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Report for the Committee on Economic, Social and Cultural Rights as part of the periodic review of the Netherlands

July 2023 Report

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International Covenant on Economic, Social and Cultural Rights

Association européenne pour la défense des droits et des libertés

Introduction

ASSEDEL (L’Association européenne pour la défense des droits et des libertés) is a non-profit organisation created in 2020 with the objective to disseminate, promote and defend human rights and fundamental freedoms at local, regional, and international level through its projects and the submission of reports to institutions.

We would like to draw the attention of the CESCR committee to certain points regarding the Netherland’s application of the International Covenant on Economic, Social and Cultural Rights, considering the mechanisms and initiatives taken by the Netherlands and presented in its seventh periodic report.

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I. Introduction

A. (Based on recommendation 15) Ensuring the full enjoyment of economic, social, and cultural rights by all persons under its jurisdiction.

1. In the Netherlands, the direct effect of international law is an essential element in the legal landscape. However, this comes with the limitation that the courts must first establish that a provision of international law is indeed binding on all persons and that it conflicts with a specific statutory provision. Hence, it is crucial to acknowledge that economic, social, and cultural rights generally have a programmatic character, meaning that they require implementing measures by the legislature or executive branch. As such, they are not directly enforceable by the courts in individual cases, and their implementation requires careful consideration of available means, affordability, and effectiveness.
2. Given the complex nature of economic, social, and cultural rights, it is recommended that the relevant authorities in the Netherlands follow a collaborative approach to address these issues effectively. One way to do this can be by promoting enhanced cooperation and communication between the judiciary, legislature, and executive branches. This in turn, will allow a more comprehensive understanding of the challenges and opportunities in implementing economic, social, and cultural rights.¹
3. Transparent information is also beneficial in striking a balance between the enforceability of human rights and the political involvement in this matter. For a clearer demonstration, specific examples of economic, social, or cultural rights that have posed challenges in terms of implementation within the Netherlands' legal system can be provided. Furthermore, a question of how the limitations on the courts' power in enforcing these rights impact the protection for individuals may be submitted.
 - **The Netherlands should adopt a collaborative approach involving the judiciary, legislature, and executive.**
 - **Specific examples can be provided to illustrate challenges in implementing these rights within the legal system, and the limitations on the courts' power impacting the protection of individuals.**

B. (Based on recommendation 17) Ensuring realisation of the Covenant rights at the local level.

4. In response to the high degree of autonomy municipalities and local authorities enjoy,

¹ Venice Commission, 'Netherlands - Draft Opinion on the legal protection of citizens, in particular under administrative law (including scope, legal protection, test of reasonableness and the role of the Council of State) and the system of checks and balances in theory and practice, including the Houses of the States General and the judiciary.', 30 September 2021, accessible at <[https://www.venice.coe.int/webforms/documents/?pdf=CDL\(2021\)040-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL(2021)040-e)>

a feasibility test has been introduced.² This brings together the Minister of the Interior and Kingdom Relations, other ministers, and local authorities to identify both the intended and unintended outcomes of proposed policies in a timely manner. It aims to provide valuable insights to inform decision-making and ensure the adoption of appropriate arrangements.

5. However, several aspects of this test can be subject to question. First, it is crucial that all relevant parties actively participate in the evaluation. Close coordination between the Minister of the Interior and Kingdom Relations, other ministers, and local authorities is crucial to guarantee a comprehensive examination of the proposed policies. Additionally, the feasibility test should adhere to a timeline that is also publicly discussed, ensuring that it takes place *before* a policy becomes legislation. Through this approach, the early identification of potential challenges will help for the mitigation in strategies, and overall benefit the effectiveness of the test.
 6. Secondly, the formalities of the feasibility test are at stake. It is highly recommended that the test is conducted in a manner that is transparent. One way to do this is by using a clear criterion to assess the viability of each proposal. Topics such as the financial implications, specific objectives, and administrative consequences of the policies at hand must be carefully scrutinised. In this way policymakers can better anticipate the practical implications of new policies.
 7. Lastly, the enforceability of the decisions taken during the feasibility test is a question. Whether or not the outcomes of the test are binding or have to be strictly followed by the municipalities should be determined.
- **It is recommended to establish a formalized mechanism that facilitates and ensures active participation and coordination between the Minister of the Interior and Kingdom Relations, other ministers, and local authorities?**
 - **The steps that will be taken to make the formalities of the feasibility test can be made more transparent.**
 - **It is suggested to clarify the enforceability of decisions taken during the feasibility test to determine whether their outcomes are binding and must be strictly followed by municipalities.**

II. Non-discrimination and equal treatment

A. (Based on recommendation 19) Discrimination against minority groups.

8. The Netherlands upholds a strong commitment to combating discrimination, as enshrined in Article 1 of its Constitution. The government takes a comprehensive approach to tackle discrimination to implement a wide range of anti-discrimination measures. One example is the established infrastructure that allows individuals to seek effective legal protection. Accessible antidiscrimination services have been provided by municipal authorities since 2010, while the Netherlands Institute for Human Rights offers free assistance and findings on discrimination matters. Additionally, the National

² Vng, 'About the VNG', 27 July 2023, accessible at <<https://vng.nl/artikelen/about-the-vng>>

Ombudsman provides recourse for anyone who believes they have been improperly treated by authorities. Regular reporting to the House of Representatives ensures transparency and accountability in this regard.³

9. However, the effectiveness of these measures heavily depends on their visibility and awareness among the general public. It is possible that individuals, particularly from outcasted communities, are not fully aware of their rights or the available avenues for seeking redress. Insufficient outreach efforts may hinder the effectiveness of the existing infrastructure. One possible area of suggestion is what comprehensive framework does the government provide to address discrimination, and how does it involve different ministries and local governments? Furthermore, what are the consequences and remedies to such mechanisms, with examples from previous real-life cases?
 - **The government can focus on ensuring the visibility and awareness of available avenues, particularly for individuals from marginalized communities.**
 - **The government should involve collaboration between different ministries and local governments to combat discrimination.**

B. (Based on recommendation 23) Achieving gender equality.

10. The Netherlands acknowledges the importance and relevance of part-time work among women, supported by the average number of hours worked by women having increased slightly in recent years.⁴ The country boasts a relatively high rate of female employment, which is seen as a positive outcome of the popular part-time work practice. To foster a cultural shift in how work and care responsibilities are divided between genders, the government is accompanying the implementation of new schemes with a broad awareness campaign. Moreover, the Dutch government is determined to combat pregnancy discrimination and address pay disparities. It promotes greater gender balance in managerial positions within companies. Large companies are now obliged to set "ambitious" targets and formulate plans to attain gender balance on boards of directors, supervisory boards, and senior management.⁵ Regular reporting and monitoring of progress are enforced to hold companies accountable for their efforts. The gender pays gap monitor published by CBS supports this by showing that the uncorrected pay gap between men and women was 19% in the private sector and 8% in the public sector. After adjustments, the pay gap reduces to 7% in the private sector and 4% in the public sector.⁶

³ National Ombudsman '2022 Annual Report', 24 May 2023, accessible at <<https://www.nationaleombudsman.nl/system/files/bijlage/Jaarverslag%202022%20Nationale%20ombudsman.pdf>>

⁴ European Commission 'REPORT FROM THE COMMISSION TO THE COUNCIL on the implementation of the Council Recommendation on access to social protection for workers and the self-employed', 31 January 2023, accessible at <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023DC0043>>

⁵ Dutch Parliament 'Act on gender balance on management and supervisory boards', 28 Sep 2021, accessible at <https://www.eerstekamer.nl/wetsvoorstel/35628_evenwichtiger_verhouding>

⁶ Statistics Netherlands (CBS) 'Labour market dashboard', 17 August 2022, accessible at <<https://www.cbs.nl/en-gb/visualisations/labour-market-dashboard>>

11. It is observed that these policies primarily focus on supporting women's participation in the labour market and balancing work and family responsibilities. They may not directly address the root causes of gender inequality, such as systemic biases, workplace discrimination, and societal norms that perpetuate gender roles. Furthermore, the gender pay gap monitor published by CBS acknowledges that the gender pay gap is decreasing but at a slow pace, and the corrected pay gap in private and public sectors remains significant. This suggests that the current measures in place may not be sufficient to achieve substantial progress, and interventions may be required to accelerate the pace of change and achieve more significant results. Lastly, there is no clear information on the enforcement mechanisms or penalties for non-compliance for gender discrimination in large companies. Without strict enforcement, companies may not feel compelled to prioritise gender diversity or take meaningful action to address existing disparities.

- **The government should directly address the root causes of gender inequality, such as systemic biases and workplace discrimination.**
- **The Netherlands should determine the enforcement mechanisms and penalties that will be put in place to ensure large companies to prioritize gender diversity and take meaningful action to address existing disparities effectively.**

III. Employment, working conditions, labour relations and social security.

A. (Based on recommendation 26) Addressing unemployment among ethnic minorities.

12. While the development of a monitoring instrument, the VIA Work Agenda, and various programs and activities aimed at improving opportunities for ethnic minorities is present, these fail to address the underlying structural and systemic factors that contribute to the disadvantage faced by these groups.⁷ For example, there may be biases in recruitment processes, lack of diversity in leadership positions, and discriminatory practices within workplaces that need to be actively addressed.

13. Hence, expanding and promoting employer incentive programs that encourage hiring individuals from ethnic minority groups can further enhance diversity and inclusivity in the labour market. Transparent reporting on progress and outcomes will also be helpful enabling stakeholders to assess the impact of interventions and make necessary adjustments for long-lasting, permanent change.

- **The Netherlands should ensure transparent reporting on progress and outcomes be implemented to assess the impact of interventions and ensure long-lasting, permanent change in promoting diversity and inclusivity.**

B. (Based on recommendation 30) Protection of all workers in the labour market,

⁷ Dutch Parliament, 'Working Conditions Act', 1 July 2015, available at https://puc.overheid.nl/nsi/doc/PUC_1174_14/1/

including domestic workers and migrant workers.

14. In the Netherlands, labour inspectors are responsible for checks related to illegal employment, minimum wage, and working hours. The country's policy aims to encourage the recognition and reporting of potential labour exploitation, and workers can file anonymous reports.⁸ The government is working to improve assistance and care for victims of labour exploitation and plans to revise article 273f of the Criminal Code to address human trafficking perpetrators better.
 15. However, the works of the Labour Authority do not provide concrete evidence or statistics to support the effectiveness of its measures in preventing exploitation. Without specific data on the impact of these certifications, it is difficult to assess their effectiveness in curbing labour exploitation.
 16. Additionally, the revision procedure of Article 273f does not elaborate on the specific changes proposed or the potential impact of these revisions. Without further details, it is challenging to evaluate the effectiveness of these proposed legal amendments in addressing the issue.
- **The Dutch government should focus on improving the Labour Authority's reporting and data collection to provide statistics that support the effectiveness of its measures in preventing labour exploitation,**

IV. Protection and assistance for families

A. (Based on recommendation 47) Funding interpreter services in healthcare facilities and ensuring that all persons in the territory enjoy access to health services without discrimination.

17. The Netherlands government implemented various campaigns and measures to address domestic violence and child abuse.⁹ These involved a social media campaign, an online prevention campaign, and published guidelines encouraging people to act if they encounter or suspect such abuse. Despite preparations to meet increased demand, shelters for domestic violence victims did not experience a surge in placement requests, but additional measures were provided for victims in need.¹⁰ Furthermore, the government appointed a government commissioner of sexual transgressive behaviour and sexual violence in April 2022, and allocated further funds on the matter.
18. While there are various means and availability of services and assistance, the accessibility of these resources is subject to question. A study by Amnesty International found that in many countries, including the Netherlands, there is a lack of specialized

⁸ Eva Jong pier, 'Employment Law - In The Netherlands', 28 February 2023, accessible at < <https://dutch-law.com/employmentlaw/#:~:text=In%20particular%2C%20labour%20law%20in,be%20claimed%20in%20this%20regard>>

⁹ Baker McKenzie, 'Fighting Domestic Violence', 2021, accessible at <<https://resourcehub.bakermckenzie.com/en/resources/fighting-domestic-violence/europe/the-netherlands/topics/1legal-provisions>>

¹⁰ Ibid.

support services for victims of domestic violence and child abuse, hindering their ability to seek help and escape abusive situations.¹¹ As a solution, the allocation and use of extra funds for supporting victims of domestic violence and child abuse should be transparent and accessible for public scrutiny. Providing information on how these funds are utilised can help build public trust and gain confidence in the government's efforts. Similarly, further elaboration on the commissioner's scope of work and objectives would be beneficial and is asked.

19. In late 2021, the House of Representatives approved a motion, urging the government to explore funding options for interpreter services in healthcare. This exploratory study will assess the pros, cons, and feasibility of different approaches. The Ministry of Health, Welfare, and Sport will conduct a preliminary study to identify existing challenges in delivering interpreter services in healthcare settings. Subsequently, the potential options for long-term funding will be examined helping reach informed political decisions.
 20. The abovementioned 'exploratory study' and examinations fail to address potential concerns related to the funding of interpreter services in healthcare. The clear details on how the funding will be allocated, the potential impact on other areas of healthcare, and timeline of the study are missing. These are topics that should be further elaborated and disclosed.
- **The Dutch government should address potential concerns related to the funding of interpreter services in healthcare, such as outlining the specific funding allocation, potential impact on other healthcare areas, and the timeline of the exploratory study.**

V. Current updates

21. Failing to convince the members of his governing coalition to support his policies, the conservative Dutch Prime Minister, Mark Rutte, tendered his written resignation in July 2023. These policies involved stricter migration rules; a highly relevant subject concerning economic, social, and cultural rights. Therefore, ASSEDEL would like to speak on the matter.
22. Discussions about migration are taking place as migrants flee war zones or seek better opportunities. Additionally, hundreds of thousands of people have fled the war in Ukraine.
23. Migration is expected to be a significant focus in the upcoming European Union parliamentary elections next year. However, the issue has already taken a toll in the Netherlands, where the dilemma of balancing a welcoming international approach with growing resistance to foreign influences was at stake.
24. Prime Minister Rutte's coalition has been striving for months to reach an agreement to

¹¹ Amnesty International, 'Submission to the United Nations Committee on Economic Social and Cultural Rights', 23 June 2017, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCESCR%2FCSS%2FNLD%2F27339&Lang=en >

manage the influx of new migrants arriving in the country of nearly 18 million people. Proposed solutions involved the establishment of two asylum categories; one temporary for those fleeing conflicts and another permanent for those escaping persecution. Additionally, a reduction in the number of family members allowed to join asylum-seekers in the Netherlands was discussed.¹² The coalition agreed with the two-tier asylum system, however there was major disagreements for Rutte's proposal of introducing a two-year waiting period for refugee families joining their members who already are living in the Netherlands.

25. The issue faced is the increasing number of arrivals in the Netherlands, which surpassed the available hosting places. Many asylum-seekers faced overcrowded reception centres and considering the crisis in the Netherlands's housing capacity which is suffering from a shortage of more than 17 million people.¹³
26. Right to adequate housing, right to non-discrimination, right to life and security are economic, social, and cultural rights surrounding the issue Netherlands is currently facing. Several measures to address the situation and protect the rights of affected individuals are available. These involve:
 - **Emergency shelter and housing: prioritize creation of emergency shelters to refugees and those in need of immediate housing.**
 - **Community engagement and participation: Involve refugees and affected communities in decision-making processes related to housing and shelter solutions. This can be achieved by considering their perspectives and needs to develop more effective and sustainable housing strategies.**
 - **Integration and local antegration: promoting the integration of refugees into local communities, fostering social unity and mutual understanding.**
 - **International cooperation: seeking assistance from international communities and collaborate with other countries to share the burden of the refugee crisis. Cooperation with humanitarian organizations and UN agencies can provide valuable resources and expertise.**
27. By adopting these recommendations, the Dutch government can better address the challenges of a refugee crisis and non-adequate housing, ensuring the protection of human rights and promoting sustainable solutions for displaced populations.

¹² Euronews with AP, 'Mark Rutte hands in resignation to the king after coalition collapse', 9 July 2023, available at < <https://www.euronews.com/2023/07/07/dutch-government-reportedly-collapses-after-failure-to-reach-agreement-on-asylum-measures> >

¹³ Senay Boztas, 'How will I buy?': housing crisis grips the Netherlands as Dutch go to polls', 15 Mar 2023, available at < <https://www.theguardian.com/world/2023/mar/15/netherlands-housing-crisis-dutch-elections> >