



# International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General  
16 October 2023

Original: English

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## Committee on Enforced Disappearances

### Concluding observations on the additional information submitted by the Kingdom of the Netherlands under article 29 (4) of the Convention\*

1. The Committee on Enforced Disappearances considered the additional information submitted by the Kingdom of the Netherlands under article 29 (4) of the Convention<sup>1</sup> at its 450th meeting, held on 15 September 2023.<sup>2</sup> At its 460th meeting, held on 22 September 2023, the Committee adopted the present concluding observations.

#### I. Introduction

2. The Committee expresses appreciation for the additional information submitted by the Netherlands, as requested by the Committee in its previous concluding observations.<sup>3</sup> The State party was invited to attend the Committee's 450th meeting, at which its report would be considered with a view to clarifying specific questions and sharing views on the following issues: (a) harmonization of domestic legislation with the Convention; (b) prosecution, investigation and cooperation in relation to enforced disappearance; and (c) prevention of enforced disappearance.<sup>4</sup> Following the State party's indication that it would not attend the meeting, the Committee proceeded with the consideration of the above-mentioned additional information in accordance with rule 51 (3) (a) of its rules of procedure, while regretting the missed opportunity for an interactive exchange with the State party.

#### II. Positive aspects

3. The Committee acknowledges the measures taken by the State party in areas relevant to the Convention following the adoption of the Committee's previous concluding observations, including the entry into force of the Convention in the constituent country of Aruba on 21 December 2017 and the extension of the operation of the Criminal Injuries Compensation Fund to residents of Bonaire, Saba and Sint Eustatius, with retroactive effect from 1 January 2017.

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\* Adopted by the Committee at its twenty-fifth session (11–29 September 2023).

<sup>1</sup> [CED/C/NLD/AI/1](#) and [CED/C/NLD/AI/1/Add.1](#).

<sup>2</sup> See [CED/C/SR.450](#).

<sup>3</sup> [CED/C/NLD/CO/1](#), para. 45.

<sup>4</sup> See

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCED%2FTHS%2FNLD%2F55685&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCED%2FTHS%2FNLD%2F55685&Lang=en).



### **III. Implementation of the Committee's recommendations and new developments in the State party**

#### **A. General information**

4. The Committee considers that, at the time of writing, the legislation and related measures in force in the State party to prevent and punish enforced disappearance are not in full compliance with the obligations incumbent upon States that have ratified the Convention. The Committee recommends that the State party take account of its recommendations, which have been made in a constructive and helpful spirit, with the aim of strengthening existing legislation and guaranteeing that the legislation, and the way that it is implemented by the State authorities, is fully consistent with the rights and obligations contained in the Convention.

#### **B. Harmonization of domestic legislation with the Convention**

##### **1. Uniform application of the Convention in the different parts of the Kingdom of the Netherlands**

5. The Committee welcomes the extension of the ratification of the Convention to Aruba on 21 December 2017, but regrets that it has yet to be extended to the other constituent countries of the Kingdom of the Netherlands, namely Curaçao and Sint Maarten.

6. **The Committee invites the State party to proceed with the extension of the ratification of the Convention and the acceptance of the competence of the Committee under articles 31 and 32 by the constituent countries of Curaçao and Sint Maarten. The Committee calls upon the State party to take all the requisite measures to ensure the uniform application of the Convention in all parts of the Kingdom of the Netherlands.**

##### **2. Direct applicability of the Convention**

7. The Committee notes the explanation provided by the State party that directly effective, self-executing provisions of treaties prevail over national laws and that provisions of treaties can be invoked by an individual in court and that their application can be legally enforced. However, the Committee regrets that it has not been provided with specific information on cases in which the Convention has been invoked and directly applied before the national courts in all parts of the Kingdom of the Netherlands.

8. **The Committee calls upon the State party to ensure the direct applicability of the Convention both in law and in practice, including through appropriate training to enhance awareness of the Convention and of its scope, significance and direct applicability.**

##### **3. Definition and criminalization of enforced disappearance**

9. The Committee remains concerned that the definition of enforced disappearance in the International Crimes Act (2003) provides that the crime should be committed by or with the authorization, support or acquiescence of a State or political organization, thereby limiting the notion of "group" as contained in article 2 of the Convention (art. 2).

10. **The Committee recommends that the State party review the definition of enforced disappearance in the International Crimes Act to ensure its full compliance with article 2 of the Convention.**

11. The Committee notes the explanation provided by the State party that the gravity of the offence of enforced disappearance is reflected in the maximum prison sentences and fines applicable, which in the presence of aggravating circumstances can extend to a prison sentence of 30 years and a fine of 870,000 euros. In that connection, the Committee remains concerned that section 8 (a) of the International Crimes Act permits the imposition of fines as a stand-alone penalty for the crime of enforced disappearance (art. 7).

12. **The State party should ensure that penalties for the crime of enforced disappearance take due account of the extreme seriousness of the offence, in accordance with article 7 of the Convention. The Committee recommends that the State party revise its legislation with a view to removing the possibility of imposing fines as a stand-alone penalty for the offence of enforced disappearance.**

## **C. Prosecution, investigation and cooperation in relation to enforced disappearances**

### **Disappearances of migrants**

13. The Committee is concerned about reports alleging the disappearance of migrants at sea while attempting to reach the Caribbean parts of the Kingdom of the Netherlands and it regrets not having received official statistical information and clarifications thereon. The Committee is also concerned at reports that, among the victims of such disappearances, some may be victims of trafficking. The Committee regrets not having received information on measures taken to address disappearances of migrants, including measures to ensure effective cooperation with countries of origin and transit in the region with regard to search, rescue, investigation, counter-trafficking measures, data collection and support to the relatives of those who have disappeared. The Committee is concerned about the large number of unaccompanied minors who have disappeared from asylum reception centres in the European part of the Kingdom of the Netherlands, including in the context of suspected trafficking in persons (arts. 3, 10, 12, 14, 15 and 24).

14. **The Committee recommends that, in accordance with its general comment No. 1 (2023) on enforced disappearance in the context of migration, the State party:**

(a) **Redouble its efforts to prevent and investigate the disappearance of migrants arriving by sea to the Caribbean parts of the Kingdom of the Netherlands, including in the context of trafficking in persons, and ensure that those responsible are prosecuted and, if convicted, appropriately punished;**

(b) **Promote mutual legal assistance with countries of origin and transit in the Caribbean region to strengthen the search for disappeared migrants, investigations into their disappearances and prosecution of those responsible, including trafficking in persons networks;**

(c) **Redouble its efforts to prevent the disappearance of unaccompanied minors from asylum reception centres, and ensure that such disappearances are effectively investigated;**

(d) **Enhance capacity to search for and identify disappeared migrants, including those who disappeared at sea while attempting to reach the Caribbean parts of the Kingdom of the Netherlands, ensuring cooperation with relevant countries, the effective coordination and cooperation between all relevant authorities and data cross-checking between existing databases;**

(e) **Ensure that relatives of disappeared migrants and their representatives, irrespective of where they reside, have the opportunity to obtain information and take part in the related investigations and search processes;**

(f) **Consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.**

## **D. Measures to prevent enforced disappearance**

### **1. Non-refoulement**

15. The Committee is concerned at reports of refoulement of asylum-seekers from the constituent countries of Aruba and Curaçao to countries where they may be at risk of enforced disappearance, and that procedural safeguards such as the right of access to a lawyer and the right to information in a language that the applicant understands are not systematically

guaranteed in the constituent countries of the Caribbean parts of the Kingdom of the Netherlands (art. 16).

**16. The Committee urges the State party to ensure that the principle of non-refoulement, as enshrined in article 16 (1) of the Convention, is strictly respected in all cases in the constituent countries of the Caribbean parts of the Kingdom of the Netherlands and recommends that the State party:**

(a) **Ensure that all asylum-seekers, without exception, have unhindered access to effective asylum procedures that comply fully with the obligations under article 16 of the Convention;**

(b) **Ensure that a thorough individual assessment of the risk faced by any person of becoming a victim of enforced disappearance is conducted, before it proceeds with an expulsion, return, surrender or extradition, that any decision taken in the context of such procedures can be appealed to an impartial authority within a reasonable time frame and that such an appeal has suspensive effect;**

(c) **Provide adequate training to all actors involved in asylum, return, surrender or extradition procedures, including law enforcement officials, on the concept of enforced disappearance and on the assessment of the related risks.**

## **2. Visits to places of deprivation of liberty**

17. The Committee takes note of information provided by the State party on the roles of the Inspectorate of Justice and Security and the Law Enforcement Council in the inspection and monitoring of places of detention in the Caribbean parts of the Kingdom of the Netherlands, but is concerned at the lack of information on measures taken to ensure the coordination of these two mechanisms, and on structures in place for Aruba, which is not covered by the Law Enforcement Council. The Committee regrets the absence of information on measures in place to ensure that the same standards are applied in both the Caribbean and the European parts of the Kingdom of the Netherlands in the context of the national preventive mechanism established under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Committee also regrets that the Law Enforcement Council is only mandated to inspect places of detention within the criminal justice system (art. 17).

**18. The Committee recommends that the State party ensure effective inspection and monitoring of all types of places of deprivation of liberty in the Caribbean parts of the Kingdom of the Netherlands. It should ensure a clear division of responsibilities and coordination between the entities responsible for such activities, and ensure that the standards applied are equivalent to those in place in the European part of the Kingdom of the Netherlands. The Committee echoes the recommendation of the Committee against Torture that the State party should “withdraw its declaration on the exclusive territorial application of the Optional Protocol to the European Netherlands and ensure the applicability thereof throughout the State party, including in the Caribbean Netherlands.”<sup>5</sup>**

19. The Committee notes the assurance provided by the State party in its report with regard to section 7 (2) of the Netherlands Institute for Human Rights Act, which allows for the restriction of the access of the Netherlands Institute for Human Rights to places that are designated as forbidden pursuant to the Protection of State Secrets Act, stating that such places are not places of detention. The Committee nonetheless remains concerned that places of detention could still be designated as forbidden in the future. The Committee regrets the absence of information about the current administrative and budgetary capacities of the national preventive mechanism and the parallel system operating in the Caribbean parts of the Kingdom of the Netherlands (art. 17).

**20. The Committee reiterates its previous recommendation that the State party remove the restriction set out in section 7 (2) of the Netherlands Institute for Human Rights Act in order to ensure unrestricted access by the Institute to all places of**

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<sup>5</sup> CAT/C/NLD/CO/7, para. 23.

deprivation of liberty.<sup>6</sup> The Committee recommends that the State party ensure that the national preventive mechanism and the parallel system operating in the Caribbean parts of the Kingdom of the Netherlands are provided with adequate resources to fulfil their mandates and ensure their financial independence.

### 3. Access to information by persons with a legitimate interest

21. The Committee notes the State party's indication that relatives of a disappeared person, or their lawyer, may ask the person in custody or their lawyer for the information listed in article 18 of the Convention. The Committee remains concerned that such procedure does not guarantee the right of any person with a legitimate interest to access information related to a person presumed disappeared, as provided under article 18 of the Convention (arts. 18 and 20).

22. **The Committee reiterates its recommendation that the State party ensure that any person with a legitimate interest can effectively access at least the information contained in article 18 (1) of the Convention. The Committee also reiterates that the State party should guarantee that those persons have access to prompt and effective judicial remedies to obtain that information without delay, as established in article 20 (2) of the Convention, and the possibility of appealing against a refusal to disclose this information.**<sup>7</sup>

### 4. Training on the Convention

23. The Committee notes with concern the lack of information in the State party's report on specific and regular training on the Convention provided to law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of persons deprived of liberty (art. 23).

24. **The Committee recommends that the State party ensure that all law enforcement personnel, whether civil or military, medical personnel, public officials, including migration officials, and other persons who may be involved in the custody or treatment of any person deprived of liberty, including judges, prosecutors and other court officials of all ranks, receive appropriate and regular training on the Convention, in conformity with article 23 of the Convention.**

## E. Measures to protect and guarantee the rights of victims of enforced disappearance

### 1. Right to the truth and to reparation

25. The Committee notes the State party's position that the right of victims to know the truth regarding the circumstances of an enforced disappearance and the fate of a disappeared person is sufficiently addressed by the provisions of section 51 (a) (1) of the Dutch Code of Criminal Procedure. The Committee nonetheless remains concerned at the lack of an explicit legislative provision in this regard. While welcoming the extension of the operation of the Criminal Injuries Compensation Fund to residents of Bonaire, Saba and Sint Eustatius, the Committee is concerned at the apparent absence of access to such a fund in the constituent countries of Aruba, Curaçao and Sint Maarten. The Committee remains concerned that the national institutional and legal frameworks do not guarantee access to the other forms of reparations specified under article 24 (5) of the Convention (art. 24).

26. **The Committee reiterates its recommendation that the State party amend its legislation to include an explicit provision for the right of victims to know the truth regarding the circumstances of an enforced disappearance and the fate of a disappeared person.**<sup>8</sup> The Committee calls upon the State party to recognize explicitly the right of persons who have suffered harm as the direct result of an enforced disappearance that

<sup>6</sup> CED/C/NLD/CO/1, para. 25.

<sup>7</sup> Ibid., para. 29.

<sup>8</sup> Ibid., para. 33.

**occurred in any part of the State party's territory and to obtain prompt and adequate compensation and all other forms of reparation, in accordance with article 24 (4) and (5) of the Convention.**

**2. Legal situation of disappeared person whose fate has not been clarified and that of their relatives**

27. The Committee welcomes the information provided in the State party's report indicating that an amendment to current legislation is being prepared so that the title "declaration of legal presumption of death" would be modified so that family members could request a declaration of absence legally establishing the disappearance of a person, without reference to death. The Committee regrets the absence of information on the status of the proposed amendment (art. 24).

**28. The Committee recommends that the State party expedite the proposed legislative amendment in order to allow family members to request a declaration of absence legally establishing the disappearance of a person, without reference to death.**

**F. Measures to protect children against enforced disappearance**

29. The Committee observes with deep concern recent reports indicating that unaccompanied children continue to disappear from asylum reception centres. The Committee notes the information provided in the State party's report on related safeguards in place and the conclusions published in 2020 of two investigations that either found no evidence of enforced disappearances or were unable to verify suspicions of trafficking in persons. The Committee regrets the lack of additional information in that regard, notably with respect to the circumstances in which such disappearances occur, details of pending and concluded cases, measures to prevent such disappearances, and guidance and protection measures in place for those who have been located (art. 25).

**30. The Committee reiterates its previous recommendation urging the State party to investigate thoroughly the disappearance of unaccompanied children from asylum reception centres and to search for and identify those children who may have been the victims of enforced disappearance, in conformity with article 25 (2) of the Convention.<sup>9</sup> The Committee recommends that the State party enhance existing safeguards to prevent enforced disappearances of unaccompanied children in its care and ensure that adequate protection and support measures are provided to unaccompanied children who have been subjected to this crime.**

31. The Committee takes note of the decision taken in 2021 by the State party to temporarily suspend intercountry adoptions, in view of abuses that had been uncovered. In that connection, the Committee regrets that the State party has not provided statistical data and specific information on the measures taken to establish procedures for the review and, where appropriate, annulment of adoptions or placements that originated in an enforced disappearance, while keeping the principle of the best interests of the child as a primary consideration (art. 25).

**32. The Committee reiterates its recommendation that the State party establish specific procedures for reviewing and, where appropriate, annulling any adoption, placement or guardianship of children that originated in enforced disappearance and for re-establishing the true identity of the children concerned, taking into account the best interests of the child.<sup>10</sup>**

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<sup>9</sup> Ibid., para. 37.

<sup>10</sup> Ibid., para. 39.

#### **IV. Fulfilment of the rights and obligations under the Convention, dissemination and follow-up**

33. The Committee wishes to recall the obligations undertaken by States when becoming parties to the Convention and, in this connection, urges the State party to ensure that all the measures that it adopts, irrespective of their nature or the authority from which they emanate, are in full compliance with the Convention and other relevant international instruments. In particular, the Committee urges the State party to adopt the necessary measures to ensure that the Convention, in particular the safeguards it provides, is applied in full in both the European and the Caribbean parts of the Kingdom of the Netherlands.

34. The Committee also wishes to emphasize the particularly cruel effect of enforced disappearance on women and children. Women who are subjected to enforced disappearance are particularly vulnerable to sexual and other forms of gender-based violence. Women who are relatives of a disappeared person are particularly likely to suffer serious social and economic disadvantages and to be subjected to violence, persecution and reprisal as a result of their efforts to locate their loved ones. Children who are victims of enforced disappearance, either because they themselves were subjected to disappearance or because they suffer the consequences of the disappearance of their relatives, are especially vulnerable to numerous human rights violations. In this context, the Committee places special emphasis on the need for the State party to ensure that gender issues and the specific needs of women and children are systematically taken into account in implementing the recommendations contained in the present concluding observations and all the rights and obligations set out in the Convention.

35. The State party is encouraged to widely disseminate the Convention, the additional information that it submitted under article 29 (4) of the Convention and the present concluding observations, in order to raise awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the State party and the general public. The Committee also encourages the State party to promote the participation of civil society in the process of implementing the recommendations contained in the present concluding observations.

36. Under article 29 (4) of the Convention, and with a view to strengthening its cooperation with the State party, the Committee requests the State party to submit, by 29 September 2026, specific and updated information on the implementation of all the recommendations contained in the present concluding observations, and any other new information on the fulfilment of the obligations contained in the Convention since the adoption of the present concluding observations. The Committee encourages the State party to involve civil society, in particular organizations of victims of enforced disappearance, in the process of preparing this information, which the Committee intends to consider in 2027 during a constructive dialogue that will be focused on a maximum of four issues.