

Ministerie van Buitenlandse Zaken

Aan de Voorzitter van de
Y Kamer der Staten-Generaal
Binnenhof Y
Den Haag

**Directie Multilateral
Instellingen en
Mensenrechten**

Bezuidenhoutseweg 67
2594 AC Den Haag
Postbus 20061
Nederland
www.minbuza.nl

Contactpersoon

Liefke Pronk
T 070 348 4817
F 070 348 5049
liefke.pronk@minbuza.nl

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Betreft Reacties op aanbevelingen VN-Mensenrechtenexamen

Onze Referentie
DMM/MP-360/12

Bijlage(n)
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Geachte voorzitter,

Hierbij bied ik u, mede namens de Minister van Binnenlandse Zaken en Koninkrijksrelaties, de reacties op de aanbevelingen en de verzoeken om extra informatie aan van het Koninkrijk der Nederlanden, ingediend in het kader van de Universal Periodic Review (UPR) bij de Mensenrechtenraad van de Verenigde Naties (VN) in Genève op 20 september jl.

De UPR is een instrument waarmee de Mensenrechtenraad van de VN elke vier jaar de mensenrechtensituatie van alle lidstaten onderzoekt aan de hand van de voor hen geldende mensenrechtenverdragen en (andere) verplichtingen.

Op 21 september jl. zijn deze reacties op de aanbevelingen voortkomende uit het tweede Nederlandse VN-Mensenrechtenexamen in de Mensenrechtenraad besproken. Met dit vervolg op de officiële zitting op 31 mei jl., waarin de Koninkrijksdelegatie door Minister Spies werd geleid, is de tweede UPR-cyclus van het Koninkrijk der Nederlanden officieel vastgesteld. De Nederlandse vertaling van het rapport met de reacties op de aanbevelingen, zal ik eveneens aan uw Kamer zenden, zodra deze beschikbaar is. Voor het rapport van de zitting waarin de aanbevelingen naar voren kwamen, verwijs ik u naar onderstaande link.

<http://www.ohchr.org/EN/HRBodies/UPR/Pages/NLSession13.aspx>

Over twee jaar zal Nederland op vrijwillige basis een tussentijdse rapportage versturen. Uw Kamer zal hierover op de hoogte worden gehouden.

De Minister van Buitenlandse Zaken,

Dr. U. Rosenthal

Response of the Kingdom of the Netherlands¹

98.1.²

Not accept.³

98.2.⁴

See 98.1.

98.3.⁵

Regarding the ICRMW, see 98.1. As for the CRPD, the Netherlands accepts this recommendation.⁶

98.4.⁷

Regarding the ICRMW, see 98.1. As for ILO Convention 189, the government is studying the possible consequences of ratification for existing legislation.

98.5.⁸

Regarding the CRPD, see 98.3. As for the Optional Protocol to the CRPD, the Netherlands will consider accession after a decision on ratification of UNCRPD has been made; the question of ratifying the OP-CRPD is therefore premature at this stage.

98.6.⁹

See 98.3 and 98.5.

98.7.¹⁰

See 98.5.

98.8.¹¹

See 98.5.

¹ All responses to the recommendations are made by the Netherlands, with the exception of the recommendations 98.12, 98.17, 98.18, 98.26, 98.27, 98.32, 98.34 and 98.96 which have been responded to by the Kingdom of the Netherlands (The Netherlands, Aruba, Curaçao and Sint Maarten).

² Ratify the ICRMW (Algeria, Egypt, Islamic Republic of Iran)

³ See for more information the national report under 6.

⁴ Consider ratifying the ICRMW (Mexico)

⁵ Study the possibility of ratifying the ICRMW and continue with its efforts to achieve the ratification of the CRPD (Argentina)

⁶ A decision on ratifying the CRPD, which has already been signed by the Kingdom of the Netherlands, is currently in preparation. Given the broad scope of the instrument and its potential impact on many pieces of legislation, this requires major involvement by multiple government ministries and hence is taking considerable time. A decision on ratification is not expected before the upcoming parliamentary elections on 12 September 2012.

⁷ Consider ratifying the ICRMW as well as the ILO Convention 189 (Belarus)

⁸ Proceed swiftly with the ratification of the CRPD and its Optional Protocol (Estonia)

⁹ Ratify the CRPD and its Optional Protocol (France, Australia)

¹⁰ Consider ratifying the OP-CRPD (Morocco)

¹¹ Ratify the OP-CRPD (Islamic Republic of Iran)

98.9.¹²

On the ratification of the CRPD and OP-CRPD, see 98.3 and 98.5. As for the OP-CESCR, the Dutch government is studying the possible consequences of ratification for existing legislation.

98.10.¹³

See 98.3 and 98.5.

98.11.¹⁴

See 98.3.

98.12.¹⁵

Not accept. The arguments for entering these reservations still apply.

98.13.¹⁶

See 98.12.

98.14.¹⁷

See 98.12.

98.15.¹⁸

See 98.9.

98.16.¹⁹

Accept. Ratification is currently under examination.²⁰

98.17.²¹

Accept.²²

98.18.²³

¹² Ratify the CRPD and its Optional Protocol, as well as OP-CESCR (Spain)

¹³ Adopt the necessary measures with a view to ratifying the CRPD and its Optional Protocol (Chile)

¹⁴ Study the possibility of ratifying the CRPD (Costa Rica)

¹⁵ Withdraw its reservations to the CRC (Islamic Republic of Iran)

¹⁶ Reconsider the possibility of lifting reservations to the CRC (Russian Federation)

¹⁷ Lift its reservations to articles 26 c, 37 and 40 of the CRC (Uzbekistan)

¹⁸ Ratify the OP-ICESCR (Slovakia)

¹⁹ Consider an early ratification of the third Optional Protocol to the CRC on a communication procedure Slovakia)

²⁰ decisions to sign and/or ratify are not expected before the upcoming parliamentary elections on 12 September 2012.

²¹ Approve, in all countries that form the Kingdom, legislation that criminalizes all forms of trafficking in persons (Nicaragua)

²² All forms of human trafficking are criminal offences in the European part of the Netherlands (article 273f of the Criminal Code) as well as in the Caribbean part of the Netherlands (the islands of Bonaire, St Eustatius and Saba) (article 286f of the Criminal Code for Bonaire, St Eustatius and Saba). In Aruba, all forms of human trafficking are criminal offences (article 286a of the Aruban Penal Code). In Curaçao, the new Criminal Code also criminalises trafficking in persons as a separate offence. In Sint Maarten, human trafficking is prohibited and extensively penalized in the new criminal code.

²³ Prohibit corporal punishment in all settings throughout the Kingdom of the Netherlands (Slovenia)

Violence in parenting has been formally prohibited in the Netherlands for several years²⁴ . In Aruba corporal punishment is prohibited by law in schools, and legislation to extend the prohibition to the family setting is expected in 2012. In Curaçao, the Civil Code was amended to define parents' role as that of caregivers and educators, prohibiting them from employing emotional or physical violence or any other form of humiliating treatment in parenting their children. The same goes for Sint Maarten since passing of the National Ordinance on Parental Authority in 2011 amending the Civil Code.

98.19.²⁵

The Dutch government is currently studying existing Dutch law and practice in relation to the European Convention on the Legal Status of Migrant Workers.

98.20.²⁶

The legal possibility of sentencing children to life imprisonment (which in practice was never used) was abolished in 2008.

98.21.²⁷

Accept.²⁸

98.22.²⁹

Accept. See 98.21.

98.23.³⁰

Accept. See 98.21.

98.24.³¹

Accept. See 98.21³²

98.25.³³

Accept.³⁴

98.26.³⁵

²⁴ See article 1:247, paragraphs 1 and 2 of the Dutch Civil Code and articles 300-304 of the Criminal Code

²⁵ Undertake necessary steps in order to harmonize the Dutch law and practice with the European Convention on the Legal Status of Migrant Workers (Turkey)

²⁶ Abolish in its criminal legislation the use of life imprisonment to children (Belarus)

²⁷ Ensure effectiveness, proper functioning and independence of its national human rights institution (Egypt)

²⁸ The institute will open its doors in October 2012. See for more information the national report under 4.

²⁹ Accelerate the full operationalization of the National Institute for Human Rights in the near future (Indonesia)

³⁰ Expedite the establishment and operationalization of the national Institute for Human Rights which fully complies with the Paris Principles (Malaysia)

³¹ Make full use in practice of the new Institute for Human Rights to promote a coherent approach to human rights issues across the spectrum of different policy areas and human rights situations (Norway).

³² See the national report under IV.

³³ Work with all sectors including the education sector, to ensure the National Human Rights Institute effectively supports the country's commitment to human rights (Australia)

³⁴ See the national report under IV.

Accept.³⁶.

98.27.³⁷

Accept.³⁸

98.28.³⁹

See 98.27.

98.29.⁴⁰

See 98.27.

98.30.⁴¹

See 98.27.

98.31.⁴²

Accept.

98.32.⁴³

Accept.

98.33.⁴⁴

Not accept. We have opted for a pragmatic manner of implementing the UN World Programme for Human Rights Education, building on the current situation through a bottom-up approach that pays attention to human rights while respecting the freedom of education. In practice we are in fact implementing the World Programme.

98.34.⁴⁵

³⁵ Continue to assist, when requested, Aruba, Curaçao and St. Maarten to develop human rights institutions, laws and policies (Australia)

³⁶ As democratic states governed by the rule of law, the countries of the Kingdom attach great importance to internationally recognised fundamental rights. The countries Aruba, Curaçao and St Maarten are however responsible for establishing their own human rights institutes. This does not preclude technical or other assistance upon request from the Netherlands if and when necessary. Aruba seeks to create a similar institution on the island to guarantee information and education on, and protection of, human rights in the Aruban community, in cooperation with Curaçao and the Netherlands.

³⁷ Formulate a national human rights action plan (Philippines)

³⁸ The Netherlands will evaluate the usefulness and added value of developing a national human rights action plan as part of establishing a working relationship with the Dutch National Institute on Human Rights. The government of Curaçao also supports this recommendation. It has for instance decided to establish a national human rights institute in accordance with the Paris Principles, which can be seen as an important step in this direction. The government of Aruba also supports this recommendation. A national human rights action plan will be developed by the Aruban Human Rights Committee.

³⁹ Develop a national human rights action plan (Uzbekistan).

⁴⁰ Evaluate the possibility to develop a national human rights action plan (Argentina)

⁴¹ Draft a national human rights plan which includes public policies and strategies reaching a comprehensive range of human rights (Brazil)

⁴² Keep the Human Rights Council informed about the follow-up to the "Talent to the Top" charter and inform it of the results obtained by signatories (Morocco)

⁴³ Continue efforts aimed at promoting and protecting human rights on the ground (Qatar).

⁴⁴ Adopt a national Action Plan on Human Rights Education (Slovenia)

⁴⁵ Apply homogenous human rights standards in the different territories that form the Kingdom of the Netherlands, especially in the Antilles as recommended by CESCR in 2010 (Spain)

The Kingdom of the Netherlands, consisting of four countries, is party to the six major international human rights treaties. The constitutions and national legislation of the four countries cover the majority if not all of the provisions of these treaties.

98.35.⁴⁶

Accept.

98.36.⁴⁷

Recommendation is in line with existing policy. Comprehensive statistics on crimes and offences committed on the basis of discrimination are in place.⁴⁸

98.37.⁴⁹

The Netherlands has a standing invitation to all Special Rapporteurs.

98.38.⁵⁰

Everyone in the Netherlands is protected by law from discrimination. In case of an infringement, access to justice is provided. In addition, active policies to prevent discrimination are implemented.⁵¹

98.39.⁵²

Accept. See 98.38

98.40.⁵³

Accept. See 98.38..

98.41.⁵⁴

⁴⁶ Strengthen its policies and measures for guaranteeing all socio-economic and cultural rights, and ensure those policies not to impede the full enjoyment these rights in the context of global and regional financial crisis (Vietnam).

⁴⁷ Develop a system of recording official statistical data on the most widespread crimes and offences committed on the basis of discrimination taking into account the legal obligations of the Netherlands in registering such crimes (Uzbekistan).

⁴⁸ Over the next year, all statistics on discrimination and racist offences will be recorded and presented in a uniform manner, in order to improve the assessment of trends and the results of government policy. See National Report VII. A. 43.

⁴⁹ Confirm in deed the status of standing invitation to the Special Procedures, in particular by inviting the Special Rapporteurs on the rights of migrant workers, on trafficking in persons, particularly women and children, as well as on the sale of children (Belarus).

⁵⁰ Take effective legal and practical measures to eliminate all forms of discrimination and violence against women and children, particularly women and children belonging to ethnic and religious minorities, including Muslims who still face multiple forms of discrimination with respect to education, health, employment and social and political participation (Islamic republic of Iran).

⁵¹ See National Report VII. A. and B. In addition See the National Report under VII. The Netherlands does not develop specific policies targeting specific types of discrimination. The Dutch infrastructure to combat discrimination, including bodies like the antidiscrimination services and the Equal Treatment Commission, is accessible to everyone and equipped to deal with discrimination on any grounds.

⁵² Ensure that existing statutes prohibiting gender discrimination are properly implemented and enforced, and increase through effective implementation and enforcement efforts to address violence against women and children (United States of America).

⁵³ Devise more specific measures to eliminate discrimination against women, ethnic minorities, migrants, Muslim and people of African origin (Thailand).

⁵⁴ Strengthen its actions against on all forms of discrimination and effectively protect the rights of women, children and immigrants (China).

See 98.38.

98.42.⁵⁵

Regarding monitoring of racism see 98.36 and the National Report, VII.A. Regarding the investigation, prosecution and punishment of incitement to and acts of hatred, intolerance, racism and xenophobia, see 98.38 and the National Report, VII. A.

98.43.⁵⁶

Discrimination is forbidden by law in the Netherlands. No discriminatory legislation exists. See National Report VII.A.

98.44.⁵⁷

Accept.⁵⁸

98.45.⁵⁹

Accepts the recommendation to combat discrimination on the internet. Combating hate speech on the internet is part of our policy on fighting discrimination and racism.⁶⁰ See 98.38. With regard to racist speech by political parties, see National Report VII.A.50 and XIII.120.

98.46.⁶¹

Accept.⁶²

98.47.⁶³

⁵⁵ Establish mechanisms to monitor, investigate, prosecute and punish incitement to and acts of hatred, intolerance, racism and xenophobia (Egypt).

⁵⁶ Review, amend and repeal its national discriminatory laws and regulations against persons of certain religious backgrounds, in particular Muslim migrants (Egypt).

⁵⁷ Take further measures to combat discrimination in the labour market and combat in particular discrimination based on ethnic origin and discrimination targeting transgender people (France);

⁵⁸ Employers must provide a good working environment. The Working Conditions Act requires employers to prevent and fight discrimination and harassment among their employees. The Social Affairs and Employment Inspectorate monitors the employers' compliance. Racial discrimination in the labour market, like gender discrimination, is a criminal offence. The Minister of Security and Justice is working to step up antidiscrimination policy to reduce discrimination in general, including discrimination in the labour market. See National Report, VII.C.

⁵⁹ Intensify efforts to combat the dissemination of ideas based on the racial superiority through Internet, as well as other media including racist speech by political parties (Poland);

⁶⁰ The Dutch government subsidises an Internet Discrimination Hotline (MDI), established to receive reports of manifestations of discrimination or racism on the internet. The MDI's main tasks are responding to notifications of discrimination on the internet, removing discriminatory material and contributing to criminal law enforcement. Police services specialised in cybercrime are also involved in investigating reports of discrimination or racism on the internet. The Public Prosecution Service has a special national service dedicated to prosecuting discrimination and racism, the National Discrimination Expertise Centre (*Landelijk Expertise Centrum Discriminatie*, LECD).

⁶¹ Continue to engage in a national dialogue with a view to promoting respect for diversity and tolerance in line with its obligation under the ICCPR (India);

⁶² A dialogue on diversity and tolerance is imperative in a democratic and pluralist society. A vital dialogue with religious and ethnic groups exists in Dutch society. The diverse and heterogeneous nature of society requires a dialogue with many different kinds of people from different ethnic and socioeconomic backgrounds. For that reason the existing official consultation process, in which eight ethnic minority organisations were regularly consulted, will be replaced by a more flexible dialogue.

⁶³ Take all necessary measures to prevent and eliminate all manifestations of racism, Islamophobia, xenophobia, and religious intolerance (Islamic Republic of Iran);

See 98.38 and National Report VII.A.

98.48.⁶⁴

See 98.38 and the National Report VII.A.

98.49.⁶⁵

Accept. See the National Report VII.A.

98.50.⁶⁶

See 98.38 and the National Report VII.A.

98.51.⁶⁷

See 98.38 and the National Report VII.A.42.

98.52.⁶⁸

Not accept. Mr Wilders was prosecuted before the Amsterdam District Court on charges of incitement to hatred and insulting a group. The District Court, after a thorough examination of the charges, acquitted him (judgment of Amsterdam District Court of 23 June 2011). The court found that as a politician and an MP, Mr Wilders should benefit from a certain freedom to express his opinions. Neither the public prosecutor nor Mr Wilders decided to appeal this judgment. The criminal proceedings have therefore ended. In addition, the Procurator General at the Dutch Supreme Court has found that there are no legal grounds for submitting the case to the Supreme Court for an extraordinary appeal (without any effect to the substance of the case).

98.53.⁶⁹

See 98.38 and the National Report VII.A.

98.54.⁷⁰

See 98.36 and the National Report VII.A.

98.55.⁷¹

Accept. See 98.38.

98.56.⁷²

⁶⁴ Take more serious measures to prevent and suppress manifestation of racism, xenophobia and intolerance against minority groups in the country, in particular the Muslims (Malaysia);

⁶⁵ Design a comprehensive policy to address discrimination of national minorities in all areas (Mexico);

⁶⁶ Adopt all the measures necessary to combat discrimination in all its forms, including racism and xenophobia (Nicaragua);

⁶⁷ Develop a national action plan to combat discrimination in consultation with civil society (Norway);

⁶⁸ Appeal the verdict made by the Amsterdam District Court in the case of Geert Wilders on the charges of incitement to hatred and discrimination (Pakistan);

⁶⁹ Strengthen legal and institutional measures to prevent and suppress manifestations of racism, xenophobia and intolerance (Pakistan);

⁷⁰ Ensure adequate registration of discriminatory motives by raising awareness among the legal profession and law enforcement officials of the need to recognize aggravated circumstances specific to hate crimes and discrimination at all levels of prosecution and criminal procedures (Hungary);

⁷¹ Make further efforts to combat racial discrimination and xenophobia, and to promote racial and religious harmony (Qatar);

Accept.⁷³

98.57.⁷⁴

The Dutch government rejects the use of ethnic profiling for criminal investigation purposes as a matter of principle.⁷⁵

98.58.⁷⁶

Accept. See 98.38 and the National Report VII.A.42.

98.59.⁷⁷

Accept. See 98.38 and the National Report VII.A.42.

98.60.⁷⁸

See 98.38.

98.61.⁷⁹

See 98.38 and 98.45.

98.62.⁸⁰

See 98.38 and the National Report VII.C and VIII.⁸¹

98.63.⁸²

See 98.45 and the National Report VII.A.50.⁸³

⁷² Continue to take measures and actions in line with the fight against discrimination including through guidelines for website moderators to keep their websites free from discriminatory content that constitutes a criminal offence (Romania);

⁷³ A digital guideline is currently being drafted to help website moderators keep their websites free from discriminatory content that would constitute a criminal offence. See 98.45 and the National Report VII.A.44.

⁷⁴ Adopt measures to stamp out discrimination arising as a result of the practice of racist, ethnic, or religious profiling (Russian Federation);

⁷⁵ In its recent proposal for a General Data Protection Regulation, the European Commission included rules on profiling that address problems that may arise due to the increasing technical possibilities for in-depth searches of databases containing personal data. The Netherlands endorses the need for clear legislative rules on this subject, given the specific challenges for privacy protection that this technology entails.

⁷⁶ Approve a plan of action to fight discrimination, and against any initiatives of political associations or groups that promote racism or xenophobia (Spain);

⁷⁷ Identify through its domestic discussion effective ways and means to prevent and suppress manifestation of racism, xenophobia and intolerance (Thailand);

⁷⁸ Follow up on the CDESCR recommendation to combat racism and xenophobia and to enforce effectively the legal prohibitions against discrimination in the enjoyment of economic, social and cultural rights (Turkey);

⁷⁹ Strengthen policies and measures to prevent and eliminate the manifestations of racism, xenophobia and intolerance in society, in particular during the national and local electoral campaigns (Uruguay);

⁸⁰ Take appropriate measures in combating discrimination and marginalization against vulnerable groups, particularly migrants, minorities, women, children and persons with disabilities (Vietnam);

⁸¹ Furthermore, the Netherlands' integration measures are aimed at stimulating participation in public life and strengthening social cohesion. These measures are in line with broader policy to promote active citizenship. Participation is essential for successful individual lives and to prevent marginalisation. The Dutch government contributes to this process by helping to shape a society in which anyone who settles here can make a life for themselves through active participation.

⁸² Take more efficient measures to prevent and eliminate manifestations of racism, xenophobia and intolerance in political speech (Algeria);

98.64.⁸⁴

The Netherlands ensures that the needs of everyone, regardless of their origin, religion or beliefs, are addressed by the regular services in fields such as education, employment and health care. For migrants to assert their rights effectively, they must invest in their future and have a good command of the Dutch language. See 98.38 and the National Report VII.C.

98.65.⁸⁵

Accept. See 98.38.

98.66.⁸⁶

Political parties must respect the law, which defines racist speech as a criminal offence. The Kingdom of the Netherlands does not make any provision for preventive or precautionary monitoring of political parties, their ideas or public expressions. See 98.45 and 98.63.

98.67.⁸⁷

Accept. See 98.38 and the National Report VII.A.

98.68.⁸⁸

Accept. The Municipal Anti-Discrimination Services Act is being evaluated.

98.69.⁸⁹

See 98.38 and the National Report VII.A.42.

98.70.⁹⁰

Accept. See 98.38, 98.45 and the National Report VII.A.

98.71.⁹¹

⁸³ The Netherlands finds it difficult to accept this recommendation. The Kingdom of the Netherlands notes in this regard that the terms 'racism' or xenophobia' imply the commission of a criminal offence. Such a conclusion can only be drawn post facto by a court of law. To date, no court has drawn this conclusion. Freedom of expression, a key principle of democracy, excludes the possibility of preventive censorship.

⁸⁴ Intensify its efforts to eliminate discrimination against migrants and other minority women, who still face multiple forms of discrimination with respect to education, health, employment and social and political participation (Azerbaijan);

⁸⁵ Intensify its efforts to eliminate discrimination against migrant, black, Muslim and other minority women, who still face multiple forms of discrimination (Bangladesh);

⁸⁶ Intensify its efforts to combat the dissemination of ideas based on racial superiority including racist speech by political parties through the Internet as well as other media (Bangladesh);

⁸⁷ Take measures to address concerns of racial discrimination in the application of its national policies (Botswana);

⁸⁸ Ensure effective national oversight and evaluation of municipal programmes that have been developed to protect the rights enshrined in Article 1 of the Dutch Constitution concerning prohibited grounds for discrimination, in particular ensure that these programmes utilize a broad systematic approach taking into consideration current fiscal realities (Canada);

⁸⁹ Develop a national plan against racism (Costa Rica);

⁹⁰ Adopt effective measures to combat racism, racial discrimination and incitement to racial hatred, and in particular, to prohibit the dissemination of racist and xenophobic propaganda (Cuba);

⁹¹ Fully implement the measures regarding violence against women as outlined in its UPR interim report and consider implementing the recommendations of the Special Rapporteur on violence against women and CEDAW (India);

The Netherlands actively contributes to implementing the recommendations of the Special Rapporteur on violence against women.⁹²

98.72.⁹³

With regard to violence against women, see 98.71. The Netherlands is in a good position with regard to the number of people at risk of poverty and social exclusion. The government intends to use existing measures and instruments to involve more people in society by reducing the number of jobless households.

98.73.⁹⁴

Conditions in Dutch prisons are satisfactory. Overcrowding is not a problem. Prisoners can file complaints about alleged ill-treatment to an independent supervisory committee attached to each detention centre. Under the Custodial Institutions Act a prisoner is entitled to participate in work available at a custodial institution.⁹⁵ One of the prison governor's tasks is to ensure that there is work available for prisoners. Convicted offenders must participate in this work, which the Dutch government sees as part of organising normal life for prisoners and as preparation for a successful reintegration into society after they have served their sentence. The 1998 Working Conditions Act and the Working Conditions Decree which lay down rules governing conditions in all places in the Netherlands where work is performed, are applicable to work in prisons. Furthermore, the Working Conditions Decree lays down special rules for custodial institutions. Prisoners are allowed to refuse work on the grounds of poor working conditions.

98.74.⁹⁶

Accept.⁹⁷

98.75.⁹⁸

See 98.18.

98.76.⁹⁹

Accept.

⁹² We refer to the recently submitted response of the Kingdom of the Netherlands to CEDAW on the steps taken to implement the recommendations contained in paragraphs 27 and 29.

⁹³ Adopt effective measures to combat violence against women and to fight poverty (Cuba);

⁹⁴ Adopt effective measures to improve conditions in prisons, reduce overcrowding and eliminate ill-treatment and forced labour of persons deprived of liberty (Cuba);

⁹⁵ Section 47

⁹⁶ Ensure that in its application of preventive body searches, all relevant human rights are adequately protected, in particular the right to privacy and physical integrity and the prohibition of discrimination on the basis of race and religion (Greece);

⁹⁷ The power to stop and search is strictly regulated in the Netherlands. The mayor of a municipality may designate an area where, for a limited period of time, preventive searches may be carried out in response to a disturbance of or grave threats to public order due to the presence of weapons. The public prosecutor then has discretion to order actual body searches and searches of vehicles and luggage for weapons.

⁹⁸ Build on this success (achieving a total prohibition of corporal punishment of children in all settings in the European part of the Dutch territory) and ensure that this prohibition is also duly implemented in Aruba and the Netherlands Antilles by enacting the necessary legislation in this regard (Hungary);

⁹⁹ Report on the implementation of the 2012-2016 Action Plan against Child Abuse, including sexual violence and child pornography, during the next interim UPR report (Hungary);

98.77.¹⁰⁰

The Netherlands has up-to-date legislation on sexual abuse against children.¹⁰¹ The Netherlands also has wide jurisdiction facilitating the prosecution of child sex tourism abroad. In 2012 the total staff dedicated to the investigation of child pornography will increase from 75 to 150. A national unit with about 40 detectives has become operational, in addition to 10 regional units. A specialised public prosecutor has overall authority over these investigations and prosecutions. Currently between 380 and 480 cases of child pornography are prosecuted every year; the aim is to prosecute about 25% more cases over the coming years. New measures to combat child pornography and to prevent sexual abuse of children will be taken as part of the 2012-2016 Action plan against child abuse.¹⁰²

98.78.¹⁰³

Various measures are being taken to sensitise public officials, social workers and other key actors to possible signals of sexual exploitation of children, and training is being provided on ways of effectively combating it. Child victims of sexual exploitation are treated with utmost care. Statements are taken in a child-friendly environment by specially certified detectives. Law enforcement officials also need special qualifications to take statements from victims of human trafficking. The Public Prosecution Service's guidelines on human trafficking further stipulate that the public prosecutor may object to a minor victim being questioned in court.

98.79.¹⁰⁴

See 98.71 and the National Report under IX.

98.80.¹⁰⁵

Accept. Trafficking in human beings is given the highest priority.¹⁰⁶

98.81.¹⁰⁷

The Dutch government makes every effort to combat trafficking in human beings and especially minors. See 98.80 and the National Report under X. 101, 102 and 103.

98.82.¹⁰⁸

Accept.¹⁰⁹

¹⁰⁰ Intensify efforts to prevent and combat cases of exploitation of children related to sexual tourism, including through legal measures that effectively protect child victims of sexual exploitation and prostitution, and to bring the perpetrators of these aberrant practices to justice (Uruguay);

¹⁰¹ For example, virtual child pornography, obtaining access to child pornography (including but not limited to downloading it) and corrupting and 'grooming' children are all criminal offences.

¹⁰² For more information see the national report under 10.

¹⁰³ Strengthen training of public order officials, social workers and prosecutors on the way to investigate and verify the complaints of sexual exploitation of children, and prosecute the authors of these offenses, taking into account child sensitivity (Uruguay);

¹⁰⁴ Adopt practical measures to ensure absolute prohibition of violence against women and cruel treatment of children (Uzbekistan);

¹⁰⁵ Carry out actions to improve the current strategy to combat trafficking in human beings, taking into account, among other, intensifying investigations, training professional staff and creating assistance centres (Mexico);

¹⁰⁶ See the National Report X.

¹⁰⁷ Adopt immediate measures, including reviewing legislation and developing comprehensive strategies to eradicate trafficking in children, sexual exploitation and involvement of adolescents in prostitution (Belarus);

¹⁰⁸ Continue strengthening the functions of the competent institutions and use of adequate mechanisms to more efficiently combat domestic violence, which mainly affects women and children (Chile);

98.83.¹¹⁰

Accept.¹¹¹

98.84.¹¹²

Accept. Alternatives are available for the detention of minors such as house arrest.¹¹³

98.85.¹¹⁴

The bill on increasing court fees has been withdrawn.

98.86.¹¹⁵

Dutch law is in accordance with the human rights standards. When new laws are enacted, they meet these standards. See also (e.g.) 98.45 and National Report XIII.120.

98.87.¹¹⁶

See 98.45.

98.88.¹¹⁷

Accept. See 98.38 and the national report under XIII.

¹⁰⁹ A national policy was adopted in 2002 on combating domestic violence. In 2011 a policy evaluation was published, showing that a great deal has been achieved. The government continues to address the problem with a government-wide approach to tackling all forms of domestic violence (including partner violence and child abuse). In July 2012 the government drew up an overview of all the activities carried out as part of the government-wide approach to the domestic sphere. See the National Report under IX.

¹¹⁰ Intensify its efforts, at national level and vis-à-vis the different ad-hoc international bodies, to reinforce measures aimed at fighting the use of children in sexual tourism and child pornography (Chile);

¹¹¹ the Dutch government is strongly committed to combating child sex tourism and child pornography. Child sex tourism can only be banned by means of a comprehensive approach, including international action in close cooperation with destination countries, NGOs and travel agencies. The Netherlands has effective legislation in place to combat child sex tourism (tourists' abuse of children during the tourists' holidays in foreign countries). The legislation provides for broad extraterritorial jurisdiction, without requiring that acts be criminal offences in both countries. New legal measures to prevent child sex tourism include an additional provision (effective from 1 April 2012) prohibiting convicted criminals from travelling to destination countries. See the National Report under X, 101, 102 and 103.

¹¹² Seek alternative solutions to deprivation of liberty for minors in particular in order to avoid pre-trial detention of minors, while awaiting judgement (France);

¹¹³ Courts are always obliged to check whether young offenders are eligible for suspension of pre-trial detention, and if not, to explain why there are not adequate conditions for surveillance. Furthermore, first offenders can be sent to a HALT Bureau, where they can make amends in lieu of prosecution. Finally, in special cases the public prosecutor can order pre-trial detention in a young offenders' institution rather than in a police cell. This reduces a young person's time in police custody. A 16- or 17-year-old young offender can be kept at a police station for no more than 10 days, and a 12-to-15-year-old for no more than 3 days.

¹¹⁴ Consider additional steps to ensure that any potential changes in court fees are proportionate and affordable, and that they do not prejudice access to the legal system (United Kingdom of the Great Britain and Northern Ireland);

¹¹⁵ Enact laws and legislation on freedom of expression in line with both articles 19 and 20 of the ICCPR (Egypt);

¹¹⁶ Step up its efforts to comprehensively address this trend (the trend that political and public figures including media made discriminatory and discriminatory speech against Muslims), not only from the freedom of expression perspective but also from socio-cultural point of view (Indonesia);

¹¹⁷ Ensure that the freedom of expression, press freedom and internet freedom will not result in racism, intolerance and hatred against minority groups (Malaysia);

98.89.¹¹⁸
Accept.¹¹⁹

98.90.¹²⁰
See 98.38.

98.91.¹²¹
The Netherlands has adopted legal provisions that require employers to take measures to protect their employees. The Netherlands does not consider it necessary to take additional measures.

98.92.¹²²
Accept.¹²³

98.93.¹²⁴
The small differences in remuneration between men and women cannot be fully explained. The main reason for this gap is that women mainly work in part-time jobs. The pay gap shows a different position in the labour market. In the younger generation (ages 23 to 35) there is hardly any pay gap. The expectation is that the gap will disappear in the coming years.

98.94.¹²⁵
See 98.93. To change women's position in the labour market, the Netherlands requires a cultural change. From 2008 to 2010 the Task Force Part-time Plus launched a debate on how women can work more hours. It formulated recommendations on increasing working hours in part-time jobs. Employees and employers need to discuss ways of better coordinating working and private life.

98.95.¹²⁶
See 98.93, 98.94 and the national report under VII.C.

98.96.¹²⁷

¹¹⁸ Promote more equal representation of men and women in top positions (Norway);

¹¹⁹ Additional information will be reported in our UPR (interim) report. See also the National Report under VII.C.61-64

¹²⁰ Adopt measures to criminalize incitement to hatred and imminent violence based on religion or belief (Pakistan);

¹²¹ Adopt legal provisions for reduced working hours, additional paid holidays or another form of compensation in dangerous and unhealthy occupations (Poland);

¹²² Take steps to facilitate equal access to the labour market, including by increasing women's ability to continue as full-time employees following child birth (Norway);

¹²³ The Netherlands considers it important that all unemployed people take responsibility for participating in the labour market. This entails using measures and instruments that take account of the individual situation. The government wants to send the message that caring for young children can be combined with paid work, ambition and ongoing personal development. We will support people's efforts to combine work and care through the opportunities offered by flexible working hours and collective labour agreements. In this way employers can have more to offer working mothers and fathers.

¹²⁴ Implement measures to decrease the wage gap between men and women (Norway);

¹²⁵ Pursue an active and strict policy to end unfair pay differences between men and women especially in Government organizations (Greece);

¹²⁶ Ensure that women enjoy equal access to the labour market and equal pay for work of equal value (Slovenia);

Recommendation is in line with existing policies.¹²⁸

98.97.¹²⁹

Recommendation is in line with existing policies.¹³⁰

98.98.¹³¹

This recommendation has been realised¹³²

98.99.¹³³

Recommendation has been realised. Every child of school age, regardless of legal status, undergoes compulsory education. See 98.98¹³⁴.

¹²⁷ Intensify its efforts to ensure that education, health, employment and social protection programmes are inclusive and not discriminatory. Apply also these measures to all the countries and territories that form the kingdom of the Netherlands (Nicaragua);

¹²⁸ In the Netherlands, educational facilities are available to everyone. People's financial situation is taken into account to make education genuinely available to them.

In Curaçao the principle of non-discrimination, enshrined in several international human rights instruments to which Curaçao is party as a country of the Kingdom of the Netherlands, is guaranteed by article 3 of Curaçao's Constitution.

The principle of non-discrimination is also enshrined in article 1 of the Constitution of Aruba. Aruba has a compulsory health insurance for everyone who is registered in the population register. In December 2011, Parliament passed the Compulsory Education Ordinance, which applies to all children aged over 4 and under 17. This Ordinance guarantees access to education to all children, irrespective of their legal status. The Your Neighbourhood Project (Bo Bario) has been set up to improve the quality of life in the various neighbourhoods. It also aims to foster the social cohesion in society by bringing all inhabitants together, without distinction, to take an active role in the upkeep of their own neighbourhood.

For Sint Maarten the principle of equality and non-discrimination is laid down in article 16 of the Constitution. Pertaining to education programmes being inclusive and not discriminatory, the Ordinance on Compulsory Education guarantees the right of education for all children regardless of their legal status. In September 2009, St Maarten started implementing the compulsory education ordinance. Under this legislation, all children residing in St. Maarten between the ages of four and eighteen must attend school. The ordinance has introduced a change for the better for undocumented children residing in St Maarten.

¹²⁹ Ensure the equal enjoyment of economic, social and cultural rights by all individuals and groups under its jurisdiction and adopt a national plan of action to combat the rise in homelessness (Azerbaijan);

¹³⁰ The enjoyment of economic, social and cultural rights by all individuals within the Kingdom is important in all parts of the Kingdom. Since October 2010 the three small islands in the Caribbean, Bonaire, St Eustatius and Saba, have been part of the Netherlands. The Charter for the Kingdom of the Netherlands mentions several factors that may justify different treatment of Bonaire, St Eustatius and Saba. The paragraph does not contradict the principle of equality or non-discrimination; it is rather an explanation of the way this principle should be applied. The Dutch government has improved the situation on these islands in several respects. A general healthcare system has been introduced. School books are now free. Taxes are lower than in the European part of the Netherlands. On the other hand, wages and benefits are also lower, as higher wages and allowances might attract many people from surrounding areas and cause socioeconomic imbalances. The government and parliament have sought to contrive a package of measures that ensures the economic, social and cultural rights of the people of the islands without having negative socioeconomic effects.

In 2006 the Netherlands adopted a Community Shelters Action Plan aimed at gradually integrating all homeless people into a comprehensive system (including housing and care). By 2010 about 10,000 homeless people had been successfully helped. Phase 2 of the plan was adopted in 2011.

¹³¹ Establish guidelines for training on human rights in primary and secondary education, with homogenous curricula in all the educational centres (Spain);

¹³² See the national report under XII.

¹³³ Facilitate enrolment of children with missing or incomplete documents, improve the safety situation at schools experiencing difficulties in that regard, and include human rights and child rights education in school curricula at all levels (Azerbaijan);

¹³⁴ See the national report under XII.

98.100.¹³⁵

See the National Report under VII.C and VIII.

98.101.¹³⁶

Not accept. Priority is given in the Netherlands to education in the Dutch language. See the National Report under VIII.

98.102.¹³⁷

See 98.3.

98.103.¹³⁸

Accept. See 98.38 and the national report under 7.1.

98.104.¹³⁹

Accept.¹⁴⁰

98.105.¹⁴¹

The Immigration and Naturalisation Service assesses the application of aliens that request asylum in the Netherlands. This procedure meets international standards. Opportunities exist to lodge an objection to and request judicial review of the rejection of an application.

98.106.¹⁴²

Not accept. Under Dutch policy, rejected asylum seekers and undocumented aliens may be detained on grounds of public policy or national security with a view to arranging their repatriation. Detention may also be used if people are refused entry at the border. It may only be used as a last resort and may not last longer than strictly necessary to arrange the return of the person concerned. The maximum limit on detaining undocumented aliens in the Netherlands is six months, which in special circumstances may be extended to 18 months, in line with the EU Return Directive.¹⁴³

¹³⁵ Review and amend national legal and policies integration measures with a view to respect the cultural and religious backgrounds of migrant communities, in particular Arab and Muslim communities (Egypt);

¹³⁶ Consider reinstating the Turkish mother tongue lessons as part of the primary and secondary school curricula (Turkey);

¹³⁷ Strengthen efforts to promote access of persons with disabilities to education and labour market, their legislative protection, in particular through speeding up approval by the Parliament of the CRPD (Ukraine);

¹³⁸ Study the possibility to establish new measures aimed at eliminating any discriminatory treatment towards ethnic minorities (Argentina);

¹³⁹ Develop a migration policy, taking into account the international human rights standards in this respect (Guatemala);

¹⁴⁰ The migration policy The Netherlands has developed is in accordance with international human rights. Enforcement methods are aimed at ensuring a fast and accurate procedure.

¹⁴¹ Promote substantive reforms in the immigration policy, which guarantee its conformity with international standards, revoking measures exposing foreigners to marginalization (Mexico);

¹⁴² Take all necessary measures, in accordance with international human rights law, to reduce the use of detention of persons solely on grounds of immigration reasons or because they belong to minority groups (Nicaragua);

¹⁴³ Directive 2008/115/EC of the European Parliament and the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals. Member States were to comply with the Directive by 24 December 2010.

98.107.¹⁴⁴

See 98.104.

98.108.¹⁴⁵

Accept. Alternatives to detaining aliens are since January 2012 part of policy.¹⁴⁶

98.109.¹⁴⁷

See 98.100.

98.110.¹⁴⁸

See 98.62.

98.111.¹⁴⁹

See 98.38.

98.112.¹⁵⁰

Irregular residence in the Netherlands is not a criminal offence. However, illegal residents are required to leave. If they do not leave voluntarily, detention is used as a last resort to force them. Alternatives to detention are already part of policy. See 98.108

98.113.¹⁵¹

See 98.108 and 98.112. There are special policies aimed at avoiding detention of families with minors. If it is necessary to have a family under supervision for a longer period while their return is being prepared, they may be placed in a centre where their freedom of movement is restricted.

98.114.¹⁵²

Accept.¹⁵³

¹⁴⁴ Review migration policies that exist in the country with a view to ensure the full application of international standards (Paraguay);

¹⁴⁵ Introduce measures to reduce detention of individuals solely for immigration purposes and consider other alternatives than detention to use when possible (Sweden);

¹⁴⁶ A differentiated system is in place for rejected asylum seekers, including alternatives to detention like the requirement to report to the authorities and restriction of liberty. In March 2011 a new policy was adopted on detaining unaccompanied minors who are now housed in facilities run by the Central Agency for the Reception of Asylum Seekers (COA).

¹⁴⁷ Enact public programs to improve integration of Muslim and other immigrants into Dutch society, and build bridges between communities (United States of America);

¹⁴⁸ Protect the social and cultural rights of migrants while taking integration measures and policies aimed at migrants (Bangladesh);

¹⁴⁹ In coordination with OHCHR, IOM, ILO and relevant special procedures of the Human Rights Council, develop a comprehensive strategy to protect the rights of migrants and persons belonging to ethnic minorities (Belarus);

¹⁵⁰ Due to the criminalization of irregular residency in the country, design alternatives for the detention of irregular or undocumented immigrants (Brazil);

¹⁵¹ Reduce the number of persons in the detention centres for migrants and create alternative measures to detention, especially for families with children or unaccompanied minors (Ecuador);

¹⁵² Improve the conditions of migrants detention centres, especially with regard to the medical and psychological attention, as well as contact with the outside (Ecuador);

¹⁵³ In 2008 there was a reorientation of policy on detaining aliens. One of the changes was the adoption of a healthcare plan focusing on the quality of care and the expertise of medical staff, especially nurses, who are given mandatory extra training. The health care provided in detention centres includes psychiatric care.

98.115.¹⁵⁴

Recently new plans were developed and presented to the Dutch parliament to enhance and speed up the Dutch asylum procedure: asylum seekers must be provided with clear information as early as possible in the procedure. Similar plans are being developed for vulnerable minors, so that a clear perspective is offered to these minors as soon as possible. When a child has no right to asylum, reunifying the child with their family in the country of origin is the highest priority. European cooperation is viewed as crucial in this connection.

98.116.¹⁵⁵

Not accept. The Dutch asylum procedure and reception centres are open to oversight by civil society. During the asylum procedure the Dutch Refugee Council is responsible for giving asylum seekers information on the procedure. They are also allowed, if the asylum seekers give permission, to be present during the interviews. The Dutch Refugee Council is present at the reception centres to assist asylum seekers and advise them on any issues or problems that may arise. Other NGOs (such as NGOs specifically concerned with minor asylum seekers) visit regularly the reception centres.

98.117.¹⁵⁶

Dutch aliens policy and practice take into account the vulnerable position of minors, especially unaccompanied minors. The best interest of the child is incorporated into policy and practice. Specific measures are taken in children's interests. For example, there are specially trained officials who interview children, special child-friendly offices for conducting interviews with young children, and specific asylum policies for child soldiers and on female genital mutilation. As long delays and uncertainty are seen as undesirable, there is a constant focus on swift decision-making. See 98.115

98.118.¹⁵⁷

Not accept. See the National Report under XI.

98.119.¹⁵⁸

As is well known, the Netherlands is not in favour of a legally binding international instrument on the right to development. The responsibility to create an enabling environment cannot be expressed in terms of binding obligations. Moreover, a legally binding instrument is not an appropriate way of transforming the right to development

Detention centres have regular visiting hours, and people may request additional visiting hours. Every detention centre also has a service desk for practical assistance.

¹⁵⁴ Review asylum procedures with a view to expediting the decisions in the cases of children asylum seekers as quickly as possible and facilitating family reunion of vulnerable children in an efficient and appropriate manner (United States of America);

¹⁵⁵ Ensure increased transparency and oversight exercised by civil society of the conditions, in which asylum seekers are kept and treated (Russian Federation);

¹⁵⁶ Consider additional measures to ensure that the interests of children are properly taken into account in provisions for asylum seeking families, since they are especially impacted by long delays and uncertainty (United Kingdom of the Great Britain and Northern Ireland);

¹⁵⁷ Carry out investigations into complaints and information on cruel treatments during the expulsions of foreigners from the Netherlands and ensure transparency when investigating such complaints (Uzbekistan);

¹⁵⁸ Contribute effectively in the operationalization of the right to development at the international level (Pakistan).

from a political commitment into a development practice. The Netherlands highly appreciates the work done by the high-level task force. We consider this a useful basis for further work on putting the right to development into practice.

Annex

Extra information

In the UPR-report, there were questions formulated which were not addressed in the recommendations. The Kingdom of the Netherlands would also like to address these questions.

21. Information on the promotion of tolerance and non-discrimination

The Dutch government regards social exclusion and discrimination as a threat to mutual trust and involvement in society. Democratic rule of law protects human dignity regardless of someone's origin, ideology, nationality or religion. Therefore, Dutch government will continuously strive to protect human dignity and the principle of equality in Dutch constitution and launches an extended program to counter discrimination. Since 2008, the Dutch government has supported and initiated various projects that aim to disseminate knowledge, increase openness, and offer scope for breaking taboos and openly discussing conflicting social values and lifestyles (including apostasy and homosexuality).

23. Information on mechanisms envisaged to incorporate NHRI and children's ombudsman in the Antilles

There are no mechanisms envisaged in view of the fact, that as an autonomous country of the Kingdom of the Netherlands Curaçao in its own right can establish a human rights institute.

Aruba seeks to create a similar type of Human Rights Institution, to guarantee information, education, and protection of human rights in the Aruban community in cooperation with Curacao and the Netherlands.

Sint Maarten seeks to create a similar type of institutions in the near future. Being a new autonomous country in the Kingdom of the Netherlands, Sint Maarten is building up all the institutions needed to guarantee the human rights of its citizens.

25. Information on the functioning of detention centers

According to Dutch policies, rejected asylum seekers and illegal aliens can be detained on grounds of public order or national security with a view to arranging their repatriation. This type of detention can only be used as a measure of last resort and cannot last longer than is strictly necessary to arrange the return of the person concerned. Moreover, detention can be used if people are refused entry at the border. The maximum limit on the detention of illegal aliens is six months in the Netherlands. In special circumstances detention can be extended up to 18 months. This is in line with the EU return Directive.

26. Information on the implementation, functioning and development of Municipal anti-discrimination services

In 2009 the Municipal Antidiscrimination Service Act entered into force. Under this Act everyone in the Netherlands has ready access to an antidiscrimination service. Victims and witnesses of discrimination can lodge their complaint at a local antidiscrimination service. Antidiscrimination services offer advice and support in case of discrimination on the basis of skin colour/ethnicity, religion/belief, gender, sexual orientation, age and disability.

36. Information on the Netherlands' view on formalisation of human rights education

See the response to recommendations 98.33 and 98.98. The human rights council will be informed in the interim-report.

50. Information on effects and benefits of the Municipal anti-discrimination act

The Municipal Antidiscrimination Service Act is currently being evaluated.

58. Is there a plan to set up appropriate institutions to protect human rights in overseas territories

Because of Curaçao's constitutional autonomy within the Kingdom of the Netherlands the setting up of institutions for the protection of the human rights of its citizens is an internal affair for which it bears sole responsibility. For alleged cases of human rights violations the citizens of the island can always seek redress through the existing court system.

Aruba seeks to create a similar type of Human Rights Institution, to guarantee information, education, and protection of human rights in the Aruban community in cooperation with Curacao and the Netherlands. The court system provides the necessary redress for the citizens in cases of alleged human rights violations.

As mentioned Sint Maarten seeks to create the human rights institutions. It should be mentioned that Sint Maarten, being part of the Kingdom of the Netherlands, is bound by International human rights treaties. The Constitution of Sint Maarten also guarantees the protection of human rights to its citizens, where as the citizens can address the court for alleged human rights violations

61. Asked if we would take further action to ensure timely hearing for all asylum seekers and access to legal system and equal treatment

The Dutch asylum procedure already allows for timely hearing and free legal aid. Since the procedure is already very fast (55% of the asylum requests are dealt with within 8 days), we see no need to take further action.

If an alien requests asylum in the Netherlands, he/she is first permitted a period of rest and preparation. The rest and preparation period is a period of a minimum of 6 days, during which the asylum seeker can rest and be prepared for the asylum procedure. Investigation of travel and identity documents can already be started during this period, but there will be no contact between the Immigration and Naturalization Service (INS) and the asylum seeker. This period is intended to give a strong quality impulse to the asylum procedure.

Once an asylum seeker states his intent to apply for asylum, he is referred to the central reception location. There, an intake will take place (this is not the formal asylum application) and research will be started into the authenticity of his documentation. At this stage, preparations for a claim on the basis of the Dublin Regulation can already be started. All guarantees and stipulations of the relevant European Union legislation are applicable from this moment on. Soon after the intake the asylum seeker will be brought to the process reception location, which is situated in the proximity of the application centre, and will remain there for the remaining time of the rest- and preparation period and the general asylum procedure. During the remainder of the rest- and preparation period the following activities will take place:

Ø medical check

All asylum seekers will have the possibility to get a medical check so their

general condition can be taken into account during the asylum procedure. For instance, any influence from medical problems on their ability to tell their story in a coherent and consistent manner will be taken into account. This can lead to adjustments in the way an asylum seeker is being interviewed.

Any evidence of medical problems can also be reason for the INS to start a separate procedure, parallel to the asylum procedure, to investigate whether these medical problems themselves are reason to grant leave to remain to the asylum seeker. This way, the situation in which a rejected asylum seeker applies for residence on medical grounds after the asylum procedure is finished, can be prevented.

Ø Information by the Dutch Refugee Council

All asylum seekers will be informed by the Dutch Refugee Council about what they can expect in the asylum procedure and about their rights. Aspects such as the possibility to ask for a female interpreter, the importance of telling everything that might be relevant etc. will be part of the information.

Ø Preparation by a legal aid worker

All asylum seekers have a right to free legal assistance. The maximum amount of legal assistance provided for during the rest and preparation period plus the general asylum procedure is 12 hours. On average 8 hours will be granted. In the extended procedure an extra 5 (max. 7) hours of legal assistance are available. The asylum seeker will have the same legal aid worker throughout the procedure as much as possible.

The general asylum procedure

All asylum seekers will in principle begin their asylum procedure in the general asylum procedure. This is an eight-day procedure in which all necessary procedural steps are taken to come to a decision on the asylum application. Because all the procedural steps are taken that require the presence of the asylum seeker in person, and the main body of evidence is gathered, the eventual extended asylum procedure will be shorter than it used to be in the past.

The general procedure will go as follows:

- Day 1: formal lodging of the application for asylum and first interview on identity and travel route.
- Day 2: Asylum seeker discusses the first interview and prepares for the second interview with his/her legal aid worker.
- Day 3: Second interview: in depth on the reasons for applying for asylum.
- Day 4: Asylum seeker discusses the second interview with his/her legal aid worker. Corrections and additions can be made to the report of the second interview with the legal aid worker.
- Day 5: INS will inform the asylum seeker of its intention. If the INS intends to accept the asylum application the procedure stops here. If the intention is to reject the asylum application, the procedure continues with day 6 etc. At this moment, the INS can also decide that further investigation is necessary and redirect the application to the extended asylum procedure.
- Day 6: The asylum seeker and the legal aid worker draw up an opinion in response to the intention of the INS to reject the asylum application.

Day 7/8: The INS will (1) make the decision to reject the asylum claim, (2) make the decision to accept the asylum application, or (3) decide that further investigation is necessary and redirect the application to the extended asylum procedure.

Approximately 55% of the asylum applications are decided on in the general asylum procedure.

The extended asylum procedure

If during the general asylum procedure the INS comes to the conclusion that further investigation is required, the asylum application will be further handled in the extended asylum procedure. Reasons for further investigation can vary: research that needs to be carried out by the Ministry of Foreign Affairs, indications that article 1F of the Refugee Convention may be applicable, language analysis, medical research etc.

Although all the necessary procedural steps have already been taken during the general asylum procedure, an additional interview can take place, if necessary. In principle, a decision on the asylum application has to be made within 6 months from the formal application of the claim (day 1 of the general asylum procedure).

The appeal process

The decision on the asylum application stands open to appeal. The court can take relevant new circumstances and policy changes into account during the appeal phase. This does not apply if it is contrary to due process or if it delays the case to an intolerable extent.

If an asylum application is rejected in the general asylum procedure, the appeal does not have suspensive effect. However, the rejected asylum seeker is given a period of four weeks to work on his return. During this period he can stay in a reception centre. Because reception facilities in principle end after these four weeks, courts will consider these cases urgently, and therefore in most cases will rule on the appeal within four weeks. If the court does not rule within four weeks, the court may give a suspensive ruling so that reception facilities are not withdrawn until the court has reached a decision. In this way, the benefits of a fast procedure are upheld also in appeal, while no irreversible steps will be taken without a court having had the chance to review the case.

If an asylum application is rejected in the extended asylum procedure, appeal does have suspensive effect. The asylum seeker will remain in the reception centre.

Repeat applications

Second or repeated applications will be handled in a less elaborate procedure. There will be no rest and preparation period. If the application is rejected the rejected asylum seeker will not get a maximum of four more weeks in a reception facility, but has to leave the Netherlands instantly.

Because of the improvements made to the asylum procedure, and especially the fact that there is more attention to medical problems at an early stage and the courts can take relevant new circumstances and policy changes into account, the expectation is that the number of repeated applications will decrease.

66. Measures to step up efforts to combat diffusion of racist ideas over internet and other media

See recommendation 98.45.

81. When has the criminal code been applied to restrict freedom of expression.

As a matter of fact, it is not a purpose of Dutch criminal law to unduly restrict the freedom of expression, which is a fundamental right. However, where it concerns forms of hate speech, perpetrators will be prosecuted, which could formally imply a restriction of their freedom of speech. Over the year 2010, some 140 cases have been prosecuted on the grounds of insult, incitement of hatred or discrimination on the grounds of race, religion or belief, sexual orientation, gender or handicap (Articles 137c -137g and 429quater Criminal Code).

83. How does the Dutch government intend to address that the administrative apparatus of Curacao has not yet been established

There is no role here for the Dutch Government in view of Curaçao's constitutional autonomy. Of course if and when necessary and upon request the Dutch Government can always provide (technical) assistance.

84. Statistics on the number of asylum seekers not been granted refugee status in the last 5 years

Asylum grants and total amount of decisions

| | 2008 | 2009 | 2010 | 2011 |
|-----------------------------------------|-------|-------|-------|-------|
| Total grants | 6.140 | 8.510 | 8.700 | 8.380 |
| Grant. 29,1,,a Refugee under convention | 600 | 740 | 900 | 830 |
| Grant. 29,1,,b Art. 3 EVRM | 1.790 | 3.400 | 4.420 | 5.210 |
| Grant 29,1,,c Humanitarian | 230 | 360 | 310 | 360 |
| Grant 29,1,,d Exceptional hardschip | 2.630 | 2.090 | 180 | 160 |
| Grant 29,1,,e Derived nuclear family | 800 | 1.780 | 2.660 | 1.650 |
| Grant 29,1,,f Derived widend | 80 | 120 | 220 | 160 |
| Grants not specified | 10 | 10 | 10 | 10 |

| | | | | |
|---------------------|--------|--------|--------|--------|
| Totale beslissingen | 12.890 | 19.270 | 19.820 | 19.070 |
|---------------------|--------|--------|--------|--------|

Source: IND (rounded to 10s). Because each cell is rounded, it is possible that the total does not match the cells.

90. Measures taken to reduce the number of migrants under detention

Alternatives to detaining aliens are part of policy. A differentiated system is in place for rejected asylum seekers, including alternatives to detention, like the requirement to report to the authorities and restriction of liberty. Special policies are implemented to avoid as much as possible that families with minors are detained. If it is necessary to have a family under the supervision of the authorities for a longer period during the preparations of return, the family can be replaced in a centre where their freedom of movement is restricted, which means, for example, that they have to report to the authorities on a daily basis.

53. There is concern that the human rights institute of the Netherlands is not accessible to inhabitants of the overseas territories where many suffer from low standards of living and ill-developed health system (Russian Federation)

Curaçao

This concern is not justified. To begin with although a human rights institute is still to be established in the near future on the island universal rights and fundamental freedoms are duly guaranteed by the Curaçaoan Constitution and its legal system.

Aruba:

Aruba's Standard of livingⁱ, normally measured by calculating the Human Development Index, the Gini-Coefficient, GDP per capita, level of inflation, life-expectancy, incidence of disease, political stability, political and religious freedom, environmental quality and safety, is reasonably high, and certainly higher than most of the neighboring countries.

Aruba has a well-developed health care system, where all of the legal citizens are insured against the cost of medical health care. The quality of the care is also very high, which has resulted in low mortality rates (for infants, children, mothers and the total population) and a high life-expectancy (79.75 yrs. for females and 73.88 yrs. for males).

ⁱ The Standard of living refers to the level of wealth, happiness, comfort, material goods and necessities available to a certain socioeconomic class in a certain geographic area.