



# Economic and Social Council

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## Committee on Economic, Social and Cultural Rights

### Forty-fifth session

#### Summary record of the second part (public)\* of the 30th meeting

Held at the Palais Wilson, Geneva, on Monday, 8 November 2010, at 3 p.m.

*Chairperson:* Mr. Marchán Romero

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Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights: documents submitted by non-governmental organizations

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\* No summary record was prepared for the first and third parts (closed) of the meeting.

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*The second part (public) of the meeting was called to order at 4 p.m.*

**Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights: documents submitted by non-governmental organizations**

1. **Ms. Koster** (Dutch Equal Treatment Commission) specified that she was speaking in the context of the non-discrimination mandate of the Dutch Equal Treatment Commission, which was due to become the Dutch Institute of Human Rights by 2011. The Government of the Netherlands had failed to report on the measures it had taken to combat discrimination based on sexual orientation prevalent in the labour market (i.e. the formulation of a strategy aiming at the emancipation of the lesbian, homosexual, bisexual and transgender communities; qualitative and quantitative studies; submission of interim reports to Parliament). The adoption of a more systematic approach to drafting reports that included benchmarks would not only unburden the relevant authorities but also greatly facilitate the evaluation of national policies on economic, social and cultural rights.
2. Although the Government of the Netherlands appeared aware of its responsibility as an employer, it had not planned for a programme to effectively train its 1 million civil servants and State agents in human rights. Likewise, in the absence of any legal obligation, human rights education in educational establishments was left to the discretion of the heads of those establishments, which did not comply with the requirements of article 13 of the International Covenant on Economic, Social and Cultural Rights.
3. An enquiry carried out in 2008 by the Dutch Equal Treatment Commission at a higher education institution (at which 50 per cent of those attending were non-Dutch) confirmed a hardening of opinion on ethnic origin and religion within Dutch society. The repercussions on human dignity in the fields of employment and education should induce the authorities to react forcefully. Again, given the continued discrimination against pregnant women and mothers in the labour market and the persistent wage gap between men and women, the Dutch Equal Treatment Commission had undertaken empirical research that could provide the basis for new strategies to combat such discrimination and enable women to develop their careers freely, independently and on the basis of equality with men in terms of pay.
4. **Ms. Bots** (Netherlands section of the International Commission of Jurists) submitted the shadow report and its addendum drafted by a coalition of 17 Dutch non-governmental organizations (NGOs). Since the population of the Netherlands, one of the most developed countries in the world, enjoyed for the most part a high standard of living and the economic, social and cultural rights enshrined in the Covenant, expectations were high in that regard and what was at issue was not so much any longer the exercise of those rights as equality in the way they were exercised. Three population groups encountered particular difficulties in that regard, namely asylum-seekers, irregular migrants and women, which was very often the result of deliberate public policies.
5. The policy of the Netherlands Government regarding asylum-seekers' access to physical and mental health care, their living conditions (housing and allowances) and their detention conditions was particularly troubling. Rapid processing and migration policies must not be an excuse for falling short of the norms applicable to the treatment of the vulnerable group in question. The Government was reminded of its obligations in that regard.
6. **Ms. Hesselman** (Netherlands section of the International Commission of Jurists) highlighted the inadequacy of policies in the Netherlands with respect to undocumented migrants as well as the failure of the Government to react on this topic in its written replies to the list of issues (E/C.12/NLD/Q/4-5/Add.1). The law on conditions for granting social

security benefits deprived this population group of access to the most basic services, in violation of article 2 of the Covenant and of the principle of human dignity. Although the Government's practice of throwing undocumented families — including children — out on to the street was altered following the explicit condemnation by the European Economic and Social Committee, it was regrettable that the measures were merely temporary and that only children could benefit from rehousing.

7. The attention of Committee members was drawn to the observations on the treatment of undocumented migrants in the addendum to the shadow report by the NGO coalition. Echoing a recent statement by the Secretary-General of the United Nations on the emergence in Europe of a dangerous policy polarizing the debate on immigration, the speaker earnestly hoped that the need to protect the human rights of all on the basis of equality, as well as the importance of human dignity and non-discrimination as principles serving to buttress domestic human rights policies and legislation, would be reaffirmed, particularly in light of the weakness of the Covenant in Dutch law. Finally, the NGO coalition drew the Committee's attention to women's continued difficulties, especially in the labour market, in exercising their rights on par with men (e.g. protection of domestic workers and pregnant women) and cited the huge obstacles faced by women belonging to certain ethnic minorities in exercising their economic, social and cultural rights.

8. **Mr. Sadi** wished to know, since human rights education was optional, if the subject was actually taught and, if so, at what academic level. He requested further information on the cases of discrimination in education mentioned by the representative of the Dutch Equal Treatment Commission.

9. It would be useful to know why the NGO coalition chose to examine concurrently the situation of asylum-seekers, refugees unlawfully in the country and women, as the problems faced by the first two categories were often similar whereas those faced by women were specific to them, particularly in the case of domestic workers and pregnant women.

10. The NGO coalition might care to indicate whether it believed that all asylum-seekers should have the same rights, regardless of whether or not they held identification papers or refugee status.

11. **Ms. Bras Gomes** asked whether the NGOs had had the opportunity to present to the Netherlands Government all the concerns expressed in the shadow report submitted to the Committee and, if so, what had been its response.

12. **The Chairperson**, taking the floor as a member of the Committee, wished to know whether the NGOs had taken part in monitoring the implementation of the concluding observations and recommendations of the Committee in its consideration of the Netherlands third periodic report.

13. **Ms. Koster** (Dutch Equal Treatment Commission) said that, in accordance with the principle of freedom of education under article 23 of the Constitutions of the Netherlands, human rights education was optional in the Netherlands. The Government had therefore not issued any regulations or laws in the matter, deeming that it was for institutions under the Ministry of Education to decide what form such teaching should take.

14. The cases of discrimination revealed in the 2008 study by the Dutch Equal Treatment Commission involved students and staff at the higher education institution in question who were not of Dutch origin. It was very regrettable that the university authorities had largely not followed up on the complaints filed by the victims and that the situation had ended in a deterioration of relations between students and staff of Dutch origin and those of a different ethnic origin.

15. **Ms. Koster** lamented the fact that by and large the Government of the Netherlands considered itself irreproachable in the human rights field and was convinced that its sole mission was to promote awareness in other countries. Outside formal meetings attended in her official capacity, she had had the opportunity to meet and discuss this matter with Government representatives and to remind them that the obligation to report under international human rights instruments to which the State was party should be regarded as a means to constant self-improvement.

16. **Ms. Bots** (Netherlands section of the International Commission of Jurists) said that the reason why the NGO coalition she represented had reported concurrently on the situation of illegal refugees, asylum-seekers and women was because its members had in-depth expertise in those three areas.

17. The NGO coalition believed that all the guarantees set out in the Covenant must be extended to all persons on Netherlands territory, regardless of their residency or immigration status. However, that was not the case in practice: families in irregular situations often found themselves denied access to housing.

18. The NGO coalition had not been able to comment on the Netherlands Government's written replies to the list of issues due to the particularly short space of time between publication of the replies and the current meeting, but it would not fail to participate in monitoring the implementation of the recommendations the Committee would formulate following its consideration of the Netherlands fourth and fifth periodic reports.

19. **Mr. Tirado Mejia** wished to know the opinion of the NGO coalition as to whether, in future, the Netherlands Government should submit a single report on its implementation of the Covenant in the European part of the Kingdom, the Netherlands Antilles and Aruba.

20. **Mr. Kedzia** wished to know whether, given the optional nature of human rights education in schools, the subject was taught at all in the Netherlands.

21. **Ms. Koster** (Dutch Equal Treatment Commission) said that the Dutch Equal Treatment Commission could not comment on the situation in the Netherlands Antilles or Aruba because the laws governing equal treatment did not apply there. Furthermore, the law establishing the national human rights institution would not come into force immediately in Saint Eustatius, Bonaire and Saba because their population totalled less than 17,000 and therefore their small size prevented them from incorporating all the Kingdom's laws at once.

22. The discrimination women faced was particularly acute with respect to pay: for equal skills, their salary was lower than that of their male colleagues. Moreover, pregnant women on fixed-term contracts generally did not have access to on-the-job training, their contracts were never renewed and those on maternity leave did not receive an allowance.

23. Lastly, broadly speaking, it could be said that human rights were not taught in Dutch schools.

24. **Ms. Bots** (Netherlands section of the International Commission of Jurists) referred the Committee to pages 25, 27 and 29 of the addendum to the shadow report where it would find concrete examples of the situation of women in Dutch society, in particular from the legal standpoint. As to the Netherlands Antilles, they did not come within the purview of the coalition, which was concerned exclusively with the European portion of the Kingdom of the Netherlands.

25. **Mr. Tobler** (Swiss Coalition), reverting to the opinion of the Federal Council reported in Switzerland's reply to the list of issues (i.e. that obligations under international law deriving from the Covenant were programmatic in nature and therefore required the intervention of the legislative power for implementation), indicated that the new 1999

Federal Constitution and the consequent partial amendments never used the term “social rights” but rather “social goals”. The Federal Council also refused to become party to the Optional Protocol because the Covenant was not directly applicable in Switzerland.

26. Switzerland still had not established a national human rights institution in accordance with the Paris Principles and, as stated in its replies to the list of issues, currently had “no bill to introduce a general anti-discrimination act”. Regrettably, there were also major gaps in human rights education. Finally, Switzerland’s greatest challenge in the area of human rights was its policy towards foreign nationals and refugees, which was marked by hostility and was neglectful of protecting their economic and social rights.

27. **Ms. Brogniart** (Coalition of French-Speaking Switzerland) listed, article by article, Switzerland’s breaches of its obligations under the Covenant. Switzerland did not respect its commitments in the area of international cooperation and assistance with regard to promoting and protecting the right to health, food, water, work and housing. In the labour market, women were subject to discrimination in recruitment while unequal pay between the sexes persisted. The Coalition called on the Government to introduce a federal minimum wage, and curb the wage undercutting practice among cantons by linking salaries to the place of work. Deploring anti-union practices and the fact that the right to strike was not always respected, the Coalition also asked the Government to ensure the application of Convention No. 98 of the International Labour Organization relating to the application of the principles of the right to organize and collective bargaining.

28. Many people lived in woeful social conditions, the right to social security was often violated and undocumented persons had limited access to health care. The Coalition urged the need to prevent forced marriages and protect victims. Switzerland limited the right to family life for immigrants and, given that the placement of children for social reasons was a further infringement of that right, the Coalition believed it would be better to combat precariousness in order to help families in difficulty. The authorities also restricted undocumented persons’ right to marry. Homosexual couples were prohibited from adopting and the law did not safeguard non-biological children and parents in such unions. Precariousness, which was worsening and sparking an alarming increase in the number of poor workers, prevented certain categories of the population, such as persons with no legal status and asylum-seekers whose application had been denied, from fully enjoying the right to food and adequate housing, especially in cantons where rent absorbed as much as 40 per cent of income. Reproductive health rights and information were insufficient. Suicide was the leading cause of death among youths aged 15 to 24. Lastly, groups where HIV/AIDS was most prevalent, namely homosexual men and migrants from Sub-Saharan Africa, did not benefit from preventive actions or budgetary measures. The Coalition underscored the fact that undocumented youths and the disabled did not have access to education, and it denounced illiteracy. Referring to discrimination and harassment by police against the Roma and the difficulty of the Yenish to maintain their traditions, the Coalition called on Switzerland to promote cultural diversity. Finally, it urged the Committee to impress upon the Swiss Government the importance of making economic, social and cultural rights enforceable in domestic law.

29. **Ms. Duarte** (“Migrant Women and Domestic Violence” working group) explained that in Switzerland, migrant women were particularly affected by the problem of domestic violence, their residence permit being, as a rule, contingent on joint residence with their husband. The entry into force in 2008 of the new Foreign Nationals Act, which provided for the renewal of residence permits in cases of cessation of cohabitation, did little to improve the situation since renewal was granted subject to proof both of domestic violence and of the fact that social reintegration in the country of origin was highly compromised. The jurisprudence of the Federal Court made the renewal of a residence permit possible — although not mandatory — only in the case of “serious” domestic violence. Moreover,

nothing obliged the administrative authorities to take exclusive account of the violence suffered. Therefore, foreign women victims of domestic violence rarely dared report what they had undergone or separate from their husbands.

30. That was why the “Migrant Women and Domestic Violence” working group was requesting the Committee to make the following recommendations to the Government of Switzerland: (1) to amend paragraph 2 (b) of article 50 of the Foreign Nationals Act by removing the requirement to demonstrate that social reintegration in the country of origin appeared highly compromised so that women victims of domestic violence were guaranteed that their residence permit would be renewed subject only to their demonstrating the probability that they had suffered such acts; (2) in the interim, to ensure that the possibilities created by the new jurisprudence of the Federal Court were systematically exploited by the competent cantonal services and the Federal Office for Migration; and to provide staff with compulsory training on the matter and distribute a circular prescribing greater flexibility with regard to accepting various proofs of domestic violence and interpreting the condition of “social reintegration in country of origin [being] highly compromised”, including taking into account the effects of the domestic violence on the feasibility of that reintegration; (3) relax the simultaneous application of criteria specified in paragraph 1 (a) of article 50 of the Foreign Nationals Act in cases where factors beyond the wife’s control prevented her from integrating into Swiss society; and (4) in the long term, disassociate the residence permits issued to women in the context of family reunification from those of their husbands.

31. **Ms. Trabichet** (“Stop Suicide”) underscored the seriousness of the problem of suicide in Switzerland, which, with three to four deaths per day, was the leading cause of mortality among youths aged 15 to 24, outstripping traffic accidents. There were between 15,000 and 25,000 suicide attempts per year, of which only 10,000 were recorded and led to medical treatment (in 2002, 8.2 per cent of girls and 3.2 per cent of boys aged 15 to 20 admitted having attempted suicide). It was necessary to take preventive measures to combat this phenomenon, yet Switzerland had fallen significantly behind in that area. The measures taken had been isolated and the result of private agents, some of whom had received cantonal funding. In the Canton of Geneva, the only one where preventive measures were taken and which had a health-care structure specifically geared to young suicide attempters, the suicide rate had decreased since the 1990s. No measures had been taken by the Swiss Government despite repeated requests from Parliament. The failure of Switzerland to include any suicide prevention measures in its bills, take protection measures for its young people, or support individual actions in that field, violated provisions in article 12 of the International Covenant on Economic, Social and Cultural Rights. A report on the matter prepared by Stop Suicide was placed at the disposal of the Committee.

32. **Ms. Bonoan-Dandan**, referring to the lack of statistics in Switzerland’s report regarding the increase in the rate of extreme poverty, asked the NGOs to provide such figures at an informal meeting to be held at a later date as well as details on their allegations regarding undocumented migrants being denied the right to marry, the lack of housing, and children of undocumented migrants being denied access to education. She also requested statistics on illiteracy in Switzerland and more information on the suicide rate in the country.

33. **Ms. Barahona Riera** noted that economic, social and cultural rights were considered in Switzerland to be programmatic goals rather than fundamental rights, which explained the gaps in human rights policy (e.g. the lack of a national human rights institution). She requested further information on the question of minimum wage, especially whether legislation in that area was homogenous across cantons, on unfair dismissal and on discrimination against women in the workplace, including the various cantonal policies regarding access to childcare.

34. **Mr. Sadi** asked the NGOs to provide details on discrimination against the Roma and women, cite examples of strikes which had not been authorized under Swiss law, and set out the main reasons contributing to an extremely high suicide rate.

35. **Ms. Bras Gomes** asked the NGOs to provide details at the informal meeting on the progress made by the canton of Geneva regarding suicide prevention, indicating whether there were differences among cantons in that regard.

36. **The Chairperson** endorsed the Committee members' questions, and stressed the need to determine, in each case, the causes of the problems and to present statistics.

37. **Ms. Brogniart** (Coalition of French-Speaking Switzerland) indicated that the details and statistics requested were in the report by the Coalition of French-Speaking Switzerland on economic, social and cultural rights made available to the Committee.

*The second part (public) of the meeting rose at 5.33 p.m.*