



International Convention for the Protection of All Persons from Enforced Disappearance

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Summary record of the 82nd meeting

Held at the Palais Wilson, Geneva, on Tuesday, 18 March 2014, at 3 p.m.

Chairperson: Ms. Janina

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The meeting was called to order at 3 p.m.

Consideration of reports of States parties to the Convention

Initial report of the Netherlands (CED/C/NLD/1; CED/C/NLD/Q/1 and Add.1)

1. *At the invitation of the Chairperson, the delegation of the Netherlands took places at the Committee table.*

2. **Mr. Stevens** (Netherlands) said that the report under consideration addressed the measures in force on the mainland only. The country's Caribbean territory, comprising the islands of Aruba, Curaçao and Sint Maarten, had a certain amount of autonomy, including in the implementation of international commitments, and had not been ready to fully implement the Convention when it had been ratified. The extension of the ratification to those three islands was planned and would take place when the necessary legislation had been adopted. The Netherlands, home to several institutions responsible for combating impunity in international crimes, had long been a staunch defender of international law and had even written that role into its Constitution, and therefore had naturally played an active part in drawing up the Convention and had made every effort to guarantee its full application. To that end it had amended the few texts still requiring revision, notably the International Crimes Act. For example, the offence of enforced disappearance, already classified as a crime against humanity, had been made an autonomous offence. While enforced disappearance did not occur in the Netherlands, it remained possible that there were individuals in the country suspected of having committed the crime abroad. The Netherlands had established its universal jurisdiction for the crime of enforced disappearance when the crime had been committed against a national of the Netherlands or by a national of the Netherlands or a person in the country. The maximum punishment was 15 years' imprisonment and/or a fifth category fine or, in some cases, life imprisonment or 30 years' imprisonment and/or a sixth category fine. A report on matters concerning international crimes was submitted annually to the House of Representatives to guarantee maximum transparency of related public prosecutions, and consultations were regularly held within the International Crimes Task Force.

3. **Mr. Decaux** said that the State party might have involved its national human rights institution and NGOs in the drafting of its report and updated its core document, which was quite old. He invited the State party to provide details of the stages and predicted time frames for the extension of the application of the Convention to its island territories and to clarify whether the different types of criminal responsibility provided for in the Convention also existed in those territories, and whether the procedures for surrender, extradition and seeking asylum were the same there as on the mainland. He requested detailed information on the direct applicability of all or part of the Convention on the territories, as well as on the two complaints mentioned in paragraph 23 of the report. He wished to know whether the definition of the crime of enforced disappearance contained in the International Crimes Act was the same for crimes against humanity and for isolated acts, whether concealment of the fate of the disappeared person was included as such in that definition and whether it defined placement outside the protection of the law as a constitutive act. He asked the delegation to clarify the minimum punishments and how the level of fines was determined. He also asked it to provide details on the jurisdiction of military courts and to explain which judicial and police authorities would be competent in cases of the involvement of military personnel in enforced disappearances.

4. **Mr. Yakushiji** asked for clarification on the division of responsibilities among the different bodies responsible for investigating international crimes, including in the Caribbean territories of the Kingdom. He asked to what extent the protection of all witnesses, including those in detention, complainants, lawyers and all other persons involved in investigations was guaranteed. He invited the delegation to provide information

on the mechanisms in place to suspend all public officials suspected of the crime of enforced disappearance during investigations, as well as the security or police force to which they belonged. He also asked the delegation to explain how the independence of the National Police Internal Investigations Department was guaranteed.

5. **Mr. Garcé García y Santos** asked how the National Ombudsman's offices provided its services in the island territories of the Kingdom and when it would be possible to apply the Convention there.

6. **Mr. Hazan** asked for information on the functioning and resources of the National Public Prosecutors' Office. He requested clarification on the discretionary principle and asked whether it was possible to appeal a prosecutor's decision not to open a criminal case.

7. **Mr. Camara** asked whether there were minimum punishments for enforced disappearance, how much fifth and sixth category fines amounted to, what the term of limitation for criminal proceedings was for isolated crimes of enforced disappearance and whether the Netherlands had adopted measures to ensure that the term commenced only from the moment when the offence ceased, in accordance with article 8 of the Convention.

8. **Mr. Huhle** said he wished to know whether the legislation of the Netherlands regarding justice system personnel extended to crimes committed by military personnel, for example contingents participating in United Nations peacekeeping missions and, if not, whether the Netherlands considered it necessary to introduce regulations expressly establishing the competence of the Netherlands authorities to judge such acts.

The meeting was suspended at 3.55 p.m. and resumed at 4.30 p.m.

9. **Mr. Stevens** (Netherlands) said that the Netherlands planned to update its core document by producing a reference document covering its four territories, but was awaiting the results of the discussions on the treaty bodies within the United Nations before making a decision. Regarding the implementation of the Convention in the different territories of the Netherlands, the International Crimes Act, including its provisions relating to surrender, was applicable to all of the Netherlands, including the Caribbean territories. Aruba, Curaçao and Sint Maarten had not yet ratified the Convention but were currently drawing up a common plan on the subject, which could be ready in two or three years. The National Ombudsman of the Netherlands was competent to receive complaints on the islands of Bonaire, Sint Eustatius and Saba, but not on the islands of Aruba, Curaçao and Sint Maarten.

10. **Mr. Berger** (Netherlands) said that articles 2 and 4 of the Convention and article 8 (a) of the International Crimes Act of the Netherlands were almost identical; the courts were therefore required to take those articles of the Convention into account. The provisions of article 16 (a) to (f) of the International Crimes Act were fully applicable to investigations and legal proceedings in the Caribbean islands of Bonaire, Sint Eustatius and Saba, and if a crime was committed on those islands, it would be tried there by a special court comprising at least two members of the chamber of the Court of The Hague specializing in international crimes. It would also be possible to offer on-site support or proceed to ad hoc nominations to investigate the crime.

11. With regard to the discretionary principle, if it fell to a prosecutor to decide whether a prosecution should be brought, the provisions of article 12 of the Convention were taken into consideration. The only justifications for a failure to prosecute were limitation, immunity and physical inability to undertake investigations in the place where the crime had been committed.

12. The complaints mentioned in the report had been made by a single complainant and accused an Argentine national living in Argentina, but currently in the Netherlands, of crimes committed between 1986 and 1993. The Netherlands had jurisdiction over those

crimes, which were punishable as crimes against humanity, but the information contained in the complaint was insufficient and did not prove that the person had participated, directly or indirectly, in an enforced disappearance or had known about such a disappearance. Additionally, a preliminary investigation had been carried out into the individual by Argentina, which was therefore the most competent authority in the case. Under the law of the Netherlands, if a prosecutor decided not to investigate, the complainant could take the case to the chamber of the Court of The Hague specializing in war crimes, which could order the prosecutor to open an investigation. In the case in hand, the complainant had been informed of that possibility but had not availed himself of it. To date, the Netherlands had been active in legal proceedings concerning international crimes but not concerning enforced disappearances. It had planned to prosecute an Afghan national who had participated in enforced disappearances and had known of such crimes, but he had died. The Netherlands anticipated carrying out prosecutions in similar cases in the future. A list of more than 5,000 disappeared persons had been published, allowing their relatives to be informed about their fate.

13. In the Netherlands, the fines provided for in cases of enforced disappearance were not proportional to the gravity of the crime, and the establishment of harsher punishments for legal persons was planned. Prison sentences corresponded better to the gravity of the crime, but it was important for victims to receive financial compensation. NGOs communicated information to prosecutors provided that such communication respected victims' privacy, and could submit questions to the National Public Prosecutors' Office.

14. The State was responsible for ensuring the safety of witnesses, but that was not always possible for those located in certain countries; the State could bring them out of a country and offer them protection in the Netherlands if they wished. Moreover, when the Netherlands was unable to carry out a prosecution for legal reasons, for example because the International Crimes Act was not yet applicable, a person could be handed over to another State by virtue of war crimes legislation.

15. Regarding the direct application of the provisions of the Convention in the legal system of the Netherlands, each court was required to assess whether treaties could be invoked directly; those decisions could be appealed, the highest court of appeal being the Supreme Court. If members of authorities responsible for prosecutions were themselves suspected of having committed a crime of enforced disappearance, their case would be treated like any other case of a law enforcement officer involved in criminal acts: in the case of the National Police, the internal inquiries department reported directly to the Management Board of the National Public Prosecutors' Office, which acted independently of the police authorities, and in the case of the Military Police of the Netherlands, prosecutions would take place in the military chamber of the Arnhem Court and the case would be dealt with by a civilian prosecutor who was competent to investigate military cases, to which the International Crimes Act applied.

16. **Mr. Stevens** (Netherlands) said that when it was not possible for a prosecution to be brought, for example because the International Crimes Act had not been applicable when the offence had been committed, suspects could be prosecuted under the Surrender of War Crime Suspects Act. A suspect could also be extradited to a State party with which the Netherlands had signed an extradition treaty. The courts were required to determine whether the provisions of each international instrument to which the Netherlands was party could be applied directly. When members of authorities responsible for investigating enforced disappearances were themselves suspected of having participated in the commission of a serious offence, investigations were opened by internal investigation departments reporting directly to the National Public Prosecutors' Office. The military chamber of the Arnhem Court, a civilian court, was competent to investigate crimes committed by military personnel. Military personnel of the Netherlands participating in

United Nations peacekeeping missions were held accountable under the domestic law of the Netherlands, in particular the International Crimes Act, and under international law and could be tried by the military chamber of a civilian court. Article 13 of the International Crimes Act expressly provided that there was no limitation period for the crimes that it addressed, including enforced disappearance.

17. **Mr. Decaux** asked the delegation to provide information on circuit courts. He recalled that, according to the Declaration on the Protection of All Persons from Enforced Disappearance and most international instruments, military courts were not competent to rule on cases of human rights violations because they were not military offences; such crimes, whose victims were generally civilians, should therefore be dealt with by civilian courts. He asked what the legal situation in the Netherlands was regarding the matter. Explanations on how the principles of criminal law relating to extraterritorial, secondary universal and “absolute” universal jurisdiction regarding extradition fitted in with the principle *aut dedere, aut judicare* would be very useful. It would be interesting to know whether the Netherlands had examined the application of article 3 of the Convention in the context of combating cross-border organized crime and human trafficking.

18. **Mr. Yakushiiji** asked who could lodge a complaint with a higher court in order to launch legal proceedings after the National Public Prosecutors’ Office had decided not to open a criminal case. He also requested clarification on the organization of investigations in proceedings conducted concurrently by the International Crimes Task Force and the Royal Netherlands Marechaussee.

19. **Mr. Corcuera Cabezut** asked for further information on the definition of enforced disappearance given in the International Crimes Act that conformed to article 2 of the Convention but also contained an element deriving from the Rome Statute of the International Criminal Court, namely the possibility of holding a political organization responsible for crimes of enforced disappearance. He wished to know whether political organizations would be considered State bodies under domestic law.

20. **Mr. Hazan** asked for details on the organization, structure and resources of the International Crimes Task Force. Information on measures intended to aid victims, beyond their protection and safety, would also be useful. He asked the delegation to describe the discretionary power held by the Public Prosecutor in respect of article 24, paragraphs 2 and 6, of the Convention and to explain what measures could be taken when it was not possible to proceed with a prosecution in a particular country, particularly in cases of crimes against humanity.

21. **Mr. Huhle** asked what the functions of the military chamber of the Arnhem Court were and whether it applied the Military Criminal Code or the general Criminal Code. It would be interesting to know whether the two codes had any provisions in common.

22. **Mr. López Ortega** asked the delegation to describe the powers of the court of appeal, in particular clarifying whether it could order the Public Prosecutor to open an investigation or charge a person. He also wished to know whether victims could make accusations themselves. He asked whether victims could appeal a decision of the National Public Prosecutors’ Office to dismiss a complaint after concluding that an investigation had failed to gather sufficient evidence.

23. **Mr. Stevens** (Netherlands) cited the information on circuit courts provided in the written replies of the Netherlands to the list of issues drawn up by the Committee (CED/C/NLD/Q/1/Add.1), adding that a military criminal court of that kind had never been established. Military courts were governed by the civilian justice system.

24. Article 3 of the Convention was applied through the provisions of the Criminal Code on abduction and denial of freedom. The Criminal Code also penalized trafficking in

persons, which was combated by special police units and the immigration services, as well as the National Public Prosecutors' Office. In the overseas territories of Bonaire, Sint Eustatius and Saba, detention was governed by a separate Criminal Code founded on the same basic principles as the Criminal Code in force in the European territory of the Netherlands.

25. **Mr. Berger** (Netherlands) said that, while the Netherlands aimed to apply the Convention fully, the inclusion of provisions from the Rome Statute in its legislation had allowed the scope of responsibilities to be widened. Regarding respect for the right of victims of enforced disappearance to an effective remedy under article 12 of the Code of Criminal Procedure, the courts of appeal could order the Public Prosecutor to open an investigation, and also to bring a prosecution. It was also possible to appeal a decision by the Public Prosecutor that there was insufficient evidence to initiate legal proceedings. A legitimate interest was required to lodge a complaint. Legal persons, including groups of NGOs representing victims, could lodge complaints provided that they could prove to the courts that they had an interest in the case. The discretionary power of the Public Prosecutor was strictly limited by all obligations under the Convention. Because there was no limitation period for the crime of enforced disappearance, decisions not to bring a prosecution action and to close a case were always provisional.

26. The International Crimes Task Force had two specialized prosecutors who worked with a police unit specializing in combating such crimes, which comprised between 25 and 30 investigators, including police officers, specialist archivists, historians, experts from certain countries and interpreters, as well as psychologists specializing in aiding victims. The Task Force attached utmost importance to the safety and well-being of witnesses, whose anonymity it endeavoured to guarantee and who could access the services of a psychologist before and after questioning.

27. Under the principle of "secondary universal jurisdiction", the jurisdiction of the Public Prosecutor specializing in international crimes extended to all persons residing in the Netherlands, whether or not they held Netherlands nationality and regardless of where the offence had been committed. The minimum length of residence in the country necessary to be able to prosecute a person had not been legally defined, but could start from the date of entry in the territory of the Netherlands. Netherlands nationals and perpetrators of crimes against Netherlands nationals also fell within the jurisdiction of the Public Prosecutor, provided that certain conditions were met. If the International Crimes Task Force and the military police were investigating the same case, the Public Prosecutor decided which of the two bodies took priority, bearing in mind in particular their degree of specialization.

28. **The Chairperson** thanked the delegation of the Netherlands and invited it to present its replies to the other two sets of questions from the Committee during the following meeting.

The meeting rose at 5.50 p.m.