

**Dutch NGOs' contribution
to the second Universal Periodic Review of the Netherlands
by the UN Human Rights Council**

This report is submitted on behalf of the following NGOs:

Aletta - Institute for Women's History
ASKV/Steunpunt Vluchtelingen (Support Organisation for Refugees)
Bits of Freedom
Caribbean Dutch Consultative Body (OCaN)
Defence for Children – the Netherlands
Doctors of the World – the Netherlands
Dutch Coalition on Disability and Development (DCDD)
Dutch Refugee Council
Dutch Section of the International Commission of Jurists (NJcM)
ECPAT – the Netherlands
E-Quality – Information Centre for Gender, Family and Diversity Issues
FIAN Netherlands - FoodFirst Information and Action Network
Johannes Wier Foundation for Health and Human Rights
Justitia et Pax – the Netherlands
LOS Foundation (National Support Organisation for Undocumented Migrants)
Moluccan Consultative Body (BUAT)
Moroccan Dutch Consultative Body (SMN)
MOVISIE
Netherlands Platform on Human Rights Education
Platform Bescherming Burgerrechten (Platform for the Protection of Civil Rights)
Southern European Consultative Body (Lize)
Surinamese Consultative Body (SIO)
TIYE International
Turkish Consultative Body (IOT)
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1. INTRODUCTION

The undersigning NGOs welcome the opportunity provided by the Office of the High Commissioner on Human Rights to submit a stakeholders' report for the Second Universal Periodic Review (UPR) of the Kingdom of the Netherlands, to be held during the 13th session of the Human Rights Council in 2012.

Due to the limited number of pages allowed for this report, its contents are limited to the most pressing matters of concern regarding the respect for and the protection and fulfilment of human rights in the Netherlands. The picture that emerges from this report's findings causes the undersigning NGOs to express their grave concern that the Netherlands demonstrates an increasing lack of commitment to human rights that does not correspond with its traditionally perceived leading role in the protection of human rights. This report notes a number of alarming trends and developments that signal a lessening of the consideration the Dutch government is prepared to give to its human rights obligations.

The undersigning NGOs express their sincere hope that the findings in this report will lead to an open and constructive dialogue, which shall lead to an expedient solution for the signaled shortcomings.

2. RATIFICATION OF UN HUMAN RIGHTS INSTRUMENTS

The undersigning NGOs welcome the fact that the Netherlands has implemented the recommendations it received during the First Universal Periodic Review to ratify the International Convention on the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. We note, however, that a number of treaties and optional protocols remain to be ratified and signed by the Netherlands.

The Convention on the Rights of Persons with Disabilities (CRPD) was signed by the Netherlands on 20 March 2007, but to date the Convention has not been ratified. This in spite of the fact that the Committee on Economic, Social and Cultural Rights (CESCR) has noted with concern in its Concluding Observations of 19 November 2010 that persons with disabilities face discrimination in the enjoyment of economic, social and cultural rights, particularly in the field of employment and education.¹ The Optional Protocol to CRPD, which entered into force on 3 May 2008, has not been signed.

In similar vein, the Netherlands has not yet signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, which entered into force on 1 July 2003. The Dutch government has previously remarked that it had no intention of acceding to the Convention, in spite of having been encouraged to do so by the CESCR.² We strongly urge the Dutch government to reconsider its position.

¹ UN Doc. E/C.12/NDL/CO/4-5, 19 Nov 2010, para 13.

² UN Doc. E/C.12/NDL/CO/4-5, 19 Nov 2010, para 41.

Finally, the Netherlands is still to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which it has signed on 24 September 2009.

We recommend the Human Rights Council to urge the Netherlands to ratify the Convention on the Rights of Persons with Disabilities and to sign and ratify its Optional Protocol.
We further recommend the Human Rights Council to urge the Netherlands to sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, and to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

3. DIRECT APPLICABILITY OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The undersigning NGOs note with concern that the Netherlands does not consider provisions on economic, social and cultural rights in human rights treaties to be directly applicable. The Dutch government has been urged on various occasions by the Commissioner for Human Rights of the Council of Europe, as well as various treaty bodies, to ensure that provisions of international human rights treaties are directly applicable. The position that economic, social and cultural rights are not directly applicable stems from the time the ICESCR was submitted to the Dutch parliament for approval in the mid 1970s. Courts in the Netherlands have simply copied the Dutch government's position, upon which the Dutch government in turn has used the rejection of the direct applicability of treaty provisions on economic, social and cultural rights (notably the ICESCR and CEDAW) by the courts as a justification for its own position. This circular line of reasoning has led to a deadlock situation.

So far, the Netherlands has not been willing to reconsider its position that social rights are merely programmatic rights, containing instructions for the Dutch government. We urge the Dutch government to take the recommendations received from the Commissioner for Human Rights and the treaty bodies to heart and carefully re-evaluate its position.

We recommend the Human Rights Council to urge the Netherlands to reassess its current position that provisions in UN human rights instruments related to economic, social and cultural rights are not directly applicable.

4. IMPLEMENTATION AND DISSEMINATION OF CONCLUDING OBSERVATIONS

The undersigning NGOs are concerned about the lack of implementation of the Concluding Observations issued by the UN human rights treaty bodies.

In its reports to the various UN treaty bodies, the Netherlands does not consistently refer to the Concluding Observations it previously received from the treaty body in question, nor does it structurally report on the progress made in implementing these observations. The Fifth Report by the Dutch government to the CEDAW,³ for example, contained no reference to the Concluding Observations made after the review of the Fourth Report. The Combined Fourth and Fifth Report to the CESCR barely

³ UN Doc. CEDAW/C/NLD/5, 24 Nov 2008.

contained references to previous Concluding Observations and often failed to specify concrete steps taken to implement the observations.⁴

Furthermore, the Netherlands fails to take all appropriate measures to ensure wide dissemination of the recommendations it receives. The undersigning NGOs would like to see the Netherlands follow up on the UN human rights treaty bodies' consistent request to ensure that General Recommendations be made available to the public at large. This would include translation into Dutch of the treaty bodies' reports and related recommendations as well as transmittal of these documents to members of government, Parliament, civil society organisations and the media.

We recommend the Human Rights Council to urge the Netherlands to consistently address the implementation of and follow-up on previously received recommendations in its reports to UN human rights treaty bodies.

We further recommend the Human Rights Council to urge the Netherlands to take the necessary steps to ensure wide dissemination of Concluding Observations.

5. ASSESSMENT OF POLICIES AND LAWS

The undersigning NGOs believe that in formulating new legislation and policies, the Netherlands should systematically assess its impact on human rights. As shown by the recent proposal to raise court fees, which would have a grave negative impact on access to justice, and a number of other examples in this stakeholders' report (see Section 7 on privacy and Section 8 on aliens), legislation and policy still too often are not in line with the Netherlands' human rights obligations or even constitute a violation thereof. In order to signal these shortcomings at an early stage and also enable effective monitoring by Parliament, civil society and the UN human rights treaty bodies, such structural assessment should be clearly reflected in the policy and legislation documentation.

We recommend the Human Rights Council to urge the Netherlands to systematically assess the impact of its policies and legislation on human rights and to make such assessment apparent in the relevant documentation.

6. GENDER DISCRIMINATION IN THE LABOUR MARKET

With regard to the position of women in the Dutch labour market serious concerns were expressed by the Committee on the Elimination of Discrimination against Women in its Concluding Observations dated 5 February 2010.⁵ Further, Concluding Observations of several other UN treaty monitoring bodies evince the structural inequality and significant disadvantages that women continue to experience.⁶ The participation of women in the labour market remains considerably lower than that of men. In particular, the persistence of horizontal and vertical segregation in the labour market indicates the absence of concrete and effective measures. In addition to that, women are mainly concentrated in the lower-

⁴ UN Doc. E/C.12/NLD/4-5, 17 Jul 2009.

⁵ UN Doc. CEDAW/C/NLD/CO/5, 5 Feb 2010, para 36.

⁶ UN Doc. CCPR/C/NLD/CO/4, 25 Aug 2009, para 5; UN Doc. C.12/NLD/CO/4-5, 19 Nov 2010, para 14.

paid service sectors. Furthermore, the unemployment rate for women is considerably higher than for men and a substantial pay gap still exists in both the private and public sectors. The undersigning NGOs firmly believe that the predominance of women in temporary and part-time work is mainly involuntary. As an example to that effect, due to the government's recent decision to adopt cutbacks on child care benefits mothers with young children are virtually forced to choose for temporary and/or part-time work, or even to resign from their positions.

Evidently, the measures taken by the Dutch government to ensure that women enjoy equal access to the labour market and equal pay for work of equal value are insufficient. Therefore, the Netherlands has failed utterly to implement the recommendations of the various UN treaty bodies.

We recommend the Human Rights Council to urge the Netherlands to take adequate measures ensuring that women enjoy equal access to the labour market and equal pay for work of equal value. Taking these measures, the State party should pay particular attention to encouraging mothers of young children to continue their employment by increasing the options available for full-time and part-time child care benefits and appropriate after-school programmes.

7. PRIVACY

Since 9/11, the Netherlands has adopted numerous laws and policies which either infringe or violate the right to privacy as protected *inter alia* by article 17 ICCPR. The majority of these measures were introduced in the name of counter-terrorism, yet without their necessity having been established and often without any element of choice for individual citizens. Notwithstanding the fact that not all of these measures have the primary objective to prevent or thwart terrorism, they nevertheless constitute a large-scale violation of the right to privacy. Examples include massive storage of telecommunication data (data retention), biometric passports and ID cards, Automatic Number Plate Recognition (ANPR), heavily increased CCTV surveillance, automatic profiling and wiretapping with limited judicial oversight. All of these measures should either be abolished or amended in order to make them comply with the right to privacy and data protection.

Unfortunately, the Netherlands lacks an overarching privacy framework for the evaluation of its legislation and policies.⁷ Concurrently, judicial review of formal legislation is prohibited by the Dutch constitution. Judicial review of government policies is also limited. It is therefore inevitable that the Dutch government does not thoroughly review the impact of policy proposals on the right to privacy, nor does it thoroughly examine the necessity and proportionality thereof. Moreover, the Dutch government often ignores concerns raised by civil society and the Dutch Data Protection Authority (DPA).

The undersigning NGOs wish to draw particular attention to the governmental project to introduce extensive ANPR on a national scale for the purpose of criminal investigation, despite the fact that these plans have already been declared illegal by the Dutch DPA. In addition, the Dutch government plans to implement a new system of ANPR-like surveillance along the Dutch borders (called @MIGO) with a wide range of objectives, the details of which remain unknown.

⁷ For more information on the lack of assessment of legislation and governmental policies, see further Section 5 of this report.

A similar lack of respect for the right to privacy is demonstrated by developments regarding the possible introduction of wireless mobile ‘fingerprint scanners’ by the Dutch police. A pilot project to publicly test these fingerprint scanners is being conducted between November 2011 and early 2012 by four regional police forces as well as the Royal Netherlands Marechaussee (military police). The primary objective of these scanners is to detect illegal immigrants by digitally verifying the fingerprints of individuals against those in the national database for asylum seekers.

We recommend the Human Rights Council to insist that the Netherlands develops a set of criteria for all legislation, policies and enforcement measures restricting the right to privacy. The privacy risks and impact of all legislation and policies should be analysed in advance. The criteria should also be applied to existing policy. All privacy infringing policies should be periodically reviewed and evaluated after implementation.

We further recommend the Human Rights Council to urge the Netherlands to revoke its ANPR Bill, to clarify and reconsider implementing @MIGO and to halt developments towards the introduction of mobile fingerprint scanners.

8. ALIENS

8.1 Living and working conditions of undocumented migrants and asylum seekers

Awaiting a decision on their procedure, various categories of aliens are forced to live under precarious conditions in the Netherlands. Under the Benefit Entitlement Act of 1998 (Koppelingswet), they have no right to social benefits such as health insurance. Although undocumented migrants do have the formal right to medically necessary health care, measures such as mandatory identification make claiming this right virtually impossible for them. Furthermore, the protection of their right to an adequate standard of living (art. 11 ICESCR) and their right to the enjoyment of just and favourable conditions of work (art. 7 ICESCR) are not guaranteed. Current developments toward criminalisation of illegality (see also Section 8.3) will discourage undocumented migrants to take steps to regularise their stay and are likely to worsen existing problems.

We recommend the Human Rights Council to urge the Netherlands to respect the obligations of protection derived from articles 7 and 11 ICESCR and grant basic facilities and create an adequate mechanism for protection of undocumented migrants living and working in dangerous, poor or sub-standard conditions.

8.2 Detention of undocumented migrants and asylum seekers

As much as 8.000-10.000 undocumented migrants and asylum seekers are waiting for their expulsion in special migrant detention centres. The conditions in these detention centres are very poor and often the duration of their stay is unreasonably long or unknown. Additionally, the undersigning NGOs are concerned about the lack of information with relation to the use of the isolation cell (for a period of two weeks) as a punitive measure for protests regarding continuing immigration detention and the ensuing strict regime. Meanwhile, undocumented migrants and asylum seekers have limited access to health care and education. Reducing the number of children in detention is a matter of particular concern to the undersigning NGOs.

Current government reconsiderations regarding its migrant detention policy focus mainly on reducing the excessive costs of migrant detention, rather than structural reform. The undersigning NGOs firmly underline that detention should form an *ultimum remedium*. Therefore, the need to develop appropriate and satisfactory alternatives is pressing. Until such alternatives are developed, fundamental rights of undocumented migrants continue to be violated in migrant detention centres, especially those of families with children and of migrants with (psychiatric) health problems.

We recommend the Human Rights Council to urge the Netherlands to significantly decrease the number of people in migrant detention by creating appropriate alternatives.

We further recommend the Human Rights Council to urge the Netherlands to improve the conditions in detention centres.

8.3 Recent measures put aliens at risk of further marginalization

Since the start of the current minority cabinet supported by the right-wing Freedom Party (PVV) in October 2010, Dutch immigration policy is becoming increasingly oppressive. Recent initiatives and measures tend to give more powers to authorities and restrict the rights of aliens, which will lead to increased marginalization of asylum seekers and undocumented migrants. Examples of such measures include criminalising illegal residence, limited judicial review of decisions on asylum procedures and immediate rejection of individuals who ever resided in the Netherlands illegally.

Furthermore, higher fees for regular residence permits were introduced as of July 2011. These higher costs will undoubtedly form a further obstacle for participation in Dutch society and thus increase the risk of marginalization of aliens. The increased risk of marginalization of aliens results in an increased risk of violation of their human rights.

We recommend the Human Rights Council to urge the Netherlands to revoke measures that put aliens at risk of marginalization, in particular the criminalisation of illegal residence and to use international human rights standards as a guideline for new immigration policy.

8.4 Civic Integration Abroad Act endangers right to family life

Under the Civic Integration Abroad Act of 2006 (Wet Inburgering in het Buitenland) aliens are required to take an integration exam abroad, the level of which has recently been raised by the government. Regrettably, the exam is unattainable for illiterate persons. Moreover, there seems to be no room for exceptions for individuals with particular health problems, which has been confirmed by an investigation of the National Ombudsman. This Act and its additional regulations cause families to be separated for long periods of time, which violates the right to family life.

We recommend the Human Rights Council to urge the Netherlands to adjust the Civic Integration Abroad Act and its regulations, so that the requirements for migrants become attainable and the room for exceptions becomes effective.

9. EDUCATION

9.1 Right to education

Mostly black or white schools still exist in the Netherlands. Both the Committee on the Rights of the Child⁸ and the Committee on the Elimination of Racial Discrimination⁹ recommended the Dutch government to increase its efforts to combat ethnic segregation in schools. Nevertheless, the Dutch government recently declared to no longer consider combating ethnic segregation in schools a priority issue. In addition to that, due to the government's recent decision to adopt budget cuts, schools for children with special needs (such as handicapped and chronically ill children) will be severely affected. For these children, attending special school education will no longer be possible.

We recommend the Human Rights Council to urge the Netherlands to actively combat ethnic segregation in schools and promote mixed schools, as well as to ensure the continuation of schools for children with special needs.

9.2 Lack of human rights education

The undersigning NGOs welcome the establishment of a National Human Rights Institute, with education as one of its tasks. Nevertheless, the government did not follow the recommendation from the First Universal Periodic Review to introduce human rights education into regular school programs. There is still no National Action Plan on Human Rights Education as agreed under the UN World Programme for Human Rights Education. In the current regulations on civic education (Toezichtkader Actief Burgerschap), education about basic values is presented as optional and human rights are not mentioned. In discussing human rights education, the government refers to the autonomy of schools, while it does set learning objectives in other fields. In policy documents on civic education no mention is made of the aims of education as laid down in article 13 ICESCR and article 29 CRC. More serious efforts should be made to make the necessary legal and administrative adjustments and to develop guidelines for the implementation of human rights education.

We recommend the Human Rights Council to urge the Netherlands to recognise that human rights education is an inherent part of civic education, that policies in this field are subject to article 13 ICESCR and article 29 CRC, and thus to take the necessary steps for the introduction of human rights education in school programs.

10. CHILDREN

10.1 Children in migration and return policy

Despite some positive developments in this regard, Dutch legislation does not yet provide protection of the rights of all children regardless of their legal status. In case of family migration the best interest of children is not taken into consideration by the Dutch migration authorities. Moreover, the Dutch gov-

⁸ UN Doc. CRC/C/NLD/CO/3, 27 Mar 2009, para 61.

⁹ UN Doc. CERD/C/NLD/CO/17-18, 16 Mar 2010, para 7.

ernment aims to return asylum seeking minors to their home countries as quickly as possible. As a result, migrant families with children are most strongly affected by the enforcement of return policy. These and other measures concerning the return of rejected migrants and asylum seekers (see also Section 8.2) will inevitably affect the rights of migrant children in a disproportional way.

We recommend the Human Rights Council to urge the Netherlands to revise its restrictive measures of migration and return policy that affect the rights of migrant children disproportionately.

10.2 Juvenile justice

Policy concerning youth criminal law in the Netherlands focuses on strong punishment of minors including deprivation of liberty. Of all minors deprived of liberty in Youth Custodial Institutions, 79 percent are in pre-trial detention. According to the Youth Custodial Institutions Act (Beginselenwet Justitiële Jeugdinrichtingen) minors can be kept in police detention up to nine or sixteen days and fifteen hours depending on their age. Although the so-called ‘suspend minor unless’ rule prescribes that while ruling on detention magistrates must examine all possibilities to suspend a minor suspect’s custody, this rule only applies after three or six days, when the minor’s custody has already been prolonged by a judge. Another concern is the intention to apply accelerated proceedings and immediate punishing, which are likely to have an adverse effect on the behaviour of youths at risk.

We recommend the Human Rights Council to urge the Netherlands to revoke the counter-productive measures regarding juvenile justice and establish rules of conduct for the treatment of minors in police detention.

10.3 Sexual exploitation of children

As pointed out in the Concluding Observations of the Committee on the Rights of the Child, there is no comprehensive strategy to combat the problem of child trafficking in the Netherlands.¹⁰ There is a lack of available specialised officials and of sufficient relief centres and treatment possibilities for victims of child trafficking. More protective measures and proactive implementation are urgent. Child pornography is also a form of sexual violence against children. As stated by the National Rapporteur on Trafficking in Human Beings in her 8th report,¹¹ repressive measures concerning child pornography alone are not sufficient to effectively protect children from sexual violence. This specific form of sexual violence against children should be taken up as part of policies and victim care programs.

We recommend the Human Rights Council to urge the Netherlands to improve its strategy to combat the sexual exploitation of children, such as child trafficking and child pornography, by means of thorough investigation, educating of professionals and the establishment of relief centres.

¹⁰ UN Doc. CRC/C/OPSC/NLD/CO/1, 6 May 2009, para 11.

¹¹ Eight report of the Dutch National Rapporteur, 15 Oct 2010, p. 57 *et seq*; accessible via <http://english.bnrm.nl/reports/eighth/index.aspx>