

Joint Parallel Report to the Sixth Periodic Report of the Netherlands on the
International Covenant on Economic, Social and Cultural Rights
(E/C.12/NLD/6)

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1. INTRODUCTION

This parallel report contains the comments of 20 Dutch NGOs and other civil society actors (hereinafter ‘the authors’) on the Sixth Periodic Report of the Kingdom of the Netherlands on the implementation of the Covenant. In particular, the report responds to the comments of the Government in its report, the CESCR Concluding Observations of 2010 and current present concerns on ICESCR-rights in the Netherlands.

This parallel report does not address *all* the provisions of the Covenant or *all* the comments made by the Dutch government in its report. Primarily, comments are based on the joint expertise of the submitting groups. This means that some issues may not be addressed (e.g. there are no submitting LGTB organizations in the present report). However, this thus not necessarily means that authors acquiesce or agree with certain developments or (in)actions of the Dutch government.

1.1. Temporal and Geographical Scope of the Report

This report covers the efforts of the Dutch government in respecting, protecting and fulfilling the ICESCR from November 2010 to September 2016, and in particular issues still pressing at the moment so that the dialogue with Committee is of immediate relevance to present day concerns. In addition, because most contributing NGO’s are primarily operating on the European territory of the Kingdom, this report mostly focuses on the implementation of the ICESCR in the European part of the Kingdom of the Netherlands by the Dutch government in the Hague. A few comments are included on ESCR enjoyment in the Caribbean parts of the Kingdom, and then particularly on the islands of Bonaire, St. Eustatius and Saba (BES-Islands) which were incorporated in 2010 as municipalities of the European part of the Kingdom, following new constitutional arrangements.

1.2. Length of the report

The authors are well aware that the present parallel report is very long. It is double the size of our 2009 Parallel Report. The reason is that ESCR have been under particular strain in the past 6 years, due to budget cuts, decentralisation of services access in the social domain, increased migration influxes, and polarisation in Dutch society leading to discrimination. These negative developments are reflected in this report.

1.3. General Concerns and Observations on the Reporting Period

A. Concerns with the general quality of the Sixth Periodic Report

A.1. Poor civil society consultation

In respect of the civil society consultation, the authors are dissatisfied with the efforts of the government to engage in meaningful consultations on the implementation of the ICESCR. and preparation of the government’s report. In March 2015, the Dutch section of the International Commission of Jurists (NJCM), and several trade unions, were sent the draft of the government’s report to scrutinize and provide written comments to (preferably in the English language).¹ The NJCM decided not to participate in this kind of consultation for several reasons which were communicated to the government. First, it finds that an independent NGO should not interfere in drafting official reports of the government. As such an NGO, the NJCM strives to influence the government’s policy, not the reporting on its implementation.

Second, the UN guidelines on reporting say that ‘States parties should see the process of preparing their reports for the treaty bodies (...) as an opportunity to take stock of the state of human rights protection within their jurisdiction for the purpose of policy planning and implementation.’² The role of civil society and other stakeholders is deemed to be of great importance to this process through monitoring human rights developments and contributing to their implementation on the national level. Therefore, the guidelines continue by stating that ‘The reporting process should encourage and facilitate, at the national level, public scrutiny of government policies and constructive engagement

¹ Sixth periodic report ICESCR, Kingdom of the Netherlands, February 2016, p. 6. (hereafter: Sixth Periodic Report 2016)

² Compilation of Guidelines on the Form and Content of Reports to be Submitted by States Parties to the International Human Rights Treaties, HRI/GEN/2/Rev.6, 3 June 2009, p. 5, par. 9.

with relevant actors of civil society conducted in a spirit of cooperation and mutual respect, with the aim of advancing the enjoyment by all of the rights protected by the relevant convention.³ This described (monitoring) process is a far more dynamic and substantial one than providing written feedback to a draft report.

In order for civil society consultation to prove its value, the government should make an effort to invite a broad range of NGOs that represent those persons and the groups most affected by the relevant treaty, and facilitate a constructive dialogue. According to the undersigning NGOs, the Dutch government failed to arrange for such an opportunity in the light of the Sixth periodic report on the ICESCR.

Recommendation 1:

The submitting parties request the Committee to urge the government to take the consultation of civil society prior to reporting seriously by:

- building and maintaining a database/network of relevant NGOs for the implementation of ICESCR, that can be consulted at any time;
- organizing one or more events for a dialogue with these organizations and other stakeholders prior to the drafting of the report – and preferably mid- reporting cycle as well;
- using this network to discuss the Concluding Observations and their follow up, including the role of civil society in that process.

A.2. Very Out-Dated Common Core Document and Failure to Use CESC Reporting Guidelines

With regard to the reporting of the Dutch government, the submitting parties deplore that the Government has not responded to the CESC Reporting Guidelines (2010) no. 42, and has still not updated its 20 year-old ‘Common Core Document’ for the treaty bodies.⁴ The document dates back to 1995. As a result important legislative developments and guarantees surrounding ICESCR are not updated, including developments that might prove retrogressive.

The submitting parties deplore that the Dutch Government has not submitted a report with regard to the state of the ICESCR implementation, instead has limited the report to responding to previous Concluding Observations of the Committee. Certainly, it is important to demonstrate how the Government has responded to these Observations (or not); however, in this manner, new issues that have arisen in the past period are not well covered. A good example are the regressive developments on ‘international cooperation’ as explained under C below (Question 9 in the ICESCR Reporting Guidelines).

Recommendation 2:

The submitting parties recommend the Committee to ask the government to:

- update their 20 year old (1998) Common Core Document, as an integral part of the reporting requirements;
- use the 2009 ICESCR Reporting Guidelines in preparing future reports, so that the Committee is given a full picture of important developments in the period under review.

B. Still a Lack of Direct Applicability of the ICESCR in the Dutch Courts

The CESC Reporting Guidelines of 2006⁵ and 2010,⁶ along with various other international human rights monitoring bodies,⁷ have already twice reprimanded the Netherlands for

³ Compilation of Guidelines on the Form and Content of Reports to be Submitted by States Parties to the International Human Rights Treaties, HRI/GEN/2/Rev.6, 3 June 2009, par. 10.

⁴ Core document forming part of the reports of the States Parties, UN Doc. HRI/CORE/1/Add.66, 15 December 1995.

⁵ Committee on Economic, Social and Cultural Rights, Concluding Observations of the Committee on Economic, Social and Cultural Rights (The Netherlands), UN Doc. E/C.12/NLD/CO/3 (Geneva: Thirty-seventh session of 6 – 24th November 2006), par. 11 and 19. (hereafter: CESC Reporting Guidelines 2006)

⁶ CESC Reporting Guidelines 2006, par. 6.

⁷ Report by the Commissioner for Human Rights Mr T. Hammarberg on his visit to the Netherlands 21 – 25 September 2008, CommDH (2009), (Strasbourg: 11th March, 2009), pp. 7-8, §13 and §14; Committee on the Rights of the Child, Concluding Observations of the Committee on the Rights of the Child: The Kingdom of the Netherlands, UN Doc. CRC/C/NLD/CO/3, (30th January 2009); Committee on the Elimination of Discrimination Against Women, Concluding Observations of the

barring persons on Dutch territory to call upon (the IC)ESCR to protect their socio-economic human rights in Dutch Courts. The basis for this is mostly that the Dutch Government traditionally considers ICESCR-rights mere policy prescriptions, and potentially too costly to be justiciable through individual claims.⁸ The Dutch Government nevertheless seems open to a different position on the matter, considering that it leaves the matter ultimately ‘up to the Dutch Courts’.⁹ However, Dutch judges have traditionally turned to prior government positions and case-law for guidance on the extent of justiciability of ESCR under the Dutch constitution. This leaves deprived citizens trapped in a Catch-22 (between Government and Judges who both look at each other for any progression on the matter). As a result some vulnerable groups and deprived persons have resorted to strained tactics for claiming some measure of socio-economic protection – e.g. by trying to claim rights directly before the non-binding collective complaints procedure of the European Committee on Social Rights, or by trying to bring ESCR-related violations under the limited scope of protection of the European Convention of Human Rights.¹⁰

The submitting parties deplore that the Dutch Government, and Dutch judges, continue to maintain very conservative positions on (IC)ESCR, which largely ignore, with a simple reference to the phrase that ‘socio-economic rights do not have direct effect’, all the significant normative developments that have taken place in international human rights law between 1970 and 2016, certainly on (IC)ESCR. Both government and courts show very little deference to, or perhaps even unawareness of, interpretations and clarifications given to (IC)ESCR by the CESCR and other treaty bodies, or UN Special Procedures, whether in terms of content of substantive rights in General Comments, the notion of core obligations or minimum essential levels, or the development of the tripartite obligation to ‘respect, protect and fulfil’ all human rights regardless of their civil/political or social/economic natures.¹¹ This backward position of the Dutch government on ESCR, despite its historically progressive stance on many other areas of international legal development, has been explicitly denounced by three UN Special Procedures, who have stated that the Dutch government takes an unjustifiable narrow position on various questions of modern international socio-economic human rights law recently.¹²

Recommendation 3:

The submitting parties recommend the Committee to urgently press the state party to remedy the poor position of ESCR in the domestic order, *inter alia* by:

- to secure adequate (IC)ESCR-protection for persons on Dutch territory, including by according direct effect to the ICESCR, again in line with advancing international legal guidance, insights and UN body interpretations in this respect.
- Ensuring by the next reporting period, as a matter of law, that persons in the Netherlands are able to meaningfully challenge (IC)ESCR violations in Dutch Courts.

C. Still no Ratification of the OP-ICESCR

In 2010, the authors of this report were very pleased with the quick signature of the Netherlands of the OP-ICESCR on 24th of September 2009.¹³ Regrettably, seven years later the OP-ICESCR still

Committee on Elimination of Discrimination Against Women (The Netherlands), CEDAW/C/NLD/CO/4 (Geneva: Thirty-seventh session of 15th January - 2nd February 2007), p. 3, §12.

⁸ J. Krommendijk (2015) XXXX. has studied the Dutch position on ICESCR-rights and his study reveals a very old-fashioned ‘Cold War’ type reasoning where it concerns these rights. The role of the ICESCR in domestic law- and decisionmaking, as well as case-law, seems exceptionally poor.

⁹ Replies by the Government of the Netherlands to the list of issues, UN Doc. E/C.12/NLD/Q/4-5/Add (14 October 2010), par. 9-12.

¹⁰ A good example is the ECHR case of *Hunde v. The Netherlands* (July 2016) in which the ECHR rejected a claim for basic living conditions under article 3 ECHR for homeless persons in an irregular situation undocumented migrants. These type of migrants were already granted protection through a complaint before the European Social Committee, but the outcome was ignored by the Dutch government and Courts for the ‘lack of direct effect’ and bindingness of decisions of this Committee.

¹¹ See for similar reprimands the letter of the SR on Extreme Poverty, SR on Housing and SR on Migration (25 February 2016), p. 7, 16-17.

¹² Letter by three UN Special Rapporteurs (SR on Extreme Poverty; SR on Migration; SR on Housing) to the Dutch Government, ref.no. NLD 1/2016 (25 February 2016), p. 16.

¹³ 64th Session of the United Nations General Assembly (New York: United Nations Headquarters, 24 September 2009).

remains unratified by the Dutch State. This lack of ratification already attracted much criticism in Dutch civil society and from members of Parliament (MPs).¹⁴

Explanations for non-ratification, for the past years, have been that the government ‘is studying the consequences’ of ratification.¹⁵ In December 2015, the Minister of Security and Justice replied to questions of the Parliament that:¹⁶

The individual complaints procedure is a relatively new task for the monitoring bodies [of OP-ICESCR, OP-CRPD and OP-CRC] and for this reason it is not easy to predict how they will deal with individual complaints on socio-economic matters. Moreover, these treaties touch many aspects of social life and contain a broad range of human rights. Assessing whether the Protocols will have consequences for the Netherlands, and if so, which, is therefore extremely complicated.. It is not easy, both legally and politically, to decide about ratification. It also needs to be taken into consideration that non-binding views of international monitoring bodies have legal effect in Dutch law. Potentially this is the reason why decision-making on ratification is more complicated than elsewhere.

In 2015, the government commissioned a study to chart the consequences of ratification of OP-ICESCR, which found no major obstacles.¹⁷ Nevertheless, on 5 July 2016, MPs again had to inquire with the Minister when the start of the ratification process could be expected. After admitting that the process is ‘indeed taking very long’, but that he is very busy, the Minister appeared to have backtracked on earlier promises to start ratification of OP-ICESCR this year, and instead promised to submit a mere letter with a ‘time schedule’ – to the dismay of MPs.¹⁸ Considering the pressure on the Dutch government to move forward on this issue, by both Dutch civil society and MPs, the submitting authors are highly disappointed about the progression so far and urge the government to step up its efforts.

Recommendation 4:

The submitting parties recommend the Committee to urge the Dutch government to ratify the OP-ICESCR within a reasonable and transparent time frame.

D. Still no Human Rights Education in Dutch Schools

Research shows that Dutch schools spend relatively little time on citizenship education¹⁹ and that Dutch students score relatively low in the area of political knowledge and social involvement compared to their peers in other countries.²⁰ Moreover, in 2015 research revealed that 20 % of teachers have difficulties discussing sensitive (social) issues in the classroom, such as those on fundamental rights and freedoms occurring after (terrorist) attacks. In both primary and secondary schools 1% of the teachers avoid discussing these topics completely.²¹ In a diverse society and with the (international) social and political issues our country is facing, these are worrying findings. Human Rights Education offers the perfect framework for these kind of challenges.

Despite the proven benefits²² and the governments obligations under international law there is still little to no mention of human rights in Dutch primary and secondary education. Human rights are only addressed in reference to international conflicts, agreements and cooperation. This is a too narrow

¹⁴ Eg. TK 34300-VI nr. N (15 December 2015), <https://zoek.officielebekendmakingen.nl/kst-34300-VI-N-n1.pdf>;

Handelingen TK 33828 nr. 14, Motion of MP Voortman about ‘problems with ratification of Protocols’ (9 September 2015).

¹⁵ Eg Handelingen 2015-2016, Report of General Discussions, TK 33 826, nr 12 (6 August 2015).

¹⁶ TK 34300-VI nr. N (15 December 2015), p. 26; <https://zoek.officielebekendmakingen.nl/kst-34300-VI-N-n1.pdf>.

¹⁷ A. Dibbets, A. Buyse & A. Timmer, Report: ‘The Legal Implications of Ratification of the ICESCR by the Netherlands’, commissioned by the Ministry of Education, Culture and Science, SIM/Utrecht University, February 2014.

¹⁸ Handelingen EK 2015-2016, TK 34485-VI (5 July 2016).

¹⁹ Maslowski, Naayer, Isac, Oonk & Van der Werf, ‘Civil Competences of Students in first years of Higher Education’, University of Groningen 2010.

²⁰ Schulz, Ainley, Fraillon, Kerr & Losito, ‘Initial findings from the IEA International civic and citizenship education study’, Amsterdam, 2010; Wagenaar, Van der Schoot & Hemker, ‘Assessment active citizenship and social integration, CITO 2011.

²¹ Report: ‘Social themes in class, how hard it is?’, Research conducted on request of the Ministry of Education, ITS, Radboud University Nijmegen June 2015.

²² Becoming a human rights friendly school. A guide for schools around the world, Amnesty International 2012, p. 4.

perception of human rights.²³ In reaction to the (international) call for human rights education, the Dutch government simply refers to the autonomy of schools. However important this may be, it cannot possibly conflict with learning about fundamental rights. Moreover, the government does instruct schools to teach and implement policies on a number of different topics such as bullying, obesity, sexual abuse and sexual orientation. Human rights education cannot be the exception to this rule. Instead, as the Dutch Platform on Human Rights Education has repeatedly stated: human rights education should provide for a compass (context or perspective) for education of pressing topics.²⁴

In the National Action Plan on Human Rights (hereafter: NAP) the government announced that the Ministry of Education would consider the proposal that human and children's rights be mentioned explicitly in the goals of education defined for primary and secondary education.²⁵ This was outsourced to an expert committee: Platform Onderwijs 2032,²⁶ which also considered the role of schools in teaching citizenship. In its final advice, the committee recommended the State to describe concretely what the core of civic education should be. The committee stated that civic education should consist of four elements, among which: 'the meaning of human rights and children's rights for their (mutual) daily life: knowledge of the functioning of human rights and their reciprocity: they are valid for everyone, and that is only possible when people respect each other's rights; standing up for the adherence of human rights.' The submitting parties welcome the advice of Platform Onderwijs 2032.

Recommendation 5:

The submitting parties recommend the Committee to ask the Government:

- what the status of the advice of Platform Onderwijs 2032 is?

The submitting parties recommend the Committee to urge the Government to:

- recognize that human rights education is an inherent part of civic education;
- subject policies in this field to demands of article 13 ICESCR, 29 CRC and 24 CRPD;
- make sure that through the new curriculum human and children's rights become an integral part of civic education in the Netherlands, reaching all primary and secondary school children.

E. National Action Plan (NAP) on Human Rights

The submitting parties welcome the adoption of the first ever Netherland's National Action Plan on Human Rights (hereafter: NAP) which has been adopted by the Dutch government in December 2013, and covered the period 2012-2015.²⁷ Albeit the initiative was welcomed, the submitting parties regret that the consultation process, the outcome document, and - as a result - the political implementation, fell short of the requirements set out by the UN Handbook on Human Rights Plans of Action. Among other things, it lacked an in-depth, broad consultation with all the relevant sectors of society: it appears that only three organization have been contacted instead of a much broader coalition given the wide range of rights protected by the ICESCR.²⁸ The government settled for the mere description of the state of affairs of human rights in the Netherlands. Therefore the NAP was not able

²³ Attainment target 47 for middle schools. There is no further mention of the meaning and importance of human rights for (people in) the Netherlands. Neither is there any mention of the aims of education as laid down in article 13 ICESCR and article 29 CRC. In the current regulations on civic education (Toezichtkader Actief Burgerschap), basic values are presented as optional while human rights are not mentioned.

²⁴ Speech by Kirsja Oudshoorn, Amnesty International Nederland and Chair of the Platform for Human Rights Education, during the Human Rights Dialogue on HRE in Parliament, 'Education in Human Rights in the Netherlands: too many direction, no compass', (30 March 2015); Letter from the Platform on Human Rights Education to Parliament, 'Input for round table Commission Education, Culture and Science about Citizenship, (21 September 2015).

²⁵ National Action Plan on Human Rights, 'The protection and promotion of human rights within the Netherlands', December 2013 ([English translation](#), February 2014), p. 57; See also Sixth Periodic Report 2016, par. 136.

²⁶ Ministry of Education, Letter to Parliament, 'Future-orientated basis of Education', 17 November 2014.

²⁷ National Action Plan on Human Rights, 'The protection and promotion of human rights within the Netherlands', December 2013 (English translation February 2014): <https://www.government.nl/documents/policy-notes/2014/03/19/national-action-plan-on-human-rights>.

²⁸ OHCHR, Handbook on National Human Rights Plans of Action, 29 August 2002, p. 13-14: <http://www.ohchr.org/Documents/Publications/training10en.pdf>.

to effectively trigger activities in relation to the NAP and was deprived of its credibility and effectiveness.

An evaluation of the NAP, which was promised by the responsible Minister, has not taken place yet, save for the interim review.²⁹ In the light of the upcoming elections (March 2017) there is no mention of a second NAP on Human Rights to set out objectives for the years to come. We believe that this decision should not depend on the outcome of elections, for every administration is equally responsible for the implementation and protection of human rights.

Recommendation 6:

The submitting parties recommend the Committee:

- to ask when and how the Government intends to evaluate the creation and implementation of the first NAP on Human Rights;
- to urge the Government to start the process of drafting a new NAP on Human Rights.

F. Positive development: Establishment of National Institute for Human Rights according to Paris Principles

On a more positive note, the authors of this report are pleased with the decision of the Dutch government to establish a National Institute for Human Rights (College voor Rechten van de Mens (Crm)) according to the Paris Principles.³⁰ The Institute has received the A-status in May 2014. Since its establishment in 2012 the Institute has advocated for various ESCR, such as discrimination in the workspace, human rights on a municipal level and the ratification and implementation of the CRPD. It has an important role to play in ‘bringing human rights home’,³¹ i.e. putting national issues in a human rights perspective. Recognizing socio-economic issues as human rights, both by the people and authorities, is an important step in their protection and implementation. “Nevertheless, in terms of the functioning of the new Institute, authors regret that the substantial increase in tasks attributed to the Equal Treatment Commission, and transferred to the new Institute, was not matched by a similar amount of budget to cope with these tasks.

G. Positive development: ratification of the CRPD

The submitting parties are also pleased that the government has ratified the Convention on the rights of people with disabilities on 14th of June 2016. The convention entered into effect on 14 July 2016. We deplore that the government has not yet signed the OP-CRPD or given any timeframe within which the issue will be considered.³² We welcome the government’s announcement to have a positive stand on the issue.³³

Recommendation 7:

The submitting parties recommend the Committee to urge the Dutch government to sign and ratify the OP-CRPD within a reasonable and transparent time frame.

²⁹ Report of the Parliamentary debate on Human Rights in the Netherlands on 10 April 2014: <https://www.tweedekamer.nl/vergaderingen/commissievergaderingen/details?id=2014A00258>; Interim review NAP on Human Rights, 3 November 2014: <https://www.rijksoverheid.nl/documenten/rapporten/2014/11/03/tussenrapportage-nationaal-actieplan-mensenrechten-en-kabinetsreactie-op-de-jaarrapportage-mensenrechten-in-nederland-2013-van->

³⁰ The Netherlands gains a National Institute for Human Rights, 11 July 2008, available at www.regering.nl/Actueel/Persberichten_ministerraad/2008/juli/11/Nederland_krijgt_Nationaal_Instituut_voor_de_Rechten_van_de_Mens; The Principles Relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights (Paris Principles) (New York: United Nations General Assembly Resolution 48/134, 1993).

³¹ B.M. Oomen, ‘Rights for Others. The Slow Home-Coming of Human Rights in the Netherlands’, (Cambridge University Press 2013)

³² Letter to Parliament, ref.no. 985800-152663-DMO, (28 June 2016), p. 3.

³³ Report of meeting of Senate, EK 2015/16, 33992, 27, (12 April 2016).

TREATY PROVISION SPECIFIC CONCERNS AND OBSERVATIONS

On the following pages the authors express their concerns and observations on the implementation of specific provisions of the International Covenant on International Economic, Social, and Cultural Rights (ICESCR). Although the comments are made on an article-by-article basis, some issues may be linked to multiple rights of the Covenant. In such cases, this is pointed out.

Article 2 ICESCR

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

A. Negative Developments on International Cooperation for ESCR

Previous CESCR Concluding Observations consistently praised the Netherlands' efforts in meeting its international obligations on the ICESCR, in particular on international cooperation and committing 0,7% of Gross National Income (GNI) to Official Development Assistance (ODA), in line with international commitments to this effect, including recent Sustainable Development Goal 17.2.³⁴

The Sixth Periodic Report of the Netherlands does not include any comments on international cooperation (in response to Question 9 of the CESCR 2009 Reporting Guidelines),³⁵ which is an important omission because the traditionally positive attitude of the Dutch government on international development cooperation has changed considerably, as indicated below.

In addition, the support for women's rights and women's organizations causes concern. Recent tender decisions under "FLOW II" (Funding Leadership and Opportunities for Women, 93 million euro) indicate that the Dutch government favours funding through Northern based (general) INGOs over applications of Southern led alliances and women's rights organizations led applicants. Moreover, gender mainstreaming is not consistently applied in **all** development sectors (only in obvious areas which already relate to women)."

A.1 Reduction of ODA target below 0,7 %

In terms of other structural issues, first the Netherlands decided in recent years to *reduce* its ODA expenditure to levels *below* 0,7%. In 2014, the Dutch ODA budget dropped to 0,64%³⁶ and in 2015, to 0,52%.³⁷ The Dutch government may argue that ODA levels of 0.7% have nevertheless been reached in 2015, but this only the case because it also includes expenses on domestic asylum seekers reception, which constitute 23% of Dutch ODA expenditure, along with 8% on subsidies for Dutch companies establishing business in developing countries – per figures of Oxfam Novib.³⁸ This results in nearly 1/3 of ODA being spent 'domestically'. Despite the fact that DAC rules allow member countries to count certain refugee-related expenses as ODA for the first year after their arrival under

³⁴ OECD/DAC, 'The 0,7% GNI/ODA target – A History', <http://www.oecd.org/dac/stats/the07odagnitarget-ahistory.htm>; CESCR Concluding Observations Netherlands (2006) UN Doc. E/C.12/NLD/CO/3 (2006) par. 9; CESCR Concluding Observations Netherlands (2010) UN Doc. E/C.12/NLD/CO/4-5 para. 4(e); UN Sustainable Development Goals, Goal 17.2 reaffirms the international 0,7% target, see UN General Assembly 'Transforming our World: the 2030 Agenda for Sustainable Development', UN Doc A/RES/70/1 (25 September 2015), par. 43 and SGD 17.

³⁵ UN Doc E/C.12/2008/2 (24 March 2009), question 9.

³⁶ OECD/DAC Review of the Netherlands, <http://www.oecd.org/dac/netherlands.htm> (last accessed: 15 August 2016).

³⁷ C. Vos, '“Blamage”: budget development drops to 0,52% BNP' (Volkskrant 24 September 2015);

³⁸ 'Asylum Reception helps Netherlands to attain development cooperation objectives', Financial Daily Newspaper, (14 April 2016) <http://fd.nl/ondernemen/1147483/asielopvang-helpt-nederland-aan-doel-ontwikkelingshulp>; 'Severe Criticism on Allocation of ODA', Trouw Newspaper (April 2016); '2015 Aid Statistics: Many EU countries become the biggest recipients of their own aid', Eurodad (13 April 2016), <https://www.eurodad.org/2015AidStatistics>

certain conditions, they are still trying to come to grips with such practices,³⁹ and generally the practice of fudging ODA expenditure with budget for reception of asylum seekers (up to 23% of overall budget) has led to severe critique by Dutch NGOs – and also by MPs: asylum reception is of a different nature altogether, a domestic affair, and should not be used as an excuse to divert ODA from the poorest countries.⁴⁰ These retrogressive steps are very regrettable in light of the severe poverty issues that still exist worldwide, in particular in Low Income Development Countries.

Recommendation 8:

The submitting parties recommend the Committee to ask the Government:

- to clarify how it intends to engage in effective international cooperation and ODA expenditure in light of securing ICESCR rights per art 2(1) ICESCR?
- how it intends to increase and maintain ODA expenditure at least at 0.7% in light of (renewed) international commitments and the effective realization of ICESCR-rights in poor developing countries.

A.2 Coupling of Trade and Development Cooperation (in favour of trade) without clear Human Rights Based Approach to ESCR

Secondly, the Government also changed its attitude on ODA expenditure in past years by consciously coupling “Development Cooperation” (DC) with “Trade” objectives. This is reflected in the creation of the new post of “Minister for Development Cooperation and Trade” under the Rutte I and II-Cabinets. The Minister is known for considering that ‘traditional’ official development cooperation is old-fashioned, and that the concept of development cooperation might go out of fashion altogether – likely in favour of innovative business partnerships and business investments.⁴¹ While trade certainly can be a *general* positive force for economic and human development there is a great concern that no priority on human rights, and particularly ESCR is placed under new ODA policies.⁴² To illustrate, Dutch companies can be recipients of ODA subsidies – accounting for 8% of total ODA expenditure in 2015 – based on a fairly general (old fashioned) assumption that trade = economic growth = decreasing poverty (= is better protection of ESCR). Yet, a distinct *human rights approach*, certainly in the area of ESCR, favouring the most vulnerable and poorest and involving monitoring and accountability for *actually* improving *human rights*, seems largely absent in present Dutch Development Cooperation policy.⁴³ Recent studies also emphasize that there is great trouble in measuring the outcomes of Dutch development cooperation, including for human rights realization abroad, and for the efforts of the business sector.⁴⁴ There is a distinct lack of a clear approach to monitoring and accountability for Development Cooperation/ODA expenditure in terms of human rights in the Netherlands,⁴⁵ including the manner in which business engages in this matter.

³⁹ ‘Three countries – Australia, Korea and Luxembourg – do not count refugee costs as ODA. Others – Austria, Greece, Italy, the Netherlands and Sweden – saw refugee costs account for more than 20% of their ODA in 2015. [...] The rise in refugee costs did not significantly eat into development programmes, with around half of donor countries using money from outside their aid budgets to cover refugee costs. [...] The DAC is also looking at clarifying the rules for which refugee costs can be counted as ODA.’ Available at: <http://www.oecd.org/development/development-aid-rises-again-in-2015-spending-on-refugees-doubles.htm>

⁴⁰ ‘Severe Criticism on Allocation of ODA’, Trouw Newspaper, (April 2016); C. Vos, ‘“Blamage”: budget development drops to 0,52% BNP’, Volkskrant Newspaper, (24 September 2015).

⁴¹ ‘Netherlands does not benefit from the reductions in development assistance’, Volkskrant Newspaper, (5 augustus 2015).

⁴² See for this discussion in Dutch society eg. Opinion piece by J. van Dijk, ‘Development assistance turns over to promotion of Dutch business’, Trouw Newspaper, (28 August 2013).

⁴³ Spearpoints of the current Dutch Development Cooperation Policy are: security and rule of law in developing countries; global water governance; sexual and reproductive rights; food security; equal treatment of women; climate change and development cooperation. The socio-economic spearheads (food, water), unlike the more civil and political spear heads, are not cast in human rights terms.

⁴⁴ N. Righton, ‘Parliament looking for results of development aid without effect’, 23 November 2015:

<http://www.volkskrant.nl/binnenland/kamer-zoekt-vergeefs-naar-resultaat-ontwikkelingshulp~a4192641/>; ‘Auditor critical of ‘development assistance grants’, Financial Newspaper, (31 March 2016) <http://fd.nl/economie-politiek/114575/rekenkamer-onvoldoende-zicht-op-effect-subsidie-aan-bedrijven>; Court of Audit, ‘Report: Monitoring policies for development assistance: the financing channel for business’, (31 March 2016): <http://www.rekenkamer.nl/dsresource?objectid=23902&type=org>.

⁴⁵ N. Righton, ‘Ploumen shows boxes full of research about effect of development aid’, Volkskrant Newspaper, (23 November 2015).

Article 2(1) clearly expresses the principle that ESCR realization is a matter of dedicated international cooperation, and vice versa⁴⁶ – in short, international development cooperation should always be geared at the realization of important human rights objectives, and any efforts be clearly explained/defended in light of ICESCR, as per the Committee’s Reporting Guidelines.

Recommendation 9:

The submitting parties recommend the Committee ask the Dutch Government:

- How it intends to ensure that the human rights impacts and achievements trade subsidies – including as linked to provision of ODA – are effectively monitored?
- How it intends to ensure that international cooperation is actually geared at meeting/fulfilling human rights for poor persons in developing countries, rather than fostering general economic progress – which could create some positive outcomes, but also reinforce and exacerbate socio-economic inequalities and discrimination rather than address them?

The submitting parties recommend the Committee to press the Dutch Government to:

- Articulate and put a “Human Rights Based Approach” clearly at the centre of all its Development Cooperation efforts, particularly in the area of ESCR and ODA.

A.3. Negative Trend of Instrumentalizing Development Cooperation: Improving Trade and Migration Control

Finally, the submitting parties point out the worrying trend that Development Cooperation, and in particular cooperation for ESCR, is subject to increasing *instrumentalization for national interests*. This is reflected in the intertwining of Development Cooperation and promotion of Dutch trade opportunities, or the expenditures on domestic asylum seekers reception (as discussed above); However, it is also clear from recent proposals that ODA might be instrumentalized for – and made conditional for recipient countries on – migration control, such as taking back migrants or taking border control measures in exchange for ODA – including provision of camera’s, equipment and training (‘capacity building’) being financed by developed nations.⁴⁷ A general need to ‘improve local economies with extra investments’ that possibly prevent (certain) poor migrants from coming to the EU is also part of this strategy. Thus, in 2015 the Netherlands dedicated 50 million euro extra to the Dutch Good Growth Fund, which supports Dutch businesses in getting a foot on the ground in developing countries.⁴⁸

Development cooperation should be about combatting *poverty* (and under art. 2(1) ICESCR more specifically: securing *human rights* implementation) not combatting *migration*. Although ‘improved living conditions’ in home countries might theoretically, and ultimately, result in less (economic) migration,⁴⁹ or lead to improved human rights enjoyment for certain groups of people, it seems short sighted, ill-informed and a wrong signal to send, to make ODA reception mostly conditional on migration control. It raises serious concerns about the human rights motives of both donors and recipient countries. Moreover, there have been worrying indications that (under Dutch direction, or with support of the Dutch government in the context of the European Union) ODA might

⁴⁶ Committee on Economic Social and Cultural Rights, General Comment 3 on The Nature of States Parties Obligations (Art 2(1)) E/1991/23 (Geneva: 14th December 1990), §14: ‘The Committee wishes to emphasize that in accordance with Articles 55 and 56 of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself, international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States. It is particularly incumbent upon those States which are in a position to assist others in this regard.’

⁴⁷ ‘Cabinet gives 50 million to Africa for stopping migration’, Volkskrant Newspaper, (27 May 2015)

<http://www.volkskrant.nl/binnenland/kabinet-geeft-50-miljoen-aan-afrika-om-migratie-te-stoppen~a4039890/>; Koert Linders, ‘EU support to dictators for migration stop’, NRC Newspaper, (9 juni 2016) <http://www.nrc.nl/nieuws/2016/06/09/eu-hulp-aan-dictators-bij-migratiestop-1626165-a1507678>

⁴⁸ Idem.

⁴⁹ See letter to Dutch Government by three UN Special Rapporteurs (25 February 2016), which disputes that there is such direct evidence on migration control measures..

be flowing to countries (Sudan, Eritrea) which have (severe) human rights issues and which also might produce legitimate asylum seekers/refugees.⁵⁰ In this respect, the authors urgently point out that the ICESCR requires from State Parties that they cooperate in good faith, and in respect of international human rights and refugee obligations, in their memberships of International Organizations, such as the EU.⁵¹

Recommendation 10:

The submitting parties recommend the Committee to ask the Government:

- How it intends to ensure that ICESCR human rights are better protected under art 2(1) ICESCR through its development cooperation policies, and are not harmed as a result of policy choices informed by domestic interests?
- To clarify its position in respect of the ‘instrumentalization’ of aid in the areas of trade, asylum seekers reception and migration control;
- To clarify what the Dutch main leitmotifs for ODA allocation are, and if this amounts to domestically informed trade or migration interests, how development cooperation still practically ensures implementation of ESCR in a concrete, measureable, and defensible sense?

B. Negative developments national implementation ESCR: general concerns

B.1. Decentralization in the Social Domain

Beginning in 2014 a comprehensive decentralization of the social domain was implemented. The government decided that social services were to be distributed through municipalities as they are better placed to provide these services in a more customised manner, assessing individual needs.⁵² This decentralisation project is known as ‘Participatiemaatschappij’ (participatory society), meaning citizens should take more responsibility to organize their own care through their social network. The other goal of the decentralisation project is cutting back budgets and making them manageable. Decentralisation is also at the core of the new educational framework (Wet Passend Onderwijs) where regional partnerships of school are responsible for the accessibility of education for pupils and students with disabilities.

Many governmental and civil societies warned of adversarial effects of decentralisation.⁵³ It was feared that local diversity in policies and practice would undermine access to services and education, and different applications of youth protection measures depending on the municipality where one lives. Issues of equality before the law, legal certainty and adequate protection of privacy were raised. Unfortunately all these concerns proved to be right. The negative effects of the decentralisation will be discussed under the respective articles of the Covenant.

B.2. Access to Justice

With the decentralisation of social services communication between government and citizen has deformed. The new laws have made it more difficult to obtain a written decision that can be challenged in a complaints procedures.⁵⁴ Few citizen are aware of this. Often a written decision denying an application for support is obtained only if explicitly asked for.

⁵⁰ Koert Linders, ‘EU support to dictators for migration stop’, NRC Newspaper, (9 juni 2016) <http://www.nrc.nl/nieuws/2016/06/09/eu-hulp-aan-dictators-bij-migratiestop-1626165-a1507678>; or <http://www.nrc.nl/nieuws/2016/06/08/ontmoedigen-en-verleiden-1625652-a1402314>.

⁵¹ See also Maastricht Principles on Extraterritorial Obligations in the Area of Economic Social and Cultural Rights (28 September 2011), Principles 15 and 29./

⁵² Decentralization letter, Minister of the Interior and Kingdom Relations, (19 February 2013), No. 2013-0000108917.

⁵³ E.g. Council for Criminal Justice and Youth Protection, Concept proposal Youth Act, Advice 25 October 2012 (w/r to new Youth Act); Vrij Nederland, ‘careful with decentralizing welfare system’, referring to criticism of all important advisers of the state: the Council of State, National Ombudsman, Centraal Planbureau, Raad voor Openbaar Bestuur, Raad voor Maatschappelijke Ontwikkelingen, etc.

⁵⁴ G. Vonk, ‘The vulnerable welfare state, on legal aspects of severe poverty in the Netherlands’, Dutch Juristenblad (2015), Vol. 19, p. 12841286.

In addition budget cuts of legal aid have affected the access to justice and therefore the protection of ESC-rights as 60% of all legal aid is provided for litigation against state agencies amongst others because of an increase in legislation. Income related contribution for legal aid as well as legal fees have been substantially raised affecting legal protection of the most vulnerable in society.⁵⁵ Currently a bill seeking more budget cuts to state funded legal aid. Some examples of the effects:

If victims of domestic violence want to divorce they are confronted with several legal procedures. However, due to cuts in state funded legal aid, the personal contribution to a lawyer's service has more than tripled (per procedure). Proposed amendments to legal aid take the income of both partners into consideration when assessing the need for state funded legal aid, and increasing registry fees even more. If the government proceeds with these plans, victims of domestic violence who do not have any or only very low income will have no independent access to state funded legal aid anymore.

When it comes to youth protection measures, the current draft bill for budget cuts to legal aid intends to cut legal aid by 50%. This reduction is foreseen for procedures regarding supervision orders (*OTS*) and written instructions by the Youth Care Agency. Possibly the intended reduction also covers out of home placement procedures (*UHP*) and placement in freedom restricted youth facilities (*gesloten jeugdzorg*), the bill is not clear on that matter.⁵⁶ These amendments affect the ability of children and parents to effective legal aid.

Specialized lawyers for no and low income groups will not be able to continue to offer good quality legal help or keep their legal practice afloat. These and other negative effects of past and proposed budget cuts to legal aid have been severely criticized by the national association of lawyers.⁵⁷

Recommendation 11:

The submitting parties recommend the Committee to:

- call upon the Dutch government to ensure that all decisions with regard to application of social services and support are put into writing to guarantee access to justice.
- To urge the Dutch government to safeguard the link between no/low income and access to effective legal aid.

C. Prohibition of Discrimination (art. 2 (2) ICESCR).

C.1. Lack of an intersectional approach in Discrimination Action Programs

The submitting parties welcome the Program of Action on Discrimination in the Labour Market and the National Program of Action to Combat Discrimination.⁵⁸ In their view, however, programs tackling discrimination should have a permanent character. The submitting parties note that both programs include special measures to combat gender discrimination as well as other forms of discrimination⁵⁹, but that the intersection of different forms of discrimination is hardly explored or addressed. For instance: in regard to the intersection of discrimination on gender and religion recent research shows that (young) women wearing a scarf are overrepresented in the reported incidents of outdoor violence as well as in the reported difficulties of finding a vocational training internship.⁶⁰ The National Human Rights Institute recently carried out an extensive literature review of various ways of intersectional discrimination in labour participation in particular, and the insights in this study should inform further understanding and tackling of intersectional discrimination (eg between gender and disability (also see this report, Article 3 under D), or age and gender, or age and ethnicity.⁶¹

⁵⁵ Commission on 'Sustainable legal aid scheme, 'Interim Report of the Dutch Lawyer's Associations', June 2015.

⁵⁶ Prof. Mr. C.F. Forder, honorary professor Rights of the Child, University of Amsterdam, at:

<http://rechtsbijstandjuistnu.nl/reactie-hoogleraar-c-forder-rechten-van-het-kind-op-bezuiniging-rechtsbijstand/>

⁵⁷ Dutch Bar Association, 'funded legal assistance', 2015. See: <https://www.advocatenorde.nl/9531/advocaten/gefinancierde-rechtsbijstand>.

⁵⁸ See also: CEDAW, 'Sixth Periodic Report', CEDAW/C/NLD/Q/6/Add.1 (2007), par. 46-50, 56-58, 139-140.

⁵⁹ CEDAW General Recommendation no. 18 (gender and disability).

⁶⁰ E. Klooster, S. Koçak & M. Day, 'Role of discrimination in the market for trainees', Knowledge Platform Integration ^& Society (2016); Lachhab, F.Z. & M.H. Vorthoren, 'Research report Islamophobia', Rotterdam SPIOR (2016).

⁶¹ College voor de Rechten van de Mens, 'Role of Stereotypes in Entering the Labour Market', July 2013, at: <https://www.mensenrechten.nl/publicaties/detail/18402>.

Recommendation 12:

The submitting parties urge the Committee to question the government why it ignores intersectional discrimination and what will it undertake to eliminate that omission.

C.2. Continued Discrimination in area of ESCR for Certain Groups

In the Netherlands, many violations of ICESCR-rights are a matter of direct or indirect discrimination, i.e. in terms of groups being left out and not gaining sufficient protection in their equal enjoyment of ICESCR-rights either as a matter of law or practice.⁶² The contributing NGO's have identified discriminatory treatment by law or practice with regard to several rights that are protected by the Convention (for example in respect of the right to work, right to health, right to education, right to adequate living standards, right to social security) and for a very many different groups in Dutch society, including women, ethnic minorities (with Dutch nationally, e.g. Turks, Moroccans, people from Dutch Antilles), irregular migrants, asylum seekers and refugees, LGTB-persons, disabled persons, minors, Travellers/Roma. To the extent that submitting parties have expertise on the discrimination suffered by such groups in the area of ICESCR-rights, these problems are discussed in the 'article-by-article' part of this report.

Nevertheless, because of certain structural concerns on discriminatory enjoyment of ESCR in relation to a broad range of rights, as a matter of recent legal reforms, there is one issue which warrants specific attention here, which is the topic of decentralization in the social domain – and access to justice in such situations.

C.3. Restricted access to ESCR for nationals from Aruba, Curacao and St. Maarten

The government, by its coalition agreement of 2012, intends to regulate migration of Dutch nationals born in Aruba, Curaçao and Sint Maarten to the Netherlands.⁶³ Currently a bill is being initiated by a member of Dutch parliament⁶⁴ that seeks to limit freedom of movement in fundamental ways by requiring settlement requirements such as sufficient funds, a clean criminal record and solid education and/or work experience. This proposal has been criticized by the Council of State⁶⁵ and academics⁶⁶ for violating freedom of movement (i.a. article 12 CCPR) and equal treatment. No or insufficient attention has been given to the protection of vital social and economic rights stipulated in *inter alia* article 9, 10, 11 and 13 ICESCR of Dutch nationals born in Aruba, Curaçao and Sint Maarten, notably the most vulnerable.

Recommendation 13:

The submitting parties recommend the Committee to ask the Dutch government to inquire about its position on creating restrictions on access to socio-economic protection for Dutch nationals from Aruba, Curacao and St. Maarten, based on migratory politics?

The submitting parties recommend the Committee to call upon the Government to ensure that access to socio-economic rights is not constricted in a discriminatory manner, on the basis of migratory politics that impact disproportionately on the most vulnerable, and to ensure access to ESCR for all Dutch nationals equally.

⁶² CESCR, General Comment 20 on 'Non-Discrimination in Economic, Social and Cultural Rights', UN Doc. E/C.12/GC/20 (Geneva, 10th June 2009).

⁶³ 'Bruggen slaan', coalition VVD-PvdA, (29 October 2012), p. 30

⁶⁴ House of Representatives (Parliament), year of session 2011/12, nr. 33325, at: <https://zoek.officielebekendmakingen.nl/kst-33325-12.html>

⁶⁵ House of Representatives, 2011/12, No. 33325, 4; House of Representatives 2014/15, No. 33325, 11.

⁶⁶ 'Exclusion Municipal Administration in conflict with the Law', Newspaper Curacao (6 February 2014), at: <http://www.kkc-curacao.com/uitsluiting-in-strijd-met-de-wet/>

Article 3 ICESCR

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Many rights discussed in this report raise additional issues with respect to article 3 of the Covenant, i.e. equal treatment of women and position of women in the enjoyment of rights. Where relevant this will be indicated.

A. Gender Pay Gap

In 1993 the social partners in the Labour Foundation agreed upon the Checklist Equal Pay, which lists 'suspect criteria' for the start salary in a new job, such as reference to the previous earned salary and the counting of work-experience without assessing how this relates to the new job. Research of the National Human Rights Institute shows that these two suspect criteria are still frequently used. Calculated over a full working life the negative effects for women amount to considerable sums of money. The submitting parties therefore regret that the Dutch government refuses to implement the recommendation of the Social and Economic Council to (re)introduce the yearly Equal Pay Day.

Recommendation 14:

The submitting parties recommend the Committee to enquire whether the government is prepared to reintroduce the yearly Equal Pay Day, which is broadly supported by employers and unions, to extend opportunities to raise awareness about all kind of gender pay gaps, including the intersection with ethnicity.

B. Girls and science/technology: stagnation in tertiary education and labour market (& 6 and 13 ICESCR)

The number of girls in secondary schools opting for the technology sector (VMBO) or natural profiles (general secondary education) increases due, amongst others, to the specific activities of the 'Landelijk expertisebureau meisjes/vrouwen en beta/techniek' (VHTO), the national expert organization on girls/women and science/technology.

In the school year 2014/15 58% of girls in secondary pre-university education (VWO) and 38% of girls in secondary education (HAVO) chose a technology oriented school trajectory. The increase in secondary vocational education and training (VMBO) is still low: only 6% of girls chose engineering compared to 46% of boys. Unfortunately this trend is not reflected in tertiary education: In Universities of Applied Sciences (HBO) only 0.9 out of 10 girls opt for technology-oriented education (0.6 in 2013). At the university level the influx of women in courses of sciences/technology remains low: only 2.3 out of 10 (2015).⁶⁷ These numbers fall far below the target that the government has set itself, namely 4 out of 10 girls/women in technology/science-oriented education. These numbers are reflected in the labour market: 70 % of women with an degree in science/technology works in non-technology related jobs, compared to 35% of men with similar educational backgrounds. It is therefore worrisome that as of July 2016 the government has not included the activities of the VHTO in its budget when it comes to primary and secondary education.

Recommendation 15:

The submitting parties suggest that the Committee to ask the Dutch government how it seeks to obtain its goals of more girls and women in technology/natural sciences education.

⁶⁷ 'University education enrollment figures 'VSNU - Association of Universities in the Netherlands', Monitor Technology Pact 2016.

C. Women in Decision-Making in Academia and the Number of Female Professors

In December 2015, Dutch universities set new targets for reducing the disparities in the proportion of males to females in academia.⁶⁸ The submitting parties applaud the acknowledgement of the disparities. However, much more effort in relation to promoting diversity is needed on the side of the government, considering that there are hardly any female professors from ethnic minorities. Notably, the usage of targets is not new; they have in place since the Lisbon Agreement of 2000, yet they are not very effective. The annual percentage of growth of women in academia remains 0.8%. Moreover, the Glass Ceiling Index (GCI) is persistent: since 2007 the GCI for the step from associate professor to full professor has remained unchanged at 1.5.⁶⁹ Furthermore, the intersection of discrimination (sex/ethnicity/age etc.) also appears at the universities. For instance, female candidates may hold all the requisite qualifications, but they do not get appointed as professor because they are too old.⁷⁰

Recommendation 16:

The submitting parties recommend the Committee to invite the Dutch government to establish clear targets for gender and diversity in academia.⁷¹

D. Local Government's Tender Procedures Disadvantage Women (& 2 and 7 ICESCR)

At the local level, calls for public procurement have propelled inequality of women: calls for tender of home care, youth care, transport of disabled and old people, school children, in the home care and specialized taxi-branches, greatly disadvantaged female workers, because a large share of the employees is female.

Particularly in these sectors, due to their fear to lose the tender, companies often submit a too tight budget which can only be met by worsening of the labour conditions, including lower wages, fewer hours, more on call contracts, as well as loss of contracts for homecare workers who subsequently lose their proper jobs and have to accept re-employment with diminished social rights under the Home Help Services Scheme. In addition, many companies go bankrupt, leading in loss of work for female workers as well. In case the workers succeed in finding another job in the sector they often have to accept temporary contracts and lower salary scales.⁷² A consistent scheme for promoting equality in public contracts is urgently needed to guarantee that the right to just and favourable working conditions is fulfilled without discrimination of any kind, including indirect discrimination.⁷³

Recommendation 17:

The submitting parties recommend the Committee to ask the Dutch government how it will ensure that (local government's) tender procedures disproportionately disadvantage women and promote gender equality.

⁶⁸ See: National Network of Female Professors, 'Monitor Women Professors 2015, Executive Summary' (19 November 2015), available at: <http://www.lnvh.nl/files/downloads/352.pdf>.

⁶⁹ GCI is larger than 1 when personnel are underrepresented in the higher rank as compared to the one below that, see *ibid.*

⁷⁰ See for instance CEDAW, Concluding observations of the Committee on the Elimination of Discrimination against Women (The Netherlands), UN Doc. CEDAW/C/NLD/CO/5 (Geneva: Forty-fifth session of 18 January-5 February 2010), par. 34-35.

⁷¹ Similar commitments have been made with regard to all other aspects of science.

⁷² L. Bijleveld, 'Domestic work in the Netherlands: a job like no other', (2015) 1 European Equality Law Review, p. 37-52.

⁷³ See CEDAW, Concluding observations of the Committee on the Elimination of Discrimination against Women (The Netherlands), UN Doc. CEDAW/C/NLD/CO/5 (Geneva: Forty-fifth session of 18 January-5 February 2010), par. 19; Committee on Economic, Social and Cultural Right, General Comment No. 23 on the right to just and favourable conditions of work, UN Doc E/C.12/GC/23 (Geneva: 27th April 2016) par. 53; See CESCR, General Comment No. 16 on the equal right of men and women to the enjoyment of all economic, social and cultural rights, UN Doc E/C.12/2005/4 (Geneva: 11 August 2005) par. 13.

Article 6 ICESCR

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

A. Discrimination of Undocumented Migrants and Asylum Seekers Regarding the Enjoyment of the Right to Work

The Covenant establishes rights which apply to everyone, regardless of citizenship or status. Therefore, the prohibition to work of undocumented migrants and asylum seekers contravenes their right to work and is discriminatory.

The Dutch labour market is only partially open to asylum seekers. For the first six-month of the asylum procedure they have no access to the labour market. After six-month asylum seekers are allowed to work a maximum of 24 weeks per year, on the condition that the employer provides them with a working permit. In addition their right to work is obstructed by the fact that asylum seekers are obliged to move frequently from one asylum centre.⁷⁴

By Law undocumented adult migrants have no right to work. Employers are fined for employing undocumented migrants: € 8.000,= per undocumented employee. The fine is increased with 50% in case of employment of an undocumented migrant, and other situations.⁷⁵ Not being able to work makes many irregular migrants feel useless and depressed. It harms their health. The prohibition to work is especially harmful for those migrants – and their family members – who cannot be expelled because of medical reasons. Furthermore, it is harmful for those migrants who are in a regularisation procedure during which they are allowed to stay in the Netherlands or migrants who reside in temporary shelters while preparing their departure.⁷⁶ As a consequence, undocumented migrants cannot provide for themselves and the future participation in society of asylum seekers is hampered.

Recommendation 18:

The submitting parties recommend the Committee to ask the Dutch Government to reconsider its position on the right to (voluntary) work for asylum seekers and undocumented migrants who cannot be expelled or are allowed to temporarily reside in the Netherlands.

B. Labour Discrimination of Ethnic Minority Groups of Non-Western Origin (& art. 2 ICESCR)

Structural difference in unemployment rates between citizens of ethnic minority groups of non-Western origin and citizens of Dutch ethnic origin are persisting in the Netherlands. The unemployment rate of citizens of ethnic minority groups of non-Western origin has risen from 8% in 2008 to 17% in 2014, whilst the unemployment rate of the general population has risen from 4% in 2004 to 7% in 2014.⁷⁷ With regard to ethnic minority youth the difference is even larger. Their

⁷⁴ K. Kloosterboer, 'Child in the Centre: Childrenrights in Asylum Centers', (The Hague: Unicef Nederland, 2009) (only available in Dutch).

⁷⁵ Decision on imposition of the policy for penalties Foreign Workers Employment Act 2016, at: <https://zoek.officielebekendmakingen.nl/stert-2016-37043.html>.

⁷⁶ C.J. Laban, 'Dutch study Iraqi asylum seekers. Impact of a long asylum procedure on health and health related dimensions among Iraqi asylum seekers in the Netherlands. An epidemiological study', (Dissertation, VU University Amsterdam, 2010); Report WODC [Research and Documentation Centre of the Ministry of Justice], Evaluation of a pilot to activate residents of family sites, The Hague: cahiers 2015-06.

⁷⁷ See Dutch Government, 'Monitor Labour Market April 2015' (19 May 2015), available at: <https://www.rijksoverheid.nl/documenten/rapporten/2015/05/19/monitor-arbeidsmarkt-april-2015> (only available in Dutch), p. 18.

unemployment rate has risen from 16% in 2008 to 24% in 2014, whilst the unemployment rate of youth of Dutch ethnic origin has risen from 8% in 2008 to 12% in 2014.⁷⁸

Several reasons for the difference exist, like the level of education, relevant networks, demographic, and socioeconomic factors. A further factor is discrimination on the labour market, as differences in labour market participation exist that cannot be explained by unequal qualifications.⁷⁹ Recently, the Dutch government took some encouraging measures to combat labour discrimination, including the National Action Plan against Labour Discrimination, which includes drastic measures to combat discrimination on the labour market⁸⁰, and a campaign against labour market discrimination⁸¹. This may be considered as a good development, considering that in 2015 the Dutch Prime Minister opined that the Government had a minor role to play, and that it was up to an active attitude of discriminated youth.⁸² Nonetheless, good intentions in the past and in the present have never narrowed the difference in labour market participation. In addition, a very specific concern is that there is very limited data available on intersectional discrimination experienced on the labour market for different groups, which affects policy making in this area. The government has even deliberately stopped measures and policies to assess and address such types of discrimination ('doelgroepenbeleid').

Discrimination in the labour market is a crime according to the Dutch Penal Code and requires proof of intent.⁸³ However, the burden of proof of discrimination in offices or businesses is always difficult, as has been noted by Parliament.⁸⁴ Suspects often defend their actions by claiming that they have not acted deliberately, and it is just a case of 'bad sense of humour'.⁸⁵

Recommendation 19:

The submitting parties recommend the Committee to call upon the Dutch government to

- further the full realization of the right to work of citizens of ethnic minority groups of non-Western origin, taking into account the burden of intersectional discrimination, by implementing clear and concrete targets focused on structurally diminishing the difference between labour market participation of citizens with and without a migration background.
- investigate the difficulties with regard to the burden of proof of labour discrimination and how they might be addressed, and, if necessary, provide legal training to the different professionals in criminal law, such as public prosecutors and judges.

C. The Right of Sex Workers to Choose their Own Form of Work (& 9 and 11 ICESCR)

Since the lifting of the ban on brothels in 2000, the number of licensed businesses has radically decreased. This applies in particular to window prostitution: in 1999 there were 2096 registered windows, by 2016 this has declined to 1272. This, among others things, has led to a considerable increase in the rents for a working place. At the same time it has become increasingly difficult for sex workers to work independently or in small collectives without interference of a brothel operator. Lack of licensed working places and prohibitions on working independently force sex workers into the illegal circuit where they are more vulnerable for abusive practices.⁸⁶ State parties have an obligation

⁷⁸ Ibid., p. 10.

⁷⁹ Ibid.

⁸⁰ See Dutch Government, 'National Action Plan against Discrimination on the Labour Market' (17 May 2014), available at: <https://www.rijksoverheid.nl/documenten/kamerstukken/2014/05/16/bijlage-actieplan-arbeidsmarktdiscriminatie-overzicht-algemene-acties> (only available in Dutch).

⁸¹ See Dutch Government, 'Start campaign Discrimination on Labour Market' (31 May 2016), available at: <https://www.rijksoverheid.nl/actueel/nieuws/2016/05/31/start-campagne-arbeidsmarktdiscriminatie> (only available in Dutch).

⁸² Dutch Prime Minister, 'Rutte: Discriminatie los je zelf maar op', NRC Newspaper (18 March 2015) <http://www.nrcreader.nl/artikel/8412/rutte-discriminatie-los-je-zelf-maar-op>.

⁸³ See Dutch Penal Code (adopted 3 March 1881, amended 1994), Art. 137(g)(1).

⁸⁴ A. Bhikie, 'House of Representatives alarms about discrimination on labour market' (18 February 2016), available at: <http://www.nu.nl/politiek/4216613/tweede-kamer-luidt-noodklok-discriminatie-arbeidsmarkt.html>.

⁸⁵ See for example the following case: 'Utrechtse brokerage denies racism in an inappropriate mail', (25 May 2016), available at: <http://www.nu.nl/binnenland/4267353/utrechtse-makelaardij-ontkent-racisme-in-ongepaste-e-mail.html>.

⁸⁶ See H. Wagenaar, S. Altink and H. Amesberger, 'Final Report of the International Comparative Study of Prostitution Policy: Austria and the Netherlands' (The Hague: Platform 31, 2013); M. Wijers, 'Fifteen years lifting of the ban on brothels: the struggle of policy makers between sex workers as agents or victims', in: R. Piotrowicz, C. Rijken and B. Heide Uhl

to take measures to reduce to the fullest extent possible the amount of workers outside the formal economy.⁸⁷

In addition, despite the decriminalisation of the sector, sex workers still face problems in accessing financial services, such as a bank account, mortgages and loans, (collective) insurances, payable housing and public services.⁸⁸ This is partly due to the strong emphasis on trafficking which reinforced the image of a criminogenic sector and increased the stigma on prostitution, adding to the discrimination and social exclusion of sex workers.⁸⁹ Measures to improve the working conditions of prostitutes and to enhance their autonomy, privacy and safety are badly needed.⁹⁰

Recommendation 20:

The submitting parties recommend the Committee to

- recommend that the Dutch government to take measures to halt to the decrease of licensed working places and to ensure that sex workers have a choice to work for a brothel operator, independently or in small self-run collectives.
- to ask the Dutch government which measures it intends to take to improve the position of sex workers and to ensure their equal access to financial services, insurances and housing.

D. People With Disabilities are More Often Unemployed than People Without Disabilities

The employment rate of disabled persons in the Netherlands is significantly lower than the employment rate of non-disabled persons. The national labour participation rate for women with a disability is 37,1% compared to 59,9% for women without a disability. The labour participation rate for men with a disability is 47,2 % compared to 72,2 % for men without a disability.⁹¹ Moreover, these figures demonstrate, that similar to general labour participation, there is a significant gap between participation of disabled men and women, indicating intersectional gender discrimination. Yet, there are no recent programmes or studies that seek to address these figures.

The actual gaps in labour participation of disabled persons are probably even wider, because the national Labour Force Survey includes only persons who are working or who are actively seeking work and can be expected to accept a job offer within short notice. Additionally, persons with an intellectual disability are explicitly excluded from the national Labour Force Survey if they live in residential group homes (this alone excludes 107,315⁹² people who live in residential settings) or if they seem not to comprehend online forms with questions. The relevance of the exclusion of this group from statistics gains weight because recent changes in the labour market, such as the loss of simple jobs, lead to the exclusion of people with an intellectual disability.⁹³

Furthermore, the new eligibility criteria for The Disablement Assistance Act for Disabled Young Persons (Wajong) since 2015 are such that persons with a disability who are assessed as being partially able to work, are not eligible for assistance. They are referred to schemes based on the Participation Act, run by municipalities. Since 2015 all entry to sheltered employment has been closed. Municipalities have large discretionary freedom to decide on how to spend budgets for the

(eds.), Handbook of Human Trafficking (London: Routledge, forthcoming in 2016); evaluation reports w/r to lifting brothel prohibition.

⁸⁷ CESCR, General Comment No. 18 on the right to work, UN Doc. E/C.12/GC/18 (Geneva: Thirty-fifth session of 7-25 November 2005), § 10.

⁸⁸ Black Book presented to minister of justice on 16 June 2016 by Proud, an interest group of sex workers, House of Representatives, 97e meeting, 16 June 2016.

⁸⁹ Y. Bleeker, L. Heuts, M. Timmermans, G. Homburg, 'Seks workers speak out. The social position of sex workers in the Netherlands in 2014', (Amsterdam: Regioplan Beleidsonderzoek, 2014).

⁹⁰ CEDAW, Concluding observations of the Committee on the Elimination of Discrimination against Women (The Netherlands), UN Doc. CEDAW/C/NLD/CO/5 (Geneva: Forty-fifth session of 18 January-5 February 2010), par. 31.

⁹¹ CBS, 'Disabled people: gender and age', (31 October 2014), available at: <http://statline.cbs.nl/Statweb/publication/?DM=SLNL&PA=70985NED&D1=0-2&D2=0,2&D3=a&D4=0&D5=9-14&HDR=T,G2&STB=G1,G3,G4&VW=T> (own calculation).

⁹² See CBS, 'Individuals with indication residential care: zzp and use', (20 August 2015), available at: [http://mlzstatline.cbs.nl/Statweb/publication/?DM=SLNL&PA=40013NED&D1=0&D2=1&D3=0,15,46&D4=3&D5=0,1&D6=\(1-4\)-1&HDR=G1,G2,T,G4&STB=G3&VW=T](http://mlzstatline.cbs.nl/Statweb/publication/?DM=SLNL&PA=40013NED&D1=0&D2=1&D3=0,15,46&D4=3&D5=0,1&D6=(1-4)-1&HDR=G1,G2,T,G4&STB=G3&VW=T).

⁹³ Netherlands Institute for Social Research, 'Care understood better' (4 December 2014), available at: http://www.scp.nl/Publicaties/Alle_publicaties/Publicaties_2014/Zorg_beter_begrepen (only available in Dutch), p. 108.

unemployed (with or without a disability) in their municipality. Indications are that jobseekers with a severe or intellectual disability are losing out as they must compete for rehabilitation help (such as job coaching, wage subsidies) with jobseekers without a disability or a lesser disability. In fewer than half of the regional work companies formed by municipalities, priority is given to assisting people with a disability who used to be eligible for sheltered workshop and/or a disability benefit.⁹⁴ The majority of regional work companies give priority to people without disabilities or only minor disabilities. As a result young people with a more severe disability may not get support in seeking work and become dependent on a means and income tested unemployment benefit (based on Participation Act). If they live with their parents they will receive no cash benefit and will have no income of their own.

Apart from that, few companies can be described as ‘inclusive organizations’, i.e. employers who create scope for people with an employment disability to work long-term and according to their capacity, and who make the necessary adaptations to allow this. Between a quarter and half of employers are unaware of the schemes designed to encourage the recruitment of people with an employment disability, such as the no-risk policy and the wage costs subsidy.⁹⁵ The State party should take more measures to enable persons with disabilities to secure and retain appropriate employment, thereby facilitating their integration or reintegration into society.⁹⁶

Recommendation 21:

The submitting parties recommend the Committee to

- ask the Dutch government to provide more data on (obstacles for) labour market participation of people with disabilities who are not actively seeking work and people with intellectual disabilities, taking into account intersectional discrimination concerns.
- to enquire how the Dutch government will prevent that local government’s unemployment policies disadvantage people with severe or intellectual disabilities and how the government ensures the involvement of local government in implementing the ICESCR.
- to call on the Dutch government to take measures to increase the awareness of employers of the schemes designed to encourage the recruitment of people with disabilities.

Article 7 ICESCR

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

a) Remuneration which provides all workers, as a minimum, with:

i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

b) Safe and healthy working conditions;

c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

⁹⁴ Samenvoordeklant.nl, ‘Analyse convenanten en marktwerkingsplannen regionale Werkbedrijven’ (25 September 2015), available at:

http://www.samenvoordeklant.nl/sites/default/files/bestandsbijlage/analyse_convenanten_regionale_werkbedrijven_def.pdf#overlay-context=actueel/nieuws/analyse-convenanten-marktwerkingsplannen (only available in Dutch), p. 24.

⁹⁵ P. van Echtelt, R. Schellingerhout and M. De Voogd-Hamelink, ‘Demand for Labour 2015’ (9 September 2015) available at: http://www.scp.nl/english/Publications/Summaries_by_year/Summaries_2015/Demand_for_labour_2015, p. 11.

⁹⁶ CESCR, General Comment No. 18 on the right to work, UN Doc. E/C.12/GC/18 (Geneva: Thirty-fifth session of 7-25 November 2005), par. 17.

A. People With Disabilities Enjoy Less Social Protection And Have Lower Income Than People Without Disabilities

Employers are obliged to pay employees at least the minimum wage.⁹⁷ However, the Act Wage Dispensation Wajong 2010 makes a general exemption for people who have a disability and who are assessed as having a productivity level of 25% below the usual productivity that would earn the level of minimum wage. In such cases the employer may pay below minimum wage. The employee will then get a benefit supplementing the wage to the net minimum wage level. The European Committee of Social Rights has noted that in some instances the minimum wage seems to decrease in case of severe economic adversity in certain enterprises or sectors in the Netherlands.⁹⁸ In response, the government stated that this refers only to employers who have applied to the ministry of Social Affairs and Employment for an exemption from the ban on short-time working. If an exemption is granted, they may claim unemployment benefit for their employees for the hours not worked. Finally, the state claims that “this scheme never results in employees earning less than the statutory minimum wage for the hours they do work. In the Netherlands, it is impossible to lower the statutory minimum wage – by legal means or otherwise – in times of economic crisis.”⁹⁹ The government makes no mention of the exemption for Wajong receivers nor to any other issue related to disability.

Related to this is the observation that the average disposable income of people with (physical) disabilities in the Netherlands amounts to €1427 per month, compared to an average disposable income of €1950 for the general population.¹⁰⁰ One in 5 interviewees in a study by the research institute NIVEL reports that they participate less in society due to money problems.¹⁰¹ The gap between the income development between households without and households with a disability benefit has widened considerably since 2000.¹⁰² In 2015 and 2016, the income gap between persons with and without a disability widens more as a result of higher obligatory contributions for health care, social support by municipalities, and long term care, while former tax credits have diminished. The higher obligatory contributions result in a net income decrease for people with disabilities of up to -12 % in 2016.¹⁰³ The State party should ensure that people with disabilities “enjoy equal remuneration for work of equal value and must not suffer wage discrimination due to a perceived reduced capacity for work.”¹⁰⁴

Recommendation 22:

The submitting parties recommend the Committee to ask the Dutch government to explain why it makes an exemption with regard to the minimum wage for people with disabilities and to enquire what measures it intends to take in order to diminish the income gap between people with and without disabilities.

B. Domestic Workers Still Do Not Enjoy Full Just and Favourable Work Conditions and Full Social Rights (& 9 ICESCR)

In its report, the government suggests there have been changes representing a first step towards improving the status of domestic workers,¹⁰⁵ referring to the Committee’s call on the Dutch government to bring the rights and benefits of domestic workers in line with those accorded to other

⁹⁷ Law Minimum Wage and Minimum Holiday Allowance, (27 November 1968).

⁹⁸ Council of Europe, 9th National Report on the implementation of the European Social Charter submitted by the government of the Netherlands, RAP/RCha/NLD/9(2016) (2 November 2015), p. 8.

⁹⁹ Ibid.

¹⁰⁰ J. Van der Veer, G. Waverijn, P. Spreeuwenberg, M. Rijken, ‘Work and income: key data and trends. Report of 2013’, Utrecht: NIVEL, 2013).

¹⁰¹ Ibid.

¹⁰² CBS, ‘Average income. Private households divided by various characteristics’, (7 September 2015), available at: <http://statline.cbs.nl/Statweb/publication/?DM=SLNL&PA=70843ned&D1=0,6&D2=0&D3=0,53&D4=a&HDR=G3,T&STB=G1,G2&VW=T>.

¹⁰³ ‘2016 is a better year for your income’, Nibud (15 September 2015) available at: <http://www.nibud.nl/beroepsmatig/2016-gunstig-jaar-voor-portemonnee/>; ‘Recipient for care loses purchasing power in the lottery’, Ieder(in) (15 September 2015), available at: <https://iederin.nl/nieuws/17660//sterke-daling-koopkracht-voor-mensen-met-een-beperking>.

¹⁰⁴ See CESCR, General Comment No. 23 on the right to just and favourable conditions of work, UN Doc E/C.12/GC/23 (Geneva: 27th April 2016), par. 47(c).

¹⁰⁵ Sixth Periodic Report 2016, par. 56.

workers, particularly in terms of social security benefits.¹⁰⁶ In reality, no changes in the legal position of domestic workers (with respect to rights and benefits) have been implemented by the government. The Netherlands remains the only European country that denies domestic workers social rights. The exceptional position of part-time domestic workers - since 2007 called Services at Home Scheme (SHS) - is still in place. The advisory committee (mentioned in para. 57 of the governments' report) strongly recommended to ban the use of the SHS in the publicly financed home care.¹⁰⁷ In reality the opposite happened: the number of home care workers under the SHS almost doubled due to decentralisation accompanied by budget cuts. Thousands of home care workers lost their jobs. Several of them could only resume working for their clients with less social protection under the Services at Home Scheme (as so-called *alfahelps*).¹⁰⁸ A Dutch Court of Appeal as well as the Central Appeals Tribunal ruled that the use of the Services at Home Scheme by the home care institutions was not in accordance with Dutch labour legislation. Both found that not the client but the home care institution had to be considered as the proper employer, meaning that the *alfahelps* were entitled to full workers' rights.¹⁰⁹ The government should have used this jurisprudence to claim taxes and social contributions from the home care institutions that falsely pretended only to act as intermediaries between the *alfahelps* and clients. Unfortunately, the government remained inactive but for a short publicity campaign to inform private employers and domestic workers about rights and obligations. However, there is no indication or evidence that this campaign really improved the status of domestic workers.¹¹⁰

Recommendation 23:

The submitting parties recommend the Committee to urge the Dutch government to ensure that the rights and benefits of domestic workers are brought in line with those accorded to other workers in accordance with national jurisprudence and international law.

C. Eastern European Migrant Workers Do Not Enjoy Just And Favourable Working Conditions

Notwithstanding a number of measures taken by the Dutch Government in 2011 to ameliorate the working conditions of Eastern European migrant workers, they are still confronted by long working days, unpaid overtime, sexual intimidation and threats. As Eastern European migrant workers are highly dependent on recruitment agencies, they are extremely vulnerable to exploitation.¹¹¹ They face discrimination and do not enjoy the same working conditions as Dutch national workers.¹¹² The work pressure is extremely high, with the result that many workers use drugs in order to keep up.¹¹³ Furthermore, "the demand for highly flexible labour, which has to be available instantly and at minimal expense, generates a culture in which workers are expected to be available for any job at any time".¹¹⁴ Still, the Dutch government continues to permit the recruitment agencies to regulate

¹⁰⁶ CESCR, Concluding Observations of the Committee on Economic, Social and Cultural Rights (The Netherlands), UN Doc. E/C.12/NL/CO/4-5 (Geneva: Forty-fifth session of 1–19 November 2010), par. 17; see also CEDAW, Concluding observations of the Committee on the Elimination of Discrimination against Women (The Netherlands), UN Doc. CEDAW/C/NLD/CO/5 (Geneva: Forty-fifth session of 18 January-5 February 2010), par. 39.

¹⁰⁷ Advisory Committee on Services to Households, "Dienstverlening aan huis: wie betaalt de rekening?" (March 2014) Annex to: Parliamentary Papers II 2013/14 29 544 no. 507, p. i (only available in Dutch).

¹⁰⁸ L. Bijleveld, 'Domestic work in the Netherlands: a job like no other', (2015) 1 European Equality Law Review, pp. 37-52.

¹⁰⁹ Court of Appeal Arnhem-Leeuwarden, 5 november 2013, ECLI:NL:GHARL:2012:8304, JAR 2014, 12, m.nt. E. Cremers-Hartman; E. Cremers-Hartman, 'Is een *alfahulp* in dienst van de thuiszorginstelling?' (Is an *alfahelp* employed by a homecare institution?), annotation of the judgement by Court of Appeal Arnhem-Leeuwarden 5 November 2013, JAR 2014/12; CRvB 4 December 2013, USZ 2014/34, m.nt. E. Alink.

¹¹⁰ L. Bijleveld, 'Domestic work in the Netherlands: a job like no other', (2015) 1 European Equality Law Review, p. 37-52.

¹¹¹ E. De Haan, "Polish migrant workers still frequently face abuse in the Netherlands", SOMO (28 June 2016) available at: <https://www.somo.nl/polish-migrant-workers-still-frequently-face-abuse-netherlands/>.

¹¹² Dennis l'Ami, 'Wrongsdoings I saw when I lifted crates between Polish persons for ten months', Newspaper: De Correspondent (28 June 2016) available at: <https://decorrespondent.nl/4807/Deze-misstanden-zag-ik-toen-ik-tien-maanden-kratten-tilde-tussen-de-Polen/598090953845-7cd98625>.

¹¹³ Ibid.

¹¹⁴ K. McGauran, E. de Haan, F. Scheele & F. Winsemius, "Profiting from dependency: Working conditions of Polish migrant workers in the Netherlands and the role of recruitment agencies", FairWork and Somo (June, 2016), available at: <https://www.somo.nl/polish-migrant-workers-still-frequently-face-abuse-netherlands/>, p. 37.

themselves.¹¹⁵ It doing so it disregards that it is responsible to ensure that migrant workers enjoy treatment that is no less favourable than that of national workers in relation to remuneration and conditions of work, in addition to just and favourable conditions.¹¹⁶ In terms of the gender implications, it is important to note that over half of labour immigrants from South and Eastern Europe are women.¹¹⁷ NGOs have indicated that there exists a gap in policy and measures to address issues that this group of women migrants are dealing with.¹¹⁸ The problems they encounter include unemployment or underemployment, unstable jobs, dependency on their employer for both income and housing, and lack of language proficiency. A few municipalities have started to take measures in these areas, but so far a gender perspective has not been taken into account.¹¹⁹

Furthermore, the labour inspection not only monitors compliance with the law concerning working conditions, but also conducts migration and fraud controls. These different aims may lead to reluctance among workers to report problems, which obstructs the identification of unacceptable working conditions and victims of labour exploitation.¹²⁰ A recent study shows that confusing immigration policing facets and labour rights facets of inspections is one of the largest barriers to identifying abuse.¹²¹

Recommendation 24:

The submitting parties recommend the Committee to ask the Dutch government to better regulate recruitment agencies and to reintroduce labour inspections that are merely focused on fostering acceptable working conditions - disconnected from migration and fraud controls.

The submitting parties also recommend the Committee to ask the Dutch government to take intersectional discrimination into account in studies and measures to better understand and improve the labour conditions for EU migrants.

D. Racial Harassment Of Black Professional Football Players (& 2 ICESCR)

The state has to ensure that all workers are free from harassment, including discrimination.¹²² However, over the past few years there have been several incidents of racism by football supporters directed towards black professional football players.¹²³ Racial harassment of black professional football players appears to be a structural phenomenon. Within Dutch football, racial harassment, hate speech, and discrimination are addressed through ‘disciplinary proceedings’ involving a special prosecutor of the Dutch Football Association (KNVB) who may issue settlement agreements including stadium bans for the perpetrator and fines for the football club.¹²⁴ However, incitement to hatred and incitement to discrimination are also criminal offences (pursuant to Article 137d of the Dutch Penal Code) and in certain cases, criminal prosecution may be more appropriate than disciplinary

¹¹⁵ E. de Haan, “Polish migrant workers still frequently face abuse in the Netherlands”, SOMO (28 June 2016) available at: <https://www.somo.nl/polish-migrant-workers-still-frequently-face-abuse-netherlands/>.

¹¹⁶ See CESCR, General Comment No. 23 on the right to just and favourable conditions of work, UN Doc E/C.12/GC/23 (Geneva: 27th April 2016) § 5, 59I and § 47(e).

¹¹⁷ Wijkhuijs & Jennissen, ‘Labour migration to the Netherlands, the influence of gender and family’, WODC, 2010, p. 66.

¹¹⁸ De Gruijter & Razenberg, ‘Survey municipaliteits & EU-migrants’, Platform Integration & Society, 2015.

¹¹⁹ Booi, Lindeman & Slot, ‘Monitor EU-migrants 2013’, Amsterdam, 2014; Bertram & Aartsen, ‘Progress Report EU labour migration’, (The Hague, 2014).

¹²⁰ K. McGauran, E. de Haan, F. Scheele & F. Winsemius, “Profiting from dependency: Working conditions of Polish migrant workers in the Netherlands and the role of recruitment agencies”, FairWork and Somo (June, 2016), available at: <https://www.somo.nl/polish-migrant-workers-still-frequently-face-abuse-netherlands/>, p. 59.

¹²¹ FLEX, Fair Work & Adpare, “Pro-Act Working Paper: Pilot Strategies for Pro-Active Identification and Support to Victims of Trafficking for Labour Exploitation” (July 2015) available at: <http://www.labourexploitation.org/publications/pro-act-working-paper-pilotstrategies-pro-active-identification-and-support-victims>.

¹²² CESCR, General Comment No. 23 on the right to just and favourable conditions of work, UN Doc E/C.12/GC/23 (Geneva: 27th April 2016) § 48.

¹²³ For instance in the case of ADO Den Haag – Riechedly Bazoer, see ‘Boete ADO voor racisme richting Bazoer’, De Telegraaf (8 March 2016), available at:

http://www.telegraaf.nl/telesport/voetbal/adodenhaag/25346907/Boete_ADO_in_zaak-Bazoer.html#voetbal/227/fixtures/.

¹²⁴ See KNVB, ‘Tuchtspraak betaald voetbal’, available at: <http://www.knvb.nl/themas/sportiviteit-en-respect/tuchtspraak/betaald-voetbal>.

proceedings. The Dutch prosecutor generally only prosecutes these crimes if the victim files a complaint with the police, which in most cases does not happen.¹²⁵

Recommendation 25:

The submitting parties recommend the Committee to urge the Dutch government provide effective legal protection against hate speech and discrimination in Dutch football regardless of an individual complaint.

Article 9 ICESCR

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

A. General changes / decentralisation of social security

On the first of January 2015 the new Youth Act (*Jeugdwet*), Social Benefits Act (*Participatiewet*) and the Social Support Act (*Wet Maatschappelijke Ondersteuning: WMO*) came into effect by which the government decentralized several social security's acts. As a result municipalities are responsible for the implementation and provision of a wide variety of social welfare programs, youth protection measures and providing reasonable accommodations to vulnerable people within society like the elderly and people with disabilities. The municipalities were given financial and policy discretion in implementing the new system. As a consequence it depends on the municipality where one resides if and which services are provided. As the scheme for income dependent benefits has also been amended the social security scheme no longer provides for an adequate standard of living for some groups that are entitled to social security.

A.1. Social Support Acts (& articles 11 and 13 ICESCR)

In December 2014 the Senate acceded to the new 'Long-term Care Act' (*Wet Langdurige Zorg: Wlz*), which replaced the 'General Act Special Care Costs' (*Algemene Wet Bijzondere Ziektekosten: AWBZ*).¹²⁶ With this new law health insurances finance necessary nursing and care; municipalities are responsible for domestic support / home care (*thuiszorg*). The latter mentioned regulation was included in the Social Support Act (*WMO*). Concurrently budget cuts, up to 42 % in 2016, in the budget for long-term care were announced, with the assumptions that elderly and chronically ill people prefer to stay at home as long as possible. The criteria for admission in a nursing home became more stringent as empowerment of the target group through home care is promoted. Another assumption was that for domestic support the target group primarily can rely on family, friends and neighbours (*mantelzorg*). The new law came into force on the 1st of January 2015.

Municipalities implemented their new responsibility in different ways. Some leave it to the market and only provide financial support to people with a minimum income; some have contracted agencies of domestic help and limit the provision to a maximum number of hours; and some apply a certain threshold, meaning that the municipality only will finance the hours above this threshold.¹²⁷ Municipalities have to assess the need for domestic support individually, through so called 'kitchen table conversations' by 'municipal neighbourhood teams' (*wijkteams*), but quite some municipalities ignore this regulation. Moreover, people are required to make a personal financial contribution (*eigen bijdrage*) for the support and care they receive.¹²⁸ As a result 25 % of those in need are not applying for support anymore.¹²⁹ Domestic workers lack time to interact with their clients anymore and

¹²⁵ See Ministry of Security and Justice, 'Letter in response to questions of the House of Representatives regarding racial harassment in Dutch professional football' (4 March 2016), p. 5, available at: <<https://www.rijksoverheid.nl/documenten/kamerstukken/2016/03/07/antwoorden-kamervragen-over-racistische-uitlatingen-supporters-ado-den-haag-tijdens-wedstrijd-tegen-ajax>>.

¹²⁶ Staatsblad 2014, 494.

¹²⁷ Allers J, 'Bezuinigingen in het licht van sociale grondrechten', Vol. NTM/NJCM Bull, 40 (3) (2015), p. 290 - 292

¹²⁸ <https://www.nationaleombudsman.nl/nieuws/2016/burger-weet-niet-waar-hij-aan-toe-bij-eigen-bijdrage-wmo>

¹²⁹ Report on Action of Reporting own contribution (2016) Utrecht: IederIn

therefore cannot signal deterioration of their health, such as signs of dementia, loneliness, depression and malnourishment.¹³⁰ Furthermore, by being more dependent on family, friends and/or neighbours, elderly and others run the risk of physical and/or mental abuse.¹³¹

Recommendation 26:

The submitting parties recommend the Committee to urge the Dutch government to

- guarantee that vulnerable groups have (equal) access to adequate health related domestic support schemes.
- promote and monitor the compliance with national qualitative and quantitative norms for the provision of domestic support to elderly, chronically ill and disabled persons.

A.2. Social and income dependent benefits (& articles 2 and 11 ICESCR)

As a contrast the legal framework and amendments of the Social Benefit Act is too rigid to be able to respond to those in need even in poignant cases. The legal framework does not accord municipalities the competence to compensate income of families in need who as a result of new rules cannot cover the costs of rent, health care, food and clothing anymore.

The new law lowers the legally defined amount a single-parent households receives, equating it to the needs of a single person's household. Single parent households are compensated for the loss of income by increasing the income dependent child budget (*kingebonden budget*) with the so called single-parent-cap (*alleenstaande ouderkop*) provided for by the tax authorities. The act also counterbalances the accumulation of multiple social-aid incomes in one household who can share the costs of living, the legally fixed amount is made dependant on the number of adults living in one household thereby lowering the amount each adult is entitled to. This concept is called *kostendelersnorm* (*cost sharing norm*). More incentives with regard to (volunteer) work have been introduced as well punitive sanctions (fines) next to the already existing reparatory sanctions (*maatregelen*) which can amount to the exclusion of social benefits up to several months. Those sanctions are strictly applied and undermine efforts and legal obligations to prevent poverty and (municipal) debts restructuring schemes.¹³² In addition a 'language requirement' has been introduced to enhance chances of job opportunities. Lack of sufficient effort to acquire Dutch language skills can be punished by lowering the amount of social benefits. This requirement is exclusively targeted at migrants and refugees and therefore discriminatory.

Persons who lack a residence permit are excluded from receiving social benefits. Families where one of the partners lacks a residence permit receive only have the legally fixed amount as to prevent undocumented family members to profit from the social security's scheme. As a result many families with undocumented members find themselves in a situation of destitution because they are also barred from receiving income dependent benefits for the same reason. Some municipalities have extra-legal schemes to prevent these families from becoming homeless. Those schemes differ greatly as per municipality. Some municipalities have no destitution-schemes. Several governmental and civil society organizations have called upon the government to provide for a solution to the lack of adequate standard of living.¹³³

Income dependent benefits on the other hand are provided by the national tax authorities (*Belastingdienst Toeslagen*). Those benefits compensate the costs of rent (*huurtoeslag*), mandatory health insurance (*zorgtoeslag*), cost of daycare for children (*kinderopvangtoeslag*) and cost of raising children (*kindgebonden budget*). Some single-parents are barred by law of receiving income dependent benefits despite their need. The ones that are excluded are single parent households who have a partner who is either undocumented, in detention or residing in a psychiatric care facility. Reason for this discriminatory exclusion lies in the definition of partnership for tax purposes. Partner for fiscal

¹³⁰ Elderly Ombudsman, 15-6-2016 <http://www.ouderenombudsman.nl/actueel/79/ouderenombudsman-bezorgd-over-tijdige-signalering>

¹³¹ Region plan, 'Final report. Exploring information study abuse elderly: approach, yields and bottlenecks', No. 14170', (Amsterdam: 2015); 'Elder abuse are subjected to more than just bruises', NRC Newspaper, 15 June 2016.

¹³² G. Vonk, 'Repressive welfare state', NJB Vol. 2, (17 January 2014), p. 95.

¹³³ VNG (association of Dutch municipalities), 'Resultaat uitvraag praktijkervaring kostendelersnorm', 2016. Letter to Parliament by Save the Children and Defence for Children, Federation shelter (Association of (women's) shelters and assisted living), Letter to Parliament, 23 February 2015;

purposes is the person one is legally married to or belongs to the same household. Therefore single parents older than 27 years old who are living with relatives are also affected in the sense that they are excluded from receiving income independent benefits to raise their children (*kindgebonden budget en alokop*). Municipalities on the other hand consider a single parent someone who effectively is raising his/her children alone, or has a undocumented partner who is not entitled to social benefits. As a result the aforementioned groups of single parents receive less social benefits and no compensation through income dependent benefits resulting in destitution, see **appendix A**, contrary to the governments statement in their report, para. 102.

The result of the far reaching amendments of law and decentralization is disastrous for these families as they have to make amends with more than 50% less income far below any definition of poverty threshold. According to the government the solution of the problem of destitution can be 'solved' through divorce, a solution that violates the right to family life.

Recommendation 27:

The submitting parties recommend the Committee to urge the Dutch government to safeguard that social benefits guarantee an adequate standard of living. To safeguard this goal:

- access to income dependent benefits on the basis of need.
- access to social and income dependent benefits for eligible persons regardless of lack of residence status of a family member.
- access of single parents to income dependent benefits on the basis of need not marital status (e.g. partners in detention, psychiatric care or abusive partners).

A.3. Dutch minors raised by undocumented single parent (& 2 and 11 ICESCR)

Dutch children who are being raised by an undocumented single parent, mostly mothers, are barred from receiving child and family benefits and are growing up in extreme poverty. A Dutch child raised by an undocumented parent is entitled to social benefits of € 240, = a month. Sometimes this benefit is supplemented by the municipality with care in kind (shelter) or benefits for housing costs. This practice differs from municipality to municipality, with some municipalities providing for no help at all.

As undocumented persons are barred from receiving social benefits by law (*Koppelingswet*) undocumented parents are not eligible for family and child benefits which are intended to safeguard the development of children and prevent child poverty. The exclusion of Dutch minors from receiving child- and family benefits is not mitigated by the courts. Dutch children are not perceived to be victims of discrimination as the courts do not consider rights under the ICESCR and CRC (protection children's rights) to be applicable. The government knowingly abandons these children contrary to the governments statement in their report, para. 102.¹³⁴

The position of the government is that Dutch minors who are raised by undocumented mothers can get all the care they need in freedom restricted family centres for rejected asylum seekers even though they are not being deported. Those family centres are purposely of sober character (more sober than asylum reception centres) to stimulate departure. The conditions in those family centres have been severely criticised by several NGO's for violating children's rights.¹³⁵ In a 2014 court verdict these centres have been judged to be harmful for minors and have forbidden the settlement of Dutch minors in these centres by restringing their and their mother's freedom of liberty. Damages have been rewarded.¹³⁶ Since this ruling undocumented mothers with Dutch children have been expelled from these centres with no place to go¹³⁷ as most municipalities reject applications for help of those families and threaten to implement a protection measure separating the children from their only caretaker in violation of the right to family life.¹³⁸

¹³⁴ Discrimination of minors based on the immigration status of their parents is explicitly forbidden by article 2.2. CRC.

¹³⁵ Workinggroup Children in AZC (coalition of child right's NGO's), 'In one word it is here ... stupid': research of the welfare and perspective of children and young people in family locations', October 2014.

¹³⁶ District court of The Hague, No. 14 / 5065 BEPTDN, (2 October 2014).

¹³⁷ Children Ombudsman, Report: 2013/171, KOM/005/2013, (14 November 2013).

¹³⁸ See. e.g. Moser v Austria, ECtHR 21 September 2006, app.no. 12643/02.

Recommendation 28:

The submitting parties recommend the Committee to urge the Dutch government to reduce child poverty by safeguarding the rights of Dutch minors to social benefits and adequate standard of living regardless of their parents immigration status.

The submitting parties recommend the Committee to call upon the Dutch government to guarantee to abolish the practice of place Dutch minors in deportation centres and guarantee their access to social services provided by municipalities and enable those children to grow up within the community.

Article 10 ICESCR

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

A. Domestic Violence / Violence Against Women

Despite the obligation to develop gender sensitive policies,¹³⁹ the Netherlands still formulates its policies on domestic violence as if it were a gender neutral phenomenon which is unrelated to traditional gender roles and the unequal power relationships between women and men. There is a lack of gender-specific knowledge, national guidance and political support. A gender scan has only been applied to partner violence but not to other types of gender-based violence. Often awareness of gender-related factors is missing with policy makers and implementers, as well as police and service providers.¹⁴⁰

At the same time, under influence of the growing influence of internet, new forms of sexual violence, stalking and bullying have developed through social media and the internet, e.g. grooming, teens dating violence, the publication of nude pictures of girls or women by ex-partners, etc. Professionals, including the police, have only limited knowledge of these new forms and how to act.

Moreover, there is a lack of awareness within the police force that the main problem is the behaviour of men, not of women. This lack of policy is especially acute as the reorganization of the police into one national police, expertise on domestic violence and other forms of gender-based violence has been lost and complaints from victims of violence, especially domestic violence, about their treatment by the police have increased. The police has become less accessible; women are regularly discouraged from reporting or the police refuses to take down their statement. This is especially important given the fact that there are an estimated 60.000-100.000 reports on domestic violence per year.¹⁴¹

¹³⁹ CEDAW; Council of Europe's Istanbul Convention (2014).

¹⁴⁰ K.B.M. de Vaan, M.M. de Boer M.C. Vanoni, 'Gender scan approach to domestic violence', Region plan, (2013).

¹⁴¹ Speech Eva Kwakman, national prosecutor youth and family, 'Expert meeting domestic and sexual violence', Association Women and Law, 23 June 2016.

Recommendation 29:

The submitting parties recommend the Committee to urge the Dutch government to develop gender sensitive policies on violence against women and to monitor the gender specific impacts of policies, in addition to:

- Improving knowledge about these new forms of violence with the police and other relevant professionals.
- Increasing the expertise of the newly formed police on gender-based violence, by preference by installing specialised units.

B. Trafficking (& articles 2 and 11 ICESCR)

While the Committee has recommended the Dutch government to continue and intensify its efforts to combat trafficking in its Concluding Observations of 2010, the efforts on combating human trafficking are currently under serious pressure. The focus and capacity of investigating authorities has shifted to human smuggling (as a result of the current refugee crisis) rather than human trafficking and as a result victims of human trafficking are (literally) less noticed. This is aggravated by the fact that restructuring of the police has resulted in expertise on human trafficking not being reinstalled in the assigned positions, leading to set backs in expertise and knowledge in detecting and investigating human trafficking cases. This is a development that need urgent attention as it already has (and will continue to have) a detrimental effect on combatting human trafficking and identifying victims of human trafficking. The submitting parties are also concerned about the (lack of) identification of trafficking victims among refugees, including unaccompanied minors.

In international law a shift can be seen from an offender-oriented approach towards a more victim-centred approach,¹⁴² in which the victim is not merely a means to catch the perpetrator. The submitting parties note a reverse development in the Netherlands as the primary focus of current trafficking policies is on the contribution of victims to the criminal investigation and prosecution of the perpetrators. Police have the exclusive mandate to identify (potential) victims and before a reflection period or residence permit is granted, the story of the victim is objectified for the purpose of a criminal investigation, rather than from the perspective of the needs of the victim.¹⁴³ The focus on criminal procedure instead of victim's needs is enhance by the merger of the police, the aliens police and the anti-trafficking units. A similar focus on immigration policy instead of victim's needs has been noted with regard to the actions of the labour inspection (*Inspectie SZW*) in cases of trafficking for other purposes than prostitution, e.g. for domestic work. The labour inspection is primarily focused on tracking illegal workers, does not have a victim-centred approach, appointments for an intake with a possible victim can take 6-8 weeks which negatively affects their access to assistance and protection, and in several cases the victim is already during the intake informed that their alleged exploitation will not be investigated. As a result no social protection is offered.

Currently the specialised shelters are only available for non-EU victims (and to a very limited extent for EU victims and very difficult for Dutch victims to access). However, also EU and Dutch victims can be in need of the specialised care these shelters can provide. Moreover, since the special arrangements for trafficking victims (B8 procedure) are primarily based on third-country nationals, EU and Dutch victims have no or hardly access to assistance and other provisions.

The submitting parties are of the opinion that identification of victims of trafficking should focus on the needs of the victim, like the need to shelter and other support services rather than on the identification of indicators to start criminal proceedings and that more disciplines should be involved in the identification process, including NGOs providing for care and assistance to victims.

Recommendation 30:

The submitting parties suggest the Committee to ask the government how it will ensure that the focus on human smuggling does not go to the detriment of combating trafficking and what measures it has

¹⁴² See the most recent convention with regard to protection of women's victims of violence: Council of Europe's Istanbul Convention of 2014.

¹⁴³ Connie Rijken et al., 'Human trafficking: the victim perspective. An exploratory study to the needs and interests of human trafficking in the Netherlands', Tilburg: Intervict 2013, p. 148-150.

taken to adequately identify trafficking victims among refugees.

The submitting parties recommend the Committee to urge the Dutch government to put the victim's needs for support services first, by:

- Ensuring *all* victims of violence (trafficking and otherwise) have access to (women's) shelters;
- fully integrate specialized NGO's into the membership of the anti-trafficking task force;
- de-linking identification of victims and criminal proceedings (e.g. separating trafficking units from aliens police) and to establish independent multi-disciplinary teams for the identification of victims and their needs;
- ensuring a more victim-centred approach of the Labour Inspection and cooperation with NGO's.

C. Effects of decentralisation on the quality of child services / youth care

C.1. Sexual violence in youth institutions

Recent research shows an alarming prevalence of sexual abuse within institutions of youth care.¹⁴⁴ Although this has led to a national action plan,¹⁴⁵ the implementation of several aspects of the action plan has been slowed down, amongst others through budget cuts and reorganizations due to the decentralisation of youth care to the municipalities.

Many municipalities lack the expertise to tackle child abuse. According to research commissioned by the Ministry of Health municipalities are not always aware of their supervisory role with regard to the implementation of the reporting code for domestic violence and child abuse.¹⁴⁶

Recommendation 31:

The submitting parties recommend the Committee to call upon the Dutch government to ensure swift implementation of the action plan, including sufficient expertise and budget to take the necessary measures.

C.2. Forced placement of minors and youngsters in closed youth facilities

The Netherlands has fourteen closed juvenile institutions with a total of 23 accommodation and 1162 available places. According to national statistics 1275 minors and young people under 23 years were placed in a closed youth institution in 2015. The average duration of stay was 182 days. Children stayed in closed institutions without the necessary judiciary authorization or judicial review.¹⁴⁷

Recommendation 32:

The submitting parties recommend the Committee to urge The Dutch government to provide for judicial review of legal measure by which minors and youngsters are committed to closed care facilities.

Article 11 ICESCR

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.
2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

¹⁴⁴ Commission Samson (2012), Commission Rouvoet (2015).

¹⁴⁵ Quality Framework preventing sexual abuse in youth care.

¹⁴⁶ Ministry of VWS, 'Quick scan reporting code domestic violence and child abuse', 2015.

¹⁴⁷ Signalement Inspectie Jeugdzorg 'Geen plaatsing gesloten jeugdzorg zonder machtiging rechter', August 2015 [report of the inspection of youth care to the government].

- a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
- b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

A. Right To An Adequate Standard Of Living For Undocumented People (“Bed-Bath-Bread” debates)

The position of irregular migrants in the Netherlands has remained a much disputed issue. Important developments have taken place since the last reporting cycle: In 2009 the ECSR has concluded that the Netherlands was violating the right to shelter of children in an irregular situation (*Defence for Children International v The Netherlands*, Complaint no/ 47/2008, 20 October 2009), followed by a ruling of the Dutch High Court to the same effect in 2012.¹⁴⁸ The government has responded by setting up freedom restricted family centres which are governed by a very sober regime of services.

In 2014 the ECSR has concluded that adult migrants in an irregular situation at risk of destitution should have unconditional access to emergency shelter and food to protect their human dignity (*Conference of European Churches (CEC) v The Netherlands*, complaint no. 90/2013, adopted on 1 July 2014 and *European Federation of National Organizations working with the Homeless (FEANTSA) v the Netherlands*, complaint no. 86/2012, adopted on 2 July 2014). The government responded by taking the position that ESC provisions have no direct effect and opinions of the ESCR are not binding. This position has been seriously disputed by different fractions of Parliament and municipalities who wanted to see the conclusion implemented. This led to the proposal of the so called ‘bed-bad-brood-compromise’ which comprised amongst others the establishment of new centres in five municipalities (April 2015).¹⁴⁹ The BBB-proposal has not been formalized nor agreed upon by all parties concerned awaiting decisions of two different high courts: the *Centrale Raad van Beroep*, high court with regard to Wmo that covers access to municipal shelter and the *Raad van State*, high court with regard to migration law. In November 2015 the high courts rendered their verdicts on the same day.¹⁵⁰ They concluded that there was no legal basis for municipalities to provide emergency shelter to irregular migrants. Shelter provided at freedom restricted departure centres on the condition of cooperation with departure did not warrant the conclusion that shelter is not available for undocumented migrants at risk of destitution.

Because this conclusion does not take into account the reality of many migrants in irregular situation, leaves the gaps of the existing system intact and side steps the conclusion of the ESCR,¹⁵¹ the Special Rapporteur on extreme poverty and human rights, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right of non-discrimination in this context and the Special Rapporteur on the human rights of migrants have written a letter to the Dutch government urging it to respect the core obligations.¹⁵²

In its non-admissibility decision 5 July 2016 (*Hunde v The Netherlands*, app.no. 17931/16) the European Court of Human Rights has acknowledged the conclusions of the ESCR in *CEC* and *FEANTSA v the Netherlands* but concludes that those findings do not automatically entail a violation of article 3 (inhuman and degrading treatment) in the context of the ECHR. The non-admissibility decision was based upon the fact that the Dutch government had not remained indifferent and was engaged in a solution (Bed-bad-brood compromise). It is vital for adult undocumented migrants that this compromise takes account of their human dignity, as human dignity is a legal concept linked to

¹⁴⁸ High Council, No. ECLI:NL:HR:2012:BW5328 (21 September 2012).

¹⁴⁹ See House of Representatives of the Dutch Parliament, (15 April 2015), available at: <https://zoek.officielebekendmakingen.nl/kst-19637-1994.html>

¹⁵⁰ Afdeling Raad van State, No. ECLI:NL:RVS:2015:3415; Centrale Raad van Beroep, No. ECLI:NL:CRVB:2015:3803, idem:3834, idem:4093 (26 November 2015).

¹⁵¹ ‘The viscous reality of return and departure’, Journal: Groene Amsterdammer (18 november 2015).

¹⁵² OHCHR, letter of 25 February 2016, ref.: OL NLD 1/2016.

the concept of core obligations under the ICESCR.¹⁵³ Currently (numbers in June 2015) approximately 1300 undocumented migrants are being sheltered by municipalities.

Recommendation 33:

The submitting parties recommend the Committee to remind the Dutch government that the ‘bed-bad-brood compromise’ has to be in conformity with its core obligations under the ICESCR.

The submitting parties recommend the Committee to call upon the Dutch government to ensure that undocumented migrants at risk of destitution have unconditional access to emergency shelters, hospices, food and clothing – while guaranteeing the special needs of irregular migrants with mental and physical disabilities are protected.

B. Right to an Adequate Standard of Living on the BES islands (& 2 ICESCR)

Since 2010, the welfare level on the BES islands has dwindled and many now live in poverty. It is clear that the consumer spending has diminished, owing in part due to higher (Dutch) taxes and living costs while salaries and social services have remained the same. Organizations such as the Netherlands Institute for Human Rights and UNICEF and the Evaluation Committee of the BES islands have repeatedly expressed their concern¹⁵⁴ over the situation on the islands and have urged the Dutch government to provide an adequate standard of living conditions. In its Concluding Observations in 2010, the Committee was already concerned at the ‘*unequal enjoyment of economic, social and cultural rights among the four constituent countries of the State party*’¹⁵⁵. Moreover, recent report shows that many children in the BES islands grow up in unsafe and unhealthy conditions.¹⁵⁶ This makes them even more vulnerable despite the government’s claim to pay special attention to child poverty.

Recommendation 34:

The submitting parties recommend the Committee to ask the Dutch Government what concrete measures it is going to take to combat child poverty and raise the standard of living on the BES islands.

C. Right to Drinking Water and Sanitation

In 2013 over 8000 households and businesses in the Netherlands were cut off from water after unpaid charges. It is estimated that this is about 500 to 750 families with children. Those households do not have access to drinking water or sanitation at home, nor can they wash themselves.¹⁵⁷ Human rights do not give the right on free drinking water. The consequences of the current laws and regulations however – children who do not have access to drinking water at home – does put the protection that human rights offer truly to the test. Children enjoy extra protection because of their vulnerability. Governments should therefore put the best interests of the child first in the making and implementing of policies and realize that the right to drinking water is a human right, which is tied to the concept of human dignity and a prerequisite for the realization of other human rights’.¹⁵⁸

¹⁵³ CESCR, General Comment 3 on The Nature of States Parties Obligations (Art 2(1)) UNDoc. E/1991/23 (Geneva: 14th December 1990), par. 10; “Women and Adequate Housing,” Study by the Special Rapporteur on Adequate Housing, 2005, UN Doc. E/CN.4/2005/43 (Geneva: 25 February 2005), par. 51.

¹⁵⁴ See, for example: Report UNICEF, ‘Child Rights within the Caribbean Countries and Dutch Caribbean public entities in the Kingdom of the Netherlands’, 2011-2012; Netherland Institute for Human Rights, ‘Advice: Towards a human rights acceptable level of facilities for the Caribbean Netherlands’ (April 2016); and Evaluation Caribbean Netherlands, ‘Joined together for five years: Bonaire, Sint Eustatius, Saba and European Netherlands’, (December 2015).

¹⁵⁵ Concluding Observations of the Committee on Economic, Social and Cultural Rights – the Netherlands (E.C.12.NLD.CO.4-5) 19 November 2010, Geneva.

¹⁵⁶ Report UNICEF, ‘Children Rights within the Caribbean Countries and Dutch Caribbean public entities in the Kingdom of the Netherlands’, 2011-2012. See: <https://www.unicef.nl/wat-doet-unicef/kinderrechten-in-nl/koninkrijkskinderen/childrights/>

¹⁵⁷ House of Representatives (28 August 2014), Doc. 20132014-2798, available at: <http://pilpnjcm.nl/wp-content/uploads/2015/03/ah-tk-20132014-2798-22.pdf>

¹⁵⁸ CESCR, General Comment No.15: The Right to Water, UN Doc. E/C. 12/2002/11, (20 January 2003), par. I.1.

Recommendation 36:

The submitting parties recommend the Committee to ask the Dutch government to take into account the right to drinking water and sanitation in the making and implementing policies, in particular children who need extra protection.

D. Right to Housing: unsafe living situations in Groningen Province due to Earthquakes caused by Gas-extraction (& article 12)

Since the 1960s, the Province of Groningen in the North of the Netherlands has seen substantial gas extraction. The ‘Groninger Gas Field’ is one of the largest in Europe, and is exploited by the Nederlandse Aardolie Maatschappij (NAM), a private company with an infinite concession, and ownership of the gas, although their extraction activities are subject to periodic extraction permits under the Mining Law (*Mijnbouwwet*).¹⁵⁹ The main shareholders of NAM are Exxon Mobile (50%) and Shell (50%), but overall the exploitation of the Groninger fields is for ‘risk and responsibility’ of the ‘Maatschap Groningen’ in which the State has a 40% interest and shares 50:50 voting rights with NAM.¹⁶⁰

In 2012, the Groningen region was struck for the first time by an earth quake of 3.6 on the Scale of Richter.¹⁶¹ Under the Dutch Mining Law (*Mijnbouwwet*) the Minister of Economic Affairs can place restrictions on extraction plans of the NAM, including for safety of inhabitants. In most recent years levels of permitted gas extractions have been curbed due to safety concerns.¹⁶² Nevertheless, current gas extraction limits still are mostly informed by (minimum) amounts of gas needed to service foreign gas contracts and to secure warm houses according to moderate winters.¹⁶³ However, considering that houses in the Netherlands are generally not earth quake proof – certainly not Groningen’s old farm houses –, many houses in Groningen have been (severely) damaged over the past years.¹⁶⁴ A number of people were already forcibly evicted from their family homes for their own safety.¹⁶⁵

Overall, there is an increasing sense of unsafety in the area and (mental) health problems are on the rise.¹⁶⁶ This has led to heated debates about the future of (safe) gas extraction and several law suits

¹⁵⁹ M. Roggenkamp and K. de Graaf, ‘Earthquake risks in Groningen’, (28 January 2014) via: <http://www.milieurecht.nl/main.php?id=138>.

¹⁶⁰ NAM: Facts and Figures, via: <http://www.nam.nl/nl/about-nam/facts-and-figures.html> (last accessed 9 August 2016). Note that the factual governance structure and the role of the Dutch government therein is quite complex: <https://www.onderzoeksraad.nl/nl/onderzoek/1991/aardbevingsrisico-s-in-groningen/publicatie/1620/veiligheid-geen-rol-bij-gaswinning-groningen>; M. Roggenkamp and K. de Graaf, ‘Earthquake risks in Groningen’, (28 January 2014)

¹⁶¹ E.g. from 2010 to 2016 there have been 587 registered earth quakes, of which up to 5 earth quakes per year stronger than 2.5 on the Scale of Richter and at least one stronger than 3.0 every year. In 2016 there have been 63 quakes at the time of writing, of which one between 2.0 and 2.5. Between 2000 and 2009 there were 315 registered quakes, including stronger than 2.5 and 3.0 as well. Figures via ‘Facts and Figures: Earthquakes’, <http://www.namplatform.nl/feiten-en-cijfers/feiten-en-cijfers-aardbevingen.html>.

¹⁶² Local authorities have recently challenged the new threshold for volumes of gas to be extracted in 2016-2021 according to the newly submitted gas extraction plan of the NAM and the concept reaction of the Minister of Economic Affairs: <http://www.dvhn.nl/groningen/Groningse-overheden-gaskraan-moet-verder-dicht-21550921.html> (9 August 2016).

¹⁶³ See Research Council for Safety, ‘Aardbevingsrisicos in Groningen’ [Earth quake risks in Groningen] (2015) <https://www.onderzoeksraad.nl/nl/onderzoek/1991/aardbevingsrisico-s-in-groningen/publicatie/1620/veiligheid-geen-rol-bij-gaswinning-groningen>. This study concluded that up until 2013 the safety of inhabitants had never played a role in decision-making surrounding the gas extraction. In fact, the study found that decision-making structures were thus closed off from other interests, and that the Ministry of Economic Affairs was so fully part of this closed structure, focused on the interests of extraction, that safety was of little concern and that there was very little room for critical voices or pressures from other Ministries or civil society; Also e.g. <https://www.rijksoverheid.nl/onderwerpen/aardbevingen-in-groningen/nieuws/2016/06/24/gaswinning-groningen>.

¹⁶⁴ ‘Welke panden staan ook op instorten?’ [Which buildings are also about to collapse?'] (RTVNoord 18 November 2013) <http://www.rtvnoord.nl/nieuws/127003/Welke-panden-staan-ook-op-instorten>; ‘Twee op de drie huizen in Groningen niet veilig’ [Two out of three houses in Groningen not safe] (NRC Newspaper, 24 April 2015)

<http://www.nrc.nl/nieuws/2015/04/20/twee-op-de-drie-huizen-in-groningen-niet-veilig-1486539-a654093>;
<http://www.dvhn.nl/groningen/Groninger-spant-kort-geding-aan-tegen-NAM-21469181.html> (30 June 2016);
<http://www.dvhn.nl/archief/Applaus-en-tranen-bij-sloop-bevingshuizen-20866160.html> (15 April 2015).

¹⁶⁵ ‘NAM bought him out. Now he lives on the streets’, (31 May 2016), at: <http://www.nrc.nl/nieuws/2016/05/31/de-nam-kocht-hem-uit-nu-leeft-hij-op-straat-1623963-a993642>.

¹⁶⁶ E.g. see <http://nos.nl/artikel/2102104-groningse-aardbevingen-leiden-ook-tot-gezondheidsklachten.html> (29 April 2016).

against the State and NAM.¹⁶⁷ These discussions and suits are increasingly couched in ‘human rights’ terms.¹⁶⁸ However, the implications of the international human rights framework for decision-making and steering action in the gas extraction dossier remain poorly understood. The submitting parties consider that the Dutch State – and private company NAM in the context of the UN Guiding Principles on Business and Human Rights – have to duly consider human rights, including rights to housing and health, subject to obligations to effectively ‘respect’ and ‘protect’ against interferences with these rights, as well as ‘fulfil their enjoyment as necessary. There are also further international standards that should play a bigger role, such as the ‘UN Basic Principles and Guidelines on Development Induced Evictions and Displacement’, drafted by the UN Special Rapporteur on the Right to Housing in 2007.¹⁶⁹ This especially applies to the – *very* slow – practical implementation of the current housing reinforcement plans and reconstruction efforts, particularly taking into account the unclarity on the number of houses to be reinforced.¹⁷⁰ Furthermore, it particularly applies to the procedures in place to *fully* compensate people for any damage, reconstruction or resettlement, and to buy the houses of people who want to leave – including the often strained and at times intimidating negotiations led by the NAM.¹⁷¹ Submitting parties observe that Dutch Courts have refused to examine these claims due to their perceived lack of direct applicability of ICESCR rights.¹⁷²

Recommendation 37:

- The submitting parties recommend the Committee to ask the Dutch government how it intends to ensure safety, right to housing and mental and physical health of Groningen inhabitants in the face of consequences of past and future earth quakes due to gas extraction?
- The submitting parties recommend the Committee to urge the Dutch government to respect and protect the rights to housing/adequate living standards and right to health, and to ensure particularly, in cases interferences cannot be prevented, that evictions, compensation, housing situations are effectively redressed, in line with relevant international human rights standards.
- The submitting parties in particular request that the full range of human rights are taken into account in assessing new extraction plans, and in monitoring the situations in the area carefully.

¹⁶⁷ Court of First Instance (2 September 2015) ECLI:NL:RBNNE:2015:4185; Council of State (15 November 2015) 201501544/1/A4.

¹⁶⁸ The National Institute of Human Rights has been very much concerned with the effects of earth quakes, and Dutch courts have already held the European Convention of Human Rights to be of relevance in decision-making on the gas-extraction. Eg. Council of State (15 November 2015) 201501544/1/A4, paras. 36-41.

¹⁶⁹ Basic Principles and Guidelines on Development Induced Evictions and Displacement: Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living’, UN Doc A/HRC/4/18 (2007), at: www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf.

¹⁷⁰ Figures on the number of houses to be reinforced range from 220.000 to 170.000 houses, to ‘a number of ten thousands houses’ to ‘100 houses’ according to recent NAM figures. In 2015, the Minister of Economic Affairs committed to reinforcing 3.000 houses, which was not even closely realized. In fact, according to a recent progress report of the National Coordinator so far 405 houses have been reinforced, of which 309 not according to the new building code for earth quake prove building. In the first quarter of 2016, only 78 houses were reinforced, of which 54 according to the new building guidelines and 24 not. Nationaal Coördinator Groningen, ‘Rapportage eerste kwartaal 2016 Nationaal Coördinator Groningen’ (17 May 2016) p. 5-6.

¹⁷¹ NAM for example recently offered 10 million euro to buy out people in one of the most severely struck areas in the Province (town of Loppersum) for which 115 eligible home owners were registered (compensation would occur at 95% of taxation value, not the full market value apparently). This compensation was ultimately afforded on the basis of a lottery, excluding many home owners from this measure based on luck, not needs. See eg. <http://nos.nl/artikel/2108700-opkoopregeling-groningen-fors-overtekend.html>; <http://www.ad.nl/binnenland/nam-koopt-huizen-op-in-bevingsgebied-groningen~a284edb8/>; <https://www.dvhn.nl/groningen/Opkoopregeling-NAM-leed-met-leed-vergelijken-21474473.html> (4 July 2016); Also see the recent call of the Groningen Province to take away the NAM’s control in matters of settling compensation: <https://www.nrc.nl/nieuws/2016/08/06/groningen-wil-kleinere-rol-nam-bij-vergoeding-3540557-a1515011> (6 August 2016).

¹⁷² Council of State, No. 201501544/1/A4 (15 November 2015), par. 41.

Article 12 ICESCR

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
 - a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
 - b) The improvement of all aspects of environmental and industrial hygiene;
 - c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
 - d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

A. Right to (Mental) Health of Children and Youth

In the Netherlands, in 2015 the new ‘Youth Act’ came into force.¹⁷³ All forms of youth care including youth mental health care, were decentralized to municipal level. In a recent rapport, the Dutch Ombudsman for Children ascertains that the new Youth Act system does not function properly. The main reason is the fact that the quality of expertise from the youth care professionals is insufficient.¹⁷⁴ The report of the Monitor Transition Youth – a coalition of various national organizations in youth care – concludes that in the offer of care to young people, choices are based on the availability of medical supplies and not based on what is needed in a particular case.¹⁷⁵ Furthermore, many general practitioners are not sufficiently informed about the teams that are contracted by municipalities, resulting in a lack of cooperation.¹⁷⁶ Parents complain about the lack of information about the procedures in youth care.¹⁷⁷ Moreover, since the Youth Act came into force the waiting time for psychosocial child care and child psychiatry has increased considerably due to insufficient purchase of care by municipalities, lack of control at the level of the neighbourhood teams and/or bureaucracy.¹⁷⁸ The Department of Child and Youth Psychiatry of the Dutch Association of Psychiatry confirms that an increasing number of parents to arrange and pay themselves for mental health care for their children as a result of long waiting lists.¹⁷⁹ Thus, apart from compromising the quality of care, the latter problems indicate that the Youth Act impedes the availability and accessibility of care.¹⁸⁰

Recommendation 38:

The submitting parties recommend the Committee to urge the Dutch Government to increase its attention to the status of (mental) health of youth and children, and in particular to:

- monitor the compliance with norms in information protection in care by municipalities;
- ensure adequate provision of information about the organization of and contracts with youth care on municipality level to all persons and organizations involved, and to promote cooperation between general practitioners and neighbourhood teams;
- provide municipalities with sufficient means to invest in education and further training of youth care professionals;
- introduce a quality register for youth care professionals;
- develop policies that prevent and reduce waiting lists in youth care facilities.

¹⁷³ Dutch Youth Act (15 March 2014), Stb. 2014,105.

¹⁷⁴ Dutch Ombudsman for Children, Report ‘The care they are entitled to’ (18 March 2016), p. 60. Available at: <https://www.dekinderombudsman.nl/ul/cms/fck-uploaded/2016.KOM009%20Dezorgwaarzerechtophebben%20deelrapport3>.

¹⁷⁵ Monitor Youth Transition, ‘Report of the First quarter of the Year 2016’ (April 2016), available at: http://www.monitortransitiejeugd.nl/images/rapportages/rapportage_MTJ_april_2016_vs5.0.pdf

¹⁷⁶ LHV, ‘Children’s Ombudsman collaboration between doctors and commune team is insufficient’ (24 March 2016), available at: <https://www.lhv.nl/actueel/nieuws/kinderombudsman-samenwerking-tussen-huisarts-en-wijkteam-onvoldoende>

¹⁷⁷ Monitor Transition Youth, ‘Parents need concrete information about Youth Care’ (June 2016), available at: <http://www.monitortransitiejeugd.nl/nieuws/nieuws-juni-2016>

¹⁷⁸ LHV, ‘Doctors concerned about waiting lists and privacy of the Youth Care’ (23 September 2015), available at: <https://www.lhv.nl/actueel/nieuws/huisartsen-bezorgd-over-wachtljsten-en-privacy-jeugdzorg>

¹⁷⁹ National Care Guide, ‘Parents often pay themselves for the psychological treatment of their Child’ (9 November 2015), available at: <https://www.nationalezorggids.nl/jeugdzorg/nieuws/27966-ouders-betalen-vaker-zelf-voor-psychische-behandeling-kind.html>

¹⁸⁰ General Comment No. 14, par. 12(a) and (b).

B. The Abolishment of Subsidies for Interpreter Services in Health Care

Per January 1, 2012, the Dutch Ministry of Health, Welfare and Sport (VWS) abolished subsidies for interpreter-translators in health care.¹⁸¹ The government's main argument that was used to justify these cuts is that patients (or their representatives) are responsible for their own command of the Dutch language.¹⁸² The measure has a particularly negative impact on the accessibility of health care for refugees and migrants. While there is an interpreter service available in the reception centres for asylum seekers, refugees are denied the right to interpreter services as soon as they move to regular housing in a municipality.

The Royal Dutch Medical Association (KNMG) has indicated that healthcare providers encounter all kinds of problems due to the Ministry's decision to abolish subsidy for these services, including delays of care if an interpreter still has to be called in a later stage, inaccurate translations by informal interpreters, differing quality of healthcare services (depending on whether a competent interpreter is present or not), and that health care providers are more inclined to send patients to a specialist who speaks the language of the patient instead of the specialist best qualified for their health care problems.¹⁸³ In addition, experts and medical practitioners agree that female asylum seekers experience maternity complications up to four times more often than Dutch women,¹⁸⁴ and while these complications can partly explained by other factors (e.g frequent moving around and costs and the (non) availability of pregnancy tests (and contraception) in asylum centres), problems with accessing interpretation services certainly adds to the problem.

It is very difficult to guarantee that patients give informed consent if they do not fully understand the information being given and cannot ask questions freely. Healthcare providers will often not be able to obtain people's full medical history and give instructions without the help of a professional interpreter. Apart from that, the requirement that patients should pay for the costs of interpretation themselves is likely to restrict access to health care for those who are least able to pay such fees – including ethnic minorities and (undocumented) migrants. As these groups already experience inequalities in health (care), this will add to their burden. Therefore these groups have diminished access to health care.¹⁸⁵

Recommendation 39:

The submitting parties recommend the Committee to urge the Dutch government to provide for interpreter in medical care, since a lack of interpreters fundamentally prevents access to adequate health care for the most vulnerable.

C. The Right To Health Of Undocumented Migrants

In the Netherlands, all rejected asylum seekers and undocumented migrants are entitled to 'medically necessary care', defined as 'well-considered and appropriate medical care', to be indicated by doctors.¹⁸⁶ However, this fund, coordinated by Zorginstituut Nederland,¹⁸⁷ only compensates care which is covered by the most basic health care insurance scheme. As a result physical therapy and also dental care for adults is not covered in the fund, which leads to severe access problems in practice. Besides, this medically necessary care is only accessible if both the migrant and the health care provider are aware of the possibility to declare costs, which is not always the case.¹⁸⁸

¹⁸¹ Except for asylum seekers in a reception centre for asylum seekers, victims of human trafficking and women in a social care home.

¹⁸² Minister of Health, Welfare and Sport (VWS), 'Policy letter on interpreter-translators (inzet tolken)', 119322-104128-MC, 28 May 2013.

¹⁸³ S. Broersen, 'Doctors in trouble without an interpreter fee', Journal: Arts & Patiënt 2014, p. 582-583, available at: medischcontact.artsennet.nl/archief-6/Tijdschriftartikel/142987/Artsen-in-de-knoop-zonder-tolkenvergoeding.htm.

¹⁸⁴ Factsheet Asylum seekers and Health October 2015. Pharos Knowledge Centre Health differences.

¹⁸⁵ General Comment No. 14, para 12.

¹⁸⁶ Committee on Medical Care, 'Arts en Vreemdeling' (Klazinga c.s. 2007), http://www.pharos.nl/documents/doc/i01-rapport_arts_en_vreemdeling.pdf

¹⁸⁷ Dutch Care Institute 2016, 'Undocumented People who cannot be insured' (2016), available at: <https://www.zorginstituutnederland.nl/verzekering/onverzekerbare+vreemdelingen>

¹⁸⁸ Breed Medisch Overleg, 'Voor hun kiezen...' (Utrecht 2010), available at: <http://zoekservice.mensenrechten.nl/StippWebDLL/Resources/Handlers/DownloadBestand.ashx?id=2953>

Moreover still problems concerning the access to medication¹⁸⁹ (a personal contribution of €5,=, which in some cases, but not always, is covered by local funds).

Access to adequate health care is furthermore complicated by the fact that the continuity of care and transfer of medical data between different settings undocumented migrants find themselves in (detention, temporary shelters, street) is not well organized and needs improvement to support health professionals in their work regarding undocumented migrants.¹⁹⁰ In 2015 various recommendations were presented at the Minister of Health¹⁹¹, on the fact that information about care to undocumented is not sufficiently accessible for both health professionals and undocumented migrants. The state leans too much on the (often invisible) efforts of Ngo's and support organizations, to provide health professionals with adequate information.

The right to health of undocumented persons with medical needs is further threatened and undermined by the fact that they are not provided with adequate day- and night shelter, rendering medical care ineffective.¹⁹²

Recommendation 40:

The submitting parties recommend the Committee to ask the Dutch government to improve accessibility to health care for undocumented migrants by, e.g.:

- review the practice of the personal contribution for medicines,
- to review the access to dentists and physical therapy for adults,
- to implement a national monitoring system with regard to access to healthcare for undocumented migrants in various settings,
- to ensure that health professionals are adequately informed about the possibilities in 'care to undocumented' and initiate an entity to coordinate the mediation of access to healthcare between migrants and regular healthcare,
- to ensure adequate (night and day) shelter for vulnerable and ill persons in order to protect their right to health.

D. Right To Health of Undocumented People And Asylum Seekers In Detention Centres

Deprivation of freedom is a particularly severe measure. To give substance to the principle of last resort, it is of great importance to propose alternatives to detention. It is well known that the administrative detention of undocumented migrants and asylum seekers forms a serious risk for their mental health.¹⁹³ This certainly applies to persons in a vulnerable situation.¹⁹⁴ They are disproportionately more at risk of worsening health conditions while in detention. Still, too many persons in a vulnerable situation are placed in immigration detention. In the proposed bill: 'Law on return and immigration detention'¹⁹⁵ no categories of vulnerable people, like children, pregnant women, the elderly and persons with physical and/or psychological problems, will be excluded *a priori* from custody.

¹⁸⁹ Dutch Care Institute 2016, 'Undocumented People who cannot be insured' (2016), available at: <https://www.zorginstituutnederland.nl/verzekering/onverzekerbare+vreemdelingen#Apotheken>

¹⁹⁰ National Ombudsman, '2013/15: Private research on medical care for asylum seekers'(3 October 2013), available at: <https://www.nationaleombudsman.nl/onderzoeken/2013/125>

¹⁹¹ Recommendations by the National Institute of Human Rights, ACVZ and National Ombudsman, <https://www.mensenrechten.nl/publicaties/detail/36258>

¹⁹² Letter of Doctors of the World to Lampion (25 April 2016), available at: http://zoeken.amsterdam.raadsinformatie.nl/cgi-bin/showdoc.cgi?action=view/id=294371/type=pdf/Bijlage_3.Mandates_of_special_rapporteur_on_human_rights_25.02.16.pdf

¹⁹³ See e.g.: A. Keller et al, 'Mental health of detained asylum seekers.', Journal: The Lancet (2003), p. 362: 1721-1723; Steel et al, 'Impact of immigration detention and temporary protection on the mental health of refugees', The British Journal of Psychiatry' (2006), p. 188:58-64; Robjant, K., Hassan, R., & C. Katona, 'Mental health implications of detaining asylum seekers: systematic review', The British Journal of Psychiatry (2007), p. 194(4), 306-312.

¹⁹⁴ Amnesty International, Doctors of the World, Stichting LOS, Immigration Detention Hotline, 'Lock up or protect? Vulnerable people in Immigration Detention', (April 2016).

¹⁹⁵ House of Representatives, 'Law on return and immigration detention' (30 September 2015), available at: <https://www.tweedekamer.nl/kamerstukken/wetsvoorstellen/detail?id=2015Z18003&dossier=34309>

The submitting parties observe that health and well-being of people who are detained for several months, deteriorates.¹⁹⁶ In 2015 480 people were confined for 3 to 6 months and 140 people 6 months and longer. These detentions include far going control measures like punitive isolation measures and handcuffing people when they have for instance appointments in the hospital. It also includes confinement in cells during several hours during a 24-hours period, the lack of meaningful daily activities, of freedom of movement, of possibilities to easily maintain external contacts, directly or through internet and email, and lack of privacy.¹⁹⁷ Expectations that the proposed bill would improve the regime, are not met.¹⁹⁸ Usually detention aggravates physical and mental problems of vulnerable persons. This is especially true for those migrants who are traumatized by experiences of violence in their home-country or because they are victims of trafficking.¹⁹⁹

Despite previous statements of the Ministry of Security and Justice to limit the duration of immigration detention to a minimum,²⁰⁰ a significant number of persons confined in immigration detention centres were put in solitary confinement as a measure of good order and security, and in particular on medical grounds as recent as 2015. In 2014 medical grounds included mainly threats or attempts of suicide, confused behaviour or hunger and/or thirst strike.²⁰¹ There are no medical grounds for isolating hunger or thirst strikers. Moreover, the care given by making use of isolation cells does not seem to be equivalent to the care given in mental health care institutions where since 2006 the aim is to abolish solitary confinement.²⁰² Isolation of people with suicidal ideation or other mental health problems, as well as people on hunger- or a thirst strike, may have an adverse effect.²⁰³

Recommendation 41:

The submitting parties recommend the Committee to urge the Dutch government to:

- limit the length of administrative detention, respecting the *ultimum remedium* principle and to prevent repeated detention;
- ensure in legislation that persons in a vulnerable situation, such as pregnant women, the elderly, children and persons with serious physical and/or psychiatric problems cannot be confined in immigration detention;
- ensure that the conditions of administrative detention do not negatively contribute to the (mental) health status of persons detained;
- take concrete steps to work on the reduction and eventual elimination of the use of isolation

¹⁹⁶ Also research shows that the length of stay in detention has an adverse effect on (mental) health. See e.g. Robjant, K., Hassan, R. & Katona, C., 'Mental Health Implications of Detaining Asylum Seekers: a Systematic Review'. *British Journal of Psychiatry* (2009), p. 194, 306-312; Jesuit Refugee Service – Europe, 'Becoming Vulnerable in Detention. Migrants in the European Union', Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular (The DEVAS Project)(2011); European Parliament Committee on Civil Liberties, Justice and Home Affairs, 'The conditions in centres for third country national', Doc. REF: IP/C/LIBE/IC/2006-181 (2011), STEPS Consulting Social Study for European Parliament (CONTRACT REF: IP/C/LIBE/IC/2006-181). p. 15-16; Wetenschappelijk Onderzoek- en Documentatiecentrum, Ministerie Veiligheid en Justitie, 'Van bejegening tot vertrek. Een onderzoek naar de werking van vreemdelingenbewaring' (2013).

¹⁹⁷ For a more detailed description of the different regimes, cf. A.M. Kalmthout, "Immigration custody," in: E.R. Muller en P.C. Vegter (eds.), 'Detention. Locked up in the Netherlands', (Alphen aan den Rijn: Kluwer, 2009), p. 325-330.

¹⁹⁸ Main improvements are less time behind closed doors (12 instead of 17 hours – art. 22 proposal), 2 instead of 1 hour of fresh air - art. 23.2 proposal; and a maximum of 4 hours visit each week (used to be 2 hours) - art. 29.1 proposal. The proposal is more strict when it comes to a special kind of intake-regime ('beheersregime') which can last for a maximum of 2 weeks - art. 17 proposal. No changes are perceived for days spent in a police cell (4) and no possibility of work.

¹⁹⁹ B. Boermans, 'Exploited and in jail! Victims of trafficking in Immigration Detention', (January 2009), available at: [BlinN-Humanitas/Oxfam Novib](http://www.blinn-humanitas.org/).

²⁰⁰ Appendix with: Kamerstuk No. 19637/2008, (20 May 2015)

²⁰¹ Amnesty International, Doctors of the World, Stichting LOS, Immigration Detention Hotline, 'Isolation in Immigration Detention', (2015). For the English summary: <http://www.doktersvandewereld.org/wp-content/uploads/2016/07/Summary-report-Isolation-in-Immigration-Detention.pdf> and Data received after a request on publicity of administration (Dutch: verzoek met beroep op de Wet openbaarheid van bestuur) of de Volkskrant Newspaper: From January till July 2015 209 punitive and order measures were imposed, from which 155 in an isolation cell. 126 times isolation was imposed as an order measure. 102 of the 154 order measures were because of medical reasons.

²⁰² Voskes, Y, 'No effect without ethics. Reduction of seclusion in psychiatry from a care ethics perspective', (Amsterdam: University 2014), p. 15-17.

²⁰³ CPT 2012: Report to the Government of the Netherlands on the visit to the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 October 2011, par. 58. Researchboard for Safety, 'Safety for Immigrants', (The Hague, 2014), p. 49.

as an order measure and to put an end to the isolation of persons on a hunger and or thirst strike.

E. Freedom of choice in obstetric care not guaranteed

The submitting parties signal that many NGO's have expressed their concern to the Minister of Health, Welfare and Sport over the intention to change the system of reimbursement for obstetric care.²⁰⁴ Those changes will lead to restrictions of the freedom of choice of pregnant women with regard to primary obstetric care for giving birth at home. It will also give rise to regional variations in treatment since health care insurers can then decide which midwife, doctor or gynaecologist is to be reimbursed and which one is not. Institutions' financial policy must never interfere with women's right to decide where, how and from whom they accept obstetric care.

Recommendation 42:

The submitting parties recommend the Committee to ask the Dutch government how it plans to safeguard pregnant women's autonomy and freedom of choice regarding obstetric care.

F. Restrictions to access to reproductive health care

According to the government, by way of Ministry of Health (VWS) and the Health Care Inspectorat (IGZ) family doctors (general practitioners) and pharmacies are criminally liable in case they provide for a medical abortion for early unwanted pregnancies.²⁰⁵

This hinders the access to quality and accessible health care particularly for vulnerable groups of women,²⁰⁶ such as women in limiting social conditions (unfree situation), undocumented women and women who live in rural areas which often live far away from the authorized clinics. Undocumented women are altogether excluded from affordable abortion services, even by the national system established for medical care for incompetent documented in life.²⁰⁷

The Health Minister has announced to amend the current abortion law to include family doctors as abortion care providers. On the other hand, the amendments include many new thresholds and obstacles by criminalizing early medical abortion and unnecessary license-requirements and excessive bureaucratic burdens for family doctors who want to provide early abortion care.

Recommendation 43:

The submitting parties recommend the Committee to:

- call upon the Dutch government to not undertake retrogressive steps while safeguarding accessible early abortion care and decriminalize abortion care;
- urge the Dutch government to make abortion care accessible to all women regardless of status.

G. Right to Health, Curaçao (ISLA Refinery)(& art. 6 ICESCR)

The submitting parties are pleased to note that in the Sixth Periodic Report the Dutch government reaffirmed its commitment to take steps to promote the right to work in Curacao, for example by agreeing protocols with major companies on the island such as the ISLA Refinery.²⁰⁸ However, the Dutch government does not address the environmental and possibly work place related health issues with regard to ISLA Refinery. In particular, major newspapers have covered the severe pollution emanating from this (Venezuelan-owned) refinery, in great excess of Dutch environmental

²⁰⁴ Letter from the Clara Wichmann Institute to the Minister of Health, Welfare and Sport, (31 May 2016), Position Paper regarding the policy on Integrated obstetrical care, Birth Movement Foundation (17 June 2016).

²⁰⁵ Answers on Kamervragen Arib, Doc. No. 2015Z05961, (2 april 2015), Answer on question of Dik-Faber, question hour House of Representatives, (31 maart 2015), 69-5-1; L. de Kwant, 'Abortion pill by the Doctor: wanted but not legal, medical contact' (2 april 2015); E-mail of IGZ to SunPharma (Dutch producer of medical abortion pills) with regard of supplying pharmacies, (24 April 2015).

²⁰⁶ CESCR, General Comment 24, par. 14.

²⁰⁷ The governmental scheme that reimburses providers of medical services to undocumented aliens does not cover the costs for abortion, available at: <https://www.zorginstituutnederland.nl/verzekering/onverzekerbare+vreemdelingen>

²⁰⁸ Sixth Periodic Report 2016, p. 57

standards, i.e. reportedly up to more than 15 times acceptable emission standards.²⁰⁹ Actually, in 2010, the Joint Court of Justice already decided that ISLA is obliged to limit its contribution to the emission for sulfur dioxide, which it currently consistently exceeds.²¹⁰ However, this is not enforced.

Over the past year, the Dutch Parliament has pressured the government for concerted action, since new problems have emerged, referring to the great threats to health (eg asthma, cancer) and life of inhabitants. In February 2016, Dutch Parliament adopted a motion that condemns the poor governance on the Island of this issue, and requires the Dutch government to ensure that pollution is maximally reduced within three months,²¹¹ Yet, considering that the costs of effective adaption are likely very high, the question is what efforts will be truly undertaken to secure the right to health of Curacao inhabitants.²¹²

Recommendation 44:

The submitting parties recommend the Committee to ask the Dutch government what concrete measures it is taking to ensure that the right to health is guaranteed for the citizens of Curacao, especially protection against harmful substances in and out of the workplace.

H. Right to Health and Air Pollution Levels in the Netherlands (Friends of the Earth – air pollution case)

Despite some improvements, the right to health of people in the Netherlands, especially in urban areas, continues to be severely compromised by prevailing and prolonged exposure to ambient air pollution, in contravention of European and international safety levels for acceptable pollution rates. To illustrate, in the Netherlands about 3-5% of the total burden of disease is caused by air pollution.²¹³ Recent studies also reveal that in 40% of Amsterdam city streets, levels of NO₂ are higher than allowed per European clean air regulations.²¹⁴ In August 2016, Friends of the Earth Netherlands therefore launched a law suit against the Dutch state to require the State to take further measures in this regard, and to ensure within half a year, compliance with relevant air pollution regulation, including also particularly the WHO Air Quality Guidelines.²¹⁵

From a perspective of the ICESCR, submitting parties concur with the perspective that clean air, in line with international regulations on air pollution, can be claimed as part of the right to health.²¹⁶ The WHO considers ‘clean air to be a basic requirement for human health and well-being’.²¹⁷ The Committee also makes several clear references to environmental hygiene and the impacts of (air) pollution on health, including ‘the prevention and reduction of the population’s exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health’.²¹⁸ Moreover states ‘should refrain from unlawfully polluting air’ and ‘should formulate and implement national policies aimed at reducing and

²⁰⁹ ‘Curacao, paradise full of sulfur and nickel’, Newspaper: Trouw (8 August 2016); , ‘Love-hate relationship with the refinery’, Newspaper: Volkskrant (15 September 2015), ‘<http://www.volkskrant.nl/buitenland/haat-liefderelatie-met-de-raffinaderij~a4141447/>. Indicating protests of the population against the pollution of the refinery by the NOS News, ‘Curacao inhabitants concerned over ‘cancer-inducing’ green stuff’, at: <http://nos.nl/artikel/2040318-curacaoenaars-bezorgd-over-kankerverwekkend-groen-spul.html>

²¹⁰ Joint Court of Justice, Vol. ECLI:NL:OGHNA:2010:BK9395 (12 January 2010).

²¹¹ House of Representatives 2015-2016, 34300-VI, 20.

²¹² Minister of the Interior and Kingdom Relations (BZK), ‘Policy letter on ISLA’, 24 May 2016.

²¹³ See information offered by the Government via: <https://www.volksgezondheidenzorg.info/onderwerp/fysieke-omgeving/cijfers-context/luchtverontreiniging#node-ziektelast-door-luchtverontreiniging>.

²¹⁴ ‘Friends of the Earth Netherlands challenging State about Air Pollution’, Newspaper: Parool (2 August 2016)

<http://www.parool.nl/binnenland/milieudefensie-daagt-staat-om-luchtvervuiling~a4350196/>; Also see

<http://www.ggd.amsterdam.nl/gezond-wonen/milieu-buitenshuis/luchtkwaliteit/>.

²¹⁵ Friends of the Earth Netherlands, ‘Dutch State being sued about Air Pollution’, (2 August 2016)

<https://milieudefensie.nl/luchtkwaliteit/nieuws/dagvaarding-recht-op-gezonde-lucht>; ‘Friends of the Earth Netherlands

challenging State about Air Pollution’, Newspaper: Parool (2 August 2016), available at:

<http://www.parool.nl/binnenland/milieudefensie-daagt-staat-om-luchtvervuiling~a4350196/>; or Trouw Newspaper:

<http://www.trouw.nl/tr/nl/4492/Nederland/article/detail/4352693/2016/08/06/Milieudefensie-tast-juridische-grenzen-af.dhtml>; and see WHO Guidelines (2005) here: http://www.who.int/phe/health_topics/outdoorair/outdoorair_aqg/en/

²¹⁶ CESCR, General Comment 14 (2000) par. 4 and 11.

²¹⁷ WHO, ‘Air quality guidelines – global update 2005’. (2005), available at:

http://www.who.int/phe/health_topics/outdoorair/outdoorair_aqg/en/ (hereafter: WHO Air Quality Guidelines (2005))

²¹⁸ CESCR, General Comment no. 14 (2000), par. 15.

eliminating pollution of air, water and soil, including pollution by heavy metals such as lead from gasoline'.²¹⁹ Finally, 'the failure to enact or enforce laws to prevent the pollution of water, air and soil by extractive and manufacturing industries' is a violation of the obligation to protect the right to health.²²⁰ Also the WHO points out the severe health effects due to exposure to ambient air pollution, and has drafted international guidelines on air pollution.²²¹ A particular concern of Friends of the Earth in its lawsuit is that WHO guidelines are two times stricter than the EU regulations.²²² They propose therefore that EU regulations are not sufficiently protective in guaranteeing clean air for Dutch citizens, and that the Netherlands should strive to meet the higher WHO Guidelines to protect the right to the highest attainable standard of health for its citizens effectively.

Recommendation 45:

The submitting parties recommend the Committee to require the Government to take immediate and concrete actions on air pollution, e.g. through various regulatory measures, particularly with the aim of ensuring that as a minimum form of protection the most stringent international safety levels for air pollution and health (i.e. the WHO Guidelines) are met.

I. Right to Health and Lack of Climate Change Measures (Urgenda-climate case)

Similar to the previous paragraph, the Dutch government also has been criticized in the past reporting period for not taking sufficient action on preventing harmful international climate change. In past years, the Netherlands has pursued as an official policy to reduce greenhouse gases with 17%, instead of minimum reduction efforts of 25% as required by international climate agreements – so as to keep to maximum 2 degrees warming. In fact, recent discussions leading up to the new UNFCCC Paris Agreement affirm now that a maximum warming level of 2% is insufficient and that 1,5% is to be strived for; accordingly efforts and targets have to be improved.

In 2015/2016, organization Urgenda has filed and subsequently won a law suit in the Court of First Instance against the Dutch state on behalf of itself and 900 Dutch citizens. The Court ruled that the Netherlands has to step up efforts on greenhouse gas reductions, in line with international treaty obligations to this effect.²²³ This goes again to the need to respect international environmental safety levels that help to ensure respect for human rights, including in the area of health. The effects of climate change for the Netherlands, as listed in the Urgenda case, are considerable.²²⁴ Still, the Dutch State decided to appeal the ruling of the Court of First Instance.

This case has primarily been ruled as a tort case in Dutch law, however civil and political human rights law was judged to be relevant.²²⁵ The implications of ICESCR were not discussed by the court. Submitting parties consider this reporting cycle an excellent opportunity to clarify the great importance and implications of the ICESCR in matters of climate change as well, in particular 'the right to health'.²²⁶ The applicability of the right to health in climate change, and the severe health effects of climate change, was also affirmed by the UN Human Right Council recently, and in the preamble of the UNFCCC Paris Agreement of December 2015.²²⁷ Similar to the issue of air pollution,

²¹⁹ *Idem*, par. 34 and 14

²²⁰ *Idem*, par. 51.

²²¹ WHO Air Quality Guidelines (2005), here: http://www.who.int/phe/health_topics/outdoorair/outdoorair_aqg/en/.

²²² Friends of the Earth Netherlands, 'Dutch State being sued about Air Pollution', (2 August 2016)

<https://milieudedefensie.nl/luchtkwaliteit/nieuws/dagvaarding-recht-op-gezonde-lucht>

²²³ Court of First Instance, Case No. ECLI:NL:RBDHA:2015:7145, (24 June 2015). Also see: <http://www.urgenda.nl/en/>.

²²⁴ Writ of Summons Urgenda (19 November 2013), p. 51. Available at:

www.urgenda.nl/documents/DagvaardingKlimaatzaak19-11-13.pdf. Factors include heat stress, increased infectious diseases, poorer air quality, increased exposure to UV, and increase in water and food related diseases. Also the Government has acknowledged such risks in the past, e.g. in terms of increased zoonose diseases (Lyme disease), UV-radiation, heat stress etc. More information available at: www.volksgezondheidenzorg.info or previously, <http://www.nationaalkompas.nl/gezondheidsdeterminanten/omgeving/milieu/klimaatverandering/wat-zijn-de-gezondheidsgevolgen-van-klimaatverandering/>.

²²⁵ Court of First Instance, Case No. ECLI:NL:RBDHA:2015:7145 (24 June 2015), par. 4.45-4.46, 4.109.

²²⁶ WHO Factsheet on Health and Climate Change, via: <http://www.who.int/mediacentre/factsheets/fs266/en/>.

²²⁷ Human Rights Council Resolution 29/15 (22 July 2015), available at:

http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/29/15 ; See also Hesselman and Toebes: 'The human right to health and climate change: A legal perspective', 31 October 2015, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2688544.

there are many ways in which the human right to the highest attainable standard of health obligates the Dutch State to respect/protect health in its territory, eg. by regulating (third party) emissions. Preventive measures and meeting international commitments on greenhouse gas reductions are still a key strategy and prime concern according to the IPCC. There can also be an extra-territorial component to the efforts expected of States in protecting life and health of people in other countries, as well as at home.

Recommendation 46:

The submitting parties recommend the Committee to require the Government to:

- Take dedicated national action on greenhouse gas reductions and meet, at a minimum, internationally required and agreed reduction targets for mitigating harmful climate change;
- Continue inventarizing the negative health effects of climate change which can no longer be averted, and introduce adequate health plans and strategies to cope with the extra health burdens of climate change, especially for vulnerable groups (elderly, sick, infants). This may include ‘vulnerability mapping’, as suggested in IPCC reports, and lead to urban interventions to address heat islands, instalment of airco’s, or plans to deal with new/increased diseases.

Article 13 ICESCR

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

- a) Primary education shall be compulsory and available free to all;
- b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
- d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
- e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

A. ‘Inclusive Education’ – Access to Education for Children with Disabilities

The submitting parties are concerned with the continuing exclusion of children and young people with disabilities from regular education and from adequate access to resources for supported learning in order to enjoy a qualitatively good education.

The right to education is ‘both a human right in itself and an indispensable means of realizing other rights’, and ‘an empowerment right’²²⁸ is especially important to children with a disability who when denied the opportunity of participating in mainstream education often remain marginalized for

²²⁸ CESCR, General Comment 13 (2011), par. 1

life. The right to education is not sufficiently anchored in the Dutch Constitution. Article 23 of the Dutch Constitution concerning education describes the responsibility of the national government to provide education as a ‘continuing responsibility’ but does not frame it as a right born by children and students themselves. The recently enacted Appropriate Education Act does not provide a right to be included in mainstream settings, nor does it provide a right to adequate support in order to receive a qualitatively good education. Recent research in the Netherlands demonstrates that many children with disabilities are almost automatically referred to schools for special education²²⁹ and that both mainstream and special schools are often unable to provide tailored educational support where necessary.²³⁰ 15,000 children are not receiving education at all, as there is no adequate option for them in the educational system, or are considered ‘ineducable’ and are officially exempted from school attendance in favour of enrolment in day care settings in the care sector.²³¹ Use of this exemption provision in the Mandatory School Attendance Act is on the increase²³².

This is despite the adoption of the Appropriate Education Act (*Wet Passend Onderwijs*) referred to by the government in para. 32 of its submissions.²³³ In its submission the government fails to mention that the ‘duty to care’ of school to provide for education of children with disabilities is limited by law enabling schools to refuse children.²³⁴ Insufficient mainstream placements are available to ensure that all children attend a mainstream school. As a result many children are de facto excluded of the right of education. Schools are also insufficiently flexible in curriculum adaptation, resulting in a lack of adaptability and resulting exclusion from pupils who require more tailoring in order to succeed at school. The Children’s Ombudsman describes this lack of flexibility as a fundamental problem for children with disabilities.²³⁵

Schools are also insufficiently accessible. Norms for making schools accessible are provided in Bouwbesluit 2012 and the Wet Milieubeheer but contain no rules for existing buildings. Rules permitting municipal governments to order accessibility adaptations to existing buildings are discretionary and open-ended.²³⁶

Finally, full inclusion of children with disabilities is obstructed by the legal framework of the Equal treatment Act of persons with disabilities and chronic illness (WGBH/CZ). This Act considers special schools for children with disabilities an exception to the prohibition of discrimination (art. 3 subsection c WGBH/CZ).²³⁷ This legal exception to the prohibition of discrimination significantly reduces the scope of the prohibition of discrimination contrary to Article 2 paragraph ICESCR (CESCR General Comment no. 5) and article 5 of the CRPD as well as the right to inclusive education which is also guaranteed by the UN Convention on Rights of Persons with Disabilities. This exception to the prohibition of discrimination not only prevents effective inclusion of persons with disabilities in society but limits their effective enjoyment of ESC-rights on equal footing in violation of the human rights approach of disability.

Recommendation 47:

The submitting parties recommend the Committee to:

- call upon the Dutch government to abolish the legal practice of branding children as ‘ineducable’ and exclude them from the right of education;
- urge the Dutch government to take (legal) measures to guarantee the right to inclusive education of persons with disabilities;
- call upon the Dutch government to ensure that all schools are accessible to persons with

^p Smits & Schoonheim, ‘Violations of the Right to Education being included,’ (June 2016)

²³⁰ 9th progress report on Appropriate Education Act, p. 8 table showing negative perceptions of internal support managers and teachers about ability to provide adequate support; Children Ombudsman, KOM014/2105, 8 September 2015, p.

²³¹ Numbers of Ministry of Education for 2014-2015: 5077 children with no right to education (‘uneducable’), 9972 children with no access to education / school (‘thuis-zitters’/‘sitting-at-home’).

²³² Letter to Parliament, ‘Compulsory figures and approach truants’, House of Representatives, parliamentary year 2015-2016, 26695, nr. 108

²³³ Recommendation 13, The Right to Education

²³⁴ Art. 40 (5) Law on Primary Education, Art. 27 (2 d) Law on Secondary Education), Art. 40 (6) Law on Special Education.

²³⁵ Children’s Ombudsman, KOM014/2015, 8 September 2015, p. 11,21

²³⁶ Court of Audit, ‘Schoolbuildings primary and secondary education: practice is being checked’, 4 February 2016.

²³⁷ Art. 3.1.b WGBH/CZ; special education as an exception to the prohibition of discrimination: Kamerstukken II 2001/02, 3, p. 11 (MvT) [Proposal of law / bill].

disabilities;

- urge the government to amend and reform the WGBH/CZ to ensure that mandatory segregation is no longer an legal exception to the prohibition of discrimination.

B. De Facto Segregation in Dutch Education System

The phenomenon of ‘black’ and ‘white’ schools in the Netherlands is persistent. In practice migrant children are often not welcome in ‘white’ schools: admission procedures are not always transparent school and directors fear low scores. Research found that school boards who actively counteract segregation have a positive effect on mixed student population. At the same time, researchers found that there is little interest with school boards for this issue, negatively influencing segregation.²³⁸ The government is no longer actively involved in the issue.²³⁹

Recommendation 48:

The submitting parties recommend the Committee to urge the Dutch government to actively investigate and monitor discriminatory admittance practices with regard to ethnic segregation. The submitting parties recommend the Committee to ask the Dutch government what measures it is taking to reduce segregation in education.

C. Vocational education and training (VET)

The structure of the vocational education and training (Wet educatie en beroepsonderwijs, WEB) leaves limited room for individual development and does not sufficiently take individual needs and achievements into account as is set out by the goals education has to fulfil under international law. Flexibility in the vocational curriculum is necessary to accommodate all students according to their different needs and talents and to prevent dropping out of education.

Although the government encourages schools to reduce their dropout rates by rewarding them financially if they manage to decrease dropout rates, this approach has a setback: it is not financially attractive for schools to admit students considered to be at risk of dropping out. Schools therefore profile students based on age, handicap or school history making those student vulnerable to non-admittance (often without motivated and/or written decision) in violation of the right of education. The law governing vocational education and training does not provide for effective legal protection in the event of non-admittance. There are no clear rules governing the admission (or refusal) of students with the appropriate pre-education certificates. Complaints procedures are not mandatory unlike other tertiary education systems as universities (of Applied Sciences).

Furthermore there exists inequality in the financial support students are provided for by way of the government. Education is free of charge for minors (younger than 18 years old) at the secondary VET education level, but not so at the tertiary level of VET education. In addition the government has amended their tuition program for students aged 18-30 years old. Previous to 2015 the fellowship system (*studiebeurs*) consisted of part loan, part gift (a part that need not be reimbursed). Since 2015 the fellowship system consists solely of a loan increasing the amount of debt related to education despite the duty to progressively introduce free education at secondary and tertiary level. To be educated has become more expensive instead. Less students have enrolled in higher education since, especially students whose parents are less educated and students with disabilities.²⁴⁰

²³⁸ Forum Factsheet, ‘Elementary in the Neighborhood: Development of Reflection and Segregation’, (April 2014); Kohnstam Instituut, ‘Action against Educational Segregation in Communities. Exploring of the local policy 2013’, September 2013.

²³⁹ Parliamentary debate on 10 March 2011, letter of NJCM, Dutch Section of the ICJ to Minister of Education, 26 April 2011 concerning policy changes regarding segregation in schools: www.njcm.nl/site/uploads/download/423.

²⁴⁰ ResearchNed, Monitor Beleidsmaatregelen 2015, ‘Study, study behavior and financing in relation to policies in higher education 206-2015’, Nijmegen 2016 [Study commissioned by Ministry of Education/VWS]; Volkrant, 19 april 2016: <http://www.volkskrant.nl/binnenland/vooral-minder-studenten-met-laagopgeleide-ouders-sinds-leenstelsel~a4284930/> (National newspaper: Less students with less educated parents enrolled in higher education).

Recommendation 49:

The submitting parties recommend the Committee call upon Dutch government to:

- provide for flexibility of the educational and training program that respect different needs of students and prevents dropouts;
- provide for effective legal remedies with regard to admittance, in addition to a mandatory complaints mechanism;
- to monitor and research effects of fellowship program with regard to accessibility of higher education

D. Discrimination of pregnant students in college and higher education

Pregnant students and single mothers are not provided with remedies or accommodations to enable them to combine education and care. Non-admittance because of care for children or pregnancy is prevalent.²⁴¹ Dropout rates are excessively high: 50% at the vocational educational and training level (VET / MBO) and 75% at university level. When the issue has been brought to the attention of the Minister of Education, the minister argued that accessibility was not an issue for the government but for the educational institutions to solve as they are responsible for compliance with laws surrounding equal treatment and accommodation for pregnant students and student mothers. These issues have to be dealt with through lodging a complaint.²⁴² It is recalled here, as noted above, that schools for VET are not required to establish a complaints procedure. Effective legal protection is lacking.

Recommendation 50:

The submitting parties recommends the Committee to:

- ask the government what effective measures it intends to take to ensure single mothers and pregnant students are not discriminated against.
- call upon the government to ensure that educational institutions provide for reasonable accommodations to pregnant and single mothers, preferably by legislation.

E. Right to education for asylum seekers and irregular migrants

Undocumented adult migrants are not allowed to start education after their 18th birthday.²⁴³ Irregular migrants are sometimes denied education when they reach the age of 18 year, or they are not allowed to continue the same education in a similar school in another city, because the schools are insufficiently aware of their right to education. This hinders their personal development and their future employment opportunities²⁴⁴ and may lead to unwanted health consequences.²⁴⁵ These negative consequences are especially harmful for undocumented migrants who are in the process of obtaining a residence permit during which they are allowed to stay in the Netherlands, or those who are still in a government shelter (rejected asylum seekers in freedom restricted departure centres).

Unaccompanied minors who have been refused asylum retain their right to shelter, food and education. However, they have no right to an identity document²⁴⁶ and are not provided with an alternative identity document. Lack of identity documents are much needed to ensure the right to education for a number of reasons: mandatory internships which require a background check, to obtain

²⁴¹ Steunpunt studerende moeders (studerendemoeders.nl/, national support group and knowledge centre), subject of current research of the Free University of Amsterdam: <http://www.vu.nl/nl/over-de-vu/profiel-en-missie/uitgelicht/onderzoek-zwanger/index.aspx>

²⁴² Letter of Minister to NGO's of 18 January 2016, zie <http://studerendemoeders.nl/verklaring-reactie-op-brief-ministerocw/>

²⁴³ See Wet educatie en beroepsonderwijs (VET act art. 8.1.1, art 1.1.1) and Wet op het hoger onderwijs en wetenschappelijk onderzoek (University (of Applied Sciences) Act art. 7.32)

²⁴⁴ <http://www.oecd.org/skills/skills-matter-9789264258051-en.htm>

²⁴⁵ C.J.Laban, Dutch study Iraqi asylum seekers. Impact of a long asylum procedure on health and health related dimensions among Iraqi asylum seekers in the Netherlands. An epidemiological study. Proefschrift Vrije Universiteit Amsterdam, 2010. ISBN 978 90 8659 452 8

²⁴⁶ Kamerstuk 27062: 91, 19.12.13; <https://zoek.officielebekendmakingen.nl/kst-27062-91.html> (Parliamentary documentation)

public transport season tickets to travel to school or a library membership.²⁴⁷ It also creates difficulties to receive a valid diploma resulting in deprivation of the positive effects of a successfully completed education.

In higher education, especially VET, internships are mandatory. Without internship, no diploma. In the previous reporting cycle it was reported that undocumented students could not fulfil this requirement because it was qualified as ‘work’. In 2012 a district court decided that this violated the right to education.²⁴⁸ Despite this verdict the government has not amended the law.²⁴⁹ As a result the violation of education of undocumented students is still being violated in many instances.

Recommendation 51:

The submitting parties recommend the Committee to ask the Dutch government to review laws on access to education and internships for undocumented migrants, asylum seekers, migrants who are in a regularisation procedure or in an government shelter.

The submitting parties recommend the Committee to recommend to the Dutch government to provide minors whose asylum claim have been rejected with an identity document so they can effectively ensure profit form their right to education.

Article 15 ICESCR

1. The States Parties to the present Covenant recognize the right of everyone:
 - a) To take part in cultural life;
 - b) To enjoy the benefits of scientific progress and its applications;
 - c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.
3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.
4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

A. The Right of Roma, Sinti and Travellers To Take Part In Cultural Life

Since the abolishment of the Caravan Act in 1999 (*Woonwagenwet*) there no longer is a national mobile homes policy. In a directory of the VROM (former-ministry of Housing, Land planning and the Environment) five policy options are directed to the municipalities concerning the enforcement of mobile home sites. The first policy option is the ‘zero-option’ aimed at the extinction of trailer parks. As a result, the municipalities can pursue an extinction policy through removing released sites, or actively, by offering different housing to residents (e.g. municipality of Utrecht).²⁵⁰

According to the European Court of Human Rights, “the occupation of a caravan is an integral part of the identity of travellers, even where they no longer live a wholly nomadic existence, and that measures affecting the stationing of caravans affect their ability to maintain their identity and to lead a private and family life in accordance with that tradition”.²⁵¹ Furthermore, in 2015 the Committee on the Elimination of Racial Discrimination has recommended the Netherlands “to take resolute measures to ensure that Travellers are provided with sufficient campsites, so as to be able to practice their

²⁴⁷ Certain internships require a so called statement of behaviour (verklaring van gedrag), which is a background check. This check cannot be obtained without id-documentation.

²⁴⁸ District court of The Hague, 2 May 2012, ECLI:NL:RBDH:2012:BW4736.

²⁴⁹ Besluit Uitvoering Wet Arbeid Vreemdelingen (art 1f en 1g).

²⁵⁰ See VROM, ‘Werken aan woonwagenlocaties’ (23 November 2010), available at:

<https://www.rijksoverheid.nl/documenten/brochures/2010/11/23/werken-aan-woonwagenlocaties> (only available in Dutch) (‘Working on caravan sites’, instructions for local authorities).

²⁵¹ ECHR, *Winterstein and Others v France*, Judgment (Merits), Application no. 27013/07 (17 October 2013), par. 148.

traditions and preserve their identity”.²⁵² However, the central government has not taken any action and municipalities maintain the extinction policy.²⁵³

Recommendation 52:

The submitting parties recommend the Committee to urge the Dutch government to abolish the trailer parks extinction policy and to ensure that sufficient caravan sites are made available, so that Roma, Sinti and travellers can live in accordance with their culture and traditions.

B. The Protection of Minority Languages (Papiamentu)

Even though Dutch is the official language of the Kingdom of the Netherlands, most people on the special municipality of Bonaire grow up with Papiamentu as a mother language. Papiamentu (or Papiamentu) is a Creole language containing elements of Spanish, Portuguese, Dutch, English and French, as well as Arawakan and African languages. It is spoken by about 330 000 people in Bonaire, Curaçao and Aruba. While Papiamentu has been recognized by the Dutch Government as an official language on Bonaire, much remains to be done with regard to an integrated approach towards the facilitation, promotion and protection of this minority language. During a visit to Curaçao the UN working group of experts of people of African descent, it concluded that ‘[T]here are very few opportunities for children to study in the local language, leaving many, including those who speak Papiamentu, at a disadvantage. The education system is often Eurocentric, dominated by the Dutch language, history and literature over local perspectives,²⁵⁴ even though language is a central element and expression of identity and of key importance in the preservation of group identity.²⁵⁵ Language rights have been referred to by the Committee as being part of the right to take part in cultural life.²⁵⁶

Recommendation 53:

The submitting parties recommend the Committee to ask the Dutch government what measures it intends to take to ensure the right to language and own history on the BES islands.

C. ‘Black Peter’ As A Breach Of The Right To Participate In Cultural Life (& 2 and 13 ICESCR)

The Netherlands has a yearly tradition of Saint Nicholas visiting the children with his servant ‘Black Peter’, bringing gifts and candy. While Black Peter has various cultural origins (for example, the black ravens of the Norse god Wodan), its most recent inspiration comes from the Moorish slave. As a result, Black Peter has black curly hair, a painted black face and big red lips. The UN CERD confirmed that that ‘the character of Black Pete is sometimes portrayed in a manner that reflects negative stereotypes of people of African descent and is experienced by many people of African descent as a vestige of slavery, which is injurious to the dignity and self-esteem of children and adults of African descent’.²⁵⁷

In the past years, many groups have protested against Black Peter, deeming him a racist relic of Dutch colonial rule.²⁵⁸ These protests have been met with resistance from national and local government, demonstrated by the (violent) arrest of some 80 silent and peaceful anti-racism protesters

²⁵² CERD, Concluding observations on the nineteenth to twenty-first periodic reports of the Netherlands, UN Doc. CERD/C/NLD/CO/19-21 (Geneva: 28 August 2015), § 20; see also European Commission against Racism and Intolerance, CRI Report on the Netherlands (fourth monitoring cycle), No. CRI(2013)39 (adopted on 20 June 2013, published on 15 October 2013), par. 169.

²⁵³ NJCM PILP, ‘Extinction policy of mobile home sites, a violation of human rights?’, see <http://pilpnjcm.nl/files/extinction-policy-mobile-homes/>.

²⁵⁴ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14840&LangID=E>

²⁵⁵ UN Independent Expert on minority issues, Rita Izsák, 12 March 2013, see:

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=13124&LangID=E>

²⁵⁶ See Committee on Economic, Social and Cultural Rights, General comment No. 21 on the Right of everyone to take part in cultural life, UN Doc. E/C.12/GC/21 (Geneva: Forty-third session of 2–20 November 2009), par. 13.

²⁵⁷ Committee on the Elimination of Racial Discrimination, ‘Concluding observations on the nineteenth to twenty-first periodic reports of the Netherlands’, 28 August 2015, CERD/C/NLD/CO/19-2, available at:

http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/NLD/CERD_C_NLD_CO_19-21_21519_E.pdf

²⁵⁸ ‘Honderden bij protest tegen Zwarte Piet in Amsterdam’, nu.nl (16 November 2013), available at: (‘Hundreds protesting Black Pete’).

during the official parade in Gouda in November 2014. The debate around Black Peter is currently polarizing the Dutch community. Many black residents that are of African descent feel that Black Peter prevents them from enjoying the Saint Nicholas festival as it caricatures a black slave. In 2014, at the height of the debate, a record amount of complaints of racism was filed, predominantly by Dutch people of Surinamese, Antillean and African descent.²⁵⁹ Many racial slurs were witnessed on (social) media and in private circles. The argument that people of African descent have no right or role regarding the development of cultural traditions because they are not truly Dutch is often heard. Unfortunately the Dutch government has neglected its responsibility to counter such explicit racism, and to play a central role in fostering public understanding and awareness of structural racism.

The state is obliged to take active and effective steps to ensure that cultural life is inclusive and without discrimination.²⁶⁰ Furthermore, in a recent judgement by the court of first instance in Amsterdam, it was ruled that Black Peter constitutes a negative stereotype of individuals of African descent and a breach of their private life.²⁶¹

Recommendation 54:

The submitting parties recommend the Committee to ask the government for an update of the taken measures and impact regarding the efforts to reduce stereotypes of people of African descent and ensure an inclusive culture.

²⁵⁹ Stichting Magenta, Afdeling Meldpunt Discriminatie Internet (Discrimination Hotline), Meldpunt Discriminatie Internet Jaarverslag 2014, Amsterdam: Stichting Magenta, MDI 2015, meldpunt.nl/site/documents-oud/MDI%20Jaarverslag%202014.pdf.

²⁶⁰ CESCR, GC 14.

²⁶¹ District court of Amsterdam, No. ECLI:NL:RBAMS:2014:3888, (3 July 2014).

APPENIX A – articles 9 and 11 ICESCR

A schematic example of the year 2016 of a family with two children aged 11 and 17:

	Families	Single parents	Parent with undocumented partner
Social benefit	€ 1.389,57	€ 972,70	€ 694,79
General child benefit (<i>Kinderbijslag</i>)	€ 174,14	€ 174,14	€ 174,14
Income dependent benefits:			
Rent benefit	€ 249	€ 249	-
Health care benefit	€ 158	€ 83	-
Child budget	€ 190	€ 445	-
<i>Total income dependent benefits (tax authorities)</i>	<i>€ 597</i>	<i>€ 777</i>	<i>€ 0</i>
Total monthly income	€ 2160,71	€ 1923,84	€ 868,93

In comparison: average fixed costs of a Dutch family:

Rent	€ 471,19
Service costs, incl. water	€ 85,35
Gas / electricity	€ 49
Health insurance	€ 138,99
Liability insurance	€ 5,86
Internet	€ 26,39
Mobile phone contract	€ 4,42
total	€ 781,20