

# TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

## COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS 38<sup>TH</sup> SESSION NETHERLANDS ANTILLES, 4<sup>TH</sup> REPORT 4 MAY 2007.

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### Information submitted to the Committee

On 13 February 2006 the Netherlands Antilles submitted its third periodic report<sup>1</sup> to the Committee on Economic, Social and Cultural Rights (the Committee). The report began with responses from the State to the

<sup>1</sup> E/C.12/ANT/3, 13 February 2006. Available at <http://www.ohchr.org/english/bodies/cescr/cescrs38.htm>.

concluding observations submitted by the Committee.<sup>2</sup> It then provided information on the Netherlands Antilles' progress regarding the Covenant on Economic, Social and Cultural Rights (the Covenant) for the period between July 1995 and June 2003. However, the report lacked comprehensive coverage of the main issues and statistics which were of great concern to the Committee.<sup>4</sup>

The only NGO parallel report submitted to the Committee was a briefing paper written by the Global Initiative.<sup>5</sup> It reiterated concerns expressed by the UN Committee on the Rights of the Child (CRC) over the use of corporal punishment in the Netherlands Antilles.

The Committee submitted a list of issues<sup>6</sup> following their consideration of the State's third periodic report. The issues discussed includes legislative guarantees, institutional and practical measures to combat discrimination (particularly against persons with disabilities and migrant children), inequalities in social services and gender equality. More substantive information was requested by the Committee on legislative guarantees and on practical measures to guarantee the right to work and the right to just and favorable conditions of work. On the subject of adequate standards of living, disaggregated data was requested on poverty, homelessness and forced evictions. The right to education and right to cultural life, with particular focus on ethnic groups, remained principal subjects of concern for the Committee.

There was little information given by the Netherlands Antilles in response to the list of issues.<sup>7</sup> The answers were very brief, sometimes simply stating that protection measures have been undertaken by the State or that the issue had been taken into consideration. The data and statistics provided were not disaggregated.

## Themes and Issues

The delegation from the Netherlands Antilles was headed by Ms. Virlene Els, Policy Advisor of the Directorate of Labour Affairs. The rest of the delegation consisted of senior-level officials and legal and policy advisors from the Government.<sup>8</sup> Mr. Pieter Ramaer, Counsellor Permanent Mission of the Netherlands in Geneva, also accompanied the delegation.

An introductory statement was delivered by Ms. Virlene Els, who gave an overview of developments that have taken place in the Netherlands Antilles between July 1995 and June 2005. The statement gave an overview of the issues but failed to address some key questions in the list of issues.<sup>9</sup> Particular emphasis was placed on the devolution of the Kingdom of the Netherlands following the referendum held on 23 of June 2000.<sup>10</sup> The opening statement mostly reflected the challenges and constraints faced by the Government. These included: limited economic growth; a national debt totalling € billion; sustained youth unemployment;

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<sup>2</sup> E/C.12/1/Add.25, 16 June 1998. Available at <http://www.ohchr.org/english/bodies/cescr/cescrs38.htm>.

<sup>3</sup> *International Covenant on Economic, Social and Cultural Rights* (ICESCR). Entered into force on 3 January 1976. Available at: <http://www.ohchr.org/english/law/cescr.htm>.

<sup>4</sup> Statistics provided in the report covered, for example, labour force, average monthly income, and industrial accidents.

<sup>5</sup> Briefing from Global Initiative is available at: <http://www.ohchr.org/english/bodies/cescr/cescrs38.htm>.

<sup>6</sup> E/C.12/ANT/Q/3, 8 January 2007. Available at: <http://www.ohchr.org/english/bodies/cescr/cescrs38.htm>.

<sup>7</sup> E/C.12/ANT/Q/3/Add.1. Available at: <http://www.ohchr.org/english/bodies/cescr/cescrs38.htm>.

<sup>8</sup> The delegation was made up of the Legal Advisor of the Social Security Bank, Policy Advisor of the Directorate of Labour Affairs, Special Advisor to the Minister of Education and Culture, Senior Policy Advisor of the Office of Foreign Relations, Head of the Section Prevention, Juvenile Protection and Judicial Facilities.

<sup>9</sup> Issues such as gender and inequality, teenage pregnancy, migration of qualified specialists, dissemination of human rights information, etc.

<sup>10</sup> In a referendum the population of Sint Maarten voted for a change in the island's position within the Netherlands Antilles and the Kingdom of the Netherlands. A substantial majority chose separate status within the Kingdom. See, E/C.12/ANT/3, 13 February 2006. Available at: <http://www.ohchr.org/english/bodies/cescr/cescrs38.htm>.

difficulties in obtaining necessary information on the five islands, and lack of sufficient and qualified personnel.

Comparative statistics were then provided on the sustained rate of unemployment experienced in the country.<sup>11</sup> Positive developments were illustrated by the Government's steps towards implementing legislative amendments and bringing them into full conformity with the Covenant. There was mention of a recently established office designed to integrate labour capacities and change perceptions of social benefits.

The delegation explained that there have been improvements in the quality and accessibility to education and linkages of different levels of the education system as a result of legislative amendments. These amendments include a law on compulsory education, aimed at addressing the problems of school dropouts and reintegrating different age groups into the educational system.

A comprehensive programme was also launched throughout the country as part of the Government's efforts to reduce poverty. This programme contained projects on housing, including plans for the improvement of housing for the elderly and for persons with disabilities and special programmes such as supporting young mothers.

Before commenting on substantive issues, Committee member Mr. Tirado addressed the appropriateness of having separate territorial reporting. Committee member Ms. Philips suggested that the State briefly inform the Committee about the relation between the three parts of the Kingdom. It was explained that foreign affairs, defence and nationality issues lie outside the authority of the Netherlands Antilles, and that all other matters, including the implementation of the Covenant, were the responsibility of the Netherlands Antilles. Following this explanation, the Committee asked for more clarification regarding the responsibilities and international obligations under the Covenant.

### **Status of the Covenant under domestic Law**

The direct application of the Covenant was among the principal subjects of concern for the Committee. Committee member Mr. Kerdoun noted with concern that in many cases only a partial reply was given by the State. This is particularly true regarding the application of the provisions of the Covenant. The issue was further elaborated by Mr. Pillay, who questioned the direct application of the Covenant before domestic courts and asked about examples of case law demonstrating the application of the Covenant. This concern was reiterated by Mr. Riedel in response to the State's comment that "The Government will take the issue [of direct applicability] into consideration".<sup>12</sup>

In response to the Committee's concern, the delegation maintained its position by stating only that the rights recognised under the Covenant are directly applicable in the case law. The Committee reminded the delegation of General Comment 3<sup>13</sup> (on the justiciability of rights under the Covenant) and argued that despite the State's intention to take the applicability into consideration, it should incorporate the provisions of the Covenant into the domestic law.

Further clarification was requested by the Committee about the process of constitutional change. The Committee was also interested in the possibility of making changes to civil legislation and maintaining the Ombudsman office. The later issue was not addressed at all. The delegation referred to the agreement with the Government of the Netherlands stipulating that all existing treaties, including the Covenant, would be covered

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<sup>11</sup> At the end of reporting period in 2005 employment rate increased reaching 65%. It further arose in 2006.

<sup>12</sup> E/C.12/ANT/3, 13 February 2006, para. 2. Available at: <http://www.ohchr.org/english/bodies/cescr/cescrs38.htm>.

<sup>13</sup> ICESCR, General Comment 3. *The nature of States parties obligations (Art. 2, par.1)*. 14 December 1990. Available at: [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+comment+3.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/CESCR+General+comment+3.En?OpenDocument).

by the new emerging Constitution. As for the nationality, the Netherlands Antilles will remain under Dutch nationality.<sup>14</sup>

### **Non-discrimination**

The Committee was interested in the State's legislation on discrimination and what measures had been taken to protect vulnerable groups. The Committee stated that issues of gender discrimination were mostly discussed by the State in terms of negative provisions<sup>15</sup> and the Committee requested more elaboration on available positive measures, particularly with respect to equal payment for equal work.

Mr Tirado observed that the State replies were so brief they did not contribute much to the current process, particularly with respect to replies about measures taken to combat discrimination.<sup>16</sup> The Committee stated also that there was little information provided on the labour status of women.

The Committee also explained that the State's reply concerning the measures taken to remedy inequalities between the various islands in health and education sector, and measures to ensure gender equality, were inadequately elaborated. Some other issues addressed by the Committee were: discrimination against men; rape and other forms of physical violence

As far as the inequality of salary between men and women was concerned, the delegation informed the Committee about the State's performance-based equal promotion opportunities existing both in public and private sectors. The State also explained that the difference in salaries between men and women is not related to gender but rather with positions and therefore there is no inequality in that field.

Regarding the National Institute on Gender Equality, the delegation reported to the Committee that there was a unit within the Government dealing with this issue, as well as similar units on some of the islands. The delegation acknowledged that a large amount of work had been done on violence against women. The State added that an ordinance had been drafted promoting equality. No reference was made to it previously since it has not been put into action. The delegation asked to leave the question on the implementation of gender education for a later date, as they did not have an answer to it at this stage.

### **Minimum wage**

The delegation was invited to comment on the different levels of minimum wage in each island; the subsistence function of the minimum wage and on the guarantee of minimum human rights under Article 6 and 7 of the Covenant.<sup>17</sup> The Committee found it difficult to understand why there were differences between the levels of employment on the islands. Ms. Gomes, Committee member, questioned the principles of the work of labour inspection services. The delegation was invited to comment on how they were able to convince people that it is more important to work rather than receive unemployment benefits.

The delegation stated that the differences between the levels of employment on the islands are due to different costs of living. The State elaborated on its use of targeted measures to address the unemployment rate among women<sup>18</sup>, including specific programmes implemented to teach women how to start a small enterprise. The delegation answered that there was a regular exchange of good practices between islands, and that decreases

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<sup>14</sup> The delegation explained that foreign affairs will remain a matter of the Kingdom. However, they will have some freedom of action regarding the surrounding hemisphere.

<sup>15</sup> E/C.12/ANT/Q/3/Add.1, para. 9. Available at: <http://www.ohchr.org/english/bodies/cescr/cescrs38.htm>.

<sup>16</sup> The State did not give any more information but confirmed that "Measures have been taken to combat discrimination..." E/C.12/ANT/Q/3/Add.1, para. 4. Available at: <http://www.ohchr.org/english/bodies/cescr/cescrs38.htm>.

<sup>17</sup> ICESCR, Art. 6 and 7 cover the right to work and the right to 'enjoyment of just and favourable conditions of work' correspondingly. The text of the Covenant is available at: <http://www.ohchr.org/english/law/cescr.htm>.

<sup>18</sup> The delegation agreed with the Committee that the unemployment rate is high among women and that they are not well represented in the technical sector.

in unemployment had to do with economic growth of specific islands, the tourism industry and hotels construction. In addition, there had been some migration from the islands, which should be taken into account while considering unemployment rates.

### **Social security**

The Committee was informed that both legitimate and illegitimate children<sup>19</sup> are equally entitled to social security, and inquired about children's right to social insurance through parents and, in case of death of insured person, about the rights of surviving children. The Committee noted that there was an observation from the CRC<sup>20</sup> and yet nothing had been done about it. The Committee was also interested in the State's legislation regarding the equal treatment of women and men and asked the delegation to bring examples.

The Committee was interested in whether there are specific legislative provisions to meet the special needs of these single elderly persons. The delegation explained that the elderly receive the State pension, and use public transportation services at a reduced cost. Additionally they receive other State benefits for marginalized groups, including free medical care, low housing cost, and water and electricity subsidies.

### **Protection of the family**

The Committee expressed its concern that there was no specific protection for single-parent families.<sup>21</sup> The Committee was also interested in the State's system of foster-care. The Committee's main concern was related to the difficulties experienced by children when they move to foster care institutions. The Committee also observed that while relying on NGOs in providing alternative care, the Government had considerably reduced its support to them.

The delegation explained that a foundation was in charge of foster care and it received certain subsidies from the Government. Single-parent families headed by women were being supported financially by the Government. As for the measures taken to integrate undocumented migrant children and their families, the delegation responded that firstly, there is compulsory education for all migrant children and secondly, pressure is being put on the Government of Holland for their support in building a school for undocumented children.

Regarding legislation and protective measures on domestic violence and its criminalisation, the delegation informed the Committee that there is a course on 'relationship' violence, which is aimed at promoting effective and efficient action by the police and judiciary. Since 2004 a shelter named the *Socorro* ('help') *Delegation* has been operating in Curaçao. A provision on domestic violence was also included in the Criminal Code, and the course on domestic violence was mainstreamed in the curriculum of police officers.

### **Child welfare**

The Committee was concerned about the high rate of abortion among teenagers and sexual exploitation of children. The delegation explained that sexual exploitation of children aged between 16 and 18 is punishable by law and once reported by police, is dealt with by the penal courts. The delegation promised to look at the issue further and include specific age groups of children. The Committee also asked whether the existing definition of the child was updated to in the legislation. The delegation did not give any information on this subject and asked if they would be able to submit it later.

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<sup>19</sup> The President reminded that children are no longer referred to as illegitimate or legitimate but as born in wedlock or out of wedlock. Ms. Ray argued that she used the formulation given by a Committee member. The President stated that it was a wrong formulation.

<sup>20</sup> Concluding observation concerning the discrepancies in the rights of certain vulnerable groups. CRC/C/15/ADD.186, para. 26 (June 2002).

<sup>21</sup> E/C.12/ANT/Q/3/Add.1, para. 18. Available at: <http://www.ohchr.org/english/bodies/cescr/cescrs38.htm>.

On the issue of youth homicide, the delegation explained that awareness-raising programmes were set up particularly through the NGO presence in schools. The Committee observed that the Netherlands Antilles should have been asked by the CRC about the measures taken to address this situation and therefore was asked to provide updated information on this issue. The request, however, was not addressed.

### **Adequate standards of living**

The delegation agreed with the Committee's statement that poverty in the Caribbean is partly due to the low level of social security. They explained that a quick review of the poverty situation was conducted with the support of the Dutch Government. Funds for poverty alleviation were mainly used for construction purposes.

The Committee expressed its dissatisfaction with the information provided on poverty and housing. It asked for further clarification on the extent and the causes of poverty. Also the delegation was invited to comment on whether the rights under the Covenant were included in their programme on poverty alleviation. This question, however, was not answered by the delegation.

The Committee was also not satisfied with the State's answer regarding housing and was interested in whether the State had taken any steps to build new social housing units, especially for disadvantaged and marginalised sections of the population. The delegation responded that nearly every year new houses are being built for those purposes; however, there is a considerable shortage of social housing in the country. With respect to disabled persons, the delegation explained that the Government is exploring the possibility of becoming a signatory to the UN Convention on the Rights of Persons with Disabilities.<sup>22</sup>

The Committee emphasised the importance of international collaboration towards ensuring adequate standards of living. It asked the delegation to detail any collaboration between the State and the international community, including the European Union (EU). Ms. Philip explained that they do not possess any information on this.

### **Right to education**

Youths dropping out of school and the social consequences of such practice were frequently referenced by the Committee as one of the fundamental issues in the Netherlands Antilles. The Committee found the State's reply vague concerning the projects on compulsory trainings and welcomed further clarification on necessary legislative provisions to address school dropouts.

Mr. Henri Vijber, Special Advisor to the Minister of Education and Culture of the Netherlands Antilles, explained the two kinds of compulsory education introduced in the country: compulsory education for children from 4 to 18 years old, and compulsory social formation for those aged between 16-24. The latter implies social development and job-related training. The long-term vision of the Government, according to Mr Vijber, is to decrease the rate of dropout among young people aged 16-24. The delegation did not respond to the Committee's question concerning the reasons for school dropouts. Instead, it reflected on the whole process of young people's integration in the educational system.

The delegation was asked to detail the availability of financial contributions for educational reforms, (either academic or technical) both from the Government of Netherlands and the EU. It was asked to present a summary of achievements and to detail the timeline of systemic reforms.

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<sup>22</sup> The text of the Convention is available at: <http://www.un.org/esa/socdev/enable/rights/convtexte.htm>.

Mr. Vijber delivered a long speech about the educational reforms currently taking place in the country. He identified two main problems: the problem of illegal and undocumented children<sup>23</sup> and the difficulties between the islands, particularly in terms of difference in their vision on education.<sup>24</sup> He explained that there was general disagreement with the Government of Holland about building extra schools. However he said that negotiations are under way to ensure an uninterrupted process of educational reforms. The delegation also explained that a joint committee was established to track the progress of reforms and to guarantee continuity. As for the timeline of the reforms, the delegation stated that in 2011 normal level of dropout rate (10%) should be reached and the implementation of all reforms should be completed in preliminary, primary and secondary education.

Regarding technical assistance, the delegation explained that specialists from Holland are applying to teach in the Netherlands Antilles.

### **Right to cultural life**

The Committee was interested in the question of whether the language used in schools is the language spoken by the majority of population and whether there are specific provisions for teaching in the languages of the minority groups on island. The Committee expressed its dissatisfaction with the very brief and incomplete information given by the delegation on the different ethnic groups in the Netherlands Antilles and on the measures taken to preserve their identity and languages. Of particular concern for the Committee was the Government's decision not to pursue any long-term policy in this respect. The Committee was of the opinion that the Netherlands Antilles, a country with a relatively small population and with rich cultural diversity, has enough access to natural resources to afford more progressive policies.

The delegation found this language issue very problematic. Regarding the status of Dutch language,<sup>25</sup> the delegation explained that generally Dutch is considered to be the language spoken in order to improve social status. Despite the Government's vision to promote education in the native language, it decided to adopt a multilingual approach. The delegation explained that Dutch is the language of communication, English is used for wider communication, and Papiamentu is the native language. The Netherlands Antilles is heterogeneous, with people of African, Jewish, Indian and Chinese descent residing on the islands. Addressing the issue of nationalities, Committee member Mr. Romero noted that the State should undertake positive measures to promote ethnic diversity.

The delegation explained that as a former colony they do not have any policy to conserve and protect the culture of different ethnic groups. The delegation noted that although there is no policy to actively protect and encourage these groups, there is no policy to restrain them either. Additionally, the delegation explained that there has been no study done regarding the exact number of ethnic groups. The delegation said that they would accept any recommendation that the Committee might consider relevant in this respect.

The delegation was also asked about the availability of unified criteria and modern technologies for maintaining cultural heritage. This request was not addressed. To the Committee's observation that there are not enough free sport facilities in schools, the delegation responded that sporting activities and traditional games are included in the school curriculum.

The Committee asked whether the Netherlands had ratified the European Charter for Regional or Minority Languages<sup>26</sup> and whether this has affected the Netherlands Antilles. The delegation explained that every treaty has to be ratified by both Parliaments (Aruba and Holland). In concluding remarks, the Committee

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<sup>23</sup> According to the delegation, on the population of 200.000, 50 thousand of them are estimated as illegal.

<sup>24</sup> St Martin did not want to implement the law on compulsory education because there are too many undocumented children and there is another a need to build schools.

<sup>25</sup> E/C.12/ANT/Q/3/Add.1, para. 32.a. Available at: <http://www.ohchr.org/english/bodies/cescr/cescrs38.htm>.

<sup>26</sup> The *European Charter for Regional or Minority Languages*. Entered into force on 1 March 1998.

inquired whether Dutch citizens can apply to the European Court of Human Rights (ECtHR), whether there are cases filed by the citizens of the Netherlands Antilles and what articles they were appealing under. The delegation explained that citizens could access the European court. However, there was no reference to any examples.

## Other issues

### **Drug abuse and trafficking**

The delegation explained that children and young people are involved in drug prevention programmes including awareness raising activities. A group of officers running the project DARE (Drug Abuse Resistance Education Programme) visit schools and explain about addiction and related problems caused by drug abuse.

The Committee found that the State's replies on trafficking issues were very brief. Information was requested about the protection measures under the Criminal Code. The delegation asked to submit their answers at a later date.

The question of the legal protection of sex workers, either men or women, was raised by the Committee. The delegation responded that the prostitution outside the borders is not protected by law. Once informed about prostitution in an area, NGOs focus on health and awareness-raising issues.

### **Refugees**

The Committee was interested in refugee's access to basic resources. The delegation responded that there is no specific law on refugees. It was explained that they do not have refugees in the sense that other countries do. A Committee has been established to work on legislation and to address all issues concerning migrants, foreigners and refugees. In case of disaster, everyone is treated equally and there is centralised help from the Government available to everybody.

### **International assistance and collaboration**

To the question of whether the country has ever sought financial assistance from international organisations, the delegation responded that they do not have any experience in this matter and would welcome the Committee's recommendations. As to where the Country's development funds get their resources, the delegation listed three sources: the Netherlands Antilles economy, EU development assistance and UNDP technical assistance.

Concerning whether the Covenant was translated in to the most common languages spoken in the country, the delegation informed the Committee that there are Dutch and English versions of the treaty, and the translation of the Papiamentu version is under way.

The Committee was also interested in the relations of the Netherlands Antilles as a legal entity with Latin America. The delegation answered that the overall policy of the Netherlands Antilles is to have the closest possible collaboration with the region in which they are geographically situated.

### **Dissemination of human rights information**

The Committee was concerned about the proper dissemination of human rights information among the population and the level of civil society's participation in writing responses to the list of issues. Instead of responding to this, Ms. Philip focused on the difficulties faced by the Government concerning the gathering of

necessary information. These included the lack of awareness on the Covenant, shortage of qualified staff and difficulties of geographical outreach.

### **National debt**

More clarification was requested concerning the national debt and the intention of the Government to handle it. The delegation talked about the institutional and procedural aspects of covering the debt by the Government of Netherlands. Mr. Vijber answered that the debt issue was handled on an *ad hoc* basis taking into consideration the commitments made by the Netherlands.<sup>27</sup>

### **'Brain drain'**

The Committee requested more information on measures taken by the State to prevent migration of qualified specialists. The delegation explained that the high rate of 'brain drain' was due to the fact that people do not return to the Netherlands Antilles after completing their education in Holland. The Netherlands Antilles Government is attempting to encourage people to study in the country and is trying to improve the quality of high educational institutions. Ms. Philips added that upon a student's return a large part of their student loans are being rescinded if they take up work with the Government.

### **Conclusions and next steps**

The Committee noticed that some questions had not been answered by the delegation. However, on a positive note, the Committee acknowledged the efforts the delegation put into answering the majority of the questions. Mr. Vijber acknowledged that they are aware of the difficulties that the Netherlands Antilles is currently facing. He assured the Committee that the Government will take full responsibility and fulfil their obligations under the Covenant.

The principal subjects of concern from other Committees include the Committee on the Rights of the Child's concluding observations on discrepancies in the rights of certain vulnerable groups,<sup>28</sup> the high dropout rate in primary and secondary school, and disparity among islands in enrolment rates and access to education.<sup>29</sup> The CRC also urged the State to develop programmes to facilitate alternative care, provide training for social and welfare workers, and to establish an independent complaint mechanism for children in alternative care institutions.<sup>30</sup> The CRC was concerned about the absence of data on the issue of sexual exploitation and sexual abuse of children,<sup>31</sup> the lack of comprehensive national plan of action to combat drug abuse and trafficking amongst children, and limited social and medical services available for treatment of drug-addicted children.<sup>32</sup> The Committee on the Elimination of Discrimination Against Women asked the State party to provide statistics disaggregated by sex and ethnicity with respect to different ethnic and minority groups.<sup>33</sup> The Human Rights Committee asked the State party to remove all distinctions between legitimate and illegitimate children.<sup>34</sup>

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<sup>27</sup> The delegation informed that almost 1/3 of yearly budget goes to pay interests either to local or external institutions and in fact there is no room left for new policies. Positive development, according to the Government, was that Holland agreed to withdraw interest rate for the coming five to ten years. The delegation expressed hope that by that time they will be able to comply with their obligations under the Covenant.

<sup>28</sup> CRC/C/15/ADD.186 , para. 25, 26. June 2002.

<sup>29</sup> CRC/C/15/ADD.186 , para. 52, 53. June 2002.

<sup>30</sup> CRC/C/15/ADD.186 , para. 43. June 2002.

<sup>31</sup> Ibid, para. 60.

<sup>32</sup> Supra n. 32, para. 62.

<sup>33</sup> A/56/38(SUPP), para. 208 bis. February; July, 2000.

<sup>34</sup> CCPR/CO/72/NET, para.21. August, 2001.

The Netherlands Antilles is next due to report to the Committee on Economic, Social and Cultural Rights on 30 June 2008.

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