations, including the right to respect for family life (article 8 ECHR). International obligations permit a State to pursue its own family migration policy, under which it may impose conditions on both the family member wishing to come to the Netherlands and the host in the Netherlands. The requirements which the Netherlands imposes for this purpose are in keeping with those that may be prescribed under the Family Reunification Directive (2003/86/EC).

The Dutch rules on family migration were tightened up in two respects in 2004. Here it is important to note the distinction between family formation and family reunification. The distinction is basically that in the case of family formation the family ties are created once the host already has his or her principal place of residence in the Netherlands. The age requirement for hosts applying for family formation has been raised from 18 to 21 years, and the income requirement has been raised to 120% of the minimum wage.

The principle underlying the income requirement is that the host should be responsible, both financially and otherwise, for the partner coming to the Netherlands. The host should have sufficient resources to bear the full cost of the partner's journey and residence on a lasting basis, thereby precluding, as far as can reasonably be anticipated, any dependence (or partial dependence) on public funds. It should be noted that in individual cases a residence permit may be granted in exceptional circumstances, for example in the light of the obligations under article 8 ECHR, even if not all the conditions have been fulfilled.

Protection of children

A 20

The Netherlands: The 'Children Safe at Home' action plan, which was presented to the House of Representatives in July 2007, sets out how the Interministerial Programme for Youth and Families and the Ministry of Justice propose to tackle child abuse. The interests of the child are paramount.

The Action Plan provides for the following activities:
- the nationwide introduction of a regional strategy for tackling child abuse. All parties involved cooperate closely with one another to provide effective assistance. These are institutions and organisations such as the Youth Care Agency, municipal health services, primary schools and municipal authorities. The aim is to achieve a comprehensive approach ranging from general prevention and support to intervention once child abuse is discovered. The introduction of the regional strategy began in May 2008 and will be completed in December 2010;
- measures to encourage the use of the reporting code for child abuse. The government has decided that the organisations involved must have access to and promote the use of such a code. The aim of the obligation is to ensure that quicker and more appropriate action is taken when domestic violence and child abuse are suspected. This can be achieved by the consistent application of a code designed to improve the early detection of domestic violence and child abuse. Application of the code of practice means that institutions and professionals know what steps they must take if they detect signs of violence or abuse. To promote the use of the code the

national steering committee on child abuse has held various meetings with the institutions in the different sectors;
- a 2-year national campaign to make the general public aware of their responsibility to report child abuse was started in December 2008;
- the use of the criminal law to tackle child abuse. The purpose is to stop the abuse immediately and punish the offender, as well as preventing any repetition of the offence by providing treatment. The Board of Procurators General is drawing up policy rules for the application of the criminal law. These are expected to be ready by the spring of 2009;
- the provision of faster assistance to children; this overlaps with the 'Better Protected' programme, whose aim is to speed up the procedure that starts with the first report of child abuse and finishes with the judgment of the court.

Statistical Data Annexe VIII(a)

Netherlands Antilles: Several cases of physical abuse were reported to the police's Juvenile and Vice Police Squad. Only a couple of these cases were brought to court. As there was insufficient evidence of physical abuse for a prosecution in the other cases, the parents were referred to the Probation Unit and the Guardianship Council for supervision. An Advice and Reporting Centre for Child Abuse was set up within the Child Protection Agency in Curaçao in August 2008.

Several cases of sex abuse involving children of both sexes in the periods 1998-2006 and 2007-2008 were prosecuted by the Public Prosecution Service. As only the defendant's name is recorded, no information can be given about the age of the victims in these cases. After a sexual offence against a minor is reported to the Juvenile and Vice Police Squad the minor is referred to the police doctor for an examination. The following statistics can be provided from the records of the police doctor on Curaçao, who examines all victims of sexual abuse, including minors:

Statistical Data Annexe VIII(b)

The office of the police doctor, together with an intern at the general hospital, is conducting an investigation into the care and aftercare of child victims. Interviews will be conducted with all agencies that provide care for these victims. The results of the investigation will be used to improve the guidance, supervision and aftercare of victims.

The highest sentence imposed in recent years for sexual intercourse with a child was 12 years' imprisonment (the victim was 6 years old and the offender was a member of its foster family). In most cases of sexual intercourse with children (14 and under) the sentence varies from 6 to 12 years. If there was no penetration during the sexual abuse the sentence may vary between 2 and 3 years. The sentence for adults having a sexual relationship with a child aged between 12 and 14 varies from 18 to 30 months.

Aruba: The Aruban Criminal Code recognises domestic violence as a specific offence (article 313 in conjunction with article 317 Criminal Code). This remains the same in the draft of the new Criminal Code. Unlike the present situation, however, the new provision (article 2.20.7) will allow for pre-trial detention for all forms of domestic violence. Under the law as it stands, pre-trial detention is not possible for simple assault. It should also be noted that some other offences defined in both the current and the new Criminal Code may also be relevant here, such as assault, negligently causing death or bodily harm, and serious offences against public decency.

Articles 250, 251 and 257 of the Criminal Code set out the sex offences relating to minors (sexual intercourse with a girl under the age of 12, commission of acts that include sexual penetration, sexual intercourse with a girl aged between 12 and 15; sexual abuse of one's own child, stepchild, foster child, etc).

The Sostenemi child abuse advice and reporting centre was founded in 2005. It also plays an important role in the existing chain of government and non-government institutions dealing with the problem of child abuse. For the first time, there is a database of reported cases of child abuse and neglect. Together with the relevant research, this statistical information provides an important basis for developing policy.

There are no exact data on the extent of domestic violence in Aruba. The Public Prosecution Service does not distinguish between domestic violence and other forms of violence in its records. Both offences are simply registered as assault or assault with a weapon. Nor do the records distinguish between assaults on adults and children. According to the records of the Public Prosecution Service, 29 people came into contact with the justice authorities in 2008 for one or more forms of child abuse.

Various public information campaigns to highlight the negative consequences of the ill-treatment of children and promote positive, non-violent forms of discipline have also been mounted by the Centre and by the NGOs that work in this field. The ‘Abuso di Mucha’ Committee, which is a partnership of various authorities, tries to raise awareness about the sexual and physical abuse of children by means of information campaigns that target government institutions, schools, healthcare establishments and the general public.

A 21

Netherlands Antilles: Under the family law of the Netherlands Antilles, the position of children born out of wedlock who have been acknowledged by their fathers is equated with that of legitimate children. Paternity can now be acknowledged outside marriage. After an amendment to the law, this will also be possible by judicial declaration of paternity if the biological father does not wish to acknowledge the child. The National Ordinance on Judicial Declarations of Paternity, which is currently being drafted, will introduce a provision in article 1:270 of the Civil Code enabling the court, at the request of a mother, a child or the Guardianship Council, to determine paternity even though the biological father has not acknowledged the child. This may also occur after the death of either the father or the child. In the event of the child’s death, his/her own child may apply for paternity to be determined. The judicial declaration is retroactive to the time of the child’s birth, provided that the ruling has become final and unappealable. The child can therefore become an heir under the intestacy rules. It should be noted that this will not adversely affect third parties who have acquired rights in good faith. Nor is there any obligation to return benefits or assets that may have been received. Provisions will be included in article 1:270a of the Civil Code to limit the inheritance of a child where its rights are acquired as a consequence of a judicial declaration of paternity. If the child’s inheritance under the rules of intestacy would cause particular hardship to the widow or other children of the deceased, they may apply to the court to limit the child’s right of inheritance. If a child lodges an application for a judicial declaration of paternity more than five years after the death of its biological father and the latter has a widow and other children, the child concerned will not become an heir to the father’s estate under the rules of intestacy.

The draft National Ordinance on the Law of Names will introduce a provision in article 1:5 of the Civil Code to the effect that parents may choose either the mother’s or the father's surname for their children. Once a surname has been chosen for the first child, it will also apply to any further children of the same parents (article 1:5a Civil Code). Children aged 16 or over may themselves choose their surnames if their paternity is acknowledged (article 1:5d Civil Code). If a child has a family-law relationship with only one of its parents, it bears the surname of that parent.

Political participation of women

A 22

The Netherlands:
(a) Political participation of women in public office: the House of Representatives: 62 women = 41.3% (15/1/09); the Senate: 26 women = 34.7% (15/1/09); the government: 11 women = 40.7% (15/1/09); ministers: 4 women = 25% (15/1/09), state secretaries (deputy/junior ministers): 7 women = 63.6% (15/1/09); mayors: 75 women = 19% (03/03/09); aldermen: 281 women = 18.4% (14/10/08). municipal councillors: 2,598 women = 26% (31/12/07); Queen's Commissioners: 2 women = 18.2% (03/03/09).

(b) Participation of women in managerial and high-ranking posts in the public sector: members of the senior civil service (central government): 19.7% (1/11/08); judges: 49%; senior police officers: 13 women = 16% (31/12/07); university professors: 11.2%; university executive boards: 7.3% (31/12/08).
Ratio of men to women in the judiciary on 31/12/2007: judicial officers: 51% men and 49% women; court officials: 28% men and 72% women; More specific data on judicial officers on 31/12/2007: 5 of the 27 court presidents, 26 of the 97 sector chairpersons and 305 of the 847 court vice-presidents were women.

(c) Participation of women in managerial and high-ranking posts in the private sector: managers in trade and industry: 12% (31/12/07); managers in the non-commercial sector: 37% (31/12/07); managers in total: 26% (31/12/07).
Top executives (proportion of women in the top 100 largest companies): management boards: 2.6%; supervisory boards: 10.5%; total = 7.3% (31/12/07, Equal Opportunities Monitor) / Proportion of women in senior positions in all listed companies: management boards: 2.0%; supervisory boards: 7.7%; total = 5.7% (31/12/07; the 2008 Dutch Female Board Index).

The target for female participation in top executive positions in the private sector is a minimum of 20% by 2010. The Ministry of Economic Affairs and the Ministry of Education, Culture and Science continued to subsidise the 'Glass Ceiling' ambassadors network in 2007 and 2008. The network consists of top executives from the private and public sectors and non-profit organisations. Its aim is to increase the proportion of women in top positions, and it has developed a diversity and inclusion code. On 30 October 2007, the network held a brainstorming session on diversity policy in the Netherlands with the Prime Minister, the Minister of Education, Culture and Science, who has responsibility for gender equality, the Minister for Foreign Trade, women in top jobs, academic experts and representatives of Dutch industry.

Statistical data Annexe IX(a)

The government will focus in the years ahead on bringing direct influence to bear on the fields for which it is actually responsible. Half of the persons nominated for appointment to general and technical advisory bodies will be women. Under the government's administrative agreement with the municipalities, the central government and the municipalities are to have diversified their staff by 2011 by increasing the number of people from ethnic minorities, women (particularly in management jobs) and elderly employees. The central government target is for women to hold at least 25% of senior civil service posts by 2011.

Various measures are being taken to increase the number of women in top jobs. The approach differs from sector to sector. The main instrument is the 'Talent to the Top' Charter, which was launched in 2008. The charter is an initiative of the private sector and is endorsed by the public sector and social partners. As such it has a broad base of support.

The main features of the Charter are as follows:
- it is suitable for all kinds of organisations (private sector, public sector, non-profit organisations);
- signature is voluntary;

- the document is signed by the top executives (CEOs);
- after signature the Charter becomes binding and organisations are bound by its provisions and must report on their results;
- one of the provisions is that signatories must formulate specific quantitative targets for their organisation in terms of the number of women being recruited for, promoted to and retained in top positions;
- an annual report is submitted to the Talent to the Top Monitoring Committee, which assesses the plans and results and in turn produces a public report; 'naming and praising' is an important aspect of the Charter.

Besides the Talent to the Top Charter, agreements have been made and objectives formulated, particularly in the public sector, for increasing the number of women in senior positions. The central government target is to increase the proportion of senior civil posts held by women to 25% by 2011. Another target for the central government and the autonomous employers in the public sector (including provinces, municipalities and schools) is for women to account for 30% of appointments to top positions. The Ministry of the Interior has made administrative agreements on this subject with the public sector employers in question. Finally, the government has agreed that advisory bodies that come within the Advisory Bodies Framework Act should consist of an equal number of men and women. No appointment may ever infringe this principle. A last measure comes from the revised Code on Corporate Governance, which can be seen as a form of industry self-regulation. The code, which was revised at the end of 2008, provides that the supervisory board should preferably have a diverse composition (including women). A report must be submitted on the desired composition and any departures from it. Six 'scouts' – themselves mayors and former mayors – have been appointed to increase the number of female mayors. Their task is to use their networks to search for suitable women candidates for the office of mayor. Analysis has shown that the number of female mayors has lagged behind owing to a shortage of candidates. The search for suitable candidates extends to people of bicultural background. Finally, efforts are being made to increase the number of women and ethnic minority municipal clerks.

Netherlands Antilles: In the Netherlands Antilles women have been involved in politics ever since they achieved the right to vote and stand for election in 1948. Women's political participation at both central and island level has been a constant ever since. Five Netherlands Antilles governments have been headed by female prime ministers, the first in 1977. Two elections were held on the islands of the Netherlands Antilles in the reporting period, namely the general election in 2006 and the island council elections in 2007.

Statistical Data Annexe IX(b)

On Curaçao 61 women and 161 men stood for election to parliament in 2006. Women headed the lists of three of the 14 political parties. In the island council elections in 2007 54 women and 225 men stood for election. Women headed the lists of three of the eleven political parties. On Bonaire 4 women and 18 men stood for election to parliament in 2006 and 17 women and 41 men for election to the island council in 2007. On Sint Maarten the candidates in the general election in 2006 were 11 women and 27 men, and 16 women and 49 men stood for election to the island council in 2007. In both elections women headed the lists of two of the six political parties. On Sint Eustatius the candidates in the general election in 2006 were 6 women and 14 men. One woman headed the list of a political party. Those standing for election to the island council in 2007 were 5 women and 13 men. On Saba the candidates in the general election in 2006 were 3 women and 7 men and in the island council election in 2007 3 women and 8 men. In both elections a woman headed the list of one of the two political parties.

A woman was also appointed as Deputy Governor of the Netherlands Antilles (the second of such appointment) and on Curaçao both the Governor and the Deputy Governor are women. On

Sint Maarten both the Deputy Governor and the Island Secretary are women. A number of women are department heads at both central and island level. As far as the court system of the Netherlands Antilles is concerned, the President of the Court of Justice is a woman. There were 6 female judges and 19 male judges in 2005 and 6 female judges and 21 male judges in 2006 and 2007. At present there are 3 female public prosecutors and 10 male public prosecutors. Curaçao currently has 63 female lawyers and 117 male lawyers. There are 66 women police officers on Curaçao. The University of the Netherlands Antilles once again has a woman rector.

Aruba: Aruba has currently one woman government minister (out of a total of 8) and 4 women members of parliament (out of a total of 21). The figures were much the same during the previous government's term of office (2001-2005). New parliamentary elections will be held in September 2009. The President of Parliament is a woman. The posts of Deputy Governor, Clerk of the Court of First Instance and Secretary to the Parliament are currently held by women.

A 23

Netherlands: The State appealed against the decision of the District Court in The Hague because it concerned matters of high principle, including the clash of a number of constitutional rights in a political context and the relationship between an employer and the court. Nonetheless, the State did comply with the court order to cease paying the grant to the Dutch Calvinist Party (SGP). The SGP lodged an appeal against the cancellation of the grant. On 5 December 2007 the Administrative Jurisdiction Division of the Council of State ('the Division') as the highest administrative court, held that the cancellation of the grant was wrong because there was no conflict with the UN CEDAW Convention. In its decision the Division ruled that although article 7, opening words and (a) and (b) of the CEDAW did have direct effect, this did not mean that the Political Parties (Grants) Act should not be applied. One of the grounds given by the Division for its decision was that although much weight must be attached to the fact that women's participation in the democratic process is compulsory under the CEDAW Convention, the Netherlands complies with this provision in terms of the full spectrum of political parties: there are enough other parties for women to join. The Division held there was no actual limitation on women's right to stand for election. The freedom of political parties was judged so important that the government could intervene only if the political party constituted a definite risk to democracy and the rule of law. The Division felt that this was not the case here.

The State (Ministry of the Interior and Kingdom Relations) then resumed payment of the grant. The Court of Appeal has now upheld the District Court's decision in the civil proceedings, with the exception of the question of entitlement to a grant, as this had already been decided by the Division as the highest administrative court (decision of 20 December 2007). The Court of Appeal noted in passing that cancelling the grant would not be an appropriate measure because it seemed unlikely that such cancellation would induce the SGP to accept women's right to stand for election. The Court of Appeal has also held that:
a) the State is in violation of the CEDAW and articles 25 and 26 ICCPR (in conjunction with article 2) by failing to take measures against the discrimination within the SGP and that this violation is not justified by the existence of other statutory rights;
b) the State must take effective measures to ensure that the SGP actually grants women the right to stand for election; these measures should nonetheless cause the least possible infringement of the constitutional rights of the SGP and its members;
c) the measures to be taken should be enacted in legislation, but the Court of Appeal cannot order the State to take specific statutory measures.

In view of the importance to law-making and legal certainty, the government has appealed to the Supreme Court seeking clarification of various points such as the following:

- the relationship between the constitutional rights involved, such as the ban on discrimination and the right to stand for election on the one hand, and the freedom of religion, freedom of political opinion and freedom of association on the other;

- the relationship between the courts, the legislature and the political parties; never before has it been necessary for the legislature or the courts to intervene in a political party because of its substantive views; the government wishes to know to what point the freedom of political parties extends or should extend;
- the difference between the decisions of the Court of Appeal (civil law) and the Division (administrative law).

As regards the Court of Appeal's finding concerning the violation of articles 25 and 26 ICCPR, the State takes the position that although they have direct effect and may in certain circumstances entail an obligation to take measures, no balance has yet been struck between these provisions and other rights such as those guaranteed in articles 18, 19 and 22 ICCPR. The State considers that the Court of Appeal should not automatically have assumed that there had been a violation of these articles. The State also considers that article 25 ICCPR, like article 7 opening words and a) CEDAW, relates, in so far as relevant here, to the right to vote and to be elected in general and does not apply to individual political parties. The decision of the Supreme Court is expected at the beginning of 2010.

Non-discrimination and equality, and protection of minorities

A 24

Netherlands: Government policy in the Netherlands includes a wide range of actions to combat discrimination, racial hatred and intolerance. In this respect criminal prosecution is considered to be an ultimate remedium.

The Penal Code criminalizes i.a. the deliberate insulting of a group of people on the basis of their race, belief, sexual orientation or handicap (article 137c Penal Code), the incitement of discrimination, hatred or violence against a group of people on the basis of their race, belief, sexual orientation or handicap (article 137d Penal Code) as well as blasphemy (article 147 Penal Code).

Confirmed case law of the Supreme Court of the Netherlands demands for an additional consideration of the court judge, judging an offence that has a possible relation to the freedom of expression. The requirement of an additional consideration follows case law of the European Court for Human Rights in Strasbourg. Main point of this additional consideration is that the contested expression should be considered in a wider, social context. If the perpetrator aimed with his expression at contributing to any public debate, or if he was presenting or explaining his religious belief, his right on freedom of speech will prevail and lifts the punishable character of the act (See f.e. Supreme Court 14 January 2003, NJ 2003, 261). However, this can only be the case if the way he expressed himself is not deemed excessively harmful for people.

Netherlands Antilles: Article 3 of the Constitution of the Netherlands Antilles provides that all persons in the territory of the Netherlands Antilles are equally entitled to protection of their person and property. There is no specific legislation defining the prohibition on discrimination. Article 8 of the Constitution regulates the freedom of expression.

A 25

Netherlands: The second generation of non-Western ethnic minority women are doing much better in the labour market than the first generation. In 2007 73% of these women had a paid job of 12 hours or more a week, compared with 47% of women of the first generation. The difference between men and women of the second generation is also much smaller than in the case of the first. In the first generation one and half times as many men as women have paid employment, and the difference is even greater in the case of Turkish and Moroccan immigrants. In the second generation almost as many women as men have paid employment. This is also true

for those of Turkish and Moroccan origin. 42% of the people from non-Western ethnic minorities belonged to the second generation in 2008.

Statistical Data Annexe X

Action plan to tackle discrimination
The Netherlands has an action plan to tackle discrimination in the labour market. The plan includes the following elements:
1) creation of a positive image and the role of the various partners
2) combating discrimination in recruitment and selection
3) combating discrimination in the workplace

These elements are explained below.
1. Creation of a positive image and the role of the various partners
Four basic conclusions can be drawn from the Discrimination Monitor and talks with employers and ethnic minority organisations: a) lumping together the different ethnic minorities is wrong; different groups of non-Western immigrants often encounter different problems; b) counter negative perceptions of immigrant workers in the workplace and work to create a positive perception; c) counter negative perceptions held by non-Western immigrants about certain industries/employers as well as the negative perceptions held by employers about some or all ethnic minority groups; d) arrange for a better match between the networks used by non-Western immigrants to find a job and by employers to find staff.

Various instruments and initiatives can be used to counter negative perceptions and promote positive perceptions:
- The ‘’Everyone Takes Part’ (IDM) Action Programme was started in September 2007. This programme is part of the social cohesion pillar of the coalition agreement and describes how the government, together with its partners, proposes to achieve its participation objectives. One element of this programme involves ethnic minorities.
- Some businesses and sectors are reporting an increasing number of job vacancies that are hard to fill, as well as cyclical and long-term tightening of the labour market. To prevent shortages in certain sectors, steps should be taken to improve perceptions of them. Projects have already been started in a number of sectors such as healthcare, defence and metals.
- A number of regional meetings were held in 2007 and 14 will be sponsored by the Ministry of Social Affairs and Employment in 2008. During these so-called ‘regional work summits’ the various partners in the region (municipalities, the UWV benefits agency, the Centre for Work and Income, employers and various other organisations) make agreements (declarations of intent) on a Regional Participation Action Plan.
- Since 2004 the Ministry of Social Affairs and Employment has subsidised the National Diversity Management Network (Div). Agreements will be made with the National Network to address the problem of employers’ perceptions of ethnic minority workers. The National Network will focus mainly on SME sectors and sectors in which there are shortages such as the construction, metals, installation and transport industries.
- A start was made in January with the K!X promotional teams project initiated by Forum (Institute for Multicultural Development). The basic idea behind these promotional teams is to improve perceptions of ethnic minority young people.
- Consultations are presently being conducted with the four largest municipalities to decide how to establish job plans for young long-term unemployed (particularly from ethnic minorities). This is a complex problem that affects a proportion of young people and for which a solution is being sought by municipalities. Some of the contributing factors are a high dropout rate from school, lack of initial qualifications, problems at home and sometimes limited (cognitive) capacities.

2. Combating discrimination in recruitment and selection

The ‘No-Worries Recruitment and Selection’ Project started recently. This is a training course which provides a brief description of the theory (Dutch legislation, European directives and so forth) and then give the participants an opportunity to practise what they have learned. The course also tackles the subject of prejudice awareness. The Social and Cultural Planning Office (SCP) has started carrying out practical tests to assess ethnic discrimination in the labour market. Pairs of applicants with the same qualifications and characteristics (training, age and sex) send equivalent job applications and CVs to employers. The only difference is that one applicant has a typically Dutch name and the other a foreign-sounding name. The tests determine whether discrimination differs according to the characteristics of companies and the characteristics of applicants.

3. Combating discrimination in the workplace
The Netherlands has added discrimination to the list of subjects covered by psychosocial workplace stress. This means that the Labour Inspectorate has now also acquired a role. If there is an obvious likelihood of discrimination in a given company, the Inspectorate can require the employer to pursue an appropriate policy. If the employer fails to do so, the Inspectorate can impose a fine. The idea is that the same approach should be adopted as for sexual harassment and bullying. The existing instrument for measuring workload shall be expanded.

A 26
The Netherlands: To reduce the concentration of low-income households in particular residential areas, the government is pursuing a three-track policy:

1. Greater variety of housing stock in areas in which low-income households are concentrated

The Urban Renewal Investment Budget (ISV) is an important instrument for reducing the concentration of low-income households in certain residential areas, enabling municipalities to tackle and speed up urban regeneration in the Netherlands. The aim of the ISV is (1) to provide good and sufficient housing for low-income groups, (2) to retain and attract higher and middle income groups, and (3) to improve the social and physical amenities. A previous evaluation of the ISV showed that the use of resources from the budget and the focus on 56 urban neighbourhoods had been effective. The ISV encourages parties to invest in urban regeneration and thus serves as a very effective trigger (multiplier effect of 1:8). The Location-Related Grants Decree (BLS) is also an effective instrument in combating segregation. The Decree promotes housing construction and thus creates scope for urban regeneration. The final evaluation of the ISV (2005-2009) will be carried out in 2010.

2. Low-income groups to be housed in peripheral municipalities

The housing construction agreements made with the urban regions for 2005-2009 include a provision for coordination at regional level of municipal construction programmes in terms of volume and coherence. This includes the distribution of low-income groups across the central and peripheral municipalities. By signing the agreement the 31 central municipalities involved declared that the contribution of the peripheral municipalities is adequately safeguarded. To carry out the housing construction agreements, the regions are allocated funds under the Location-Related Grants Decree (BLS). At regional level this instrument can be used to control the distribution of low-income groups among central and fringe municipalities (through the coordination of construction programmes and housing allocation).

3. Control of flow of low-income households into certain residential areas in which they are concentrated

The 2006 Urban Areas (Special Measures) Act, sometimes known as the ‘Rotterdam Act’, made it possible for municipalities to take measures designed to create a varied population in certain neighbourhoods by setting income requirements for those applying for housing. As this is a far-reaching measure, its use is subject to strict conditions. Any such action must be necessary and suitable for tackling the urban problems in the municipalities concerned. This Act will be evaluated five years after its entry into force (i.e. in 2011).

Statistical data Annexe XI

The Urban Areas (Special Measures) Act (also called the Rotterdam Act) entered into force in 2006. Every statute in the Netherlands should be in conformity with the Constitution and the prohibition of discrimination on grounds such as origin, religion and sex. The Act meets the need of municipalities to improve the quality of life in deprived areas. The Act authorises temporary measures that may be taken only with the approval of the Minister for Housing, Communities and Integration in a limited number of specific neighbourhoods as a last resort when other measures have proved inadequate. Under the Act potential tenants who have lived in the region for less than six years and do not have an earned income may be refused permission to occupy a dwelling in a specific neighbourhood. Students and pensioners are exempted from these requirements. The aim is temporarily to boost the influx of people who are not dependent on benefits. To make use of the Act municipalities have to meet certain criteria, for example necessity and suitability as well as subsidiarity and proportionality. Potential tenants who are unable to take up residence in a neighbourhood as a consequence of the Act must have sufficient opportunity to rent accommodation in another neighbourhood in the same municipality. The Act provides local authorities with the means of halting urban decay. The intention is to reduce the number of residents who find a job and move away, and hence do not invest in the neighbourhood or contribute to its social cohesion. The Act serves as an instrument of last resort that can be used to temporarily boost the influx of people who will invest in the neighbourhood. To date (March 2009), the Act has only been used in Rotterdam. Some other cities are considering using it.

The Dutch government does not believe that the Act provides scope for discrimination in violation of article 26 ICCPR. Although the Act does make a distinction based on income and may in certain circumstances result in indirect discrimination on other grounds such as gender or race, the legislator expressly provided that the Act could be applied only if there was an objective justification. And such a justification exists: namely, the use of a temporary instrument to regenerate deprived neighbourhoods that face accumulating problems of a social, economic and physical nature in circumstances where all other measures have failed. The measure is suitable because its application reduces the influx of disadvantaged people in search of housing, with the exception of people who have lived in the region for six years or more. When deciding in a specific case whether the designation of an area is justified the Minister for Housing, Communities and Integration assesses to what extent the instruments of the Housing Allocation Act have been effective. The measure is also proportional. Although those affected by the measure may as a result find it rather more difficult to find accommodation, the condition that they should be able to find housing elsewhere in the municipality or region means that the measure is proportionate to the objective. This condition will also involve a limitation on the maximum size of such areas. More generally, it should also be noted that municipal councils that submit an application to designate a neighbourhood must show that the requirements of subsidiarity and proportionality are fulfilled. Second, the measures are backed by thorough procedures. And, third, the procedure may only be applied temporarily and must also meet the requirements of the evaluation. The Act carefully balances the need of local authorities to halt urban decay against the rights of potential tenants.

The measures included in the Urban Areas (Special Measures) Act constitute a minimal restriction of the right of freedom to choose one’s residence (article 12 ICCPR). The restriction applies only to the areas designated by the Minister for Housing, Communities and Integration at the request of the municipal council. In addition, the designation of the neighbourhood and the application of the measures are subject to the condition that the people affected by the requirements specified under the legislation should have sufficient opportunities for finding accommodation elsewhere in the municipality or region. This minimal restriction on the freedom to choose one’s residence is justified because the measures are intended to protect public order.

As the habitability of the areas concerned is seriously jeopardised, measures to improve habitability in these areas are in the interests of public order.

Dissemination of information relating to the Covenant and the Optional Protocol

A 27

The Netherlands: Consultations were held between NGOs and the relevant Dutch ministries in preparing for the session, at which the NGOs had the opportunity to explain their report and raise any other matters of concern. The NGOs and the ministries are also in contact with one another about the Committee's concluding observations. The report is prepared by the ministries concerned.

The Covenant and the Protocol are officially published in the Dutch Treaty Series. The Dutch Treaty Series is issued by the Ministry of Foreign Affairs and contains all the treaties and conventions to which the Netherlands is a party. It is freely accessible to all. In addition, anyone can visit the website of the Ministry of Affairs (www.minbuza.nl/verdragen) to consult the human rights instruments of most relevance to the Kingdom of the Netherlands (treaty database), together with accompanying information about the ICCPR. The human rights home page has also been available in English since September 2008 (www.minbuza.nl/treaties). In January 2009 the authorities also launched an advertising campaign to make the general public and professionals throughout the Kingdom of the Netherlands more aware of the treaty database. Leaflets and posters have been produced for this purpose (in Dutch and English) and distributed among diplomatic missions in the Netherlands, the judiciary, law firms in the Netherlands and the Netherlands Antilles as well as all universities, university libraries and some institutes of higher professional education in the Netherlands. The leaflets and posters contain a separate reference to the human rights home page.

Netherlands Antilles: As is the case with all human rights reports, both government organisations and NGOs are involved. Copies of the Covenants and all documents (report, list of issues and concluding observations) are sent to the relevant agencies, and anyone can call the Directorate of Foreign Relations to receive a copy or find out where they can locate the relevant information on the UNHCHR website. The Directorate of Foreign Relations is looking into the possibility of creating a human rights website where all this human rights information would be easily accessible, preferably in all the languages of the Netherlands Antilles.

Aruba: Since the 1990 's the intergovernmental Aruban Human Rights Committee and since 2002 the Aruban Committee on the Rights of the Child, consisting of governmental and non-governmental organisations have been organising awareness-raising activities and providing information to the public. For example, talks are being given at schools and other establishments and documents and information distributed. The aim is for human rights education to become an integral part of the school curriculum. The Human Rights Coordination Centre, which comes under the Social Affairs Department, has been providing courses on human rights for officials of the Social Affairs Department. The aim is to extend this to the other government departments and NGO's.
