



**International Convention on
the Elimination
of all Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Sixty-fourth session

SUMMARY RECORD OF THE 1634th MEETING

Held at the Palais Wilson, Geneva,
on Monday, 8 March 2004, at 3 p.m.

Chairman: Mr. YUTZIS

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6) (continued)

Fifteenth and sixteenth periodic reports of the Netherlands (CERD/C/452/Add.3; HRI/CORE/1/Add.66/Rev.1; CERD/C/304/Add.104)

1. At the invitation of the Chairman, the members of the delegation of the Netherlands took places at the Committee table.

2. Mr. de JONG (Netherlands), introducing the consolidated fifteenth and sixteenth periodic reports of the Netherlands (CERD/C/452/Add.3), said that the notion of equality was enshrined in the Netherlands Constitution and was a guiding principle for his Government in both policy and practice. He noted that following consultation with the Committee, it had been decided to postpone to a future session consideration of the Netherlands Antilles and Aruba, both of which enjoyed full autonomy as to the information submitted to the Committee. As a strong proponent of transparency in every aspect of its policy, the Netherlands Government attached great importance to making documents such as its report to the Committee available to the general public, especially on the Internet.

3. New developments since the report had been submitted included the appointment, in June 2002, of a special Minister for Immigration and Integration, who also had responsibility for coordinating anti-racism policies. The Government recognized that the lower tiers of government, the police, schools, civil society and individuals also had a role to play in cultivating the unity of society and forging links between communities. In December 2003, the Government had published a national action plan against racism that was designed to tackle the broad spectrum of prejudice and discrimination that arose in a multi-ethnic society. The action plan, the major themes of which were the living environment, awareness-raising and equal treatment, had been drawn up in consultation with the National Bureau against Racial Discrimination and the National Platform for Consultation and Cooperation against Racism and Discrimination.

4. In explanation of the temporary nature of some measures to combat discrimination, he said that the Netherlands Government aimed to develop policy that was equally effective for all persons concerned, and resorted to special measures only when general policy was not having sufficient effect on certain groups. Policy with regard to the position of ethnic minorities on the labour market had been developed in accordance with that principle. Since primary responsibility for the situation on the labour market lay with trade unions and employers' associations, the Government's role in that regard was confined to providing a structured legal basis and taking measures to encourage the social partners to develop structural policies. Since such measures were often aimed at groups of people who temporarily found themselves in a disadvantaged situation, the measures themselves also tended to be temporary in nature. The Employment of Minorities (Promotion) Act, known in the Netherlands as the *Wet SAMEN*, was an example of one such temporary measure that had achieved its maximum effect and thereby reached the end of its useful life: the most recent evaluation had shown that the Act had been successful in increasing employers' awareness of the position of ethnic minorities on the labour market and encouraging them to develop measures to promote multicultural personnel policies.

The Government had therefore begun considering new instruments that might promote the labour market position of ethnic minorities in future. He noted that, in pursuit of the goal of maximum labour market participation, the Netherlands Government also lent its support to non-governmental organizations (NGOs) that played a useful role in promoting the position of target groups on the labour market.

5. His Government attached great importance to education for all children, and thus invested considerably in schools with disadvantaged pupils; primary and secondary schools received substantial extra funding on the basis of the socio-economic or ethnic demographics. In areas where there was a high concentration of people from ethnic minorities, schools with a majority of pupils from ethnic minorities had built up specific expertise in preparing those pupils for society, and children from ethnic minorities were making progress as a result.

6. The Public Prosecution Service and the police had taken steps with the aim of improving the investigation and prosecution of discrimination cases. On 1 April 2003, an anti-discrimination directive had been renewed and strengthened; tripartite consultations between the mayor, the public prosecutor and the head of the police force were of great importance for the coordination of policy in that regard. A survey carried out by the National Bureau for Discrimination Cases had revealed that many of the Netherlands' police forces had not yet created the organizational structures required to enforce the anti-discrimination directive; all police forces had subsequently been instructed to create the necessary structures by 1 July 2004.

7. With regard to systematic discrimination on the basis of race, religion, belief or sexual orientation, he informed the Committee that legislative changes, which had entered into force on 1 February 2004, had doubled the maximum penalty for repeatedly insulting others or inciting hatred, and for the systematic distribution of discriminating material or for discriminatory acts in the course of exercising official duties or running a business to a custodial sentence of two years and one year respectively.

8. Lastly, the impact of the Aliens Act 2000, which had entered into force on 1 April 2001, on increasing the effectiveness of the asylum procedure, was in the process of being evaluated. Residence permits had been issued to 2,300 asylum-seekers on the basis of a one-off amnesty granted under special powers by the Minister for Immigration and Integration; all the asylum-seekers in question had applied for asylum before the entry into force of the Aliens Act 2000. The Government was aware of recent reports in the international press regarding its intention to return failed asylum-seekers. In that context, he wished to emphasize that the Netherlands would always give shelter to refugees who were in need of protection and that the provisions for repatriation were not a sign of intolerance but merely an attempt to ensure that an effective strategy was in place for the departure of failed applicants. Asylum-seekers whom the Immigration Service found did not meet the requirements under the Aliens Act were entitled to appeal against the decision before the courts, and those whose claims were ultimately rejected by the courts received counselling to prepare them for their return. Anyone who could demonstrate objectively that they could not return to his or her own country would be given a residence permit. He looked forward to a constructive dialogue with the Committee, whose recommendations his Government considered to be valuable.

9. Mr. HERNDL, Country Rapporteur, recalled that the Netherlands had an impressive record for the ratification of human rights conventions. Unlike many States, it had no reservations to the Convention on the Elimination of Racial Discrimination, had made the declaration under article 14, and had ratified the amendment to article 8. He asked when the Government intended to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Council of Europe's Framework Convention on the Protection of National Minorities.

10. The report responded precisely to paragraph 15 of the Committee's concluding observations of August 2000 (CERD/C/304/Add.104). He asked whether NGOs and interested institutes had been consulted in the compilation process. He wished to know whether the Minister for Immigration and Integration, who had responsibility for coordinating anti-racism policies, could be considered to have taken over the tasks of the Minister for Urban Policy and Integration of Ethnic Minorities, a position which, despite having been referred to positively in paragraph 6 of the Committee's concluding observations of August 2000, had reportedly been abolished.

11. The increased penalties for systematic discrimination that had been introduced by means of amendments to the Criminal Code attested to a progressive attitude. He also recalled the far-reaching interpretation of the word "race" that had been communicated in the Netherlands' fourteenth periodic report (CERD/C/362/Add.4). He therefore had no concerns with regard to the Netherlands' fulfilment of its obligations under article 4 of the Convention. Paragraphs 61 to 88 of the report contained useful information in that respect. The specific cases mentioned in paragraphs 84 and 68 (b) were of particular interest, as the courts had found that freedom of thought and expression were limited by the statutory provisions necessary in a democratic society to protect the rights and freedoms of others. In its Concluding Observations (para. 15 (f)), the Committee had requested further statistical data on complaints, indictments and judicial decisions relating to acts of racism. The current report contained a wide range of statistics that had been collected by several bodies, including the National Discrimination Expertise Centre.

12. Regarding measures taken to improve the living conditions of the Roma population, he asked what the outcome had been of the annual consultation between the Government and the Caravan Dwellers' Initiative Group, and what measures would be taken in relation to caravan dwellers in the future. He wished to know whether the amended Housing Act that had been in force until December 2003 had been replaced, or had simply been repealed.

13. The report showed that figures for the employment of ethnic minorities in the Netherlands had improved considerably. The Employment of Minorities (Promotion) Act had ceased to be effective at the end of 2003. He wished to know whether the Act had been replaced, or whether the matter would be dealt with solely at the level of negotiations between employers and trade unions. The Committee had been informed that people from ethnic minorities were resigning from the police force, rather than joining it. The delegation should explain why that was the case, and provide precise statistics on the ethnic composition of the Dutch police force. Regarding political participation, further efforts should be made to encourage minority groups to vote in elections.

14. The new Aliens Act was a controversial issue, as it had a restrictive effect on Dutch asylum law. The Committee had received information that the new Act had resulted in infringements of the basic rights of asylum-seekers. One problem in that regard was that of family reunification, and the effect on the family if an asylum-seeker was stripped of his or her temporary rights. Further information should be provided on the appeal system for the rejection of asylum applications. According to the report, if rejections were confirmed during the appeal process, there was a period of up to 16 weeks in which asylum-seekers should prepare to return to their country of origin. If, within that 16-week period, asylum-seekers could objectively prove that they could not return to that country, they would be granted a residence permit in the Netherlands. Such a system was, in effect, granting a third form of appeal to asylum-seekers. He asked according to what criteria the proof provided by asylum-seekers in such cases was judged to be objective, and whether the provision of such proof always served to override the decision originally made by the court.

15. Racial segregation in schools gave cause for concern and he wished to know what measures were being taken to rectify the situation. According to paragraph 40 of the report, between 1999 and 2002 there had been a sharp increase in the number of complaints regarding discrimination on the Internet. He wished to know whether the Netherlands had ratified the Council of Europe Convention on Cybercrime. He asked what measures were being taken to overcome day-to-day discrimination and to change public attitudes towards ethnicity.

16. Mr. BOYD, regarding the prosecution of discrimination cases, said that the proportion of discrimination cases that were dismissed following investigation and never reached the courts was twice that of other cases. He wondered whether that was a reflection of invidious discrimination within the judicial system, or whether it was due to discrimination cases being subject to more thorough investigation than other cases. It should be noted, however, that when discrimination cases were submitted to court, the conviction rate was discernibly higher than for non-discrimination cases. A review should be conducted of the system of investigation and prosecution of discrimination cases. The Government had a vital role to play in such a review, as it had best access to the relevant data.

17. Despite the large number of mixed race communities in the Netherlands, racial segregation still existed in Dutch schools and was often due to the fact that white children were sent to private schools. He wished to know whether the Government considered school segregation to be a problem and, if so, what measures were being taken to rectify the situation. He asked how the Government could ensure direct benefit for children attending multiracial schools.

18. Mr. PILLAI said that the Government had shown itself to be committed to the elimination of racial discrimination. It was rare and commendable for a Government to finance a shadow organization to produce an alternative report for submission to the Committee. The summary of judgements in discrimination cases given in paragraphs 62 to 88 of the current report showed how the individual aspects of each discrimination case were taken into account by the courts. However, he wondered why so many discrimination cases were being dismissed before reaching the courts. Paragraph 34 of the report made reference to the high percentage of cases that had resulted in out-of-court settlements. He wished to know what the nature of those cases had been and how they had been settled. He asked whether a person who had a net income no higher than one and a half times the statutory minimum was eligible for legal aid. Further

information should be provided on victim compensation, in particular on measures taken to facilitate the filing of compensation claims. The delegation should also provide more information on how the Government perceived immigration-related discrimination.

19. Mr. AVTONOMOV said that the section of the report devoted to additional information requested by the Committee in its previous Concluding Observations was particularly useful, as it allowed the Committee to evaluate the progress made in the Netherlands in relation to the elimination of racial discrimination. Regarding the Caravan Act, he wished to know who was entitled to live in a caravan.

20. According to paragraph 52 of the report, while other nationalities would happily mix with the local population, Moroccan and Turkish parents tended to want their children to stay within their own ethnic groups. If that tendency continued, it could lead to a very worrying situation. The delegation should attempt to explain why such communities wished to enclose themselves within their own cultures. He wished to know whether the Government planned to try to encourage the integration of such groups into Dutch society, particularly in view of the problem of racial segregation in schools.

21. He wished to know what results had been obtained through application of the Employment of Minorities (Promotion) Act during its five years of existence and why it had been allowed to expire in 2003. He asked what other mechanisms the Government had decided to implement in order to increase the employment opportunities of ethnic minorities and whether those mechanisms took into account objectives not reached under the Act.

22. Mr. VALENCIA RODRÍGUEZ asked what the status was of the amendments to the Criminal Code that were being considered by Parliament. He requested additional information on the measures currently in force to deal with the management of caravans and on the solutions that had been found to deal with the shortage of caravan sites and their illegal use (para. 9).

23. The policy of encouraging ethnic minorities to participate in elections should be continued as it contributed to the integration of such groups. He noted that following the events of 11 September 2001 there had been an increased incidence of Islamophobia and a sharp increase in the number of complaints of anti-Islamic discrimination on the Internet. He requested information on the actions taken by the Government to deal with those problems.

24. The sixteenth periodic report contained many valuable examples of discrimination cases, noteworthy among which was one concerning a book that challenged the authenticity of Anne Frank's Diary. In that case, the Amsterdam Court of Appeal had found that the freedoms of thought and expression - the grounds for the appeal - were limited by statutory provisions protecting the rights and freedoms of others (para. 68). He hoped that that decision would serve as a reference for other cases and requested the State party to supply examples of case law in its next periodic report as well.

25. It was encouraging to note that the unemployment rate of ethnic minorities had declined and that efforts made by enterprises to promote the recruitment of ethnic minorities were having a positive effect. He requested additional information concerning a pilot study on microlevel pay differences that had been commissioned by the Ministry of Social Affairs and Employment. Given the Government's recognition that primary responsibility for the position of ethnic

minorities at work lay with employers and trade unions (para. 121), he enquired whether persons belonging to ethnic minorities could participate in trade unions in the same conditions as other workers. He noted with satisfaction the policy of the Ministry of Defence and the police to recruit members belonging to minorities in order to increase their representation in the armed forces and the police service. Those efforts should be continued and the Committee should be kept abreast of the results achieved.

26. Regarding the fact that actions had been taken in the Netherlands to improve housing for ethnic minorities, who tended to be concentrated in the major cities, he recalled the Committee's Recommendation XIX, in which it had warned that a condition of partial segregation might arise as an unintended consequence of the actions of private persons and had encouraged States parties to work towards the eradication of any negative consequences. He noted that Dutch law made no social security provision for illegal immigrants but that urgent medical care was provided, even if recipients were uninsured or unable to pay. It would be more equitable for medical services to be provided throughout the period preceding deportation and instead of being limited to emergency situations.

27. Mr. de GOUTTES requested an explanation of why the Government had proposed to increase the maximum penalties for structural forms of racial discrimination (para. 5), but had chosen not to add grounds for increasing the penalty for assisting discriminatory activities (para. 7). He asked what steps the Government was taking to deal with the rise in racist incidents and utterances and right-wing extremism in the Netherlands. He welcomed the establishment of the Reporting Centre for Discrimination on the Internet, which had been described in the fourteenth periodic report (CERD/C/362/Add.4), and asked what results the Centre had obtained since its establishment. He wondered whether the fact that relatively light sanctions were issued in discrimination cases (paras. 61-88) pointed to a lack of awareness or alternatively to a lack of diligence on the part of police and judicial authorities.

28. It was encouraging that the unemployment rate among persons belonging to ethnic minorities had declined and he wished to know what factors were responsible for the improvement. The voluntary framework agreement with 14 major businesses on the recruitment of ethnic minorities was a very good example of cooperation with the private sector and he would appreciate additional information on the subject.

29. With regard to the fact that illegal immigrants were not entitled to public medical insurance or to social security, he recalled the case law of the European Court of Human Rights, which had become increasingly strict in its application of the European Convention on Human Rights in terms of non-discrimination towards immigrants. He asked what the Government's views were on that matter. He requested information concerning the fund that had been set up to reimburse health services for illegal immigrants. It was curious that in Aruba the Government had introduced a general medical insurance scheme that was equally accessible to all and was therefore more favourable than the one applied in the Netherlands in Europe. He had received a number of reports from the Dutch Equal Treatment Commission concerning various forms of racial discrimination towards immigrants, such as denial of access to goods and services, segregation and de facto discrimination in schools. The delegation should comment on those reports.

30. Mr. KJAERUM said that he wished to commend the Government for the forthright and innovative approach it had adopted with respect to addressing racial discrimination, in particular in terms of improving access to the labour market for ethnic minorities. The labour market was an area of concern for many European countries, since access to it by immigrants was crucial for their integration into society. He hoped that the next periodic report would contain reference to the new approaches adopted by the Government and the results obtained. The numerous strong institutions established by the Government for dealing with racial discrimination played an important role both in the Netherlands and at the European level in terms of the participation of the Netherlands in various networks and the example it gave to other countries. It was commendable that the State party granted political rights at both the national and local level to immigrants after five years of residence.

31. The Jewish community in the Netherlands remained one of the targets for abuse on the part of right-wing extremists and groups of young immigrants. He asked how the Government was dealing with the social dimension of the issue, given that the perpetrators were not the traditional right-wing extremists, but were second-generation immigrants who were poorly integrated. He had received information indicating that anti-Semitic songs and slogans had become commonplace at football stadiums. He asked whether the delegation could verify the accuracy of that report and, if it was correct, indicate what steps had been taken to deal with the matter. Noting the increase in the number of anti-Islamic utterances on the Internet and other instances of Islamophobia following the events of 11 September 2001, he wondered whether the Government had devised any specific measures to deal with anti-Islamic activities.

32. The participation in all levels of education of girls and women from ethnic minorities was lower than that of Dutch girls and women. The delegation should confirm the accuracy of reports indicating that 36 per cent of girls and women from ethnic minorities obtained no more than a ninth-grade education, as compared to only 13 per cent for those of Dutch origin. The fact that girls from ethnic minorities faced a double educational challenge was an issue that deserved special attention, as had been indicated by the Committee in its General Recommendation XXV. He asked how the Government was dealing with double discrimination and what steps it had taken to encourage girls and women from minority groups to continue their education beyond the compulsory level and to assist them in becoming full members of society.

33. States parties should take proper measures to ensure that children of non-citizens were protected from discrimination based on their immigration status. Yet the Council of State in February 2002 had held that the rights embodied in the Convention on the Rights of the Child were not applicable to children whose parents had no right to remain in the Netherlands. That did not appear to be in conformity with the approach of the Convention on the Rights of the Child, nor with human rights law in general. The delegation should comment.

34. Mr. SICILIANOS commended the reporting State on the recent adoption of an action plan against racism and the strong institutional structure in place to combat racial prejudice and problems related to it. Regarding the new provision in article 137 (c) of the amended Criminal Code, "Deliberately insulting a group of people" (para. 6), it was unclear whether the prosecutor alone could act in accordance with that provision, or whether members of the group affected by such an insult had locus standi to take legal action themselves.

35. He noted with satisfaction the detailed section of the report on case law. It would be useful to learn whether the State party had incorporated European Union Directive 2000/43/EC (implementing the principle of equal treatment between persons irrespective of racial or ethnic origin) into domestic legislation. If so, he would appreciate additional information on whether the relevant legislation contained provisions on sharing the burden of proof.
36. He noted with interest the work of the Magenta Internet Discrimination Hotline, and said that the Committee would be interested in the Government's analysis of the new Aliens Act in the next periodic report. While he welcomed the reduction in the number of unemployed immigrants, he noted that no measures had been taken to replace those of the Employment of Minorities (Promotion) Act, which had ceased to be effective on 31 December 2003. He would be grateful for additional information on whether minority groups had achieved equal employment opportunities in practice, not just in theory, and whether the decision not to extend special measures was therefore justified. The reporting State should also indicate whether it had incorporated European Union Directive 2000/78/EC (establishing a general framework for equal treatment in employment and occupation) into domestic legislation and if so, what the effects of that legislation had been.
37. Mr. TANG Chengyuan said that there had been reports of incidents involving discrimination in the State party which, instead of being referred to the law enforcement hierarchy, had been processed by police officers and prosecutors and had not resulted in punishment for the perpetrators. It would be useful to have a full account of such cases, as it appeared that the law was being undermined.
38. While he commended the State party on its anti-discriminatory legislative measures, it was important to combat the growing tendency towards anti-Islamic and anti-Semitic utterances by providing appropriate education to schoolchildren from primary level onwards. For ethnic minorities such as the Roma, the Act repealed in 1999 had offered many rights. The reporting State should indicate whether subsequent legislation had replaced the earlier Act, particularly in the light of the housing problems currently experienced by the Roma, which appeared to have been left in the hands of the housing authorities.
39. Mr. AMIR, referring to the increasing number of private schools that attracted large concentrations of students from particular religious communities, said that it was unclear whether that was a new phenomenon in the Netherlands and in Europe. If indeed it was a growing trend, he questioned how it would affect government policies related to the integration of national minorities in the Netherlands education system, and indeed in more general terms the integration of the individual in society. While anti-Islamic sentiment had reportedly decreased in the United States of America, it had been on the increase in Europe, including the Netherlands, as recognized in the periodic report. The State party should clarify the status of racial discrimination under the new Criminal Code.
40. Ms. JANUARY-BARDILL said that it was unclear why the Employment of Minorities (Promotion) Act had been discontinued. Additional information on the reasons for that decision should be provided. The periodic report contained significant statistics on unemployment. While the disaggregated statistics on the ethnic background of the workforce were useful, it

would be interesting in future if the Government could also provide a breakdown according to the level of posts reached by recruits. That would provide a clearer picture of the effectiveness of the legislation.

41. The CHAIRMAN invited the delegation to respond to any questions or make any comments they wished.

42. Mr. de JONG (Netherlands) said that it was important to recognize that ethnic minorities living in the Netherlands tended to find themselves in different situations, either because they had spent more time there than other minorities, or because their standard of education was higher. Both factors had a significant impact on the level of integration of a minority group and thus on their current situation. While it was clearly a delicate issue, it was important to point out that the new immigration law aimed to ensure that only those entitled could be considered immigrants. The legislation was applied in strict accordance with guidelines provided by the Office of the United Nations High Commissioner for Refugees.

The meeting rose at 5.45 p.m.