



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés



Excerpts of Concluding Observations and Recommendations from UN Treaty Monitoring Bodies and Special Procedures' Reports

- Universal Periodic Review:

THE NETHERLANDS

We would like to bring your attention to the following excerpts from UN Treaty Monitoring Bodies' Concluding Observations and Recommendations and from a Special Procedures' Report, relating to refugees, asylum-seekers and issues of direct interest to UNHCR with regard to the Netherlands.

Annotations to these Concluding Observations and Recommendations are made in the footnotes to indicate circumstances that have changed.

1. Treaty Body Reports

E/C.12/NDL/CO/4-5

**COMMITTEE ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 45th session
19 November 2010**

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 (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.**

20. The Committee is concerned that the requirement of a long period of affiliation 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. (art. 9, 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 on 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 on social security (2007).

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 healthcare and education, in practice they cannot always have access to either. (art. 11, 10, 12, 13, 2 (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.

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

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

CEDAW/C/NLD/CO/5

COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, 45th session

5 February 2010

Trafficking

28. The Committee expresses concern that anti-trafficking legislation has not yet been enacted in the Netherlands Antilles.¹ While noting with satisfaction the Netherlands intention to ratify the Council of Europe Convention on Action against Trafficking in

¹ The Netherlands Antilles no longer exists as such, as it was dissolved on 10 October 2010.

Human Beings and other efforts,² notably the creation in February 2008 of an anti-trafficking task force, the Committee regrets that representatives of anti-trafficking NGOs are not members of the task force, and that the role of NGOs in the identification of victims of trafficking is not formally recognized. The Committee also reiterates its concern that victims of trafficking who do not cooperate with the police in the investigation and prosecution of traffickers are excluded from the protection of the so-called B-9 regulation. The Committee considers that by imposing this requirement, the Government of the Netherlands seriously hampers its capacity to reach and support victims of trafficking with adequate help. The Committee further expresses serious concern that women victims of trafficking continue to be detained in alien detention centres.

29. The Committee urges the Netherlands Antilles to adopt without delay legislation criminalizing all forms of human trafficking.³ The Committee calls upon the Netherlands to ensure that relevant NGOs are fully integrated into the membership of the anti-trafficking task force. The Committee also calls upon the Netherlands to improve the identification of victims of trafficking by associating relevant NGOs with the process and to ensure that trafficked women are not, in any circumstances, held in immigration detention or other forms of custody. The Committee further urges the Netherlands to comply with its obligations to provide protection to all victims of trafficking regardless of their willingness or ability to cooperate in legal proceedings.

Asylum-seeking and refugee women

40. The Committee expresses serious concern that the current 48-hour accelerated asylum procedure of the 2000 Aliens Act,⁴ as well as its extension to eight days, places women at high risk of *refoulement* if they do not report immediately the violence or sexual persecution they had experienced. The Committee is ever more concerned that appeals under the accelerated procedure do not have suspensive effect and that applicants have no right to stay in reception facilities but must leave the country. The Committee is further concerned that although temporary resident permits may be provided to victims of domestic violence by the Deputy Minister of Justice of the Netherlands on humanitarian grounds, domestic violence is still not formally recognized as grounds for asylum.

41. The Committee considers that even if extended to eight days, as envisaged by the Netherlands, the short length of the accelerated asylum procedure remains unsuitable for vulnerable groups, including women victims of violence and unaccompanied children, and therefore urges the State party to introduce in the procedure the possibility for women victims of violence and unaccompanied minors to fully explain their claims and to present evidence on their situation at a

² The Netherlands has since ratified the Council of Europe Convention on Action against Trafficking in Human Beings on 22 April 2010 and its entry into force was on 1 August 2010.

³ The US State Department "Trafficking in Persons Report 2011" states that with the dissolution of the Netherlands Antilles, these islands became part of the Netherlands and that the Criminal Code been adapted and now includes an Article prohibiting trafficking in persons, both for sexual and labour exploitation (Article 286f). The Government reported this Article is similar to the human trafficking article in the Dutch criminal code, although prescribed penalties are lower, ranging from six years' imprisonment for a single offense to 15 years' imprisonment in the case of a trafficking victims' death. See <http://www.state.gov/documents/organization/164457.pdf>.

⁴ The 48-hour accelerated procedure no longer exists, as an eight-day procedure was introduced on 1 July 2010. It is only at Schiphol airport, where arriving asylum-seekers are detained, that the procedure lasts two days.

later stage. The Committee also urges the State party to provide asylum-seekers with suitable accommodation during the entire review of their case, including during the appeal phase. The Committee further calls upon the State party to recognize domestic violence and gender-related persecution as grounds for asylum in line with the guidelines of the Office of the United Nations High Commissioner for Refugees on gender-related persecution and the Council of the European Union directive 2004/83/EC of 29 April 2004.

Immigrant, migrant and minority women

42. While noting the measures taken with the aim of enhancing the integration of immigrant, migrant, black, Muslim and other minority women in Dutch society, the Committee continues to be concerned that those groups still face multiple forms of discrimination with respect to education, health, employment and social and political participation. The Committee also reiterates its concern at the formal requirements for family reunification in the Netherlands, namely the integration test and the minimum income requirement, which are imposed only on certain nationalities and which disproportionately affect migrant women. The Committee notes also that similar requirements apply with respect to family formation and to family members of a refugee who have not applied for family reunification within three months after asylum was granted.

43. **The Committee urges the Netherlands to intensify its efforts to eliminate discrimination against immigrant, migrant, black, Muslim and other minority women. It encourages the adoption of proactive measures to further increase their participation in the labour market, improve their awareness of the availability of social services and legal remedies and ensure protection against victimization. The Committee also calls upon the State party to conduct regular and comprehensive studies on discrimination against immigrant, migrant and minority women, to collect statistics on their employment, education and health situation and to report them in its next report. The Committee urges the Netherlands to withdraw its more severe requirements for family formation and family reunification, which constitute a breach in its obligation under article 16 of the Convention.**

CCPR/C/NLD/CO/4

HUMAN RIGHTS COMMITTEE, 96th session

25 August 2009

9. The Committee notes that under the “accelerated procedure” for the review of asylum applications, claims are evaluated within 48 working hours.⁵ The Committee is concerned that both the current procedure and the proposed regular “8-day” procedure may not allow asylum-seekers the opportunity to adequately substantiate their claims and may place them at hazard of being expelled to a country where they may be at risk. (art. 7)

The State party should ensure that the procedure for processing asylum applications enables a thorough and adequate assessment by allowing a period of time adequate for the presentation of evidence. The State party must, in all cases, ensure respect for the principle of *non-refoulement*.

⁵ Ibid.

Non-discrimination

26. The Committee welcomes the Equal Treatment Act, the National Action Plan against Racism, the Racial Discrimination Monitor and the campaign “Discrimination? Phone now!” in the Netherlands and the new draft criminal code in Aruba which includes discrimination against persons with mental or physical disabilities. However, the Committee is concerned that racial discrimination still persists.

27. The Committee urges the State party to ensure full protection against discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status in all parts of the Kingdom. The Committee also urges the State party to strengthen its awareness-raising and other preventive activities against discrimination and, if necessary, to take affirmative actions for the benefit of certain vulnerable groups of children, asylum-seeking and refugee children and children belonging to minority groups. The Committee further urges the State party to take all necessary measures to ensure that cases of discrimination against children in all sectors of society are addressed effectively.

Health and health services

51. The Committee is concerned about the access to health care for migrant children without a residence permit.

52. The Committee recommends that the State party take appropriate measures to make sure that all children in its territory have access to basic health care.

Asylum-seeking and refugee children

67. While noting with appreciation the high number of asylum-seekers accepted in the Netherlands, the Committee is concerned about the practice of detention of unaccompanied children and families with children, and that children continue to disappear from reception centres, despite the pilot project centre to prevent the disappearance of undocumented children. Furthermore, the Committee is concerned about the access to family services for asylum-seeking and refugee children, which should be culturally sensitive.

68. The Committee recommends that the State party further reduce the use of aliens’ detention for unaccompanied children and for families with children, further strengthen the measures already taken to prevent the disappearance of asylum seeking children, and provide culturally sensitive family services.

69. The Committee reiterates its concern about the State party’s restrictive declaration concerning article 22, and the absence of legislation, policies and procedures in the Netherlands Antilles⁶ regarding the protection of the rights of refugee and unaccompanied children.

⁶ See above footnote 1.

70. In line with its previous recommendations, the Committee recommends that the State party withdraw the declaration concerning article 22 and take effective legal and other measures to ensure adequate protection of refugee and unaccompanied children and implement programmes and policies to ensure their access to health, education and other social services. The State party should take into consideration the Committee's general comment no 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin.

Sexual exploitation and trafficking

73. The Committee welcomes the efforts made by the State party to prevent sexual exploitation and trafficking. While noting the National Action Plan to Combat Trafficking in Human Beings, the Committee is concerned at the lack of a comprehensive national strategy to prevent trafficking and sexual exploitation specifically of children. The Committee is further concerned that the State party considers that sexual exploitation of children is not a problem in Aruba. Furthermore, the Committee shares the concern of the Committee on the Elimination of Discrimination against Women about the number of women and girls who are victims of trafficking (CEDAW/C/NLD/CO/4, para. 23).

74. The Committee recommends that the State party:

- (a) Strengthen its efforts to reduce and prevent the occurrence of sexual exploitation and trafficking of children and child sex tourism, through, *inter alia*, undertaking a comprehensive study and data collection of the occurrence and the dimension of the problems and implement comprehensive strategies and policies;**
- (b) Strengthen cooperation with the authorities of countries from or to which children are trafficked in order to combat the phenomenon;**
- (c) Continue to sensitize professionals, parents, children and the general public to the problems of sexual exploitation of children, child trafficking and child sex tourism through education, including media campaigns;**
- (d) Take account of the outcome documents of the first, second and third World Congresses against Commercial Sexual Exploitation of Children, held in 1996, 2001 and 2008 respectively;**
- (e) Take appropriate legal and other measures to protect children who are victims of sexual exploitation and prostitution and prosecute perpetrators of sexual abuse and exploitation;**
- (f) Train law enforcement officials, social workers and prosecutors on how to receive, monitor and investigate complaints in a child-sensitive manner.**

CRC/C/OPSC/NLD/CO/1

COMMITTEE ON THE RIGHTS OF THE CHILD, 50th session

6 May 2009

Data collection

8. The Committee welcomes the replies to the list of issues, including data on cases of child pornography and children trafficked to and from the Netherlands and Aruba, but regrets the lack of statistics on prosecution of such cases, and on recovery and reintegration assistance and compensation to victims of the offences under the Optional Protocol. It also regrets the lack of statistics on child sex tourism.

9. The Committee recommends that the State party elaborate statistics on the prosecution of offences, recovery and reintegration assistance, compensation for child victims and child sex tourism, as indicated in article 9, paragraphs 3 and 4, of the Optional Protocol.

Measures adopted to protect the rights and interests of child victims of offences prohibited under the Optional Protocol

28. The Committee welcomes that the State party provides permanent residence permits to child victims of sale and trafficking and that it will only repatriate victims if, after investigation, it is determined to be in their best interest. However, the Committee is concerned about the reception, supervision and provision of care to child victims of offences prohibited under the Optional Protocol.

29. The Committee recommends that the State party:

- (a) Ensure specific shelter and care facilities for child victims;**
- (b) Improve the safety of reception centres for unaccompanied foreign children;**
- (c) Ensure special attention for the children in a manner appropriate for their age, and provide support services when hearing victims;**
- (d) Enhance child rights knowledge and skills of professionals in shelters and care facilities dealing with children who are victims;**
- (e) Take into consideration the Committee's general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin.**

CAT/C/NET/CO/4

COMMITTEE AGAINST TORTURE, 38th session

3 August 2007

Non-refoulement

7. The Committee is concerned at the difficulties faced by asylum-seekers in the European part of the Kingdom of the Netherlands in substantiating their claims under the accelerated procedure of the 2000 Aliens Act, which could lead to a violation of the *non-refoulement* principle provided for in article 3 of the Convention. (...)

The Committee takes note of the State party's intention to revise the accelerated procedure, notwithstanding which, the State Party should consider the following when reviewing the procedure:

- (a) Applications from all asylum-seekers, in particular, children, undocumented applicants and others made vulnerable are processed in such a way that those in need of international protection are not exposed to the risk of being subjected to torture. This may require the State party to establish criteria for cases which may or may not be processed under the accelerated or the normal procedure;**
- (b) All asylum-seekers have access to adequate legal assistance and may be, as appropriate, assisted by the same lawyer from the preparation of the first interview to the end of the proceedings;**
- (c) The procedures with regard to required supporting documentations for asylum are clarified;**
- (d) The appeal procedures entail an adequate review of rejected applications and permit asylum-seekers to present facts and documentation which could not be made available, with reasonable diligence, at the time of the first submission.**

Unaccompanied children and young asylum-seekers

9. While taking into consideration the State party's clarification that unaccompanied children asylum-seekers in the European part of the Kingdom of the Netherlands are placed in detention centres only when there is doubt about their age, the Committee remains concerned at the situation of young asylum-seekers.

The State party should take measures to ensure that when the age of an unaccompanied child is uncertain, verification should be made before placing the child in detention. The State party should pay particular attention to the situation of young asylum-seekers and only use detention as a measure of last resort. The State party should provide adequate housing and education for young returnees awaiting expulsion (CRC/C/15/Add.227, para. 54 (d)).

Trafficking

15. While taking positive note of the recent criminalization of trafficking in human beings in Aruba and the State party's domestic effort to prosecute traffickers, the Committee remains concerned at the practice and lack of information about existing mechanisms to effectively prevent trafficking and prosecute traffickers in Aruba.

The State party should reinforce international cooperation mechanisms to fight trafficking in persons, prosecute perpetrators in accordance with the law, and provide adequate protection and redress to all victims.

16. The Committee recommends that, in order to have a clearer view of the situation regarding protection against torture, the State party systematically include in its future reports, data which are disaggregated by age, sex and ethnicity, on:

- (a) The number of asylum applications registered and the number of applications processed respectively under the normal and accelerated procedures;⁷
- (b) The number of applications accepted;
- (c) The number of applicants whose application for asylum was accepted on grounds that they had been tortured or might be tortured if returned to their country of origin and data on asylum granted on grounds of sexual violence;
- (d) The number of cases of *refoulement* or expulsion.

2. Special Procedure Reports

A/HRC/4/34/Add.4

HUMAN RIGHTS COUNCIL, 4th session

Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk

2 March 2007

89. Women belonging to immigrant communities face particular problems of gender inequality that also translate into violence. Culturally essentialized perceptions of violence experienced by these women have increased stigmatization and discrimination against women and men of immigrant backgrounds, which is making the efforts to eradicate gender discrimination within these communities more difficult. These women's vulnerability to violence

⁷ See above footnote 4.

is fostered by increasingly restrictive immigration laws that have unequal consequences for women.

90. Women in prostitution still face violence, despite the legalization and regulation approach and the Government's efforts to enforce a zero-tolerance policy towards trafficking and sexual exploitation. Additionally, a grey sex sector continues to escape regulation and monitoring. Furthermore, the overtly regulation-oriented policy has failed to enhance the ability of women in prostitution to effectively pursue their interests in the sex sector.

92. In view of my findings, I would like to make the following recommendations to the Government:

(b) Eliminate all forms of discrimination by:

...

- **Ensuring the norm of equal opportunity and non-discrimination on the basis of sex and ethnic or religious origin in the labour market, the justice sector and other key institutions. Special measures should be considered to facilitate the equal participation of women and men with an immigrant or refugee background in the educational system and the labour market. In this regard, the Government should consider signing and ratifying the International Convention on the Rights of All Migrant Workers and Members of Their Families;**

(c) Investigate and punish perpetrators of VAW and protect women at risk of violence by:

...

- **Promoting the pending legislation on restraining orders. Immigrants should be able to apply for a restraining order without being questioned about their immigration status;**

(d) Address particular vulnerabilities of women who are not Dutch citizens by:

- **Ensuring that undocumented immigrant women have full access to State protection against violence, including filing criminal complaints relating to violence, applying for restraining orders, accessing a women's shelter or pursuing any other protective mechanism irrespective of their immigration status and without fear of deportation. Adequate resources should be made available to ensure that all undocumented immigrant women exposed to violence (whether "honour"-related or not) can access women's shelters;**

- **Providing women holding dependent residence permits who escape violence access to independent residence, regardless of whether they prove the fact that violence occurred by way of an official police report, medical reports, reports of a woman's shelter or any other means. Immigrant women and men married to citizens or permanent residents should automatically receive an independent residence permit after no more than two years in the country, regardless of their income;**

- **Adopting gender-sensitive asylum procedures including by recognizing gender-related persecution as a ground for asylum and ensuring that they are accessible to traumatized victims of violence;**

- **Enhancing measures to detect and prevent trafficking and sexual exploitation of asylum-seekers, especially minors. The Government should also ensure inter-**

agency cooperation on the basis of a shared protocol to meticulously follow up each case of a disappearance of a minor asylum-seeker;

- Refraining from sending victims of transnational human trafficking back to their country of origin, regardless of whether they cooperate with the law enforcement authorities, unless an individualized risk assessment demonstrates that the victim can be safely repatriated. In cooperation with the country of origin, adequate provisions must be made to ensure that the victim can be reintegrated without revictimization;

**Human Rights Liaison Unit
Division of International Protection
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