

Nederlands Juristen Comité voor de Mensenrechten

Dutch Section of the International Commission of Jurists



**Commentary on the first periodic report submitted by  
the Kingdom of the Netherlands on the implementation of the  
UN International Convention for the Protection of  
All Persons from Enforced Disappearance (CED/C/NLD/1)**

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**Commentary on the first periodic report submitted by the Kingdom of the Netherlands on the implementation of the UN International Convention for the Protection of All Persons from Enforced Disappearance (CED/C/NLD/1), by the Nederlands Juristen Comité voor de Mensenrechten (Netherlands Committee of Jurists for Human Rights), the Dutch section of the International Commission of Jurists (hereinafter: NJCM).**

This document contains a brief commentary on the first periodic report of the Netherlands on the implementation of the International Convention for the Protection of All Persons from Enforced Disappearance (CED/C/NLD/1), which is scheduled for consideration during the March 2014 session. This commentary aims to provide the Committee on Enforced Disappearances (hereinafter: the Committee) with information in order to enable it to make its dialogue with the Dutch government as effective and useful as possible.

The list of issues in relation to the first periodic report submitted by the Netherlands under article 29, paragraph 1, of the Convention, contains issues which have not been addressed by the government in its report. The NJCM considers the questions posed by the Committee to be pertinent. Yet unlike for instance Germany, the Dutch Government has given no reaction to these issues. This is a missed opportunity, and it prevents the Committee and Dutch Civil Society actors from conducting a constructive dialogue with the Government about the role of the Netherlands in the fight against enforced disappearances.

Next to underscoring that the Netherlands is expected to reply to the important questions posed by the Committee, the NJCM has three additional matters it would invite the Committee to address.

Firstly, we refer to the statement by the government that:

“Enforced disappearance perpetrated by the State does not occur in the Netherlands. Where persons are deprived of their liberty by the State, this is based on Dutch law and is subject to procedural safeguards. The lawfulness of deprivation of liberty is assessable by an independent court.”<sup>1</sup>

This is a sweeping statement that is not only irrelevant (all states parties can make similar statements, whether true or not), but also inaccurate. It is a translation into English of the Dutch legislative history,<sup>2</sup> where – with regard to the procedural safeguards against enforced disappearances – the Minister of Justice and Security refers to “criminal law and penitentiary law” (instead of “Dutch law”, as mentioned in the above statement). In this legislative history, the Minister leaves an important area of law out of the equation: immigration and asylum law. This omission is understandable, since, as is evidenced by many Concluding Observations of other Treaty Bodies,<sup>3</sup>

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<sup>1</sup> State report, par. 6. See also: Tweede Kamer, vergaderjaar 2009–2010, 32 208, nr. 3, p. 2 (available at: [http://www.parlementairemonitor.nl/9353000/1/j4nvg55kjg27kof\\_j9vvij5epmjley0/viaa8frwchv1/f=/kst137221.pdf](http://www.parlementairemonitor.nl/9353000/1/j4nvg55kjg27kof_j9vvij5epmjley0/viaa8frwchv1/f=/kst137221.pdf)).

<sup>2</sup> See also: Tweede Kamer, vergaderjaar 2009–2010, 32 208, nr. 3, p. 2 (available at: [http://www.parlementairemonitor.nl/9353000/1/j4nvg55kjg27kof\\_j9vvij5epmjley0/viaa8frwchv1/f=/kst137221.pdf](http://www.parlementairemonitor.nl/9353000/1/j4nvg55kjg27kof_j9vvij5epmjley0/viaa8frwchv1/f=/kst137221.pdf)).

<sup>3</sup> See e.g. Committee against Torture, Fiftieth session (20 June 2013), UN Doc. CAT/C/NLD/CO/5-6, par. 11-18; Committee on the Elimination of Racial Discrimination, Seventy-sixth session (25 March 2010), UN Doc. CERD/C/NLD/CO/17-18, par. 5 and 11; Committee on the Rights of the Child, Fiftieth session (27 March 2009), UN Doc. CRC/C/NLD/CO/3, par. 67-70. Committee on Economic, Social and Cultural Rights, Forty-fifth session (9 December 2010), UN Doc. E/C.12/NLD/CO/4-5, par. 25; Committee on the Elimination of Discrimination against Women, Forty-fifth session (5 February 2010), UN Doc. CEDAW/C/NLD/CO/5, par. 40-41.

there appear to be less procedural safeguards (against enforced disappearances) in immigration and asylum law. Yet such guarantees are very much warranted since the persons concerned are particularly vulnerable to abuse and trafficking. It would have been appropriate for the government to acknowledge problems in the context of human trafficking and refer to its efforts to address this, in reference to its obligations under this treaty. Moreover, flaws in procedural safeguards in asylum law may lead to persons being exposed to a real risk of enforced disappearance upon their removal from the Netherlands.

An inherent danger of the sweeping statement of the Dutch government in its first periodic report, is the lack of investment in prevention of enforced disappearances as may be committed in the future. For example, in the preparation for Dutch participation in Peace Keeping Missions, this aspect is not taken into account in the risk analysis, nor in the training of the military.

*Recommendation: the NJCM invites the Committee to call upon the Government to take into account and implement the full object and purpose of the treaty, including prevention measures and including during (preparation of) extraterritorial operations.*

Secondly, we point out that the Common Core Document is dated 12 December 1995. This can hardly be considered to be up to date and therefore barely contains relevant information for the Committee to consider. Especially since the Netherlands has recently (10 December 2013) presented its *Nationaal Actieplan Mensenrechten* (National Action Plan on Human Rights), which might serve as the new Common Core Document, it is unfortunate that it did not present this to the Committee.

*Recommendation: the NJCM invites the Committee to call upon the Government to update its Common Core Document.*

Finally, we would invite the Committee to question the Dutch government on its obligation under Article 3 of the Convention, especially since enforced disappearances constitute a continuous crime. Apart from the two complaints mentioned in the State Report, there have been several situations that warrant an effective and thorough investigation.

For example, during the Indonesian War of Independence, the Dutch military engaged in military intervention, the so-called *Politioele Acties* (Police Actions) 1947-1949, where it used methods that were contrary to international humanitarian law. On 12 January 1948 the ‘Committee of Good Offices on the Indonesian Question’ of the UN Security Council published a report, concerning its investigation of the military actions of the Dutch military in Rawagedeh and designated them as “deliberate and ruthless”.<sup>4</sup> In 2011, the Dutch State was judged by a civil court to have acted unlawfully by conducting, what we would now call extrajudicial executions in the village Rawagedeh on Java (Indonesia).<sup>5</sup> A similar complaint has been made concerning South Sulawesi. It would not be a far stretch to imagine people have disappeared during these actions.

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<sup>4</sup> District Court of The Hague, Civil law sector, case number: 354119 / HA ZA 09-4171, Court ruling of 14 September 2011, par. 2.6 (available at: [http://www.prakkendoliveira.nl/user/file/110914\\_-\\_court\\_ruling\\_rawagedeh.pdf](http://www.prakkendoliveira.nl/user/file/110914_-_court_ruling_rawagedeh.pdf)).

<sup>5</sup> District Court of The Hague, Civil law sector, case number: 354119 / HA ZA 09-4171, Court ruling of 14 September 2011, par. 5 (available at: [http://www.prakkendoliveira.nl/user/file/110914\\_-\\_court\\_ruling\\_rawagedeh.pdf](http://www.prakkendoliveira.nl/user/file/110914_-_court_ruling_rawagedeh.pdf)).

A second example concerns the lack of clarification on the role the Netherlands may have played during the CIA rendition flights. This has not been investigated sufficiently and certain questions concerning the use of the Dutch airspace have been left unanswered. During his investigation in 2006, Dick Marty, Rapporteur of the Committee on Legal Affairs and Human Rights of the COE, stated: “It is now clear – although we are still far from having established the whole truth – that authorities in several European countries actively participated with the CIA in these unlawful activities. Other countries ignored them knowingly, or did not want to know.”<sup>6</sup> He concluded in 2007: “Almost six years in, we seem no closer to pulling ourselves out of this quagmire, partly because of the absence of factual clarity – perpetuated by secrecy, cover-up and dishonesty – about the exact practices in which the US and its allies have engaged, and partly because a lack of urgency and political will on both sides of the Atlantic to unite around consensus solutions.”<sup>7</sup>

A final example concerns the disappearances of children from aliens’ detention. In April 2013 a report from Defence for Children and Unicef mentioned the disappearance of children from so-called COA-locations (Central Organ accommodation Asylum seekers). Through an administrative procedure they had gained information that in 2011 140 children left these locations without a trace. It is the duty of the authorities to know where these children are and to protect them.<sup>8</sup> We point to the Concluding Observations of the UN Committee on the Rights of the Child, in which they conclude: “While noting with appreciation the high number of asylum-seekers accepted in the Netherlands, the Committee is concerned about the practice of detention of unaccompanied children and families with children, and that children continue to disappear from reception centres, despite the pilot project centre to prevent the disappearance of undocumented children.”<sup>9</sup>

*Recommendation: the NJCM invites the Committee to question the Government on its interpretation of the “continuous crime” and the implementation thereof in Dutch law.*

*Recommendation: the NJCM invites the Committee to call upon the Government to effectively and thoroughly investigate matters that might concern enforced disappearances.*

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<sup>6</sup> Committee on Legal Affairs and Human Rights COE, ‘Secret detentions and illegal transfers of detainees involving Council of Europe member states: Draft report – Part II’ (Explanatory memorandum) AS/Jur (2006) 16 Part II, par. 285.

<sup>7</sup> Committee on Legal Affairs and Human Rights COE, ‘Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report’ (7 June 2007), par. 367.

<sup>8</sup> Defence for Children and Unicef, ‘Bescherming alleenstaande minderjarige vreemdelingen in de knel’ (‘Protection for unaccompanied minors in distress’) (April 2013), p. 10.

<sup>9</sup> Committee on the Rights of the Child, Fiftieth session (27 March 2009), UN Doc. CRC/C/NLD/CO/3, par. 67.