

Dutch NGOs contribution to the List of Issues prior to the submission of the Fifth Periodic Report by the Netherlands on the International Convention on Civil and Political Rights

This report is submitted on behalf of the following NGOs:

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- Dokters van de Wereld/Medecins du Monde Netherlands
- FairWork
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- Justice and Peace
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INTRODUCTION

This document contains suggestions for a list of issues prior to the submission of the Fifth Periodic Report by the Netherlands to the UN Human Rights Committee (hereafter: the Committee). This report was created with input and effort on the part of a wide variety of organizations (hereafter: the NGOs).

The NGOs have noticed several improvements that have been made since the last periodic report. One of these improvements concerns the conditions one has to meet before being able to change one's gender. Since the last periodic report, a new law has been implemented allowing transgenders to change their name and gender in the civil personal records database,¹ without having to meet some of the earlier requirements such as the requirement of sterilization. Additionally the NGOs have noticed that, since the last periodic report Dutch public prosecutors have not shied away from applying the law against incitement to hatred. For instance currently Dutch politician Geert Wilders stands trial for different variants of the prohibition to inciting hatred and/or discrimination namely jointly perpetrating and (jointly) causing others to commit the offense.² This shows that although politicians enjoy a relatively large freedom of expression, even they are not immune to prosecution on the basis of the prohibition in question.

The impact of the Committee's work is felt greatly and the NGOs are grateful to the members of the Committee for the opportunity to contribute to the Committee's work and to voice our concerns. The NGOs aim to provide the Committee with information which will enable it to make its dialogue with the Dutch Government as effective and useful as possible. Since the NGOs are all based in the European part of the Kingdom, this document predominantly deals with the situation in the European part of the Kingdom. The NGOs are concerned that the following issues may constitute a violation the Convention and we respectfully request the Committee to include them on the List of Issues Prior to Reporting.

Article 2

Access to justice

Budget cuts of legal aid have affected the access to justice as 60% of all legal aid is provided for litigation against state agencies. Income related contribution for legal aid as well as legal fees have been substantially raised affecting legal protection of the most vulnerable in society.³

Specialized lawyers for no and low income groups will not be able to continue to offer good quality legal help or keep their legal practice afloat. These and other negative effects of past

¹ Decision on designation of transgenders experts (Besluit aanwijzing deskundigen transgenders), 19 June 2014, Staatsblad (Official Journal), nr. 22, 2014, <https://www.rijksoverheid.nl/documenten/kamerstukken/2014/06/26/besluit-aanwijzing-deskundigen-transgenders-staatsblad-222>.

² In English, on the website of the public prosecutor: <https://www.om.nl/vaste-onderdelen/zoeken/@93631/ten-questions-about/>.

³ Commission on 'Sustainable legal aid scheme, 'Interim Report of the Dutch Lawyer's Associations', June 2015.

and proposed budget cuts to legal aid have been severely criticized by the national association of lawyers amongst others.⁴

The NGOs respectfully recommend the Committee to call upon the Dutch government to safeguard the link between no/low income groups and access to effective legal aid.

Article 7

Life imprisonment

As it currently stands life imprisonment in the Netherlands means a life sentence, *de jure* and *de facto*. Under Dutch law, someone sentenced to life imprisonment can only be released if the King grants him or her a pardon.⁵ Neither the ICCPR nor the ECHR prohibits life sentences. However, case law of the ECHR has confirmed that after a certain amount of time, there must be a real possibility of review, which can lead to a shortening of the sentence or a conditional release.⁶ On 5 July 2016, the Supreme Court of the Netherlands held that the current lack of a possibility of review in the Netherlands violates the prohibition of torture and inhuman or degrading treatment or punishment.⁷ Even though the government is aware of the issue the current life sentencing regime poses with respect to fundamental rights the proposed adjustments of the life sentencing regime are still not in line with international human rights law and jurisprudence.⁸ Moreover, at this moment, approximately 40 life detainees do not have the possibility of review or a prospect of release which is in line with international human rights law and jurisprudence.⁹

The NGOs respectfully recommend the Committee to call upon the Dutch government to ensure a form of review that conforms to international human rights standards for detainees who have been sentenced to life in prison.

Article 9

Immigration detention

Undocumented migrants are often repeatedly put in immigration detention. Although the restriction of a maximum detention period of 18 months is respected, repeated periods of detention often lead to detention periods much longer than that.¹⁰ According to Dutch law

⁴ Dutch Bar Association, 'funded legal assistance', 2015. See: <https://www.advocatenorde.nl/9531/advocaten/gefinancierde-rechtsbijstand>.

⁵ See article 2 (especially paragraph b) of the Gratiwet and <https://www.government.nl/topics/sentences-and-non-punitive-orders/contents/custodial-sentences>.

⁶ See *Murray v. the Netherlands*, Application no. 10511/10, Judgement of 26 April 2016.

⁷ Hoge Raad 5 July 2016, case number 15/00402, ECLI:NL:HR:2016:1325.

⁸ See more on the Dutch Government's attempts to improve the system around life imprisonment on p. 9.

⁹ See the Netherlands' judiciary website, <https://www.rechtspraak.nl/Uitspraken-en-nieuws/Themas/Levenslang>.

¹⁰ Nationale Ombudsman, *Vreemdelingenbewaring: Strafregime of Maatregel om uit te zetten*, 7 August 2012 (2012/105), p. 18, available at: https://www.nationaleombudsman.nl/uploads/2012-105_-_vreemdelingenbewaring.pdf.

undocumented migrants should only be detained as a last resort.¹¹ However, in practice the measure of detention is regularly applied, either to prevent migrants from entering the territory or in order to facilitate their expulsion, without considering less radical alternatives. A new regime for immigration detention has been proposed since 2013. This has recently taken the form of a legislative proposal namely the ‘*wet terugkeer en vreemdelingenbewaring*’ (law on return and immigration detention).¹²

Some improvements imposed by the proposed law are that the detainee will be locked up in his cell for 12 hours a day rather than the current 17 hours,¹³ a minimum of two hours a day in the open air, instead of the current one hour,¹⁴ and a minimum of four hours of visits each week, instead of the current two hours.¹⁵ A worrying development, however, is the inclusion of a special kind of intake-regime (‘*beheersregime*’) which can last for a maximum of 2 weeks, and which is even more restricted than the present regime.¹⁶ Additionally there is still a possibility of being detained in a police cell for a maximum of five days while being put in to immigration detention,¹⁷ and there is still no possibility of employment while being detained.

Though there seem to be some improvements in the proposed law, it remains to be seen whether it will bring about the required changes in practice.

The NGOs respectfully recommend the Committee to call upon the Dutch Government to ensure that immigration detention is used as measure of last resort.

Minors and criminal law

Criminality amongst minors has been decreasing steadily for years and has decreased by fifty percent over the last 10 years.¹⁸ The number of minors that are interrogated by police has also steadily declined and there are more alternatives to detention that are being applied and developed.¹⁹ However minors that come in to contact with police and the public prosecutor’s office are oftentimes treated in a way that is neither in accordance with their age nor their special position within criminal law.

¹¹ According to Article 15 (1) of the Return Directive (2008/115/EC) a ‘third-country national who is the subject of return procedures’ should only be kept in detention if other sufficient but less coercive measures cannot be applied effectively in a specific case. See also: Vreemdelingencirculaire 2000 (A)6/5.3.3.3.

¹² Available at: <https://www.tweedekamer.nl/kamerstukken/wetsvoorstellen/detail?id=2015Z18003&dossier=34309>.

¹³ Article 22 under b, *Wet terugkeer en vreemdelingenbewaring*.

¹⁴ Article 23 sub 2 under e, *Wet terugkeer en vreemdelingenbewaring*.

¹⁵ Article 29 sub 1, *Wet terugkeer en vreemdelingenbewaring*.

¹⁶ Article 17, *Wet terugkeer en vreemdelingenbewaring*. This regime includes a maximum of 17 hours of confinement to their cells, less hours allowed to participate in activities than under the regular regime, a minimum of 2 hours of visits per week, and a minimum of 10 minutes a week of phone privileges (article 36 sub 1 *Wet terugkeer en vreemdelingenbewaring*).

¹⁷ Article 11 sub 5, *Wet terugkeer en vreemdelingenbewaring*.

¹⁸ Statistics available at: <http://www.nji.nl/nl/Databank/Cijfers-over-Jeugd-en-Opvoeding/Cijfers-per-onderwerp/Cijfers-per-onderwerp-Delinquentie>.

¹⁹ Defence for Children & Unicef, *Kinderrechten in Nederland, Jaarbericht Kinderrechten 2016*, May 2016, p. 23.

Out of all the minors that are being detained, 76% has not been convicted but is being held in custody prior to trial.²⁰ For some of them the period they are held in custody before trial is as long as the entirety of the punishment they are sentenced to. Alternatives to detention such as forensic foster care, restorative justice and nightly detention are not always available and are not always applied.²¹ Additionally, the rules on the taking and retention of minors' fingerprints and DNA in the criminal process are the same as the rules regarding adults, without consideration of the particularly adverse impact this can have upon minors

Additionally there are also points of concern with respect to the adolescent criminal law system. While it has its benefits for those above 18 years of age, minors can still be tried as adults and the so-called "PIJ"-measure, a treatment measure aimed at the rehabilitation and re-education of minors which deprives them of their liberty, can over the course of time be altered in to 'TBS' (involuntary commitment).

The NGOs respectfully recommend the Committee to call upon the Dutch government to ensure that the police, the public prosecutor's office, and the probation officers develop additional expertise with respect to alternatives to detention.

The NGOs respectfully recommend the Committee to call upon the Dutch government to review the position of minors within the current system of adolescent criminal law, more specifically the possibility for minors to be tried as adults.

Closed care facilities

The Netherlands has fourteen closed care facilities for juveniles with a total of 23 accommodations and 1162 available places. According to national statistics 1275 minors and young people under 23 years were placed in a closed care facility in 2015. The average duration of stay was 182 days. Children stayed in closed institutions without the necessary judiciary authorization or judicial review.²²

The NGOs respectfully recommend the Committee to call upon the Dutch Government to provide for judicial review of the legal measure by which minors and youngsters are committed to closed care facilities.

Article 10

Treatment of vulnerable people in health care facilities

Although in general the rights of people deprived of their liberty in a health care facility or in detention are respected, still various aspects need improvement, concludes the National

²⁰ Idem, p. 24.

²¹ Idem.

²² Signalement Inspectie Jeugdzorg 'Geen plaatsing gesloten jeugdzorg zonder machtiging rechter', August 2015 [report of the inspection of youth care to the government].

Prevention Mechanism in her annual report 2015.²³ In the care for the physically and mentally handicapped and the elderly still too many patients are deprived of their liberty for instance by fixation with tapes (*onrustbanden*) or separation.²⁴ Also the use of psychopharmaceutics and the locking up in own room should be reduced.²⁵ Some institutes do not, sufficiently, identify the reasons for restless behaviour and thus do not seek for alternative measures.²⁶

The NGOs respectfully recommend the Committee to call upon the Dutch Government to ensure that alternative measures researched and applied where necessary with respect to people deprived of their liberty in a health care facility.

Treatment in immigration detention

It has been documented that the administrative detention of undocumented migrants and asylum seekers forms a serious risk for their mental health.²⁷ This certainly applies to the more vulnerable people among them such as children, pregnant women, the elderly, and persons with physical and/or psychological problems. They, more than others, are at risk that their health will worsen in detention. There are still many vulnerable people placed in immigration detention and the newly proposed law on return and immigration detention will not exclude them from custody a priori.

The strict regime in immigration detention centres has a serious impact on the well-being and health of people, and research has shown that the health and well-being of people who stay in detention for multiple months deteriorates.²⁸ The strict regime is reflected in the option of far-reaching control measures like punitive isolation measures and handcuffing people when they have appointments in the hospital, for instance. It is also reflected in the possibility of confinement in cells for 12 to 17 hours a day, the lack of meaningful daily activities, and in difficulties with maintaining external contacts.

²³ Nationaal Preventie Mechanisme (2016) Jaarverslag 2015; http://www.igz.nl/Images/jaarverslag-nationaal-preventie-mechanisme-2015_tcm131-651197_tcm294-379357.pdf.

²⁴ Idem, p. 9.

²⁵ Idem, p. 18.

²⁶ Nationaal Preventie Mechanisme (2016) Jaarverslag 2015; http://www.igz.nl/Images/jaarverslag-nationaal-preventie-mechanisme-2015_tcm131-651197_tcm294-379357.pdf, p.17-18.

²⁷ See e.g.: Keller, A. S., Rosenfeld, B., Trinh-Shevrin, C., Meserve, C., Sachs, E., Leviss, J. A., Ford, D. (2003). Mental health of detained asylum seekers. *The Lancet*, 362: 1721-1723; Steel et.al. (2006) Impact of immigration detention and temporary protection on the mental health of refugees, *The British Journal of Psychiatry*, 188:58-64; Robjant, K., Hassan, R., & Katona, C. (2009). Mental health implications of detaining asylum seekers: systematic review. *The British Journal of Psychiatry*, 194(4), 306–312.

²⁸ Also research shows that the length of stay in detention has an adverse effect on (mental) health. See e.g. Robjant, K., Hassan, R. & Katona, C. (2009a). 'Mental Health Implications of Detaining Asylum Seekers: a Systematic Review'. *British Journal of Psychiatry*, 194: 306-312; 28 Jesuit Refugee Service - Europe (2011). *Becoming Vulnerable in Detention. Migrants in the European Union* (Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular (The DEVAS Project)); European Parliament Committee on Civil Liberties, Justice and Home Affairs (2007). 'The conditions in centres for third country national'. REF: IP/C/LIBE/IC/2006-181, STEPS Consulting Social study for European Parliament (CONTRACT REF: IP/C/LIBE/IC/2006-181). pp. 15-16; Wetenschappelijk Onderzoek- en Documentatiecentrum, Ministerie Veiligheid en Justitie (2013): *Van bejegening tot vertrek. Een onderzoek naar de werking van vreemdelingenbewaring*.

Through the years the standards of medical care in the immigration detention centres have improved. However, there are still a number of issues of concern. For instance in 2014, in a report about health care in immigration detention it was concluded there were issues with continuity of care upon arrival, transfer, deportation or release from detention, resulting in risks to health.²⁹ Though it seems that upon arrival and transfer the exchange of medical information has improved, there are still some concerns about continuity of care upon release.³⁰

In 2015 a significant number of persons confined in immigration detention centres were put in solitary confinement as a measure of good order and security, despite previous statements of the Ministry of Security and Justice that the intention is to limit restraints in immigration detention to a minimum.³¹ This occurred in particular on medical grounds. In 2014 medical grounds included mainly threats or attempts of suicide, confused behaviour or hunger and/or thirst strikes.³² To our best knowledge, there are no medical grounds for the isolation of hunger or thirst strikers. Moreover, the care given by making use of isolation cells does not seem to be equivalent to the care given in mental health care institutions where, though not completely successful, since 2006 the aim has been to abolish solitary confinement.³³ Isolation of people with suicidal tendencies or other mental health problems, as well as people on hunger- or a thirst strike may in fact have an adverse effect.^{34,35}

The NGOs respectfully recommend the Committee to call upon the Dutch Government to ensure the mental and physical health of vulnerable people in immigration detention is safeguarded.

The NGOs respectfully recommend the Committee to call upon the Dutch Government to ensure the new immigration detention regime improves as regards the previous one, and to ensure it safeguards the physical and mental health of detainees.

The NGOs respectfully recommend the Committee to call upon the Dutch Government to ensure that adequate health care will be provided once detainees are released.

²⁹ Amnesty International, Dokters van de Wereld en Stichting LOS - Meldpunt Vreemdelingendetentie (2014). Geketende zorg. *Gezondheidszorgen in vreemdelingendetentie*.

³⁰ From medical files of people in immigration detention received by Doctors of the World on a case-by-case basis, we conclude that people are released without information about which care they need and how they can organize their care. Appointments with specialist doctors or for medical tests already made during detention, are cancelled when some is released, without giving the person proper information how to arrange a new appointment.

³¹ Attachment to Parliamentary paper (*Kamerstuk*) 19637 nr. 2008, 20.5.15.

³² Amnesty International, Dokters van de Wereld en Stichting LOS: Meldpunt Vreemdelingendetentie (2015). *Isolatie in vreemdelingendetentie*. For the English summary: <http://www.doktersvandewereld.org/wp-content/uploads/2016/07/Summary-report-Isolation-in-Immigration-Detention.pdf> and Data received after a request on publicity of administration (Dutch: *verzoek met beroep op de Wet openbaarheid van bestuur*) of *de Volkskrant*: From January till July 2015 209 punitive and order measures were imposed, from which 155 in an isolation cell. 126 times isolation was imposed as an order measure. 102 of the 154 order measures were because of medical reasons.

³³ Voskes, Y. (2014) *No effect without ethics. Reduction of seclusion in psychiatry from a care ethics perspective*, (diss.) Amsterdam: Vrije Universiteit, pp 15-17.

³⁴ CPT 2012: *Report to the Government of the Netherlands on the visit to the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)* from 10 to 21 October 2011, § 58.

³⁵ Onderzoeksraad voor Veiligheid (2014). *Veiligheid van vreemdelingen*. Den Haag: Onderzoeksraad voor Veiligheid, p. 49.

The NGOs respectfully recommend the Committee to call upon the Dutch Government to ensure that solitary confinement in immigration detention is minimized and eventually abolished.

Life imprisonment

In the Netherlands life imprisonment de facto and de jure means imprisonment for the rest of a person's life. Someone sentenced to life imprisonment can only be released through a Royal Pardon, but this is almost never granted. Because prisoners serving a life sentence in the Netherlands cannot participate in reintegration activities, and as a consequence do not have the possibility to rehabilitate, a legitimate prospect of release by pardon will likely not be available.

Recently, the European Court of Human Rights (ECtHR) has ruled in different cases that, under certain circumstances, life sentences can violate article 3 of the ECHR. The ECtHR is of the opinion: if there is no right to review, no mechanism to ensure this right and no realistic prospect of release exist, then human rights violations are imminent.³⁶ A pardon procedure can be permissible under the ECHR, but it must represent both a de jure and de facto prospect of release for the prisoner. At this moment that is not the case in The Netherlands.

Recently the Supreme Court of the Netherlands also gave some criteria to maintain the life sentence. They stated that over time there must be a real possibility of review, which may lead to a reduction of the sentence or to a (conditional) release. The Supreme Court added that this review should preferably be done by a judge.³⁷

Following the rulings by the ECtHR and in order to maintain the life sentence, the Dutch State Secretary for Security and Justice proposed a system of periodic review with respect to the question whether or not to start reintegration activities. This would take place after a prisoner has served 25 years of a life sentence. There will also be a 'broad commission', which is expected to hear requests by prisoners for early release. Moreover, the State Secretary alludes to a role in the process of family members of victims of crimes punishable by a life sentence.³⁸

Despite the proposed adjustments of the ruling of life sentence, the State Secretary will not end the uncertainty with respect to whether the Dutch practice is in accordance with international human rights standards, partly because it ignores the urgent advice of the Dutch Supreme Court to provide a judicial review of life sentences. Additionally a system which would review whether or not a detainee is fit for reintegration after they have served 25 years of a life sentence hardly seems adequate. Reintegration activities should start from the moment of imprisonment and not after 25 years.

³⁶ See e.g. *Murray v. the Netherlands*, Application no. 10511/10, Judgment of 26 April 2016 & *Vinter et al. v. the United Kingdom*, Applications nos. 66069/09, 130/10 and 3896/10, Judgment of 9 July 2013.

³⁷ HR 5 July 2016, ECLI:NL:HR:2016:1325, r.o. 3.3.

³⁸ The plans are explained in more detail in Parliamentary papers (*Kamerstukken*) II, 2016/17, 29 279, nr. 354 (Letter from K.H.D.M. Dijkhoff, the Dutch State Secretary for Security and Justice, 25 October 2016, Z19507).

The NGOs respectfully recommend the Committee to call upon the Dutch government to ensure that the system of life imprisonment will be aimed towards rehabilitation and reintegration.

Article 12

Restricted freedom of residence

The government, by its coalition agreement of 2012, intends to regulate migration of Dutch nationals born in Aruba, Curaçao and Sint Maarten to the Netherlands.³⁹ Currently a law is being initiated by a member of Dutch parliament that seeks to limit freedom of movement in fundamental ways by requiring settlement requirements such as sufficient funds, a clean criminal record and solid education and/or work experience.⁴⁰ This proposal has been criticized by the Council of State⁴¹ and academics⁴² for violating freedom of movement and residence. While this would still allow the inhabitants of the islands to travel freely to the Netherlands, individuals from the islands unable to meet the requirements stipulated by the law cannot register in a Dutch municipality.

The NGOs respectfully recommend the Committee to ask the Dutch government to inquire about its position on creating restrictions on freedom of residence for Dutch nationals from Aruba, Curacao and St. Maarten.

Article 14

Right to contact counsel in the context of a police interrogation

In their ICCPR shadow report from 2008, the NGOs expressed concerns about the lack of legal provisions safeguarding the right for counsel to be present at police interrogations⁴³. Since the last periodic report (the Fourth Periodic Report of the Kingdom of the Netherlands on the implementation of the International Covenant on Civil and Political Rights), a provision was introduced that formally introduces the right to the presence of counsel in the context of a police interrogation.⁴⁴ Additional regulations about the role and financial compensation are subject of a Bill approved by parliament, later in 2016.⁴⁵ This Bill has met with strong criticism about the limitations on the attorney's right to speak during interrogations and because of the maximum compensation regardless the duration and amount of interrogation(s).

³⁹ 'Bruggen slaan', coalition VVD-PvdA, (29 October 2012), p. 30 available at: <http://www.parlement.com/9291000/d/regeerakkoord2012.pdf>.

⁴⁰ House of Representatives (Parliament), year of session 2011/12, nr. 33325, available at: <https://zoek.officielebekendmakingen.nl/kst-33325-12.html>.

⁴¹ House of Representatives, 2011/12, No. 33325, 4; House of Representatives 2014/15, No. 333325, 11.

⁴² 'Exclusion Municipal Administration in conflict with the Law', Newspaper Curacao (6 February 2014), available at: <http://www.kkc-curacao.com/uitsluiting-in-strijd-met-de-wet/>.

⁴³ Commentary on the Fourth Periodic Report of the Netherlands on the International Covenant on Civil and Political Rights (ICCPR), 8 August 2008, by a collective of NGOs.

⁴⁴ Staatscourant (State journal) nr. 8884, 23 February 2016, <https://zoek.officielebekendmakingen.nl/stcrt-2016-8884.html>

⁴⁵ Available at: https://www.eerstekamer.nl/wetsvoorstel/34159_aanvulling_van_bepalingen

The NGOs respectfully recommend the Committee to call upon the Dutch Government to ensure that in practice, regulation concerning the right to counsel in the context of a police interrogation is being enforced in a manner in line with relevant treaties.⁴⁶

Article 17

Electronic patient registration

According to a draft law “Act on market healthcare”,⁴⁷ it would become possible for medical insurance companies to consult the individual records of citizens in the electronic patient registration, without preceding consent from the patient. The minister’s motivation for the infringement is to prevent insurance fraud, which means that a financial interest is placed above the right to privacy for citizens. In the Netherlands, employees at health insurance companies are not bound by laws of professional confidentiality. The draft law is currently (November 2016) tabled at the parliament’s senate, after having been approved in the lower house.

The NGOs respectfully recommend the Committee to ask the Dutch government to closely monitor the patient’s right to privacy depending on the outcome of the senate voting procedure.

Border control system

In 2011, it became clear that the Dutch government had been planning to implement a highly privacy-invasive system of border control for years.⁴⁸ The new high-tech camera surveillance system, called @MIGO-BORAS, was due to become operational from January 1, 2012.⁴⁹ @MIGO-BORAS intended to photograph, screen and profile every vehicle crossing the Dutch-German or Dutch-Belgian border with the help of various (unknown) databases. In October 2011, the European Commission – under German pressure – started an investigation to assess whether @MIGO-BORAS complied with European Schengen and privacy regulations.⁵⁰ Consequently, the Dutch government scaled back the planned operational use of the system: instead of @MIGO-BORAS being operational 24/7, it was made operational up to six hours per day or 90 hours per month. After the European Commission provisionally concluded that the system did not contravene the rules that govern the EU’s Schengen area in June 2012, @MIGO-BORAS was launched officially on August 1, 2012.⁵¹

⁴⁶ I.e. General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial, Principle 7 of the UN Basic Principles on the Role of Lawyers

⁴⁷ Wet marktordening gezondheidszorg, https://www.eerstekamer.nl/wetsvoorstel/33980_verbeteren_van_toezicht.

⁴⁸ See D. Tokmetzis, *Staat bouwt digitale hekken aan de grenzen*, Sargasso, 19 January 2011, sargasso.nl/archief/2011/01/19/staat-bouwt-digitale-hekken-aan-de-grenzen/; see also a summary of B. de Konings’ subsequent speech at the CPDP Conference in Brussels, 26 January 2011, njcm.nl/site/newsposts/show/273.

⁴⁹ The Dutch/English acronym @MIGO-BORAS stands for ‘*Automatisch Mobiel Informatie Gestuurd Optreden* (Automatic Mobile Information-Driven Action) - Better Operational Results and Advanced Security.

⁵⁰ See e.g. ‘Nut van nieuw camerasysteem langs de grenzen niet bewezen’, *NRC Handelsblad*, 31 October 2011, nrc.nl/nieuws/2011/10/31/nut-van-nieuw-camerasysteem-langs-de-grenzen-niet-bewezen/; ‘Duitsland kwaad over grenscameras’, *NOS*, 30 November 2011, nos.nl/artikel/318196-duitsland-kwaad-over-grenscameras.html.

⁵¹ See *Kamerstukken II* 2011/12, 32 317, no. 128; *Kamerstukken II*, 2012/13, 33 400-VII, no. 4, para. 247. See also ‘Brussels defends Dutch border control project’, *EU Observer*, 5 July 2012, euobserver.com/justice/116881.

The primary goals of the project are the detection of illegal immigration, human trafficking, identity fraud and narcotics control through camera surveillance and profiling. Critical profiling factors include the type and colour of the vehicle, the number plate and country or region of origin.⁵² Since April 2013, the @MIGO-BORAS camera system is also being used for law enforcement and criminal investigation purposes (including counter-terrorism) through Automatic Number Plate Recognition (ANPR).⁵³ However, many details of @MIGO-BORAS still remain confidential. No specific legislation around its implementation has been drafted and the Dutch Parliament asked relatively few questions about the project. As far as the Dutch NGOs are currently aware, participating organisations include the Royal Military and Border Police (Koninklijke Marechaussee), the Dutch National Police, the Public Prosecution Service, the General Intelligence and Security Service (Algemene Inlichtingen- en Veiligheidsdienst or AIVD) and the Netherlands Organisation for Applied Scientific Research ('TNO'). The last two government letters to parliament reporting on the use of @MIGO-BORAS do not mention anything concerning the extent to which practices are in line with international human rights obligations.⁵⁴

Reports show that the (effect of the) use of @MIGO-BORAS is likely to be discriminatory, as nationality seems to be a primary profiling criterion and most vehicles being stopped and searched originate from Eastern Europe.

The NGOs respectfully recommend the Committee to urge the Netherlands to clarify the mandate, use and effects of the @MIGO-BORAS surveillance system and to introduce adequate legislation or guidelines to prevent the system from being used in a discriminatory manner or having discriminatory effects.

Law on the secret service and intelligence agencies

The new law on the secret service and intelligence agencies is intended to replace the Intelligence and security Act 2002 (or: Wiv2002).⁵⁵ This act aimed to introduce a so-called 'drag-net method' with respect to the interception of communications data by creating the possibility to intercept non-specific ('bulk') data of innocent persons. Furthermore it aims to introduce the possibility to hack computers of innocent persons and share the obtained data with foreign intelligence services in absence of any obligation to check the obtained data for its reliability and relevance. The national Advisory body on legislation, the Council of State (Raad van State), has issued its report on the draft bill in October 2016.⁵⁶ In its report, the Council expresses a number of concerns about the effectiveness of the proposed supervision safeguards and the international human rights demands concerning the proportionality of the

⁵² See e.g. Ministry of Security and Justice, *Factsheet on the use of the @MIGO-BORAS system*, 7 July 2012, government.nl/documents-and-publications/leaflets/2012/07/11/factsheet-on-the-use-of-the-amigo-boras-system.html.

⁵³ *Kamerstukken II* 2012/13, 19 637, no. 1647; *Kamerstukken II*, 2012/13, 29 754, no. 232; *Kamerstukken II*, 2013/14, 19 637, no. 1760; *Kamerstukken II*, 2013/14, 28 684, no. 411.

⁵⁴ Letter from the Minister of Security and Justice to the lower house, 15 August 2014, 28 684, nr. 411/ Letter from the Minister of Security and Justice to the lower house, 1 July 2016.

⁵⁵ <https://www.rijksoverheid.nl/onderwerpen/bevoegdheden-inlichtingendiensten-en-veiligheidsdiensten/inhoud/wet-op-de-inlichtingen-en-veiligheidsdiensten-wiv>.

⁵⁶ <https://www.raadvanstate.nl/adviezen/samenvattingen/tekst-samenvatting.html?id=421>.

proposed scope of data collection. In particular, the Council has expressed concerns about the retention/storage terms of three years for certain data classifications, the effectiveness and independence of the proposed oversight and safeguards concerning the exchange of data with foreign security bodies.

The NGOs respectfully recommend the Committee to request the Netherlands to explain the motivation as to how the proportionality between data collection and the right to privacy are weighed

Article 18

Face covering clothing

On November 29th 2016, the lower house of the Dutch parliament has voted in favour of a ban on wearing face covering clothing in certain public places (hospitals, public transport and governmental buildings/offices).⁵⁷ The proposed ban is formulated in neutral terms and includes non-religious face covering clothing. The draft has yet to be approved by the Senate.

A number of members of parliament have stated that they are in favour of such a ban because they view the Islamic versions of face covering clothes as a symbol of oppression of women and presume that wearing this veil occurs frequently as a consequence of coercion by partner and/or family members. Coercion is already covered by existing sanctions in Dutch criminal law. A number of members of parliament have openly motivated their vote in favour of a ban in the name of equality between men and women, the pursuit of 'de-islamisation' and/or as a means of combatting coercion. These arguments reach beyond the non-religious purpose of the proposed ban as a means to ensure 'open communication' and the necessity to identify people in certain public areas. It is likely that a majority of the votes cast in the lower house were motivated by different goals than those described in the draft.

The NGOs respectfully recommend the Committee to urge the Netherlands to explain the reasoning behind this proposed act, when there are already safeguards preventing coercion of women.

Article 21

Limitations of the right to protest

The Public Demonstrations Act dictates each city or city council to make municipal legislation on the topic of demonstrations. It states the circumstances under which one is obliged to notify the municipality of the intention to demonstrate. When a notification is required, the mayor of a town can set rules that regulate and restrict the demonstration. A limitation on the right to demonstrate under the Public Demonstrations Act is only allowed when it is needed to protect public health, to regulate traffic or to prevent disorder. The topic and the content of a manifestation are never under review by the city council.

⁵⁷ https://www.eerstekamer.nl/wetsvoorstel/34349_wet_gedeeltelijk_verbod.

Secondly, the Municipality Act attributes the mayor the task to protect public order in his constituency. This has been codified in art. 170-181 of the Dutch Municipality Act. These articles give the mayor the power to give the necessary orders to maintain public order in the case of disturbances or in the event serious fears for disturbances arise. It attributes the right to a mayor to use the light-weight option of art. 172 and the heavy-weight option of art. 175-176 of the Act. The heavy-weight option is only to be used in extreme circumstances, for example when a natural disaster occurs or in situations of war.⁵⁸ A total ban is only considered lawful in case of force majeure, in case of natural disaster and major irregularities, when the municipality has limited resources due to police deployment elsewhere. Furthermore, a limitation of fundamental rights is only allowed when such a restriction of rights meets the requirements formulated in the treaties that protect them.

The NGOs signal that the use of emergency powers under the Dutch Municipality Act is increasing and are more often used to ban a protest in Dutch cities and municipalities. Rather than respecting, protecting and fulfilling the constitutional and fundamental rights, emergency decrees are used to ban citizens off the streets. Furthermore it is noticed that it occurs that when a demonstration is regulated under the Municipality Act, orders are being given by the mayor that intervene with the content or the topic of the demonstration.

Some examples of limitations on the right to demonstrate are:

- 326 soccer supporters were arrested by the police in Rotterdam on the 21st of February 2016. The soccer supporters wanted to demonstrate against the club, demanding a change of board members, but the police and municipality did not allow this. The National Ombudsman investigated this event resulting in a very critical opinion regarding the course of actions of the authorities. The Ombudsman concluded: ‘this cannot happen again.’⁵⁹
- The radical right organisation Pegida organised a demonstration in Amsterdam on the 27th of February 2016. Anti-racist organisations organised a counter demonstration. The mayor of Amsterdam gave both demonstrations a multitude of rules they had to abide to. One of those rules was that it was not allowed to wear swastikas. Signs that had a swastika on it with a red cross through the swastika, or signs where a swastika is thrown in a trashcan, were also forbidden. The wearing of such signs can, under certain circumstances, constitute a criminal offence for which those responsible can be prosecuted afterwards. Thus, forbidding the symbols beforehand can be disproportionate. The limitations of the (content of the) demonstration by the mayor were highly criticized.⁶⁰
- 200 activists were arrested in Rotterdam on the 12th of November 2016. The aim of the group was to demonstrate against the figure Black Pete, which they consider a racist blackface caricature. The night before the demonstration, the mayor of Rotterdam used the emergency

⁵⁸ Tekst en Commentaar, GPW bij art. 172 Gemeentewet.

⁵⁹ <https://www.nationaleombudsman.nl/nieuws/2016/verkeerde-beslissingen-bij-aanhouding-demonstrerende-feyenoordsupporters>

⁶⁰ ‘Van der Laan mocht hakenkruis bij Pegida demonstratie niet verbieden’, VPRO Argos, <http://www.vpro.nl/argos/lees/nieuws/2016/pegida-demonstratie-amsterdam.html>.

powers under the Dutch Municipality Act in order to prohibit all demonstrations in the centre of Rotterdam for the larger part of that day. It is disputable whether this emergency measure was correctly used by the mayor. Consequently the demonstrators were arrested even before they could start the demonstration. Some were beaten by police, all were detained for several hours. These events and also the use of this measure by the mayor were highly criticised by legal scholars and journalists.⁶¹

- The fact that the right to protest in the Netherlands is under pressure, can also be illustrated by the arrests of civil activists against the Monarchy. In 2015 the police arrested a man after he had said ‘fuck the King’ from a stage addressing a crowd of protesters.⁶² There are many more examples of demonstrations that were ended or were made impossible by authorities. The majority of these cases did not lead to demonstrators being prosecuted.

The fact that the right to protest is under pressure, was also put forward in the reporting on CERD.⁶³ The CERD has stated:

“The Committee is furthermore concerned at reports that citizens seeking to peacefully protest against such portrayals have been denied authorization to conduct such protests at a meaningful time and place and have been subjected to violent attacks and other forms of intimidation, which have not been adequately investigated. (arts.2, 5 and 7).”⁶⁴

The NGOs respectfully recommend the Committee to urge the Netherlands to take measures to prevent unlawful limitations of the right to peaceful protest

The NGOs respectfully recommend the Committee to urge the Netherlands to ensure that when rules are set to regulate a demonstration under the Public Demonstrations Act there will be no prior intervention on the basis of the content of the demonstration.

The NGOs respectfully recommend the Committee to urge the Netherlands to Ensure that the emergency measure to prohibit a demonstration by Dutch mayors is used correctly.

Article 23

Family reunification

Since the last Dutch Government report in 2009, improvements have been made regarding some of the policy measures on family reunification. For example, the time limits within

⁶¹ ‘Wapperde Aboutaleb bij intocht Sinterklaas te snel met noodbevel?’, Trouw, <http://www.trouw.nl/tr/nl/39681/nbsp/article/detail/4415176/2016/11/14/Wapperde-Aboutaleb-bij-intocht-Sinterklaas-te-snel-met-noodbevel.dhtml>.

⁶² <http://www.dutchnews.nl/news/archives/2015/05/f-the-king-demonstrator-taken-to-court-for-insulting-the-monarch/>.

⁶³ <http://www.njcm.nl/site/uploads/download/625>.

⁶⁴ Concluding Observations on the 19th to 21st periodic reports of The Netherlands, point 17: http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/NLD/CERD_C_NLD_CO_19-21_21519_E.pdf.

which refugees can apply for family reunification has been modified from a period of three months to a period of six months after the residence permit is granted. Furthermore, family reunification procedures are accepted in the cases of adult dependent children.

Nevertheless, there are still some concerns, since there remain several situations where families are separated. The following cases are some examples:

- The Dublin-Regulation permits separation of family members if they arrive in different countries. This is the case when one family member has already another status or subsidiary protection (not a refugee-status) and another member of the family arrived in another country.⁶⁵ Another example where family members are often separated, is when the family life develops during the Dublin-procedure, for instance with a National.⁶⁶

- In cases where the residing partner has no stable and high income. If the regularly residing partner loses his/her income, the dependent partner loses the residence permit. These situations lead to long separations and distortion of families but also to long-term irregular stay with dependency and no chance for self-determination on the part of the irregularly staying partner.

The NGOs respectfully recommend the Committee to urge the Netherlands to develop policy rules which guarantee that family unity is of primary importance within the context of family unification policies

Vulnerable position of children

Furthermore, the Dutch NGO's are concerned that in several cases where children are separated from their parents, the violations of the right to family protection leads to a risk of disregard of the basic right of every child to live with his or her parents. In cases where separation takes place, the situation sometimes becomes difficult to restore.

For instance, in the Dublin-procedures, there have been situations where a parent has been separated from a legally residing minor child when the parent arrived in the country on a later date.⁶⁷ Also, there have been cases in residence procedures, where a parent has been separated from a child when the other parent cannot be a sponsor for the family reunification. In other cases, there are possibilities of separation of a parent from a child after a divorce, when the dependent partner loses his/her residence permit.

The NGOs respectfully recommend the Committee to call upon the Netherlands to take measures to prevent separations of parents and minor children in the migration processes

⁶⁵ See examples of cases, the following decisions of the Dutch Administrative Courts, RvS 201507537/1/V3, 16.9.16; RvS 201507801/1/V3, 9.8.16; RvS 201505008/1/V3, 12.2.16.

⁶⁶ See examples of cases, the following decisions of the Dutch Administrative Courts, RvS 201604850/1/V3, 25.8.16; RvS 201505706/1/V3, 19.2.16.

⁶⁷ See examples of cases, the following decisions of the Dutch Administrative Courts, RvS 201508456/1/V3, 10.8.16 and RvS 201507317/1/V3, 9.5.16.

Article 24

Protection of the child

There is also a lack of protection of children rooted in the Netherlands. Children who have grown up in the Netherlands often do not get a residence permit. The regularisation of children under the ‘Children’s Pardon Settlement’ (Kinderpardon regeling), applicable for children who have been living in the Netherlands for more than 5 years, have not been extended to children without an asylum-background or children whose parents didn’t always cooperate with the return-procedures (*Meewerk Criterium*).⁶⁸

The NGOs respectfully recommend the Committee to urge the Netherlands to develop policy measures in order to ensure that there is no distinction between children with an asylum background and other children in matters of regularisation.

Children of undocumented parents and social assistance

Dutch children who are being raised by an undocumented single parent, mostly mothers, are at a disadvantage in matters concerning child and family benefits and are growing up in extreme poverty. This is due to the fact that undocumented persons are barred from receiving social benefits by law (*Koppelingswet*) and therefore, undocumented parents are not eligible for family and child benefits which are intended to safeguard the development of children and prevent child poverty. A Dutch child raised by an undocumented parent is entitled to social benefits of 240 euro’s a month. Sometimes, these benefits are supplemented by the municipality with care in kind (shelter) or benefits for housing costs. This practice differs from municipality to municipality, and some municipalities provide no help at all.

Futhermore, the conditions in the family centres are governed by a very sober regime of services and these conditions have been criticised by several NGO’s for violating children’s rights.⁶⁹ After a complaint of Defence for Children International at the ESCR in 2009⁷⁰ and a ruling of the Dutch High Court in 2012,⁷¹ the conclusion in both cases being that the Netherlands was violating the right to shelter of children in an irregular situation, the Dutch Government responded by setting up these freedom restricted family centres.

The Dutch Government is of the opinion that Dutch minors who are raised by undocumented mothers can get all the care they need in freedom restricted family centres for rejected asylum seekers even though they are not being deported. In a 2014 Court verdict, these centres have been judged to be harmful for minors and have forbidden the settlement of Dutch minors in these centres by restricting their and their mother’s freedom of liberty. Damages have been

⁶⁸<https://www.defenceforchildren.nl/images/69/4631.pdf>, see also Jaarberichten Kinderrechten 2016, p. 28 available at <https://www.defenceforchildren.nl/images/68/4572.pdf>.

⁶⁹Workinggroup Children in AZC (coalition of child right’s NGO’s), ‘In one word it is here ... stupid’: research of the welfare and perspective of children and young people in family locations’, October 2014, also Discrimination of minors based on the immigration status of their parents is explicitly forbidden by article 2.2. CRC.

⁷⁰Defence for Children International v The Netherlands, Complaint no/47/2008. 20 October 2009.

⁷¹High Council, No. ECLI:NL:HR:2012:BW5328 (21 September 2012).

rewarded.⁷² Since this ruling of the Court, mothers with Dutch children can cooperate and allow that their child is removed from the family centre and goes to live somewhere else.⁷³ If the mother chooses to leave the family centre with her child in order to avoid separation, most municipalities reject applications for help and threaten to implement a protection measure separating the children from their only caretaker.⁷⁴ This is not only in violation of the right to protection of every child without any discrimination under Article 24 of this Convention, but also in violation of the right to family life as enshrined in Article 23 of this Convention.

The NGOs respectfully recommend the Committee to urge the Dutch government to reduce child poverty by safeguarding the rights of Dutch minors to social benefits and adequate standard of living regardless of their parents immigration status.

The NGOs respectfully recommend the Committee to call upon the Dutch government to guarantee to abolish the practice of place Dutch minors in deportation centres and guarantee their access to social services provided by municipalities and enable those children to grow up within the community.

Article 25

Political participation of women

The NGOs regret the fact that the government's target for 2017 of having 30% women functioning at top levels of the public services has not been achieved in governmental positions. The ministries are still below this target while female participation in senior positions had a slight rise from 26% in 2012 to 31% in 2015. The ministry of Economic Affairs for example is at 17%, the Ministry of Defence 9%, the Ministry of Foreign Affairs 25% and the Department of Government 24%.⁷⁵ The NGOs note that the figures presented are colour-blind, i.e. they do not include information on the ethnic background of the women concerned.

Furthermore, the number of women in local politics is still very low (25%) and is barely increasing over the years. The percentage is only higher in the four major cities namely 38% in 2014. On average, there are also more female representatives in provincial councils: 34.7% in 2015. Hardly any official intersectional statistics are maintained with regard to black, migrant and refugee women: 'women' and 'ethnic minorities' are counted separately.

According to the most recent figures representation of 'ethnic minority women' in local politics was less than 1% in 2010.⁷⁶ Recent research reveals that female councillors are confronted with structural obstacles.⁷⁷ Municipal councils often assemble, for instance,

⁷²District court of The Hague, No. 14 / 5065 BEPTDN, (2 October 2014).

⁷³See, Kamervraag 526, 12/11/14, SvV&J: Opvang Nederlandse Kinderen in Gezinslocatie is maatwerk, and Children Ombudsman, Report: 2013/171, KOM/005/2013, (14 November 2013).

⁷⁴See. e.g. Moser v Austria, ECtHR 21 September 2006, app.no. 12643/02.

⁷⁵ Jaarrapportage Bedrijfsvoering Rijk 2015 (Annual Report of the State's Conduct of internal Management 2015).

⁷⁶ Prodemos, 2010, 2014, 2015.

⁷⁷ Corine van Egten et al. Vrouwenstemmen in de raad (Women's voices in local councils), Atria, 2016.

between six and eight in the evening, a period that is ‘rush-hour’ in family life. Since the national government has delegated several functions to the municipal authorities, the workload for councillors has significantly increased. Women experience more problems than men in combining their political work with a job and care for children or sick relatives. Moreover, local councillor’s wages have remained the same and do not cover the cost of living. So councillors – in particular single mothers – need to have jobs alongside their work as councillor.

The NGOs respectfully recommend the Committee to call upon the Netherlands to realise its 2017 goal of having women 30% of senior positions at the ministries that are lagging behind.

The NGOs respectfully recommend the Committee to call upon the Netherlands to investigate the structural obstacles to women’s political participation in municipal councils and to consult with local administrators as to how to overcome these obstacles

Public Participation of women

In December 2015 the Dutch Universities set targets for reducing the disparities in proportion for males to females in academia.⁷⁸ The NGO’s point out, however, that the targets are not new. They have been adopted since the 2000 Lisbon Agreement and appear not to be very effective: the annual increase remains at 0.8%. Moreover, the Glass Ceiling Index (GCI) figure is persistent: since 2007 the GCI for the step from associate professor to full professor has remained unchanged at 1.5.⁷⁹ The NGOs note also that the intersection of discrimination (sex/ethnicity/age etc.) also occurs at the universities. Female candidates may hold all the requisite qualifications, for instance, but don’t get appointed professor because they are too old. In the view of the NGOs and CSOs the measures mentioned in the replies to the List of Issues (CEDAW/C/NLD/Q/6/add.1 para 141/142) are not sufficiently result-oriented.

The NGOs respectfully recommend the Committee to call upon the Netherlands to take measures to increase the extremely low number of women in high ranking posts in the civil service, in academic life, and in Government High ranking positions
The NGOs respectfully recommend the Committee to call upon the Netherlands to add diversity in background to the targets.

Article 26

Access to shelters and safe houses

The lack of capacity of shelters and safe houses for victims of gender-related violence is a structural problem. However, migrant women face extra obstacles, since many shelters are

⁷⁸ Monitor Women Professors 2015. Executive Summary, <http://www.lnvh.nl/files/downloads/352.pdf>.

⁷⁹ The GCI is larger than 1 when personnel is underrepresented in the higher rank as compared to the one below.

hesitant to receive migrant women without a secured residence permit or limit the number of migrant women without an independent residence permit they are willing to take in.⁸⁰

According to (Article 10 of) the Immigration Act 2000 (which followed the 1998 Linkage Act), undocumented migrants have no access to the social security system. As a consequence, undocumented women who have become the victim of (sexual) violence (with the exception of victims of trafficking in women) are not entitled to social assistance and have no access to a safe shelter. Most shelters will not take in undocumented women because of the financial problems this pose.

The NGOs respectfully recommend the Committee to urge the Netherlands to specify which measures it tends to take in order to provide shelter and protection to undocumented women who are victims of gender-based violence and who are in need of protection.

Racial profiling

Dutch legislation comprises several broad discretionary police competences that allow police officers to exercise stop and search powers without a reasonable suspicion in individual cases. In a couple of individual cases, police officers have admitted to have stopped citizens because of these citizens' visible ethnic origins.⁸¹ The many documented stories of citizens with a migrant origin about the frequency with which they are stopped reflect a larger underlying unfavourable treatment of minority groups by the police, also documented in a number of studies.⁸²

Police officials and the Minister of Security and Justice have so far acknowledged that ethnic profiling does occur and should be prevented. However, a number of unresolved issues remain concerning the aim to reach a shared set of definitions and goals.

At present, the police force defines (unlawful) profiling as “the disproportionately frequent stopping of citizens on the ground of their visible ethnic origin and/or skin colour, when there is no objective and reasonable justification for that (stopping)”.⁸³ Holding onto this definition, the police force insists that stopping citizens on the basis of skin colour, race or alleged migrant background is justified when this factor is *part of a combination of factors*. From the point of view of the victims of disproportionately frequent stop and frisk activities, this definition is concerning.

⁸⁰ See the websites, <http://www.opvang.nl/site/item/aandachtspunten-verbeterplan-vrouwenopvang> , <http://www.huiselijkgeweld.nl/publicaties/brochures/vrouwenopvang>, and also the Report, *Een wereld van Verschil, 40 jaar vrouwenopvang in Nederland*, Claudette H. Tjen-A-Tak and Lida M. Van Den Broek, 2014;

⁸¹ <http://www.volkskrant.nl/binnenland/excuses-voor-typhoon-na-aanhouding-vanwege-huidskleur~a4310605/>
<http://brandpunt.kro-ncrv.nl/brandpunt/uit-interne-politierapporten-blijkt-dat-merendeel-agenten-etnisch-profileren-gerechvaardigd-vindt/>.

⁸² Landman, Wouter, e.a., *Boeven Vangen. Proactief politieoptreden onderzocht*, 2016 Mutsaers, Paul, *A public anthropology of policing*, 2015; Amnesty International, *Proactief politieoptreden vormt risico voor mensenrechten. Etnisch profileren onderkennen en aanpakken*, 2013; Çankaya, Sinan, *De Controle van Marsmannetjes en ander Schorriemorrie: Het beslissingsproces tijdens proactief politiewerk*, 2012.

⁸³ <https://www.politieacademie.nl/overdepolieacademie/politiedebat/Paginas/Etnisch-profileren-25-oktober-2016.aspx>.

Secondly, there is no clear shared definition of ‘disproportionate’.⁸⁴ There is a possibility that the overrepresentation of certain ethnic groups in crime rates are seen as a justification for an increased concentration of police scrutiny focused on these groups.⁸⁵ For citizens who are not in any way involved in criminal activities, this increased risk of being stopped is an unacceptable form of stigmatization and concerning from the point of view of individual citizens being held accountable for other people’s actions.

The minister and the police force have rejected proposals to implement instruments that could help quantify the amount of cases in which citizens are stopped (partly) on the basis of skin colour, race or alleged migrant background.⁸⁶

This in itself is concerning, since the goal should be to reduce the frequency with which individual citizens are being stopped relative to the average frequency with which citizens without visible ethnic origin and/or skin colour are being stopped. An unawareness of the degree to which generalizations and ethnic stereotypes drive an increased risk of being stopped for certain groups of citizens, is thus being maintained.

An additional reason for concern is that the police define ‘ethnic profiling’ as unlawful only when the condition of ‘disproportionality’ is fulfilled, as mentioned above.⁸⁷ This implies that to arrive to the conclusion that profiling occurs in an unlawful fashion, data gathering needs to take place, in which the police force will not take part at present.

The Central Bureau for Statistics of the Netherlands, CBS, has access to police suspect registrations and frequently issues publication in which those ‘suspect registrations’ are coupled to citizen’s country of birth and the country of birth of (one of) their parents and or grandparents. Such studies in which correlations are shown between country of origin and crime rates have been published by CBS and other government bodies since the 1990s.⁸⁸ In these studies, a selection of countries of origin are individually mentioned (like Morocco, Suriname and Turkey) while other citizens are grouped under one collective category, labelled ‘Dutch’.⁸⁹

Repeatedly, government advising bodies have expressed their concern about the categorisations in government statistics along citizens’ national origin (namely: place of birth

⁸⁴ <http://www.websitevoordepolitie.nl/nieuws/het-beste-tijdschrift-voor-de-politie-artikel-1483.html>.

⁸⁵ Amnesty International, *Proactief politieoptreden vormt risico voor mensenrechten. Etnisch profileren onderkennen en aanpakken*, 2013. See also the remark of a member of leading political party VVD about the increased risk: “it’s just how things are”, <http://www.joop.nl/videos/halbe-zijlstra-over-etnische-profilering-typhoon-hoort-er-gewoon-bij>

⁸⁶ <https://www.politie.nl/nieuws/2016/oktober/3/rapporten-onderbouwen-aanpak-etnisch-profileren.html> Letter from the minister of justice to the lower house, on racial discrimination, 4 October 2016, 30950, nr. 105

⁸⁷ <https://www.politieacademie.nl/overdepolieacademie/politiedebat/Paginas/Etnisch-profileren-25-oktober-2016.aspx>

⁸⁸ Letter from the minister of justice on crime related to the integration of ethnic minorities (“Criminaliteit in relatie tot integratie van etnische minderheden”), 4 November 1997, 25726, nr.1 Jennissen, R.P.W. e.a., *Allochtonen en autochtonen verdachten van verschillende delicttypen nader bekeken*, July 2007, CBS; CBS annual report on integration “Jaarrapport Integratie 2008”, November 2008; CBS and WODC, *Monitor Jeugdcriminaliteit, Ontwikkelingen in de jeugdcriminaliteit 1997 tot 2015*, March 2016; CBS, *Verkenning niet-westerse derde generatie (study on third generation non-western citizens)*, February 2010.

⁸⁹ CBS annual report on integration “Jaarrapport Integratie 2016”, November 2016.

of themselves, their parents and/or grandparents).⁹⁰ Although throughout the years members of the cabinet have acknowledged the risk of stigmatisation and generalisations as a consequence of abovementioned classifications,⁹¹ the government and the Central Bureau for Statistics continue their categorisations in crime statistics to the present day.⁹² In occasional studies, the Bureau explores possible underlying reasons for overrepresentation of certain minority groups in crime statistics. In those cases, the Bureau limits its investigation to only a couple of variables that partly explain the overrepresentation,⁹³ but leaves out possible other variables (among which the increased focus of police on certain minority groups is just an example).

Until now, no research has been conducted by governments or CBS to study the extent to which suspect registrations may have been affected by (ethnic) profiling by the police. This bias in choice as to what topics are subject of government research is concerning, not in the least because the government agenda of study topics has a degree of influence on the choices made in media reporting. Illustrative for this bias are the remarks of CBS's editor-in-chief: "we have to listen more to the questions of government departments and society" and "if a study fails to raise interest, then we should stop it".⁹⁴

The NGOs respectfully recommend the Committee to urge the Netherlands to eradicate any form of police profiling which results in a considerably higher risk for citizens from an apparent non-Dutch ethnic origin to be stopped without a reasonable suspicion.

The NGOs respectfully recommend the Committee to call upon the Netherlands to implement clear policies aimed at reducing the risk of police officers justifying their stop and search powers by the alleged overrepresentation of minorities with foreign origin in crime statistics.

The NGOs respectfully recommend the Committee to call upon the Netherlands to provide detailed statistical data disaggregated by ethnicity and community origin in order to track the degree with which people with an ethnic foreign background are more likely to be stopped without a reasonable suspicion.⁹⁵

The NGOs respectfully recommend the Committee to call upon the Netherlands to

⁹⁰ Raad voor Maatschappelijke Ontwikkeling (RMO), *Polariseren binnen onze grenzen*, 29 October 2009, Raad voor Maatschappelijke Ontwikkeling (RMO), *Migratie en classificatie: naar een meervoudig migratie-idiom*, November 2016. Dierx, Janny e.a., *Verwerken van persoonsgegevens over etnische herkomst - Verkenning onder achttien gemeenten*, 7 July 2010. Ham, Marcel, Meer, Jelle van der, *De etnische bril - Categorisering in het integratiebeleid*, February 2012.

⁹¹ Letter from the minister of justice on crime related to the integration of ethnic minorities ("Criminaliteit in relatie tot integratie van etnische minderheden"), 4 November 1997, 25726, nr.1. Letter from the minister of justice on youth crime, 13 December 2002, 28741, nr. 1. Letter from the deputy minister of social affairs and employment, 27 April 2004, 29544, nr. 1.

⁹² Lastly, in the CBS annual report on integration "Jaarrapport Integratie 2016", November 2016.

⁹³ CBS, *Verdacht van criminaliteit - allochtonen en autochtonen nader bekeken*, May 2015.

⁹⁴ CBS editor-in-chief Mike Ackermans, <https://decorrespondent.nl/3913/ook-onze-statistiek-wordt-nu-bepaald-door-de-waan-van-de-dag/150435285-ecf26f15>.

⁹⁵ See also the Concluding observations on the nineteenth to twenty-first periodic reports of the Netherlands, 27 August 2015, from the Committee on the Elimination of Racial Discrimination, p.3.

motivate its choice to not investigate the degree to which ethnic profiling may have affected its crime reports in which a selection of minority groups are categorized.

Article 27

Legislation on integration

The Dutch NGOs welcome the initiative of the Dutch Government in the past years to improve the disadvantaged position of ethnic minorities in the labour market by putting in place an Action Plan Discrimination in the labour market (*Actieplan Arbeidsdiscriminatie*).⁹⁶ A recent report shows that in 2015, the employment participation of non-Westerns migrant rose to 55% in comparison to early years, and for non-migrants is this number, 67%.⁹⁷

However the Dutch NGOs believe that the legislation on the integration of migrants, which came into force in 2013, remains a limiting instrument within the policy as regards migrants, because of the excessive obligations. In this legislation, there is a requirement for a preliminary test before one's arrival in the Netherlands, which is specifically intended only for non-Western migrants. Migrants in the Netherlands are under an obligation to take part in a test on integration within 3 years, with a possibility for a prolongation of this period. Cases where a prolongation can be granted include among others, cases where asylum seekers' stay in an asylum centre is extended, cases of sicknesses, pregnancy etc. The Dutch Government's involvement in this process has been reduced with a consequence that the migrants are left on their lot. The full responsibility with regard to this test lies with the migrants as well as the payment of the fees to this regard. Only asylum seekers can get a refund of the paid fees when succeeded in the test, while this is not the case for other migrants. We notice for example, that the number of asylum seekers who passed this test in the first 3 years is low 42%, and this is 70% in case of other migrants⁹⁸

Also migrants, asylum seekers in particular, often comprise a diverse group of different people and this test is not adapted to their particular differences in order to help them succeed therein. Thus, this legislation still fails to provide effective measures to improve the disadvantaged position of migrants and leads also to a breach of the principle of equal treatment stated in Article 26 of this Convention.

The NGOs respectfully recommend the Committee to urge the Netherlands to strengthen the existing measures and develop further policies for the improvement of the labour market position of ethnic minorities.

⁹⁶ See, *het Actieplan arbeidsmarktdiscriminatie en kabinetsreactie SER advies 'Discriminatie werkt niet'*, Kamerstukken II, 2013 – 2014, 29 544, nr. 523, available at, <https://www.rijksoverheid.nl/documenten/kamerstukken/2014/05/16/kamerbrief-actieplan-arbeidsmarktdiscriminatie-en-kabinetsreactie-ser-advies>.

⁹⁷ See Centraal Bureau voor de Statistiek (*Statistics Netherlands*), November 2016.

⁹⁸ See, Tweede Kamer, Vergaderjaar 2016-2017, 32 824, nr. 174/ <https://kamerbrief-over-voortgang-inburgering.pdf>, See also Rapportage *Verdiepend Onderzoek Inburgeraars, Starters Eerste en tweede kwartaal 2013*, MWM2, available at, <https://www.rijksoverheid.nl/documenten/rapporten/2016/11/28/rapportage-verdiepend-onderzoek-inburgeraars>

The NGOs respectfully recommend the Committee to urge the Netherlands to consider more effective measures for the improvement of the legislation on integration in the light of relevant treaty provisions