



07/01/2011

RAP/Cha/NL(Aruba)/III(2008)

EUROPEAN SOCIAL CHARTER

3rd National Report on the implementation of
the European Social Charter

submitted by

THE GOVERNMENT OF ARUBA

(Articles 1 of the 1961 Charter and
Article 1 of the Additional Protocol of 1988
for the period 01/01/2005 – 31/12/2006)

Report registered by the Secretariat on 17 December 2010

CYCLE XIX-2 (2009)

ESH REPORT 2005 - 2006

For the period 1 January 2005 to 31 December 2006 made by the Government of Aruba 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.

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

The employer's organisations:

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

The worker's organisations:

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

Table of Contents

ARTICLE 1: THE RIGHT TO WORK	5
<i>ARTICLE 1 PARA. 1 – Policy of full employment.....</i>	<i>5</i>
<i>ARTICLE 1 PARA. 2 –Freely undertaken work (non-discrimination, prohibition of forced labor, other aspects).....</i>	<i>8</i>
<i>ARTICLE 1 PARA. 3- Free placement services</i>	<i>11</i>
<i>ARTICLE 1 PARA. 4-Vocational guidance, training and rehabilitation.....</i>	<i>12</i>
<i>Comments on the negative conclusion of the European Committee of Social Rights with regard to Article 1, paragraph 2</i>	<i>13</i>
<i>Answer to the question or request for information by the ECSR.....</i>	<i>14</i>
<i>Answer to the general question or request by the ECSR.....</i>	<i>17</i>
THE APPLICATION OF THE ADDITIONAL PROTOCOL OF 5 MAY 1988	19
<i>ARTICLE 1. Right to equal opportunities and equal treatment in matters of employment and occupations without discrimination on grounds of sex.....</i>	<i>20</i>
<i>Comments on the negative conclusion of the European Committee of Social Rights with regard to Article 1 of the Additional Protocol:.....</i>	<i>23</i>
<i>Answer to the question or request for information by the ECSR.....</i>	<i>24</i>

ARTICLE 1: THE RIGHT TO WORK

ARTICLE 1 PARA. 1 – Policy of full employment

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

Question A

Please indicate the policy followed by your government in attempting to reach and maintain full employment. Please supplement with details of the measures and programmes implemented to achieve as high and stable a level of employment as possible.

During the reference period the jobfair project took place in July 2005, please refer to Annex 1. The re-integration project took place once a year and the Education for Employment (EPE) continued to increase the number of courses offered to improve the possibilities for employment. The data concerning the re-integration project is presented in Table 1. Please refer to Annex 2 for the information concerning the EPE.

Table 1. Data re-integration project

	2009	2007	2006	2005
Total candidates in project	26	55	60	62
Dropped out before start of or during project	8	10	17	31
Candidates with problematic issues	-	5	8	-
Candidates who accepted a job	-	-	-	3
Candidates who accepted a job thru mediation	3	23	19	13
Candidates who did not find a job	-	6	6	10
Candidates needing additional guidance	10	9	6	5
Candidates who opted for further studies	-	2	-	-
Unknown	6	-	-	-

Please indicate, if possible, the trend in total employment policy expenditure over the past five years, including the relative shares of "active" (job creation, training, etc.) and "passive" (financial compensation, etc.) measures.

During the reference period, the Government continues its budget for the Department of Labor and Research, out of which the costs of the vacancy advertising are paid. The costs of the re-integration project fall under the total budget of the Department of Social Affairs. The data concerning employment policy expenditure is presented in table 2.

Table 2. Employment policy expenditures

	2005		2006	
GDP in 1000s	4,041,000		4,288,000	
	Afls. In 1000s	% GDP	Afls. In 1000s	% GDP
Department of Labor and Research	7,119.4	0.17 %	8,069.0	0.18 %
EPE	1,844.4	0.04 %	1,767.4	0.04 %
Total:	8,963.8	0.21 %	9,836.4	0.22 %
Projects:				
Re-Integration	750.0	0.018 %	600.0	0.013 %
Vacancy Advertising	161.0	0.004 %	154.0	0.004 %
Total:	911.0	0.022 %	754.0	0.017 %

Source: Central Bank of Aruba, EpE, Department of Finance of the Government of Aruba

Please indicate the active policy measures taken in order to favor access to employment of groups most exposed to or affected by unemployment (eg. women, the young, older workers, the long-term unemployed, the disabled, immigrants and/or ethnic minorities).

In 2006 the Department of Labour and Research held a campaign in order to inform the above-mentioned employment groups on the offered labor services, labor obligations for workers and employers on the Aruban labor market, and other labor legal issues.

This campaign also reduced the amount of daily received telephone calls regarding questions on labor obligations, labor laws, labor claims and the increase of workers requesting information on specific labor issues.

Please give indications on the number of beneficiaries from these measures and information, if possible, on their impact on employment.

The Government of Aruba refers the Committee to its previous report. Not known.

Question B

Please indicate the trends in employment covering all sectors of the economy, in connection with this, indicate as far as possible, the activity rate, the employment rate and the breakdown of employment by region, by sex, by age, by employment status (employed, self-employed), by type of employment (full time and part time, permanent and fixed term, temporary), and by sector of activity.

The Government regrets to inform that there is no data available on the information requested.

Please give the trend of the figures and percentages of unemployed in your country, including the proportion of unemployed to the total labor force. Please give a breakdown of the unemployed by region, category, sex, age and by length of unemployment.

The following table (Table 3) gives an indication of a number of available indicators. Information on the unemployed by region, category, age and length of unemployment is not available.

Table 3. Indicators of the Labor market .

	2005	2006
<i>General</i>		
Aruba Population	100.629	103.483
Denisty of population / km2	559	575
GDP – Nominal	4.041	4.249
GDP – Real	3.004	3.079
Labor		
Working-age population	66.396	69.314
Labor Force	50.896	52.295
% of total Population	50.6	50.5
Employed Public Sector	6.359	6.430
Employed Private Sector	41.006	42.257
Total Employed	47.365	48.687
Employed as % of Labor Force	93.1	93.1
Employed as % of Total Population	47.1	47.0
Unemployed	3.531 (8.8)	3.608 (9.3)
Minimum wage/month	1.236 Arubian guilders	1.360 Arubian guilders

Source: Central Bureau of Statistics Aruba

* Public sector includes teachers

Question C

Please indicate the trend in the number and the nature of vacant jobs in your country.

The following table (Table 4) gives an indication of the number of vacant jobs registered by the Department of Labor in 2005 and 2006.

Table 4. Number of vacant jobs in 2005 en 2006

	2005	2006
Number of jobs registrered	2.813	3.702
Number of persons needed for the jobs	6.188	10.003

Source: Jobcenter of the Department of Labor and Research Aruba

The five most requested occupations were the same in 2005 and 2006. Table 5 gives an indication of these occupations.

Table 5. Most requested occupations in 2005 and 2006

	2005	2006
Cleaner	1.131	1.378
Bricklayer	447	1.007
Carpenter	258	711
Helper construction	356	664
Cook	196	379

Source: Jobcenter Dpt of Labor and Research Aruba

ARTICLE 1 PARA. 2 –Freely undertaken work (non-discrimination, prohibition of forced labor, other aspects)

"With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake: to protect effectively the right of the worker to earn his living in an occupation freely entered upon;" [The Appendix to the Charter stipulates that this provision shall not be interpreted as prohibiting or authorising any union security clause or practice.]

Elimination of all forms of discrimination in employment

Question A

Please give information concerning legislative or other measures taken to ensure the elimination of all discrimination in employment which might be based on sex, social or national origin, political opinion, religion, race, colour or age and to promote effectively equal opportunities in seeking employment and in taking up an occupation.

The Government would like to inform the Committee that the labor legislation review is still underway. The Government will communicate any progress made in this regard in a subsequent report.

The Government informs the Committee that the parliament of Aruba accepted a motion (Annex 2) on 21 January 2005 to remove the benefit inequality in the Sickness Insurance. The motion stipulates the following:

“All insured persons, regardless of whether he or she is wed and or the breadwinner, will receive 80% benefit of his or her daily wage for Sickness Insurance and will also receive 80% of his or her daily wage during hospitalization.” Before the motion was accepted the workers who are not considered as breadwinner and not married would have received 70 per cent of their daily wage. The term breadwinner refers to the individual (male or female) who has the highest income in a household. To this end, the Government would like to mention that the legislation did not differentiate between workers on the basis of their sex, but on the basis of their income. Differentiation on the basis of income is no longer an issue

The Government indicates that the motion also stipulates the number of weeks for the maternity leave to 12 weeks.

The Government emphasizes that it is a motion that has been adopted and not the law that has been changed. The Government indicates that as per July the 1st 2005 the Social Insurance Bank in advance of the concept legislation does apply within the scope of the sickness insurance the following changes as policy:

- 80% benefit of his or her daily wage and 80% of his or her daily wage during hospitalization.
- the number of weeks for maternity leave to a total of 12 weeks starting from 6 to 4 weeks prior to the due date.
- 100% benefit of her daily wage during the maternity leave.

Please give information in this respect on existing sanctions and remedies in cases of discrimination in employment.

No new developments.

Question B

Please indicate any methods adopted:

- a. to seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and observance of the above policy of non-discrimination;**
- b. to ensure the acceptance and observance of the above policy through educational efforts.**

No new developments.

Question C

Please indicate the guarantees, including applicable sanctions and remedies, which prevent any discrimination in regard to members of workers' organizations at the time of engagement, promotion or dismissal.

No new developments.

Prohibition of forced labor

Question D

Please indicate whether any form of forced or compulsory labor is authorized or tolerated.

No new developments.

Question E

If so, please describe the nature and scope of any such labor and indicate the extent to which recourse has been had thereto during the reference period.

No new developments.

Question F

Please indicate what measures are being taken to secure the complete abolition of forced or compulsory labor and the date by which these measures will be fully implemented.

The Government of Aruba refers the Committee to its previous report. The Government informs the Committee that during the reference period no complaints related to forced labor have been submitted to the Department of Labor and Research nor have there been any detection of existence of forced or compulsory labor during the inspections carried out by the Inspectors.

Question G

Please give information concerning the conditions under which work is carried out in prison establishments.

Prisoners are allowed to perform labor on a voluntary basis outside of the correctional institute (KIA). It is prohibited for prisoners to perform forced labor while incarcerated. This in conformity with the International treaty concerning civil and political rights.

During the prison period a prisoner is allowed to apply for work. The application for work will be tested on the basis of his/her assessment, skills or previous workplaces.

There is a possibility for detainees to perform labor outside of the correctional institute (KIA) by means of special work projects. Labor participation within and outside of the correctional institute are in conformity with standard safety aspects. A risk assessment is performed before each prisoner is placed in a work project. Behaviour reports are reviewed very seriously. Every prisoner has

to undergo a urine control test. Besides the above-mentioned regulations, the Public Prosecutor also has an advisory role regarding work projects outside the correctional institute for each prisoner. Work projects outside the correctional institute take place between 08:00 a.m and 15:00 pm.

In addition the Government refers the Committee to the text of the State Ordinance Penitentiary Regulations (AB 2005 no. 75) approved by the Parliament of Aruba on December 13, 2005 (Annex 3). According to the first paragraph of the final provision of said ordinance, the ordinance will come into force at the time it is laid down by an ordinance in which also the introductory and transitional decrees are arranged. Because neither the latter-mentioned ordinance nor the decrees have been created, ordinance AB 2005 no. 75 has not yet come into force.

ARTICLE 1 PARA. 3- Free placement services

"With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake: to establish or maintain free employment services for all workers;"

Question A

Please describe the operation of free employment services available in your country, indicating the age, sex and nature of occupation of persons placed by them in employment and persons seeking employment. Please indicate as far as possible the number of vacancies, the placement rate and the duration of unemployment of persons placed.

Table 6.

	2005	2006
Public employment offices	1	1
Applications for employment ¹	1360	1157
Applicants sent to vacancies ²	1041	1659
Applicants placed in employment ³	147	130
Number of vacancies	6188	10003
% Employment placement per applications received	!E5 Is Not In Table	!D5 Is Not In Table

¹ Applications for employment refers to first-time applications.

² Applicants sent to vacancies does not distinguish whether the same person was sent to two or more vacancies.

³ Applicants placed in employment includes new and existent applicants

The Government regrets to inform that there is no data available on the duration of unemployment of persons placed.

Question B

Please describe the organization of public employment services in your country indicating the accompanying measures for the unemployed, and where appropriate, the steps taken to revise the geographical distribution

of local and regional employment centers and to redeploy resources when the changing patterns of economic activity and of population so warrant.

In 2004 the Department of Labour and Research opened a branch in Pos Chiquito, situated on the other side of the island. The branch offers services of employment mediation and is carried out by one career placement counselor and one advisor in labor mediation.

Question C

If both public and private free employment services exist in your country, please describe the steps taken to co-ordinate such services, and to determine the conditions governing the operation of private employment agencies.

No new developments.

Question D

Please indicate whether and how the participation of representatives of employers and workers in the organization and operation of the employment services and in the development of employment services policy is provided for.

No new developments.

Question E

Please indicate what legislation or administrative guarantees are provided to ensure that these services are available to all.

No new developments.

ARTICLE 1 PARA. 4-Vocational guidance, training and rehabilitation

"With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake: to provide or promote appropriate vocational guidance, training and rehabilitation."

Please indicate, illustrating with relevant data as far as possible, what measures have been taken to provide or promote:

- a. vocational guidance;**
- b. vocational training;**
- c. vocational rehabilitation**

No new developments. Please refer to the Government's comments under Question A of Article 1 paragraph 1 – Policy of full employment page, 3 of this report.

With the aim of giving everyone the possibility of earning his living in an occupation freely entered upon.

Please indicate whether equal access is ensured for all those interested, including nationals of the other Contracting Parties to the Charter lawfully resident or working regularly in your territory, and disabled people.

No new developments.

Comments on the negative conclusion of the European Committee of Social Rights with regard to Article 1, paragraph 2

paragraph 2

The Committee considers that under Article 1§ legislation should prohibit discrimination in employment at least on grounds of race, ethnic origin, religion, disability, age, sexual orientation and political opinion.

.....

The Committee recalls that it has previously found that the situation is not in Conformity with Article 1§2 on the grounds that the legal guarantee of protection against discrimination in employment is insufficient (Conclusions XVII-1). Protection against discrimination in Aruba is currently based on the Constitution, which prohibits all forms of discrimination in very general terms.

.....

The Committee wishes to be kept informed of all amendments in this area, but pending changes to the legal situation the Committee concludes that the situation is not in conformity with the Charter in this respect.

The Aruban government would like to make the following comments regarding this conclusion. The Aruban Constitution does not permit discrimination on the grounds of religion, belief, political opinion, race or sex or on such grounds as age or disability.

The Government informs the Committee that no changes in the legislation have been made. The Government assures the Committee that the Government is making continuous efforts to change its legislation and has installed, as communicated previously, by ministerial order of 8 July 2004 a tripartite committee for the modernisation of the labor legislation (CMLL).

The Committee has not completed its work yet, but thus far, the Government can communicate to the Committee that a revision of the Civil Code regarding adding a provision on the prohibition of discrimination is still on the agenda and will be discussed in the next meetings. The Government assures the Committee that the CMLL will take into consideration all the remarks given by the Committee to ensure that the situation will be in conformity with article 1 paragraph 2 of the Charter. The Government will submit to the Committee the final report at the time the CMLL finishes its work.

Answer to the question or request for information by the ECSR

Paragraph 1

The Committee reiterates its request for employment indicators such as employment rate, activity rate, overall unemployment rate, the long-term unemployment rate, youth unemployment rate and unemployment among immigrants, ethnic minorities and the disabled.

The Committee wishes that the next report provide data on participation in and the outcome of the various employment programmes.

Please refer to the Government's comments under Question A of Article 1 paragraph 1 – Policy of full employment, page 3 of this report.

Paragraph 2

1. Prohibition of discrimination in employment

The Committee asks whether there are limits to the amount of compensation that may be awarded in discrimination cases, including in cases where the employee is dismissed as a result of making a claim of discrimination.

The Government informs that there are no such limits to the amount of compensation that may be awarded in discrimination cases. The civil proceeding is conducted before the court where the judge has discretionary power to assess a fair amount of compensation. The Government informs that there have been no cases registered as a result of making a claim of discrimination.

The Committee also considers that there must be an alleviation of the burden of proof in discrimination cases, and asks what the situation is in this regard.

The Government informs the Committee that a person claiming discrimination in the civil court has no alleviation of burden of proof. The claimant has to present plausible proof to the judge that there is a case of discrimination. The principles of a fair and public hearing are enshrined in the Constitution and in other

regulations. The equality of all persons before the law is expressed in statutory regulations on procedural law. All parties in legal proceedings, whether these are civil, administrative or criminal proceedings, have the same rights and obligations.

The Committee asks whether there are restrictions on the employment of foreigners in the certain sectors of services.

See the answer to general question p. 15 of this report.

2. Prohibition on forced labor

The Committee had previously noted that Section 82 of the organic law of Civil Servants provided that unpaid compulsory work could be imposed on civil servants who fail to fulfill their professional obligations. It noted that this provision had been found by the ILO Committee of Experts on conventions and recommendations to be contrary to the Forced Labor (Convention No 29 of the ILO), and asked for further information as to its content and application. The committee requests further information on the content of the provision; to whom it applies, in what circumstances etc.

The Government informs the Committee that the literal application of Section 82 of the Organic Act of Public Servants would mean that any public servant who refuses to comply with his/her inherent duties and responsibilities at work or is guilty of transgressions of any rules can be submitted to disciplinary punishment which, among other punishment, may, according to Article 83b, entail obligatory work with reduced or no pay. But the Government would like to state that even though this article exists, it is not applied which means that the real application of the article is to nobody and under no circumstances.

The Committee invites the Government to reply to its question in the general introduction to these Conclusions on this issue.

Please, see the answer to general question p.15 and p.16.

Prison work

The Committee invites the Government to reply to its question in the General Introduction to these Conclusions as to whether legislation against terrorism precludes persons from taking up certain employment.

Please, see the answer to general question page 15.

3. Other aspects of the right to earn one's living in an occupation freely entered upon.

The committee invites the Government to reply to its question in the General Introduction to these Conclusions as to whether legislation against terrorism precludes persons from taking up certain employment.

The Committee notes the information provided in the report on part time workers. It notes that according to the report the rule for the hours considered overtime for individual is usually agreed between the parties. However it further goes on to state that hours considered as overtime are only those in excess of the usual working week which is 40 hours and therefore that individuals who for example usually only work 20 hours per week in a company which has normal working schedule of 40 hours per week, would only qualify for overtime when they work more than 40 hours per week. The Committee seeks clarification that this is in fact the case and how part time workers are compensated for hours worked in excess of their contractual weekly hours where these do not exceed 40 hours.

The Government informs the Committee that any time past regular working schedule of the company is qualified as overtime. An employee who, for example, usually only works 20 hours per week in a company which has normal working schedule of 40 hours per week, would only qualify for overtime when he/she works more than 40 hours per week.

In this case, the employee is entitled to 100% of his/her hourly wage up to 40 hours and 150% of his/ her hourly wage if labor is performed in excess thereof in accordance with article 7 paragraph 2 of the Labor Ordinance to a maximum of 11 hours per day and 55 hours per week. The compensation is based on the same rule for a worker who works the normal working schedule of the company.

The Government would like to state that part time work arrangement falls under the discretion of the parties involved. The Government informs the Committee that the overall rule for hours considered overtime is the hours performed in excess of the regular working schedule of the company. The compensation for overtime starts at 150% of the employee's hourly wage for the hours performed past the regular working schedule of the company up to a maximum of 11 hours per day and 55 hours per week. When labor is performed on a day that is qualified as a resting day or a public holiday the employee is entitled to 200% of the normal hourly wage.

Paragraph 3

The Committee requests the report to provide further information on number of placements by private agencies as well as those made by public services as a share of total hirings in the labor market.

Please refer to the Government's comments under Question A for Article 1 Paragraph. 3- Free placement services, page 9 of this report.

Answer to the general question or request by the ECSR

All areas where discrimination may occur, the Committee asks for national reports to provide comprehensive information on any measures introduced to take account of the fact that certain groups of the population, such as nomads, are particularly vulnerable and to secure for them the effective enjoyment of the rights enshrined in the Charter.

Not applicable.

Article 1 par.2 – Restrictions

The Committee asks whether any legislation aimed at terrorism (or incitement to terrorism) explicitly precludes persons from taking up certain employment and, if, so, under what circumstances such legislation is applied.

The Government informs the Committee that there is no such legislation aimed at terrorism that explicitly precludes persons from taking up certain employment.

The Committee requests specific information on:

Can a prisoner be required to work (irrespective of consent)

- a. for a private undertaking/enterprise? i) within the prison? ii) outside the prison?
- b. for a public/ state undertaking? i) within the prison? ii) outside the prison?

What types of work may a prisoner be obliged to perform?

What are the conditions of employment and how are they determined?

Please refer to the Government's comments under G for Article 1 Paragraph. 2 – Freely undertaken work (non-discrimination, prohibition of forced labor, other aspects), page 8 and 9 of this report.

The Committee requests sufficient information on how employee individual dignity and freedom are protected by legislation or through case law of courts from interference in their private or personal lives that might be associated with or result from the employment relationship.

No information is available on cases of law of courts at this time.

THE APPLICATION OF THE ADDITIONAL PROTOCOL OF 5 MAY 1988

Report of the Government of Aruba for the period 1 January 2003 to 31 December 2006 in pursuance of Article 6 of the Protocol to the European Social Charter, on the measures taken to give effect to the accepted provisions of the Protocol to the European Social Charter.

In accordance with Article 8 of the Protocol and Article 23 of the Charter, copies of this report have been communicated to

The employer's organisations:

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

The worker's organisations:

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

ARTICLE 1: Right to equal opportunities and equal treatment in matters of employment and occupations without discrimination on 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 promotion its application in the following field:***
 - ***access to employment, protection against dismissal and occupational resettlement;***
 - ***vocational guidance, training 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 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 provision.”***

[The Appendix to the Protocol states that:

Article 1

It is understood that social security matters, as well as other provisions relating to unemployment benefit, old age benefit and survivor's benefit, may be excluded from the scope of this article.

Article 1 para. 4

The provision is not to be interpreted as requiring the Parties to embody in laws or regulations a list of occupations which, by reason of their nature or the context in which they are carried out, may be reserved to persons of a particular sex.]

- A. **Please state the specific provisions in statues, examples of significant collective agreements, etc. which, in your country, forbid direct**

and indirect discrimination on grounds of sex in the areas covered by paragraph 1 of Article 1.

No new developments. The Charter of the Kingdom of the Netherlands, the highest constitutional instrument of the Kingdom is a legal document sui generis, based its voluntary acceptance by the Netherlands, the Netherlands Antilles and Aruba. The fact that together they form one sovereign entity implies that a number of matters need to be administered jointly. These are called Kingdom affairs. These affairs are administered in the Charter, and include the agreements on independence, defense and foreign relations.

Article 14 of the Charter of the Kingdom of the Netherlands implies that the articles dealing with Kingdom affairs in the Netherlands Constitution also apply to Aruba. Thus the articles of the Netherlands Constitution that stipulate the order of precedence of international conventions and national guidelines also apply to the constitutional order of Aruba. The provision of these articles solve the problems which arise should the application of provisions of a convention or decision by a human rights organization, which are binding on each individual, conflict with the statutory provisions of the country concerned. In such cases the provision of the convention or of the human rights organization take precedence over domestic statutory provisions. Of crucial relevance are the words "binding on each individual".

The Government would like to state that the main frame of reference for fundamental human rights in Aruba is the Constitution. Chapter 1 of the Constitution enshrines the most important basic human rights. The catalogue of these rights is extensive and is based on international conventions such as the Universal Declaration of Human Rights, Convention on the Elimination of all forms of Discrimination against Woman and Optional Protocol, the International Covenant, the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The Government would like to emphasize that the rulings of the European Court of Human Rights are binding on Aruba.

B. Please describe all significant case law and other decisions in the field covered by paragraph 1 of Article 1.

No new developments.

C. Please state the guarantees provided for the recognition of the right to equal treatment to which male and female workers are entitled, in particular the protection provided against possible retaliatory measures taken by an employer following a complaint or legal proceedings for discrimination.

No new developments.

- D. Please state the measures taken and the machinery established in your country to guarantee or promote in practice equality of opportunity and equal treatment. This information should be specified according to the various areas listed in paragraph 1 of Article 1.**

The National Bureau of Women's Affairs has continued to focus on raising awareness of gender equality concerns at different levels. A variety of projects have been organized to this end at the community level and in schools. At the community level, empowerment training focused in improving women's status and gender awareness training was given on to the media in order to tackle gender stereotyping. At high education school level, lectures on gender issues were given to support the new curriculum, which includes an approach to prevent stereotyping and to encourage emancipatory education.

The intention of the government is to strengthen the national machinery in order to mainstream gender concerns across the board. Recently, the Government decided to merge the Bureau of Women's Affairs with the new Human rights Coordination Center at the Department of Social Affairs. The purpose is to focus on a rights based approach in programs.

- E. Please supply information on de facto situation which, in your country, constitute inequalities in matters covered by paragraph 1 of Article 1 and state the specific measures taken to remedy those situations.**

No new developments.

- F. Please indicate if, in your country, social security matters and the other provision listed in the Appendix are excluded from the scope of the Protocol.**

No new developments.

- G. Please state the specific measures taken in accordance with Article 1, paragraph 2, to protect women in employment or occupations, particularly with respect to pregnancy, confinement and the post-natal period.**

Please refer to the Government's comments under Question A for article 1 Paragraph 2, Freely undertaken work (non-discrimination, prohibition of forced labor, other aspects), page 7

H. Please state whether other specific measures for protecting women or men in matters covered by paragraph 1 of Article 1 exist and explain the reasons for such measures and their scope.

No new developments.

I. Please indicate whether there are occupations (if so, which ones) that are reserved exclusively for one or other sex, by specifying if it is because of the nature of the activity or the conditions in which it is carried out.

No new developments.

Comments on the negative conclusion of the European Committee of Social Rights with regard to Article 1 of the Additional Protocol

The committee concludes that the situation is not in conformity with Article 1 of the Additional Protocol for the following reasons:

- **The legal safeguards against discrimination in employment are inadequate;**
- **No particular steps are taken to promote women's access to employment.**
- **No particular steps are taken to promote women's access to employment.**

The Government of Aruba refers the Committee to its previous report regarding its comments in response to the conclusions made by the European Committee of Social Rights of the Council of Europe on the case of non-conformity with Article 1 of the Additional Protocol of the European Social Charter. The Government also refers the Committee to page 20 of this report to the Government's comments under D for Article 1 of the Additional Protocol.

The Government of Aruba informs the Committee that no changes in the labor legislation have been made during the reporting period and that the labor legislation review is still underway. However, the Government assures the committee that the government addressed all the remarks stated by the committee to the CMLL to ensure to bring the situation in conformity with article 1 of the Additional Protocol.

The Government will communicate any progress made in this regard in a subsequent report.

Answer to the question or request for information by the ECSR

The committee asks in what circumstances women are excluded from dangerous occupations and what these occupations are.

Article 17 of the labor ordinance provides that it is prohibited to cause women to perform night work or work of a hazardous nature after 20.00 until before 07:00, which is to be described by state degree. The Government informs the committee that the state degree to specify the types of hazardous has not yet been created.

The committee states that according to the previous report, a general revision of the legislation is under way to abolish all employment discrimination between woman and men but this is far from completion. The committee considers that this is not consistent with the earlier statements and asks for exhaustive information on which specific forms of protection are still in force and whether women are still excluded from certain occupations.

The Government would like to clarify the statements made in the Government's last report regarding the general revision of the legislation to abolish all employment discrimination between woman and men. A general revision is under way to enact legislation for equal treatment in all aspects.

The only "discriminatory" provision still in force but not applied in practice is article 17 of the Labor Ordinance, which prohibits woman from undertaking night work between the hours after 20:00 until before 07:00 and dangerous work.

List of Annexes

Annex 1	Report on Jobfair 2005
Annex 2	Summary of Participants for Education for Employment 2005-2006
Annex 3	Parliamentary motion
Annex 4	State Ordinance Penitentiary Regulations (AB 2005 no.75)