

Joint Parallel Report to the Combined Fourth and Fifth Periodic  
Report of the Netherlands on the International Covenant on  
Economic, Social and Cultural Rights

The Netherlands, 28th October 2009

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- Defence for Children International Nederland
- Justitia et Pax Nederland
- ASKV / Steunpunt Vluchtelingen (Support Organization for Refugees)
- Foundation LOS (National Support Organization for Undocumented People)
- Fischer Attorneys
- Joris Sprakel of the The Hague University of Applied Sciences
- End Child Prostitution, Child Pornography and the Trafficking in Children
- VluchtelingenWerk Nederland (Dutch Council for Refugees)

The report is further submitted on behalf of:

- Stand Up For Your Rights
- FIAN Nederland - Foodfirst Information & Action Network - International Human Rights Organization for the Right to Food
- TIYE International Foundation (Platform of 21 National Association of Black, Migrant, and Refugee Women)
- Art. 1 (Dutch National Association Against Discrimination)
- Johannes Wier Foundation for Health and Human Rights
- Aim for human rights
- Netwerk VN-Vrouwenverdrag (Dutch CEDAW Network)
- E-Quality

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## **1. INTRODUCTION**

The authors of this parallel report greatly welcome the opportunity provided by the Committee on Economic, Social and Cultural Rights (hereinafter the Committee) to submit a parallel report on the efforts of the Dutch government in implementing the International Covenant on Economic Social and Cultural Rights (hereinafter the Covenant). This report is to be considered as input for the Pre-Sessional Working Group of 23rd – 26th November 2009. The authors of this report sincerely hope that the findings in this report will lead to an open debate and a fruitful dialogue between the members of the Committee and the delegation of the Dutch government.

### *1.1. SUBMITTING PARTIES*

This parallel report contains the comments of a number of Dutch NGOs and other actors in civil society (hereinafter the authors) on the Combined Fourth and Fifth Periodic Report of the Kingdom of the Netherlands on the implementation of the Covenant.

It should be noted that this report does not address all the provisions of the Covenant or all the comments made by the Dutch government in its report. The report is based on the joint expertise of the submitting groups. Since part of the scope of the Covenant may be outside the direct expertise of the submitting parties, the authors have opted not to comment on these issues. However, this thus not necessarily means that authors acquiesce or agree with certain developments or (in)actions of the Dutch government.

### *1.2. SCOPE OF THE REPORT*

This parallel report will cover the efforts of the Dutch government in respecting, protecting and fulfilling the rights set forth in the Covenant during the period under review, and as covered by the Combined Fourth and Fifth Periodic Report of the Dutch government: 1st January 2003 to 31st December 2006.

However, in order to ensure the relevance and effectiveness of the present report, the authors have, where appropriate, taken into account positive and negative developments that have occurred after the period under review.

In addition, it may be noted that this report will only focus on the European part of the Kingdom of the Netherlands.

### *1.3. GENERAL STATEMENTS*

#### *1.3.1. Concerns with the general quality of the Combined Fourth and Fifth Periodic Report*

The authors of this report regret that the Dutch government refers in its State Report rather easily to the future intentions of the current Dutch government (Balkenende IV), which was installed on 22nd July 2007. We consider that this happens at the cost of a serious review of the actual state of affairs during the period under review.<sup>1</sup> Moreover, it does so without addressing sufficiently whether any of these intentions had been acted upon at the time of writing.

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<sup>1</sup> Balkenende I Government was in office between 22nd July 2002 and 26th May 2003, Balkenende II Government was in office between 27th May 2003 and 7th July 2006, Balkenende III Government was in office between 7th July 2006 and 22nd February 2007.

The submitting parties recommend the Committee to urge the Dutch government to comment on the realization of the intentions stated in the State report. When can results be expected? The submitting parties recommend the Committee to ask the Dutch government, in so far as appropriate, to elaborate on actions taken in the period under review.

*1.3.2. Positive developments: Signature of the Optional Protocol for the International Covenant on Economic, Social and Cultural Rights<sup>2</sup> and decision to establish a National Institute of Human Rights.*

On a positive note, the submitting parties are pleased to note that the Dutch Government has reaffirmed its commitment to the protection of economic, social and cultural rights by recently signing the Optional Protocol to the Covenant during the 64th session of the UN General Assembly in September 2009.<sup>3</sup> The submitting parties trust that the Dutch government will seek to ratify the Optional Protocol expeditiously, and are looking forward to the entry into force of the Optional Protocol in the Netherlands and other countries around the world soon.

In addition, the authors of this report also note with great pleasure the decision of the Dutch government to establish a National Institute for Human Rights according to the Paris Principles.<sup>4</sup> The authors sincerely hope that the Dutch government, through the establishment and finalization of this National Institute for Human Rights, will be better equipped than at present to guarantee the overall protection of human rights in national legislation.

*Below a more detailed commentary on the implementation of Covenant rights in the period under review will follow. First, two general observations will be made relating to major issues of concern for the period under review. After this comments will be made on an article-by-article basis.*

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<sup>2</sup> *Optional Protocol to the International Covenant of Economic, Social and Cultural Rights*, UNDoc. A/RES/63/117 (New York: adopted during the 63th Session of the UN General Assembly on 10th December 2008).

<sup>3</sup> *64th Session of the United Nations General Assembly* (New York: United Nations Headquarters, 24 September 2009).

<sup>4</sup> *Nederland krijgt Nationaal Instituut voor de Rechten van de Mens*, 11 July 2008, available at [www.regering.nl/Actueel/Persberichten\\_ministerraad/2008/juli/11/Nederland\\_krijgt\\_Nationaal\\_Instituut\\_voor\\_de\\_Rechten\\_van\\_de\\_Mens](http://www.regering.nl/Actueel/Persberichten_ministerraad/2008/juli/11/Nederland_krijgt_Nationaal_Instituut_voor_de_Rechten_van_de_Mens); *The Principles Relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights (Paris Principles)* (New York: United Nations General Assembly Resolution 48/134, 1993).

## **2. GENERAL OBSERVATIONS**

### *2.1. DIRECT APPLICABILITY OF THE PROVISIONS OF THE COVENANT.*

In its Concluding Observations (D.11 and E.19) to the Third Periodic Report of the Netherlands,<sup>5</sup> the Committee called upon the Netherlands to reassess the extent to which the provisions of the Covenant might be considered to be directly applicable. It urged the Dutch government to ensure that the provisions of the Covenant are given effect by its domestic courts, and that it promotes the use of the Covenant as a domestic source of law.<sup>6</sup> Earlier, the Committee on the Elimination of Discrimination against Women (CEDAW), the Commissioner for Human Rights of the Council of Europe Mr. Thomas Hammarberg, and the Committee on the Rights of the Child urged the Dutch government to ensure the direct applicability of provisions of international treaties.<sup>7</sup>

In its Fourth and Fifth Combined Periodic Report the Dutch government ignored this recommendation. It just referred to its previous report on the Dutch position on the direct applicability of the Covenant.<sup>8</sup> The submitting parties feel that the attitude of the Dutch government in this respect to be disappointing.

It is clear that The Dutch government is opposed to the direct applicability of the Covenant provisions. This view reflects the weak position of the Covenant in the Netherlands legal order. The reasons for this relate to the equally weak position of social rights in the Netherlands Constitution. They are seen as programmatic rights, containing instructions for the Dutch government only. They cannot be enforced by individuals before the courts. In addition, there are historical reasons for the Dutch position. When the Covenant was submitted to Parliament for approval in 1975-1976, the Dutch government was of the opinion that in general provisions of the Covenant will have no direct effect in the Netherlands legal order. In the Dutch government's view this conclusion follows from the nature, content and wording of the Covenant as a whole and the fact that its individual provisions are aimed at progressive realization by means of legislation and other implementation measures.<sup>9</sup> The courts have just copied this view in their judgments. For example, one leading judgment of the Supreme Court on Article 13(2) of the Covenant held:<sup>10</sup>

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<sup>5</sup> Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights (The Netherlands)*, UN Doc. E/C.12/NLD/CO/3 (Geneva: Thirty-seventh session of 6 – 24th November 2006), p. 2-3, §11 and §19.

<sup>6</sup> Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights (The Netherlands)*, UN Doc. E/C.12/NLD/CO/3 (Geneva: Thirty-seventh session of 6 – 24th November 2006), p. 3, §19. Committee on the Elimination of Discrimination Against Women, *Concluding Observations of the Committee on Elimination of Discrimination Against Women (The Netherlands)*, CEDAW/C/NLD/CO/4 (Geneva: Thirty-seventh session of 15th January - 2nd February 2007), p. 3, §12.

<sup>7</sup> *Report by the Commissioner for Human Rights Mr Thomas Hammarberg on his visit to the Netherlands 21 – 25 September 2008*, CommDH(2009)2 (Strasbourg: 11th March, 2009), pp. 7-8, §13 and §14; Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: The Kingdom of the Netherlands*, UNDoc. CRC/C/NLD/CO/3, 30th January 2009.

<sup>8</sup> *Combined Fourth and Fifth Periodic Reports on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, UN Doc. E/C.12/NLD/5, § 11.

<sup>9</sup> *Parliamentary Documents II 1975-1976*, 13 932 (R 1037), nr. 3, p. 12-13.

<sup>10</sup> Dutch Supreme Court (Hoge Raad) 14th April 1989, AB 1989, 207 (Harmonisatiewet).

Already the wording of Articles 2 and 13 indicates that these are non-self executing provisions. In order to enjoy these rights, positive measures are required from the state which needs elaboration and implementation in the domestic legal order.

This view is shared by the Judicial Branch of the Council of State and the Central Court of Appeal, the highest courts in administrative and social security matters. The Dutch government has used the rejection of the self-executing nature of ICESCR provisions by the courts as a justification of and support for its own position. This means that in practice there is now a deadlock situation. The courts are unable or unwilling to apply the Covenant as a standard for reviewing primary and secondary legislation, administrative decisions and practice. This leads to the conclusion that in practice there is no effective remedy available as required by Article 8 of the Universal Declaration of Human Rights.

This situation has had a negative impact on the status of the Covenant in the Netherlands in general. Dutch judges and lawyers know very little of the progressive development of the Covenant since 1990. General Comments, Concluding Observations on the Netherlands and Statements by the Committee are not known.<sup>11</sup> They are rarely used in court proceedings. In addition, the question may be raised which role the Covenant plays in the process of drafting and amending domestic legislation and new policies in the areas covered by the Covenant.

**The submitting parties recommend the Committee to ask the Dutch government what role it sees for the Covenant in the Dutch legal order, taking into account its current weak position. How can this role be strengthened?**

**The submitting parties recommend the Committee to ask the Dutch government whether it is prepared to revise its views regarding the direct applicability of the Covenant in the light of developments in the last fifteen years.**

## *2.2. DISCRIMINATION IN THE ENJOYMENT OF RIGHTS PROTECTED BY THE COVENANT ON THE BASIS OF STATUS*

In Concluding Observation E.18 to the Third Periodic Report of the Netherlands,<sup>12</sup> the Committee commented on the (non-)ratification of the International Convention on the Protection of the Right of All Migrant Workers and Members of their Families. It encouraged the Dutch government to consider ratifying this Convention.

In reply to this Concluding Observation, the Dutch government remarked in the Combined Fourth and Fifth Periodic Report that:<sup>13</sup>

“At this point the Government has no intention of acceding to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. This is, inter alia, related to the Benefit Entitlement (Residence Status) Act (*Koppelingswet*), which

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<sup>11</sup> This came very much to the fore at the conference ‘Lessons from the South on Economic, Social and Cultural Rights’, organized by the Netherlands National UNESCO Commission on 28th and 29th September 2007 (Middelburg).

<sup>12</sup> Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights (The Netherlands)*, UN Doc. E/C.12/NLD/CO/3 (Geneva: Thirty-seventh session of 6 – 24th November 2006), p. 3

<sup>13</sup> *Combined Fourth and Fifth Periodic Reports on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, UN Doc. E/C.12/NLD/5, §8.



entered into force on 1st July 1998 and which distinguishes between foreigners with and without legal residence status, and the consequences of that distinction for entitlement to social security benefits.”

The authors of this report regret the position of the Dutch government and its lack of intention to ratify this Convention. The authors are deeply concerned by the Dutch government’s approach, according to which it feels entitled to deny enjoyment of certain economic, social and cultural rights to certain persons within its territory or jurisdiction in this manner. In the opinion of the authors this is contrary to the very essence of human rights protection: the protection of inalienable rights ‘deriving from the inherent dignity of the human person’.<sup>14</sup>

In fact, on review, and considering the Committee’s latest General Comment, General Comment 20 of May 2009,<sup>15</sup> the authors of this report would like to express their profound concern about the Benefit Entitlement Act (*Koppelingswet*), and the fact that it explicitly excludes, on the basis of status or nationality, certain people within its territory or jurisdiction from enjoying (basic) economic, social and cultural human rights. It should be noted here that the Benefit Entitlement Act (*Koppelingswet*) in fact does not only concern exclusion from ‘social security benefits’, but social assistance in general (cf. in this parallel report: Article 11, under A.2; Article 12, under D.).<sup>16</sup> Although the Dutch government has accepted the right to education of all persons aged 18 or under, and the right to all medically necessary assistance, regardless of status, certain groups are still explicitly excluded from access to housing (shelter), and from enjoying basic subsistence.

Indeed, by becoming a party to the Covenant, the Netherlands agreed ‘to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures’<sup>17</sup> and to ‘guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’.<sup>18</sup>

Moreover, most of the substantive provisions in part III of the Covenant refer to the ‘rights of everyone’.<sup>19</sup> In the light of these commitments there may be no doubt that the Netherlands must strive to fully realize Covenants rights for everyone residing within its territory or jurisdiction, and that it may not discriminate in doing so on the basis of status or nationality.<sup>20</sup>

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<sup>14</sup> Preamble, *International Covenant on Economic, Social and Cultural Rights* (New York: General Assembly, 16th December 1966).

<sup>15</sup> Committee on Economic, Social and Cultural Rights, *General Comment 20 on ‘Non-Discrimination in Economic, Social and Cultural Rights’*, Geneva, 10th June 2009, UN Doc. E/C.12/GC/20, § 30.

<sup>16</sup> Benefit Entitlement Act (Residence status) (*Koppelingswet*), 26 maart 1998, *Stb.* 1998, 203.

<sup>17</sup> Article 2(1), *International Covenant on Economic, Social and Cultural Rights* (New York: General Assembly, 16th December 1966).

<sup>18</sup> Article 2(2), *International Covenant on Economic, Social and Cultural Rights* (New York: General Assembly, 16th December 1966).

<sup>19</sup> Part III, *International Covenant on Economic, Social and Cultural Rights* (New York: General Assembly, 16th December 1966).

<sup>20</sup> See also: Committee on Economic, Social and Cultural Rights, *General Comment 20 on ‘Non-Discrimination in Economic, Social and Cultural Rights’*, UN Doc. E/C.12/GC/20 (Geneva, 10th June 2009), §30: Nationality: The ground of nationality should not bar access to Covenant rights, e.g., all children within a State, including those with an undocumented status, have a right to receive education and access to adequate food and affordable health care. The Covenant rights apply to everyone including non-nationals, such as

There may thus also not be any doubt as to the fact that it is not in line with commitments under the Covenant to explicitly exclude certain groups from enjoying certain Covenant rights on the basis of residence status. See for concrete examples of the problematic issues with the Benefit Entitlement Act below, under Article 11, Article 12 and Article 13.

**The submitting parties recommend the Committee to urge the Dutch government to ensure that it abstains from excluding certain groups of people from enjoying their basic economic, social and cultural rights on the basis of nationality or status.**

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refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation.

### **3. OBSERVATIONS ON SPECIFIC ARTICLES OF INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

With regard to the specific provisions of the International Covenant on International Economic, Social, and Cultural Rights (hereinafter the Covenant), the authors would like to make to following comments, on an article-by-article basis.

#### **ARTICLE 2**

##### **Article 2**

*1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.*

*2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

#### ***A. ENSURING FOOD SECURITY IN DEVELOPING COUNTRIES (ART. 2 (1)).***<sup>21</sup>

The submitting parties greatly appreciate the commitment of Dutch cooperation policies to attain the Millennium Development Goals. The extra commitment undertaken by the Dutch Ministry of Foreign Affairs to strengthen agriculture in developing countries is particularly welcomed, considering the special position of the Netherlands as the second largest trader in agricultural produce. In 2006, the share of Dutch Official Development Assistance Gross national product allocated to agricultural development was 7.7%, while globally resources targeted at agricultural development were shrinking.

However, the authors are concerned that the pillars which underpin Dutch agricultural policies – namely, focus on international research, improved access to markets, and support for insurance instruments available to producers - may not be adequate to secure food security to the plethora of people depending on agricultural work in other countries. It is calculated that in the world half a billion agricultural workers are wage workers. The economic and social rights of wage workers is not very likely to be adequately secured by policies targeted at fostering entrepreneurial capacities of subsistence farmers. A specific focus is also needed to ensure that improvement of agricultural production and of living conditions of farmers does not leave women behind.

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<sup>21</sup> Committee on Economic Social and Cultural Rights, *General Comment 3 on The Nature of States Parties Obligations (Art 2(1))* E/1991/23 (Geneva: 14th December 1990), §14: ‘The Committee wishes to emphasize that in accordance with Articles 55 and 56 of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself, international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States. It is particularly incumbent upon those States which are in a position to assist others in this regard.’

**The submitting parties recommend the Committee to urge the Dutch government to ensure that policies regarding international co-operation always take into account possible negative impacts in the overall level of enjoyment of economic, social and cultural rights of all persons affected by such policies.**

**The submitting parties recommend the Committee to ask the Dutch government to make a human rights impact assessment of present and future policies.**

*B. DISCRIMINATION OF UNDOCUMENTED MIGRANTS REGARDING THE ENJOYMENT OF BASIC ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ART. 2 (2)).*

The Covenant establishes rights which apply to everyone, regardless of citizenship or status. Most provisions in part III of the Covenant refer specially to the 'rights of *everyone*'.<sup>22</sup> Nevertheless, undocumented adults and children in the Netherlands are excluded from most public services and have no entitlement to the most fundamental rights such as shelter and food. By undocumented people we mean people who reside in the country illegally. This problem can arise after a failed (asylum or regular) immigration procedure, but unlawful presence is not necessarily preceded by an attempt to gain lawful residence. Furthermore the person may have had a period of lawful residence which for a number of reasons may have lapsed.

Problems with access to government services may also occur while awaiting a decision on regular immigration. Because regular immigration is considered to be voluntary, the person waiting is usually not entitled to government services while awaiting the decision on the request for a residence permit. However, this waiting without access to basic facilities can lead to unacceptable circumstances from a perspective of Covenant rights.

Since the Dutch government explicitly excludes undocumented people from the right to food and housing, the Dutch government does not fulfil its obligation to meet the basic needs of *everyone* without discrimination on the ground of status.

Accordingly, the authors believe that the situation should be considered as unjustified discrimination on the ground of 'status' and in disrespect of the right to human dignity (preamble) of these human beings. As also indicated in the introduction, below, under articles 11, 12 and 13 some of these violations will be further discussed.<sup>23</sup>

**The submitting parties recommend the Committee to take the principle of non-discrimination, enshrined in Article 2(2) of the Covenant, as a leading assessment framework for analyzing the implementation of all other rights within the Covenant.**

**The submitting parties recommend the Committee to urge the Dutch government to ensure that the Covenant applies to everyone within its territory or jurisdiction, in accordance with Article 2(2) of the Covenant.**

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<sup>22</sup> Part III, *International Covenant on Economic, Social and Cultural Rights* (New York: General Assembly, 16 December 1966).

<sup>23</sup> Committee on Economic Social and Cultural Rights, *General Comment 3 on The Nature of States Parties Obligations (Art 2(1))*, E/1991/23 (Geneva: 14 December 1990), § 1.

## ARTICLE 3

### Article 3

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

#### *A. POLITICAL PARTICIPATION OF WOMEN AT LOCAL LEVEL*

With the municipal elections of the Netherlands on the agenda for March 2010, the submitting parties would like to draw the attention of the Committee to the lasting stagnation of the political participation of women at local level. Especially in municipal councils, often considered as a stepping-stone for higher political posts, male members still outnumber their female colleagues by far: on average, seventy-four per cent of the members is male and twenty-six per cent is female.<sup>24</sup> The percentages of female aldermen or female mayors are even worse than the percentage of female council members.

The activities described in the report of the Dutch government are mainly targeted at increasing the number of female candidates available for election. The submitting parties doubt whether this approach will pay off in the near future, because it is questionable whether the availability of qualified female candidates is the root problem.<sup>25</sup> To the disappointment of the submitting parties, the Dutch government seems to disregard recent and comparative research about the low participation of women at local level.<sup>26</sup>

Generally, the political background of a candidate plays a role in nomination processes as well as in appointment processes, especially in the larger cities. Requiring a double nomination could be a solution. Introduction of more transparency and accountability with regard to gender in the nomination and appointment processes including the composition of the municipal selection Committee should be considered as well. Another possible strategy is the one used by the European Commission, signaling that political parties with a qualified female candidate have better chances.

**The submitting parties recommend the Committee to ask the Dutch government's view about its approach vis-a-vis the recent research and about other strategies to raise the participation of women in local politics.**

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<sup>24</sup> In twenty-four of the 442 local councils the percentage of elected women was less than ten per cent and in seven councils not one woman was elected. Some municipalities show a more positive picture: in thirty-four councils more than forty per cent of the seats were awarded to women; in one of them just over fifty per cent.

<sup>25</sup> In 1992, the Dutch government was already convinced that there was no shortage of qualified women; Beleidsprogramma Emancipatie 1992-1995, *Parliamentary Documents II* 1992-1993, 22 913 nr.2, pp.126-134.

<sup>26</sup> Monique Leyenaar, *Political Empowerment of Women. The Netherlands and Other Countries* (Leiden: Martinus Nijhoff Publishers 2004): pp. 138-145 and pp. 299-314.

## ARTICLE 6

### Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right (...).

#### *A. RIGHT TO WORK FOR WOMEN*

##### *A.1. ECONOMIC INDEPENDENCE OF WOMEN*

For many years the Dutch government used an indicator to measure economic independence: seventy per cent of the net statutory minimum wage for adults. This was also the amount a single pensioner received from the statutory old age pension (AOW). According to a broad consensus, however, the level of this state pension was not enough to ensure a decent life, let alone full development. Therefore, an extra tax-credit for pensioners has been introduced, leveling up the income for single pensioners to around eighty per cent of the net minimum wage.

In the view of the submitting parties it is time to adapt the indicator for economic independence accordingly to eighty per cent of the net statutory minimum wage, based on the minimum wage income of a four-day working week. The authors believe this is reasonable since a four-day working week is often seen as the ideal standard for people that combine employment with care (for children).

The policies of the Dutch government seem to tend in an opposite direction. For years it had been a target that in 2010 at least sixty per cent of the women between fifteen and sixty-five would be economic independent earning a wage or an entrepreneurial income of at least seventy per cent of the net statutory minimum wage.<sup>27</sup> The present Dutch government (Balkenende IV) did not expect to achieve this target and came up with a plan to postpone the target to 2016. Fortunately, almost unanimously the Dutch Parliament thought the Dutch government had to step up its efforts and reinstated the target for 2010.

Recently, the Dutch Parliament requested information about the extra activities of the Dutch government in this respect. The Dutch Minister responsible for emancipation, Mr Plasterk, responded that he had not yet discussed the matter with his colleagues at the Ministry of Social Affairs. In his expectations, the proposed tax measures and the *Part-time-Plus Taskforce* would pay off. Besides, he announced to commission another in-depth research on economic independence.<sup>28</sup> The submitting parties are disappointed about these developments and would like to express their concern that the request from the Dutch Parliament has not lead to a policy-intensification at all.

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<sup>27</sup> Ministerie van Sociale Zaken en Werkgelegenheid, *Meerjarenbeleidsplan Emancipatie: het emancipatiebeleid voor de korte en middellange termijn* (Den Haag: Ministerie van Sociale Zaken en Werkgelegenheid, 2000): p.23.

<sup>28</sup> *Parliamentary Document II*, 2008-2009, 30 420, nr. 133 (Letter by the Minister responsible for Emancipation of 20<sup>th</sup> March, 2009).

**The submitting parties recommend the Committee to request the Dutch government to report about the number of women earning (at least) an income of seventy or eighty percent of the net minimum wage via a wage or entrepreneurial income as well as via social security benefits.**

#### *A.2. REPRESENTATION OF WOMEN WITHIN THE WORKING POOR*

Women represent some fifty-five percent of the poor in the Netherlands. Two of the five single parent families, predominantly single mothers, belong to the poor households. Besides, the number of working poor is increasing steadily, and especially among the wage earning working poor women seem overrepresented. Some eleven per cent of the working single parents belong to the category of working poor.<sup>29</sup> The authors would like to express their concern that present governmental policies mainly aim to reduce the number of poor people with a benefit in order to reduce the Dutch government's expenditures. By doing this, the Dutch government forgets to give poor people a perspective on stable improvement of their income.

Hardly any insight exists in the length of the period that working people live in poverty. However, it is not unlikely that the perspective of escaping poverty, especially for single mothers and elderly (50+) women, is rather poor. The underutilisation of national and local (additional) allowances seems quite substantial. Moreover, most working poor, and especially the single parents among them, earn too little to be able to make full use of all the tax-credits.

**The submitting parties recommend the Committee to urge the Dutch government to develop gender sensitive policies improving the perspectives of the working poor female and men.**

#### *B. RIGHT TO WORK FOR ETHNIC MINORITY GROUPS OF NON-WESTERN ORIGIN*

According to data supplied by the Dutch non-governmental organisation 'Artikel 1' – a body concerned with discrimination in the Netherlands – diversity among Dutch companies is still very low, although 20% of the working population in the Netherlands consists of non-Western ethnic minority groups (hereafter ethnic minority groups). Almost 80% of the companies in the Netherlands employ less than 15% non-Western ethnic minority groups.<sup>30</sup>

Statistical analyses on the labour market position of ethnic minorities in the Netherlands have repeatedly shown continuing minority disadvantage. Compared to ethnic Dutch, non-western ethnic minorities have less often paid work and fixed contracts, are more often unemployed and more often work in lower level occupations. Also, the 'second generation' of ethnic minority people is more often unemployed and less often has fixed contracts than ethnic Dutch people.<sup>31</sup>

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<sup>29</sup> C. Vrooman, *Armoedemonitor 2007* (Den Haag: SCP & CBS, 2007): pp. 32, 46, 86.

<sup>30</sup> Sara de Sloover and Mariken Smit, "Bedrijf denkt nog behoorlijk zwart-wit," *De Volkskrant* (15th April 2008). <http://www.vkbanen.nl/actueel/dossiers/diversiteitsbarometer-2008/716379/Bedrijf-denkt-nog-behoorlijk-zwartwit.html>

<sup>31</sup> Jacob Dagevas, *Hoge (jeugd)werkloosheid onder etnische minderheden* (The Hague: National Institute for Social Research, January 2006) (only available in Dutch).

Although the number of people from ethnic minority background with a steady job or his or her own business seems to be increasing, the unemployment figures of persons of ethnic minority background, and especially youth, are disturbing. The National Institute for Social Research investigated unemployment rates in the 50 largest municipalities from November 2004 – May 2005, and concluded that these numbers had doubled since the beginning of the economic recession in 2002. In 2005, the unemployment rate for Moroccans was 27%, for Antilleans 22%, Turks 21% and Surinam people 16%, whereas the unemployment rate amongst ethnic Dutch was 9%.<sup>32</sup>

The unemployment rate of ethnic minority youth is even more dramatic. The National Institute for Social Research reports that unemployment rates of ethnic minority youth in the same survey area and period is 40%, double the rate of ethnic Dutch youth.<sup>33</sup>

**The submitting parties recommend the Committee to address the issue of high (youth) unemployment amongst ethnic minorities and inquire into the causes.**

**The submitting parties recommend the Committee to ask the Dutch government which measures (are to be) taken to combat (youth) unemployment of ethnic minorities.**

#### *C. RIGHT TO WORK FOR WOMEN OF ETHNIC MINORITY GROUPS IN THE LABOUR MARKET*

The average labour market participation among women has remained at close to 56% for some years, while the Dutch government envisages reaching a female participation rate of 65% by 2010 (data from Central Bureau for Statistics). Comparison of the labour market participation rates of different groups of women reveals that Turkish and Moroccan women come off worst. Although Dutch NGOs are happy to see almost a doubling of the net labour market participation rate of Turkish and Moroccan women between 1995 and 2005, they are worried that still very few of these women find their way into work. More than two thirds of the Turkish and Moroccan women find themselves in a destitute situation with neither a proper education nor a job.<sup>34</sup> In view of the current economic situation, extra measures are needed to reach the envisaged participation rate of 65% in 2010. In the period under review, the Dutch government focused on generic labour market policy to prevent stigma and fragmentation.<sup>35</sup> However, although the Dutch NGOs appreciate the efforts made by the Dutch government to combat discrimination, the Dutch NGOs stress that positive measures in the field of employment aimed specifically at the ethnic minority population should be used

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<sup>32</sup> Jacob Dagevas, *Hoge (jeugd)werkloosheid onder etnische minderheden* (The Hague: National Institute for Social Research, January 2006) (only available in Dutch).

<sup>33</sup> Jacob Dagevas, *Hoge (jeugd)werkloosheid onder etnische minderheden* (The Hague: National Institute for Social Research, January 2006) (only available in Dutch). In a similar research amongst the wider population of the Netherlands (not the 50 largest municipalities) conducted by the Central Bureau for Statistics in 2006, the unemployment rate of ethnic minority labour market participants (15-24 yrs) is 22%, whereas the unemployment rate of ethnic Dutch youth is 9%. Cf. Eddie Nieuwenhuizen, "Discriminatie etnische minderheden op de arbeidsmarkt," available at: <http://www.art1.nl/artikel/4405-Discriminatie-etnische-minderheden-op-de-arbeidsmarkt-Factsheet>.

<sup>34</sup> S. Groeneveld, W. van der Laan Bouma-Doff, T. Marx, A. van Putten, M. Gijsberts en A. Merens, *Emancipatie in Estafette. De positie van vrouwen uit etnische minderheden* (Den Haag: Sociaal Cultureel Planbureau, 2004).

<sup>35</sup> *Combined Fourth and Fifth Periodic Reports on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, UN Doc. E/C.12/NLD/5, § 40.



more widely; the groups that appear to be most disadvantaged should be assisted in their search for a job.

On the other hand, Surinamese women have on the whole a higher participation to the labour market than ethnic Dutch women. More needs to be known however about sub-categories of this large group, who may be lagging behind this general trend.<sup>36</sup>

**The submitting parties would like to recommend the Committee to encourage the Dutch government to strengthen their efforts to improve the position of ethnic minority women in the labour market.**

#### *D. RIGHT TO WORK FOR ASYLUM SEEKERS*

Asylum seekers are unfairly deprived of full employment. The Dutch labour market is only partly open to asylum seekers. For the first six-month of the asylum procedure they have no access to the labour market. After six-month asylum seekers are allowed to work a maximum of 24 weeks per year, on condition that the employer has a working permit for them. The Dutch government does not want to give asylum seekers the right to have more than 24 weeks per year access to the labour market as working more will deprive them of the right to unemployment benefit. Furthermore asylum seekers are obliged to move frequently from one asylum centre to the other. Apart from the restrictions by law, this obstructs access to work.<sup>37</sup>

**The submitting parties recommend the Committee to ask the Dutch government to give asylum seekers full access to the labour market (in case the asylum procedure takes more than six months) in order to enjoy their rights under the Covenant fully.**

#### *E. RIGHT TO WORK FOR PERSONS WITH A REFUGEE STATUS – WORK OPPORTUNITIES AND DISCRIMINATION*

The Dutch government does not give sufficient protection against discrimination to people with a refugee status. The authors have signalled that some employers fear to employ people with a refugee status, and incidentally even temporarily lay off people with a refugee status.<sup>38</sup> This is because of two reasons.

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<sup>36</sup> S. Groeneveld, W. van der Laan Bouma-Doff, T. Marx, A. van Putten, M. Gijsberts en A. Merens, *Emancipatie in Estafette. De positie van vrouwen uit etnische minderheden* (Den Haag: Sociaal Cultureel Planbureau, 2004).

<sup>37</sup> In 2008, 15275 persons requested for asylum. For 88% of the persons, it was their first request. Unicef has expressed its concern about the number of times children (and their parents) have to move from one asylum centre to the other. Cf. Karin Kloosterboer, *Kind in het Centrum: Kinderrechten in Asielzoekerscentra* (The Hague: Unicef Nederland, 2009).

<sup>38</sup> There are no statistics about how often this happens, because it is very difficult to research this. The Dutch Council for Refugees in particular receives these signals once in a while, but suspects that it is the top of the iceberg. For one thing, the discrimination monitor of non-western ethnic minorities on the Dutch labour market of 2007 point in that direction. This research concludes for example that a rather big part of the differences in unemployment between the indigenous population and 'other non-western ethnic minority groups' cannot be explained by differences in labour market relevant characteristics, such as differences in education level and experience. Discrimination may be the cause of this unexplained residue. For the 'other non-western ethnic minority groups', including refugees, this unexplained part is much bigger than for the Turks, Moroccans, Surinamese and Antilleans. The different legal position in relation to access to the labour market between asylum seekers and refugees on one hand and the legal position of the other ethnic minority groups in the research on the other hand can be one of the reasons of this much bigger unexplained part and

1. There exists a fear of employing people with a refugee status, because refugee statuses are initially issued for five years. When, in view of the Dutch government, it is safe to return after these five years, the possibility exists that people are sent back to their country of origin. Although regular residence permits are also initially issued for a restricted period in time, there is very little chance that those people will be required to leave the Netherlands.
2. There exists a fear of employing people with a refugee status, because employers are afraid of fines in case their employees cannot show identity papers proving their residential status. Generally, people with a refugee status are able to prove their identity by other identity papers, such as passports en driving licences. The reason why people cannot show the identity papers of residential status are mostly due to administrative problems of the Dutch government.<sup>39</sup> It should be clear to employers that the impossibility to show such papers should not affect their right to work.

**The submitting parties recommend the Committee to ask the Dutch government to ensure that people are not discriminated on the labour market because they have a refugee status, and to ensure their right to work. The submitting parties recommend the Committee to urge the Dutch government to come up with concrete measures to prevent discrimination.**

**The submitting parties recommend the Committee to urge the Dutch government to inform employers that the right to work does not depend on the possession of identity papers proving residential status. Employers must be informed how they can avoid a violation of the Act of Identification.**

#### *F. RIGHT TO WORK FOR IRREGULAR IMMIGRANTS AND ASYLUM SEEKERS IN DETENTION*

To the social and economic rights of asylum seekers in detention in the Netherlands should be given extra attention. It has now become a policy in the Netherlands to detain irregular immigrants and asylum seekers on arrival at the Dutch border, and to continue detention during the entire time of their asylum procedure. Part of the detention capacity is located on detention boats, in use since 2004. Immigration detention in this context is the administrative detention of irregular migrants and asylum-seekers, either to prevent them from entering the territory or in order to facilitate their expulsion.<sup>40</sup> Every year around 10,000 irregular migrants and asylum-seekers are detained in the Netherlands.<sup>41</sup>

During the time of their detention these people are not only deprived of many of their citizenship rights but also many social and economic rights. For example, asylum seekers'

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the reason for more discrimination. See: I. Andriessen, J. Dagevos, E. Nievers, and I. Boog, *Discriminatiemonitor niet-westerse allochtonen op de arbeidsmarkt* (The Hague / Rotterdam: National Institute of Social Research / Artikel 1, 2007)

<sup>39</sup> I.e. The Dutch government cannot issue new identity papers in time. See: Nationale Ombudsman, *Rapport Reguliere Verblijfsvergunning* (Den Haag, 21 juni 2005). Available at: [http://www.ombudsman.nl/rapporten/grote\\_onderzoeken/20050176/20050176.pdf](http://www.ombudsman.nl/rapporten/grote_onderzoeken/20050176/20050176.pdf)

<sup>40</sup> *The Netherlands: Detention of Irregular Immigrants and Asylum Seekers* (Amsterdam: Amnesty International, June 2008).

<sup>41</sup> Dienst Justitiële Inrichtingen - Ministerie van Justitie, *Capaciteit en Bezetting Vreemdelingenbewaring*, available at: [http://www.dji.nl/Organisatie/Feiten-en-cijfers/Vreemdelingenbewaring/dji\\_capaciteit\\_bezetting.aspx](http://www.dji.nl/Organisatie/Feiten-en-cijfers/Vreemdelingenbewaring/dji_capaciteit_bezetting.aspx).

right or opportunity to work during their stay in a detention centre is severely attenuated.<sup>42</sup> No options are made available to do either paid or unpaid work during a detention period that may take in some cases well beyond 12 months. Besides the impossibility of earning an living this situation causes many cases of depression as people feel bored and lose energy.

**The submitting parties recommend the Committee to ask the Dutch government to ensure the Covenant rights of people in (prolonged) administrative detention, in particular in this context to ensure their right to work.**

*G. RIGHT TO WORK FOR MIGRANTS WITH A RESIDENCE PERMIT ON MEDICAL GROUNDS AND THEIR FAMILY MEMBERS*

People in possession of a residence permit on medical grounds and their (healthy) family are unfairly deprived of employment. People with this permit are very ill, but are sometimes, with the help of medication, partly able to work. Their healthy family members also have no access to the labour market, due to their kind of residence permit. The fear that migrants will misuse the possibility to get a residence permit on medical grounds is not reasonable, because in order to get this kind of permit one must suffer from a life threatening disease which cannot be cured in the country of origin.<sup>43</sup>

**The submitting parties recommend the Committee to ask the Dutch government to eliminate restrictions on access to the labour market for migrants with a residence permit on medical grounds and their family members.**

ARTICLE 7

Article 7

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

(...)

(b) *Safe and healthy working conditions;*

(...)

*A. EQUAL REPRESENTATION OF WOMEN - INCLUDING WOMEN OF ETHNIC MINORITIES - IN POLITICAL AND SOCIAL LIFE*

The Dutch government seems to focus primarily on equal pay for women in its report. In the opinion of the submitting parties, the Dutch government should strive for participation of women on equal terms with men. This means that the Dutch government should aim to increase the influence of women.

<sup>42</sup> A.M. van Kamthout, "Vreemdelingenbewaring," in: E.R. Muller en P.C. Vegter (eds.), *Detentie. Gevangen in Nederland* (Alphen aan den Rijn: Kluwer, 2005) pp. 321-343.

<sup>43</sup> Up until 26th January 2007, 648 persons obtained a permit on medical grounds. It is unknown how many family members (of this 648) are concerned.

In general, men are still heavily overrepresented in political and public decision-making, even in bodies where the numerical participation of women seems to be not that bad.

“Still too many obstacles keep women away from leadership positions in politics, while at the same time women are needed in these high-level powerful positions, because then they can take decisions in order to change the underlying structural mechanisms that favour men”.<sup>44</sup>

Implicit and explicit rules about collaboration between women of different political parties have increasingly limited their influence.<sup>45</sup>

The major increases in the percentages of elected women representatives occurred in the last decades of the 20th century. In its policy plan of 1992, the Dutch government stated that certainly no shortage of qualified women did exist.<sup>46</sup> A project aiming at equal participation was launched and targets were set. In 1996 the targets were raised, aiming at equal representation of women and men in all elected bodies in 2010. These targets were included in the Multi year Policy Plan of 2000, but have not been met by far.

Since 1998 the percentage of women in the House of Representatives has been remarkably stable around 40 per cent. The reason that the target of 50 per cent will not be met is that several parties still place less female candidates than male candidates on their list and moreover at a lower position. In 2005 - with the adaptation of the Multi Year Policy Plan - the target for equal participation at all political elected bodies had even been dropped to 45 per cent in 2010.<sup>47</sup> The Emancipation Memorandum does not contain any targets in this respect anymore. There cannot be any doubt that without further measures it will take many more years to achieve de facto equal participation.

**The submitting parties recommend the Committee to ask the Dutch government why it has dropped the targets to achieve equal representation in the political elected bodies. Does the Dutch government considers extra measures in order to achieve equal participation as soon as possible?**

#### *B. WORK-RELATED HEALTH STATUS OF VULNERABLE GROUPS.*

As far as work-related health conditions, there is evidence that people of low socio-economic background are more exposed to work-related health problems than persons of higher socio-economic background. These persons with lower socio-economic background often overlap with the strata of migrant workers or population with ethnic/minority background. Data from *Arbo in Bedrijf* (Health Conditions at Work), a survey published in October 2008, show that the percentage of companies where employees lift heavy loads of 25 kilos or more had declined slightly and that employees are also being exposed less often to harmful noise and

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<sup>44</sup> Monique Leyenaar, *Political Empowerment of Women: the Netherlands and other countries* (Leiden: Martinus Nijhoff, 2004), p. 7.

<sup>45</sup> Monique Leyenaar, *Political Empowerment of Women: the Netherlands and other countries* (Leiden: Martinus Nijhoff, 2004), pp. 167-171.

<sup>46</sup> Beleidsprogramma Emancipatie 1992-1995, *Parliamentary Documents II 1992-1993*, 22 913, nr.2, pp.126-134.

<sup>47</sup> *Parliamentary Documents II 2005-2006*, 30 420, nr.2, p.37.

hazardous materials.<sup>48</sup> However, in the Netherlands – as in every other country in Europe, three occupation safety and health issues for workers from ethnic minority backgrounds generally are still in place: their high employment in high risk sectors; language and cultural barriers to communication and safety and health training; and the fact that migrant workers often work a lot of overtime and/or are in poor health and thus are more prone to occupational injuries and diseases.<sup>49</sup>

**The submitting parties recommend the Committee to ask the Dutch government to address the issue of poor working conditions for people of low socio-economic background, in particular of migrant workers.**

#### ARTICLE 10

##### Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly (...) while it is responsible for the care and education of dependent children. (...)

#### *A. IRREGULAR IMMIGRANTS AND ASYLUM SEEKERS IN DETENTION CENTRES*

Migrant detention puts unnecessary pressure on family lives, as many of the detained people are parents who have to live without their spouses and children during a sometimes excessively long stay in detention centres. This practice runs counter to the intentions stated in Article 10 of the Covenant. The Dutch government recently decided (when?) that whole families need not be detained but instead, in case of illegal residence, at least one parent should be detained. In practice this means the separation of a family that may have and often has a disrupting effect on family life. Sometimes members of one family are being kept in different detention and reception facilities. In many cases direct family members are unable to visit their relatives, either because of lack of money to travel, or because of lack of legal identification papers that are necessary to visit any detention centres.<sup>50</sup>

**The submitting parties would like to recommend the Committee to ask the Dutch government to honour their commitments under the Covenant to accord the widest possible protection and assistance to the family, particularly while it is responsible for care and education of dependent children, and make sure that families (especially parents and children) are not separated by administrative detention.**

<sup>48</sup> European Agency for Safety and Health at Work, *Literary Study on Migrant Workers* (Bilbao: OSHA, 2007); available at: [http://osha.europa.eu/en/priority\\_groups/migrant\\_workers](http://osha.europa.eu/en/priority_groups/migrant_workers).

<sup>49</sup> European Agency for Safety and Health at Work, *Literary Study on Migrant Workers* (Bilbao: OSHA, 2007); available at: [http://osha.europa.eu/en/priority\\_groups/migrant\\_workers](http://osha.europa.eu/en/priority_groups/migrant_workers).

<sup>50</sup> *The Netherlands: Detention of Irregular Immigrants and Asylum Seekers* (Amsterdam: Amnesty International, June 2008), pp. 46-48; *Advies vreemdelingenbewing* (The Hague: Raad voor de Strafrechtstoepassing en Jeugdbescherming (RSJ), June 2008), pp. 21-22.

## ARTICLE 11

### Article 11

*1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.*

#### *A. GENERAL*

##### *A.1. MATERIAL RECEPTION CONDITIONS FOR PEOPLE IN THE ASYLUM PROCEDURE*

In the Netherlands there are several categories of legally resident aliens who do not receive (adequate) material reception conditions (like food, clothing and housing). An example are asylum seekers who have been rejected within the accelerated asylum procedure (of 48 ‘working hours’) and who are awaiting a decision on their appeal. This appeal does not have the effect of suspending the decision on the application, which means that a request for an interlocutory injunction has to be made. Dutch policy rules state that the asylum seeker is allowed to await the outcome of the interlocutory injunction. However, during this period the asylum seeker is not entitled to reception facilities.

In addition, asylum seekers awaiting a first decision on their asylum procedure in Reception Centres are only entitled to very limited financial allowances. (Adult) asylum seekers receive an allowance of €2,50 per day (in case all meals are provided by the government-financed Central Agency for the Reception of Asylum Seekers). This sum is in stark contrast with the amount of financial social aid that other persons staying in facilities receives, for example people staying in (mental) institutions or nursing homes. According to the Dutch Social Assistance Act, people living in institutions are entitled to a monthly payment of €288,37, which is €9,50 per day. These people receive accommodation, food, heating, etcetera in kind and are therefore entitled to a lower amount of social assistance than people living outside these institutions. Finally, it is important to note that the one-off payment which asylum seekers receive for clothing (€39,05) has only been raised marginally as compared to the amount granted in 1997, although prices have gone up considerably.

**The submitting parties recommend the Committee to ask the Dutch government to ensure that adequate material reception facilities are guaranteed to asylum seekers.**

##### *A.2. RIGHT TO AN ADEQUATE STANDARD OF LIVING FOR UNDOCUMENTED PEOPLE*

In the Netherlands, the Work and Social Assistance Act (Wet Werk en Bijstand)<sup>51</sup> is the so-called “safety net” in the system of (social assistance) benefits. This means that if people have no other means of income they will be eligible for the benefits provided for in this act. The

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<sup>51</sup> Work and Social Assistance Act (Wet Werk en Bijstand), Act of 9 October 2003, Stb. 2003, 375.

benefits received on the basis of the Work and Social Assistance Act should be considered social assistance benefits as they are not dependant on an affiliation to a social security scheme aimed at covering a particular risk, or any requirement of professional activity or payment of contributions. There is a regime for general living costs ('Algemene Bijstand') to cover expenses for needs such as housing, food and health insurance, and a regime for other, so-called extraordinary living costs ('Bijzondere Bijstand').

People not lawfully residing in the Netherlands are excluded from both these benefits by law (Article 11-2 WWB). The law even prohibits the Dutch government from providing social assistance benefits to unlawful residents if they are in dire need (Article 16-2 WWB). As a result undocumented people cannot meet the costs for living an adequate standard of living necessary to maintain their human dignity.<sup>52</sup> Undocumented people have no income that enables them to rent a house or buy food, nor are these fundamental rights provided in kind, for example by care centres and food distribution centres.<sup>53</sup>

The Netherlands is essentially failing to fulfil its obligations under the Covenant because undocumented people are deprived of essential foodstuffs and basic shelter and housing.<sup>54</sup>

By not providing food, clothing and housing to undocumented people, the Netherlands not only violates its obligations under article 11, but violates other fundamental rights as well. As the special Rapporteur on adequate housing as a component of the right to an adequate standard of living has stated: 'homeless people suffer from multiple problems, including social exclusion, vulnerability (..), detention (...) and inability to access services that require proof of residency.'<sup>55</sup>

**The submitting parties recommend the Committee to make a statement on the violation of the right to housing and food for undocumented people in the Netherlands and to encourage the Dutch government to make food and housing available for everyone.**

**The submitting parties recommend the Committee to ask the Dutch government to at least consider changing the law to make it possible for payment of benefit in case of exceptional circumstances.**

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<sup>52</sup> Committee on Economic Social and Cultural Rights, *General Comment No. 4 on The Right to Adequate Housing*, UN Doc. E/1992/23 (Geneva: 13th December 1991), §7.

<sup>53</sup> The European Committee on Social Rights declared Collective Complaint 47/2008 about the right to housing for undocumented children admissible on 23rd September 2008. The complaint is filed by Defence for Children with the support of Stichting LOS, UNICEF-NL and the Dutch section of the International Commission of Jurists (NJCM); available at: [http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC47Admiss\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC47Admiss_en.pdf).

<sup>54</sup> Committee on Economic Social and Cultural Rights, *General Comment 3 on The Nature of States Parties Obligations (Art 2(1))* UNDoc. E/1991/23 (Geneva: 14th December 1990), § 10.

<sup>55</sup> "Women and Adequate Housing," *Study by the Special Rapporteur on Adequate Housing, 2005*, UN Doc. E/CN.4/2005/43 (Geneva: 25 February 2005), § 51.

## B. RIGHT TO FOOD

### B.1. NUTRITIONAL EDUCATION

Complying with this right means that, on one hand, the Netherlands has to tackle reducing/eliminating inequalities in the standards of living inside the country; on the other hand, the Netherlands must put food security high on the agenda of its cooperation policies with the developing world.

The definition of “adequate standards of living” varies geographically and historically. The Netherlands ranks 6<sup>th</sup> in the UNDP Human Development Index, which affords a relatively high standard of living for everyone. In the current situation of the Netherlands food security is high, this means in terms of the right to adequate, accessible, available and acceptable food,<sup>56</sup> the emphasis of state obligations thus does not lie on increasing the quantity of food available, but rather on ensuring that nutrition is of a qualitatively high level, appropriate to the dietary needs of individuals, and available to all segments of the population.

#### Top 10 Countries UNDP Human Development Index

- 1 Iceland
- 2 Norway
- 3 Canada
- 4 Australia
- 5 Ireland
- 6 Netherlands
- 7 Sweden
- 8 Japan
- 9 Luxembourg
- 10 Switzerland

The recent effort of the Dutch government to promote nutritional education, in particular to the most vulnerable sectors of the population (older people and those with a low socio-economic status) is very much appreciated.<sup>57</sup>

However, further action has to be taken to tackle the uneven distribution of food-related disease in the population. Stark inequalities are reported in terms of eating habits among different segments of the Dutch population. In 2008 obesity and other food-related diseases were on the increase in the Netherlands.<sup>58</sup> This was specifically the case for ethnic minorities, generally having poorer health performances than their native counterparts. Some of these inequalities in food-related diseases are explained by level of education and income. For instance, in the Netherlands the risk of dying from a heart attack is 2.4 times higher for people without a secondary school diploma than for people with a university degree<sup>59</sup>.

**The submitting parties recommend the Committee to ask the Dutch government to (continue to) take measures to adapt and strengthen appropriate consumption and feeding patterns, in particular in the most vulnerable groups of society.<sup>60</sup>**

<sup>56</sup> Committee on Economic Social and Cultural Rights, *General Comment 12 on The Right to Adequate Food*, UN. Doc. E/C.12/1999/5 (Geneva: 12th May 1999).

<sup>57</sup> For example, the establishment of ‘Het Voeding Centrum’ – an independent body funded by the Dutch ministries of Agriculture and Health, Sports and Well-being with the aim of increasing the understanding of food qualities and to encourage customers to eat healthily and safely, or the initiative “fruitables at school” launched in 2003 by a coalition including the Dutch ministry of Health.

<sup>58</sup> L.C. Jager, *Consumers and healthy eating patterns* (Koninklijke Nederlandse Akademie van Wetenschappen, 2009). Available at: <http://www.onderzoekinformatie.nl/nl/oi/biza/d61000o/OND1331214/>.

<sup>59</sup> European Public Health Alliance, “Tackling health inequalities: what can health promotion do?” Available at: <http://www.ephpa.org/a/547>.

<sup>60</sup> Committee on Economic Social and Cultural Rights, *General Comment 12 on The Right to Adequate Food*, UN. Doc. E/C.12/1999/5 (Geneva: 12th May 1999) § 9.



## C. RIGHT TO HOUSING

### C.1. HOUSING SITUATION OF NON-WESTERN ETHNIC MINORITIES

The housing situation of people of ethnic minority background is generally poorer than that of the ethnic Dutch population. According to recent research of the Netherlands Institute of social research, housing quality is poorest in the neighbourhoods with a majority of inhabitants of ethnic minority background, measured by characteristics such as owner-occupied homes, single family homes and above all home size.<sup>61</sup> Furthermore, all non-western ethnic minority groups in each of the neighbourhood types live in housing of poorer quality. For instance, for Turkish and Moroccan Dutch residents, the number of square metres per occupant in the home stands out unfavourably in comparison to the number of square metres per occupant in the residents of ethnic Dutch.

The most vulnerable groups, including less-educated people, have the least freedom of choice as to where they live and most often live in areas with poorer housing and more social fragmentation. As a result of these factors collective action to improve conditions of the neighbourhood is less likely. The participation of ethnic minorities in organised tenants is scant.<sup>62</sup>

**The submitting parties recommend the Committee to ask the Dutch government to comment on the housing situation of non-Western ethnic minorities and to consider taking any appropriate measures to strengthen the position of this group on the housing market.**

### C.2. EMERGENCY SHELTER FOR MIGRANTS IN AN ADMISSION PROCEDURE.

Dutch NGOs are concerned about the Dutch government's plans to force municipalities to stop funding any kind of emergency shelter to migrants taking part in an admission procedure. About 750 migrants, awaiting the decision of the immigration authorities regarding their right to stay, are dependent on these shelters to prevent them from having to sleep in the streets. Alongside the Dutch government's decision in 2007 to grant 27.700 persons a residence permit (the 'Generaal Pardon'), the Dutch government promised to close all emergency shelter facilities for ex-asylum seekers. By January 2010, all facilities should be closed.<sup>63</sup>

The Dutch government has promised to organise a complete solution for the group of people in the admission procedure, either through speeding up their admission procedures or through placing them in a 'freedom restricting' location. Some municipalities however fear that many migrants who have nowhere to go to will end up on the streets again. It is up to now unknown what kind of solution the Dutch government will come up with for migrants who are ill and need immediate care and unaccompanied minors who have attained the age of majority.<sup>64</sup>

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<sup>61</sup> European Public Health Alliance, "Tackling health inequalities: what can health promotion do?" Available at: <http://www.eph.org/a/547>.

<sup>62</sup> J. Kullberg, Kulu-Glasgow, and Isik See, *Building Inclusion: Housing and Integration of Ethnic Minorities in the Netherlands* (The Hague: National Institute of Social Research, July 2009).

<sup>63</sup> "Veertien gemeenten weigeren sluiting noodopvang asielzoekers", *DeTelegraaf*, 3 September 2009, available at: [http://www.telegraaf.nl/binnenland/4752855/\\_Weigering\\_sluiting\\_opvang\\_asielzoekers\\_.html](http://www.telegraaf.nl/binnenland/4752855/_Weigering_sluiting_opvang_asielzoekers_.html).

<sup>64</sup> Vereniging van Nederlandse Gemeenten, "Noodopvang met ruim zestig procent gedaald," press release of 3 September 2009, available at: <http://www.vng.nl/eCache/DEF/90/094.html>.

**The submitting parties recommend the Committee to urge the Dutch government to guarantee the right to shelter for migrants awaiting their decision on an admission procedure.**

#### ARTICLE 12

##### Article 12

1. *The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*
2. *The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:*
  - (...)
  - (d) *The creation of conditions which would assure to all medical service and medical attention in the event of sickness.*

#### *A. RIGHT TO HEALTH AND ETHNIC MINORITIES*

In a 2005 study, there is noted that numerous hurdles must be taken when trying to quantify the state of health of migrant groups. The most readily available statistics are those relating to the amount of care given, but these do not say anything about the underlying needs of the persons concerned. This is particularly a problem in the area of mental health, where the consensus of opinion in the Netherlands suggests that migrants are often less inclined to seek and/or be referred for treatment. The same study notes that rates of perinatal mortality are higher among migrant groups, especially those from non-western countries, in whom the risk is 30% higher. In the latter group, the risk of a stillbirth is 40% higher. Among people of Turkish and Moroccan descent, risks are also increased in the second generation, whereas the second generation of Surinamese migrants shows no increased risk when compared to the ethnic Dutch population. Diabetes mellitus is found more often among migrants and this is especially true in deprived urban areas. Migrants are more likely to be overweight and have high blood pressure, though less likely to have high cholesterol levels.<sup>65</sup>

**The submitting parties recommend the Committee to ask the Dutch government to pay increased attention to the status of (mental) health of migrant groups.**

#### *B. RIGHT TO HEALTH OF ASYLUM SEEKERS AND REFUGEES IN RECEPTION CENTRES*

Generally refugees and asylum seekers have been through traumatic experiences before arriving in the Netherlands. The mental health status of these persons gives rise to concern

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<sup>65</sup> D. Ingleby, M. Chimienti, P. Hatziprokopiou, and C. de Freitas, "The role of health in integration," in: M. Fonseca, J. Malheiros (eds.), *Social integration and mobility: education, housing and health* (Lisbon, Centro de Estudos Geográficos, 2005); available at: [http://mighealth.net/nl/index.php/Gezondheid\\_van\\_migranten\\_en\\_minderheden\\_-\\_Overzicht](http://mighealth.net/nl/index.php/Gezondheid_van_migranten_en_minderheden_-_Overzicht).

and may deserve (extra) attention. In any case, refugees and asylum seekers tend to show elevated rates of post-traumatic stress disorders, depression and anxiety, and in the Netherlands, it has also been demonstrated that mental disorders increase after prolonged detention in the Central Reception Centre.<sup>66</sup>

Besides the elevated rates of mental health risks, a meta-study on the health of the asylum-seekers and refugees, published by Pharos in 2003, has indicated substantially raised mortality rates on account of diseases endemic in countries of origin. The main causes were TB, aids, meningitis and hepatitis- diseases.<sup>67</sup>

**The submitting parties recommend the Committee to ask the Dutch government to pay increased attention to the status of (mental) health of asylum seekers and refugees, and make ensure that they have access to the medical attention they need.**

### *C. RIGHT TO HEALTH OF UNDOCUMENTED PEOPLE AND ASYLUM SEEKERS IN DETENTION CENTRES*

The general conditions in detention centres for migrants do not meet the standards required by Article 12. The article states that everyone has the right to enjoy the highest attainable standard of physical and mental health. The regime in detention centers where people are entitled to one hour fresh air per day; two hours of visits per week; two hours of sport per week, low quality and little varied food, does in view of the authors of this report not comply with these standards. Furthermore, migrants have to stay fifteen hours per day in a cell with often more than two cellmates (so enjoying hardly any privacy) and spend months without any meaningful pastime.<sup>68</sup> The standard of medical care is low and physical and mental problems suffered tend not always to be taken seriously. The authors consider the deprivation of liberty of people that have no criminal record whatsoever, nor the deprivation of their liberty for any other reason, a violation of their fundamental human rights.

It could be even stated that detention in general of this group of people creates or increases physical and mental problems. This is especially true for those migrants who are traumatized by experiences of violence in their home-country or because they are victims of trafficking.<sup>69</sup> The circumstances in prison, the insecurity about the duration of their stay and the lack of any useful pastime like work or education, puts the health condition of these migrants at risk.<sup>70</sup>

**The submitting parties recommend the Committee to urge the Dutch government to ensure that the conditions of administrative detention do not negatively contribute to the**

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<sup>66</sup> D. Ingleby, M. Chimienti, P. Hatziprokopiou, and C. de Freitas, "The role of health in integration," in: M. Fonseca, J. Malheiros (eds.), *Social integration and mobility: education, housing and health* (Lisbon, Centro de Estudos Geográficos, 2005); available at: [http://mighealth.net/nl/index.php/Gezondheid\\_van\\_migranten\\_en\\_minderheden\\_-\\_Overzicht](http://mighealth.net/nl/index.php/Gezondheid_van_migranten_en_minderheden_-_Overzicht).

<sup>67</sup> K. Bartels, "Gezondheidstoestand," in: Grotenhuis, R. (red.) *Van pionieren tot verankeren. Tien jaar gezondheidszorg voor vluchtelingen* (Utrecht: Pharos, 2003): 115-161.

<sup>68</sup> For a more detailed description of the different regimes, cf. A.M. Kalmthout, "Vreemdelingenbewaring," in: E.R. Muller en P.C. Vegter (eds.), *Detentie. Gevangen in Nederland* (Alphen aan den Rijn: Kluwer, 2009), pp. 325-330.

<sup>69</sup> B. Boermans, *Uitgebuut en in de bak! Slachtoffers van mensenhandel in vreemdelingendetentie* (BlinN-Humanitas/Oxfam Novib, January 2009).

<sup>70</sup> *The Netherlands: Detention of Irregular Immigrants and Asylum Seekers* (Amsterdam: Amnesty International, June 2008), pp. 43-50.

**(mental) health status of persons detained, and to ensure that detained persons receive sufficient and appropriate medical care.**

#### *D. RIGHT TO HEALTH OF UNDOCUMENTED PEOPLE*

The right to the highest attainable standard of health includes the core obligation of the State parties “to ensure basic shelter, housing and sanitation, and an adequate supply of safe and potable water”.<sup>71</sup>

In the Netherlands, the Social Support Act (Wet Maatschappelijke Ondersteuning)<sup>72</sup> covers access to disability and (emergency) shelters. People not lawfully residing in the Netherlands cannot apply for these provisions (Article 8(1)). This means that undocumented people have no access to shelter for homeless people, to special protection centres for abused women and men (blijf-van-mijn-lijf-huizen) and to hospices (homes for the terminally ill). In this manner extremely vulnerable people are excluded from access to special protection centres. This violates not only their right to shelter but also their right to the highest attainable standard of health. Even the ambiguous ‘Strategy Plan for Social Relief’, which should give 10.000 homeless people accommodation and an income, excludes undocumented people.<sup>73</sup>

Moreover, access to clean water is not available for undocumented people because they have no access to shelter, as described under article 11. This creates important health problems, In the words of the Committee on Economic, Social and Cultural Rights: “Under no circumstances shall an individual be deprived of the minimum essential level of water.”<sup>74</sup>

**The submitting parties recommend the Committee to urge the Dutch government to give undocumented people access to special protection centres, shelters and hospices and health related provisions under the Social Assistance Act (Wet Maatschappelijke Ondersteuning) and the Exceptional Medical Expenses Act (Algemene Wet Bijzondere Ziektekosten).**

#### *E. HEALTH INSURANCE DURING THE FAMILY REUNIFICATION PROCEDURE (ART 12 (2)(D)).*

In 2006, the system for health insurance changed in the Netherlands. Because of the new system family members of migrants and refugees who are allowed to come to the Netherlands for family reunification and enter the Netherlands with a valid visa, are no longer entitled to the basis health insurance whilst they are waiting for their permit. This period of waiting takes several weeks and often even a couple of months.<sup>75</sup> Also family members of refugees who are

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<sup>71</sup> Committee on Economic, Social and Cultural Right, *General Comment No. 14 on The Right to Highest Attainable Standard of Health*, UN Doc. E/C.12/2000/4 (Geneva: 11th August 2000) § 43.

<sup>72</sup> Social Support Act (Wet Maatschappelijke Ondersteuning), Act of 29th June 2006, Stb. 2006, 351.

<sup>73</sup> *Combined Fourth and Fifth Periodic Reports on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, UN Doc. E/C.12/NLD/5, p. 25.

<sup>74</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 15 on The Right to Water*, UNDoc. E/C.12/2002/11, § 56.

<sup>75</sup> 12.600 (in 2007) and 13.100 (in 2008) family members have travelled to the Netherlands for family reunification or family formation on a visa and had to wait for their permit. In 2007, the average waiting time for the permit was 14 weeks, cf. Statistics Immigration Service, see [www.ind.nl](http://www.ind.nl). If the family members have been allowed to come to the Netherlands in case the applicants did not meet the income requirements, there is

allowed to come to the Netherlands for family reunification have no health insurance for several weeks or months until they receive their asylum permit. Before 2006 it was possible to obtain directly a health insurance as a partner or child of someone with a valid permit.

Although this omission has been discussed many times in Parliament the Dutch government has not yet provided a solution. It is suggested that family members can take out a health insurance with a private company. However these are very expensive but above all such insurances do not cover treatment of existing illnesses or disorders. The authors of this report consider this a breach of the right to health facilities, goods and services.<sup>76</sup>

**The submitting parties recommend the Committee to urge the Dutch government to provide access to basic health insurance for family members who arrive in the Netherlands for family reunification.**

#### *F. WOMEN LIVING WITH HIV / AIDS*

The submitting parties have the impression that women with HIV / AIDS have greater problems in the Netherlands than can be derived from the global information that is available on the health situation of women in the Netherlands.

Reports from the HIV Monitoring Foundation state that 871 people were diagnosed as HIV-positive in the Netherlands in 2006, of which 166 infections were diagnosed in women.<sup>77</sup> Most of these women are of non-Dutch origin, whereas most HIV infected men originate from the Netherlands. Of all men, seventy-three per cent acquired the infection through sex with men. Heterosexual contact is by far the most important risk factor amongst women (95 per cent).<sup>78</sup> Many resources for prevention and treatment of the Dutch government are aimed at the large group of Dutch men who are (at risk of) living with HIV because of homosexual contact. The authors suggest that preventive measures and treatment should proportionally be developed for women as well.

**The submitting parties urge the Committee to ask the Dutch government how it intends to improve its policies targeted at women living with HIV. Is the government prepared to provide more in-depth information about HIV/AIDS in its next report to the ICESCR?**

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an possibility to also provide for a health insurance (Regeling Verstrekkingen Bepaalde Categoriën Vreemdelingen). However, this is only the case in exceptional circumstances.

<sup>76</sup> Committee on Economic, Social and Cultural Right, *General Comment No. 14 on The Right to Highest Attainable Standard of Health*, UN Doc. E/C.12/2000/4 (Geneva: 11th August 2000) § 17.

<sup>77</sup> M.G. van Veen c.s. *Sexually transmitted infections in the Netherlands in 2006*, RIVM report number: 210261003 / 2007 (Bilthoven, 2007).

<sup>78</sup> HIV Monitoring Foundation, Table number of HIV cases diagnosed in 2006, by transmission risk group and region of origin, 2007.

## ARTICLE 13

### Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.

(...)

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

(...)

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, (...)

#### *A. TRAINEESHIP / INTERNSHIP OPPORTUNITIES FOR PEOPLE APPLYING FOR A RESIDENT PERMIT IN THE NETHERLANDS AND FOR UNDOCUMENTED PERSONS.*

“Education is both a human right in itself and an indispensable means of realizing other human rights”.<sup>79</sup> “Education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds”.<sup>80</sup> It should be emphasized that enjoyment of the right to fundamental education is not limited by age or gender; it extends to children, youth and adults, including older persons.<sup>81</sup>

In the Netherlands the right to education for undocumented people until they are 18 years old is protected by Dutch law.<sup>82</sup> There is a problem regarding adolescents who follow a so-called professional education. They 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 the permit is not granted, for children in an asylum procedure it is. So even though children under 18 are allowed to follow education, the work placement requirement makes it impossible for most children without a residence permit to finish school (i.e. obtain a diploma). Undocumented adults are excluded from education altogether.

**The submitting parties recommend the Committee to ask the Dutch government to ensure a full right to education for all undocumented people.**

<sup>79</sup> Committee Economic, Social and Cultural Rights, *General Comment No. 13 on The Right to Education*, UNDoc. E/C.12/1999/10, § 1.

<sup>80</sup> Committee Economic, Social and Cultural Rights, *General Comment No. 13 on The Right to Education*, UNDoc. E/C.12/1999/10, § 6.

<sup>81</sup> Committee Economic, Social and Cultural Rights, *General Comment No. 13 on The Right to Education*, UNDoc. E/C.12/1999/10, § 24.

<sup>82</sup> Aliens Act 2000 of 23 November 2000, Stb. 2000, 495, art. 10; Act for Higher Education and Scientific Research (Admission) of 8 October 1992, Stb. 2007, 254, art. 7.32.5 ; Secondary Education (Admission) Act of 14th February 1963, Stb. 1967, 387, art. 27.1a; Education and Professional Education Act of 31st October 1995, Stb. 1995, 501, art. 8.1.1..

**The submitting parties recommend the Committee to ask the Dutch government to implement an unambiguous policy on access to traineeship of legally resident aliens which ensures the full right to education, and to make traineeship equally and fully accessible to all aliens under the age of 18.**

*B. RIGHT TO EDUCATION FOR IRREGULAR IMMIGRANTS AND ASYLUM SEEKERS IN DETENTION*

The education rights of migrants in administrative detention are not guaranteed in the Netherlands. Just like work, education is not provided for during the time migrants have to stay in detention. This limits unnecessarily their chances of setting up a successful living when reintegrating either in Dutch society or in the home country to which the migrant will be returned.

**The submitting parties recommend the Committee to ask the Dutch government to ensure that the right to education is guaranteed to persons in administrative detention.**

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