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Committee on Economic, Social and Cultural Rights

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Item 5 of the provisional agenda

**Follow-up to the consideration of reports
under articles 16 and 17 of the Covenant**

Concluding observations on the sixth periodic report of the Netherlands

Addendum

Information received from the Netherlands on follow-up to the concluding observations*

[Date received: 24 January 2019]

* The present document is being issued without formal editing.

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Recommendation 8

The Committee recommends that the State party set specific targets and develop strategies for all line ministries and all levels of government to implement the national action plan on human rights in close consultation with all relevant stakeholders, including civil society and the Netherlands Institute for Human Rights. The Committee further recommends that the State party adopt national action plans on human rights for all its constituent parts

1. The Netherlands first adopted a National Action Plan on Human Rights in 2013. This action plan gave an overview of the national human rights infrastructure and policies aimed at further protecting and promoting human rights, and identified several priority areas. The first action plan has run its course and the Ministry of the Interior & Kingdom Relations is currently working on the adoption of a second one. Based on evaluations of the first action plan, the time allotted for adopting a second action plan has been extended and the process itself has been made more inclusive. There are regular consultations with the line ministries, the National Human Rights Institute, the National Ombudsman, and other civil society organisations which take part in a consultative group. An external research institute will carry out further stakeholder interviews and organise meetings on the issues involved. The new National Action Plan is scheduled to appear in December 2019.

2. Aruba is taking steps to draft a national human rights action plan. It will do so on the basis of the most recent periodic reports submitted under the human rights instruments and the international recommendations arising from them. This integrated action plan, embracing a broad spectrum of human rights, with set priorities and implementation paths, will promote the observance and implementation of human rights in Aruba.

3. An initial survey based on the periodic reports and the recommendations arising from them was carried out by the interdepartmental Aruba Human rights committee to establish the priorities, which includes the consultation with NGO's. The plan is expected to be completed in 2019.

4. In March of 2016, the Council of Ministers of Curaçao officially decided that a Human Rights Institute will be established. The Institute will be brought under auspices of the Ombudsman to guarantee impartiality. The National Ordinance regulating the establishment of this institute is currently being developed.

5. In 2017, The Government of Sint Maarten devised a human rights matrix that would identify gaps in implementation and help to prioritize addressing these gaps in the short, medium, and long-term. This will form the basis for ensuring that human rights obligations are met.

Recommendation 12 (a)

Include a formal monitoring mechanism in the national action plan on business and human rights

6. Monitoring and reporting on the implementation of the elements of the National Action Plan (NAP) on Business and Human Rights is included in the annual Human Rights Report.

7. Supplementary reports relating to Responsible Business Conduct (RBC) are issued whenever necessary. The IOB's RBC evaluation also reports on components of the NAP. By 2018 the NAP had been in place for five years. The government is currently considering whether the plan is in need of revision, and if so how. If it is revised, the government will take the Committee's recommendation into account as part of the revision.

Recommendation 12 (b)

Take measures to ensure compliance with human rights obligations for companies operating on the territory of the State party

8. The Netherlands pursues an active policy on ensuring respect for human rights in and by the business community. The government expects companies to comply with the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises. This means identifying, preventing or mitigating risks –

including those in the area of human rights violations – and rendering account for the way in which they deal with these risks. The government has launched several initiatives aimed at raising awareness of human rights in the business world, including the provision of information by the Dutch missions abroad and tools the business community can use, such as the guide ‘Doing business with respect for human rights’ and the RBC Risk Check. The guide was drafted jointly by the Global Compact Network Netherlands, Oxfam Novib and Shift. It provides practical advice and real-world examples that help to translate the UN Guiding Principles into concrete action. The RBC Risk Check is an online instrument that gives companies insight into country- and sector-specific risks. It helps companies begin the process of identifying potential risks so they can then develop strategies to address them. Another important pillar of the policy to promote respect for human rights in business is the conclusion of voluntary agreements with companies, civil society organisations and trade unions. These international RBC (IRBC; previously ICSR) voluntary agreements seek to establish shared principles of corporate social responsibility among the parties to the agreement. By working together, the parties can offer collective solutions to problems that companies cannot solve alone, such as child labour and poor working conditions. The first results of these IRBC voluntary agreements are now emerging. They represent the initial steps towards improvement through due diligence by companies and towards setting up joint projects to tackle IRBC risks. The joint agreements with the garment and textiles sector and the food sector, for instance, include agreements on a living wage. Under the agreement with the banking sector, parties have identified human rights violations in the cocoa value chain and are following up on recommendations for the role that banks and parties to the agreement can play in tackling these violations. Under the voluntary agreement with the gold sector, the parties are collaborating on a project to tackle child labour in small-scale mining in Uganda. To support efforts to tackle IRBC risks, the government also offers instruments such as the Fund Against Child Labour. Companies can join forces with civil society organisations to propose projects to combat child labour.

Recommendation 12 (c)

Take measures to ensure the physical safety and mental health of the people residing in the area of gas extraction in Groningen and the security and safety of their homes, provide proper compensation to the victims and prevent future occurrences of damages related to gas extraction

9. The report examines the safety and health of the people of Groningen and the measures to reinforce their houses. The Committee is right to devote attention to this issue. The policy of the Minister of Economic Affairs & Climate Policy is geared towards ‘future-proofing’ Groningen, ensuring the same degree of residential safety as in the rest of the Netherlands.

10. The following measures have been taken:

- The government has decided to completely end natural gas production as soon as possible, so as to remove the cause of seismic hazard. This is the fastest and most robust way to guarantee physical safety and residents’ perception of safety in Groningen;
- The key measures to support the phasing-out of gas production in Groningen are as follows:
 - A phase-out plan;
 - A new act of parliament, in which the government imposes an obligation on NAM to extract no more gas than is essential;
- This will speed up the process of improving safety for the people of Groningen as well as reduce the scale of the reinforcement work, which can also be carried out more quickly, and reduce the damage to homes;
- In addition, a new independent procedure has been put in place for dealing with claims, which ends the involvement of NAM in this procedure: a new compensation protocol has been developed and the government is preparing legislation to transfer this area in its entirety to the public domain;

- The government and regional public authorities have also reached agreement on launching a Groningen Programme with a view to 2040. Through this programme, we will together ensure that Groningen remains a future-proof and liveable part of the country, retaining its own identity, where it is pleasant to live, work and pursue recreational activities. The programme also specifically addresses the health effects of gas extraction, particularly mental health. Through this programme, central government and the NAM are together investing €1.15 billion in Groningen.

Recommendation 12 (d)

Expedite an overhaul of the oil refinery industry in Curaçao with a view to averting pollution

11. Curaçao is currently looking for a new partner to take over the refinery and modernise it in line with international environmental standards.

Recommendation 12 (e)

Remove the legal and practical obstacles to holding companies domiciled under the State party's jurisdiction accountable for violations of economic, social and cultural rights, resulting from their operations on the national territory or abroad

12. As part of the National Action Plan on Business and Human Rights (NAP), an extensive study was made of the duty of care that applies to Dutch businesses in their international business conduct, and to investigate whether this duty of care complies with the standard set by the UN Guiding Principles on Business and Human Rights. The study revealed several points requiring attention, relating to legal and practical barriers in the Dutch legal system. The government has made a number of pledges to incorporate these points into future draft legislation.¹ For instance, the previous government submitted a Bill to parliament in November 2016 aimed at removing a number of impediments that the study had identified. The Bill makes it possible to demand compensation in a class action. It also provides that the party that is ordered to pay compensation in a successful class action will also be ordered to pay the plaintiff's legal costs. This may be relevant to victims of business-related human rights violations for which Dutch enterprises are liable. The government is also working on a Bill to modernise and simplify the rules of evidence. To this end, a draft Bill was posted online for consultation in mid-2018. The simplification of the right of submission of documents is part of this draft Bill.

Recommendation 40 (a)

Refrain from making access to food, water and housing conditional on an individual's willingness to return to his or her country of origin

13. The Netherlands has a system of providing shelter to those without the right of residence, so that no alien need be homeless. Those going through asylum and judicial review procedures are given shelter. Those granted a residence permit are then housed by the local authority. Those whose applications are denied or rejected must in principle effect their departure within the statutory 28-day period. During this period, the individual concerned retains the right to shelter. Once this period has expired, the individual can stay in restrictive accommodation (VBL), where his or her return is facilitated. Those staying in a VBL also have access to other provisions, such as medical care. Admission to a VBL is contingent upon the person's efforts to effect his or her departure. This means that a minimum level of provision is available for every individual.

14. Additional provision is available for vulnerable individuals. Failed minor asylum seekers (whether or not unaccompanied) are entitled to shelter (along with any family members) until they reach the age of majority. Aliens whose medical condition constitutes a temporary impediment to their departure may be granted a postponement, which includes the right to shelter and covers the costs of medical care.

15. In addition, central government and municipal authorities are currently (as a pilot) developing National Immigration Facilities (LVVs) to arrive at a lasting solution for aliens

¹ Parliamentary Papers, House of Representatives 2016–2017, 26 485, no. 219.

who have not left the Netherlands, whether voluntarily or by means of forced return. This lasting solution will consist of either ensuring the individual's departure or providing a legal right of residence. In five pilot LVVs, aliens will be provided with temporary shelter while receiving intensive professional coaching towards a lasting solution. The provision of temporary shelter is conditional upon the person's willingness to cooperate in this coaching programme. This three-year pilot phase will explore the best ways of arriving at a lasting solution.

16. Finally, the Netherlands' 'no-fault policy' provides for a residence permit to be granted to those who are unable to leave the country through no fault of their own. The individual concerned must produce objective documents to demonstrate that the authorities in the country of origin will not consent to return in his or her case.

17. This reception system complies with international obligations. The Dutch government acknowledges that the right to an adequate standard of living, including adequate housing, is enshrined in article 11 of the ICESCR. However, in the government's view the ICESCR does not prohibit the attaching of certain conditions – such as cooperation with the return procedure following an unsuccessful asylum application – to the provision of shelter. In several judgments, the highest court in the Netherlands in aliens cases, the Administrative Jurisdiction Division of the Council of State, has ruled that the Netherlands' reception system complies with the existing obligations under international law. The European Court of Human Rights likewise ruled, on 28 July 2016, that the system of reception facilities, including the obligation imposed on aliens without the right of residence to cooperate with their return, is not incompatible with the ECHR.
