



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

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**Committee on Enforced Disappearances**

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

Addendum

**Aruba (Netherlands)**

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\* The present document is being issued without formal editing.



## **I. General**

1. The International Convention for the Protection of All Persons from Enforced Disappearance (the Convention) entered into force for Aruba on 21 December 2017.
2. The Convention contains a package of measures intended to prevent and combat enforced disappearance and protect victims. It also establishes a Committee on Enforced Disappearances to supervise implementation.
3. The purpose of this report is to comply with the requirement laid down in article 29 of the Convention to report on the measures Aruba has taken to give effect to its obligations under the Convention.

## **II. General legal framework**

4. Although enforced disappearance by agents of the state does not occur in Aruba, the country may be confronted with the phenomenon in cases where a person suspected of committing an enforced disappearance outside Aruba is found on Aruban territory.
5. With a view to the implementation and acceptance of the Convention, Aruba amended the National Ordinance on International Crimes (*Landsverordening internationale misdrijven*, Lim). The Lim was introduced to implement the Rome Statute of the International Criminal Court and entered into force on 7 November 2012. Article 4 (h) designates the serious offence of widespread or systematic enforced disappearance as a crime against humanity. Because the Convention also prescribes that enforced disappearance of persons must constitute a punishable substantive offence (article 4 of the Convention), consideration was given to incorporating a provision in the Lim criminalising that serious offence.
6. The government is further of the opinion that it is appropriate for the Lim to include the offence of enforced disappearance, given the nature and gravity of that crime. The Convention also requires that the necessary measures are taken to hold superiors criminally responsible. Criminal responsibility of this kind is laid down in article 9 of the Lim. In addition, article 2 of the Lim provides for substantial extraterritorial jurisdiction. As the Convention imposes an obligation to create substantial extraterritorial jurisdiction, it was therefore desirable to align with the Lim in this regard. Finally, under the Convention enforced disappearance must not be regarded as a political offence. The Lim contains a provision to that effect (in article 12), making implementation of the Convention by means of that national ordinance desirable.

## **III. Information about the implementation of the Convention in Aruba**

### **Article 1**

7. Aruba had already established, in article 4 (h) of the Lim, that the serious offence of widespread or systematic enforced disappearance is a crime against humanity. With the introduction of article 8a of the Lim, Aruba made enforced disappearance of persons punishable as a substantive crime.

### **Article 2**

8. In order to implement the Convention with regard to the definition of ‘enforced disappearance’ Aruba used the definition of enforced disappearance in article 4 (h) of the Lim as the basis and amended various elements of the definition so that it now reads as follows: the arrest, detention, abduction or any other form of deprivation of liberty of persons by, or with the authorisation, support or acquiescence of a State or a political organisation, followed by a refusal to acknowledge that deprivation of liberty or to give information on the fate or whereabouts of those persons, thereby removing them from the protection of the law.

### Article 3

9. This article of the Convention obliges Aruba to take enforcement action against forms of deprivation of liberty in which the state is not involved. It should be noted that intentional deprivation of liberty is a punishable offence under articles 2:249, 2:250 and 2:251 of Aruba's Criminal Code.

### Article 4

10. When the Lim was amended a new article 8a was added, making enforced disappearance a substantive punishable offence.

11. Article 8a, paragraph 1, provides that anyone who commits the offence of enforced disappearance of a person, as defined in article 4 (h), is liable to a term of imprisonment not exceeding fifteen years or a fine not exceeding AWG 100,000.

12. Under paragraph 2, a more severe penalty consisting of life imprisonment or a determinate term of imprisonment not exceeding thirty years or a fine not exceeding AWG 1,000,000 may be imposed if the offence:

- (a) results in death or serious bodily injury or involves rape of a person;
- (b) involves violence, committed in association, against a person or violence against a sick or wounded person;
- (c) is committed against a pregnant woman, a minor, a person with disabilities or another particularly vulnerable person;
- (d) is committed against a group of persons.

### Article 5

13. Widespread or systematic enforced disappearance was already a punishable offence under article 4 of the Lim.

14. The opening words of article 4 of the Lim and point h of that article provide that the commission of an enforced disappearance of a person within the context of a widespread or systematic attack against a civilian population constitutes a crime against humanity. Anyone who commits this serious offence is liable to life imprisonment or a determinate term of imprisonment not exceeding 30 years or a fine not exceeding AWG 1,000,000.

### Article 6

15. Criminal responsibility is regulated in various statutory provisions.

16. The Criminal Code of Aruba contains general provisions that also cover the serious offences that are punishable under the Lim. For example, the attempted commission of a serious offence is regulated in article 1:119 of Aruba's Criminal Code and the preparation of a serious offence is regulated in article 1:120. Article 1:123 describes various forms of participation in a serious offence, namely committing a criminal offence, whether as an individual or jointly with another person, and soliciting the commission of a criminal offence. Article 1:124 covers participating as an accessory to a serious offence.

17. In addition, article 9 of the Lim provides that a superior is liable to the same penalties as the perpetrator if the superior (a) intentionally permits the commission of such an offence by a subordinate; or (b) intentionally fails to take measures, in so far as these are necessary and can be expected of the superior, if one of their subordinates has committed or intends to commit such an offence.

18. Article 11, paragraph 1, of the Lim provides in this context that a crime as defined in the national ordinance which was committed pursuant to a regulation issued by the legislature or pursuant to an order of a superior must remain an offence.

19. Paragraph 2 regulates the exclusion of a defence based on an order or instruction as justification for a criminal offence defined in the national ordinance. Paragraph 3 negates the effect of paragraph 2 in the case of enforced disappearance. After all, an order to commit an enforced disappearance of a person is deemed to be manifestly unlawful.

## **Article 7**

20. Article 8a, paragraph 1, of the Lim provides that anyone who commits the offence of enforced disappearance is liable to a term of imprisonment not exceeding fifteen years or a fine not exceeding AWG 100,000. Paragraph 2 sets out a number of aggravating circumstances which can lead to the imposition of a sentence of life imprisonment or a determinate term of imprisonment not exceeding 30 years or a fine not exceeding AWG 1,000,000.

21. The serious offence of enforced disappearance committed as part of a widespread or systematic attack carries a sentence of life imprisonment or a determinate term of imprisonment not exceeding 30 years or a fine not exceeding AWG 1,000,000.

## **Article 8**

22. Article 13 of the Lim provides that there is no statute of limitations for the prosecution of offences such as enforced disappearance committed either as part of a widespread or systematic attack or as a substantive offence. This is an exception in Aruban criminal law such that article 13 emphasises the gravity of the offence of enforced disappearance.

## **Articles 9 and 10**

23. Aruban jurisdiction over the offence of enforced disappearance is established in articles 1:2 and 1:3 of the Criminal Code of Aruba and article 2, paragraph 1 (c) of the Lim. Articles 1:2 and 1:3 of the Criminal Code of Aruba provide that Aruban criminal law applies to anyone who commits any criminal offence in Aruba or does so outside Aruba while on board a Dutch or Aruban ship or aircraft. Article 2, paragraph 1 (c), of the Lim provides that Aruban criminal law applies to Dutch nationals or non-Dutch nationals whose habitual place of residence is in Aruba and who commit one of the offences defined in the Lim outside Aruban territory.

24. Article 9, paragraph 1 (c), of the Convention makes provision for the passive personality principle. This jurisdiction is established in article 2, paragraph 1 (b), of the Lim.

25. Article 9, paragraph 2, of the Convention contains the obligation to establish secondary universal jurisdiction in those cases in which the alleged offender is present in any territory under the state's jurisdiction and it does not extradite them to another state or surrender them to an international criminal tribunal. This jurisdiction is established in article 2, paragraph 1 (a), of the Lim.

## **Article 11**

26. If Aruba has jurisdiction and does not extradite the alleged offender, it will bring the person concerned before the competent authorities for prosecution as soon as possible. During this process the alleged offender's fundamental procedural rights will be safeguarded.

## **Article 12**

27. Aruban criminal procedure applies to the criminal offences defined in the Lim. For example, article 199 of Aruba's Code of Criminal Procedure states that anyone who has knowledge of the commission of a criminal offence may lodge a criminal complaint. This right is not limited to the victim. Pursuant to article 201, paragraph 4, of the Code of Criminal

Procedure, investigating officers are required to receive any such complaint. If the public prosecutor decides, on the basis of the investigation, that prosecution is warranted, the prosecutor will institute criminal proceedings as soon as possible (article 207 of the Code of Criminal Procedure of Aruba).

### **Article 13**

28. The first paragraph of this article of the Convention provides that for the purposes of extradition, the offence of enforced disappearance must not be regarded as a political offence. Article 12 of the Lim gives effect to the obligation not to regard the offences defined in the Lim, including enforced disappearance, as political offences. Extradition is therefore possible, in principle, under article 2b, paragraph 1, of the Extradition Decree of Aruba, Curaçao and St Maarten.

### **Article 14**

29. This article of the Convention requires states parties to provide mutual legal assistance in respect of the offences covered by the Convention. Under articles 555 et seq. of the Code of Criminal Procedure of Aruba, the granting of requests for mutual legal assistance is conditional upon the existence of a treaty basis. That basis can be found in article 14 of the Convention.

### **Article 15**

30. With respect to the passage on requests for mutual legal assistance in searching for victims, the Public Prosecution Service must afford the greatest possible measure of mutual assistance in so far as the request is based on a treaty (article 558, paragraph 1, of the Code of Criminal Procedure of Aruba).

31. In cases involving a reasonable request that is not based on a treaty, and cases in which the applicable treaty does not require the granting of requests, the request will nonetheless be granted as long as this does not contravene a statutory provision or instructions issued by the Minister of Justice (article 558, paragraph 2 of the Code of Criminal Procedure of Aruba).

32. The substance of requests for international mutual legal assistance differs from case to case. Depending on the nature of the request, the Public Prosecution Service can conduct investigative tasks or provide investigative assistance, dispatch documents, files or items of evidence, serve or issue documents or give notifications to third parties.

### **Article 16**

33. This article provides that no state party may expel, return (“refouler”), or extradite a person to another state where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance. This obligation already arises from article 3 of the European Convention on Human Rights.

34. Article 16 also has similarities to the non-refoulement principle laid down in article 33 of the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 (Dutch Treaty Series 1951, 131), but should be distinguished from it since, unlike article 33, it is unrelated to the question of whether the life or freedom of the person concerned would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

### **Articles 17 to 23**

35. Articles 17 to 23 contain a large number of rules designed to ensure the lawfulness of the detention and prevent unlawful detention and enforced disappearance.

36. In this respect it is important to note that article I.5, paragraph 1, of the Constitution of Aruba provides that no person may be deprived of their liberty except in accordance with regulations to be laid down by or pursuant to a National Ordinance. Aruban criminal procedure and prison law provide for the application of the criminal law in accordance with these rules of the Convention. For example, in the context of article 17, paragraph 2 (b), of the Convention, the Code of Criminal Procedure of Aruba provides that in the preliminary judicial investigation phase a person may be deprived of their liberty by the Public Prosecution Service or by the criminal court when the sentence is enforced.

37. An important safeguard in ensuring that persons do not ‘get lost’ in the prison system is the obligation in article 17, paragraph 3, to compile and maintain official registers and records of deprivations of liberty and persons in custody. The Code of Criminal Procedure of Aruba and the Prisons Decree contain provisions relating to keeping a register of persons deprived of liberty. When a prisoner is admitted the prison director records the personal details of the prisoner in the register, the judge or public servant who ordered the arrest or imprisonment, the date of the arrest warrant or judgment, the date of admission and, in the case of conviction, the criminal offence, the nature and duration of the sentence, as well as the start and end dates of the sentence. The prisoner’s date of release and the order or judgment on which basis the prisoner was released and, if the prisoner dies while serving the sentence, the date of death are recorded in the register.

38. With regard to the training of personnel involved in the custody of persons deprived of liberty, it is important to note that the Public Prosecution Service participates every year in a course on current topics of interest in criminal and procedural law.

## **Articles 18, 19 and 20**

39. Any person deprived of liberty is entitled by law to the assistance of a lawyer. Any person deprived of liberty and his lawyer have a right of access to all the information listed in article 18, paragraph 1, of the Convention. This information is furnished automatically (in criminal proceedings, at any rate) or at the written request of the person concerned.

40. The relatives of the person deprived of liberty or their lawyer may ask that person or his lawyer to forward this information to them. Neither the prison register referred to in article 21 of the Prisons Decree nor the register used for other forms of deprivation of liberty referred to in article 622 of the Code of Criminal Procedure of Aruba are public. Article I.16 of the Constitution of Aruba guarantees the right to respect for privacy and the protection of personal data.

## **Article 24**

41. Under the Code of Criminal Procedure of Aruba, anyone who suffers harm due to the commission of a criminal offence by another person may register as an aggrieved party during the criminal investigation, and state whether they wish to claim compensation or be kept informed about the progress of the case. If the aggrieved party requires assistance or support, the police will mediate on the victim’s behalf as needed. If the public prosecutor believes that prosecution can be dispensed on grounds of public interest, the interests of the aggrieved party will be taken into account. If the case is prosecuted, the public prosecutor keeps the aggrieved party informed of events in the proceedings that are of interest to them. If the case is not prosecuted, the public prosecutor informs the aggrieved party of the possibility of lodging a complaint.

42. The aggrieved party may join the criminal proceedings at the first instance if the compensation for damage is at least AWG 50,000. The aggrieved party or their lawyer is entitled to have access to the documents in the action. The person concerned may introduce witnesses and experts during the hearing.

43. With regard to the obligation laid down in article 24, paragraph 4, of the Convention requiring the state party to make provisions to secure the legal status of victims of enforced disappearance, it should be noted that, as in the Dutch Civil Code, Book 1 of the Civil Code

of Aruba lays down regulations that apply in the case of missing persons and the legal presumption of death. Article 1:409 of the Civil Code of Aruba provides for measures that can be taken to arrange for the administration of a missing person's property. Article 1:413 of the Civil Code of Aruba 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.

## Article 25

44. The purpose of this provision is to protect (under criminal law) children who are subjected to enforced disappearance, children whose father, mother or legal guardian is subjected to enforced disappearance or children born during the captivity of a mother subjected to enforced disappearance.

45. In this regard article 2:246 of the Criminal Code of Aruba provides that:

(a) Anyone who intentionally removes a minor from the authority under which he has been lawfully placed or from the supervision of a person authorised to exercise such supervision is liable to a term of imprisonment not exceeding six years or a fine not exceeding AWG 100,000;

(b) If deception, violence or the threat of violence is used, or if the minor is under the age of twelve, the offender is liable to a term of imprisonment not exceeding nine years or a fine not exceeding AWG 100,000.

46. Article 2:247 of the Criminal Code of Aruba provides that:

"Anyone who intentionally and unlawfully conceals a minor who has been removed, or who has absconded, from the authority under which he has been lawfully placed or from the supervision of the party authorised to exercise such supervision, or who impedes the efforts of the criminal justice authorities or police officers to find him, is liable to a term of imprisonment not exceeding three years or a fine not exceeding AWG 25,000, or, if the minor is under the age of twelve, to a term of imprisonment not exceeding six years or a fine not exceeding AWG 100,000."

47. Article 2:249 of the Criminal Code of Aruba provides that:

(a) Anyone who intentionally and unlawfully deprives another person of his liberty or keeps him deprived thereof is liable to a term of imprisonment not exceeding eight years or a fine not exceeding AWG 100,000;

(b) If as a consequence of the offence the victim suffers serious bodily injury, the offender is liable to a term of imprisonment not exceeding nine years or a fine not exceeding AWG 100,000;

(c) If the offence results in a person's death, the offender is liable to a term of imprisonment not exceeding twelve years or a fine not exceeding AWG 100,000;

(d) Anyone who intentionally makes premises available for the purpose of unlawful deprivation of liberty is likewise liable to the penalties laid down in this article.

48. With regard to the provisions of article 25, paragraph 1 (b), of the Convention, articles 2:184 to 2:189 of the Criminal Code of Aruba apply to falsification. In addition, article 2:190 of the Criminal Code of Aruba provides that anyone who commits an act that obfuscates from whom a person is descended is liable to a term of imprisonment not exceeding five years or a fine not exceeding AWG 25,000.

49. With regard to the provisions of article 25, paragraph 4, of the Convention, an adoption may be annulled by court decision at the request of the adoptee. The application for annulment must be submitted within five years after the adoptee learns of the adoption. If the adoptee learns of the adoption while still a minor, the application may be submitted up to five years after the adoptee reaches the age of majority.