

THE NETHERLANDS

UN HUMAN RIGHTS COUNCIL
UNIVERSAL PERIODIC REVIEW
SECOND CYCLE - 2012

This report is submitted on behalf of the following independent organisations:



Commissie Gelijke Behandeling

The Equal Treatment Commission (*Commissie Gelijke Behandeling*) is an independent institute which supervises the compliance with equal treatment legislation. It promotes awareness and develops standards for equal treatment by means of advisory reports or research. The ETC provides opinions and advice. The ETC currently holds the National Human Rights Institute B-status within the International Coordinating Committee of national institutions for the promotion and protection for Human Rights (ICC).



The National Ombudsman of the Netherlands is an independent institute tasked to give individuals an opportunity to lodge complaints about the practices of government before an independent and expert body. The Ombudsman and his role are enshrined in the Dutch Constitution. The Ombudsman oversees complaints procedures, initiates own motion investigations, and has at his (or her) disposal a wide range of measures that can help guarantee the effectiveness of human rights.



The Ombudsman for Children (*Kinderombudsman*) in The Netherlands is in office since 1 April 2011. Its task is to monitor the implementation of the International Convention on the Rights of the Child in The Netherlands. The Ombudsman for Children advises the government and Parliament on legislation and policies concerning children and has the authority to handle individual complaints.



The Dutch Data Protection Authority (*College bescherming persoonsgegevens, CBP*) supervises compliance with legislation regulating the use of personal data. The CBP primarily supervises compliance with and application of the Dutch Data Protection Act (*Wet bescherming persoonsgegevens, Wbp*) and the Police Data Act (*Wet politiegegevens, Wpg*).

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A. Introduction and developments National Institute for Human Rights¹

1. The Dutch Equal Treatment Commission (ETC), in its capacity as a human rights institute (B-status), welcomes the opportunity to contribute to the Universal Periodic Review (UPR) Process. For this contribution, the ETC also invited other independent human rights organisations to voice their concerns. Each paragraph is accompanied by the logo of the organisation that has raised its concerns. With this submission, the parties hope that the UPR working group will bring their concerns and recommendations to the attention of the Dutch Government.

2. Generally speaking, the level of respect for human rights in the Netherlands is high. A good legal framework is in place. However, issues do emerge about its implementation in practice. The Netherlands has its role to perform in safeguarding human rights. Yet, it is noted that European Union legislation has a growing importance on the implementation of human rights issues, such as asylum and migration, the fight against crime and terrorism, and privacy.

3. This contribution cannot cover all human rights aspects in the Netherlands. This report is based on the recommendations to the Netherlands from the first UPR-cycle and recent developments in the human rights situation on the ground.

Towards a National Human Rights Institute

4. In 2010 the Dutch Government introduced a bill in Parliament proposing the establishment of a national institute with a comprehensive human rights mandate. The bill was approved by the Senate on 22 November 2011, enabling the Act to become effective and paving the way for the Netherlands Institute for Human Rights, which is to become operational in 2012. The ETC has been appointed “quarter master” for the preparations for the establishment of the Institute and will merge with this Institute.

B. Tolerance and diversity in the political and social debate²



5. A multiform society that guarantees human rights and tolerance requires more than just combating discrimination; other forms of exclusion and negative stereotyping must also be countered. Discrimination cannot be fought with legal bans, criminal prosecution or civil proceedings alone. Preventing discrimination is important for creating a favourable climate for realizing human rights and includes striving towards a climate of tolerance and respect for diversity, alongside the value in providing balanced information.

6. In the Netherlands, human rights are often absent in public debate, even when this debate concerns themes that are directly relevant to human rights.³ There is a very lively debate on themes such as the multicultural society, the (supposedly) primacy of Dutch culture, the freedom of religion, separation between church and state, the integration of minorities and the admission of foreign nationals. In the public debate, too little attention is paid to nuanced data on integration and immigration. Subjects like the ‘islamisation of the Netherlands’ and ‘mass immigration’ drive negative sentiments against some groups in society. Generally, the fierceness of the debate is attributed to the minority policy of the past century which underestimated the importance of integration, combined with increasing populism in the 21st century.

7. In an analysis of public sentiment in the Netherlands, the Netherlands Institute for Social Research (SCP)⁴ notes a change from traditionally open progressive convictions to a conservatism that wants to guard contemporary achievements against exterior influences. Also, ties between the media and politics are tighter in the Netherlands than they are in other countries, which could tempt politicians to focus on short-term rather than long-term politics.

8. Although the Government emphasizes that participation, commitment and solidarity in society are expected from all citizens, stricter requirements apply to certain minority groups, particularly those with very specific problems.⁵ The risks of generalisation of these problems and the stigmatising effects lie in wait.⁶ This is aggravated by the frequent and unnecessary use of ethnic categories in official

statistics. The unintended effect is that these strongly emphasise and reinforce ethnic differences in society.

9. The position of immigrants and migrant workers in the Netherlands merits special attention. For instance, the National Ombudsman (*Ombudsman*) drew the attention of the Minister of Social Affairs and Employment to an instance of discriminatory government communication. His ministry had issued a press release under the title: "The Polish have to pay their taxes too". This type of generalized communication about a group of people is discriminatory and unacceptable, particularly from a government source. The Minister accepted the criticism and corrected the press release.

10. Various authoritative bodies have warned against the social implications of a harsher parliamentary debate in the Netherlands. The Government should lead by example in debates and make every effort to prevent a one-sided negative image of minorities and migrants and rousing public sentiment in policy, legislation and public statements by ministers. It is important to take a firm stand in matters of discriminating policies by official institutions.⁷ The same applies to politicians who use incorrect data to feed islamophobia.⁸

11. In his annual report for 2009, the Ombudsman reflected on escalation and de-escalation in the resolution of disputes.⁹ De-escalation is an important issue in the relationship between government and citizens in the Netherlands. It is essential for professionals who are employed by administrative agencies to have the authority and ability to de-escalate conflict where it arises.¹⁰

The ETC and Ombudsman recommend that the Government promote tolerance, respect for diversity and balanced information by:

- Conducting fact-based political debates;
- Presenting a broader perspective in discussions involving foreign nationals and minorities;
- Firmly and publicly rejecting discriminating policy proposals by public institutions;
- Tackling islamophobia by countering misrepresentation of facts by politicians.

C. Freedom of religion



Restrictions of freedom of religion

12. Freedom of religion has come under pressure in Dutch society.¹¹ Freedom of religion is no longer automatically privileged over other fundamental rights and interests. To illustrate, there have been proposals to ban ritual slaughter and face-covering clothing in public areas, and a discussion on civil registrars¹² who refuse to carry out wedding ceremonies of persons of the same sex. There has also been a call for a stricter maintenance of the separation of Church and State.¹³ In the Netherlands there is – especially at the local level – no strict separation between Church and State.¹⁴ The separation between Church and State is to be understood in the Netherlands that no religion is privileged and all religions are treated equally by the government.

13. Debate is important for democracy and the concepts of freedom of religion and separation of Church and State need new interpretation in view of recent developments. However, proposals for a drastic restriction of freedom of religion by a secular majority, that sometimes overlook the interests and feelings of religious minorities, are a cause for concern. It is a challenge to find a balance between the various rights and interests and to make careful considerations.

Dress code an obstacle¹⁵

14. The ETC is concerned because Muslim women looking for jobs or internships may suffer from discrimination due to the fact that some private and public sector organisations ban headscarves in the workplace.¹⁶

15. The Dutch Government does little to make people understand that wearing a headscarf, yarmulke or turban for religious purposes is a right that results from the freedom of religion. This right cannot easily be overridden by other interests such as 'representation' or 'neutrality'. In some public office there is a general dress code. This affects in particular civil servants who visibly express their religious beliefs. Such codes or regulations could exclude certain groups from these positions. Religious headgear cannot be banned, unless it interferes with the proper performance of tasks. While in special public services, such as the police, the government has the freedom to decide upon the necessity of a

particular dress code for purposes of neutrality and representation, this should always be decided in light of fundamental human rights in a multiform society.¹⁷

The ETC recommends that the Government exert restraint in establishing dress codes in its services, and must investigate if and how this excludes women.

D. Access to Justice and Court fees



16. Without equal access to justice the realization of other (human) rights is at risk. The legal empowerment of citizens to challenge decisions and actions of public authorities is central in promoting a strong culture of human rights. As such the creation of barriers to justice is inherently problematic from a human rights perspective.¹⁸ The current Dutch Government has proposed to raise court fees significantly. Raising court fees is a barrier in its own right, but another problem looms. Starting a legal procedure or becoming a defendant in appellate proceedings carries the risk of unforeseeable financial consequences, because the party who loses the procedure may be ordered to compensate the other party for the court fees. Especially in procedures of administrative law, the outcome can be difficult to predict. So the argument that people can use their own judgement as to whether or not to start legal proceedings is problematic.

17. When citizens cannot defend themselves against an unjust decision by public authorities, they risk losing their trust in the legal system altogether. In addition the realistic possibility of going to court has a much broader effect in terms of the quality of decision-making by public authorities. It also plays an important role in mediation or other informal forms of conflict resolution. Court procedures also generate important normative guidance for public authorities and a clear incentive for better performance.

The Ombudsman recommends that the Government ensure access to justice for everyone regardless of economic status and should promote the legal empowerment of citizens vis-à-vis the Government.

E. Conduct of governmental agencies



Police violence

18. The National Ombudsman frequently deals with complaints about handcuffing and the use of police dogs.¹⁹ Over the years he has drawn attention to this issue.²⁰ The police and Public Prosecution Service use their statutory powers to the limit. The National Ombudsman regards this practice as an example of the hardening of relations in society. There is a tendency to criminalize interactions that are to some extent part of normal societal relations.²¹ Research has shown that, over the past 25 years, relations between the police and the public have hardened. People are less inclined to obey the instructions of the police, and the issuing of fines or filing of reports without any form of questioning is more likely to lead to debate and an escalation of the situation. The police seem to have a policy of imposing on-the-spot penalties, which results in the escalation of many situations to the point where the police have to resort to violence by physically restraining people and applying handcuffs. Increasingly, the police seem to regard handcuffing as standard practice, while in fact they are allowed to apply handcuffs only if there are particular reasons for doing so. The same applies to the use of police dogs.

The Ombudsman recommends that the Government ensure that:

- police officers are sufficiently empowered to de-escalate conflict wherever possible;
- all instructions are compliant with relevant human rights provisions; and
- practices that have human rights dimensions, such as handcuffing and the use of police dogs, are applied with restraint.

Preventive Body Searches

19. Every year over 50,000 people are submitted to preventive body searches in the Netherlands. The National Ombudsman, together with the municipal ombudsman of Amsterdam and Rotterdam, investigated the use of the instrument of preventive body searches. The basic assumption in preventive body searches is that they are applied randomly to all citizens. In practice there is a need

for selective searches. The basis for selection however, can never be race or religion. The report shows that it has become very unclear who is responsible for guaranteeing that this does not happen. The conclusion of this investigation is that in the operations that use preventive body searches, the fundamental rights of citizens, especially the right to privacy and physical integrity, need to be better safeguarded. These rights may not be superseded by the need for efficiency in the use of this instrument. Concretely the report argues for an *ex ante* assessment of the purpose of the operation, to enable better evaluation *ex post*.²² The three Ombudsmen jointly argue the need for clear criteria and a more active role for the public prosecutor.

The Ombudsman recommends that the Government ensure that in its application of preventive body searches, all relevant human rights are adequately protected, in particular the right to privacy and physical integrity and the prohibition of discrimination on the basis of race and religion.

Schengen Information System

20. The Schengen Agreement allows people to travel between 25 European countries without border controls. The Schengen Information System (SIS) was introduced to ensure that people who should not be permitted to enter the Schengen Area are stopped at its border. An alert issued for a third country national in this system means that he or she will be denied entry to Schengen countries for several years. In this sense, the system is a blacklist that has major implications. The National Ombudsman conducted an investigation into the practical implementation of the Schengen Information System.²³

21. Registration in the SIS has far-reaching implications. On arrival, visitors can be unpleasantly surprised by the fact that an alert has been issued for them in the Schengen Information System, meaning that they have to leave immediately or be placed in detention.²⁴

22. The Ombudsman's investigation revealed that it is unclear who decides if registration in the system is justified, and when. Given the far-reaching implications that registration in the SIS may have for individuals, it is important to ensure that no one is inaccurately or wrongfully registered in the system. No such guarantees are in place in the Netherlands. Two other problems were identified. Namely, the proportionality of registering an individual in the SIS is not considered with sufficient care and the legal position of those registered in the SIS is not adequately safeguarded. The decision to register someone in the SIS must be made known to the person concerned, and it must also be clear to them how they can contest wrongful or inaccurate alerts.

The Ombudsman recommends that the Government take measures to guarantee that no one is inaccurately or wrongfully registered in the Schengen Information System. The Government should take measures to ensure that the decision to register someone in the Schengen Information System is communicated to the person concerned accompanied by the information on how to contest such a decision.

F. Counterterrorism measures and privacy

*Counterterrorism measures in relation to data protection and other human rights*²⁵

23. Counterterrorism measures are important for the security of the Netherlands and its citizens. In response to terrorist attacks inland and abroad, the Dutch Government has responded with new legislation and many measures to extend police and judicial powers. This has its effect on the protection of the private lives and personal data of all citizens and residents of the Netherlands.

24. Personal data are stored in many databases, varying from the API-data to the phone numbers called at specific moments in time. So far, it has not been completely clear who has access to which databases and for what purposes. Nor are there clearly defined retention periods. Furthermore, data may be interlinked either by a physical or logical link between databases, or because the same person has access to several databases and could thus combine data about a specific person. Risk analysis is often carried out on the basis of profiles. This may result in false hits, when a person may fall within the scope of the criteria of the profile, but is still exempt from the result.²⁶ The large scale collection of data and the use of profiles to put people under extra surveillance or other measures bring about serious risks of infringements of the right to privacy.

25. The Dutch Government has recently evaluated the legitimacy and effectiveness of counter-terrorism measures over the past ten years. It remains, however, important to assess measures and practice on its human rights implications prior to developing new legislation and policies and while implementing existing measures. Counter-terrorism measures are particularly targeted on Jihadism, which may result in a particular focus on Muslims. It needs to be stressed that counter-terrorism measures need to be in line with the principle of non-discrimination. Also, the new counter-terrorism strategy has placed a particular focus on migration and travel movement. These measures need to be in line with the principle of non-refoulement and art. 3 ECHR. Furthermore, there is a shift to a more pro-active and preventive approach, in which penal and administrative action and measures can be taken against persons who are not suspects in the sense of criminal law. These measures create concern in view of respect for family life, the principle of habeas corpus, and the right to a fair trial.

The Data Protection Authority recommends that the Government continually assess counter-terrorism measures and practice on its human rights implications and decide on the continuation of the applicable legislation.

Privacy

26. The Dutch Parliament is increasingly aware of privacy risks in policy and projects that involve the large-scale collection of personal data.²⁷ Interest in privacy protection among Dutch citizens is growing, as the media show.²⁸

27. Privacy protection in our digital society is largely concerned with the prevention of unreliable profiles of individual citizens.²⁹ Such profiles may arise if there is a lack of context to personal data, if there are insufficient guarantees for data accuracy or if citizens have too little control over the digital imaging.³⁰ Citizens are obliged to submit a large number of personal details to the government. The government also gathers data from private parties, and links personal data without informing citizens. This leaves citizens unable to exert their right of access, rectification or deletion.

28. Government proposed policy that involves large-scale processing of personal data focuses on achieving the intended goal and presupposes that data processing is an effective means to reach this. The Scientific Council for Government Policy (WRR) observes that in recent years the government has failed to take into account the enormous growth of databases with personal data on citizens and of the information exchange between many government organisations and also with private parties.³¹ This has drastically changed the relationship between government and its citizens, and requires structural attention, according to the WRR.

Citizen privacy and its infringement are given little thought in policy. In March 2011, the WRR urged the government for an ex-ante analysis of privacy risks when planning large-scale data processing systems and using previously collected data, linking and enriching or making pro-active use of collected data, and to explicitly involve these risks in policy considerations.

The Data Protection Authority recommends that the Government design a mode of operation to allow for ex-ante analysis and consideration of privacy risks.



The public sector in the digital era

29. On several occasions in 2011, the National Ombudsman called attention to the security³² and reliability of the digital interactions between public institutions and citizens. A number of complaints were received from citizens whose personal information in government systems is incorrect. The Ombudsman argues for the right of citizens to consult and correct their personal information that is registered in government systems. Often multiple agencies are involved and they use and re-use data from joint systems.³³ The right of citizens to complain and be heard must be guaranteed in such cases and a system for compensation for negative consequences should function properly.³⁴

The Ombudsman recommends that the Government give citizens a generalized right to consult and correct the registration of their personal data in government systems. The Government should be forthcoming to individuals who suffer negative consequences as a result of system-errors and security breaches of government systems.

G. Anti-discrimination policy³⁵

30. Since September 2010, the Government has sent Parliament several letters on anti-discrimination policy in general.³⁶ The Government has decided to adopt a decentralized approach to discrimination, based on the idea that discrimination is mainly a local problem. One of the instruments is the obligation of municipalities to create an anti-discrimination desk where citizens can lodge complaints about discrimination. Furthermore, the Government and the Association of Netherlands Municipalities (VNG) have written a manual for the municipalities on how to tackle discrimination. However, the Government has failed to sufficiently check whether the implementation of its policy approach has been successful in preventing and combating discrimination at local level.

31. The Government's general anti-discrimination efforts focus on LGBT people (lesbian women, gay men, bisexuals and trans-genders) and on the Jewish community with regard to anti-Semitism. While the ETC appreciates these efforts, certain other vulnerable groups are missing such as people with a disability and ethnic minorities. They also face discrimination, e.g. in housing and in education.³⁷

In view of policy fragmentation, the ETC recommends that the Government monitor its decentralized approach to discrimination and evaluate the effects it has on all groups vulnerable to discrimination. It recommends that a coherent and broad plan of action tackling discrimination is put back on the political agenda.

H. Discrimination in the labour market

Racial discrimination³⁸

32. The Netherlands Institute for Social Research (SCP) has extensively researched³⁹ the scope and causes⁴⁰ of discrimination based on race and ethnic origin in recruitment and selection procedures. Even when candidates' qualifications and motivation are equal, employers tend to base their choice of applicant on their own biases regarding ethnic origin.⁴¹ The Dutch Government has recognized the issue of race discrimination in the labour market.⁴² At the same time, it has played down discrimination as the cause for unemployment amongst foreign nationals with a non-western background.⁴³ In response to the discrimination monitor survey it had commissioned, the Government announced in July 2010 that it would leave new anti-discrimination measures in the labour market to the next government.

These measures have still not been implemented; the Government merely summarizes ongoing research.⁴⁴ The many policy recommendations to employers made in the SCP survey on race discrimination in the labour market⁴⁵ have not been acted on.

33. Race discrimination by employment agencies is a concern.⁴⁶ A study in 2011 showed that 76% of all 187 employment agencies contacted for the survey were prepared to impose discriminatory requirements upon applicants, if the employer had specified particular unlawful preferences to the employment agency.

The ETC recommends that the Government:

- publicly and repeatedly voice its concern and disapproval regarding race discrimination in the labour market;
- make employers aware of their non-neutral selection behaviour and address their responsibility to select in an ethnically neutral manner, preferably supported by concrete agreements;
- take responsibility to enforce the ban on discrimination in the employment agencies sector.

Immigrant workers from the most recent EU member states

34. Working conditions in the Netherlands for many of the immigrant workers from Central and Eastern Europe (Poland, Rumania and Bulgaria in particular)⁴⁷ are poor. They form a vulnerable group in the labour market. According to a study on Polish immigrant workers⁴⁸ they are often exploited by shady contracting agencies, employers and landlords. Consistently poor working conditions and mala fide labour mediation threaten the right to work and to non-discrimination. Violation of human rights is evident where these employees are locked up and their passports seized by their employers.

35. The Government has an obligation to prevent and fight these kinds of human right violations. The Minister of Social Affairs and Employment recently presented policy measures to the Parliament. In view of the scale and urgency of the problems, the ETC welcomes an active approach by the Government.

The ETC recommends that the Government take an active approach towards implementing proposed policy measures that relate to the exploitation of migrant workers from other EU countries.

Equal pay for women

36. Women in the Netherlands structurally earn less than men, even after correction for factors such as age and job level.⁴⁹ ETC's survey into equal pay in general hospitals (2011) shows that differences in pay are significant throughout all (researched) positions and all hospitals, and are twice as often at the disadvantage of women. The survey shows which mechanisms cause pay discrimination, by application of pay criteria that are non-neutral, i.e. that do not relate to the value of the work.⁵⁰

37. There is no reason to assume that the pay situation in general hospitals is significantly different from the situation in Government organisations. The Government must pursue an active and strict policy to end unfair pay differences between men and women in government service, in order to be an 'excellent employer' and therefore a role model.

The ETC recommends that the Government organisations in their capacity as employers be audited for meeting all legal equal pay standards. It further recommends that the Government, in its capacity as legislator, oblige private sector employers to include information on equal pay in their annual reports.

People with disabilities

38. The Participation Monitor 2011 (NIVEL) concludes that participation levels on the labour market of persons with a disability have remained the same since 2006.⁵¹ New legislation such as the Disablement Assistance Act for Handicapped Young Persons (Wajong)⁵² and the Work according to Ability Act (WWNV)⁵³ aim to change this in order to allow people with disabilities to work to the extent possible, and to make them not dependent on benefits. However, without the right provisions, legislation alone will not help people with a disability find employment. Provisions are for instance financial compensation for the employer in relation to extra costs due to sick leave or a higher administrative burden.⁵⁴

The ETC recommends that the Government investigate adequate conditions (in legislation or otherwise) for employers to hire people with a disability under the Work according to Ability Act.

I. Children



Adolescent criminal law that applies to 16 and 17 years olds⁵⁵

39. The Netherlands has made a reservation with regard to the Convention of the Rights of the Child, namely that it 'accepts the provisions of article 37(c) of the Convention with the reservation that these provisions shall not prevent: the application of adult penal law to children of sixteen years and older, provided that certain criteria laid down by law have been met. (...).'

The current Government has announced its intention to create a criminal law for adolescents, between 15 and 23 years old. One of the consequences would be that the juvenile criminal law no longer applies to 16 and 17 year olds. For this group, maximum detention increases from two to four years. This is in conflict with the International Convention on the Rights of the Child, which states that juvenile law should apply to all minors up to the age of 18 and that detention of minors should be a measure of last resort and should be as short as possible.

The Ombudsman for Children recommends that sixteen and seventeen year olds be tried according to juvenile law and that the criminal law for adolescents will only be applied to youngsters from 18 to 23.

The protection of the interest of minors in Dutch asylum policies

40. The Ombudsman for Children recently received a number of complaints of children whose parents have requested asylum in the Netherlands. In many cases the parents of these children have been in the asylum procedure for many years. Consequently, these children have lived with uncertainty for a great part, if not all, of their lives. They are often well integrated in society, attend Dutch schools and have Dutch friends. Despite this fact, it happens that they are sent back with their parents to their country of origin, after living in the Netherlands for sometimes more than ten years. Research shows that many of these children are psychologically damaged by the uncertainty they live in and the continuing threat of having to leave the country. At this moment, it is not standard procedure that the interest of the child is - independent from the interests of the parents - taken into account by the Dutch Immigration Service when the asylum application of the parents is under consideration. The interest of the child, however, might not always be parallel to that of the parents, as children often are better integrated in Dutch society than their parents.

The Ombudsman for Children recommends that the Dutch Immigration Service independently considers the interest of the child, when an asylum request of the parents is under consideration. The level of integration in Dutch society of the child and the presence of (psychological) damage should be criteria that are used to judge the asylum request. This should be guaranteed for all children in this situation, by adjusting the asylum policy.

Child abuse

41. A recent study by the University of Leiden shows a high prevalence of child abuse in the Netherlands: 34 cases of child abuse on every 1000 children.⁵⁶ The researchers state that despite growing attention among the public, professionals and politicians, the number of cases of child abuse is not decreasing. The Ombudsman for Children is deeply concerned about the high prevalence of child abuse. The numbers show that efforts of the Dutch Government to tackle this problem have not been effective so far. The Government's main focus is on the increase of professionals reporting presumptions of child abuse.

The Ombudsman for Children recommends that more attention be paid to the prevention of child abuse. More research is needed to make clear how to effectively target risk groups, such as unemployed parents, low educated parents and parents who are psychiatric patients.

J. Human rights education⁵⁷



42. The UN launched a World Programme on Human Rights Education. In the first phase (2005-2007) it called on Member States to include human rights education in their primary and secondary education curriculums. Various conventions⁵⁸ oblige the Netherlands to take steps to incorporate human rights education⁵⁹ in its primary and secondary school curriculums. However, the transposition of this international obligation into Dutch legislation and regulations has been minimal. Human and children's rights are virtually absent in the teaching methods and in the formal curriculum in secondary education. Consequently, Dutch children know relatively little about human and children rights, as international surveys have shown.⁶⁰

43. According to the Minister of Education, Culture and Science, human rights education is an integral part of (statutory) citizen education.⁶¹ However, authoritative institutions such as the Education Inspectorate and the Educational Council have found that civic education lacks a general definition.⁶² It is shaped by individual schools and these are often unsure about what is expected from them. The Minister of Education has asked the Educational Council for advice on supporting schools in the further development of civic education. The Government also subsidizes the Curriculum Development Association and the Human Rights Education Platform to implement the Human Rights Education Stimulation Plan (2009-2012). Various products and services are being developed, including a citizenship and human rights education Framework Learning Plan.

The ETC, the Ombudsman and the Ombudsman for Children recommends that the government actively promote the outcome of the stimulation plan amongst primary and secondary schools. It also recommends a formalisation of human rights education.

44. The second phase of the UN World Programme on Human Rights Education (2010-2015) focuses on higher education as well as human rights training for teachers, civil servants, the police and the military.⁶³ Until now, the Dutch Government has no coherent training programme on human rights for civil servants in the public and civil sector. Yet it is these civil servants who are supposed to implement the Government's commitment to human rights.

The ETC, the Ombudsman and the Ombudsman for Children calls on the Government to make professionals in the public sector aware of the importance and relevance of human rights to their work through education and training.

K. Implementation or non-ratification



Non-ratification of the United Nations Convention on the Rights of Persons with Disabilities

45. The Government signed the UN convention on the rights of persons with disabilities and has expressed its intention to ratify the convention on number of occasions.⁶⁴ Article 18 of the Vienna Convention on the Law of Treaties stipulates that once a convention is signed, a state is obliged to refrain from acts which would defeat the object and purpose of the UN Convention. This is referred to as the '*stand still*' stipulation. People with a disability are currently facing a series of economic cutbacks that could put many of them at a serious disadvantage.⁶⁵ This calls into question whether the many cutbacks in the budget are not in fact contradictory to this *stand still* stipulation.

The ETC recommends that the Government takes an active approach towards the ratification and that the Government fully respects the *stand still* stipulation until then.

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The Optional Protocol to the Convention Against Torture and other Inhuman or Degrading Treatment (OPCAT)



46. The Netherlands ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in September 2010. It is expected that the Government will designate eleven inspections as the National Preventive Mechanism (NPM) for OPCAT. The Inspectorate for the Implementation of Sanctions will be responsible for the actual carrying out of the Protocol. However, in the opinion of the National Ombudsman, these inspectorates do not meet all the requirements that OPCAT sets out for NPMs. A second concern is that the Government has opted for a very limited interpretation of OPCAT, focussing only on people in criminal detention, while OPCAT has a much wider reach, including refugees and asylum-seekers, people in mental health care and several types of youth detention and treatment.

The National Ombudsman recommends that the Government critically examine whether the currently envisaged NPM mechanism meets the requirements of OPCAT. The Netherlands should broaden the scope of its considerations under OPCAT beyond just criminal detention to all places where people are held against their will.

Notes

- 1 This section relates to Recommendation 30 of the first UPR-cycle: (take necessary steps to establish a NHRI).
- 2 This section relates to Recommendations 4, 11, 13 and 28 of the first UPR-cycle.
- 3 Article in Dutch: *Verdwijnende mensenrechten in Nederland*, A.F.M. Brenninkmeijer, in: Nederlands Tijdschrift voor Mensenrechten/NJCM-Bulletin 2010, Volume 35, nr. 3.
- 4 'Stemming onbestemd' (Destination Unknown), Netherlands Institute for Social Research (SCP), March 2011. The SCP is an independent research agency that performs social and cultural studies for government policies.
- 5 Policy memorandum on 'Integration, binding, citizenship' of 16 June 2011 by the Ministry of the Interior. The *Landelijk overleg van minderheden* (National Consultation of Minorities) responded to this memorandum.
- 6 Thomas Hammarberg, Council of Europe Commissioner for Human Rights, refers to the connection between xenophobia, rhetoric targeting migrants and a more restrictive immigration policy. He pleads for sensible leadership versus the sad trend of populist rhetoric, a focus on burkas and minarets and shallow resentment that foreign nationals do not integrate properly (Speech during the Seminar Human rights challenges of migration in Europe, Istanbul, 17-18 February 2011).
- 7 So did the Minister of Education, Culture and Science, Ms van Bijsterveldt. She responded immediately when a school in Ede announced it was to refuse pupils from certain foreign backgrounds to stop overrepresentation of pupils with the same background (*De Volkskrant*, 17 October 2011).
- 8 So did the State Secretary Mr Teeven when he corrected a Member of Parliament who had suggested during a debate that the Dutch courts massively applied the Sharia (*Reformatisch Dagblad*, 30 September 2011).
- 9 An English summary of the Annual report 2009 is available at: <http://www.nationaleombudsman.nl/sites/default/files/no-summary-v3.pdf>.
- 10 This applies to the police of course, but also to situations in which people are dependent on government for benefits, permits or licences and the payment of taxes. All such issues touch upon the ability of people to realize their (human) rights.
- 11 Many religious groups complain about this, see for example: B. Oomen, J. Guijt e.a. (2009) '*Recht op verschil? Percepties en effecten van de implementatie van gelijkebehandelingswetgeving onder orthodox-protestanten in Nederland*. Onderzoeksrapport Roosevelt Academy'. (Right to be different? Perceptions and impact of the implementation of equal treatment legislation among orthodox Protestants in the Netherlands. Research Roosevelt Academy)
- 12 The ETC advisory opinion 2008-04 on Registrars with conscientious objections: "*Trouwen? Geen Bezwaar!*" (Getting Married? No objection!) played an important role within this discussion. The report is available in Dutch at: http://www.cgb.nl/publicaties/alle_publicaties.
- 13 See for instance Forum Masterclass, *Between principles and pragmatism*, 23 September 2010. This public debate inspired a hearing in the Parliament on the principle of the separation of Church and State, 15 September 2011.
- 14 See B.P. Vermeulen, *Vrijheid, gelijkheid, burgerschap* (liberty, equality and citizenship) The Hague, SDU Uitgevers 2007. VNG/Ministry of Interior and Kingdom Relations, *Tweeluik religie en publiek domein. Handvatten voor gemeenten*, (Diptych religion and public domain. Guidelines for municipalities) The Hague, March 2009.
- 15 This section relates to Recommendation 11 and 16 of the first UPR-cycle.
- 16 The ETC established that of all its opinions on the ground of religion (2006-2011), in the field of recruitment and selection of jobs 43% (15 out of 35) relate to the headscarf. From these headscarf cases, 67% (10 out of 15) is to be considered unlawful discrimination.
- 17 ETC advisory opinion 2007-08 '*Pluriform Uniform?*' as well as ETC advisory opinion 2011-08 (to be published) on the dress code within the Dutch Immigration and Naturalisation Service. Both reports are available in Dutch at: http://www.cgb.nl/publicaties/alle_publicaties.
- 18 The Dutch Council of State advises the Government and Parliament on legislation and governance. In their report on the proposed legislation they have underlined that measures that may limit access to justice need to be evaluated against the relevant human rights provisions. Ultimately this judgment is rendered by national and international judges.
- 19 For example in the reports 2011/108, 2011/224, 2011/264, 2011/269, 2011/277, 2011/293. In some of these cases the conduct of the police was judged to be proper, in others it was not. Report available in Dutch at: <http://www.nationaleombudsman.nl/rapporten>.
- 20 A.F.M. Brenninkmeijer and Y. van der Vlugt, *Principles of proper conduct as guarantee of human rights. The role of the National Ombudsman in the protection of human rights*. Published in English by the National Ombudsman, March 2009. This article was published in Dutch in the book: *Geschakeld recht, Verdere studies over Europese grondrechten ter gelegenheid van de 70ste verjaardag van prof. mr. E.A. Alkema*, by: T. Barkhuysen, M.L. van Emmerik and J.P. Loof (red.) Deventer: Kluwer 2009. (pp. 41-54).
- 21 A fight among school kids now sometimes leads to parents reporting this as a violent crime to the police. The police in turn respond immediately, and sometimes heavily.

22 Report in Dutch: “*Waarborgen bij preventief fouilleren. Over de spanning tussen veiligheid, privacy en selectie*” (safeguards for body searches. The tension between security, privacy and selection), <http://www.nationaleombudsman.nl/rapporten/2011/252>.

23 No entry, *Investigation of the registration of foreign nationals in the Schengen Information System and the provision of information in this connection*, Report no. 2010/115, 17 June 2010.

24 This happened, for example, to a young woman from the United States who came to The Netherlands to celebrate Christmas with her parents. A researcher at Radboud University in Nijmegen also faced problems as a result of an alert in the SIS when he wanted to return to The Netherlands to defend his PhD thesis.

25 This section relates to Recommendation 29 of the first UPR-cycle.

26 For example: his travel schedule and other criteria indicate Mr. X is a drug trafficker and as a consequence he has been registered in a border control system, while he is not a drug trafficker at all.

27 In 2011 the Parliament rejected government plans to store biometric passport data in a national database; in 2011 the Senate rejected government plans to facilitate the exchange of medical patient data through a national health carer information network.

28 De Pers 9-6-2011, *De glorieuze comeback van privacy* (The glorious comeback of privacy).

29 Prof. Y. Buruma, *Het recht op vergetelheid. Politieke en justitiële gegevens in een digitale wereld*, (The right to oblivion. Police and judicial data in a digital world), Chapter 5, *De Staat van informatie* (The State of information), compilation by the Scientific Council for Government Policy, March 2011.

30 Examples of the large-scale storage and linking of personal data include the registration by automatic number plate recognition (ANPR) along motorways, and the border control system at 15 border crossings that registers on camera not only car registration numbers, but that also stores images of vehicles and passengers. Reports of the installation of this new system were leaked in October 2011.

31 *iOverheid* (i-government), report by the Scientific Council for Government Policy, March 2011.

32 Another case in point is the Dutch Unemployment Agency (UWV) which required people to enter their resume in the online database of the UWV system, in order to qualify for benefits. Because they did not do enough to protect people’s privacy, personal information entered was freely accessible online (report 2011/191).

33 In the case of fraudulent applications by third parties for benefits the Dutch Tax Administration and DigID (the digital identification system of the Dutch government) referred to each other and took a technical stance by stating that there was no breach in security of the DigID. While perhaps technically correct such an approach disregards the impact that the abuse of private information has on individuals.

34 The Dutch Tax Administration has been all but forthcoming in compensating people who were confronted with such abuse.

35 This section relates to Recommendations 7 (discrimination of migrants), 11, 18 (policy plan to combat racism) and 28 (awareness-raising campaign) of the first UPR-cycle.

36 Letter to Parliament on the response to police data and action programme on the fight against discrimination (TK 32 123 VII, no. 74) and the Letter on tightening discrimination policies, dated 7 July 2011.

37 Data provided by anti discrimination agencies, 2011.

38 This section relates to Recommendation 7 (discrimination of migrants) of the first UPR-cycle.

39 *“Liever Mark dan Mohammed? Discriminatie op de arbeidsmarkt”* (Rather Mark than Mohammed? Discrimination on the labour market) SCP, 2010 (practical field survey for employers), The Hague; I. Andriessen e.a. (2007), *Discriminatiemonitor niet-westerse allochtonen op de arbeidsmarkt 2007, The Hague*, (Discrimination monitor for foreign nationals with a non-western background on the labour market 2007) SCP/Art 1, 2007; and the *Monitor rassendiscriminatie 2009 (Monitor Race discrimination 2009)*, Landelijk Expertisecentrum Art.1/Anne Frank Foundation/ Leiden University, The Hague 2010.

40 I.e. prejudices employers have about someone’s ethnic origin in relation to productivity, as emerged in the SCP survey *Liever Mark dan Mohammed* (2010) Ibid.

41 SCP 2010, *Liever Mark dan Mohammed*. Ibid.

42 Letter to Parliament of the State Secretary De Krom of the Ministry of Social Affairs and Employment to the presentation of the SCP study *Liever Mark dan Mohammed* on 13 April 2011: *‘Discrimination is entirely unacceptable. (...) People do have a right to equal treatment. It is a fundamental right.’* He talks about *“Equal treatment is an absolute condition”* for *“economic independence”*.

43 Letter to Parliament from the Ministry of Social Affairs and Employment to the Lower House in answer to questions from the Parliament about unemployment amongst people with a non-Western background, dated 6 April 2011.

44 Letter to Parliament by Minister Donner (Social Affairs and Employment) and Minister Middelkoop (Ministry of Housing, Neighbourhoods and Integration) of the previous Government to the presentation of the labour market monitors on 1 July 2010. The labour market monitor studies by SCP (2007, 2010) were commissioned by the Ministry of Social Affairs and Employment.

45 The recommendation to make employers aware of their non-neutral selection behaviour and to address their responsibility to select in an ethnically neutral manner, preferably supported by concrete agreements, has not been followed up. For the recommendations to employers see the SCP survey *Liever Mark dan Mohammed? Discriminatie op de arbeidsmarkt*. The Hague, 2010, p. 20-22.

46 This scientific study into discrimination by temporary employment agencies was performed by two students of sociology at the VU University, supervised by SCP researcher I. Andriessen (master’s thesis by Anne Backer and Evelien Loeters, November 2011. See *de Volkskrant*, 2-11-2011). The study shows that 76% of all 187 temporary employment agencies that were contacted were prepared to honour the discriminatory preferences expressed by the applicant employer. During these so-called field tests a fictitious call centre contacted 187

temporary employment agencies and specifically asked for staff other than persons with a non-Western background.

47 The Dutch borders are now open to Polish immigrants, but not yet to Bulgarians and Romanians. The latter qualify for a work permit only if there are no Dutch workers able to do the work. Consequently, many Bulgarians and Rumanians work in the Netherlands illegally.

48 See SCP (2011) *Poolse migranten. De positie van Polen die vanaf 2004 in Nederland zijn komen werken*; FNV. (Polish migrants. The position of Poles who have been working in the Netherlands since 2004).

49 ETC survey 'Onderzoek en oordeel Gelijke beloning van mannen en vrouwen bij de algemene ziekenhuizen in Nederland' (Equal pay in general hospitals) (2011). A summary of the report is in English available at: http://www.cgb.nl/publicaties/alle_publicaties. See also the study by Inge Noback-Hesseling (2011), *Regional labour market dynamics and the gender-employment gap* (dissertation Groningen University).

50 These criteria originate from factors that put men at an advantage, such as pay negotiations, guaranteed salaries, labour shortages and 'seeking alignment with the last salary earned' (ETC survey Onderzoek en oordeel Gelijke belonging) Ibid.

51 Nearly four in ten (38%) people with a minor disability is in paid employment for 12 hours a week or more.

52 Which came into effect on 1 January 2010.

53 Which will become effective in 2013.

54 Letter of Cedris (branch organisation for social employment and labour integration), dated 24 June 2011.

55 This section relates to Recommendation 10 of the first UPR- first cycle

56 IJzendoorn, R. van, (2011) *De Tweede Nationale Prevalentiestudie Mishandeling van Kinderen en Jeugdigen* (the second national prevalence study of maltreatment of children and youngsters), University of Leiden and TNO.

57 This section relates to Recommendation 19, 20 and 31 of the first UPR-cycle (intensifying human rights education)

58 As a partner to the ICESCR Treaty and the Convention on the Rights of the Child, the Netherlands has committed to providing education that contributes to knowledge about and respect for human rights (article 13 paragraph 1 and article 29 paragraph 1, respectively).

59 See the UN Action Plan on Human Rights Education: education on human rights should bring across the underlying fundamental principles, such as equality, non-discrimination and respect for human dignity. The UN Action Plan on Human Rights Education covers education, training and information aimed at creating a universal culture of human rights. This is about acquiring knowledge as well as learning skills required for the promotion, defence and application of human rights in every-day life. UN Resolution A/59/525/Rev.1.

60 *International Civics and Citizenship Education Study (ICCS) 2009*; Study by the International Association for the Evaluation of Educational Achievement (IEA).

61 See for instance Letter to the Parliament of 5 October 2011 in response to questions by members of Parliament Celik and Arib.

62 Inspectie van het Onderwijs, *De staat van het onderwijs. Onderwijsverslag 2008/2009* (2010) (State of the education. Education Report 2008/2009) , p.22 en 273-286 and Onderwijsraad, *De stand van educatief Nederland 2009 (the state of educational Netherlands 2009)*, Den Haag 2009.

63 UN Resolution A/59/525/Rev.1, 2nd phase on the implementation of the UN Action Plan on Human Rights Education. Also: A/HRC/RES/16/1 of 8 April 2011.

64 Most recently in a letter by the State Secretary of Health, Welfare and Sport addressed to the Parliament dated 7 November 2011.

65 Examples include: abolition of individual pupil funding, income ceilings on annual compensation for the chronically ill, lower care allowances, increase in health care insurances (own risk), changes in income-dependent health insurance premium, cutbacks on WSW facilities, lower kilometre budgets for Valys transportation, lower personal budgets, lower reintegration budgets, cutbacks in customised education and cutbacks in organisations that support people with a disability, such as MEE organisations, the CG Council and the *Expertise Centrum Handicap en Studie*.