

The Kingdom of the Netherlands: New constitutional Structure

New constitutional structure

The Kingdom of the Netherlands has recently undergone a process of constitutional reform, which has now reached fruition. The changes concern the Netherlands Antilles, a country that until recently was made up of the islands of Curaçao, Sint Maarten, Bonaire, Sint Eustatius and Saba. The reforms are based on the results of referenda and on decisions taken by representative assemblies about the islands' future constitutional status. The results, with one exception, were unequivocal: the islands no longer wanted to be parts of the Netherlands Antilles, yet they also did not want to sever their ties with the Kingdom of the Netherlands. The exception, Sint Eustatius, voted to remain a part of the Netherlands Antilles.

On the basis of an outline agreement concluded in 2005, which set out agreements on constitutional reforms, financial and economic issues, law enforcement and good governance, a series of conferences was launched with the aim of taking a coordinated and parallel approach to dealing with the complexities of this process. This led, in October and November 2006, to final declarations on the constitutional position of Bonaire, Sint Eustatius and Saba, and of Curaçao and Sint Maarten. At the Round Table Conference in Curaçao on 15 December 2008, the Netherlands and the other Kingdom partners reached agreement on the new constitutional structure of the Kingdom.

The conclusions of the final Round Table Conference were signed on 9 September 2010. These stated that the amended Charter for the Kingdom of the Netherlands would enter into force as planned on 10 October 2010. As of 10-10-'10 the Netherlands Antilles has ceased to exist.

In the new constitutional structure, Curaçao and Sint Maarten have acquired the status of countries within the Kingdom (like the Netherlands Antilles and Aruba before the changes). Aruba retains the separate country status it has had since 1986. Thus, as from 10 October 2010, the Kingdom consists of four, rather than three, equal countries: Aruba, Curaçao and Sint Maarten are not Dutch overseas dependencies, but full, autonomous partners within the Kingdom, alongside the Netherlands, and each enjoys a high degree of internal autonomy.

The three other islands, Bonaire, Sint Eustatius and Saba have voted for direct ties with the Netherlands and are now part of the Netherlands, thus constituting 'the Caribbean part of the Netherlands'. The relationship's legal form will be that each island has the status of public body within the meaning of article 134 of the Dutch Constitution. In broad terms, their position is now like that of Dutch municipalities, with adjustments for their small size, their distance from the Netherlands and their geographic situation in the Caribbean region. For the time being, Netherlands Antillean legislation will still be applicable in large part to the public bodies. Every resident of the three islands who has Dutch nationality now has the right to vote in elections to the Dutch House of Representatives alongside the existing right to vote in European Parliament elections. They are not, however, allowed to vote in Provincial Council elections because the public bodies are not part of any Dutch province.

Responsibility for foreign relations

The constitutional changes **do not** affect the way in which the Kingdom conducts its foreign relations.

- The Kingdom's external borders have not changed.
- Foreign relations and defence remain 'Kingdom affairs'. These are dealt with in the Council of Ministers for the Kingdom, which meets in The Hague. The governments of the Caribbean countries are represented in the Council by a minister plenipotentiary. The Aruban government has its seat in Oranjestad, the government of Curaçao is based in Willemstad and the government of Sint Maarten in Philipsburg.
- There is one Minister of Foreign Affairs, who has ultimate responsibility for foreign relations for the Kingdom as a whole.
- The Ministry of Foreign Affairs and the embassies, consulates and permanent missions/representations abroad continue to work for the Kingdom as a whole and all its constituent parts.
- As of 10 October 2010, the Caribbean countries of the Kingdom of the Netherlands (Aruba, Curaçao and Sint Maarten) each have their own Foreign Relations Department.
- While treaties and conventions may be concluded only by the Kingdom and not by its constituent parts, their applicability may be confined to one or more countries. In other words, such agreements may be concluded by the Kingdom for one or more individual parts of the Kingdom.

Questions & Answers

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What does the constitutional reform mean for the Kingdom?

On 10 October 2010 the Netherlands Antilles ceased to exist as a country within the Kingdom of the Netherlands. The Caribbean part of the Kingdom of the Netherlands is now made up of the countries of Aruba, Curaçao and Sint Maarten (each with its own government) and, as public bodies of the Netherlands, the islands of Bonaire, Sint Eustatius and Saba. As in Aruba, the government of the Kingdom is represented in the new countries of Curaçao and Sint Maarten by a Governor. The island councils have been abolished, and thus there is only one tier of government.

Will there be changes to the way in which the Kingdom promotes its interests abroad?

No, the Kingdom will continue to promote its interests abroad in the same way.

- The Kingdom's external borders have not changed.
- Foreign relations and defence remain 'Kingdom affairs'.
- The Minister of Foreign Affairs continues to represent the Kingdom of the Netherlands as a whole.
- The Ministry of Foreign Affairs and the missions abroad continue to work for the Kingdom as a whole and all its constituent parts.
- While treaties and conventions may be concluded only by the Kingdom and not by its constituent parts, such agreements may be applied to the Kingdom as a whole, or to its constituent parts individually, or in any combination.
- As of 10 October 2010, the Caribbean countries of the Kingdom of the Netherlands (Aruba, Curaçao and Sint Maarten) each have their own Foreign Relations Department.

How are governance and legislation organised following the constitutional reform?

Like Aruba, the new countries, Curaçao and Sint Maarten, each have their own government and parliament. Together, these institutions are empowered to enact legislation in regard to the countries' own affairs. The Dutch public bodies of Bonaire, Sint Eustatius and Saba have the power to regulate their own internal affairs. Each public body has a local executive and a local council. For the time being, Antillean legislation will continue to apply to these islands wherever possible. It will gradually be replaced by Dutch law. The residents of the public

bodies are eligible to vote in elections to the Dutch House of Representatives (and in European Parliament elections). In each public body there is also a branch of the Dutch government's new Department for the Netherlands in the Caribbean (*Rijksdienst Caribisch Nederland*), in which each government ministry is represented.

What is the Netherlands' role in relation to the other countries of the Kingdom following the constitutional reform?

The Netherlands works together with the Caribbean countries in the Kingdom in the interests of protecting the independence of the judiciary, tackling corruption and cross-border crime, and maintaining public order. A joint Court of Justice is responsible for the administration of justice in the Caribbean part of the Kingdom, and a single Procurator General is in charge of the Public Prosecution Service for Curaçao, Sint Maarten, and Bonaire, Sint Eustatius and Saba. Aruba has its own Procurator General. The three police forces serving Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba respectively also work together closely. Cooperation in the context of the joint criminal investigation team will be continued for the time being. The Netherlands is also involved in financial oversight of the two new countries and the three public bodies.

How does the Netherlands manage its governance tasks on Bonaire, Sint Eustatius and Saba now that they have public body status?

Bonaire, Sint Eustatius and Saba now maintain two tiers of government, i.e. a local authority and the Dutch central government. Broadly speaking, central government has taken over the duties performed previously by the Antillean authorities. The local government is under the control of the local representative assembly ('the island council'). As well as taking over the tasks of the Netherlands Antillean authorities, the Dutch government has also taken on certain tasks previously the responsibility of the islands, such as management of the fire service.

The implementation of the Netherlands' tasks on Bonaire, Sint Eustatius and Saba (and the related support services) is the responsibility of the Department for the Netherlands in the Caribbean (*Rijksdienst Caribisch Nederland*), which has a branch on each of the islands. In addition, the Department implements the Minister of the Interior and Kingdom Relations' official tasks as the employer of all public servants on Bonaire, Sint Eustatius and Saba, including the police, the fire service and employees of the care administration office. That said, the police force and fire service maintain their own management structures.

In the short term, the aim is to improve education, public safety, public health, infrastructure and other facilities and services on the islands.

How is financial supervision organised following the constitutional reforms?

A Financial Supervision Authority has been established for Curaçao and Sint Maarten to supervise public finances under the ultimate responsibility of the Council of Ministers for the Kingdom. A similar body has been set up for Bonaire, Sint Eustatius and Saba under the minister responsible for Kingdom Relations. This type of oversight structure will continue to exist in the new constitutional situation. The underlying supervisory principles are a balanced budget, prudent financial management and a cap on contracting debt.

Has there been any change to the Joint Court of Justice of the Netherlands Antilles and Aruba as a result of the constitutional reforms?

Yes, the existing Joint Court of Justice of the Netherlands Antilles and Aruba has become the Joint Court of Justice of Aruba, Curaçao, Sint Maarten and the Caribbean part of the Netherlands (i.e. Bonaire, Sint Eustatius and Saba). The Supreme Court remains the court of cassation for the Caribbean parts of the Kingdom.

How does the Kingdom ensure that public order, safety and security are maintained in the new constitutional situation?

Responsibility for maintaining public order, safety and security and running the emergency services on Curaçao and Sint Maarten now fall to the respective Ministers of Justice of the new countries. On Bonaire, Sint Eustatius and Saba the local authorities will be responsible for public order, crisis management and disaster response. The Public Safety and Security Act for Bonaire, Sint Eustatius and Saba also provides for special powers in the event of incidents whose scale exceeds a single island's capacity.

What is the role of the Public Prosecution Service in the different countries of the Kingdom in the new constitutional situation?

Investigative and prosecutorial powers rest with the Procurator General. There is a single Procurator General for all the Caribbean parts of the Kingdom that once made up the Netherlands Antilles: the new countries of Curaçao and Sint Maarten and the three new

public bodies of the Netherlands: Bonaire, Sint Eustatius and Saba. The Procurator General is the head of the public prosecution services in the new countries and the new public bodies. There is a joint Procurator General's Office, with a staff including two advocates general. In Aruba, the situation has not changed in any respect as a result of these reforms. That country continues to have its own Procurator General.

What currency will Curaçao, Sint Maarten and the Netherlands in the Caribbean use?

On 1 January 2011, the US dollar will replace the Antillean guilder on Bonaire, Sint Eustatius and Saba. Curaçao and Sint Maarten have a joint central bank. The Caribbean guilder will be introduced on 1 January 2012 as the countries' common currency. Until that time, the Antillean guilder will remain the official currency.

What is the relationship between the Caribbean parts of the Kingdom and the EU?

The Netherlands is a European Union member state, but Aruba, Curaçao, Sint Maarten, and the Caribbean part of the Netherlands (Bonaire, Sint Eustatius and Saba) are not. Instead they have the status of Overseas Countries and Territories (OCT). As a result, the islands enjoy a number of advantages, for example where the export of goods to the EU is concerned. In addition, the islands receive funding from the European Development Fund (EDF). And since citizens of the Caribbean parts of the Kingdom are Dutch nationals and thus EU citizens, they may also vote in European Parliament elections. The constitutional reform does not affect the islands' relationship with the EU.

How is the Representation of the Netherlands in Aruba, Curaçao and Sint Maarten organised?

On 1 January 2011, the Representation of the Netherlands in the Netherlands Antilles and the Representation of the Netherlands in Aruba will be integrated to form the Representation of the Netherlands in Aruba, Curaçao and Sint Maarten. It will be a single Representation led by a single Representative, with an office in each of the three countries. The head of each office will be the deputy Representative in that country. The Representation will continue to represent all Dutch ministries (apart from the Ministries of Defence and Foreign Affairs, whose responsibilities span the Kingdom as a whole). It may thus be considered an 'outpost' of the Netherlands. As well as reporting to the Netherlands, the Representation is tasked with preparing and assisting with visits by members of the Dutch government, officials and other dignitaries. It also provides information on Dutch policy with respect to Aruba, Curaçao and

Sint Maarten, and general consular assistance to Dutch nationals in difficulty and detainees. The activities of the Representation in the Caribbean are thus comparable to that of an embassy.