



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination Eighty-seventh session

Summary record of the 2375th meeting

Held at the Palais des Nations, Geneva, on Tuesday, 18 August 2015, at 3 p.m.

Chairperson: Mr. Calí Tzay

later: Mr. Avtonomov (Vice-Chairperson)

later: Mr. Calí Tzay

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The meeting was called to order at 3.10 p.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention *(continued)*

Combined nineteenth to twenty-first periodic reports of the Netherlands (CERD/C/NLD/19-21; CERD/C/NLD/Q/19-21)

1. *At the invitation of the Chairperson, the delegation of the Netherlands took places at the Committee table.*

2. **Ms. van Rijn** (Netherlands), introducing the combined periodic reports of the Netherlands (CERD/C/NLD/19-21), said that the arrival of a significant number of migrants since the 1960s had led to profound changes in Dutch society which had given rise to fear and alienation in some segments of the population and had sparked a fierce debate on integration and immigration. Political leaders and the wider society increasingly spoke out against acts of intolerance and discrimination, and perpetrators of discrimination were brought to justice wherever possible, including in the case of the Dutch politician, Geert Wilders, who had incited his supporters to chant racist statements during a political rally. Nevertheless, despite positive steps towards the eradication of racism and racial discrimination, developments in the Middle East, such as the rise of the Islamic State and Israeli-Palestinian conflict, had had an impact on Dutch society and tension and intolerance between and within different groups in Dutch society seemed to be increasing.

3. The Government acknowledged that direct and indirect forms of racial discrimination were a major concern and remained committed to combating racism and intolerance by means of alternative dispute resolution mechanisms, backed up by criminal law and prosecutions where appropriate. Hate crimes and hate speech were given high priority under the national security agenda and were not subject to out-of-court settlements. The Government had commissioned research on the status of ethnic minorities and continued to implement targeted policy measures to address the underlying obstacles to equality and tolerance. It also attached great importance to dialogue and consultation with civil society and migrant associations, including round tables to discuss issues such as Islamophobia, anti-Semitism and the cultural tradition of Black Pete, and strove to set the example as an employer, purchaser and service provider through its diversity charter. Steps had also been taken to prevent racial profiling by police, and regional anti-discrimination services had been established across the country. The Government intended to launch a new nationwide anti-discrimination campaign in September 2015 to increase the public's awareness of racial discrimination and had introduced an action plan to eliminate labour market discrimination in 2014.

4. **Ms. Croes** (Netherlands) said that Aruban society had been formed by waves of migration which had resulted in a diverse and tolerant society. The population consisted of 96 different nationalities and intercultural marriages were common. All ethnic groups had access to the education system, which had been designed to promote the successful integration of migrant children into Aruban society. A large number of foreign-born students had enrolled at the national university over recent years and migrants had equal access to the labour market and health-care system. The Government of Aruba would continue to work towards maintaining and enhancing social cohesion and had broadened the prohibition of racial discrimination under the Criminal Code in 2012 in order to offer more extensive protection against acts of racism. The courts had also been granted the power to review the constitutionality of laws and declare them non-applicable if they were deemed to be contrary to the principle of equality enshrined in the Constitution.

5. **Ms. Daal** (Netherlands) said that Sint Maarten was one of the most ethnically, racially and culturally diverse islands in the Caribbean region. The newly formed Justice Academy offered training for police officers and civil servants on issues affecting the various ethnic communities and on procedures for identifying and tackling racial and other societal problems. Anti-discrimination courses had also been provided to immigration officials to curb racial and other forms of discrimination. In addition, the national school curriculum had been designed to promote a sense of national unity and tolerance, and students at all levels were taught to respect different cultures, customs and traditions.

6. **Mr. Diaconu** (Country Rapporteur), noting the lack of information in the combined report concerning Aruba, Curaçao and Sint Maarten contained, said that he would like a detailed overview of the situation facing ethnic minorities in those countries. Recalling that local authorities were responsible for the implementation of national anti-discrimination policies, he wished to know what measures had been taken to address the lack of expertise and resources of local councils and ensure that they were in a position to apply the provisions of the Convention effectively. Information on steps taken to raise the public's awareness of the procedures for reporting acts of racial discrimination to the local authorities would also be welcome. Given that 10 per cent of the population consisted of foreign-born nationals, he also wished to know whether migrants could apply for naturalization and whether children of migrant parents born in the Netherlands acquired Dutch nationality. Moreover, he wished to know what specific measures had been taken to promote the integration of migrants into society and facilitate social cohesion. Had the State party considered adopting special temporary measures to ensure the adequate development and protection of particularly vulnerable ethnic groups for the purpose of guaranteeing their access to social, economic and cultural rights?

7. As for Aruba, Curaçao and Sint Maarten, he asked whether indigenous peoples, such as the Arawak tribe, still inhabited the islands and, if so, whether policies had been implemented in those countries to uphold the rights of such peoples. Information on the anti-discrimination measures in place for the Afro-descendant populations would also be welcome.

8. He wondered why the Constitution, the Equal Treatment Act and the Criminal Code banned discrimination on the basis of race but no mention was made of ethnic origin, descent or colour, even though those types of discrimination were generally specified in numerous European and international instruments that were binding on the State party. He asked whether the relevant authorities were aware of a 2010 Supreme Court decision according to which the notion of race should be interpreted in the light of article 1 of the Convention. The Committee had information that prosecutors were citing racial motivation as an aggravating circumstance in criminal proceedings even though not provided for in the Criminal Code; would the Criminal Code be amended in that regard? The Equal Treatment Act (1994) prohibited unlawful distinctions on grounds of nationality. He wondered whether nationality meant citizenship or ethnic origin and whether "unlawful distinctions" meant a distinction prohibited in another law; were there any such laws?

9. The onus seemed to be on victims of discrimination to appeal to the courts to have their rights respected, but the Committee had reports that victims were reluctant to go to court because of the way the police and prosecutors dealt with such complaints and the difficulty of proving racial discrimination. He wondered if the State party intended to address that situation. Complaints could also be submitted under civil and administrative procedures with a view to seeking damages; if the complainant pleaded discrimination the burden of proof could be shifted. More information on such procedures and the number of cases where damages were awarded

would be welcome. The Ombudsman's authority was limited to the activities of the State administration, including the State and local police, but local authorities were currently responsible for the implementation of State policies against discrimination. He wondered if the powers of the Ombudsman would be broadened to include all State authorities.

10. In its most recent progress report to Parliament on discrimination the Government had recognized the need to increase efforts to combat discrimination and unequal treatment but the Committee had reports that the causes of discrimination were not being addressed and no preventive measures, for example education and awareness-raising in the public and private spheres, had been adopted. Municipalities were not fully implementing anti-discrimination policies, Government policies relating to cultural requirements for citizenship and asylum seekers contributed to stereotyping and anti-Semitic and anti-Islamic activity had increased. While acknowledging the State party's position on the importance of freedom of expression, he asked how the Government intended to combat discrimination and intolerance based on ethnic origin and religion.

11. The Committee would like more statistics on the situation of the different groups making up the population, for example, on political representation and, access to education, health care, culture, employment, housing and public places. The Committee had reports that unemployment for non-national groups was three times the national average, and that even highly qualified graduates from minority groups had difficulty finding employment and that non-Western and other immigrants had difficulty finding housing and were subject to harassment in schools. He wondered when the State party would adopt measures to prevent and eliminate such situations, for example in the context of a national action plan to combat racial discrimination.

12. He enquired whether the State party accepted the notion of cultural diversity; according to some reports the State party was moving towards cultural as well as socio-economic integration, asking immigrants to give up their culture. In that context he expressed concern that the Civic Integration Act and Civic Integration (Preparation Abroad) Act required applicants to pay the costs of the process, including the civic integration courses, although they could apply for a loan for that purpose, and applicants requiring a visa for Netherlands had to apply and prepare from their home country. A recent European Court of Justice decision had found that that procedure was too expensive and did not take into account the situation of the applicants; he wondered what measures would be adopted in the light of that decision, and when.

13. Netherlands had a significant population of African descent, most of them citizens. He underlined the State party's obligation to avoid discrimination against Afro-descendants and find a balance between the country's cultural traditions and the human dignity and rights of such persons. In that context he deplored the Dutch tradition of Black Pete, Saint Nicholas's companion, and recalled that practices contrary to human rights could not be justified on the grounds that they were cultural traditions.

14. Migrants and refugees, in particular women, were discriminated against in such areas as employment, health care and housing. There seemed to be little support for their integration into society, although Government policy seemed to be changing, especially with regard to employment. He was concerned at reports of discrimination against minority children, including migrants and asylum seekers, who, for example, had difficulty enrolling in school. The Committee on the Rights of the Child had recommended that the best interests of the child should be the primary consideration in asylum cases involving children and undocumented children arriving in the Netherlands. He noted problems in the school system in Aruba, Curaçao and Sint Maarten relating to study of native languages and local history.

15. With regard to the situation of the Roma and Sinti, there seemed to be no specific policy to improve their position. The National Roma Integration Strategy included generic policies and referred to the problems caused by the Roma, but not the discrimination they faced, and contained no specific measures. The Netherlands Institute for Human Rights had itself underscored the need for measures to help Roma find employment, combat discrimination in education and address problems of civil registration and statelessness. More must be done to assist Roma travellers as well, guaranteeing them campsites so that they might continue their traditional lifestyle. He asked what measures had been adopted in that regard and how many such travellers there were.

16. He expressed concern at reports of activities of Dutch companies in developing countries that were harmful to the environment and had a negative effect on the human rights of local populations. He asked if the State party envisaged the adoption of measures to address that situation.

17. According to information received by the Committee, the State party seemed reluctant to address the problem of racial and ethnic discrimination. He therefore called for strengthened training of police, prosecutors and judges on human rights and racial discrimination and for awareness-raising campaigns for the general public. Human rights should also be studied in the schools. With regard to the latter, he expressed concern about reports of ethnic segregation in the schools and the placement of a disproportionate number of students from ethnic groups in special education classes. He invited the delegation to comment on those issues.

18. More information would be welcome on whether the State party felt an obligation to consult representatives of minority groups in order to identify their concerns and adopt adequate policies and measures to address those concerns. If so, how would such consultations take place given that the National Ethnic Minorities Consultative Committee had been disbanded and minority organizations no longer received State financial support? He wondered if the State party envisaged some other form of public dialogue with minority groups, including those of African descent, or did the State party not consider them to be a part of Dutch civil society?

19. **Mr. Avtonomov** noted the large number of persons of Surinamese origin living in the State party and wondered why there seemed to be so little information in the report about the situation of that group, including Surinamese of indigenous, Maroon, Indian or Javanese origin. He asked, for example, if any measures had been implemented to help those groups maintain their languages. He wondered whether persons of Surinamese origin who had been living elsewhere in Europe had difficulty integrating into Dutch society after settling in the Netherlands. He had information according to which 17 per cent of Surinamese felt they were discriminated against, as did 15 per cent of persons from the Antilles and 26 per cent of persons from North Africa; he wondered if the delegation wished to comment.

20. With regard to the former Netherlands Antilles, he noted the high rate of enrolment in primary school but asked what measures had been adopted to guarantee access for all to secondary and higher education. He also wondered if any measures were envisaged to increase the number of native-born judges and lawyers. Lastly, he requested more information on the situation of stateless people in the former Netherlands Antilles as well as the Netherlands itself.

21. **Mr. Murillo Martínez** noted the State party's laudable efforts to combat anti-Semitism and commemorate the Holocaust. He felt however that more should be done to combat discrimination against other groups which, in fact, represented a larger proportion of the population but were generally underrepresented in positions of authority, including Parliament. Persons of African descent, for example, were not

well-represented in the political, public and private spheres but made up a disproportionate percentage of the prison population and had lower education levels and shorter lifespans than the general population. Recalling that the United Nations International Decade for People of African Descent had just begun, he suggested that the State party should adopt a more balanced approach in its efforts to eliminate discrimination.

22. Persons of African descent were often the victims of structural racism and discrimination. He was therefore concerned by the Netherlands Christmas tradition of Black Pete, the servant of Saint Nicholas. He recalled the Committee's position that practices like female genital mutilation, early or forced marriage, or denying women the right to work and placing limits on their freedom were violations of human dignity and could not be excused or tolerated because they were cultural traditions. The Netherlands itself was, for example, a leader in the recognition of same-sex relationships which some other States refused to allow on the basis of tradition or religious doctrine. Other countries had abandoned traditions of Saint Nicholas having a black companion. The Netherlands could no longer tolerate such an obviously discriminatory tradition as Black Pete, which was an affront to human dignity and a vestige of the era of slavery. He deplored attempts by some politicians to exploit the Black Pete controversy to stir up anti-immigrant sentiment and called on the State party to put an end to that hateful practice. He wondered if the delegation had any comment and further called on the State party to devote greater attention to combating discrimination in general and against persons of African descent in particular.

23. **Mr. Lindgren Alves** requested further information on the measures taken under the Civic Integration Act to provide preparation for immigrants who were due to arrive in the Netherlands for the purposes of family reunification. He asked what form that preparation would take. He had been concerned to learn that funding for civic integration in the State party had been cut, and the costs of integration courses must be borne by migrants themselves, which was often not practical given their financial situation. He sought clarification on who was responsible for addressing discrimination in the workplace. Lastly, he had been interested to learn about the doctrine for establishing whether an utterance fell into the category of hate speech, which took account of the context in which the utterance had been delivered. Care must be taken, however, to avoid playing into the hands of those who used racism to win votes.

24. **Ms. Hohoueto** asked how freedom of expression was addressed in the State party, and in particular whether any opinion whatsoever could be expressed under the guise of public debate, including shocking or offensive statements. She wondered what measures were in place to ensure that hate speech expressed during public debate would be subject to investigation. It seemed that the procedures in place to establish whether an utterance constituted a criminal offence were particularly complex. She wondered whether groups or individuals who were targeted by hate speech in the course of public debate were able to bring their cases before the courts.

25. Given that anti-discrimination measures in schools were organized at the local level, she wished to know how disparities were avoided between the approaches taken in different areas, and how non-discrimination was guaranteed in schools with many minority students. She requested information on access to justice in the Netherlands overseas territories, in particular on what measures were in place to overcome geographic and financial obstacles to such access. Lastly, she wished to know how anti-discrimination services functioned.

26. *Mr. Avtonomov (Vice-Chairperson) took the Chair.*

27. **Mr. Kut** commended the State party's efforts to improve procedures for reporting incidents of discrimination and he requested further information on the mobile app that had been developed to encourage reporting. On integration, while he agreed that immigrants should be prepared in their home country, he was concerned that immigrants from some countries were exempt from that preparation and the related examination. Such differential treatment was, in itself, discriminatory. With regard to racism, xenophobia and intolerance in political discourse, he said that the State party had not provided a sufficient response to concerns previously expressed by the Committee. While he agreed that ideas considered repugnant must be challenged through argument, a fully democratic public debate could only take place when all participants were on an equal footing. Any asymmetry of power between participants would skew the discussion, and an exchange of racial insults could not be considered a healthy debate.

28. He wished to know how a balance was struck between upholding the constitutional right to freedom of expression and protecting victims of racism. He was particularly concerned about apparent patterns with regard to the outcome of racial discrimination cases: cases relating to anti-Semitism appeared to result in convictions, while others seemed to result in acquittals on grounds of freedom of expression. On the basis of those patterns, it seemed likely that the new case against Geert Wilders would culminate in an acquittal.

29. Lastly, turning to the issue of the Christmas tradition of Black Pete, he wished to know why the State party had chosen not to solve a problem that offended so many members of Dutch society. He was concerned that the Government was not considering the potential long-term effects of the Black Pete tradition on the development of prejudices and damage to the sense of equality felt among the population.

30. *Mr. Cali Tzay (Chairperson) resumed the Chair.*

31. **Mr. Kemal** asked what was being done to ensure that ethnicity was not a decisive factor in police stop and search operations. He wondered whether any measures were being taken to provide education and awareness-raising in that regard for law enforcement officers. Given that the Netherlands had a wealthy, productive society with wide-ranging employment opportunities in the agriculture sector in particular, he wondered why ethnic minorities faced discrimination in employment. Such an attitude was counterproductive, since those who could not find employment would become a burden on the State. The Committee had received information to the effect that undocumented migrants' and asylum seekers' basic needs were not met. He asked what was being done to rectify that and to ensure that their freedom was respected.

32. **Ms. January-Bardill**, noting that racism changed form over time, said she was concerned about increasing feelings of fear and alienation in some quarters of Dutch society. The process of integration seemed to be ongoing; she wished to know at what point minorities felt truly integrated. While she commended the intention to elaborate a new action plan against discrimination, she wished to know whether there was an ultimate vision that would inform the new plan. She wondered how the State party ensured that local authorities, which were entrusted with jurisdiction for cases of racial discrimination and integration issues, were agile enough to adapt to the continuously changing migration situation and resulting changes in racism patterns, and how such continuous change would be integrated into the new action plan. Lastly, she urged the State party to take measures to address the Black Pete issue, which would be a fitting gesture in the fiftieth year since the adoption of the International Convention on the Elimination of All Forms of Racial Discrimination and during the

International Decade for People of African Descent, to discourage that objectionable cultural tradition.

33. **Ms. Crickley** asked what measures the State party thought it would be feasible to take before the end of 2015 to address disparities of power, tackle ethnic stereotyping and ensure that everyone in the Netherlands felt fully included and able to participate in society, particularly in the context of the Black Pete tradition. In view of the fact that the State party was considering developing a new anti-discrimination plan, she asked how it intended to ensure an appropriate focus on racism and racial discrimination, how relevant groups would be consulted on its development and how the plan would inform other activities. How did the State party tackle the double discrimination faced by women from ethnic minority groups, particularly in the area of employment? Had it considered ratifying the ILO Domestic Workers Convention, 2011 (No. 189), which would be a direct means of addressing the issue? Expressing the concern that fewer and fewer sites were available for the use of Roma, Sinti and Travellers and the view that the State party should focus less on integration and more on anti-exclusion measures, she asked what specific targets were in place to ensure that the way of life of those groups was preserved and their rights upheld.

34. **Mr. Khalaf** enquired about the interplay between freedom of expression and the prohibition of discrimination enshrined in the State party's Constitution. The expression of religious convictions was one of the three contexts to be taken into account in judging whether a particular utterance constituted a criminal act. Did that effectively mean that racial discrimination and racial insults were permissible if they formed part of the expression of religious convictions and would not be prosecuted in such cases? He also asked what measures were taken to enable refugees to be accommodated in areas where they could preserve and maintain their own culture.

35. **Mr. Yeung Sik Yuen**, observing that the State party appeared to have shifted much of the burden of integration onto the shoulders of individual migrants, enquired about the cost of compulsory courses provided by private organizations that migrants must complete in order to apply for nationality through naturalization. Did the fact that migrants from certain countries were exempt from tests on their knowledge of Dutch language and society constitute discrimination? With regard to the Black Pete tradition, he echoed the view that, unless it could be altered to remove any discriminatory implications, it had run its cultural course and should be abandoned.

36. **Mr. Bossuyt**, outlining the historical context of the Black Pete tradition, which predated the transatlantic slave trade, expressed the strong view that the tradition was not racist in origin and that to portray it as such would be damaging to the credibility of the United Nations and its human rights treaty bodies, engendering more racism and racial discrimination than it would prevent.

37. **Mr. Vázquez** said that the State party's efforts to address racism and racial discrimination were largely reactive and should be coupled with better preventive measures, particularly in the area of employment. He requested further information in that regard. The State party's generic approach to anti-discrimination did not preclude targeted measures where necessary, but were the measures being taken sufficient? Moreover, were any being taken with respect to the Roma, Sinti and Traveller populations? It was troubling that, despite notable progress having been achieved, funding to tackle issues affecting those groups had been withdrawn. Information received from civil society suggested that the State party's integration strategy effectively made protection for Roma interests conditional upon their refraining from criminal activity, which was a matter of concern, inasmuch as everyone was expected to observe the law.

38. While the State party's commitment to protecting freedom of expression was commendable, there was some concern that, in practice, the freedom was upheld in a discriminatory manner that might even infringe on the right to freedom of association. He sought information on the Dutch term for members of the Afro-descendent community, which apparently translated literally as "not from here" and could reflect a worrying attitude. Lastly, with regard to the Black Pete tradition, he sought the State party's views concerning the November 2014 decision of the Netherlands Institute for Human Rights to the effect that, even though the festival and character were not intended to be discriminatory, they had that effect and should be altered to remove all negative stereotypes.

39. **The Chairperson**, speaking in his capacity as a member of the Committee, asked whether any indigenous peoples existed or had existed in the Netherlands overseas territories and what had become of them. The tradition of Black Pete was evidently a long-standing one, but the Committee had consistently recommended to States parties that traditions be changed if they were racist in effect, despite their intentions.

The meeting rose at 5.55 p.m.