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EUROPEAN SOCIAL CHARTER OF 1961

6th National Report on the implementation of
the European Social Charter of 1961

submitted by

**THE GOVERNMENT OF ARUBA, KINGDOM OF THE
NETHERLANDS**

(Article 1 of the European Social Charter and Article 1 of
the 1988 Additional Protocol
for the period 01/01/2007 – 31/12/2010)

Report registered by the Secretariat on 7 May 2013

CYCLE XX-1 (2012)

European Social Charter

REPORT SUBMITTED BY THE GOVERNMENT OF ARUBA



*Report in terms of Article 1 of the European Social Charter
(revised) and
Article 1 of the Additional Protocol to the European Social Charter
of 5 May 1988*

*For the period:
1 January 2007 - 31 December 2010*

ESH REPORT 2007 - 2010

Foreward

The Government of Aruba submits hereby its report for the period 1 January 2007 to 31 December 2010 in accordance with Article 21 of the European Social Charter, on the measures taken to give effect to the accepted provisions of the European Social Charter.

The Government of Aruba would also like to inform the committee that as of April 1, 2013 progressive changes are implemented in the Labour Ordinance, the Civil Code and the Minimum Wages Ordinance. Two new labour laws have also been approved by parliament, namely the Temp Agency Agreement Ordinance and the Ordinance Administrative Enforcement Labour Laws. These proposals and changes of the law were initiated by Minister of Labor to achieve social equity and these have been discussed at the tripartite forum with ATIA, AHATA and Employees Unions.

The Government of Aruba will supply all necessary and relevant information regarding these changes in the next reporting period.

In accordance with article 23 of the European Charter, copies of this report have been communicated to:

The employer's organisations:

- | | |
|--|--------------|
| ➤ Associated General Contractors of Aruba | AGCA |
| ➤ Aruba Hotel and Tourism Association | AHATA |
| ➤ Aruba Trade and Industry Association | ATIA |

The worker's organisations:

- | | |
|---|--------------|
| ➤ Union of Nurses of Aruba | ABV |
| ➤ Federation of Workers of Aruba | FTA |
| ➤ Union of Public and Private Employees of Aruba | SEPPA |

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Article 1 – The right to work

With a view to ensuring the effective exercise of the right to work, the Parties undertake:

- 1. to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;*
- 2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon;*
- 3. to establish or maintain free employment services for all workers;*
- 4. to provide or promote appropriate vocational guidance, training and rehabilitation.*

Appendix to Article 1§2

This provision shall not be interpreted as prohibiting or authorizing any union security clause or practice.

Article 1§1: Policy of full employment

Question

1. Please describe national employment policy and the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

Answer

The Governments informs the Committee that its main priority is to achieve higher labour market participation rates for fellow country residents. The Government's first and foremost concern is to provide a decent standard of living and promote full employment for fellow country residents of Aruba.

Question

2. Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Answer

Re-integration project: During the reference period the re-integration project which was executed in collaboration with the Department of Social Affairs took place once a year in 2007 and 2008. The data concerning the re-integration project is presented in Table 1.

Table 1. Data re-integration project

	2008	2007
Total candidates in project	27	55
Dropped out before start of or during project	8	10
Candidates with problematic issues	-	5
Candidates who accepted a job	-	-
Candidates who accepted a job through mediation	3	23
Candidates who did not find a job	-	6
Candidates needing additional guidance	10	9
Candidates who opted for further studies	-	2
Unknown	6	-

Education for Employment

Please refer to **Annex 1** for the information concerning the summary of participants for Education for Employment 2007- 2010 (EPE).

Part-time employment

Jobs in Aruba are usually full-time and part-time work is quite rare. Given:

- a. the increasing demand for labour in 2007 and 2008, especially in the catering, building and retail sectors and the shortage of local workers and
- b. that research in 2005 by the Department of Labour and Research (DAO), shows that a substantial number of people are not economically active for one reason or another, the DAO has decided to investigate the necessity of part-time employment.

The purpose of the research was two-fold:

- To identify the unemployed (including the unemployed jobseekers and the inactive(woman, young people and welfare recipients)) and their interest for part-time work,
- To examine the need of employers for part-time workers and in which positions.

Project “Participa”

The aim is, through this research the unemployed (both unemployed and not seeking employment) and inactive (those not available for a job) to register their characteristics in order to determine the reasons for being available to work and or whether looking for a job or not.

A national registry campaign was held to promote this project. This campaign was promoted by using different media tools. The national campaign involved registering the above mentioned target group for one week.

In the week of 25 to 29 August 2008 the registration took place through a questionnaire, in seven parts of the island and at the DAO. The possibility was also given to register by a general telephone number or by email. 1797 persons showed up to participate in the questionnaire.

Question

3. Please provide pertinent figures, statistics (for example Eurostat data) or any other relevant information, in particular:
the GDP growth rate; trends in employment covering all sectors of the economy: employment rate (persons in employment as a percentage of the population aged 15-64 years), youth employment rate; activity rate (total labour force as a percentage of the population aged 15 years and over); unemployment rate, long-term unemployment rate, youth unemployment rate; employment status (employed, self-employed); all figures should be broken down by gender; employment policy expenditure as a share of GDP, including the relative shares of 'active' (job creation, training, etc.) and 'passive' (financial compensation, etc.) measures.

Answer

The Government regrets to inform that there is no data available on all the information requested. Availability of adequate and up to date labour market information is vital to understanding and managing the economy. Because of a persistent lack of such data, the Central Bank of Aruba is a strong component of conducting a labor force survey at least once a year to improve labour market statistics.

In November 2011, the DAO conducted a labor force survey among a sample of households to assess labour market conditions. The results hereof suggest the labor market improved from the latest investigation (census 2010). The unemployment rate contracted from 10.9 percent to 8.9 percent, representing some 4,679 unemployed persons in November 2011. This development in unemployment mirrors increases in available jobs, with some 1,400 plus more people employed than in the survey of 2010.

Table 2. Demographic aspects of the population of Aruba

	Unit	2007	2008	2009	2010
Males	Absolute	49,860	50,748	51,343	51,664
Females	Absolute	54,663	55,302	55,795	56,139
Total population	Absolute	104, 523	106,050	107,138	107,803

Source: CBS, Statistical Yearbooks 2010

Table 3. Macro-Economic Key indicators

	unit	2007	2008	2009	2010
Nominal GDP	Afls.	4,696	4,876	4,478	-
Nominal GDP per capita	Afls.	45,164	46,401	42,014	-
Real GDP	Afls.	3,176	3,046	3,293	-
Real GDP per capita	Afls.	35,210	28,960	30,895	-

Source: CBS, Statistical Yearbooks 2010

Table 4. Minimum wages (monthly Afls), december 31

	unit	2007	2008	2009	2010
Minimum loan for Industry, Service, Trade	Afls.	1,460.00	1,505.25	1,542.90	1,542.90
Domestic Servants	Afls.	681,14	702,25	719,80	719,80

Source: CBS, Statistical Yearbooks 2010/ Department of Labour

Table 5. Welfare benefits

	unit	2007	2008	2009	2010
Persons on welfare (per Jan 31)	absolute	2,020	1,991	1,846	1,943
Total amount paid	x Afls. 1000	1,240	1,172	1,134	1,459

Source: CBS, Statistical Yearbooks 2010/ Department of Social Affairs

The Government refers the Committee to the following table for the data concerning employment policy expenditure.

Table 6. Education

	unit	2007	2008	2009	2010
Number of students (full time)	Absolute	22,508	22,470	22,523	-
Current government expenditure on education (provisional data)	Min. Afls.	191,0	192,9	205,1	-

Source: CBS, Statistical Yearbooks 2010

The following table shows the development of the population and the working population of Aruba between 2007 and 2010

Table 7. Population

	2007	2008	2009	2010
Population Aruba	104.523	106.050	107.138	107.803
Potential working population (15-60 years)	70.156	71.201	70.883	76.637 (15-64 years)
Working Population (labor force)	52.770	53.102	53.147	50.822

Source: CBS and DAO / Labour market figures 2010

Table 8. Workers on the labour market

	2009	2010
Private sector	39.289	37.875
Public sector	4.395	3.866
Other sectors (teachers, etc)	1.938	1.345
Independent	4.810	4.987
Live in maids (domestic workers)	910	1.165
Total	51.342	49.238

Source: SVB (Social Insurance Bank Aruba), DAO, DPO, Kvk, DIMAS / Labour market figures 2010

Article 1§2: Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

Question

1. Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

Answer

The State Ordinance Sickness Insurance (AB 1993 no. GT 24) and the State Ordinance Accident Insurance (AB 1996 no. GT 26) has been amended by the State Ordinance of 15 august 2007 (AB 2007 no.73 and AB 2007 no.88) . These legislations have been changed to codify the right to pregnancy and maternity leave and related matters. The discrepancy between the private sector and the public sector with regard to the length of pregnancy leave and the amount of benefit has been eliminated. The Government refers the Committee to **Annex 2** submitted to the Committee with this report.

The Government informs the nature of the most important changes:

The Civil Code of Aruba is amended as follows:

After article 1614c, two new articles were added on 1 October 2007, namely:

- Article:1614 ca, codifying the right that female workers have to paid pregnancy and maternity leave. Pregnancy leave would commence four to six weeks before the official due date and maternity leave would end six to eight weeks after giving birth. If birth occurs before the due date, pregnancy leave ends and maternity leave begins on the date of birth, in which case the period of maternity leave is twelve weeks minus the number of weeks of pregnancy leave that have already elapsed.
- Article 1614cb, codifying that female workers have the right to interrupt their work to nurse the child or express breast milk during the child's first nine months of life, without loss of wages.

After article 1614z, a new article was included, namely:

article 1614aa, nullifying any clause distinguishing between men and women in the context of:

- entering into a contract of employment;
- issuing instructions to workers;
- employment terms and conditions;
- renewal and termination of a contract of employment.

An exception is made for provisions in an employment contract that protect female workers, particularly with regard to pregnancy and motherhood.

At article 1615e, §3(new) is also included: stipulating that any stipulation leading to termination of employment due to marriage, pregnancy or childbirth is void.

At article 1615h, §2, a sentence is added, prohibiting employers from giving notice of termination during pregnancy and maternity leave.

The State Ordinance Sickness Insurance (AB 1993 no. GT 24) is amended as follows:

- Article 3a (new): In accordance with article 5 of the State Ordinance Sickness Insurance female workers are entitled to 100% of salary during pregnancy and maternity leave.

Question

2. Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Answer

No new developments. The Government refers the Committee to its previous reporting periods.

Question

3. Please provide pertinent figures, statistics or any other relevant information, if appropriate.

Answer

The Government of Aruba refers the Committee to its previous report. The Government informs the Committee that during this reference reporting period no complaints related to forced labour were submitted to the DAO nor have there been any detection of existence of forced or compulsory labour during the inspections carried out by the Inspectors.

Article 1§3 Free placement services

Question

- 1 Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

Answer 1

No new developments. The Governments refers the Committee to its previous reporting periods.

Question

2. Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Answer 2

No new developments. The Governments refers the Committee to its previous reporting period.

Question

3. Please provide indicators, estimated if necessary, on the functioning and the performance of the employment services in practice, including the number of vacancies registered by employment services; placement rate (placements made by the employment services as a share of notified vacancies).

Answer

Vacancy Advertisement

The DAO continued to submit weekly to local newspapers an advertisement with the available vacancies registered by the Division of Employment Mediation, under which the Jobcenter. The Government informs that the notification of vacancy by the employer is free of charge.

Table 9. Number of registered vacant jobs between 2007 and 2010

	2007 vacant jobs	2008 vacant jobs	2009 vacant jobs	2010 vacant jobs
1 st quarter	2182	2479	1500	1318
2 nd quarter	1911	2221	1798	1361
3 rd quarter	2319	2429	1513	1299
4 th quarter	1625	1984	1204	1324
Total	8037	9113	6015	5302

DAO (BAS system)/ Labour market figures 2010

Table 10. Working population in the private sector of Aruba by industry

Relative	Svb dec. 2008	Svb dec.2009	Svb dec.2010
Hotels and restaurants	10803	10891	10330
Wholesale and retail trade	7854	7734	7576
Real estate, renting and business activities	6408	6760	6361
Construction	3693	3011	2811
Industrie	2804	1932	1855
Vervoer, Opslag en Communicatie	2470	2401	2355
Other community, social and personal service	2512	2068	2091
Health and social work	1869	1965	1945
Financial intermediation	1612	1616	1549
Electricity, gas and water supply	502	509	500
Agriculture, hunting and forestry	253	258	244
Education	119	112	111
Government and defence	100	100	101
Mining	30	32	34
Unknown	-	-	12
Total	41029	39389	37875

Source: (Social Insurance Bank Aruba) Svb-Dec 2008, Dec 2009 en dec 2010/ DAO Arbeidsmarkt cijfers -2010

Article 1§4 Vocational guidance, training and rehabilitation

Question

1. Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

Answer 1

No new developments. Please refer to the Government's comments under the Questions of Article 1 paragraph 1 of this report.

Question

2. Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Answer 2

No new developments. Please refer to the Government's comments under the Questions of Article 1 paragraph 1 of this report.

Question

3. Please provide pertinent figures, statistics or any other relevant information, if appropriate.

Answer 3

No new updated appropriate developments.

General Question by the ECSR

The Committee addresses the following general question to all the States Parties and invites them to provide replies in the next report on the provision concerned Article 1§2.

- The Committee draws the attention to the existence of forced labour in domestic environment (see judgment of the European Court of Human Rights in the case of *Siliadin v. France*, 26 July 2005). It asks for information on the legal provisions adopted to combat such types of forced labour as well as measures taken to implement them.

Answer on General Question by the ECSR, regarding live-in domestic workers environment:

The Government informs the Committee that live-in domestic workers are a special category of workers, mainly women, for which demand has grown in recent years. It must be noted that fellow country residents have no interest in this sort of work. National law make access to employment on Aruba subject to possession of a work permit, issued by the ministry of Integration, Infrastructure and Environment.

For a migrant live-in domestic worker to receive a work permit, administrative arrangement required among others, a minimum standards of decent living conditions, which respect their privacy, consistent with national practice. In particular size, ventilation, sanitary utilities. The responsible authority D.I.M.A.S will conduct the investigation at the employers' resident. The migrant live-in domestic worker is also informed of their terms and conditions of employment, in easily understandable manner, through written contract in accordance with national laws and regulations.

Trafficking in persons

The Government informs the Committee that the Criminal Code of Aruba was amended in May 2006 (AB 2006, no. 11) in order to comply with international treaties. The amendments to the Criminal Code of Aruba made human smuggling a criminal offence,

and further amplified the scope of the article about human trafficking to include forced labour, debt-bondage trafficking and organ removal. The Criminal Code of Aruba thus specifically prohibits trafficking in persons (including sexual exploitation, labour exploitation and organ removal) and smuggling of persons.

Under article 286a of the Criminal Code of Aruba, human trafficking, including trafficking in women and children, is an offence carrying a maximum sentence of six years' imprisonment or a fine of AWG 100,000 (paragraph 1), which may be increased to eight years' imprisonment if the offence is committed by two or more associated persons or the victim has not yet reached the age of sixteen (paragraph 3), to ten years' imprisonment if the offence is committed by two or more associated persons -and the victim is under sixteen (paragraph 4), to 12 years imprisonment if the offence results in serious physical injury or if the life of another person is feared (paragraph 5), or to 15 years imprisonment if the offence results in death (paragraph 6).

The Government informs the Committee that an interdepartmental and interdisciplinary working group on trafficking and smuggling of persons (-to be referred to hereinafter as the TIP-Committee) was established in Aruba in early 2000, which was installed to draw up a plan for counter trafficking and smuggling activities.

The following departments are represented in the TIP-Committee: the Aruban Police Force (chair), the National Security Service Aruba, the Public Prosecutor's Office, the Department of Foreign Affairs, the Department of Social Affairs, the Bureau for Victim Assistance, the DAO, the Directorate of Alien Policy, Admission and Integration, the joint Netherlands Antilles and Aruba Coast Guard, the Aruban Border Control and Immigration Services and the Department of Contagious Diseases.

Besides the above-mentioned TIP-committee, the Human Trafficking Review Committee (to be referred to hereinafter as the Review Committee) was formed. This committee will analyze information received on possible cases of human trafficking in a preliminary investigation, and advice on further investigation and/or prosecution.

The Government informs the Committee that in January 2007 the Ministers of Justice of the three countries that make up the Kingdom of the Netherlands agreed to improve monitoring and screening practices to reduce human trafficking and smuggling and illegal migration. The three countries subsequently agreed to broaden their approach to these problems by focusing more attention on border control, investigation, prosecution, prevention and victim support.

A two-day conference on human trafficking and human smuggling was held on Aruba in June 2008. The conference findings will serve as a basis for further agreements between Aruba, the Netherlands Antilles and the Netherlands on these issues. A national coordinator was designated for each country at the conference.

The Government informs the Committee that the 2007 Analysis of Crime and Criminal Activity in Aruba (*Criminaliteitsbeeld analyse Aruba 2007*) concluded that there are no concrete indications of human trafficking in Aruba. The Public Prosecutor's Office in Aruba has not brought any human trafficking cases to trial, nor have there been any complaints lodged in this regard during this reference reporting period.

The Government informs the Committee that in Aruba the ministry of Social Affairs has a victim support office (*Bureau Slachtofferhulp*) that could provide assistance, for example in the form of shelter and care, to victims of trafficking. The Government informs the Committee that during the reference period, no requests for assistance have been made by any live-in domestic worker.

1988 ADDITIONAL PROTOCOL TO THE EUROPEAN SOCIAL CHARTER

Article 1 – Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

1. *With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the Parties undertake to recognize that right and to take appropriate measures to ensure or promote its application in the following fields:*
 - *access to employment, protection against dismissal and occupational resettlement;*
 - *vocational guidance, training, retraining and rehabilitation;*
 - *terms of employment and working conditions including remuneration;*
 - *career development including promotion.*
2. *Provisions concerning the protection of women, particularly as regards pregnancy, confinement and the post-natal period, shall not be deemed to be discrimination as referred to in paragraph 1 of this Article.*
3. *Paragraph 1 of this Article shall not prevent the adoption of specific measures aimed at removing de facto inequalities.*
4. *Occupational activities which, by reason of their nature or the context in which they are carried out, can be entrusted only to persons of a particular sex may be excluded from the scope of this Article or some of its provisions.*

Question

1. Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

Answer 1

Please refer to the Government's answer under the Questions of Article 1 paragraph 2 of this report.

Question

2. Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Answer 2

Training for staff. The Human rights Coordination Center at the Department of Social Affairs is actively engaged in cultivating a process aimed at increasing awareness of human rights, including the rights of women, in Aruban society. In 2007 a training programme was launched for staff of the Social Affairs Department. Four courses were given in 2007 and 2008.

The courses are interactive and take place over four half-days. The objectives are:

1. to educate the participants about the various human rights conventions and the United Nations, and
2. to inspire and motivate the participants to secure and promote human rights in their daily lives and in their work.

The thought behind these courses is that gender equality cannot be achieved through a sectorial approach. Gender must be integrated into a policy for all sectors and ministries. This process of raising awareness among the civil servants of Aruba is a springboard for implementing the gender policy.

Education event.

In 2007 the Social Affairs Department organized an educational event with song, music and poetry and video presentations of women discussing the evening's theme: 'Is it possible to be a good mother and a good employee?'

International Human Rights day

The coordination center marked International Human Rights Day (10 December) in 2007 and 2008 with Amnesty International Aruba and the Dutch Caribbean Human Rights Committee. Street theatre was used to draw attention to the status and situation of working women in Aruba and to the issue of violence against women.

Preventing stereotyping in education

The Government strives to prevent stereotyping and to encourage emancipatory education in all curricula, from nursery level to secondary vocational education. Boys and girls both attend classes on these subjects. In primary schools they are grouped under 'movement and health', in general secondary education under 'social studies' and in secondary vocational education under 'personal and social education'.

The Government informs that Aruba has developed its own teaching material for each of these courses so that the content is appropriate for the Aruban context and ties in as closely as possible with the pupils' perception of their environment.

Question

3. Please provide pertinent figures, statistics or any other relevant information, in particular on employment and unemployment rates by sex and percentage differences in earnings.

Answer 3

No new developments.

List of Annexes

Annex 1	Summary of participants for Education for Employment 2007- 2010 (EPE).
Annex 2	The State Ordinance Sickness Insurance (AB 1993 no. GT 24) and the State Ordinance Accident Insurance (AB 1996 no. GT 26) that has been amended by the State Ordinance of 15 august 2007 (AB 2007 no.73 and AB 2007 no.88) .