



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

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Committee on Enforced Disappearances

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**Consideration of additional information submitted
by States parties to the Convention**

**Additional information submitted by the Netherlands under
article 29 (4) of the Convention***

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* The present document is being issued without formal editing.



I. Introduction

1. The Committee on Enforced Disappearances (CED, the Committee) considered the report submitted by the Netherlands under Article 29, paragraph 1 of the International Convention for the Protection of All Persons from Enforced Disappearance at its 82nd and 83rd meetings, held on 18 and 19 March 2014.
2. In paragraph 45 of its concluding observations (CED/C/NLD/CO/1), the Committee asked the State party to provide, by 28 March 2020, specific and updated information on the implementation of all its recommendations and any other new information on the fulfilment of the obligations contained in the Convention. The Netherlands met this obligation by submitting the requested updated information on 27 March 2020.
3. On 30 March 2020, the Netherlands was requested to provide follow-up information on the recommendations of the concluding observations that were not touched upon in the response of 27 March 2020.
4. In this document, the Kingdom of the Netherlands provides the requested follow-up information.

II. Information concerning follow-up to the concluding observations of the Committee (CED/C/NLD/CO/1)

Recommendation in paragraph 9

5. The Convention has already entered into force for Aruba on 21 December 2017. However, the Convention has not yet entered into force for Curaçao and Sint Maarten. Both Curaçao and Sint Maarten have indicated their wish to have the application of the Convention to be extended to them. However, both countries are still in the process of drafting the legislation needed to be able to implement the Convention. The Kingdom of the Netherlands as State Party has no influence in that legislative process, as treaty implementation is an autonomous responsibility of the individual countries. Once the necessary legislation is in place the Kingdom of the Netherlands can ratify the Convention for the country concerned.

Recommendation in paragraph 11

6. In the follow-up report submitted by the Kingdom of the Netherlands on 28 March, it was indicated that the operation of the Criminal Injuries Compensation Fund has been extended to residents of Bonaire, Saba and St Eustatius. As from 1 April 2019, residents of Bonaire, Saba and St Eustatius can claim compensation from this fund, under the same conditions that apply to residents of the Netherlands in Europe. The law came into force with retroactive effect, meaning that victims can also claim damages in respect of events that occurred between 1 January 2017 and 1 April 2019.

Recommendation in paragraph 13

7. The government takes note of the comments of the Committee but does not share the concerns expressed. The government has the constitutional task of promoting the development of the international legal order (article 90 of the Constitution). One of the ways in which the government fulfils this obligation is by acceding to human rights conventions such as the International Convention for the Protection of All Persons from Enforced Disappearance.

8. The implementation of international obligations in the Dutch legal order is regulated by articles 93 and 94 of the Constitution. The consequence of articles 93 and 94 of the Constitution is that directly effective, self-executing provisions of treaties prevail. To the extent that they are substantially of a constitutional nature they function as hierarchically superior constitutional provisions in the Netherlands. This is typically the case with treaty

provisions on classic human rights. As these primarily aim to regulate the relations between the state and individuals, they are sources of the constitutional law of the Netherlands.

9. Provisions of treaties can be invoked by an individual in court and their application can be legally enforced. The answer to the question of whether a treaty provision has direct effect is indeed ultimately determined by the courts on the basis of the formulation of the provision. Because courts have to give priority to these provisions over conflicting norms, the constitutional importance of treaties cannot be overstated, all the more because the courts cannot review acts of parliament for compatibility with the fundamental rights enshrined in the Constitution.

Recommendation in paragraph 15

10. The Committee recommends a partial review of the definition of ‘enforced disappearance’ in the International Crimes Act, because it is of the opinion that the current definition is not in full compliance with article 2 of the Convention. In this regard the Committee points out that the definition does not include the ‘concealment of the fate or whereabouts of the disappeared person’ as a possible element and does not mention that the crime should be committed by ‘agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State’ but by or with the authorization, support or acquiescence of a ‘State or political organization’.

11. The Government would like to stress that the definition of enforced disappearance in the International Crimes Act is in full compliance with article 2 of the Convention. There appears to be some misunderstanding about the definition that the Government would like to clarify.

12. Section 4 (2) (d) of the International Crimes Act reads as follows: ‘Enforced disappearance of a person means the arrest, detention, abduction or any other form of deprivation of liberty of a person by, or with the authorization, support or acquiescence of a State or political organization, followed by a refusal to acknowledge that deprivation of liberty or to provide information on the fate or whereabouts of that person, or by concealment of their fate or whereabouts, thus removing that person from the protection of the law.’

13. Thus, ‘the concealment of the fate or whereabouts of the disappeared person’ is indeed included in the definition. It is true that the International Crimes Act does not contain the exact same wording as the Convention as it states that the crime should be committed ‘by or with the authorization, support or acquiescence of a State or political organization’ instead of “by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State’. However, the term ‘State’ must be interpreted broadly and encompasses agents of the State, as is explicitly set out in the explanatory memorandum to the law giving effect to the Convention. In addition to anyone who acts with the authorization, support or acquiescence of the State, the definition in the International Crimes Act also refers to anyone who acts with the authorization, support or acquiescence of a political organization. This addition is derived from the definition of enforced disappearance contained in article 7 (2) (i) of the Rome Statute of the International Criminal Court. In this regard, the International Crimes Act contains a broader definition than the Convention and thus offers greater protection.

Recommendation in paragraph 17

14. In the Dutch criminal justice system the judiciary is vested with a wide discretionary power with regard to sentencing. The statutory rules that guide the courts in this process are general in nature and do not limit the court in choices of type and severity of the sanctions in individual cases. The statutory minimum term of imprisonment is one day and the minimum statutory fine is €3. This is the same for all offences, regardless of the seriousness of the offence. Unlike the situation in other countries, no offences carry a special statutory minimum. The gravity of the offence is reflected in the maximum terms of imprisonment and the applicable category of the fine, which are specified. The offence of enforced disappearance carries a maximum prison sentence of 15 years and/or a fine of the fifth

category. In the case of aggravating circumstances, the maximum prison sentence is 30 years and a fine of the sixth category is applicable. The government would point out that the fifth and sixth fine categories are the highest categories. As of 1 January 2020, the maximum fines for these categories are €87,000 and €870,000, respectively. The Government is of the opinion that these sanctions reflect the extreme seriousness of the offence.

Recommendation in paragraph 19

15. Enforced disappearance is an offence for which a suspect can be placed in pre-trial detention (article 67 of the Code of Criminal Procedure). Should the court at any time decide to suspend the pre-trial detention, it may impose certain restrictions curtailing the suspect's freedom of movement and behaviour, such as a restraining order or an exclusion order.

Recommendation in paragraph 21

16. Article 12, paragraph 1 of the Convention stipulates that State Parties must ensure that any individual who alleges that a person has been subjected to enforced disappearance has the right to report the facts to the competent authorities and that appropriate steps must be taken, where necessary, to ensure that the complainant, witnesses, relatives of the disappeared person and their defence counsel, as well as persons participating in the investigation, are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given.

17. Dutch criminal procedural law contains general provisions on the protection of complainants, relatives of disappeared persons, their representatives, witnesses and other persons participating in the investigation of an enforced disappearance, but no specific provisions relating to the offence of enforced disappearance. Dutch law has a variety of instruments to prevent harmful contact between a suspect on the one hand and informants, witnesses and victims on the other.

Recommendation in paragraph 23

18. The protection provided by article 16 of the Convention is similar to that provided by Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

19. The Dutch asylum procedure conforms to Directive 2013/32/EU on common procedures for granting and withdrawing international protection.

20. Specifically, article 46 (3) states that an appeals procedure has to be an effective remedy and as such should provide for a full and ex nunc examination of both facts and points of law: "In order to comply with paragraph 1, Member States shall ensure that an effective remedy provides for a full and ex nunc examination of both facts and points of law, including, where applicable, an examination of the international protection needs pursuant to Directive 2011/95/EU, at least in appeals procedures before a court or tribunal of first instance."

21. This article has been implemented in sections 83 and 83a of the Netherlands' Aliens Act.

22. Furthermore, any facts and circumstances brought forward for the first time during appeal proceedings are to be examined by the court. Exceptions to this rule are possible, for instance when the facts and circumstances are brought forward at a very late stage of the proceedings. In its judgment of 4 October 2018 (ECLI: EU:C:2018:801), the European Court of Justice formulated the following rule in this regard:

"[...] Article 46(3) of Directive 2013/32 read in conjunction with the reference to the appeal procedure contained in Article 40(1) of that directive, must be interpreted as meaning that a court before which an action has been brought against a decision refusing international protection is, in principle, required to examine, as 'further

representations’ and having asked the determining authority for an assessment of those representations, grounds for granting international protection or evidence which, whilst relating to events or threats which allegedly took place before the adoption of the decision of refusal, or even before the application for international protection was lodged, have been relied on for the first time during those proceedings. That court is not, however, required to do so if it finds that those grounds or evidence were relied on in a late stage of the appeal proceedings or are not presented in a sufficiently specific manner to be duly considered or, in respect of evidence, it finds that that evidence is not significant or insufficiently distinct from evidence which the determining authority was already able to take into account.”

23. Should a full and ex nunc examination not be made because the facts and circumstances were brought forward at a very late stage of the appeal proceedings, the individual can lodge a subsequent application for international protection.

Recommendation in paragraph 25

24. The follow-up report submitted by the Kingdom of the Netherlands on 28 March indicated that on the basis of the Public Safety and Security Act for Bonaire, St Eustatius and Saba and the Kingdom Act establishing the Law Enforcement Council, the Justice and Security Inspectorate is responsible for supervising the islands in the Caribbean part of the Netherlands. Alongside the national preventive mechanism of the Netherlands, the Law Enforcement Council was set up so that an oversight mechanism could function effectively in the Caribbean part of the Netherlands as well. The Law Enforcement Council for Curaçao, St Maarten and the BES Islands (Bonaire, Saba and St Eustatius) is the independent inspectorate charged with the general inspection of the bodies of the criminal justice system for these islands. The formation of two new countries in the Kingdom (Curaçao and St Maarten), each of which is responsible for inspections in their respective criminal justice system, and the remoteness of the BES Islands from the European part of the Netherlands, led to the establishment of a joint body in 2010. The Law Enforcement Council works independently and carries out its work in much the same way as the inspection bodies in the Netherlands. Detention facilities fall within the scope of its inspection duties and they are inspected regularly.

Recommendation in paragraph 27

25. No updated information available.

Recommendation in paragraph 29

26. The Government has taken note of the Committee’s recommendation. At the outset the government would like to reiterate that a person may be deprived of liberty under provisions of administrative, civil or criminal law. All those who have been deprived of their liberty are entitled by law to the assistance of a lawyer. A person who is being held in custody and (through him) his lawyer has a statutory right to inspect all the information listed in article 18 of the Convention. This information is provided automatically (in criminal proceedings, at any rate) or at the person’s written request. The information listed in article 18 of the Convention is not automatically supplied to the person’s relatives. However, the relatives of the person concerned, or their lawyer may ask the person in custody or his lawyer to pass this information on to them.

27. Under Dutch law, in line with article 19, paragraph 2 of the Convention, personal data may not be processed in a way that would unjustifiably infringe or have the effect of infringing the rights of an individual. The prohibition enshrined in the first sentence of article 19, paragraph 1 of the Convention against using personal information or making this information available for purposes other than the search for the disappeared person accords with the central feature of ‘purpose limitation’ in Dutch data protection legislation.

Recommendation in paragraph 31

28. Professionals are offered a variety of courses. All law enforcement personnel receive basic training enabling them to perform their work.

Recommendation in paragraph 33

29. The follow-up report submitted by the Kingdom of the Netherlands on 28 March provided information on the rights of victims and their next of kin in the Netherlands. On the basis of the definition of a victim in article 51a, paragraph 1 (a) of the Dutch Code of Criminal Procedure, these rights also apply to persons who have suffered harm as the direct result of an enforced disappearance.

30. The Netherlands is of the opinion that these rights sufficiently address the needs of victims and therefore does not intend to draft any additional legislation on this matter.

Recommendation in paragraph 35

31. As explained in our earlier note of 2015, it is possible for interested parties “ mainly partners and other relatives “ to initiate a legal procedure to obtain from the district court a declaration of legal presumption of death of a missing person.

32. Articles 409 to 414 of Book 1 of the Civil Code lay down regulations that apply in the case of missing persons and the legal presumption of death. Article 1:409 provides for measures that can be taken to arrange for the administration of a missing person’s property. Article 1:413 sets the periods of time for establishing the legal presumption of death. Once there is a legal presumption of death, or the person’s death has been established, matters such as matrimonial property and the person’s estate can be settled.

33. From contacts with parties such as Victim Support Netherlands (Slachtofferhulp Nederland), an organisation that offers assistance to victims of crime, traffic accidents and disasters and supports partners and other relatives of disappeared persons, it is clear that family members find it difficult psychologically to initiate this legal procedure, as they feel a heavy burden of responsibility when it comes to having the missing person declared deceased. In order to offer them some relief, the Minister for Legal Protection announced in a letter to the House of Representatives on 6 June 2019 that he would propose an amendment to modify the title of this declaration. A draft amendment is currently being prepared. This means that instead of a ‘declaration of legal presumption of death’ family members could request a declaration legally establishing the disappearance of the missing person. The legal procedure in itself would not be altered; nor would the legal consequences differ from the current ones. The Netherlands trusts that the Committee will approve of this initiative to amend the law.

34. Furthermore, the Netherlands would inform the Committee that Victim Support Netherlands has now established a protocol in cooperation with various organisations, including the Dutch Association of Insurers, the Dutch Banking Association, the Tax and Customs Administration, the Association of Netherlands Municipalities and the Healthcare Institute of the Netherlands, to offer support to partners and relatives of missing persons should legal or financial problems arise in the period before they can obtain a decision from the district court legally establishing the disappearance of the missing person.

Recommendation in paragraph 37

35. The Dutch government considers it very important to protect unaccompanied minors from the enforced disappearance and implements various protective measures to ensure that unaccompanied minors do not disappear from reception centres. Employees in the reception centres are trained to recognize signs of human trafficking. When a potential victim is identified they are placed in a protected residence facility, where extra precautions are in place, such as additional security and supervision. Furthermore, a multidisciplinary risk

assessment is made to identify vulnerabilities of unaccompanied minors. Appropriate guidance, protection and counselling are determined on the basis of the assessment.

36. In March 2020 the Dutch government published two reports on the disappearances of unaccompanied minors from asylum reception centres. One focused on the disappearance of unaccompanied minors of all nationalities from reception centres, from 2015 up to and including 2018, while the other focused on Vietnamese unaccompanied minors who had disappeared from the protected residence facility. With respect to the Vietnamese nationals, there were suspicions that they might have fallen victim to human trafficking, but according to the reports these suspicions could not be verified. With respect to other nationalities, the reports did not indicate that there was any evidence of enforced disappearances.

Recommendation in paragraph 39

37. No updated information available.
