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**THE GOVERNMENT OF NETHERLANDS
ANTILLES**

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THE LAST REPORT OF THE NETHERLANDS ANTILLES

Article 16 of the European Social Charter

INTRODUCTION

For a number of years now the constitutional restructuring of the Netherlands Antilles within the Kingdom of Netherlands has been a major development sometimes overshadowing other developments. On 10th of October 2010 the Netherlands Antilles ceased to exist and Curaçao and Sint Maarten became separate countries within the Kingdom of the Netherlands and Bonaire, Saba and St. Eustatius (Statia) integrated as public bodies within the Netherlands.

The Kingdom of the Netherlands will then consists of four countries, namely the Netherlands, Aruba, Curaçao and Sint Maarten.

Even though the constitutional reform had been getting most of the attention of, a few developments will be highlighted under the paragraphs A-F.

A. THE ECONOMIC SITUATION IN THE NETHERLANDS ANTILLES

The economy of the Netherlands Antilles was adversely affected by the world economic downturn. The current leading indicators are pointing to that economic growth in the Netherlands Antilles has decelerated tot 1.0% in 2009. This was owed solely to a decrease in domestic demand. Despite gains in private and public demand, domestic demand fell. This was due to the noticeable lower pace of growth in private demand and the decline in inventories. Given the less favorable economic setting, private consumption weakened. Fewer private investment activities should be seen largely in the context of the high volume of project development that a occurred in the last few years, related mostly to investments in the hotel and real estate sectors. GDP increase received a damper as a result of a work down on stock building, following significant built up during the buoyant years. The growth of overall economic activity has had an impact on stock building over the past several years..

As opposed to 2008, public spending expanded, stemming from both higher public consumption and investment. More outlays on wages and salaries and goods and services were accountable for the rise in public consumption. These were related to wage indexation of public servants and teachers and expensed for technical assistance. The buoyant performance in public investment was backed mostly by the approval and initiation of development projects included in the Social Economic Initiative (SEI). Import demand shrank, reflected by the slower domestic demand, fewer tourism and free-zone activities, and declines in price and volume of oil. A strong decline in imports was the main driving force behind the improvement in net exports, which had a positive influence on GDP growth. The global economic downturn caused a decline in tourism receipts and fewer free-zone and bunkering activities, leading to the marked contraction in exports of goods and services.

In terms of production, overall activity growth deceleration was caused by a slowdown in the manufacturing, construction, wholesale and retail trade, restaurants and hotels, and real estate, renting and business services sectors in 2009. The unfavorable developments in manufacturing was led by output declines in the refinery "Isla" and the ship repair. The pace of growth in construction investment slowed considerably in

2009, but this result has to be seen against the backdrop of a marked increase in construction activities in the past several years. The fact that the wholesale and retail trade and restaurants and hotels activities were poor was evident with the weaker domestic spending, fewer tourist arrivals, and a downturn in the free-zone.

After a soaring inflation of 6.3% in 2008, consumer price inflation eased perceptibly to 2.0% in 2009. This much lower inflation rate was driven mainly by lower prices in oil and other commodities. The labor market response to the slowing of economic activity has been gloomy, because the unemployment rate rose from 9.7% in 2008 to 10.0% in 2009.

Table 1 : macro-economic facts Netherlands Antilles

	2003	2004	2005	2006	2007	2008	2009
GDP(mill. NAf)	5,425	5,576	5,843	6,141	6,536	7,077	7,148
Real growth GDP	1.7%	1.2%	1.1%	2.3%	3.8%	2.0%	1.0%
Inflation	1.6%	1.6%	3.7%	2.8%	2.8%	6.3%	2.0%
Unemployment	15.3%	15.1%	16.2%	13.2%	11.5%	9.7%	10.0%

Source: Central Bank of the Netherlands Antilles (2009)

B. LEGAL POSITION OF CIVIL SERVANTS GUARANTEED

As the final date of the dismantling of the Netherlands Antilles is rapidly approaching, the civil servants are now being accommodated in the new to become ministries of both entities, Curaçao and Sint Maarten. This part of the constitutional course proved up till now to be the most intensive and delicate issue due to the human aspect involved. A correct allocation of all civil servants was and still is now of the highest importance and this correct allocation definitely includes the placement of the civil servant(s) in charge of and responsible for the ILO desks in Curaçao and Sint Maarten.

The Antillean government guaranteed all civil servants, both those on the central level as those on the island territories level, their legal position (salary, labour conditions and possibilities in career growth). This guarantee was laid down in a so called Social Statute Civil Servants Country Curaçao and Country Sint Maarten and agreed upon by the workers union representing civil servants the ABVO (the General Union of Civil Servants) in close cooperation with its mother organisation the C.G.TK. (Central General of Curaçao Workers). This Social Statute stipulates that in case a civil servant disagree with the received job offer, complaints can be filled by an independent Commission of Complaints presided by an independent President and assisted by union members and experts on the field of human resources and legal position issues. The verdict of this Commission has the legal status of an advice and when parties (the civil servant on one hand and the government on the other hand) disagree with the final commission advice still the independent judges of the Common Courthouse of Justice remains the ultimate appeal authority.

Thus, this allocation process of the civil servants into the administration and departments of the governments of the new entities is guaranteed through the Social Statute Civil Servants and its organ the Commission of Complaints, and finally with the Common Court of Justice as the ultimate legal appeal authority.

So far, approximately 4200 civil servants got a job offer and of this number approximately 900 civil servants filed complaints at the Commission of Complaints.

This way the Antillean government safeguarded a lot of mothers and fathers and head of the family to maintain their income and way of living in a decent way.

C. DIVISION FAMILY AND YOUTH

In 2009 the Government of the island territory of Curaçao accepted the Note “Nieuwe Bestuurlijke Organisatie (New Administrative Organization) for the country of Curaçao” in which a new division has been created: “the division for Family and Youth”. The motivation is that specific attention is called for the development of this target group, since this is essential for the configuration of society. Moreover, there are at this point in time such complex problems regarding this group that a separate division is warranted.¹

(source of information: Directorate of Youth and Youth Development, ms drs Yadira Schonenberg-Hasselmeyer)

D. FAMILY LAW

Under the family law of the Netherlands Antilles, the position of children born out of wedlock who have been acknowledged by their fathers is equated with that of legitimate children. Paternity can now be acknowledged outside marriage. After an amendment to the law, this will also be possible by judicial declaration of paternity if the biological father does not wish to acknowledge the child. The National Ordinance on Judicial Declarations of Paternity will introduce a provision enabling the court, at the request of a mother, a child or the Guardianship Council, to determine paternity even though the biological father has not acknowledged the child. This may also occur after the death of either the father or the child. In the event of the child's death, his/her own child may apply for paternity to be determined. The judicial declaration is retroactive to the time of the child's birth, provided that the ruling has become final and unappealable. The child can therefore become an heir under the intestacy rules. The draft will be sent to Parliament in the coming weeks.

The draft National Ordinance on the Law of Names will introduce a provision to the effect that parents may choose either the mother's or the father's surname for their children. Once a surname has been chosen for the first child, it will also apply to any further children of the same parents. Children aged 16 or over may themselves choose their surnames if their paternity is acknowledged. If a child has a family-law relationship with only one of its parents, it bears the surname of that parent. It is my understanding that Parliament will discuss this legislation in plenary soon.

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¹ Source of information, ms drs Yadira Schonenberg-Hasselmeyer, Directorate of Youth and Youth Development

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E. MATERNITY LEAVE

Maternity Leave on the Netherlands Antilles

Since April 29, 1999 pregnant female employees are, according to article 1614ca of the Civil Code, entitled to a leave of work with pay; the so-called maternity leave (pregnancy and maternity).

The purpose of this maternity leave is: to protect and guarantee the safety, the health and the well-being of the female employee and the (unborn) child.

With this regulation in the Civil Code the Netherlands Antilles has introduced a minimum legal maternity leave for all female employees, irrespective of the height of their income.

Furthermore, the present regulation in the Sickness Insurance Ordinance supplements the one in the Civil Code. If an employee is insured through the S.V.B. 80% of the wage will be paid to the employer by the S.V.B. during the leave.

The employees are entitled to a full paid leave of a minimum of 4 and a maximum of 6 weeks before the estimated delivery date ('pregnancy leave') and to a minimal of 6 and a maximum of 8 weeks after the birth ('maternity leave').

The moment the 'pregnancy leave' begins - the beginning of the leave is to be chosen by the employee - one has to take into account how many weeks it lays before the estimated delivery date (this date must be ascertained by the doctor, obstetrician or specialist): if this is 6 weeks than the employee is entitled to 6 weeks of 'maternity leave', if it is 5 weeks than the employee is entitled to 7 weeks of 'maternity leave' and in case of 4 weeks than she is entitled to 8 weeks. The employee cannot take less than 4 weeks of 'pregnancy leave', meaning that the 'maternity leave' has a duration of not more than 8 weeks.

Too early or too late childbirth:

If the actual duration of the 'pregnancy leave' is less or more than the planned leave, because the actual childbirth occurs before or after the estimated delivery date, this will have influence on the duration of the 'maternity leave'. This means that because of the actual moment of the childbirth the final duration of the 'pregnancy leave' and 'maternity leave' calculated together can be more or less than 12 weeks.

EXAMPLE 1 (premature childbirth – less than 12 weeks leave)

- Estimated delivery date: 16th February
- Choice made by female employee for pregnancy leave four weeks prior to estimated date: 19th January
- Actual date of birth: 8th February
- Entitled to eight weeks maternity leave from 8th February until 5th April

Explanation: the female employee has decided to take four weeks of pregnancy leave (before childbirth), and in consequence the maximum eight weeks of maternity leave (after birth). The actual childbirth takes place one week early. The mother is entitled to eight weeks maternity leave (after birth). In this case the week or days of pregnancy leave that have not been used as such cannot be transferred to maternity leave (after birth) since maternity leave cannot be longer than eight weeks. As a result the total period in this example is eleven weeks.

EXAMPLE 2 (premature childbirth and still 12 weeks leave)

- Estimated delivery date: 1st July
- Choice of female employee for pregnancy leave of five weeks before: 27th May
- Actual date of birth: 24th June
- Entitled to eight weeks maternity leave from 24th June until 19th August

Explanation: the female employee has decided to take five weeks of pregnancy leave; in this case maternity leave will be seven weeks. However the actual birth takes place one week early. The mother in this case is entitled to eight weeks maternity leave because pregnancy and maternity leave may have a total duration of a maximum of 12 weeks.

EXAMPLE 3 (late childbirth – more than 12 weeks leave)

- Estimated delivery date: 19th October
- Choice of female employee for pregnancy leave of six weeks before: 7th September
- Actual date of birth: 27th October
- Entitled to six weeks maternity leave from 27th October until 8th December

Explanation: the female employee has decided for six weeks of pregnancy leave, resulting in the minimum of six weeks of maternity leave. The actual childbirth takes place one week later than the estimated date of delivery. As a result the mother is still entitled to the minimum period of six weeks maternity leave after childbirth, notwithstanding the real period of pregnancy leave (of seven weeks). The total period of combined leave comes to 13 weeks.

The minimal duration of 'pregnancy leave' and 'maternity leave' prescribed by the law is compulsory law meaning that no deviation at the expense of the female employee is allowed. The employer and the employee can by mutual agreement agree upon longer periods.

A Commission Maternity Protection supported by a initiative proposal of the

Parliament both made huge efforts to widen the range of application of the maternity leave thus benefiting the bonding of mother and child. In April 2008 A Commission Maternity Protection was installed by the Antillean government . This commission counts with the participation of the Directorate of Labor, the Medical en Health department and the Directorate of Public Health and Environmental Care. The main objective of this group is to discuss the health protection in conformity with ILO- convention 183.

The Commission brought forward its proposal to the Antillean government and the Parliament and this resulted firstly in the consent of the Parliament in the insertion of the articles 629a and 657 in book 7 of the new Civil Code.

The public has already been informed about these changes to be enforced later on the coming year, in 2011.

F.. POVERTY LINE

Many human and financial efforts were put into this important research. The Antillean government feels that this research will enable the formulation of adequate national policies and legislation in order meet, on a progressive basis, the goals, such as poverty reduction, set in the UN Millennium Declaration. Furthermore, this poverty line set for the island of Curacao, is intended to keep good pace, on one hand with the fair remuneration for all, as set in the Decent Work Program of the ILO and on the other hand with the minimum wages in the Netherlands Antilles. In this manner the minimum wages, laid down in the Minimum wage Ordinance, can be adapted and re-adapted together with other social provisions until exceeding the incomes of the less privileged beyond the researched poverty line.

Recently the Central Bureau of Statistics established, after a long period of research, a so called poverty line for the island of Curaçao. The methodology used to establish the poverty line for Curaçao will be used later on for the other islands as well. The intention is to establish a poverty line for each island, taking into consideration the social-economic reality of each island. However, the most important ingredient of this research consists mainly of the food basket principle. This principle includes, beside food, also the expenditures for housing, water and electricity.

In view of the developments regarding the design and the implementation of the labour market policy for Curaçao firstly, priority was given to this island again in the research of a poverty line. The intention is that in the near future same like research will take place at the island of Sint Maarten.

To establish the poverty line some basic assumptions were used:

- food: a menu list containing the eight basic group nutrients drawn by a weight consultant/dietist;
- housing: according to the Construction Ordinance the living space should be at least 60 m². Beside the minimum available living surface, the standardized rental value, as laid down in the Rent Commission of the Court, was duly taken into account;
- the cost of water and electricity administration: the established quote for water and electricity consumption was based on a so called household investigation done by Fundashon Antiyano pa Energia (FapE) in 1999. This figures

combined with other consumer's figures delivered by the water and electricity distributor Aqualectra in 2005 resulted in a quote for water and electricity consumption which was evaluated and adapted to the actual rate measured in April 2008. Electricity for a freezer and for the use of airconditioning (temperature cooling) was not included in the list of necessities.

The established poverty line was established firstly and as a starting point for a so called standard household of two adults and two children. The amount set as for July 2008 is Naf 2195 Antillean guilders (approximately 1000 US dollars) per month. This amount is the total minimum amount necessary to cover the cost of living for this standard household ².

The amounts set, at the various components of the research, are the following:

- Food Naf. 997,42
- Housing Naf 334,62
- Electricity Naf. 138,41
- Water Naf. 80,54
- Other expenditure Naf. 633,76

For other types of households, than the above mentioned standard household of two adults and two children, the poverty line is stipulated as followed:

- one person household Naf 1045,--
- two adults Naf. 1568,--
- one adult and one child Naf. 1359,--
- one adult and two children Naf 1673,--
- two adults and once child Naf. 1881,--
- three adults Naf. 2090,--

(all figures are expressed in Naf (Antillean guilders); one US dollar is Naf 1.79 Antillean guilders)

² Source of this information: the Central Bureau for Statistics of the Netherlands Antilles