

**FUNDAMENTAL RIGHTS IN THE KINGDOM OF  
THE NETHERLANDS: EQUIVALENT PROTECTION  
IN ALL PARTS OF THE KINGDOM**

THEORY AND PRACTICE OF TERRITORIAL LIMITATIONS ON THE  
APPLICATION OF HUMAN RIGHTS TREATIES UPON RATIFICATION

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# Contents

Introduction	5
I	Treaty relations of the Kingdom of the Netherlands 8
I.1	Constitutional structure and membership of international organisations 8
I.2	Territorial limitation and territorial extension 10
I.3	Approval and ratification of treaties 12
I.4	Implementing measures 12
I.5	Conclusions 15
II	Territorial extension and human rights treaties 16
II.1	Case studies 16
II.1.1	<i>UN Convention on the Rights of Persons with Disabilities (CRPD)</i> 17
II.1.2	<i>Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography</i> 19
II.1.3	<i>Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</i> 20
II.1.4	<i>Council of Europe Convention on Action against Trafficking in Human Beings</i> 21
II.1.5	<i>International Convention for the Protection of All Persons from Enforced Disappearance</i> 23
II.1.6	<i>Protocol no. 15 amending the Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR)</i> 24
II.1.7	<i>Council of Europe Convention on preventing and combating violence against women and domestic violence</i> 24
II.1.8	<i>Paris Agreement</i> 27
II.2	Explanations 29
II.2.1	<i>Impact of the constitutional reforms of 10 October 2010</i> 29
II.2.2	<i>Limited expertise and implementing capacity</i> 31
II.2.3	<i>Limited attention, knowledge and coordination in the Netherlands</i> 32
II.2.4	<i>Costs</i> 33
III	Conclusions and recommendations 34
Annexe I	List of human rights treaties
Annexe II	List of abbreviations

# I Introduction

The international rule of law, which must be promoted by the government pursuant to article 5 of the Charter for the Kingdom of the Netherlands in conjunction with article 90 of the Dutch Constitution, provides protection not only for states from aggression but also for individuals and groups from violations of their fundamental rights. This makes the establishment and implementation of multilateral treaties to protect human rights a subject of fundamental importance for the entire Kingdom and hence for its four constituent countries. However, the ongoing efforts made by the Dutch government to achieve this in international relations are not sufficiently reflected in the internal relations of the Kingdom. The application of these treaties to parts of the Kingdom is postponed too often and too long, because it remains confined to the Netherlands or even to just the European part of the Netherlands.

In Geneva in May 2017 the Kingdom of the Netherlands underwent a Universal Periodic Review (UPR) by the Human Rights Council of the United Nations for the third time. The UPR is an international human rights instrument that enables all 193 UN member states to question one another in turn, by means of an interactive dialogue, about their internal human rights situation. The Minister of the Interior and Kingdom Relations led the delegation consisting of representatives of all four constituent countries of the Kingdom: the Netherlands, Aruba, Curaçao and St Maarten. The previous reviews of the Kingdom took place in April 2008 and May 2012.

During the UPR, four UN member states (Australia, Peru, Romania and the Russian Federation) explicitly requested action to eliminate differences in human rights between the European and Caribbean parts of the Netherlands or, in some cases, between the Netherlands and the Caribbean countries of the Kingdom. For example, Peru requested the Kingdom: '[to] seek to harmonise the human rights norms in the four countries of the Kingdom according to the international standards.'<sup>1</sup> Four other member states (Liechtenstein, the United Kingdom, Ireland and the Republic of Korea) requested improved compliance with human rights in relation to the Caribbean countries and the Caribbean part of the Netherlands, including children's rights, equal access to justice, training for prison staff and the mandate of the national human rights institute.<sup>2</sup>

This indicates a problem that is often unknown to Dutch politicians and policymakers and the public at large, namely that within the Kingdom of the Netherlands different international human rights standards apply to its different constituent parts.

These differences are hard to reconcile with the universality of human rights or with the fact that safeguarding fundamental human rights and freedoms is designated as a 'Kingdom affair' (article 43, paragraph 2 of the Charter for the Kingdom of the Netherlands). In view of this principle, human rights treaties signed by the Kingdom should

1 United Nations General Assembly, Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Netherlands*, 18 May 2017, A/HRC/36/15, recommendations 131.105, 131.199, 131.202, 131.203.

2 *Ibid.*, recommendations 131.117, 131.119, 131.154, 131.198, 131.201.

apply in all its countries and territories (territorial extension). Otherwise there are two major consequences:

1. The international credibility of the Kingdom of the Netherlands may be called into question if it encourages other states (some of which have less implementing capacity than the three Caribbean countries and the Caribbean part of the Netherlands) to sign and comply with human rights treaties when it itself restricts the application of these treaties to just part of the Kingdom. In other words, the state of the Netherlands is setting the bar lower for itself than for other countries.
2. Systematic differentiation in the application of human rights treaties within the Kingdom produces a situation in which human rights do not apply equally to all Dutch citizens and other inhabitants of the Kingdom. As transpired during the most recent UPR, this has not gone unnoticed internationally and has not escaped criticism.

In view of these two points, the Advisory Council on International Affairs (AIV) sees cause to study more closely the practice connected with the territorial extension of human rights treaties in the Kingdom of the Netherlands. There are two dimensions to this practice. The first is the harmonisation of international human rights standards within the Kingdom. The second concerns the subsequent implementation and enforcement of these standards by each of the four countries of the Kingdom, including the financial outlay required for this purpose.

This second dimension – the implementation and enforcement of these treaties – is clearly of great importance. As will become apparent in this advisory report, safeguarding fundamental rights and freedoms is a responsibility of the Kingdom as a whole. On this point the four countries of the Kingdom could and should work together more closely to tackle pressing internal human rights issues. At present, for example, Aruba, Curaçao and Bonaire are having to deal with an influx of asylum seekers and other migrants from Venezuela, their large and crisis-riven neighbour. Closer cooperation in this field is therefore certainly necessary.

Nonetheless, implementation and enforcement can be undertaken only when the standards actually apply to all parts of the Kingdom. This is still by no means always the case. That is why this report puts the emphasis primarily on the first dimension, in other words on guaranteeing the applicability of international human rights throughout the entire Kingdom. The report aims to make a number of policy recommendations to ensure that these human rights treaties are applied equally and more quickly to all inhabitants of the Kingdom.

#### *Structure of the advisory report*

Chapter I examines first how the treaty relations of the Kingdom of the Netherlands are established. Among the matters considered are the special constitutional structure of the Kingdom, how the concept of ‘territorial limitation’ of a treaty is defined and how treaties are approved and ratified by the Kingdom. The chapter also deals with the rules governing the formulation of the implementing legislation which is often required for a treaty to take effect.

Chapter II focuses on human rights treaties that have been signed by the Kingdom of the Netherlands. The difficulties that arise with respect to territorial extension during and

after approval is discussed in case studies on a number of these treaties. This chapter also considers some possible explanations for these difficulties.

The report finishes with conclusions and policy recommendations.

*Background and procedure*

The topic 'Territorial limitation upon ratification of human rights treaties' was included in the 2017-2020 work programme at the AIV's initiative. This report is therefore not a response to a request for advice from the government or parliament.

It is primarily based on a literature study and examination of source material, mainly Dutch parliamentary papers. The AIV also received additional information from the legal departments of the Ministry of the Interior and Kingdom Relations, the Ministry of Health, Welfare and Sport and the Ministry of Justice and Security. Annexe 1 was drawn up by the Legal Affairs Department of the Ministry of Foreign Affairs at the AIV's request. The AIV is extremely grateful to all concerned for their assistance.

This advisory report was prepared by Professor E.M.H. Hirsch Ballin, Professor J.H. Gerards, Professor R.A. Lawson and R.A.G. Dekker MA MSc (executive secretary). They were assisted by M. Guldemond and N.S. Bagga (trainees).

The AIV adopted this report on 8 June 2018.

# I Treaty relations of the Kingdom of the Netherlands

## I.1 Constitutional structure and membership of international organisations

The Charter for the Kingdom of the Netherlands<sup>3</sup> regulates the constitutional structure of the Kingdom and the relations between its constituent countries. Since the amendment of the Charter of 10 October 2010, the Kingdom has consisted of four countries: the Netherlands, Aruba, Curaçao and St Maarten. The country of the Netherlands consists of a European and a Caribbean part. The islands of Bonaire, St Eustatius and Saba (also known as the 'BES islands') have the status of public bodies (analogous to municipalities) and are part of the country of the Netherlands (the Netherlands in the Caribbean). The countries of Aruba, Curaçao and St Maarten and the BES islands together form the Caribbean part (or, rather, the Caribbean parts) of the Kingdom.

The countries of the Kingdom are of equal rank and look after their own affairs independently. However, the Charter designates various topics that are the responsibility of the Kingdom as a whole. Decisions on these Kingdom affairs are made by the Council of Ministers for the Kingdom and legislation takes the form of Kingdom Acts and orders in council for the Kingdom. The Council of Ministers for the Kingdom comprises the Dutch ministers and the Ministers Plenipotentiary for Aruba, Curaçao and St Maarten.

Article 3, paragraph 1 (b) of the Charter for the Kingdom designates foreign relations as a Kingdom affair. The provisions of the Constitution of the Kingdom of the Netherlands<sup>4</sup> apply to this subject. Pursuant to article 5, paragraph 1 of the Charter, further rules on foreign relations, including treaty relations, are laid down in the Constitution (articles 90-95) and the Kingdom Act regulating the approval and publication of treaties.<sup>5</sup> How the rules are applied in practice is regulated in the Legislative Drafting Instructions.<sup>6</sup>

The Kingdom of the Netherlands has thus constituted itself as a unitary subject of international law. Unlike federal states such as Germany and Belgium, the constituent parts of the Kingdom (the countries of the Netherlands, Aruba, Curaçao and St Maarten) are not authorised to conclude treaties independently. Treaties are therefore always concluded by the Kingdom and signed on behalf of the Kingdom government either by the Minister of Foreign Affairs or by another official designated for this purpose. This may also be a minister of one of the governments of the Caribbean countries. Signature by the head of state has become uncommon.

To determine whether the countries of the Kingdom can be a member of an international organisation it is necessary to distinguish between the power to conclude a treaty on

3 See: <<http://wetten.overheid.nl/BWBR0002154/2017-11-17>>.

4 Particularly articles 91-95. See: <<http://wetten.overheid.nl/BWBR0001840/2017-11-17>>.

5 See: <<http://wetten.overheid.nl/BWBR0006799/2017-07-01>>.

6 See: Chapter 8. Preparation, approval and implementation of treaties, <<http://wetten.overheid.nl/BWBR0005730/2018-01-01>>.

accession to the organisation concerned and membership of that organisation as such. The former power can be granted by domestic constitutional law for certain subjects to federated states and comparable entities.<sup>7</sup> Whether a subnational entity can be a member of an international organisation also depends on the organisation's charter.

The Charter for the Kingdom of the Netherlands grants the power to conclude treaties solely to the Kingdom. Article 28 of the Charter is relevant to membership of an international organisation which does not restrict this exclusively to sovereign states. This article provides that Aruba, Curaçao and/or St Maarten may become members of an international organisation on the basis of a treaty. Such a provision does not apply to the Netherlands because the Charter (as is apparent from article 5) does not treat the Netherlands as an entity separate from the Kingdom for the purposes of international relations. This is in keeping with how the Kingdom was viewed when the Charter was adopted.<sup>8</sup> Nonetheless, cases do occur in which the legal consequences of the Kingdom's membership of an international organisation are limited in the founding treaty or upon accession to the treaty to the country of the Netherlands or to the European part of the Kingdom.

Although membership of the European Union is often crudely described as belonging to the Netherlands, it is apparent from the founding treaties (which, when amended, must be approved by Kingdom Act) that it is in fact the Kingdom of the Netherlands that has membership. This was expressly noted by the Council of State in the information it provided in 2004 about relations within the Kingdom and with the European Union: 'Not only are the NAA [Netherlands Antilles and Aruba, as they were at that time] excluded from the full operation of the treaties by the Overseas Countries and Territories (OCT) arrangement, but the fact that the Kingdom of the Netherlands is the member state of the EU also means that certain important Kingdom affairs are determined partly or wholly by European law and European policy. Dutch nationals who are residents of the NAA have the status of EU citizen and have, in principle, all related rights.' At the time, the Council of State added that this did not extend to the right to vote in elections to the European Parliament. Following a judgment by the Court of Justice of the European Union, however, all Dutch nationals, including those in the Caribbean parts of the Kingdom, do in fact have the right to vote in EP elections. The Council continued: 'In matters of foreign policy and defence, which are policy areas expressly mentioned in the Charter for the Kingdom as Kingdom affairs, the Kingdom must take account of the results of decision-making in the context of the EU's Second Pillar.'<sup>9</sup> The EU treaties too are clear about this: the basic principle is that they apply to the entire territory of the

7 That is the case, for example, in the situations referred to in article 167 (3) of the Belgian Constitution and article 32 (3) of the Basic Law for the Federal Republic of Germany, subject to consent at national level.

8 W.C.L. van der Grinten, *Het Koninkrijk der Nederlanden*, in: C.J.H. Jansen, S.C.J.J. Kortmann and G. Van Solinge (eds.), *Verspreide geschriften van W.C.L. van der Grinten*, Deventer: Kluwer 2004, pp. 709-719; R. dos Santos Nascimento, *Het Koninkrijk ontsluit*, PhD dissertation Groningen/Aruba 2016, § 4.4.2.

9 *Verdieping of geleidelijk uiteengaan? De relaties binnen het Koninkrijk en met de Europese Unie* (Deepening or gradual separation? Relations within the Kingdom and with the European Union), information dated 9 September 2003 pursuant to section 18, subsection 2 of the Council of State Act on how the Netherlands Antilles and Aruba relate to the European Union. See the publication in book form, February 2004, p. 22.

member states, but special clauses relating to their territorial scope apply pursuant to article 52 of the Treaty on European Union (TEU) and article 355 of the Treaty on the Functioning of the European Union (TFEU). For this purpose, the Caribbean countries of the Kingdom and the Caribbean parts of the Netherlands constitute 'overseas countries and territories' to which only Part Four of the TFEU applies. This position may be changed at the request of the member state concerned – i.e. the Kingdom of the Netherlands – by means of a special procedure (as laid down in article 355 (6) TFEU) for granting the status of outermost region to which EU law in its entirety applies, subject to a few special clauses.

## **1.2 Territorial limitation and territorial extension**

The basic rule in international law is that a treaty applies to the entire territory of a state, in this case the Kingdom of the Netherlands. However, article 29 of the Vienna Convention on the Law of Treaties<sup>10</sup> provides for the possibility of indicating, when a treaty is concluded and/or ratified, that it applies only to one or more parts of the Kingdom. A territorial limitation is not possible if the subject matter of the treaty is one which, by its very nature, does not permit a distinction to be made between the different parts of the territory (see also section II.1.6 below).

A treaty that has been concluded on behalf of the Kingdom of the Netherlands need not therefore always apply to the Kingdom as a whole or to the territory of each of the constituent countries. This requires a separate decision of the Council of Ministers for the Kingdom (the Kingdom government), on the initiative of the Minister of Foreign Affairs. In practice, the governments of Aruba, Curaçao and St Maarten are asked by the Treaties Division of the Legal Affairs Department of the Ministry of Foreign Affairs in The Hague whether the treaty should also apply to these countries.<sup>11</sup> They then make their own independent decision. However, their answer need not be the last word on the matter. It is up to the Kingdom government, if necessary after further consultation, to make decisions on the international relations of the Kingdom.

The situation of Bonaire, St Eustatius and Saba (the BES islands) is different. Since 10 October 2010 each of these islands has formed part of the Dutch constitutional order.<sup>12</sup> As they are presently classified as 'overseas countries and territories', European legislation does not apply to them. A large part of the Netherlands Antilles legislation has been converted into Dutch legislation for these islands pursuant to the Public Bodies (Bonaire, St Eustatius and Saba) Implementation Act (IBES); as a result, the treaties applicable there have become treaties for that part of the Netherlands as well.

10 Article 29 reads: 'Unless a different intention appears from the treaty or is otherwise established, a treaty [...] is binding upon each state party in respect of its entire territory.'

11 Legislative Drafting Instructions (1 January 2018), instruction 8.2.

12 Pursuant to article 1, paragraph 2 of the Charter for the Kingdom of the Netherlands, which has now been replaced by article 132a of the Constitution. See also the 2015 report of the committee established to evaluate the implementation of the new constitutional structure of the Caribbean part of the Netherlands. The report is entitled *Vijf jaar verbonden: Bonaire, St Eustatius, Saba en Europees Nederland* (Five years joined together: Bonaire, St Eustatius, Saba and the Netherlands in Europe) <<https://kennisopenbaarbestuur.nl/rapporten-publicaties/vijf-jaar-verbonden-bonaire-sint-eustatius-saba-en-europees-nederland/>>, annexe to Parliamentary Papers 34300 IV, no. 23/B.

In addition, legislation drawn up specifically for the BES islands became applicable to them on 10 October 2010. Examples are the BES Drivers, Driving Licence and Driving Proficiency (Third Party Liability) Act, the BES Oil Tankers (Third Party Liability) Act and the BES Administrative Jurisdiction Act.

It follows from the above that a distinction is often made between the European and Caribbean parts of the country of the Netherlands for the purposes of the territorial scope of treaties. The Legislative Drafting Instructions contain the following passage on this:

‘As Bonaire, St Eustatius and Saba form part of the country of the Netherlands constitutionally, but belong to the Caribbean part of the Kingdom in geographical terms, the explanatory memorandum to a treaty should preferably deal expressly with the question of whether the treaty will also apply to Bonaire, St Eustatius and Saba. Their geographical location may be a reason for arranging for a treaty that is to be concluded for Aruba, Curaçao or St Maarten to be applicable to Bonaire, St Eustatius and Saba as well or for providing that a treaty to be concluded for the Netherlands should apply only to the European part of the Netherlands. Conversely, the constitutional ties of Bonaire, St Eustatius and Saba with the Netherlands may be a reason for not extending the application of a Caribbean treaty to them or for arranging for a treaty to be concluded for the Netherlands to apply equally to the European and Caribbean parts of the Netherlands. In special cases, it is even conceivable for a treaty to be concluded exclusively for Bonaire, St Eustatius or Saba, without also applying to the other parts of the Kingdom.’<sup>13</sup>

Like the governments of Aruba, Curaçao and St Maarten, the island authorities of the BES islands are consulted about whether it would be desirable to extend the application of treaties to them. Although there is no provision for this constitutionally, these public bodies (sometimes known as ‘special municipalities’) are granted a measure of administrative autonomy in practice to assess this desirability. This would be virtually inconceivable in the case of municipalities in the European part of the Netherlands. It should be noted, however, that departures from the statutory provisions in the ‘special municipalities’ are not always permissible. They should comply with the criterion contained in article 132a, paragraph 4 of the Constitution (Bulletin of Acts and Decrees 2017, 426):<sup>14</sup>

‘Rules may be introduced and other specific measures taken for these public bodies where, on account of special circumstances, they differ fundamentally from the European part of the Netherlands.’

A special arrangement applies to economic and financial treaties affecting Aruba, Curaçao or St Maarten. Article 25 of the Charter provides that such treaties should

13 See also Legislative Drafting Instructions (1 January 2018), instruction 8.13, explanation of paragraph 6.

14 This constitutional provision came into effect on 17 November 2017 and replaced article 1, paragraph 2 of the Charter for the Kingdom, as provided for in article 54 of the Charter. Article 1, paragraph 2 of the Charter read: ‘Bonaire, St Eustatius and Saba shall form part of the Dutch constitutional order. Rules may be laid down and other specific measures may be introduced for these islands, in view of their economic and social circumstances, their substantial distance from the Netherlands in Europe, their island character, small size and population, their geographic location, their climate and other factors that fundamentally distinguish them from the Netherlands in Europe.’

not be concluded against the will of the country concerned. Article 26 adds that if one of these countries wishes to conclude an economic or financial treaty the Kingdom government should assist in this, unless this would be inconsistent with that country's ties with the Kingdom.

### **1.3 Approval and ratification of treaties**

Treaties enter into force on the date specified in them and become binding on the signatory states on the date on which the ratification is notified to the depositary of the treaty.<sup>15</sup> With some exceptions, parliamentary approval is required before the Kingdom government can ratify a treaty. However, provisional application of a treaty is possible pending its entry into force in the situations described in article 25 of the Vienna Convention on the Law of Treaties<sup>16</sup> and section 15 of the Kingdom Act on the approval and publication of treaties.<sup>17</sup>

Parliamentary approval is given either by (Kingdom) Act or tacitly. If a treaty affects one or more Caribbean countries of the Kingdom, which may be the case where the ties relate to the Kingdom as a whole and/or there is territorial applicability in those countries, it is necessary to follow either the procedure for Kingdom legislation or a procedure appropriate to tacit approval. These situations are summarised in the Kingdom Act on the approval and publication of treaties as arranging for their 'application' to Aruba, Curaçao or St Maarten.<sup>18</sup>

When a treaty is submitted to the States General for approval, the explanatory memorandum to the Kingdom Bill for the treaty's approval states whether each Kingdom country believes it desirable for application of the treaty to be extended to it or has this under consideration. The explanatory memorandum also states whether the treaty will apply to the Caribbean part of the Netherlands (Bonaire, St Eustatius and Saba). The approval documents accompanying a treaty therefore indicate to which parts of the Kingdom the treaty will apply. After approval by parliament, the instrument of ratification indicates what parts of the Kingdom will be bound by the treaty.

### **1.4 Implementing measures**

When preparing the parliamentary approval of a treaty, the Kingdom government examines to what extent compliance by the Kingdom (or part of it) requires certain implementing measures.<sup>19</sup> The Legislative Drafting Instructions provide that a treaty can be approved even before completion of the formal implementing legislation, which generally tends to be rather more complex. This may be desirable in the case of

15 The depositary of a treaty is the country or international organisation designated as such in the treaty. States which sign, ratify or denounce a treaty must give notice of this to the depositary.

16 In addition, article 18 obliges a state to refrain from acts which would defeat the object and purpose of a treaty before it enters into force. See: <<http://wetten.overheid.nl/BWBV0003441/1985-05-09>>.

17 See: <<http://wetten.overheid.nl/BWBR0006799/2017-07-01>>.

18 See articles 8 and 9.

19 Legislative Drafting Instructions <<https://zoek.officielebekendmakingen.nl/stcrt-2017-69426.html>>, instruction 8.9, explanatory note on paragraph 3.

politically important treaties, if their entry into force is expected to take a long time and it is considered desirable for the Kingdom to ratify them at an early stage. Implementing legislation must, however, be in force or enter into force by the time the treaty in question enters into force internationally.<sup>20</sup>

In practice, there seems to be a preference for drawing up the legislation before a treaty enters into force for the Kingdom or part of it. The explanatory memorandum to the Bill for approval of the treaty then states that territorial extension is 'desirable', but that implementing legislation must first be drawn up before the treaty can enter into force. To enable the treaty to be ratified at a later date for the Caribbean countries of the Kingdom and for the Caribbean part of the Netherlands, approval is then immediately requested for the entire Kingdom. This practice is examined in more detail in section II.2 below.

As each of the four countries constituting the Kingdom of the Netherlands has its own constitutional order, each of them must arrange independently for the legislation and government action necessary to implement a treaty that will apply to it, except in the case of treaties concerning matters that have to be regulated by Kingdom Act pursuant to the Charter for the Kingdom. The drafting of the implementing legislation required to enable a treaty to enter into force is therefore primarily a matter for the countries of the Kingdom themselves.<sup>21</sup> This does not, however, exclude cooperation on this point. Article 27 of the Charter provides that Aruba, Curaçao and St Maarten should be consulted at the earliest possible stage in the preparation of agreements with other Powers which affect any of them, in accordance with article 11 of the Charter. These countries should also be involved in implementing such treaties. A provision was added in 2010 to the effect that the Netherlands, Aruba, Curaçao and St Maarten should conclude a mutual arrangement on cooperation between them for the purpose of drafting delegated legislation or other measures necessary for the implementation of treaties.<sup>22</sup> The following 'catch-all provision' was also added in 2010:

'If the interests of the Kingdom are affected by the fact that delegated legislation or other measures necessary for the implementation of agreements with other Powers have not been introduced in one of the Countries, while the agreement in question can be ratified for that Country only once the delegated legislation or measures have been introduced, an order in council for the Kingdom, or if necessary a Kingdom Act, may determine the way in which the agreement is to be implemented.'<sup>23</sup>

The mutual arrangement referred to above was published in the Government Gazette on 10 December 2010<sup>24</sup> and contains provisions which (1) set criteria for the (timely) preparation of implementing legislation, and (2) make it possible to request assistance

20 Ibid., instruction 8.9, explanatory note on paragraph 3.

21 Parliamentary questions (Annexe), 2014-2015, no. 753, answer 3. See also: Charter for the Kingdom of the Netherlands, article 43, paragraph 1.

22 Charter for the Kingdom of the Netherlands, article 27, paragraph 2.

23 Ibid., article 27, paragraph 3.

24 Government Gazette 2010, no. 19006, 10 December 2010. The Agreement was signed by the Minister of Justice on behalf of the Netherlands, the Prime Minister on behalf of Aruba, the Island Commissioner for Constitutional Affairs on behalf of Curaçao and the Prime Minister on behalf of St Maarten.

with this from the other countries of the Kingdom. It should be emphasised that this mutual arrangement relates to treaties concluded on behalf of the Kingdom of the Netherlands since 10 October 2010.

In the mutual arrangement, the Netherlands, Aruba, Curaçao and St Maarten agreed that if it is decided a treaty should apply to the entire Kingdom and implementing measures are necessary before the treaty can be ratified, each of the countries should draw up an implementation plan as quickly as possible.<sup>25</sup> This plan should in any event specify:

- a. what measures need to be taken before the treaty can be ratified for the country;
- b. within what period such measures can be taken;
- c. whether the implementation of the treaty may have substantial consequences for the country's budget;
- d. whether the treaty gives rise to reporting obligations.<sup>26</sup>

A country may ask the other countries of the Kingdom for 'assistance' in executing an implementation plan.<sup>27</sup> Such a request for assistance may not, in principle, be refused 'if the interests of the Kingdom would be affected by the absence of timely and correct implementation by the requesting country (...).'<sup>28</sup> In other words, the autonomous countries can ask the Netherlands in Europe for technical assistance in preparing implementing measures, which, with some exceptions,<sup>29</sup> the Netherlands in Europe is then obliged to provide. By the same token, the Netherlands in Europe can ask Aruba, Curaçao and St Maarten for assistance, and the autonomous countries can ask each other for assistance. In practice, the most likely scenario is for the Netherlands in Europe to provide assistance, for example technical assistance.

The mutual arrangement explicitly creates a role for the Minister of the Interior and Kingdom Relations 'if, in his opinion, insufficient progress is made with the execution of an implementation plan [i.e. the preparation of implementing legislation and the implementing measures necessary to enable a treaty to enter into force for a country], and an order in council for the Kingdom or a Kingdom Act as referred to in article 27, paragraph 3 of the Charter is under consideration.'<sup>30</sup> In such a case, the minister consults with the minister with responsibility for the policy in Aruba, Curaçao or St Maarten with a view to executing the implementation plan within a reasonable period.

25 A mutual arrangement as referred to in article 38, paragraph 1 of the Charter for the Kingdom of the Netherlands on cooperation between the countries for implementation of treaties, article 1, paragraph 1.

26 Ibid., article 2.

27 Ibid., article 5 (2).

28 Ibid., article 5 (4).

29 Ibid., article 5 (4). These exceptions are 1. the requested assistance is not available; (b) the assistance cannot be provided within the requested period; (c) it would not be reasonable to expect the assistance to be provided.

30 Ibid., article 6 (1).

Finally, article 7 of the mutual arrangement provides that a joint report on the effects and effectiveness of this agreement in practice should be drawn up by the Netherlands, Aruba, Curaçao and St Maarten within five years of its entry into force. This report is then presented to the Council of Ministers for the Kingdom for their information.<sup>31</sup>

The Netherlands, Aruba, Curaçao and St Maarten consult periodically about the approach to and content of legislative affairs in the Civil Service Meetings on Draft Legislation for Kingdom Relations (AWOK). The aforementioned cooperation on the execution of implementation plans is discussed at these meetings. AWOK is also responsible for drafting the joint report on the effects and effectiveness of this cooperation.<sup>32</sup> Such a report is currently being prepared.

## **1.5 Conclusions**

Treaty relations entered into by the Kingdom can be viewed from two angles: first, from that of the policy of the Kingdom government to promote the development of the international rule of law, as prescribed in article 90 of the Constitution (which is a Kingdom affair) and, second, from the angle of the policy of both the Kingdom government and the country governments for the implementation and observance of such treaties. The usual procedure, which involves asking the governments of the Caribbean countries of the Kingdom whether they wish to have a treaty extended to them, is intended to combine these two aspects of entering into treaty relations. This means, however, that the posing and answering of the question about territorial extension must be more than just passively following an administrative routine. The policy relevance of introducing implementing legislation in good time led to the review of article 27 of the Charter,<sup>33</sup> but has still only had limited effect in practice. Although the legal framework for cooperation and the provision of aid and assistance between the countries of the Kingdom does exist, only limited use appears to be made of it in practice, as will become apparent in the remainder of this report.

31 Ibid., article 7.

32 Mutual arrangement, Civil Service Draft Legislation (Kingdom Relations) Meetings, article 2, points f and g. See: <<http://wetten.overheid.nl/BWBR0032847/2013-02-01>>.

33 The explanatory memorandum to the Kingdom Bill to amend the Charter (Parliamentary Papers II 2009–2010, 32 213 (R 1903), no. 3, p. 6) contains the following passage relevant to the advisory report: ‘Treaties are entered into by the Kingdom, but the Netherlands, Aruba, Curaçao and St Maarten are themselves responsible for their implementation, in so far as country rather than Kingdom affairs are concerned. It is desirable for the four countries of the Kingdom to make agreements among themselves regarding cooperation in implementing treaties that will apply in the countries. First, because the Kingdom as a whole is liable under international law for the observance of treaties that apply to the Kingdom. This is why treaties are not ratified by the Kingdom for a country as long as the requisite measures have not been introduced in that country. A second reason is that treaties quite frequently necessitate the taking of comparable measures in each of the countries. Where this is the case, the most efficient approach is for the countries to inform each other about the implementing measures they are proposing to take and support one another in their implementation. This also makes it possible for treaties to be implemented more quickly in the countries and thus enter into force earlier for them. This has a positive effect on the international position of the Kingdom as a whole, particularly in the case of treaties that are important to the development or maintenance of the international rule of law.’

## **II Territorial extension and human rights treaties**

This chapter examines the practice of deciding on the territorial extension of human rights treaties. Under article 43 of the Charter for the Kingdom of the Netherlands, each country of the Kingdom is itself responsible for promoting the realisation of fundamental human rights and freedoms, legal certainty and good governance (paragraph 1). Paragraph 2 of article 43 adds, however, that the safeguarding of such rights and freedoms, legal certainty and good governance is a Kingdom affair. This implies that ultimately this is a joint responsibility. Against this background, the report discusses how the application of human rights treaties is extended in practice to the various countries of the Kingdom and whether this promotes cooperation among them.

Annexe 1 to this report lists the human rights treaties that have been signed on behalf of the Kingdom of the Netherlands.<sup>34</sup> This shows that the great majority of these treaties apply in both the European and the Caribbean part of the Netherlands as well as in the autonomous countries Aruba, Curaçao and St Maarten. In most cases, this territorial extension occurred before the constitutional reforms of 10 October 2010. The practice of extending application within the Kingdom is more varied, especially in the case of the more recent treaties.

The Caribbean countries and the BES islands<sup>35</sup> have indicated that they consider territorial extension to be desirable in the case of virtually all other human rights treaties, but have noted that implementing measures must first be introduced before the treaties can actually enter into force. Only in the case of the UN Convention on the Rights of Persons with Disabilities is territorial extension still under consideration by Aruba, Curaçao and St Maarten; a territorial limitation to the European part of the Netherlands is in force for the time being. In two cases (the Council of Europe Convention on Action against Trafficking in Human Beings and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography) the implementing measures have been completed in Aruba and the conventions have also entered into force for this country.

### **II.1 Case studies**

This section examines the ratification process of a number of relevant human rights treaties. The aim is to identify what potential problems could limit the application of these treaties to just part or parts of the Kingdom over a longer period.

Parliamentary documents were the main sources used for these case studies. The selection was based on annexe 1 to this report. These are human rights treaties which

<sup>34</sup> This list has been drawn up by the Legal Affairs Department of the Ministry of Foreign Affairs at the AIV's request.

<sup>35</sup> Constitutionally, it is the minister responsible for the relevant legislation who indicates, after consultation with the island authorities of Bonaire, St Eustatius and Saba, whether it is desirable for application to be extended to these islands. The same question is put to the autonomous countries by the Treaties Division of the Legal Affairs Department of the Ministry of Foreign Affairs in The Hague. See also sections I.2 and II.2.3.

do not yet apply throughout the entire Kingdom. Although the Istanbul Convention is not included in the list, it has been added to the case studies since the AIV considers it to be closely related to human rights treaties. Finally, the ratification process of the Paris Agreement is examined. Not only does this international agreement have broader human rights implications, for example as regards the fundamental socioeconomic right to a good human environment, but it also provides an indication of whether a comparable situation occurs in the cases of treaties other than those involving human rights.

### **II.1.1 UN Convention on the Rights of Persons with Disabilities (CRPD)**

#### *Explanatory memorandum*

According to the explanatory memorandum with which the UN Convention on the Rights of Persons with Disabilities<sup>36</sup> was presented for approval to the States General, Aruba, St Maarten and Curaçao have indicated that the territorial extension of the Convention is still under consideration. As noted in the memorandum, legislation to implement the convention would in any event be required for each country.<sup>37</sup> What kind of implementation would be necessary and why the absence of such implementing measures could prevent territorial extension was not explained in the memorandum.

The memorandum also indicated that the convention would not apply for the time being to Bonaire, St Eustatius and Saba. Implementing legislation, in particular equal treatment legislation, would also be necessary for its application in the Caribbean part of the Netherlands. However, as the memorandum noted, '[i]t is not possible at present to indicate when that legislation can be in place'.<sup>38</sup> It also referred to the five-year period of legislative restraint (until the evaluation in 2015) which had been promised to the Caribbean part of the Netherlands at the time of the dissolution of the Netherlands Antilles. The explanatory memorandum did, however, announce an inventory of the existing legislation and policy for Bonaire, St Eustatius and Saba in the light of the treaty obligations, comparable to the review carried out for the European part of the Netherlands. As the memorandum noted, once the review was completed it would be possible to determine how and when territorial extension of the convention could take place.<sup>39</sup>

#### *Advisory opinion of the Council of State and Report to the King*

In its advisory opinion on the Convention, the Council of State of the Kingdom dealt at length with the subject of legislative restraint raised in the explanatory memorandum. According to the Council, legislative restraint does not mean:

'that the situation existing on 10 October 2010 was completely frozen. (...) The purpose of legislative restraint was to prevent sweeping changes all at once on the BES islands. However, there are various categories of case in which amendment (sometimes far-reaching amendment) of what was originally Netherlands Antilles

36 Dutch Treaty Series 2007, 169.

37 Parliamentary Paper 33992 (R2034), no. 3, p. 98.

38 Ibid., p. 12.

39 Ibid., p. 12.

legislation was considered possible right from 10 October 2010 onwards. The call for legislative restraint needs to be viewed in this light.’<sup>40</sup>

The Council of State indicated that the principle of equal treatment applied in relations between Bonaire, St Eustatius and Saba on the one hand and the European part of the Netherlands on the other. Although this would not automatically mean that treaties should apply equally to all parts of the Netherlands, it did mean, according to the Council of State, that ‘where an arrangement specifically intended for the public bodies Bonaire, St Eustatius and Saba differed from that applicable elsewhere, reasons for choosing a different arrangement should be given.’<sup>41</sup> These reasons must naturally fulfil the derogation criterion laid down for this purpose in the Charter for the Kingdom (or in the Constitution after its amendment). Finally, the Council of State considered it necessary to specify a definite period within which territorial extension of the Convention should be completed. As the Council explained, ‘This ensures that there will be no protracted divergence between constitutional protection afforded on the islands and in the European part of the Netherlands.’<sup>42</sup>

The Council of State did not deal in its advisory opinion specifically with the issue of extension of the Convention to Aruba, Curaçao and St Maarten or with the implementing measures that would be necessary for this purpose. No explanation was given, but a possible reason could be that the countries concerned were still considering territorial extension and had not yet made a decision.

In its Report to the King, setting out its reaction to the advisory opinion of the Council of State, the government acknowledged the importance of extending the application of the Convention to the BES islands, but merely added that: ‘The explanatory memorandum deals in more detail with the survey of legislation and the policy pursued in relation to the period for extending the territorial application of the Convention.’<sup>43</sup>

#### *Consideration in the House of Representatives*

Following the territorial limitation of the application of the Convention to the European part of the Netherlands, the House of Representatives passed a motion calling on the government ‘to draw up a plan of action for the Caribbean part of the Netherlands based on the outcome of the survey in order to improve the position of people with a disability’.<sup>44</sup> In answer to this motion, the government sent its research report to the House of Representatives in December 2016.<sup>45</sup> When doing so, the government promised that it would send its response by the spring of 2017, but eventually it left the task of drafting the response to the next government. The research report, which was commissioned by the Ministry of Health, Welfare and Sport, assessed to what extent the

40 Parliamentary Paper 33992 (R2034), no. 4, p. 8.

41 Ibid., pp. 8-9.

42 Ibid., p. 9.

43 Ibid., p. 9.

44 Parliamentary Paper 33990, no. 42.

45 Blg-794532 annexed to Parliamentary Paper 33990, no. 60.

legislation in the Caribbean part of the Netherlands complied with both civil and political rights and economic, social and cultural rights (of people with disabilities) and what gaps needed to be filled in order to comply with the Convention. The government's response to the research report is not yet available.

#### *Consideration in the Senate*

The Senate asked the State Secretary for Health, Welfare and Sport how the government was assisting with the introduction of implementing legislation by the governments of Aruba, Curaçao and St Maarten.<sup>46</sup> The government answered that '[s]ince these countries are still considering territorial extension, the government is focusing for the time being on implementation here and in the Caribbean part of the Netherlands (...)'.<sup>47</sup>

The Convention was ratified for the European part of the Netherlands on 14 June 2016 and entered into force there on 14 July 2016. No information is currently available about the date on which the Convention will be extended to the Caribbean part of the Netherlands or about the desirability of extension to the autonomous countries Aruba, Curaçao and St Maarten.

#### **II.1.2 *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography***

When the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography<sup>48</sup> was ratified in 2005, the governments of Aruba and what was then still the Netherlands Antilles indicated that they wished the Optional Protocol to be extended to their countries, but they also stated that further implementing legislation would be necessary.<sup>49</sup>

The Council of State of the Kingdom observed on this point in its advisory opinion that:

'A country [must], in principle, comply with the obligations to which it is subject under a treaty at the moment that the treaty enters into force for that country. This is why the time frame for the implementing legislation in the Netherlands Antilles and Aruba should be specified in the explanatory memorandum.'<sup>50</sup>

In response, the Minister of the Interior stated that '[i]t is not possible to specify a time frame for completion of the legislation as the introduction of legislation is dependent on too many different factors'.<sup>51</sup> What these factors were was not explained.

46 Parliamentary Paper 33992 (R2034), A, pp. 3-4.

47 Parliamentary Paper 33992 (R2034), B, p. 8. See also Parliamentary Paper 34 550 XVI, C.

48 Dutch Treaty Series 2001, 63.

49 Parliamentary Paper 30158 (R1793), A and no. 1, p. 7.

50 Parliamentary Paper 30158 (R1793), B and no. 2, p. 2.

51 Ibid.

In Aruba the necessary implementing measures were completed a year later, after which the Protocol entered into force for that country in October 2006. At the time of the constitutional reforms of the Kingdom on 10 October 2010, the Protocol also entered into force for Bonaire, St Eustatius and Saba. This is still not the case for Curaçao and St Maarten. The AIV does not know whether these countries are working on the necessary implementing legislation and, if so, when it will be ready.

### ***II.1.3 Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment***

The objective of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)<sup>52</sup> is to help prevent torture by establishing two independent systems of supervision – international and national – involving regular visits to places where people are deprived of their liberty. The Protocol entered into force for the European part of the Netherlands on 28 October 2010.

The explanatory memorandum to the Kingdom Act approving OPCAT indicated that the government of Aruba wished the Protocol to be extended to that country. It also stated that it would be necessary to consider ‘how the existing supervision mechanisms could be strengthened and expanded and how a national prevention mechanism could be put in place’.<sup>53</sup>

The government of what was then the Netherlands Antilles also considered that territorial extension of the Protocol would be desirable. However, in view of the numerous implementing measures necessary for the various treaties which it intended to implement before the constitutional reforms of 10 October 2010, it was not yet able to say when a final decision would be taken on the system of national supervision and when the implementing legislation would be in place.<sup>54</sup>

In its advisory opinion on the Bill, the Council of State of the Kingdom recommended, among other things, that mention should be made of the time frame for completion of the national prevention mechanism in the Netherlands Antilles.<sup>55</sup>

In the period leading up to the dissolution of the Netherlands Antilles, the government subsequently did not consider it appropriate to appoint a supervisory body before 10 October 2010. It reasoned that in the new situation that would arise after the constitutional reforms, the countries would be able to establish their own supervisory body.<sup>56</sup> In answer to questions from the Senate, the Minister of Justice and the Minister of Foreign Affairs stated that once the Protocol had been ratified by the Netherlands, the Netherlands Antilles and Aruba would be asked whether they too would ratify the Protocol. The Netherlands Antilles could then indicate whether this decision would

52 Dutch Treaty Series 2005, 243.

53 Parliamentary Paper 31797 (R1871), A and no. 1, p. 11.

54 Ibid., p. 10.

55 Parliamentary Paper 31797 (R1871), no. 2, p. 2.

56 Parliamentary Paper 31797 (R1871), no. 7, p. 8.

be left to the countries of Curaçao and St Maarten, which would be formed upon the dissolution of the Netherlands Antilles.<sup>57</sup> It is unclear whether this actually happened.

As part of the treaty obligations under OPCAT the states which are party to the Protocol are required to present a periodic report to the UN Committee against Torture. In May 2013 this UN Committee requested the Kingdom of the Netherlands:

'[to] [e]xplain, in its next periodic report, what progress had been made to accept and apply the Optional Protocol to the Caribbean part of its territory and the autonomous islands in order to establish the NPMs [National Preventive Mechanisms] tailored for the needs of the islands and allow for visits by the Subcommittee on Prevention of Torture.'<sup>58</sup>

In June 2016 the Dutch government replied in the Seventh Report of the Kingdom of the Netherlands that '[t]o date, the Optional Protocol has not entered into force in Bonaire, Saba and St Eustatius. There is nonetheless a degree of supervision: the Committee makes regular visits, as does the Law Enforcement Council. The possibilities for the Protocol's entry into force are currently being explored.'<sup>59</sup> It did not explain how these possibilities were being explored or give a time frame for completion.

In its contribution to the report, Curaçao did not deal with the question asked by the UN Committee.<sup>60</sup> Aruba and St Maarten did not provide a contribution to the report. In the letter presenting the report to the House of Representatives, the Minister of Foreign Affairs undertook to forward these contributions as soon as they were received.<sup>61</sup> It is not known whether this has now been done.

#### ***II.1.4 Council of Europe Convention on Action against Trafficking in Human Beings***

In the Kingdom Bill for the approval of the Council of Europe Convention on Action against Trafficking in Human Beings,<sup>62</sup> the governments of both the Netherlands Antilles and Aruba stated they wished the Convention to be extended to their countries. They pointed out that implementing legislation would first be necessary for both countries.<sup>63</sup>

57 Parliamentary Paper 31797 (R1871), E, p. 3.

58 Committee against Torture, 'Concluding observations on the combined fifth and sixth periodic reports of the Netherlands, adopted by the Committee at its fiftieth session (6-31 May 2013)', CAT/C/NLD/CO/5-6, para. 28 (b), p. 10.

59 Blg-812722 annexed to Parliamentary Paper 33826, no. 21; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Seventh Periodic Report, The Kingdom of the Netherlands, CAT/C/NLD/7, p. 15.

60 Ibid., p. 16.

61 Parliamentary Paper 33826, no. 21.

62 Dutch Treaty Series 2006, 99.

63 Parliamentary Paper 31429 (R1855), no. 3, pp. 18-19.

The government of the Netherlands Antilles referred in this connection to the forthcoming revision of the Criminal Code, which would be 'a time-consuming process'.<sup>64</sup>

The Council of State of the Kingdom recommended that the explanatory memorandum to the Kingdom Act for the approval of this Convention should mention when the implementing measures necessary for the Netherlands Antilles and Aruba were expected to be ready. If this were not possible, the Council recommended that the consequences of failing to introduce these measures be described in the explanatory memorandum and 'that at the same time the interests of the Kingdom and of the international rule of law in securing timely approval and ratification of the (...) Convention for the entire Kingdom should be included'.<sup>65</sup>

Although the Minister of Foreign Affairs indicated in his response to the Council of State's advisory opinion that the explanatory memorandum had been supplemented,<sup>66</sup> it is not immediately clear how this was done. The final explanatory memorandum does not contain any indication of the time frame for drawing up the implementing measures, nor does it deal clearly with the consequences of any failure to introduce such measures. However, the importance of the Convention for the Netherlands Antilles and Aruba was described in general terms.

When it was considering the Bill, the House of Representatives requested the Minister of Justice (as the government minister with responsibility for this subject) to deal with the consequences of extending the Convention to the Netherlands Antilles and Aruba, including the question of the extent to which the countries would be able in practice to deliver effective enforcement and protection of victims and witnesses.<sup>67</sup> In his reply the minister stated that he had agreed with his fellow ministers of the Netherlands Antilles and Aruba that measures would be taken to strengthen cooperation in tackling trafficking in human beings and people smuggling. As the minister noted, '[t]he countries would take into account the provisions of the Convention in their further cooperation'.<sup>68</sup>

The Convention entered into force for the European part of the Netherlands on 1 August 2010, i.e. two months before the dissolution of the Netherlands Antilles. It entered into force for Aruba on 1 May 2015. The Ministry of Justice and Security has been unable to provide the AIV with any clarity about whether implementing legislation is currently being prepared by Curaçao and St Maarten or for the Caribbean part of the Netherlands.

64 Ibid.

65 Parliamentary Paper 31429 (R1855), no. 4, p. 1.

66 Ibid.

67 Parliamentary Paper 31429 (R1855), no. 5, p. 7.

68 Parliamentary Paper 31429 (R1855), no. 6, p. 13.

### ***II.1.5 International Convention for the Protection of All Persons from Enforced Disappearance***

In the explanatory memorandum to the Kingdom Bill for the approval of the Convention for the Protection of All Persons from Enforced Disappearance,<sup>69</sup> the governments of both the Netherlands Antilles and Aruba stated they wished the Convention to be extended to their countries. They also indicated that they recognised the mandate of the Committee on Enforced Disappearances and that it was authorised to hear complaints by both states and individuals. However, the application of the Convention would be limited to the Netherlands for the time being, until the required implementing legislation had been introduced in the Netherlands Antilles and Aruba. Afterwards, the Convention could also be extended to these countries.<sup>70</sup>

In commenting on the Bill, the Council of State of the Kingdom used almost the same wording as in its advisory opinion on the Council of Europe Convention on Action against Trafficking in Human Beings, namely:

‘In view of the importance of preventing and combating enforced disappearance by agents of the state and protecting victims of this crime, the Council recommends that measures be taken to promote extension of the Convention to all countries of the Kingdom and to state in the explanatory memorandum when the requisite implementing legislation is expected to be ready. If this is not possible, the Council recommends that the consequences of failing to introduce the implementing legislation be described in the explanatory memorandum and hence the interests of the Kingdom and of the international rule of law in securing timely approval and ratification of the present Convention for the entire Kingdom. The Council recommends that the explanatory memorandum be supplemented.’<sup>71</sup>

In his response to the Council’s advisory opinion, the Minister of Foreign Affairs stated that the part of the explanatory memorandum dealing with the ‘position of the Kingdom’ had been supplemented. Where it was initially stated that the government of Aruba was considering the desirability of the Convention for its country, in the meantime it had become clear that the government of Aruba considered territorial extension to be desirable.<sup>72</sup> However, the final version of the explanatory memorandum contains no time frame and/or final date for the preparation of implementing measures. Nor does it contain any description of the possible consequences of the absence of implementing measures, as recommended by the Council of State of the Kingdom.

The Protocol entered into force simultaneously for the European and Caribbean parts of the Netherlands on 24 April 2011. It is not known whether the countries of Aruba, Curaçao and St Maarten are preparing the necessary implementing measures and, if so, when they will be ready.

69 Dutch Treaty Series 2008, 173.

70 Parliamentary Paper 32251 (R1905), no. 3, p. 4.

71 Parliamentary Paper 32251 (R1905), no. 4, p. 1.

72 Ibid., p.2.

### ***II.1.6 Protocol no. 15 amending the Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR)***

In the explanatory memorandum to the Kingdom Act for the approval of Protocol no. 15 amending the Convention on the Protection of Human Rights and Fundamental Freedoms, the Minister of Foreign Affairs and the Minister of Security and Justice stated as follows:

‘As far as the Kingdom of the Netherlands is concerned, Protocol no. 15, like the ECHR itself, will apply to the entire Kingdom. The governments of Aruba and Curaçao consider that territorial extension of Protocol no. 15 is desirable. No confirmation about the desirability of extension has yet been received from St Maarten because the government of that country has not yet been able to make a decision. Once St Maarten has indicated that extension of the Protocol is desirable, it can also be accepted for that country.’<sup>73</sup>

As indicated in section 1.2 above, a territorial limitation is not possible if it concerns a subject about which, by its very nature, no distinction can be made between the different parts of the territory. Protocol no. 15 to the ECHR concerns an institutional reform, namely the procedure and composition of the European Court of Human Rights. It can therefore enter into force only when all States that are party to the ECHR have ratified the Protocol. As the Kingdom of the Netherlands is party to the ECHR, an exception to the extension of the Protocol to St Maarten is not possible without blocking the entry into force of the Protocol. In this situation, the Kingdom government was therefore mistaken to inquire whether the Caribbean countries wished the Protocol to be extended to them; it should instead have concluded that this was a Convention that could enter into force only for the Kingdom as a whole.

### ***II.1.7 Council of Europe Convention on preventing and combating violence against women and domestic violence***<sup>74</sup>

The Council of Europe Convention on preventing and combating violence against women and domestic violence,<sup>75</sup> known for short as the Istanbul Convention, entered into force for the European part of the Netherlands on 1 March 2016.<sup>76</sup>

Although the government requested parliamentary approval for the entire Kingdom in the explanatory memorandum to the Kingdom Act for the approval of the Istanbul Convention, it introduced at the same time the territorial limitations discussed below.<sup>77</sup>

73 Parliamentary Paper 33873 (R2026), no. 3, p. 7.

74 This Convention has not been included in annexe 1 by the Legal Affairs Department of the Ministry of Foreign Affairs.

75 Dutch Treaty Series 2013, 233.

76 Dutch Treaty Series 2015, 197. See also: <<https://verdragenbank.overheid.nl/nl/Verdrag/Details/012294>>.

77 Parliamentary Paper 34038 (R2039), no. 3, paras. 3-4, p. 49.

### *The Netherlands*

First, the government indicated that for the time being the Convention would be accepted only for the European part of the Netherlands. Partly in response to the advice given by the Council of State of the Kingdom,<sup>78</sup> the explanatory memorandum stated that the island executives of Bonaire, Saba and St Eustatius had been informed in October 2012 of the intention to apply the Convention in the Caribbean part of the Netherlands as well. To determine the consequences of implementing the Convention on the three islands, a study was carried out and a basic approach to tackling domestic violence drawn up in close cooperation with the government authorities on the islands and implementing partners. The study showed that the Caribbean part of the Netherlands still did not comply with the obligations resulting from the Convention. As the government noted, implementing legislation was also necessary for the application of the Convention in this part of the Netherlands. This is why the Convention does not apply for the time being to the Caribbean part of the Netherlands.<sup>79</sup>

The explanatory memorandum then dealt specifically with the follow-up process. The government indicated that it had been agreed with the island executives of Bonaire, St Eustatius and Saba that a basic policy for tackling violence against women and domestic violence would be adopted and implemented on the three islands in the next few years. The experience of implementing this basic policy would then be examined in 2016 to determine what implementing legislation and additional policy and other measures were necessary, whether the basic policy needed to be modified and by what date acceptance of the Convention for the Caribbean part of the Netherlands would be possible.<sup>80</sup>

Finally, the government noted that a number of civil society organisations, including the Netherlands Institute for Human Rights and the Dutch Women's Council, had recommended in their opinions on the draft legislation that the Convention be introduced without delay in the Caribbean part of the Netherlands.<sup>81</sup>

The Ministry of Health, Welfare and Sport then took active follow-up measures. In October 2016 the State Secretary for Health, Welfare and Sport informed the House of Representatives that a survey had been carried out in consultation with the public bodies on the three islands and relevant implementing partners to determine what measures were needed to strengthen the strategy for tackling domestic violence. The State Secretary also announced his intention to conclude an administrative agreement with the public bodies for the period 2017-2020 setting out in more detail the strategy for tackling domestic violence and child abuse.<sup>82</sup> This agreement was presented to the House of Representatives in October 2017. The preamble reads as follows:

'The Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) entered into force for the European part of the

78 Parliamentary Paper 34038 (R2039), no. 4.

79 Parliamentary Paper 34038 (R2039), no. 3, para. 1.2, pp. 3-4.

80 Ibid.

81 Ibid.

82 Parliamentary Paper 28345, no. 170, pp. 18-19. See also blg-784677.

Netherlands on 1 March 2016. This convention has not yet been ratified for the Caribbean part of the Netherlands. The administrative agreement and accompanying measures are intended to result in ratification of this convention for the Caribbean part of the Netherlands.’<sup>83</sup>

No specific deadline is mentioned. The State Secretary has set aside over €4.5 million for the implementation of the agreement over its lifetime (2017-2020).

#### *Aruba*

The explanatory memorandum to the Kingdom Act approving the Istanbul Convention indicated that the government of Aruba wished the convention to be extended to its country. According to the government of Aruba, tackling domestic violence was a policy priority. However, Aruba still needed implementing legislation. Once it had legislation in place, the Convention could be accepted for Aruba.<sup>84</sup>

Despite the advice given by the Council of State of the Kingdom on the Kingdom Bill,<sup>85</sup> the explanatory memorandum did not state when the implementing measures would be ready on Aruba and the convention could be accepted. According to the government, this was because it was still not entirely certain what implementing measures were needed on Aruba. Until this was clear, the government could not say when the measures would be in place and the convention could be approved for Aruba.<sup>86</sup> Aruba is currently preparing a plan to implement this convention. It is not known when the plan will be ready.

#### *Curaçao*

The government of Curaçao also wished the convention to be extended to its country. The explanatory memorandum stated that as sufficient implementing legislation was already in place on Curaçao, the convention could be accepted for that country.<sup>87</sup> Nonetheless, as noted above, the convention entered into force only for the European part of the Netherlands on 1 March 2016. It is unclear why a territorial limitation was applied in respect of Curaçao. The Ministry of Health, Welfare and Sport has been unable to clarify for the AIV whether this limitation was imposed for policy reasons or was simply the result of an official oversight.

#### *St Maarten*

According to the explanatory memorandum, the territorial extension of the Convention was ‘still under consideration’ by the government of St Maarten. Implementing legislation would in any event be necessary for this country too.<sup>88</sup> The explanatory memorandum did not specify any follow-up steps. It is not known whether the

83 Blg-821170 annexed to Parliamentary Paper 28345, no. 183, p. 3.

84 Parliamentary Paper 34038 (R2039), no. 3, p. 49.

85 Parliamentary Paper 34038 (R2039), no. 4, p. 3.

86 Ibid., p. 3.

87 Parliamentary Paper 34038 (R2039), no. 3, p. 49.

88 Ibid.

government of St Maarten has since expressed a view on whether extension of the convention would be desirable.

### **II.1.8 Paris Agreement**

#### *Background*

The Montreal Protocol on Substances that Deplete the Ozone Layer<sup>89</sup> (1987) was one of the first international climate agreements. It entered into force on 1 January 1989 for the entire Kingdom of the Netherlands, which consisted at that time of the Netherlands, Aruba and the then Netherlands Antilles. On 10 October 2010 the Protocol formally entered into force for Curaçao and St Maarten as newly autonomous countries and the BES islands as public bodies analogous to municipalities.

The United Nations Framework Convention on Climate Change (better known as the UN Climate Change Convention) was concluded in 1992<sup>90</sup> and entered into force for the European part of the Netherlands on 21 March 1994. Aruba, Curaçao, St Maarten and the BES islands have been excluded from territorial extension for the time being. The same is true of the Kyoto Protocol (KP)<sup>91</sup> to the Framework Convention, which entered into force for the European part of the Netherlands on 16 February 2005. The Seventh National Report on the UN Climate Change Convention, which was recently submitted by the Ministry of Economic Affairs and Climate Policy, explicitly stated that '[r]eporting under the UNFCCC (Convention and KP) is restricted to the European part of the Kingdom, hereafter referred to as the Netherlands'.<sup>92</sup>

#### *The Netherlands*

The Paris Agreement<sup>93</sup> was presented to the House of Representatives for ratification on 31 October 2016. The explanatory memorandum to the Bill stated that for the time being the Agreement was accepted only for the European part of the Netherlands.<sup>94</sup> Although extension of the Agreement to the Caribbean part of the Netherlands was considered desirable, this would require extension of the UN Climate Change Convention as well. This was not yet the case. The explanatory memorandum went on as follows:

'For the purpose of any acceptance of the Paris Agreement for the Caribbean part of the Netherlands, consultations will be held with Bonaire, St Eustatius and Saba about how they can make an additional contribution to achieving the general objective and the long-term temperature goal of the Agreement. This can involve examining ways

89 Dutch Treaty Series 1988, 11.

90 Dutch Treaty Series 1992, 189.

91 Dutch Treaty Series 1998, 170.

92 Ministry of Economic Affairs and Climate Policy, *Seventh Netherlands National Communication under the United Nations Framework Convention on Climate Change* (2018), p. 14. See: <[https://unfccc.int/files/national\\_reports/annex\\_i\\_natcom/submitted\\_natcom/application/pdf/seventh\\_netherlands\\_national\\_communication\\_under\\_the\\_unfccc.pdf](https://unfccc.int/files/national_reports/annex_i_natcom/submitted_natcom/application/pdf/seventh_netherlands_national_communication_under_the_unfccc.pdf)>.

93 Dutch Treaty Series 2016, 94.

94 Parliamentary Paper 34589 (R2077), no. 3, p. 18.

of enhancing the adaptive capacity of the islands, strengthening their resilience and reducing vulnerability to climate change and its effects, preparing mitigation plans, drawing up the necessary legislation and funding the entire package of measures. Once the preparation of the requisite implementing legislation has been completed, the Agreement can also enter into force for Bonaire St. Eustatius and Saba. The necessary extension of the Framework Convention to Bonaire St, Eustatius and Saba will therefore be taken into account in this context.’<sup>95</sup>

On this occasion the Council of State of the Kingdom did not raise the issue of extension within the Kingdom in its advisory opinion.<sup>96</sup> When considering the Bill, the House of Representatives asked how the individual responsibility of the authorities on the BES Islands had been taken into account in arranging for the entry into force of the Agreement.<sup>97</sup> In her reply, the State Secretary of (what was then) Infrastructure and the Environment emphasised the relatively reserved stance of the European part of the Netherlands:

‘The authorities of the BES Islands have been informed about the proposed ratification and about the fact that the application of the Agreement will initially be limited to the European part of the Netherlands. Whether application to the islands is desirable and what the legal, policy and financial consequences would be is being discussed with the authorities. Whether the Agreement should be applied to the BES islands is a matter for the island authorities to decide, if only because the islands will have to introduce their own implementing legislation. If they so desire, the island authorities will receive active assistance from the Netherlands.’<sup>98</sup>

The (former) Ministry of Infrastructure and the Environment identified the consequences of extending the Agreement to the BES islands. The focus was on adaptation to climate change. In the next few months the islands must identify what specific measures should be taken. This is expected to take some time, partly because the islands have only limited expertise and implementing capacity available. As a consequence, it is unclear when the Paris Agreement can enter into force for the BES Islands. Enhancing the islands’ resilience to climate change (particularly in view of increasing hurricane intensity) is also expected to require a financial outlay, for example to modify infrastructure and buildings. When the third Rutte government took office in the Netherlands in October 2017, responsibility for implementing the Paris Agreement passed from the Ministry of Infrastructure and the Environment (now the Ministry of Infrastructure and Water Management) to the Ministry of Economic Affairs and Climate Policy. This Ministry is in contact at civil service level with its counterparts in the BES islands about the possible application of the Paris Agreement to the Caribbean part of the Netherlands.

95 Parliamentary Paper 34589 (R2077), no. 3, p. 8.

96 Parliamentary Paper 34589 (R2077), no. 4.

97 Parliamentary Paper 34589 (R2077), no. 5, p. 8.

98 Parliamentary Paper 34589 (R2077), no. 6, p. 17.

### *Aruba, Curaçao and St Maarten*

The government of Aruba expressed the wish to have the Paris Agreement extended to its country, just as it had in the case of the Framework Convention. Implementing legislation would first need to be introduced for this purpose.<sup>99</sup> The governments of Curaçao and St Martin were still considering whether they wish to have territorial extension of the Agreement. Although they had also previously indicated that they wanted the Framework Convention to be extended to their countries, implementing legislation would also need to be introduced for this purpose.<sup>100</sup>

When considering the Paris Agreement, the House of Representatives inquired how Aruba, Curaçao and St Maarten were involved in implementing the Agreement and how this would affect climate change adaptation and greenhouse gas reduction in these countries.<sup>101</sup> In her reply, the State Secretary did not answer this question substantively. Instead, she stressed that the governments of each of these countries would determine their position on the Paris Agreement separately and then repeated the position taken by Aruba, Curaçao and St Maarten about territorial extension of the Agreement, as set out in the explanatory memorandum.<sup>102</sup>

It is not known whether the Caribbean countries are working on the necessary implementing measures. They have not as yet requested the Netherlands for technical assistance.

## **II.2 Explanations**

The case studies described above show that the process of identifying and formulating the necessary implementing measures is one of the main obstacles to the entry into force of human rights and other treaties in all countries and parts of the Kingdom. The Kingdom government or, as the case may be, the Dutch ministers adopt a cautious stance on this point. Various explanations can be given for this.

### **II.2.1 Impact of the constitutional reforms of 10 October 2010**

#### *Aruba, Curaçao and St Maarten*

Curaçao and St Martin became autonomous countries within the Kingdom, like Aruba, on 10 October 2010.<sup>103</sup> Their constitutional position is entirely comparable to that of the former Netherlands Antilles. As the Kingdom government is generally guided by the views of the autonomous countries on the territorial extension of international treaties,

99 Parliamentary Paper 34589 (R2077), no. 3, p. 18.

100 Ibid., p.18.

101 Parliamentary Paper 34589 (R2077), no. 5, p. 8.

102 Parliamentary Paper 34589 (R2077), no. 6, p. 17.

103 Aruba has been an autonomous country within the Kingdom of the Netherlands since 1 January 1988. Curaçao, St Maarten and the BES islands together constituted an autonomous country within the Kingdom, in a kind of federated structure known as the Netherlands Antilles, until 10 October 2010. The constitutional reforms that took effect on 10 October 2010 did not result in new decision-making powers for the autonomous countries.

this may explain why questions about this are dealt with so summarily. Nonetheless, the Kingdom government is responsible for promoting adequate and consistent realisation of human rights throughout the Kingdom. In principle, the views of the governments of the individual countries are decisive only in the case of the economic and financial treaties referred to in article 25 of the Charter for the Kingdom. These countries are themselves responsible for complying with the treaty obligations and ensuring that their internal legislation is in keeping with them. Article 27 of the Charter, which was amended in 2010 (see section I.4 above), is regarded as a reserve option.

#### *Caribbean part of the Netherlands*

The Constitution (article 132a, paragraph 4) allows for a limited degree of differentiation. Although Bonaire, St Eustatius and Saba each form part of the Dutch constitutional order, rules may be laid down and other specific measures may be taken in view of special circumstances that fundamentally distinguish these public bodies from the European part of the Netherlands.

When the Netherlands Antilles was dissolved, it was agreed that the legislation of the Netherlands Antilles would initially remain in force as special BES legislation on Bonaire, St Eustatius and Saba and would gradually be replaced by Dutch legislation. As implementing the constitutional reforms required substantial effort, a period of 'legislative restraint'<sup>104</sup> was also established until 2015. This meant that only the most pressing legislation would be introduced, such as that relating to technical maintenance and essential measures urgently required by the islands themselves. In 2013, however, the Minister of the Interior and Kingdom Relations stated in the National Action Plan on Human Rights that essential standards of human rights in the Caribbean part of the Netherlands must be safeguarded: 'The standard of public services in the Caribbean Netherlands, in view of the regional and socioeconomic conditions there, has not been equated with that in the European part of the Netherlands. It is being raised, however, to a level that is acceptable within the Netherlands.'<sup>105</sup>

In 2015 a committee chaired by Liesbeth Spies, former Minister of the Interior and Kingdom Relations, published an evaluation of the impact of the new constitutional structure of the Caribbean part of the Netherlands. The report considered at some length how the policy of legislative restraint was working in practice.<sup>106</sup> The Spies Committee argued that it was important to determine the purpose for which the principle of legislative restraint had been introduced. Although legislative restraint had originally been introduced for a five-year transitional period (after which Dutch legislation would, as a general rule, become applicable on the BES islands), the principle had been gradually relaxed by the Dutch government. This meant that not all Dutch legislation would be introduced on the three islands in the long term either.<sup>107</sup> The Committee concluded as follows:

104 Parliamentary Paper 31954 (R1855), no. 7, p. 13.

105 National Action Plan on Human Rights, p. 5: blg-271922 annexed to Parliamentary Paper 33826, no. 1.

106 Blg-599768 annexed to Parliamentary Paper 34300 IV, no. 54, pp. 19-22 and 29-31.

107 Ibid., pp. 19-22.

'In the period after 10 October 2010 steps were taken to introduce new or fundamentally revised primary legislation in only a very limited number of cases. In general, the agreement that legislative restraint would be observed for five years after 10 October 2010 therefore seems to have been fulfilled, although it should be noted that a quantity of new or amended secondary legislation was introduced. At the same time, the committee has the impression that legislative restraint is being used as a pretext for shelving legislation, even in cases where delaying the introduction of new legislation might be undesirable.'<sup>108</sup>

An example of the last point is the Kingdom Bill to approve the UN Convention on the Rights of Persons with Disabilities. The Spies Committee noted that, as the principle of legislative restraint had been invoked, the Convention had not (for the time being) been extended to Bonaire, St Eustatius and Saba, 'although it concerns fundamental human rights'.<sup>109</sup>

In response to the report, the government once again confirmed in general terms that:

'[W]hen taking (legislative) measures in the next few years too, account [will] be taken of the absorptive capacity of the islands. Restraint is appropriate. (...) The islands need time to implement the legislation that has already been introduced.'<sup>110</sup>

## **II.2.2 Limited expertise and implementing capacity**

As the population of the Caribbean islands is small (Aruba: 111,081<sup>111</sup>; Curaçao: 160,337<sup>112</sup>; St Maarten: 40,535<sup>113</sup>), their civil service and the machinery of government are also of limited size. Identifying and drafting the implementing legislation necessary to enable the human rights conventions and other treaties to enter into force often requires specific expertise as well as sufficient implementing capacity. This is not always present on the islands. Although Aruba, Curaçao and St Maarten can obtain information and assistance from the Dutch authorities under the mutual arrangement,<sup>114</sup> they themselves must take steps to initiate this. As yet they have not made use of this possibility.

There are also differences in capacity between the autonomous countries. Whereas Aruba had already established its own independent machinery of government during its period of 'separate status' and Curaçao had been the centre of government of the Netherlands Antilles, St Maarten had to start more or less from scratch in building administrative capacity after 10 October 2010.

108 Ibid., p. 31.

109 Ibid., p. 31.

110 Parliamentary Paper 34300 IV, no. 59.

111 See: <<http://cbs.aw/wp/index.php/category/population/census/>>.

112 See: <[http://www.cbs.cw/website/key-indicators-curacao\\_3131/](http://www.cbs.cw/website/key-indicators-curacao_3131/)>.

113 See: <<http://www.stat.gov.sx/>>.

114 See chapter I, para. I.4.

The population of the islands of the Caribbean part of the Netherlands is also small (Bonaire: 19,405; St Eustatius: 3,193; Saba: 1,947).<sup>115</sup> Although the Dutch government has the same responsibility for the Caribbean part of the Netherlands as for the European part, these three public bodies enjoy a degree of administrative autonomy. The central government in The Hague works closely there with local government, whose capacity is limited.

### ***II.2.3 Limited attention, knowledge and coordination in the Netherlands***

A third factor accounting for the Netherlands' restraint is that knowledge of the constitutional structure of the Kingdom is probably still less than perfect in central government in the Netherlands. In this respect, there also seems to be a lack of expertise and implementing capacity in the European part of the Netherlands. It will take time before the far-reaching constitutional reforms of 10 October 2010 are fully reflected in central government policy in practice.

The fragmentation of responsibilities within central government in the Netherlands also plays a role. The Minister of Foreign Affairs has primary responsibility for signing international treaties and submits them to parliament for approval. The question of whether territorial extension is desirable and implementing measures are necessary is submitted by the Treaties Division of the Legal Affairs Department of the Ministry of Foreign Affairs in The Hague to the autonomous countries. The relevant line ministry consults the three public bodies about the desirability of territorial extension and in most cases has contact with them about the substance of treaties as well. If implementing measures have to be taken for extension to the Caribbean part of the Netherlands, the relevant line ministry is responsible for taking whatever steps are necessary. What line ministry is responsible for a particular human rights treaty depends on the theme of the treaty. For example, the Ministry of Justice and Security is responsible for monitoring compliance in the Kingdom with the European Convention for the Protection of Human Rights and Fundamental Freedoms.

At the same time, the Ministry of the Interior and Kingdom Relations (BZK) is responsible in a general sense for ensuring compliance with the Constitution and the Charter for the Kingdom of the Netherlands in the Caribbean part of the Netherlands. BZK also has primary responsibility for implementing the National Action Plan on Human Rights. However, BZK does not appear to have any active role to play in coordinating the entry into force of human rights treaties on the BES islands. It should be noted here that the Council of State of the Kingdom, in its advisory opinion on the Temporary Act on Neglect of Duty on St Eustatius, recently pointed to the necessity of improving the manner in which the Netherlands handles the issue of the public bodies and concluded that 'far-reaching coordination by BZK [is] necessary, including for governance in the longer term'.<sup>116</sup> In its Report to the King responding to the Council of State's opinion, the government undertook to consider this suggestion and return to it at a later date.<sup>117</sup> Incidentally, even before this the Coalition Agreement of the third Rutte government

115 See: <<http://statline.cbs.nl/StatWeb/publication/?VW=T&DM=SLNL&PA=80534NED&D1=0&D2=a&D3=0&D4=a&D5=6-I&HD=120104-1530&HDR=T,G2,G1&STB=G3,G4>>.

116 Parliamentary Paper 34877 (R1855), no. 4, p. 5.

117 Ibid.

provided that BZK would be given a stronger coordinating role and a commensurate budget, in particular in order to improve the 'economic prospects' of the inhabitants of Bonaire, St Eustatius and Saba.<sup>118</sup>

#### **II.2.4 Costs**

The high cost involved could be one reason why implementing measures are introduced so slowly, if at all, in practice. This argument can (implicitly) be found, for example, in the 'Ties with Brussels' report, which was drawn up by the Van Beuge Committee in 2004 and covered the possible future relations of the (then) Netherlands Antilles and Aruba with the European Union.<sup>119</sup> The question of whether or not the Netherlands Antilles and Aruba should become an 'outermost region' (OR) of the EU rather than join the Overseas Countries and Territories Association (OCTA) was examined in this report in terms of the possible financial and economic consequences and the burden on government and the justice system. However, as the committee's report also showed, the costs argument is by no means always decisive.

'Ultimately, the choice between OCTA or OR status is mainly political, and cannot be reduced to a simple bookkeeping calculation. Fundamental choices have to be made: between adopting an extensive system of EU law on the one hand and preserving autonomy on the other; between joining forces with the EU on the one hand and maintaining flexibility in foreign relations on the other; between aligning with the European market and customs union on the one hand and continuing to expand trade relations with partners in the Americas on the other.'<sup>120</sup>

Notwithstanding this modification – to which can be added that not all the choices presented are black and white in reality – this report also showed that costs can be a factor in decisions regarding territorial extension.

118 2017-2021 Coalition Agreement, 'Confidence in the Future', 10 October 2017, p. 8.

119 Parliamentary Paper nds-naaz040020-b1.

120 Ibid., p. 41.

### III Conclusions and recommendations

As a matter of principle, human rights treaties should be applicable to the entire territory of the Kingdom of Netherlands owing to the universality of human rights and the need for consistency in internal and international policy. Moreover, since 10 October 2010 formal arrangements have been made for territorial extension and agreements have been concluded to make this possible in practice, namely in the form of a mutual arrangement within the meaning of article 38, paragraph 1 of the Charter for the Kingdom of the Netherlands on cooperation between countries in the implementation of treaties. The obvious course of action would be to apply these arrangements when approving human rights treaties and treaties that can have a clear impact on the protection of human rights, such as the Paris Agreement.

In practice, however, it is apparent that territorial extension of human rights treaties cannot always be achieved, at least not in the short term. Sometimes this is because Aruba, Curaçao and St Maarten take a long time to deliberate on the desirability of extension. In the great majority of cases, however, the reason why human rights treaties are not ratified for the Caribbean parts of the Kingdom is that implementing measures must be in place for a treaty to enter into force. Introducing implementing measures often proves difficult in these parts of the Kingdom. Although the Netherlands could and should offer support and could and should initiate action on a treaty-by-treaty basis to draw up an implementation plan and time frame in mutual cooperation and on the basis of equality, this remains in practice a responsibility of the individual countries. Although this is correct in a formal sense, it is reasonable to expect the Netherlands to make a concerted effort since it generally has greater implementing capacity. It is worrying that various line ministries do not always know what progress has been made by the autonomous Caribbean countries or the BES islands in drawing up implementing measures.

Various explanations have been given above for the limited application of a number of human rights treaties and the Paris Agreement in the Caribbean part of the Kingdom. Some of these explanations are of an institutional nature in the sense that the Netherlands is wary of intervening too quickly in the islands' affairs. Others are of a more practical nature in the sense that the limited administrative capacity available on the islands sometimes makes it hard to introduce implementing legislation quickly and adequately. One final explanation is the lack of effective coordination and sufficient knowledge on the part of central government in the Netherlands.

In view of these findings, the AIV makes the following recommendations:

#### **Recommendation 1**

*The Kingdom of the Netherlands must always base its decision to conclude a human rights treaty on the substantive objectives and content of the treaty in question. The basic principle must be that human rights treaties are applicable throughout the entire Kingdom. Convincing reasons must be given if a decision is made to limit territorial application.*

#### **Recommendation 2**

*As the BES islands form part of the Dutch constitutional order and a divergent system of human rights cannot be justified by a 'fundamental distinction' within the meaning of article 132a of the Constitution, any such differences between the Caribbean and European parts of the Netherlands must be ended.*

Human rights are universal. Protection from discrimination and people smuggling, for example, is important for everyone, regardless of where they live. This means that for the purposes of a human rights treaty it makes no difference, in principle, whether people live in the European or the Caribbean part of the Kingdom. Human rights should apply equally to all Dutch citizens and other inhabitants of the Kingdom. Moreover, from the perspective of consistent policy it is only logical that they should apply to the entire Kingdom. In its foreign policy the Netherlands regularly recommends that a treaty be applicable to the entire territory of the contracting states. The credibility of this policy would be undermined if the Netherlands itself were then to permit a limitation of territorial application.

Hitherto, the practice in respect of every treaty has been to inquire explicitly whether territorial extension is desired and to extend application only if this question is answered in the affirmative. In view of the above, however, the opposite principle should apply in the case of human rights treaties and treaties such as the Paris Agreement that are clearly relevant to human rights. Such a treaty must apply throughout the entire Kingdom, unless it would be reasonable to make an exception to the principle in view of its substantive objectives and content.

In view of the great significance of human rights, insufficient administrative capacity at local level, defective coordination or knowledge on the part of Dutch ministries or the costs of implementation should not be permitted to result in failure to apply these treaties. Human rights are of such importance to all Dutch citizens and other inhabitants of the Kingdom that in discussions about the application of human rights treaties only limited weight can be given to arguments for legislative restraint. Limited administrative capacity in the Caribbean part of the Kingdom may not remain a reason for deferring territorial extension. On the contrary, it should instead be a reason for intensifying the cooperation and support provided by the Netherlands and for assisting the Caribbean countries and public bodies, naturally on the basis of equality among the four countries.

The ultimate objective is to ensure that human rights treaties are applicable to all people living in the Kingdom of the Netherlands. This is the criterion by which all measures and decision-making processes must be assessed. A change of policy is necessary in order to replace the wait-and-see approach by more active cooperation between the governments of the different parts of the Kingdom after a treaty has been ratified by the Kingdom. To this end the following recommendations are made.

### **Recommendation 3**

*If the Kingdom government decides on a temporary territorial limitation when ratifying a treaty, it should as a matter of course draw up an implementation plan (including the financial consequences) for all countries of the Kingdom, as referred to in article 2 of the mutual arrangement within the meaning of article 38, paragraph 1 of the Charter for the Kingdom of the Netherlands on cooperation between the countries in the implementation of treaties. The Dutch government should take the initiative in this connection. The implementation plans should be sent with the request for parliamentary approval to the States General and also shared with the parliaments of Aruba, Curaçao and St Maarten.*

### **Recommendation 4**

*Within Dutch central government the Ministry of the Interior and Kingdom Relations has primary responsibility for the cooperation between the different parts of the Kingdom, as referred to in recommendation 3. The role of this ministry in coordinating the application of human rights treaties should be strengthened. This should also be the aim of this*

*ministry's coordinating role within the Rijksdienst voor Caribisch Nederland (National Office for the Caribbean Netherlands, RCN).*

**Recommendation 5**

*The States General should be informed annually in the Explanatory Memorandum to the Kingdom Relations Budget (chapter IV of the Central Government Budget) about the progress made in executing the implementation plan referred to in recommendation 3.*

**Recommendation 6**

*Knowledge within central government in the Netherlands regarding the structure of the Kingdom of the Netherlands should be increased and cooperation between the countries of the Kingdom should be improved.*

In view of the importance of human rights treaties, there should be stricter observance of the agreements laid down in mutual arrangements as referred to in article 38, paragraph 1 of the Charter for the Kingdom of the Netherlands on cooperation between the countries for implementation of treaties, and the Dutch government should heed the numerous calls by the Council of State to adopt implementation plans and time frames prior to ratification of human rights treaties (recommendation 3). The Dutch government can reasonably be expected to take the initiative in this respect, given the relatively limited administrative capacity in the Caribbean part of the Kingdom and the ample coordinating and implementing capacity available in the Netherlands. However, coordination and cooperation between the Dutch ministries requires attention (recommendation 4). The main coordinating role should preferably be given to the Ministry of the Interior and Kingdom Relations, since it already plays this role in relation to Kingdom affairs. Implementation of recommendation 5 would allow greater parliamentary scrutiny of the main issues discussed in this advisory report. Clearly, any actual improvement will also be dependent on the ministries and parliament paying more attention to and having a greater understanding of Kingdom relations and the relevant legislation (recommendation 6).

## **Annexes**

## List of human rights treaties

Agreement	Title in English	Title in Dutch	Formation	Entry into force	Kingdom	Ratification	Entry into force	Territorial extension desirable	Implementation legislation
005132	Convention for the Protection of Human Rights and Fundamental Freedoms	Verdrag tot bescherming van de rechten van de mens en de fundamentele vrijheden	04-11-1950	03-09-1953	Aruba Curacao Neth. Antilles Netherlands (Bonaire) Netherlands (Saba) Netherlands (St. Eustatius) Netherlands (in Europe) St Maarten	01-01-1986 10-10-2010 31-12-1955 10-10-2010 10-10-2010 10-10-2010 31-08-1954 10-10-2010 01-01-1986	10-10-2010 10-10-2010 31-12-1955 10-10-2010 10-10-2010 10-10-2010 31-08-1954 10-10-2010 01-01-1986		
005133	Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11	Protocol bij het Verdrag tot bescherming van de rechten van de mens en de fundamentele vrijheden, zoals herzien door Protocol nr. 11	20-03-1952	18-05-1954	Aruba Curacao Neth. Antilles Netherlands (Bonaire) Netherlands (Saba) Netherlands (St. Eustatius) Netherlands (in Europe) St Maarten	01-01-1986 10-10-2010 31-12-1955 10-10-2010 10-10-2010 10-10-2010 31-08-1954 10-10-2010 01-01-1986	10-10-2010 10-10-2010 31-12-1955 10-10-2010 10-10-2010 10-10-2010 31-08-1954 10-10-2010 01-01-1986		
009053	European Social Charter	Europees Sociaal Handvest	18-10-1961	26-02-1965	Aruba Curacao Neth. Antilles Netherlands (Bonaire) Netherlands (Saba) Netherlands (St. Eustatius) Netherlands (in Europe) St Maarten	01-01-1986 10-10-2010 22-04-1980 10-10-2010 10-10-2010 10-10-2010 22-04-1980 10-10-2010 01-01-1986	10-10-2010 10-10-2010 22-04-1980 10-10-2010 10-10-2010 10-10-2010 22-04-1980 10-10-2010 01-01-1986		
004631	Protocol No. 3 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 29, 30 and 34 of the Convention	Derde Protocol bij het Verdrag tot bescherming van de rechten van de mens en de fundamentele vrijheden, tot wijziging van de artikelen 29, 30 en 34 van het Verdrag	06-05-1963	21-09-1970	Aruba Curacao Neth. Antilles Netherlands (Bonaire) Netherlands (Saba) Netherlands (St. Eustatius) Netherlands (in Europe) St Maarten	01-01-1986 10-10-2010 11-10-1966 10-10-2010 10-10-2010 10-10-2010 11-10-1966 10-10-2010 01-01-1986	10-10-2010 10-10-2010 21-09-1970 10-10-2010 10-10-2010 10-10-2010 21-09-1970 10-10-2010 01-01-1986		
004582	Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto	Vierde Protocol bij het Verdrag tot bescherming van de rechten van de mens en de fundamentele vrijheden, tot het waarborgen van bepaalde rechten en vrijheden die niet reeds in het Verdrag en in het eerste Protocol daarbij zijn opgenomen	16-09-1963	02-05-1968	Aruba Curacao Neth. Antilles Netherlands (Bonaire) Netherlands (Saba) Netherlands (St. Eustatius) Netherlands (in Europe) St Maarten	01-01-1986 10-10-2010 23-06-1982 10-10-2010 10-10-2010 10-10-2010 23-06-1982 10-10-2010 01-01-1986	10-10-2010 10-10-2010 23-06-1982 10-10-2010 10-10-2010 10-10-2010 23-06-1982 10-10-2010 01-01-1986		
003653	Protocol No. 5 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 22 and 40 of the Convention	Vijfde Protocol bij het Verdrag tot bescherming van de rechten van de mens en de fundamentele vrijheden, tot wijziging van de artikelen 22 en 40 van het Verdrag	20-01-1966	20-12-1971	Aruba Curacao Neth. Antilles Netherlands (Bonaire) Netherlands (Saba) Netherlands (St. Eustatius) Netherlands (in Europe) St Maarten	01-01-1986 10-10-2010 19-05-1971 10-10-2010 10-10-2010 10-10-2010 19-05-1971 10-10-2010 01-01-1986	10-10-2010 10-10-2010 20-12-1971 10-10-2010 10-10-2010 10-10-2010 20-12-1971 10-10-2010 01-01-1986		
003657	International Convention on the Elimination of All Forms of Racial Discrimination	Internationaal Verdrag inzake de uitbanning van alle vormen van rassendiscriminatie	07-03-1966	04-01-1969	Aruba Curacao Neth. Antilles Netherlands (Bonaire) Netherlands (Saba) Netherlands (St. Eustatius) Netherlands (in Europe) St Maarten	01-01-1986 10-10-2010 10-12-1971 10-10-2010 10-10-2010 10-10-2010 10-12-1971 10-10-2010 01-01-1986	10-10-2010 10-10-2010 09-01-1972 10-10-2010 10-10-2010 10-10-2010 09-01-1972 10-10-2010 01-01-1986		

Agreement	Title in English	Title in Dutch	Formation	Entry into force	Kingdom	Ratification	Entry into force	Territorial extension desirable	Implementation legislation
003721	International Covenant on Civil and Political Rights	Internationaal Verdrag inzake burgerrechten en politieke rechten	16-12-1966	23-03-1976	Aruba Curacao Neth. Antilles Netherlands (Bonaire) Netherlands (Saba) Netherlands (St. Eustatius) Netherlands (in Europe) St Maarten		01-01-1986 10-10-2010 11-03-1979 10-10-2010 10-10-2010 10-10-2010 11-03-1979 10-10-2010 01-01-1986		
003723	International Covenant on Economic, Social and Cultural Rights	Internationaal Verdrag inzake economische, sociale en culturele rechten	16-12-1966	03-01-1976	Aruba Curacao Neth. Antilles Netherlands (Bonaire) Netherlands (Saba) Netherlands (St. Eustatius) Netherlands (in Europe) St Maarten		03-01-1976 10-10-2010 11-03-1979 10-10-2010 10-10-2010 10-10-2010 11-03-1979 10-10-2010 01-01-1986		
000837	Convention on the Elimination of All Forms of Discrimination against Women	Verdrag inzake de uitbanning van alle vormen van discriminatie van vrouwen	18-12-1979	03-09-1981	Aruba Curacao Neth. Antilles Netherlands (Bonaire) Netherlands (Saba) Netherlands (St. Eustatius) Netherlands (in Europe) St Maarten		03-09-1981 10-10-2010 22-08-1991 23-07-1991 10-10-2010 10-10-2010 23-07-1991 22-08-1991		
000219	Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty	Zesde Protocol bij het Verdrag tot bescherming van de rechten van de mens en de fundamentele vrijheden, inzake de afschaffing van de doodstraf	28-04-1983	01-03-1985	Aruba Curacao Neth. Antilles Netherlands (Bonaire) Netherlands (Saba) Netherlands (St. Eustatius) Netherlands (in Europe) St Maarten		01-03-1985 10-10-2010 25-04-1986 01-03-1986 10-10-2010 10-10-2010 25-04-1986 01-03-1986		
000170	Protocol No. 7 to the Convention for the protection of human rights and fundamental freedoms	Zevende Protocol bij het Verdrag tot bescherming van de rechten van de mens en de fundamentele vrijheden	22-11-1984	01-11-1988	Aruba Curacao Neth. Antilles Netherlands (Bonaire) Netherlands (Saba) Netherlands (St. Eustatius) Netherlands (in Europe) St Maarten		01-11-1988 10-10-2010 10-10-2010 10-10-2010 10-10-2010 10-10-2010 25-04-1986 10-10-2010		
000176	Convention against torture and other cruel, inhuman or degrading treatment or punishment	Verdrag tegen foltering en andere wrede, onmenselijke of ontorende behandeling of bestraffing	10-12-1984	26-06-1987	Aruba Curacao Neth. Antilles Netherlands (Bonaire) Netherlands (Saba) Netherlands (St. Eustatius) Netherlands (in Europe) St Maarten		26-06-1987 10-10-2010 20-01-1989 10-10-2010 10-10-2010 10-10-2010 21-12-1988 20-01-1989		Yes
000042	Protocol No. 8 to the Convention for the Protection of Human Rights and Fundamental Freedoms	Achtste Protocol bij het Verdrag tot bescherming van de rechten van de mens en de fundamentele vrijheden	19-03-1985	01-01-1990	Aruba Curacao Neth. Antilles Netherlands (Bonaire) Netherlands (Saba) Netherlands (St. Eustatius) Netherlands (in Europe) St Maarten		01-01-1990 10-10-2010 11-12-1986 01-01-1990 10-10-2010 10-10-2010 11-12-1986 20-01-1989		
002005	European Convention for the prevention of torture and inhuman or degrading treatment or punishment	Europees Verdrag ter voorkoming van foltering en onmenselijke of vernederende behandeling of bestraffing	26-11-1987	01-02-1989	Aruba Curacao Neth. Antilles Netherlands (Bonaire) Netherlands (Saba) Netherlands (St. Eustatius) Netherlands (in Europe) St Maarten		01-02-1989 10-10-2010 12-10-1988 01-02-1989 12-10-1988 10-10-2010 11-12-1988 01-02-1989		

Agreement	Title in English	Title in Dutch	Formation	Entry into force	Kingdom	Ratification	Entry into force	Territorial extension desirable	Implementation legislation
003908	Convention on the Rights of the Child	Verdrag inzake de rechten van het kind	20-11-1989	02-09-1990	Aruba Curacao Neth. Antilles Netherlands (Bonaire) Netherlands (Saba) Netherlands (St. Eustatius) Netherlands (in Europe) St Maarten	18-12-2000 17-12-1997 10-10-2010 10-10-2010 10-10-2010 08-03-1995 10-10-2010	17-01-2001 10-10-2010 16-01-1998 10-10-2010		
003919	Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty	Tweede Facultatieve Protocol bij het Internationaal Verdrag inzake burgerrechten en politieke rechten, gericht op de afschaffing van de doodstraf	15-12-1989	11-07-1991	Aruba Curacao Neth. Antilles Netherlands (Bonaire) Netherlands (Saba) Netherlands (St. Eustatius) Netherlands (in Europe) St Maarten	26-03-1991 26-03-1991 11-07-1991 10-10-2010 10-10-2010 26-03-1991 11-07-1991 10-10-2010	11-07-1991 10-10-2010		
004650	International Convention on the protection of the rights of all migrant workers and members of their families	Internationaal Verdrag inzake bescherming van de rechten van alle migrerende werknemers en hun gezinsleden	18-12-1990	01-07-2003	Aruba Curacao Neth. Antilles Netherlands (Bonaire) Netherlands (Saba) Netherlands (St. Eustatius) Netherlands (in Europe) St Maarten				
004919	Protocol No. 10 to the Convention for the Protection of Human Rights and Fundamental Freedoms	Tiende Protocol bij het Verdrag tot bescherming van de rechten van de mens en de fundamentele vrijheden	25-03-1992		Aruba Curacao Neth. Antilles Netherlands (Bonaire) Netherlands (Saba) Netherlands (St. Eustatius) Netherlands (in Europe) St Maarten	23-11-1992 23-11-1992			
005113	European Charter for Regional or Minority Languages	Europees Handvest voor regionale talen of talen van minderheden	05-11-1992	01-03-1998	Aruba Curacao Neth. Antilles Netherlands (Bonaire) Netherlands (Saba) Netherlands (St. Eustatius) Netherlands (in Europe) St Maarten			NA NA	
005433	Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby	Elfde Protocol bij het Verdrag tot bescherming van de rechten van de mens en de fundamentele vrijheden, betreffende herstructurering van het bij dat Verdrag ingestelde controlemechanisme	11-05-1994	01-11-1998	Aruba Curacao Neth. Antilles Netherlands (Bonaire) Netherlands (Saba) Netherlands (St. Eustatius) Netherlands (in Europe) St Maarten	21-01-1997 21-01-1997 10-10-2010 10-10-2010 10-10-2010 21-01-1997 10-10-2010	01-11-1998 10-10-2010 01-11-1998 10-10-2010		
006015	Framework Convention for the protection of national minorities	Kaderverdrag inzake bescherming van nationale minderheden	01-02-1995	01-02-1998	Aruba Curacao Neth. Antilles Netherlands (Bonaire) Netherlands (Saba) Netherlands (St. Eustatius) Netherlands (in Europe) St Maarten			No No	
						16-02-2005	01-06-2005		

Agreement	Title in English	Title in Dutch	Formation	Entry into force	Kingdom	Ratification	Entry into force	Territorial extension desirable	Implementation legislation
009290	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	Facultatief Protocol inzake de verkoop van kinderen, kinderprostitutie en kinderpornografie bij het Verdrag inzake de rechten van het kind	25-05-2000	18-01-2002	Aruba Curacao Neth. Antilles Netherlands (Bonaire) Netherlands (Saba) Netherlands (St. Eustatius) Netherlands (in Europe) St. Maarten	17-10-2006 11-10-2010 11-10-2010 11-10-2010 23-08-2005	17-10-2006 10-10-2010 10-10-2010 10-10-2010 23-09-2005	Yes NA	Complete Needed
009291	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	Facultatief Protocol bij het Verdrag inzake de rechten van het kind inzake de betrokkenheid van kinderen bij gewapende conflicten	25-05-2000	12-02-2002	Aruba Curacao Neth. Antilles Netherlands (Bonaire) Netherlands (Saba) Netherlands (St. Eustatius) Netherlands (in Europe) St. Maarten	24-09-2009 24-09-2009 10-10-2010 10-10-2010 24-09-2009	24-10-2009 24-10-2009 10-10-2010 10-10-2010 24-10-2009	Yes	Needed
009353	Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms	Protocol nr. 12 bij het Verdrag tot bescherming van de rechten van de mens en de fundamentele vrijheden	04-11-2000	01-04-2005	Aruba Curacao Neth. Antilles Netherlands (Bonaire) Netherlands (Saba) Netherlands (St. Eustatius) Netherlands (in Europe) St. Maarten	28-07-2004 28-07-2004 10-10-2010 10-10-2010 28-07-2004	01-04-2005 10-10-2010 01-04-2005 10-10-2010 10-10-2010		
010333	Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances	Protocol nr. 13 bij het Verdrag tot bescherming van de rechten van de mens en de fundamentele vrijheden, inzake de afschaffing van de doodstraf onder alle omstandigheden	03-05-2002	01-07-2003	Aruba Curacao Neth. Antilles Netherlands (Bonaire) Netherlands (Saba) Netherlands (St. Eustatius) Netherlands (in Europe) St. Maarten	10-02-2006 10-02-2006 10-10-2010 10-10-2010 10-02-2006	01-06-2006 10-10-2010 01-06-2006 10-10-2010 10-10-2010		
009949	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Facultatief Protocol bij het Verdrag tegen foltering en andere wrede, onmenselijke of ontorende behandeling of bestraffing	18-12-2002	22-06-2006	Aruba Curacao Neth. Antilles Netherlands (Bonaire) Netherlands (Saba) Netherlands (St. Eustatius) Netherlands (in Europe) St. Maarten			Yes Yes Yes	Needed Needed Needed
010903	Protocol no. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention	Protocol nr. 14 bij het Verdrag tot bescherming van de rechten van de mens en de fundamentele vrijheden, betreffende wijziging van het controlesysteem van het Verdrag	13-05-2004	01-06-2010	Aruba Curacao Neth. Antilles Netherlands (Bonaire) Netherlands (Saba) Netherlands (St. Eustatius) Netherlands (in Europe) St. Maarten	02-02-2006 02-02-2006 10-10-2010 10-10-2010 02-02-2006	01-06-2010 10-10-2010 01-06-2010 10-10-2010 01-06-2010	Yes	Needed
011298	Council of Europe Convention on Action against Trafficking in Human Beings	Verdrag van de Raad van Europa inzake bestrijding van mensenhandel	16-05-2005	01-02-2008	Aruba Curacao Neth. Antilles Netherlands (Bonaire) Netherlands (Saba) Netherlands (St. Eustatius) Netherlands (in Europe) St. Maarten	23-01-2015 23-01-2015 10-10-2010 10-10-2010 22-04-2010	01-05-2015 10-10-2010 01-08-2010	Yes Yes	Needed Needed

Agreement	Title in English	Title in Dutch	Formation	Entry into force	Kingdom	Ratification	Entry into force	Territorial extension desirable	Implementation legislation
011595	Convention on the rights of persons with disabilities	Verdrag inzake de rechten van personen met een handicap	13-12-2006	03-05-2008	Aruba Curaçao Neth. Antilles Netherlands (Bonaire) Netherlands (Saba) Netherlands (St Eustatius) Netherlands (in Europe)			Consultations Consultations Consultations Yes Yes Yes Yes	Needed Needed Needed Needed Needed Needed
011563	International Convention for the Protection of all Persons from Enforced Disappearance	Internationaal Verdrag inzake de bescherming van alle personen tegen gedwongen verdwijning	20-12-2006	23-12-2010	Aruba Curaçao Neth. Antilles Netherlands (Bonaire) Netherlands (Saba) Netherlands (St Eustatius) Netherlands (in Europe) St Maarten			Consultations Yes Yes Yes 23-03-2011 23-03-2011 23-03-2011 23-03-2011 Yes Yes	Needed Needed Needed Needed Needed Needed Needed Needed
012205	Protocol No. 14bis to the Convention for the Protection of Human Rights and Fundamental Freedoms	Protocol nr. 14bis bij het Verdrag tot bescherming van de rechten van de mens en de fundamentele vrijheden	27-05-2009	01-10-2009	Aruba Curaçao Neth. Antilles Netherlands (Bonaire) Netherlands (Saba) Netherlands (St Eustatius) Netherlands (in Europe)				
012860	Protocol No. 15 amending the Convention for the Protection of Human Rights and Fundamental Freedoms	Protocol nr. 15 tot wijziging van het Verdrag tot bescherming van de rechten van de mens en de fundamentele vrijheden	24-06-2013		Aruba Curaçao Neth. Antilles Netherlands (Bonaire) Netherlands (Saba) Netherlands (St Eustatius) Netherlands (in Europe) St Maarten	01-10-2015 01-10-2015		Yes Yes	Needed Needed
012861	Protocol No. 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms	Protocol nr. 16 bij het Verdrag tot bescherming van de rechten van de mens en de fundamentele vrijheden	02-10-2013		Aruba Curaçao Neth. Antilles Netherlands (Bonaire) Netherlands (Saba) Netherlands (St Eustatius) Netherlands (in Europe) St Maarten			Consultations Yes Yes	Needed Needed

**List of abbreviations**

<b>AIV</b>	Advisory Council on International Affairs
<b>AWOK</b>	Civil Service Meetings on Draft Legislation for Kingdom Relations
<b>BES</b>	Bonaire, St Eustatius and Saba
<b>BZK</b>	Ministry of the Interior and Kingdom Relations
<b>ECHR</b>	European Convention for the Protection of Human Rights and Fundamental Freedoms
<b>EU</b>	European Union
<b>IBES</b>	Public Bodies (Bonaire, St Eustatius and Saba) Implementation Act
<b>KP</b>	Kyoto Protocol
<b>NPM</b>	National Preventive Mechanism
<b>OCT</b>	Overseas Countries and Territories
<b>OPCAT</b>	Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>OR</b>	Outermost Region
<b>TEU</b>	Treaty on European Union
<b>TFEU</b>	Treaty on the Functioning of the European Union
<b>UN</b>	United Nations
<b>UNFCCC</b>	United Nations Framework Convention on Climate Change
<b>UPR</b>	Universal Periodic Review

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