

STATEMENT before the COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

---

By: The Dutch Section of the International Commission of Jurists (NJCM)

Regarding: Joint Parallel NGO Report

Date: 29 May 2017

Distinguished Committee Members,

This statement is delivered by the International Commission of Jurists on behalf of the NJCM, the Dutch section of the ICJ, and 18 other Dutch NGOs that submitted a joint Parallel Report to this Committee in October 2016, and an Addendum last month. Both reports should be read in conjunction with each other, and are meant to inform this session.

As the reports evidence, there are still many ICESCR-related concerns in the Netherlands, both in the European Part and in the Caribbean Part of the Kingdom. Since we do not wish to repeat the content of the reports, we draw the Committee's attention to some pressing issues.

### GENERAL STRUCTURAL ISSUES

First, we highlight some serious *structural* issues, in particular the lack of direct applicability and justiciability of ESCR in Dutch courts. The Dutch Government maintains **the untenable view that covenant rights are effectively non justiciable**. The main problem is that Courts echo the Government's view, leaving individuals in a Catch-22: which body will first advance an approach that accords with the Netherlands' obligations under the Covenant as interpreted by this Committee and the majority of international authorities on ESC rights?

In paragraph 3 of its Response to the List of Issues the State appears to confuse 'direct applicability' with using economic and social rights as interpretative tools. This last method of legal interpretation cannot make up for the lack of enforceability of the Covenant. We underscore that the Covenant contains binding obligations and courses of action, and the Government should recognize and promote the relevant legal development of the Covenant's rights in past decades.

Before addressing a number of specific issues of ICESCR protection in the Kingdom of the Netherlands, we would like to highlight another structural issue that continues to be highly problematic in the Netherlands, namely the **absence of any formal human rights education**

**in the Dutch school curriculum.** This issue has been repeatedly stressed by civil society, to this Committee and in the UPR. We underline that human rights education is now more important than ever, since Dutch society faces polarization amongst different groups, including in educational facilities. We cannot emphasize enough that human rights education should be the *primary* basis for civic education. When children and youngsters are unaware of their human rights and those of others, they become grown-ups who lack basic knowledge about the importance of human rights for our society, their history, and why these universal rights are still important for us today, both in the Netherlands and in the world around us.

\*\*\*\*\*

### SPECIFIC ISSUES

\*\*\*\*\*

In our remaining time, we kindly ask your attention for **three** current pressing issues.

Firstly, we express our concern about the **continuing violations of the rights of persons from groups at heightened risk, particularly migrants**, who in some instances do not even enjoy the most basic level of protection of their rights.

In 2010, the joint Parallel Report to this Committee already described the dire situation of undocumented migrants in the Netherlands. Since then, not much has changed, despite extensive debate in Dutch society, a strong Concluding Observation by this Committee in 2010, and three letters on this issue by Special Rapporteurs.<sup>1</sup> The Dutch government persistently ignores calls for better protection of the members of this group, and even refuses to implement a decision of the European Committee for Social Rights, because it says it is not binding. Although several large municipalities defy the Government's official policy by providing a measure of shelter – so-called bed-bath-bread measures – and risk fines as a result, in general the basic subsistence rights of this group remain poorly protected – in direct violation of CESCR's General Comment 20.

Secondly, **persons from the Caribbean part of the Netherlands still experience obstacles in equal enjoyment of rights**. Unequal protection of rights for people living in the Caribbean part of the Kingdom of the Netherlands has resulted from recent constitutional changes, which turned the islands of Bonaire, St Eustasius and Saba into 'municipalities' of the European part of the Kingdom. Our report and addendum raise several issues of concern in this respect,

---

<sup>1</sup> Communication UA NLD 2/2014, The Netherlands, (14 December 2014)  
[https://spdb.ohchr.org/hrdb/29th/public\\_-\\_UA\\_Netherlands\\_12.12.14\\_%281.2014%29.pdf](https://spdb.ohchr.org/hrdb/29th/public_-_UA_Netherlands_12.12.14_%281.2014%29.pdf)

including the difficulties with obtaining an adequate standard of living in the Caribbean Netherlands, attempts to curb migration from the islands to the European part because of socio-economic differences, and the lack of opportunity to use and promote the local minority language, culture and history through education.

Finally, we would like to raise some pressing concerns in the areas of **natural resources extraction and business and human rights**, topics which UN human rights bodies increasingly engage with.

One of the most pressing issues that currently attracts much attention, but which has been a problem since 2012, is the state of affairs regarding gas extraction in the northern province of Groningen. In this province, the inhabitants are severely shaken up, literally and figuratively, by many regular earthquakes due to prolonged gas extraction in their region. As a result, the inhabitants now face severe and wide-spread damage to housing, forced evictions due to safety concerns, social unrest, and health problems. In part, these problems are caused by the highly unsatisfactory manner in which the government and the gas extraction company NAM (Shell and Exxon Mobile) have been addressing the situation. More information can be found in our report and the addendum, and can be shared with you by NGO representatives on Thursday. So far, in and out of court, the issue is formally recognized as a human rights concern. Yet, for aforementioned reasons, there is extremely little attention for the role of ESCR from the Dutch government and the courts. We hope that the Committee will press the Government on these issues and clarify how ESCR and other important standards in the area of the extractive industries and business and human rights apply. This will surely assist the national debates on these matters.

\*\*\*\*\*

Distinguished Chair and members of the Committee, we kindly thank you for your attention.