Annexe: information on measures taken to implement the recommendations contained in the Committee's previous concluding observations

In accordance with rule 71, paragraph 5 of the Human Rights Committee's rules of procedure, the Kingdom of the Netherlands was asked, in paragraph 29 of the concluding observations of the Human Rights Committee (CCPR/C/NLD/CO/4), to provide within one year information on the current situation and on its implementation of the Committee's recommendations in paragraphs 7, 9 and 23. This information has been submitted. This annexe provides information on the remaining recommendations for the Netherlands. As regards the implementation of the Committee's recommendations by Aruba and Curaçao, please refer to the Report on the List of Issues to which this Annexe has been added.

Paragraph 4 (reservation to article 10)

The Kingdom of the Netherlands wishes to maintain its reservation to article 10 ICCPR. For further information see the answer to question 3.

Paragraph 5 (equal pay for women)

The Netherlands aims to increase women's participation and economic independence, and to encourage a healthy balance of work and care. The income-related combination tax credit was introduced to stimulate secondary earners within households (mostly women) to maintain or increase their working hours after childbirth. Other measures include childcare benefit, policies aimed at improving the quality of childcare, various leave arrangements and the Flexible Working Arrangements Act, which entitles employees to request changes to their working hours and work location.

Several measures are in place to address the gender pay gap. These include awareness-raising campaigns, specific measures incorporated in the Action Plan against Labour Market Discrimination, steps to promote the active involvement of the 'social partners' (employers' associations and trade unions), progress reports, the establishment of an employment discrimination team at the Inspectorate of the Ministry of Social Affairs and Employment (ISZW), research on equal pay in higher vocational education (HBO), measures in the insurance industry and the establishment of a biennial 'gender pay gap monitor' in the private and public sectors.

Paragraph 6 (women in public office)

Within political parties

The basic premise in the Netherlands is that the political parties are responsible for recruiting and nominating candidates for political posts on behalf of the party. The freedom of political parties is one of the fundamental principles underpinning the Dutch democratic system. Figures relating to the number of women among administrators and politicians at local and regional level are published every two years in a report entitled 'State of Government' (*Staat van het Bestuur*).

The Minister of the Interior and Kingdom Affairs, and the Association of Dutch Mayors believe it is important for more women to become mayors, one of the most visible posts in local government. One instrument to achieve this is the mayoral orientation programme, financed by the Ministry of the Interior and Kingdom Affairs. The aim of the programme is to offer promising candidates from other professional backgrounds the opportunity to prepare themselves to apply for a post as mayor.

Within the Senior Civil Service

The Senior Civil Service (ABD) consists of around 500 of the most senior Dutch civil servants. Between 2007 and late 2013 the proportion of women in the ABD rose from 18% to 29%. By the end of 2016 the proportion of women holding a senior post in government service was 33%.

In the private sector

The Monitoring Committee noted in its 2016 Companies Monitor that although the proportion of women on management boards and supervisory boards is increasing, the rate of progress is too slow. All of the 5,000 Dutch companies that fall under the extended Management and Supervision Act must work to ensure that more women occupy top-level posts in the near future. To help and inspire these companies, the Minister for Education, Culture and Science, who is the coordinating minister for equal treatment policy, and the president of the Confederation of Netherlands Industry and Employers (VNO-NCW) have sent them a letter and handbook containing information and tips on recruitment and selection procedures. In addition, the Senate agreed in early 2017 that the statutory target for a balanced gender ratio on management boards should be maintained. This means that the 5,000 companies that fall under the Act are obliged to make ongoing efforts to allot 30% of the seats on management and supervisory boards to women. The Act further obliges every company that fails to achieve the 30% target to explain in its annual report why this is so and to set out plans to correct the situation.

Paragraph 8 (medical experiments involving minors)

On 16 June 2014, a new Clinical Trials Regulation entered into force in the European Union (CTR EU No 536/2014).[1] Once applied, the Regulation will ensure that the rules for conducting clinical trials are identical throughout the EU. It also sets out the latest standards for patient safety in clinical trials in all EU member states, including the Netherlands.

The Dutch government was already reconsidering the legislation concerning the participation of minors and incapacitated subjects in non-therapeutic research. In doing so, it took account of both patient safety and the importance of such research to advancing knowledge of disease and enhancing existing treatments or developing new ones for the benefit of the population represented by the subject. The publication of the EU Clinical Trials Regulation was taken into account in the revision of the Dutch Medical Research (Human Subjects) Act.

One of the conditions set by the Regulation for non-therapeutic research involving minors is as follows: a clinical trial on minors may be conducted only where there are scientific grounds for expecting that participation in the clinical trial will produce some benefit for the population represented by the minor concerned and such a clinical trial will pose only minimal risk to, and will impose minimal burden on, the minor concerned in comparison with the standard treatment of the minor's condition. In anticipation of the implications for interventional clinical research involving medicinal products, this standard has been adopted by the Netherlands for all types of medical research with human subjects, including trials of medical devices, and observational and social science research. The change entered into force in the Netherlands on 1 March 2017. The revised legislation also conforms to the more detailed description given by the EU clinical trials expert group of the requirements for research involving minors laid down in the revised Ethical Considerations for Clinical Trials on Medicinal Products conducted with Minors, as published in September 2017.

With regard to safeguarding consent, the government would like to point out that this is a standard legal requirement in medical research. More importantly, before a minor can participate in medical research, not only is the consent of the parents or legal guardians required (after they have been adequately informed), but from the age of 12 the consent of the minor is also mandatory. If consent for a minor under the age of 12 has been given by the parents or legal guardians but the minor in question does not wish to participate, the minor will be excluded from the trial. This ensures that the wishes of a minor, or a person unable to give informed consent, are respected under all circumstances.

Paragraph 10 (2008 National Security (Administrative Measures) Bill)

[1] The Regulation will become applicable in the Netherlands on a date as yet to be determined, possibly in 2019.

The bill has been withdrawn. The grounds for this recommendation therefore no longer exist.

Paragraph 11 (right to counsel)

The right to legal representation is enshrined in article 6 of the ECHR and article 18 of the Constitution. Under the criminal law, every arrested suspect has the right to speak to a lawyer before being questioned by the police (*Salduz* judgment; ECtHR). For further information see the answer to question 15.

Paragraph 12 (pre-trial detention)

In its previous concluding observation no. 12, the Committee expressed concern regarding pre-trial detention in the Netherlands. The government therefore wishes to provide a further explanation of the relevant statutory framework and the practical application of pre-trial detention.

The term pre-trial detention as used here encompasses both remand in police custody (*inverzekeringstelling*) and the subsequent stages of pre-trial detention (*voorlopige hechtenis*). The interests of the investigation constitute the basis for remand in police custody (regulated in article 57 of the Code of Criminal Procedure). The legislature has restricted the application of remand in police custody to criminal offences for which pre-trial detention (*voorlopige hechtenis*) is permissible (article 58, Code of Criminal Procedure). In general, these are criminal offences carrying a maximum sentence of four years or more. Remand in police custody may be ordered by the public prosecutor or assistant public prosecutor for a maximum of three days and may be extended once for a further three days. The public prosecutor orders the release of the suspect as soon as the interests of the investigation allow this. A relatively large number of suspects (over 50%) are released during remand in police custody or when the remand period ends.

Longer periods of detention can be ordered only by the examining magistrate or the courts. The court can make a detention order only if a number of specific statutory criteria have been met (see articles 67 and 67a, Code of Criminal Procedure). There is also a statutory requirement precluding the imposition of pre-trial detention if the suspect is not expected to receive a sentence or non-punitive order depriving them of their liberty, or if the term involved is likely to be shorter than the total period of pre-trial detention. Finally, the Netherlands applies the principle that pre-trial detention should be used with caution, in accordance with ECtHR case law. In principle, suspects remain free while awaiting trial, or alternatives to detention are explored. Such alternatives include electronic monitoring, or suspension or termination of pre-trial detention subject to conditions laid down by the court.

These conditions may restrict the suspect's liberty (e.g. if a restraining order is imposed) or oblige them to take part in certain activities or programmes. The figures show that the courts are making increasing use of such alternatives. Pre-trial detention is suspended in around 25% of hearings before the public prosecutor.

The judiciary is currently exploring the scope for encouraging the courts to release suspects on bail rather than impose pre-trial detention. The government would also refer the Committee to the Act on the mutual recognition of decisions on supervision measures as an alternative to provisional detention (Bulletin of Acts and Decrees 2013, 250), which entered into force on 1 November 2013 (Bulletin of Acts and Decrees 2013, 309).

The need to extend pre-trial detention is periodically reviewed by the courts; at the same time, increasingly strict requirements are imposed with regard to the grounds for detaining the suspect. A detention order may be lifted if there is no longer any suspicion that one of the offences listed in article 67a, paragraph 3 of the Code of Criminal Procedure has been committed or if there are no longer serious grounds for suspicion within the meaning of article 67, paragraph 3 of the Code. In addition, the suspect's personal circumstances such as a change in their family or work situation can be raised to support the lifting of the detention order. Other arguments that may be put forward include the undesirability of enforcing the order in a police cell, or defects in the order or in the arrest and remand in police custody procedures.

The following observations also apply to the use of pre-trial detention. It is correct that the number of individuals in pre-trial detention relative to the total prison population is high, but the following circumstances should be taken into account. The number of people on remand in the Netherlands per 100,000 inhabitants is exactly the same as the European average (35). However, in the Netherlands more short prison sentences are imposed than in other countries, so the share of the total prison population made up of people in pre-trial detention is relatively large. Pre-trial detention is not imposed extremely often or for extremely long periods.

A person who has undergone pre-trial detention in criminal proceedings and is no longer a suspect can claim compensation under article 89 of the Code of Criminal Procedure if the criminal case concluded without a sentence or measure being imposed. A fixed daily amount of €80 (or €105 if detention took place at a police station) applies. Suspects can also claim compensation for costs and loss of income under article 591a of the Code of Criminal Procedure.

Paragraph 13 (witness identity)

The Witness Identity Protection Act contains a provision on questioning the staff of the intelligence and security services. This may take place in the context of an investigation into the reliability of information supplied by these services to ascertain if it can be used in criminal proceedings.

During such questioning the rights of the defence may be restricted if this is necessary in the interests of national security. The Act contains effective safeguards to compensate the defence for any restrictions to its rights of defence imposed as a result of this provision. For example, the questioning of a witness whose identity is protected is conducted by the court, which must be informed of the full identity of the witness; the witness must be sworn in; the court must investigate the reliability of the witness's testimony; and the defence must have sufficient opportunity to question the witness. It is acknowledged that such questioning must often take place without the defence being present if the interests of national security so require. To compensate, the Act provides for restrictions on the scope for using in evidence the testimony of a witness whose identity is protected. Furthermore, the court is obliged to provide specific reasoning to underpin the use of such testimony as evidence.

In the government's opinion, the above-mentioned legislation provides an adequate basis for the use of information provided by the intelligence and security services in criminal proceedings. If such information is used as a source of evidence in a criminal case, the defence must be given the opportunity to investigate and challenge its reliability, if necessary by summoning witnesses to be heard in court. The Witness Identity Protection Act provides the necessary framework and imposes restrictions on the use of such material in evidence.

Paragraph 14 (telephone tapping)

There is a general impression that interception of phone communications (tapping) is common in the Netherlands. Every year, the Dutch Parliament receives a report containing the annual figures on telephone interceptions. This data provides information about the number of interceptions carried out in the context of criminal investigations, enabling Parliament to ask questions. The annual total is approximately 25,000. Although the number of taps on landlines in the Netherlands has been stable for many years (around 3,000 in the period from 1993 to 2008), the growth in the use of mobile phones has led to a marked rise in the total number of interceptions, from zero in 1993 to over 20,000 in 2009. There has also been a striking increase in the number of interceptions of internet communications, from 3,331 in 2011 to 16,676 in 2012. The same trend can be observed in a neighbouring country: a study carried out by a research institute speaks of an exponential rise of over 600% in the number of interception warrants issued for telephone tapping in the country concerned between 1998 and 2007. Nevertheless, the number of interceptions carried out in

the Netherlands in recent years has declined slightly, both in absolute figures (a 17% reduction in 2010 compared with 2008) and in relation to the total number of connections in use. The figures show that the number of connections intercepted is less than 0.10% of the total number of telephone connections in the Netherlands.

The study referred to above shows that as an investigative tool, telephone tapping is highly valued by the Dutch police and justice authorities and has more than demonstrated its usefulness over time. However, the way in which the information thus obtained is used has changed: in the past it could be used as direct evidence, but today it is increasingly deployed for control and investigative purposes and as indirect evidence. It should be noted that telephone interceptions are registered according to telephone number in the Netherlands and not according to individual or company name, which would allow interception warrants to be combined.

The study also showed that the use of mobile phones has grown exponentially in recent years. People whose phones are being tapped frequently change their SIM card or mobile phone. Each time this happens, the agency concerned has to seek a new warrant in order to be able to continue intercepting the suspect's calls. A bill is currently before Parliament that would provide for interception by name. This would allow the public prosecutor simply to note the name of the user in question and the warrant would be issued in that name. In such a case, the warrant – and an authorisation from the examining magistrate – would apply to all numbers used by that person for the duration of the warrant. Studies estimate that only 20% of users have only one telephone number. On the basis of two to four numbers per person, it is expected that once the bill enters into law the number of interception warrants sought will be more than halved.

Paragraph 15 ('disturbance orders')

The Dutch government is obliged to protect the constitutionally guaranteed rights and freedoms of its citizens. The right to private life is a fundamental right protected by article 10 of the Dutch Constitution, article 17 of the Covenant and article 8 of the ECHR. Infringements of privacy must have a statutory basis and must be subject to strict safeguards. Where measures are necessary in the interests of national security, the government can apply them vis-à-vis individuals only after careful consideration of all the interests at stake. On 1 March 2017, new legislation entered into force within the framework of the plan of action 'An Integrated Approach to Jihadism', extending the government's powers to combat terrorism. For example, it is now possible to impose certain administrative measures (e.g. a banning order, restraining order or requirement to report periodically to the authorities) on individuals who engage in conduct connected with terrorist activities or who

provide support for such activities. The law also empowers the authorities to issue a travel ban. Such measures can only be imposed if they are deemed necessary on the grounds of national security. They must further have a legitimate purpose, serve a pressing social need and meet the requirements of foreseeability, proportionality and subsidiarity.

Paragraph 16 (blasphemy)

In paragraph 16 of the Human Rights Committee's concluding observations on the Netherlands' fourth periodic report, the Committee drew attention to the principle of freedom of expression in connection with the government's intention to remove the article on blasphemy from the Criminal Code and at the same time to revise its anti-discrimination provisions. However, the government has scrapped its plans in this respect. As a result, the grounds for the recommendation no longer apply.

It goes without saying that the Netherlands attaches great value to freedom of expression. Whenever the government is preparing legislation that might affect this principle, it takes great care to ensure that the proposed legislation is compatible with article 19 of the Covenant.

Paragraph 17 (child sexual abuse)

The government takes vigorous measures to combat child abuse. For a detailed explanation of these measures, the government would refer the Committee to the answer to question 30.

Paragraph 18 (Urban Areas (Special Measures) Act)

The government would refer the Committee to the answer to question 23.

Paragraph 19 (discrimination)

The government presented its Action Plan against Labour Market Discrimination in May 2014. Information and awareness are key issues. One of the principal measures outlined in the plan is the Diversity Charter. By signing the Charter, organisations commit themselves to an active focus on inclusion and diversity in the work environment. Committed organisations formulate their own goals in their action plans. All government ministries have signed the Diversity Charter. Examples of measures taken include the provision of workshops on 'selection without prejudice' and advice on tapping into alternative recruitment channels. For more detailed information, the government would refer the Committee to the answers to questions regarding discrimination in the main report.

Bonaire. St Eustatius and Saba (part of the former Netherlands Antilles)

Paragraph 21 (discrimination against children born out of wedlock)

In connection with the changed constitutional arrangements in Bonaire, St Eustatius and Saba, a new Civil Code for the three islands has replaced the Civil Code of the Netherlands Antilles.

When the consolidated text of the new Code was adopted on 27 September 2010, three articles of the Netherlands Antilles Civil Code were reintroduced in Book 4 by mistake. These articles distinguish between children born in and out of wedlock in matters of inheritance law. This distinction was abolished in 1985 and is no longer made in legal practice in Bonaire, St Eustatius and Saba.

The text of Book 4 is corrected, bringing it into line with existing practice (through the Security & Justice (Miscellaneous Provisions) Act (Bill no. 33 771), in force since 1 September 2014).