

Consideration of report submitted by The Netherlands – 18/19 March 2014

Introductory statement by the Netherlands - head of delegation Mr. Wijnand Stevens

Mr Chairman, distinguished members of the Committee, ladies and gentlemen,

As the head of delegation of the Netherlands for this session, I have the honour to address the Committee on behalf of the Kingdom of the Netherlands.

We are pleased to have the opportunity to discuss the report of the Kingdom of Netherlands under Article 29 of the International Convention for the Protection of All Persons from Enforced Disappearance. The Netherlands is strongly committed to the proper implementation of the Convention and we hold the work of your Committee in high esteem. The delegation is looking forward to a productive and open exchange of views.

Allow me to briefly introduce the members of the delegation:

- Jeroen de Jong – Deputy head, legal section, penitentiary service
- Thijs Berger – National Public Prosecutor's Office
- Joël van Andel - Policy coordinator, Ministry of Security and Justice
- Wietske Dijkstra - Senior policy officer, Ministry of Security and Justice
- Dirk Klaasen – Legal Counsel, Ministry of Foreign Affairs
- Maurits ter Kuile – First secretary, Permanent Representation of the Kingdom of The Netherlands in Geneva
- [And myself, Wijnand Stevens – Deputy Director International Affairs, Ministry of Security and Justice]

We are all at your disposal for any questions you may have on the implementation of the Convention, and will answer them to the best of our ability. With your permission, I would like to make a number of general remarks.

The report to be considered today and tomorrow sets out the measures taken by The Netherlands to give effect to the provisions of the Convention for the Protection of All Persons from Enforced Disappearance. It is important to note that the Kingdom of the Netherlands consists of four parts: the Netherlands, Aruba, Curacao and Sint Maarten. The latter three islands are situated in the Caribbean. When the Kingdom ratified the Convention on 23 March 2011, the three islands were not yet ready to implement the Convention in full. For this reason, the ratification was limited to the Netherlands. Extension of the ratification to Aruba, Curacao and Sint Maarten is envisaged and will be effected when these parts of the Kingdom have drawn up the necessary legislation. Each of the four countries within

the Kingdom is autonomous in its internal affairs, including in the manner in which they implement international commitments. Given that, for now, the Convention only applies in the Netherlands, not the other three parts of the Kingdom, the report deals only with measures taken by the Netherlands. The same is true, of course, for the replies submitted last month in response to the List of Issues we received from your Committee.

It goes without saying that the Netherlands is deeply committed to this convention. The Netherlands is a strong proponent of upholding international law and strengthening the international legal order. In fact, our constitution specifically states that the Dutch government is held to contribute to the development of the international legal order. This constitutional assignment has its roots in a long tradition, going back at least to the work of Hugo de Groot - or Grotius - in the first half of the seventeenth century. After the Second World War, the Netherlands has been in the forefront of the codification and development of international human rights law. In this same tradition, we have played an active part in the drawing up of the Convention against Enforced Disappearance.

Many institutions dealing with the fight against impunity with regard to international crimes have their home in the Netherlands. The International Criminal Court is of course the primary example, but also the International Criminal Tribunal for the former Yugoslavia and the Special Tribunal for Lebanon are situated in our country. In fact, as you may know, the seat of the Dutch government, the city of The Hague, is known as the 'legal capital of the world'.

For the Netherlands, giving full effect to the Convention, as to any other convention, is therefore not only a legally binding obligation but also a matter of pride. As with all human rights conventions, we rely on a well developed national legal system to give effect to the provisions of the convention. We have made a number of legislative changes, most notably in the International Crimes Act (In Dutch: Wet Internationale Misdrijven). At the same time, a great number of provisions of the convention was covered by legislation already in place, sometimes in combination with the changes made in the International Crimes Act or other legislation.

After this introduction, in which I indicated the importance the Netherlands attaches to the Convention, I will now try to explain how the Convention was incorporated in Dutch law and policy.

It is important to note at this juncture, that enforced disappearance perpetrated by State organs or with the knowledge of the State does not take place in The Netherlands. Where persons are deprived of their liberty by the State, this is based on Dutch law and subject to strong and effective procedural safeguards, upheld where necessary by an independent and vigorous judiciary. The lawfulness of each and any deprivation of liberty is assessable by an independent court. Nonetheless, the Netherlands may be confronted with enforced disappearance in cases where a person suspected of perpetrating an enforced disappearance outside the Netherlands is found to be on Dutch territory.

The entry into force of the Convention was accompanied by various changes in Dutch law to give full effect to the Convention. Enforced disappearance was already on the statute books as a crime against

humanity but was also made an autonomous offence under Dutch criminal law. This has been set out in the International Crimes Act, which apart from enforced disappearance also deals with genocide, crimes against humanity, war crimes and torture.

Apart from criminalizing enforced disappearance, the International Crimes Act also contains provisions for holding superiors criminally responsible and exercising extraterritorial jurisdiction. Very importantly, in light of Article 11 of the Convention, the International Crimes Act established universal jurisdiction for the crime of enforced disappearance, albeit subject to certain conditions. These conditions are that the subject must be a Dutch national or be in the Netherlands or that the offence must have been committed against a Dutch national. Apart from prosecution, extradition or surrender is possible provided the usual conditions are fulfilled.

The International Crimes Act provides that a person found guilty of enforced disappearance will be liable to a term of imprisonment not exceeding 15 years and/or a fifth category fine. A heavier sentence (life imprisonment or a term of imprisonment not exceeding 30 years – the maximum temporary prison term in the Netherlands) may be imposed when the crime of enforced disappearance is committed in a number of special circumstances or in respect of certain categories of vulnerable people. Examples are cases in which the crime has resulted in death or serious physical injury or where the victim has been raped. Vulnerable people include people who are sick or injured, pregnant women, minors and persons with a disability. Furthermore, the International Crimes Act provides that committing an act involving the enforced disappearance of a person as part of a widespread or systematic attack directed against a civilian population is a crime against humanity. Again, the sentence in this case will be life imprisonment or a term not exceeding 30 years and/or a sixth category fine.

This is the legal framework that we established in the Netherlands. Of course the policies that put these laws into practice are just as important.

To ensure maximum transparency of the efforts undertaken by the national authorities on international crimes, there is an annual international crimes reporting letter to parliament. This letter sets out how many cases of (alleged) international crimes have been considered and how they have been dealt with by the police and the prosecutor's office. Furthermore, this letter addresses the system-wide approach aimed at preventing, investigating and prosecuting international crimes. In and outside the Netherlands.

To make sure that complaints of international crimes, including enforced disappearance, are adequately dealt with, the policy rules of the Public Prosecution Service contain provisions for the disposal of cases in which a complaint is lodged with a district court or the police concerning an international crime as defined in the International Crimes Act. The National Public Prosecutor's Office takes up complaints about such crimes. Furthermore, a regular consultation has been set up in the International Crimes Task Force, which includes the Public Prosecution Service, the National Police, the Immigration and Naturalisation Service, the Ministry of Security and Justice and the Ministry of Foreign Affairs. The task force is chaired by the chief public prosecutor of the National Public Prosecutor's Office in Rotterdam.

We firmly believe that in the Netherlands, we have set up a strong system to deal with the prevention and prosecution of international crimes, including enforced disappearance. Not only by making proper legislative provisions, but also by giving effect to these provisions through effective mechanisms and procedures within our national institutions. Of course, many more details could be provided, and partly we have already done so in the written replies. But I hope I have set out the main lines of the approach taken in the Netherlands to the crime of enforced disappearance.

Mr. Chairman, members of the committee, we are open to your remarks and questions and look forward to a constructive exchange.