



THE NETHERLANDS: A BRIEF ON CONSTITUTIONAL GUARANTEES TO EQUALITY AND NON- DISCRIMINATION

*Information for the Committee on Economic, Social, and Cultural Rights
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INTRODUCTION

The WORLD Policy Analysis Center, based at the University of California, Los Angeles, captures quantitative policy data on more than 2,000 indicators that matter to equality, health, and well-being. We strive to improve the quantity and quality of globally comparative data available to policymakers, citizens, national governments, intergovernmental organizations, civil society, and researchers for all 193 UN member states. We submit the following brief in advance of the 72nd Pre-Sessional Working Group of the Committee on Economic, Social, and Cultural Rights.

This brief will focus on the following area:

1. Equality and non-discrimination (Article 2, General Comments No. 5, 20)

We have collected and analyzed information on rights, laws, and policies in these areas for all 193 UN member states using a variety of sources, including primary national legal sources (e.g. original legislation and constitutions), national reports on policies and laws to the United Nations and official global and regional bodies, and secondary sources where clarification or corroboration of primary data is needed. Using a rigorous double-coding process, we create original databases which distill thousands of pages of text to highlight the essential features of each right, law, or policy. These original databases are the reference for the following brief. When drafting each brief, we perform a series of additional verifications to ensure the data provided reflects the current constitutional and legal landscape of a country.

In this report we first provide a summary of our constitutional findings, as well as suggested questions for the Committee to ask the Netherlands and topics we hope the Committee will address in its concluding observations. This summary is followed by detailed constitutional excerpts documenting our findings. We hope the Committee will recommend that the Netherlands address any gaps in consultation and collaboration with relevant stakeholders, including civil society organizations. We also recognize that while having strong constitutions, laws and policies in place are necessary first steps, implementation is also of paramount importance. In areas where we have commended the Netherlands for having provisions in place, we hope the Committee will recommend that the Netherlands work with stakeholders to overcome any obstacles in implementing these provisions.



SUMMARY OF FINDINGS AND RECOMMENDATIONS

1. Equality and Non-Discrimination (Article 2, General Comments No. 5, 20)

Based on our review of full-text national constitutions, we find that the constitution of the Netherlands guarantees equality on the basis of race, sex, religion, political opinion, sexual orientation, disability and “any other grounds”. The constitution does not, however, explicitly protect against discrimination on the basis of language, national or social origin, property, or birth status.

RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask the Netherlands: Can the Netherlands demonstrate whether the constitutional right to equality on the basis of “any other grounds” has been interpreted through case law or other policies to apply on the basis of language, national or social origin, property, or birth status?
 - If the Netherlands cannot demonstrate that this constitutional universal protection protects from discrimination on the basis of language, national or social origin, property, or birth status, recommend in its concluding observations that the Netherlands amend its constitution to add explicit guarantees of equality and non-discrimination based on these grounds. These provisions could be added to Article 1 of the constitution, which already lists multiple other Covenant grounds and statuses.

DETAILS OF CONSTITUTIONAL FINDINGS

1. Equality and Non-Discrimination (Article 2, General Comments No. 5, 20)

Article 2 (2) of The Covenant states that:

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, General Comment No. 5 explicitly addresses non-discrimination of persons with disabilities by stating:

[...] the requirement contained in article 2 (2) of the Covenant that the rights “enunciated ... will be exercised without discrimination of any kind” based on certain specified grounds “or other status” clearly applies to discrimination on the grounds of disability.

In addition, General Comment No. 20 states:

““Other status” as recognized in article 2, paragraph 2, includes sexual orientation (...);”

Constitutions state the values of a country, describe the rights of people living within the country, and profoundly influence norms and practice. In nearly all countries, constitutions take precedence over other sources of law—making them critical tools for delineating and implementing equal rights. New



constitutions and new rights guaranteed in constitutions can be used to overturn discriminatory laws as well as to legislate non-discrimination guarantees. Moreover, constitutions can offer protection against policy and legal changes during periods of social and political shifts that may seek to undermine equal rights. For these reasons and others, as the foundational document setting out the rights of all human beings in a country, a constitution and the rights contained therein are essential to realizing equal rights. We reviewed full text constitutions for all 193 UN member states available from official government sources to determine whether the constitution took any approach to equality across the grounds listed in Article 2.2 and General Comments No. 5 and No. 20 of the Covenant by prohibiting discrimination based on each specific status, guaranteeing equal rights, guaranteeing equality before the law, or guaranteeing overall equality or equal opportunities.

THE NETHERLANDS' CONSTITUTIONAL PROVISIONS: MISSING EXPLICIT GUARANTEES OF EQUALITY AND NON-DISCRIMINATION ON THE BASIS OF LANGUAGE, NATIONAL OR SOCIAL ORIGIN, PROPERTY, AND BIRTH STATUS

Article 1 of the Netherlands's constitution explicitly prohibits discrimination on the basis of religion, political opinion, race, and sex, disability, and sexual orientation.

Constitution of the Netherlands, amended to 2023

Artikel 1

Allen die zich in Nederland bevinden, worden in gelijke gevallen gelijk behandeld. Discriminatie wegens godsdienst, levensovertuiging, politieke gezindheid, ras, geslacht, handicap, seksuele gerichtheid of op welke grond dan ook, is niet toegestaan.

Moreover, although the constitution prohibits discrimination on “any other grounds”, it does not guarantee equality explicitly on the basis of language, national or social origin, property, or birth status, which are all outlined in the Covenant.

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