

Netherlands Institute for Human Rights Written Contribution

for the 27th Session of the Universal Periodic Review Working Group on behalf of the
consideration of the human rights situation in The Netherlands

September 2016

Netherlands Institute for Human Rights (College voor de Rechten van de Mens)

W: www.mensenrechten.nl

E: info@menserenrechten.nl (general)

P: PO Box 16001, 3500 DA Utrecht, The Netherlands

T: (030) 888 38 88

F: (030) 888 38 83

The Netherlands Institute for Human Rights (hereinafter: the Institute) constitutes the National Human Rights Institution of the Netherlands and has been accredited with A-Status in May 2014. The Institute protects, monitors, explains and promotes human rights in the Netherlands through research, advice, and awareness raising. Its mandate also covers urging the Government to ratify, implement and observe human rights treaties.

For this submission the Institute consulted with the National Ombudsman, the National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children and the Children's Ombudsman. This written contribution is complemented by a matrix of recommendations.

The Institute will not address all topics in this contribution. This does not necessarily imply that the Institute believes those topics are sufficiently observed or that there is no reason for the Working Group to consider them. A larger number of topics are covered in the complementary matrix attached to this report.

1) Implementation of human rights

1. The Netherlands presents itself internationally as a strong proponent for human rights, yet at the national level human rights are not sufficiently considered in government policies. Human rights should not only be the touchstone for policy areas of justice, security and interior affairs, but also areas such as social support, welfare and the environment. The relevance of human rights standards needs to be regarded in a structural way, not just through ad hoc solutions.
2. The interim report of the government suggests that the National Action Plan on Human Rights (NAP) follows up on many of the recommendations made during the previous UPR cycle. The NAP includes a limited number of policy themes and mainly enumerates existing policies.¹ It is unclear who is responsible for the implementation of the NAP and its realization is neither monitored nor evaluated. The current government considers the follow up of the NAP to be the responsibility of the next government. The Institute considers that more ambition is to be expected to create an infrastructure to improve the implementation of human rights obligations across all ministries.
3. The NAP seems to have had no impact in political discussions in order to prevent unnecessary and disproportional restrictions on human rights. Especially with regard to counterterrorism measures and other politically sensitive issues human rights are under pressure. The Institute produced several critical reports on the human rights compatibility of proposed measures in this area and stressed the need for such measures to be preceded by careful consideration of various interests, including the impact on the enjoyment of civil rights and freedoms and the stigmatizing effect of some measures for people of foreign descent.²
4. The State party should also improve the implementation of international human rights obligations. The recommendation from, for instance, the Committee Against Torture to ensure complete independence of the National Preventive Mechanism has not been implemented. Moreover, the Netherlands has not followed up on the decision of the CEDAW³ Committee about payment of benefits for the maternity leave of self-employed women⁴. This is worrying since the Netherlands was a strong proponent of, and committed to, the Optional Protocol to CEDAW. The State party is reticent in its ratification of the Optional Protocols to the CRC⁵, ICESCR⁶ and CRPD⁷ that establish the individual complaints procedure. The State party ratified the CRPD but made seven interpretative declarations.
5. **Recommendation:**
The State party should
 - a. Evaluate the current National Action Plan on Human Rights with a view to have an effective follow-up;
 - b. Ensure that human rights are structurally incorporated in all policies by improving the infrastructure to implement human rights;
 - c. Ratify the Optional Protocols to the Convention on the Rights of the Child, International Covenant on Economic, Social and Cultural Rights and the International Convention on the Rights of Persons with Disabilities.

2) Human Rights Education (HRE) and Training

Implementation of the UN World Programme on HRE

6. The UN World Programme on HRE calls upon states to strengthen the implementation of HRE in primary, secondary and higher education, and human rights training for teachers and professionals.⁸ The NAP includes a minor paragraph on education. However, the State party did not make a policy plan on human rights training for professionals.

7. Recommendation:

d. The State party should make a policy plan on human rights training for all professionals as mentioned in the World Programme on HRE.

HRE in the entire school system

8. Schools and teachers have repeatedly asked for tools to discuss sensitive issues and to create a safe and stimulating school environment⁹. These tools are crucial considering the current polarisation between different groups in society. Human rights provide a touchstone and framework to give guidance to the discussion about clashing norms and values. The Institute urged the State party to strengthen HRE at primary and secondary schools while recognising the institutional freedom of schools and rights of parents. The curriculum is currently under review. The Institute advised the State party to use this opportunity to introduce HRE in the new curriculum.¹⁰ In the meantime schools and teachers should be equipped to make human rights a reality in practice.

9. Human rights should also be integrated in the mandatory school safety policy. Research shows that an approach focussed on human and children's rights can create a positive school climate and help prevent bullying.¹¹

10. Recommendation:

e. The State party should include human rights education in the new curriculum.

f. The State party should encourage schools to incorporate human rights in democratic citizenship and safety at school policies.

3) Labour market discrimination

11. Labour market discrimination is a serious and structural problem in the Netherlands. It directly impacts people's right to work, as well as other human rights, such as the right to an adequate standard of living, health and family life. Tackling discrimination on the labour market is crucial in the fight against poverty.
12. The extent, seriousness and persistent nature of labour market discrimination are evident from research, surveys, complaints received by Anti-Discrimination Services and opinions of the Institute. In the State party's action plan against labour market discrimination, as well as in the measures implemented, there is too little attention for root causes, structural measures and a misbalance between preventive and repressive measures.
13. Discrimination is, amongst others, caused by stereotypes. Understanding the effects of such stereotypes is one way to address root causes of discrimination.
14. Discrimination on the labour market (and in general) is downplayed by those not affected, and those who are directly affected often have resigned to accept it. There seems to be acceptance of discrimination as a fact of life. This makes it increasingly more difficult, yet more important and urgent, to address this problem structurally.

Women

Unequal pay

15. Women still get paid less than men for the same work. This is partly the result of the application of remuneration criteria not directly related to the employee's performance on the work floor, such as: previous salary, most recently earned pay and wage negotiations. Research conducted by the Institute concluded that when employers use these factors in determining salary this negatively affects women twice as much as men¹². Unequal pay, like other discriminatory practices against women, is caused by stereotype images of women and men. These influence expectancies with regard to suitability, ambitions, competencies and roles in care of women and men.

16. Recommendations

The State party should

- g. Integrate measures to combat unequal pay, with policies designed to deal with root causes of discrimination between men and women;
- h. Undertake concrete and structural measures to ascertain employers know what factors contribute to unequal pay;
- i. Increase capacities of the Inspectorate to monitor employers on unequal pay;
- j. Monitor the effects of measures at regular intervals.

Pregnancy and motherhood

17. Women are discriminated in accessing the labour market and in the workplace due to pregnancy and motherhood. A recent study by the Institute indicates that 43% of the participating women had an experience that indicates pregnancy discrimination.¹³ Despite interventions by the State party, the situation is almost exactly the same as four years ago.¹⁴ Almost half of the women with a temporary contract indicate they do not get an extension, probably because of their pregnancy¹⁵. Being pregnant or mother of young children makes it much more difficult to access the labour market.¹⁶ Women on a permanent contract, who

become pregnant or are mother of young children, face criticism, and barriers in promotions and salary.¹⁷

18. The Institute's research shows that women do not recognise this form of discrimination, find it understandable or even acceptable. Their willingness to complain about this has halved in four years' time.

19. Recommendations

The State party should

- k. Undertake an assessment of the failure of the current policy to address the problem of discrimination of pregnant women and mothers of young children. This assessment should include consultation with civil society.
- l. Formulate an effective action plan, that includes at least:
 - Structural preventive measures informing women and employers of their rights and duties;
 - Enforcement of relevant legislative measures against discrimination of pregnant women and mothers with young children;
 - Monitoring of these measures.

Ethnicity and religion

20. Unemployment among workers with a non-Western background is almost three times higher than native Dutch people.¹⁸ A number of reports have highlighted the problem of discrimination against non-Western migrants in accessing the labour market.¹⁹ The Institute also receives many complaints.²⁰ This discrimination contributes to (further) marginalisation and poverty, which also affects children.²¹
21. Negative stereotypes and prejudices play an important role in recruitment and selection of candidates on the labour market, and therefore contribute to discrimination in access to the labour market. Further measures to address the negative effects of stereotypes in recruitment and selection are necessary.²²

22. Recommendation

- m. The State party should intensify measures to combat labour market discrimination for non-Western migrants, including further intensification of structural measures to combat the negative effects of stereotypes in recruitment and selection.

Persons with disabilities

23. Fewer persons with disabilities have a job compared to persons without disabilities (45% compared to 66% in 2012). Research and opinions of the Institute show that people with disabilities still encounter discrimination when applying for a job.²³ In 2015, the government introduced new legislation, aimed at including persons with disabilities to participate in regular jobs. Job support schemes were introduced. Targets were set for private as well as public employers to recruit a certain number of workers with disabilities. If these targets or quota are not met, individual employers risk a fine. The new job support schemes have been criticized because they are limited to certain disabilities and do not cover all people with disabilities. This is not in full compliance with the CRPD. Moreover, only certain disabilities count in terms of quota employers are required to meet. Data show that public employers currently fail to meet the targets.

24. Recommendations

The State party should:

- n. Take additional measures to promote the integration of all persons with disabilities in the labour market;
- o. Make concrete plans for sustainable access to work for people with disabilities ;
- p. Revise its job schemes in line with the CRPD.

4) Decentralisation of social policy and human rights

25. As a consequence of a major overhaul in the field of social policies local governments have more responsibilities which affect human rights.²⁴ The overhaul was accompanied by (severe) budgetary cuts.
26. Municipalities are responsible to support individuals in participating in society and to provide access to care and services to facilitate this. Individuals are expected to do as much as possible themselves and to request their social network to provide informal care.
27. Various reports indicate that the access to, and availability of, care for various groups are negatively affected. These groups include elderly, chronically ill and people with disabilities, women, and children. It appears that many have limited support from their social network.²⁵ Local authorities are often not equipped to provide the necessary support. They often lack the infrastructure, expertise and budget. They are not always able to identify vulnerable groups who do not seek support themselves.
28. The issues that have arisen as a result of the transition in social services include:
- Access to health care: reports indicate that people avoid seeking support due to unclear and high financial contributions to obtain care and services. ²⁶ This disproportionately affects elderly and people with disabilities. Information on obtaining a waiver for such contribution is not always provided. Local authorities are not transparent about the amount of own contribution.²⁷
 - Violence against women: victims of domestic violence have to wait too long to access support services. Consequently, victims risk having to continue to live with their abusive partners. Specialist care provided to victims is insufficient.²⁸
 - Rights of the child and family life: lack of specific expertise among professionals, lack of information for the families, wrong referrals to specialised support and long(er) waiting lists for families mean access and availability of (specialised) care cannot be guaranteed on time and waiting lists are growing.²⁹
 - Right to information and availability of an effective remedy: local authorities decide about support based on a request by the individual concerned. Information about how to request support is often unclear. The right of access to an independent professional to request support is largely unknown. Though mandatory, such an independent professional is not present everywhere. Decisions on the request for support are not always well-motivated. A refusal to grant support is not always clearly communicated; as a result it is difficult to appeal such decisions.
29. The shift in responsibilities to provide social care towards local authorities does not lift the central government's end-responsibility to guarantee human rights. It should increase its efforts in monitoring the effects of the transition in the domain of social policies on human rights, with special focus on vulnerable groups. It should raise awareness and ensure the development of expertise about relevant human rights standards within local authorities.
30. **General recommendations**
The State party should:
- q. Monitor the effects of the transition in the domain of social policies on human rights. This calls for special attention for vulnerable groups;
 - r. Improve human rights capacities of local authorities so they can increase respect, protection and fulfilment of human rights at the local level;

- s. Make sure local authorities collect data and information that provide insight in the extent to which human rights of people are respected and where possible challenges remain. This should be used to regularly and structurally monitor the effects of the transition on human rights;
- t. Make sure local authorities have a more pro-active role in identifying and supporting vulnerable groups and provide easily accessible information.
- u. Ensure that all victims of domestic violence have access to high-quality protection and support services and specialist aid at the local level.

5) Human rights situation in Caribbean Netherlands

Constitutional changes

31. On 12 October 2015 an evaluation committee published a report³⁰ on the results of the new administrative structure of Caribbean Netherlands (Bonaire, St. Eustatius and Saba). The levels of health care and education have improved significantly but other problems remain.³¹

Increased poverty

32. The level of poverty on all three islands is alarming. The material living conditions of many inhabitants worsened since the transition in 2010. Since the introduction of the US dollar as the standard currency on 1 January 2012 the inhabitants experienced drastic price increases and reduced purchasing power. This is particularly harmful for the vulnerable groups in society. Poverty is strongly linked with low levels of education and employment, poor quality of housing, addiction to drugs and alcohol and psychiatric symptoms.
33. The government had agreed with Caribbean Netherlands that the provision of well-being and health care would be elevated 'to a standard of services and provisions that is acceptable within the Netherlands'. However, the Netherlands and the islands hold different opinions on the interpretation of this agreement. The national government has been reticent to counter the increasing poverty. For long, the government refrained from determining a minimum level of social security. In response to the 2015 evaluation report the government has promised to set a social minimum, but this will not be linked to benchmarks for subsistence.

Recommendation:

- v. The State party should soon determine a clear time schedule to establish a social minimum with benchmarks for subsistence in Caribbean Netherlands and implement robust socio-economic policies for poverty alleviation.

Strengthening the human rights infrastructure

34. As far as human rights protection and promotion is concerned the policies and management of the local government, civil society organisations and schools are vulnerable. Given the small scale and limited capacity available, it appears difficult to maintain quality and sufficient checks and balances. There is no easily accessible office where people can go for (judicial) advice and referral.

Recommendation:

- w. The State party should vigorously invest in strengthening the human rights culture in Caribbean Netherlands and establish easily accessible offices for advice and referral on all three islands.

¹ The only policy themes mentioned in the Plan are (1) non-discrimination and equal treatment, (2) information society, (3) immigration and asylum, (4) physical integrity and personal liberty and (5) education, employment and culture.

² Netherlands Institute for Human Rights, *Mensenrechten in Nederland 2015 - Jaarlijkse Rapportage* (Human Rights in the Netherlands 2015 - Annual Status Report), 7 July 2016; *Recommendation on the Draft bill of the 20.. Intelligence and Security Services Act*, 31 August 2015;

Recommendation on the Draft legislative proposal on the temporary administrative (counterterrorism) measures Act, 28 April 2015; *Recommendation on the Draft legislative proposal on the amendment of the Netherlands Nationality Act to allow for the withdrawal of Dutch nationality in the interests of national security*, February 2015.

³ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

⁴ *De Blok et al. v. the Netherlands case*, communication number 036/2012, 17 February 2014.

⁵ Convention on the Rights of the Child (CRC).

⁶ International Covenant on Economic, Social and Cultural Rights (ICECSR).

⁷ International Convention on the Rights of Persons with Disabilities (CRPD).

⁸ UN General Assembly, A/HRC/27/28, 4 August 2014.

⁹ See e.g. ITS, *Maatschappelijke thema's in de klas. Hoe moeilijk is dat?* (Social themes in the classroom. How difficult is that?), June 2015; M. Kleijwegt, *2 Werelden, 2 werkelijkheden. Hoe ga je daar als docent mee om?* ('2 worlds, 2 realities. How to deal with that as a teacher?'), January 2016.

¹⁰ Netherlands Institute for Human Rights, *Mensenrechten op School* (Human Rights at School), July 2015.

¹¹ Covell and Howe, *Empowering Children: Children's Rights Education as a Pathway to Citizenship*, 2005, Toronto: University of Toronto Press.

¹² Netherlands Institute for Human Rights, *Verdiert een man meer? Gelijke beloning van mannen en vrouwen bij hogescholen* (Does a man earn more? Equal remuneration of men and women in Universities of Applied Sciences), January 2016; Equal Treatment Commission, *Survey on Equal Pay for Men and Women in General Hospitals in the Netherlands*, 21 April 2011.

¹³ Netherlands Institute for Human Rights, *Is het nu beter bevallen: vervolgonderzoek naar discriminatie op het werk van zwangere vrouwen en moeders met jonge kinderen* (Follow-up research on discrimination of pregnant women and mothers with young children), September 2016.

¹⁴ In 2012 the Institute's predecessor launched its first report on discrimination of pregnant women and (young) mothers. Equal Treatment Commission, *Study on discrimination because of pregnancy and motherhood at work*, March 2012.

¹⁵ 44% of women surveyed indicate they suspect their contract was not extended because of pregnancy. Netherlands Institute for Human Rights (see note 13).

¹⁶ 11% of women are explicitly rejected because of pregnancy or upcoming motherhood, while 1 in 5 women suspect they were rejected for a job because of this (see note 13).

¹⁷ In general, 1 in 4 women face problems with job conditions because of their pregnancy or becoming a mother. 22% of women experience an unpleasant working environment for being pregnant (see note 13).

¹⁸ 2015 unemployment figures from Statistics Netherlands published in June 2016. There was an unemployment rate of 6,9%. Among native Dutch people this was 5,6%, whilst for people with a non-Western background this was 15,2%.

¹⁹ For example: Research Centre for Education and Labour Market (ROA), *Schoolverlaters tussen onderwijs en arbeidsmarkt* (Transition of graduates into the labor market), July 2016; Andriessen, van der Ent, Dekker and van der Linden, *Op afkomst afgewezen: onderzoek naar discriminatie op de Haagse arbeidsmarkt* (Rejected because of descent:

research about discrimination on the labour market in *The Hague*), the Netherlands Institute for Social Research, June 2015; Social and Economic Council of the Netherlands, *Discrimination does not work!*, April 2014; Andriessen, Nievers en Dagevos, *Op achterstand: discriminatie van niet-Westerse migranten op de arbeidsmarkt (Lagging behind: discrimination of non-Western migrants on the labour market)*, the Netherlands Institute for Social Research, November 2012.

²⁰ In total the Institute received 422 requests for an opinion in 2015 (this is more than a simple question or complaint). 218 (52%) of these requests were regarding discrimination with regard to work. 155 of these requests led to a procedure and an opinion. Of those 155 cases 92 were about labour. Out of those 92 cases, 33 were on access to the labour market (recruitment and selection). Out of those 33 cases, 17 cases dealt with discrimination on the basis of race (6) or religion (11). See: Netherlands Institute for Human Rights, *2015 Monitor discriminatiezaken* (2015 Monitor discrimination cases), 2016.

²¹ The number of non-Western households living under low-income levels for a longer period of time (more than 4 years) is almost 6 times higher than native Dutch households. Statistics Netherlands, *Armoede en sociale uitsluiting 2015 (Poverty and social exclusion 2015)*, 2015.

²² See for example: Social and Economic Council of the Netherlands, *Discrimination does not work!*, April 2014; Netherlands Institute for Human Rights, *De juiste persoon op de juiste plaats: de rol van stereotypering bij de toegang tot de arbeidsmarkt (The right person at the right place: the role of stereotyping in access to the labour market)*, July 2013. This research will be followed up in 2016 by further research in new recruitment techniques.

²³ Netherlands Institute for Human Rights, *Inzicht in Inclusie: werk, wonen en onderwijs - participatie van mensen met een beperking (Insights in inclusiveness: work, living and education - participation of people with disabilities)*, July 2016.

²⁴ The overhaul centred around three new pieces of legislation each focusing on specific target groups and topics. These are:

- Wet Maatschappelijke Ondersteuning (Law on Social Support): focusing on people in need of (health) care and support;
- Jeugdwet (Law on Youth): focusing on children and youth (and their families) in need of specific support;
- Participatiewet (Law on Participation): focusing on the labour market and people who are unable to find a job. This includes people with disabilities.

²⁵ In 2014 the Netherlands Institute for Social Research (SCP) conducted research on support in care. In that research 1 in 10 Dutch people indicated they would have nobody in their social network to provide support for more than 3 months. SCP, *Zorg en ondersteuning in Nederland: kerncijfers 2014 (Care and support in the Netherlands: core numbers 2014)*, 2014, p.19-21. In later research evaluating the transition published in 2016, SCP concluded that for elderly people (65+) with health problems this figure is 1 in 5. Boelhouwer, van den Berg, den Draak and Pommer, *Overall Rapportage sociaal domein 2015: rondom transitie* (Overall report social domain 2015: around transition), SCP, May 2016, chapter 3. They do not always have access to a social network, but they are also reluctant to ask their social network for support. At the same time it is not always possible for the social network to support due to lack of available time and/or expertise.

²⁶ Ieder(in) and Binnenlands Bestuur, *Meldactie Eigen Bijdrage (Report on survey on own contribution)*, February 2016; SSKIPR, *Ouderen mijden zorg om kosten (Elderly avoid care because of expenses)*, August 2015.

²⁷ National Ombudsman, *Een onverwacht hoge rekening (An unexpected high bill)*, March 2016, p. 34 .

²⁸ Association of Netherlands Municipalities, *Wachlijsten en Veilig Thuis (Waiting lists and safety at home)* 2015.

²⁹ See for example: Baracs, de Jong and van der Kooi, *De zorg waar ze recht op hebben: onderzoek naar de toegang tot en de kwaliteit van de jeugdhulp na decentralisatie* (The care they are entitled to: research in the access to and quality of support for children and youth after decentralization), the Netherlands' Ombudsman for children, March 2016. Specific issues identified are: lack of access to information about support and where to go; waiting lists in support; delays in support for children in unsafe situations; lack of expertise in so-called community teams who are supposed to offer support; little access to information about support available to community teams and general practitioners. Also see: Movisie, *Sociale (wijk)teams in beeld* (Community teams portrayed), 2015; Monitor Transition Youth, *Annual report of 2015*; *Quarterly reports* by Monitor Transition Youth in 2016 indicate the problems are continuing; Kriek, Mallee, de Vaan, Witvliet, *Ervaringen van instellingen na een jaar decentralisatie* (Experiences of institutions one year after decentralisation), Regioplan Policy Research, January 2016.

³⁰ As of 10 October 2010 the country the Netherlands Antilles was dissolved. Curacao and St Maarten became two independent countries within the Kingdom of The Netherlands. The Caribbean islands of Bonaire, St Eustatius and Saba became public entities and are integrally part of the country the Netherlands. The Institute's mandate includes these three islands, also called Caribbean Netherlands. Committee for the evaluation of the constitutional structure of the Caribbean Netherlands, *Joined together for five years, Bonaire St Eustatius Saba and the European Netherlands, conclusions*, October 2015.

³¹ The Institute submitted recommendations on the findings of the evaluation committee to the government, including an English summary: Netherlands Institute for Human Rights, *Naar een mensenrechtelijk aanvaardbaar voorzieningenniveau voor Caribisch Nederland, Reactie op het rapport 'Vijf jaar verbonden. Bonaire, Sint Eustatius, Saba en Europees Nederland'*, April 2016.