

**Mandates of the Special Rapporteur on extreme poverty and human rights; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; and the Special Rapporteur on the human rights of migrants**

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extreme poverty and human rights; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; and Special Rapporteur on the human rights of migrants pursuant to Human Rights Council resolutions 26/3, 25/17, and 26/19.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the **failure by your Excellency's Government to provide emergency assistance for homeless migrants in an irregular situation.**

According to information we have received:

The European Committee of Social Rights ("ECSR") adopted two decisions in July 2014 in the cases of the European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands and the Conference of European Churches (CEC) v. the Netherlands, finding that the Netherlands violated various provisions of the European Social Charter ("Charter") by failing to provide adequate access to emergency assistance to various groups in need of such assistance. The decisions were notified to the Government on 9 July 2014 and published on 10 November 2014.

With regard to adult migrants in an irregular situation, specifically, the ECSR found that the practical and legal measures denying these individuals emergency assistance (such as food, clothing, and shelter) restrict their Charter rights in a

disproportionate manner. The ECSR also held that the right to a judicial review in matters concerning the granting of emergency assistance is not effective in practice. The ECSR therefore found a violation of article 13 (1) and 13 (4) of the Charter, which guarantee the right to social assistance. The ECSR also held that the Netherlands violated its obligation to “*prevent and reduce homelessness with a view to its gradual elimination*” under article 31(2) of the Charter by failing to provide shelter to a significant segment of the homeless, including migrants in an irregular situation.

The recent decisions by the ECSR are not the first time it has been concluded by international, regional and national human rights bodies that the exclusion of homeless migrants in an irregular situation in the Netherlands from emergency assistance violates human rights law (see further below). These human rights problems originate in Dutch Government policy to deny emergency assistance to adult irregular migrants that do not cooperate with their expulsion from the country. Municipalities are confronted with the effects of this policy that forces many irregular migrants to live on the streets, often in unsafe situations. Although municipalities are not supposed to shelter irregular migrants and do not receive funds from the central Government, some of them – often in cooperation with local charities and churches – have taken ad hoc measures to deal with this problem.

Reportedly, instead of implementing the decision by the ECSR, which follows earlier findings by other human rights bodies, the Government is waiting for a resolution by the Committee of Ministers of the Council of Europe, which is expected in 2015. Meanwhile, a coalition of more than 60 municipalities very recently requested the Government to act on this issue without further delay, particularly given the onset of winter, by: (i) making available a total of 15 million Euro in temporary budget support to municipalities that offer ‘bed, bath and bread’ to migrants in an irregular situation until the resolution by the Committee of Ministers in 2015; (ii) temporarily halting the eviction of migrants in an irregular situation from centers for asylum seekers (‘COA locaties’). The Government has reportedly refused to honor these requests in a debate in Parliament on 20 November 2014. On the day of the Parliamentary debate, a group of asylum seekers from various countries, including Somalia, Libya and Ethiopia, demonstrated in front of the Parliament building in The Hague for the direct implementation of their right to emergency assistance.

We wish to express our concern that your Excellency’s Government reportedly still maintains that it is not under any obligation to provide emergency assistance for homeless migrants in an irregular situation, which contradicts international human rights law and standards. The continued refusal to provide emergency assistance for homeless migrants in an irregular situation appears to indicate a *prima facie* violation of the right of

everyone to an adequate standard of living, including adequate food, clothing and housing, enshrined in article 11, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights (“ICESCR”), ratified by the Netherlands in 1978. Article 11 of the ICESCR must be read in conjunction with the non-discrimination provision of article 2, paragraph 2 ICESCR. The Committee on Economic, Social and Cultural Rights, in its General Comment No. 20 on non-discrimination, has clarified that the right to adequate housing applies to everyone, including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation. In its 2010 concluding observations concerning the periodic report of the Netherlands on the implementation of the ICESCR (E/C.12/NDL/CO/4-5), the Committee expressed its regret that undocumented migrants are not entitled to a basic right to shelter and are rendered homeless after their eviction from reception centers. Furthermore, migrant children, regardless of their legal status and documentation, have the right to a standard of living adequate for their physical, mental, spiritual, moral and social development, pursuant to article 27 of the Convention of the Rights of the Child (“CRC”).

The problems related to the provision of emergency assistance to migrants in an irregular situation in the Netherlands are not new and date back to the end of the 1990’s. The Advisory Committee on Migration Affairs (‘Adviescommissie voor Vreemdelingenzaken’), traces the current problems with providing emergency assistance to migrants in an irregular situation to the 1998 ‘Koppelingswet’ that linked social benefits to residence status. The recent decisions by the ECSR are also not the first and only time it has been concluded that the exclusion of homeless migrants in an irregular situation in the Netherlands from emergency assistance violates human rights law. As recently as 14 October 2014, the Commissioner for Human Rights of the Council of Europe, in a report about the Netherlands, stated that “in principle irregular immigrants do not have an explicit right to shelter under Dutch law” and that “anyone, irrespective of whether their stay in a country is lawful, has the right to an adequate standard of living for himself and his family, including adequate food, clothing and shelter”.<sup>1</sup> In 2009, the ECSR found that legislation and practice in the Netherlands with regard to children unlawfully present on its territory violated the right to shelter within the meaning of Articles 31(2) and 17(1) (c) of the Charter. In 2010, the Committee of Ministers took note of that decision in a resolution and held that States have a “responsibility to prevent homelessness of persons unlawfully present in their jurisdiction, more particularly when minors are involved”.<sup>2</sup>

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<sup>1</sup> Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, 14 October 2014, CommDH(2014)18, available at: <http://www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2014/10/15/tk-bijlage-report-by-commissioner-for-human-rights-of-the-council-of-europe.html>

<sup>2</sup> Resolution - Collective complaint No. 47/2008 by Defence for Children International (DCI) against the Netherlands (Adopted by the Committee of Ministers on 7 July 2010 at the 1090th meeting of the Ministers' Deputies).

Dutch courts have relied on the above-mentioned case law of the Council of Europe to rule that shelter should be provided to irregular migrant children and their families.<sup>3</sup> On 25 October 2013, the ECSR took a decision on immediate measures in the case of FEANTSA v. the Netherlands, inviting the Government to “adopt all possible measures with a view to avoiding serious, irreparable injury to the integrity of persons at immediate risk of destitution, through the implementation of a co-ordinated approach at national and municipal levels with a view to ensuring that their basic needs (shelter) are met”.<sup>4</sup> A District Court in Amsterdam concluded earlier this year that this decision by the ECSR accords migrants in an irregular situation a right to a dignified existence, for which food, clothes and housing are essential.<sup>5</sup> Furthermore, the Netherlands Institute for Human Rights (‘College voor de Rechten van de Mens’), recently also took the position that the Netherlands has a human rights obligation to provide shelter, food and clothing to homeless migrants in an irregular position.

The specific exclusion of homeless migrants in an irregular situation from access to emergency assistance is the outcome of a debate over immigration policy in the Netherlands that has been ongoing for more than a decade. The provision of basic emergency assistance to those in need is however not a matter of policy or politics, but one of human rights. Homeless irregular migrants should not have to depend on charities to provide them with emergency assistance, since such assistance is a matter of *right*, not of charity. The Netherlands is bound by international and European human rights instruments that require it to provide certain basic services to those living on its territory, regardless of their legal status. Moreover, many migrants are in fact unable to leave the Netherlands<sup>6</sup> and there appears to be no clear evidence that the provision of emergency assistance affects the aims of Dutch immigration policy.<sup>7</sup>

We are especially concerned that the position of your Excellency’s Government reportedly leaves it effectively up to municipalities and local charitable organizations to provide ad-hoc assistance to homeless migrants in an irregular situation, without any legal, administrative or financial agreements or safeguards agreed with the central Government. All levels of government are responsible for the implementation of international human rights obligations, and must ensure the full implementation of those instruments. When a central government delegates responsibilities to municipalities to provide emergency assistance, formally or informally, it must ensure that these

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<sup>3</sup> Gerechtshof 's-Gravenhage, 11 January 2011, case number: 200.063.511/01. Confirmed by the Supreme Court of the Netherlands, 21 September 2012, case number: 11/01153

<sup>4</sup> Complaint No. 86/2012, European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Decision on Immediate Measures (2013), para. 5.

<sup>5</sup> “Uit deze uitspraak volgt [...] dat eiser recht heeft op een menswaardig bestaan waarvoor voedsel, kleding en onderdak een vereiste zijn [...]” Rechtbank Amsterdam, 8 May 2014, case number: AMS 13-6904, paragraph 3.2.

<sup>6</sup> Advisory Committee on Migration Affairs, ‘Right to protection of human dignity’ (2012), p. 118, English summary available at: <http://www.acvz.org/en/adviezen-2012>

<sup>7</sup> Complaint No. 86/2012, European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Decision on the Merits (2014), para. 181.

responsibilities are exercised in accordance with the human rights obligations of the State. It must also ensure that municipalities have adequate resources to comply with their human rights obligations. While we recognize that the internal allocation of responsibilities for implementing these rights is a matter for States to determine, this allocation must be consistent with the international human rights obligations of the State at all levels.

In the present case the budget provided by the central Government to the municipalities fails to ensure the equal enjoyment of the right to adequate housing without discrimination against non-nationals, regardless of legal status and documentation. The Government's policy deliberately excludes irregular migrants in a discriminatory fashion and municipalities therefore lack the funds to provide the necessary emergency assistance. It is noted that a number of municipalities, to their credit, have attempted to compensate for the discriminatory terms and conditions of the national policy by setting up local assistance schemes. However, this is not an adequate solution. The central Government has an obligation to provide funding and other assistance in a non-discriminatory fashion, recognizing the equal right to adequate housing of irregular migrants.

Your Excellency's Government should take immediate action to ensure that emergency assistance is provided to all homeless migrants in an irregular situation during the coming winter months, measures which should go beyond the so-called 'cold weather scheme'. We understand that your Excellency's Government's position is to await formal endorsement of the ECSR's decision by the Committee of Ministers before it will take further action on this matter. However, it is expected that the Committee of Ministers will confirm the ECSR's decision. Indeed, according to article 9 of the Explanatory Report to the 1995 Additional Protocol, the Committee of Ministers "*cannot reverse the legal assessment*" made by the ECSR. No matter what the outcome of this regional process will be, however, it is undisputed that the Netherlands is under an international legal obligation to take swift action to ensure the international human rights of the migrants concerned.

The Netherlands' human rights obligations, include the obligation contained in article 2.1 of the ICESCR, requiring the Netherlands to realize relevant economic, social and cultural rights progressively, to the maximum of its available resources; and article 2.2 requiring non-discrimination in the exercise of Covenant rights. The obligation of non-discrimination is an immediate obligation. Additionally, the satisfaction of minimum essential levels of economic, social and cultural rights is an immediate obligation of all States parties. Considering that the 15 million euro requested by the municipalities to arrange emergency assistance for the coming months on a non-discriminatory basis represents only a fraction of the estimated 250 billion euro in government expenses for 2014, the Government's refusal to provide the municipalities with this temporary budget support appears inconsistent with the requirements under article 2.1 and 2.2 the ICESCR to make every effort to use all resources at its disposition to satisfy its minimum core obligations.

In view of the urgency of the matter, considering the vulnerable situation that the people involved are in and the impending winter, we would appreciate a response as soon as possible on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international human rights law. The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) and can be provided upon request.

It is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Council, we would be grateful for your cooperation and your observations on the following matters:

1. Please provide any additional information and any comments you may have on the above-mentioned concerns.
2. Could you please provide us with data on the number of migrants in an irregular situation that are in need of emergency assistance, including disaggregated data on the number of women, children, and people with physical or mental disabilities in need of emergency assistance?
3. Could you please provide us with data on the number of migrants in an irregular situation that are actually provided with emergency assistance by the State, including disaggregated data on the number of women, children, people with disabilities and people with physical or mental disabilities that are provided emergency assistance by the State?
4. Please provide information, including on policies, legislation, ordinances or regulations at the municipal level, which reflects the responsibilities of municipalities in relation to the realization of the right to adequate housing and to the right to non-discrimination in this context.
5. Please provide any information on the health consequences of homelessness in the Netherlands, particularly during the winter months and what is anticipated in this regard with respect to irregular migrants.
6. Could you provide us with information about the right to emergency assistance for minors in an irregular situation and their direct family members? What legislative, administrative, financial or other measures has your Excellency's Government undertaken in order to guarantee the right of irregular migrant children to emergency assistance, following the ECSR's decision in 2009?

7. Could you indicate the legal and/or non-legal remedies that are available for migrants in an irregular situation that are denied emergency assistance, as well as the necessary procedures to claim such remedies, including an indication of the length of applicable procedures, their costs and the availability of legal aid provided by the State?

8. Could you indicate how many migrants in an irregular situation are expected to be evicted from centers for asylum seekers ('COA localities') between the date of this letter and the expected resolution by the Committee of Ministers in early 2015 and the costs involved with temporarily allowing these migrants to stay in these 'COA localities'?

9. Your Excellency's Government has indicated to Parliament on 20 November 2014 that it intends to enter into a dialogue with municipalities about the issue of homeless migrants in an irregular situation. Does your Excellency's Government intend to discuss how the rights of migrants to non-discrimination regardless of legal status and documentation will be complied with? Please indicate whether your Excellency's Government also intends to consult civil society representatives and homeless migrants in an irregular situation in conjunction with this dialogue and how it intends to take into account their views.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence. We are intending to publicly express our concerns in the near future as we are of the view that the information on which this urgent appeal is based and which will inform our press release is sufficiently reliable to indicate a matter warranting immediate attention. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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