

COMMITTEE ON ECONOMIC SOCIAL AND CULTURAL RIGHTS

Meeting of the 33rd session, Geneva 6 – 24 November 2006

The Netherlands (3rd periodic report)

Information submitted to the Committee

On 5 August 2006, the Netherlands submitted their 3rd periodic report¹ to the Committee on Economic Social and Cultural Rights (the Committee) and written replies² to the list of issues³ provided by the Committee. The report gave a comprehensive description of the measures and policies adopted to implement the *International Covenant on Economic, Social and Cultural Rights*⁴ (the Covenant). It included several tables and statistical information explaining the impact of those policies. Mr Piet de Klerk, Ambassador at Large for Human Rights of the Ministry of Foreign Affairs, and chairman of the Netherlands' delegation,⁵ started his presentation by apologising for the delay in submitting the report. He also explained that since the Antilles and Aruba have full autonomy on the implementation process, they would hold a separate database for the different part of the country.⁶

The Dutch section of the International Commission of Jurists (NJCM) and Johannes Wier Stichting (JWS) both presented a joint parallel report⁷ to the Committee. The main concerns brought up by the report regarded the discrimination in job access for minorities and women, the lack of definition of domestic violence as crime, and the risk of segregation in the school system due to the increased number of religion-based schools. The JWS's main concerns regarded the changes in the healthcare policies, mainly the budgetary cuts and the consequent unavailability of several basic services for the most vulnerable groups, such as ethnic minorities, elders, and 'illegal' migrants.

The Netherlands has a reservation on Article 8, Paragraph 1 (d) regarding the right to strike. With this reservation, the State wants to exclude its responsibility to implement this article in the Antilles, in accordance with the full autonomy accorded to this area.

¹ The report was composed by a core document, which includes general information regarding the country, such as demographic and economic statistics, and an addendum, with information on the implementation of the Covenant. Both documents are available in OHCHR web site. The core document HRI/CORE/1/Add.66, 26 February 1996: <http://daccessdds.un.org/doc/UNDOC/GEN/G96/153/96/PDF/G9615396.pdf?OpenElement>,

The addendum, E/1994/104/Add.30, 23 August 2005:

<http://daccessdds.un.org/doc/UNDOC/GEN/G05/436/60/PDF/G0543660.pdf?OpenElement>,

² E/C.12/NLD/Q/3/Add.1, 18 August 2006: <http://www.ohchr.org/english/bodies/cescr/cescrs37.htm>.

³ E/C.12/NLD/Q/3, 2 March 2006:

<http://daccessdds.un.org/doc/UNDOC/GEN/G06/407/13/PDF/G0640713.pdf?OpenElement>.

⁴ For the full text of the International Covenant on Economic, Social and Cultural Rights please refer to the OHCHR web site: <http://www.ohchr.org/english/law/cescr.htm>.

⁵ The delegation included representative of the Permanent mission of the Kingdom of the Netherlands in Geneva, the Ministry of Social Affairs and Employment, the Ministry of Interior and Kingdoms Relations, the Ministry of Justice, the Ministry of Health Welfare and Sport, and the Ministry of Foreign Affairs.

⁶ Mr Yuri Kolasov, a Committee member, lamented that in this way the report was not complete and the Committee has not got any other way to examine the Antilles and Aruba. He stated that the Netherlands signed the Covenant as a whole, and since the overseas territories were part of the countries and not a sovereign State, the Government has the responsibility for the implementation of the Covenant and for reporting in all territories.

⁷ For the full text of the joint report please refer to the OHCHR web site:

<http://www.ohchr.org/english/bodies/cescr/docs/info-ngos/NJCM-JWS.pdf>.

Themes and issues⁸

The Committee's examination was focused on social security, the insurance system, discrimination against migrants, gender equality, and domestic violence. Another issue regarded the Netherlands' position on the proposal of the *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*.⁹ In this regard the delegation stated that the implementation of economic, social and cultural rights represented a central issues in the domestic political dialogue and it wanted to preserve the sovereignty of the national parliament on these issues. In its concluding observations,¹⁰ the Committee encouraged the State to consider giving support to the process of discussion and the future adoption of the Optional Protocol.

The state of the Covenant in domestic legislation

The Committee expressed concerned that some articles¹¹ of the Covenant were not directly applicable by the courts. The delegation stated that the non-applicability of those articles was decided by the parliament to preserve the internal political debate surrounding the implementation of such rights. The Committee recommended that the Netherlands extend the direct applicability to all Covenant provisions and ensure that the domestic courts give them effect. It also invited the State to give information on case law on the applicability of the Covenant provision in its fourth periodic report.

Social security

The Committee asked for more information to better understand if the reduction of the number of people supported by public benefits was due to a failure of the protection system. The delegation explained that the benefits¹² were removed only when people reached a stable and independent situation. In its concluding observations, the Committee recommended that the State ensure the entitlement and duration of social assistance for vulnerable members as well as support during the administrative procedure of entitlement to the benefits.

The Committee also focused its attention on the *Health Insurance Act*, asking for more information regarding the cutting of some services, such as the availability of free contraception measures for women under 21 years old and the exclusion of psychological treatment. The delegation explained that funding problems required those reductions, but that less expensive treatments were provided.

Mr Whaleed M. Sadi expressed concerns regarding the legalisation of drugs. Referring on how, in other countries, similar 'liberal' policies induced an increase in consumption, he asked for more figures regarding the results obtained in the Netherlands. The delegation highlighted that those

⁸An unofficial press release of the session is available at:

[http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/93701630BEBDF52EC1257220003EF593?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/93701630BEBDF52EC1257220003EF593?OpenDocument)

⁹ The main aim of this proposal is to create a complaints procedure under the Covenant. The elaboration of the draft Protocol was recommended by the World Conference on Human Rights, held in Vienna in June 1993. The Committee concluded its work and submitted a report to the 53rd Session of the Commission on Human Rights for consideration. The Optional Protocol has not been officially adopted yet. The report of the Committee is available at the OHCHR web site: <http://daccessdds.un.org/doc/UNDOC/GEN/G04/120/29/PDF/G0412029.pdf?OpenElement>.

¹⁰ E/C.12/NLD/CO/3, 24 November 2006: <http://www.ohchr.org/english/bodies/cescr/docs/E.C.12.NLD.CO.3.pdf>.

¹¹ The Articles not directly applicable are: 2/2, 6, 7, 8, 12, and 14.

¹² The benefits included "pocket money", free education for children, training and assistance to find a new 'proper' job, legal assistance to apply for benefits, and free childcare facilities (the so called "day arrangement" facilities that take care of the children all day long).

policies were limited to soft drugs. It added that the statistics, available in the report, clearly demonstrated their success.

Minorities and migrants

The Committee expressed concern regarding the fact that the rate of unemployment within minority groups was four times higher than within the rest of the Dutch population. It asked which policies the Government had adopted. The delegation stated that discrimination was prohibited by several legislative acts, such as the *Equal Treatment Act*. It also added that a recent reform had shifted the burden of proof so that whoever is accused of discrimination has to prove that it did not occur.

The Committee asked why the Netherlands have not yet signed the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*.¹³ The delegation explained that the Convention implies a distinction between migrant and non-migrant workers that does not exist in the Netherlands. The Dutch legislation, in fact entitles anyone who legally resides in the country to the same rights as a Dutch citizen. Furthermore, a smaller range of rights¹⁴ is granted to those who are not legally residing¹⁵ in the Netherlands in order to provide them with the basic needs. In its concluding observations, the Committee encourages the State to consider ratifying this Convention.

Gender equality

The Committee expressed concern for the lack of any reference to Article 3 of the Covenant¹⁶ in the country report. The delegation explained that any discrimination between women and men was prohibited by the Constitution. It also added that the *Gender Equal Treatment Act* set up a system of individual complaints in cases of violations.

The Committee asked if there were any juridical or practical obstacles for women to have full time jobs since 2/3 of them have part-time contracts. The delegation stated that several measures were adopted, such as childcare facilities,¹⁷ flexible schedules and fiscal reductions for home workers. In its concluding observations the Committee encouraged the State to continue its efforts to mainstream gender equality across all public policies. It also invited the State to provide assessments of the impact of the measures taken in the fourth report.

Right to fair working conditions

The Committee asked information regarding the criteria used to calculate the minimum wage and the measures adopted to assure it to all workers. The delegation answered that it was calculated in relation to the cost of life and updated yearly. It explained that it was binding, and that regular inspections were held to avoid violations and fines would be applied.

¹³ The Convention was adopted by General Assembly *Resolution 45/158* of 18 December 1990 and the full text is available on the OHCHR web site: <http://www.ohchr.org/english/law/cmw.htm>.

¹⁴ The delegation, answering to a follow-up question of the Committee, explained that illegal residents have the right to receive medical assistance, but only for emergencies and for chronic diseases such as HIV and diabetes, free education for children and legal assistance.

¹⁵ The delegation explained illegal residents were the only people who have been refused refugee status.

¹⁶ Article 3 states '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'. For the full text of the Convention please refer to the OHCHR web site: <http://www.ohchr.org/english/law/cesscr.htm>.

¹⁷ The delegation explained that funds were allocated both to increase the number of facilities and to subsidise their cost. Currently the childcare facilities are paid 1/3 by the Government and 1/3 by the employer on a voluntary basis, but since January 2007 it will be compulsory, for the low-income families.

The Committee expressed concern regarding the restrictions on the right to strike of public officers and asked for more information. The delegation stated that the same rights were granted for workers of the public and private sector, however it conceded that some restrictions still existed regarding the army, but that a reform was underway.

International dimension

The Committee was impressed by the allocation of 0.8 % of the GDP (Gross Domestic Product) to development cooperation policies. It also expressed appreciation regarding the human rights approach to those policies. Mr Azzoz Kerdoun asked for more information regarding the role of the Netherlands in combating extreme poverty, with references to the negative effect of the European Union agricultural policies in developing countries' economies. The delegation explained that the Netherlands had joined the main international programs, notably, the Millennium Development Goals. It also emphasised the role of the State in supporting reforms in EU agricultural policies.

Education

The Committee expressed its concern regarding violence in schools and asked what kind of measures was adopted to assure the rights to a safe education. The delegation explained that the *Action Plan on the Safety in Education* introduced several preventive and repressive measures and allocated extra funds in order to improve expertise for teachers, coaching for students, and cooperation between schools and other youth institutions.

The Committee also expressed concern regarding the increase in the number of religion-based private schools that conduct to a discriminatory education system. The delegation explained that public schools were open for everybody and that private schools were free to establish criteria for access, even based on religious factors. It also added that the Government provides a national curriculum for all schools in a way to harmonise the education system and safeguard minorities' culture as well as multiculturalism in general.

Domestic violence and child abuse

The Committee expressed concerns regarding the lack of a definition of the crime of domestic violence in the Criminal Code and asked how such crimes could be punished. The delegation stated that those violations were severely punished according to the laws regarding sexual abuse and assault. In its concluding observations, the Committee urged the State to adopt specific legislation on domestic violence and to strengthen social, psychological, and legal measures.

The Committee asked for clarification regarding the alarming figures on child abuse (40%), and that only 12% of those cases were reported. In its reply, the delegation stated that those percentages included 'any violence, physical or psychological, occurred at any moment of a person life', which expands the percentage enormously. It added that the Government created a Child Protection Board that would inquire any cases of suspicion of abuse, and adopted guidelines for policemen and prosecutors to allow them to take action in cases of abuse, even without the victim's report.

The Committee also brought up the issues of sexual exploitation and child pornography asking for more information. The delegation replied that the detention of child pornographic material was a crime and severe punishments were provided. It also explained that laws on sexual exploitation have no limit of jurisdiction in order to enforce the protection of minors in case of sexual tourism.

The Committee recommended that the State strengthen its efforts to combat child pornography and sexual exploitation.

Prostitution and trafficking

Mr Waalid M. Sadi condemned prostitution as human rights violations *per se* and as a degrading activity for women. He expressed his concerns regarding the legalisation of prostitution and the increase in trafficking that it might cause. The delegation explained that that policy allowed granting a better safeguard for the women involved, protecting them from violence, abuses and exploitation. It also added that data demonstrated clearly that those policies did not increase trafficking. The Committee urged the State to strengthen its efforts and to provide detailed information on the progress achieved and difficulties encountered in the next report.

Other themes

Mr Waleed M. Sadi asked for clarification regarding the provision on marriage between people of the same sex adopted in 2001 in Netherlands. He stated that this provision was not coherent with the definition of marriage as a union between a man and a woman and against Article 23 of the *International Covenant on Civil and Political Rights*¹⁸ (ICCPR). The delegation replied that there was no contradiction and that the Government had an extensive interpretation of the concept of marriage with regard to the principle of equal treatment.

The high rate of homelessness amongst youths was another concern for the Committee particularly regarding the progressive reduction of budget allocation to support the right to housing. The delegation replied that there was a Strategy Plan for Social Relief that provided several measure to improve youth lives, such as housing, employment and healthcare. In the concluding observations, the Committee asked the delegation to provide detailed information on the outcome and assessment of the Strategy Plan in the next report.

Conclusion and next Steps

The Committee thanked the delegation for the satisfactory and fruitful dialogue and expressed appreciation for the innovative and comprehensive policies adopted by the Netherlands, stating that they were an example for other countries. The dialogue was well structured and the delegation provided efficient and punctual replies to the Committee. The criticisms and concerns expressed by Mr Sadi allowed the delegation to reaffirm its strong commitment and the progressive view of economic social and cultural rights, representing an example of a comprehensive approach to those rights.

In its concluding observations the Committee made only general recommendations to the Netherlands asking for a strengthening of its policies and efforts in protecting economic, social and cultural rights, and for more detailed data regarding the results. It invited the State to update its core document in accordance with the *Harmonised Guideline on Reporting*¹⁹ recently approved by the

¹⁸ For the full text of the CCPR please refer to the OHCHR web site: <http://www.ohchr.org/english/law/ccpr.htm>.

¹⁹ In 2002 in order to improve the reporting system of the treaty bodies, the inter-committee meeting proposed to expand of the scope of the core document to include information relating to treaty provisions common to several or all treaties. The document would be updated regularly and submitted to the each committee together with the treaty-specific reports. The guideline's document is available in OHRCH web site: HRI/MC/2004/3, 9 June 2004, [http://www.unhcr.ch/tbs/doc.nsf/7cec89369c43a6dfc1256a2a0027ba2a/24d2ce2ba1a3736ac1256ebc00512026/\\$FILE/G0442161.pdf](http://www.unhcr.ch/tbs/doc.nsf/7cec89369c43a6dfc1256a2a0027ba2a/24d2ce2ba1a3736ac1256ebc00512026/$FILE/G0442161.pdf).

international human rights treaty bodies and requested the State to submit its combined fourth and fifth periodic reports by 30 June 2007.