

## NETHERLANDS

### CESCR E/1987/28

23. The Committee considered the initial report of the Netherlands (dealing with the Netherlands Antilles), relating to articles 6 to 9 of the Covenant (E/1984/6/Add.14), at its 5<sup>th</sup> and 6<sup>th</sup> meetings, on 11 March 1987 (E/C.12/1987/SR.5-SR.6).

24. The report was introduced by the representative of the State party who affirmed his Government's support for the work of the Committee. He explained that, at the time of preparation of the report, the Kingdom of the Netherlands had consisted of two countries, the Netherlands and the Netherlands Antilles, but that since January 1986 the island of Aruba had achieved a separate status. The Kingdom thus consisted of three countries linked under a legal framework laid down in the Charter of 1954, according to which each country pursued its own interests independently but all were linked by obligations of mutual assistance. In accordance with a 1983 agreement Aruba would become independent in 1996 following a 10-year separate status transition period.

25. The representative noted that under the Charter of 1954 each of the countries was responsible for implementing human rights but that the Kingdom as a whole was responsible for their guarantee. He explained that the report under consideration dealt only with the Netherlands Antilles (including Aruba) and not with the Netherlands itself. He indicated that, for financial and administrative reasons, the authorities of the Netherlands Antilles had been unable to send an expert to present supplementary information or to respond to questions from the Committee.

#### General observations

26. Members of the Committee regretted the absence of a representative of the Netherlands Antilles who could have responded to their questions. It was noted that a single report covering both the Netherlands and the Netherlands Antilles would have been preferable since it would have enabled a comparison of the situation between the two. It was said that while the report had, in principle, followed the outline of the reporting guidelines admirably, it was none the less lacking in a number of respects. In particular adequate information of a general political, economic and demographic nature was absent. It was suggested that a specific reporting guideline might be appropriate, in order to ensure that the relevant issues were addressed with respect to non-metropolitan territories.

27. More specifically, members felt that the report did not provide a sufficiently clear picture of the legal relationship between the Netherlands and the Netherlands Antilles. They also wished to receive more information on whether, and if so how, the right to self-determination had been exercised by the people of the Netherlands Antilles. In response the representative of the State party observed that the report submitted by his country to the Committee on the Elimination of Racial Discrimination

2/ contained much of the background information which members had sought and suggested that the documentation of the different supervisory committees of the United Nations might be made available to each other.

28. Some members noted that the content of the report and the result of its consideration by the Committee should be publicized in the Netherlands Antilles.

29. The representative of the Government declared that he would transmit to the competent authorities the questions which had been put to him by the members of the Committee.

#### Article 6: Right to work

30. With reference to that issue, members of the Committee asked whether there was any statutory recognition of the right to work and whether there were any guarantees beyond the general economic and social policies of the Government designed to promote realization of this right. Members also asked whether a detailed programme for full employment, such as that required by the ILO Convention concerning Employment Policy, of 1964 (Convention No. 122), to which the State party's report refers, had been drawn up. Members also asked to receive more information on the reasons for the high levels of unemployment in part of the Netherlands Antilles, on the measures which had been taken to halt the escalating levels of unemployment and on the nature and consequences of action taken to combat inflation. Members also requested more details on the protection provided against arbitrary dismissal and asked whether it was a matter dealt with by the Civil Code or the labour legislation and whether a labour code existed, how many dismissals had been consented to by the appropriate authorities, and whether there was a right of judicial review and, if so, by whom.

31. With respect to the non-discrimination provisions of the Covenant, members asked what legal and administrative guarantees existed against discrimination in employment, why there was no legislation aiming to achieve equality of opportunity in the private sector and what was the extent of wage differentials between men and women. It was also asked whether the Government of the Netherlands intended to enshrine the principle of non-discrimination in its legislation. Information was also sought as to the situation of the aliens with respect to the right to work and as to the legal status with respect to articles 6 to 9 of the Covenant of any foreigners who did not have the right to work. With respect to the promotion of opportunities for technical and vocational guidance, members asked for further information as to the facilities available, as to the means used for evaluating the occupational training needs of industry and as to the resources available to fund such training.

#### Article 7: Right to just and favourable conditions of work

32. With reference to those issues, members wished to know the extent to which worker and employer groups were involved, on a tripartite basis, in the preparation of relevant legislation,

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2/ CERD/C/131/Add.10.

whether there was a balance of power between trade unions and employers in the collective

bargaining process and whether there was an industrial relations service available. It was also asked whether a minimum wage existed, what the actual range was between the highest and lowest income groups, and whether the public servants' holiday allowance had been restored subsequent to its revocation for a year as from July 1984. As to safe and healthy working conditions, more specific information was sought as to the legal penalties for violations of the relevant regulations and as to the legal and other measures taken to ensure such conditions.

#### Article 8: Trade union rights

33. With respect to those rights, members of the Committee asked for more information as to the positive legal protection provided for the right to freedom of association as to the restrictions applicable to the right and as to the proportion of trade-union members in the work force. They also asked whether the Netherlands had ratified the ILO Convention concerning the Application of the Right to Organize and to Bargain Collectively, of 1949 (Convention No. 98), and if so, whether it was applicable to the Netherlands Antilles. With reference to the right to strike, further information was sought as to the relevant legislation, as to the implications of the prohibition on strike action while arbitration was in progress, and as to whether all or only some categories of public servants were prohibited from striking.

#### Article 9: Right to social security

34. With respect to this right, members of the Committee wished to know how the social security system differed with respect to different categories of workers, what percentage of the relevant contributions were paid by the employer and employee respectively, whether the unemployed were covered by the social security system and, if not, how they and their families survived, what the level of benefits was compared to average salaries and whether there was a general system of family benefits applicable to the population as a whole.

35. In concluding the consideration of the report, the Chairman thanked the representative of the State party for having co-operated with the Committee in a spirit of constructive dialogue and with the common objective of implementing the rights recognized in the Covenant.

## **CESCR E/1989/22**

193. The Committee considered the initial report of the Netherlands on the rights referred to in articles 6 to 9 of the Covenant (E/1984/6/Add.20) and the second periodic report of the Netherlands on the rights referred to in articles 10 to 12 of the Covenant (E/1986/4/Add.24) at its 14<sup>th</sup> and 15<sup>th</sup> meetings, on 15 February 1989 (E/C.12/1989/SR.14 and 15).

194. The reports were introduced by the representative of the State party who explained that the Kingdom of the Netherlands had a unique constitutional framework within which three autonomous parts freely co-operated, namely the Netherlands, the Netherlands Antilles and, since 1986, Aruba. Under its Charter, the highest constitutional instrument, the Kingdom of the Netherlands, while remaining one sovereign entity under international law, consisted of three equal partners with distinct identities which were fully autonomous in their internal affairs. As a consequence of that constitutional framework, the General Assembly of the United Nations had, as early as 1955, discharged the Netherlands of its duty to report on its non-self-governing territories.

195. He added that the Netherlands was a party to the majority of the ILO conventions relevant to the provisions of the Covenant and he pointed out that his Government's second periodic report concerning articles 10 to 12 of the Covenant contained information about the revised Constitution of the Netherlands and new legislation and policy. The report also provided a number of replies to the questions asked by the members of the former sessional working group of governmental experts on the implementation of the Covenant when it had dealt with the initial report on articles 10 to 12 in 1986.

### General matters

196. The Committee expressed its appreciation of the report of the Netherlands and of the goodwill shown by the Government in sending a large and high-level delegation.

197. Referring to the general framework within which the Covenant was implemented in the Netherlands, members of the Committee wished to receive information on the current status of the Covenant in the national legal order. They asked, in particular, whether the provisions of the Covenant had been invoked in the national courts and, if so, in what cases and with what consequences. They asked also what steps had been taken by the Government in order to safeguard the rights under consideration, in particular the right to work and equality between men and women in the light of the provisions not only of the Covenant, but also of the ILO Convention concerning Employment Policy, 1964 (Convention No. 122), ratified by the Netherlands.

198. Furthermore, it was observed that the sections of the Constitution concerning discrimination seemed to apply only to citizens and it was asked whether foreigners were excluded from those provisions and what was the meaning of "horizontal" application of the constitutional provisions by the courts. Clarification was also requested on the references to minorities appearing in the reports and on the ways in which the Netherlands Government was seeking to integrate its non-indigenous populations.

199. Members of the Committee also asked what sanctions were provided in case of violation of the laws prohibiting any form of discrimination between men and women in employment and why relatively few married women in the Netherlands were in paid employment. The question was raised of how the Netherlands Government was endeavouring to ensure that economic, social and cultural rights were respected during the process of the privatization of enterprises in the country. It was observed that in general the reports gave insufficient details about the specific application of the various provisions of the Covenant and that it would be desirable for the Committee to have more information, in particular about any difficulties encountered by the Netherlands in the implementation of the Covenant.

200. In accordance with paragraph 9 of Economic and Social Council decision 1981/158 of 8 May 1981, the representative of ILO provided the Committee with information about the ILO conventions ratified by the Netherlands and specified the provisions of those conventions which contained information relevant to the implementation of the Covenant.

201. In his reply, the representative of the State party referred to the new Constitution of the Netherlands which entered into force in 1983 and, in particular, to the first chapter, which contained provisions on most of the rights reflected in the Covenant. He added that in several instances, including decisions of the Supreme Court, the Covenant had been taken into account. However, the nature and formulation of the rights mentioned in the Covenant had not made it possible for individuals to claim a directly applicable right as was the case under the Covenant on Civil and Political Rights. The representative also stated that measures concerning employment policy had been explained in his Government's recent report on the application of ILO Convention No. 122. They included the act to promote the employment of very long-term unemployed job seekers which had been drafted in close co-operation with workers' and employers' associations and which had entered into force in 1986, several measures to combat youth unemployment, to give special attention to poorly qualified minorities and women who re-entered the labour market, and to encourage equality in employment between men and women.

202. He observed, furthermore, that the reports submitted by his Government also referred, even if only implicitly, to the difficulties encountered in the implementation of the Covenant. With regard to the questions concerning possible discrimination between citizens of the Netherlands and foreigners, he stated that no condition was implied in the term "citizen", which could be replaced by the term "individual". He went on to give details about ethnic and other groups which constituted minorities in the Netherlands but nevertheless formed an integral part of Dutch society. The representative also explained that the concept of "horizontal" application of certain legislative provisions in the Netherlands derived from the fact that, although the system of human rights had been established to protect the rights of individuals *vis-à-vis* the State, it had been necessary to recognize that some of those rights should also be protected in relations between individuals. He then briefly described the policy measures planned by the Government to ensure that representation of women on the labour market was equal to that of men.

#### Article 6: Right to work

203. Members of the Committee wished to know how the Government's policy of seeking "to promote sufficient employment" satisfied the obligation to respect the right to work, whether in the

pursuit of the “optimal use of human resources” the new technology was taken into account, what sort of re-training programmes were offered to assist unemployed persons to find productive employment, whether training and re-training programmes were offered to assist unemployed persons to find productive employment and whether training and re-training schemes were designed on the basis of tripartite consultations. Clarification was also requested on the meaning of “tailoring employment policies to specific needs of minorities”. In addition, reference was made to the protection in the Netherlands against arbitrary termination of employment and it was asked whether the law provided for compensation, reinstatement and quick adjudication.

204. Some information was requested on the practical experience of the Government with the assistance provided to unemployed persons who wished to set up in business on their own account and on the actual situation of women in paid employment. It was also asked how the percentage of jobs to be reserved by law for the disabled had been calculated, whether this provision was actually applied in both public and private employment, to what extent non-nationals had access to posts in the civil service, what the actual functions were of the Equal Opportunities Commission, whether the phenomenon of marginalization of unemployed people existed in the Netherlands and whether the Government endeavoured to ensure that every citizen enjoyed a certain minimum income even if unemployed. In addition, it was asked what measures the Government intended to take to ensure that the right to work was recognized by the Constitution and domestic law and to combat unemployment effectively.

205. In his reply, the representative stated that article 19 of the Constitution of the Netherlands referred directly to the measures the Government should take to promote sufficient employment and that particular measures were taken by the Government to encourage the creation of additional jobs and to provide training facilities. The effect of new technologies was taken into account in the pursuit of the optimal use of human resources. The training and re-training of employees generally was the responsibility of the employer or of the employers’ and workers’ associations. However, the Government also assumed some responsibility, particularly in the case of employed persons. There were 27 technical and 6 vocational training centres for adults run by the Government and a new training scheme had been launched on 1 January 1987 for training people in enterprises and establishments. The joint Industrial Labour Foundation composed of employers’ and workers’ organizations had issued a report on training in 1986 and 1987, and had made recommendations in which provision was made for some aspects of training in 50 collective agreements covering about 1,790,000 workers. Furthermore, in future, the Government’s manpower policy would focus more directly on helping members of minority groups. There was a target of increasing the proportion of ethnic minority employees in government service to 3 per cent by the end of 1990. As regards protection against arbitrary dismissal, the representative pointed out that an employer could not terminate labour relations with an employee without the consent of the director of the Local Employment Office and that, on the basis of the Civil Code, an employee might ask for compensation as well as reinstatement if his dismissal had been obviously unreasonable.

206. The representative stated, furthermore, that following the repeal of an old act, non-nationals could now be appointed to most public service posts. The percentage of jobs to be reserved by law for the disabled was arbitrary but served as a target to be reached gradually in enterprises. He also explained the functions of the Equal Employment Opportunities Commission but pointed out that its role would be changed by a new law on equal treatment for which a bill had been submitted to

Parliament. Equal treatment for men and women in employment was guaranteed by law.

Article 7: Right to just and favourable conditions of work

207. Members of the Committee wished to know what the methods were for determining minimum wages; what problems, if any, were encountered in the determination of what constituted “equal work”; what were the main criteria for promotion and who determined it.

208. In his reply, the representative referred to legislative measures adopted in the Netherlands to determine minimum wages and minimum holiday allowances. Those measures took account of criteria mentioned in the ILO Convention concerning Minimum Wage-Fixing, 1970 (Convention No. 131), such as the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment. The methodology which had been adopted in 1980 was currently under review and a bill on the subject had been recently submitted to Parliament. The representative added that the Netherlands legislation on equal pay for work of equal value provided for the advice of the Tripartite Committee on Equal Treatment, on which both employers’ and workers’ organizations were represented. The Committee was supported by the wages service of the Ministry of Social Affairs and Employment. There was no specific legislation or general policy in the Netherlands with regard to promotion to a higher function in the same enterprise. There were, however, some legal provisions relating to non-discrimination in the matter of promotion. Article 1 of the 1983 Constitution required the equal treatment of persons in equal circumstances and that article applied also to promotion.

Article 8: Trade union rights

209. Members of the Committee wished to know whether workers had the right to strike over conflicts of “rights” and whether public servants, having no right to strike, had the right to go to “compulsory arbitration”.

210. In addition, it was asked whether the representative organizations of members of the armed forces in the Netherlands were comparable to trade unions, whether the State could help trade unions facing economic difficulties, what the criteria were for ensuring that trade unions were representative, what powers the Judiciary could exercise to bring parties to a dispute to the negotiating table and to what extent the notion of a “minimum level of service” applied in the case of public service strikes.

211. Details were also requested on the level of trade-union membership in the Netherlands and on the exercise of the right to strike in the private and public sectors.

212. Replying to the questions raised, the representative stated that Netherlands case law on the right to strike was mainly based on conflicts of interest. A strike which resulted from a very serious violation of an existing labour agreement might be regarded as lawful by the court. However, there were no examples of such cases. Furthermore, he explained that the courts in the Netherlands had in principle recognized the right to strike of public servants. There was no procedure for compulsory arbitration in the Netherlands, but there was a procedure for solving disputes that might arise in discussions between the Government and the trade unions on terms of employment and working

conditions. If those discussions did not lead to an agreement and the parties were of the opinion that further discussions would be to no avail, the advisory and arbitration committee of the public service would be asked for advisory opinion or for arbitration. An arbitration decision had binding force.

213. The representative added that the members of the armed forces could form and join trade unions. The Government exerted no influence on trade-union activities or on the internal affairs of trade unions and provided no direct financial or other support. The representativeness of a trade union was not a requirement for collective bargaining but only of the establishment of advisory bodies in the public sector. The application of the right to strike was not regulated by any act and was subject only to case law. However, the judge could at times play a part in negotiations, if he considered that the possibility of recourse to negotiations had not been exhausted; he sometimes decided that a strike was unlawful and that negotiations must be reopened. The minimum level of service was not stipulated in any regulations, nor had it been established by case law. Moreover, all case law was based on conflicts of interest and did not take account of conflicts of rights.

#### Article 9: Right to social security

214. Members of the Committee asked whether foreign workers and minorities enjoyed in the Netherlands the same eligibility and benefits as nationals, what relationship existed between social insurance, national assistance and social security schemes referred to in the report, how the workers contributed to those schemes and what amount of money they must pay for them. Reference was made to the views under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights which were adopted by the Human Rights Committee on 9 April 1987 with regard to the case *Zwaan de Vries v. the Netherlands* <sup>3/</sup> and it was asked whether the Government of the Netherlands had taken any measures in response to those final views and whether it was aware of any other areas in which the existing social security provisions could be challenged as being contrary to the non-discrimination provisions of article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights.

215. In addition, it was asked whether the Netherlands authorities had considered the question of reviewing the social security system because of a decline in the active population, what was the difference between the level of pensions in the public service and in the private sector, what was the basis for calculating workers' pensions and what distinction was made between married couples and single persons. It was also asked whether the Netherlands authorities had a policy to assist elderly persons.

216. The representative replied that in so far as ethnic minorities had Netherlands nationality, they enjoyed the same eligibility and benefits as their compatriots who did not belong to a minority group. Foreign workers enjoyed the same social security rights and benefits as nationals with two

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<sup>3/</sup> Official Records of the General Assembly, Forty-second session, Supplement No. 40 (A/42/40), annex VIII, sect. D.

exceptions specified in the Public Allowances for Unemployed Persons Act and in the National Assistance Act. He provided further information on the social security system of the Netherlands and stated that contributions to social security were divided between employers and employees. With regard to the final views of the Human Rights Committee in the case of *Zwaan de Vries v. the*



Netherlands, he stated that in order to comply with the principle of non-discrimination formulated in a number of international instruments, the Government had been making a general review of all social security laws in order to establish a legal system in which there was no discrimination between men and women. The greater part of the social security legislation had already been adapted to the principle of non-discrimination. However, the process of legislation took time because formal procedures had to be observed and advisory opinions sought, but most because there were different ways of realizing equal treatment.

217. With regard to the policy concerning elderly persons, the representative briefly described the measures taken by the Netherlands authorities, which were centred on providing care at home rather than in institutions for the elderly, and on a policy of informal care.

#### Article 10: Protection of the family, mothers and children

218. Members of the Committee requested further information on factors and difficulties, if any, affecting the implementation of the rights set forth in article 10 of the Covenant. They wished to know, in particular, what sort of facilities were available to newly established families, what the rate of divorce was in the Netherlands and, in view of the high level of unemployed women in the country, what measures were being taken to help women getting an employment. It was also asked what the rate of unemployment among young people was and what specific measures were being taken to improve the situation in this regard.

219. With reference to the wider concept of family in line with recent social trends which was mentioned in the report, it was asked whether a homosexual couple could be considered to constitute a family under the new concept and what value was attached to the traditional concept of marriage and family in contemporary Dutch society. It was asked also whether the law discriminated between the status of married and unmarried couples in respect of custody of children and whether the principle of joint custody of children had been established in the country. Details were also requested on tax allowances for families and on the consequences of divorce in terms of taxation, as well as on questions relating to abortion, the operation of play centres, measures for the rehabilitation of young drug addicts, the scheme of "work with retention of benefit" for young persons, the proportion of families having unmarried couples as the parents and the situation of children of divorced couples.

220. The representative replied that in the Netherlands the view was now taken that government policy as a whole, and not only welfare policy, should do justice to the increased diversity in the types of family and other ways in which people lived together. He explained that in connection with the policy on taxation and social security there was a clear tendency to take account of the fact that children were being cared for at home by one of the parents. However, it was not certain at present whether the resources for child-care facilities could continue to be provided through an income tax allowance if the tax system was simplified as was proposed. An important task facing the Government was to determine how in future the flow of resources could be shifted so that instead of breadwinners enjoying tax facilities, special leave for parents and child-care facilities could be provided. He referred, in this connection, to research and the elaboration of legislative and other measures undertaken by the Government to improve maternity leave and leave to look after sick children, to increase the number of care centres and facilities for the care of older children during

school hours and to establish a more equal division between men and women of paid employment outside the home and unpaid duties at home. With respect to the rate of divorce in the Netherlands, the representative provided figures indicating a decline in marriages and a growth in the percentage of divorce. He also referred to measures being taken by the Ministry of Social Affairs and Employment to help unemployed women and stated, in particular, that since May 1988, employers might ask for financial compensation in developing affirmative action for women in their organizations. That measure would be in force until 1992. In addition, he stated that by the end of June 1987 the rate of unemployment of young people was just over 20 per cent among young people under 23 years and just under 20 per cent for those between 23 and 24 years of age. The number of unemployed young people had declined by 45,000 since 1986. Several job creation instruments for young people were now in force and the Government contributed to financing the training costs. The objective of the youth development employment measures was to promote the admission or re-admission into the labour market of young people up to the age of 25 who had been unemployed for at least two years. The employer with whom the young person was placed received 33 per cent of the gross minimum youth wage.

221. The representative then informed the Committee of his Government's policy concerning drug addiction, which involved stopping imports of narcotics into the country and preventing drug abuse.

#### Article 11: Right to an adequate standard of living

222. Members of the Committee wished to know what kind of difficulties, if any, had been encountered by the Government of the Netherlands with respect to the implementation of the right to food. As regards the right to housing, they wished to receive statistical information on the housing problems encountered by minorities. They also asked what kind of difficulties, if any, had been encountered by the Government in respect to the implementation of the right to housing. In addition, clarification was requested on the very high level of unoccupied dwellings and it was asked, in particular, what the current number of people in search of housing was and what measures were being taken to solve housing problems in the Netherlands.

223. In addition, some information was requested on the Government's bilateral food aid programmes and on the procedure for the requisition of unoccupied housing in case of need. Details were also requested on the system of rent control and its method of operation, and on the protection given to tenants moved to allow the renovation of dwellings occupied by them. It was observed, in particular, that it would be interesting to have the Government's comments on a list of questions relating to housing which had been transmitted to the Committee by a non-governmental organization. In addition, clarification was requested concerning the existence in the Netherlands of problems such as that of homelessness and malnutrition or of illegal workers who might be experiencing hardship as a result of occupational accidents.

224. In his reply, the representative stated that his Government had encountered no difficulties with regard to the implementation of the right to food. Some difficulties had, however, been encountered with respect to the implementation of the right to housing mainly because, for budgetary reasons, the State was no longer in a position to maintain a high level of housing aid and people had to spend more on housing. As regards specifically housing problems encountered by minorities in the Netherlands, statistics would be provided in written form. Furthermore, the representative explained

that unoccupied dwellings were not so numerous but they were highly concentrated. The reasons were economic development, changes in physical planning policies and to some extent the wrong choice by the authorities of housing type, size and location. The housing shortage could be estimated at approximately 127,000 whereas there were some 125,000 vacant housing units. By giving more discretion to local government and private initiative, the problem would probably be solved, and relevant policy measures had been taken by the Government under consideration. The National Assistance Act contained measures to assist persons unable to pay their rent.

#### Article 12: Right to physical and mental health

225. Members of the Committee asked for further information on the new legislation under preparation in the Netherlands, aimed at “maximizing individuals’ responsibility for themselves and for their own health care”, in particular with regard to the existing system. They noted that, according to the Government’s report, 62 per cent of the population in the Netherlands was insured against medical expenses and they asked for clarification with regard to the situation of those who were not insured against such expenses. In addition, further information was requested on the availability and accessibility of the health services provided for the rural populations as compared with those provided to the urban populations. It was asked, in particular, how the quality and the scope of health-care facilities provided for rural populations compared with those available to urban populations.

226. Moreover, it was asked whether euthanasia was permitted in Netherlands law, what the Government’s approach was in respect of the problem of AIDS, what the rate of infant mortality in the country was, and what the number of hospitals and medical doctors was in proportion to the population.

227. In his reply, the representative explained that in March 1987 an advisory committee on the structure and financing of health care had published a report containing a number of proposals for major changes to the health-care system. The Netherlands Government was broadly in agreement with the Committee’s proposals which had started to be implemented in January 1989. The aim was to complete the restructuring of the system by 1992. Although health care in the Netherlands was of a very high standard and quality the health care system suffered from a few basic shortcomings. In 1992, there would no longer be any distinction between national insurance funds and private insurance companies but only one type of insurance. The insured would be free to choose his insurer and, in principle, insurers would be obliged to accept all applicants. The representative also pointed out that since the Netherlands was a relatively small country, there was no significant difference between the rural and urban populations, and the medical facilities everywhere in the country were of a high quality. The representative added that there was no act governing euthanasia in the Netherlands. Cases of euthanasia were exceptional and had to be reported to the Attorney-General, who decided whether there were grounds for prosecution. Measures to combat AIDS in the Netherlands were aimed at prevention and centred on health education.

#### Concluding observations

228. Following consideration of the reports of the Netherlands, the Chairman and various members of the Committee thanked the Netherlands delegation for the frankness of its replies to the questions.

They nevertheless felt that some further details should be given and gaps still had to be filled in respect of some of the complex questions raised during the discussion. It was noted that the absence of any significant time between the presentation of questions by the Committee and the responses by the Government, while perhaps inevitable because of circumstances beyond the control of the Government, was none the less regrettable since it limited the possibility for the Committee to receive detailed and thoughtful responses. It would be useful if the Dutch Government could communicate additional information to the Committee in writing before the submission of its next periodic reports.

## **CESCR E/1989/22**

229. The Committee considered the initial report of the Netherlands Antilles on the rights referred to in articles 13 to 15 of the Covenant (E/1982/3/Add.44) at its 14<sup>th</sup> and 15<sup>th</sup> meetings, on 15 February 1989 (E/C.12/1989/SR.14 and 15).

230. The report was introduced by the representative of the Netherlands Antilles who provided explanations on the educational system in the islands, which consisted of pre-primary, primary, special and technical education. He pointed out that since 1986 the junior domestic science schools and the junior commercial schools had been combined into a new type of school known as the junior school for business and service-related education. The other types of secondary education had not undergone any changes since 1986. Higher vocational and university education were pursued mainly in the Netherlands and the United States of America and that had to be taken into account whenever changes in secondary education were being considered. For the past few years the tendency of both the island Governments and central Government had been to co-operate in gearing post-secondary education, in particular technical education, to the needs of the labour market.

### General matters

231. The Committee expressed its appreciation of the report of the Netherlands Antilles and, in particular, of the participation of their representative in the consideration of the report.

232. Referring to the general framework within which the Covenant was implemented, members of the Committee wished to know what percentage of the total budget of the Netherlands Antilles was devoted to education. They asked whether the Government believed that such a statistic constituted a relevant “benchmark” to assist the Committee in determining whether the obligations in the Covenant were being complied with.

233. In his reply, the representative informed the Committee that 20 per cent of the total budget of the Netherlands Antilles was devoted to education. He referred to a regional conference of Ministers of Education and Economic Development organized by UNESCO at Bogotá (Colombia) in April 1986, in which it had been concluded that that amount was amply above the standard.

### Article 13: Right to education

234. Members of the Committee wished to receive statistics relating to literacy rates in the Netherlands Antilles and information on measures to fight against illiteracy. They noted that the report attributed the large proportion of children who needed to repeat classes at primary school level in part to the use of the Dutch language and in part to the policy of developing education in the Netherlands Antilles on the same lines as in the Netherlands. In this connection, they wished to know in some detail why these two policies had been adopted and the extent to which public debate had focused on those issues. Furthermore, they asked what the gender breakdown of secondary and higher education enrolments was, whether there was a significant imbalance, whether any measures had been taken to correct it, whether the domestic science schools referred to in the report were open to boys as well as girls and, similarly, whether girls could be trained for trades or employment in

industry.

235. In his reply, the representative informed the Committee that data provided by the second general population census in 1981 had indicated that 98 per cent of the population had attended, or was attending, school. There had been no information on the other 2 per cent, but it had been assumed that the rate of illiteracy had been less than 2 per cent. He further explained that the main reason why a large proportion of children needed to repeat classes at primary school level in the Netherlands Antilles was that Dutch was the medium of instruction but only 6 per cent of the population spoke Dutch at home. Approximately 80 per cent spoke Papiamentu at home, while there were quite a number of native speakers of English. There was a Bill proposing to officialize Papiamentu for some islands and English for others; however, the Dutch language and the Dutch educational system were still retained because Dutch continued to be the official language in which documents, laws and books were written and not many possibilities for further education were available in the Netherlands Antilles. The representative also stated that in his country there was no significant difference in higher education enrolments between the two sexes and that in advanced education 53 per cent of students were girls. All schools in the Netherlands Antilles were open to everybody; however, in practice only girls attended domestic science schools.

#### Article 14: Principle of compulsory free education

236. Members of the Committee recalled that the Covenant provided that primary education should be free and compulsory while the report indicated that primary education was not compulsory in the Netherlands Antilles and that the issue had been much debated since the turn of the century. In this connection they asked what the principal arguments were that had been used against making primary education compulsory and whether more details could be provided of the study of this question, which was due to have been completed by the end of 1989 and to which reference was made in the report.

237. The representative replied that many children in the Netherlands Antilles came from the poorer sections of society and often their families received Government support to survive. If a fine were imposed for failure to attend school, the parents would have to pay it out of the grant which they received from the Government. There were also cases in which children worked to help their parents financially. If they had to go to school, the family would be affected. Some children tried to combine going to school with working. It had been felt that one solution might be to make the school "child-minded" so that children would prefer going to school to staying at home. A committee was still studying the matter.

#### Article 15: Right to take part in cultural life and to benefit from scientific progress and from the protection of the interests of authors

238. It was asked what role was played by the Roman Catholic Church and other religious denominations in the cultural life of the Netherlands Antilles.

239. The representative explained that in the Netherlands Antilles there were two types of schools: public schools and private schools administered by councils which could be Catholic, Protestant, Adventist or of other denominations. Provided the private schools complied with the law, their

financing was ensured by the State. No child could be refused admission to the public schools because of his religious or other beliefs. Cultural policy was primarily the responsibility of the island authorities, which made allowance for all religions.

#### Concluding observations

240. Following the consideration of the report, the Committee thanked the representative of the Netherlands Antilles for his co-operation with the Committee.

**I. EUROPEAN PART OF THE KINGDOM**

167. The Committee considered the second periodic report of the Netherlands (the European part of the Kingdom) on the rights covered by articles 1 to 15 of the Covenant (E/1990/6/Add.11) at its 13<sup>th</sup> to 17<sup>th</sup> meetings, held on 5 to 7 May 1998 and, at its 28<sup>th</sup> meeting on 15 May 1998, adopted the following concluding observations.

**A. Introduction**

168. The Committee thanks the Government of the Netherlands for the presentation of its report, which was in keeping with the Committee's guidelines, although it was nearly nine years late. The Committee also welcomed the written submission of full replies to its list of questions and expressed satisfaction at the open and constructive dialogue with the State party, which was represented by a delegation of experts. The Committee appreciates the high quality of the information contained in the core document (HRI/CORE/1/Add.66).

**B. Positive aspects**

169. The Committee recognizes the State party's long tradition of respect for human rights and that the various initiatives it has taken to guarantee these rights more securely have been included as part of this tradition.

170. The Committee notes that the Netherlands has to a considerable extent met its obligations with respect to the protection of the rights set out in the Covenant.

171. The Committee welcomes the programmes and measures adopted in the education system to eliminate discrimination against women and to address social stereotypes of women in the media.

172. The Committee welcomes very warmly the success of the campaign against racial discrimination which can be seen in particular in the fact that incidents of racial violence have disappeared.

173. The Committee also welcomes the Government's programmes to create new jobs and help the unemployed, particularly ethnic minorities, young people and persons over 50 years of age, to become part of or to become reintegrated into the labour force.

174. The Committee welcomes the Government's intention to withdraw the reservation it entered in the Covenant concerning the right to strike.

175. The Committee considers that the Government's policy of providing subsidies for the construction of places of worship for the various religions practised in the Netherlands is of considerable importance both in helping to combat discrimination and in contributing to the realization of the right to take part in cultural life.



### C. Factors and difficulties impeding the implementation of the Covenant

176. The Committee notes that the structural adjustment policy adopted by the Government has lowered the standard of living of the lowest income groups. The reduction in services and subsidies previously provided by the State has had adverse effects on wages, health, social security and education. This policy has not undergone any change despite the economic growth recorded over the last four years, but the Committee notes the Government's assertion that it will continue its efforts to alleviate the damage which the policy has caused or may cause to the most vulnerable sectors of society.

### D. Principal subjects of concern

177. In line with its General Comment No. 3 (1990) on the nature of States parties' obligations (art. 2, para. 1, of the Covenant), [E/1991/23, annex III.] the Committee considers that, at a minimum, certain provisions of the Covenant are potentially able to be directly applied both in law and in policy. It therefore cannot accept the assertion by the representative of the State party that for essentially technical reasons the Covenant is not directly applicable.

178. The Committee is concerned by continuing discrimination against women at work. Their higher rate of unemployment, their lower position on the wage scale and their disproportionate representation in part-time work reveal that the principle of equality established by the law is not effectively enforced.

179. Racial discrimination can also be seen to exist in labour matters, contributing to some extent to unemployment among immigrants.

180. A third group which suffers from discrimination in the labour market is that of persons 55 to 65 years of age, whose unemployment rate is over 50 per cent.

181. The Committee expresses its concern at the permissive nature of labour legislation with regard to overtime, the excessive use of which may give rise to a decline in the creation of further jobs.

182. The Committee expresses its concern that the reform of the social security system may have certain adverse consequences for the most underprivileged sectors of society.

183. The Committee regrets that the statistical data on violence against women and child abuse have not been analysed and used to formulate measures to address these problems. The Committee also regrets that the lack of information on child prostitution has prevented both the Government and the Committee from appreciating the extent of this problem.

184. The Committee views with concern the living conditions of asylum seekers in some reception centres in the country.

185. The Committee wishes to express its concern at the consequences of the Tuition Fees Act which has led to a constant increase in the cost of education. Such increases are contrary to the principle of equality of opportunities between the children of rich families and children of poor

families.

186. The Committee wishes to express its concern at the statement by the State party that the Government of the Netherlands is not responsible for the implementation of economic, social and cultural rights in Aruba and the Netherlands Antilles, given that Aruba and the Netherlands Antilles are equal parts of the Kingdom of the Netherlands and the Government of the Netherlands contributes every year 1.5 per cent of GNP to Aruba and the Netherlands Antilles.

E. Suggestions and recommendations

187. The Committee recommends that the Government reassess the extent to which the provisions of the Covenant might be given direct applicability within the Kingdom.

188. The Committee recommends that the Government intensify its efforts to guarantee men and women equal access to employment and equal wages for work of equal value.

189. The Government should continue its endeavours to root out racial discrimination in the labour market with a view to facilitating the integration of immigrants and their families into the national life.

190. The Committee encourages the Government to adopt measures to promote the access of persons between the ages of 55 and 65 to the labour market.

191. The Committee urges the Government to ensure that the reduction of budgetary allocations for social welfare programmes does not adversely affect the economic, social and cultural rights of the most vulnerable groups in the Netherlands, and calls upon the Government to address this issue in detail in its next periodic report.

192. The Committee notes that the Ministry of Justice is currently analysing the results of studies on violence against women and on child abuse, with a view to formulating policies and implementing measures to combat these problems. The Committee recommends that more clearly targeted policies be adopted to protect the welfare of the family. The Committee requests an update on these matters in the Government's next report.

193. The Government should take appropriate steps to alleviate or eliminate the adverse effects of the Tuition Fees Act.

194. The Committee urges the State party to ensure that it complies fully with its obligations under the Covenant as they apply to Aruba and the Netherlands Antilles.

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### **II. ARUBA**

195. The Committee also considered the second periodic report of Aruba on the rights covered by articles 1 to 15 of the Covenant (E/1990/6/Add.13) at its 13th to 17th meetings and, at its 28th meeting, adopted the following concluding observations.

#### **A. Introduction**

196. The Committee regrets that no delegation from Aruba was able to take part in the discussion and that the resulting dialogue therefore proved unsatisfactory, despite attempts by the delegation of the Netherlands to answer questions based on written information received from Aruba. The Committee appreciates the high quality of the information contained in the core document (HRI/CORE/1/Add.68).

#### **B. Positive aspects**

197. The Committee notes that Aruba has, generally speaking, achieved a satisfactory level of compliance with its obligations concerning the protection of the rights established in the Covenant.

198. The Committee notes with satisfaction the low rate of unemployment in Aruba.

#### **C. Factors and difficulties impeding the implementation of the Covenant**

199. The Committee considers that a major challenge facing the government in relation to the implementation of the Covenant concerns the challenges posed by the number of foreign workers in the territory.

#### **D. Principal subjects of concern**

200. The Committee regrets that none of the provisions of the Covenant may be directly invoked in the courts. This situation is inconsistent with the approach adopted by the Committee in its General Comment No. 3 (1990).

201. The Committee is concerned at the inequalities between men and women, particularly with regard to equal wages for equal work.

202. The Committee notes the slow progress of the Joint Committee for the Revision of the Civil Code, established in 1993 to do away with the anachronistic provisions embodying the inequalities between men and women.

203. The Committee expresses its concern at the fact that primary education is still not compulsory, and at the high rate of school drop-outs in Aruba.

E. Suggestions and recommendations

204. The Committee recommends that a reassessment should be made of the extent to which the provisions of the Covenant might be given direct applicability in Aruba.

205. The Committee recommends that the Government intensify its efforts to guarantee the effective implementation of equality between men and women, particularly with regard to equal wages for work of equal value.

206. The Committee recommends that the authorities abolish provisions in the country's legislation constituting any form of discrimination and that they promulgate the new Civil Code as soon as possible.

207. It also recommends that a plan of action be adopted urgently to move towards the provision of free compulsory primary education as required by article 14 of the Covenant.

208. The Committee urges the Government to intensify its efforts to address the school drop-out problem.

209. In view of the extent to which Aruba's laws and regulations are outdated, the Committee recommends that Aruba bring its laws and regulations up to date in order to ensure full compliance with the Covenant.

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### NETHERLANDS ANTILLES

210. The Committee further considered the second periodic report of the Netherlands Antilles on the rights covered by articles 1 to 15 of the Covenant (E/1990/6/Add.12) at its 13<sup>th</sup> to 17<sup>th</sup> meetings and, at its 28<sup>th</sup> meeting, adopted the following concluding observations.

#### A. Introduction

211. The Committee welcomes the participation of a government official from the Netherlands Antilles in the delegation of the State party. The Committee appreciates the high quality of the information contained in the core document (HRI/CORE/1/Add.67).

#### B. Positive aspects

212. The Committee notes that the Netherlands Antilles has achieved a generally satisfactory level of compliance with its obligations in respect of the protection of the rights set out in the Covenant.

213. The Committee notes also that, pursuant to the law, primary education is compulsory in all the islands of the Netherlands Antilles.

#### C. Factors and difficulties impeding the implementation of the Covenant

214. The Committee notes that the population of the Netherlands Antilles is dispersed over a large geographical area and that this adds another dimension to the challenge of ensuring an effective system for the implementation and promotion of economic, social and cultural rights.

#### D. Principal subjects of concern

215. The Committee regrets that none of the provisions of the Covenant may be directly invoked in the courts. This situation is inconsistent with the approach adopted by the Committee in its General Comment No. 3 (1990).

216. The Committee is concerned at the inequalities between men and women, particularly with respect to equal access to employment and equal wages for work of equal value.

217. The Committee expresses its concern at provisions that permit practices in matters of inheritance not governed by the principle of equity so as to benefit all those who have a legal interest in the inheritance.

218. The Committee expresses its concern at the increase in the school drop-out rate, the causes of which include the difficulties which have emerged in education due to the existence of several tongues spoken as first languages on the islands and the use of Dutch as the language of education.

219. The Committee is also concerned at the existence of three minimum wage levels in each island, since such situations may give rise to or reflect situations of discrimination.

220. The Committee views with concern the problem of the acute shortage of housing and forced evictions, and the homelessness which affects primarily the island of St. Maarten. These problems are compounded by the influx of migrants, by cyclones, and by a sharp decline in the annual expenditure dedicated to housing by the Government.

#### E. Suggestions and recommendations

221. The Committee recommends that the extent to which the provisions of the Covenant might be given direct applicability within the Netherlands Antilles be reassessed.

222. The Committee recommends that the Government intensify its efforts to guarantee effective equality between men and women, particularly with regard to equal access to employment and equal wages for work of equal value.

223. The Committee encourages the Government, in addressing the school drop-out problem, to expedite the implementation of its programme for education in the students' mother tongues along with the progressive introduction of Dutch. It also recommends the urgent adoption of a plan of action to move towards the provision of free compulsory primary education as required by article 14 of the Covenant.

224. The Committee urges the Government to promulgate legislation for the standardization of minimum wages throughout the islands.

225. The Committee encourages the Government to carry out its intention to withdraw its reservation to the Covenant concerning the right to strike.

226. The Committee encourages the governments of all three parts of the Kingdom of the Netherlands to circulate these concluding observations as widely as possible among all sectors of

society.