

Parallel Report of the Dutch Section of the International Commission of Jurists (NJCM) to the Seventh Periodic Report of the Kingdom of Netherlands on the International Covenant on Economic, Social and Cultural Rights (2023)

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PARALLEL REPORT TO THE SEVENTH PERIODIC REPORT OF THE KINGDOM OF NETHERLANDS ON THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

I Introduction

The past years have been turbulent and the situation within the Kingdom of the Netherlands has been no exception. During such times, upholding and promoting human rights is more important than ever. Whilst the country is known for highly valuing the rule of law and human rights, in practice it seems that the promotion of economic, social and cultural rights have remained low on the government's agenda.

In this report the following three themes will be discussed: the problems that have emerged in relation to the reception of asylum seekers in the Netherlands, the revision of the curriculum on human rights education in primary and secondary education and the lack of transparency in its process, and the continuing failure of the government to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. These themes are not new, but have already been addressed in previous reporting cycles of this Covenant and during the latest Universal Periodic Review of the Kingdom of the Netherlands.ⁱ

We would like to emphasise that the recommendations of UN treaty bodies and civil society actors must be taken seriously. We therefore welcome the opportunity to submit this parallel report to the seventh periodic report of the Kingdom of the Netherlands on the International Covenant on Economic, Social and Cultural Rights (the Covenant).

II Reception of Asylum Seekers

During the reporting period, the Dutch asylum system has been marred by severe logistical problems in the reception and accommodation of asylum seekers.ⁱⁱ Those issues raise serious doubts as to whether the Netherlands is still able to comply to its minimum obligations under the Convention in relation to the refugees and migrants under its jurisdiction, such as the non-discrimination principle, the obligation to protect and support the family, the right to an adequate standard of living and the right to the highest attainable standard of health.ⁱⁱⁱ The difference between the reception of Ukrainian refugees and other groups of refugees has been astonishing.^{iv}

The reception centres have been severely overcrowded for years,^v but the Central Agency for the Reception of Asylum Seekers (COA) sounded the alarm in 2022.^{vi} All reception centres, including emergency shelters, were completely full and as a result many asylum seekers were forced to sleep on the floor,^{vii} on chairs, on stretchers,^{viii} in tents, or even outside.^{ix} Most centres were lacking privacy, hygiene and access to health care.^x This situation has been especially worrying for families with young children and for unaccompanied minors. At the end of August 2022, a three-month old baby died in the sports facility at Ter Apel, the national reception centre,^{xi} which was used as a dorm due to a lack of capacity. Humanitarian organisations such as Doctors Without Borders and the Red Cross had to intervene in Ter Apel, by providing for the lacking minimum of (physical and mental) health care.^{xii}

However, no policy changes or sustainable improvements have yet been made. As the Advisory Council for Migration (Adviesraad Migratie) has stated, the government urgently needs to provide for structural policy changes.^{xiii} This crisis has shown how over the years the government's approach to the reception and treatment of asylum seekers has been deeply flawed. The dependency of the budgets on the influx of asylum seekers (the so-called 'crisis mode')^{xiv} and failure to facilitate an efficient outflow from reception centres (partly because of the national housing crisis), have been the recipe for this self-made 'crisis'.^{xv} The situation might become even more precarious with the prediction that in 2023 more asylum seekers are expected to come to the Netherlands.^{xvi}

In an apparent attempt to stem the influx of asylum seekers the Dutch government decided to suspend or postpone family reunification for persons who have been granted international protection.^{xvii} Many concerns have been raised as to the compatibility of this measure with the EU Family Reunification Directive (2003/86/EC) and the Dutch Aliens Act.^{xviii} These concerns were affirmed by two lower courts on 22 and 23 December 2022, as they found that the measures were indeed incompatible with EU and national law and ordered the State Secretary to immediately allow the applicants the entry into the country's territory.^{xix} The Council of State is currently reviewing the appeals against these decisions and has declined the request of the State Secretary to issue an interim measure to suspend the effect of the lower courts' decisions.^{xx} Moreover, it is not likely that the temporary suspension will be an effective solution for the long-term challenges related to the accommodation of migrants.^{xxi}

The government must act urgently to ensure that the conditions at the reception centres meet the minimum standards of the Covenant rights, paying special attention for the most vulnerable. The government must also facilitate family reunification as quickly as possible and move away from temporary suspension measures as a solution to the reception crisis.

III Human Rights Education

Since the NJCM's last report on the implementation of Article 13 ICESCR,^{xxii} the Dutch Government has adopted an amendment to the national law on citizenship education, which entered into force in August 2021. This amendment aims, among other things, to strengthen the position of human rights and children's rights in citizenship education. The NJCM and the Platform on Human Rights Education have welcomed this development.

It is welcome, and long overdue. Research has shown that children's knowledge on citizenship has declined since 2009,^{xxiii} and that only 34% of Dutch children has heard about the Convention of the Rights of the Child.^{xxiv} This has been partially explained by insufficient education on these topics on primary and secondary schools. Although the amended law has entered into force almost 1,5 years ago, the necessary changes to the new curriculum have not been made. It is therefore still left up to individual schools and teachers to provide for education on human rights in any manner they see fit. A 2017 study illustrates why this can be problematic. It shows that basic information on human rights is lacking in a popular social studies textbook and may even convey misinformation on human rights due, in part, to the lack of the authors (mis)understanding of the topic.^{xxv} For example, the research found that the book's presentation of (certain) human rights as "mere" values, that one may or may not adhere to, might imply that these are not rights at all.^{xxvi} The introduction of a new curriculum is therefore urgently necessary to guarantee that children are adequately educated on the topic.

The process for the formulation of a new curriculum for primary and secondary education has recently – finally – started and is due to last a year. Previously, the NJCM has actively and enthusiastically participated in the stakeholder consultations for the reform of the curriculum called “Onderwijs2032”, that was launched in 2015 and is part of an ongoing process. However, it has been left entirely up to the participants of the working groups for the new curriculum to decide whether and which of the outcomes of these stakeholder consultations are going to be put into practice. Civil society organizations, like the NJCM and other members of the Platform on Human Rights Education who possess the necessary knowledge on human rights and citizenship education, have no seat at the table during this part of the process. The formulation of the new curriculum is therefore neither transparent nor clearly structured and its outcomes remain uncertain. We can only hope that it will reach its intended objective.

We urge the Government to ensure that the importance of human rights, including children’s rights, that has been imbedded in the new law on citizenship education, will be reflected brightly in the new curriculum and in the core objectives (*kerndoelen*) and examination programs. The Government should also ensure that civil society organisations, such as the members of the Platform on Human Rights Education, will be actively involved throughout the entire process of formulating the new curriculum and will be given a say in the final decision regarding the content of the curriculum.

IV Ratification of the Optional Protocol

The Optional Protocol (OP) to the Covenant, which, amongst other things, grants individuals access to the Covenant’s complaints procedure at the Committee on Economic, Social and Cultural Rights (Committee), was signed by the Kingdom of the Netherlands in 2009. However, to this day, it has not ratified the Optional Protocol.

The Committee recommended the Netherlands in 2017 in its Concluding Observations on the country’s sixth periodic report to conclude the ratification process of the OP as soon as possible.^{xxvii} In the same year the Council of State gave its advice on the on the ratification bill for the OP,^{xxviii} in which it advised the Government what to take into account when considering ratification of the Protocol. The Council particularly noted that decisions by the Committee are non-binding and that, following the Dutch Constitution,^{xxix} the provisions of the Covenant will most likely not be directly applicable to the Dutch courts merely because of the ratification of the OP. It has added, however, that the Committee’s views are authoritative and may render certain provisions directly applicable. This may shift the main task of the interpretation of the Covenant toward the courts instead of the lawmakers. The Council lastly found that it was not able to give any advice on the financial consequences of the ratification.

On 7 December 2021, the Government asked the Council of State to provide information concerning the Optional Protocols to the ICESCR, the Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child. This information was published on 4 July 2022.^{xxx} Among other things, the Council of State noted that ratification of the Optional Protocols could contribute to strengthening the international protection of human rights and the development of the international legal order. The Government indicated that it would aim to respond to the Council of State’s advice by 1 November 2022.^{xxxi} However, the Government has as of January 2023 not done so yet. In its seventh periodic report of June 2022,

the Government indicated that it will include these findings when deciding on the possible ratification of the OP.^{xxxii}

The NJCM cannot stress enough the importance of the ratification of the Optional Protocol to the ICESCR. This will contribute to the further realization of and improve access to economic, social and cultural rights by Dutch citizens. Moreover, by ratifying the Optional Protocol the Government would underline that all human rights are indivisible, interdependent and equally important.

The NJCM urges the Government to finally ratify the Optional Protocol to the ICESCR.

ⁱ See ‘NGO’s informeren VN voor sessie over economische, sociale en culturele rechten in Nederland’, njcm.nl, 12 May 2017 (available at: <https://njcm.nl/actueel/ngos-informeren-vn-voor-sessie-economische-sociale-en-culturele-rechten-nederland/>); see ‘NJCM spreekt Verenigde Naties toe over mensenrechten in Nederland’, njcm.nl, 29 August 2022 (available at: <https://njcm.nl/actueel/njcm-spreekt-verenigde-naties-toe-over-mensenrechten-in-nederland/>).

ⁱⁱ ‘Vijf organisaties schrijven brandbrief aan Rutte: ‘neem verantwoordelijkheid voor de crisis in de asielopvang’’, unicef.nl, 26 July 2022 (available at: <https://www.unicef.nl/pers/2022-07-26-vijf-organisaties-schrijven-brandbrief-aan-rutte-neem-verantwoordelijkheid-voor-de-crisis-in-de-asielopvang>). The concerns expressed by civil society organisations resulted in a summary judgment won by Vluchtelingenwerk against the Dutch Government. The verdict confirmed that the Dutch government did not meet the minimum standards for the reception of asylum seekers, see Rechtbank Den Haag 6 October 2022, ECLI:NL:RBDHA:2022:10210 (available at: <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2022:10210>).

ⁱⁱⁱ See CESCR, Duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights, E/C.12/2017/1, 13 March 2017; The ECtHR has recently ordered several interim measures against Belgium for very similar circumstances, see ECtHR 31 October 2022, *Camara v. Belgium*, no. 49255/22, and ECtHR 16 November 2022, *Msallem and 147 others v. Belgium*, no. 48987/22 and 147 others.

^{iv} ‘Oproep aan de Staatssecretaris van Asiel & Migratie: legitimeer geen discriminerend opvangbeleid van gemeenten’, mensenrechten.nl, 22 July 2022 (available at: <https://www.mensenrechten.nl/actueel/nieuws/2022/07/29/oproep-aan-de-staatssecretaris-van-asiel--migratie-legitimeer-geen-discriminerend-opvangbeleid-van-gemeenten>).

^v ‘Het is crisis in de asielzoekerscentra’, *NRC Handelsblad*, 4 November 2019 (available at: <https://www.nrc.nl/nieuws/2019/11/03/het-is-crisis-in-de-asielzoekerscentra-a3979015>).

^{iv} ‘Situatie asielzoekers Ter Apel ‘nog steeds schrijnend’’, *AD*, 3 October 2022 (available at: <https://www.ad.nl/binnenland/situatie-asielzoekers-ter-apel-nog-steeds-schrijnend~ac892fee/>).

^{vi} ‘Het COA staat op instorten’, *NRC Handelsblad*, 28 July 2022 (available at: <https://www.nrc.nl/nieuws/2022/07/28/coa-staat-op-instorten-2-a4137677>).

^{viii} ‘Burgermeester ‘heel boos’ over noodsituatie asielzoekers: ‘Nederland laat Ter Apel zitten’’, *NOS Nieuwsuur*, 13 October 2021 (available at: <https://nos.nl/nieuwsuur/artikel/2401571-burgemeester-heel-boos-over-noodsituatie-asielzoekers-nederland-laait-ter-apel>).

^{ix} ‘Opnieuw crisis in azc Ter Apel: ‘Opvang zit overvol’’, *RTL Nieuws*, 24 November 2021, (available at: <https://www.rtlnieuws.nl/nieuws/nederland/artikel/5269306/ter-apel-opvang-overval-asielzoekers-vluchtelingen>).

^x See for example the Kinderombudsman’s letter to Parliament concerning the situation in Ter Apel, 5 September 2022 (available at: <https://www.kinderombudsman.nl/publicaties/brief-aan-kamer-over-de-nieuwe-asieldeal>).

^{xi} Directly upon arrival in the Netherlands, asylum seekers must report and register at the Immigration and Naturalization Services (IND) desk in Ter Apel. After a thorough intake, it is decided whether the person must remain at this reception center or whether they are relocated to other reception centers throughout the country to await the outcome of their asylum procedure.

^{xii} See ‘Crisis bij aanmeldcentrum Ter Apel’, *artsenzondergrenzen.nl* (available at: <https://www.artsenzondergrenzen.nl/projecten/nederland-ter-apel/>); see ‘Rode Kruis-hulpverlening in Ter Apel

hervat’, [rodekruis.nl](https://www.rodekruis.nl), 24 August 2022 (available at: <https://www.rodekruis.nl/persberichten/rode-kruis-hulpverlening-in-ter-apel-hervat/>).

^{xiii} Adviesraad Migratie, ‘Asielopvang uit de crisis’, 14 June 2022, p. 5 (available at: <https://www.adviesraadmigratie.nl/publicaties/publicaties/2022/06/14/asielopvang-uit-de-crisis/>).

^{xiv} Id.

^{xv} Id.; See also ‘Asielzoekerscentra bomvol: ’We zitten tegen crisisnoodopvang aan’, *RTL Nieuws*, 28 September 2021 (available at: <https://www.rtlnieuws.nl/nieuws/politiek/artikel/5256905/asielcrisis-licht-op-de-loer-asielzoekerscentra-zitten-bomvol-azc>); ‘Veel vertraging bij bouw van asielzoekercentra’, *NRC Handelsblad*, 30 December 2019 (available at: <https://www.nrc.nl/nieuws/2019/12/29/veel-vertraging-bij-bouw-van-asielzoekerscentra-a3985258>); ‘Druk op asielproces door hogere instroom’, *Immigration and Naturalisation Service*, ind.nl, 15 December 2021 (available at: <https://ind.nl/nieuws/paginas/druk-op-asielproces-door-hogere-instroom--.aspx>).

^{xvi} ‘Ministerie verwacht volgend jaar meer asielzoekers blijkt uit interne stukken’, *NRC Handelsblad*, 23 October 2022 (available at: <https://www.nrc.nl/nieuws/2022/10/23/ministerie-verwacht-volgend-jaar-meer-asielzoekers-blijkt-uit-interne-stukken->).

^{xvii} State Secretary of Justice and Safety, Letter to parliament on the decisions concerning the reception crisis, 26 August 2022, p.3 (available at: <https://open.overheid.nl/repository/ronl-dbd85806d6050d6cc54edb722bf926d54e922ec9/1/pdf/tk-brief-besluitvorming-opvangcrisis.pdf>).

^{xviii} see Meijers Committee, Reaction to the State Secretary’s letter to Parliament concerning the reception crisis, CM2207, September 2022 (available at: <https://www.commissie-meijers.nl/wp-content/uploads/2022/09/220905-CM2207-Reactie-van-de-Commissie-Meijers-op-de-Kamerbrief-inzake-besluitvorming-omtrent-de-opvangcrisis.pdf>); See Adviesraad Migratie, ‘Schurende maatregelen: Signalering over aangekondigde maatregelen in reactie op de asielopvangcrisis’, 11 November 2022 (available at: <https://www.adviesraadmigratie.nl/publicaties/publicaties/2022/11/11/signalering-schurende-maatregelen>); See the Kinderombudsman’s letter to Parliament concerning the situation in Ter Apel, 5 September 2022.

^{xix} See the decision by the lower court of The Hague, location Middelburg, 22 December 2022, ECLI:NL:RBDHA:2022:13902 (available at: [https://uitspraken.rechtspraak.nl/#!/details?id=ECLI:NL:RBDHA:2022:13902&showbutton=true&keyword=EC LI%20253aNL%20253aRBDHA%20253a2022%20253a13902&idx=1](https://uitspraken.rechtspraak.nl/#!/details?id=ECLI:NL:RBDHA:2022:13902&showbutton=true&keyword=EC%20LI%20253aNL%20253aRBDHA%20253a2022%20253a13902&idx=1)); See the decision by the lower court of The Hague, location Amsterdam, 23 December 2022, ECLI:NL:RBDHA:2022:14097 (available at: <https://uitspraken.rechtspraak.nl/#!/details?id=ECLI:NL:RBDHA:2022:14097>). The lower court The Hague, location Haarlem, has issued an interim measure to suspend the government’s decision: decision of 5 December 2022, ECLI:NL:RBDHA:2022:12986 (available at: <https://uitspraken.rechtspraak.nl/#!/details?id=ECLI:NL:RBDHA:2022:12986>).

^{xx} Council of State 29 December 2022, ECLI:NL:RVS:2022:4004 (available at: <https://www.raadvanstate.nl/uitspraken/@134744/202207360-3-v1/>).

^{xxi} Adviesraad Migratie, ‘Schurende maatregelen: Signalering over aangekondigde maatregelen in reactie op de asielopvangcrisis’, 11 November 2022.

^{xxii} NJCM, 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), 29 August 2016 (available at: https://njcm.nl/wp-content/uploads/2016/08/NJCM_JointNGO_CESCR_Parallel_Report_2016.pdf).

^{xxiii} Dutch Inspectorate of Education, ‘Peil.Burgerschap einde basisonderwijs 2019-2020’, 9 March 2022, p. 14, (available at: <https://www.onderwijsinspectie.nl/onderwerpen/burgerschap/nieuws/2022/03/09/burgerschapsonderwijs-op-basisscholen-moet-verder-ontwikkeld-worden>).

^{xxiv} Dutch National Youth Council, ‘Het geluid van de nieuwe generatie. Inbreng van Nederlandse jongeren op de List of Issues voor het VN-Kinderrechtencomité’, July 2019, p. 8 (available at: https://www.njr.nl/documents/108/LOIPR_DEF.pdf).

^{xxv} F. de Kort, ‘Human rights education in social studies in the Netherlands: A case study textbook analysis’, *Prospects* 47 (2017), p. 55–71 (available at: <https://doi.org/10.1007/s11125-018-9431-3>).

^{xxvi} De Kort 2017, p. 67.

^{xxvii} Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of the Netherlands, 6 July 2017, UN Doc. E/C.12/NLD/CO/6.

^{xxviii} Council of State, Goedkeuring van het op 10 december 2008 te New York totstandgekomen Facultatief Protocol bij het Internationaal Verdrag inzake economische, sociale en culturele rechten, W02.17.0001/II/K, 1 May 2017 (available at: <https://www.raadvanstate.nl/adviezen/@116935/w02-17-0001-ii/#highlight=W02.17.0001%20II%20FK>). Note that this advice was only published upon request in June 2022.

^{xxix} Article 94 of the Dutch Constitution requires that a provision of an international agreement be “binding upon everyone” for it to be directly applicable in the Dutch legal order. Typically, social and economic rights have not been seen as “binding upon everyone” by the Dutch courts, as they generally leave much room for policy.

^{xxx} Council of State, Voorlichting over de facultatieve protocollen bij het VN-verdrag handicap en IVESCR en het 3e protocol bij het IVRK, W13.21.0367/III/Vo, 29 June 2022 (available at: <https://www.raadvanstate.nl/@128426/w13-21-0367-iii-vo/>).

^{xxx}_i Minister for Long-term Care and Sport, Letter to Parliament on the Optional Protocols to the ICESCR, the Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child, 14 July 2022 (available at: <https://www.rijksoverheid.nl/documenten/kamerstukken/2022/07/14/kamerbrief-inzake-voorlichting-facultatieve-klachtprotocollen-vn-verdrag-handicap-vn-kinderrechtenverdrag-en-ivescr>).

^{xxx}_{ii} Seventh Periodic Report of the Kingdom of the Netherlands, International Covenant on Economic, Social and Cultural Rights, June 2022, E/C.12/NLD/7, para. 13.