

NETHERLANDS ANTILLES

Comments by Amnesty International on the Second Periodic Report submitted to the United Nations Committee against Torture

In April 1995 the United Nations (UN) Committee against Torture in Geneva will examine the Second Periodic Report of the Kingdom of the Netherlands under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture). Amnesty International would like to take the opportunity of this examination to comment on certain statements made in the submission regarding the Netherlands Antilles.

Amnesty International received various reports of torture and ill-treatment in the Netherlands Antilles during the period from 1 January 1990 to 1 January 1994 covered by the Second Periodic Report.¹ These reports alleged persistent ill-treatment of detainees by police and prison officers resulting, in some cases, in deaths in custody. The contents of these reports were brought to the attention of the Netherlands Antillean authorities and the Minister for Netherlands Antillean and Aruban Affairs² (the Kingdom Minister) in the Hague.

The Second Periodic Report, in the Addendum on the Netherlands Antilles, quotes extensively from the exchanges of correspondence between these authorities and Amnesty International and describes specific cases of torture and ill-treatment which the authorities had been requested to investigate.

Amnesty International would like to inform the Committee of its views on the cases which the authorities describe in the Second Periodic Report; on other cases raised with the Netherlands Antillean authorities which are not described in the report; and finally to comment on the conclusions of the 1991 "Commission of Inquiry into the alleged unlawful behaviour of the police" (the Commission of Inquiry) established by the Netherlands Antillean Government.

¹ CAT/C/25/Add.2 of 12 December 1994.

² *Kabinet voor Nederlandse Antillaanse en Arubaanse Zaken* - KABNA.

Relevant extracts on the organization's concerns in the Netherlands Antilles, taken from the six-monthly publication entitled *Amnesty International Concerns in Europe*,³ are attached.

On 19 November 1991 Amnesty International wrote to the Kingdom Minister in the Hague in connection with allegations of torture and ill-treatment of criminal suspects. The cases cited were of Henry K. Every who was found dead on arrival at a hospital in Curaçao in June 1990 after police allegedly kicked and beat him in the street during arrest; Leroy Neil, a Jamaican, who died of peritonitis in February 1990 during a session of interrogation by detectives in the House of Detention in Curaçao; and Moreno G. Fabias who alleged that in May 1991 he was punched, kicked and hit with a truncheon during his arrest. The Minister was urged to take the necessary steps to ensure that these allegations of torture and ill-treatment were promptly, fully and impartially investigated. The organization's letter was also sent to the Government of the Netherlands Antilles.⁴

Amnesty International addressed the Kingdom Minister regarding these reported violations of human rights in the Netherlands Antilles because of the powers granted under the Charter of the Kingdom to the Minister. The Charter allows the Kingdom Minister to fulfil a role in the Netherlands Antilles notwithstanding the autonomous nature of the three countries⁵ within the Kingdom.

According to the explanation provided by the Kingdom Minister in a letter to Amnesty International of 17 January 1992, "The tasks and powers of the Kingdom thus relate primarily to the affairs of the Kingdom mentioned in the Charter". However, responsibility can also arise at Kingdom level for matters which are the autonomous affairs of the countries concerned.

Article 43 of the Charter of the Kingdom states in its first paragraph that "Each of the countries shall promote the observance of fundamental human rights and freedoms, the rule of law and the integrity of administration". Implementing this obligation is the autonomous responsibility of each of the three countries within the Kingdom. However, in paragraph two of Article 43, the Kingdom is also provided with a role in safeguarding these rights and freedoms because it is in the interest of the Kingdom that this responsibility is discharged. The Kingdom is, therefore, allowed to take appropriate measures where the autonomous responsibility of the individual countries is not discharged. It is within the discretion of the Kingdom Minister to decide whether such a situation exists ("...only if no redress were to prove possible...could the taking of such a measure be considered..."). Amnesty International addressed itself to the

³ AI Index: EUR 01/03/92; EUR 01/04/92; EUR 01/01/93; EUR 01/01/94; EUR 01/02/94.

⁴ See CAT/C/25/Add.2, paragraph 7.

⁵ Aruba, Holland and the Netherlands Antilles.

Kingdom Minister because of the persistence of the allegations of ill-treatment and the failure of the Netherlands Antillean authorities to conduct a full, prompt and thorough investigation into the allegations.

In subsequent correspondence with Amnesty International the Netherlands Antillean authorities provided information about the findings and recommendations of the Commission of Inquiry and information regarding some of the cases of alleged torture and ill-treatment which had been raised with the authorities.

Commission of Inquiry into the alleged unlawful behaviour of the police

In August 1991 a commission was set up by the Government of the Netherlands Antilles to investigate "the alleged unlawful behaviour of the police"; to inquire into the functioning of the Complaints Commission⁶ set up in 1985; and, if unlawful behaviour by the police was established, to make recommendations to ensure the proper exercise by the Netherlands Antillean police force of their duties. This was, as the Kingdom Minister acknowledged in a letter to Amnesty International of 17 January 1992, partly in response to a hunger-strike in July 1991 by a lawyer over allegations of ill-treatment in Bonaire. Amnesty International was informed that this hunger-strike was the second that this lawyer had undertaken. In 1989, an undertaking was given by the authorities, after an earlier hunger-strike by the same lawyer, to conduct an inquiry into allegations of police misconduct. This inquiry never took place.

The Commission of Inquiry's report covered the period from 1 January 1990 to 31 March 1992. The report recognized that this was the same period covered by the allegations of torture, ill-treatment and deaths in custody raised with the authorities by Amnesty International.

Amnesty International considered there were two areas within the Commission of Inquiry's mandate which would be of the greatest concern to it.

- ! The examination of data relating to contacts between the public and police; allegations of ill-treatment by the police and the Commission of Inquiry's

⁶ *Klachtencommissie*.

conclusions regarding the incidence of torture and ill-treatment.

The Commission of Inquiry said there were "instances of unlawful use of violence by the police on every island" except Saba. The inquiry by the Centre for Scientific Research and Documentation (WODC) showed that "...approximately three per cent of those questioned [a relatively high figure] had direct personal experience of police violence". One per cent of a sample of a representative cross-section of the population claimed to have been ill-treated. Fifteen per cent of a representative cross-section of the population as a whole claimed to know of people in their family, or circle of friends or acquaintances, who had been ill-treated by the police. Eight per cent knew of such incidents occurring between 1 January 1990 and 31 March 1992, the period under investigation by the Commission of Inquiry. Almost all claims were of beatings with truncheons or, more rarely, with bare fists. Only in exceptional cases were firearms mentioned.⁷

! The related issues of offending officers being brought to justice - through disciplinary measures, criminal or civil action in the courts and the role played by the Commissions of Complaint.

In the examination in November 1990 of the Initial Report⁸ to the UN Committee against Torture, the Netherlands delegation described the formal responsibility of the "Public Prosecutor's office" in the Netherlands Antilles to supervise every criminal investigation: "**...Part of its duty was to examine every complaint concerning police behaviour. It condemned every form of torture and would institute criminal proceedings if torture occurred**". The function of "Commissions of Complaint" to monitor the way in which complaints were handled was also described: "**...Commissions of Complaint had been established to monitor the way in which complaints against police officers were handled...Public prosecutors were also members of the commissions and complaints included both those dealt with through criminal and those dealt with through disciplinary action**".⁹

The Commission of Inquiry, in examining the conduct of the police, criticized the lack of policy and proper management: "...in the opinion of the former head of the police training college, **the Force may be characterized as an organization in which mismanagement is rampant, in all departments and at every level**". It also criticized in the strongest terms both the system of disciplinary action to deal with complaints and the functioning of the judicial system. It saw

⁷ See attached AI Index: EUR 01/01/93, for further details.

⁸ CAT/C/9/Add.2 of 20 September 1990.

⁹ See Summary Record of the 63rd meeting of the UN Committee against Torture, CAT/C/SR.63, paragraphs 72 and 73.

it as a **"serious failure of the police, the Commanding Officer, the Public Prosecutor and the Minister, that in obvious cases of serious offences neither disciplinary nor criminal action is taken"**. The Commission of Inquiry also noted a strong tendency within the police to "cover up" for colleagues in that "...insufficient action is taken against police officers who resort to unlawful violent behaviour towards civilians, even where it concerns repeated instances".

The Commission of Inquiry also examined the functioning of the Complaints Commission. It concluded that effectively the complaints procedure hardly appeared to work at all. It said **"The Complaints Commission does not function on any one of the islands"**. It reported that "Not only do complaints not lead to any visible results, due to the police examining the complaints against itself and the authorities concerned (Commanding Officers, the Public Prosecution Department, the Government, Heads of Police) not exercising sufficient supervision and not taking sufficient action; **in the Commission's opinion the competent authorities may be accused of serious negligence in this area"**.

In the Second Periodic Report the government quotes the conclusion of the Commission of Inquiry that "...there was no structural ill-treatment of the citizen on the part of the police..." and the Minister of Justice of the Netherlands Antilles said in a letter to Amnesty International of 15 September 1992 that the Commission of Inquiry had concluded that "there is no structural police brutality in the Netherlands Antilles". Professor R.A. Römer, the chairman of the Commission of Inquiry, explained this view to Amnesty International. He felt that there was scope for endlessly continuing the discussion as to when "the incidental" becomes "the structural". In his view the relevant conceptual starting point is that "...there is structural violence if this is the policy of the police force. And that is not the case within the KPNA" (Netherlands Antillean police).

However, Amnesty International cannot agree with this interpretation of the facts and the report. The incidence of allegations of ill-treatment and its causes, as set out in the Commission of Inquiry's report, reveal a pattern of persistent failures within the Netherlands Antillean police and other authorities. In the penultimate paragraph of its report the Commission of Inquiry concluded **"...the Commission wishes to explicitly state as its opinion that the established failures of the Force can be traced to years of neglect of the Force by the Government, and the failure to exercise their powers, particularly of control and supervision, by Senior Police Authorities, the Department of Public Prosecution, the Commanding Officer and the Minister of the Government"**.

In December 1992 Amnesty International wrote to the Minister of Justice welcoming the Commission of Inquiry's report and urging the government to make public the complete text, including the conclusions and the recommendations. The organization also requested details of the implementation of the preventive measures recommended by the UN Human Rights Committee in General Comment 20 on Article 7 of the International Covenant on Civil and Political Rights (adopted at the forty-fourth session in 1992) and recommended implementation

of the safeguards contained in Amnesty International's April 1984 document entitled *Against torture: an Amnesty International briefing*.¹⁰

In the Second Periodic Report to the UN Committee against Torture, and in the replies of the Kingdom Minister and the Netherlands Antillean authorities to Amnesty International's letter of December 1992 regarding the findings of the Commission of Inquiry, an extensive program of legislation, increased funding and training is described. New institutions were promised which were designed to remedy the serious situation of ill-treatment in the Netherlands Antilles, reported on by Amnesty International and confirmed by the Commission of Inquiry's report.

At the time of writing Amnesty International has no detailed information as to the extent to which this program of reform has been implemented or whether the numerous measures described in the Second Periodic Report of 16 June 1994 are functioning effectively.¹¹

Allegations of torture, ill-treatment and deaths in custody

On 19 November 1991 Amnesty International wrote to the Kingdom Minister about, *inter alia*, reports alleging ill-treatment of detainees which, if true, would constitute serious violations of fundamental human rights and freedoms. Amnesty International expressed its concern that allegations of ill-treatment should be investigated promptly, fully and impartially. Information was also requested regarding the Commission of Inquiry established in 1991 (see above). This letter was also sent to Mr W.J. Knoppel, the Minister of Justice for the Netherlands Antilles.

Amnesty International requested a proper investigation into the individual allegations of ill-treatment as an essential step in bringing violators to justice, in accordance with the obligations of the Netherlands under international human rights law, including Articles 12, 13 and 16 of the Convention against Torture. The organization also pointed out that a thorough investigation by a commission of inquiry would be a valuable step in assessing the effectiveness of safeguards against such violations and in determining whether new protective mechanisms were necessary, in accordance with Articles 2, 11 and 16 of the Convention against Torture.

The Second Periodic Report describes in considerable detail the correspondence between Amnesty International and the Netherlands Antillean Minister of Justice and the Attorney General in Curaçao. Amnesty International would like to make it clear to the Committee that at no stage in this correspondence did it consider that officers suspected of violations in the

¹⁰ AI Index: ACT 04/13/84 (see section entitled *Safeguards against torture*).

¹¹ See CAT/C/25/Add.2, paragraphs 41 to 53.

cases raised with the authorities should not be brought to justice. The Netherlands are under an obligation to bring violators to justice including where the incidents occurred some five years ago as in the cases in the Netherlands Antilles and regardless of the possible introduction of reforms to prevent future violations. Indeed, Amnesty International considers that future violations will not be effectively prevented unless potential violators are deterred by the knowledge that past offenders have been brought to justice.

Full details of the cases reported by Amnesty International, contained in Part III of the Second Periodic Report, can also be found in the relevant extracts taken from the six-monthly publication *Amnesty International Concerns in Europe* (see attached).

The attention of the Committee is drawn to certain points in individual cases. **Henry K. Every**¹² died from some form of crushing injury to the chest while in police custody. It was finally conceded by a pathologist in Curaçao in a second opinion that "...powerful thumping and pressing force on the chest, must have led to the cause of death." The mechanism for inflicting this type of injury, as described by Amnesty International, is set out in paragraph 140 of the Second Periodic Report. Amnesty International cannot agree with the view of the Netherlands Antillean Government that there was "...no possible manner of formulating criminal evidence against one of the police officers [who had Henry K. Every in custody]". The organization also notes the comments of the pathologist, who supplied the second opinion cited in the Second Periodic Report, as to the lack of thoroughness of the original investigation. Amnesty International considers that the inquiry did not examine all the relevant information and failed to establish those responsible for causing the fatal injuries.

Leroy Neil¹³ died of peritonitis while being interrogated by the police and after previously showing clear signs of illness, such as vomiting and diarrhoea. In Leroy Neil's case it was apparent that adequate care was not exercised by the police in interrogating a person showing evident signs of distress and illness. The pathologist commented that, on the information she received, it was clear there were signs of illness that "...required at the least proper care". The pathologist also noted the difficulties she had in investigating because of the absence of "...a detailed record of the complaints and cause of illness of Leroy Neil..." in the reports supplied to her. Amnesty International considers the authorities should pursue an inquiry into who was responsible for this failure of care and custody and to bring them to justice.

¹² See Attachments and CAT/C/25/Add.2, paragraphs 131 to 141, for further details.

¹³ See Attachments and CAT/C/25/Add.2, paragraphs 142 to 148, for further details.

Moreno G. Fabias¹⁴ alleged that he was punched, kicked and hit with a truncheon by arresting officers. The Second Periodic Report concedes that the police used violence on the complainant. However, because of doubts raised regarding the manner in which violence was used and because the complainant received medical attention, the Public Prosecutor decided not to pursue the inquiry. After examination of the evidence Amnesty International concluded that the number of injuries sustained by Moreno G. Fabias was not consistent with police claims that he was only struck twice. It would have expected the Public Prosecutor to conduct a full and thorough investigation and, if justified, to have prosecuted the officer or officers involved. This was not done.

Xavier Fluonia¹⁵ allegedly committed suicide by hanging in a police station in Curaçao in July 1992. Amnesty International notes the results of the investigation into the death.

In the conclusion of the Netherlands Antillean Government with regard to these cases, paragraph 161 of the Second Periodic Report quotes the Attorney General's opinion, which is also contained in a letter of 26 May 1993 to Amnesty International, that "I should like to stress that it is not feasible at the moment to correct possible omissions in the procedures followed, and that every time corrections were made both in the form of organization and the procedures, both by the Minister of Justice and by the Public Prosecution's Office of the Netherlands Antilles, so as to prevent irregularities in any form". Amnesty International does not know what corrections were made "every time" but cannot accept the view that it was not feasible to correct possible "omissions". In none of the extensive correspondence between Amnesty International and the authorities have details been given of the corrections claimed in the Attorney General's letter.

Amnesty International would also like to draw the attention of the UN Committee against Torture to further reports of ill-treatment in the Netherlands Antilles which it has received. Amnesty International has sought information from the authorities on the action taken in these cases.

Gerardo E. Chong was arrested in Bonaire in November 1992. He claimed that the police beat and menaced him and at one point attempted to strangle him. An officer shot and wounded him slightly in the head during the arrest.

Amnesty International is still awaiting the authorities' reply to its request for information regarding the complaints of ill-treatment in **Pointe Blanche Prison**, St Maarten. Former prisoners alleged that they had been beaten with clubs and fists and kicked by prison guards in

¹⁴ See Attachments and CAT/C/25/Add.2, paragraphs 149 to 153, for further details.

¹⁵ See CAT/C/25/Add.2, paragraphs 154 to 159.

steel-capped boots. Former prisoners showed scars which they claimed had resulted from ill-treatment. One prisoner stated he had been shot through the neck. At least three guards were named as being responsible. According to reports, the increasing number of allegations from former prisoners prompted the Attorney General, Robert Pietersz, to visit the prison in November 1993 and an investigation was opened.

In November 1993 the press reported the Attorney General as saying "We take all complaints of beatings by police and warders very seriously" and that in the "...past year, a couple of people, both police and prison warders, have been sentenced." Amnesty International is still awaiting details from the authorities regarding any such criminal proceedings and other measures demonstrating the seriousness with which allegations of ill-treatment are taken by the Netherlands Antillean authorities.

Cuthbert Athanaze stated that he had been physically ill-treated and threatened by officers in St Maarten in December 1993.¹⁶ The organization sought further details from the authorities about the judicial investigation opened into this case. On 25 May 1994 the St Maarten Public Prosecutor replied to Amnesty International saying he had concluded that the officers had **for the most part** acted correctly but one officer, who admitted punching Cuthbert Athanaze in the eye, causing injuries which required three stitches, had been "severely reprimanded". Amnesty International has no information about the conduct of the investigation or of any subsequent attempt to bring the officer concerned to justice.

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¹⁶ See attached AI Index: EUR 01/02/94, for further details.

ATTACHMENTS

- ! *Amnesty International Concerns in Europe:
November 1991 - April 1992
(AI Index: EUR 01/03/92)*

- ! *Amnesty International Concerns in Europe:
May 1992 - October 1992
(AI Index: EUR 01/04/92)*

- ! *Amnesty International Concerns in Europe:
November 1992 - April 1993
(AI Index: EUR 01/01/93)*

- ! *Amnesty International Concerns in Europe:
May 1993 - October 1993
(AI Index: EUR 01/01/94)*

- ! *Amnesty International Concerns in Europe:
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