

**Commentary on the fifteenth and sixteenth periodic report of the Kingdom of the Netherlands on the Implementation of the Convention on the Elimination of All Forms of Racial Discrimination (CERD/C/452/Add.3)**

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Dutch section of the International Commission of Jurists  
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## **I. Introduction**

This document contains the comments of the *Nederlands Juristen Comité voor de Mensenrechten* (NJCM, Dutch Section of the International Commission of Jurists) on the 15<sup>th</sup> and 16<sup>th</sup> periodic report of the Kingdom of the Netherlands, submitted in accordance with article 9 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD), in June 2003. The report of the Kingdom of the Netherlands covers the period of 1998 until 2002.

This commentary consists of two main parts. In part II the NJCM makes a few general remarks relating to the Concluding Observations of the Committee on the Elimination of Racial Discrimination (hereafter: the Committee). In part III the NJCM comments on the information the Netherlands' Government has given under specific articles of the CERD. After every subheading it is indicated which paragraphs of the 15<sup>th</sup> and 16<sup>th</sup> periodic report are commented upon.

The NJCM commentary is limited to the section of the Government report concerning the European part of the Kingdom of the Netherlands. The situation in the Netherlands Antilles is not dealt with. The NJCM furthermore underlines that this commentary does not in any way claim to be complete. In order to enhance its effectiveness, the commentary focuses on points of concern and remarkable developments. In essence, the commentary is an update of the commentary on the previous report of the Kingdom of the Netherlands.<sup>1</sup>

## **II. General remarks**

In § 19 of its Concluding Observations the Committee stated that the Netherlands' next periodic report (15<sup>th</sup> periodic report) was due on 5 January 2001. The NJCM would like to point out that the report is two and a half years late.

In § 3 of the Concluding Observations the Committee complimented the Netherlands' Government with its policy to refer to minorities without making a distinction between nationals and non-nationals. Within this context the Committee welcomed the plan to apply the Framework Convention for the Protection of National Minorities of the Council of Europe along the same lines. The NJCM comments that as of the writing of this commentary (December 2003) the Framework Convention for the Protection of National Minorities of the Council of Europe had not yet been ratified.

In § 6 of its Concluding Observations the Committee welcomed the appointment of a Minister of Urban Policy and Integration of Ethnic Minorities. The NJCM wishes to inform the Committee that the Netherlands' Government does no longer include such a Minister.

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<sup>1</sup> NJCM, Dutch section of the ICJ, Commentary on the thirteenth periodic report of the Kingdom of the Netherlands on the implementation of the Convention on the Elimination of All Forms of Racial Discrimination (CERD/C/362/Add.4), 11 July 2000.

### III. Provisions of the CERD

#### *Article 2 (2): special and concrete measures*

##### Women

##### General remarks

##### **The NJCM remarks that the Government report fails to provide gender-specific information.**

The NJCM remarks that the Government report fails to provide gender-specific information, e.g. in the area of participation of ethnic minorities in various elections (Chapter 1.4), the effects of the new Aliens Act (Chapter 1.5), the data on complaints, indictments and judicial decisions relating to acts of racism (Chapter 1.6), employment figures (Chapter 2.3.1.1 and 2.3.1.6), discrimination at work (Chapter 2.3.1.4), the right to education and training (Chapter 2.3.4), participation in cultural activities (Chapter 2.3.5), the involvement of representatives of ethnic minority organisations in local anti-discrimination policy (§ 193) and the National Platform for Consultation and Cooperation against Racism and Discrimination (§ 194) and the representation of ethnic minorities in the media (§ 212 – 214).

In § 117 ('women') the Government states that "there was to be an effort to mainstream activities designed to promote the participation of women from ethnic minorities, using existing structures, monitoring arrangements and instruments". In this respect, the Government seems to subscribe the recommendations of the Committee on Employment of Women of Ethnic Minority Groups, a committee set up by the Ministry of Social Affairs and Employment. However, gender mainstreaming is lacking in the present report, not only in the area of employment but also in the above mentioned areas. The report does not specify data according to gender, nor does it pay specific attention to gender in relation to the results of measures taken or in the description of intended measures.

In this context the NJCM also wishes to refer to the Concluding Comments of the CEDAW-Committee on the Second and Third Report of the Netherlands in 2001<sup>2</sup>, in which the Committee voices its concern about the lack of detailed data on the various ethnic and minority groups (specified according to gender and ethnicity) in the Netherlands. The NJCM underlines that in order to gain insight in the situation of black, migrant and refugee women the collection of such data is of crucial importance.

Similarly the report does not pay attention to the fact that women of ethnic minorities often face double discrimination, based on both sex and ethnicity, nor to the impact of the combination of such discriminations. Insofar as attention is paid to discrimination on the basis of sex, this is dealt with as separate and apart from discrimination on ethnicity. In other cases no reference to sex is made at all, e.g. in the paragraphs concerning the working climate at the police forces ( Chapter 2.3.1.7 of the Government report).

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<sup>2</sup> § 24, *Concluding Comments, Consideration of Reports of States Parties, The Netherlands*, Committee on the Elimination of Discrimination against Women, 25th session, 2-20 July 2001.

### Participation of minorities in local government elections ( § 14 – 19)

#### **The NJCM wishes to draw the attention of the Committee to the situation of ethnic minority women and the field of political participation.**

Paragraphs 14-19 of the Government report appear to deal only with the political representation and participation of ethnic minorities in general, without providing a specification according to sex.

The NJCM would like to know if the alleged progress also concerns the political representation of female members of ethnic minorities. Another question that might be asked is which measures the Government intends to take to increase political participation of women.

### Changes brought about by the new Aliens Act (§ 20 – 32)

#### **The NJCM is concerned about the effects on women of the restricted aliens policy pursued by the Netherlands' Government.**

##### *Asylum (§ 21)*

In § 21 the Government describes the new Aliens Act 2000. In this context the NJCM would like to draw the attention to the problem of, especially female, asylum seekers who have faced traumatic experiences. Under the present law a renewed application for asylum is only taken into consideration if it contains so called 'new' facts. However, in the present interpretation of the Immigration and Naturalisation Department (Immigratie- en Naturalisatie Dienst) and the courts an earlier experience of sexual violence, e.g. rape, about which the victim was not able to speak before, is also qualified as a fact he or she should have mentioned at once and therefore cannot lead to reconsideration of the application for asylum. Even if there is no doubt about the trustworthiness of the victim, the new application is dismissed without further investigation. This contradicts the recognised fact that victims of sexual violence can often tell about such experiences only after a certain period of time and under safe conditions. Moreover, this policy seriously affects the right to protection against violence of, especially female, asylum seekers and might lead to violation of the prohibition of refoulement. This is the more urgent since under the new Aliens Act many applications are dealt with in an accelerated procedure, the so called 48-hours procedure. This procedure provides insufficient medical research and psychological assistance for traumatised asylum seekers.

##### *Protection against domestic violence*

Under the present law (sexual) violence in the private sphere is not recognised as a ground for asylum. The present Aliens Circular seems to exclude the possibility that female victims of domestic violence can qualify for asylum status or can appeal to the special "traumata" policy. The NJCM is of the opinion that in serious cases of domestic violence where the state is not willing or able to offer protection, the victim should at least be offered the possibility to qualify for a residence status on compelling humanitarian grounds. In this context the NJCM also wants to refer to the Concluding Comments of the CEDAW-Committee under § 22 and 23, where domestic violence and discriminatory treatment are explicitly mentioned.

### *Family reunification\_ (§ 22 and 30)*

In § 22 the Government refers to the new criterion for family reunification, namely the requirement that the principal applicant must have financial resources equivalent to 100% of the relevant standard of social assistance. Plans are made to require even 120%. There are serious indications that this income requirement negatively affects (migrant) women more than men, due to their weaker status in the labour market. The NJCM underlines the need for further research on this issue and the desirability of an Emancipation Effect Report before implementation of such policy changes.

### *Protection against violence*

Under the new Aliens Law persons who are admitted to the Netherlands for family reunification are granted a dependent residence permit for the first three years. If the relationship ends within the first three years, the residence permit is withdrawn. Where (sexual) violence forms the reason for ending the relationship, the migrant partner is eligible for an independent residence permit if, apart from the violence, also a second humanitarian factor is present, such as the care for children born in the Netherlands. This means that migrant women do not enjoy the same protection against domestic violence as Dutch women do, since in many cases they are forced to either stay with a violent partner or face the risk of removal from the country.

### *Humanitarian grounds (§ 29)*

The Government states that under the law applying to aliens other than asylum seekers, the grounds for granting a residence permit have stayed the same, i.e. international obligations, compelling humanitarian reasons and significant national interests. However, under the new Aliens Act “compelling humanitarian reasons” are restricted almost exclusively to cases in which the asylum seeker is traumatised by government officials. This means that women who would previously fall within this category can hardly obtain a residence permit at this moment. This especially raises problems in cases where women evidently do not meet the criteria for asylum, but where nevertheless the return of the applicant would lead to unacceptable hardship.

### The right to work (§ 89 – 166)

#### **The NJCM is concerned about the labour market position of ethnic minority women.**

The NJCM remarks that data on unemployment figures fail to distinguish between men and women, although there are reasons to believe that unemployment rates among women from ethnic minorities are higher than among men.<sup>3</sup> Also the Government does not provide any information on whether or not the Employment of Minorities (Promotion) Act and the measures taken to address discrimination at work<sup>4</sup> pay special attention to women.

### *Female migrant workers in the informal labour market*

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<sup>3</sup> See Chapter 2.3.1.1 of the Government report.

<sup>4</sup> See Chapter 2.3.1.4 of the Government report.

The NJCM wishes to draw attention to the fact that especially those sectors of the informal labour market that are traditionally considered ‘women’s work’ ( i.e. the provision of domestic and sexual services), and in which a considerable number of female migrant workers are working, are not recognised as work and/or are not or only partially protected by labour law.

Since the abolition of the ban on brothels the sex sector is an official employment sector in the Netherlands. However, a special prohibition has been incorporated in the Aliens Labour Act (Wet Arbeid Vreemdelingen) and the Aliens Act, which prohibit the issue of residence or work permits for work in the sex industry. As a consequence, migrant workers are categorically excluded from legalised labour in the sex sector and thus from the same labour law protection to which their Dutch colleagues are entitled since the change of the law. In this way migrant sex workers are pushed deeper into illegality and more easily become victims of trafficking and other forms of abuse and violence. The NJCM would like to know how the Netherlands’ Government justifies the exclusion of non-EU migrant prostitutes from protection by labour and civil law as provided to Dutch prostitutes after the abolition of the ban on brothels, especially in the light of the prevention of trafficking in women.

As for domestic workers, the only legal way for migrants to work as a domestic worker is under the ‘au pair’ arrangement. However, although the au pair arrangement allows for a 30 hour working week, it is considered to be a ‘cultural exchange’ programme. Au pairs are not considered workers and do not enjoy labour law protection.

#### The right to education and training (§ 191)

#### **The NJCM is concerned about the level of participation of ethnic minority girls in education.**

Although the Government report lacks gender-specific figures about the participation of migrant children, the NJCM is especially concerned about the fact that participation in primary, secondary and higher education of girls and women from ethnic minorities is lower than educational participation of girls and women with a Dutch background.

The NJCM is aware of the fact that participation in education and actual school attendance not only depend upon the efforts undertaken by the State, but also upon social factors, such as the attitude of parents, teachers and children themselves. However, the NJCM is of the opinion that central and local authorities have a major responsibility and obligation to promote and supervise participation in education.

In this context the NJCM would like to refer to the first and second report of the Netherlands under the Convention on the Elimination of All Forms of Discrimination against Women, in which it was said that “girls from migrant families, however, (...) too often go on to the lowest forms of secondary education or leave school on reaching the age at which education ceases to be compulsory”.<sup>5</sup> From the second report of the Netherlands (in particular pages 59-61), it appeared that no or little progress had been made to improve the situation of girls and women from ethnic minorities in education, compared to women and girls with a Dutch background. In this second report it is stated, for example, that ‘girls from ethnic minorities still often have a low level of educational attainment; 36% of them obtain no more than a comprehensive

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<sup>5</sup> CEDAW/C/NET/1 and Add.1-3, 7 April 1993, § 467.

school leaving certificate, compared with only 13% of pupils with a Dutch background'. In addition, a large proportion of Moroccan and Turkish women only manage to complete their primary education. Furthermore, young people from ethnic minorities are barely represented in higher education (page 60).<sup>6</sup>

As a matter of fact, girls from ethnic minorities face a double educational back-log: as members of a minority when compared to children with a Dutch background, and as girls



The NJCM would like to know if and how many times instruments of civil law have been used by the Public Prosecutor (in addition or as an alternative to instruments of criminal law) and whether the Ministry of Justice and/or the Public Prosecutor have developed any policy concerning these instruments of civil law in cases of racism by political parties. The NJCM is of the opinion that it is important to know whether the Public Prosecutor uses all available legal instruments to deal with racist political parties.

#### Funding for Racist Political Parties

**The NJCM asks the Netherlands' Government to withdraw its funding for racist political parties when the leaders of such parties are convicted of racist offences.**

In its Commentary on the thirteenth periodic report of the Kingdom of the Netherlands, the NJCM noted that the Netherlands' Parliament adopted an Act in July 1999 regarding funding for political parties (Wet Subsidiëring Politieke Partijen, WSPP) which makes it possible that a political party whose leaders have been convicted of racist offences can still get funding from the Government, because the political party is not considered responsible for the actions of its members (see article 16 (1) of the Act). Since then this Act has not been changed. The NJCM considers it necessary that the Act will be amended, in order to prevent political parties, whose leaders and/or members have been convicted for racism, from getting official Government funding.

#### ***Article 5 (b): the right to security***

##### Restrictive immigration policy (§ 20 – 29)

**The NJCM is concerned about the effects of the aliens policy of the Netherlands' Government now that it has become more restrictive since the entry into force of the new Aliens Act.**

In its previous commentary, the NJCM referred to the risk that the more restrictive immigration policy under the new Aliens Act 2000 might lead to direct or indirect discrimination of aliens.<sup>8</sup> This is still a matter of concern. Problems may arise inter alia with regard to facilities, since Government has the power to end facilities for several groups of aliens (asylum seekers with a final negative decision on their request for asylum; aliens that have a procedure running for a regular permit to stay; asylum seekers that are awaiting a court decision after their application has been rejected in the accelerated procedure for asylum). In this regard the NJCM also wishes to call in mind its remarks concerning the so-called Linkage Act that excludes persons residing illegally in the Netherlands from health care and social security benefits.<sup>9</sup>

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<sup>8</sup> See the NJCM Commentary on the 13th periodic report of the Kingdom of the Netherlands, p. 9-10.

<sup>9</sup> See p. 4 of the previous Commentary.

## Family reunification

### § 22

**The NJCM wishes to draw the attention of the Committee to the fact that the Government report states that all asylum seekers who are granted a temporary or a permanent residence permit are entitled to family reunification, irrespective of the grounds on which the permit was granted, but that a large group of aliens who already were in the possession of a provisional residence permit under the old Aliens Act, a permit that was changed into a temporary (refugee) permit when the new Aliens Act came into force, is placed in a disadvantaged position.**

The Government report states that all asylum seekers who are granted a temporary or a permanent permit are entitled to the same package of rights and facilities (called provisions in the Government report) at a level as laid down in the Geneva Convention relating to the Status of Refugees. Among these rights and facilities is the right to family reunification. If the request is filed within a period of three months and the family members have the same nationality as the refugee, there is no requirement of having a sufficient income.

The Government does not mention a very large group of aliens who have been granted a refugee status at the day of the entry into force of the new Aliens Act (1 April 2001), but who are not entitled to the right of family reunification (without further restrictions). This group got a provisional residence permit under the old Aliens Act, because the situation in their home country was not safe enough to send them back. A lot of refugees belonging to this group have filed a request for family reunification as soon as possible after they were admitted as a refugee under the new Act. However, the Government and some Courts<sup>10</sup> have refused their requests, arguing that the permit of these aliens has been converted into a refugee status by law. This converted refugee status is not the same as a refugee status granted for the first time. Moreover, according to the Government and the Courts these refugees should have filed their request within three months from the moment they received their provisional residence permit under the old Aliens Act. However, at the time the policy was that family reunification was not allowed at all for holders of a provisional residence permit.<sup>11</sup> The result is that many of these refugees, who by now have a permanent refugee status or even Dutch nationality, are still separated from their wives or husbands and children.

### § 30-32

**According to article 29 of the new Aliens Act it is possible to admit family members of a refugee with the same nationality as this refugee without his having to meet the requirement of a sufficient income as long as the request for family reunification is filed within a period of three months after the refugee got a status. In the opinion of the NJCM this period is too short, specially since the Netherlands' Government does not inform the refugee about the consequences of not filing such a request within a period of three months. According to recent Dutch case law, invoking article 8 of the European Convention on Human Rights does not always change this situation.**

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<sup>10</sup> See e.g. Voorzieningenrechter rechtbank Utrecht, 19 November 2003, AWB 02/82519, 02/82518, published in Nieuwsbrief Asiel- en Vluchtelingenrecht, NAV 2003/34. This Court refers to the Explanation on the Aliens Decree (Stb. 2000 nr. 497, p. 215).

<sup>11</sup> Aliens Circular 1994, B7/15.3.5.

When a refugee fails to file a request for family reunification within three months after he got refugee status, he has to follow the regular procedure under aliens law for aliens who do not have a refugee status. According to Dutch policy on such regular requests, aliens not only have to fulfil the requirement of a sufficient income but also must pay an extremely high amount of money (€ 430 per person above the age of 12) in order to obtain a decision on such a request. For these reasons it is important for the refugee to file his request for family reunification within the said period of three months. This period however is rather short. In some cases a search for children in the country of origin or elsewhere is necessary. In some cases the request of refugees who wanted to file it within the period of three months was not accepted by the authorities.

Under the old Aliens Act the refugee could file a request within a so-called ‘reasonable period’, which meant a period of about six months. In this way a more flexible approach by judges was possible, which resulted in most cases in the admission of the family members concerned. Under the new Aliens Act such a flexible approach might be possible too if article 8 of the European Convention on Human Rights (ECHR) would be fully applied. In its previous report the Government stated that all applications for family reunification and family formation are considered in the light of international provisions concerning the right to respect for family life, in particular article 8 of the ECHR. However, neither the text of the new Aliens Act nor the most recent Government report refer to the applicability of article 8 ECHR in these cases.

According to the case law of the European Court on Human Rights a fair balance has to be struck between the competing interests of the individual (and its family members) and the community as a whole to answer the question whether the Government has a positive obligation to admit the alien(s) concerned.<sup>12</sup>

In some recent cases the Council of State (Afdeling Bestuursrechtspraak van de Raad van State), the highest national appeal instance in aliens’ cases, sanctions the policy of the Minister of Alien Affairs and Integration not to give a residence permit to minor children of a refugee. The Council of State stated as follows: *“Although there exists an objective obstacle to enjoy family life in the country of origin, this does not mean that the interests of the aliens and the referent concerned have more importance than the interest of the community as a whole. Due to the circumstances that the referent does not fulfil the requirement of having a sufficient income, article 8 ECHR does not compel to admit the aliens concerned.”* The Council of State continued that *“there are no specific facts or reasons, which do impose a positive obligation on the Minister to admit the children concerned.”*<sup>13</sup>

As far as the NJCM knows there is not one case of family reunification in which the Council of State accepts such specific facts or reasons, resulting in a positive obligation to admit the family members of a refugee. Relevant factors such as the age of the child, the interest of a minor child to join his or her parents, the settled status of the referent in the Netherlands, the reasons why the parents fled from their country, etc., are thus neglected by the Council of State. This case law of the Council of State forms a strong contrast to the case law of the Dutch Courts in the situation under the old Aliens Act.

As has been said before, not filing the request within a period of three months will have extreme consequences. In this context, in the opinion of the NJCM the Government should at least inform the refugee that he has to file the request for family reunification in time, for instance by including this information in the decision granting the refugee his status.

<sup>12</sup> See e.g. ECHR, 21 December 2001, application number 31465/96, *Sen v. the Netherlands*.

<sup>13</sup> ABRVS, 25 September 2003, nr. 200303811/1 and 200303830/1; ABRVS, 21 October 2003, nr. 200304601/1.

## ***Article 5 (e) (i): the right to work***

### Employment of Minorities (Promotion) Act (§ 90-93)

**The NJCM wonders how the Netherlands' Government expects to promote equal participation by ethnic minorities in the labour market now that one of its major instruments of policy, the Employment of Minorities (Promotion) Act, will no longer be in force as of 1 January 2004.**

In its report the Netherlands' Government gives some more information on the implementation of the Employment of Minorities (Promotion) Act (Wet SAMEN), as requested by your Committee in § 15 of the Concluding Observations. The Act was set up for the purpose of reaching proportional participation of ethnic minorities in the labour market. An evaluation of the Act was finished recently.<sup>14</sup> After publication of the evaluation the decision was taken not to prolong the Act.<sup>15</sup> It is true that the Act was meant to be temporary, as the Government report states in its § 91. Yet there are reasons for not dropping this project just now. Although there always have been some doubts about the effectiveness of the Act as such it would, in the opinion of the NJCM, be better to continue to use this legal instrument, especially now that it appears to be better applied since a few years. The more the Act is applied, the more it is possible to monitor the situation of ethnic minorities in the labour market. Although the purpose of the Act was to improve proportional participation of ethnic minorities in the labour market, an aim which even according to the Government has not yet been achieved, the Government now says the aim of the Act was to make employers conscious of the disadvantaged position of ethnic minorities in the labour market and that this aim *has* been achieved (this follows from the Evaluation of the Act).<sup>16</sup> The Government now intends to set up a so-called policy of diversity of workforces, which apparently means that employers should see to it that their workforce is diverse with regard to ethnicity, sex and age at all levels of the undertaking. However the Employment of Minorities (Promotion) Act could be of use in this project and its application should therefore be continued. The NJCM does not see how equal participation by ethnic minorities in the labour market can be reached when every few years existing policies are abandoned and new policies set up from the beginning.<sup>17</sup>

### Action Plan 2002-2003 (§ 97-118)

**The NJCM wishes to draw the attention of the Committee to the fact that in spite of the success of special measures as described by the Government, unemployment rates among ethnic minorities are still three times as high as unemployment rates for people not belonging to ethnic minorities.**

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<sup>14</sup> Evaluatie Wet SAMEN (Evaluation Employment of Minorities (Promotion) Act), a report by KPMG made on request by the Ministry of Social Affairs and Employment, 2003.

<sup>15</sup> Kabinetsstandpunt Wet SAMEN (Opinion of the Government on the Wet SAMEN), The Hague, 26 september 2003.

<sup>16</sup> See the Kabinetsstandpunt (Opinion of the Government).

<sup>17</sup> The same opinion is expressed in Rapportage Minderheden 2003 (Report on Minorities 2003), by SCP, 2003, p. 294 - 295.

The Government report describes measures taken within the framework of the Action Plan 2002-2003 and the positive results reached. Research shows that unemployment among ethnic minorities decreased – the measures described may certainly have had influence in this respect. However since one or two years unemployment among ethnic minorities rises again and at any rate the percentage of unemployment is still three times as high as among people not belonging to an ethnic minority.<sup>18</sup>

Several factors may have a role here: the group looking for a job itself has grown; young people meet extra difficulties when trying to find a job; many jobs are only temporary.<sup>19</sup> The level of education of members of ethnic minorities may be of influence in some cases; however research shows that members of ethnic minorities with a level of education comparable to that of a certain group of autochtone persons are more often unemployed than persons belonging to that autochtone group.<sup>20</sup>

The research report mentioned above also shows that the results reached by the agreement with employers' organisations (as described in § 98 of the Government report) seem more than they actually are: some of those concerned probably already had a job or were unemployed only for a very short period of time, some probably got a job with the help of this plan more than once. To sum up, it is too early yet to stop some of the measures described, although this already happened, for instance with the agreement described in § 98 of the Government report.

#### Young people (§ 109-111)

#### **The NJCM wonders whether enough is done to combat high unemployment rates amongst young people belonging to ethnic minorities.**

In its report the Government describes a policy to reduce unemployment of young members of ethnic minorities. The new report on the situation of minorities (Rapportage Minderheden 2003) shows that over the last few years there has been a considerable rise in unemployment rates for this group. Young people belonging to ethnic minorities are unemployed in three to four times as many cases as young people not belonging to this group.<sup>21</sup> This raises the question whether Government policy in this field has had any effect at all. A question that is the more pressing now that the policy programme will come to an end in May 2004 (as mentioned in § 110 of the Government report).

#### Refugees (§ 116) and other aliens

#### **What measures does the Netherlands' Government intend to take to remove obstacles for refugees and (other) aliens to get access to the labour market?**

Rightly the Government pays attention to the position of refugees in § 116 of its report. We may wonder however whether the measures mentioned to improve their situation in the labour market will be sufficient now that unemployment rates are very high among this group and refugees that do have a job more often than not work below their level of education.

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<sup>18</sup> Evaluatie Wet SAMEN, p. 22; Rapportage Minderheden 2003, p. 210.

<sup>19</sup> Rapportage Minderheden 2003, p. 212.

<sup>20</sup> See inter alia Rapportage Minderheden 2003, p. 216.

<sup>21</sup> Rapportage Minderheden 2003, p. 213, 214.

With regard to the position of (other) aliens, the NJCM would like to remark that the new Government report again does not pay attention to the Aliens Labour Act (Wet Arbeid Vreemdelingen) or the Act on the Nomination of Aliens in the Public Service (Wet Benoembaarheid van Vreemdelingen in Openbare Dienst). We already referred to this issue in our previous commentary.<sup>22</sup>

### Discrimination (§ 119-156)

**The NJCM would like to know whether the Netherlands' Government will continue to pay special attention to possible forms of discrimination in the labour market.**

The basic idea of the Netherlands' Government to give the fight against discrimination attention within the framework of general measures directed at improving the labour market position of ethnic minorities may be regarded as positive. In that regard the idea of a general policy of diversity in the workforce<sup>23</sup> is in itself welcomed by the NJCM. However as it appears from research<sup>24</sup> that many employers are still less inclined to employ workers from ethnic minorities than workers not belonging to this group, it is important to continue and pay special attention to the possibility of (indirectly) discriminatory factors or structures as well.

### Dismissal

**A rise in employment is not enough to enhance the participation of ethnic minorities in the labour market. The prevention of (directly or indirectly discriminatory) dismissal is equally important. The NJCM wonders why in its most recent report the Government refrained from referring to this matter.**

The report evaluating the Employment of Minorities (Promotion) Act (Wet SAMEN) notes that a relatively high number of members from ethnic minorities loses its jobs.

One of the reasons for this is, according to the report, the fact that members of ethnic minorities often had temporary contracts.<sup>25</sup> Together with difficulties in reaching higher function levels in undertakings, this should be seen as one of the major problems still to be faced in the matter of improving the labour market situation of ethnic minorities.<sup>26</sup> The Government report however does not refer to this aspect at all, even when the preceding report did refer to this issue in its § 123. The NJCM is of the opinion that information on this subject is indispensable for judging the situation of ethnic minorities in the labour market. As long as there is no information at all, moreover, it is impossible to find out whether and to what extent the problem at issue is caused by discrimination (direct discrimination or indirect discrimination).

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<sup>22</sup> NJCM, Commentary on the thirteenth periodic report of the Kingdom of the Netherlands, p. 14.

<sup>23</sup> See above under "Employment of Minorities (Promotion) Act ( § 90-93)", p. 12 of this document.

<sup>24</sup> Rapportage Minderheden 2003 (Report on Minorities 2003), p. 282.

<sup>25</sup> Evaluatie Wet SAMEN (Evaluation of the Employment of Minorities (Promotion) Act), p. 24; see also Rapportage Minderheden 2003 (Report on Minorities 2003), p. 217 and 241.

<sup>26</sup> Evaluatie Wet SAMEN, p. 30.

### ***Article 5 (e) (iii): the right to housing***

#### Refugees and asylum seekers with residence permits (§ 174-176)

**The NJCM wishes to note that not all asylum seekers with residence permits can be brought under the targets for municipalities set by the central Government with regard to the amount of refugees to be housed within the municipality in question. Especially those aliens who did not have the right to central reception facilities during their asylum procedure but received a residence permit afterwards have serious problems to find housing.**

In practice municipalities accept refugees or asylum seekers with a residence permit for housing when they can be brought under specific housing targets. This means that a municipality will be reluctant to accept them when they already met their targets or when the alien concerned can not be brought under this target.

This is the case at least when an alien did not have the right to central reception facilities during his asylum procedure. Such an alien only has the right to stay legally in the Netherlands to wait for the outcome of his procedure. In case a residence permit is granted afterwards this alien cannot make an appeal to the housing targets of municipalities. In the opinion of the NJCM it is strange that there are no rules for this situation.

#### De-concentration in housing policy (§ 179-181)

In November 2003, the municipality of Rotterdam has made a plan to keep refugees (with a status) out of the city. Because this plan was criticized by representatives of other big municipalities such as Amsterdam and Utrecht, a new plan was published at the beginning of December 2003. This new plan no longer speaks of refugees who have to be kept out of the city but of underprivileged people. This means the new plan does not affect refugees only, but all other people who do not have an independent income equivalent to 120% of the standard level of social assistance.

The Minister of Alien Affairs and Integration already rejected this new plan as not being realistic, but the NJCM is worried about the fact that the Netherlands' Prime Minister and the Coalition Partners welcomed the plan in general. Since among those who will not be able to meet the requirements of an income equivalent to 120% of the standard level of social assistance there will be many refugees and/or members of ethnic minorities, the plan might have a discriminatory effect at least in an indirect way.

### ***Article 5 (e) (iv): the right to public health and medical care***

#### The right to public health and medical care (§ 186 and 187)

**The NJCM wishes to remark that there are problems with regard to payment of medical care for illegal immigrants.**

The Netherlands' Government remarks that according to national ethical standards urgent medical care must be provided even if the recipient has no insurance or is unable to pay for it, e.g. when they are illegal immigrants.

However, for illegal immigrants as well as for medical staff, it is often not clear in which situations medical assistance should be offered without payment. Even in the case of a life threatening situation, the medical staff first has to ask the illegal immigrant to pay. If the medical staff can prove that this person is residing illegally and cannot pay, the staff may get paid by a special fund, Stichting Koppeling, if they can show that they are structurally burdened with illegal immigrants as patients who cannot pay. However, the staff has to make an estimation of its costs and hand in a proposal for refunding one year in advance. All this creates much extra administration for the medical staff. In practice this leads to situations in which medical staff is not willing to offer medical assistance to illegal immigrants, due to the fact that they might have to pay for it themselves in the end.

### ***Article 5 (e) (v): the right to education and training***

#### The right to education and training (§ 191)

**The NJCM is concerned about the passive attitude of the Minister of Education with regard to segregation in schools. A more active approach is necessary to combat this phenomenon.**

The NJCM notes that the report of the Netherlands' Government only very briefly deals with the right to education. It only contains one paragraph about early childhood education (§ 191). Unfortunately, the report does not deal with the issue of segregation in education, that is the phenomenon of 'black' and 'white' schools which is increasing in the Netherlands. Black schools are schools that have over 50 % of ethnic minority pupils. Presently the number of black primary schools is approximately 600 nation-wide. The number has increased over the years. In Amsterdam, for example, segregation between ethnic minority pupils and their white counterparts in separate primary schools is almost complete. There is also an increasing trend of segregation of black and white pupils in secondary schools in Amsterdam.<sup>27</sup> Research results also show that segregation is not only based on colour, but also on the level of education of the parents: overall and generally speaking, ethnic minority pupils have parents with a low level of education, while white pupils have parents with a higher level of education. In addition, in secondary education in Amsterdam, white pupils usually go to schools that prepare for university education or higher vocational education, while black pupils generally attend schools that focus on lower or medium levels of vocational education. Another trend is that new primary schools established by members of the Muslim minority in the Netherlands are almost fully 'black' by definition, while the population of schools established on a specific educational basis (Montessori schools, Jenaplan schools, Free schools etc.) or on a denominational basis (Protestant or Roman Catholic) is 'white' in majority.

The topic of segregation in education is a hotly debated subject in the Netherlands. The current Minister of Education is of the view that Dutch society cannot do anything but accept this type of segregation in education. In a recent newspaper interview the Minister said that

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<sup>27</sup> See the Dutch daily newspaper *NRC Handelsblad* of 26 August 2003, reporting about the results of research undertaken by the SCO Kohnstamm Institute by order of the Municipality of Amsterdam.



she resigns herself to the existence of black and white schools and that she is not willing to pursue an active policy to combat this trend. She argued that she fully supports Article 23 of the Netherlands Constitution which lays down the freedom of parents to choose the kind and type of education for their children. She also said that she lacks the tools to pursue an anti-segregation policy. Instead, she wants to focus on making up the educational arrears of both white and black pupils, although she has to face a cut in the budget of approximately € 100 million for expenses in this area.<sup>28</sup>

The NJCM is alarmed about this passive and resigned attitude of the Minister of Education. It considers such an attitude to be incompatible with the obligations of the Netherlands' Government under several articles of the CERD, such as Article 2(e), the obligation to encourage means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division. In addition, under Article 3 a State Party undertakes to prevent, prohibit and eradicate all practices of racial segregation. Finally, under Article 7 the Netherlands Government is dutybound to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices and to promote understanding, tolerance and friendship among racial or ethnic groups.<sup>29</sup>

The NJCM is of the opinion that an active public campaign and policy is needed, initiated by the central educational authorities, to inform parents and teachers about the consequences the existence of the present multicultural society has for the composition of the school population and for the policy pursued by the local (educational) authorities. Such a policy should discourage mono-ethnic schools, promote mixed schools and strengthen the importance of intercultural education and informal contacts vital for the development of a child's personality and its role in society. In the opinion of the NJCM, the Minister should not hide behind the freedom of education of the parents to justify a passive governmental attitude concerning an issue which is of crucial importance for the future of Western European multicultural societies.

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<sup>28</sup> *NRC Handelsblad* of 28 October 2003.

<sup>29</sup> See also in this respect Article 29 (1)(d) of the UN Convention on the Rights of the Child and General Comment no. 1 adopted by the UN Committee on the Rights of the Child concerning the purposes of education.

## **IV. Summary of remarks and questions**

### *Article 2 (2): special and concrete measures for women*

#### **Women**

##### General remarks

The NJCM remarks that the Government report fails to provide gender-specific information.

##### Participation of minorities in local government elections ( § 14 – 19)

The NJCM wishes to draw the attention of the Committee to the situation of ethnic minority women and the field of political participation.

##### Changes brought about by the new Aliens Act (e) (§ 20 – 32)

The NJCM is concerned about the effects on women of the restricted aliens policy pursued by the Netherlands' Government.

##### The right to work (§ 89 – 166)

The NJCM is concerned about the labour market position of ethnic minority women.

##### The right to education and training (§ 191)

The NJCM is concerned about the level of participation of ethnic minority girls in education.

### *Article 4*

#### Registration of cases against Racist Political Parties

The NJCM finds that the Government report does not deal with political parties at all. Further, the NJCM wonders why there are only figures available concerning cases of alleged discrimination that are dealt with under criminal law and no figures concerning cases that are dealt with in another way.

#### Funding for Racist Political Parties

The NJCM asks the Netherlands' Government to withdraw its funding for racist political parties when the leaders of such parties are convicted of racist offences.

### *Article 5 (b): the right to security*

### Restrictive immigration policy (§ 20 – 29)

The NJCM is concerned about the effects of the aliens policy of the Netherlands' Government now that it has become more restrictive since the entry into force of the new Aliens Act.

### Family reunification

#### § 22

The NJCM wishes to draw the attention of the Committee to the fact that the Government report states that all asylum seekers who are granted a temporary or a permanent residence permit are entitled to family reunification, irrespective of the grounds on which the permit was granted, but that a large group of aliens who already were in the possession of a provisional residence permit under the old Aliens Act, a permit that was changed into a temporary (refugee) permit when the new Aliens Act came into force, is placed in a disadvantaged position.

#### § 30-32

According to article 29 of the new Aliens Act it is possible to admit family members of a refugee with the same nationality as this refugee without his having to need the requirement of a sufficient income as long as the request for family reunification is filed within a period of three months after the refugee got a status. In the opinion of the NJCM this period is too short, specially since the Netherlands' Government does not inform the refugee about the consequences of not filing such a request within a period of three months. According to recent Dutch case law, invoking article 8 of the European Convention on Human Rights does not always change this situation.

### ***Article 5 (e) (i): the right to work***

### Employment of Minorities (Promotion) Act (§ 90-93)

The NJCM wonders how the Netherlands' Government expects to promote equal participation by ethnic minorities in the labour market now that one of its major instruments of policy, the Employment of Minorities (Promotion) Act, will no longer be in force as of 1 January 2004.

### Action Plan 2002-2003 (§ 97-118)

The NJCM wishes to draw the attention of the Committee to the fact that in spite of the success of special measures as described by the Government, unemployment rates among ethnic minorities are still three times as high as unemployment rates for people not belonging to ethnic minorities.

### Young people (§ 109-111)

The NJCM wonders whether enough is done to combat high unemployment rates amongst young people belonging to ethnic minorities.

### Refugees (§ 116) and other aliens

What measures does the Netherlands' Government intend to take to remove obstacles for refugees and (other) aliens to get access to the labour market?

### Discrimination (§ 119-156)

The NJCM would like to know whether the Netherlands' Government will continue to pay special attention to possible forms of discrimination in the labour market.

### Dismissal

A rise in employment is not enough to enhance the participation of ethnic minorities in the labour market. The prevention of (directly or indirectly discriminatory) dismissal is equally important. The NJCM wonders why in its most recent report the Government refrained from referring to this matter.

### ***Article 5 (e) (iii): the right to housing***

#### Refugees and asylum seekers with residence permits (§ 174-176)

The NJCM wishes to note that not all asylum seekers with residence permits can be brought under the targets for municipalities set by the central Government with regard to the amount of refugees to be housed within the municipality in question. Especially those aliens who did not have the right to central reception facilities during their asylum procedure but received a residence permit afterwards have serious problems to find housing.

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