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COMMITTEE ON ECONOMIC, SOCIAL  
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IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON  
ECONOMIC, SOCIAL AND CULTURAL RIGHTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
IN ACCORDANCE WITH ARTICLE 16 OF THE INTERNATIONAL  
COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

REPLIES BY THE GOVERNMENT OF THE NETHERLANDS TO THE LIST OF ISSUES  
(E/C.12/NLD/Q/3) TO BE TAKEN UP IN CONNECTION WITH THE CONSIDERATION OF  
THE THIRD PERIODIC REPORT OF THE NETHERLANDS CONCERNING THE RIGHTS  
REFERRED TO IN ARTICLES 1-15 OF THE INTERNATIONAL COVENANT ON  
ECONOMIC, SOCIAL AND CULTURAL RIGHTS (E/1994/104/ADD.30)\*

[17 July 2006]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

## I. GENERAL FRAMEWORK WITHIN WHICH THE COVENANT IS IMPLEMENTED

**1. Please explain the domestic legal status of the Covenant and whether its provisions are considered by the State party to be “specific and precise enough” to be directly applied in its domestic courts.**

*The International Covenant on Economic, Social and Cultural Rights contains international obligations with which national legislation should not conflict. In the government’s opinion, all of the obligations under the Covenant are adequately incorporated in national legislation. Nevertheless, citizens who believe their rights under the Covenant are being infringed by Dutch law may invoke the relevant provisions of the Covenant in court insofar as the substance of the provisions lends itself to direct application (Article 94 of the Constitution). It is then up to the court to determine whether the latter condition is fulfilled and, if so, whether the provision has been violated.*

**2. Please indicate whether the State party has adopted a national plan of action on human rights, in accordance with the Vienna Declaration of 1993, and whether there is an effective national human rights institution, in accordance with the Paris Principles of 1991.**

*In accordance with the 1993 Vienna Declaration, international standards of human rights have been made an integral part of policy development in every domain of national policy in the Netherlands. There are also specific human rights strategies for certain subdomains of policy such as gender equality, integration, minorities and fighting racial discrimination.*

*In 2004, the government drafted a policy document entitled “Fundamental rights in a plural society” (Nota Grondrechten in een pluriforme samenleving). It describes the national human rights situation and concludes that established fundamental rights and settled national case law offer sufficient scope for tackling the kind of problems that arise as social plurality grows (e.g. discrimination, honour killings and genital mutilation) and for striking a balance between the various interests (e.g. the ban on discrimination, freedom of religion and freedom of expression).*

*As a follow-up to this policy document, the government is currently working on its plan of action for promoting fundamental rights (Actieplan “Grondrechtenbevordering”). The aim of the plan is to broaden and vitalise knowledge and understanding of the human rights enshrined in the Constitution. The plan expands on the Vienna Declaration and is expected to be finalised in the course of 2006.*

*The Netherlands has a considerable number of institutions that play an advisory or monitoring role in the context of human rights protection, promotion and education. The National Ombudsman assesses the conduct of public bodies in response to complaints and on his own initiative. A list of criteria, which includes human rights standards guaranteed in UN Covenants (ban on discrimination, privacy of communications, territorial privacy, etc.) is used to assess the propriety of conduct. In addition, Dutch law provides for human rights watchdogs, such as the Equal Treatment Commission (CGB) and the Dutch Data Protection Authority (CBP). At the request of individuals, the CGB assesses whether equal treatment laws have been violated in specific cases. It also gives advice on such issues as equal treatment legislation and the implementation of the ban on discrimination and provides information and training on related matters.*

*The Data Protection Authority (CBP) monitors compliance with laws regulating the use of personal data. The CBP also advises the government on proposed legislation on, or related to, the processing of personal data and the protection of privacy.*

*Notwithstanding the variety of human rights related tasks performed by these bodies, there is no umbrella human rights institution in this country. The government has commissioned a study to examine the options for establishing an independent national human rights institution to facilitate optimal cooperation and coordination among the existing bodies and to supervise human rights policymaking and activities in the Netherlands. This study will be completed by 1 August 2006, after which the government will take the necessary decisions.*

## **II. ISSUES RELATING TO THE GENERAL PROVISIONS OF THE COVENANT (ARTS. 1-5)**

### **Article 2.1: International assistance and cooperation**

**3. Please indicate whether the State party intends to increase its Official Development Assistance to 0.7 per cent of its GDP, as recommended by the United Nations.**

*The Netherlands spends 0.8% of its GDP on ODA (since 1997; between 1974-1997 0.7% of GDP was spent on ODA) and does not intend to change this.*

**4 (I). Please provide information as to whether the State party, as a member of international financial organizations, in particular the International Monetary Fund and the World Bank, does all it can to ensure that the policies and decisions of those organizations are in conformity with the obligations of States parties to the Covenant.**

*The Netherlands closely follows relevant discussions by the Boards of Directors of both the World Bank and the IMF, paying special attention to those on the enforcement of WB safeguards. The Executive Directors representing the Netherlands and 11 other countries on both boards see to it that the two institutions respect all obligations under the Covenant.*

**4 (II). Please explain by what means the State party implements the human rights approach in development cooperation with third countries and to what extent its position on economic, social and cultural rights affects its strategy for such cooperation.**

*The Netherlands began implementing the human rights approach in 2005. Policy, strategies and training programmes are being developed at national level by the Human Rights Division of the Ministry of Foreign Affairs to inform and train desk officers in the Netherlands and future and current embassy staff in countries where the Netherlands has development cooperation programmes. So far, there have been seven missions to embassies introducing and applying the human rights approach (Guatemala, Colombia, Yemen, Tanzania, Pakistan, Armenia, Georgia and Rwanda). The Netherlands works with partners such as SIDA, DFID, GTZ, SDC, CIDA, UNDP, UNICEF and OHCHR, exchanging relevant information and lessons learnt.*

*The Netherlands believes in the indivisibility and interdependence of all human rights. Civil and political rights and economic, social and cultural rights reinforce each other, and both classes of human rights are important pillars of Dutch development cooperation policy. The human rights approach includes all of these rights and aims to promote them as such.*

**Article 2.2: Non-discrimination**

**5. Please provide updated information on measures taken by the State party to combat xenophobia and racial discrimination.**

*Please find enclosed a detailed report on the measures taken by the government to combat xenophobia and racial discrimination.*

**6. Please explain how successful the Equal Treatment Act has been in combating discrimination. Are there any organizations representing ethnic minority groups, other than the Turkish Community Advisory Association (IOT) and the Moroccan and Tunisian Alliance (SMT), that have been engaged in promoting equal treatment?**

*An evaluation of the Equal Treatment Act, commissioned by the Ministry of the Interior and Kingdom Relations, is in progress. The study will also specifically assess the effectiveness of the Act. The results of the evaluation will not be available until July 2006. (A summary of the study results can be sent to the Expert Committee as soon as they are made public.)*

*The Ministry of Social Affairs and Employment is assisted by the National Ethnic Minorities Consultative Committee in developing policy to improve the position of ethnic minorities in the Netherlands. This policy also aims to tackle discrimination and promote equal opportunities. The following organisations are represented in the Committee:*

- *the Chinese Community Advisory Association (IOC);*
- *the Turkish Community Advisory Association (IOT);*

- *The National Consultative Committee for the Welfare of the Moluccan Community (LOWM);*
- *Lize, representing southern European communities in the Netherlands;*
- *Dutch-Caribbean Community Consultative Association (Ocan);*
- *Surinamese Community Advisory Association (SIO);*
- *Moroccan-Tunisian Cooperation (SMT);*
- *Refugee Organisations in the Netherlands (VON).*

**7. Please explain why, according to the State party's report, asylum seekers and a few other categories of foreigners are granted preferential treatment over other foreigners under the Benefit Entitlement (Residence Status) Act (para. 110). Please indicate whether the State party envisages any amendments to that Act and, if so, please explain the reasons for any such amendments.**

*The Benefit Entitlement (Residence Status) Act excludes foreign nationals residing illegally in the Netherlands from entitlement to social security benefits. Under the Act foreign nationals without legal residence status ("rechtmatig verblijf") in the Netherlands are not entitled to social services. It should be noted that some exceptions apply: all foreign nationals, with or without legal residence status, have the right to services such as education, necessary medical assistance and legal aid. At this time, no amendments to the Act are envisaged.*

*Some categories of foreign nationals who are not in possession of a valid residence permit nonetheless have legal residence status ("rechtmatig verblijf") because they are allowed to remain in the Netherlands for some reason, e.g. while awaiting the outcome of their application for a residence permit. As a rule, asylum seekers are allowed to remain in the Netherlands during the asylum procedure. Consequently the Benefit Entitlement (Residence Status) Act does not apply to them, as they are not residing illegally in The Netherlands. Other foreign nationals, including foreign nationals applying for a residence permit for the purpose of family reunification, may remain in the Netherlands during the procedure under specific circumstances. This rule does not apply to foreign nationals whose applications have been denied because they are considered a threat to public security; such persons are not allowed to stay in the Netherlands while awaiting the outcome of legal proceedings and they are not entitled to social benefits. These rules illustrate that this is not a matter of some categories of foreign nationals receiving preferential treatment with regard to benefits, but rather a question of who is allowed to remain in the Netherlands.*

**8. Please provide additional and updated information on the enjoyment of migrant workers in the State party of the rights recognized in the Covenant. Please indicate whether the State party intends to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.**

*There is no additional information to be provided on the enjoyment by migrant workers of the rights recognized in the Covenant. At this point the Government has no intention to accede to the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. This is inter alia related to the Benefit Entitlement (Residence Status) Act (Koppelingswet), which entered into force on 1 July 1998 and which distinguishes between foreigners with and without legal residence status, and the consequences of that distinction for entitlement to social security benefits.*

*To date there 34 parties to the convention, none of which are countries that receive labour migrants. If other western countries were to ratify the convention, that could precipitate a review of the current position.*

### **III. ISSUES RELATING TO SPECIFIC PROVISIONS OF THE COVENANT (ARTS. 6-15)**

#### **Article 6: The right to work**

#### **9. Please provide information on the measures taken by the State party to achieve its objective of a net employment rate for women of 65 percent by 2010.**

*In the period 2000–2005, legislation was enacted to make it easier to combine care and paid employment. This is expected to increase women's economic independence and participation in work. The Work and Care Act provides for maternity and paternity leave, adoption leave, paid and unpaid parental leave, care leave and emergency leave. The Working Hours (Adjustment) Act makes it possible for employees to reduce or increase their working hours. The Childcare Act protects the quality of childcare and regulates how it is paid for. In principle employers, employees and the government share responsibility for paying for childcare. The life-course savings scheme, which came into force on 1 January 2006, offers employees the option of saving to finance a period of unpaid leave. Parents who take their statutory parental leave and participate in the life-course savings scheme are eligible for tax relief.*

*Developments set in motion by Work-Life Balance (Dagindeling) projects are making it easier to combine paid work and care. Examples of provisions include day care for 0-12 year olds, flexible working hours, working at home and support services for carers.*

*Raising the percentage of women in employment is part of the current government's reform agenda, which aims to increase participation in work across the board. In 2004, the government introduced the new Work and Social Assistance Act (WBB). As a result of the new law, the number of people on social assistance benefit fell to 337,000 in 2004, which represents a greater decrease than initially anticipated. The follow-up benefit under the Unemployment Insurance Act (WW) has been abolished to increase the activating effect of the unemployment benefit scheme. In 2006 various new schemes will be introduced, such as the new Work and Income (Capacity for Work) Act (WIA), which replaces the Invalidity Insurance Act (WAO). The new legislation shifts the emphasis from a*

*person's limitations to his or her capabilities. Only people who are genuinely incapable of working ever again are entitled to full benefits. The government is also gradually abolishing the tax treatment accorded to early retirement (VUT) and pre-pension schemes. Consequently, the percentage of older male and female employees is gradually increasing.*

*The Dutch government has also taken several general measures to support women's participation in employment:*

- *combination tax credit: tax incentive to encourage women to work or return to work*
- *supplementary combination tax credit: tax incentive to encourage women to work or return to work*
- *contribution towards formal childcare (employer/tax authorities)*
- *general provisions for childcare before and after school*

*Plans are currently being developed to allow schools to offer childcare between the hours of 7.30 and 19.00.*

- *life-course savings scheme*

*This scheme enables participants to spread paid work and care over the course of their career.*

- *Work and Care Act*

*This act makes provision for parental leave and maternity leave.*

- *Work-Life Balance projects*

*In practice, it is often difficult to juggle one's work and private life. There is a shortage of childcare, working hours are not flexible enough, working hours and opening times of schools, daycare centres and facilities are insufficiently synchronised. The Work-Life Balance Office (Bureau Dagindeling) coordinates and supervises local experiments aimed at facilitating a well-balanced combination of work and care (until Sept. 2007; policy implications will be assessed after that date).*

*In addition, there is policy aimed specifically at ethnic minority women:*

- *Ethnic Minority Women and Employment Coordination Group*

*The coordination group's task is to improve the position of minority women on the labour market.*

- *strategy for emancipating and integrating women from ethnic minority groups.*

*The provisions described above are intended to increase the net employment rate for women to 65% by 2010.*

**10. Please explain why the so-called Voluntary Agreement on Ethnic Minorities with the Royal Association MKB-Nederland (the employer's association for small and medium-sized businesses to alleviate unemployment among minorities) was not extended beyond 31 December 2002.**

*The parties to the Voluntary Agreement were the Royal Association MKB-Nederland, Arbeidsvoorziening Nederland (now known as the Centres for Work and Income, CWI) and the Ministry of Social Affairs and Employment. When the Agreement expired, the parties and the CWI decided that the knowledge acquired during the term of the agreement and the work of minority business consultants (intensive mediation) would be incorporated into the regular services of the CWI. The substantive parameters of the Voluntary Agreement are now a structural part of cooperation between the parties. The CWI's minority business consultants, who were engaged during the term of the Voluntary Agreement, are no longer employed under that job title, but the CWI still uses their expertise to provide tailored solutions for ethnic minorities and employers.*

*Although the Voluntary Agreement officially expired on 31 December 2002, the rationale behind it has been embedded in other ways in cooperation between the parties.*

**11. Since unemployment among ethnic minorities is still three times higher than among ethnic Dutch people, please explain what measures have been taken to combat this phenomenon. In this connection, please indicate why the Employment of Minorities Act (SAMEN) was not extended on expiry and to what extent it has been successful in promoting employment for minorities.**

*The government is developing a range of activities to improve employment opportunities for ethnic minorities. Ethnic minorities benefit proportionately from general activities (such as the Youth Unemployment Task Force (40,000 new jobs to be created for young people by 2007; unemployed young people and early school leavers to either return to school or have a job within six months). They also benefit from measures to maximise opportunities for reintegration to increase long-term outflow from unemployment by 25%. In addition, there are special activities geared specifically to ethnic minorities. For example, the government has made agreements with the social partners, implementing bodies, Association of Netherlands Municipalities (VNG), minorities organisations and other civil society organisations within the framework of the Social Cohesion Initiative (BIMB) regarding a joint commitment to improving the position of ethnic minorities in the labour market. Ten projects have been initiated under this framework. An important BIMB project currently in progress is the Employment Offensive for Refugees. The Dutch Council for Refugees launched this project in cooperation with Foundation for Refugee Students (UAF), Emplooi and the CWI with the goal of helping find jobs for 2,600 extra refugees within 3.5 years.*



*Another area of attention is combating negative stereotypes and discrimination of ethnic minorities in employment. Specific supplementary policy is pursued as required. Examples include:*

- *In order to foster diligence in recruitment and selection policy, the National Bureau against Racial Discrimination developed guidelines for using psychological assessments, with a grant from the Ministry of Social Affairs and Employment, in order to ensure equal opportunities for ethnic minorities.*
- *With a grant from the Ministry of Social Affairs and Employment, the Trade Union Confederation FNV launched a project to stimulate discussion in the workplace between employees of different ethnic minority groups and ethnic Dutch employees about the differences between cultures and the effect they have on relations in the workplace; to optimise working relationships and increase integration in the workplace; and to discuss the prejudices each ethnic group has about the other group(s).*

#### **Employment of Minorities (Promotion) Act (SAMEN)**

*Under the Employment of Minorities (Promotion) Act, every company with more than 35 employees was required to submit yearly reports about how many members of ethnic minorities it employed (in comparison with the targets for the region) and about its efforts to promote proportionate participation by ethnic minorities. Although the number of companies that submitted yearly reports increased, full compliance with the Act was never achieved. After being renewed once for two years in 2002, it was not renewed again in 2004 because in the government's view the little progress that had been made was insufficient.*

*Central government is setting up a National Diversity Management Network this year to help employers pursue diversity policies. The Network will serve as an activating knowledge centre to promote diversity management and bring together knowledge, competencies and experiences from both the supply and the demand side. This will ensure that the knowledge developed in various projects in recent years is incorporated into the government's diversity policy.*

**12. Migrants who are lawful residents of the State party have the same rights and duties as Dutch nationals as far as employment is concerned. Does this also apply to other foreigners, including foreigners without residence permits? In particular, does the 1994 Equal Treatment Act apply to all categories of workers?**

*At the time of writing, the Netherlands does not recognise free movement of labour for persons from outside the EU/EEA or persons from the new EU member states, with the exception of Malta and Cyprus. Dutch employers require a work permit to employ people from these countries in the*

*Netherlands. Work permits are linked to residence permits: persons who are not authorised to reside here are not allowed to work here either. Therefore, foreign nationals without a residence permit do not have the same employment rights as foreign nationals who have a legal residence permit and a work permit.*

***In particular, does the 1994 Equal Treatment Act apply to all categories of workers?***

*The Equal Treatment Act applies to all categories of workers.*

#### **Article 7: The right to just and favourable conditions of work**

**13. Please explain the method for determining the legal minimum wage and whether it is sufficient to ensure an adequate standard of living for workers and their families.**

*In the Netherlands, the minimum wage is set by law and cannot be deviated from by collective agreement. Consequently, the minimum wage is an effective lower limit. The lowest wages in collective labour agreements between employers and labour unions are usually higher than the minimum wage.*

*Anyone who is lawfully resident in the Netherlands and who has insufficient means to support himself is entitled to a guaranteed minimum income benefit under the Social Assistance Act (ABW). These benefits are linked to the minimum wage. The Netherlands has one of the highest minimum wages of the European Union. The statutory minimum wage and the Dutch social security system provide sufficient income to guarantee an adequate standard of living.*

*The minimum wage is indexed to the average percentual wage increase in the market and the public sector, which is calculated by the Netherlands Bureau for Economic Policy Analysis (CPB). This indexation of the minimum wage can be reconsidered or abandoned if it would negatively affect employment or cause social security expenditure to rise in such a way that a substantial increase in social security contributions or taxes would be inevitable. These grounds for reconsideration are translated into an indexation criterion called the "inactivity ratio". If the inactivity ratio, calculated by the CPB, is above a certain norm, indexation will not take place. The government is authorised to change the norm (parliament must be informed).*

**14. Please explain why approximately 68,000 employees (or 1.1% of all employees) earn less than the statutory minimum wage.**

*Some employers pay less than the statutory minimum wage in order to lower their operating costs. This is against the law. Payment of the minimum wage can be enforced only under civil law. The Labour Inspectorate can conduct an investigation on the basis of tips or reports of underpayment and pass on the results to the interested parties, including the trade unions, which can then initiate civil proceedings.*

*After these figures became known in 2001, the Ministry of Social Affairs and Employment took steps to better inform employees and employers about their legal rights with regard to the statutory minimum wage. The social partners (employers' organisations and trade unions) were told about the number of employees receiving less than the minimum wage so that they could take action geared towards their respective members.*

*In addition, the government intends to introduce an administrative fine for non-compliance with minimum wage law. The Labour Inspectorate, which currently has an investigative role in this regard, is developing a policy of more active supervision.*

**15. Please provide information on the minimum working age for children and on the types of work that children under the age of 16 can lawfully perform.**

*The Working Hours Act contains several exceptions to the ban on child labour. The ban does not apply to:*

- work performed by a child aged 12 or older imposed by the court as an alternative sanction, as long as the work is not performed during school hours;*
- non-industrial light auxiliary work performed by a child aged 13 or older, as long as the work is not performed during school hours;*
- light work performed by a child aged 14 or older if the work is associated with the child's education;*
- morning newspaper delivery by a child aged 15 or older, as long as the work is not performed during school hours.*

*The exceptions contained in the Act state only the kind of work and the age from which it is permitted and that the work may not be performed during school hours. The related ministerial order on child employment (below: NRK), contains more rules about the frequency with which children are permitted to work, the maximum permitted hours of work per day and per week, the minimum required hours of rest per day and per week, breaks, supervision, inspection and further explanation of the kind of work permitted.*

*The NRK also defines "non-industrial light auxiliary work" as work carried out in a non-industrial environment and consisting exclusively of unskilled casual jobs.*

*Children aged 13 are permitted to do "non-industrial light work", i.e. work in a non-industrial environment. The actual tasks carried out and the environment in which those tasks are carried out are taken into consideration when determining whether work qualifies as "non-industrial light work".*

*With regard to light work, the NRK states the following:*

*“Work that is too heavy, dangerous or harmful to health is not permitted. Dangerous work includes work at machines that could cause injury by cutting, pressing or crushing. Work that is harmful to health includes work:*

*a. in which the child could be exposed to hazardous substances;*

*b. for which the child would have to wear personal protection gear.*

*In any event, children are prohibited from working as a cashier, on an assembly line or in a warehouse, (e.g. loading and unloading lorries)”.*

**16. The income gap between men and women decreased from 26% (1993) to 23% (1998). Please provide updated statistical data on income disparities between men and women and indicate by which date the State party expects to fully implement the principle of equal pay for equal work for men and women? Please also provide updated information on cases in which the courts and the Equal Treatment Commission found unjustified differences of pay for men and women.**

*Equal pay was formally and fully implemented in the Netherlands by Act of 20 March 1975.*

*The Netherlands cannot provide examples of court cases because it is the Equal Treatment Commission that reviews equal pay cases and neither the parties nor others are obliged to comply with its decisions. The Personal Data Protection Act prohibits access to data on decisions of the Equal Treatment Commission that have led to court proceedings. Consequently, the Netherlands is unable to provide information about cases in which both bodies reached the same conclusions.*

*The Labour Inspectorate has published two reports on the position of employees.*

*The report shows that pay differentials between men and women have fallen from 23% (uncorrected, 1998 and 2000 figure) to 22% (2002 figure), and remained at 7% (corrected). In the public sector the pay differential between men and women shows a decrease from 15% (uncorrected, 1998 and 2000 figure) to 14% (2002 figure), and from 4% (corrected, 1998) to 3% (2000 and 2002)*

*Another Labour Inspectorate report on pay differentials between men and women (2004 figures) will be published in the course of 2006.*

*The uncorrected differentials can be explained partly by differences in job level, training and years of service. The corrected differential cannot yet be fully explained. It may be due to pay discrimination, but there may also be other factors involved.*

*The public sector encourages equal pay through:*

- consultation with the social partners (for example at the spring and autumn round of talks);*
- development of instruments such as the gender-neutral job evaluation manual and the equal pay quick scan, checklist and management tool;*

- *commissioning research: with a grant from the Ministry of Social Affairs and Employment, the Equal Treatment Commission has developed a simulation program to analyse pay systems. This equal pay quick scan evaluates quickly and efficiently whether further research is required. This allows testing of pay systems and pay policies on a large scale for discriminatory elements without long waiting times or delays. A “light version” of the quick scan has also been developed;*
- *an equal pay task force in which all relevant organisations, such as employers’ organisations, trade unions, the Dutch Association of Personnel Officers and the Equal Treatment Commission, participate; and*
- *providing information (the Ministry of Social Affairs and Employment has compiled various brochures and reports on equal treatment and equal pay, which are also available online.)*

*The Equal Treatment Commission’s decisions have no binding force on the parties. Nevertheless, in 80% of all cases its decisions are followed. If the decision is disregarded the complainant can initiate court proceedings and invoke the Commission’s decision. The court will take the decision into consideration, but its ruling may differ from that of the Equal Treatment Commission. No specific cases can be cited in which this has happened.*

**17. Please provide information on the wages paid in the State party to nationals of new member States of the European Union and indicate to what extent labour inspection units ensure that such wages do not fall below the legal minimum wage.**

*There is no concrete data on underpayment of workers from the new member states. However, the Labour Inspectorate has found that a considerable percentage of workers from new member states encountered during inspections for compliance with the Foreign Nationals (Employment) Act were being underpaid (i.e. receiving less than the statutory minimum wage).*

*Payment of the minimum wage can be enforced only under civil law. The Labour Inspectorate can conduct an investigation on the basis of tips or reports of underpayment and pass on the results to the interested parties, including the trade unions, which can then initiate civil proceedings.*

*With regard to the debate on the free movement of workers from the new member states, the House of Representatives has been informed that the Minimum Wage and Minimum Holiday Allowance Act will be amended to include an administrative fine for employers that pay less than the statutory minimum wage (see also question 14, second paragraph).*

*The social partners see to it that employers pay wages in accordance with the collective labour agreement (CAO).*

*The Labour Market Fraud Directorate of the Labour Inspectorate is responsible for supervising compliance with the minimum wage rules and the Foreign Nationals (Employment) Act.*

### **Article 8: Trade union rights**

**18. The right to strike is restricted for some categories of public employees. What categories of public employees are excluded from exercising the right to strike and on the basis of what grounds?**

*In the Netherlands there is no statutory or constitutional right to strike. However, that right is recognised in article 6, paragraph 4 of the European Social Charter. In its judgment of 30 May 1986 (NJ1986, 688), the Supreme Court decided that article 6, paragraph 4 has direct effect. The right to strike could therefore be described as ‘judge-made law’ that is ‘directed’ by the European Social Charter. As a result of the Supreme Court’s decision, the provision prescribes a mandatory minimum right to strike in the Netherlands. This applies to both the private sector and to public servants, with the exception of military personnel in active service and civil servants employed by the Ministry of Defence.*

*Until recently, a reservation was attached to article 6, paragraph 4, excluding public servants. Due to developments in case law, whereby public servants’ right to take collective action was, in principle, recognised, this reservation no longer had any meaning. A new reservation was made in the Act of 1 December 2005 approving the Revised European Social Charter (Strasbourg, 3 May 1996) (Bulletin of Acts and Decrees 2005, 694), but this time it was limited to military personnel in active service and civil servants employed by the Ministry of Defence. Legislation governing collective action by this category of public servants is being prepared. The precise wording of the provision is therefore not yet known.*

### **Article 9: The right to social security**

**19. Please provide information on the measures the State party intends to adopt and implement in order to ensure that self-employed women have access to maternity leave benefits, given that private insurance contracts do not cover the first two years following the conclusion of such contracts.**

*In this regard, the Netherlands is awaiting a decision from the court and the Equal Treatment Commission.*

- *An appeal is pending before the Amsterdam Court of Appeal concerning the waiting period that insurance companies impose. The court is expected to pass judgment in the course of 2006.*

- *At the request of the Senate, the Equal Treatment Commission has been asked to issue an advisory report on waiting periods.*

### **Article 10: Protection of family, mothers and children**

**20. According to the State party's report, the rate of domestic violence in the State party is high, affecting more than 40 percent of women. Please provide information on the reasons for such a high rate, as well as on the results of the implementation of the Preventing and Combating Domestic Violence project.**

*The figure 40% does not only refer to women, but to the Netherlands population as a whole. When surveyed, 40% of Dutch women and men claim to have been confronted with domestic violence. As women are more often victims than men, the percentage of women in the Netherlands confronted with domestic violence might be over 50%. Other research, however, concludes that approximately 20% of women in the Netherlands between the ages of 20 and 60 have experienced physical violence from a person with whom they had a relationship.*

*As to the second part of the question: the policy document 'Privé Geweld-Publieke Zaak' (Private Violence, Public Issue) of April 2002 resulted in a domestic violence strategy programme, which started in 2002 and will continue until 2008. The main developments to date are summarised below.*

- *The 35 regional authorities for women's shelters have established Domestic Violence Advice and Support Centres.*
- *Women's shelters are currently carrying out a plan for improving the intake process and safety.*
- *Women's shelters have developed a risk screening tool, which has been used during intakes since 1 January 2006.*
- *The website [www.huiselijkgeweld.nl](http://www.huiselijkgeweld.nl) ("huiselijk geweld"= "domestic violence") was transformed in 2005 into the primary digital source of information about domestic violence. Between 9 August and 31 December 2005, the site had 216,511 visitors.*

- *The Bill to allow temporary restraining orders to be issued against perpetrators of domestic violence was submitted to the Council of State in February 2006 and is expected to be presented to the House of Representatives for consideration in the summer.*
- *Preparatory work for the temporary restraining order Bill began in October 2005; pilot projects are being carried out in three municipalities, where the specially developed instruments and training courses will be tested starting in October 2006.*
- *In March 2006 the Bill for a ban on the use of physical punishment in child rearing was presented to the House of Representatives for consideration.*
- *The first version of a domestic violence risk assessment tool has been completed.*
- *A practical guide called "Child Trails" (Kindsporen) will become available in the summer. It contains strategies for assisting children who have witnessed domestic violence.*
- *In 2005 the number of domestic violence incidents that were actually registered with the police increased to 40% and the number of arrests rose to 60% of those registered incidents.*

**21. Please explain why the integrated national safety policy of 2002 focuses on domestic violence in the public sector, although such violence primarily occurs in the private sphere.**

*The government believes that this question is the result of a misunderstanding. In the Dutch language we speak of "de publieke zaak", by which we mean that it is in the public interest for the government to take steps to combat violence in the private sphere.*

*With the aim of implementing an effective strategy for dealing with domestic violence, in 2002 the government issued a policy document entitled 'Privé Geweld-Publieke Zaak' (Private Violence, Public Issue). On the basis of this document, the Ministry of Justice and the other ministries, the Association of Netherlands Municipalities, the police, the Public Prosecution Service and other partners introduced a multi-year programme in 2002 to develop a joint strategy and good infrastructure and facilities for effectively curbing and, where possible, preventing domestic violence.*

*Several programme objectives have already been achieved. For instance, a growing number of local and regional partnerships, such as the Domestic Violence Advice and Support Centres, which are being set up by all regional authorities for women's shelters with a special grant from the State Secretary for Health, Welfare and Sport. TransAct (centre for gender issues in health care and prevention of domestic violence) has developed a national support programme for all the partners in the system. Progress has been made in the police project. Not only have the police greatly improved their expertise, they have also developed a special registration system that provides more insight into the nature and extent of domestic violence.*



*A few years ago, the Board of Procurators General issued instructions on domestic violence, with guidelines for the police, the public prosecution service and the probation service. The instructions encourage the police and public prosecution service to take action in cases of domestic violence, even if the victim does not report it.*

*In 2006 the Association of Netherlands Municipalities will complete a project funded with a grant from the Ministry of Justice. By the end of 2006, over 250 municipalities will be ready to begin coordinating the local approach to domestic violence. Domestic violence advice and support centres will be set up in all 35 regional authorities for women's shelters and in the large cities with funding from the Ministry of Health, Welfare and Sport.*

*Powers to grant temporary restraining orders to keep perpetrators of domestic violence from entering their homes are expected to enter into effect in 2007. A training programme will be set up for police officers and other involved parties. In addition, forms and instruments, including a risk assessment tool, will be developed. The new material will be tested in pilot projects. A national publicity campaign is likely to start in 2007 to spread the message that domestic violence is unacceptable and is never justified.*

**22. Please provide information as to whether the National Action Plan to Combat Sexual Abuse of Children (NAPS) which expired in 2002 has attained its intended objective. Please state why the Plan was not extended on expiry.**

*The National Action Plan against Sexual Abuse of Children (NAPS) was intended to improve policy coherence and cooperation among the institutions that have a role in this area. The activities set out in the plan were aimed at improving victim assistance, reducing recidivism and increasing the expertise of professionals. At the end of 2002, the Minister of Justice sent the final report on the results of the NAPS to the House of Representatives.*

*Much has been achieved, but this matter requires continuous attention. For that reason, a follow-up to the action plan has been incorporated into regular prevention and youth care policy and in the strategies for dealing with child abuse and domestic violence.*

*The measures that have ensued from the NAPS include the following.*

- A child abuse reporting code has been implemented. Preparations are in progress to amend the Youth Care Act so that this code is compulsory for several professions.*
- Since 2003 the RAAK approach has been initiated in four regions. RAAK is the Dutch acronym for "child abuse reflection and action group" and its aim is to develop a comprehensive strategy for tackling child abuse. The evaluation will be finished at the end of 2006.*

- *Leiden University and the Free University of Amsterdam are currently researching the nature and extent of child abuse in the Netherlands. The results are expected sometime this year.*

*The Minister of Justice is also focusing attention on new phenomena in which the sexual abuse boundary can be easily overstepped. At the end of 2006 a study will be completed that is investigating new forms of youth sexual behaviour, such as chatting, instant messaging and other means of “sexually charged communication” via mobile phones and the Internet. Young people are making themselves vulnerable and these activities can result in abuse, adolescents engaging in sex for payment, sex parties given by and for young people and boys – primarily of Moroccan descent – being sexually abused and ending up in prostitution (in some cases under the control of a “sugar daddy”).*

*The study is looking at whether behaviour of this nature can be described as voluntary and whether it can lead to prostitution.*

*The NAPS itself was not renewed. Instead the choice was made to integrate its positive results into standard policy and into current strategies for tackling child abuse and domestic violence.*

**23. Since prostitution is legal in the State party, please explain what measures have been adopted and implemented to combat trafficking in women and children for purposes of sexual exploitation.**

*The Netherlands does not endorse the question’s underlying assumption that legalising prostitution automatically leads to trafficking.*

*As regards the Dutch measures to combat trafficking in general, please see the appended National Action Plan to Combat Trafficking in Human Beings.*

**24. Please explain why persons under the age of 18 who are married or in a formal cohabitation relationship are not considered as minors.**

*A person under the age of 18 is, in the eyes of the law, subject to the authority of his or her parents or guardian and legally incapable. This means that he or she cannot perform legal acts (such as buying a moped) without the consent of his or her parents or guardian unless the act is one that minors customarily perform autonomously.*

*A minor requires the consent of the minister of Justice to marry or enter into a registered partnership. This consent may only be given for significant reasons.*

*The principle underlying the provision referred to in the question is that if a child under the age of 18 marries or enters into a registered partnership he or she is no longer subject to the authority of his or her parents or guardian and is therefore capable of performing legal acts. This is why the law considers this group to have reached the age of majority.*

#### **Article 11: The right to an adequate standard of living**

**25. Since the main objective of the overall development cooperation policy of the Netherlands is to combat extreme poverty, please indicate whether this policy has attained its objective, especially with regard to women, ethnic minorities, persons with disabilities and the disadvantaged and marginalized groups.**

*This objective is incorporated in the Millennium Development Goals (MDGs), which form the core of the Netherlands' development cooperation policy. Policies on ethnic minorities, persons with disabilities and the disadvantaged and other marginalised groups are an integral part of overall development cooperation policy. In line with the MDGs there is a special focus on the position of women.*

*By means of evaluations and progress reports on its activities, the Ministry of Foreign Affairs continuously and systematically monitors the effectiveness and impact of Dutch development cooperation policy. According to the regular reports produced by the government and by independent institutions, the Netherlands' development cooperation activities generally contribute to the fight against poverty. However, the effectiveness of ODA remains the subject of an ongoing debate within the Netherlands (guided by the Ministry of Foreign Affairs' Effectiveness and Quality Department) and throughout the international community (e.g. UN reforms).*

**26. Please provide information on the causes of homelessness in the State party and indicate whether the State party has developed a strategy to address this problem effectively.**

*The causes of homelessness are numerous. People may be evicted from their homes due to rent arrears or anti-social behaviour. Psychological problems and addiction can lead to vagrancy. Sometimes when people are released from care institutions no follow-up arrangements have been made. In a few cases, this happens because the person's behaviour is too disruptive to the other clients in the institution. Sometimes when people are released from prison they have no home to go to.*

*This year central government and the four largest cities (Amsterdam, Rotterdam, The Hague and Utrecht) presented their Strategy Plan for Social Relief, which aims to reduce homelessness dramatically. A key feature of the plan is its personal approach. For each homeless person an individual programme is drafted containing personal goals in the areas of housing, care, income and daily activity. Over a period of seven years, all homeless people will gradually be integrated into the system. Consultations are ongoing to discuss the options for implementing the plan in other municipalities.*

## **Article 12: The right to physical and mental health**

**27. Only 60 percent of the population is insured against the costs of curative medical treatment. Please explain how the rest of the population is covered.**

*For many years the Netherlands had a fragmented system of healthcare insurance for standard medical care. Until 1 January 2006, a large section of the Dutch population (60%) was covered by a system of compulsory healthcare insurance. People not falling within the scope of the compulsory national health insurance scheme or of the statutory public servant's health insurance scheme, needed to obtain insurance from the private sector when looking for a health insurance. However, no one was obliged to take out private health insurance. Some risk groups were able to obtain a policy that covered a legally defined standard package of services. In addition, certain groups of civil servants were covered by special private healthcare insurance.*

*This fragmented system was abolished on 1 January 2006 with the introduction of a single statutory insurance regime that covers all residents of the Netherlands. It is governed by the Healthcare Insurance Act (ZVW). Under the Act, the entire population has to be insured against the costs of curative medical treatment. The new insurance regime was designed to contribute to the fullest extent possible to the provision of effective, high-quality health care. The new system retains and, where possible, strengthens some established rights, like the scope for private initiative, a relatively strong private law basis with accompanying financial responsibilities for medical insurers and good accessibility.*

**28. Please provide information as to the manner in which the Exceptional Medical Expenses Act (AWBZ) interacts with the Health Insurance Act (ZFW) and on the medical expenses covered under each Act. In this regard, please also provide information on the new Health Insurance Act which will come into operation in 2006.**

*The Dutch healthcare insurance system has three pillars:*

- *long-term nursing and care (AWBZ);*
- *curative care (formerly ZFW, currently ZVW);*
- *supplementary insurances.*

*The Healthcare Insurance Act (ZVW), which came into force in 2006, provides for insurance coverage against the costs of curative care, while the AWBZ provides coverage for long-term nursing and care.*

***Exceptional Medical Expenses Act***

*The entitlements that exist under the Exceptional Medical Expenses Act have been defined in terms of functions. The focus is on the needs of people entitled to care rather than on the available supply of care. This change in emphasis is expected to pave the way for providing customised care. The need to switch from a supply-side to a demand-side approach came about as a result of a changing society in which people increasingly voice their wishes and want to organise their lives the way they see fit. Another basic principle of the Exceptional Medical Expenses Act is that people should*

*continue to live at home for as long as possible. They can receive care either in the home or at a healthcare institution.*

*Seven broadly-defined functions create considerable freedom for arranging indicated care in consultation with a care provider. They are:*

- 1. domestic help: e.g. tidying up, cleaning, preparing meals.*
- 2. personal care: e.g. help taking a shower, bed baths, dressing, shaving, skin care, going to the toilet, eating and drinking.*
- 3. nursing: e.g. dressing wounds, administering medication, giving injections, advising on how to cope with illness, showing clients how to self-inject.*
- 4. supportive guidance: helping the client organise his/her day and manage his/her life better, as well as day care or provision of daytime activities, or helping the client to look after his/her own household.*
- 5. activating guidance: e.g. talking to the client to help him/her modify his/her behaviour or learn new forms of behaviour in cases where behavioural or psychological problems exist.*
- 6. treatment: e.g. care in connection with an ailment, e.g. rehabilitation following a stroke.*
- 7. accommodation: some people are not capable of living independent lives, and require, for example, sheltered housing or continuous supervision in connection with serious memory problems. In some cases, a client's care requirements may be too great to address in a home environment, making admission to an institution necessary.*

*Care is provided in the form of products. So, for example, home care, psychiatric care and admission to a residential care home, nursing home or institution for people with physical or mental disabilities are all Exceptional Medical Expenses Act products. A product consists of one or more functionally defined forms of care. Illustration: Mr B has suffered a brain haemorrhage. He is convalescing and is temporarily in need of nursing and general care. His indication therefore covers four functionally defined forms of care: "general care", "nursing", "treatment" and "accommodation". The combination of these functions is delivered by admission to a nursing home.*

*Under the Act, people are also entitled to such facilities as nursing aids, hospital care after one year, rehabilitation (after one year), pre-natal care, testing for certain hereditary metabolic diseases and vaccinations under the national vaccination programme.*

### ***The new Healthcare Insurance Act (ZVW)***

*The services provided under the Healthcare Insurance Act, in effect since 1 January 2006, are equivalent to the services under the former Health Insurance Act (ZFW) (see question 27). However, the way in which the services are offered and the supplier-customer matching process have been changed.*

*The government will carry out regular reviews of the services provided under the Act to ensure the provisions of the Act are still adequate and cover the needs of the population. This involves assessing whether certain types of care need to be removed from or added to the package.*

*The new healthcare system in the Netherlands has reduced direct government involvement in the health services sector. The focus is now on the needs of people entitled to care rather than on the available supply of care. This change in emphasis is expected to pave the way for providing customised care. Within frameworks defined by law that guarantee that the standards of the former healthcare insurance system will be maintained, there is now more freedom of choice for the customer, more decision-making latitude and also greater incentives for suppliers to compete.*

*The medical expenses covered by the new Healthcare Insurance Act are:*

- *medical care*
- *paramedical care*
- *speech therapy*
- *maternity care*
- *pharmaceutical care*
- *medical devices*
- *oral care*
- *accommodation and transport.*

*Mental health care (including primary psychological care) will be financed under the Healthcare Insurance Act from 1 January 2007. This kind of care will still be covered by the Exceptional Medical Expenses Act in 2006. Primary psychological care is not included in the social healthcare insurance schemes in 2006.*

*A brochure with a detailed overview of the Healthcare Insurance Act and the different services it provides is enclosed with this report.*

### **Articles 13 and 14: The right to education**

**29. Please indicate whether all children residing in the State party enjoy the right to education under the Compulsory Education Act.**

*Yes, all children residing in the Netherlands are entitled to education on the basis of the Compulsory Education Act (1969).*

**30. Please explain to what extent the minimum working age of 16 years is compatible with the fact that education is compulsory for 12 years in the State party.**

*Compulsory school attendance in the Netherlands begins on the first school day of the month following the month in which the child turns five and ends:*

*a. at the end of the school year in which the child has attended school for at least twelve full school years;*

*b. at the end of the school year in which the child turns sixteen.*

*A partial school attendance requirement applies to young people under 18 who are not enrolled in a fulltime education programme. This partial requirement ends on the last day of the school year.*

**31. Please indicate whether the State party intends to adopt effective measures to combat the increasing segregation of ethnic minority pupils from ethnic Dutch pupils, particularly in Amsterdam.**

*In the Netherlands, parents have a free choice of primary schools. Most send their children to a school in the neighbourhood. This means that schools with a high percentage of ethnic minorities develop in neighbourhoods with a high population of ethnic minority pupils. These neighbourhoods and schools are found mainly in the big cities, including Amsterdam. In May 2005 the Education Council issued an advisory report entitled: "Beacons for Dispersal and Integration", which addresses ways of reducing segregation in education. The government included several of the Council's recommendations in its policy response to the report. The Dutch government aims to increase the number of mixed schools, despite the free-choice system. Agreements to this effect are needed at local level between schools and the municipality. As of 1 August 2006 all schools will be required to consult with the municipal authorities about how they can help combat segregation in education. The parties will be left to make arrangements based on the local situation, but possible agreements include collective registration of pupils, providing parents with information on school choice, etc. Other options include running pupil exchanges or developing joint sport or cultural activities. The government supports municipalities, schools and parents in their endeavour to create more mixed schools. The Education Inspectorate sees to it that schools make an adequate contribution to this objective.*

**Article 15: Cultural rights**

**32. Please provide information on the measures taken by the State party to ensure access to cultural life for individuals and groups belonging to ethnic minorities, as well as on specific programmes designed to preserve their cultural identity.**

*The government pursues an active policy to enable everyone to participate in the cultural life of the Netherlands.*

- *It supports various organisations that aim to increase cultural institutions' knowledge of diversity issues. Examples include:*
  - *Netwerk CS: a networking organisation that encourages cultural institutions to take more account of cultural diversity in serving the public, programming and personnel policy;*

- *Atana: aims to improve ethnic diversity at board level;*
- *Miramedia: strives for greater ethnic diversity in the media sector.*
- *It supports various organisations that are specifically directed at one or more ethnic groups, for example by organising special exhibitions. Examples include: the Wereldmuseum, Tropenmuseum, Marmoucha, Rhythm of Reason, Rast, NiNsee, ImagineIC.*
- *It supports nine public funds for culture and the media which have stepped up their intercultural programming, i.e. activities to promote events with people from different cultures working together.*
- *It supports the programme “From Talent to Profession” (“Van Talent naar Beroep”) which helps talented bicultural youngsters towards a professional career in the arts.*

*In general, cultural policy is moving away from a focus on target groups in favour of a more inclusive approach. For example, policy may be aimed at young people in general rather than those from specific ethnic minorities.*

*The government pursues an active policy to protect the cultural background of ethnic minorities in the Netherlands by supporting projects such as:*

- *the Ethnic Minorities Cultural Heritage Project and Support Scheme: to increase the visibility and knowledge of ethnic minorities’ cultural heritage in the Netherlands (e.g. history of slavery, Islamic history, migration history);*
- *the Moroccan Heritage Project, organised by the Wereldmuseum: showing museum exhibits and other cultural objects from Morocco in the Netherlands. The Wereldmuseum will manage and lend out the collection.*