

The Netherlands

Submission to the UN Universal Periodic Review

First session of the HRC UPR Working Group, 7-18 April 2008

In this submission, Amnesty International provides information under sections B, C and D (as stipulated in the General Guidelines for the Preparation of Information under the Universal Periodic Review):

In section B, Amnesty International raises concern over shortcomings in the ratification of international human rights standards, and reporting to the UN treaty bodies;

In section C, we describe human rights concerns in the context of counter-terrorism, asylum procedures, *refoulement*, discrimination and conditions of detention of irregular migrants;

In each section Amnesty International makes a number of recommendations in the areas of concerns listed.

B. Normative and institutional framework of the State

Ratification of international human rights standards

Amnesty International recommends that the Netherlands ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; the Optional Protocol to the Convention on the Rights of the Child, on children in armed conflict, and the Convention on the Rights of Persons with Disabilities; and should sign and ratify the International Convention for Protection of All Persons from Enforced Disappearance and the International Convention on the Rights of All Migrant Workers and Members of their Families.

Reporting to UN Treaty Bodies

Amnesty International notes with concern delays on the part of the Netherlands in submitting periodic reports to the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of All Forms of Racial Discrimination and the Committee on the Rights of the Child.

Amnesty International notes the commitment by the government of the Netherlands, in correspondence with Amnesty International in October 2007, to submit overdue reports “as soon as possible”.

Amnesty International considers that such delays hinder the monitoring of human rights obligations in the Netherlands, and recommends that the government should submit all overdue reports without further delay, and should submit future reports in a timely manner.

The government of the Netherlands does not systematically include in its reports to Treaty Bodies information on the implementation of human rights conventions in the overseas territories of the Kingdom of the Netherlands, namely Aruba and the Netherlands Antilles.

Amnesty International recommends that the Netherlands should include information on the implementation of human rights conventions in the overseas territories of the Kingdom of the Netherlands in its periodic reports to UN Treaty Bodies.

C. Promotion and protection of human rights on the ground

Counter-terrorism and human rights

New legislation with the stated aim of countering terrorism came into force in the Netherlands on 1 February 2007. The *Act on expanding the scope for investigating and prosecuting terrorist crimes* (Wet ter verruiming van de mogelijkheden tot opsporing en vervolging van terroristische misdrijven) provides for an increase in the maximum period of pre-trial detention for people charged with terrorism offences, up to two years. It also allows the prosecution to delay full disclosure of evidence to the person charged for the duration of this further period.

Under the legislation, the detainee would have the right to challenge periodically both the detention and the decision not to disclose evidence.

Amnesty International is concerned that this legislation may result in trial proceedings which do not meet international human rights standards, and recommends that it should be amended so as to ensure that the right to a fair trial for any individual charged with a terrorism-related offence is fully protected.

Asylum procedure

In May 2007 the UN Committee against Torture (CAT) recommended that the Netherlands should reconsider its position on the role of medical investigations in the asylum procedure, and should integrate medical reports as part of such a procedure.¹

Amnesty International recommends that the *Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (the 'Istanbul Protocol' – 1999) should be used in the asylum-determination procedure, as a valuable tool for the investigation and documentation of torture allegations.

In 2006 the Evaluation Committee on the Aliens Act 2000 (a governmental advisory committee) published its first report on the asylum procedure in the Netherlands.²

¹ See *Conclusions and recommendations of the Committee against Torture: The Netherlands, CAT/C/NET/CO/4*,

² See (in Dutch) *Evaluatie Vreemdelingenwet 2000: De asielprocedure*, <http://www.wodc.nl/onderzoeksdatabase/voorbereiding-nulmeting-evaluatie-vreemdelingenwet-2000.aspx#publicatiegegevens>

One of the main conclusions of the Committee was that the 48-hour accelerated procedure for processing asylum claims does not provide sufficient safeguards, and creates excessive time pressure. The Committee also considered that the regular procedure for processing claims was overly lengthy. It recommended that the two procedures should be merged into a single prompt and efficient procedure.

Amnesty International shares the concerns of the Committee, and recommends that the government of the Netherlands should introduce a prompt, efficient and fair procedure for processing asylum claims, which allows sufficient time for claims to be fully considered, including sufficient time for the consideration of appeals against initial refusal.

Refoulement

In January 2005 the Dutch authorities failed to prevent the expulsion from the USA to Syria, via the Netherlands, of Syrian national 'Abd al-Rahman al-Musa. He was not permitted to exercise his right to file an asylum application while on Dutch territory, despite warnings about his safety.

In June 2006 'Abd al-Rahman al-Musa was sentenced to death for membership of the Muslim Brotherhood, following an unfair trial before the Syrian Supreme State Security Court. His death sentence was immediately commuted to 12 years' imprisonment. He has reportedly been held incommunicado for most of his detention, but has eventually been allowed some family visits.

Amnesty International considers him to be a prisoner of conscience, held solely for his non-violent beliefs. In May 2007 the UN Working Group on arbitrary detention found his detention to be arbitrary, given "the gravity of the violation of the right to a fair trial".³

In the wake of this case, the Royal Dutch Constabulary (RDC) announced that it would amend its policy and respond to non-governmental organizations and lawyers intervening to prevent *refoulement* of asylum-seekers in future.

Amnesty International urges the Netherlands to take all necessary measures to protect the right of individuals on Dutch territory to file applications for asylum.

Combating discrimination

Responsibility for developing and implementing policies against discrimination and racism in the Netherlands has largely been delegated by the national government to local authorities. Research carried out by Amnesty International indicates that fewer than 10 per cent of municipal authorities have addressed discrimination and racism at a local level by adopting general policies or action plans.⁴ Fewer than 20 per cent of municipal authorities have

³ See 'OPINION No. 16/2006 (SYRIAN ARAB REPUBLIC)', *Opinions adopted by the Working Group on Arbitrary Detention*, 2 February 2007, [A/HRC/4/40/Add.1](#)

⁴ See (in Dutch) *Aanpak van discriminatie door Nederlandse gemeenten: 443 kansen voor verbetering*, Amnesty International, http://www.amnesty.nl/documenten/themas/discriminatie/AINL_antidiscriminatiebeleid_gemeenten_april2007.pdf

developed policies to combat discrimination and racism in specific areas of concern, such as law enforcement, employment or education.

The principle of non-discrimination is at the heart of the protection of human rights. Amnesty International's research indicates a failure on the part of municipal authorities in the Netherlands to act with due diligence to prevent and combat all forms of discrimination. The national government in the Netherlands does not systematically monitor and evaluate the implementation of policies which are aimed, at a national and local level, at protecting people from all forms of discrimination.

Amnesty International considers that the government of the Netherlands is therefore failing to ensure the implementation of relevant international human rights standards in relation to the prevention of discrimination.

Amnesty International calls on the government of the Netherlands to develop, implement, monitor and evaluate policies to combat all forms of discrimination, at both the national and the local levels.

Conditions of detention of irregular migrants

Amnesty International has voiced concern over an October 2005 fire in a temporary detention centre at Amsterdam's Schiphol airport. Eleven irregular migrants died and 15 others were injured in the fire. Approximately 350 people were being held in the complex when the fire broke out. The centre, which held both prisoners and irregular migrants, had caught fire on two previous occasions, the first being shortly before it was opened in 2003 and the second in 2004.

In April 2006 the independent Dutch Safety Board criticized the Minister of Immigration for the expulsion of survivors and other witnesses before they could be interviewed. Shortly before publication of its report, most survivors still in the country were granted residence permits⁵.

In September 2006 the Board reported on its investigation into the fire. The Board confirmed earlier concerns about unsafe detention conditions and found that safety recommendations had not been fully implemented, that guards lacked training and intervened inappropriately, and that other detention centres had similar deficiencies. It concluded that "there would have been fewer or no casualties if fire safety was taken more seriously by the government authorities responsible".

Following publication of the report, the Ministers of Justice and Housing resigned. Their successors announced reorganization of government departments, strengthened fire safety regulations, and offered to discuss compensation for the victims.

Amnesty International calls on the Netherlands to provide adequate compensation to all the survivors of the fire, including those who were forcibly expelled, and to the relatives of the deceased, irrespective of their legal status.

⁵ See *The Netherlands: Concerns about Schiphol fire need urgent follow up*, AI Index: [EUR 35/001/2006](#).

Appendix: Amnesty International documents for further reference

Conditions of detention of irregular migrants

- *The Netherlands: Concerns about Schiphol fire need urgent follow up*, EUR 35/001/2006,
<http://web.amnesty.org/library/Index/ENGEUR350012006>

General background

- Entry on the Netherlands in the Amnesty International Report 2007,
<http://thereport.amnesty.org/eng/Regions/Europe-and-Central-Asia/Netherlands>.
- Entry on the Netherlands in the Amnesty International Report 2006,
<http://web.amnesty.org/report2006/nld-summary-eng>.