

NETHERLANDS

CERD 28TH No. 18 (A/9018) (1973)

308. The initial report of the Netherlands, submitted on 12 March 1973, was considered by the Committee at its eighth session (160th and 161st meetings)

309. Some members welcomed the declaration by the Netherlands Government that it recognized the Committee's competence under article 14 of the Convention. Several members noted that the report was comprehensive and organized in conformity with the guidelines laid down by the Committee. The three annexes to the report, providing additional information, were also noted. The openness with which the report discussed the problems faced in connection with the efforts of the Government of the reporting State to give effect to the provisions of the Convention was welcomed. The legislative measures adopted in order to adapt existing legislation to the requirements of the Convention were viewed as indications of the seriousness with which the Government of the reporting State viewed its obligations under the Convention. Some of these measures appeared to some members to go beyond the requirements of the provisions of the Convention to which they were designed to give effect - such as article 4 and article 5, paragraph (f). The statement that the Convention was binding upon provincial and municipal authorities as well as the national authorities, in the opinion of some members, showed that the Government was making a sincere attempt to apply the Convention throughout its territory.

310. Some members observed, however, that the information on measures taken in pursuance of article 7 of the Convention was cursory. One member observed that there was a fundamental defect in the approach taken by the reporting State to the Convention as a result of its non-conformity with the definition established in article 1: whereas Netherlands legislation referred to "race", the definition in article 1 of the Convention covered "race, colour, descent, or national or ethnic origin". Similarly, some sections of the report seemed to imply that human rights could in general be violated only by public authorities; the Convention, however, prohibited racial discrimination whether practised by public authorities or by individuals. It was noted that, between the alternative policies of assimilation and integration, with regard to the non-indigenous population, the Government of the reporting State appeared to have chosen assimilation; integration would be the better policy, however, in that it would enable the various groups to retain their respective identities, characteristics and cultures. One member noted that the Government's emphasis had shifted from the principles set forth in article 2, paragraph 2, of the Convention to the principles in article 2, paragraph 1 (e); and he wondered whether that shift constituted an abdication of responsibility by the Government in favour of private initiative. The statement made by the Minister of Justice in the Chamber, to the effect that the Convention "does not require that unfavourable treatment of persons of a specific nationality be prohibited", was questioned by some members. While the new legislation enacted in order to satisfy the requirements of article 4 of the Convention in some respects went beyond the requirements of that article, in other respects it appeared to fall short of those requirements; and the underlying assumption that giving full effect to article 4, paragraph (a), would unduly restrict freedom of opinion was questioned.

311. Some members inquired whether the procedure for annulment of the by-law of the Municipality of Rotterdam, already suspended by the central Government, had been completed. Referring to the statement that “participation in a prohibited association is punishable as an offence”, one member asked whether punishment for such participation presupposed prior prohibition of the association by a court or could be applied directly, without prior court judgement. One member wondered what administrative or other measures were being taken to eliminate conditions of poverty in housing for foreign workers. More information was requested with respect to the agencies entrusted with ensuring the integration of foreigners and the practical results of their work. An inquiry was made about the Netherlands Government’s immigration policy. A question was asked about the status of the relations of the reporting State with the racist régimes in southern Africa.

312. The representative of the Netherlands assured the Committee that the questions raised during the discussion would be transmitted to his Government and covered in the next report. With reference to the definition of “race” in his country’s legislation, he stated that the introductory note to the bill which had prompted the observation made during the discussion had stated that the term “race” should be interpreted in accordance with article 1 of the Convention. In a note to Parliament the Government of the reporting State had stated that it was aware of its obligations under article 7 of the Convention, although in the educational field the question was already receiving ample attention. There was some misunderstanding in the Committee of a statement made by the Minister of Justice and quoted in the report; the statement did not warrant the conclusion that discrimination against persons of a specific nationality was permissible; however, the Netherlands Government did not feel that it should be illegal to show unfriendliness towards, for example, persons from neighbouring European countries if the behaviour in question was unimportant and occurred on a limited scale. In the specific case involved, no action had been taken because the offence was discontinued immediately after the person concerned was approached. Under the new legislation, the Public Prosecutor had discretion not to prosecute. The representative of the Netherlands informed the Committee that the by-law of the Municipality of Rotterdam - which, he said, was not a racist one - was still in suspense; but unless the central Government took a decision within one year of suspension, the by-law would once again take effect. The outcome would be indicated in the next report. As to relations between the Netherlands and South Africa, his Government rejected apartheid both in principle and practice. Its decision to discontinue the granting of subsidies to those wishing to emigrate to South Africa should be viewed in that light. The Netherlands Government would continue to maintain a careful watch to ensure strict compliance with the embargo on arms shipments to South Africa. It did not believe, however, in a policy of isolating South Africa. In particular, it felt that private initiative to establish personal relations with individual South Africans might prove beneficial. Furthermore, through its contributions to the United Nations Educational and Training Programme for Southern Africa and the United Nations Trust Fund for South Africa the Netherlands supported United Nations humanitarian activities aimed at alleviating the consequences of apartheid.

313. The Committee decided to consider the report, together with the statement by the representative of the Netherlands, satisfactory, and expressed the hope that the Government of the Netherlands would continue to co-operate with the Committee.

CERD 30TH No. 18 (A/10018) (1975)

117. Members of the Committee observed that the second periodic report of the Netherlands contained detailed information on judicial and administrative measures giving effect to the provisions of the Convention, as required under article 9, paragraph 1, of the Convention, as well as detailed information on the numbers and situation of migrant workers, nationals of the Kingdom from Surinam and the Netherlands Antilles, and Moluccans in the reporting State. It was noted that the report took note of, and commented on, observations made and questions raised by members of the Committee during the consideration of the initial report of the Netherlands. Members found useful the inclusion, in an annex to the report, of questions raised by members of Parliament (Second Chamber) and the Government's written replies, with regard to matters within the scope of the Convention. It was observed also that the report was both frank and informative, stating the problems and setting forth solutions.

118. Special note was taken of the measures - envisaged in article 2, paragraph 2, of the Convention - which had been adopted with respect to nationals of the reporting State from Surinam and the Antilles; of the principle of promoting the integration of minority groups, rather than their complete assimilation; and of the measures adopted with respect to foreign workers.

119. It was noted that, while no additional legislation had been enacted in the period with which the report dealt, the Government had adopted decrees nullifying a discriminatory by-law of the municipality of Rotterdam, and had instituted proceedings against one individual in accordance with the requirements of article 4, paragraph (a), of the Convention and against six other individuals in the implementation of article 5, paragraph (f), of the Convention. In this connection, some members of the Committee requested further information on the outcome of these proceedings. It was observed that, according to the information provided, the Ministry of Justice had shown, at least in two cases, a certain reluctance to prosecute acts of racial discrimination.

120. The representative of the Netherlands commented in detail on most of the points that had been raised by members of the Committee during their consideration of his Government's report, and assured the Committee that he would convey all the observations and questions to his Government. He informed the Committee, *inter alia*, that migrant workers enjoyed both *de jure* and *de facto* equal protection as nationals and had exactly the same rights as national workers, subject to certain restrictions in respect of political activities only but not in respect of social or economic rights; that the difference in treatment of foreign workers from countries in the European Economic Community and foreign workers from other countries lay in the fact that the first group came by virtue of a multilateral treaty which granted them freedom of movement within the Community while the second group came to the Netherlands on the basis of bilateral agreements; and that his Government had always maintained that *apartheid* was a violation of human rights, had refused to provide assistance to perpetuate that policy, and had complied fully with the Security Council resolutions on sanctions, but that it did not entirely agree that the isolation of South Africa could solve the *apartheid* problem and felt that dialogue with South Africa could yield positive results.

CERD A/32/18 (1977)

220. The third periodic report of the Netherlands was considered together with the introductory statement made by the representative of the reporting State.

221. Some members of the Committee noted with satisfaction that a Bill was introduced in 1976 to amend the relevant provisions of the Constitution so as to prohibit discrimination based on race; they inquired whether that amendment had already been adopted.

222. With regard to the law governing the status of Moluccans who were not of Netherlands nationality, enacted on 1 January 1977, some members inquired whether the Government had taken steps to enable the Moluccans to decide whether they preferred to remain stateless or to enjoy the rights which Netherlands nationality would confer on them.

223. Referring to the information given in the report, concerning the arrest of members of the Netherlands People's Union in connection with the distribution of racist pamphlets, and to the statement that, when the criminal investigation was completed, the Public Prosecutor would decide whether or not to demand the dissolution of the political party in question, some members stated that it would be useful if the next periodic report of the Netherlands would inform the Committee about the decision of the Public Prosecutor, since that question came under article 4, paragraph (b), of the Convention.

224. Some members referred to the information on the proceedings against a bar owner, whose case appeared to come under article 5, paragraph (f), of the Convention, and hoped that the summary of the courts' decisions given in the report would be supplemented in the next report by the text of the decision of the Court of Appeal.

225. Some members recalled earlier requests for information on the implementation of article 7 of the Convention and expressed the hope that the fourth periodic report of the Netherlands would provide such information.

226. An inquiry about the relations of the Netherlands with racist régimes of southern Africa was made, and the hope was expressed that the information envisaged by the Committee in general recommendation III and decision 2 (XI) would be supplied.

227. Some members of the Committee took note of the information about the refusal of municipal authorities to issue certificates of "non-Jewish faith", because these might serve as the equivalent of certificates of "non-Jewish origin", the issuance of which - in connection with trade or travel - would "conflict with the spirit and tenor of the Convention". They expressed satisfaction with the attitude of the Government of the reporting State and expressed the view that requiring "proof of non-Jewish origin" as a condition for the entry of persons was tantamount to racial discrimination, which they deplored. However, some members asked whether the countries to which such practices were attributed were parties to the Convention and, if so, whether the information given by the Government of the Netherlands regarding those reported practices should not have been brought to the attention of the Committee in accordance with the procedures provided for in article 11 of the

Convention, instead of article 9. It was also asked whether the competent authorities of the reporting State would adopt the same attitude towards the question, if persons - proposing to emigrate to a country whose legislation conferred special privileges upon Jews in connection with immigration and naturalization - asked for certificates of Jewish faith or origin.

228. The representative of the Netherlands commented on some of the observations and questions summarized in the preceding paragraphs. Concerning the proposed amendments to the Constitution, he explained that there had not yet been time to consider the amendments which had recently been introduced in Parliament. A special status was required for the Moluccans since they had not been able to retain their previous nationality and did not wish, for political reasons, to acquire Netherlands nationality, although they could have done so if they had wished. He gave further particulars about the court decisions mentioned in paragraph 5 above. With regard to the issue of "certificates of non-Jewish origin", he stated that the countries concerned had not, at the time in question, been parties to the Convention; his Government had not taken any steps to ascertain whether or not those countries had in the meantime become parties to the Convention, as that was clearly outside the scope of the obligation under which it reported. A case such as that described in the last sentence of the preceding paragraph had not arisen in the Netherlands; however, he saw no reason why there should be an exception to the position taken by his Government if such a case arose.

CERD A/34/18 (1979)

437. The fourth periodic report of the Netherlands (CERD/C/48/Add.5) was considered by the Committee together with supplementary information provided in the introductory statement by the representative of the reporting State concerning developments which had taken place since the preparation of the fourth report.

438. The Government of the reporting State was commended for the farsightedness of its policies in dealing with problems of racial discrimination and the integration of migrants from its former colonies, as well as for providing the Committee with information on the outcome of a number of studies concerning racial discrimination conducted in the Netherlands. It was suggested that it would be useful if the Government could provide information about the terms of reference, methodology and composition of study groups, for the benefit of other Governments which might wish to conduct similar studies. In particular, it was asked whether the study would deal with the situation of the people of West Friesland and other inhabitants who were not immigrants. It was asked whether the Bill mentioned in section 2 (a) of the report proposing the amendment of the Constitution had been adopted by the Upper House.

439. The Committee welcomed the Government's decision to discontinue issuing certificates of non-Jewish faith, since any authority which requested or made use of such a certificate was practising racial discrimination. The issuing of such certificates would be a violation of article 2, paragraph 1 (b) of the Convention. The Government's efforts to integrate the Surinamese and Moluccans into Dutch society while, at the same time, preserving their cultural identity were commended by Committee members. Likewise, the proposed co-ordination of activities of various ministries dealing with minorities was a step in the right direction.

440. The Committee noted with satisfaction that special attention was being paid by the Netherlands authorities to the needs of immigrants and migrant workers in the allocation of housing and in teaching their children in their own languages. Further information was sought on the breakdown of migrant workers by country of origin, measures adopted by the Government to ensure their full equality in the field of social security, special educational assistance provided for their children and efforts to facilitate the return of migrant workers to their countries of origin.

441. In connection with the statement of the Minister for Foreign Affairs of the Netherlands at the thirty-third session of the General Assembly, referred to by the representative of the reporting State, that his country would promote and support a policy of increasing pressure on South Africa if the Government of Pretoria persisted in maintaining its inhuman policy of racial discrimination, it was asked whether the Government intended to sever all ties with the South African régime. Information was requested on the Government's relations with the régimes of southern Africa and on its policy with regard to the national liberation movements.

442. With regard to the implementation of article 4 of the Convention, a contradiction was noted in the ruling of the Amsterdam District Court on the prohibition of the Netherlands People's Union (NVU). It was contrary to the spirit of article 4 (b) of the Convention to allow a prohibited organization to continue functioning. Further clarification was requested on the reasons for the

decision not to dissolve the NVU, and it was suggested that the Government might consider reforming the law to avoid such contradictions.

443. With reference to the implementation of article 7 of the Convention, members of the Committee expressed the wish that the Government would further strengthen its activities in the field of teaching, education and culture pursuant to the provisions of that article, not only in State-run schools but also in private schools.

444. Replying to the questions raised by the members of the Committee, the representative of the Netherlands said that his Government would be willing to include in its next report information on the scope and methods of studies concerning racial discrimination. Touching upon the rights of the inhabitants of Friesland he pointed out that the Frisians had their own language and customs, but they participated fully in Dutch society as ordinary Dutch citizens. The social security scheme was open to all those legally resident in the Netherlands, including migrant workers. The bill to amend the Constitution in order to provide the basis for the principle of non-discrimination and not yet been adopted by the Upper House of the Parliament owing to cumbersome procedures required for amending the Constitution.

445. With regard to article 3 of the Convention, the representative confirmed the Netherlands intention to sustain a dialogue with South Africa while bringing pressure to bear on the South African Government to change its policy of apartheid, as well as his country's willingness to participate in measures decided upon by the Security Council. He drew attention to the fact that the Netherlands had no relations with Southern Rhodesia.

446. On the question of the decision concerning the NVU, he said that one consequence of the decision not to dissolve the Union was that the ruling could not be taken as a precedent for other cases. Following the decision, it remained to be seen whether there were any gaps in the Netherlands legislation concerning racial discrimination and the competent authorities were currently looking into the matter.

447. With reference to the application of article 7 of the Convention, he pointed out that the Government could control the curriculum in State-run schools but had no control over the curriculum in the many private schools of the country, in so far as freedom of education was respected in the Netherlands.

CERD (A/36/18) (1981)

472. The fifth periodic report of the Netherlands (CERD/C/75/Add.6) was considered by the Committee together with the introductory statement of the representative of the reporting State, who supplemented the information given in the report and clarified the Government's approach to questions relating to demographic composition of the population, policy on minorities, application of the law on the right to association and attitude to the right-wing political parties openly professing racial discrimination. Concerning the law on the right to association, he asked the Committee whether it felt that the Convention required that racial discrimination should be incorporated as a separate and independent ground for dissolution of corporate bodies.

473. Members of the Committee expressed their satisfaction with the report and the introductory statement which reflected the complexities of a multiracial and multicultural society and frankly admitted the unavoidable problems facing the country in both the public and private sectors which had absorbed people of many different nationalities.

474. Noting the measures adopted by the Government in connection with the implementation of article 2 of the Convention, to improve the lot of minority groups, some members asked that the Committee be kept informed of the scope of work, achievements and the terms of reference of the Minorities Policy Co-ordination Department that had been set up at the Ministry of Home Affairs, as well as on the progress of all the various measures being taken in favour of disadvantaged immigrants from Suriname, the Netherlands Antilles, workers from the Mediterranean region and Moluccans, including information on the types of pilot projects for young Moluccans. It was also asked what status minorities held under the Constitution and, if the Constitution did not recognize them as minorities, whether any amendments were proposed to ensure such recognition, and how long non-nationals had to reside in the Netherlands to be given the right to vote in local elections. Concerning the proposals to amend the Constitution, currently before the Parliament, which sought to remove obstacles to voting in elections by foreign residents, it was asked what the nature and strength of those obstacles were, and if, even once those proposals were approved, whether it would still require "additional legislative measures" to remove them. More details were also requested about the implementation of the policy on publicly owned housing for minorities, about discrimination by mail order companies and about research on discriminatory attitudes.

475. With reference to article 4 of the Convention, it was noted that legislation had been adopted to abolish racial discrimination in the public and private sectors and that the report contained valuable information about cases of discrimination brought before the courts. Concerning the amendment to article 429 quater of the Criminal Code, it was noted that a major difference between the old and the new version had been that the new article no longer spoke of "discrimination on the grounds of race" but of "distinguishing on the grounds of race". As had been explained by the representative of the Netherlands the change had been made in order to avoid difficulty that arose when it was necessary to submit evidence of discrimination. It was pointed out, in this connection, that discrimination implied a certain exercise of judgement or intention on the part of the person involved and it might be hard to prove such intention; accordingly, it might be better to use the word "distinguishing".

476. Referring to the Netherlands People's Union (NVU), an extreme right-wing political party, it was pointed out, in connection with the new Civil Code, that there was no provision in Netherlands legislation which was really fully consistent with article 4 of the Convention. Articles 15 and 16 of the Civil Code which stated respectively that a legal person shall be deemed prohibited if it aims or activities are contrary to public order or morality and that the court may order the dissolution of a prohibited legal person upon application by the Public Prosecutor did not state directly that illegal organizations must be dissolved. Accordingly, it was possible for an illegal organization to continue in existence even though its purposes were contrary to those outlined in article 4 of the Convention. The members of the Committee asked why the NVU had not been dissolved and the Amsterdam District Court had exercised its discretionary power to deny the submission of the Public Prosecutor; why the Public Prosecutor had not recommended that other such kind of societies also be dissolved; and why financial assistance to an illegal organization from within the Netherlands was not punishable under article 140 or article 429 quater of the Criminal Code. Members of the Committee agreed with the proposal that the Government should take steps to amend article 15 of the Civil Code by adding the phrase "or contrary to the Netherlands legal order", or to include therein the words used in article 4 (b) of the Convention which required States to prohibit organizations promoting and inciting racial discrimination.

477. Concerning the so-called "non-Jewish" and "non-Israeli" declaration mentioned in the report, some members of the Committee asked what were the reasons for these declarations, whether they were economic and whether those root causes would be removed.

478. As to the question asked by the representative of the Government, whether the Convention required racial discrimination to be incorporated in the Civil Code as a separate and independent ground for the dissolution of a legal person, some members noted that the Committee had always interpreted the Convention literally to mean that any organization or association which promoted or incited racial hatred or discrimination should be declared illegal, or its formation prohibited. However, under the laws of some countries such an organization or association could not be dissolved until it became apparent that its objective was racist in nature. The Committee had not really taken an adamant stand on that question, but if article 4 (b) was implemented to the letter, then the ad limina prohibition should be possible.

479. In connection with article 5 of the Convention, more information was requested about the teaching of the regional language in Friesland on the optional or compulsory education programmes for workers from the Mediterranean region and other ethnic minorities in their own languages and to develop their traditions and customs. It was also asked whether any disciplinary measures had been taken in connection with practices of certain employment offices mentioned in annex I of the report with a view to punishing them or pointing out to them the harm that they were doing to the country by failing to apply the precepts embodied in the Convention.

480. Members of the Committee commended measures being taken by the Government under article 7 of the Convention, to promote understanding, tolerance and friendship among racial groups. However, since the report itself admitted that "racial discrimination existed far more generally than previously supposed", there would be a need for a fuller programme of action to educate public opinion in order effectively to respond to article 7 of the Convention.

481. Replying to the questions raised by the members of the Committee, the representative of the Netherlands said that the Government's minority policy had produced encouraging results thus far, although the multicultural society was still in its infancy. Concerning arrangements for the political participation of minorities, he said that the detailed provisions for the participation in municipal elections were being worked out and in future the question of participation in the national elections might seriously be considered. The representative also draw attention to the fact that on 23 July 1981 the Council of Ministers had approved the preliminary draft of a statute containing various modalities whereby different organs could see to the political participation of minorities.

482. Replying to questions raised in connection with the Frisians, he explained that they were not regarded as a minority but as Dutch nationals having their own cultural heritage and language. The Frisian language could be taught in school and that Frisian parents could require the schools attended by their children to teach that language.

483. In reply to questions concerning article 4 of the Convention, the representative stated that article 429 quater of the Criminal Code had differences between the old and the new versions. The old version had led to problems relating to evidence; courts had been uncertain as to how to handle that evidence and that had led to a certain reticence in applying the provision. The new version of article 429 quater, introducing the broader concept of "distinction" instead of "discrimination", would have a wider range of application. The Government had also intended the amendment to encompass the various forms of so-called "indirect discrimination", of which the "non-Jewish declarations" were an example. He felt that those declarations should not be seen as expressions of anti-Semitism; their roots had lain mainly in economic factors.

484. On the questions concerning the Netherlands People's Union (NVU), he explained that article 15 of the Civil Code meant that the prohibition of an association was automatic once it had been established that its aims or activities were contrary to public order or morality. However, problems began shortly to arise in connection with evidence. In order to indict a legal person under article 140 of the Criminal Code, the Public Prosecutor had to prove in each case that the association was prohibited. As a consequence, the law is now being changed to reinstate the concept of the declaratory judgement, of general binding force, to overcome those problems.

485. Concerning the penalties for "outside financial assistance" to prescribed organizations, he said that external donations were covered by article 429 quater of the Criminal Code and were a misdemeanour carrying a light penalty, whereas donations made from within the body were tantamount to active participation in a prescribed organization and were thus an indictable offence under article 140, carrying a high maximum penalty.

486. Replying to questions of whether any disciplinary measures had been taken against employment officers who helped to maintain discriminatory practices, he stated that no such disciplinary measures had been taken, but that a circular had been sent by the Minister for Social Affairs, prohibiting such practices under administrative law and that the execution of that order had been followed up.

487. The representative assured the Committee that all questions and comments would be reflected in the next periodic report of the Netherlands.

CERD A/39/18 (1984)

530. The sixth periodic report of the Netherlands (CERD/C/106/Add.11) was introduced by the representative of the reporting State who referred to the main points dealt with in the report and provided some additional information in that respect. With regard to the demographic composition of his country, he stated that the number of non-nationals in the country had increased by 0.4 per cent in January 1983, compared to January 1980, representing 3.8 per cent of the total population. Figures for January 1984 showed that about 555,000 non-nationals, 3.9 per cent of the total population, lived in the Netherlands. He also referred to a judicial case, still sub judice, in which the Platform of Democratic Organizations of Migrant Workers had requested the Government to terminate its subsidy to the Foundation Scientific Institute Centrum Partij on account of a discriminatory document written by the Director of the Institute. The Minister for Home Affairs had endorsed the plaintiff's view that the Netherlands was obliged, pursuant to article 2, paragraph 1 (b), of the Convention, to deal with the matter and a preliminary judicial investigation was in progress to establish, inter alia, whether article 429 of the Criminal Code, dealing with participation in or financial assistance to activities involving racial discrimination, had been breached.

531. With regard to his Government's policy on minorities, the representative stated, in particular, that the first progress report on a long-term project to revise any provisions in the Netherlands laws and regulations which drew an unjustified distinction between nationals and non-nationals was expected to be sent to Parliament by the middle of 1985. Furthermore, a Bill was to be submitted to Parliament, before the end of 1984, to deal with non-national residents' rights to vote in municipal council elections and stand as candidates. The Bill should become law in time for the municipal council elections scheduled for 1986. He also stated that the Government budget for its policy on minorities for 1984 amounted to f. 700 million with the same amount being provisionally allocated for each year up to 1988 and he provided details concerning the financial support of various projects.

532. In addition, the representative highlighted the main points of an instruction recently issued in the Netherlands by the attorneys-general to the district courts, with regard to cases of discrimination. He recalled that his Government had made the declaration required under article 14 of the Convention and that any individuals or groups in the Netherlands which might feel that the Government did not fulfil its obligations under the Convention had the opportunity to seek international redress.

533. Members of the Committee commended the Government of the Netherlands for its excellent report which provided comprehensive and frank information, for its efforts to fight racial discrimination and to improve the status of minorities and migrant workers, and for the very progressive measures it had taken to implement, in particular, article 4, 5 and 6 of the Convention. They also expressed appreciation for the additional information provided by the representative of the Government in introducing the report.

534. Members of the Committee made some general comments and raised some general questions relating to the implementation of the Convention in the Netherlands. It was noted that, according to the information provided, legislation in the Netherlands offered sufficient guarantees against racial discrimination; however, the report stated that legislation alone was not sufficient to combat

and eliminate all forms of discrimination and it also raised some doubts as to whether the victims of racial discrimination could obtain redress through the courts easily. Clarification was requested on the apparent discrepancy between those points. With reference to the interministerial study on anti-discrimination measures and their effectiveness in countries comparable to the Netherlands, one member wished to receive information on follow-up action on the basis of the study, another member wished to know why socialist countries had been excluded from the study and whether documents of the Committee had been used as sources of material. It was also asked whether provision was made in the Netherlands for co-ordination of the activities of the various organs referred to in the report to ensure more effective implementation of the Convention and what exactly the remaining obstacles mentioned in the report were which had to be removed in the country with regard to discrimination. In addition, it was asked whether the apparently small number of non-nationals residing in the Netherlands was due to widespread naturalization over the years. One member asked for information on the relationships between the Netherlands and the Netherlands Antilles, whether there were any plans to grant independence to those islands and whether there was any pro-independence movement there. Information was also requested on the demographic composition of the population of the islands, its level of education and illiteracy and unemployment rates and on the language or languages used as the medium of instruction in schools.

535. In connection with article 2 of the Convention, reference was made to the request addressed to the Government of the Netherlands by the Platform of Democratic Organizations of Migrant Workers. It was noted that the Government acknowledged its responsibility under article 2, paragraph (b), of the Convention, but that its action depended on a judicial finding in respect to the violation of article 429 of the Penal Code and further information was requested on that point. In connection with article 2, paragraph 1 (c), of the Convention it was asked whether the Government intended to amend or rescind the regulations containing distinctions based on nationality or place of residence. In addition, clarification was requested about the wording of the recommendations contained in the study of problems in minorities legislation referred to in the report. It was also asked what the Government's response to those recommendations was.

536. Members of the Committee drew particular attention to the social and economic status of ethnic minorities in the Netherlands. They wished to know, in particular, whether the Government had tried to ascertain the reasons for the 35 per cent unemployment rate among ethnic minorities, whether it was the effect of ethnic discrimination in the labour market, and whether the amended version of article 429 quater of the Criminal Code meant that ethnic discrimination on the labour market, including the private sector, was explicitly prohibited. They also asked in which sectors of the economy ethnic minorities were predominantly employed, how many people belonging to minority groups were enrolled in the police force, whether minorities had opportunities for upward mobility in their jobs and for competition on an equal footing with the Dutch and how the agreement concerning housing policy in Rotterdam, which had been reached between the welfare organizations for minorities and the municipal authorities, was actually being enforced. In addition, further details were requested on the activities of the participation bodies referred to in the report with a view to understanding how they promoted the welfare of the Moluccans and Surinamese and how effective the recommendations they made on Government policy were. Furthermore, members of the Committee wished to know whether educational programmes to prepare minorities for integration into the existing education system were envisaged in the Netherlands on a comprehensive scale, what the illiteracy rate was among ethnic minorities and in which groups it was highest, how per

capita expenditure on the education of minority groups compared with that provided for Dutch children at the primary and secondary levels, and whether they were eligible for the same type of education.

537. In connection with article 3 of the Convention, clarification was requested on whether the Netherlands had diplomatic or commercial relations with South Africa or whether there were any Dutch investments in South Africa or Namibia.

538. Turning to article 4 of the Convention, members of the Committee wished to know on what specific grounds the criminal courts in the Netherlands could deprive a voter of the right to vote or to stand for office and whether those grounds complied with article 4 (a). In this connection, it was asked what effect the Judicial Department's interpretation of section G.3, subsection 3a of the Franchise Act had had on the registration of individual candidates or candidate lists. It was also noted that the Bill submitted to Parliament on 11 June 1982 proposed amendments to the Civil and Criminal Codes which would make it easier to take action against persons whose aims or activities were contrary to public order or morality and an explanation was requested with regard to its impact on members of extreme right-wing parties. With reference to article 140 of the Criminal Code, which made participation in a prohibited organization a punishable offence, it was asked how many organizations, if any, had been banned, which they were, whether there had been cases of discriminatory behaviour other than those described in the report and whether there were other examples of practical implementation of the measures adopted.

539. In connection with article 5 of the Convention, members of the Committee focussed their attention on the status of migrant workers in the Netherlands. They wished to know, in particular, the results of the scientific studies of the problems of immigrants workers in the Netherlands, whether any steps would be taken to follow them up, why foreign workers migrated to the Netherlands and why the Government did not take measures to limit their entry, whether the former system whereby permits for immigrant workers were tied to jobs was still in force, whether there was any provision for care of non-nationals who had lost their jobs and wished to remain in the Netherlands, and whether an employer who showed reluctance to hire an immigrant worker could be punished under the revised article 429 quater of the Criminal Code.

540. With reference to article 6 of the Convention, members of the Committee welcomed the study undertaken by the Government of the Netherlands on the further steps that could be taken to assist individuals in instituting legal proceedings in cases of racial discrimination. However, they wished to know whether, apart from some kind of legal assistance, any other measures were planned by the Government of the Netherlands to protect the right of victims of discrimination to obtain redress through the courts and what possibilities existed, particularly for an individual immigrant, if he were denied employment on grounds of his immigrant status. It was also asked whether the ombudsman acted only as an intermediary between individuals and the public authorities or whether he also dealt with relations between individuals, whether the ombudsman's report referred to in the Government's report was published and whether it contained information which might be useful to the Committee. In addition, information was requested on the work of the national non-governmental centre to be established in 1984 in order to assist victims of discrimination.

541. In respect of article 7 of the Convention, it was asked whether people had become more aware

of discrimination in the Netherlands only as a result of information provided through the media, such as reports on individual cases, or as a result of information activities by public or other authorities, whether studies had been made in the country to ascertain how attitudes had developed and whether any steps had been taken with a view to understanding relations between the various ethnic groups as well as between them and the Dutch population.

542. Replying to comments made and questions raised by members of the Committee, the representative of the Netherlands said that, in his view, there was no contradiction in the statements that there was sufficient legislation in the Netherlands to combat racial discrimination and that the Government believed that legislation alone was not enough. He stated in that connection, that it was necessary to inform the public and to raise the level of awareness and consciousness so that people would indeed make use of their legal rights in cases of racial discrimination. His Government's study on anti-discrimination measures had not referred to the experience of socialist countries because it had dealt with the experience of countries comparable to the Netherlands with a view to finding solutions applicable in that country. Regarding co-ordination among the organs involved in combatting racial discrimination, he explained that at Government level co-ordination was provided by the Department on Co-ordination of Minorities Policy of the Ministry for Home Affairs. In addition, the attorneys-general of the five district courts co-ordinated detection and prosecution procedures in connection with racial discrimination. At the local level, there was co-ordination between the municipality, the police and the public prosecutor who reported regularly on their triangular consultations to the Municipal Council, the Public Prosecution Department and the attorneys-general. Non-governmental organizations also had a great variety of co-ordination forums. The representative, then, informed the Committee that the total number of people in the Netherlands with a Suriname background was generally considered to be some 180,000, but since the majority had Dutch nationality they were not included separately in demographic data. With regard to the relationships between the Netherlands Antilles and the Netherlands, he explained that, since the Statue of the Kingdom of the Netherlands had come into force in 1975, the General Assembly had decided that the Netherlands Antilles could no longer be regarded as a colony but was an autonomous part of the Kingdom of the Netherlands. He stated that the information requested on the Netherlands Antilles could be found in the report submitted by his Government in 1983 under the International Covenant on Economic, Social and Cultural Rights (E/1980/6/Add.33).

543. In connection with article 2 of the Convention, and with particular reference to the judicial inquiry concerning a possible breach of article 429 of the Penal Code of the Netherlands, the representative pointed out that the judiciary would not decide on the termination of the subsidy, its decision would deal only with the legality of the alleged action of the Institute and, depending on that decision, the Government might or might not terminate the subsidy. He also informed the Committee that the Act of 1858 which set certain conditions for application for a job in the public sector would be repealed in the near future.

544. Referring to specific questions on ethnic minorities, the representative stated that unemployment statistics did not differentiate between the unemployed according to their origin and that it would not be possible to provide information on the rates of unemployment of the various minorities. He also said that article 429 quater applied throughout society and that, if any private firm were to show discrimination, the case would be brought before the courts. Furthermore, he informed the Committee that the Amsterdam police had received inquiries or applications from 160

Turkish and Moroccan nationals and that the implementation of the agreement between the Rotterdam municipal authorities and minority organizations concerning housing policy was ensured by regular contact between those authorities and the minority groups. In addition he provided information on the advisory role of the participation bodies and gave examples of their advice having been taken into account by the Government. He also stated that in order to make education equally accessible to all and to eliminate the disadvantages from which minorities suffered, his Government had decided to enact legislation incorporating existing circulars on the matter. He provided details on the main relevant provisions.

545. With regard to article 3 of the Convention, the representative referred to his Government's position on the question of apartheid which had been expressed in various international forums.

546. As regards article 4 of the Convention, he indicated that there had been no cases of discriminatory behaviour in the Netherlands other than those referred to in the report.

547. In connection with article 6 of the Convention, the representative stated that victims of discrimination had access to the courts in the Netherlands. He also made it clear that the ombudsman in the Netherlands dealt only with relations between the individual and the Government. He published a yearly report, which was submitted to Parliament and received a great deal of attention in the media. In addition, the representative stated that his Government had decided in favour of the establishment of the National Centre to Assist Victims of Racial Discrimination and had postponed setting up an Anti-Discrimination Institute as that would involve the introduction of a completely new procedural system. It was hoped that the Centre would become operational in January 1985 and it would receive a Government subsidy for the first five years. A decision on the Anti-Discrimination Institute would be taken in the light of the work of the Centre.

548. The representative of the Netherlands finally assured the members of the Committee that comprehensive information relating to their questions would be provided in his Government's next periodic report.

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313. The seventh periodic report of the Netherlands (CERD/C/131/Add.7) was considered by the Committee at its 766th, 767th and 769th meetings on 14, 15 and 17 March 1986 (CERD/C/SR.766, SR.767 and SR.769).

314. In introducing his country's report, the representative of the Netherlands said that his Government had been unable to provide information on the implementation of the Convention in the Netherlands Antilles in time for inclusion in the report, but that that information would be available soon. He highlighted relevant parts of the report and stated that his Government valued highly the dialogue with members of the Committee and would be interested to hear the Committee's views on the problem of "conflicting fundamental rights", namely, the guarantees laid down in article 4 of the Convention and the exercise of the right to freedom of expression and of association. The next report would provide details on proposed amendments aimed at tightening up certain parts of the Criminal Code dealing with racial discrimination.

315. Members of the Committee complimented the Netherlands for its exemplary record with regard to human rights and the implementation of the Convention. The report was frank in discussing the real situation in the country and conformed to the Committee's guidelines (CERD/C/70/Rev.1). Information was requested on the political status of the Netherlands territories in Latin American, their demographic composition, degree of autonomy and standard of living. Clarifications were requested as to whether their nationals enjoyed all the rights of Netherlands citizens and whether they elected representatives to the Netherlands legislature.

316. With regard to the implementation of articles 2 and 5 of the Convention, members of the Committee underlined the positive measures taken by the Government to give minorities the same opportunities for development as other residents in the Netherlands and its efforts to combat discrimination in the labour market and in housing, two major areas where minorities and immigrants were at a significant disadvantage. They requested information on non-citizen migrant workers and asked what was being done to preserve their right to their own culture and language. Clarification was sought regarding the distinction between members of the minority groups and non-nationals. In connection with employment policies, members wished to receive further information on the level of unemployment among minorities and the effect that the measures indicated by the Government had had or would have in creating employment opportunities for minorities in the Netherlands; it was asked what was meant by the municipal police, as opposed to the national police, whether employment was a right in the Netherlands, what the percentage of members of ethnic minorities in the National Police Force was and what percentage of the population in the Netherlands were resident aliens. Noting that in certain cases employers could employ aliens who had obtained a "declaration" rather than the normal employment permit, it was asked whether such employees received the same treatment and wages as those who had complied with all the formal requirements necessary to obtain the permit. Members wished to learn about any surveys that might have been conducted on the employment situation and asked whether such surveys indicated any correlation between the level of discrimination and that of unemployment. Clarification was sought regarding the use of the "minority budget"; it was asked how funds were allocated and, in view of the high unemployment among minorities, what percentage of funds could be used to improve their situation.

Further information was requested about the amendment to the Foreign Workers Employment Act and how it would benefit migrant workers. Members wished to know whether affirmative action to promote minority groups also covered areas such as bilingualism, and whether such linguistic competence was recognized as a merit or qualification in government service. It was also asked how the integration of Indonesians who had emigrated to the Netherlands had proceeded at the political and socio-economic levels. Members pointed out that the new law, which enabled resident aliens to vote and be candidates in municipal elections, was of particular interest. In that context, they wished to know the reaction of the people of the Netherlands and whether there had been any political opposition to the adoption of the law.

317. In relation to the implementation of article 3 of the Convention, members of the Committee requested further information about the state of economic and trade relations between the Netherlands and South Africa; they asked what action the Government was taking and whether there were any limitations imposed on Netherlands citizens in their economic relations with South Africa and in the fields of sport and culture. They also wished to know whether the people of the Netherlands supported their Government's anti-apartheid policy, whether the press was playing an effective role in that regard and what the extent of the ban on imports from South Africa, called for in Security Council resolution 558 (1984), adopted on the initiative of the Netherlands, was.

318. With reference to the implementation of article 4 and the problem of conflicting fundamental rights on which the Committee's views had been invited, members pointed out that minority groups were often at disadvantage in multi-ethnic societies and clearly required effective protection. Freedom of expression and association should not be used to promote racial discrimination. The Convention had been elaborated after the Universal Declaration of Human Rights had become accepted as the standard for the international community. The freedoms of expression and association must be balanced against the effect which their exercise would have on the freedom of others. In that context, it was appropriate for the legal order to provide for limitations in favour of anti-discriminatory measures. It must be remembered that in most, if not all, countries there were restrictions on the right to freedom of expression. Where an organization's objectives were clearly racist, its freedom of association should be limited and the organization banned. The Convention had been drafted as a result of the international community's bitter experience of racist acts which had led to great suffering. Freedom of association could no longer be equated with the principle of non-discrimination, the very hub of the Convention. Limitation of the right of association restricted freedom only to the extent needed to promote harmony within society. The solution lay essentially in a judicious differentiation between a right and its punishable abuse. The question of conflict of rights also arose in the case of defamation, where criminal liability might be regarded as interference with freedom of expression but was at the same time universally accepted, since there the issue was not one of the legitimate exercise of a right, but of its abuse. The Committee's study on article 4 of the Convention ^{3/} concluded that paragraphs (a) and (b) of article 4 were not discretionary, but mandatory. Moreover, given a reasonable interpretation of article 19, paragraph 3, of the International Covenant on Civil and Political Rights, there was no ground for any conflict regarding

^{3/} United Nations publication, Sales No. E.85.XIV.2.

the prohibition of certain organizations as called for under article 4 of the Convention. It was

pointed out, however, that repressive measures might be counterproductive: an organization driven underground might be much more dangerous than one which was allowed to act openly. In that context, it was observed that any difficulty which might arise should be regarded rather as inherent in the political situation of the country concerned, and it could be seen from the excerpts from the speech given in the report that the Prime Minister of the Netherlands preferred to deal with organizations which propagated racist ideas primarily by using the political strength and openness of a democracy to initiate public debate and express criticism and perhaps only then to have recourse to the law. Majority public opinion in industrialized countries like the Netherlands had the capacity to espouse opinions of varying degrees of hostility or tolerance according to the circumstances, and the attitudes or positions which the public adopted were often a response to the kind of political guidance it received. It was hoped that the action taken by the Prime Minister would be part of a wider programme of leadership in all areas of administration aimed at bringing about desired changes in majority attitudes.

319. Members of the Committee requested information about the Centre Party, its social and political basis and membership. Noting that the Centre Party was not being prosecuted for producing the memorandum “the Netherlands for the Netherlands”, but only its authors, members wished to know whether the Party could be prosecuted as an organization, on the basis of its ideals and activities. It was pointed out that, if only organizations in breach of public order could be prohibited, it would be difficult to prevent organizations which proclaimed racist views from being formed and thus to observe the provisions of the Convention.

320. With regard to article 6 of the Convention, members welcomed the inclusion in the report of an account of court cases involving racial discrimination. The Committee had been able to see the practical application of the law and hoped that that practice would be followed by other States parties. It was asked whether there were any pending cases relating to racial discrimination and whether court decisions had a dissuasive effect in that regard.

321. It was also asked whether prosecutors were helping to promote awareness on the part of minority groups of the ways in which they could seek legal redress. Additional information was requested about the terms of reference of the Ombudsman and specifically about whether he had the power to bring cases before the courts on behalf of persons claiming to have been victimized or given inadequate protection by government agencies or the public authorities. It was noted that, at a time when measures to combat racial discrimination were increasing, the number of instances of racial discrimination was also rising. In that connection, it was asked what social and cultural factors lay behind that phenomenon. A clarification was sought on the implication of the proposed deletion of the word “morality” from book 2, article 15, of the Civil Code.

322. In reply to questions raised by Committee members about the Netherlands Antilles, the representative of the Netherlands said that, as a result of an agreement in 1986 between the parties concerned, the Kingdom of the Netherlands comprised three countries: the Netherlands, Aruba and the Netherlands Antilles - the latter consisting of the two remaining leeward islands, Curaçao and Bonaire, and the three windward islands of Saba, St. Eustatius and St. Maarten. Under the legal framework established by the Charter of the Kingdom of the Netherlands, the three countries served their own interests independently, with complete domestic autonomy, and they were bound, on the basis of equality, to pursue their common interests and provide mutual assistance.

323. Netherlands citizens of Indonesian stock had not been treated as a separate group in statistics for a long time. They had Netherlands nationality, were culturally almost indistinguishable from indigenous Netherlanders, particularly in respect of language, and were widely distributed throughout the social structure. Information regarding the Moluccans, too, had been given in previous reports. Unlike the Netherlanders of Indonesian stock, the Moluccans differed from the indigenous population in terms of both race and culture. They spoke Malay and practised their own religion. Since the majority of the Moluccans had decided not to retain their Indonesian nationality and had not wished to become naturalized Netherlands citizens, and as they had been in the Netherlands since 1951 and were likely to remain there, their position had been regulated by a 1977 Act according them equal status with Netherlands citizens but without Netherlands nationality.

324. The measures referred to in the report concerning the Government's policy on minorities in the area of education and employment were for the benefit of both Netherlands people and members of minority groups. The educational system had been adjusted to meet the needs of minorities. The average unemployment rate in the Netherlands was approximately 17 per cent. The purpose of the measures outlined in the report was to reduce unemployment among members of minority groups. The available figures would be provided in the next report, together with additional information about affirmative action in the labour market for the benefit of aliens. It was not possible to say when such action would produce tangible results. Funds for the purpose of alleviating the problems of unemployed non-nationals were available from the "minorities budget" and from the regular budgets of the Ministries concerned. It was difficult to calculate exactly what percentage of those budgets the funds in question represented. In general there had been a positive reaction in the Netherlands to the revised Franchise Act, under which non-nationals were now permitted to vote and stand for election in municipal council elections. The terms "resident" and "citizen" were used interchangeably in the report and applied to both nationals and non-nationals. Nationals had Netherlands citizenship. In the report, non-nationals were also referred to as aliens and foreigners. The Government of the Netherlands defined minorities as Moluccans, residents of Surinamese and Antillian origin, migrant workers and members of their families from the countries of recruitment, Gypsies and refugees. Its policies were based on the view that people belonging to those categories constituted an integral part of Netherlands society. Caravan-dwellers were also defined as a minority, in order to ensure that they derived the maximum benefit from the minorities policy. The distinction between the municipal police force and the national police force had no practical implications as far as implementation of the Convention was concerned. Non-nationals accounted for approximately 4 per cent of the population as a whole.

325. In connection with article 3 of the Convention regarding relations with South Africa, the representative of the Netherlands said that his country strictly observed Security Council resolution 418 (1977) and, at the national level, was in the process of introducing legislation to prohibit the export of paramilitary goods to South Africa and to give a statutory basis to the provisions of resolution 558 (1984) calling on Member States to ban the import of South African arms.

326. The Netherlands had consistently advocated selective economic sanctions under Chapter VII of the Charter, in particular a mandatory ban on investments and an oil embargo. It believed that, for a restriction of new investments in South Africa to be effective, it must be mandatory or at least supported by a significant number of countries. The Netherlands Government fully subscribed to the measure agreed upon with its partners in European political co-operation to cease oil exports to

South Africa and actively encouraged Netherlands companies to reduce their imports of South African coal. It had terminated its cultural agreement with South Africa and introduced visa requirements for South Africans, the latter measure enabling the authorities to restrict South African participation in sporting events in the Netherlands. The Government had increased its contacts and programmes for assisting members of the non-white community and anti-apartheid organizations dedicated to the goal of peaceful transformation of South Africa's social and political system. In addition, the Netherlands would continue to provide humanitarian assistance to political prisoners and other victims of apartheid through appropriate channels. The representative of the Netherlands thanked members of the Committee for their comments with regard to the implementation of article 4 of the Convention and the question of "conflicting fundamental rights". Those comments would be given careful consideration, and a detailed response would be made in the next Netherlands report with a view to continuing the dialogue with the Committee on that specific issue.

327. The previous report had voiced concern about the general climate in the country with respect to racism and racial discrimination, and in particular about the growing intolerance shown by individuals or groups towards one another and the rise of certain political groups. Partly as a reaction to certain events, groups had been set up and organizations and action committees had been established to fight racial discrimination. The media had begun to pay more attention to the phenomenon of racial discrimination and how society reacted to it; governmental institutions had also responded. As far as the political process was concerned, parliamentary and municipal council elections were to be held in 1986 and their outcome would show whether candidates of political groups such as the Centre Party and other extreme right-wing groupings had any significant support among voters. Recent polls suggested that those groupings, which were in any case marginal, were on the decline.

328. The Government's policy on the investigation and prosecution of cases of racial discrimination applied not only to individuals but also to organizations. The relevant legal provisions had been described in previous reports, and it should be noted that, under articles 15 and 16 of book 2 of the Civil Code, courts could prohibit an organization if its aims or activities were contrary to public law, morality or the Netherlands legal order. Cases of racial discrimination fell within that description.

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644. The report of the Netherlands (CERD/C/131/Add.10) containing additional information to that provided in its seventh periodic report (CERD/C/131/Add.7) was considered by the Committee at its 791st meeting on 11 March 1987 (CERD/C/SR.791).

645. The report was introduced by the representative of the Netherlands, who explained that it dealt with measures adopted and progress made in the Netherlands Antilles. It constituted the second part of the seventh periodic report considered by the Committee in 1986. He referred to the composition of the Kingdom of the Netherlands and its constitutional framework and gave additional background information.

646. Members of the Committee thanked the representative of the Netherlands for the report, which had been prepared in accordance with the Committee's guidelines (CERD/C/70/Rev.1) and contained ample information on the Netherlands Antilles.

647. Some members wished to know whether the Kingdom of the Netherlands was a federation with three countries in it or whether there were differences in status as a result of its overseas territories having been former colonies, and they pointed out that it was essential that the Government clarify the constitutional situation. They asked what the implications of the "separate status" transition period were for Aruba and why Aruba and not Curaçao, which had a larger population, should seek independence. Additional information about the composition of the population was also requested and it was asked what percentage of people from the Netherlands in Europe were living in the islands. Member wished to know what role was played by the residents from Europe and other countries in administration and economic activity, and whether there were many foreign companies and transnational corporations there. An explanation was requested concerning the percentage of the population that was illiterate. Members noted that 18 per cent of the labour force was unemployed and asked what measures the Government was taking to resolve the problem and which ethnic groups were most affected.

648. With regard to article 3 of the Convention, members asked whether there had been any new developments regarding compliance with General Assembly resolutions concerning South Africa and the relations between the Netherlands and South Africa.

649. Concerning article 7 of the Convention, information was requested about the measures taken by the Government to promote understanding, tolerance and friendship among nations and ethnic groups and to propagate the principles of the United Nations.

650. In reply to the questions raised and comments made by members of the Committee, the representative of the Netherlands said that they would be taken into account in the eighth periodic report, which was now under preparation.

CERD A/45/18 (1990)

166. The Committee considered the eighth and ninth periodic reports of the Netherlands (CERD/C/158/Add.9 and CERD/C/184/Add.4) at its 872nd and 873rd meetings, held on 13 August 1990 (CERD/C/SR.872 and SR.873).

167. In his introductory statement, the representative of the State party said that the Government of the Netherlands was endeavouring to strengthen existing legislation to punish any discriminatory behaviour towards ethnic minorities and to guarantee equal opportunities on the employment market. In its policy of combatting racial discrimination, the Government was receiving effective support from non-governmental organizations, two of which had submitted comments to members of the Committee (Netherlands branch of the International Commission of Jurists and Landelijk Bureau Racismebestrijding). The Government was giving priority to a social renewal policy designed to facilitate re-employment and to prevent members of minorities and disadvantaged citizens from dropping out of school. He pointed out that in the Netherlands Antilles no case of racial discrimination had ever been reported in a population which was composed of several nationalities. Articles 8 and 12 of the Code of Penal Procedure, however, made provision for a legal remedy in the event of racial discrimination. Furthermore, if the alleged victim did not obtain satisfaction, he could submit a communication to the Committee, in accordance with article 14 of the Convention.

168. The members of the Committee congratulated the Government of the Netherlands on having prepared exhaustive reports which conformed to the guidelines laid down by the Committee, and on the efforts it had made to ensure that the Convention was enforced. They pointed out that the Committee had had the opportunity to consider a specific case of discrimination involving the Netherlands and had found that the Netherlands had given a perfectly satisfactory reply to the Committee's opinion. In that connection, it was asked whether the consequences of the case and the Committee's opinion had been considered by the judges and the Public Prosecutor, and what was the opinion of the Netherlands national anti-discrimination agency on the matter. It had, furthermore, been noted that certain cases tried in the Netherlands courts showed that the country was adhering to an accurate interpretation of the implementation of article 1, paragraph 2, of the Convention. The Netherlands did not interpret that provision as excluding non-citizens from the protection of the Convention if they were victims of discrimination by private persons and non-governmental organizations. It was, however, pointed out that the reports submitted revealed that certain principles concerning racial discrimination depended on the interpretation given by a judge and that the prohibition of racial discrimination would appear to apply to activities relating only to public life but not to private life. Further information was requested on the subject. Some members of the Committee asked why the proportion of foreigners resident in the Netherlands was steadily increasing and what was the Government's attitude to that trend; why had the number of complaints about racial discrimination recorded by the Public Prosecutor increased from 63 in 1987 to 101 in 1988; and how serious were the manifestations of racism mentioned in the report. It was pointed out that on no account could a State party allow the principle of non-discrimination to be infringed upon in the name of freedom of expression, association and assembly.

169. In addition, precise figures comparing the status of all ethnic minorities with that of the majority were requested. It was observed that the classification of certain minorities, such as

persons of Surinamese, Moluccan or Indonesian origin, remained somewhat unclear and it was asked whether they were regarded as aliens or citizens, or as belonging to another category. Information was also requested on Jewish and Gypsy groups living in the Netherlands. Members of the Committee also asked why there was a delay in the approval by Parliament of the bill containing supplementary provisions of the Criminal Code dealing with discrimination and whether the Government of the Netherlands would be prepared, within the purview of its own legislation and jurisdiction, to acknowledge special rights and not merely special measures for minorities.

170. With regard to the Netherlands Antilles, members of the Committee wished to know why it was not possible to classify population groups in economic terms; whether officials working in one of the islands could be transferred to the Kingdom of the Netherlands and vice versa; what were the causes of the decline in the population of Curaçao and the doubling of the population of St. Maarten; and what was the exact legal status of Aruba within the Kingdom of the Netherlands.

171. With respect to article 2 of the Convention, members of the Committee requested further information on the publicity campaign by the Government of the Netherlands to bring about a change in social behaviour in order to eliminate racial discrimination in both public and private life. They also asked what was the economic and social situation of the ethnic groups and how the Government could give special protection to citizens of the Netherlands who belonged to ethnic minorities if there was no record of their origin.

172. In connection with article 3 of the Convention, it was asked whether the attitude of the Netherlands towards South Africa had changed since Nelson Mandela's release.

173. With regard to article 4 of the Convention, members asked what was the attitude of the public authorities towards religious congregations or organizations that permitted racist language or propaganda on their premises; whether the authorities had imposed penalties on a new party that had emerged on the political scene in August 1989 and was inciting racial discrimination; and why public subsidies were not withheld from an organization guilty of racial discrimination until a court had decided to ban it. In that connection, further information was requested on the means at the disposal of new political parties that spread racist ideas. In addition, clarification was sought concerning the apparent paradox between the increase in racist propaganda and the reported decline in the number of court cases against racist organizations and racist propaganda.

174. Regarding article 5 of the Convention, members requested information on whether foreigners could take part in provincial or national elections; on the proportion of Netherlands citizens belonging to ethnic minorities in the Government, Parliament and public service, and on the possibility of legally forming political parties on the basis of ethnic origin. Additional information was requested on the policy of quotas for ethnic minorities in various sectors of employment and on the unemployment rate among those minorities; on the status of foreign workers; on the results of the efforts by the Netherlands Government to promote the employment of ethnic minorities in public service; and on the formulation of new codes of conduct and psychological tests to combat racism on the employment market. It was also asked why in the housing crisis in the Netherlands certain minorities had been disadvantaged; how the measures for improving the housing conditions of minority groups were implemented; and whether measures had been taken to prevent any discrimination in housing allocation. Concerning education, members requested details of the

phenomenon referred to in the report as the “white/black schools problem” and “white flight”, and the efforts being made by the Netherlands authorities to find a solution. It was also asked whether children from the Netherlands Antilles could learn languages other than Dutch in school.

175. In connection with article 6 of the Convention, information was sought concerning the results of the lawsuits initiated on racial grounds in 1987 and 1988.

176. In their replies, the representatives of the Netherlands stressed that, in their Government’s view, the prohibition of racial discrimination could in certain circumstances justify limitations on other fundamental freedoms. That did not mean, however, that a hierarchy existed. It was a matter of weighing the interests that were to be protected by the several rights involved. Furthermore, the Netherlands Government rejected racial discrimination in both the public and private spheres, but the private sphere was not considered to be an area that could be regulated by law. As there was no clear borderline between the public and private spheres, it was for the courts to decide whether certain expressions had been used in public and what was the content of those expressions. No preventive measure could be taken by the Government to preclude the use of certain expressions. The representatives also provided additional information on the draft Equal Treatment Bill prohibiting discrimination on such grounds as race in certain areas where the participation of individuals in society could be seriously hindered by discrimination. The draft, which was currently being considered by the Council of State, gave a precise definition of exceptions to the general rule of equal treatment for all and provided for the creation of a committee on equal treatment which, among other things, would investigate complaints of discrimination.

177. Furthermore, the representatives referred to the bill supplementing the Criminal Code, which introduced a specific penalty for civil servants who were guilty of discrimination while on duty. The bill had been passed by the Lower House of Parliament in June 1990 and was to be discussed by the Upper House before the end of the year. The long delay had been caused by the change of government and the length of the parliamentary agenda.

178. The representatives pointed out that, since 1986, Aruba had become a separate country within the Kingdom and in accordance with its Charter. With regard to the Netherlands Antilles, the representatives stated that the Government had devoted considerable efforts in the past decade to reducing the high level of underemployment in the islands. Persons in the 20 to 29 age group constituted the main category of the unemployed. Non-nationals were required to have a work permit, which was in most cases for a specific period. The Government was currently preparing for a new census, which would enable it to provide the necessary data in its next report. Labour mobility and staff transfers existed between islands and were determined by economic developments, especially with regard to tourism. This explained the decrease in the population of Curaçao and the increase in that of St. Maarten.

179. In connection with article 2 of the Convention, the representatives stated that the Government of the Netherlands considered that unnecessary registration of a person’s ethnic origin was an invasion of privacy. Only where information was required for the successful implementation of the minority policy would short-term monitoring be allowed under strict conditions and information on ethnic origin be collected by census authorities, police, employment agencies, courts, etc.

180. With regard to article 3 of the Convention, the representatives stressed that the Netherlands subscribed to the statement made by the European Council welcoming the significant changes that had taken place in South Africa in recent months. They recalled that the objective of the European Community was the complete dismantlement of the apartheid system by peaceful means and that the members of the Community would maintain their pressure on the South African authorities in order to promote the profound and irreversible changes they had repeatedly sought.

181. Turning to article 4 of the Convention, the representative explained that the bill to regulate State subsidies to political research institutes working on behalf of specific political parties was still before the Upper House of Parliament. For the time being, a subsidy could be withdrawn only if the political party or organization concerned had been banned because its aims or activities were incompatible with public order. The research bureau of the party that had won a seat in Parliament at the 1989 elections would continue to receive a State subsidy unless the courts declared the party or the research bureau illegal. On the other hand, the chief public prosecutor in the Hague was due to begin a pre-trial investigation on the basis of complaints concerning allegedly racist statements made by that political party during the 1989 general election campaign. The representatives pointed out that the guidelines issued in 1984 to the police and the public prosecutor's department in cases of racial discrimination were among the strictest of all policy guidelines relating to criminal law.

182. With regard to article 5 of the Convention, the representatives stated that it was possible in the Netherlands to set up a political party which aimed to improve the position of a particular group. However, such parties were not allowed to choose a racially discrimination name or express racist views. As at 1 January 1989, foreign nationals had constituted approximately 4.2 per cent of the population, and ethnic minorities 5.1 per cent of the population. The number of unemployed among ethnic minorities had increased in recent years, mostly due to the rapid demographic increase of the ethnic minority population and to the increase in the number of new immigrants in the Netherlands, and the situation was alarming. There were plans to increase the proportion in public service of people belonging to ethnic minorities, and the Government was also trying to improve their fluency in Dutch, as well as their general educational standards. The reduction in the incidence of unemployment among ethnic minorities was one of the Government's priority goals.

183. The representatives said that practices relating to employment relied on voluntary agreements entered into by employers' and workers' federations. Psychological tests had been prepared in consultation with the representatives of ethnic minorities. The housing situation of immigrants and ethnic minorities often gave rise to problems in terms of quality of housing, especially in urban areas. As far as discrimination was concerned, the number of cases of irregularities involving the allocation of housing by local authorities and housing corporations brought to the attention of the Ministry of Housing did not exceed one a year. The Ministry had recently commissioned an independent survey of discrimination in housing whose findings would be available by mid-1991. The Government was concentrating on positive action to correct the situation created by the refusal of white families to send their children to local schools that had a large proportion of ethnic minority pupils. Private schools were forbidden to discriminate on grounds of race, under the new Equal Treatment Bill.

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94. The Committee considered the tenth, eleventh and twelfth periodic reports of the Netherlands (CERD/C/319/Add.2) at its 1252nd and 1253rd meetings, on 5 and 6 March 1998, and, at its 1272nd meeting, on 19 March 1998, adopted the following concluding observations.

A. Introduction

95. The Committee welcomes the opportunity to continue its dialogue with the State party and the detailed report submitted. It notes with appreciation that the report covers the European part of the Netherlands and, additionally, the Netherlands Antilles and Aruba. The Committee particularly appreciates the open and constructive dialogue with the representatives of the State party and the additional information given orally on the wide range of questions asked by members.

96. The considerable delay in submitting the report is noted, as is the fact that it contains information that has not been updated.

B. Positive aspects

97. The concepts of multicultural society and inter-cultural education, of proportional participation in employment in the army and the police, as well as the involvement of the civil society in activities aiming at the elimination of racial discrimination and intolerance are noted with great interest.

98. Different policies and programmes initiated by the Government or by local authorities in the fields of multicultural education and education of children of minorities, employment, combatting racist messages through the Internet and involving persons from different minorities in health programmes and activities are also noted with interest.

99. The efforts undertaken and the innovative measures adopted by the State party to prevent and combat racial discrimination are welcomed. In this regard, note is taken of the Government's willingness to recognize existing problems and to find appropriate solutions, both legislative and administrative.

100. The active participation of organizations representing ethnic minorities, schools and employers in the elaboration and the execution of governmental programmes to combat racism is noted with appreciation. Such involvement has contributed to achieving more successful implementation of reforms and programmes to combat racial discrimination.

101. It is noted with interest that the draft Matching Bill, expected to come into force in July 1998, contains provisions aimed at narrowing the existing differences in the state of health between members of ethnic and national minorities and the rest of the population. It is noted that, according to the draft legislation, illegal immigrants will be provided with essential health-care services.

C. Concerns and recommendations

102. Concern is expressed over the dissemination of ideas of racial superiority and of intolerance by various organizations, political parties and individuals. Although new guidelines for the Public Prosecution Department entered into force in 1993, requiring the pursuit of an active investigation policy in discrimination cases and that prosecution be undertaken in all such cases, reports from non-governmental organizations indicate that these guidelines are not complied with consistently. The Committee recommends that more attention be given to countering such activities and to investigating and prosecuting discrimination cases more actively and effectively.

103. The increasing racial segregation in society, mainly in the big towns, with so-called "white" schools and neighbourhoods, is also noted with concern. Similar trends are also noted in Aruba and in parts of the Netherlands Antilles. The Committee draws the attention of the State party to the relevance of its general recommendation XIX (47) of 17 August 1995 to such trends.

104. Concern is also expressed over practices relating to the entry and control of foreigners, both in the continental territory and in Aruba and the Netherlands Antilles, which could lead to racial discrimination in effect. The Committee requests the State party to take the necessary measures to see that regulations and practices in this field do not have that effect.

105. The disproportionately low rate of participation of minorities in the labour market and their increasing unemployment rates, while the rates for the rest of the population are stable, are noted with concern, as are reports of both direct and indirect forms of discrimination in recruitment procedures. The Committee recommends that further action be taken to ensure and promote equal opportunity in economic and social life, in particular as regards education and employment. Special attention should be given to the information and conclusions found in two ILO reports, "The documentation and evaluation of anti-discrimination training activities in the Netherlands" (1997) and "Discrimination against migrant workers and ethnic minorities in access to employment in the Netherlands" (1995).

106. Concern is also expressed at the under-representation of ethnic minorities in most areas of education and, in particular, that only an estimated 2 per cent of the total student population in higher education comes from ethnic minorities. As for Aruba and the Netherlands Antilles, concern is expressed that the process of education may not give the necessary attention to the fact that the majority of the population speaks Papiamentu. The Committee requests the State party to give more attention to providing students from ethnic minorities at all levels of education, as appropriate, instruction in their mother tongue.

107. The Committee also requests more information about the implementation of the 1994 Law of Equal Treatment and the activity of the Commission for Equal Treatment. The Committee draws attention to proposals to extend the competence of this Commission and to make it more effective in countering discrimination.

108. The Committee suggests that the State party review its arrangements for the coordination by one ministry of all actions in implementation of the Convention, including reporting obligations.

109. It is further recommended that the next report introduce a consistent nomenclature and classification of ethnic and national minorities, and that the State party include information

regarding the Frisian minority and data on the total population according to ethnic and national origin.

110. The Committee recommends that the State party's next report, due on 9 January 1997, be an updating report and that it address all the points raised in the present observations.

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307. The Committee considered the thirteenth and fourteenth periodic reports of the Netherlands, submitted in one document (CERD/C/362/Add.4) at its 1413th and 1414th meetings (CERD/C/SR.1413 and 1414), on 8 and 9 August 2000, and at its 1424th meeting (CERD/C/SR.1424), on 16 August 2000, adopted the following concluding observations.

1. Introduction

308. The Committee welcomes the very detailed updated report presented by the Government of the Netherlands, containing information on the European part of the Kingdom of the Netherlands, the Netherlands Antilles and Aruba, which follows the Committee's guidelines and contains relevant information about the implementation of the provisions of the Convention. The Committee particularly welcomes the opportunity to be able to continue a constructive and open dialogue with the State party represented by a large delegation and appreciates the detailed answers to questions raised and concerns expressed during the consideration of the report, including valuable written answers from Aruba.

2. Positive aspects

309. The Committee notes that the Netherlands is one of the few countries to refer to minorities without making a distinction between nationals and non-nationals; it welcomes the plan to apply the Framework Convention for the Protection of National Minorities of the Council of Europe without regard to nationality.

310. The Committee notes further progress in the implementation of article 4 of the Convention and welcomes the judicial proceedings that have led to the prohibition of a racist political party. It notes also the creation of the National Discrimination Centre within the prosecution service, the appointment of a national police "discrimination officer", the existence of public prosecutors and advocates general specialized in discrimination cases, and the Partnership Training Project between the police, the public prosecution service and civil society.

311. The Committee welcomes with great satisfaction the establishment of the Reporting Centre for Discrimination on the Internet which is aimed at combating racism on Internet sites. The Committee considers this initiative a major step forward in the fight against contemporary forms of racism and looks forward to receiving updated information on the work of the Centre.

312. The Committee welcomes the appointment of a Minister for Urban Policy and Integration of Ethnic Minorities.

313. The Committee is also satisfied that its previous request for information on the Frisian-speaking community has been met and that the State party has given satisfactory information on the situation of this community.

314. For the Netherlands Antilles, the Committee welcomes the efforts undertaken - despite huge

difficulties - to address the problems of children with language backgrounds different from those of the majority.

315. For Aruba and the Netherlands Antilles, the Committee welcomes the plans to address immigration problems cooperatively in the region.

316. The Committee acknowledges the efforts by the government in Aruba to promote the national language, Papiamentu, in the educational system and cultural life.

3. Concerns and recommendations

317. While the Committee acknowledges the increase in employment among members of minorities, it is concerned that the unemployment rate among minority groups remains four times higher than among the native Dutch population. The Committee therefore hopes to receive information on the results of the “action plan” set up by the Government to reduce that difference by 50 per cent and on the evaluation of the new legal measures (Wet SAMEN).

318. The Committee is concerned about insufficient protection against discrimination in the labour market; it regrets the privatization and the planned dissolution of the Women and Minorities Employment Bureau and wonders what institution is going to fulfil the Bureau’s task in the future.

319. While acknowledging the efforts to recruit members of minorities into government service, including the police and armed forces, the Committee is concerned about the disproportionately high number of members of minorities leaving the police forces. It recommends that the State party strengthen its efforts to create a police force reflective of the total population.

320. The Committee expresses concern at de facto school segregation in a number of localities and recommends that the State party undertake further measures to reduce de facto segregation and to promote a multicultural educational system.

321. The State party is invited in its next report to provide further information on the following issues: (a) the revision of the Criminal Code; (b) the living conditions of the Roma minority and the specific measures taken to improve them; (c) the further implementation of the Employment of Minorities (Promotion) Act; (d) the participation of minorities in local elections; (e) the changes brought by the draft new Aliens Act; and (f) statistical data on complaints, indictments and judicial decisions relating to acts of racism.

322. For the Netherlands Antilles, the Committee is concerned that there have been social tensions and problems in the educational system relating to immigration; it recommends that the problems be addressed on a regional level, so as to avoid racial discrimination.

323. While noting the information from the government of Aruba that domestic servants may change employers though not occupation, it recommends that the government ensure that the status of domestic servants under immigration law is not exploited by employers.

324. The Committee recommends that the State party’s reports be made readily available to the

public from the time they are submitted and that the Committee's concluding observations on them be similarly publicized.

325. The Committee recommends that the State party's next periodic report, due on 5 January 2001, be an updating report and that it address the points raised in the present observations.