



# Economic and Social Council

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## Committee on Economic, Social and Cultural Rights

### Forty-fifth session

Geneva, 1–19 November 2010

## Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant

### Concluding observations of the Committee on Economic, Social and Cultural Rights

#### The Kingdom of the Netherlands

1. The Committee on Economic, Social and Cultural Rights considered the combined fourth and fifth periodic reports of the Kingdom of the Netherlands on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/NLD/4-5, Add.1 and Add.2) at its 43rd, 44th and 45th meetings, held on 10 and 11 November 2010 (E/C.12/2010/SR.43, 44 and 45), and adopted, at its 55th meeting held on 19 November 2010, the following concluding observations.

#### A. Introduction

2. The Committee welcomes the submission of the combined fourth and fifth periodic reports of the Kingdom of the Netherlands and the written replies to its list of issues, but regrets the late submission of the report of Aruba.

3. The Committee appreciates the frank and constructive dialogue with the delegation of the State party that included representatives from the four constituent countries of the State party, with expertise on the subjects covered by the Covenant.

#### B. Positive aspects

4. The Committee welcomes the adoption of measures, legislative and otherwise, by the State party since the last review of the State party's reports that have contributed to the realization of the economic, social and cultural rights enshrined in the Covenant, including the following:

(a) The incorporation of economic, social and cultural rights in the Constitutions of Curaçao and St. Maarten;

- (b) The legislative amendments providing for compulsory education for all children in all territories of the State party, irrespective of their legal status;
- (c) The introduction of a mechanism of reimbursement of medical fees for services provided to undocumented migrants;
- (d) Measures, legislative and otherwise, put into place to improve work/life balance; and
- (e) The maintenance by the Netherlands of a high level of official development assistance at 0.7 per cent of its gross national product.

### C. Principal subjects of concern and recommendations

5. The Committee is concerned at the unequal enjoyment of economic, social and cultural rights among the four constituent countries of the State party (art. 2, paras. 1 and 2).

**As the State party is accountable for the implementation of the Covenant in all its territories, the Committee urges it to ensure the equal enjoyment of the economic, social and cultural rights by all individuals and groups under its jurisdiction. This entails an obligation for the State party to ensure that all its enactments and policies should provide for all the same level of enjoyment of economic, social and cultural rights. Moreover, the principle of “maximum available resources” should apply to the State party and not to its constituent countries individually. The Committee requests the State party to provide information on practical measures adopted and implemented in this regard in its next periodic report.**

6. Given the fact that the State party follows a monist system, whereby international treaties are directly applicable, the Committee reiterates its concern that some provisions of the Covenant are not self-executing and enforceable in the State party and that they have not been admitted by courts to substantiate legal claims relating to economic, social and cultural rights.

**The Committee reiterates its recommendation that the State party has the obligation to give effect to the rights contained in the Covenant in each territory, so that individuals can seek enforcement of their rights before national courts and tribunals. Moreover, in view of the numerous decisions of the State party’s courts to the effect that the provisions of the Covenant are not self-executing and thus not binding in accordance with articles 93 and 94 of the Constitution of the State party, the Committee urges the State party to consider all remedial measures, legislative or otherwise, to ensure that the Covenant rights are applicable and justiciable in all its constituent countries. In this regard, the Committee refers the State party to its general comment No. 9 (1998) on the domestic application of the Covenant. The Committee also requests the State party to continue to provide in its periodic reports detailed information on case law from all its territories regarding the implementation of the Covenant.**

7. The Committee is concerned that none of the constituent countries of the State party has yet adopted national human rights action plans.

**The Committee calls on the State party to ensure that, in all its constituent countries, national action plans for human rights in accordance with the Vienna Declaration and Programme of Action of 1993 are adopted and**

**implemented. The Committee recommends that these plans include specific programmes regarding the realization of economic, social and cultural rights.**

8. The Committee is concerned by the insufficient awareness of the provisions of the Covenant among the general public at large.

**The Committee recommends that the State party take effective measures to increase awareness among the public at large of the economic, social and cultural rights contained in the Covenant, as well as of judicial or other remedies available to individuals in the event of violations of these rights, and encourages the State party to involve civil society and national human rights institutions in this regard.**

9. The Committee is concerned that the training programmes for judges, law enforcement officers, teachers, social workers and public officials do not cover the provisions of the Covenant and their application in a systematic manner.

**The Committee calls on the State party to provide systematic training on the provisions of the Covenant and their application to members of all professions and sectors that play a direct role in the promotion and protection of the rights contained in the Covenant, including judges, law enforcement officers, migration officers, lawyers, civil servants, teachers, and health-care professionals.**

10. The Committee is concerned that there are no human rights institutions that comply fully with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) in the State party.

**The Committee calls on the State party to continue its efforts to establish national human rights institutions compliant with the Paris Principles. The Committee calls upon the State party to ensure that these institutions have mandates which specifically cover economic, social and cultural rights and all territories of the State party. The Committee draws the attention of the State party to its general comment No. 10 (1998) on the role of national human rights institutions in the protection of economic, social and cultural rights. Moreover, the Committee recommends that the State party take steps towards the accreditation of these institutions by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.**

11. The Committee notes with concern that the anti-discrimination legislation of the State party does not provide protection against discrimination in all its forms (art. 2, para. 2).

**The Committee calls on the State party to ensure that the new legislation integrating the four Equal Treatment Acts to be introduced in the Netherlands and the new equal treatment enactments to be adopted by Curaçao and St. Maarten provide comprehensive protection of the rights to equality and non-discrimination on all the prohibited grounds covered by the Covenant. The Committee further urges the State party to ensure that effective remedies are available to victims of discrimination. The Committee draws the attention of the State party to general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.**

12. The Committee is concerned that migrants and persons from ethnic minorities in the Netherlands continue to face considerable discrimination in the enjoyment of economic, social and cultural rights, particularly with regard to employment, housing, health and education, in spite of the measures taken by the State party. The Committee is further

concerned that the situation is compounded by the rise in racism and xenophobia in the Netherlands (art. 2, para. 2).

**The Committee urges the State party to pay particular attention to the situation of migrants and persons from ethnic minorities in the Netherlands and calls on the State party to:**

**(a) Identify any difficulties faced by these groups in accessing employment, housing, health and education, and take the necessary remedial steps;**

**(b) Adopt and implement targeted policies and programmes to improve their situation;**

**(c) Take all necessary measures to combat racism and xenophobia, including through the use of media and education to overcome stereotypes and promote diversity, bearing in mind that changing attitudes will necessitate long-term efforts reaching out to the public at large;**

**(d) Enforce effectively the legal prohibitions against discrimination in the enjoyment of economic, social and cultural rights; and**

**(e) Provide in its next periodic report comparative statistics on the enjoyment of economic, social and cultural rights by migrants and persons from ethnic minorities, and the rest of the population.**

13. The Committee notes with concern that persons with disabilities face discrimination in the enjoyment of economic, social and cultural rights, particularly in the field of employment and education (art. 2, para. 2).

**The Committee calls on the State party to continue its efforts to promote integration of persons with disabilities in the labour market and to facilitate their access, physical or otherwise, to education. The Committee recommends that the State party take all necessary measures to ensure that all persons with disabilities enjoy the same economic, social and cultural rights as the rest of the population, according particular attention to their accessibility to public places. In this regard, the Committee draws the attention of the State party to its general comment No. 5 (1995) on persons with disabilities.**

14. The Committee remains concerned that, in spite of advances made in all the constituent countries of the State party, women still do not enjoy economic, social and cultural rights on the same level as men. As regards employment, the Committee is concerned at the wage gap, the under-representation of women in the labour market and their concentration in part-time employment, in spite of measures introduced and services made available to facilitate reconciliation of work and family life. The Committee is also concerned that women are under-represented in political life (art. 3).

**The Committee calls on the State party, in all its constituent countries, to:**

**(a) Increase the effectiveness of policies, strategies and programmes promoting gender equality in relation to economic, social and cultural rights, and adopt the remedial measures required;**

**(b) Adopt the necessary measures to encourage employers to promote uptake of flexible work arrangements by women and men; and**

**(c) Step up efforts to increase women's participation in political life.**

**The Committee draws the attention of the State party to its general comment No. 16 (2005) on the equal right of men and women and requests the State**

**party to provide in its next periodic report statistical data on the participation of women in the workforce, disaggregated by age, wage, part-time/full-time work and national origin, as well as data on women's economic independence and participation in political life.**

15. The Committee expresses concern at the existence of compulsory labour for detainees in the Netherlands. The Committee is further concerned that detainees work for private entities for very low wages (arts. 6 and 7).

**The Committee urges the State party to take appropriate measures in the Netherlands so that detainees are not subjected to any form of compulsory labour, in contravention of article 6 of the Covenant. Moreover, the Committee recommends that the State party ensure that the conditions of work of detainees, including wages and social security benefits, are fair and just. In this regard, the Committee urges the State party to bring its legislation into line with articles 6 and 7 of the Covenant and International Labour Organization (ILO) Convention No. 29 concerning Forced or Compulsory Labour.**

16. The Committee notes with concern that unemployment in Aruba and the islands of the former Netherlands Antilles remains high. The Committee further regrets the lack of statistical data on underemployment in the State party (arts. 6 and 2, para. 2).

**The Committee reiterates its recommendation calling on the State party to intensify its efforts to combat unemployment, particularly in Aruba and in the islands of the former Netherlands Antilles. The Committee recommends that the State party take account of its general comment No. 18 (2005) on the right to work in the adoption and implementation of its employment policies. The Committee also requests the State party to provide in its next periodic report statistical data on unemployment and underemployment, disaggregated by constituent country, sex, ethnic origin and economic and social situation, over the five years preceding the submission of the report.**

17. The Committee is concerned that, in all the constituent countries of the State party, domestic workers do not enjoy the same protection as other workers and are in a disadvantaged position in that their employers do not contribute to the payment of their health insurance and pensions, as employers do in other sectors (art. 7 and 9).

**The Committee calls on the State party to adopt remedial measures, legislative or otherwise, to bring the rights and benefits accorded to domestic workers in line with those afforded to other workers, particularly in terms of social security benefits.**

18. The Committee is concerned that, in the absence of an explicit recognition of the right to strike in the legislation of the Netherlands, the exercise of that right has been made subject to the scrutiny of the courts and that in Curaçao and St. Maarten a ban on the right to strike is still in force (art. 8).

**The Committee urges the State party to recognize explicitly the right to strike with its permissible limits in the legislation of the Netherlands. The Committee also calls on the State party to ensure that the provisions on the exercise of the right to strike in the new Criminal Codes of Curaçao and St. Maarten are in line with article 8 of the Covenant.**

19. The Committee notes with concern the rather low uptake of social assistance by entitled persons both in the Netherlands and in the islands of the former Netherlands Antilles (arts. 9 and 11).

**The Committee urges the State party to continue taking all necessary measures to raise awareness of social assistance entitlements both in the Netherlands and in the islands of the former Netherlands Antilles and ensure that all individuals and households in need of social assistance have effective access thereto. The Committee also encourages the State party to include these measures into national poverty action plans.**

20. The Committee is concerned that the long period of affiliation required in order to receive the full public pension in the Netherlands is discriminatory to migrant workers working in the State party. The Committee is further concerned at the risk of poverty for pensioners, as the amount of the full pension is at the level of the minimum wage (arts. 9 and 11).

**The Committee calls on the State party to end discrimination against migrant workers with regard to pension rights. The Committee also calls on the State party to assess the impact of its enactments regarding old-age pension on the standard of living of pensioners, bearing in mind the increasing mobility of workers. The Committee draws the attention of the State party in this regard to its general comment No. 19 (2007) on social security.**

21. The Committee is concerned, in spite of the measures taken, at the scale of domestic violence and the absence of a specific offence of domestic violence in the Netherlands. Furthermore, the Committee is concerned at the lack of information on the scale of domestic violence in Aruba and the islands of the former Netherlands Antilles (art. 10).

**The Committee calls on the State party to:**

- (a) **Enact a specific offence of domestic violence in the Netherlands;**
- (b) **Continue efforts undertaken to combat domestic violence, including by strengthening efforts to prosecute acts of domestic violence and continue raising awareness of domestic violence;**
- (c) **Act upon the findings of the survey on domestic violence in the Netherlands, including by addressing its root causes;**
- (d) **Ensure the effective enforcement of the new provisions on domestic violence enacted in Aruba, Curaçao and St. Maarten;**
- (e) **Conduct a study on the scale of domestic violence in Aruba, Curaçao and St. Maarten and provide information on the findings in the next periodic report of the State party; and**
- (f) **Include in its next periodic report, for all constituent countries of the State party, information on the number and nature of reported cases of domestic violence, on convictions, and sanctions imposed on perpetrators, as well as any assistance and rehabilitation measures provided to victims.**

22. The Committee regrets that corporal punishment is not prohibited in Aruba (arts. 10 and 13).

**The Committee urges the State party to introduce a statutory prohibition of corporal punishment in the home and in all educational settings in Aruba, in line with article 10 of the Covenant and the Committee's general comment No. 13 (1999) on the right to education, which refers to the fact that corporal punishment is inconsistent with the fundamental principle of dignity of the individual.**

23. The Committee notes with concern that boys face discrimination on all the islands of the former Netherlands Antilles, which affects their education, as confirmed by a survey conducted by the State party (arts. 10 and 2, para. 2).

**The Committee calls on the State party to continue to address the problem of discrimination faced by boys on the islands of the former Netherlands Antilles by attending to its root causes, such as the societal stereotypes about, and expectations from, boys and girls. In this regard, the Committee recommends that, in addition to the involvement of parents and teachers, the policies to be adopted and implemented also comprise public awareness campaigns to change the public's attitudes towards gender roles and the education of boys and girls.**

24. The Committee notes with concern that pockets of poverty exist in all the constituent countries of the State party. Moreover, the Committee is concerned that Aruba, Curaçao and St. Maarten have not yet adopted either official poverty lines or strategies or action plans to combat poverty (art. 11).

**The Committee urges the State party to combat poverty and social exclusion by targeting disadvantaged and marginalized groups, such as single parent families, migrants and children, and reiterates its recommendation calling on the State party to:**

(a) **Establish, for each constituent country, an official poverty line which would enable the State party to assess the extent of poverty and monitor and evaluate progress; and**

(b) **Draw up and implement anti-poverty strategies and action plans, taking full account of economic, social and cultural rights.**

**In this regard, the Committee refers the State party to its statement on poverty and the International Covenant on Economic, Social and Cultural Rights (E/2002/22-E/C.12/2001/17, annex VII), adopted in 2001. The Committee also requests the State party to provide in its next periodic report disaggregated and comparative, annually collected data on the number of individuals and households living in poverty, and on progress made in combating poverty.**

25. The Committee is deeply concerned that asylum-seekers and unaccompanied minors in the Netherlands have been held in detention for long periods of time. The Committee also regrets that undocumented migrants, including families with children, are not entitled to a basic right to shelter and are rendered homeless after their eviction from reception centres. The Committee is also concerned that, although undocumented migrants are entitled to health care and education, in practice they cannot always have access to either (arts. 11, 10, 12, 13 and 2, para. 2).

**The Committee urges the State party to:**

(a) **Ensure that the legislation in the Netherlands guarantees that asylum-seekers are detained only when it is absolutely necessary and that the time which rejected asylum-seekers and irregular migrants spend in detention is limited to a strict minimum; and**

(b) **Meet its core obligations under the Covenant and ensure that the minimum essential level relating to the right to housing, health and education is respected, protected and fulfilled in relation to undocumented migrants.**

26. The Committee regrets that it has not received clear and detailed information on the reportedly high drug consumption in the State party (art. 12).

**The Committee requests the State party to include in its next periodic report detailed information, including statistical data, on drug consumption and trafficking in the State party and availability of dependence therapy, including for detainees.**

27. The Committee expresses its deep concern at the reportedly high number of abortions performed on the islands of the former Netherlands Antilles and at the lack of an official estimate of the scale of the problem. In addition, the Committee is also particularly concerned that abortion primarily concerns adolescents and that it remains illegal in Curaçao and St. Maarten (art. 12).

**The Committee urges the State party to review the legislation in Curaçao and St. Maarten and consider providing for exceptions to the prohibition on abortion in cases of therapeutic abortion or pregnancies resulting from rape or incest. Furthermore, the Committee calls on the State party to adopt, in all its territories, effective measures to assist women in preventing unwanted pregnancies, including by implementing mandatory sex education in schools and providing a broad range of sexual and reproductive health goods and services through the primary health-care system, with particular attention to access by adolescents and other disadvantaged and marginalized individuals and groups. The Committee requests the State party to provide in its next periodic report detailed information, including statistics, on early pregnancies and abortions among adolescents, and on the impact of measures taken to address these problems.**

28. The Committee is concerned over the adverse impact on the enjoyment of the right to health resulting from the seizure in the Netherlands by the State party of consignments of generic medicine consistent with Trade-Related Aspects of Intellectual Property Rights (TRIPS) being shipped from one developing country to another (art. 12).

**The Committee urges the State party to take into account its international obligation to respect the right of everyone to the highest attainable standard of health and to desist from such seizures in the future.**

29. The Committee is concerned at reports that many older persons are denied appropriate care, including in nursing homes, due to the insufficient number of caregivers, the lack of sufficiently trained personnel and the absence of a comprehensive enactment on geriatric health care (arts. 12 and 2, para. 2).

**The Committee urges the State party to accord priority to the improvement of the health-care system for older persons, in order to meet its obligation of ensuring availability, accessibility, acceptability and quality of health care for them. In this regard, the Committee recommends that the State party adopt urgently a strategy on the health of older persons, in line with the Committee's general comment No. 14 (2000) on the right to the highest attainable standard of health. The Committee also urges the State party to monitor the quality of facilities, goods and services provided to older persons through an effective inspection mechanism. Furthermore, in view of the ageing population, the Committee encourages the State party to adopt a coherent and comprehensive strategy to address the difficulties faced by older persons. In this connection, the Committee draws the attention of the State party to its general comment No. 6 (1995) on the economic, social and cultural rights of older persons.**

30. The Committee is concerned that, according to reports, a large proportion of prisoners with mental health problems in the Netherlands do not receive the health assistance that they need, owing to the shortage of trained personnel in penal institutions and a lack of monitoring of adequacy and quality of care. The Committee is also concerned

about the practice of the use of isolation as a form of punishment when prisoners cause trouble, without due regard being given to the health implications involved (art. 12).

**The Committee recommends that the State party address the problem of medical treatment of prisoners with mental health problems and take the necessary measures to increase the number of trained mental health personnel in penal institutions or to guarantee appropriate treatment in mental health institutions. The Committee urges the State party not to use isolation as a form of punishment when prisoners with mental health problems cause trouble.**

31. The Committee is concerned that, while education is compulsory for all children, regardless of their legal status, undocumented children opting to enrol in vocational education programmes are not yet able to complete their apprenticeships because of work permit requirements in the Netherlands (arts. 13 and 2, para. 2).

**The Committee recommends that the State party take appropriate remedial measures to ensure that undocumented children who enrol in vocational education programmes in the Netherlands are able to complete their apprenticeships.**

32. The Committee is concerned that the national school curricula of the State party do not provide for adequate human rights education (art. 13).

**The Committee calls on the State party to ensure that human rights education is provided in schools at all levels and universities, and that it covers the economic, social and cultural rights.**

33. The Committee encourages the State party to take advantage of the institution-building process taking place in Curaçao and St. Maarten to ensure that their enactments and policies give effect to the economic, social and cultural rights enshrined in the Covenant. In this regard, the Committee draws the attention of the State party to its general comment No. 3 (1990) on the nature of States parties' obligations.

34. The Committee welcomes the progressive reforms brought to the social security system in the four constituent countries of the State party and encourages the State party to take account of the Committee's general comment No. 19 (1997) on the right to social security in future initiatives to be taken to improve the social security system (art. 9).

35. While recognizing the measures taken in the Netherlands to combat human trafficking, the Committee urges the State party to continue and intensify its efforts to combat trafficking as long as the Netherlands remains a destination or transit country for trafficking. The Committee also recommends that the State party provide in its next periodic report detailed information about the problem of human trafficking in the islands of the former Netherlands Antilles and the impact of measures taken (art. 10).

36. The Committee recommends that the State party adopt a national plan of action to combat the rise in homelessness in the Netherlands, and to consider its causes and prescribe ways and means of preventing homelessness and rehabilitating the homeless (art. 11).

37. The Committee recommends that the State party intensify its efforts to reduce the waiting time of six weeks in the Netherlands for children and adolescents needing mental health care (art. 12).

38. The Committee recommends the State party to provide, in its sixth periodic report, updated statistical data on the enjoyment of each Covenant right,

disaggregated by age, sex, ethnic origin, urban/rural population, economic and social situation and other relevant status, on an annual comparative basis over the five years preceding the submission of the report.

39. The Committee requests the State party to disseminate the present concluding observations widely among all levels of society, in particular among State officials, the judiciary and civil society organizations, to translate and publicize them as far as possible, and to inform the Committee on the steps taken to implement them in its next periodic report. It also encourages the State party to continue engaging national human rights institutions, non-governmental organizations and other members of civil society in the process of discussion at the national level prior to the submission of its next periodic report.

40. The Committee encourages the State party to consider ratifying the Optional Protocol to the Covenant on Economic, Social and Cultural Rights, which it has signed.

41. The Committee encourages the State party to consider signing and ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and ratifying the Convention on the Rights of Persons with Disabilities and the International Convention for the Protection of all Persons from Enforced Disappearance.

42. The Committee invites the State party to update its core document in accordance with the requirements of the harmonized guidelines on reporting (HRI/GEN/2/Rev.6) recently approved by the international human rights treaty bodies.

43. The Committee requests the State party to submit its sixth periodic report, prepared in accordance with the revised reporting guidelines of the Committee, adopted in 2008 (E/C.12/2008/2), by 30 June 2015.

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