Addendum to the Joint Parallel Report to the Sixth Periodic Report of the Netherlands on the International Covenant on Economic, Social and Cultural Rights (29 August 2016) and reaction to the Replies of the Netherlands to the list of issues (E/C.12/NLD/Q/6/Add.1)

On behalf of the Dutch section of the International Commission of Jurists (NJCM) and supporting NGOs and civil society actors.

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A. INTRODUCTION

Main Report + Present Addendum as Basis for Review
On 29 August 2016, twenty Dutch civil society organizations submitted their 'Joint Parallel Report' to this Committee with the purpose of providing a full account of the specific problems regarding the implementation of the ICESCR in the Netherlands.
This present 'Addendum' is an integral part of this main 'Joint Parallel Report', and adds (i) further relevant updates; (ii) responses to unresolved questions of the Pre-Sessional Working Group to NGOs representatives; (iii) reactions to matters in the List of Issues.

B. GENERAL REMARKS AND UPDATES

1. Human Rights Law in the 'National Voluntary Review' of SDGs
As a further preliminary remark: the Dutch State is currently drafting its first 'National Voluntary Review' of the Sustainable Development Goals to the UN, in line with relevant review mechanisms set in place to this effect.[1] The Netherlands commits to reporting to the UN every five years, while nationally reporting on the SDGs to Parliament every year. We applaud this active reporting approach, but also wish to note the underexplored opportunities to fully align important UN reporting procedures and outcomes.
In fact, the 2030 SDG Agenda explicitly affirms that the 17 SDGs are *grounded in, informed and guided by international human rights law.*[2] We therefore consider it of the utmost importance that all SDG reporting recognizes and reflects these links, inter alia, by making all SDG reporting efforts 'Human-Rights Based'. There is already useful guidance available from the Office of the High Commissioner for Human Rights, but there is also great opportunity to ensure complementary between SDG implementation/reporting and Treaty Body review, and/or the Universal Period Review.[3]
We urge the Dutch government to directly engage with relevant ICESCR-standards, other relevant human rights treaties/instruments, and the recommendations/outcomes of various human rights bodies in their SDG reporting. This will give full expression to the ambitions of the 2030 Agenda, and to the implementation of the ICESCR.

2. Ratification process for OP-ICESCR has commenced
On 29 December 2016 – after further pressure from Parliament – the Minister of Foreign Affairs has finally proceeded with the ratification of OP-ICESCR by submitting the Protocol for advice to the Council of State, as a first step**.** Naturally, we celebrate this moment. We hope that, now, the ratification of the OP-ICESCR can proceed without further delays.
At the same time, we also regrettably have to inform this Committee that the Minister decided to postpone the ratification of the OP-CRC and OP-CPRD. Submitting NGOs urge that the Dutch Government will proceed on the ratification of these instruments swiftly, and without further delay.[4]

[1] IISD, '24 Governments Volunteer for 2017 SDG Reviews', http://sdg.iisd.org/news/24-governments-volunteer-for-2017-sdg-reviews/
[2] (see para 10 of United Nations General Assembly Resolution 70/1, 'Transforming our World').
[3] OHCHR, Sustainable Development Goals and Human Rights, http://www.ohchr.org/EN/Issues/MDG/Pages/The2030Agenda.aspx; OHCHR, Summary Table on the linkages between SDGS and International Human Rights Instruments, http://www.ohchr.org/Documents/Issues/MDGs/Post2015/SDG_HR_Table.pdf
[4] [Ratification of OP-ICESCR near?], NJCM 16 January 2017, https://njcm.nl/actueel/ratificatie-ivescr-klachtrechtprotocol-nabij/.

C. NGO's REACTION TO REPLY TO THE LIST OF ISSUES

Preliminary remarks:
Although the Dutch Government has comprehensively responded to the LOI, the submitting NGOs note with some regret that the Government, in various responses to the LOI, indicates that some studies have been done, but the response does not elaborate on their outcomes and/or how this particular data has inspired particular responses in light of ICESCR (see e.g § 18, 30, 31).

Specific remarks:

LOI Question 1. In light of articles 94 and 19-22 of the 2008 Constitution of the Kingdom of the Netherlands which mention economic, social and cultural matters in terms of policy guidelines and not rights of individuals and groups, please provide information on the legal enforceability of the Covenant rights within the domestic legal order, in particular if the courts are empowered to decide whether the relevant domestic legislation is in conformity with the Covenant standards. In this context, please indicate also whether a holder of rights enshrined in the Covenant can assert them before the courts and obtain redress, and if so, provide examples of relevant case law.
The submitting parties are disappointed by the response of the State with regard to the legal enforceability of the Covenant rights within the domestic legal order. It appears as if the State confuses 'direct applicability'/enforceability with using eco-soc rights as interpretative tools. This last method of legal interpretation cannot make up for the lack of enforceability of the Convenant.
The lack of direct applicability of the ICESCR in the Dutch Courts has been addressed in § 1.A of the Joint Parallel Report. In its response to the List of Issues, the State, again, simply maintains that the Covenant's provisions generally do not qualify as 'binding on all persons'. And whilst the government ultimately leaves it up to the Dutch Courts[5], the Courts generally turn to prior government positions and case-law for guidance on the extent of justiciability of ESCR under the Dutch constitution.
The position of the Dutch government on ESCR has been explicitly denounced by three UN Special Rapporteurs, who have stated that the Dutch government takes an unjustifiable narrow position on various questions of modern international socio-economic human rights law.[6] Furthermore, the CESCR's Concluding Observations of 2006[7] and 2010,[8] along with various other international human rights monitoring bodies,[9] have already twice reprimanded the Netherlands for barring persons on Dutch territory to call upon (the IC)ESCR to protect their socio-economic human rights in Dutch Courts.

3. Referring to paragraph 9 of the State report, please provide examples of how the guidance on economic and social rights have been used in legislative and policy-making processes in the Netherlands.
The response by the State to this question is a decidedly weak one. First, no concrete example is given in this paragraph, despite being asked. The State does not clarify *how* this guidance document works in

[5] Replies by the Government of the Netherlands to the list of issues, UN Doc. E/C.12/NLD/Q/4-5/Add (14 October 2010), par. 9-12.
[6] Letter by three UN Special Rapporteurs (SR on Extreme Poverty; SR on Migration; SR on Housing) to the Dutch Government, ref.no. NLD 1/2016 (25 February 2016), p. 16.
[7] Committee on Economic, Social and Cultural Rights, Concluding Observations of the Committee on Economic, Social and Cultural Rights (The Netherlands), UN Doc. E/C.12/NLD/CO/3 (Geneva: Thirty-seventh session of 6 – 24th November 2006), par. 11 and 19. (hereafter: CESCR Concluding Observations 2006)
[8] CESCR Concluding Observations 2006, par. 6.
[9] Report by the Commissioner for Human Rights Mr T. Hammarberg on his visit to the Netherlands 21 – 25 September 2008, CommDH (2009), (Strasbourg: 11th March, 2009), pp. 7-8, §13 and §14; Committee on the Rights of the Child, Concluding Observations of the Committee on the Rights of the Child: The Kingdom of the Netherlands, UN Doc. CRC/C/NLD/CO/3, (30th January 2009); Committee on the Elimination of Discrimination Against Women, Concluding Observations of the Committee on Elimination of Discrimination Against Women (The Netherlands), CEDAW/C/NLD/CO/4 (Geneva: Thirty-seventh session of 15th January - 2nd February 2007), p. 3, §12.

practice (or not), and/or how, in specific instances, it has influenced law or policy-making (or not). How does the ICESCR, in various instances, inspire particular policy choices, and/or the allocation of resources, or the phrasing of legislation?
Rather, the Government states fairly generally that the document helps civil servants to identify 'whether these fundamental rights *may* or *should be* taken into account, and if so, *to what extent*'. In fact, this document only offers very general guidance, and its practical effect is not clear. Although it is integrated in the 'Integral Assessment Framework', assessments of this kind are of an entirely internal nature. On this point, the CEDAW-Committee recently recommended the Dutch Government 'to ensure *accessibility* to human rights impact assessment results and *transparency* in compliance checks'.[10]

5. Please provide information on the measures taken by the Netherlands to overcome difficulties relating to the enforcement of the obligation of provision of reasonable accommodation and accessibility for persons with disabilities, as stipulated in the Appropriate Education Act and other regulations.
The submitting parties are disappointed about the evasive answer the State has been giving with regard to the high number of disabled children not attending school and/or have been exempted of the duty to go to school because of budget cuts and segregated educational laws. The numbers of out-of-school children are increasing despite the State's efforts.[11] The submitting parties would like to recall that exclusion of disabled children from mainstream education is discriminatory, see General Comment no 4 on education by the Committee on the Rights of Persons with Disabilities.[12] The Netherlands has ratified the CRPD on July 2016 and is under the obligation to ensure an inclusive education system.[13] Anti-discrimination case law does not offer sufficient protection in a segregated educational system: in a recent decision of the Netherlands Institute of Human Rights with regard to access to mainstream education (access to a mainstream primary school by a boy with down syndrome), the Institute concluded that it was up to the State to make the educational system accessible to children with handicaps.[14] It therefore is not up to the Dutch Inspectorate of Education to ensure access to education for disabled children as the State pretends in its answer in § 8. In fact, according to research reports of the Children's Ombudsman, there are insufficient mechanisms to assure access to education by disabled children, that includes the limited competence of the Inspectorate of Education.[15]

6. Please provide information on the measures taken by the Netherlands to ensure that asylum-seekers can have prompt access to economic and social entitlements, such as adequate housing and access to healthcare.
The services the State mentions in its answer in § 9 are available only upon first application of asylum in the Netherlands. In case of a repeated application for asylum no services at all are provided (no housing, no benefits, no health insurance), except in cases where the subsequent application is successful. Social services are not provided in other cases i.e. aliens who are supposed to come from a safe country**.**
It must also be noted that the health care insurance for asylum seekers and rejected asylum seekers staying in freedom restricted locations, the 'Regeling zorg asielzoekes' (Rza) does not cover the same care as the basic health care insurance for Dutch Nationals. The Rza excludes some specific treatments which are not considered to be essential for people not (yet) admitted to the Netherlands. On that

[10] Concluding Observations, 18 November 2016, CEDAW/C/NLD/C0/6, § 16 c and again in § 46 a with regard to comprehensive and transparent assessments of the impact of arms exports on women's rights before approving export licenses.
[11] AD, 28 March 2017, 5.500 kinderen met 'rugzakje' gaan niet naar school [5.500 children with a personal disability budget are not attending school (national newspaper article). Only in Dutch: http://www.ad.nl/nieuws/5-500-kinderen-met-rugzakje-gaan-niet-naar-school~a1c402d4/
[12] CRPD, General Comment no. 4 on education (2016), CRPD/C/CG/4, 2 September 2016.
[13] Article 24 CRPD, the right to education.
[14] Decision no. 2017-41, 4 April 2017. The Netherlands Institute of Human Rights is authorized to give non-binding decisions with regard to several Equal Treatment Acts.
[15] Kinderombudsman, Werkt passend onderwijs? Stand van zaken een jaar na dato, KOM014/2015, 8 September 2015.

ground a four year old Afghan girl who was born deaf was denied a cochlear implant which could have enabled her to hear at a rate comparable to children with normal hearing.[16]
Contrary to the government's claim in its answer in § 9 access to the freedom restrictive accommodation (Vbl) - and therefore shelter and health insurance - is limited to those asylum seekers who explicitly expressed the desire to leave and have made demonstrable efforts to this end. According to the secretary of state only 70 single persons (persons without minor children) reside in the VBL as of 28 February 2017.[17] Families reside in freedom restricted family centres. All others are left to fend for themselves on the street. This issue will be addressed in more detail with regard to question 24 of your Committee.
With regard to the answer provided by the State in § 11, the NGO's working in the field who refer undocumented migrants and rejected asylum seekers to regular medical practitioners are very critical about the *effective* access to *necessary* health care to undocumented migrants, due to various reasons (see also parallel report, p. 38): undocumented migrants often lack information on their right to health care, and many health care professionals and administrators do not know of the existence of article 122a Zwv / the 'ZiN regulation' (factually provided for by CAK) of reimbursement of services rendered the State is referring to in its answers. Additionally the 'ZiN-regulation' is connected to the basic health care package, resulting in lack of coverage of dental care for adults (older than 18years), physiotherapy, abortion services, contraception and some medicines, amongst others.
As it is left to health professionals to decide whether or not treatment is ´necessary´, and for not being adequately informed on possibilities of financial reimbursements, room is left for refusals. In practice, access to mental health services can be a problem when someone lacks a stable residency. Treatment is also often difficult to obtain because of the mandatory 5-euro charge for medicines. As a result some patients in need of frequent treatments and medications (chronically ill, psychiatric problems) have severe difficulties to obtain all medicines needed. Many of these difficulties have been documented by the National Ombudsman in 2013.[18]

7. Please provide information on any assessment of the impact of the implementation of the 2013-2016 Equal Opportunities Letter mentioned in para. 35 of the State report, including on addressing stereotypes, on improving the availability of affordable child care services, on advancing women's representation in decision-making positions, and on promoting the reconciliation of work and family life in the Netherlands.
In § 15 the State answers that it has invested in child care enabling parents to combine work and care. The submitting parties would like to inform the Committee that those investments only partially compensate previous cuts in the budget for child care. Taken in combination, the increases in 214, 2016 and 2017 amount to about one third of the previous budget cuts. These budget cuts resulted in families not being able to afford child care, especially the lower income families. In this regard we would like to draw the Committee's attention to the recent Concluding Observations o and f the CEDAW Committee to "create more opportunities for women to gain access to full-time employment by addressing the root causes regarding the drop in the use of childcare services" and to "increase incentive for men to use their right to parental leave as well as develop programmes which encourage the sharing of parental responsibilities between women and men."[19]

8. Please provide information on the impact of measures taken by the Netherlands under the 2013 Integration Agenda to combat discrimination against ethnic minorities in the labour market.

[16] Only in Dutch: https://www.nrc.nl/nieuws/2016/02/02/gaat-de-staat-voor-kalma-betalen-1586360-a511450, verdict immediate measure district court of 1 February 2016, AWB 15/22338.
[17] Letter of 28 March 2017 by the secretary of state of the Justice department to the council of state answering questions of the council of state with regard to access of vbl by undocumented migrants.
[18] *Medische zorg vreemdelingen. Over toegang en continuïteit van medische zorg voor asielzoekers en uitgeprocedeerde asielzoeker'*, 3 oktober 2013, 2013/125. [*Medical care for aliens. About access and continuity of medical care for asylum seekers and rejected asylum seekers (2013)*].
[19] CEDAW Committee, 18 November 2016, CEDAW/C/NLD/CO/6, § 36 a, and b.

The submitting parties express their dissatisfaction with the response of the State party in relation to discrimination against ethnic minorities in the labour market. In § 17 of its response to the List of Issues, the State claims that "discrimination is to a large extent a subjective perception that is difficult to measure using objective indicators". This disregards the fact that structural difference in unemployment rates between citizens of ethnic minority groups of non-Western origin and citizens of Dutch ethnic origin persist in the Netherlands[20], which is partially caused by discrimination on the labour market.[21]
Whilst the State confirms that "it is essential for the government to adopt a clearly visible stance and set certain standards", it does not specify any targets or concrete policies it may pursue to improve the situation. The vague and evasive position of the State is particularly problematic in relation to intersectional discrimination. There is very limited data available on intersectional discrimination experienced on the labour market for different groups, which affects policy making in this area. The government has even deliberately stopped measures and policies to assess and address such types of discrimination. The National Human Rights Institute recently carried out an extensive literature review of various ways of intersectional discrimination in labour participation in particular, and the insights in this study should inform further understanding and tackling of intersectional discrimination.[22]

10. Please provide an assessment of the impact of the measures taken to promote persons with disabilities' integration in the labour market, as described in paragraphs 30 and 31 of the State report.

People who are employed in these reserved jobs are hired on a temporary basis and the majority of them lose their job once their contract ends. Public Employment service UWV holds a registration of all reserved jobs and how many people with disabilities are hired on that basis.[23] In the third quarter of 2016 it turns out that 6045 extra people with a disability found a reserved job, but 4089 young people with a disability lost their reserved job. This tendency of offering reserved jobs but at the same time discontinuing the contract with those that already are in such a job, is especially clear in the larger cites. Two explanations are suggested for this phenomenon.[24] It may be that the young people who are employed turn out not to be qualified enough for the work. It may also be that employers seek maximum profit on repeating wage subsidies by firing and hiring for the same job."

11. Please inform the Committee of any regulatory or policy follow-up to the findings of the investigation undertaken by the Netherlands Institute for Human Rights revealing patterns of exploitation and abuse of migrant workers. Please also clarify as to whether the adjustment to the relevant legislation and regulations mentioned in para. 57 of the State report has eliminated the discrimination against domestic workers in their exercise of the right to just and favourable conditions of work and the right to social security.

The submitting parties deplore that no changes in the legal position of domestic workers with regard to rights and benefits have been implemented by the State. The situation as addressed in the Joint Parallel Report in pages 24-25 remains the same. Domestic workers who are part-time employed by private households are still denied most of the social rights that all other workers enjoy, such as social security (see also question 13 of the LOI).
In § 22 of its response to point 11 of the List of Issues the State party writes that: "The Inspectorate of the Ministry of Social Affairs and Employment (SZW Inspectorate) may launch an investigation if it

[20] See Joint Parallel Report to the Sixth Periodic Report of the Netherlands on the International Covenant on Economic, Social and Cultural Rights (E/C.12/NLD/6) of 29 August 2016, comment to Article 6, § B
[21] Ibid.
[22] College voor de Rechten van de Mens (Netherlands Institute for Human Rights, 'Role of Stereotypes in Entering the Labour Market', July 2013, at: https://www.mensenrechten.nl/publicaties/detail/18402.
[23] Factsheet banenafspraak arbeidsmarktregio, February 2017: www.uwv.nl/overuwv/kennis-cijfers-en-onderzoek/statistischeiinformatie/factsheet-banenafspraak-arbeidsregio-stand-van-zaken-derde-kwartaal-2016.aspx
[24] http://www.binnenlandsbestuur.nl/sociaal/nieuws/plaatsing-arbeidsbeperkten-vaak-niet-duurzaam.9558348.lynkx?utm_source=NB_BB_bb20170221_dagelijks_dinsdag&utm_medium=email&utm_term=&utm_content=&utm_campaign=21-02-2017&mt=Wgoh553Zsuap8yGZOGrb+Q&vk=f17W0JP2dJnbybrtiBvkOg&pub=1002

suspects, for instance, that employees are working unduly long hours or being grossly underpaid." The submitting parties would like to reiterate that the labour inspection not only monitors compliance with the law concerning working conditions, but also conducts migration and fraud controls.[25] These different aims may lead to reluctance among workers to report problems, which obstructs the identification of unacceptable working conditions and victims of labour exploitation.[26] A recent study shows that confusing immigration policing facets and labour rights facets of inspections is one of the largest barriers to identifying abuse.[27] Apart from that, the Dutch government does not specify how it may better regulate recruitment agencies. By permitting the recruitment agencies to regulate themselves (with detrimental results[28]), the government disregards its responsibility to ensure that migrant workers enjoy treatment that is no less favourable than that of national workers in relation to remuneration and conditions of work.[29]

The number of domestic workers without social protection has increased due to the extended use of the sham construction private companies employ to avoid treating domestic workers as employees. These companies operate under the pre-text of being a mediator of services while at the same time fixing rates and paying salaries. Under Dutch law and jurisprudence these companies ought to be considered as employer of those domestic workers (and the Services at Home Scheme is not applicable for others than private households). In condoning this sham construction the State is in fact complicit as it is under the duty to assure payment of social securities and provide protection of worker's rights.

14. Please indicate to what extent the measures described in paragraphs 61 and 62 of the State report address the issue of non-uptake of social assistance by vulnerable groups, including because of the lack of awareness or clarity of qualifying conditions and affordability of contributions. Please also provide information on the corrective measures taken to address the difficulties encountered by municipalities in the delivery of social services devolved to them, such as those under the Youth Act and the Social Support Act, including due to the lack of expertise and resources.

The submitting parties are happy that the government acknowledges the problems when it comes to access of services by certain groups, especially the elderly. The NGO's working in the field nevertheless are unaware of any effective progress with regard to the problems of access to social care by the said groups.

15. Please provide information on any assessment made of the impact of changes to the Social Benefit Act and other acts such as the Disability Assistance Act for Disabled Young Persons, in particular as to whether qualifying criteria are reasonable and do not exclude individuals and households who are in need of assistance in the Netherlands.

The submitting parties are disappointed that the State does not respond to the questions whether qualifying criteria are reasonable. The discriminatory criteria resulting in destitution have been discussed extensively in the Joint Parallel Report, pages 27-29. Research commissioned by the

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[25] See Joint Parallel Report to the Sixth Periodic Report of the Netherlands on the International Covenant on Economic, Social and Cultural Rights (E/C.12/NLD/6) of 29 August 2016, comment to Article 7, § C.

[26] K. McGauran, E. de Haan, F. Scheele & F. Winsemius, "Profiting from dependency: Working conditions of Polish migrant workers in the Netherlands and the role of recruitment agencies", FairWork and Somo (June, 2016), available at: https://www.somo.nl/polish-migrant-workers-still-frequently-face-abuse-netherlands/, p. 59.

[27] FLEX, Fair Work & Adpare, "Pro-Act Working Paper: Pilot Strategies for Pro-Active Identification and Support to Victims of Trafficking for Labour Exploitation" (July 2015) available at: http://www.labourexploitation.org/publications/pro-act-working-paper-pilotstrategies-pro-active-identification-and-support-victims.

[28] E. de Haan, "Polish migrant workers still frequently face abuse in the Netherlands", SOMO (28 June 2016) available at: https://www.somo.nl/polish-migrant-workers-still-frequently-face-abuse-netherlands/; K. McGauran, E.de Haan, F. Scheele & F. Winsemius, "Profiting from dependency: Working conditions of Polish migrant workers in the Netherlands and the role of recruitment agencies", FairWork and Somo (June, 2016), available at: https://www.somo.nl/polish-migrant-workers-still-frequently-face-abuse-netherlands/, p. 37.

[29] See CESCR, General Comment No. 23 on the right to just and favourable conditions of work, UN Doc E/C.12/GC/23 (Geneva: 27th April 2016) § 5, 59I and § 47(e).

municipality of Amsterdam shows that 17 % of Amsterdam households struggle to survive on social benefits, and 8 % of those households are unable to cover their most basic needs.[30] The Act also excludes children as benefactors in their own right resulting in ignoring children's rights to adequate living standard.[31] According to case law children's rights are only to be taken into account if they have suffered irreparable harm.[32]

16. Please provide information on the obstacles to the introduction of a minimum level of social security that enables an adequate standard of living in the Caribbean Netherlands.

The statutory minimum wage (and the reference point of subsistence) in the Caribbean Netherlands is, despite the fact that it has risen in recent years, not enough to enable an adequate standard of living. In order to make ends meet, a person who earns the minimum wage must have multiple jobs and/or receive help from family or the community.[33] The social assistance benefit is linked to the minimum wage in such a way that it remains rewarding to work: if the minimum wage is too low to enable an adequate standard of living, the level of social assistance (which is below the minimum wage) is also too low to enable an adequate standard of living.

The minimum wage level is determined by the level of economic growth: the economy must be able to support the minimum wage. The opportunities for economic growth in the Caribbean Netherlands are not great. The submitting parties welcome that the Dutch government has announced a number of measures aimed at making better use of the opportunities for economic growth. For instance, together with the island administrations the Dutch government is in the process of identifying the main stumbling blocks for companies, such as high transportation costs and low availability of public facilities, and it has proposed policies to overcome some issues, such as adjusting fiscal regulations. Nonetheless, it may take a long time before these measures actually lead to economic growth, and currently the situation persists that the minimum income and the social security allowance are insufficient to enable an adequate standard of living. Therefore, additional measures are required to aid Dutch Caribbean nationals who need to get by from a social security allowance or the minimum wage, who are unable to have multiple jobs, or who cannot rely on their family. This risk of falling into poverty is greatest among the elderly (mostly 75 years and over) who have to get by from their pension, single mothers who do not receive (sufficient) contribution from the father of the child, and persons who are unable to work due to a disability.[34]

19. Please indicate to what extent the merging of centres into joint Domestic Violence Support Centres and other measures taken enable the Netherlands to attend to the increasing number of victims reporting domestic violence and to make adequate services promptly accessible. Moreover, please indicate the measures in place to ensure protection of women that are particularly vulnerable to domestic violence, including those who depend on their partners economically or for their residency permit.

The submitting parties are disappointed that the State limits its response to the question of adequate and prompt help for victims of domestic violence to the statutory monitoring of the Social Support Act which is the responsibility of the municipalities. During the past two evaluations it has emerged that more than half of the organisations involved do not function adequately.[35] Although there are improvements, those are not fundamental enough and lack a sense of urgency as implementation is

[30] Gevolgen kostendelersnorm in Amsterdam, Regioplan, eindrapport April 2015, Only in Dutch: http://www.parool.nl/amsterdam/onderzoek-gemeente-woningdeler-in-bijstand-houdt-te-weinig-over~a4407914/

[31] Article 13 Social Benefit Act (Participatiewet).

[32] Centrale Raad van Beroep, interim measure, 1 September 2016, ECLI:NL:CRVB:3279 and 3287.

[33] See 'Report on Poverty in the Caribbean Netherlands, a survey' (May 2012), Attachment to Letter to Parliament 35000 IV no. 76 of 22 June 2012, available at: https://www.rijksoverheid.nl/documenten/rapporten/2012/06/22/armoede-in-caribisch-nederland-een-verkenning (only available in Dutch) pp. 4-9.

[34] Ibid, pp. 11-14.

[35] https://www.rijksoverheid.nl/documenten/kamerstukken/2017/04/21/kamerbrief-over-rapporten-van-de-inspectie-jeugdzorg-toezicht-sociaal-domein

slow. The same can be said of the implementation of the 'Act Mandatory Reporting of Domestic Violence and Child Abuse'
('Wet verplichte meldcode huiselijk geweld en kindermishandeling'). In the new structure there are still too many organisations who lack (knowledge of) an adequate response to domestic violence and do not train their staff with regard to the mandatory reporting process. Domestic violence is still underreported. There are waiting lists and the cooperation with local organizations impedes the prompt support of victims and their families.
With regard to access of shelter, dedicated shelters for victims of domestic violence, and other forms of shelter, the problems are rampant. There is no transparent decision making process. Many women are turned away without a proper decision and therefore legal protection. Victims of domestic violence, and their children, are often placed in shelters with mostly addicted, men. In this context we would like to draw the Committee's attention to the recent Concluding Observations of the CEDAW Committee with regard to domestic violence and accessibility of legal aid,[36] as well as the Istanbul Convention of the Council of Europe to which the Netherlands is a party.
The State's reply in § 45 with regard to domestic violence and independent residence permits is not matched by the reality of the victims as the criteria to be able to obtain an independent residence permit are very strict. Obstacles are that written declarations have to be obtained from police and social worker or counsellor. A lot of victims find it difficult to involve the police (in addition to the police to not respond accurately to charges of domestic violence, see parallel report p. 30). Victims of domestic violence who reside illegally in the Netherlands do not obtain an independent residence permit except in case they face threats in their country of origin.
What is missing are data and numbers that show that a independent residence permit can effectively be obtained. However, there are no data of number of applications lodged and residence permits granted to this group of women. And also no data on how many women were able to access safe and dedicated shelters.

21. Please provide information how the current law and policies on licensed prostitution, as well as the proposed Bill before the Senate, can prevent and detect clandestine operations and trafficking. Please also provide information on measures to ensure that trafficking victims are informed about the B-8 permit granting temporary residency, and the services provided to the non-EU victims during the 3-month reflection period.
In § 50 the State responds to questions about the 'Regulation of Prostitution and Combating Abuses in the Sex Industry Bill' (WRP). According to the original Bill sex workers would be forced to register. Following rejection by the Senate due to the implied violation of Dutch and EU privacy law, mandatory registration was removed from the Bill. However, despite rejection by the Senate and the fact that during the Parliamentary debate the minister of Justice explicitly confirmed that compulsory registration is against the law, municipalities still continue to introduce mandatory registration of sex workers on the local level. The submitting parties would therefore like to know which steps the government takes to prevent municipalities from illegal registration of sex workers.
The submitting parties subscribe the harmonisation of the licensing system for sex businesses. They are, however, concerned that the new Bill will force all sex workers to work for and under the control of a brothel keeper, while criminalising sex workers who prefer to work independently or who are not willing to cede half or more of their income to a brothel keeper. This would lead to the remarkable situation that before the lifting of the ban on brothels in 2000 the law prohibited to work for a third party, while now it would become *obliged* to work for a third party. It would also directly discriminate against sex workers compared to other professions, where workers can choose whether they want to work as independent entrepreneurs, whether or not for a third party, or as an employee. The submitting parties would like to know how the government will ensure equal treatment of sex workers with other workers, including being able to choose to work independently.
In 2008 the government introduced the so-called 'opting-in (tax) arrangement' in brothels, which implied that brothel operators would not be taxed as employers as long as they met a set of conditions aimed to guarantee the autonomy of sex workers, e.g. sex workers should be free to decide when and how they want to work and to refuse clients or sexual services, no obligation to use alcohol, etc.

[36] CEDAW Committee, Concluding Observations 18 November 2016, CEDAW/C/NLD/CO/6, § 23 and 24.

However, there is no state agency that is responsible to control whether brothel operators actually keep to these conditions. The submitting parties would like to know which steps the government will take to ensure enforcement of the conditions attached to the opting-in arrangement.
And with regard to answers provided in § 51-53, although victims of trafficking who are not able or willing to cooperate with the authorities can apply for a (humanitarian) residence permit, this possibility is hardly used and no concrete numbers are available since the introduction of this possibility in 2011, in any case no more than 0 to 10 persons a year.[37] No information is available whether that number has increased since.
Victims of trafficking can apply for compensation of damages with the State Fund for Victims of Violent Crimes. This is especially important when no compensation can be claimed from the offender because the case is not brought before the criminal court, for instance because the offender cannot be found or because of lack of law enforcement indicators. Recently, however, the Victim Fund has changed its policy and does not accept anymore the victims' declaration at the police and/or medical statements of a psychiatrist or psychologist as proof for a claim. As in many cases it is not possible to prosecute and convict the offender, this leaves a large group of victims without access to compensation. The submitting NGOs would like to know if the government is aware of this change of policy of the State Fund and how it wants to address the resulting gap in access to compensation for victims of trafficking.

23. Please provide information on the impact of the immediate measures taken by the State party to mitigate the impact of the rising prices in the Caribbean Netherlands on the most disadvantaged and marginalized groups, and indicate to what extent they aim to enable an adequate standard of living. Please indicate whether the extra resources made available are commensurate with the scale of poverty in the Caribbean Netherlands.
As mentioned in the response to point 16 above, poverty is mainly found among the elderly, single mothers (and their children), and the disabled. The costs of living in the Caribbean Netherlands are high and especially healthy foods (vegetables, fruit, dairy) are extremely expensive (much more expensive than in the European part of the Netherlands). Furthermore, enduring problems exist with regard to social housing. At the poverty summit at Bonaire of February 2017, deputy Wilson pointed out that the measures that are currently being taken in relation to social housing are insufficient. According to the deputy, social housing tenants require rent subsidy, as they often cannot afford to pay their rent. The local government has asked the Dutch government for assistance, but the Dutch government maintains that the local government must solve these issues.[38]
Because wages and social benefits rise slowly in the Caribbean Netherlands, additional measures must be taken to ensure an adequate standard of living for vulnerable groups. The submitting parties are pleased that the government has taken a number of measures already, such as a multiannual program aimed at alleviating child poverty, including childcare benefits for all children and more possibilities to obtain special assistance. However, whilst the State's intentions are good, the question remains whether these measures are effective. Do the people who are currently living under conditions of poverty actually profit from these measures? The well-being of the inhabitants should be the determining assessment factor, rather than the amount of measures that are taken, the amount of conferences that are held, and the amount of money that is invested. Therefore, a population survey is required. The last population survey dates from 2001. Having periodic population surveys is necessary to better understand the effectiveness of the taken measures and to guide follow-up policies.[39]

[37] Information obtained Freedom of Information Act (Wob) in 2013: letters by Immigration Services on 22 November 2013 (ref. INDUIT13254OJZPV) and 31 January 2014 (ref. Geen).
[38] Hazel Durand, "Raising social contributions is not a solution to poverty', *Caribbean Network* (3 February 2017) available at: http://caribischnetwerk.ntr.nl/2017/02/03/verhogen-van-sociale-premies-geen-oplossing-voor-armoede/ (only available in Dutch).
[39] See 'Report on Poverty in the Caribbean Netherlands, a survey' (May 2012), Attachment to Letter to Parliament 35000 IV no. 76 of 22 June 2012, available at: https://www.rijksoverheid.nl/documenten/rapporten/2012/06/22/armoede-in-caribisch-nederland-een-verkenning (only available in Dutch) p. 17.

Moreover, as long as the minimum subsistence level and financial support (which has improved but still proves insufficient) do not enable an adequate standard of living, in-kind support is a necessary additional measure. In particular, subsidized childcare should be available for all children, and healthy meals should be provided in day care, childcare and home care for the elderly. To conclude, a thorough and more sustainable approach to such in-kind assistance is necessary. This requires close cooperation between government bodies, island organizations, and the Dutch government.[40]

24. Please indicate how the State party ensures that the obligation to provide shelter, mentioned in para. 130 of the State report, is fulfilled in practice in the Netherlands. Please also indicate how the Netherlands reconciles its core obligations under the Covenant with the conditions for undocumented migrants to be entitled to shelter.

There are still serious problems with regard to access to shelter accommodation by all groups. The Netherlands counts 31.000 homeless people. Numbers have not changed recently but the background of the homeless has: they are younger and more often of non-Dutch origin.[41]

A systematic problem can be located in the system of the Social Support Act itself. The Act requires someone to give a notification of the need for support first ('melding'), before being legally allowed to file an application ('aanvraag'). Lack of shelters result in municipalities to abuse this process to prevent an application for shelter by convincing someone in need to solve the homelessness problem differently. This is the negative effect of the de-legalized process of access to social services ('dejuridiseren').

With regard to the State's answer on the situation of undocumented migrants and respecting core obligations the submitting parties are disappointed about the incorrect answer the State provides.

The ECHR reached its verdict in *Hunde v The Netherlands* amongst others because the State was engaged in finding a solution for the destitute situation of undocumented migrants living on the streets. More importantly the ECtHR has made it clear that a violation of article 3 ECHR requires meeting a different set of criteria than the protection of core obligations by providing shelter. That protection is still needed, see parallel report p. 33.

The State proposed to open up a few centres providing shelter to undocumented migrants in exchange for the municipalities to close their dedicated 'Bed-Bath-Bread'-shelters. The municipalities refused to close their shelters because the State's criteria for access to shelter are de facto preventing access for most undocumented migrants. Municipalities are critical of the 'paper reality' of the migration system which is at odds with the reality of undocumented migrants who often suffer from multiple problems. Municipalities and NGO's have addressed the government to come up with a *realistic* solution respecting core obligations, with reference to the ICESCR.[42]

27. Please indicate what considerations are being made to ensure that regulations on abortion in the Netherlands do not lead to discrimination against certain groups of women in their exercise of the right to sexual and reproductive health. Please also provide information on the impact of measures taken to address early pregnancy in Aruba, Curaçao and Sint Maarten. Referring to paragraph 238 of the State report, please comment on the compatibility of the Sint Maarten's legislation on termination of pregnancy with the right to sexual and reproductive health.

The submitting parties are bewildered about the incorrect answer the State provides with regard to access to reproductive health services in The Netherlands. Undocumented women are barred from free

[40] Ibid, pp. 15-18.

[41] Numbers by the Central Bureau of Statistics, http://www.nu.nl/binnenland/4369776/daklozen-steeds-jonger-en-vaker-allochtoon.html?kl=771&ku=4207099&utm_source=SIM&utm_medium=email&utm_campaign=nu%2Enl_berichten_doorsturen_popup_2014&utm_content=&utm_term=a_244144

[42] Letter, dd 5 December 2016, by the Association of municipalities of Groningen to the Ministry of Justice, reference: 16044/GWE/TSc-6062197; letter, dd 21 March 2017, by the L.O.G.O. municipalities (National consultation platform of municipalities w/r to shelter and return policy), ref: dakloze vreemdelingen met ernstige problematiek (ref: homeless aliens with serious problems); letter, dd 7 april 2017, by Amnesty International to the Parliamentary Commission Justice and Security, ref: opvang dakloze vreemdelingen zonder verblijfsrecht (ref: shelter homeless aliens lacking residence permit).

and affordable access of counselling, birth control and abortion services. The 'ZiN-regulation' the State refers to in its response (reply in § 11 to LOI question 6) does not cover abortion care for undocumented migrant women, one of the most vulnerable groups with regard to exploitation and rape. The free services the State is referring to are only free for those legally residing in the Netherlands and no one else. The State furthermore does not address the practical obstacles other groups see themselves confronted with when trying to access reproductive services.

28. Please provide information on measures taken by the State party to address the impact of business activities on the Covenant rights, including the right to health and safe environment and the right to adequate housing in the State party, such as in the context of the refinery activities in Curaçao and gas extraction in the Netherlands.

1. **ISLA refinery in Curaçao (§ 76-77 response to LOI)**

The negative environmental health effects caused by the Isla Refinery on Curaçao have remained poorly addressed for a considerable time (see also our Joint Parallel Report, pp. 41-42) . Therefore, we welcome the fact that a technical and environmental audit of the Isla Refinery by the Dutch Ministry of Health, Environment, and Nature is now carried out. We also welcome that the new 'Heads of Agreement' signed with Chinese company Guangdong Zhenrong Energy Co. Ltd (GZE) includes a statement that Curaçao's oil and energy sector will have to be modernized.

Yet, we express severe concerns that this Chinese state-owned company, GZE, does not have a good record on environmental health and working conditions generally. We are highly concerned that GZE will be ill-prepared to mitigate and address environmental and work place related health issues, since contrary to international standards and industry practices, this company does not disclose Environmental, Social and Governance policies. GZE also does not indicate whether it has certified environmental policies in place or that it conducts environmental and social impact assessments. The *UN Guiding Principles on Business and Human Rights* (UNGPs) place 'due diligence requirements' on States and companies in order to prevent or address adverse human rights impacts, and additional requirements are in place in case business enterprises are owned or controlled by the State.[43] The submitting parties would like to know whether and how the UNGPs were followed before the new Agreement with GZE was concluded? How can the State Party guarantee that the rights to health, adequate living standards and working conditions, in the ICESCR are not negatively affected, and that current environmental human rights harms are effectively redressed?[44] (see UN Guiding Principle 4).

Finally, we are concerned that company Fluor Corporation NYSE:FLR was brought in to support the Environmental and Nature Inspectorate. This is a private company which has had ties with *Petroleos de Venezuela S.A.*, the current owner of the Isla Refinery.[45] Such involvement does not meet international standards and practices, requiring that parties should consult independent parties to conduct audits on environmental and health impacts. This might affect the outcomes of the audit and jeopardize the credibility of the audit.

We ask the State Party to take appropriate measures to audit and redress health impacts caused by the Isla Refinery, as well as clearly set expectations with regard to the future activities of GZE.[46] The negative human rights impacts caused by current operations should be fully redressed, and human rights standards, of the ICESCR and on business and human rights, play a crucial role in this respect.

2. **Air pollution (§ 77)**

[43] http://www.fluor.com/investors/factbookdownloads/FB1Q02.pdf
[44] http://www.gdzhenrong.com/siteen/qyxw/2726.html
[45] China firm seeks state financing for $5.5 bln Caribbean oil project, Reuters, 2 November 2016, http://in.reuters.com/article/china-caribbean-refinery-idINL4N1CY36I
[46] United Nations Working Group on Business and Human Rights, Report of the Working Group on the role of states to ensure state-owned enterprises respect human rights to the 32nd Session of the UN HRC held in June 2016, UN Doc A/HRC/32/45, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/091/71/PDF/G1609171.pdf?OpenElement

In its response to § 28, the State only refers to the situation of air pollution on Curaçao (Isla Refinery). However, our Main Report (see pp. 42-43), clearly stressed that air pollution is a substantial problem in the European part of the Netherlands as well. Presently, there is a law suit pending against the Dutch State by NGOs, regarding negligence to take effective measures to meet European air quality standards (CO2, PM10). The law suit also addresses that, unfortunately, the current European standard of PM10 does not meet Guidelines by the WHO. Submitting NGOs consider that the right to health is breached by this negligence, and that the State should, on the basis of CESCR General Comment 14 on Right to Health (e.g. paras 36, 51) formulate and implement adequate 'national policies aimed at reducing and eliminating pollution of air', and where relevant, enact and enforce relevant laws to combat air pollution to effectively protect citizens health.

3. Gas extraction activity of company NAM (Shell/Exxon Mobile) in Groningen Province and related earth quakes (§ 78)

The State's response regarding gas extraction is very unsatisfactory, as it does not address the severe deficiencies of the 'package of measures' mentioned, certainly in combination with continued gas extraction.

First, affected citizens face many obstacles to actually get their damages recognized, fixed and reimbursed. Although the Dutch government refers to the possibility to bring a civil law suit against the NAM, the reality is that formal out-of-court damage procedures – with support of the government – were put in place specifically for earth quake damages, and to prevent people from ending up in lengthy, costly civil suits.[47] By now, however, these protocols – which involve government support – prove very controversial: many people get bogged down in long disputes with an uncooperative NAM. The NAM typically disputes damages, wants to reimburse the minimum, and essentially have managed to dictate the procedure and the settlements.[48] As a result, just recently, it was decided to remove NAMs involvement in the settlements altogether.[49] Yet, the first contours of a new procedure are now also sparking great controversy,[50] so there is not much hope for a swift resolution.

Of note: our Joint Parallel Report listed a number of successful (collective) court cases by citizens, so far (see pp. 35-36: material/immaterial damages, lowering levels of gas extraction). In April 2017, a Dutch court ruled that the public prosecutor has to launch a criminal investigation into NAM as well – for (knowingly) destroying property and putting peoples' lives in danger.[51] Overall, most persons have difficulty getting their grievances in a court though.

Second, while gas extraction was indeed scaled down in response to safety concerns (but mostly due to law suits and increasing public pressure, not because the government has been very cooperative) there is still considerable uncertainty about the *actual* safety of current extraction levels.[52] Over the past year, earth quakes diminished, but recently this trend reversed.[53] The Minister scaled down the extraction with another 10% in April 2017. This decision was met with both *approval* and *anger*, for,

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[47] See protocol here (latest version November 2016): https://www.nationaalcoordinatorgroningen.nl/downloads/publicaties/2016/november/1/protocol-schadeafhandeling.

[48] [90% of NAM's money spent on damages in Groningen is spent on experts] http://www.volkskrant.nl/binnenland/90-procent-schadevergoedingen-groningen-gaat-naar-experts~a4403888/

[49] [Fury about Tentacles of NAM], Dagblad van het Noorden, 7 April 2017, http://www.dvhn.nl/groningen/Woede-over-tentakels-van-NAM-22124825.html

[50] Concerns include continued (back-door) involvement of the NAM, too little involvement of affected stakeholders, too great control for the State, and apparent removal of present procedural safeguards for citizens such as arbiters and contra-expertise. Idem; [Province calls upon Minister Kamp to engage in open talks about new protocol for damages in Groningen], Nu.nl, 20 April 2017, http://www.nu.nl/groningen/4630491/provincie-roept-kamp-open-overleg-schadeafhandeling-groningen.html

[51] [Public Prosector has to launch criminal investigation into NAM], NRC 20 April 2017, https://www.nrc.nl/nieuws/2017/04/20/om-moet-strafrechtelijk-onderzoek-doen-naar-nam-8333322-a1555245

[52] Charles Vlek, [Even with 10% less gas extraction, more quakes will follow] NRC 19 April 2017, https://www.nrc.nl/nieuws/2017/04/19/deze-10-procent-haalt-weinig-uit-verwacht-hoe-dan-ook-meer-gasbevingen-8286145-a1555083

[53] [NAM: 'No Clear Cause Extra Earthquakes in Loppersum'] NU.nl, 4 April 2017, http://www.nu.nl/groningen/4595160/geen-oorzaak-extra-aardbevingen-loppersum.html

just six months ago the Government maintained it was not possible to extract less gas.[54] There is still no clarity about the manner in which safety of citizens in this provincial area of the Netherlands is exactly balanced against domestic and foreign gas contracts, profits and the State's Treasury. Yet, what is clear, is that the trust of the Groninger people has been greatly damaged through the conduct of NAM and the State.

Thirdly, and very importantly: the 'inspections and structural reinforcement measures' which the Government mentions, also prove *hugely* problematic.[55] In March 2017, the Minister of Economic Affairs (Liberal Party/VVD) conceded that the scale of reinforcements is 'immense and all-compassing' and was seriously 'misjudged'.[56]A first inspection of 1.450 houses, just concluded in December 2016, demonstrated that nearly *all* these houses need reinforcements. The total number of houses in the *immediate* earth quake area is 22,000, and the total estimate of possibly affected houses in Groningen Province goes up to 220,000.[57] It is estimated that reinforcement will take many years and costs billions.[58] During this time, the people in Groningen will continue to live in uncertainty about the safety of their homes, and be subjected to unhealthy, stressful, and in some cases, dangerous situations. As foreseen now, the gas extraction will continue until 2050.[59] As a result, as considered in our Main Report, people feel 'trapped' and powerless, and the government is failing/far too slow in protecting people's essential rights to adequate housing, adequate living standards and their right to mental and physical health. Beyond the scope of the ICESCR, it has equally been argued that the rights to life, private life, and right to property are at stake. This has already been affirmed by Dutch courts on various occasions (see cases listed in Joint Parallel Report in article 11 under D (p. 35), article 12 under G (p.41) and H (p. 42) and I (p. 43).

29. Please provide data, disaggregated by municipality, sex and ethnicity, on children with disabilities who are not enrolled in school and the measures to enable access to inclusive education.

There are data available, since March 2015, disaggregated by municipality, on children with disabilities exempted from compulsory education or who are not enrolled, although this data is not broken down by gender or ethnicity.[60]

The measures aimed at decreasing the number of children being exempted from compulsory education, has failed so far: the number of children with disabilities being exempted from compulsory education because of their disability has increased with 9% in the schoolyear 2015-2016 (5537 children) compared to schoolyear 2014-2015. (5077 children).[61]

And more in general on measures to enable access to inclusive education for children with disabilities:

The Appropriate Education Act introduced the obligation on schoolboards to cooperate within designated regions to be able to offer every child within their region an 'appropriate place'. That place may either be in a regular school or in a special school. The financial system works such that regular schools who want to refer pupils to special schools, have to seek permission by the regional organization. Regular schools that refer pupils to special schools will have to transfer budget along with the pupil to the receiving special school. Special schools will receive additional lump sum finances from the national government, no matter the number of pupils that are being referred. This

[54] [Groninger Bodem Beweging: Minister Kamp has been lying], Dagblad van het Noorden, http://www.dvhn.nl/binnenland/Groninger-Bodem-Beweging-Kamp-zat-te-jokken-22150205.html

[55] [Reinforcement of Houses is Nightmare for Groningers] Dagblad van het Noorden, 7 december 2017) http://www.dvhn.nl/groningen/Versterking-huizen-is-nachtmerrie-voor-Groningen-21833928.html

[56] [Reinforcement of Houses underestimated] Telegraaf, 8 March 2017, http://www.telegraaf.nl/binnenland/27761491/___Versterking_huizen_onderschat__.html

[57] See information in our Main Report, p. 36.

[58] [Study: Reinforcement of Housing costs Billions] Dagblad van het Noorden 23 March 2017, http://www.dvhn.nl/groningen/Studie-versterking-huizen-kost-miljarden-22087955.html.

[59] [The political legacy of Kamp: End of the Gas Era] NRC, 2 December 2016: https://www.nrc.nl/nieuws/2016/12/07/einde-van-het-gas-tijdperk-5684291-a1535389

[60] http://www.vsvkompas.nl/#!/

[61] Tiende Voortgangsrapportage Passend Onderwijs, P. 15, December 2016, letter to Parliament by secretary of state of education. https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2016Z23188&did=2016D47426

lump sum is meant to help special schools maintain size and educational quality. Inclusive education, as laid down in article 24 of the CRPD and CRPD General Comment nr. 4. is not an objective of Appropriate Education.[62] National Government states that there will be a need for special schools for those pupils who cannot go to regular schools.[63] Schools and their regional boards are free to decide how they will organize support for their pupils with disabilities: either in special schools or within regular schools with support systems. The financial incentive of the obligation to hand over budget with every referral to special education incites a lower referral rate. Latest figures show that there is no strong effect yet; the number of pupils being referred to special schools very slightly decreased.[64] The aim to reduce the number of pupils being out of school due to disabilities or learning difficulties has not been met yet. The number is on the contrary increasing (with 9% to 5537 children).

33. Please provide information on the impact of measures taken to enforce the 2015 regulations mentioned in paragraph 136 of the State report on internships for undocumented minors, asylum seekers and migrants under regularization, and to address the obstacles to their access to higher education in the Netherlands.

The rules for internships described in the state's response under § 87 do not apply for education on university level, universities of applied sciences (HBO) and higher level of vocational training (BBL); and also not for students who start their education after their 18th birthday, although students who are in possession of a residence permit are allowed to start an education after their 18th birthday and to finish it.

If an undocumented migrant turns 18 years old he/she cannot start a new education and costs for education are not funded anymore after turning 18 years old. As a result students who did legally start tertiary education have to drop out.

[62] CRPD, General Comment no. 4 on the right of education,

[63] Tiende Voortgangsrapportage Passend Onderwijs, p. 3; December 2016, letter to Parliament by secretary of state of education.)
ttps://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2016Z23188&did=2016D47426

[64] Achtste Voortgangsrapportage Passend Onderwijs (report on results of implementation of Appropriate Education Act), p. 15, December 2015. letter to Parliament by secretary of state of education.
https://www.rijksoverheid.nl/documenten/kamerstukken/2015/12/07/kamerbrief-met-achtste-voortgangsrapportage-passend-onderwijs)