



**Convention on the Elimination
of All Forms of Discrimination
against Women**

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**Committee on the Elimination of Discrimination
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**Concluding observations of the Committee on the
Elimination of Discrimination against Women: The
Netherlands**

Addendum

**Information provided by the Government of The Netherlands on the follow-up
to the concluding observations of the Committee (CEDAW/C/NLD/CO/5)***

* 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.

Response of the Kingdom of the Netherlands to the request of the Committee on the Elimination of Discrimination against Women in its concluding observations (CEDAW/C/NLD/CO/5, para 52) to provide, within two years, information on steps undertaken to implement the recommendations contained in paragraphs 27 and 29.

Introduction: Constitutional restructuring of the Kingdom of the Netherlands

1. Following constitutional reforms within the Kingdom of the Netherlands, the Netherlands Antilles, consisting of the islands of Curaçao, St Maarten, Bonaire, St Eustatius and Saba, ceased to exist as part of the Kingdom of the Netherlands on 10 October 2010. The Kingdom now consists of four parts: the Netherlands, Aruba, Curaçao and St Maarten. The islands of Bonaire, St Eustatius and Saba have become part of the Netherlands, thus constituting 'the Netherlands in the Caribbean'. These changes constituted a modification of the internal constitutional relations within the Kingdom of the Netherlands. The Kingdom of the Netherlands will accordingly remain the subject of international law with which agreements are concluded.

This new constitutional set-up has implications for the Kingdom's reporting obligations to UN human rights treaty bodies. After the restructuring, Aruba, Curaçao, St Maarten and the Netherlands will each provide its own contribution to the joint Kingdom report.

Paragraph 27 in full

2. The Committee urges the Netherlands Antilles and Aruba to promptly enact legislation providing for temporary restraining orders to be imposed on perpetrators of domestic violence. The Committee also calls upon Aruba to provide training to the police, law enforcement personnel and health personnel so that they may properly investigate and deal with domestic violence. The Committee urges the Netherlands to ensure that the specificities of domestic violence targeting women be fully taken into consideration in the formulation of the new plan of action against domestic violence starting in 2011. It also reiterates its call on the Netherlands to ensure without any further delay that free legal aid is provided to all victims of domestic violence. While acknowledging the need to respect the best interests of children, the Committee urges the State party not to use the joint plan for parenthood as a legal precondition for starting divorce proceedings and in no case to impose it on women victims of domestic violence.

Paragraph 29 in full

3. The Committee urges the Netherlands Antilles to adopt without delay legislation criminalizing all forms of human trafficking. The Committee calls upon the Netherlands to ensure that relevant NGOs are fully integrated into the membership of the anti-trafficking task force. The Committee also calls upon the Netherlands to improve the identification of victims of trafficking by associating relevant NGOs with the process and to ensure that trafficked women are not, in any circumstances, held in immigration detention or other forms of custody. The Committee further urges the Netherlands to comply with its obligations to provide protection to all victims of trafficking regardless of their willingness or ability to cooperate in legal proceedings.

Response of the Kingdom of the Netherlands to the recommendations contained in paragraph 27

4. Recommendation: The Committee urges the Netherlands Antilles and Aruba to promptly enact legislation providing for temporary restraining orders to be imposed on perpetrators of domestic violence.

Bonaire, St Eustatius and Saba

Bonaire, St Eustatius and Saba constitute 'the Netherlands in the Caribbean'. Their position is broadly similar to that of Dutch municipalities, with certain modifications to allow for their small scale, the distance from the Netherlands and their location in the Caribbean. For the time being, the great majority of the legislation that applied in the Netherlands Antilles remains applicable, in modified form, with the exception of certain specific areas. The Temporary Domestic Exclusion Order Act has not (yet) entered into force in Bonaire, St Eustatius and Saba. A victim of domestic violence can however request the civil court to impose a restraining order on the perpetrator.

Curaçao

The revised Criminal Code of Curaçao entered into force on 15 November 2011.

When (serious) assault is committed with premeditation or serious bodily injury is intentionally inflicted upon another person or serious bodily injury is caused with premeditation, the maximum sentence may be increased by a third if the victim of the offence belongs to certain categories of people such as the offender's mother, father, spouse or partner, a child for whom he bears parental responsibility or a child whom he is caring for and raising as a member of his family. As an additional sentence the court may impose an exclusion order on him (barring him from entering certain parts of the island). A restraining order may also be imposed by the court for other forms of assault.

Aruba

The Country Ordinance on Temporary Domestic Exclusion Orders mentioned in the fifth periodic report on Aruba has not entered into force. A victim of domestic violence can request the civil court to impose a restraining order on the perpetrator.

St Maarten

Suspected and convicted perpetrators of domestic violence can be arrested and prosecuted under the law. Reference is made to domestic violence in article 317, paragraph 1 of the Criminal Code: if the victim of assault is the suspect's spouse, this is considered an aggravating factor. In addition, the law makes it possible to impose a temporary restraining order on suspects/defendants in domestic violence cases, even if the public prosecutor decides not to proceed further with prosecution. In the case of a conviction, the court may decide under certain conditions to impose a restraining order and/or treatment and supervision aimed at changing the offending behaviour.

Tackling domestic violence is also a priority for the Public Prosecution Service. The Minister of Justice is currently consulting with experts on establishing a domestic violence reporting centre by statute law. This should make it possible to report domestic violence (anonymously if necessary), enabling the problem to be tackled effectively and the victims to obtain protection as quickly as possible.

Domestic violence is further an area of focus for non-governmental organisations. Safe Haven, for example, is a St Maarten-based non-profit organisation which offers shelter, counselling and support services for victims of domestic violence.

5. Recommendation: The Committee also calls upon Aruba to provide training to the police, law enforcement personnel and health personnel so that they may properly investigate and deal with domestic violence.

Since 2000 the 24-month basic training at the police academy has included several training modules on the subject of dealing with victims. Specifically, in the module entitled 'Legal Protection' (*Rechtsbescherming*), participants are taught about the statutory provisions and police regulations on victim assistance, the treatment of victims, victims' rights (for example the right to relevant information and the right to seek financial compensation) and the process of referral to the Victim Assistance Bureau. In the 24-month follow-up course at the police academy participants – while working in the police force – take different modules in which attention is again given to victim assistance. Starting in 2012, participants will be more specifically informed about domestic violence in the modules 'Crime' (*Criminaliteit*) and 'Public order and social care' (*Openbare orde en maatschappelijke zorg*). These modules will be accompanied by interactive lectures by the Support Me Foundation (*Fundacion Sostenemi*), the Respect Me Foundation (*Fundacion Respetami*), the Children's Hotline (*Stichting Kindertelefoon*) and the Department of Social Affairs.

6. Recommendation: The Committee urges the Netherlands to ensure that the specificities of domestic violence targeting women be fully taken into consideration in the formulation of the new plan of action against domestic violence starting in 2011.

The Netherlands has been implementing a country-wide policy on combating domestic violence since 2002. In 2011 a policy evaluation was published, showing that a great deal has been achieved. A coordinated approach is in place at national level, and under the Social Support Act (WMO) municipalities have a role to play in combating domestic violence. All municipalities have an infrastructure in place to facilitate an integrated approach to the problem. Organisations in the system work together effectively. A national network of Domestic Violence Advice and Support Centres has also been set up. Shelters are now more professional. Domestic violence has been placed on the agenda of partners in the criminal and administrative law systems. The Public Prosecution Service has drawn up instructions on investigating and prosecuting domestic violence, and the maximum penalty has been increased. At the same time the police operate a specific domestic violence policy, and are making more arrests. The Temporary Domestic Exclusion Order Act makes it possible to use administrative law to intervene when emergencies arise. It is applied more often than had been expected, and the cooperation required between partners in the system is working well. The evaluation makes it clear that efforts to combat domestic violence in the Netherlands have achieved a good deal.

Nonetheless, a robust approach to this major issue is still vital. Research conducted for the government in 2010 revealed that every year some 220,000 adults are victims of serious, ongoing violence in their domestic environment, with a further one million adults experiencing occasional violence. The government will therefore continue to address the problem, adopting a government-wide approach to tackle *all* forms of domestic violence, including partner violence, child abuse, honour-related violence and abuse of the elderly (together called: violence within the 'domestic circle'). This, and the measures being taken to combat domestic violence, is based on three elements:

- a targeted approach to offenders;
- strengthening the position of actual and potential victims (through prevention, identification, and the provision of shelter and aftercare);
- breaking the generational cycle of domestic violence.

In the first half of 2012 the government will draw up a national plan of action on violence within the 'domestic circle' in which the government-wide approach is laid down. In this

framework, ministries will devise an approach aimed at taking gender into account when developing policy.

Most victims of domestic violence are women. In most cases violence is inflicted on them by their partners or ex-partners, who often engage in a process of intimidation, threats and control at the same time. Women are also much more often the victims of sexual violence than men. However, a smaller group of men are also affected by domestic violence (e.g. in the form of honour-related violence or elder abuse). The number of cases where men are the victims of violence inflicted by a brother or other member of the household is increasing. Although there is not an enormous difference in the percentages, the nature of violence against women is different from that of violence against men. This has to do with inequality and power relationships between men and women.

As women and men can both be victims of domestic violence, the Netherlands employs a gender-neutral definition of domestic violence. Dutch policy on combating domestic violence has focused on all victims and all forms of domestic violence, and will continue to do so. This does not change the fact that the government takes gender into account when developing policy.

The Netherlands therefore adopts a systemic approach, encompassing the needs of all parties: victims, perpetrators and any children involved. The aim is to help them lead a life free of violence. Gender plays an important role in this (e.g. in the relationship between the victim and perpetrator, and in their different roles in relation to the children). Again the inequality and power relationships underlying the violence are taken into account.

In women's shelters, for example, the emphasis is on empowerment and building on women's own strengths, using methods developed for the Women's Shelters Improvement Plan (subsidised by the Ministry of Health, Welfare and Sport). One method is based on women's own power and resources, and is designed to strengthen their self-reliance and ability to participate in society. At the same time, the victim is asked whether they want to continue to have contact with the perpetrator and, if so, in what form. The issue of how, and if, the perpetrator will continue to have a relationship with the children is also considered, for example through the Orange House project. The project was set up to stop domestic violence being hidden away somewhere secret: instead, it is addressed in the person's own immediate neighbourhood so it is dealt with safely but is no longer hidden. The aim is to end the violence by giving all members of the family direct assistance.

The Temporary Domestic Violence Exclusion Order is in fact a gender-sensitive measure. Previously, the victim (usually a woman) had to flee the home. Under the Order, the perpetrator (usually a man) has to leave.

The Minister of Security and Justice is introducing a stricter approach for repeat offenders and those who commit 'intimate terrorism', which is characterised by the control and power exercised by the perpetrator, usually a man, over a victim, usually a woman, based on an unequal power balance.

A good example of a gender-specific approach is a project run by the Dutch Women's Council (NVR), an umbrella organisation with about a million members. The Ministry of Security and Justice has awarded the NVR a grant of approx. €440,000 for this three-year project, which aims to raise awareness of domestic violence and empower women nationwide. So far, the project has been very successful.

In addition to this, the Minister of Education, Culture and Science, who is responsible for gender equality policy, is supporting an NVR pilot project on the social participation of adult women who have been the victims of domestic violence (2011-2012). Stereotyped attitudes and shifting power relationships between men and women are important causes of domestic violence. Women often lack self-confidence and are not assertive enough to break

the spiral of violence and display more resistance. Social participation helps women boost their own strengths, which is vital if they are to gain confidence.

In its measures the government factors in stereotypes of social roles and the inequality and power relationships underlying domestic violence. The government's main objective is to prevent domestic violence in the first place. This can only be achieved if young people are resistant and know how to deal with inappropriate behaviour. Prevention and increasing young people's resistance in the context of inappropriate sexual and other relationships will also help break the generational cycle. After all, the younger people learn a lesson, the more likely it is to stick.

In this connection the Minister of Education, Culture and Science will be joining up with municipalities and social media to encourage young 'changemakers' to sign up and support the cause. The We Can Young campaign (We Can = We Can End All Violence Against Women) will run from 2012-2014 and aims to make young people resistant to and take a stand against sexual and other violence, and to deal with conflict and relationships. The Ministers of Education, Culture & Science and Health, Welfare & Sport are also joining forces on a strategy to boost this resistance through social media.

Girls are much more likely than boys to fall victim to sexual violence. However, campaigns which target boys as well as girls as an integrated approach to resistance are more effective. The idea is to encourage a culture in which it is normal for girls and boys to stand up for themselves, to set and keep to their own boundaries and to respect other people's boundaries, a culture of open communication.

This will help to ensure that violent behaviour patterns do not develop in future generations and help to reduce domestic violence in the long term.

It should also be mentioned that the Netherlands made an active contribution to the Council of Europe Convention on preventing and combating violence against women and domestic violence, which was opened for signature in spring 2011. In early 2012 the government will make a start on preparing to sign and ratify the Convention, with a view to signing before the summer.

7. Recommendation: It also reiterates its call on the Netherlands to ensure without any further delay that free legal aid is provided to all victims of domestic violence.

The government is working to improve the position of victims. To this end the Victims' Status (Legal Proceedings) Act came into force on 1 January 2011. It lays down the rights of victims of crime in criminal proceedings, such as the right to obtain and provide information, the right to a lawyer or an interpreter, and the right to an advance if the defendant is sentenced to pay damages. The new law also increases the options for the victim to file a civil claim in the criminal proceedings. Victims can determine for themselves the rights and services they wish to avail themselves of, and receive free support in doing so (in legal, practical, social and psychological terms) from Victim Support Netherlands.

In 2011 a national network of victim support centres was set up to advise victims at different points in the criminal proceedings, involving the police, the Public Prosecution Service and Victim Support Netherlands. The objective is to ensure that the victims can go to a single agency for free assistance and information on the criminal proceedings and the enforcement of the sentence.

In addition, since 1 March 2011 Victim Support Netherlands has provided free legal assistance for the person who remains in the home in the event of a temporary exclusion order. Although they are not party to the proceedings, and therefore have no right to free legal aid, they may require legal assistance. This measure addresses victims' need for legal support, which was not previously available through social services. The support offered by

Victim Support Netherlands includes information about the court proceedings and accompanying victims, if they wish so, to the hearing or helping them set out in writing their view of the domestic exclusion order. This improves the legal position of victims of domestic violence, as promised in the coalition agreement.

The Netherlands already had a system of subsidised legal aid in place for people on a low income (who have to pay a proportionate means-tested contribution). However, since 1 April 2006 all victims of sex offences or other violent crimes – including victims of domestic violence – may apply for free legal assistance from specialist lawyers irrespective of their financial capacity. The only condition is that the violence resulted in severe physical and/or mental injuries. The criteria for determining whether this condition is met are the same as those applying under the Criminal Injuries Compensation Fund Act. Legal aid applies to both criminal proceedings and civil proceedings to obtain compensation.

For simple legal questions, a victim of domestic violence may of course consult the Legal Aid and Advice Centre. Its advice is free.

8. Recommendation: While acknowledging the need to respect the best interests of children, the Committee urges the State party not to use the joint plan for parenthood as a legal precondition for starting divorce proceedings and in no case to impose it on women victims of domestic violence.

The compulsory parenting plan, which was introduced in the interests of the child, falls under the Shared Parenting and Responsible Divorce and Separation Act (Bulletin of Acts and Decrees 2008, 500). The Act aims to limit problems arising from divorce or separation and the associated access arrangements. In principle, parents are required to submit a parenting plan together with their petition for divorce, termination of their registered partnership or judicial separation. This obligation also applies to cohabiting parents who have joint responsibility for their child/children.

The legislator recognised that it is not always possible to reach agreement on or to draw up a parenting plan. This is why the Act includes a get-out clause in the form of article 815, paragraph 4 of the Code of Civil Procedure. The Explanatory Memorandum explicitly states that domestic violence can be considered a situation in which it is impossible to draw up a joint parenting plan. So, in these cases a divorce can still take place even if no parenting plan is in place, by means of a unilateral petition for divorce. So it is always possible to initiate divorce proceedings, but in that case the parent submitting the unilateral petition must explain in it why it has been impossible to draw up a parenting plan and how he or she believes the elements of the parenting plan should be addressed. The other parent can contest this. Ultimately, it is for the courts to establish whether it is impossible to draw up a parenting plan in the case at hand. There are a number of examples in case law in which the courts indeed found that drawing up a parenting plan was not a reasonable option, because of domestic violence (see for example Utrecht district court, 11 November 2009, LJN BK3265). The Act will be evaluated in 2012.

The response of the Kingdom of the Netherlands to the recommendations contained in paragraph 29.

9. The Committee urges the Netherlands Antilles to adopt without delay legislation criminalizing all forms of human trafficking.

Bonaire, St Eustatius and Saba

In response to the recommendation made by the Committee to adopt without delay legislation criminalising all forms of human trafficking, the government is glad to inform the Committee that human trafficking in all its forms is a criminal offence under the Criminal Code for Bonaire, St Eustatius and Saba. Article 286f of the Criminal Code

criminalises all forms of human trafficking. (The text of Article 286f is enclosed with this report.)

Curaçao

The provision on human trafficking in Curaçao's Criminal Code is much broader than the old article 260 of the Criminal Code of the Netherlands Antilles.

The present article 2:239 covers not only sexual exploitation but also other aims of trafficking such as the provision of forced labour or services, slavery or slavery-like practices and the removal of organs. The prison sentences have also been adjusted.

Any person who is guilty of human trafficking is liable to a term of imprisonment not exceeding nine years. A person commits human trafficking if, for example, he:

- A. with the intention of exploiting another person, recruits, transports, transfers, accommodates or shelters that other person by means of duress, force or other hostile act, or the threat of force or other hostile act, or by means of fraud, extortion, deception or the abuse of power arising from a specific state of affairs;
- B. recruits, takes away or abducts a person with the intention of inducing that person to make him or herself available for sexual acts with or for a third party for payment in another country;
- C. recruits, transports etc. or forces or induces another person to make him or herself available for work or services, or by means of extortion, fraud etc. takes any action which he knows or may reasonably be expected to know will result in that other person making him or herself available for work or services;
- D. induces another person to make him or herself available for sexual acts with or for a third party for payment;
- E. profits from the exploitation of another person.

Aruba

As mentioned in the fifth periodic report on Aruba, the Aruban Criminal Code was amended in May 2006 (Official Bulletin 2006 no. 11) in order to comply with several international agreements, specifically the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography; the Convention against Transnational Organized Crime; the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, supplementing the Convention against Transnational Organized Crime; and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the Convention against Transnational Organized Crime.

These Conventions and Protocols entered into force for Aruba in 2006 and 2007. The amendments to the Aruban Criminal Code made people smuggling a criminal offence, and further amplified the scope of the article regarding human trafficking to include forced labour, debt-bondage trafficking and organ removal. The Criminal Code thus specifically prohibits trafficking in persons (including sexual exploitation, labour exploitation and organ removal) and smuggling of persons.

Under article 286a of the Criminal Code, human trafficking, including trafficking in women and children, is an offence carrying a maximum sentence of six years' imprisonment or a fine of AWG 100,000 (paragraph 1), which may be increased to eight years' imprisonment if the offence is committed by two or more persons acting in concert or if the victim is under sixteen years of age (paragraph 3), to ten years' imprisonment if the offence is committed by two or more persons acting in concert and the victim is under sixteen

(paragraph 4), to 12 years' imprisonment if the offence results in serious physical injury or threatens the life of another person (paragraph 5), or to 15 years' imprisonment if the offence results in a person's death (paragraph 6).

The Task Force's Legislation Committee is currently seeking to enshrine in law the right of trafficking victims to free legal aid and medical assistance. In the near future, it will also be studying the feasibility of issuing temporary residence permits, temporary work permits or temporary social assistance benefits.

St Maarten

Combating human trafficking is a priority for St Maarten, and consequently a ban on human trafficking has been laid down in article 4, paragraph 3 of the Constitution. How the criminal justice system tackles both human trafficking and people smuggling is laid down in law. The current Criminal Code makes trafficking in women and in male children a criminal offence. In the new Criminal Code, which will be adopted this year, the scope for criminal prosecution is broader, in accordance with the latest international developments in this area.

10. The Committee calls upon the Netherlands to ensure that relevant NGOs are fully integrated into the membership of the anti-trafficking task force.

The anti-trafficking task force consists of representatives of the relevant ministries, implementing organisations/services and the National Rapporteur on Trafficking in Human Beings. The Trafficking in Human Beings Coordination Centre (Comensha) is a non-governmental organisation which, in response to the Committee's recommendation, has been granted official status within the task force. Comensha is responsible for the registration of victims and organises and coordinates care for victims.

Aruba

An interdepartmental and interdisciplinary working group on trafficking and smuggling of persons established in early 2007 has come up with several initiatives. The objectives of the Human Trafficking and Smuggling Task Force are (1) to draw up multidisciplinary policy proposals on preventing and combating human trafficking and people smuggling, and (2) to launch an awareness campaign for government bodies and the general public. A joint and multidisciplinary action plan for anti-human trafficking and smuggling activities was approved on 21 January 2009. The plan includes prevention, fundraising, investigation, prosecution, emergency assistance, a hotline and a publicity campaign. Since 2009 the Task Force has been executing this action plan by establishing several committees (on legislation, information and victim assistance) and is currently revising its plan for the coming years.

11. The Committee also calls upon the Netherlands to improve the identification of victims of trafficking by associating relevant NGOs with the process and to ensure that trafficked women are not, in any circumstances, held in immigration detention or other forms of custody.

The Netherlands endorses the importance of cooperation with the non-governmental sector in combating trafficking in human beings. The identification of victims is, however, primarily a task for the national law enforcement agencies. These agencies have received special training in the identification of victims of trafficking. On a number of occasions NGOs have contributed to the identification of victims, for instance by attending interventions by the law enforcement agencies at the latter's request in order to coordinate the necessary shelter arrangements or to help communicate with victims of a different cultural background. However, the confidentiality and sensitivity of criminal investigations make it difficult to include NGOs in the identification of victims on a systematic basis. If

NGOs have reason to believe that a person is a victim of trafficking they can always report the case to the relevant agencies.

Staff working in alien detention centres is trained to identify victims of human trafficking. Furthermore, staff of the Dutch NGO FairWork (formerly called Bonded Labour in the Netherlands, BLinN) inform aliens in detention centres who are believed to be victims about their rights and options for cooperating in the criminal investigation and/or prosecution of the human trafficker(s). Victims of human trafficking are entitled to an unconditional period of reflection outside detention. FairWork also organises awareness training for detention centre staff.

Aruba

In 2010 several training courses on Aruba were run for members of the Human Trafficking and Smuggling Task Force and government officials. The purpose of the courses was to boost the operational expertise of victim assistance professionals, members of the legal profession and the police. A course was given by the Dutch Royal Military and Border Police (KMAR) – whose responsibilities include border control at Schiphol Airport – on indicators for recognising possible victims of human trafficking. There was also a follow-up course on victim assistance by CoMensha and an online Webex training course entitled ‘Enhancing Resiliency Among Trafficking Victims’, run by the US Department of Health and Human Services (HHS).

In cooperation with the other countries within the Kingdom of the Netherlands, 18 October was chosen to be the National Day against Human Trafficking in 2011. During a press conference the Minister of Justice and Education of Aruba once again emphasised the importance of combating human trafficking. For the next three days, an interregional training course on the subject of child victims of human trafficking was held on Aruba, organised by the Department of Homeland Security / Immigration and Customs Enforcement (ICE) and the Human Trafficking and Smuggling Task Force.

As of the end of 2011, the Victim Assistance Bureau – which operates a human trafficking and people smuggling hotline – falls under the Aruba Police Force. The hotline number was transferred from the Department of Social Affairs and is still available 24 hours a day, seven days a week. Since the Bureau’s staff have already been trained to help victims of crime, they have the people skills required to address personal issues when dealing with potential cases of human trafficking and people smuggling. When the Victim Assistance Bureau learns of an incident, it passes on the report to the National Coordinator, who then has the assessment committee collect information and assess the case, and alerts the necessary bodies to provide assistance to the victim and initiate a criminal investigation.

Reception facilities for victims of human trafficking are currently organised in accordance with cooperative agreements between the National Coordinator and representatives of the Red Cross, when emergency reception is needed, and the Foundation for Women in Distress (*Fundacion Hende Muhe den Dificultad*), for short-term reception. In the near future, medium and long-term reception options will be sought with, for instance, the FCCA (a foundation specialised in public housing) or by setting up a multifunctional reception facility on Aruba with EU funding.

In January 2011, at the invitation of the Organization of American States (OAS), the National Coordinator gave a presentation to the Committee on Hemispheric Security in Washington DC. The OAS is very interested in Aruba’s approach to human trafficking and smuggling and would like it to serve as an example of best practice for the region. To this end, the National Coordinator also gave a presentation in March 2011 at a multidisciplinary training course in Antigua and Barbuda, at the OAS’s request.

In order to achieve the Task Force's second objective, its information committee launched an information and awareness campaign on 14 and 15 April 2011, entitled 'Open Your Eyes' during the visit of the Dutch National Rapporteur on Human Trafficking. The campaign uses a range of publicity material to reach the general public, young people, scholarship students and potential and actual victims and offenders. Cooperation will also be sought with the Dutch embassies and consulates in the countries from which trafficking victims are suspected to originate.

Posters and flyers to be placed in government buildings, the airport, public schools, banks and offices of NGOs were sent out on 18 October, the National Day against Human Trafficking.

On 27 June 2011, the latest Trafficking in Persons (TIP) report was released and favourably mentioned Aruba's efforts to combat human trafficking and establish international cooperation in the region.

12. The Committee further urges the Netherlands to comply with its obligations to provide protection to all victims of trafficking regardless of their willingness or ability to cooperate in legal proceedings.

The protection of and care for victims of trafficking is one of the cornerstones of Dutch anti-trafficking policy. Care for victims is regulated in part 9 of the Aliens Act 2000 Implementation Guidelines (known as the B9 regulation). If there is the slightest indication that a given person is a victim of trafficking, the police inform the person of his or her rights under the B9 regulation and the possibility of filing charges and/or cooperating in legal proceedings.

International instruments, such as the Council of Europe Convention on Action against Trafficking in Human Beings and EU Directive 2004/81/EC, require that victims of trafficking be given a recovery and reflection period. The CoE Convention sets the minimum recovery and reflection period at one month. The Netherlands endorses the importance of such a period; indeed, the B9 regulation allows for a recovery and reflection period of up to three months.

Since 1 January 2011 victims of human trafficking who are unable or unwilling to cooperate with the competent authorities may be entitled to a residence permit if the victim cannot be expected to cooperate because of serious threats from the trafficker and/or physical or mental disabilities.

The assumption that victims who do not cooperate are excluded from help is incorrect. As was also pointed out during the session in Geneva in January 2010, victims who are not willing or able to cooperate can apply for a residence permit on humanitarian grounds. The safety of the victim is one of the points considered in this procedure; while the application is being processed they have access to safe accommodation, financial support and free legal aid.

Additional information

In addition to the response to recommendations 9, 10 and 11, we would like to inform the Committee of the following. In February 2009 a Memorandum of Understanding on Human Trafficking and Smuggling and Illegal Immigration was signed by the Ministers of Justice of Aruba, the (then) Netherlands Antilles and the Netherlands. Besides incorporating agreements between the signatory countries on tackling human trafficking, people smuggling and illegal immigration, it set out the responsibilities of the procurators general and the national coordinators on human trafficking and people smuggling in the three countries.

The first MoU has generated various forms of cooperation and support, such as expertise sharing, training courses and the national coordinators' annual meeting. A basic referral process has been established with the help of the International Organisation for Migration (IOM) and the Dutch NGO CoMensha. During an expert meeting on human trafficking and smuggling on St Maarten on 18 and 19 April 2011, preliminary discussions were held on renewing the MoU and a first draft of the new text was compiled by the coordinators.

On 20 June 2011, the Ministers of Justice of Aruba, Curaçao, St Maarten and the Netherlands signed a new MoU concerning cooperation on prevention and combating of human trafficking and people smuggling. The MOU creates a twinning system between the countries of the Kingdom to stimulate the exchange of knowledge and experience. It contains provisions on shelter and protection of victims of these practices. In addition, the countries have agreed to improve preventive efforts and the exchange of information between the organisations responsible for investigation, prosecution, inspection, immigration and shelter. The countries' procurators general are responsible for implementing the law enforcement provisions of the the MOU, the national coordinators are responsible for the other provisions. They will submit annual progress reports to their respective justice ministers. The results of the MOU will be evaluated after three years.

Annex to the response of the Kingdom of the Netherlands:

Ad para 27, question 4: relevant provisions in the Revised Penal Code of Curaçao:

The relevant provisions are as follows:

Article 2:208

1. Any person who commits an indecent act with his minor child, stepchild or foster child, his ward, a minor entrusted to him for care, education or supervision, or an employee or subordinate who is a minor is liable to a term of imprisonment not exceeding eight years or a fifth category fine.

2. The same penalty will apply to:

a) any public servant who commits an indecent act with a person under his authority or in his charge;

b) any person who is employed in or for any institution to which he has not been admitted and who commits an indecent act with a person admitted to the institution; for the purposes of this article an institution is deemed to include a prison, children's home, orphanage, hospital, psychiatric institution and charitable institution;

c) any person employed in the healthcare sector or in social work who commits an indecent act with anyone committed to his care as a patient or client.

Article 2:209

1. Any person who intentionally causes or encourages his minor child, stepchild or foster child, his ward, a minor entrusted to him for care, education or supervision, or an employee or subordinate who is a minor, to commit an indecent act with another person is liable to a term of imprisonment not exceeding six years or a fourth category fine.

2. Any person who intentionally causes or encourages a person whom he knows or may reasonably be expected to know is under the age of eighteen to commit an indecent act with another person, other than in the cases defined in paragraph 1, is liable to a term of imprisonment not exceeding three years or a fourth category fine.

3. If the person concerned makes a habit of committing the indictable offence referred to in paragraphs 1 or 2, the terms of imprisonment set for these offences are increased by a third and the fines set for these offences increased to the next highest category.

Article 2:210

1. The terms of imprisonment referred to in articles 2:196 to 2:209 are increased by not more than a third and the fines set for the offences increased to the next highest category if the offence is committed by two or more people acting in concert.

2. The terms of imprisonment referred to in articles 2:196 to 2:207 are increased by not more than a third and the fines set for the offences increased to the next highest category if the offender commits the offence against his child, a child for whom he bears parental responsibility or is caring for and raising as a member of his family, his ward, a minor entrusted to him for care, education or supervision, or an employee or subordinate who is a minor.

3. If one of the indictable offences referred to in articles 2:197 to 2:204 and 2:208 results in serious bodily injury or threatens the life of another person, the term of imprisonment set for the offence is increased by half and the fine set for the offence is increased to the next highest category.

4. *If one of the indictable offences referred to in paragraph 1 threatens the life of another person or results in another person's death, the sentence to be imposed is life imprisonment or a determinate term of imprisonment not exceeding thirty years or a fifth-category fine.*

Article 2:211

A person convicted of one of the indictable offences referred to in articles 2:196 to 2:209 may be deprived of the rights referred to in article 1:64, paragraph 1 (a), (b) and (c).

Title XX

Assault

Article 2:273

1. *Assault is punishable by a term of imprisonment not exceeding four years or a fourth-category fine.*
2. *Assault committed with weapons as referred to in section 1, subsection 2 of the Firearms and Offensive Weapons Ordinance 1931 is punishable by a term of imprisonment not exceeding six years or a fifth-category fine.*
3. *If the victim suffers serious bodily injury as a consequence of the offence, the offender is liable to a term of imprisonment not exceeding nine years or a fifth category fine.*
4. *If the victim dies as a consequence of the offence, the offender is liable to a term of imprisonment not exceeding twelve years or a fifth category fine.*
5. *Intentional acts committed for the purpose of impairing the health of another person are treated as the equivalent of assault.*
6. *Attempted assault is not an offence.*

Article 2:274

1. *Premeditated assault is punishable by a term of imprisonment not exceeding six years or a fifth category fine.*
2. *Premeditated assault committed with weapons as referred to in section 1, subsection 2 of the Firearms and Offensive Weapons Ordinance 1931 is punishable by a term of imprisonment not exceeding nine years or a fifth-category fine.*
3. *If the victim suffers serious bodily injury as a consequence of the offence, the offender is liable to a term of imprisonment not exceeding twelve years or a fifth category fine.*
4. *If the victim dies as a consequence of the offence, the offender is liable to a term of imprisonment not exceeding fifteen years or a fifth category fine.*

Article 2:275

1. *Any person who intentionally causes serious bodily injury to another person is guilty of serious assault and liable to a term of imprisonment not exceeding fifteen years or a fifth category fine.*
2. *If the victim dies as a consequence of the offence, the offender is liable to a term of imprisonment not exceeding twenty years or a fifth category fine.*

Article 2:276

1. *Premeditated serious assault is punishable by a term of imprisonment not exceeding fifteen years or a fifth category fine.*
2. *If the victim dies as a consequence of the offence, the offender is liable to a term of imprisonment not exceeding twenty-four years or a fifth category fine*

Article 2:277

1. *The terms of imprisonment referred to in articles 2:273 to 2:276 are increased by one third where:*
 - a) *the victim of the indictable offence is the offender's mother, father, spouse or partner, a child for whom he bears parental responsibility or a child whom he is caring for and raising as a member of his family;*
 - b) *the victim of the indictable offence is a person entrusted to the offender for care, education or supervision;*
 - c) *the victim is a public servant and the indictable offence is committed during the lawful performance of or in connection with his official duties;*
 - d) *the indictable offence involved the administering of substances endangering life or health.*
2. *If the indictable offence carries a maximum determinate term of imprisonment of twenty years or more, a sentence of life imprisonment or a determinate term of imprisonment not exceeding thirty years will be imposed.*

Article 2:278

If any of the indictable offences referred to in articles 2:275 and 2:276 is committed with terrorist intent, a sentence of life imprisonment or a determinate sentence not exceeding thirty years or a fifth-category fine may be imposed.

Article 2:279

Conspiracy to commit the indictable offence referred to in article 2:276 with terrorist intent is punishable by a term of imprisonment not exceeding twelve years or a fifth category fine.

Article 2:280

Any person intentionally participating in an attack or affray in which several persons are involved, is, without prejudice to each person's responsibility for the acts he himself has committed, liable to:

1. *a term of imprisonment not exceeding two years or a fourth-category fine if the attack or affray causes serious bodily injury;*
2. *a term of imprisonment not exceeding three years or a fourth-category fine if the attack or affray results in a person's death.*

Article 2:281

A person convicted of one of the indictable offences referred to in this title may be deprived of the rights referred to in article 1:64, paragraph 1 (a), (b) and (c).

Ad Paragraph 29, question 9: adopt without delay legislation criminalizing all forms of human trafficking.

Article 286f Criminal Code for Bonaire, St, Eustatius and Saba

- 1) *Any person who:*

1. *with the intention of exploiting another person or removing his or her organs, recruits, transports, transfers, accommodates or shelters that other person by means of duress, violence or another hostile act, or the threat of violence or other hostile act, or by means of extortion, fraud, deception or the abuse of power arising from a specific state of affairs, or by means of the abuse of a position of vulnerability, or by means of giving or receiving payments or benefits in order to obtain the consent of a person having control over that other person;*

2. *recruits, transports, transfers, accommodates or shelters a person with the intention of exploiting that other person or removing his or her organs, if that person has not yet reached the age of eighteen years;*

3. *recruits, takes away or abducts a person with the intention of inducing that person to make him or herself available for sexual acts with or for a third party for payment in another country;*

4. *forces or induces another person by means referred to under 1o to make him or herself available for work or services or to make his/her organs available, or takes any action in the circumstances referred to under 1o which he knows or may reasonably be expected to know will result in that other person making him or herself available for work or services or making his or her organs available;*

5. *induces another person to make him or herself available for sexual acts with or for a third party for payment or to make his or her organs available for payment, or takes any action in relation to another person which he knows or may reasonably be expected to know will result in that other person making him or herself available for these acts or making his or her organs available for payment, if that other person has not yet reached the age of eighteen years;*

6. *intentionally profits from the exploitation of another person;*

7. *intentionally profits from the removal of organs from another person, if he knows or may reasonably be expected to know that the organs of that person were removed under the circumstances referred to under 1o;*

8. *intentionally profits from the sexual acts of another person with or for a third party for payment or the removal of that person's organs for payment, if this other person has not yet reached the age of eighteen years;*

9. *forces or induces another person by the means referred to under 1o to provide him with the proceeds of that person's sexual acts with or for a third party or of the removal of that person's organs;*

shall be guilty of trafficking in human beings and as such liable to a term of imprisonment not exceeding six years or a fifth category fine.

2) *Exploitation shall include, at the minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced or compulsory labour or services, slavery or practices comparable to slavery or servitude.*

3) *The following offences shall be punishable by a term of imprisonment not exceeding eight years or a fifth category fine:*

1. *offences as defined in paragraph 1 if they are committed by two or more persons acting in concert;*

2. *offences as defined in paragraph 1 if they are committed in respect of a person who is under the age of sixteen.*

- 4) *The offences defined in paragraph 1, committed by two or more persons acting in concert under the circumstances referred to in paragraph 3 under 2o, shall be punishable by a term of imprisonment not exceeding ten years or a fifth category fine.*
- 5) *If one of the offences defined in paragraph 1 results in serious physical injury or threatens the life of another person, it shall be punishable by a term of imprisonment not exceeding twelve years or a fifth category fine.*
- 6) *If one of the offences defined in paragraph 1 results in death, it shall be punishable by a term of imprisonment not exceeding fifteen years or a fifth category fine.*
- 7) *Article 261 shall apply mutatis mutandis.*

Article 2:239 and 2:240 Criminal Code for Curaçao

The provision on human trafficking in Curaçao's Criminal Code is much broader than the old article 260 of the Criminal Code of the Netherlands Antilles.

The present article 2:239 covers not only sexual exploitation but also other aims of trafficking such as the provision of forced labour or services, slavery or slavery-like practices and the removal of organs. The prison sentences have also been adjusted.

Any person who is guilty of human trafficking is liable to a term of imprisonment not exceeding nine years. A person commits human trafficking if, for example, he:

A. *with the intention of exploiting another person, recruits, transports, transfers, accommodates or shelters that other person by means of duress, force or other hostile act, or the threat of force or other hostile act, or by means of fraud, extortion, deception or the abuse of power arising from a specific state of affairs;*

B. *recruits, takes away or abducts a person with the intention of inducing that person to make him or herself available for sexual acts with or for a third party for payment in another country;*

C. *recruits, transports etc. or forces or induces another person to make him or herself available for work or services, or by means of extortion, fraud etc. takes any action which he knows or may reasonably be expected to know will result in that other person making him or herself available for work or services;*

D. *induces another person to make him or herself available for sexual acts with or for a third party for payment;*

E. *profits from the exploitation of another person.*

The relevant provisions are as follows:

Article 2:239

1. Any person who:

a) *by duress, force or other act, by the threat of force or other act, by extortion, fraud, deception or abuse of a de facto position of power, by abuse of a position of vulnerability or by giving or receiving payments or benefits to obtain the consent of a person having control over another person recruits, transports, transfers, accommodates or shelters another person with the intention of exploiting this other person or removing his or her organs;*

b) *recruits, transports, transfers, accommodates or shelters another person who has not yet reached the age of eighteen with the intention of exploiting this other person or removing his or her organs;*

c) recruits, takes away or abducts another person with the intention of inducing that person to make himself/herself available to perform sexual acts with or for a third party for gain in another country;

d) forces or induces another person by the means referred to at (a) to make himself/herself available for work or services or make his/her organs available or takes any action in the circumstances referred to at (a) which he knows or may reasonably be expected to know will result in that other person making himself/herself available for work or services or make his/her organs available;

e) induces another person to make himself/herself available for sexual acts with or for a third party for payment or to make his/her organs available for payment or takes any action in respect of another person which he knows or may reasonably be expected to know will result in that other person making himself/herself available for these acts or make his/her organs available for payment, if this other person has not yet reached the age of eighteen;

f) intentionally profits from the exploitation of another person;

g) intentionally profits from the removal of organs from another person, while he knows or may reasonably be expected to know that the organs of that person were removed in the circumstances referred to at (a);

h) intentionally profits from the sexual acts of another person with or for a third party for payment or the removal of that person's organs for payment, if this other person has not yet reached the age of eighteen;

i) forces or induces another person by the means referred to at (a) to surrender to him/her the proceeds of that person's sexual acts with or for a third party or of the removal of that person's organs; is guilty of human trafficking and is liable to a term of imprisonment not exceeding nine years or a fifth-category fine.

2. Exploitation includes at the minimum the exploitation of the prostitution of others or other forms of sexual exploitation, forced or otherwise compulsory labour or services, slavery, slavery-like practices or servitude.

3. The following offences are punishable by a term of imprisonment not exceeding twelve years or a fifth-category fine:

a) offences as defined in paragraph 1, if they are committed by two or more persons acting in concert;

b) offences as defined in paragraph 1, if they are committed in respect of a person who is under the age of sixteen.

4. The offences defined in paragraph 1 are punishable by a term of imprisonment not exceeding fifteen years or a fifth-category fine, if they are committed by two or more persons acting in concert in the circumstances referred to in paragraph 3 (b).

5. If one of the offences defined in paragraph 1 results in serious bodily injury or threatens the life of another person, it is punishable by a term of imprisonment not exceeding eighteen years or a fifth-category fine.

6. If one of the offences defined in paragraph 1 results in a person's death, it is punishable by a term of imprisonment not exceeding twenty-four years or a fifth-category fine.

Article 2:240

Anyone who is guilty of using the services of a victim of an offence as referred to in article 2:239, paragraph 1, in the knowledge that this person is being forced or induced by the means referred to in article 2:239, paragraph 1 (a) to make himself/herself available to

perform such services is liable to a term of imprisonment not exceeding four years or a fourth-category fine.
