

**COMMENTARY ON THE SECOND PERIODIC REPORT OF THE
KINGDOM OF THE NETHERLANDS IN ACCORDANCE WITH
ART. 44, PARAGRAPH 1 (A) OF THE CONVENTION ON THE
RIGHTS OF THE CHILD.**

*NJCM, Dutch Section of the International Commission of
Jurists, (ICJ) and Johannes Wier Stichting, May 2003.*

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List of abbreviations and acronyms

- AC Aanmeldcentrum (reception center for aliens)
- CRC Convention on the Rights of the Child
- FGM Female Genital Mutilation
- ICJ International Commission of Jurists
- ILO International Labour Organization
- IND Immigratie- en Naturalisatie Dienst (Immigration and Naturalization Services)
- JWS Johannes Wier Stichting
- NJCM Nederlands Juristen Comité voor de Mensenrechten (Dutch Section of the International Commission of Jurists)
- NMI Nationaal Mensenrechten instituut (National Human Rights Institution)
- SMAK Stichting Medisch Advies Collectief (Foundation for medical advice)
- STD's Sexually Transmitted Diseases

SUMMARY

Name and Nationality

The NJCM is concerned about the consequences of the Dutch Nationality Act for minors who apply for Dutch nationality and for stateless children. The NJCM is of the opinion that existing restrictions on obtaining Dutch nationality for minors in general as well as stateless minors born in the Netherlands are too strict and should be revised.

Female Genital Mutilation

The NJCM advises the Dutch government to implement and further develop its position on FGM in the Alien Policy Rules 2000 ('Vreemdelingencirculaire 2000') and in the working instructions ('werkinstructies') for the Immigration and Naturalisation Services (Immigratie en Naturalisatie Dienst).

Family reunification

The NJCM stresses that if the Dutch government includes the measure to deny reunification to children of 14 to 16 years of age, this might conflict with article 10 of the Convention on the Rights of the Child and also with article 8 of the European Convention on Human Rights.

Child care facilities

The NJCM is concerned that the Dutch government has not carried out its responsibility to ensure the development of child-care facilities sufficiently.

The NJCM doubts whether the Netherlands has fulfilled its obligations under Art.18, paragraph 3 CRC. It stresses the wording of Art.18 paragraph 2 CRC according to which each State Party is obliged "to ensure the development of institutions, facilities and services for the care of children".

Health care for children

1. The prevailing problems in the Dutch health care system and the way in which these problems affect the health of children are not transparent.

2. The systematic screening of school children should be safeguarded by the Dutch government.

3. The NJCM is concerned as to the rise in STD's, alcohol and tobacco abuse amongst youth as well as the rise of teenage pregnancies and the fact that the Dutch government is not taking enough measures to counteract these developments.

4. There are several urgent measures that need to be taken by the Dutch government concerning breast feeding and the provision of information about breast feeding.

Basic facilities for several categories of aliens in the Netherlands

The NJCM is concerned about the fact that several categories of aliens are excluded from facilities in the Netherlands and that Dutch policy does not take into account that these categories include children. Even people who still have a procedure running are excluded from facilities and have to live in the streets with their children.

Special protection measures with regard to alien children and unaccompanied alien minors

1. The aim of the policy of the Dutch government concerning unaccompanied minors seeking asylum is to reduce the number of unaccompanied minors that come to the Netherlands. Part VIII under A.i of the Second Periodic Government Report puts a strong emphasis on the issue of return. The NJCM is concerned that the current policy as described above is not in the best interests of the child.

2. The NJCM is concerned about the conditions in the campus in which minors are placed before they are returned to their home country and the impact this situation has on the children concerned.

3. The NJCM is concerned about the way in which the Dutch Government uses interviews of children to consider applications for asylum.

4. Children whose parents apply for asylum at Schiphol airport are detained in the Application Centre during the procedure and after a rejection of their asylum request. The NJCM is worried about conditions there and the impact they have on the children concerned.

Child Labour

1. The NJCM requests that the Dutch government urges the Dutch Labour Inspectorate to perform a more continuous periodic control specifically on hazardous child labour regulation.

2. The NJCM notes that Dutch legislation is to a large extent in conformity with ILO standards. There are a few exceptions, however. Recommendation 190, which complements Convention 182, should be used as a guideline for the implementation because of the evident similarity with the CRC. The recommendation advises the Member States on the determination of hazardous child labour in Paragraph 3 and 4.

Children in Armed Conflict

1. The NJCM considers that setting the minimum recruitment age at 18 is the most effective protection of children against their participation in armed conflict, both in the Netherlands as worldwide. At present, the Netherlands can only ratify the Protocol on the basis of 17 years as the minimum age for voluntary recruitment.

2. The NJCM doubts the legality of some of the guarantees as formulated by the Minister of Defence in this area. The Netherlands is a state party to the Geneva Conventions and the First Additional Protocol. On the basis of these international humanitarian law instruments, the category of *prospective combatant* does not exist. Someone is either a combatant or a non-combatant. So-called *prospective-combatants* do not fall under the broader protective regime that covers civilians. National laws, guarantees or definitions cannot change this fact.

3. The NJCM recalls the concluding observations on the Netherlands by the Committee on the Rights of the Child in its 22nd session 8 October 1999 (CRC/C/15/Add.114), stating: 'It (...) urges the State party to reconsider its present recruitment policies with a view to setting the age of recruitment into the armed forces at 18 years'.

INTRODUCTION AND GENERAL REMARKS

1. The *Nederlands Juristen Comité voor de Mensenrechten* (NJCM) - the Dutch Section of the *International Commission of Jurists* (ICJ) - is a non-governmental organisation which closely monitors the Dutch Government's human rights policy at a national and international level.
2. The NJCM previously submitted a 'shadow' or 'parallel' report to the Committee on the Rights of the Child in March 1999. On various occasions it has submitted similar reports to other UN human rights bodies. The present report comments on the Second Periodic Report of the Dutch Government to the Committee on the Rights of the Child of 2 April 2002.
3. The present report has been drafted in close cooperation with the *Johannes Wier Stichting* (JWS). The JWS is a non-governmental human rights organisation committed to the promotion and protection of health rights. Their contribution consists of paragraphs 32-37 under article 24: Health and Health care.
4. In 2002, the Dutch NGO 'Coalition for Children Rights' ('het Kinderrechtencollectief') submitted a comprehensive report, entitled: *Growing up in the Low Lands: Children's Rights in the Netherlands*, to the Committee of the Rights of the child. The NJCM and the JWS, in their present report, limit themselves to point out some of the most important Dutch policy and legislative problems regarding the rights of children that were not dealt with in the Coalition for Children's Rights report at all or only very briefly.
5. Moreover, since the Coalition's report was drafted in 2002, the NJCM and the JWS wish to direct the Committee's attention to some of the current problems which have occurred over the past year.
6. The current report is not meant to be exhaustive: the fact that not all the provisions of the Convention on the Rights of the Child (CRC) receive attention, does not mean that there are no practical problems in the implementation of these articles in the Netherlands.
7. Similarly, the description of relevant developments since the last Government report in 1999, is by no means claimed to be exhaustive.
8. The implementation of the CRC in the Netherlands Antilles and Aruba has not been examined for the purposes of this commentary.
9. Concerning the Government report, the NJCM and the JWS observe that some developments in Dutch legislation, which are very relevant for the implementation of the Convention, are not mentioned in the Government's Report.¹
10. The NJCM and the JWS observe that, although the Government's report contains important information on many subjects relevant to the Committee, its nature is rather descriptive. The report does not contain an analysis or opinion of the Government on the state of affairs concerning the implementation of the Convention rights in terms of factors and difficulties as stipulated in article 44 (2) of the Convention on the Rights of the Child.

¹ For example, the amendment of the Dutch Nationality Act.

11. The Government's Report barely refers to the Concluding Observations of the Committee concerning the last Report and to the progress made in the implementation of these observations into Dutch law and policy. Therefore, the NJCM and the JWS are interested to know what status the Government of the Netherlands accords to the Concluding observations of the Committee.

12. The NJCM and the JWS furthermore draw attention to the fact that, so far, the Committee's general comments have not been translated into Dutch, which makes further dissemination among the Dutch population more difficult.

13. The NJCM and the JWS would also like to point out that the Netherlands has not yet withdrawn its reservations to articles 26, 37 and 40 of the Convention.

14. The NJCM and the JWS are of the opinion that all children in the Netherlands could benefit from the institution of a fully independent ombudsman for children to monitor and assess the full implementation of the Convention. The Belgian example where the ombudsman has independent advisory and executive powers is worth considering.

15. The NJCM and the JWS are in favour of a National Human Rights Institution (Nationale Mensenrechten Instelling, NMI). Several EU States like Denmark and Germany, already have such an institution. The National Human Rights Institution would be a permanent, independent body that provides advise to the government about human rights issues when introducing new laws or policies. It would cover all human rights areas, including children's rights, women's rights and other minority rights. A special Ombudsman for Children could be part of such an Institution.

15. Lastly, the NJCM and the JWS express the hope that their comments will constitute a useful addition to the Second Periodic Report of the Netherlands.

Cluster IV - CIVIL RIGHTS AND FREEDOMS

Art. 7 CRC - Name and nationality

A. Developments since 1999

1. In its report under the heading “Name and Nationality”, the Dutch government refers to article 13 of the Convention with regard to the law on names. The NJCM assumes that the Government meant to refer to article 7 instead of article 13, as article 13 deals with the right of freedom of expression of the child and it is article 7 that enshrines the right to a name and a nationality. This comment therefore concerns article 7 of the Convention.

2. According to article 7 of the Convention on the Rights of the Child, children have the right to acquire a nationality. The state has to protect this right especially if the child is in danger of being left without a nationality.

3. Therefore, the Netherlands, in accordance with their international obligations with regard to the reduction of statelessness and facilitating the assimilation and naturalisation of stateless persons who normally reside in the Netherlands, should give children a preferential treatment with regard to acquiring Dutch nationality by law.

4. The second Dutch periodic report contains no information concerning simplification of the conditions for the easy acquisition of Dutch nationality by stateless children born in the Netherlands.

5. An amendment of the Act on Dutch Nationality of 2001 will complicate the acquisition of Dutch nationality by stateless children.² Under the current Act minors automatically obtain the Dutch nationality when their parents obtain Dutch nationality. When the amendment of the Act has entered into force, the minor will have to meet the requirements of obtaining Dutch nationality him- or herself, which means that the minor between sixteen to eighteen must have had residence in the Netherlands during the three years immediately before the date of application. The Dutch Government also set very strict conditions for stateless persons with regard to acquiring a residence permit in the Netherlands.³

B. Concerns

The NJCM is concerned about the consequences of the Dutch Nationality Act for minors who apply for Dutch nationality and for stateless children. The NJCM is of the opinion that existing restrictions on obtaining Dutch nationality for minors in general as well as stateless minors born in the Netherlands are too strict and should be revised. On the basis of the best interests of the child and the principle that statelessness should be avoided, Dutch legislation should be changed in order to give minors and stateless children a possibility to acquire Dutch nationality by law.

² Stb.2001, 618.

³ TBV 2000/29.

Article 19 CRC - Protection from abuse and neglect

A. Developments since 1999

6. Female genital mutilation (FGM) of female children in the Netherlands occurs especially within communities of migrants and asylum seekers from, in most cases, Africa and Asia.

7. The Dutch Minister of Justice has committed himself to making it clear to communities within which FGM occurs that the execution of FGM is criminal in the Netherlands.⁴ Indeed, educational programs have been set up to inform the Somali community in the Netherlands about this fact. The PHAROS foundation has been granted funds to intensify education to social workers in the health sector and to Somalis via key persons from their communities.⁵

8. According to the Minister of Public Health, Welfare and Sports, it should be emphasised in educational programs that FGM in the Netherlands is prohibited by law and that it results in an irreparable mutilation.⁶ The Minister also stresses that the enhancement of knowledge in the areas of FGM should form a structural part of educational and training programs in the health sector.⁷

9. According to the Government, the fact that someone faces a realistic chance of being mutilated can be seen as a reasonable fear of persecution as laid down in the International Refugee Convention.⁸

B. Questions

1. The NJCM would like to know if any educational programs have been developed for other communities in the Netherlands in which FGM occurs.

2. The NJCM inquires whether the educational programs on FGM also include practitioners of other health sectors or non-health sector professions and if so, which.

3. The NJCM advises the Dutch government to implement and further develop its position on FGM in the Alien Policy Rules 2000 ('Vreemdelingencirculaire 2000') and in the working instructions ('werkinstructies') for the Immigration and Naturalisation Services (Immigratie en Naturalisatie Dienst).

4. The Dutch Government should be asked to create adequate and sufficient facilities for abused children.

⁴ Algemeen overleg begroting, Handelingen TK 2001-2002, 28 000 VI, nr. 52, p. 9.

⁵ Antwoord op vragen kamerlid Dittrich, Handelingen TK, 1999-2000, Aangangsnel nr. 1076.

⁶ Algemeen overleg begroting, Handelingen TK 2001-2002, 28 000 VI, nr. 52, p. 10.

⁷ Algemeen overleg begroting, Handelingen TK 2001-2002, 28 000 VI, nr. 52, p. 11.

⁸ Brief Minister van Justitie, Handelingen TK 200102002, 28 000 VI, nr. 54, p. 4.

Cluster V - FAMILY ENVIRONMENT AND ALTERNATIVE CARE

Art. 10 CRC - Family reunification

A. Developments since 1999

10. In paragraph V, part D, of the second periodic Dutch government report to the CRC, an independent study is quoted that was conducted in 1999 by Steenberg, Spijkerboer, Vermeulen and Fernhout. According to the Dutch government, these researchers concluded that under Dutch Law applications for family reunification are dealt with in a positive and expeditious manner with no adverse consequences for the applicants or the members of their family.

11. In cases of family reunification, art. 8 of the European Convention on Human Rights is referred to instead of the Convention on the Rights of the Child. This is because according to the majority of Dutch courts, the Convention on the Rights of the Child is not self-executing.

12. A case in point regarding family reunification and its consequences in the Netherlands is the case of *Sen v. the Netherlands* (appl. No. 31465/96) of December 21, 2001, European Court of Human Rights. In this case, the Court unanimously concluded that in preventing a nine-year old Turkish girl from joining her parents in the Netherlands the Dutch Government had violated Article 8 of the European Convention on Human Rights which guarantees respect for private and family life. The Court's decision concerned a rule in current Dutch immigration policy which states that parents must submit a request for reunification with their child(ren) within a period of five years. When the request is submitted after this period of five years, any family ties are automatically supposed to have been broken.

13. The NJCM stresses the fact that since 1999 many Dutch immigration rules have been changed. In April 2001 a new Aliens Act came into force. Under this Act, refugees who have received a refugee status have to submit their request for family reunification within a period of three months. If they fulfil other criteria such as having the same nationality, the family members are also granted refugee status, without having to fulfil any income requirements. However, when the request is submitted after a period of three months, people do have to fulfil income requirements as well, which is a serious problem for refugees who do not have a job.

14. Even if the result of the request for family reunification is positive, there are various problems when people try to obtain provisional residence visa ('machtiging tot voorlopig verblijf' (mvv)) to travel to the Netherlands. Although, according to Dutch policy, the decision on a request for a provisional residence visa should be taken within three months, in practice people are forced to wait for a period of up to three quarters of a year.

15. In addition, over the past few years, several attempts have been made to restrict family reunification in the Netherlands. For example:

- in the situation of a regular request for family reunification, one has to pay extremely high fees (people over 12 years of age have to pay €430 each).

- when the residence permit is valid for at least a year, extra fees are to be paid (€285) when the request for prolonging one's stay is submitted.

- another proposed measure was to deny reunification to children over 12 years of age. Later this was changed to 14 or 16 years of age. At the moment of writing it is not clear whether the Dutch Government will include this measure in its policy.

B. Concerns

The NJCM stresses that if the Dutch government includes the measure to deny reunification to children of 14 to 16 years of age, this might conflict with article 10 of the Convention on the Rights of the Child and also with article 8 of the European Convention on Human Rights.

C. Question

Are the above mentioned Dutch policy measures regarding family reunification consistent with the Committee's interpretation of the obligations of the Dutch government under article 10 of the Convention on the Rights of the Child?

Art. 27 CRC - Standard of Living

A. Developments since 1999

Children whose parents are (ex-) asylum seekers should not be left without facilities.

16. Art. 27 CRC, together with art. 2 CRC, provides that each State party has to respect and ensure the right to an adequate standard of living for every child within its jurisdiction, including children with an alien nationality. Furthermore, according to these articles, the right to an adequate standard of living should be enjoyed without discrimination of any kind, including discrimination on the ground of nationality or (il)legal status.

17. Dutch legislation excludes amongst others the categories of people mentioned below, including their children, from housing and other basic living facilities:

a. Asylum seekers with a final negative decision on their request for asylum

18. The right to housing and living facilities ends for rejected asylum seekers 28 days after the final decision by a competent Dutch court. The reason for this is that the relevant Dutch legislation is based on the presumption that it is always possible for rejected asylum seekers to get travel documents to return to their home country. In practice, problems arise frequently when aliens try to get travel documents.

19. In this policy and legislation, no special consideration is given to 'vulnerable' people like children. In general, the reasoning is that it is the choice of the parents that they are still in the Netherlands and that the parents are therefore responsible for what happens to their child(ren). No extra effort is made by Dutch authorities to help those families with children, for instance by supporting them in getting their travel documents.

b. Aliens (with their children) in the Netherlands, who start a new procedure for asylum

20. The reason that this category is excluded from facilities is that according to Dutch policy a second demand for asylum is by definition less credible than the first request for asylum.

However, these aliens are involved in an asylum procedure, and must therefore be considered to be in the Netherlands with government permission. They, together with their children, should get the necessary facilities for living.

c. Aliens (with their children) in the Netherlands who start a new procedure for a residence permit, for instance on medical grounds, and are allowed to wait in the Netherlands for a decision on their request

21. Dutch legislation and policy demand that the alien who wishes to make a request for a residence permit has to obtain a provisional residence permit (mvv). To obtain the mvv, he should travel to his home country with his children, even when mother, father or child are in very poor health. This has its effects on the health and development of the child. If these people remain in the Netherlands, they will not get the necessary facilities such as money for food and housing. Only in case the alien is not able to travel at all, does the Dutch government allow the alien to retain facilities to await the decision for a residence permit.

d. Asylum-seekers, including their children, whose application is rejected in the accelerated procedure of 48 hours

22. Nowadays approximately 60 % of the applications are decided on in this manner. While the aliens are waiting for the final decision in court they do not get any facilities and are forced to live in the streets.

23. The Government did not change its policy after a judgement of the District Court of Groningen of 24 April 2002. The Court stated that according to Article 27 of the Convention on the Rights of the Child, the Government has the obligation to take measures to help parents to care for their children and give them facilities as long as they are in the Netherlands, without regard to their (il)legal status.⁹

24. It may not be absolutely clear how far government obligations reach with regard to the realisation of an adequate standard of living. However, the government report does not even mention the problem of children without housing or money for food and clothing because of the status of an alien of their parents.

25. Moreover, the rights to education and medical care may be negatively influenced by this situation. Article 3 of the Convention is also relevant in this respect: it cannot be regarded as being in the best interest of the child to be living in the streets.

B. Concerns

The NJCM is concerned about the fact that several categories of aliens are excluded from facilities in the Netherlands and that Dutch policy does not take into account that these categories include children. Even people who still have a procedure running are excluded from facilities and have to live in the streets with their children.

⁹ Rechtbank Groningen, 24 April 2002, reg.no. 57966 JE RK 02-184, not published.

C. Question

The NJCM would like to know whether the Committee is of the opinion that the exclusion of children from facilities because of the status of an alien of their parents is in conformity with the right to an adequate standard of living as laid down in article 27 CRC.

CLUSTER VI - BASIC HEALTH AND WELFARE

Art. 18 CRC - Parental responsibilities

A. Developments since 1999

26. The government of the Netherlands believes that parents have the primary and final responsibility for the upbringing and development of their children. The government recognises at the same time that it has a task in creating the necessary conditions for parents to carry out their child rearing responsibilities.

27. One of the ways of supporting parents in the upbringing of their children is to enable them to combine child rearing and work. This combination of childcare and work can be realised by structurally working fewer hours, i.e. taking on part-time work, and/or to take leave of work whenever necessary, e.g. in case a child is ill.

28. The Netherlands government has facilitated the combination of childcare through the basic Act 'Work and Care' ('*Wet Arbeid en Zorg*') and other laws. The Act for the Adjustment of Working Hours ('*Wet aanpassing arbeidsduur*') provides individual workers in private and government employment the right to structurally change the number of working hours. When an employee chooses to work fewer hours, the financial consequences of that choice are borne solely by that employee.

29. The lion's share of part-time work in the Netherlands is performed by women (68 % of all female employees worked part time in 1998 against 17 % of male employees¹⁰). Based on this information it would appear that the efforts of the government to stimulate part-time work, result in a return to a breadwinners' system, so that women and children become dependent – once again – on the income of the man.

30. The Netherlands heads the list of European countries with regard to part-time work.¹¹ This is caused (in part) by a lack of child-care facilities, which forces parents to combine their jobs with the care for their children. The Netherlands' Government recognises the growing need for adequate child-care facilities. The Government has indeed already taken several measures. However, these measures have thus far been aimed mostly at persons who are dependent on benefits (e.g. unemployment benefits or welfare).¹²

31. The Basic Assistance for Child Care Act (*Wet basisvoorziening kinderopvang*) aims to provide the use of child-care facilities for children up to twelve years of age to all persons in the labour market. The *Wet basisvoorziening kinderopvang* does not provide a right to the use of childcare facilities, but offers – when certain criteria are met – financial assistance in case parents make use of these facilities. The government of the Netherlands is of the opinion that it has thus fulfilled its obligations under art.18, paragraph 3 of the CRC.

¹⁰ Parliamentary papers, 2nd chamber 1998-1999, 26 358, nr. 3, p. 2.

¹¹ Source: Parliamentary papers, 2nd chamber 1998-1999, 26 358, nr. 3, p. 2.

¹² Means for public child care are provided to persons receiving benefits through e.g. the *Regeling kinderopvang en buitenschoolse opvang alleenstaande ouders* (Regulation child care and out-of-school care single parents), the *Wet inschakeling werkzoekenden* (Law re-involvement jobseekers), the *Werkloosheidswet* (Unemployment Act) and the *Wet op de (re)integratie arbeidsgehandicapten* (Act for the (re)integration of the handicapped).

B. Concerns

1. In view of the overwhelming shortage of child-care facilities and in view of the fact that the *Wet basisvoorziening kinderopvang* merely subsidises the use of child-care facilities but in no way guarantees access to the facilities, the NJCM is concerned that the Dutch government has not sufficiently carried out its responsibility to ensure the development of child-care facilities.

2. The NJCM is concerned that the government has not given enough consideration to the reality that it is now mostly women that work part-time and the negative impact this development may have on their income and on their dependent children. This seems to be of particular concern in situations where the breadwinner is removed from the household by death or separation. In those instances women usually take on the care for the children.

3. The government of the Netherlands is of the opinion that it has thus fulfilled its obligations under art.18, paragraph 3 of the CRC. The NJCM doubts whether the Netherlands has fulfilled its obligations under this article. It stresses the wording of Art.18 paragraph 2 CRC, according to which each State Party is obliged “to ensure the development of institutions, facilities and services for the care of children”.

C. Recommendations

1. The Dutch government should thoroughly address their responsibility to ensure the development of child-care facilities.

2. The Netherlands’ government should more adequately address the need for general child-care facilities, instead of facilities which are not aimed specifically at persons who are dependent on benefits.

Art. 24 Health and Health Care

A. Developments since 1999

a.) General problems

32. The report of the Netherlands leaves unmentioned the general problems that exist in the Dutch health care system: a shortage of personnel, the restricted budget for hospital and nursing homes, and the existing waiting lists for many treatments, including ones that are life-threatening. These problems also affect the right to health of children, in particular, the right of children not to be deprived of their right to access to health care services under Article 24 (1) CRC.

b.) School healthcare services

33. Regarding school healthcare services, the Government incorrectly states in its report under article 24, part C first paragraph that all schoolchildren are examined every two years. In practice, the frequency of the examination of children depends on the policy of the municipal health services. An expert group has advised 5 check-ups between the age of 5 and 13. However, the Dutch government has not yet adopted this advice as a national policy. Altogether, it is questionable whether preventive health care services for schoolchildren are sufficiently available.

c.) Prevention of tobacco and alcohol consumption

34. The Dutch government report, in the section that deals with article 24, part C, second paragraph, under 'National policies, refers to, among other matters, the prevention of smoking and alcohol consumption. The report refers to a forthcoming ban of sales of tobacco and alcohol to young people under 18. This legislative prohibition, which has been enacted this year, does not concern a ban under 18 but under 16. It is to be observed that alcohol consumption has increased among persons under 18 and that the new act is not necessarily a sufficient measure to counter these problems.

d.) Sexually transmitted diseases and abortions

35. Furthermore, the report of the Netherlands refers to the prevention of Sexually Transmitted Diseases (STDs) under 'National Policies'. The report leaves unmentioned the rise of STDs, including HIV/AIDS, and abortions in the last few years. In this respect the NJCM considers it alarming that the Government has substantially reduced the subsidy for the so-called 'Rutger's Huizen' (reproductive health care centres where reproductive information and services are provided). As a result, most centres were forced to close down, whereas others were forced to work for a fee per client.

e.) Teenage pregnancies

36. A related problem that the report of the Netherlands leaves unmentioned concerns the rising amount of teenage pregnancies in the Netherlands, a problem that is particularly prevalent among migrant teenagers.¹³

f.) Breastfeeding

37. Article 24 (2) (e) CRC refers to the obligation of governments to provide information about the advantages of breastfeeding. Although in the former reaction of the CRC Committee (1999) the Netherlands was asked to counter the low breastfeeding figures in the country, breastfeeding is not mentioned in the Dutch report. As a result of the remark made by the CRC Committee the Minister of Public Health, Welfare and Sports commissioned the Feeding Center ("Voedingscentrum") to co-ordinate a breastfeeding master plan. The funding for this master plan is, however, not considerable and up to now it has lead to no concrete results. Only the 'Baby-friendly Hospital Initiative' (named "Stichting Zorg voor Borstvoeding", ZvB) has received a substantial government grant for the 2003-2006 period. A study carried out at the request of ZvB revealed that of the 17 text books used at various educational levels of medical schools only four complied with WHO standards for breastfeeding education. Moreover, in 38 % of medical schools free brochures provided by infant formula producers are available, while in 24 % of schools lessons on infant formula are taught by formula industry teachers. Conferences and workshops for health care providers on infant health and breastfeeding are heavily sponsored by these companies. Various means of advertising (special) infant formula products, follow-up milks and even breastfeeding are undermining NGO efforts to support breastfeeding. Breastfeeding breaks at work is another field that requires government attention. Employers are not familiar with the law, nor interested in supporting breastfeeding by women.¹⁴

¹³ Stisan (Stichting Samenwerkende Abortusklinieken Nederland), 2002, blz 35.

¹⁴ According to the study 'The economic benefits of breastfeeding in the Netherlands', L. Houtenbos, 2002.

B Questions

1. Can the government of the Netherlands provide a more coherent picture of the prevailing problems in the Dutch health care system and of the way in which these problems affect the health of children?
2. What measures does the Government intend to take to safeguard the systematic screening of school-children?
3. What measures does the Government intend to take to counteract the rise in STD's, alcohol and tobacco abuse amongst youth as well as the rise of teenage pregnancies?
4. Does the Government invest in preventive health strategies directed towards children?
5. In the light of Article 24 (2) (e) CRC: Does the government continue the financial support for breastfeeding promotion activities? Does the government provide training for health care providers on breastfeeding, which is independent of infant formula companies? Does the government promote the implementation of the law by companies in their policies?

CLUSTER VIII - SPECIAL PROTECTION MEASURES

<i>Art. 22, 39 CRC</i>	- <i>Refugee children</i>
<i>Art. 3, 27 CRC</i>	- <i>Reception of unaccompanied minors</i>
<i>Art. 3, 22, 31, 39 CRC</i>	- <i>Placement of unaccompanied minors in a campus</i>
<i>Art. 12, 22 CRC</i>	- <i>Interviewing children in asylum procedures</i>
<i>Art. 3, 6, 28, 37 CRC</i>	- <i>Detention of children whose parents applied for asylum.</i>

A. Developments since 1999

Unaccompanied Minors

(art. 22, 39)

38. The aim of the policy of the Dutch government concerning unaccompanied minors seeking asylum is to reduce the number of unaccompanied minors that come to the Netherlands. As section VIII under A.i of the Government report states, there is a strong emphasis on return. The question is whether in this policy the best interests of the child are a priority.

39. The Dutch government states that its report takes the minor's age and development into account in the asylum procedure. The NJCM considers that this is often not the case in practice.

40. At the moment 35 % of the asylum requests of unaccompanied minors are rejected in the accelerated procedure in the reception center ('Aanmeldcentrum' (AC)). This procedure takes at most 48 working hours, which comes down to four or five days. In this short time the unaccompanied minor gets two interviews. The first is about his or her identity, nationality and travel route. The second interview is about the asylum motives of the child. During the AC procedure there is little time to rest and to prepare for the interviews. The child gets two hours of legal assistance for the preparation of the second interview and three hours to discuss the report of the second interview and write a reaction on the intended rejection of the asylum application.

41. If there are doubts about the age of the child, its age will be examined. For this purpose, X-rays are made of the collarbone and the hand and wrist of the child. In 61,5 % of the cases the bone examination does not give the result that the person is over 20 years. If the unaccompanied minor turns out to be older than he or she said (for example 16 instead of 15), this is considered a strong reason to deem the asylum story discredited, even when the difference is only a few months. The method used is claimed by some to be scientifically sound. This is doubted by others, amongst others because of the absence of comparable bone atlases of other than Caucasian races, and because anthropological assumptions are mixed with unproven radiological methods. After protest by lawyers and physicians, the Dutch National Ombudsman has investigated the case on the basis of a complaint submitted by a foundation for medical advice (*Stichting Medisch Advies Collectief*, 'SMAK'). The National Ombudsman ruled that the Dutch Immigration and Naturalisation Services (Immigratie en Naturalisatie Dienst (IND)) is not able to assess whether an asylum seeker has reached the age of 18 on the basis of X-rays of the clavical bone. Furthermore, he concluded that it is

inappropriate for the IND to ignore the objections made by the Dutch Health Inspection against this type of investigation ¹⁵.

42. The fact that a child does not have any documents to prove his identity, nationality and travel route is also considered a strong reason to reject their asylum application. If a child's account of events is inconsistent or incomplete the asylum application will be rejected. This includes the accounts of children under the age of 12

43. If the asylum request is rejected, unaccompanied minors can get a residence permit if there is no one to care for them in the country of origin. However, if they are 15 years or older, the permit will be withdrawn when they turn eighteen. If, in the judgement of the Minister, a child lies or frustrates the procedure, he does not get a permit at all, even if he cannot go back to his country of origin. That means that a child (no matter what age) will have to stay in a reception center without a residence permit for years, without any perspective until he turns eighteen and can be expelled. During this period he is not allowed to integrate in Dutch society.

Reception of unaccompanied minors
(art. 3, 27)

44. Minors seeking asylum who come to the Netherlands with a brother or sister who is 18 years old or older, are left in the streets when their asylum application is rejected in the AC. This is not mentioned in the Government report. The brother or sister is expected to care for the child although, under Dutch law, they are not responsible for the child.

45. Children between 15 and 18 years old are housed in a large reception center (85 up to 115 unaccompanied minors in a center which houses around 400 asylum seekers in total). The interest of the child to be housed in the most suitable center for its development is not given priority. The principle that these children are not supposed to integrate in Dutch society is the most important consideration in the choice of the reception place (see VIII under A.i of the Dutch government report).

46. Children whose asylum application is rejected and who are unable to return to their country of origin or another country can stay in a reception center up until their eighteenth birthday. When they turn eighteen they are left on their own. They have to leave the reception center and they do not get any money. This causes a lot of stress for children who know they are going to be left in the streets when they turn eighteen.

Placement of unaccompanied minors in a campus
(art. 3, 22 , 31, 39)

47. From 1 November 2002, unaccompanied minors whose asylum application is rejected and who are older than 15 can be placed in a campus. On November 1 the first campus that can house unaccompanied minors opened in Vught and there are plans for more. The idea of this campus is to work towards the return of the unaccompanied minor to his or her country of origin. It is not the interest of the child that comes first, but the message to them and to the world outside the campus that they have to return to their country of origin. Despite this fact

¹⁵ Dutch National ombudsman, report 2002/386, see www.nationaleombudsman.nl/nieuws/nieuws.html

even children that still have a procedure running for a permit to stay are put in a campus although they need not yet -if ever- return to their country of origin.

48. The NJCM is concerned about the circumstances at this campus. Officially the children are not detained. However there is a program that the children are obliged to follow. This program starts at 6:30 am and stops at 22:30 pm. The program consists of education, work (cooking, cleaning etc.(and sports). The children only have one free hour. This would seem to contradict the Dutch government's obligations under art. 31 of the Convention which is that State Parties recognize the right of the child to rest and leisure. In practice the children can not go outside the campus when they are following the program. The methods used in the campus are based on the methods of the Glenn Mills schools, schools for children who have committed crimes. Everything is done to prevent the children from integrating into Dutch society. For example, the children get education in English and are not allowed to watch Dutch television. Many children have already run away from the campus and disappeared. Other children have protested because they find the regime in the campus far too strict.

49. On 23 April 2003, the president of the Hague District Court gave his judgment in proceedings instituted by the NJCM, several organisations of asylum lawyers, Defence for Children International and the Dutch Refugee Council against the regime in the campus. The president of this Court concluded, *inter alia*, that an independent complaints committee must be set up to investigate what is happening at the campus.

Interviewing young children in asylum procedures (art. 12, 22)

50. The Dutch Government uses interviews of children from the age of four (accompanied or unaccompanied by parents) to consider asylum applications. This, in itself, does not appear to be inconsistent with articles 12 and 22 of the Convention on the Rights of the Child. However, these interviews are often used to reject asylum applications, regardless of the age of the child. These rejections can occur in an accelerated procedure. The best interests of the child do not seem to be a primary consideration here.

51. According to the Government's report, IND officials take the child's age and mental development into consideration. However, in practice, the IND rejects applications considered to be vague or inconsistent regardless of the age of the child. It even uses these statements to reject applications by adults.

For instance, the statements of a girl from Azerbaijan, aged nine, were used to argue that the declarations of her foster parents who applied for asylum in the Netherlands were untruthful, notwithstanding the fact that the girl was a victim of war.

Detention of children whose parents applied for asylum (art. 3, 6, 28, 37)

52. People who arrive at Schiphol Airport and apply for asylum there are refused leave to enter the country. They are deprived of their liberty and taken to the Application Center (AC) at Schiphol. In the AC the IND assesses their asylum application. Among these people are families with children and unaccompanied minors.

53. During the asylum procedure the asylum seekers are detained in the AC Schiphol. Some of them go through to the 'normal' asylum procedure and are sent to an open center for

asylum seekers after the first interview. Most of them (around 67 % at the moment, and the percentage is still rising) are rejected in the AC in an accelerated procedure.

54. The asylum seekers who are rejected at AC Schiphol, also the families with children, are taken to the 'grenshospitium', a detention center for rejected asylum seekers. If there is a lack of capacity in the grenshospitium, the families with children are normally the first to be released from the AC. They are left in the streets without any facilities. Unaccompanied minors do not go to the grenshospitium. However, if an asylum seeker claims to be an unaccompanied minor, but there are doubts about his age, he can be detained in the grenshospitium.

55. The asylum seekers stay in the grenshospitium for the remainder of their asylum procedure (appeal at the regional court and in some cases the Administrative Justice Division of the Council of State) until their expulsion. This can take months. When the regional court or the Administrative Justice Division quashes the Minister's decision, the asylum seekers are released and put in a normal reception center. If the IND does not manage to arrange an expulsion, the asylum seekers can also be released. The regional court has judged that after a detention of six months, the interest of the detained alien to be released is greater than the interest of the government to detain the person in order to be able to expel him afterwards (except when he frustrates the procedure).

56. The circumstances in the Grenshospitium are far from ideal, especially for children:

- The situation in the grenshospitium may be described as prison-like.
- There are far-reaching restrictions on the freedom of movement.
- Children are not provided with educational facilities.
- The atmosphere in the Grenshospitium is very tense.
- Medical and psychological facilities are limited, as well as assistance by social workers.
- Staff are not educated to work with children.
- There is a lack of privacy (no privacy of correspondence)
- Contact with people outside the grenshospitium is limited.

57. The aim of the detention is to make sure that the asylum seeker is expelled. However, the interest of the child should be given priority. Detention poses great risks to the development of children. The lack of education facilities also poses a risk to their education and, according to the NJCM, may be in conflict with article 28 of the Convention and with Dutch national law. The circumstances in the Grenshospitium (as mentioned above) may be in conflict with article 37, under c of the Convention.

58. Article 37 under b states that the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest possible period of time.

59. In the view of the NJCM, the Minister has alternatives that are less severe. He could, for example, place an obligation upon the family to report to the police on a regular basis. Regional courts have already decided in a few cases that the minister should have considered a less severe alternative. In those cases the asylum seekers themselves asked for an alternative to detention. Leaving the families in the streets without any facilities with an obligation to report to the police however is, in the view of the NJCM, no alternative to detention in the grenshospitium.

B. Concerns

1. The aim of the policy of the Dutch government concerning unaccompanied minors seeking asylum is to reduce the number of unaccompanied minors that come to the Netherlands. Part VIII under A.i of the Second Periodic Government Report puts a strong emphasis on the issue of return. The NJCM is concerned that the current policy as described above is not in the best interests of the child.
2. The NJCM is concerned about the conditions in the campus and the impact this situation has on the children involved.
3. The NJCM is concerned about the way in which the Dutch Government uses interviews of children to consider applications for asylum.
4. Children whose parents applied for asylum at Schiphol airport are detained during the procedure in the Application Centre and after a rejection of their asylum request. The NJCM is concerned about their conditions and the impact this can have on children.
5. Children whose parents apply for asylum at Schiphol are detained during the procedure in the Application Center and after a rejection of their asylum request. The NJCM questions the consistency of this detention with the Convention and wonders whether the Minister is not under an obligation to use alternatives to detention in the case of children.

C. Recommendations & Questions

1. The NJCM recommends that the Dutch government reviews its policy with regard to unaccompanied minors in the light of the CRC to see whether the rights of children are sufficiently taken into account.
2. Can the government report on the implementation of the decision of the National ombudsman concerning the age assessment of unaccompanied minors?
3. The NJCM doubts whether the best interest of the child is given sufficient priority in the current Dutch policy with regard to unaccompanied minors being placed in the campus in the conditions described above. The NJCM is most interested in the Committee's opinion on this most urgent matter; there is, at the present time, a considerable degree of tension on the campus and among the children held there.
4. The question arises whether the Netherlands, in using interviews of children to consider applications for asylum, is acting in consistence with its obligations under the Convention, especially under articles 12 and 22. The NJCM urges the Government to take into consideration that testimonies of children in asylum procedures should be handled with the utmost care and that immigration officials must take the child's age and mental development into consideration when deciding on their applications.
5. Can the Dutch government address alternatives to detention of parents who have minor children with them when they apply for asylum at Schiphol Airport?

A. Developments since 1999¹⁶

60. It should be noted that there are some specific groups of children that run a greater risk of becoming employed in illegal child labour, both the ‘worst forms’ and those forms that are not labelled as such. Examples are:

61. Children who (often with their mothers) are victim of trafficking, for prostitution of drugs transport. Two different definitions are being applied for the trafficking of persons in the Netherlands. One definition is trafficking with the intention of prostitution (the Dutch definition is ‘mensenhandel’) and the other definition is trafficking for all other purposes like for instance the people who smuggle drugs in their stomachs. (Dutch definition is ‘mensenroof’). In case of mensenhandel, the legal position of the victim is stronger than in case of mensenroof: he or she is allowed to await an appeal for a permit of residence in the Netherlands, which includes several social assistance benefits. The NJCM would urge the government to extend the application of these rights to victims of any of the other three ‘worst forms of child labour’ of Convention 182.

62. Children whose parent(s) perform ‘work at home’ in the sense of Convention 177 of the International Labour Organization (ILO). This Convention stresses the minimum age of the worker. However, particularly in situations where the parents hold a marginal position in society, for example when they are residing illegally in the country, the child runs the risk of becoming employed in child labour.

63. Children who perform domestic work and baby-sit smaller siblings when their parents, mostly single mothers, are at work. The *Defence for Children* report ‘Children without status’ shows that for many girls who are residing illegally with their families in the Netherlands, compulsory school attendance is often threatened by a combination of poor administration of the law and the fact that their parents are dependent on them. This is also caused by the fact that single parents with children under the age of 5, predominantly women, who hold a restricted residence permit for one year, are not exempted from the duty to seek employment, as is the rule for other residents.

64. From 1997 - 2001, the Labour Inspectorate conducted an investigation concerning persons without a residence permit, who perform illegal labour. The outcome showed that about 5 – 7% of the summons that were made related to people younger than 18 years of age, sometimes even as young as 12 or 13. This shows that there must indeed be an illegal workforce of children and adolescents.

65. Another investigation by the Labour Inspectorate shows that a number of distributors of papers and other printed matters violated the Working Time Act, where they employed children under 18 before 6.00 a.m. The minimum age for this work is 15, and many violations of that rule were found. This investigation did not distinguish between children with, and

¹⁶ Conclusions of the Committee on the Rights of the Child on the first report of the Netherlands: CRC/C/15/Add.114, 26-10-1999. (See: www.unhchr.ch). See also: Arbobesluit 1998 especially article 4.105 and 6.27.

those without a residence permit, but it is likely that the latter group runs a greater risk in becoming involved in this type of work.

66. Over the last few years in the course of the implementation of the ILO obligations presented by the ratification of Convention 182, the Dutch Minister of Social Affairs and the Dutch Members of Parliament have on several occasions held deliberations on child labour. Many Members of Parliament commented that both the policy and the law making process in this field are very fragmented in the Netherlands. The Minister of Social Affairs co-ordinates this process, but his colleagues of the Justice department, Foreign Affairs, Development Assistance and the Under-secretary of Economic affairs are also competent on this field. This results in fragmented responsibilities and the risk that specific problems fall between the different conceptions of the officials' tasks.

B. Recommendations

1. The NJCM requests that the Dutch government urges the Dutch Labour Inspectorate to perform a more continuous periodic control specifically on the hazardous child labour regulation. The Labour Inspectorate could select companies on the basis of the risk inventory and evaluation ('risico inventarisatie- en evaluatie') made by the companies, which should reflect the specific dangers that young workers face in their duties.

2. The NJCM notes that Dutch legislation is to a large extent in conformity with ILO standards. There are a few exceptions, however. Recommendation 190, which complements Convention 182, should be used as a guideline for the implementation because of the evident similarity with the CRC. The recommendation advises the Member States on the determination of hazardous child labour in Paragraph 3 and 4.

Article 38: Children in Armed Conflict

A. Developments since 1999

67. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict entered into force on 12 February 2002. The Netherlands has signed the Optional Protocol on the 7th September 2000 but has not yet ratified it.

68. Based on Art.38 of the Convention on the Rights of the Child, the Netherlands is bound by its international humanitarian law obligations to take all feasible and practical measures to guarantee the protection of the civilian population in armed conflict, especially children.

69. At present the minimum age of voluntary recruitment in the Netherlands is 17 years. They are recruited but not allowed to take part in armed conflict yet. Dutch legislation states that people under 18 years of age are not allowed to take part in armed conflict.

70. The Minister of Defence has written several letters to Parliament in which safeguards for the voluntary recruitment of 17-year-olds were formulated. The most important ones are:

- Under 18's will be regarded as 'prospective combatants' (*aspirant-militair*) instead of having the status of combatants;
- Under 18's will not be permitted to participate in peace keeping or peace enforcement missions in which the Netherlands participates;
- Under 18's will only be allowed to carry weapons while, for example, taking part in drills, shooting exercises or during exceptional circumstances such as festive ceremonies;
- Under 18's will be able to leave any moment they want. Upon becoming 18 years of age, they have to choose to enter the armed forces on an official contract. In doing so, they will lose the status of *prospective combatant*;
- Under 18's will fall under the responsibility of a military superior and be able to join units of the armed forces- while not yet having entered the armed forces officially in a specific rank. The informed consent of the parents or legal guardians of the minor will be necessary.

71. In May 2002 elections took place as a result of which the political balance in Parliament changed radically. During the following discussion of the recruitment issue in Parliament on 13th June 2002, a majority agreed on the fact that enough safeguards were given by the Minister of Defence for the voluntary recruitment of minors by the armed forces. The Minister promised to draft an Act in which all safeguards were included. This has not happened yet. A reason might be that the government stepped down in October 2002 and that meanwhile new elections again have taken place in January 2003, which have caused yet another shift in the political landscape. While a new government has not yet been formed - negotiations are still taking place- all Ministers are acting in their outgoing capacity.

B. Concerns

1. The NJCM considers 18 years as the minimum recruitment age to be the most effective protection of children against their participation in armed conflict, both in the Netherlands as worldwide. At present, the Netherlands can only ratify the Protocol on the basis of 17 years as the minimum age for voluntary recruitment.
2. The NJCM doubts the legality of some of the guarantees as formulated by the Minister of Defence. The Netherlands is a state party to the Geneva Conventions and the First Additional Protocol. On the basis of these international humanitarian law instruments, the category of *prospective combatant* does not exist. Someone is either a combatant or a non-combatant. So-called *prospective-combatants* do not fall under the more far-reaching protective regime that covers civilians. National laws, guarantees or definitions cannot change this fact.
3. Furthermore, *prospective combatants* will not be linked to the armed forces as civilians, but officially belong to the armed forces. For example, they will wear a uniform, they will be bound by the legal regime of military discipline, they will therefore form a legitimate military target and can be imprisoned without any form of process as prisoners of war.
4. The NJCM recalls the Human Rights Memorandum of 14 May 2001, produced by the Ministers of Foreign Affairs and Development Co-operation, in which it is stated that the protection of children in armed conflict must be given special attention and priority.

5. The NJCM recalls the concluding observations on the Netherlands by the Committee on the Rights of the Child in its 22nd session 8 October 1999 (CRC/C/15/Add.114), stating: ‘It (...) urges the State party to reconsider its present recruitment policies with a view to setting the age of recruitment into the armed forces at 18 years’.