



## **Themes of the Committee on Enforced Disappearances for the consideration of the additional information submitted by Netherlands under Article 29(4) of the International Convention for the Protection of All Persons from Enforced Disappearances**

### **Harmonization of national legislation with the Convention**

1. In relation to the Committee's recommendation to the State party to take all the necessary measures to harmonize its procedures and practices throughout its territory in order to ensure the uniform application of the Convention in the European and Caribbean parts of the Netherlands, please provide information on the measures taken so far in that regards, specifying the current status of the procedure to implement the Convention in the States of Aruba, Curaçao and St Maarten.
2. In relation to the Committee's recommendations to the State party to review the definition of enforced disappearance in the International Crimes Act to ensure that, in so far as it applies to the autonomous crime of enforced disappearance, it fully complies with article 2 of the Convention, please provide information on the State party's intention to proceed with the legislative amendments and on the steps taken in that regard. In that connection, please explain how the requirement contained in the International Crimes Act (Wet Internationale Misdrijven – ICA) that the perpetrator be a State agent or a political organization can include "all persons or groups of persons", and indicate the way in which the requirement that the person be removed from the protection of the law "for a prolonged period of time" can be made compatible with article 2 of the Convention.
3. Please describe the steps taken to implement the Committee's recommendation to review its legislation to ensure that the imposition of the minimum penalty for the crime of enforced disappearance takes due account of the extreme seriousness of the offence, including by removing the possibility of imposing fines as a stand-alone penalty for the offence of enforced disappearance (article 7).
4. Please clarify how State authorities ensure the compatibility of the principles described in paragraph 9 of the State party's report on additional information according to which "Provisions of treaties can be invoked by an individual in court and their application can be legally enforced", while it later says that "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".

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

5. Please provide disaggregated data, including by sex, gender identity, sexual orientation, age, nationality, ethnic origin, religious affiliation, occupation of the victim, and nationality of the perpetrator, on the investigations of enforced disappearances carried out and their results, including the proportion of proceedings launched that resulted in convictions, and on the sanctions imposed on the perpetrators. Please specify the number of ongoing or finalised investigations of cases of disappeared migrants and cases of international illegal adoptions (arts. 3 and 12).

6. Please provide information on the measures taken by the State party to prevent and eradicate the disappearance of migrants, and to promote mutual legal assistance with other States parties in that regard. While in the context of the Universal Periodic Review the State party “noted” the recommendation to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and requests, the Committee requests the State party to provide information on measures taken to ensure such ratification (articles 12, 14, 15, 24).
7. Please provide updated information as to the prosecution, investigation, and sanction of cases of enforced disappearances under the International Crimes Act, specifying the number of such cases, the outcome of the decisions, and the modalities of their implementation (articles 9, 10).
8. Please provide information on how the Committee’s recommendation that the State party include an explicit provision for the right of victims to know the truth regarding the circumstances of an enforced disappearance and the fate of the disappeared person has been addressed (article 24).
9. In relation to the Committee’s recommendation to adopt the necessary legislative or other measures to recognize explicitly the right of persons who have suffered harm as the direct result of an enforced disappearance, which occurred in any part of the territory, to obtain prompt, fair and adequate compensation and all the other forms of reparation, without the need to prove the death of the disappeared person, please provide information on the measures taken in order to achieve a full compliance with the Convention in that regard (article 24, paragraphs 4 and 5).
10. In relation to the Committee’s recommendation contained in paragraph 35 of its concluding observations, and in view of the information provided by the State party, please describe the current status of the project announced by the Minister for Legal Protection in a letter to the House of Representatives on 6 June 2019 to amend the current legislation with a view to incorporating a declaration of absence as a result of enforced disappearance. Please also describe any other steps taken in order to adequately address the legal situation of disappeared persons and that of their relatives in areas such as social welfare, financial matters, family law and property rights through the issuance of such a declaration, and their current status.
11. The Committee takes note of the information provided in paragraphs 35s of the State party’s report on additional information as relates to the disappearance of unaccompanied minors from asylum reception centres and requests the State party to describe the circumstances under which these minors disappeared; the current status of their case; and the measures taken to prevent such disappearances (article 25)

## **Prevention of enforced disappearance**

12. Please provide information on the measures taken in relation to the Committee’s recommendation to the State party to remove the restriction set out in section 7, paragraph 2, of the Netherlands Institute for Human Rights Act in order to ensure unrestricted access of the Institute to all places of detention. Please describe the measures taken to ensure that the national legislation specifically guarantees that any person with a legitimate interest can have direct access to the information on detention, as provided for in article 18 of the Convention (articles 17, 18).
13. In relation to the recommendation of the Committee to ensure that the same standards with regard the national preventive mechanisms apply in the European and the Caribbean parts of the Netherlands, please provide information on the mandate and the division of competences between the Human Rights Institute and The Law Enforcement Council (article 17).
14. The Committee notes the information contained in paragraph 36 of the State party’s report on additional information, the Justice and Security Inspectorate is responsible for supervising the islands in the Caribbean part of the Netherlands, and the Law Enforcement Council works independently and carries out its tasks in a very similar way to the inspection bodies in the Netherlands, including through inspection and monitoring functions. Please describe the measures taken to ensure the coordination of these two mechanisms whenever necessary to guarantee the prevention, investigation and sanction of any cases of enforced disappearance (articles 12, 17, 18, 20).

15. In relation to the recommendation of the Committee that the national preventive mechanism enjoys complete financial and operational independence from the executive power, please provide additional information on the current administrative and budgetary capacities of the national preventive mechanisms operating in in the European and the Caribbean parts of the Netherlands (article 17).
  16. Please provide information of the measures taken to address the Committee's recommendation to ensure that any person with a legitimate interest has the right to directly access to the information contained in article 18, paragraph 1, of the Convention and has a real possibility to do so. Please also specify the measures taken to ensure that those persons have access to prompt and effective judicial remedies to obtain that information without delay, as established in article 20, paragraph 2, of the Convention, and the possibility of appealing against a refusal to disclose this information (articles 18, 20).
  17. Please provide information on the measures taken to 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 provisions of the Convention (article 23).
  18. In a view of the Committee's recommendations aimed at the prevention of illegal adoptions, please provide information on the measures taken to establish specific 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 (article 25).
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