

NETHERLANDS

**Protecting human rights
at home**

*Amnesty International
Submission to the UN Universal
Periodic Review, May-June 2012*

**AMNESTY
INTERNATIONAL**



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INTRODUCTION

In this submission, prepared for the UN Universal Periodic Review of the Netherlands taking place May-June 2012, Amnesty International comments on the implementation of recommendations the Netherlands supported during its previous UPR in 2008, concerning the rights of migrants, refugees and asylum-seekers, racial discrimination and human rights education.

As regards the Netherlands' normative and institutional framework, Amnesty International notes that the Netherlands needs to formally establish a national preventative mechanism for independent inspections of places of detention. Ratification of the Optional Protocol to the Covenant on Economic, Social and Cultural Rights, as well as the Convention on the Rights of Persons with Disabilities and its Optional Protocol is still pending. Human rights perspectives are rarely included in policy making and a national action plan on human rights needs to be more wide-ranging. There is a lack of effective engagement between government and civil society on human rights issues and human rights education remains a matter of choice of individual schools. Amnesty International welcomes the establishment of a National Human Rights Institution, but notes that it will lack litigation capacity for all human rights and is unlikely to be accessible in the Caribbean parts of the Netherlands.

The high level of detention of irregular migrants and asylum-seekers continues to give rise to concern, as do proposals to criminalize irregular entry and stay in the Netherlands.

FOLLOW UP TO THE PREVIOUS REVIEW

At the time of its first UPR in April 2008, the Netherlands accepted a number of recommendations made by other States on issues which are key to improving the human rights situation in the country, including on migrants, refugees and asylum-seekers;¹ racial discrimination;² and human rights education.³ Amnesty International regrets to note that many of the recommendations have yet to be implemented.

With regard to the issue of migrants, refugees and asylum-seekers, the Netherlands accepted a recommendation to "take appropriate measures to prevent the use of excessive force by security forces when forcibly repatriating migrants, refugees and asylum-seekers".⁴ However, since then Amnesty International has continued to receive complaints of ill-treatment during expulsion from the Netherlands, and regrettably, the organization's ability to investigate these cases has been hampered by the lack of transparency about investigations into allegations of excessive use of force by the authorities. It is a particular problem that the reports by the Commission for Comprehensive Supervision of Return (*Commissie Integraal Toezicht Terugkeer*), which monitors so-called "individual" removals, are not made public.

The Netherlands also accepted a recommendation to review the asylum determination procedure. Since then, the government has introduced amendments to the Aliens Act that provide for a new general eight-day processing procedure for asylum claims, with the possible extension to 14 days. Amnesty International is concerned, however, that the new procedure might not allow asylum-seekers, in particular those who have complex claims, to adequately substantiate their claims within the limited time allowed, thereby increasing the risk of their forcible return in violation of the principle of *non-refoulement*. Any fast-tracking of the asylum determination procedure must ensure that the decision-making process is fair and respects minimum procedural guarantees of due process.

As regards racial discrimination, the government accepted several recommendations to enhance efforts to combat discrimination. However, Amnesty International is concerned that such efforts continue to be hampered by the failure of the government to establish an integral and comprehensive action plan to combat discrimination. For further information, see the section below on non-discrimination.

In respect of human rights education, the Netherlands supported a recommendation to consider intensifying its efforts in this area. However, Amnesty International regrets to note that the Netherlands is still not fully complying with its international obligation to provide human rights education to Dutch school pupils. See below for further information.

NORMATIVE AND INSTITUTIONAL FRAMEWORK OF THE STATE

INTERNATIONAL HUMAN RIGHTS STANDARDS

Amnesty International regrets that the Netherlands has not yet formally designated or established a national preventative mechanism mandated to conduct independent inspections of all places where people may be deprived of their liberty. Such a body is a central element of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The government has stated that the existing inspection system meets the criteria of a national preventative mechanism, and the Inspectorate for Implementation of Sanctions is reportedly to be given a co-ordinating role between existing monitoring bodies. However, Amnesty International is concerned that even though the Inspectorate for Implementation of Sanctions operates relatively autonomously, it is still part of the Ministry of Security and Justice and accountable to the Minister of Security and Justice, and therefore cannot be regarded as fully independent.⁵ Moreover, it has no formal powers with respect to the other inspection bodies. Amnesty International is concerned, therefore, that this may not be able to give effect to the purpose and object of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

While welcoming the fact that the Netherlands was among the first 20 states to sign the Optional Protocol to the Covenant on Economic, Social and Cultural Rights, Amnesty International is concerned that the ratification process is currently stalled. Also, the Netherlands has yet to ratify the Convention on the Rights of Persons with Disabilities and its Optional Protocol.

Lastly, Amnesty International notes that the government frequently fails to provide consolidated reports pertaining to the various parts of the Kingdom, including all overseas territories, to the UN human rights treaty bodies.⁶ The Netherlands accepted a recommendation during the previous UPR to “ensure that information on the implementation of human rights conventions in the overseas territories be consistently included in reports to treaty bodies”.⁷

NATIONAL HUMAN RIGHTS FRAMEWORK

Amnesty International regrets that to date the Netherlands has shown no intention of developing a national action plan on human rights, to specify amongst other things guidelines for meaningful collaboration with human rights treaty bodies, directions for policy making, benchmarks for assessing progress and measures for evaluation. The organization is also concerned that the distribution of human rights competences between ministries and other parts of the government (like municipalities and inspectorate bodies) appears ambiguous. Most ministries do not have a human rights focal point, a human rights agenda, or a structured approach to addressing human rights concerns raised by international human rights bodies and national or international civil society organizations. Human rights have not been mainstreamed

into relevant areas of national and local government policy, and as a result human rights perspectives are rarely included in policy making.

Amnesty International further notes that there is no mechanism to facilitate regular substantive dialogue with civil society on human rights concerns in the Netherlands. Instead, meetings between government officials and civil society occur on an ad hoc basis. For example, although the Netherlands held consultations with civil society before submitting its national report to the first UPR of the Netherlands in April 2008, and its mid-term report in April 2010, these took place only a few days before the reports were submitted, which did not allow for effective and constructive engagement between government and civil society.

HUMAN RIGHTS EDUCATION

As noted above, the Netherlands is not complying with its international obligation to provide human rights education to Dutch school pupils. In 2009 the Committee on the Rights of the Child called on the Netherlands to "make sure that human rights and child rights education is included in school curricula at all levels".⁸ Recently, the Dutch government introduced a so-called incentives programme on human rights education.⁹ However, Amnesty International believes this programme falls short as it leaves individual schools to choose whether or not they want to provide their pupils with human rights education. The government has frequently argued that it is not pursuing an obligatory integration of human rights education in school curricula due to the importance it attaches to freedom of education in the Netherlands. However, it should be noted that the content of the school curriculum is still determined by the central government, so a mechanism exists to ensure that human rights education takes place. Further, it is ultimately the government which has the responsibility to ensure the adequate provision of human rights education, both with respect to the content of the curriculum taught in school, as well as the educational processes, pedagogical methods and the environment within which that education takes place.

NATIONAL HUMAN RIGHTS INSTITUTION

Amnesty International welcomes the fact that on 22 November 2011 the Dutch parliament approved a law for the establishment of a National Human Rights Institution. Amnesty International regrets, however, that the institution will lack litigation capacity with regard to all human rights violations¹⁰ and that most people living in the Caribbean parts of the Kingdom of the Netherlands will not have access to the National Human Rights Institution.¹¹

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

IMMIGRATION DETENTION

Though some progress has been achieved with respect to immigration detention in recent years, official figures show high numbers of asylum-seekers and irregular migrants being detained solely for immigration purposes.¹² In light of this, Amnesty International is concerned that little consideration, if any, is given to the necessity and proportionality of each decision to institute or continue someone's detention, leading to instances of unlawful detention.¹³ This is particularly the case when other means short of detention would suffice to pursue the authorities' legitimate objectives. Furthermore, Amnesty International continues to receive reports that vulnerable people are being detained, including victims of torture and of human trafficking, pregnant women, the mentally ill and the elderly.

Amnesty International also has concerns about the immigration detention regime and reports of unnecessary use of restraints. Under this regime many individuals detained for immigration

purposes have been locked in their cells for up to 16 hours a day, some have frequently been handcuffed; some have been made to wear restraining trousers during transportation; and some have been strip-searched several times.

NON-DISCRIMINATION

The government has stated on various occasions that it is opposed to discrimination in all its forms and on all grounds and acknowledges that discrimination threatens social cohesion and creates division in society.¹⁴ At the same time, however, the government has also stated that “[it] is primarily up to citizens of this country to free themselves from discrimination and prejudices” and that “countering discrimination is a civic duty”.¹⁵ The government has defined for itself mainly a supportive role to ensure the registration of discrimination complaints and when needed enforcement of the non-discrimination prohibition.¹⁶ The adoption of such a limited and merely facilitating role is in conflict with the obligation in international human rights standards to respect, protect and fulfill the principle of non-discrimination. This requires states, for example, to take temporary special measures to ensure equality of all in practice, to take proactive measures to address the root causes of discrimination and to promote greater tolerance and understanding. With its currently limited approach, the government also fails to address concerns about discrimination by the authorities, such as ethnic profiling by police and discrimination in the juvenile justice system, as brought to light in various studies.¹⁷

The Dutch General Equal Treatment Act (GETA) guarantees non-discrimination. It is not, however, fully consistent with regional and international standards of non-discrimination. It is anticipated that some of these shortcomings will be addressed by the amendments currently being debated in Parliament, for example, ensuring that a correct definition of direct and indirect discrimination is used in the Act; however, other shortcomings are still not being sufficiently addressed. These include the generally formulated exemptions granted to public institutions founded on religious principles to differentiate while recruiting personnel or providing education. Currently, the GETA provides exemptions on the basis of “maintaining” a religious ethos within the institution, while international human rights standards clearly demand a stricter test of necessity and proportionality.

In September 2011, the government announced that it was drafting legislation to ban the wearing in public of clothing that was intended to conceal the face. A violation of this ban could be punishable with a fine of up to €380. The ban would have a disproportionate effect on one particular group of the population: girls and women who choose to wear a burqa or niqab.¹⁸

CRIMINALIZATION OF IRREGULAR ENTRY AND STAY

Amnesty International is concerned about two separate draft laws which, if enacted, would sanction irregular entry and stay in the Netherlands, either via the imposition of administrative fines or imprisonment for non-payment of a fine.¹⁹

Various UN bodies, including the Office of the High Commissioner for Human Rights and the Special Rapporteur on the human rights of migrants, are opposed to measures imposing criminal sanctions solely in connection with irregular migration. The European Court of Justice ruled in April 2011 that EU Member States “may not, in order to remedy the failure of coercive measures adopted in order to effect a forced removal, provide for a custodial sentence [...] on the sole ground that a third-country national continues to stay illegally”.²⁰

If enacted, the legislation would make foreign nationals with an irregular immigration status in the Netherlands even more vulnerable to human rights abuses. It would also lead to their unnecessary criminalisation contrary to the principles of proportionality and effectiveness and the full respect for their fundamental human rights.²¹

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of the Netherlands to:

International and regional human rights standards:

- Establish a national preventative mechanism in accordance with the obligations under the Optional Protocol to the Convention against Torture, with sufficient resources and mandate in line with the Optional Protocol;
- Ratify the Optional Protocol to the Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention on the Rights of Persons with Disabilities;
- Provide single consolidated reports regarding all parts of the Kingdom of the Netherlands when reporting to UN human rights treaty bodies.

National human rights framework:

- Establish a national action plan for human rights;
- Ensure the effective and regular consultation between civil society and the government on current and structural human rights concerns in the Netherlands;
- Ensure the implementation of recommendations of all UN human rights bodies, including the treaty monitoring bodies.

Human rights education:

- Fulfill the state's obligation to provide human rights education to all school pupils.

National Human Rights Institution:

- Ensure that the National Human Rights Institution is accessible to all individuals in the Kingdom of the Netherlands, including all parts of the overseas territories.

Protection of migrants and asylum-seekers:

- Ensure that all allegations of ill-treatment and excessive use of force are independently, effectively and thoroughly investigated in line with international human rights law and that the outcome of the investigation is made public;
- Review its asylum legislation and procedures to ensure that all asylum-seekers, including those whose claims are being assessed under the accelerated procedure, receive a full and fair individualized determination of their claim;
- Take concrete measures to reduce the resort to detention of individuals solely for immigration purposes, in line with international refugee and human rights law and standards;
- Assess individually alternatives short of detention and apply these whenever possible;
- Introduce statutory provisions in law, policy and practice to prevent the detention of persons belonging to vulnerable groups;
- Treat those detained for immigration purposes humanely and in line with the strictest international human rights standards.

Non-Discrimination:

- Develop a national action plan to combat discrimination;
- Address concerns of discrimination by the government such as ethnic profiling, in order to

uphold the principle of non-discrimination;

- Withdraw draft legislation to introduce a complete ban of full-face veils in public;
- Amend the Dutch General Equal Treatment Act to ensure it is fully in compliance with regional and international standards of non-discrimination.

Criminalization of irregular entry and stay:

- Refrain from criminalization of irregular entry or stay which may leave irregular migrants more vulnerable to human rights abuses.

ENDNOTES

¹ Report of the Working Group on the Universal Periodic Review of the Netherlands, 13 May 2008 (A/HRC/8/31) paragraph 78.6 (Nigeria) and 78.24 (Mexico). See also the Addendum to this report, A/HRC/8/31/Add.1, 25 August 2008.

² A/HRC/8/31, paragraphs 78.7 (Algeria), 78.8 (Canada and Cuba) and 78.18 (Indonesia).

³ A/HRC/8/31, paragraphs 78.19 (Ghana), 78.20 (Algeria and Republic of Korea) and 78.31 (Saudi Arabia).

⁴ A/HRC/8/31, paragraph 78.6 (Nigeria).

⁵ For more information on the duties, role and powers of the Inspectorate for Implementation of Sanctions (Inspectie voor de Sanctietoepassing) see: <http://english.ist.nl/organisation/> (accessed 23 November 2011).

⁶ This is despite recommendations from several treaty bodies, see for example, the concluding observations of the Human Rights Committee on the Netherlands, CCPR/C/NLD/CP/4, 25 August 2009 paragraph 30; concluding observations of the Committee on the Elimination of Discrimination against Women, CEDAW/C/NLD/CO/5, 05 February 2010, paragraph 53; and the concluding observations of the Committee on the Rights of the Child, CRC/C/NCD/CO/3, 27 March 2009, paragraph 85. It should also be noted that the government failed to submit information regarding the Netherlands Antilles and Aruba to the Committee on the Elimination of Racial Discrimination.

⁷ A/HRC/8/31, paragraph 9 (United Kingdom, Russian Federation and Algeria).

⁸ CRC/C/NLD/CO/3, 2009, paragraph 62.d. See also the views of the Committee on the Rights of Child on the implementation of human rights education by States, in particular its views regarding Article 29(1) of the CRC as elaborated on in paragraphs 17 and paragraph 18 of the Committee's General Comment number 1 (UN Doc: CRC/GC/2001/1).

⁹ Universal Periodic Review, The Netherlands, National Interim Report, April 2010, paragraph 20; Ministry of Foreign Affairs, Human Rights Report 2009, March 23rd 2010, page 20 (in Dutch: Tweede Kamer 2009-2010, 31 263 nr. 42).

¹⁰ The Equal Treatment Commission, which will be transformed into the National Human Rights Institution, currently has litigation capacity for discrimination cases and will keep this capacity in the future. For the other human rights issues the institution will not get a similar litigation capacity. This results in different capacity and possible approaches to resolve different human rights violations.

¹¹ Aruba has the status of a country within the Kingdom. Curacao and Saint Maarten are constituent countries within the Kingdom. People living on these three Caribbean islands will not have access. People living on the other islands that are designated as special municipalities within the European part of the Netherlands – i.e. Bonaire, Saint Eustatius and Saba – will have access.

¹² For example, the highly criticized detention boats that were used by the Dutch government have been put out of practice and unaccompanied minors are in principle detained for a maximum of 14 days.

¹³ For further information (in Dutch) please see the Amnesty International Netherlands website: <http://www.amnesty.nl/mensenrechten/dossiers/vreemdelingendetentie> (accessed 14 December 2011).

¹⁴ Minister of Security & Justice and the Interior & Kingdom Relations, Policy letter on anti-discrimination, July 7th 2011, page 3. (In Dutch: Tweede Kamer, vergaderjaar 2010-2011, 30 950 nr. 34.)

¹⁵ Minister of Security & Justice and the Interior & Kingdom Relations, Policy letter on anti-discrimination, July 7th 2011, page 3.

¹⁶ Minister of Security & Justice and the Interior & Kingdom Relations, Policy letter on anti-discrimination, July 7th 2011, page 4.

¹⁷ Monitor Racial Discrimination 2009, Expertise Centre Art. 1, Rotterdam, 2010, pages 132 and 136 (research commissioned by the government); see also Peter R. Rodrigues and Jaap van Donselaar (eds.), "Racism and Extremism Monitor: ninth report", Anne Frank House/Leiden University, Amsterdam, 2010, page 131.

¹⁸ Dress can be a form of personal expression which can be protected by the right to freedom of expression or right to freedom of religion. Restrictions on these rights must be prescribed by law; pursue a specific and legitimate purpose permitted by international law and be demonstrably necessary, adequate and proportionate. The permissible legitimate purposes - ensuring respect for the rights of others or protecting certain public interests (national security or public safety, or public order, health or morals) – must be narrowly interpreted. Reference to any of these purposes must not be used to justify the imposition of restrictions on dress which some – even a majority – find objectionable or offensive. Amnesty International doubts that the proposed ban will meet these conditions. The draft law has not been made public yet.

¹⁹ Legislation to implement the EU Returns Directive includes provisions criminalizing illegal stay after a re-entry ban has been issued. The House of Representatives has adopted the draft which is now pending before the Senate. The Senate is

expected to vote on this before the 31 December 2011. A second piece of legislation, criminalizing illegal stay, has not been made public yet. It has been sent to the Council of State in September 2011 for consultation, and will subsequently be submitted to the House of Representatives.

²⁰ C-61/11 PPU, *El Dridi v. Italy*.

²¹ Amnesty International believes that current domestic legislation provides for sufficient instruments to regulate entry and ensure returns. Amnesty International believes that criminalizing irregular entry and stay goes beyond the appropriate use of the state's power to control its borders and address irregular migration.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE¹

Dealing with Difference: A Framework to Combat Discrimination in Europe, 1 July 2009, Index: AI 01/003/2009.²

The Netherlands: The detention of irregular migrants and asylum-seekers, June 2008, Index: EUR 35/02/2008.

¹ All of these documents are available on Amnesty International's website:
<http://www.amnesty.org/en/region/Netherlands>.

² See section on ethnic profiling on page 34 and a section on restriction on the wearing of religious symbols and forms of dress on page 10.