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SUMMARY RECORD OF THE 33rd MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 7 November 2006, at 10 a.m.

Chairperson: Ms. BONOAN-DANDAN

CONTENTS

CONSIDERATION OF REPORTS:

- (a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH
ARTICLES 16 AND 17 OF THE COVENANT

Third periodic report of the Netherlands

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT

Third periodic report of the Netherlands (E/1994/104/Add.30; E/C.12/NLD/Q/3 and Add.1; HRI/CORE/1/Add.66)

1. At the invitation of the Chairperson, the members of the delegation of the Netherlands took places at the Committee table.
2. Mr. de KLERK (Netherlands) apologized for the late submission of the third periodic report (E/1994/104/Add.30). His Government had tried to include information about developments during the period following 2002 in its written replies (E/C.12/NLD/Q/3/Add.1) to the Committee's questions in the list of issues (E/C.12/NLD/Q/3). Noting that the third periodic report covered only the European part of the Kingdom of the Netherlands, he said that agreement had been reached the previous week that from 1 July 2007 the Kingdom would consist of four countries: the Netherlands, Aruba, Curacao and St. Maarten. That change would affect future reporting requirements.
3. The Netherlands believed in the indivisibility and interdependence of all human rights: economic, social and cultural rights did not have a different status to civil and political rights. Rights differed only insofar as their implementation required different measures.
4. His Government considered that all the Netherlands' obligations under the International Covenant on Economic, Social and Cultural Rights had been adequately incorporated into national legislation. Individuals believing their rights under the Covenant to have been infringed could seek redress in the courts, where they could invoke the relevant provisions of the Covenant, provided that such provisions were directly applicable, as stipulated in articles 93 and 94 of the Constitution. It was the responsibility of the courts to decide whether a provision of the Covenant should be directly applicable in a given case, with case law providing guidance in determining the issue of direct effect.
5. Both economic, social and cultural rights and civil and political rights were important pillars of his country's development cooperation policy. The human rights-based approach to that policy made the link between human rights and development much clearer, enabling the two issues to be addressed more coherently and strategically through the use of both financial and political resources.
6. States parties to the Covenant had an obligation to try to protect the right to work and to guarantee access to the labour market: work enabled people to take part in society and to contribute to economic and social life. In the Netherlands, the number of people in paid employment had risen to 64.4 per cent of the population between the ages of 15 and 65. The Dutch economy was healthy, and future prospects were good: a 3 per cent growth rate was forecast for 2007, when nearly 7.2 million people were expected to be in work, although job creation would slow down in the 2008-2011 period.

7. Unemployment rates among some population groups, such as older people, young people, women and ethnic minorities, needed to be improved; for example, much human capital had previously been lost as a result of early retirement and, although employment among those over 55 years of age had subsequently risen, it was important for such increase to be sustained because of changing demographics in the future. In 2006, the number of jobless young people had also dropped for the first time in several years, from 130,000 to 100,000. His Government had also tried to make it worthwhile for women to work by providing satisfactory childcare facilities: its efforts had led to a 10 per cent rise in the employment rate among women during the past year.

8. Discrimination had once been regarded as the main cause of high levels of unemployment among ethnic minorities; however, the relatively large proportion of older persons and poor levels of education had also been discovered to be important factors. His Government had undertaken various successful activities to improve employment prospects among ethnic minority groups. Its aim was for employment among ethnic minorities and among people of Dutch origin to increase at the same rate.

9. His Government attached great importance to a well-functioning social security system. To protect such a system for the future, a number of reforms had been introduced with a view to placing greater emphasis on participation in society and citizens' own responsibilities. A reintegration system, tougher assessment procedures and an active attitude on the part of both employer and employee meant that people were kept in work as long as possible. Since the introduction of the 2004 Work and Social Assistance Act, the number of individuals claiming benefits had fallen, as had the number of people declaring themselves unable to work. Efforts had been made to discourage early retirement so that older people would stay in work longer; to that end, in January 2006 tax relief on early retirement schemes had been abolished.

10. In view of the fundamental importance of education, teaching should not only impart knowledge, but also provide children with the social, cultural and physical skills necessary for their development. Since 1 February 2006, Dutch schools had been required by law to promote good citizenship and social cohesion. In 2005, school fees for all secondary school pupils and young persons under the age of 18 undergoing vocational school training, meaning that both primary and secondary education were henceforth free of charge. The Netherlands needed to continue its progress in preventing young people from leaving school early. In pursuit of that goal, special needs were being addressed early in the education process and the transition between the different stages of education had been made easier. Schemes were in place to allow schools and local authorities to offer training and work experience to school leavers without qualifications.

11. Life expectancy in the Netherlands was continuing to rise and people remained healthier for longer, which demonstrated the striking improvement in the quality of life. His Government had worked on enhancing the health-care system over the last three years; for example, it had introduced the Healthcare Insurance Act in January 2006, which was aimed at preparing the health-care system for future demographic and social changes and curbing rising costs by permitting free choice of insurance. The Government was also devoting more attention to disease prevention by encouraging local authorities to tackle specific health problems and to promote a healthy lifestyle.

12. One major challenge in the coming years would be the introduction of the Social Support Act, under which local authorities would be obliged to pursue coherent policies on welfare, housing and health.

13. Mr. MALINVERNI requested clarification of the Covenant's place in the Netherlands' internal legal order in the light of the statement in reply to item 1 of the list of issues that "citizens who believe their rights under the Covenant are being infringed by Dutch law may invoke the relevant provisions of the Covenant in court insofar as the substance of the provisions lends itself to direct application" (E/C.12/NLD/Q/3/Add.1, para. 1). As the courts decided whether the Covenant was directly applicable, he would like to know what their procedure was. He also enquired whether economic, social and cultural rights were given as much importance as civil and political rights.

14. The main victims of discrimination had been identified as foreigners and members of ethnic minority groups. In the Netherlands, around 3 million people were of foreign origin, approximately 1.7 million of whom were from ethnic minority groups. Unemployment figures among members of such groups were four times higher than among people of Dutch origin. There seemed to be segregation between children belonging to ethnic minorities, asylum-seekers, refugees and foreigners, and Dutch children. Discrimination was particularly apparent in the case of gypsy children, whose attendance in primary and secondary schools was low. Ethnic minorities also experienced discrimination in the housing sector, in being refused accommodation. Internet sites expounding racist and anti-Semitic ideas were also fostering discrimination, a new phenomenon present not only in the Netherlands, but elsewhere too.

15. Mr. ATANGANA said he would welcome information concerning cases in which the Dutch courts had found the Covenant not to be directly applicable.

16. Ms. GHOSE, referring to the Government's written reply to item 6 of the list of issues, said that she was curious to know whether there were any organizations representing Asian communities in the Netherlands, other than the Chinese community.

17. It was clear from the report and the Government's written replies that ethnic minorities in the Netherlands had originated in many parts of the world. She wondered whether the Government was sensitive to the specific problems of those different groups or treated all non-European minorities as a single entity.

18. She asked if members of minority groups were in fact Dutch citizens, pointing out that, if they were, then they could not be described as foreigners.

19. The positive approach adopted in the "Prize, Code and Monitor" project (E/1994/104/Add.30, para. 61) was a laudable one, but she wondered whether the project included a deterrent element in the form of punitive measures that could be taken against employers who nonetheless discriminated against ethnic minorities.

20. In its reply to item 9 of the list of issues, the Government mentioned a policy and strategy for emancipating women belonging to ethnic minority groups but did not state how that objective was to be achieved. She would appreciate some clarification from the delegation.

21. Mr. KERDOUN said the Netherlands was to be congratulated on exceeding the recommended target for official development assistance (ODA) of 0.7 per cent of GDP (E/C.12/NLD/Q/3/Add.1, item 3).
22. Elsewhere in its written replies (item 4 (II)), the Government listed a number of developing countries where the Netherlands had cooperation programmes. Were there any plans to include other countries in its programme of international cooperation? In particular, since the State party's main objective appeared to be to combat absolute poverty, he wondered whether it tried to move beyond the traditional scope of such programmes by seeking out those countries where absolute poverty really existed and developing special programmes for them.
23. He would also like to know if the State party had any plans for development cooperation programmes specifically involving the realization of economic, social and cultural rights, as opposed to the more commonplace "tied" aid programmes that attempted to induce countries to develop civil and political rights.
24. Mr. RIEDEL likewise commended the State party's record on ODA and particularly the steps it had taken to coordinate with other development assistance programmes and institutions.
25. He appreciated the Government's replies under item 4 (I) of the list of issues but would like further information on concrete action being taken to influence the international financial institutions. Could the delegation provide an example of a specific economic, social or cultural right that had been brought to the attention of the board of one of those institutions by the State party?
26. In the context of the elaboration of an optional protocol to the Covenant, he noted that the State party's report and the Government replies contained clear statements of principle regarding the indivisibility and applicability of human rights in the Netherlands. However, in the light of the head of delegation's introductory statement, which had contained various provisos in that regard, he was no longer very sure exactly what the State party's current position might be on direct applicability and thus on the proposed optional protocol, and he would welcome a clear statement of that position.
27. Mr. SADI said that the delegation had painted a rosy picture of the Netherlands' performance in implementing the Covenant. He could not believe, however, that there was any country that did not face challenges, crises or problems in that process and he asked the delegation to provide some information on any difficulties encountered.
28. He would also appreciate clarification of the criteria used in determining whether a provision of the Covenant could be directly applied.
29. Endorsing Mr. Riedel's comments regarding the optional protocol, he urged the State party to support the project more warmly.
30. Turning to the question of discrimination, he asked whether the fact that a large minority of the population was not native Dutch affected the country's politics. Could the rightward trend observed in many European countries also be seen in the Netherlands? What was the impact of the fact that nearly half the population in cities was non-Dutch?

31. On the question of integration of minority groups, he pointed out that multiculturalism had not been successful in all countries. He was not sure it was possible to integrate people of different cultures into the mainstream culture and he would like some reassurance that the Netherlands in fact expected to succeed in its efforts.

32. Ms. BARAHONA RIERA said that none of the documents submitted by the State party appeared to deal with article 3 of the Covenant, on the equal rights of men and women. She wondered what legal framework existed in the Netherlands to guarantee the right to equality between men and women. Was there a law on equality and what institutions existed to monitor its application? What resources were allocated to those institutions? She was interested in specific legislation or plans to introduce such legislation, rather than general measures.

33. She would also like to know what results had been obtained by affirmative action and, given that gender was a cross-cutting issue, what progress had been made in applying the principle of gender equality in housing, education and health policy.

34. She asked how the State recognized women's work with children, the elderly and the family so that, by helping to provide adequate care in those areas, it could guarantee women full access to employment. What plans and policies did the State have on paternity leave, for example, and on promotion of gender equality within companies?

35. Referring to the written reply to item 8 of the list of issues, she said that, rather than hearing about other signatories to the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, she would prefer to know the Netherlands' reasons for not acceding to that instrument. In particular, she would like to hear about the impact of its decision on illegal migrants in the Netherlands and their families, who had no protection and no access to social security.

36. Mr. ABDEL-MONEIM, referring to paragraphs 267 and 268 of the core document submitted by the State party (HRI/CORE/1/Add.66), asked if he was correct in thinking that economic, social and cultural rights were not listed under article 103 of the Constitution as rights that might be restricted during states of emergency.

37. Mr. RZEPLINSKI asked what policy governed the selection of countries that were to receive ODA and what role NGOs played in the selection process.

38. There could be no rights without precise accountability in the event of violations or denial of those rights, but in countries where the Netherlands was providing humanitarian aid and social rights, he wondered who could be held accountable where aid recipients claimed to have been denied such assistance on an equal basis: the Government of the Netherlands or the local authorities?

39. It was well known that countries in receipt of ODA risked becoming dependent on such funds. It was also alleged that certain countries operated a policy whereby 70 per cent of ODA received was allocated to government institutions, 20 per cent was stolen by the leaders and sent to banks abroad and 10 per cent was spent on the poor. He wondered what policy the Netherlands had for preventing countries from becoming dependent on ODA.

40. He asked which social rights in the Netherlands were considered “soft rights” and which were seen as “hard rights”.

41. Lastly, he would like to know how deep immigrants’ roots in the Netherlands had to go for them to be treated as Dutch. Were three generations sufficient, for example?

42. Mr. KOLOSOV observed that the State party’s report was not complete, since it related only to the European part of the Kingdom of the Netherlands. The Covenant had been ratified, not by the European part of the Kingdom but by the Kingdom as a whole. The Netherlands’ overseas territories might well submit reports of their own but, *stricto sensu*, under article 16 of the Covenant, the Committee had no competence to discuss them as those territories were not sovereign States and could not accede to the Covenant themselves. The population of the overseas territories was under the jurisdiction of the Kingdom of the Netherlands and the central Government was responsible for implementing the Covenant in those territories.

43. He pointed out that the Netherlands had entered a reservation with respect to article 8, paragraph 1 (c), of the Covenant, as applied to the Netherlands Antilles, but no reservation applicable to the European part of the Kingdom.

44. He reserved the right to raise questions concerning the implementation of the Covenant in the Netherlands’ overseas territories. Did their population enjoy the same rights, for example, and were they as wealthy as the inhabitants of the European part of the Kingdom?

The meeting was suspended at 11.20 a.m. and resumed at 11.45 a.m.

45. Mr. de KLERK (Netherlands) said that it had not been the intention to paint an overly positive picture in his country’s report. Although a number of factors had facilitated the implementation of the Covenant over the reporting period, there were still some major challenges to be overcome. One of them was to reduce the relatively high unemployment levels among ethnic minorities. An important element in that regard was age distribution, as many first-generation immigrants who had arrived to the country in the 1960s and 1970s were now in their fifties and sixties and unemployed, and it was difficult to reintroduce them into the labour market. A range of practical measures had been taken to promote employment opportunities for ethnic minorities, but much remained to be done.

46. Another challenge was the integration of foreigners. Figures on the total number of immigrants who had acquired Dutch nationality were not available, but, by way of example, of the 200,000-250,000 Moroccans who had arrived in the last two decades, some 70,000 were now Dutch citizens. Over the past five years the focus of policy had shifted from the multiculturalism model to greater integration. Subsidies which had previously been provided for language courses to encourage ethnic minorities to continue to use their own languages had been abolished, and the focus was now on the need to learn Dutch. Although there were some tailor-made measures aimed at specific ethnic minority groups, in some cases ethnic minorities were treated as a collective, for example in discussions on broader policies that applied to all immigrants. Efforts at integration were complicated by the diversity of the ethnic minority groups in terms of background and religion. However, there was freedom of religion, and freedom to build places of worship.

47. The Government's position with regard to the proposed optional protocol on an individual complaints mechanism had been rather cautious, although it fully supported the expansion of the mandate of the open-ended working group on that instrument. The Government considered the implementation of rights under the Covenant to be essentially a political question and, indeed, several of those rights were currently under discussion in the political arena prior to the upcoming elections. Although the Government wished to be involved in the negotiations on the proposed mechanism, the position it had adopted when ratifying the Covenant, namely that it considered the rights contained in the Covenant not to be of direct applicability, had not changed. He acknowledged that there was a contradiction in acknowledging the indivisibility of human rights while at the same time having different implementation mechanisms for certain rights.

48. The Government had not signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families because it was not entirely comfortable with the Convention's central term "migrants". From a Dutch perspective, all persons legally residing in the country, whether migrants or not, had the same rights, while persons illegally residing in the Netherlands, migrants or others, had different rights.

49. The Netherlands currently had intensive development cooperation links with 36 countries. The current list of development partners had last been revised in 2003, but might change depending on the economic development of particular countries. The relationship with countries whose average income was increasing might change to a broader, more symmetrical form of cooperation. In some cases the reasons for choosing countries were purely historical, such as the ties with Suriname and Indonesia, but the number of other donors working in a country and the specific expertise the Netherlands could provide were also considered. The human rights-based approach attempted to frame cooperation, much of which focused on core areas such as health and education, more explicitly in terms of the rights under the Covenant and human rights in general. The Netherlands also cooperated with other bilateral and multilateral institutions to promote a rights-based approach. For example, it had funded the Human Rights Strengthening (HURIST) project between the Office of the United Nations High Commissioner for Human Rights and the United Nations Development Programme (UNDP) to promote greater use of the rights-based approach within UNDP, although that had not been very successful to date.

50. He acknowledged that the report was not complete in that it covered only the European part of the Kingdom of the Netherlands. For purely practical reasons, it had been agreed to consider the situation in the Kingdom on two separate occasions in order not to delay discussion of the current report any longer, although legally the two reports should be considered as a whole. There was a distinction between the implementation of the Covenant, which was the responsibility of the constituent parts of the Kingdom, and the guarantee of the rights under the Covenant to all citizens, which was provided by the Kingdom as a whole.

51. Mr. KUIJER (Netherlands) said that, under the Constitution, any directly applicable rule of international law took precedence over domestic law, even the Constitution. However, in the case of economic, social and cultural rights, it was for the individual courts to decide whether a particular provision was specific and precise enough for an individual to invoke. The Supreme Court had, in a number of decisions, referred to the statement by the Government, on ratification of the Covenant, that various provisions would not be considered directly applicable by individuals. Nonetheless, in some of those cases the Supreme Court or the highest

administrative court had, de facto, taken account of the substance of the provisions, such as articles 9, 11 and 15, when drafting their decisions. However, the domestic courts had ruled that, generally speaking, an individual could not invoke articles 2 (2), 6, 7, 8, 12 and 13 in order to claim specific rights. It was difficult to draw general conclusions on the status of case law, as only a few dozen cases had been brought before the highest courts between 1979 and 2000.

52. Concerning the representation of minorities, he said that the only formal requirement for an ethnic minority group to enter into an official dialogue with the authorities was that it must represent at least 40,000 people. However, there were separate consultation forums with the Chinese and Suriname communities, for example.

53. Mr. MOREE (Netherlands) said that the level of participation by women in the labour market was measured on the basis of the number of women who worked 12 hours per week or more. As a result of concerted Government efforts, that rate had reached 55.8 per cent in September 2006. However, although childcare facilities and after-school care were widely available, not all women wished to work full time. The Government considered it the right of women and men to work as long as they chose, and facilitated their choice. Policies had been developed to encourage men to work part time and participate in childcare. Generally speaking, men employed on a part-time basis worked 4 days a week, while women worked for anywhere between 12 hours and 4 days a week. The Government covered one third of childcare costs, and as of 1 January 2007 it would be mandatory for the employer to pay another third. The fact that parents would now bear only one third of the cost of childcare or after-school care was an incentive to work.

54. The “Prize, Code and Monitor” project encouraged employers to identify reasons why more women did not work in their companies, and whether facilities for women could be improved or working hours made more flexible. The focus of that project was on prevention.

55. His Government had elaborated both punitive measures and proactive strategies to root out discrimination in the labour market.

56. Regarding the means available to redress discriminatory acts within companies, there were both informal mechanisms and company statutes enabling employees to raise the issue of discrimination in the workplace with their employers. On the basis of the country’s Constitution and the Anti-Discrimination Act, it was also possible to file complaints with the police, the National Ombudsman, or the Equal Treatment Commission. In 2005, that Commission had received 34 complaints of unequal treatment concerning members of ethnic minorities, down from 40 the previous year.

57. Among proactive measures to prevent discrimination, the Netherlands had set up a programme to raise awareness and promote the right to equal treatment. The Government’s emphasis had been on actions such as subsidizing employers to hire members of ethnic minorities for one year and training employees to raise their education and language knowledge levels. Of the young people involved in the programme, 21 per cent were offered an unsubsidized job after a year.

58. Likewise, self-activating social security arrangements, policy actions taken by the central Government, the Centre for Work and Income and local authorities also pursued the aim of facilitating employment. For instance, people under the age of 24 who could not find work within six months were entitled, regardless of their ethnic background, to educational training and subsidized employment to prevent them from losing contact with the labour market.

59. Research identified lower levels of education and more limited knowledge of the Dutch language as some of the reasons explaining higher rates of unemployment among ethnic minorities. The Netherlands therefore focused its policy efforts on offering ethnic minorities more opportunities to learn Dutch.

60. As one of the main causes of unemployment among young people was that they left school without having completed a diploma, the Netherlands had set up vocational training and special assistance programmes to increase school attendance rates among ethnic minorities.

61. Mr. de KLERK (Netherlands) said that, in the area of development assistance, which took place within a multilateral context, the Netherlands sought to reach the Millennium Development Goals by 2015 and to help implement the poverty-reduction schemes of its development partners.

62. In its development efforts, the Netherlands placed considerable and growing emphasis on combating corruption and on good governance. In particular, substantial funds were allocated to setting up or strengthening accounting offices in recipient countries.

63. As was also the case in the areas of human rights and foreign policy, Government officials met regularly with representatives of NGOs on the subject of development assistance, in which civil society organizations played a major implementing role.

64. Mr. KUIJER (Netherlands) said that since the attacks of 11 September 2001 on the World Trade Center and the Pentagon and the killing of a filmmaker in the Netherlands, the segregation of the Muslim community had grown. In order to counter that tendency, the Minister for Immigration and Integration had initiated a number of projects with other concerned ministers and civil society representatives, in consultation with the different Muslim organizations, to promote greater communication among the country's communities. As a result, various proposals had been formulated to avoid the formation of radical opposition to a democratic society, or the negative portrayal of a community in the media. Finally, also to prevent discrimination, a member of the Public Prosecutor's Office was assigned to focus exclusively on issues of discrimination.

65. Because knowledge of the Dutch language was considered one of the essential factors of social integration, there had been various amendments to the Aliens Act in connection with the introduction of an integration requirement for the admittance of certain categories of aliens. Anyone wishing to settle permanently in the Netherlands was required to participate actively in Dutch society and have a command of the Dutch language. Prospective immigrants were required to first learn basic Dutch in their home country and, once they had arrived in the Netherlands, to deepen their knowledge of Dutch history and society and to have an awareness of generally accepted moral viewpoints.

66. Mr. SADI asked the delegation to clarify whether the Netherlands classified issues of discrimination in relation to gender equality and the rights to food, health, education and housing as political matters, and what kind of language was used in Dutch judicial decisions in reference to rights under the Covenant.

67. Ms. BARAHONA RIERA requested the delegation to provide more information on illegal migrant workers and their families, whose rights needed to be protected even if the Netherlands had not ratified the relevant Convention.

68. Ms. GHOSE enquired whether members of ethnic minorities, some of whom were also Dutch nationals, all had the rights of Dutch citizens or whether in some cases they were treated as foreigners.

69. Ms. BRAS GOMES asked the delegation to clarify the notion of the “self-activating” nature of social security. In particular, since the Netherlands had decided to focus more on work than on benefits, she enquired how many of those previously claiming benefits had been able to find sustainable paid jobs.

70. Regarding the decrease in the number of welfare recipients, she wondered to what extent that was attributable to the fact that potential beneficiaries were discouraged from applying for benefits because of the obligations involved.

71. She also asked whether there were enough childcare facilities to cater for the needs of women who wanted to work full time, since in its policy agenda for 2006, the Netherlands itself questioned the affordability of childcare expenses for average-income families. She suggested involving the non-profit sector so as to reduce the cost of childcare.

72. Mr. RIEDEL asked for an update of paragraph 19 of the Netherlands’ written replies to the list of issues, which pertained to the maternity leave of self-employed women, as it mentioned a judgement expected to be rendered in the course of 2006.

73. He further asked why illegal immigrants could no longer claim benefits, as stated in paragraph 239 of the report, and whether they were covered under another assistance scheme instead.

74. Mr. TEXIER asked how the Netherlands went about establishing that candidate selection for a given job had been discriminatory.

75. He also invited the delegation to explain how the statutory minimum wage was set and whether the law prohibited collective labour agreements to adopt measures less favourable to employees.

76. Finally, he would welcome some clarification as to which categories of Dutch public servants were entitled to strike action.

The meeting rose at 1 p.m.