

## **Committee against Torture**

### **Concluding observations on the combined fifth and sixth periodic reports of the Netherlands, adopted by the Committee at its fiftieth session (6-31 May 2013)**

#### **ADVANCE UNEDITED VERSION**

1. The Committee against Torture considered the fifth and sixth periodic reports of the Kingdom of the Netherlands (CAT/C/NLD/5-6) at its 1144th and 1147th meetings, held on 14 and 15 May 2013 (CAT/C/SR/1144 and 1147), and adopted the following concluding observations at its 1163rd meeting on 28 May 2013 (CAT/C/SR/1163).

#### **A. Introduction**

2. The Committee expresses its appreciation to the State party for accepting the optional reporting procedure and to have submitted its periodic report under it, as it improves the cooperation between the State party and the Committee and focuses the examination of the report as well as the dialogue with the delegation.

3. The Committee welcomes the information presented in the fifth and sixth periodic reports of the Kingdom of the Netherlands which consists of the Netherlands (the part in Europe and in the Caribbean, namely Bonaire, Sint Eustatius and Saba), and the autonomous countries within the Kingdom of Aruba, Curaçao and St. Maarten. The Committee notes with appreciation a constructive dialogue with the State party's delegation. The State party's report generally complied with the reporting guidelines, although it lacked updates on the implementation of the Convention in the Caribbean part of the Netherlands. The Committee also appreciates the delegation's oral and written responses to questions raised and concerns expressed during the consideration of the report.

#### **B. Positive aspects**

4. The Committee notes with satisfaction the various measures taken by the State party to implement the standards set by the Convention in the domestic policies and to guarantee the rights of persons not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment in the Kingdom of the Netherlands.

5. The Committee welcomes the ratification by the State party of the following international instruments:

(a) The ratification of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in armed conflict, on 24 September 2009;

(b) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 28 September 2010; and

(c) The International Convention for the Protection of All Persons from Enforced Disappearance, on 23 March 2011.

6. The Committee welcomes the enactment of the following legislation:

(a) The adoption of new legislation to criminalize human trafficking in Curaçao in 2011;

(b) The entry into force of the new Penal Code of Curaçao on 15 November 2011; and

(c) The adoption of the New Criminal Code in Aruba in April 2012, including the new juvenile justice system providing for educational measures and treatment of juveniles.

7. The Committee also welcomes the adoption of the following administrative and other measures:

(a) The establishment in Aruba of an interdepartmental and interdisciplinary Task Force against the trafficking and smuggling of persons in 2007 and the subsequent adoption of a comprehensive counter-trafficking action plan;

(b) The revision of Police Order on Detainees in Aruba in February 2012 incorporating the legally prescribed hours of access by a duty lawyer in order to guarantee the right of consultation with a lawyer even before the first police interview, in accordance with the *Salduz* judgement (no. 36391/02) of the European Court of Human Rights;

(c) The adoption of an instruction for the use of force for prison personnel in Aruba in 2012;

(d) The extension in 2012 of the mandate of the National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children to cover all forms of sexual violence against children in the European part of the Netherlands;

(e) The designation of the national preventive mechanism which has been mandated to serve as national preventive mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, although the Committee expresses some reservations at the lack of its independence, the way it is established and the fact that the mandate is limited to the European part of the Netherlands which may result in differential treatment of some categories of the Dutch nationals;

(f) The steps taken by the Government to improve the quality of its refugee status determination procedure, inter alia, through constant attention and monitoring of the system;

(g) The establishment of a centre for substance abuse addicts as part of the criminal justice system in Aruba; and

(h) The improvement of detention conditions through renovations and expansions of several detention and correctional facilities in Curaçao.

## **C. Principal subjects of concern and recommendations**

### **Enforcement of prohibition of torture and ill-treatment**

8. While noting the availability of data on investigations and prosecutions into alleged offences of torture and ill-treatment by law enforcement officers in Curaçao, the Committee regrets the absence of clarity as well as specific information as to which allegations and investigations of torture and ill-treatment by public officials in the other parts of the Kingdom, if any and if proven true, amounted to torture, under article 1 of the Convention, or to cruel, inhuman or degrading treatment or punishment, under article 16 of the Convention (arts. 1, 12, 13 and 16).

**In accordance with the Committee's General Comment No. 2 (2007), the State party should:**

(a) **Provide statistics on the allegations and investigations of torture and ill-treatment by public officials in all four parts of the Kingdom; and**

**(b) Clarify which of the incidents of ill-treatment by law enforcement officers, if proven true, amount to torture, and other cruel, inhuman or degrading treatment or punishment; and**

**(c) Provide training to the law enforcement personnel to effectively apply the prohibition of torture and ill-treatment to appropriately sanction such acts.**

#### **Direct applicability of the Convention**

9. The Committee notes that the State party stated during the consideration of the report that the Convention is directly applicable and self-executing; however, the Committee has not been provided with specific information on cases in which the Convention has been invoked and directly applied before the national courts in the individual parts of the Kingdom (arts. 2 and 10).

**The Committee recommends that the State party undertake all necessary steps to ensure direct applicability of the Convention including by dissemination of the Convention to all public authorities, including the judiciary, and raising the awareness thereon to facilitate direct application of the Convention before national courts in all four parts of the Kingdom, and that it provide an update on the illustrative cases.**

#### **Right of access to a lawyer**

10. The Committee notes that the right of access to a lawyer is regulated by the instruction of the Board of Procurators General of 1 April 2010. It also observes that the draft Bill on Counsel and Police Interviews is being prepared. However, the Committee is concerned about the practice of restricting the right of access to a lawyer during police interrogation only to suspects under the age of 18 and anyone accused of a crime carrying a prison sentence of six years or more. The Committee is also concerned that the draft Bill contains an exception to the effect that the request for legal assistance can be denied if such legal assistance is “contrary to the interests of the investigation” which may lead to arbitrary restrictions of this right by the Public Prosecution’s Office. The Committee also notes that there are no advocates based in Sint Eustatius and Saba (Caribbean Netherlands) and that detained suspects in police custody in Sint Eustatius often sign a waiver to have a lawyer present during the first police interrogation (art. 2).

#### **The State party should:**

**(a) Review in all parts of the Kingdom its criminal procedures and practice with a view to guaranteeing to persons in police custody an access to a lawyer from the moment of deprivation of liberty;**

**(b) Consider timely adoption of the draft Bill on Counsel and Police Interviews to allow all suspects of an indictable offence, whether detained or not, to rely on access to and assistance from a lawyer at an earlier stage in the proceedings; and**

**(c) Define in law the circumstances when the right to legal assistance can be restricted to avoid arbitrary limitations of the access to a lawyer.**

#### **Non-refoulement**

11. Noting the positive impacts of amending the asylum procedure in July 2010, introducing the eight-day accelerated procedure, and the information that almost 90 per cent of new asylum applications were processed or at least interviewed under the eight-day procedure, the Committee is nevertheless concerned that the pressure to decide claims speedily puts constraints on procedural safeguards and fair review of applications by the Immigration and Naturalization Service. In particular, the Committee is concerned that:

(a) The accelerated procedure may prevent asylum-seekers from fully presenting and substantiating their claims and therefore put the persons in need of international protection at heightened risk of rejection and possible return to a country where they may face persecution, torture or ill-treatment, in violation of the *non-refoulement* principle (art. 3).

(b) Only 12 hours of legal aid are allocated during the asylum procedure, which may limit the quality of legal advice to asylum seekers with complex claims (art. 3).

(c) The information forwarded by the asylum-seeker after the initial decision has been taken by the authorities concerned, is considered to have less value than the information provided before the initial decision was adopted and that the appeal procedures before the Council of State (the Administrative Jurisdiction Division) provide only for a marginal review of the facts which substantially limits the effectiveness of the appeal procedures (art. 3).

**Noting the intention of the State party to evaluate the accelerated asylum procedure in 2013, the Committee recommends that the State party consider the following revisions:**

(a) Allow sufficient time for asylum-seekers, especially those in the accelerated procedures, to fully indicate the reasons for their application and obtain and present crucial evidence in order to guarantee fair and efficient asylum procedures in order to ensure that the legitimacy of applications for protection by refugees and other persons in need of international protection is duly recognized and *refoulement* is prevented;

(b) Allow for adequate legal assistance to all asylum-seekers including by providing for exceptions from the maximum number of hours of legal assistance during the asylum procedure to facilitate submission of complex claims; and

(c) Allow asylum-seekers to present new evidence which could not be made available at the time of the first interview on the merits and ensure that the appeal procedures before the Council of State provide for a full review of rejected applications.

#### **Medical examinations as part of asylum procedure**

12. The Committee is also concerned that during medical examinations as part of asylum procedure, the individuals are primarily assessed on their ability to be interviewed while disregarding their eventual needs of treatment and support due to ill-treatment, torture or trauma suffered. This practice of not using the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) as a means for establishing link between the asserted ill-treatment in the asylum application and the findings of actual physical examination is not in conformity with the requirements set out in the Istanbul Protocol (arts. 3 and 10).

**The Committee recommends that the State party take measures:**

(a) To identify asylum-seekers with specific needs as early as possible by ensuring that during the medical examination as part of asylum procedure the applicants are assessed for both their capacity to be interviewed properly as well as their eventual needs of treatment and support due to ill-treatment, torture or trauma suffered;

(b) To apply the Istanbul Protocol in the asylum procedures and to provide training thereon to concerned professionals to facilitate monitoring, documenting and investigating torture and ill-treatment, focusing on both physical and psychological traces, with a view to providing redress to the victims.

### **Residence permits to asylum-seekers**

13. The Committee notes with concern the reports by reliable sources on Government's intention to change the Aliens Act to abolish article 29, paragraph 1 (c), of the Aliens act providing for residence permit based on humanitarian grounds, leaving discretion to the Government to reflect for example on the level of integration in the country. This intention is reportedly motivated by the new Government policy to counter the perceived abuse of the law by requiring the asylum seekers to prove the well-founded fear of persecution or real risk of suffering cruel or inhuman treatment. The Committee is also concerned at reports that in the context of such evaluations the Government tends to place emphasis on the fact that if perpetrators of atrocious acts are duly prosecuted in the country of destination, the victims are no longer considered being at risk to be subjected to torture or ill-treatment upon return to that country. This policy may not fully address the psychological conditions of the concerned individual and therefore should not result in a negative decision on asylum and return of the person to his country (art. 3 and 16).

**The Committee recommends that the State party consider maintaining the provision in article 29(1) (c) of the Aliens Act and ensure that the assessment of well-founded fear take into account, *inter alia*, previous experience of persecution or serious harm as being seriously indicative of a well-founded fear and whether or not protection against widespread and generalized violence in the country of destination can be provided by either the state or other actors, in accordance with article 3 of the Convention.**

### **Detention of asylum seekers and foreigners based on migration law**

14. The Committee is concerned that asylum seekers arriving at Amsterdam's Schiphol airport are systematically detained for average duration of 44 days due to a failure to comply with the necessary visa requirements, which prompted for example a hunger-strike by 19 detainees on 30 April 2013 and the incidents of suicide in protest against detention. Their grounds for stay are processed according to the Dublin II Regulation procedure and they remain detained until its outcome (arts. 11 and 16).

**The Committee urges the State party to ensure that the detention of asylum-seekers is only used as a last resort, and where necessary, for as short period as possible and without excessive restrictions, and to effectively establish and apply alternatives to the detention of asylum-seekers.**

15. The Committee is concerned that the maximum time limit of 18 months for administrative detention of foreign nationals who await expulsion or return to their country of origin, based on article 59 of the Alien Act and article 15 of the EU Return Directive (EU directive 2008/115/EG) is not strictly observed in practice. There have been reports of about 30 per cent of aliens being administratively detained several times for a period longer than 18 months because of apprehensions by the police after the release from their first detention due to absence of valid residence permit.

**The Committee recommends that the State party:**

**(a) Scrupulously observe the absolute time limit for the administrative detention of foreign nationals, including in the context of repeated detention; and**

**(b) Avoid, wherever possible, the accumulation of administrative and penal detention, in excess of the absolute time limit of 18 months of detention of migrants under migration law.**

16. The Committee further notes with concern that the legal regime in alien detention centres is not different from the legal regime in penal detention centres. The reports received by the Committee with regard to the confinement in cell for 16 hours, the absence of day-activities, the use of isolation cells, handcuffs and strip searches of aliens detained

under migration law who await expulsion to their home country have been of particular concern (arts. 11 and 16).

**The Committee urges the State party to ensure that the legal regime of alien detention is suitable for its purpose and that it differs from the regime of penal detention. The State party is also urged to use alien detention as a last resort and where necessary, for as short period as possible and without excessive restrictions, and to effectively establish and apply alternatives to such detention.**

#### **Unaccompanied children asylum seekers and children in detention**

17. The Committee notes the State party's information that unaccompanied children asylum-seekers continue to be placed in detention centres in the European part of the Kingdom if there is doubt about their age. The Committee is also concerned about the reports by the European Committee for the Prevention of Torture about families with children, who await expulsion, being detained longer than the maximum limit of 28 days (arts. 3 and 11).

**The Committee recommends that the State party:**

(a) **Verify the age of an unaccompanied child, if uncertain, before placing the child in detention. Such detention should be used as a last resort;**

(b) **Take alternative measures to avoid detention of children or their separation from the families; and**

(c) **Ensure that unaccompanied minors can enjoy the rights guaranteed by the Convention on the Rights of the Child, of which the Kingdom of the Netherlands is a party.**

#### **Forced removals**

18. The Committee notes the State party's clarifications of the figures on removals and forced returns of foreign nationals. Out of the total number of removals in the recent years amounting to about 20.000 per year, the number of forced returns was around 6.000. The Committee is concerned at the reported incidents of the excessive use of restraints during forced returns, some of which, according to NGO sources of information, have not been duly investigated (arts. 2, 3, 11, 12 and 16).

**The Committee urges the State party to use restraints during forced returns only in accordance with the principle of proportionality, and to investigate any incidents of excessive use of restraints and force during forced returns.**

#### **Illegal treatment by the police and prison and border guards**

19. The Committee expresses concern at the alleged incidents of illegal use of force, insults and mistreatment in the Koraal Specht prison in Curaçao and the cells at the police stations on the islands of St. Maarten, Bonaire and Aruba, as well as ethnic profiling by the police and border guards aimed in particular at foreigners and members of minorities.

**The State party should take measures to strengthen adequate training to law enforcement personnel and justice officials about the obligations stemming from the Convention and regularly assess the impact and effectiveness of such training measures in order to prevent the acts of torture, ill-treatment and violence.**

#### **Pre-trial detention**

20. The Committee is concerned at the high percentage (38 %) of pre-trial detainees in the Netherlands, and the little consideration of alternatives to pre-trial detention. The Committee is also concerned that pre-trial detention does not serve as a measure of last

resort; instead it was reported that a bill is currently discussed in Parliament which may lead to the further extension of the grounds for pre-trial detention for up to seventeen days before a hearing takes place. In addition, the Committee is concerned by the State party's response that the nature of sentencing is generally lenient. This was not considered by the Committee as a convincing argument, especially in light of the absence of commitment to reduce the use of pre-trial detention. The Committee further observes with concern the absence of systems to obtain disaggregated data about the composition of detainee population. Finally, the Committee is concerned at the length of pre-trial detention in Aruba (up to 116 days) and in Curacao (up to 116 days, and 146 days in the event of preliminary judicial investigation), which can be exceptionally extended (arts. 2 and 11).

**The State party should take appropriate measures to reduce the use of pre-trial detention and to ensure that the decisions imposing pre-trial detention are duly substantiated. The State party should use the pre-trial detention as a measure of last resort, consider alternative measures to its use and observe presumption of innocence. The State party should also establish systems to obtain disaggregated data about the composition of detainee population to avoid disproportionate representation of minorities. In addition, the Governments of Aruba and Curacao should review criminal legislation to further shorten the length of pre-trial detention and guarantee the suspects the right to be brought before a judge within one or two days from the arrest.**

#### **Forced internment in mental health care**

21. The Committee is concerned at the high numbers of persons with mental and psychosocial disabilities who are held in mental health care institutions on involuntary basis, often for a lengthy period of time. The Committee is further concerned at the frequent use of solitary confinement, restraints and forced medication which may amount to inhumane and degrading treatment. Taking into account the information received during the consideration of the report on plans regarding mental health care, the Committee remains concerned at the lack of focus on alternatives to hospitalization of persons with mental and psychosocial disabilities. Finally, the Committee is concerned about the frequent lack of effective and impartial investigation of the excessive use of restrictive measures in mental health care institutions (arts. 2, 11, 13 and 16).

#### **The Committee recommends to the State party to:**

**(a) Develop alternative measures to reduce the number of forcibly interned persons with mental and psychosocial disabilities and ensure that involuntary internments in places of deprivation of liberty, including psychiatric and social care institutions, are done on the basis of a legal decision, guaranteeing all effective legal safeguards;**

**(b) Strengthen the possibilities for appeal of decisions and effective access to complaint mechanisms for interned persons;**

**(c) Use restraints and solitary confinement as a measure of last resort when all other alternatives for control have failed, for the shortest possible time and under strict medical supervision;**

**(d) Undertake effective and impartial investigations into incidents where the excessive use of restrictive measures resulted in injuries and/or death of the interned persons; and**

**(e) Provide remedies and redress to the victims.**

### **Access to complaint mechanisms**

22. The Committee is concerned about the lack of clarity about the State party's strategies to inform, through the Custodial Institutions Inspectorate, alleged victims of torture and ill-treatment in detention facilities, including immigration detention centres, about the available complaint procedures against detention personnel (arts. 12, 13 and 16).

**The Committee recommends to the State party to take further steps:**

(a) **To sensitize detainees, through the Custodial Institutions Inspectorate, about the possibility and procedure for filing a complaint of alleged torture and ill-treatment in detention facilities against the respective categories of detention personnel;**

(b) **To make such information available and widely publicised, including by displaying it in all places of detention; and**

(c) **To ensure that all allegations of misconduct by the detention personnel are duly assessed and investigated, including the cases of intimidation or reprisals as a consequence of the complaints of ill-treatment.**

### **Prompt, independent and thorough investigations**

23. While welcoming the clarification on the mechanisms of investigation of ill-treatment and abuse of prisoners (paras. 73-77 of the Report), the Committee is concerned at the absence of any indication of the impact of the measures to reduce cases of ill-treatment in the detention facilities, including immigration detention centres. The Committee is also concerned about the lack of independent, impartial and effective investigations of inter-prisoner violence in Aruba and Curaçao (arts. 12, 13 and 16).

**The Committee recommends that the State party:**

(a) **Inform it about measures to ensure prompt, impartial and effective investigations into all allegations of torture and ill-treatment in detention facilities, including immigration detention centres, and measures to bring the perpetrators to justice and compensate the victims appropriately;**

(b) **Assess the impact of those measures in reducing the cases of ill-treatment in all detention facilities and update the Committee accordingly; and**

(c) **Undertake independent, impartial and effective investigations of inter-prisoner violence in Aruba and Curaçao and facilitate request for compensation, including by family members of the inmates.**

### **Redress**

24. Noting the State party's indication about the avenues of seeking redress and reparation through the criminal, civil and administrative proceedings (para. 90 of the Report), the Committee notes with concern the lack of specific information about the number and instances of redress and reparation measures, including the means of compensation ordered by the courts and actually provided to victims of torture, or their families, since the examination of the last periodic report in 2007. The Committee is also concerned that while an independent investigation into the fire in the immigration detention centre at Amsterdam's Schiphol airport, killing 11 people and injuring 15 on the night of 26 to 27 October 2005, concluded that fire precautions had severely failed, no officials were held accountable and none of the victims or their families received redress and reparation as part of the 2007 Haarlem court judgement (art. 14).

**The Committee requests the State party to indicate in its next periodic report the number of requests for redress and reparation, including compensation, the number granted, the amounts of compensation ordered and actually provided in each case. In**



particular, the State party should grant redress and reparation to the victims of the fire in the immigration detention centre at Amsterdam's Schiphol airport in 2005 or their families. The Committee draws the State party's attention to the recently adopted general comment No. 3(2012) on article 14 of the Convention which explains the content and scope of the obligations of States parties to provide full redress to victims of torture.

### **Trafficking**

25. The Committee notes with concern that the number of criminal investigations of trafficking in human beings rose to 150 in 2012 and that there have been 140 convictions for trafficking in human beings in 2012 which represents a substantial increase compared to previous years. The Committee is thus concerned at the State party's information that 'since trafficking is very difficult to detect it is impossible to say if there has been an increase or decrease in the total number of cases, i.e. identified and unidentified cases of sexual exploitation and trafficking taken together' (para. 150 of the Report) (arts. 2, 3, 12, 14 and 16).

**The Committee recommends to the State party to:**

(a) Prevent and to promptly, thoroughly and impartially investigate, prosecute and punish trafficking in persons and related practices, including the incidents of trafficking of minors;

(b) Provide adequate protection and means of redress to victims of trafficking, including the assistance to report incidents of trafficking to the police, in particular by providing legal, medical and psychological aid and rehabilitation including adequate shelters, as well as protection of witnesses, in accordance with article 14 of the Convention;

(c) Prevent return of trafficked persons to their countries of origin where there is a substantial ground to believe that they would be in danger of exploitation and torture or ill-treatment;

(d) Provide regular training to the police, prosecutors and judges on effective prevention, investigation, prosecution and punishment of acts of trafficking, including on the guarantees of the right to be represented by an attorney of one's own choice, and inform the general public on the criminal nature of such acts;

(e) Undertake research into the impact of preventive measures and criminal justice response to counter trafficking in human beings with a view to increasing their efficiency; and

(f) Compile disaggregated data on trafficking in human beings including cases of sexual exploitation and trafficking of children, to be regularly updated.

### **Physical restraints in places of detention and incidents of death**

26. The Committee notes with concern the reports of the incidents of death in places of detention some of which have allegedly been related to the excessive use of physical restraints such as isolation measures.

**The Committee recommends that the State party carry out thorough investigations of deaths and ascertain whether there is a link between the use of measures of physical restraints and the incidents of death in places of detention.**

### **Use of Electrical Discharge Weapons (Tasers)**

27. The Committee is concerned about the pilot plan to be reportedly launched to distribute electrical discharge weapons to the entire Dutch police force, without due

safeguards against misuse and proper training for the personnel. The Committee is concerned that this may lead to excessive use of force (arts. 2, 11 and 16).

**The Committee recommends to the State party, in accordance with articles 2 and 16 of the Convention, to refrain from flat distribution and use of electrical discharge weapons by police officers. It also recommends adopting safeguards against misuse and providing proper training for the personnel to avoid excessive use of force. In addition, the Committee recommends that electrical discharge weapons should be used exclusively in extreme limited situations where there is a real and immediate threat to life or risk of serious injury, as a substitute for lethal weapons.**

#### **The National Agency for the Prevention of Torture**

28. The Committee takes positive note that the State party designated six different bodies as the national preventive mechanism (NPM) in accordance with the Optional Protocol to the Convention in April 2012 (three national inspectorates on public order and safety, health care and youth care, a supervisory commission and a council, coordinated by the Inspectorate of Justice and Security). Since the inspectorates that form the NPM are organisational divisions of various ministries, the Committee is concerned about the alleged lack of perceived independence of the NPM and the limitation of its mandate to the European part of the Netherlands (arts. 2 and 12).

**While noting that the Optional Protocol leaves the institutional format in which the NPM is established to the State Party's discretion, the Committee recommends that the State party:**

(a) **Ensure and respect complete financial and operational independence of the NPM, both factual and perceived, when carrying out its functions, in accordance with article 18, paragraph 1, of the Optional Protocol and the Subcommittee on Prevention on Torture's "Guidelines on national preventive mechanisms", with due regard to the Paris Principles; and**

(b) **Explain in its next periodic report what progress has been made to accept and apply the Optional Protocol to the Caribbean part of its territory and the autonomous islands in order to establish the NPMs tailored for the needs of the islands and allow for the visits by the Subcommittee on Prevention of Torture.**

#### **The National Human Rights Institution**

29. The Committee notes with appreciation the establishment of the Netherlands Institute for Human Rights in October 2012, independent from the Government, but it regrets that while the mandate extends to the Caribbean Netherlands it does not cover the autonomous territories of the Kingdom. In this respect it notes the commitment made by the Governments of Aruba and Curaçao in the context of the Universal Periodic Review to establish similar but separate institutions (arts. 2 and 12).

**The Committee recommends that the Governments of Aruba and Curaçao deliver on their commitment and establish separate National Human Rights Institutions as a matter of priority. The Government of St. Maarten should also consider establishing the National Human Rights Institution.**

#### **Data collection**

30. In light of the Committee's previous concluding observations (para. 17), the Committee regrets the State party's response 'that the Government is unable to provide information as data are not registered in a way that would allow the production of the statistics' (para. 89 of the Report) on complaints, investigations, prosecutions, convictions and sanctions of cases of torture and ill treatment by law enforcement, security, military

and prison personnel. The Committee observes with concern the State party's response that the law does not allow for the collection of such data (arts. 2, 12, 13 and 16).

**The State party recommends to the State party to:**

**(a) Establish a national system for the collection of data including through research studies to facilitate analysis of the implementation of the Convention; and**

**(b) Provide the Committee with detailed statistical data, disaggregated by crime, ethnicity, age and sex, relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions, convictions and penal or disciplinary sanctions of cases of torture and ill-treatment by law enforcement, security, military and prison personnel, domestic and sexual violence, crimes with racist motives, ethnic composition of the detainee population including the representation therein of Antilleans, Moroccans, Roma, Sinti and Turks, as well as on means of redress, including compensation and rehabilitation provided to the victims.**

31. The Committee is also concerned about the lack of updates in the report, due to privacy concerns, on the asylum applications, including their outcomes.

**The Committee reiterates its recommendation that, in order to have a clearer view of the situation regarding protection against torture, the State party include in its future reports, data which are disaggregated by age, sex and ethnicity on:**

**(a) The number of asylum applications registered and the number of applications processed respectively under the normal and accelerated procedures;**

**(b) The number of applications accepted;**

**(c) The number of applicants whose applications for asylum was accepted on grounds that they had been tortured or might be tortured if returned to their country of origin and data on asylum granted on grounds of sexual violence; and**

**(d) The number of cases of refoulement or expulsion.**

#### **Other issues**

32. The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party, including the Convention on the Rights of Persons with Disabilities and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and to consider signing and ratifying the Optional Protocol to the Convention on the Rights of Persons with Disabilities, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure.

33. The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

34. The State party is invited to submit its **common core document** in accordance with the requirements of the common core document contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6).

35. The Committee requests the State party to provide, by 31 May 2014, follow-up information in response to the Committee's recommendations related to (1) ensuring or strengthening the right of access to a lawyer for persons in police custody, (2) conducting, prompt, impartial and effective investigations, and (3) statistics on prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, as contained in paragraphs 10, 23, and 30 of the present document. In addition, the Committee requests follow-up information on detention of asylum seekers and foreigners based on migration law and forced internment in

mental health care, including “providing remedies and redress to the victims”, as contained in paragraphs 14-17 and 21 of the present document.

36. The State party is invited to submit its next report which should cover all parts of the Kingdom of the Netherlands, which will be the 7<sup>th</sup> periodic report, by 31 May 2017. To that purpose, the Committee will, in due course, submit to the State party a list of issues prior to reporting, considering that the State party has accepted to report to the Committee under the optional reporting procedure.

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