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EUROPEAN SOCIAL CHARTER

9th National Report on the implementation of
the European Social Charter

submitted by

**THE GOVERNMENT OF NETHERLANDS
ANTILLES**

(Articles 5 and 6
for the period 01/01/2005 – 31/12/2008)

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EUROPEAN SOCIAL CHARTER

9th Report of the Government of the Netherlands Antilles on the implementation of article 5 and 6 of the European Social Charter for the period 2007-2009.

Directorate of Labour
Curaçao, October 2009

Content of this 9th Report of the Government of the Netherlands Antilles on the articles 5 and 6 of the Charter

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1. Report of the Government of the Netherlands Antilles

For the period 1st of January 2007 to 30th of June 2009 made by the **Government of the Netherlands Antilles** in accordance with Article 21 of the European Social Charter, on the measures taken to give effect to the accepted provisions of the European Social Charter, the instrument of ratification which was deposited on 22 May 1980.

In accordance with article 23 of the European Social Charter, copies of this report have been communicated to:

The employers' organisation:

V.B.C.

Curaçao Business Association

The workers' organisations:

C.G.T.C.

Central General of Curaçao Workers

S.S.K.

Central of Curaçao Trade Unions

A.F.B.W.

General Federation of Bonaire Workers

FEDEBON

Federation of Bonaire Workers

W.I.F.O.L.

Windward Islands Federation of Labour

U.F.A.

United Federation of the Windward Antilles

2. Preface

This document contains the reports regarding articles 5 and 6 of the European Social Charter for the period January 2007 till June 2009 from the Government of the Netherlands Antilles.

It is important to mention that the current governmental developments are still on going and that all resources, both human and financial, are made available into obtaining this new constitutional status. To provide an overview of the current situation in the Netherlands Antilles the following issues are elaborated upon, in paragraph 3 and 4, of this report:

- the economic situation in the Netherlands Antilles (paragraph 3);
- the ongoing process of social dialogue (paragraph 4)

In paragraph 5 a report on the articles 5 and 6 of the European Social Charter is presented. To conclude a short summary is provided in paragraph 6.

3. The economic developments in the Netherlands Antilles

To date, Caribbean countries have not felt the full impact of the downturn in the global economy. The growth of the Netherlands Antillean economy decelerated to 2.0% in 2008, down from 3.8% in 2007. This less favorable performance can be attributed to slowing domestic activities in both the private and public sectors. Annual inflation soared to 6.3% in 2008, the highest since 2000. Despite a slowdown in economic growth, the employment situation continued to improve, resulting in a lower jobless rate of 9.7% in 2008, down from 11.5% in 2007.

On the expenditure side, the contribution of domestic demand dampened real GDP in 2008. Private demand slowed, as both consumer spending and private investments expanded at a reduced pace. The soaring consumer price inflation put perceptible strains on consumer spending and investments. The rise in food and energy prices tightened companies' profits and consumers' purchasing power. In addition, the lower private consumption growth was reflected by a decline in personal credit. Public demand posted a decline, generated by a drop in public consumption as well as public investment in real terms. As opposed to 2007, the external component had a less negative influence on real GDP growth because exports grew at a faster pace, the result of gains in bunker sales, free-zone, and tourism activities. Exports have relatively high import content; hence, the considerable import growth was backed by positive developments in construction, the free-zone, and tourism along with the soaring food and oil prices. Consumer price inflation rose considerably in 2008 as the inflation rate jumped to 6.3%, fueled by rising world oil and food prices¹.

Table 1 : macro-economic facts Netherlands Antilles

	2002	2003	2004	2005	2006	2007	2008
GDP (mill. NAf)	5,200	5,370	5,505	5,760	6,121	6,465	7,100
Real growth GDP	0.4%	1.7%	1.2%	1.1%	2.3%	3.8%	2.0%
Inflation	0.4%	1.6%	1.6%	3.7%	2.8%	2.8%	6.3%
Unemployment	14.6%	15.3%	15.1%	16.2%	13.2%	11.5%	9.7%

Source: Central Bank of the Netherlands Antilles (2008)

4. Labour Administration and Labour Force Development Plan

For some years now, the Committee of Experts of the International Labour Organization has brought some labour issues which are not in compliance with ratified conventions to the attention of the Antillean government. Inspired by the aforementioned the Antillean government asked the ILO to support and to provide the framework for achieving the principles laid down in the Decent Work Programme Declaration of 2006.

¹ Source: Central Bank of the Netherlands Antilles (2008)

After an intensive study of the national situation in November 2008, the ILO offered its professional technical assistance. This technical assistance consists of the deliverance of high level expertise and know how to realize a setup for a new labour administration. This new labour administration will consist of highly trained labour inspection officers and solid based national labour laws in accordance with the ILO Conventions no. 150 (labour administration, 1978) and no. 81 (labour inspection, 1947).

The first recommendation of the study was to translate the most important national labour regulations and ordinances in order for the ILO experts in Barbados and Geneva to assist in formulating the necessary adaptations on other labour terrains such as occupational health and safety, gender equality and social insurance.

The Antillean government so far, attributes priority to the implementation of the Labour Force Development Plan for the island of Curaçao which covers these four areas:

- reduction of poverty;
- development of the population;
- economic stimulation;
- good governance;

So far, all constituents are giving their full cooperation to this huge project. Moreover, all stakeholders (employer's and employees organization and the Antillean government) involved expressed their commitment and their awareness that meeting international labour obligations, derived from the European Social Charter and the International Labour Organization, remains an ongoing and progressive process and that they will keep making their contribution to this end.

5. Articles 5 and 6 – the right to freedom of association and the right to collective bargaining

These rights, freely exercised, by workers and employers, without distinction, to organise for defending their interests has also known a progressive development. The development to be described below is partly based on legal adaptations (subparagraph a), new institutions (subparagraph b and c) and other renewed tools (subparagraph d). In this paragraph a short review is presented to clarify some of the achievements. Last but not least the figures of the Bureau of the Mediator of Curacao and the Windward Islands will be given in subparagraph e.

a. Social Economic Council.

Firstly, in the recent past the European Committee of Social Rights concluded on several occasions that the requirements for membership of the tripartite Socio-Economic Council were not in accordance with the Charter. This omission consisted in the requirement that members of the Council had to be resident of the Netherlands Antilles and also had to possess the Dutch nationality. The government agreed with the Committee on this point and has taken measures to adapt the charter of the Socio-Economic Council in such a way that membership is now open to all legal residents of the Netherlands Antilles and is no longer restricted to Dutch nationals (P.B. 2002 no. 117).

b. Tripartite Advisory Council for Education and the Labour market

Secondly, a further positive development, mentioned in earlier reports, can be highlighted again in this process. In 2003 a tripartite advisory council for education and the labour market was set up. Initially the statute of this council was in many ways a copy of the relevant articles of the charter of the Socio-economic council, also requiring the Dutch nationality for members. Luckily this could be prevented in time and the final charter has no membership requirements as to nationality.

c. Kolaborativo

Thirdly, due to the recession and the lack of economic growth of the Netherlands Antilles in 2003 efforts were made to face this situation. This joint effort resulted in the initiative to bring employers- and employees organization together in a discussion platform. Within this platform, parties, the representatives of the Antillean government included, discuss openly matters with the central idea to achieve consensus about issues on the labour market. This platform named the Kolaborativo occupies to this date a prominent place in decision-making in the governmental administration. Thus, all stakeholders involved achieve agreements through the process of social dialogue and tripartism as prescribed by the International Labour Organization.

One of the most important labourproject of this reporting year, the Labour Force Development Plan (already mentioned in paragraph 4), remains until now the most outstanding fruit of this platform.

d. Centraal Georganiseerd Overleg in Ambtenarenzaken (C.G.O.A)

In attaining full compliance with the principles on collective bargaining in the public sector a already existing tool has been renewed, especially to bring the national situation in conformity with ILO Convention 151 (labour relations, public sector, 1978). Diligent efforts were made by all parties to review the old composition of the organ named Centrale Commissie voor Georganiseerd Overleg in Ambtenarenzaken (Central Consultation for Civil Servants issues). The institution of this organ is laid down formerly in the articles 101-110 of the Landsverordening Materieel Ambtenarenrecht (Ordinance Material regulations on Civil Servants). Within this platform the legal position of the civil servant used to be discussed and the unions would assist the governmental decision-making by providing legal advices. Yet, as the legal status of an advice is not binding to parties, the government could deviate from this advice and change the labour conditions of the civil servants on unilateral basis. This situation was considered completely out of date and little satisfactory to all parties concerned.

In 1994 representatives of the civil servants unions and representatives of the government signed the so called Agreement of Ascension where the composition of this organ changed dramatically. The new C.G.O.A bears now another composition. This organ will make it possible for consultation and negotiation between civil workers' union representatives and the government to take place in equality. This equality goes this far that issues regarding the legal position of the civil servants are agreed upon. The government is no longer entitled to change the legal position of the civil servants on unilateral basis.

e. Bureau of the Mediator Curaçao

Last but not least, firstly the activities of the Bureau of the Mediator Curaçao from 2004 till 2008 are presented in table 2. In table 3 the activities of the Bureau of the Mediator of the Windward Island will be showed.

Table 2.

		2004	2005	2006	2007	2008
Strikes	Mediation²	130	210	185	171	239
	Private sector	11	12	29	23	19
	Public Sector	8	7	10	20	3
	Negotiated CLA	14	15	15	17	8
	Registered valid CLA³	89	108	91	93	93
Total dealt with	Disputes	11	11	19	19	28
	Recognitions of unions	6	13	5	3	4
	Referenda	1	4	3	1	0
	Voluntary recognition	1	2	1	1	4

Source: Bureau Mediator of the Netherlands Antilles

Over the past years the number of mediations held on Curacao show a decreasing trend. In 2008 however a considerable increase is suddenly detected in this number.

After the period between 2006 - 2007 a considerable increase in the number of strikes in the private and the public sector was signaled, but in 2008 a substantial decrease is shown. This decrease can be attributed even more to the public sector. As already mentioned under paragraph 5d the institution of the C.G.O.A bears greatly credit for this decrease.

In the past few years the number of negotiated Collective Labour Agreements (CLA) remained more or less unchanged, with an average number of 15 negotiated CLA's per year. In 2008 a sudden decrease in number of negotiated CLA's was registered. The number of disputes dealt with showed a considerable increase in comparison with the past 5 years. The number of recognitions has decreased steadily in the past 5 years. The number of referenda and voluntary recognitions remained relatively steady over the past 5 years.

² The word mediation denotes the amount of mediations sessions which took place.

³ Not all of these negotiated CLA's originates only from the indicated year, reason why these figures in the column does not represent a total amount

Activities Bureau Mediator of the Windward Islands

The number of mediations in negotiated CLA's fluctuates. Remarkably, in 2007 a peak of 126 followed by a strong decrease in 2008 to merely 31 CLA's. The number of considerations regarding referenda decreased to the amount of the years before 2007. The number of referenda remained similar to the level of the past years. The amount of the group labeled as different mediations has known a considerable growth.

Table 3

Year	Different Mediations	Referenda	Considerations regarding referenda	Negotiations CLA's
2004	4	4	11	17
2005	53	13	15	41
2006	85	10	18	48
2007	21	9	26	126
2008	46	12	14	31

Source: Bureau Mediator of the Windward Islands

As mentioned in earlier reports, the islands of Bonaire, Sint Eustatius and Saba (the BES islands), after the completion of the constitutional changes, will become public bodies of the Netherlands and the reporting obligation will be taken care of by the Dutch administration.

Anticipating this new status of the islands the Antillean government requests the Committee of Social Rights to defer its conclusion on the articles 5 and 6 until a later to be stipulated date.

6. Summary

As already mentioned in the Preface, the Netherlands Antilles are facing far reaching constitutional changes. It is important to mention that the current governmental developments are still going and that all resources, both human and financial, are put into obtaining this new constitutional status. This status will come into force before October 2010.

After this date the Netherlands Antilles will no longer exist. For the time remaining the Antillean government has set the following priorities:

- consolidation and continuation of the process of social dialogue through its most important vehicle the platform called the Kolaborativo;
- the implementation of the labour administration will be oficialized with the technical assistance of the International Labour Organization;
- increasing fuller compliance to the articles 5 and 6 of the European Charter through the functioning of the Bureau of Mediator and the new structure of the organ CGOA realizing collective bargaining in the public sector as well.

All stakeholders to the social dialogue agreed that a sustainable economic growth and social stability deserves to be the highest priorities.

Thus, the government is convinced that within a short period of time the fruits of the efforts to attain sustainable economic growth for each island and social stability trough a fuller compliance to collective bargaining and other worker's right, even after the constitutional changes, will be effective. In view of the upcoming constitutional changes the government requests the Committee of Social Rights to defer its conclusion till after the realization of the new constitutional status for the islands of Curacao and Sint Maarten, and as already stated in paragraph 4 sub e, this retrieval is especially valid for the so called BES islands (Bonaire, Sint Eustatius and Saba).