

ADDENDUM

to the

Joint Parallel Report to the Combined Fourth and Fifth Periodic
Report of the Netherlands on the International Covenant on
Economic, Social and Cultural Rights (ICESCR)
(28 October 2009)

The Netherlands, 16 September 2010

This document constitutes an Addendum to the *Joint Parallel Report to the Combined Fourth and Fifth Periodic Report of the Netherlands on the International Covenant on Economic, Social and Cultural Rights*, as submitted to the United Nations Committee on Economic Social and Cultural Rights by seventeen Dutch NGOs and other civil society actors in October 2009.

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- Dutch Section of the International Commission of Jurists
- Foundation LOS (National Support Organisation for Undocumented People)
- Johannes Wier Foundation for Health and Human Rights
- Justitia et Pax Nederland
- Netwerk VN-Vrouwenverdrag (Dutch CEDAW Network)
- Tiye International (Platform of 21 National Associations of Black, Migrant and Refugee Women and Youth)
- Vereniging VluchtelingenWerk Nederland (Dutch Council for Refugees)
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The report is further submitted on behalf of:

- Aim for human rights
- ASKV / Steunpunt Vluchtelingen (Support Organisation for Refugees)
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INTRODUCTION

On 23 November 2009, at the 43rd Pre-Sessional Working Group meeting of the United Nations Committee on Economic, Social and Cultural Rights, two representatives of the Dutch section of the International Commission of Jurists presented the *Joint Parallel Report to the Combined Fourth and Fifth Periodic Report of the Netherlands on the International Covenant on Economic, Social and Cultural Rights*.

During this Pre-Sessional Working Group meeting, the representatives presented the shared concerns of seventeen Dutch NGOs and other actors in civil society on the protection of economic, social and cultural rights, as expressed in the Joint Parallel Report, and answered questions of the United Nations Committee on Economic, Social and Cultural Rights in this regard. While most questions were answered during the Pre-Sessional Working Group meeting, two questions were too comprehensive and complex to provide an answer to at the meeting itself, and it was agreed that a written response would be formulated and submitted at a later date.

The present Addendum contains the written responses to the questions posed at the Pre-Sessional Working Group, which were:

- 1) Please provide more information on the workings of the procedure for asylum requests, and the various problems that asylum seekers face in regard of the enjoyment of economic, social and cultural rights throughout various stages of the asylum procedure, in particular with regard to the situation in reception centres for asylum seekers and immigration detention centres.
- 2) Please provide more information on the protection of economic, social and cultural rights of undocumented migrants, and in particular the effects of the Benefits Entitlement Act.

The United Nations Committee on Economic, Social and Cultural Rights also requested more statistics on the situation of asylum seekers, refugees and undocumented migrants. These statistics have been incorporated in the Addendum at relevant instances, and as far as they were available.

Due to the vulnerable and worrisome situations of migrants in procedures other than procedures for asylum, the authors have decided to also include for the benefit of the Committee, a chapter on the economic, social and cultural rights of migrants in other procedures for residence in the Netherlands (e.g. stay with a Dutch child, or for medical reasons). Generally these migrants face different obstacles than asylum seekers, who have a better position in terms of reception and conditions during their procedure for application for residence than other migrants.

In order to do justice to the different groups of migrants, and the particular problems they face, Chapter I below will first focus on the economic, social and cultural situation of *asylum seekers*, and include also, for the benefit of the Committee in response to the question posed in November 2009, an overview of the manner in which the Dutch Asylum procedure works. It may be noted that the asylum procedure was just revised, so the information included is very up-to-date, while on the other hand certain consequences of the changed policy may not be clear. Attention will be paid to certain negative and positive developments.

Chapter II will then focus on an overview of the economic social and cultural problems and exclusion faced by *migrants other than asylum seekers, and who have a procedure pending for residence based on another ground than asylum*. Again, generally the problems faced by this group are different from the problems faced by asylum seekers, due to *inter alia*, their lack of access to asylum facilities. Their situation is thus discussed in an additional chapter, so as to make clear to the Committee their particular plight.

Lastly, Chapter III will then contain a reply to the question of the Committee in regard of the situation of ‘undocumented migrants’, which are understood in this report as *migrants residing on Dutch territory without a valid residence permit, and who are not in any procedure to apply for formal residence status*.

The differences between the various groups, and particular problems they are facing will be described in more detail below.

1.1. JOINT RESPONSE TO THE ‘WRITTEN REPLIES TO THE LIST OF ISSUES OF THE NETHERLANDS GOVERNMENT

In addition to the formulation of written responses to the questions posed at the Pre-Sessional Working Group in November 2009, the authors would also like to take this opportunity to provide the United Nations Committee on Economic, Social and Cultural Rights (hereinafter the Committee) with a written response to the ‘Written Replies’ of the Dutch government, to the Committee’s ‘List of Issues’ as published in December 2009.

The authors are of the opinion that the Dutch government has failed to provide full and accurate information in response to a number of items on the List of Issues, and would like to bring some additional information and developments to the attention of the Committee for the benefit of drafting Concluding Observations on the implementation of economic, social and cultural rights in the Netherlands.

As the Addendum should be seen as complementary to the Joint Parallel Report submitted earlier, the information to follow below will serve primarily to highlight some particular key issues in response to the Written Replies of the government, or to add extra information where appropriate. The shared concerns expressed in the Joint Parallel Report remain valid as such (unless indicated otherwise).

Please note that due to the expertise of the participating civil society actors, as was the case in the *Joint Parallel Report* no comments are made on the status of implementation of the Covenant in the Netherlands Antilles and Aruba.

1.2. NEW DEVELOPMENTS IN THE FIELD OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN THE NETHERLANDS

In addition to the above submissions, the authors furthermore would like to point out a number of new developments regarding the protection of economic, social and cultural rights that have taken place recently.

1.3. RECENT ADOPTION OF CONCLUDING OBSERVATIONS/DECISIONS BY OTHER HUMAN RIGHTS SUPERVISORY BODIES RELEVANT TO IMPLEMENTATION OF ECONOMIC SOCIAL AND CULTURAL RIGHTS BY THE NETHERLANDS

Lastly, the present Addendum would like to call the Committee's attention to a number of findings that other human rights supervisory bodies have made on the implementation of economic, social and cultural rights in the Netherlands since the Pre-Sessional Working Group meeting was held in November 2009. Most notably these are the comments of the UN CEDAW Committee (Concluding Observations on the Netherlands of February 2010)¹, the UN CERD Committee (Concluding Observations on the Netherlands of March 2010)², and the European Committee of Social Rights supervising the regional (Revised) European Social Charter (rendering a decision on housing rights of undocumented children in the Netherlands on 20 October 2009)³

For ease of reference, Chapter 6 will enlist the most important comments of these bodies in respect of the implementation of economic, social and cultural rights in the Netherlands.

The authors hope that this overview will be of use to the Committee in determining the status of implementation of economic, social and cultural rights in the Netherlands, and hope that the Committee will reiterate the obligations for the protection of economic, social and cultural rights in the Netherlands as enumerated in Chapter 6 of the Addendum.

¹ UN Doc. CEDAW/C/NLD/CO/5.

² UN Doc. CERD/C/NLD/CO/18.

³ See Complaint No. 47/2008, DCI v. The Netherlands, decision of 20 October 2009, decision is available from the website of the European Committee on Social Rights:
http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC47Merits_en.pdf

I. WRITTEN RESPONSE TO THE FIRST QUESTION OF THE COMMITTEE:

The economic social and cultural situation of asylum seekers in various stages of the Dutch (Revised) Asylum procedure, including a practical overview of the asylum procedure

As described in the introduction, this chapter will first provide an overview of the economic, social and cultural situation of asylum seekers. As was requested by the Committee, the Chapter will first include a clarification of the (new) procedure for asylum requests, so as to provide an overview of general procedures, the manner in which asylum seekers end up in reception centers or detention facilities, etc. The Chapter will end with an overview of particular problems faced by asylum seekers in various stages of the procedure. (The subsequent chapters will deal with the position of other migrants)

Before going into the matter, first it is worth while to point out the various groups of migrants in the Netherlands that will be discussed in this Chapter and the subsequent Chapters, in order to distinguish them from each other. Again, each of the groups have their own particular problems, as to be discussed below

In the Netherlands, generally a distinction is made between the following groups of migrants:

- I. Legal migrants which have a legal residence permit: in most cases these persons have full legal rights
- II. Undocumented migrants without procedure pending: these persons have almost no legal rights (see Chapter III)
- III. People 'in-between', meaning persons which are:
 - a. in an admission procedure starting from 'illegality', that could be either:
 - i. an asylum request (Chapter I)
 - ii. a request for a permit to stay for medical reasons, humanitarian reasons, family reunion or family formation, stay with Dutch child, or because of the impossibility of return (Chapter II)
 - b. rejected from an admission procedure but still in the country pending departure (Chapter II)
 - c. in a procedure to change an existing residence permit (Chapter II)
 - d. waiting for their residence permit for instance for family reunion after entry with a long-term visa (mvv) (Chapter II)

Description of (Revised) Dutch Asylum Procedure and various problems faced by asylum seekers in different stages of the procedure

In July 2010, the Dutch government the Aliens Act 2000 was revised so as to allow for the provision of a convenient reception model, i.e. for example less relocations throughout the asylum procedure. The section below describes each stage of the asylum procedure as it stands now, and provide an explanation of which type of reception location is provided for at that specific stage and which rights and facilities are applicable. At the end of the Chapter some particular difficulties are brought to the attention of the Committee in the context of the rights of asylum seekers throughout various stages of the procedure and the economic social and cultural situation in various reception / detention locations, which deserve further attention in the context of the present reporting procedure.

1. Applying for asylum and registration of the asylum application

Any foreign national who arrives in the Netherlands and wishes to apply for asylum (Group III.a.i) must report this to the Immigration and Naturalization Service (*Immigratie en Naturalisatie Dienst, IND*). He or she can apply for asylum (i.e. not a formal lodging of his/her application (see below under B)):

1. On Dutch territory: Any other asylum seeker who has entered the Netherlands has to apply for asylum at the central reception location (*Centrale OntvangstLocatie, COL*) in Ter Apel. Once an asylum seeker has stated that he wishes to apply for asylum, registration takes place in the COL in Ter Apel. Under normal circumstances, the asylum seeker stays in the COL up to a maximum of three days.
2. At the border (airport, seaport): If an asylum seeker, coming from a non-Schengen country, has entered the Netherlands by plane or boat and is stopped by the Royal Netherlands Marechaussee (*Koninklijke Marechaussee, KMar*) before crossing the Dutch (EU) external border, he will be stopped at the border. If he states that he wishes to apply for asylum, he will be refused entry to the Netherlands and will be deprived of his liberty. He will be transferred to the application centre at the Amsterdam airport Schiphol (*Aanmeldcentrum (AC) Schiphol*) to formally lodge his application.
3. In a detention centre: Aliens who are detained in an immigration detention centre and who wish to apply for asylum, need to apply for asylum in the detention centre, with a maximum period of procedure of six weeks.⁴ If their procedure cannot be terminated in this period, they will be transferred to an asylum seeker reception center as well.

Expressing a wish to apply for asylum does not directly mean that the request for asylum has officially been lodged. Before the asylum seeker will be able to officially lodge his application, which will mark the start of the general asylum procedure, he will have a reflection and preparation period (*rust- en voorbereidingstermijn, RVT*).

2. Reflection and preparation period (RVT)

Any alien who wishes to apply for asylum for the first time will have a reflection and preparation period (RVT) before his actual asylum procedure formally starts. The aim of the RVT is twofold. Firstly, the period offers the asylum seeker some time to rest and prepare himself/herself for the actual asylum procedure. Secondly, to the RVT gives the INS the opportunity to commence preparatory actions and investigations on for example the identity, nationality and travel route of the asylum seeker. The duration of the RVT is at least six days and starts right after the Aliens Police registers the asylum seeker at the COL. The alien will stay in the COL up to a maximum of three days. After those three days, the alien will be relocated to a central process reception location (central POL), where he will complete his reflection and preparation time.

The following activities will take place in the reflection and preparation period:

- Investigation by the Kmar: Based on details and documents that have been collected by the Kmar during the first registration an investigation will take place into the identity, nationality and travel route of the asylum seeker.

⁴ Voorzetting maatregel artikel 6 Vreemdelingenwet 2000 in het grenslogies t.b.v. onderzoek na de AC-procedure. Besluit van de Minister van Vreemdelingenzaken en Integratie van 20 april 2004, nummer 2004/32, houdende wijziging van de vreemdelingencirculaire 2000. See: <https://zoek.officielebekendmakingen.nl/stcrt-2004-79-p13-SC64830.pdf>.

- Medical advice: During the RVT the asylum seeker is offered medical advice. This advice aims at researching whether the asylum seeker suffers from medical problems that would interfere with his capacity to declare in a consistent and coherent manner.
- Counselling by the Dutch Council for Refugees: The Dutch Council for Refugees informs every asylum seeker about the asylum procedure. An explanation of the procedure is given, the different roles of each actor in the procedure are explained and the rights and duties of the asylum seeker are outlined.
- Preparation by the lawyer: During the RVT, the asylum seeker meets his lawyer at his office. This meeting is mainly intended to become acquainted and to prepare the asylum seeker for his first and second interview.

Reception and facilities during the RVT

- a. Reception: Every asylum seeker has a right to reception after he has expressed his wish to apply for asylum in the COL. Reception will be provided in the COL for a maximum of three days, where the asylum seeker will be registered. After registration, he will be relocated to a central POL (where he will also stay during the procedure). Reception during the RVT also means that the Central Organ for Reception of Asylum Seekers (Collectief Orgaan voor Opvang Asielzoekers, COA) will provide meals to asylum seekers in the reception location.
- b. Medical care: cover of the costs of medical benefits in accordance with a health insurance scheme.
- c. Public transport tickets: Every asylum seeker will be provided with public transport tickets in order to travel to and from his legal representative in relation to his asylum procedure

3. The general asylum procedure (AAP)

After the RVT, the general asylum procedure (*algemene asielprocedure, AAP*) starts. In the general asylum procedure a decision on the application will be rendered within eight working days. When it appears on the fourth day that the IND needs more than eight days to investigate the application, the applicant will continue his procedure in the prolonged asylum procedure (*verlengde asielprocedure, VAP*).

Day 1: Formal submission of the asylum application and the first interview

Every asylum seeker starts his asylum procedure in an application centre (AC). An asylum application must be submitted through a special form. At the day of the official lodging of the asylum application, the IND conducts the first interview with the asylum seeker regarding the asylum seekers' identity, nationality, and travel route from his country of origin to the Netherlands.

Day 2: Review of the first interview and preparation for the second interview

The first interview will be reviewed by the asylum seeker and his lawyer. If necessary, corrections and additions on the first interview can be submitted to the IND. The lawyer also prepares the asylum seeker for his second interview.

Day 3: Performance of the second interview

During the second interview the asylum seeker will be questioned by the IND about his asylum motives.⁵

⁵ If the IND holds that the asylum application should be assessed by another country and the Dublin procedure applies, the second interview will not be conducted, but instead another interview will be held in regard to the transfer to another country.

Day 4: Review of the second interview and lodging of the corrections and additions

The second interview will be reviewed by the asylum seeker and his lawyer. If necessary, corrections and additions on the second interview can be submitted to the IND.

After day 4, the IND decides whether the asylum application of the asylum seeker will be further processed in the general or the prolonged procedure.

Day 5: Issuance of the intention to reject the asylum application

If the IND decides to continue the asylum application in the general procedure and has the intention to reject the application it will issue this intention in writing to the asylum seeker. The intention to reject provides the grounds and reasons for the intended rejection.

Day 6: Submission of the response to the intention

After the IND has issued its written intention to reject the asylum application, the lawyer can, on behalf of the asylum seeker, submit his response to the intention, in writing.

Day 7 and 8: Issuance of the decision of the IND

After the submission of the response to the intention, the IND decides to either grant asylum, refuse asylum or decides to continue the asylum procedure in the prolonged asylum procedure.⁶

Reception and facilities during the general asylum procedure

When the asylum seeker starts his general asylum procedure, he will be relocated from a central POL to a reception location (POL). The POL will be in the region of an application centre (*aanmeldcentrum*, AC) where the asylum seeker will formally lodge his application. However the procedure takes place in the AC. Therefore, daily shuttle buses run between the POL and the AC to transport the asylum seekers. The asylum seeker will stay in the POL during the night and when his presence is no longer required in the application centre (AC).

The asylum seeker leaves the POL either on day five of the general asylum procedure (if the IND decides to further process the asylum application in the prolonged asylum procedure) or on day eight of the general asylum procedure (when a positive or negative decision has been issued). In both cases the asylum seeker will be transferred to a reception centre.

Every asylum seeker is entitled to the following facilities during his general asylum procedure:

- a. Reception: Every asylum seeker has a right to reception after he has expressed his wish to apply for asylum. Reception during the general asylum procedure means that the COA will provide a weekly allowance to cover the living expenses. (See indeed the authors' earlier comments on deficiencies of this allowance in our *Joint Parallel Report*).
- b. Medical care: cover of the costs of medical benefits in accordance with a health insurance scheme.
- c. Insurance: Every asylum seeker will be insured against financial consequences of legal liability.
- d. Extraordinary costs: Under special circumstances, extraordinary costs will be covered.

⁶ It may happen that the IND does not grant asylum to the asylum seeker on other grounds than has been stated in its intention to reject. In special circumstances, a new intention to reject will be issued, upon which a new written view of the lawyer may be submitted.

4. The prolonged asylum procedure

If the IND, during the general asylum procedure decides that it needs more time to investigate the asylum claim properly, the asylum seeker will be referred to the prolonged asylum procedure (*verlengde asielpprocedure, VAP*). This also means that the asylum seeker will be relocated from a POL to an asylum seekers' centre (AZC).

Under normal circumstances, the IND has *six months* to decide on an asylum application in the prolonged procedure. If the IND intends not to grant asylum to the asylum seeker, it first has to issue an intention to reject in writing to the asylum seeker. The asylum seeker then has a period of four weeks to issue a written view on the intention to the IND. After four weeks, the IND renders its written rejection to the asylum seeker.. Under specific circumstances the six month period to decide on the asylum application can be prolonged.

Reception and facilities during the prolonged asylum procedure

Every asylum seeker who follows the prolonged asylum procedure has a right to all the rights as mentioned under the RVT and the general asylum procedure. Also, he or she has additional rights:

- Allowances: Every asylum seeker has a right to a weekly financial allowance for food, clothing and other personal expenditures.
- Recreational and educational activities: During the stay in one of the reception locations, the asylum seeker will be offered a program for education and development.
- Integration programmes: During the stay in one of the reception locations after the asylum procedure has started officially, the asylum seeker can be offered a facility whereby a start can be made to learn some Dutch and information about the Dutch society.

An asylum seeker will not be granted all the above rights in cases where he or she does not make use of the offered reception.

5. Detention

There are several reasons why asylum seekers can be detained before, during and after their asylum procedure. Firstly, asylum seekers who arrive at the Dutch border and enter the territory illegally, can be detained in a border detention centre throughout their entire asylum procedure. Secondly, asylum seekers who are found residing illegally on Dutch territory can be detained. Lastly, asylum seekers can be detained if their detention is in the interest of public order or national security and in the light of expulsion.

In the past few years, there has been a significant increase in the number of immigration detention facilities and cells. The total number of cells mounted from 200 places in 1989 to more than 3,000 in 2007. More than half of the capacity is located on detention boats, which have been used since 2004. Every year about 10,000 irregular migrants and asylum-seekers are detained in the Netherlands.⁷

The legal basis for immigration detention in the Netherlands is laid down in the Aliens Act 2000 (Vreemdelingenwet 2000), which entered into force on 1 April 2001. More detailed elaborations of the Act are laid down, amongst others, in the Aliens Decree 2000 (Vreemdelingenbesluit 2000), comprising both procedural and material governmental decisions to implement the Act, and the Aliens Circular 2000 (Vreemdelingencirculaire 2000)

⁷ See generally: Ministry of Justice, *Migrant Detention in Number 2005-2009s*, 15 June 2010, available via: <http://www.dji.nl/Organisatie/Feiten-en-cijfers/>

– comprising policy decisions and changes. The Act allows, on the one hand, for the detention of irregular migrants and asylum-seekers at the border in order to prevent them from formally entering the territory (Article 6 Aliens Act 2000) and, on the other hand, for the detention of irregular migrants who are discovered after having entered the territory, rejected asylum-seekers and migrants who have overstayed their visas (Article 59 Aliens Act 2000). Most individuals are detained on the basis of Article 59 of the Aliens Act 2000.

There are no limits to the maximum period of detention in The Netherlands. The Netherlands is one of the few European countries that do not have a statutory limitation for administrative detention of undocumented migrants. However, after six weeks of detention, the asylum seeker can request the Court to reconsider his detention. This request can be made every six weeks.

Jurisprudence has developed a general maximum duration of six months of detention. During six months rejected asylum seekers and other undocumented migrants can be detained as long as there is a continued intention of the Dutch authorities to expel them, and no exceptional circumstances are in play. Circumstances which prolong the immigration detention beyond six months are the existence of an exclusion order (being an “undesirable alien”), a criminal record, when the alien frustrates any investigation into his identity or nationality, the initiation of one or more procedures with a view to stalling the expulsion or when the removal will take place shortly after the expiry of the six month period.⁸ The longest periods of detention known are 18 months. Children are only allowed to stay in aliens’ detention for a maximum of 14 days.⁹ The detention of unaccompanied minors doubled however, from 160 in 2008 to 300 in 2009.¹⁰

In the Joint Parallel Report already a number of issues have been considered in respect of the enjoyment and protection of economic, social and cultural rights by (rejected) asylum seekers and undocumented migrants in immigration detention centers (see e.g. comments on Article 12 ‘Right to Health’ under C, Article 13 ‘Right to Education’ under B). These comments remain valid and are again brought to the attention of the Committee. The authors also would like to refer to the Joint Response formulated below to the written reply A29, which contains additional information on access to adequate health care in immigration detention centers (see Chapter III).

Asylum procedure in detention

Asylum seekers whose claim is processed at AC Schiphol are detained. Therefore, there is no full reflection and preparation period. At AC Schiphol, this period is limited to two days. During these days medical advice can be provided, information by the Dutch Council for Refugees will be given and a preparation meeting with the lawyer takes place. After these two days, the general asylum procedure commences. If the IND decides after four days, it needs more time to investigate the claim, there are two possibilities. Firstly, the asylum seeker can

⁸ Amnesty International, *the Netherlands: The Detention of Irregular Immigrants and Asylum Seekers* (Amsterdam: June 2008). See:

<http://www.amnesty.nl/documenten/wereldnieuws/RapportVreemdelingendetentie.pdf>

⁹ Vreemdelingencirculaire A6/2.7 – de duur. See:

http://wetten.overheid.nl/BWBR0012287/6/2/27/geldigheidsdatum_09-03-2010, and A6/5.3.3.8 – Detention of families with migrant children. See:

http://wetten.overheid.nl/BWBR0012287/6/5/53/533/5338/geldigheidsdatum_09-03-2010

¹⁰ UNICEF Nederland en Defence for Children-ECPAT, *Jaarbericht Kinderrechten* (Year Report Child Rights) 2010, to be published (available from the website of both organisations starting September 17 2010) .

be sent to the closed prolonged asylum procedure (Gesloten Verlengde Asielprocedure). This six-week period can be prolonged if the IND cannot come to a decision. Secondly, the IND can decide to transfer the asylum seeker to an asylum seekers centre. This means that the asylum seeker will no longer be detained.

Reception and facilities during detention

During the asylum procedure in AC Schiphol, the asylum seeker stays in a detention centre. They sleep in cells and all meals are provided.

6. Outcomes and consequences

6.1. Positive decision

If the IND has issued a positive decision, the asylum seeker will not only receive a temporary residence permit, but the decision will also grant the asylum seeker legal residence in the Netherlands. The temporary residence permit will be valid in retrospective for a period of five years, that is to say from the moment when a person has lodged an asylum application and if the conditions on which the asylum seeker was granted asylum will not change during this time. Also, the residence permit has to be renewed every year.

Reception after positive decision in the general and prolonged asylum procedure

If the IND has issued a positive decision upon the asylum application of an asylum seeker, he will be relocated from the POL to an AZC, where he has to wait until appropriate housing will become available. Therefore, he will continue to have a right to reception until this moment. If the asylum seeker will be granted a positive decision in the prolonged asylum procedure, he will stay in the AZC until the moment appropriate housing becomes available.

6.2. Negative decision

There are different forms of reception, depending on the procedure in which a decision on the asylum procedure has been given. The different forms are explained below.

Reception after a negative decision in the general asylum procedure

If the IND has issued a negative decision in the general asylum procedure, the asylum seeker is given a period of four weeks (28 days) to leave the reception location and the country. If an asylum seeker however appeals against this negative decision and requests a provisional measure to stay in the Netherlands during his appeal, the asylum seeker has a right to reception until the ruling of the court. Theoretically the Court has to render a decision within four weeks, however practice shows that Courts are not always able to do this.

If the IND has issued a negative decision in the general asylum procedure, he will be relocated from the POL to a return location (TL), which is situated within an AZC. The asylum seeker will stay for a period of four weeks in a TL. If the asylum seeker has appealed against the negative decision and the court did not decide within four weeks, the asylum seeker will no longer have a right to reception, unless the asylum seeker has been granted a provisional measure in which reception was requested. If such a provisional measure has not been granted, the asylum seeker has no reception. Until recently, an asylum seeker that was rejected after a negative decision in the general asylum procedure would just be sent away from the reception centre without any options. Under the new asylum procedure, these rejected asylum seekers will now have four weeks of shelter in the return location (TL), but

without any prolongation possible. Although the change is to be applauded, the change needs to be re-evaluated at a later point for its effects.

For specific groups, there is a possibility to be relocated from a TL to a semi-open facility (*vrijheidsbeperkende locatie, VBL*). These specific groups consist of families with children, persons who are a threat to national security and persons who co-operate in their return.

The VBL in Ter Apel offers the same facilities as an asylum seeker reception center in theory, but with a duty for the rejected asylum seeker to report every day. This combined with the distance to most other places of interest, means that those living at this Location have only very limited possibilities to move outside the Location. The isolated situation complicates the possibility to go to normal schools, to visit lawyers, or to visit friends. For children there is a small school, but the level of education is insufficient for a longer stay especially for elder children in secondary education. While there was a contract for a while with a school for secondary education, the contract expired and currently there is no secondary education available at the Location beyond lower level primary education. Students wishing to take advanced secondary education will have to go off the location, which is often difficult due to the obligation to report every day. Now generally children can stay with acquaintances living off the Location, and the aliens police generally exempt children from their reporting duty. Education for adults has proven problematic though, due to the reporting procedure, and submitting parties have experienced that persons had to stop their education due to the reporting obligation.

The VBL is meant for a period of twelve weeks maximum. Rejected asylum seekers living there can be sent away afterwards. It is supposed that during these twelve weeks return to the home country can be realized; however, this is often not the case. On 20 October 2009, the European Committee of Social Rights of 20 October 2009 ordered the Dutch authorities not to send children of rejected asylum seekers away from the VBL, in order to prevent homelessness among children. The Dutch authorities first continued to withdraw reception facilities from families with children, stating that the decision of the Committee was legally not binding.¹¹ Several solicitors made complaints about this situation. In most cases judges refused the withdrawal of facilities from the family.¹² In some other cases judges decided that municipalities have a duty to prevent homelessness and ordered them to offer accommodation to these individuals or families either in kind (homeless shelters) or in cash (social benefits).¹³

On 9 August 2010, the Minister of Justice decided to temporarily stop the withdrawal of shelter for families with children, awaiting a final decision of the Court of Appeal in The Hague,¹⁴ which is a decision to be applauded.¹⁵ However, the duration of this measure, and its

¹¹ Collective Complaint Defence for Children International No. 47/2008, 14 January 2008. See: http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp.

¹² Court of Appeal (*Gerechtshof*) 200.063.511/01, 27 July 2010; Court of First Instance (*Rechtbank*) 's-Gravenhage, Awb 10 / 12456 en Awb 10 / 12455, 1 June 2010; Court of First Instance (*Rechtbank*) Utrecht, 08/36349, 13 November 2008; ABRvS, 200808890/1/V1, 20 May 2010; Court of First Instance (*Rechtbank*) Zutphen, 109691 / KG ZA 10-10 18 February 2010; Court of First Instance (*Rechtbank*) Zutphen, 109691 / KG ZA 10-10, 29 April 2010

¹³ Court of First Instance (*Rechtbank*) Leeuwarden, AWB 10/928, 5 July 2010; Court of First Instance (*Rechtbank*) Haarlem 10/2701, 14 June 2010; Court of First Instance (*Rechtbank*) Utrecht, SBR 10/867 WMO 6 April 2010; CRvB (mk), 09/1082 WMO 19 April 2010

¹⁴ Letter of Minister Hirsch Ballin to the Parliament, 4 August 2010, Reply to Parliamentary Questions, 2010Z11424.

¹⁵ See also case of the Dutch The Hague Court of Appeal which was the main push factor for the Ministry to change its policy: Court of Appeal, 27 juli 2010, LJN: BN2164.

effect are not yet clear at the time of writing. A number of serious concerns deserve mentioning in this regard as well, which is first of all the fact that change of policy does not provide a solution for families which have already been placed on the streets after a previously rejected asylum procedure. In addition, it is of serious concern that the Minister is now supporting a policy, based on relevant judgments on the rights of children, that only children will receive shelter, which means that children will be separated from their parents and placed in youth care institutions, while the parents will be left on the street. This is an undesirable situation altogether. Such practice is problematic for the right to family life.

Reception after a negative decision in the prolonged asylum procedure

If a negative decision has been rendered in the prolonged asylum procedure, and the asylum seeker appeals, this appeal has the effect of suspension. The asylum seeker therefore is provided with reception facilities in an asylum seekers centre until four weeks after the first ruling of the Court.

Negative decision of a renewed asylum application

If a negative decision is reached following request of a renewed asylum application, asylum seekers who will not be given a deadline of departure. Right after the negative decision has been issued, the asylum seeker no longer has a right to reception. However, an asylum seeker will still have the possibility to request a provisional measure and a right to appeal against the renewed negative decision. If the appeal will be declared well-founded and the provisional measure will be assigned, the asylum seeker will be entitled again to a right to reception.

7. Pressing concerns with regard to reception of asylum seekers (in or after conclusion of the asylum procedure) that deserve close attention in the present reporting procedure

- The first criticism focuses mainly on the use of detention for investigation purposes in regard to the asylum procedure in case an asylum seeker is detained and has requested asylum. Specifically, the criticism focuses on the length of the detention and the often miserable conditions during the detention. The Dutch Council for Refugees, for example, believes that the possibility to detain asylum seekers is being misused. It is often unclear for which purposes further investigation is used. Also, the imposition of detention appears arbitrary and improper.
- Other criticism focuses on families with children who end up on the streets after their right to reception has ended (as already briefly described above). Such circumstances may for example occur for families who have exhausted their asylum procedure and did not leave the Netherlands within the deadline of departure, and of whom their departure has not been realized yet. The European Committee of Social Rights has addressed this issue to the Dutch government. According to the Committee, the human dignity of children is affected in cases where they live on the streets. The government should be responsible for special protection of children. Recently, the Dutch government decided to provide accommodation to children after they have exhausted their asylum procedure, however the full effects of this are as yet uncertain and may have not fully solved the problem (see also in more detail above, and below under our Joint Responses to some written replies of the Dutch Government (A26/A27/A28)).
- Another problem that may occur concerns the situation in which an asylum seeker has been rejected in the asylum procedure and has requested a provisional measure which should also provide a right to reception and appeals against the negative decision. The

Legal Aid Board agreed on issuing the appeal and the request for a provisional measure within the deadline of four weeks by the Dutch courts. Theoretically, this would mean that an asylum seeker would not have to wait for the ruling of the court after the deadline of departure of four weeks. The expectation is that the practice will be different.

- A further problem that may occur concerns asylum seekers who have been issued a positive decision, but have to wait in an AZC until appropriate housing can be found. Appropriate housing will not be found immediately in all cases. The same could be stated about integration, which does not start immediately after a positive decision has been issued.

II. ADDITIONAL CHAPTER ON THE ECONOMIC SOCIAL AND CULTURAL SITUATION OF MIGRANTS IN PROCEDURES FOR LEGAL RESIDENCE OTHER THAN ASYLUM:

As already mentioned above, this Chapter will deal with an overview of the economic, social and cultural obstacles and exclusion faced by migrant groups who are in the Netherlands, and are awaiting a procedure for application for legal residence. These groups (introduced at the start of Chapter I under Group III.a.ii-iv), face different problems than migrants in a procedure for asylum requests, as they do not generally have access to any reception facility during their procedure. Below an account will follow of the particular problems that are faced by these various groups, and that deserve the attention of the Committee as being problematic from the point of view of Covenant obligations of the Dutch Government. Problems will be described per different category of application procedure.

While this Chapter could have included a description of the various applications procedures, in a similar manner as above for the asylum procedure, authors have opted not to do so for reasons of time, and because the information was not specifically requested by the Committee. In addition, the above chapter clearly highlights particular problems related to government run reception facilities, which are generally not applicable to the groups below, as they are denied access to such formal reception facilities altogether.

Particular problems will be highlighted per group below.

A.1. Group III.a.ii – migrants in a procedure for residence based on medical reasons, humanitarian reasons, family reunion or family formation, stay with Dutch child, or because of the impossibility of return

People in admission procedures for medical reasons, for humanitarian reasons, family reunion or formation, stay with Dutch child, or because of the impossibility of return, normally do not receive any support, although their stay is allowed. Or these groups are excluded from social benefits and insurances since the introduction of the Benefit Entitlement Act.

However, there are three exceptions:

1. People in admission procedures for medical reasons who start this procedure after a failed asylum procedure, can be allowed to stay in an asylum seeker reception center if they applied after 1 January 2010 and issued the right forms.¹⁶ Before this date, no allowances were offered to this group. As such, this change is to be applauded. A parliamentary request to offer people in other admission procedures access to asylum seeker reception centers was refused however.¹⁷
2. People with children in any of the procedures from group III.a.ii can get a small allowance during the initial phase of the procedure: €215,- per child per month.¹⁸ As

¹⁶ Brief van de Staatssecretaris van Justitie aan de Voorzitter van de Tweede Kamer der Staten-Generaal, The Hague, 7 December 2009, Parliamentary brief 30846 Evaluatie Vreemdelingenwet 2000, nr. 16. See: http://www.tweedekamer.nl/images/30846_16_118-204792.pdf

¹⁷ Parliamentary brief 31994, Wijziging van de Vreemdelingenwet 2000 in verband met het aanpassen van de asielprocedure, nr. 19, Motie van het lid Anker, C.S., of 7 December 2009. See: <https://zoek.officielebekendmakingen.nl/dossier/31994/kst-31994-19?resultIndex=29&sorttype=1&sortorder=4>; Parliamentary brief 31994, Wijziging van de Vreemdelingenwet 2000 in verband met het aanpassen van de asielprocedure, nr. 32, Brief van de Minister van Justitie Aan de Voorzitter van de Tweede Kamer der Staten-Generaal, of 29 March 2010. See: <https://zoek.officielebekendmakingen.nl/dossier/31994/kst-31994-32?resultIndex=5&sorttype=1&sortorder=4>.

¹⁸ Regeling verstrekkingen bepaalde asielzoekers en andere categorieën vreemdelingen 2005, geldend op 15 juni 2009, Article 2e. See: http://wetten.overheid.nl/BWBR0009726/geldigheidsdatum_10-09-2010.

the allowance for children in general is not enough to cover all living expenses of the child, some parents have asked social benefits to cover housing and other expenses for their children as well¹⁹. Some adults successfully complained in courts to get social benefits to cover their own expenses during these procedures.²⁰ For these children and adults, no health insurance is available however, they have to use the system to cover doctors' costs that is set up for undocumented migrants.

3. For people during a procedure as victims of domestic violence, the threat of honour killing or human trafficking or as witnesses of human trafficking during the trial, in some cases arrangements can be made to provide for a financial allowance and health insurance (*Rvb Regeling verstrekkingen bepaalde categorieën vreemdelingen*).²¹

If people ultimately receive a positive decision, it can still take many weeks or even months before migrants are able to obtain social benefits and health insurance because you need the actual document to prove your identity and legal status. This should be improved.

A.2. Group III.c – migrants in a procedure to change or renew an existing residence permit

In this procedure, the right to social benefits that existed during a legal stay continues as long as the new procedure allows the person to await the outcome of the procedure in the Netherlands.²²

Statistics in 2009

	requests	Admitted	rejected
a). Asylum seekers	15,040 ²³	8,510	9,770
b). Different procedures	6,100 ²⁴		

¹⁹ Zaaknummer AWB 10/754 WWB, Rechtbank Amsterdam, 10th June 2010. See:

<http://www.fischeradvocaten.nl/download.php?j=dXAva2luZGVyZW4ga29wcGVsaW5nc2JlZ2luc2VsIHZhc3RlIGpwLnBkZg>

²⁰ CRvB, 09/2713 WWB 19.4.10; Rb Rotterdam AWB 09/3704, 30.11.09; AWB 09-32888, 3290, 4290 WWB, 18.9.09; CRvB, 09/2715 WWB-VV 7.7.09

²¹ Regeling verstrekkingen bepaalde categorieën vreemdelingen, . See:

http://wetten.overheid.nl/BWBR0009726/geldigheidsdatum_10-09-2010.

²² See, for example: Work and Social Assistance Act (*Wet Werk en Bijstand*) Art. 11.3b, Act of 9 October 2003, Stb. 2003, 375; Unemployment Act (*Werkloosheidswet*) Art. 3.6b; Wet op de Arbeidsongeschiktheidsverzekering art 3.6b

²³ Ministry of Justice, *Rapportage Vreemdelingenketen; periode Januari – Juni 2009*. See:

http://www.ind.nl/nl/Images/RVK%202009%201e%20periode_tcm5-184018.pdf

²⁴ Parliamentary brief 19637: 1346, 8 June 2010. See:

<https://zoek.officielebekendmakingen.nl/dossier/19637/kst-19637-1346?resultIndex=12&sorttype=1&sortorder=4>

• medical reasons	1,200 ²⁵	400 ²⁶ or 300 ²⁷ or 170 ²⁸	800 or 900 or 1,030
• humanitarian reasons		170 ²⁹	
• stay with child			4.000 ³⁰
• impossibility of return	340 ³¹	50 (in 2008 ³²)	N/A

As such, there are generally few problems in terms of discrimination of access to social, economic and cultural rights in comparison to people legally resident in the Netherlands (i.e. Group I as previously discussed in Chapter I: Migrants legally resident, who enjoy generally full economic, social and cultural rights).

A.3. Group III.d – migrants waiting for their residence permit for instance for family reunion after entry with a long-term visa (mvv)

Since the introduction of the Benefit Entitlement Act (*Koppelingswet*), persons who enter with a long-term visa (mvv), which is a condition for obtaining a regular residence permit, are excluded from social benefits and health insurance during the period in which they are waiting for their residence permit. Obtaining such a residence document can take several weeks or even some months. Family members already legally resident in the Netherlands are expected to take care of the family members applying for the permit. There is an exception for family members of which the partner is exempted for the income requirement (for instance in the case of long lasting invalidity). In that case there is an arrangement possible which provides financial allowance and health insurance during the time they wait for their permit (Rvb).³³

²⁵ Parliamentary brief 31994: 31, 24 February 2010. See:

<https://zoek.officielebekendmakingen.nl/dossier/31994/kst-31994-31?resultIndex=8&sorttype=1&sortorder=4;> 'It appeared that in the year 2009 (until 7 December 2009) 2% of the admission requests was on grounds of medical treatment.' In 2009, the total number of admission requests was 58.100. See Parliamentary brief 19637: 1346, 8 June 2010. See: <https://zoek.officielebekendmakingen.nl/dossier/19637/kst-19637-1346?resultIndex=12&sorttype=1&sortorder=4>

²⁶ 'About one third of the persons with an admission request on grounds of medical treatment will obtain a residence permit'. Parliamentary brief 31018: 57, 11 December 2009. See: [https://zoek.officielebekendmakingen.nl/dossier/31018/kst-31018-57?resultIndex=2&sorttype=1&sortorder=4.](https://zoek.officielebekendmakingen.nl/dossier/31018/kst-31018-57?resultIndex=2&sorttype=1&sortorder=4)

²⁷ 'About one quarter of the persons with an admission request on grounds of medical treatment will obtain a residence permit'. Parliamentary brief 31994: 25, 7 December 2009. See: [https://zoek.officielebekendmakingen.nl/dossier/31994/kst-31994-25?resultIndex=20&sorttype=1&sortorder=4.](https://zoek.officielebekendmakingen.nl/dossier/31994/kst-31994-25?resultIndex=20&sorttype=1&sortorder=4)

²⁸ It appears that between 1 May 2004 and 1 November 2009, 920 residence permits have been provided on grounds of medical treatment & medical emergency situations. This is an average of 170 accepted residence permits on grounds of medical treatment in one year. For the year 2009 this would mean 1.030 rejected requests. Parliamentary brief 19637:1320, 28 January 2010. See: [https://zoek.officielebekendmakingen.nl/dossier/19637/kst-19637-1320?resultIndex=42&sorttype=1&sortorder=4.](https://zoek.officielebekendmakingen.nl/dossier/19637/kst-19637-1320?resultIndex=42&sorttype=1&sortorder=4)

²⁹ 'In the period between March 2007 and April 2010, about 550 asylum requests have been accepted on grounds of dire circumstances. Parliamentary brief 19637: 1346, 8th June 2010. See: <https://zoek.officielebekendmakingen.nl/dossier/19637/kst-19637-1346?resultIndex=12&sorttype=1&sortorder=4>

³⁰ "Dochter (5) Peter Klashorst dreigt te worden uitgezet," *Volkskrant*, 5th August 2010. See:

http://www.volkskrant.nl/binnenland/article1406352.ece/Dochter_5_Peter_Klashorst_dreigt_te_worden_uitgezet

³¹ Parliamentary brief 31994, 32.. 29 March.2010.

³² Parliamentary brief 19637, 1302, 1 October 2009: 'The number of permits that is granted base don the 'no fault' criterium amounted to over 50 permits in 2008'.

³³ Regeling verstrekkingen bepaalde categorieën vreemdelingen, Article 2c. See: [http://wetten.overheid.nl/BWBR0009726/geldigheidsdatum_10-09-2010.](http://wetten.overheid.nl/BWBR0009726/geldigheidsdatum_10-09-2010)

A special group is the group of family members of refugees. Since 2005, family members of refugees were excluded from the above arrangement. Instead they are allowed to stay in accommodation centres for asylum seekers. But if they want to live with the refugee in their own home there is no financial allowance. The period of time before they receive their permit will take at least several weeks but sometimes several months. A slight improvement since July this year is the possibility to have health insurance during this period (for more information please see page 29 of the Joint Parallel Report submitted in November 2009).

III. WRITTEN RESPONSE TO THE SECOND QUESTION OF THE COMMITTEE:

The protection of economic social and cultural rights of undocumented migrants, and in particular the effects of the Benefits Entitlement Act

The last group to be discussed in this Addendum, is the group of undocumented migrants, meaning those resident within the Netherlands without a valid residence permit, and who are not in any procedure to obtain one. As already mentioned above, this group is fully excluded from Dutch society and social and economic benefits available to others, besides some basic social benefits, such as basic health care, education for minors and legal aid as discussed below)³⁴

The legal basis for exclusion of undocumented migrants is found in the The Benefit Entitlement Act, which came into force in 1998. The Benefit Entitlement Act links the right to legal stay to the right to social benefits.³⁵ As a result, undocumented migrants do not have access to social benefits. Over the years, the provisions of the Benefit Entitlement Act have become incorporated in the different social benefit laws. In each of these laws, a definition of alien (*vreemdeling*) is included, and restrictions regarding the economic and social entitlements of different groups of aliens are described. In general, legal migrants who have obtained a residence permit (group I) have a right to all social benefits. Undocumented migrants without a procedure pending (group II), enjoy no protection of economic and social rights at all (except access to basic health care, education for minors and legal aid as discussed below).³⁶ Persons ‘in between’ (group III) have some rights, depending on the procedure and state of procedure that they are in. (see above Chapter I).

Below the specific problems relating to Group II, undocumented migrants will be highlighted, and are brought to the attention of the Committee for the present reporting procedure.

A. Right to Health Care for undocumented migrants

‘Necessary medical care’ is a right for *everyone* in the Netherlands. (See for a discussion on the meaning of what constitutes ‘necessary medical care’ and the problems and adequacy of these terms in the comments under our Joint Response to Written Reply A29 by the government). If a person cannot insure himself/herself (for instance because a person is legally barred from obtaining health insurance, i.e. in case of undocumented migrants and for most migrants in the course of their admission procedure) and has no means to pay, the doctor who offers this care can ask for reimbursements of his expenses at the CVZ (College voor Zorgverzekeringen).³⁷

Without touching upon the question whether ‘necessary medical care’ can be deemed sufficient protection according to Covenant obligations, the current system is subject to some deficiencies. First of all, both migrants and doctors are often not even aware of this possibility. (See also the remarks regarding Written Reply A29 below.) The lack of

³⁴ Aliens Act (*Vreemdelingenwet*) Art. 10(2).

³⁵ ‘An alien who is not lawfully resident may not claim entitlement to benefits in kind, facilities and social security benefits issued by decision of an administrative authority,’ Aliens Act (*Vreemdelingenwet*) Art. 10(1). These benefits include: social benefits in general, unemployment benefits, sickness benefits, disability benefits, child benefits, old age benefits.

³⁶ Aliens Act (*Vreemdelingenwet*) Art. 10(2).

³⁷ Health Insurance Act (*Zorgverzekeringswet*) Art 122a .

knowledge causes pressures on the already vulnerable undocumented migrants to pay huge sums of money.³⁸

Secondly, there exists a lack of knowledge about the type of health care that is covered. In section 10(2) of the 1998 Benefit Entitlement Act (*Koppelingswet*), it states that persons not lawfully resident should have access to ‘all care that is medically necessary’, and left the decision on the doctor. As this caused confusion, it was later operationalized as ‘care that is responsible and appropriate (verantwoord en passend)³⁹

In practice the accessibility of medical care is guaranteed by a state-financed fund (CVZ) that compensates the doctor if he/ she treats an undocumented patient. Unfortunately, for the coverage of the doctors expenses, the fund uses its own operationalization of the definition ‘medically necessary care, and reduces it to: care that falls under the basic health insurance system. In this way, dental care for adults and physiotherapy are not covered. Thus it may be wondered if indeed all necessary health care is available, as doctors may determine that dental care is medically necessary, which is subsequently not subject to reimbursements. . (See for more specific concerns regarding access to health care for undocumented migrants the Joint Response to the government’s Written Reply A29 below.

B. Education for Undocumented Minors

Undocumented minors under eighteen years of age may start their education according to Dutch law, even if they do not have legal status, and should be able to finish their schooling, even when they have already reached the age of eighteen. The school expenses for these pupils are covered. There is no duty to reject or report students. In this case, however, several practical problems exist. First of all, some schools refuse pupils. Clearly, there is a lack of knowledge by both migrants and schools that this practice is not accepted, which is to be deplored. Similarly, there exists a lack of knowledge about the type of education that students are permitted to engage in. Sometimes, schools seem to stop pupils at the age of eighteen although they have not completed their education. In addition, there is a problem regarding adolescents who follow a so-called professional education, which has already been addressed in the Joint Parallel Report under Article 13. Adolescents sometimes have to fulfil a work placement (internship) as a part of their education. For people without a residence permit, such an internship requires a work permit. For undocumented children and children in an admission procedure for other reasons than asylum, such a permit is not granted (for children in an asylum procedure, it is). Therefore, even though children under eighteen are allowed to receive an education, the work placement requirement makes it impossible for most children without a residence permit to complete their schooling (i.e. obtain a diploma).

Undocumented adults are excluded from education altogether.

C. Right to housing for undocumented migrants / access to basic shelter

As explained above, shelter is only available for legal migrants, asylum seekers, and - in some cases - for rejected asylum seekers who start a procedure on grounds of medical reasons. Others, including undocumented migrants (those not involved in any admissions procedure), have no right to shelter. On the basis of the Benefit Entitlement Act, migrants without legal status are denied access to social housing on the basis of their lack of legal residence status. As already mentioned above, after an asylum seeker’s request for asylum is rejected, such persons are sent to the “Vrijheids Beperkende Locatie”, from where they will have 28 days to prepare their departure.

³⁸ Cases are known of undocumented migrants obliged to pay €5,000 in case of delivery.

³⁹ Commissie Klazinga, Arts en Vreemdeling

After twelve weeks, the rejected asylum seekers are sent out to the streets. They are also refused in **most** homeless shelters, as these most cities only provide these shelters for people who are registered in the municipal administration. As such, they are effectively being made homeless.

Until very recently, children were expelled from the shelter as a result of rejection of the asylum request in the same manner as adults. However, due to the decision of the European Committee of Social Rights of 20 October 2009 (see also Chapter V below),⁴⁰ the criticisms of the Council of Europe, and several Dutch court cases, the Dutch Justice Minister decided on 9 August 2010 to temporarily stop the withdrawal of shelter for families with children, awaiting a final decision of the Court of Appeal in The Hague.⁴¹ Concerns regarding the housing situation of undocumented migrants (and undocumented migrant children) were already expressed earlier in the Joint Parallel Report under the General Observations (2.2.), Comments on the implementation of Article 2 ICESCR and comments on Article 11. Below in the Joint Responses, further attention will be paid to this matter. In any case, the right of undocumented migrants to housing (or even basic shelter) leaves much room for improvement in the Netherlands. The authors of this report believe that the Dutch government should take proper responsibility for the protection of rights of migrants, as required under the Covenant.

D. Right to food for undocumented migrants

Food support in the Netherlands is not common. Most people on social benefits have to buy their food with the allowance they receive. As mentioned earlier, due to the Benefit Entitlements Act (*Koppelingswet*), these allowances are not available for undocumented migrants, nor for most migrants in admission procedures. In most large cities, food banks have been created. All of them have their own rules and regulations. Generally speaking, in order to qualify from assistance from the food bank, people must prove that they lack sufficient financial means to purchase their own food. As most undocumented migrants do not have registered incomes, they cannot prove their entitlement. Therefore, access to food can become problematic for undocumented migrants, and with this, the right to an adequate (or possibly even basic) standard of living in the Netherlands.

Conclusion on the rights of undocumented migrants:

In conclusion, the Benefit Entitlements Act (*Koppelingswet*), which links access to social and economic assistance and support to residence status, severely marginalizes undocumented migrants. This group will have a very difficult time maintaining an adequate standard of living, and their access to health care and education is either restricted or problematic as a result of Dutch policy (for more details, see also the considerations below in response to the Written Replies of the Government (A/26/A27/A28). The authors maintain, as they have submitted earlier in the *Joint Parallel Report*, that the Dutch government is not fulfilling its obligations under the Covenant to ensure economic, social and cultural rights to *all*, without discrimination on the basis of residence status

⁴⁰ Complaint No. 47/2008, DCI v. The Netherlands, decision of 20 October 2009, decision is available from the website of the European Committee on Social Rights:

http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC47Merits_en.pdf

⁴¹ Anneke Stoffelen, "Asielkinderen niet op straat," *Volkskrant* 10 August 2010. See:

http://www.volkskrant.nl/binnenland/article1407759.ece/Asielkinderen_niet_op_straat. See also comments elsewhere in this report regarding the uncertain status of this decision.

IV. JOINT RESPONSES TO THE ‘WRITTEN REPLIES TO THE LIST OF ISSUES’

by the Netherlands government

(UN Doc. E/C.12/NLD/Q/4-5/Add.1)

As already mentioned above, this chapter will deal with a number of Joint Responses to the ‘Written Replies to the List of Issues’ as formulated by the Dutch government (UN Doc. E/C.12/NLD/Q/4-5/Add.1)

The Joint Responses serve mainly to highlight particular issues and to add information for the benefit of the Committee where the authors are of the opinion that the ‘Written Reply’ by the government is inaccurate, incomplete or otherwise inadequate.

Not all of the ‘Written Replies’ of the government will be provided with a ‘Joint Response’, as some of the matters may be outside of the scope of the joint expertise of the authors. In some instances, the authors may feel that the information provided by the government is adequate. In any case, the Addendum should be as an addition to the Joint Parallel Report submitted last year. The shared concerns expressed there remain valid, unless indicated otherwise.

The comments below will not address any issues of implementation of the Covenant in the Netherlands Antilles and Aruba. Authors of this report do not possess any knowledge as to the situation in the Netherlands Antilles and Aruba.

JOINT RESPONSE TO WRITTEN REPLY A3

Committee’s Question:

3. While noting the State Party’s reply in its report (E/C.12/NLD/4-5, para 11), please indicate whether, in accordance with the Committee’s recommendations issued in 2006, there have been any recent developments to ensure that the provisions of the Covenant are given effect by domestic courts

Joint Response:

The reaction of the Dutch government on the domestic application of the Covenant is not convincing. Although the Covenant may be used domestically as a standard of review for new legislation, the fact remains that individuals who allege a violation of their social, economic or cultural rights have no effective remedy before the national courts. Judicial bodies generally do not examine the merits of a complaint, because the preliminary rejection of the direct effect of Covenant provisions bars such an examination. This means that an in-depth review of the substance of a case does not take place. This is also not in conformity with the expectations of Article 8 of the Universal Declaration which requires an effective remedy, also for economic, social and cultural rights.

JOINT RESPONSE TO WRITTEN REPLY A13

Committee's Question:

13. Please provide details of policies and programmes aimed at ensuring the rights of domestic workers, especially in the Netherlands Antilles, to receive remuneration equivalent at least to the official minimum wage, so as to benefit from adequate social security and to enjoy just and favourable working conditions.

Joint Response:

The authors are concerned about the explanation given by the Dutch government on the position of domestic workers in A13. Furthermore, they disagree strongly with the Dutch government's position that *domestic workers enjoy sufficient protection under current legislation*.

The Dutch government disguises that both domestic workers working for one private employer (on less than four days) and domestic workers working for several private employers (each on less than four days – in combination a rather full working week) face diminished social protection. In all these cases they have no access to social security (unemployment, invalidity) unless they pay an additional sum of money for a private insurance, while all other workers (part-time and full-time) do not have to pay for social security. This, combined with the fact that they do not receive compensation from their employer for the compulsory health insurance, in effect means that these domestic workers have to pay some 20% extra premium, compared to other workers earning the same gross wage income.

In the past, the exemption was applicable to domestic workers, including the homecare workers working for a private employer for less than **three** days. From 2007 onwards, the Dutch government extended the category to domestic workers and homecare workers working for a private employer for less than **four** days. The Dutch government indicated that “[t]hese regulations were introduced to boost the market for personal services.” However, they fail to motivate why the extension of the category of domestic workers exempted from the social security is necessary. The Dutch government cannot even assess whether the measure will contribute to achieving the aims since it admits not to keep any registration of the market for personal services.

The Dutch government does not mention that the Council of State advised to withdraw the ‘services at home scheme’ from the bill in which it was included nor that it was introduced as an alternative for the proposals from two official advisory councils to improve the market for personal services.⁴² In the opinion of the authors, these proposals, which have been broadly supported in society, would have improved the position of the domestic workers instead of deteriorating it, as the new regulations have done.

It deeply concerns the authors that the Dutch government is unwilling to admit that no assessment has been carried out of the conformity of the ‘services at home scheme’ with the International Covenant on Economic Social and Cultural Rights, nor with the Convention on

⁴² Sociaal Economische Raad, *Advies Personenkring werknemersverzekeringen (vervolgadvies)*, Publicatienr. 7 (Den Haag: Social Economic Council, 16 juni 2006); Raad voor Werk en Inkomen, *Huis houden op de markt*, (Den Haag: Raad voor Werk en Inkomen, 26 januari 2006); Raad voor Werk en Inkomen, *Huis houden op de markt (2)* (Den Haag: Raad voor Werk en Inkomen, November 2006).

the Elimination of All forms of Discrimination Against Women CEDAW) or other international legislation like ILO Convention. No. 175 (part-time work).

There are several sources indicating that women form the overwhelming majority (more than 95%⁴³) of the domestic workers and homecare workers to which this scheme is applicable. The number of homecare workers in formal working hours has been doubled in 2007, while the number of ‘normal’ workers in the sector has been reduced accordingly.⁴⁴ The authors conclude that the limited social rights of domestic workers constitute indirect discrimination of women.

The authors stress that CEDAW expressed serious concern that several hundred thousand domestic workers have limited social rights and limited access to social security and has called upon the Dutch government to take measures to ensure that female domestic workers are duly provided with full social rights and that they are not deprived of social security and other labour benefits.⁴⁵

The authors hope that the Committee on Economic Socials and Cultural Rights will express its serious concern about the situation of domestic workers as well, and calls upon the Dutch government to end this indirect discrimination.

JOINT RESPONSE TO WRITTEN REPLY A14

Committee’s Question:

14. Please provide information on any measures taken to protect women against discrimination in the labour market on grounds of pregnancy and motherhood.

Joint Response:

The authors are of the opinion that the Dutch government’s description of the anti-discrimination legislation in written reply A14 is not accurate enough. The authors agree with the Equal Treatment Commission that the obstacles which women in general face in the labour market are often related to discrimination on the grounds of pregnancy. It is disappointing that the Dutch government does not go provide more detail about educating the public on prohibited discrimination on the ground of pregnancy, childbirth and motherhood. A good example is the website www.discriminatie.nl (a website with public information on prohibited discriminatory practices). This website hardly contains any reference to this type of discrimination, even though it still frequently takes place, as the Equal Treatment Commission has confirmed in its Comments on the Dutch Report.⁴⁶ Only recently has

⁴³ At the Ministry of Health, Welfare and Sports, the Ministry of Finances, the Central Bureau of Statistics, employers organisations in the home care sector. An overview: Leontine Bijleveld & Eva Cremers, *Een baan als alle andere?! De rechtspositie van deeltijd Huishoudelijk personeel* (Leiden: Vereniging voor Vrouw en Recht Clara Wichmann, 2010).

⁴⁴ *Huishoudelijk hulp in WMO leidt tot verliezen*, Webmagazine, 22-07-2009.

⁴⁵ UN Doc. CEDAW/C/NLD/CO/5 para 38 and 39.

⁴⁶ Equal Treatment Commission, *Comments on the combined fourth and fifth Dutch report on the Implementation of the International Covenant on Economic, Social and Cultural Rights* (Utrecht: November 2009). Available at: http://www.cgb.nl/webfm_send/479.

information on pregnancy-related discrimination been added, but the full range of issues concerning discrimination on the basis of motherhood for example, are not easily accessible.

Although the authors appreciate the public campaign ‘Anti-discrimination’, the timing of this campaign is rather unfortunate. Even though the campaign’s timing has improved from 2009, when it was held entirely during 6 weeks of the summer holiday, the 2010 campaign is still partly held during the summer holidays. Such timing is likely to reduce the impact. This might be a consequence of the fact that the authors with expertise about women’s discrimination have not been consulted in the design of the campaign in 2009. In 2010 some of these NGOs were only involved at a late stage.

The authors would like to ask the Committee to urge the Dutch government to pay more attention to pregnancy and motherhood-related discrimination in the labour market, and to increase its efforts in combating such discrimination, e.g. by better informing the public and employers. The Dutch government is encouraged to increase cooperation with relevant civil society organisations in this regard.

In a specific response to the information provided by the Dutch government, the authors regret that the Dutch government does not provide any information on the right of women returning from maternity leave to return to their former job (or equivalent position). Dutch equal treatment legislation does not explicitly recognize such a right, and despite the provision of such guarantees in EU secondary law on the equal treatment of men and women on the labour market, the Dutch government does not consider such protection necessary because it should be considered discrimination, which is already prohibited.⁴⁷

The authors would like to ask the Committee to urge the Dutch government that the right of women to return to the same or equivalent position after maternity leave is part of the right to work, and would like to ask the Committee to urge the Dutch government to bring its laws up to date, and clearly safeguard these rights in law.

Another form of discrimination in relation to maternity which deserves attention is employers’ practice of not extending temporary employment contracts after being informed about pregnancy. EU and national jurisprudence is very clear on the matter: the employer has to prove that failure to extend the contract is not related to the pregnancy. Well informed women can take legal steps against this discrimination, but the energy which these legal steps require of women (especially while pregnant or caring for a newborn), often demotivates them. The information for employers provided by the government does not contain information about the fact that not extending the temporary contract due to pregnancy is discriminatory. Nor are many employers (or pregnant women) aware of the shift in the burden of proof in such cases.

The authors would like to ask the Committee to urge the Dutch government to ensure that employers do not end temporary contracts of pregnant women for pregnancy related reasons, e.g. by better informing employers of the illegality of such practices, or by otherwise encouraging employers not to discriminate against women based on

⁴⁷ See Art. 2 (7) of Directive 2002/73/EC and Art. 15 of Directive 2006/54/EC: ‘A woman on maternity leave shall be entitled, after the end of her period of maternity leave, to return to her job or to an equivalent post on terms and conditions which are no less favourable to her and to benefit from any improvement in working conditions to which she would have been entitled during her absence.’ The government argued this in the bill implementing Directive 2002/73/EC. *Parliamentary Papers II* 2004/05 30 237 nr. 3 p.5-6.

maternity.

JOINT RESPONSE TO WRITTEN REPLY A17

Committee's Question

17. Please indicate whether the Benefit Entitlement Act (Koppelingswet, Stb. 1998, 203) excludes any persons based on their nationality or legal status from social security benefits.

Joint Response:

As is discussed extensively in Chapter II, and as also apparent from the Governments reply, the Benefit Entitlement Act plainly excludes persons from social benefits and social security on the basis of residence status, which according to the authors of this report is prohibited discrimination under the Covenant. The fact that certain people are excluded by law from social benefits creates serious human rights issues.

With the introduction of the Benefit Entitlement Act, people without a residence permit are basically fully excluded from any social benefits (again, see our earlier Joint Parallel Report and the chapters above). The authors have already commented extensively on the unacceptability of this practice.

While the Benefit Entitlement Act has disastrous consequences for undocumented migrants as discussed earlier, it deserves to be mentioned that other groups are also affected, i.e. many of the people in the 'in between group' discussed in Chapter I of this addendum.

According to authors, the explanation of the Dutch government does not explain sufficiently why also the group of persons 'in between' formal legal, and formal 'illegal' status (see Chapter I) - without means to legally cover their living expenses – are also restricted in enjoying benefits.

The restricted access is valid for all persons who applied for an admission procedure from illegal stay, as described above, but is also applicable to i.e. family members who are allowed to come to the Netherlands for family reunion, but who have no right to social benefits in the time during which they are waiting for their permit.

It should also be mentioned that in some family reunification cases, there is an arrangement possible which provides for a financial allowance and health insurance (RVB Regeling Verstrekingen Bepaalde categorieën vreemdelingen). However, family members of refugees have been excluded from this arrangement since 2005. Instead, they are allowed to stay in accommodation centres for asylum seekers. But if they want to live with the refugee in their own home, there is no financial allowance. The period of time before they receive their permit will take at least several weeks, but can sometimes take several months. A slight improvement, however, has been made since July this year, as it is now possible to have a health insurance during this period (see page 29 Joint Parallel Report).

In addition, it seems unacceptable and not in conformity with Covenant obligations that the most vulnerable groups like children, the elderly, people in need of medical care and pregnant women are excluded from access to shelter and money (even the purchase food) as a result of the Benefit Entitlement Act.

In light of the abovementioned facts, the previously submitted statements of the authors as well as the unsatisfactory explanation of the Government as to its discriminatory practices, the authors urge the Dutch government to eliminate unacceptable discriminatory practices as a result of the Benefit Entitlement Act and ensure access to (basic) economic and social assistance for all persons on its territory.

JOINT RESPONSE TO WRITTEN REPLY A18

Committee's Question:

18. Please indicate if there will be a compensation arrangement for self-employed women who did not receive maternity leave benefits before the new legislation providing such benefits came into effect in July 2008.

Joint response:

The Dutch government states in A18 that the exclusive intention of the new maternity benefit for entrepreneurs is to enable the women concerned to stop or temporarily reduce their working activities in view of their maternity. The authors do not agree with this: the reinstatement of maternity benefits was - in their view - necessary to comply with the Convention on the Elimination of All forms of Discrimination Against Women.⁴⁸ The withdrawal of the previous maternity benefit was only an accidental by-product of the withdrawal of the public disability insurance for entrepreneurs. It was not necessary to achieve the aims of that measure in itself, nor particularly relevant for the financial status of the funds from which the benefit is paid. In the third place: it is a matter of justice. It is unclear why female entrepreneurs who became pregnant between August 2004 and October 2007 were not eligible to receive benefits, while women in the same situation before and after those dates were eligible.

The authors would like to ask the Committee to urge the Dutch government to arrange compensation for missed maternity pay due to the regulation, with which female entrepreneurs can pay off debts they had to make to be able to have some maternity leave and/or to spend time with their children as a form of paid parental leave. It seems unjustified, and in fact even arbitrary, that the female entrepreneurs who were pregnant during this period did not receive any benefits.

Another aspect of concern that the authors wish to bring to the attention of the Committee, in line with the concerns expressed under A3 on the domestic application of the Covenant, is that the ruling of the Court of Appeal, stating that Article 11(2)(b) of CEDAW (on paid maternity leave and without loss of benefits) has no direct effect in the Dutch domestic legal order.⁴⁹

According to the Court, "maternity leave" is not sufficiently defined in the Convention, because neither the duration of the leave nor the level of the maternity benefit is defined. Therefore the State has, in the view of the Court of Appeal, the discretionary power not to take any measures at all (for entrepreneurs). The authors are surprised that the Court of Appeal made no reference to relevant documents of human rights supervisory Committees

⁴⁸ CEDAW/C/NLD/CO/4 para 29-30 (2007) ... "The Committee call upon the State party (...) as well as to reinstate maternity benefits for all women in line with article 11 (2) (b) of the Convention."

⁴⁹ The Hague Court of Appeal, Case 105.007.459/01 of 21 July 2009 (not published at <http://www.rechtspraak.nl>)

which could provide support in the interpretation and hopes this practice will change.⁵⁰ At least the case evidences the difficulty to obtain redress in respect of economic social and cultural rights at the domestic level in the Netherlands.

The authors would like to ask the Committee to urge the Dutch Government to make sure that international obligations in respect of women's rights in regard of maternity leave and benefits are guaranteed by domestic law, and that women are able to vindicate such rights before domestic Courts. The views of relevant human rights supervisory bodies should not simply be disregarded but deserve attention whenever claims for protection of international human rights are being brought.

JOINT RESPONSE TO WRITTEN REPLY A21

Committee's Question:

21. Please provide information on the availability of full-time and part-time child care and appropriate after-school programmes.

Joint Response:

With regard to the developments in relation to childcare in written reply A21, the authors feel that the Dutch government is too optimistic. The report does not mention that the Dutch government decided last year to reduce the public funding (via the tax system) available for home-based childcare.⁵¹ On top of that, the Dutch government announced another major cut in the public funding (via the tax system) for parents allowing them to be partly compensation for the childcare costs.⁵²

The authors would like to ask the Committee to ask the Dutch government for more information on these new measures, and the effect that can be expected for the use of childcare facilities.

⁵⁰ See for example, CEDAW Communication No. 3/2004 in which the CEDAW Committee considered that article 11(2)b obliges State Parties to introduce maternity leave with pay. The Committee restricted the margin of discretion to the level of the benefit (which was the crux of the dispute in that special case).

⁵¹ Netwerk VN-Vrouwenverdrag (Dutch CEDAW Network). *Women's Rights: Some Progress, Many Gaps. Shadow report by Dutch NGOs; an examination of the Fifth Report by the Government of the Netherlands on the Implementation of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 2005-2008*. Utrecht: Aim for Human Rights, 2009, p.41; FNV Bondgenoten, "Kinderopvang door kabinetsbeleid in de knel", 26 November 2008. See: <http://www.fnv.nl/publiek/themas/kinderopvang/artikelen/130568/>

⁵² Brief van de Minister van Onderwijs, Cultuur en Wetenschap aan de Voorzitter van de Tweede Kamer der Staten Generaal, The Hague, 11 June 2010; FNV Bondgenoten, "Kinderopvang fors duurder," 15 June 2010. See: <http://www.fnv.nl/publiek/themas/kinderopvang/artikelen/130570/>

JOINT RESPONSE TO WRITTEN REPLY A26/A27/A28

Committee's Questions:

26. Please provide information on the extent of homelessness and malnutrition among asylum-seekers and migrants without legal residence. Please also indicate whether such persons are entitled to benefits under the Work and Social Assistance Act (*Wet Werk en Bijstand*, Stb. 2003, 375).

27. Please outline the measures taken to remedy the housing situation of the most disadvantaged and marginalized individuals and groups, such as migrants without legal residence and drug addicts.

28. Please provide detailed and updated information on the nutritional status, in particular in the Netherlands Antilles, of migrants, homeless people, single-parent families, children, unemployed people, low-income earners, older persons, persons with disabilities, persons living in rural areas, refugees and asylum-seekers, and their ability to access adequate, affordable and appropriate food and water.

Joint response:

The questions above all relate (to a large extent) to the economic and social situation of asylum seekers and undocumented migrants, and their rights to enjoy an adequate standard of living, including access to food, adequate housing (shelter) and access to (basic) health care within the Netherlands. Reference is made here to the comments already presented in Chapters I, II, and III of the present Addendum, as well as the concerns voiced in the previously submitted *Joint Parallel Report*.

The authors maintain their position that the Dutch government is not living up to its human rights obligations under the International Covenant on Economic Social and Cultural Rights, which it has subscribed to for the benefit of *all*. The practices of the Dutch government constitutes selective discrimination on the basis of status, for which the Covenant, also according to the Committee's General Comment 20, does not leave room.⁵³

The authors maintain the belief that the Dutch government should take up its responsibilities under the Covenant and safeguard economic social and cultural human rights, including the right to food, shelter and health care for *all* present in the Netherlands, and not to exclude persons from such protection on the basis of status.

JOINT RESPONSE TO WRITTEN REPLY A29

Committee's Questions:

29. Please clarify whether the right to health is guaranteed to migrants without legal residence, and provide detailed information on their access to universal health coverage.

⁵³ See General Comment 20 of the UN Committee on Economic Social and Cultural Rights, 2 July 2009, UN Doc. E/C.12/GC/20.

Joint response:

Although the legal framework for protection of access to health care for undocumented migrants has improved over the years, the authors maintain that there are still some issues left to be solved, which have as yet not received sufficient attention by the Dutch government, either in practice or in the reports submitted by the Dutch to the Committee on Economic, Social and Cultural Rights in the context of the present reporting procedure.

The authors would like to draw attention in particular to the report “Arts en Vreemdeling” [Doctor and Alien], which is a report constituting the findings of the independent Commission on ‘Medical care for (about to be) rejected asylum seekers and undocumented migrants’.⁵⁴ This Commission was instituted in response to serious concerns that surfaced in respect of the provision of adequate medical care to undocumented migrants, in reception centers for asylum seekers, detention centers for undocumented migrants, and the assessment of individual medical situations concerning decisions to be made in the asylum procedure process (e.g. HIV/AIDS).⁵⁵

The report “Arts en Vreemdeling” (English summary available through: http://www.pharos.nl/uploads/site_1/Pdf/Documenten/Arts%20en%20vreemdeling.pdf, p. 11 *et seq.*) clarifies the definition of necessary medical care, sets proper standards, and describes the legal, political and financial obstacles medical doctors experience in providing necessary medical assistance to aliens as a result of the Dutch Alien Act. The report contains recommendations and directions as to how the situation could be improved, and how to ensure that doctors can continue to provide necessary medical care in an adequate manner. The report expresses *inter alia* concerns about the need to take into account the medical situation of asylum seekers in terms of housing, withdrawal of reception facilities, and the detention of undocumented migrants. In addition, in response to the government’s written reply A29, it is pointed out that the Commission opined that the term ‘necessary medical assistance’, should be defined as ‘responsible and appropriate medical care.’⁵⁶ The Dutch government does not comment on the 2007 report in its written replies, and that the Health Inspectorate has not yet followed up on the recommendations.

The authors urge the government to pay more attention to the standards of the 2007 Report and to ensure the right to health for aliens by ensuring that medical doctors perceive no obstacles in delivering the medical assistance which they deem necessary, and that (rejected) asylum seekers and (other) undocumented migrants perceive no obstacles in seeking necessary medical assistance.

In regard of specific deficiencies in the health care available for undocumented migrants, mention can be made of: a) lack of provision for access to dental care and physiotherapy b) the lack of an adequate monitoring system for health care to undocumented migrants. Other

⁵⁴ See also: Commission on ‘Medical care for (about to be) rejected asylum seekers and undocumented migrants’, *Arts and Vreemdeling* (Utrecht: Pharos, 2007), p. 13 available via:

http://www.pharos.nl/uploads/site_1/Pdf/Documenten/Arts%20en%20vreemdeling.pdf

⁵⁵ See on this matter also: Netwerk VN-Vrouwenverdrag (Dutch CEDAW Network). *Women’s Rights: Some Progress, Many Gaps. Shadow report by Dutch NGOs; an examination of the Fifth Report by the Government of the Netherlands on the Implementation of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 2005-2008*. Utrecht: Aim for Human Rights, 2009, p.71.

http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/DutchNetwork_Netherlands45.pdf

⁵⁶ See also: Commission on ‘Medical care for (about to be) rejected asylum seekers and undocumented migrants’, *Arts and Vreemdeling* (Utrecht: Pharos, 2007), p. 13 available via:

http://www.pharos.nl/uploads/site_1/Pdf/Documenten/Arts%20en%20vreemdeling.pdf

than access to health care, continuity of care is also of major importance and should be safeguarded. In view of the authors it is not acceptable that the government relies on monitoring systems that NGOs have set up.

The authors urge the Dutch government to pay closer attention to the medical needs of (rejected) asylum seekers and (other) undocumented migrants, to keep closer track of the medical situation of undocumented aliens, and to ensure that they have access to the medical care which they require.

Some last points of concern for the authors are the fact that medical doctors are still not aware of the existence and ramifications of the right to the highest attainable standard of physical and mental health as provided for by the ICESCR. This also applies to the nurses and even more to the receptionists in the hospitals (as this is where patients first enter the hospital). The government has the obligation to inform the health care professionals of individuals' right to health, and the practical implications thereof.

In addition, the authors regret that the government does not consider at all specific problems faced by particular groups of female migrants, i.e. undocumented migrant women and female asylum seekers (who were not directly the subject of Question A29, but deserve mention nonetheless). Problems with the access to health care for undocumented migrant women and female asylum seekers relate in particular to access to maternal care. However, the high rates of HIV/AIDS infections among female asylum seekers also deserve to be mentioned.⁵⁷ In respect of undocumented female migrants in the Netherlands, it should be pointed out that they are likely to experience many health problems due to their problematic, often violent, social situations. Although they are formally entitled to all necessary medical and maternal care, their practical access to health care is problematic.⁵⁸ Particular problems exist due to a lack of knowledge concerning the Dutch health care system and the lack of continuity of care. Fear makes undocumented migrant women avoid contacting health care providers. Lack of research and monitoring the needs of undocumented women creates a problem as well.⁵⁹ Regarding the situation of female asylum seekers, which, unlike undocumented migrant women, generally reside in asylum seeker reception centers (see also Chapter I and II above regarding the different situations of undocumented persons and asylum seekers in asylum procedures), the authors wish to indicate a PhD study on access to health of migrants, which proves that increased maternal mortality risk of female asylum seekers in asylum procedures (which is four times higher than native Dutch women), is directly caused by the Dutch government's policies with regard to asylum seekers in reception facilities - since they are not allowed to settle in one centre they are frequently appointed different doctors and midwives, which increases their risks.⁶⁰ In the view of the authors, this shocking outcome should be

⁵⁷ See also: Netwerk VN-Vrouwenverdrag (Dutch CEDAW Network). *Women's Rights: Some Progress, Many Gaps. Shadow report by Dutch NGOs; an examination of the Fifth Report by the Government of the Netherlands on the Implementation of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 2005-2008*. Utrecht: Aim for Human Rights, 2009, p.71.

http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/DutchNetwork_Netherlands45.pdf

⁵⁸ M. van den Muijsenbergh, *Ziek en geen papieren: gezondheidszorg voor mensen zonder geldige verblijfspapieren*, (Utrecht: Pharos, 2004).

⁵⁹ See on these issues also Netwerk VN-Vrouwenverdrag (Dutch CEDAW Network). *Women's Rights: Some Progress, Many Gaps. Shadow report by Dutch NGOs; an examination of the Fifth Report by the Government of the Netherlands on the Implementation of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 2005-2008*. Utrecht: Aim for Human Rights, 2009, p.67-68.

⁶⁰ J.J. Zwart, *Safe Motherhood: Severe maternal morbidity in the Netherlands*. LEMMoN Studie (Leiden: University Leiden 2009).

addressed without delay. While in July 2010 newspapers wrote about the death of a pregnant asylum seeker in a Dutch reception center,⁶¹ the Dutch government still maintains that health care for asylum seekers is adequately safeguarded. This does not do justice to evidence found in practice, as also discussed here.

The authors request that the maternal health of female undocumented migrants/asylum seekers be appropriately safeguarded, and that the government ensure that policies do not frustrate access to adequate care in asylum seeker reception facilities or otherwise.

Lastly, the authors would like to comment on the fact that there are insufficient means for training in intercultural health care.

⁶¹ NRC Handelsblad, 23 juli 2010.

IV. NEW RELEVANT DEVELOPMENTS **REGARDING ECONOMIC SOCIAL AND CULTURAL RIGHTS** **IN THE NETHERLANDS**

The sections below contain a number of remarks regarding relevant developments in respect of the recognition and safeguarding of economic social and cultural rights in the Netherlands.

1. DUTCH GOVERNMENT FAILS TO SUPPORT UN RESOLUTION 64/292 ON THE RIGHT TO CLEAN WATER AND SANITATION

First of all, the authors would like to express their regret at the missed opportunity of the Dutch government to confirm and support the recognition of the right to clean water and sanitation for all. Authors deplore that the Netherlands government chose not to support the land-mark UN General Assembly Resolution A/RES/64/292, which was adopted by a vote of 122 in favour to none against, with 41 abstentions on 28 July 2010. The rights to clean water and sanitation are basic human rights, and deserve full respect and support by the Dutch government, which should be backed by concrete efforts and progressive action at the international level.

The authors hope and expect that the Dutch government will take more progressive efforts in this respect at the international level in the future and will continue to ensure and promote the right to clean water and sanitation despite the failure to support the UNGA Resolution.

2. DISPARITIES IN MORTALITY RATES OF BABIES IN POOR IMMIGRANT NEIGHBOURHOODS

The authors would like to bring to the attention of the Committee some new studies that have become available on the mortality rate of babies in poor immigrant neighbourhoods in Amsterdam (among these studies is one conducted by the Amsterdam Academic Medical Center).⁶² The mortality rates in some of the neighbourhoods concerned are three times higher than in other neighbourhoods, which has caused significant reason for alarm. Possible explanations as to why this occurs are that women in these neighbourhoods obtain access to care too late, but to a certain degree, the heightened mortality rate cannot be explained.

The authors urge the Dutch government to pay close attention to differences in mortality rates in poor neighbourhoods and amongst specific groups within Dutch society. The government should be asked to examine the reasons for such disparities and take action where appropriate. Part of the solution is better information on health care.

⁶² See generally on this item a recent news paper article describing outcomes of studies and concerns: "Babysterfte in arme wijken Amsterdam drie keer zo groot." *NRC Handelsblad (on-line)*, 20 March 2010, available at: http://www.nrc.nl/binnenland/article2507912.ece/Babysterfte_in_arme_wijken_Amsterdam_drie_keer_zo_groot

3 DEVELOPMENTS ON ACCESS TO HEALTH CARE FOR DETAINEES IN PENITENTIARY INSTITUTIONS

In the Netherlands, half of the prisoners with a need for mental health care do not receive the assistance they need.⁶³ 80% of detainees have already had psychiatric treatment (addiction and personality disorders included) before imprisonment.⁶⁴

The authors of this report are concerned about lack of access to health care in penitentiary institutions and incidents that taken place recently. Penitentiary institutions are in this regard taken to mean penitentiary institutions across the board, i.e. any facility in which persons are detained against their will. As persons in such detention centers depend on the Dutch state for their access to care, the threshold of responsibility for the state should be set even higher. The authors regret that although there is general commitment to attain the ‘equivalent principle’, there are too many thresholds for implementing the needed care in detention facilities.⁶⁵

The authors insist that more information for the prisoners and more trained health personnel are needed within the detention facilities in order to provide adequate care.

In addition, it is considered a deficiency that there is no monitoring system which tracks the access to health care and the quality of this care, along with an analysis of the causes of death among prisoners. A practice which greatly concerns the authors, is isolation, which is used as a punishment without regard for the health implications. People on hunger strike are, for example, isolated without being monitored by a medical practitioner.

Authors request that the government improve policies on access to health care for detainees, and ask that the right to health for detainees within state care is guaranteed.

4 CONCERNS REGARDING ACCESS TO HEALTH CARE FOR ELDERLY PEOPLE IN NURSING HOMES FOR THE ELDERLY

More recently, concerns about the access to health care and protection of the ‘highest attainable standard of health’ for the elderly in nursing homes have increased. NGOs have received complaints from doctors that accessibility, affordability, acceptability and quality of the day-to-day care provided in those homes is not in conformity with Covenant standards. In particular, the access to care and the manner in which this is provided is cause for concern. This could be due to, for example, the lack of sufficiently educated and trained staff. Another major, structural problem is the application of laws and regulations, and the policies set out. There are insufficient numbers of care takers assigned to provide care to the elderly. Furthermore, the level of education among care-takers is below par, and the protocols for execution of care are deficient.

The authors urge the Dutch government to pay more attention to the health care situation of the elderly in nursing homes. Considering the aging Dutch society and the vulnerable position many elderly find themselves in, the matter of adequate, accessible and affordable care for elderly should become a focal point of the Dutch health care policy. In any case, the elderly should receive care that is of an appropriate standard.

⁶³ Bulten and Nijman, “Veel psychiatrische stoornissen onder gedetineerden op reguliere afdelingen van penitentiaire inrichtingen”, *Nederlands Tijdschrift voor Geneeskunde* 153 (2009) A634: pp. 1-6.

⁶⁴ *Ibid.*, pp. 1-6.

⁶⁵ *Ibid.*, pp. 1-6. The equivalence principle means that care should resemble as much as possible the care available to non-detainees.

V. RECENT ADOPTION OF CONCLUDING OBSERVATIONS/DECISIONS BY OTHER HUMAN RIGHTS SUPERVISORY BODIES (UN AND (R)ESC)

V.1 RELEVANT EXCERPTS OF 2010 CONCLUDING OBSERVATIONS OF CEDAW COMMITTEE

UN Committee on the Elimination of all Forms of Discrimination against Women, *Concluding Observations on the implementation of the International Convention on the Elimination of all Forms of Discrimination against Women*, adopted at the 45th Session of the Committee on 5 February 2010, UN Doc. CEDAW/C/NLD/CO/5:

National machinery and gender mainstreaming

19. The Committee further encourages the Netherlands to continue the process of strengthening its national machinery for the advancement of women and to systematize assessment of the gender impact of legislation and policies and gender budget analysis among the various ministries, as well as to provide an overview of progress in its next report. The Committee further urges the Netherlands to introduce a consistent scheme for promoting equality in public contracts.

Non Governmental Organisations

21. The Committee reminds the governments of the State party that constructive dialogue with civil society is imperative for the effective protection and promotion of women's rights. The Committee calls upon them to ensure systematic consultation of NGOs in the elaboration and evaluation of policies aimed at achieving gender equality, including while drafting their next periodic report to the Committee. The Committee strongly supports the intention expressed by the Netherlands Antilles during the interactive dialogue to fund reports submitted by NGOs and invites Aruba to also consider such a possibility. The Committee urges the Netherlands to reconsider the funding of organisations working in the field of women's rights, including organisations of black and migrant women, in order to contribute in an efficient manner to the continuing implementation of the Convention.

Political participation and participation in public life

33. The Committee calls upon all the governments of the State party to accelerate their efforts to achieve equal representation in their elected bodies and, with that aim, to adopt temporary special measures, in accordance with article 4, paragraph 1, of the Convention and general recommendation No. 25, in particular quotas, numerical goals and measurable targets aimed at increasing the participation of women, including migrant and minority women in political and public decision-making at all levels, in security and defence sectors, as well as the representation of women in the diplomatic service and international organisations.

Education

35. The Committee encourages the State party to develop comprehensive measures aimed at the diversification of women's academic and professional choices. The Committee also encourages the State party to monitor the career development of women in the education system to ensure equal access and prevent hidden or unintended discrimination faced by women. The Committee calls upon the Netherlands to align itself with the objectives fixed by

the European Union and to provide the Committee in its next report with information on concrete measures taken to reach this objective. The Committee further urges the Netherlands to expand gender mainstreaming in all levels of the school system, including in the lifelong learning policy, and to ensure full access for all women throughout their lives.

Employment and economic empowerment

37. The Committee urges the State party to intensify its efforts to ensure equal opportunities for women and men in the labour market, including through the use of temporary special measures, with time-bound targets, in accordance with article 4, paragraph 1, of the Convention and its general recommendation No. 25 and by providing the labour inspectorate with the necessary human and financial resources to monitor and enforce anti-discrimination legislation in the labour market. The Committee calls upon the Government to implement policies targeted at women with special measures to curb women's unemployment, to create more opportunities for women to extend their working hours, to gain access to full-time employment and to strengthen its measures to promote women's entry into growth sectors of the economy. The Committee also urges the Netherlands to adopt more vigorous measures to accelerate the eradication of pay discrimination against women, including job evaluations, the collection of data, the organisation of a nationwide equal pay campaign and the provision of increased assistance to social partners in collective wage bargaining, in particular in determining wage structures in sectors dominated by women. It further recommends that the Netherlands include in its next report information about the results of such measures and data on cases of discrimination against women in the workplace, including wage discrimination, and sexual harassment dealt with by the labour inspectorate and to supply an overview about developments in women's income, whether from gainful employment, social security benefits or pensions.

39. The Committee calls upon the State party to take measures to ensure that female domestic workers are duly provided with full social rights and that they are not deprived of social security and other labour benefits.

Asylum-seeking and refugee women

41. The Committee considers that even if extended to eight days, as envisaged by the Netherlands, the short length of the accelerated asylum procedure remains unsuitable for vulnerable groups, including women victims of violence and unaccompanied children, and therefore urges the State party to introduce in the procedure the possibility for women victims of violence and unaccompanied minors to fully explain their claims and to present evidence on their situation at a later stage. The Committee also urges the State party to provide asylum-seekers with suitable accommodation during the entire review of their case, including during the appeal phase. The Committee further calls upon the State party to recognize domestic violence and gender-related persecution as grounds for asylum in line with the guidelines of the Office of the United Nations High Commissioner for Refugees on gender-related persecution and the Council of the European Union directive 2004/83/EC of 29 April 2004.

Immigrant, migrant and minority women

43. The Committee urges the Netherlands to intensify its efforts to eliminate discrimination against immigrant, migrant, black, Muslim and other minority women. It encourages the adoption of proactive measures to further increase their participation in the labour market,

improve their awareness of the availability of social services and legal remedies and ensure protection against victimization. The Committee also calls upon the State party to conduct regular and comprehensive studies on discrimination against immigrant, migrant and minority women, to collect statistics on their employment, education and health situation and to report them in its next report. The Committee urges the Netherlands to withdraw its more severe requirements for family formation and family reunification, which constitute a breach in its obligation under article 16 of the Convention.

Immigrant, migrant and minority women

45. The Committee calls upon all the governments of the State party to provide in their next report data and information, disaggregated by ethnicity, on rural women, women with disabilities and older women. The Committee calls upon the Netherlands to closely monitor the incidence of poverty among women and the attendant risks, to include specific women-oriented measures in its poverty schemes and to develop poverty prevention programmes targeted at women, including divorcees. The Committee further urges the Netherlands to conduct gender assessments of its social sector legislation and policies as well as of its cuts in the health-care budget, and to pay particular attention to older women, single mothers and women with disabilities.

Health

47. The Committee urges the Netherlands to include in its next report the outcome of the study into the health condition of ethnic minority women related to the obligation under the Convention and general recommendation No. 24. In the meantime, the Committee urges the Netherlands to take immediate measures to reduce the maternal mortality of female asylum-seekers and to provide information to undocumented women on their rights as well as practical information on how they can access health-care services. The Committee strongly supports the intention of the Netherlands to conduct in-depth research on the health situation of transgender women and to revise the law making sterilization compulsory for transgender women. The Committee also invites the Netherlands to reconsider its position to not reimburse transgender women for breast implants. The Committee urges the Netherlands to use appropriate methods of examination on pregnant women suspected of drug trafficking in order to avoid their detention at the national airport.

V.2. RELEVANT EXCERPTS OF 2010 CONCLUDING OBSERVATIONS OF CERD COMMITTEE

UN Committee on the Elimination of all Forms of Racial Discrimination, *Concluding Observations on the implementation of the International Convention on the Elimination of all Forms of Racial Discrimination*, adopted at the 76th Session of the Committee on 25 March 2010, UN Doc. CERD/C/NLD/CO/17-18:

Article 3

The Committee urges the State party to increase its efforts to prevent and abolish segregation in education, including through the review of admissions policies which may have the effect of creating or exacerbating this phenomenon and other disincentives to such segregation.

Article 4

The Committee urges the State party to take more effective measures to prevent and suppress manifestations of racism, xenophobia and intolerance and to encourage a positive climate of political dialogue, including at times of local and national election campaigns.

The Committee recommends that the State party intensify its efforts to combat the dissemination of ideas based on racial superiority through the internet as well as other media, including racist speech by political parties.

Article 2 and Article 5

The Committee recommends that the State party effectively implement its stated policy of using detention as a measure of last resort and redouble its efforts to establish alternative living arrangements for families and children in such situations.

Article 5

The Committee recommends that the State party take more effective measures to eliminate discrimination in access to employment, through, inter alia, awareness raising campaigns in the private and public sectors. The Committee urges the State party also to implement measures to achieve the equitable representation of ethnic minorities in elected bodies and other public sector services. The Committee encourages the State party to consider the use of special measures to address the above disparities, as envisaged in article 1 of the Convention, taking into account General Recommendation 32 (2009).

The Committee recommends that the State party provide, in its next periodic report, more detailed information, including statistical data disaggregated by age, gender and ethnic origin, on the socio-economic situation of all minority groups, particularly in relation to their access to education, health, employment and housing.

V.3. RESOLUTION BY THE FROM DECISION OF THE EUROPEAN COMMITTEE ON SOCIAL RIGHTS ON RIGHT TO HOUSING OF UNDOCUMENTED CHILDREN

Resolution CM/ResChS(2010)6 on Collective complaint No. 47/2008 by Defence for Children International (DCI) against the Netherlands

(Adopted by the Committee of Ministers on 7 July 2010 at the 1090th meeting of the Ministers' Deputies)

Excerpts of the decision of the European Social Committee supported by the Council of Europe Committee of Ministers:

(...) the Aliens Act 2000 unequivocally links entitlement to benefits other than education, necessary medical care and legal aid, to residence status. Thus, children unlawfully present in the Netherlands are not, as a general rule, guaranteed a right to shelter. Exceptions exist where children co-operate with the authorities with regard to their return to their country of origin and under other specific circumstances. However, the Committee [European Social Committee] notes that there is no legal requirement to provide shelter to children unlawfully present in the Netherlands for as long as they are in its jurisdiction. Moreover, according to

section 43 of the Aliens Act 2000, after the expiry of the time limit fixed in the Act on the Central Reception Organisation for the Asylum-Seekers or another statutory provision that regulates benefits in kind, the aliens supervision officers are authorised to compel the vacation of property in order to terminate the accommodation or the stay in the residential premises provided as a benefit in kind.

Article 31§2 of the Revised Charter is directed at the prevention of homelessness with its adverse consequences on individuals' personal security and well being (Conclusions 2005, Norway, Article 31 and ERRC against Italy, Complaint 27/2004, decision on the merits of 7 December 2005, §18). Where the vulnerable category of persons concerned are children unlawfully present in the territory of a state as in the instant case, preventing homelessness requires states to provide shelter as long as the children are in its jurisdiction. Furthermore, the Committee is of the view that alternatives to detention should be sought in order to respect the best interests of the child.

(...) under Article 31§2 States Parties must make sure that evictions are justified and are carried out in conditions that respect the dignity of the persons concerned, and must make alternative accommodation available (see Conclusions 2003, France, Italy, Slovenia and Sweden, Article 31§2, as well as ERRC against Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §41, ERRC against Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006, §52, ATD against France, Complaint No. 33/2006, decision on the merits of 5 December 2007, §77 and FEANTSA against France, Complaint No. 39/2006, decision on the merits of 5 December 2007, §81). (...), since in the case of unlawfully present persons no alternative accommodation may be required by states, eviction from shelter should be banned as it would place the persons concerned, particularly children, in a situation of extreme helplessness which is contrary to the respect for their human dignity.

As this is not the case, the Committee holds that the situation in the Netherlands constitutes a violation of Article 31§2. (...)

Article 17§1.c requires that states take the appropriate and necessary measures to provide the requisite protection and special aid to children temporarily or definitively deprived of their family's support. The Committee observes that as long as their unlawful presence in the Netherlands persists, the children at stake in the instant case are deprived of their family's support in that by law (see section 10 of the Aliens Act) they may not claim entitlement to the benefits or facilities which would, *inter alia*, secure them shelter.

In this respect, the Committee holds that the obligations related to the provision of shelter under Article 17§1.c are identical in substance with those related to the provision of shelter under Article 31§2. Insofar as the Committee has found a violation under Article 31§2 on the ground that shelter is not provided to children unlawfully present in the Netherlands for as long as they are in its jurisdiction, the Committee also finds a violation of Article 17§1.c of the Revised Charter on the same ground.

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