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

Initial reports submitted by States parties to the Covenant
concerning rights covered by articles 6 to 9, in accordance
with the first stage of the programme established by the
Economic and Social Council in its resolution 1988 (LX)

Addendum

NETHERLANDS */

[2 February 1988]

PART A - THE NETHERLANDS

I. Reporting period

1. This report on measures adopted and progress made in achieving the observance of the rights recognized in articles 6, 7, 8 and 9 of the International Covenant on Economic, Social and Cultural Rights, covers the period from the entry into force of the Covenant for the Kingdom of the Netherlands on 11 March 1979 until the end of 1983. Some additional information concerning more recent developments has been included.

*/ This document contains information relating to the implementation of articles 6 to 9 of the Covenant in the Kingdom of the Netherlands. The second part of the initial report, concerning the Netherlands Antilles, is contained in document E/1984/6/Add.14 which was considered by the Committee at its first session (see E/C.12/1987/SR.5-SR.6).

II. Article 6: the right to work

A. Principal laws on the right to work

2. The revised Dutch Constitution which came into force in 1983 contains a provision in the chapter on basic rights laying down the Government's responsibility to promote sufficient employment (article 19, para. 1).

3. The provision is an indication of what may be expected of the Government and what it should be deemed able to do. The reference to sufficient employment implies a certain minimum limit which will depend on the specific possibilities existing at the time and the relevant political, social and economic circumstances.

4. Article 19 does not, therefore, provide individuals with a statutory right to employment; rather it is a guideline for government policy.

5. The minimum age of employment is 16. There are two possible cases of exemption.

(a) Light work performed by 14 and 15 year-olds who are enrolled at an educational establishment.

(b) Non-industrial work of a light nature which is comparable for example with participation in radio and television programmes.

6. There is no statutory upper age limit to the right to paid employment. Most collective agreements, however, stipulate that the labour contract will be terminated automatically when the age of 65 is reached or define the term "employee" as a person under the age of 65. This is also normal practice where no collective agreement is in force.

7. Individuals in receipt of benefit under social security legislation may perform (unpaid) work subject to certain conditions. Increasing numbers of people are turning to traditional voluntary work, community projects and employment projects for the unemployed while continuing to draw benefits. To prevent abuses an Unpaid Employment (Claimants) Bill has been drafted. Among other things, the Bill provides for the setting up of regional assessment committees, which will be empowered to decide, on the basis of criteria laid down in the Bill, whether a claimant is entitled to perform certain forms of unpaid work. The Bill also regulates the legal status of claimants engaged in such employment. For the time being the Bill only provides for those drawing unemployment benefit to take up unpaid employment, but it also provides for the possibility that other categories of claimants will be permitted to perform unpaid work.

8. In the case of non-Dutch citizens who are not subjects of a member State of the E.C., it is generally necessary for an employer to obtain an employment permit. Such a permit must be applied for jointly by the employer and the employee. Applications are only considered if the employee has or has applied for a valid residence permit entitling him/her to work in the Netherlands (Foreign Workers Employment Act 1978). If a non-EC subject has been legally employed in the Netherlands for an uninterrupted period of three years, lives in the Netherlands and has a valid residence permit entitling him/her to work, the employee is entitled to obtain a declaration entitling him/her to work

anywhere in the Netherlands without an employment permit. Nor is an employment permit required if the person concerned has a permanent residence permit, has been granted refugee status or has an entry permit of unspecified duration.

9. Women have the same entitlement to employment as men (see Section B1 on the Equal Opportunities Employment Act). When a Dutch municipality stated in a report that its recruitment policy would be based on a maximum limit of 50 hours per couple, it was reprimanded by the central Government since this policy would in practice have limited the right of women to employment. Moreover, this policy was considered incompatible with a provision of the Equal Opportunities Act which prohibits indirect discrimination. In present labour market circumstances in the Netherlands, the number of women in paid employment outside the home is low. Many married women do not seek employment until they are older. Given the career gap and the correspondingly low contribution to family income on the part of women, the aforementioned regulation would de facto have placed women in a position of disadvantage.

10. Under the Disabled Persons (Employment) Act, 2 per cent of the available jobs in firms are required to be reserved for the disabled (the Handicapped Persons (Employment) Bill, expected to be introduced shortly, will even increase the proportion to 5 per cent). The Act is not readily enforced, however. The Handicapped Persons (Employment) Bill currently under consideration by Parliament contains regulations designed to improve employment opportunities for the handicapped.

B1. The right to a free choice of employment

11. Paragraph 3 of Article 19 of the Constitution recognizes the right of all Dutch persons to the free choice of employment, without prejudice to the restrictions laid down by or pursuant to Act of Parliament.

12. The Constitution contains a provision prohibiting the application of unjustified criteria to job appointments in the public service ("All Dutch nationals shall be equally eligible for appointment to public service", article 3). Requirements with respect to skills and suitability may be stipulated, provided they are functional (i.e. related to a specified job or category of jobs, and essential for their performance). Article 3 does not exclude non-nationals from being appointed to government service.

13. Article 3 is an elaboration of the provision on non-discrimination in the Constitution (Article 1), which states: "All persons in the Netherlands shall be treated equally in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race, sex or on any other grounds whatsoever shall not be permitted". These sections of the Constitution apply primarily to the relationship between the State and citizens. It is, however, possible for the courts to allow the "horizontal" application of a provision (i.e. between citizens only). As regards discrimination on the grounds of race, the law allows for horizontal application under Section 429 (quater) of the Criminal Code.

14. The Equal Opportunities Employment Act which has been in force since 15 March 1980 and the Equal Opportunities (Public Service) Act of 2 July 1980 prohibit discrimination between men and women on the basis of sex as regards: recruitment and selection; the signing of a contract of employment; terms of

employment; internal training; promotion, and dismissal. Apart from such direct discrimination between men and women, it is also unlawful to engage in indirect discrimination, i.e. a form of treatment that is not directly related to the difference in sex but which does in practice disadvantage one sex or the other. An example would be the concept of the "breadwinner". The application of this principle in the case of recruitment and dismissals could often work to the disadvantage of women since men are generally the breadwinners in the current labour market situation. Similarly it is forbidden to discriminate between married and unmarried persons as regards recruitment and dismissal (Civil Code, article 1637 ij).

15. In the case of job applications the law states that employers must indicate in their job advertisements that both men and women may apply (e.g. by placing the letters "M/F" behind the job in question). This does not, however, apply to posts which can only be filled by members of one sex, e.g. bass or soprano singers.

16. The Equal Opportunities Acts allow for preference to be given temporarily to women in order to eliminate existing inequalities between men and women. In accordance with the Equal Opportunities (Public Service) Act the Minister for Home Affairs has sent a circular to the other Ministers calling for preference to be given temporarily to women if candidates of equal merit of both sexes should apply for a particular position, as women are under-represented in certain government departments.

17. The ban on sex discrimination is discussed in further detail under B (4), B (5) and III. At this point we may examine the procedures instituted under the Equal Opportunities Employment Act. To begin with there is an Equal Opportunities Commission, to which complaints about unequal treatment may be directed. The Commission is required to issue a recommendation to both complainant and employer after an impartial investigation. If this fails to resolve the issue, the complainant can then go to court with the Commission's recommendation. If the court declares the complaint to be well-founded, the employer is then bound to accord equal treatment to the complainant. A complainant can also go straight to the courts, except in the case of complaints about unequal pay (see under III A).

18. Civil servants come under the Equal Opportunities (Public Service) Act, and are able to submit any complaints to a commission appointed under the Act.

19. A draft Equal Opportunities Bill has been drawn up that seeks to outlaw unjustified discrimination on the grounds of sex, homosexuality, marital status or family circumstances in social and economic dealings between the Government and the public and between individuals. The draft is still under consideration by a number of advisory bodies.

20. Any stipulation in a Collective Agreement (see III below) under which an employer is obliged to employ (or not employ) exclusively workers of a particular race, religion or political persuasion, or members of a particular association, is invalid.

B2. Policies and techniques designed to achieve steady economic, social and cultural development

21. The Directorate-General for Manpower of the Ministry of Employment and Social Security is responsible for the optimal use of human resources in the labour market. The Government's prime consideration is to achieve a situation in which all who are able and willing to work will be able to find a job suited to their particular abilities and wishes. Government policy is directed towards distribution of labour and employment creation. As regards the former, attention is being given to early retirement, part-time work and a reduction in working hours (see III below). As regards employment creation, the Government is undertaking a number of special employment projects (especially in the construction industry), with special attention to the long-term unemployed, young people and women.

22. Unemployed persons who wish to set up in business on their own account may apply for assistance under the Special Government Scheme for the Self-Employed. Under this scheme such persons are able to obtain a loan and, subject to certain conditions, a supplement to their income for a maximum period of 18 months. A separate scheme exists for women wishing to start their own business, enabling them to obtain an interest-free loan from the Government.

23. In principle the Government acts on the basis that minorities will make the fullest possible use of measures available to society as a whole. If it turns out that these measures are not, or are insufficiently, geared to the needs of minorities, the universal measures are generally adapted or consideration is given to group-specific measures (i.e. supplementary instruments or special criteria).

B3. Measures to ensure the best possible organization of the labour market

24. Throughout the Netherlands there are a number of Employment Offices, which come under the Ministry of Employment and Social Security, and are responsible for harmonizing the supply of and demand for workers in the various regional and district labour markets. Their placement work is not one-way in nature; equal attention is devoted to employers and employees. No fee is charged when a placement is made. Placement activities come under the provisions of the Employment Services Act. The provision of services in this field (on either a commercial or a non-commercial basis) without a permit from the Ministry of Employment and Social Security is prohibited.

25. The placement of mentally and physically handicapped job-seekers is regulated by the Employment Services (Handicapped Persons) Act.

26. With a view to co-ordinating government economic and financial policy, the Central Planning Office (which is part of the Ministry of Economic Affairs) publishes an annual macro-economic survey and central economic plan. In addition the CPO provides data based on academic research on the economic implications of government measures in various policy areas.

27. The Central Bureau of Statistics (which again comes under the Ministry of Economic Affairs) is responsible for the collection, processing and publication of statistical data of relevance for practical or academic purposes.

28. With a view to tailoring employment policies as effectively as possible to the specific needs of minorities, the Ministry of Employment and Social Security has given instructions for research to be conducted into the position of each minority group in the labour market.

B4. Technical and vocational guidance and training programmes

29. Throughout the Netherlands there are 27 technical and 6 Vocational Training Centres for Adults, run by the Government, providing day-time training, paid for by the Government, for men and women who are unemployed or threatened with unemployment. Those attending such courses receive an allowance in lieu of wages or unemployment benefit.

30. Under certain circumstances the Government will help defray wage and training costs where a company provides in-house training. Such training schemes must relate to:

(a) People working in the company in question who are being given training essential for them to retain their jobs in the company;

(b) People recruited by the company in question who have to be trained in order to acquire the skills required for the job;

(c) People taking compulsory redundancy with the consent of the Local Employment Office who are first being given training by the Company in order to improve their prospects of re-employment;

(d) People with a lack of training who are allowed to use a company's training facilities even though not employed by the company itself.

31. In addition the Government provides financial support in certain instances for people taking a course in person or by correspondence at a recognized establishment. In such cases there must be a definite need for training, the training must directly enhance job prospects and the applicant must be suitable for the training in question.

32. In 1979 two training centres were set up for physically handicapped persons aged between 16 and 40. Training is free of charge while the various benefit payments to which the trainees are entitled continue for the entire duration of the course.

33. A number of specific measures have been taken for unemployed young people. Special attention is paid to members of ethnic minorities and to girls.

34. Employers are not permitted to discriminate on the basis of sex when providing training (Civil Code article 1637 ij).

B5. Protection against arbitrary termination of employment

35. The Civil Code contains provisions concerning the various ways in which a contract of employment can be terminated. The regulation concerning the unilateral termination of a contract of employment is, however, superseded by the Labour Relations (Special Power) Decree of 1945, which prohibits an employer or employee from terminating a contractual relationship without the

consent of the director of the Local Employment Office. The dismissal prohibition does not apply, however, if no notice has to be given for the termination of the contract. This is the case for example if a contract of employment is terminated for a compelling reason (of which the other party must be informed without delay). The Civil Code specifies a number of "compelling" reasons (e.g. if the employee proves to be seriously unsuited or lacking in skills for the work for which he was engaged, if he loses his employer's trust as the result of theft, embezzlement, deception or other offences, deliberately or in disregard of warnings wantonly damages his employer's property or exposes it to serious danger). A number of other cases have also been recognized by the courts as compelling reasons.

36. No distinction may be drawn between the sexes or between married and unmarried persons when a contract of employment is terminated (Civil Code article 1637 ij).

37. An employer is not permitted to dismiss an employee during sickness, military service or pregnancy and the subsequent 12 weeks (Civil Code article 1639 h). Dismissal is permitted if an employee is ill for over two years.

38. Under draft legislation concerning official intra-company union activity, an employer is not permitted to terminate the employment of a union official (see IV below) or of a person who was a union official for a period of at least 12 months, within the two years following his term of office without the prior consent of a Cantonal Court. If the bill becomes law, both the union official and the employer's association will be permitted to demand that this obligation be observed.

39. Under the Works Councils Act an employer is not permitted to terminate the employment of a person who is a member of the works council or of a works council committee as referred to in the regulations. There are three exceptions: (a) the employee may agree in writing to the termination of his employment; (b) dismissal is on account of a compelling reason of which the employee was advised without delay; (c) the employment has been terminated because the company or part of the company in which the employee is employed is closing down.

40. The Collective Dismissal (Notification) Act obliges an employer who intends to dismiss 20 or more employees within a period of three months to notify the trade unions concerned and the director of the Local Employment Office. In order to provide an interval in which to investigate the possibility of continuing the activities of the company in question with its original staff, applications for mass dismissal approval are not considered until one month after such notification.

41. Civil servants may not themselves submit their resignation by the Government as employer is obliged to discharge a civil servant upon request. The granting of a discharge may not be made dependent on the fulfilment of certain conditions (e.g. the repayment of training expenses).

42. The submission of a complaint to the Equal Employment Opportunities Commission or proceedings on account of unequal treatment do not constitute grounds for dismissal.

B6. Protection against unemployment

43. The Socio-Economic Council (an advisory body representing governmental, employers' and union interests) has drawn up a code of conduct to protect employees' interests in the event of company mergers. The trade unions concerned, the Mergers Commission, and the Minister for Economic Affairs must be notified of all mergers.

C. Statistical and other available information on the level of employment, etc.

44. The table below gives the 1980-1983 unemployment rates. The figures are based on the definition of unemployment valid at the time.

Registered unemployed; annual rate

	1980	1981	1982	1983
	(x 1 000)			
Unemployed: men	159.9	262.1	376.2	471.9
women	88.0	123.2	165.5	206.9
men and women	248.0	385.3	541.7	678.8
	<u>(as % of the total work force)</u>			
Unemployed: men	4.4	7.0	10.0	12.4
women	5.3	6.9	8.7	10.3
men and women	4.6	7.0	9.6	11.7

III. Article 7: the right to just and favourable conditions of workA. Remuneration

45. In principle parties are free to determine wage levels. Exceptions in this regard consist of the Minimum Wage and Minimum Holiday Allowance Act and the regulations on minimum wages for young people, which provide for minimum wages below which the contracting parties are not permitted to go. Moreover, specific legislation exists for the determination of wages in the subsidized and social insurance sectors. The minimum wage is adjusted every six months by the Minister of Employment and Social Security. With respect to the minimum youth wage, employees between 15 and 23 years of age are entitled to the minimum wage less a certain percentage for each year below 23.

46. The Minimum Wage and Minimum Holiday Allowance Act applies to employment in the Netherlands for workers who work more than one third of normal working hours. If the employment is not performed in the Netherlands but the employer is Dutch (including foreign employers with a permanent establishment or representative in the Netherlands) the regulations then apply if the employee is resident in the Netherlands. The Supreme Court has ruled that they do not apply if an employee is predominantly resident outside the Netherlands and hence away from the Dutch standard of living and associated price levels.

47. If an employee is prevented from working on account of sickness or accident, he is in principle entitled for a limited period to receive wages (Civil Code article 1638 c). If however the employee is in receipt of benefits under social security legislation (see article 9) or payments from a health insurance fund, membership of which is required under or arises out of the contract of employment, his wages may be reduced by a corresponding amount.

48. A collective agreement is an agreement between one or more employers or one or more employers' associations with full legal powers and one or more employees' associations with full legal powers, which primarily or exclusively lays down the terms of employment to be respected in a contract of employment. Any conditions agreed between an employer and employee that are at variance with a collective agreement which is binding on both parties are null and void (Collective Agreements Act section 1 and section 12). There are at present some 800 such agreements.

49. The Minister of Employment and Social Security is empowered to declare provisions in a collective agreement to be generally applicable. They then become binding on all employers and employees with respect to contracts of employment which, by virtue of the nature of the employment to which they refer, come or would come under the scope of the collective agreement.

50. The Minimum Wage and Minimum Holiday Allowance Act (mentioned under para. 45) entitles any employee who works more than one third of normal working hours to a minimum holiday allowance of 7.5 per cent of his wages payable by the employer. In addition there is an entitlement to holiday allowance in respect of benefits paid under the Sickness Benefits Act and the Unemployment Insurance Act (see Section V) as long as the contract of employment has not been terminated. The percentage of 7.5 applies only to that proportion of remuneration plus any of the benefits specified above, that is no greater than three times the legal minimum wage.

51. Collective agreements generally specify whether and to what extent overtime is remunerated by pay or compensation in time off. Where they do not, a fair and reasonable solution has to be agreed.

See annex 1 for statistical data.

52. Under the Equal Pay Act, men and women doing work of the same or almost the same value are entitled to the same pay. Differences in remuneration are permitted only if there are differences in levels of importance of the job. Complaints may be submitted to the Equal Employment Opportunities Commission (see Section II). Grievances about unequal pay cannot be taken straight to the courts, but must first be referred to the Commission.

53. Again, public servants may turn to the Equal Opportunities (Public Service) Commission.

54. Taken at face value, statistics would seem to indicate that women are underpaid. On average they earn less than men. Reasons for the difference include the fact that (a) the female working population is younger than the male, and young people generally earn less than older people; and (b) a higher proportion of women are in lower-status jobs and a lower proportion in higher ones. If pay is matched against job level, the difference is much smaller.

55. Among the factors explaining why women at the same job level earn less than men are the fact that (a) many women interrupt their careers and resume them later on, thereby accumulating fewer years of service and also less experience; (b) men often receive extra pay in connection with dirty or unpleasant work; and (c) inadequate observance of the Equal Pay Act.

56. The deterioration in the economic situation has meant a decline in the purchasing power of virtually all income categories since 1979. Purchasing power is now expected to remain the same or improve for most income categories. In recent years there has been extensive wage restraint (sometimes in exchange for a reduction in working hours) in order to restore company profitability and promote redistribution of work. The policy of wage restraint is to be continued in the Government and government-aided sectors.

B. Safe and healthy working conditions

57. A new act, the Working Conditions Act, is being phased in over an eight-year period replacing a number of old Acts such as the Industrial Safety Act of 1934. The first phase of the Act has been in force in respect of industry since 1 January 1983. In view of the fact that the Act goes considerably further than used to be the case on a number of points, it was not possible for the Act to be introduced in such a way that it applied to all employees in the Netherlands at once.

58. For the present the Act will apply only to private companies, institutions and foundations, etc., with the exception of those operating in the transport sector. Two General Administrative Orders will shortly come into force, providing for public servants (including military personnel at the Ministry of Defence) to come under the Administrative Jurisdiction (Government Orders) Act.

59. In addition there are regulations governing safety in particular industrial sectors, such as the Act on Working under Excessive Pressure and the Dangerous Implements Act.

60. These pieces of legislation may be regarded as deriving from Article 19 (2) of the Constitution (referred to in Section II A above). It may be noted that the group of persons referred to there, namely "working persons", for example, is broader than "employees", including as it does the self-employed. The Government takes the view that Article 19 (2) of the Constitution does not apply to public servants, since they are covered by a special provision, namely Article 109 of the Constitution, which states that the legal position of public servants is regulated by law, which lays down rules for their protection in employment and concerning co-determination.

61. The Employment of Young People Decree contains provisions designed to prevent mental or physical injury to young people.

62. Co-operation in implementing the Factories Act (on rest, leisure and limitation of working hours see D below) and statutory provisions in the field of industrial safety and health and the enforcement of such legislation is a matter for the Labour Inspectorates and, in the ports, for the Dock Labour Inspectorates, both of which are part of the Ministry of Employment and Social Security.

63. An important role is reserved in the new Working Conditions Act for works councils (see Section IV below). On certain subjects they have advisory powers, while in other areas they have to be consulted, and their consent is required for the finalization, amendment or withdrawal of a regulation in the field of safety, health or welfare at work.

64. The Working Conditions Act requires companies with over 100 employees to draw up annual reports on working conditions and any improvements that have been effected; these reports are discussed in the works council. A national advisory board on which trade unions and employers' organizations and the Government are represented has been set up to advise the State Secretary for Employment and Social Security on the improvement of working conditions.

See annex 2 for statistical data.

C. Equal opportunity for promotion

65. Here again the Equal Opportunities Act, Article 1 of the Constitution and article 429 of the Criminal Code apply.

66. A large number of collective agreements contain provisions for employees to pursue vocational training (including supplementary training) while continuing to draw pay where the training is related to the position and duties of the employee concerned. Several collective agreements contain provisions under which members of works councils are able to take part in training courses on full pay. In certain instances there are also provisions for employees to draw pay while taking part in educational activities of a different nature which have no direct connection with their position or duties. In addition a considerable number of collective agreements contain provisions for older employees to take part in pre-retirement educational activities.

See also the remarks under paragraphs 52 and 54.

67. Minorities are also heavily over-represented in lower occupational categories, especially manufacturing industry, the hotel and restaurant trade and cleaning firms. There has been a sharp expansion in recent years in the number of facilities for foreign workers who do not speak Dutch or speak it poorly.

D. Rest, leisure, limitation of working hours, and holidays with pay

68. Article 1638 bb of the Civil Code states:

- (1) Employers shall grant employees in each year of their employment leave the length of which shall be equal to at least three times the number of working days per week agreed upon.
- (2) With respect to young employees the duration of leave shall be at least four times the stipulated number of working days per week.

(Clause 2 refers to employees aged under 18.)

69. Article 1638 hh subsection 2 states:

An employee shall be entitled to pay while taking the leave due to him.

70. Minimum holiday allowances were discussed under A. Most collective agreements, however, provide for a longer holiday than the legal minimum.

71. The Factories Act 1919 specifies how long and at what times particular groups of employees are permitted to work. On the basis of this Act a number of working-hours decrees have been drawn up containing specific provisions. A number of other Acts also contain provisions relating to times and hours of work, such as the Driving Hours Act and the Stevedores Act.

72. Special provisions are contained in the Factories Act relating to the hours of work and rest periods of young people.

73. A Bill submitted to Parliament to amend the Factories Act would make it possible for female employees to do night work under certain conditions, subject to a permit from the Labour Inspectorate.

74. Until 1983 almost all industries worked a 40-hour week. More recently negotiations have been conducted with a view to redistribution of labour by means of such measures as a reduction in working hours, and a number of industrial sectors have now introduced a 38 or 39-hour week (average). In addition there has been a sharp increase in recent years in the number of people in part-time jobs, especially women. In view of the need for redistributing employment and the fact that part-time work can in certain circumstances provide women with more equal opportunities, the Government takes the view that part-time work should be encouraged.

For leave see A and D, paragraph 68.

75. In general it is not permissible for work to be carried out on Sundays (Factories Act section 22 and Civil Code section 1638 w). There are, however, many exceptions. The most important Christian festivals are treated as Sundays.

76. With the growing numbers of workers in the Netherlands in recent years from non-Christian countries, this can cause problems. A judgement of the Supreme Court of 30 March 1984 (AB 1984, No. 366) concerned a female Turkish employee who had applied for a day off on an Islamic festival. Her application had been refused and, when she failed to appear at work on that day, she was dismissed. The High Court ruled that "attendance cannot generally be insisted upon if an employee has applied in good time, specifying the reasons, for a day off to celebrate a religious holiday of importance to him".

77. Labour Inspectorates also play a role in this matter. They are required to provide their consent for overtime and to conduct regular visits to enterprises to check that the regulations concerning working hours and rest periods are being observed.

78. There are special provisions in the Factories Act in respect of nursing homes, etc. Further provisions are contained in general administrative orders and collective agreements.

79. The working hours of the self-employed give rise to problems where reduction of working hours is concerned. Shopkeepers are subject to the Trading Hours Act 1951. Shops are permitted to be open for a maximum of 52 hours a week.

IV. Article 8: Trade union rights

A. Principal laws on trade union rights

80. Article 8 of the Constitution states:

The right of association shall be recognized. This right may be restricted by Act of Parliament in the interest of public order.

81. Article 9 of the Constitution states:

- (1) The right of assembly and demonstration shall be recognized, without prejudice to the responsibility of everyone under the law.
- (2) Rules to protect health, in the interest of traffic and to combat or prevent disorders may be laid down by Act of Parliament.

There is no separate constitutional provision relating to trade unions.

82. Reference should also be made here to Article 19 (2) of the Constitution (see under Article 6), which states inter alia that the law shall lay down regulations concerning co-determination. One such piece of legislation is the Works Councils Act, under which enterprises employing at least 100 persons or in which at least 35 persons work more than a third of normal working hours are obliged to set up a works council, consisting of members directly elected from their ranks by the employees. The Act lays down the instances in which works councils are empowered to make recommendations and in which their consent is required. In addition a works council is entitled to certain data. The equivalent in the civil service is known as a public servants' consultative committee, the system also being based on the Works Councils Act.

83. Although the freedom to establish trade unions as a specific form of association is not stated explicitly in Article 8 of the Constitution, a number of Acts nevertheless assume the existence of such bodies, for example:

The Collective Agreements Act of 24 December 1927;

The Collective Agreements Extension Act of 25 May 1937;

The Industrial Organization Act, which inter alia provides for one third of the members of the Socio-Economic Council to be appointed by employees' associations while another third of the members are appointed by employers' associations, as designated by the Government.

B. Right to form and join trade unions

84. Every person has the right to join a trade union of his choice. Individuals also, however, have the right not to join a trade union. This liberty is only curtailed if a Collective Agreement contains a closed-shop clause, obliging the employer to employ organized workers only. A clause of

this kind cannot, however, be declared generally binding by the Ministry of Employment and Social Security (Collective Agreements (Binding Force) Act, section 2, subsection 5, clause c).

85. From the case law of the European Court of Human Rights it could be concluded that the Court regards certain forms of coercion to join (or remain affiliated to) a trade union as unacceptable. The Court cites two instances:

(a) the fact that employees might lose their job and hence their livelihood on account of refusal to join a union;

(b) where the closed-shop clause comes into force after employees had been engaged.

C. Right of trade unions to federate

86. No restrictions are imposed by Government on the formation of federations. In practice two of the largest trade union associations have entered into a federation. Nor are any limitations imposed on Dutch trade unions wishing to affiliate to international organizations. Some have actually done so.

D. Right of trade unions to function freely

87. A distinction should be drawn here between collective negotiations on terms of employment and representative consultations in public bodies. Collective negotiations come under private law. There are no rules preventing the organizations from functioning freely. The legislation concerned provides nothing but the necessary machinery.

88. When it comes to representative consultations, the degree of representativeness is a major factor. In order to participate in organized consultations on social and economic affairs in a public forum, a trade union must be representative, meaning that it must be deemed adequately to represent a particular group of employees. The degree of representativeness depends on:

(a) the quantitative relationship between the organization and the total group from which the members are drawn (i.e. degree of organization);

(b) the quantitative relationship between the organization and its members and that of other organizations in the group in question (i.e. comparison of the degree of organization of the various trade unions that recruit their members from the same group).

89. The question of representativeness comes up in the Industrial Organization Act (in relation to the Social and Economic Council and commodity and industrial boards), the Works Councils Act (i.e. industrial committees, which supervise works councils), the Social Security (Organization) Act (i.e. industrial insurance boards; see under III) and the Working Conditions Act (i.e. the Working Conditions Advisory Council).

E. Right to strike

90. The European Social Charter was ratified by the Kingdom of the Netherlands on 22 April 1980. Article 6, paragraph 4 of the Charter states:

With a view to ensuring the effective exercise of the right to bargain collectively, the Contracting Parties undertake and recognize: the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

With respect to paragraph 4, the Netherlands has entered a reservation concerning employees in the public service.

91. Otherwise there are no specific provisions in Dutch legislation concerning the right to strike. A Bill to regulate the legitimacy of strikes (Bill No. 10.111) was withdrawn in June 1980 in view of the ratification of the European Social Charter.

92. The contents of this Bill from its introduction in 1969 onwards did, however, influence case law and judicial precedents have exerted an important influence in this matter. Thus for example, the Amsterdam Court of Justice in 1972 pronounced that a strike in general is lawful unless circumstances make it unlawful. This was in direct contradiction to the earlier PanHonLibCo verdict of the Supreme Court that said that in theory a strike was a breach of contract and that inciting to strike was therefore in principle an unlawful act unless justified by prevailing legal opinion.

93. In a judgement by the Supreme Court of 7 May 1976 (NJ 1977, 55) it was ruled that in the case of a strike that was organized by a trade union and intended as a means of reinforcing workers, demands in relation to pay and other conditions of employment, not just the strikers and their supporters but also employees willing to work were not in general entitled to receive their wages. In the case of other strikes such entitlement depends on the circumstances, the key question being whether the strike related more to the employer or to the employees.

F. Special groups

a. Trade union rights

(i) Public servants

94. Article 8 of the Constitution grants public servants, like all other workers, the right to establish trade unions. A public servant is free to join or not to join a trade union. Traditionally the degree of organization among public servants tends to be fairly high. Comparatively large numbers of them are, however, members of associations that are not affiliated to one of the major union federations.

95. With respect to terms of employment, it may be noted that, strictly speaking, these are not arrived at through negotiation between the employer and the unions representing public servants, but that they are determined by the State, represented by the Minister for Home Affairs, after consultation with the unions.

(ii) Police

96. Police officers are also free to establish trade unions and to join or not as they wish. The remarks above concerning the terms of employment apply also to police officers.

(iii) Armed forces

97. Members of the armed forces are also permitted to establish representative organizations. Organizations exist for national servicemen and for voluntary officers, non-commissioned officers and corporals.

98. The terms of employment are determined in broad outline by the Minister for Home Affairs after consultation with public service unions. Those aspects relating specifically to members of the armed forces are unilaterally determined by the Minister of Defence after having consulted the armed forces representative organizations in the Central Consultative Body on Matters affecting Public Servants.

99. An Interim Regulation governing facilities for armed forces representative organizations regulates inter alia leave and exemption from certain obligations for officials in those organizations.

b. Right to strike

(i) Public servants

100. As noted earlier the Kingdom of the Netherlands entered a reservation when ratifying the European Social Charter with respect to article 6-4 (which among other things recognizes the right to strike) for employees in the public service.

101. The courts have, however, in principle recognized the right of public servants to strike (see for example Pres. Amsterdam District Court, 16 Nov. 1982, NJ 1983, 347 and CRvB (Central Board of Appeal), 21 Oct. 1982, NJ 1983, 35). Public servants do not, however, have an unlimited right to take part in every collective stoppage; their interests must rather be weighed against those of the Government and the public. In this process aspects such as the following will need to be taken into account:

Has every possibility of negotiation been exhausted (i.e. is the strike the "ultimum remedium")?

How important is it that the work should continue without interruption?

What would be the adverse effects of a stoppage?

How much care has gone into the preparation and implementation of the collective stoppage?

How long has the strike lasted?

What is the scale of the strike?

102. In a decision of 11 November 1983 (NJ 1984, 65), the President of the Hague District Court stated that a strike by Post Office staff was permissible and therefore could not be prohibited, but that there were nevertheless grounds for an emergency measure against the State and the public service unions enjoining them to resume negotiations without delay and certainly no later than the fourth day after the Court ruling.

(ii) Police

103. On 8 November 1983 the President of the Utrecht District Court was required to rule on the lawfulness of certain forms of collective action being called for by police unions (AB 1983, 561). The President ruled "that the duties and responsibilities of the police are not to be compared with the obligations of an ordinary employee and that deviation from the normal fulfilment of duties by the police has totally different consequences". The court came to the conclusion that a number of the forms of action being called for were not compatible with the legal protection due to the general public which the police were required to provide, and that the actions were therefore unlawful.

(iii) Armed forces

104. The reservation entered by the Kingdom with respect to article 6-4 ESC also applies to members of the armed forces. No strikes have as yet taken place within the armed forces, so that there is no case law on this point.

G. Factors and difficulties

105. The trade unions are at present facing the problems caused by the difficult economic situation, which has led to many people giving up their membership. Union income has consequently fallen, and the unions have themselves been obliged to dismiss staff.

106. The reservation entered upon the ratification of the ESC with respect to the recognition of a collective right of industrial action by government servants is intended as temporary. As soon as legislation on collective action by public servants has come into force, the reservation will be withdrawn. Drafting legislation on collective action by public servants would not, however, appear straightforward.

V. Article 9: Right to social security

1. Principal laws

107. Article 20 of the Netherlands Constitution states that it shall be the concern of the authorities to secure the means of subsistence of the population and to achieve the distribution of wealth. Rules concerning entitlement to social security shall be laid down by Act of Parliament. Dutch nationals resident in the Netherlands who are unable to provide for themselves shall have a right, to be regulated by Act of Parliament, to aid from the authorities. This provision has been elaborated into an extensive social security system consisting of a combination of social insurance and national assistance.

108. With respect to social insurance regulations, a distinction needs to be drawn between regulations that apply solely to employees and those that apply to all residents (including non-nationals).

The first category includes:

Health insurance, regulated by the Sickness Benefits Act;

Invalidity insurance regulated by the Disablement Insurance Act;

Unemployment insurance, regulated by the Unemployment Insurance Act;

Medical insurance, regulated by the Health Insurance Act.

109. The second category includes:

Old-age insurance, regulated by the General Old-Age Pensions Act;

Survivors' benefits, regulated by the General Widows and Orphans Benefits Act;

The General Family Allowances Act;

General disability insurance, regulated under the General Disablement Benefits Act;.

The Exceptional Medical Expenses Act.

110. The administrative organization is regulated under the Social Security (Organization) Act and the Social Insurance Bank and Labour Councils Act.

111. The implementation of employed persons' insurance schemes and of the General Disablement Benefits Act is the responsibility of the industrial insurance boards, bodies established under public law, and jointly run by representatives from employers' associations and employees' organizations.

112. Implementation of national insurance schemes (with the exception of the General Disablement Benefits Act) is the responsibility of the Social Insurance Bank and the 22 regional Labour Councils.

113. Supervision of the implementation of social security legislation is the responsibility of the Social Insurance Council.

114. There is an extensive system of legal protection. In the event of a dispute between the tax authorities and a contributor to a national insurance scheme a notice of objection must first be lodged with the Inspector of Direct Taxes. If the dispute concerns the right to payment of a benefit, the claimant may turn to the Appeals Tribunals or, in the event of further appeal, to the Central Appeals Tribunal. Appeals may also be lodged with these bodies against decisions by the industrial insurance boards concerning the payment of contributions.

115. The most important forms of national assistance designed to supplement the national insurance system are the National Assistance Act, the Unemployment Provisions Act and the Government Unemployment Assistance Regulations.

116. Anyone with a complaint about a decision by the Municipal Executive of the municipality in which he/she lives concerning payments under the National Assistance Act or the Government Unemployment Assistance Regulations may lodge a notice of objection with the Executive. Appeals may subsequently be lodged with the Provincial Executive and, against the latter's decisions, with the Crown. The same applies to decisions under the Unemployment Provisions Act, except that here the two courts of appeal are the Appeals Tribunal and the Central Appeals Tribunal.

2. Main features of the social security schemes

(a) Medical care

117. Health insurance by one of the health insurance funds entitles claimants to cover against medical, pharmaceutical and dental expenses, hospitalization and a wide range of other services and facilities. In some cases patients are required to make a certain payment of their own. Insurance is compulsory for persons in employment with fixed contractual earnings of no more than 47,850 guilders a year (as at 1 July 1984). In most cases the insured person's husband or wife is also automatically insured free of charge (unless he or she is also in paid employment), together with children aged under 16 (unless in paid employment), students, children aged between 16 and 27 who are helping to run the household, disabled children aged 16 and 17 and disabled children aged between 18 and 26 who are not entitled to benefits under the General Disablement Benefits Act.

118. Elderly people may take part in a special health insurance scheme for the elderly provided their annual income does not exceed 23,685.60 guilders. Voluntary health insurance can be taken out by persons who do not come under compulsory or old people's schemes and whose annual family income does not exceed 47,850 guilders. In these cases average contributions per person are 165 guilders a month, although it is often possible to obtain a reduction on the contribution rates.

119. Employers and employees each pay 50 per cent of the contributions to compulsory health insurance schemes. The Exceptional Medical Expenses Act grants all persons the right to treatment and nursing in institutions for the mentally retarded and sensorially handicapped, psychiatric institutions and nursing homes, etc. Patients are required to make a co-payment not exceeding 1,350 guilders a month. Contributions are paid by employers to the tax authorities.

(b) Cash sickness benefits

120. Under the Sickness Benefits Act workers aged under 65 are insured against loss of earnings as the result of sickness, accident, infirmity, pregnancy and confinement. The insurance provides entitlement to benefits for a maximum of 52 weeks. The statutory benefit amounts to 80 per cent of the employee's daily wage up to a certain maximum (Fl.262.28 on 1-7-84). No benefits are paid for the first two days absence from work. Contributions - a percentage of the employee's wage up to the maximum daily amount - are paid to the industrial insurance board, partly by the employer and partly by the employee, and may vary according to the sector of industry concerned. On 1 July 1984 the national average contribution was 6.57 per cent. In principle the employer is permitted to deduct half the contribution from the employee's wage, up to a maximum of 1 per cent of the wage.

(c) Maternity benefits

121. Under the Sickness Benefits Act, an insured pregnant woman is entitled to benefits in cash for six weeks before and six weeks after confinement, irrespective of whether she is capable of work. The period of entitlement to confinement benefits may be extended to a maximum of 52 weeks if the confinement results in the insured person remaining incapable of work. Maternity benefits amount to 100 per cent of the employee's daily wage up to a certain maximum (Fl.262.28 on 1-7-84).

(d) Invalidity benefits

122. The Disablement Insurance Act (WAO) provides entitlement to benefits to insured persons who are still at least 15 per cent incapacitated for work after 52 weeks. The rate of benefits is governed by the level of the wage and the degree of disablement. Contributions are partly paid by employers and partly by employees to the industrial insurance board: as of 1-7-84, employers 1.50 per cent, employees 17.6 per cent, up to a maximum of Fl.262 per day.

123. The General Disablement Benefits Act (AAW) makes provision for benefits to be paid to all residents of the Netherlands aged 18 and over who, in the year before their disability was sustained, have received income from or in connection with employment or professional activities (this condition does not apply to people handicapped since their youth) and who remain at least 25 per cent disabled after a period of 52 weeks. The benefits are not related to the actual income of the persons concerned, but are based on fixed amounts derived from the statutory net minimum wage.

124. The level of benefit is governed by the degree of incapacity and the relevant basic rate (which varies according to age and whether there are any children).

125. The difference between this and the Disablement Insurance Act (WAO) is that the latter is a form of employees' insurance whereas the General Disablement Benefits Act (AAW) is a form of national insurance. If a person is entitled to benefits under both Acts, WAO benefit will be paid only in so far as it exceeds AAW benefit.

126. AAW contributions payable by the insured person are levied by the tax authorities and amount to a percentage of income (as of 1-7-84, 6.5 per cent up to a maximum of Fl.65,850 per annum). If the insured person is paid by the employer, the latter is not allowed to deduct part of it from the salary of the person concerned.

(e) Old-age benefits

127. The General Old-Age Pensions Act covers the entire population of the Netherlands between the ages of 15 and 65 irrespective of nationality or marital status. The scheme provides an entitlement to an old-age pension from the age of 65. Since 1 January 1980, pensions have been tied to the statutory minimum wage. The gross pension for a married couple is such that the net monthly amount is equal to the net monthly minimum wage. The net monthly pension for a single person is equal to 70 per cent of the net pension for married couples.

128. As of 1 July 1984 a married couple's gross monthly pension amounted to Fl.1,554.05, while a single person's gross monthly pension was Fl.1,083.38.

129. Contributions are levied as a percentage of income and collected by the tax authorities (as of 1-7-84: 11.65 per cent of income up to a maximum of Fl.62,850 per annum).

(f) Survivors' benefits

130. Under the Widows and Orphans Benefits Act all residents of the Netherlands aged 15 and over are insured irrespective of nationality. The Act provides for three kinds of benefits:

- (i) Widows' pensions (subject to certain conditions);
- (ii) Temporary widows' benefit (for a maximum of 19 months);
- (iii) Orphans' pensions (in principle until children reach the age of 16 years; in certain instances 18 years or, if they are students, 27 years).

131. Contributions are levied as a percentage of income and collected by the tax authorities (as of 1-7-84: 1.45 per cent up to a maximum of Fl.62,850 per annum).

(g) Employment injury benefits

132. There is no separate insurance provision for industrial injuries or occupational diseases. See Section (a) on medical care, Section (b) on cash sickness benefits, section (d) on invalidity benefits and section (f) on survivors' benefits.

(h) Unemployment benefits

133. The Unemployment Insurance Act (WW) insures employed persons (under the age of 65) against the financial consequences of involuntary unemployment. Benefits are paid for a maximum of 26 weeks per benefit year and are equal to 75.2 per cent of daily earnings (subject to a maximum limit). Contributions are paid partly by the employer and partly by the employee to the industrial insurance board.

134. An employee who has exhausted his right to benefit under the Unemployment Insurance Act may lay claim to benefit under the Unemployment Provisions Act (WWV). Benefit under this act amounts to 72.75 per cent of daily earnings, and is usually paid for no more than two years.

135. In the event of protracted unemployment, assistance may be sought under the Government Unemployment Assistance Regulations (RWW). Both this scheme and the Unemployment Provisions Act are not forms of insurance but of national assistance. They are administered by the municipalities and funded out of tax revenues.

136. If there is no, or too little income, a claim can be made under the National Assistance Act. Benefits, which are paid by the municipal authorities, depend on the level of the claimant's income, capital and needs

(i.e. with or without children; couple or one-parent family; without family support or children living in). These benefits are also paid out of tax revenues.

(i) Family benefits

137. Under the General Family Allowances Act, child allowance is in general paid from the first child onwards to every resident in the Netherlands or to those employed in the country. The level of family allowances depends on the age of the child and family size. Contributions are paid by employers to the tax authorities.

3. Factors and difficulties affecting the entitlement to social security

138. Percentage of the population covered, calculated according to the provisions of standard-setting instruments of the International Labour Office (Conventions Nos. 102 and 128). The figures refer to 1983.

- (a) medical care (health insurance): 89.1 per cent
- (b+c) cash sickness benefits: 95.3 per cent
- (d+g) invalidity benefits; employment injury benefits: 99.2 per cent
- (e) old-age benefits: 99 per cent
- (f) survivors' benefits: 100 per cent
- (h) unemployment benefits: 99 per cent
- (i) family benefits: 39.7 per cent

139. The deterioration in the economic situation has highlighted the need for a review of the system of social security. This review was to be implemented in the years following the reporting period.

Annex 1

Trends in purchasing power (excluding incidentals) of
married employees in enterprises with a non-employed
wife or husband and two children aged 6-11, 1979-1984,
percentage changes in relation to previous year

Income levels	1979	1980	1981	1982	1983
Minimum wage <u>1/</u>	0.6	-1.0	-2.8	-2.0	-2.7
Minimum wage +	0.9	-1.2	-2.8	-1.4	-2.6
Modal	0.7	-1.9	-4.2	-2.2	-3.5
2 x modal	0.0	-3.0	-5.1	-3.2	-5.1
4 x modal	0.0	-3.3	-5.8	-3.2	0.2

Source: Ministry of Employment and Social Security.

1/ Excluding lump-sum benefit

Annex 2

Industrial accident casualties by branch of industry
(Standard Industrial Classification 1974), 1982

	Numbers of persons affected	Per 100,000 employees
Agriculture and fisheries	2 643	3 830
Mining	152	1 900
Manufacturing	29 764	3 386
Public utilities	7	-
Construction	16 850	5 435
Commerce, hotel and restaurant trade, repair companies	11 303	1 667
Transport, storage and communication companies	4 755	1 640
Banking and insurance, business services	2 176	638
Other services <u>1/</u>	2 021	306
Total		
1982	69 671	2 122
1981	75 515	2 228

1/ Excluding public administration, government hospitals and public and State-supported education.