



National Dialogue Structure with Minorities

Contribution to the second Universal Periodic Review of the Netherlands by the UN Human Rights Council

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This report is submitted on behalf of the following NGOs:

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1. Introduction

The undersigning NGOs welcome the opportunity provided by the Office of the High Commissioner on Human Rights to submit a stakeholders' report for the Second Universal Periodic Review (UPR) of the Kingdom of the Netherlands, to be held during the 13th session of the Human Rights Council in 2012.

The picture that emerges from this report's findings causes the undersigning NGOs to express their grave concern that the Netherlands demonstrates an increasing lack of commitment to human rights that does not correspond with its traditionally perceived leading role in the protection of human rights. This report notes a number of alarming trends and developments that signal a lessening of the consideration the Dutch government is prepared to give to its human rights obligations, especially with relation to ethnic minorities.

The undersigning NGOs express their sincere hope that the findings in this report will lead to an open and constructive dialogue, which shall lead to an expedient solution for the signaled shortcomings.

2. Public commitment to equal rights and full citizenship

Since October 2010 the Netherlands have a minority government of VVD, a liberal party, and CDA, the christian-democratic party, with the support in parliament of the PVV, a political party with an explicit anti-islam and anti-immigration program.

In this political context it is in relation to identification of ethnic minorities with the Dutch society, to their integration and to social cohesion in general very important that on a regular basis the government sends out the clear message that ethnic minorities are full citizens of the Dutch society. However, we have to recognize that in this respect the government seriously falls short. For example, the government reacts rarely on radical statements of the PVV in the public political debate. This behavior undermines the confidence of ethnic minorities in the political system and increase their fears about an attack on their fundamental rights as citizens of this society.

We recommend that the Human Rights Committee urges the Netherlands in the public debate to make more often explicitly clear that ethnic minorities are an essential part of the Dutch society, that 'they' belong to 'us', and that it will champion the equal rights and full citizenship of ethnic minorities and of all international human rights treaties, in particular with respect to its own policies.

3. National Action Plan to combat racism

The Cabinet has indicated in its action programme on the tightening of measures to be taken in the elimination of discrimination (*Aanscherping van de maatregelen in het actieprogramma "bestrijding van discriminatie"*)ⁱ (2011), that it will, in addition to generic measures, put in place specific tightening measures to combat anti-semitism and discrimination against lesbian, gay, bisexual and transgender persons (LGBT). We welcome these specific measures.

Nevertheless, we question why discrimination based on ethnic origin (racism, including racism against indigenous Dutch citizens) has no specific tightening measures, when racial discrimination, according to the Anti-Discrimination Bureaus, is the most common form of discrimination.ⁱⁱ *Poldis 2010*, the police's national report on discrimination, *Criminaliteitsbeeld Discriminatie*, noted: "A quick scan of the descriptions of the incidents shows that 139 incidents relate to discrimination on the basis of a 'black' skin colour. If this had been a separate category, it would be the largest category within the group "origin and ethnicity".ⁱⁱⁱ

It is mentioned in *Criminality Image 2010*, that: "The proportion of discriminatory incidents on the basis of ethnicity or origin decreased, but in absolute terms, these incidents occurred almost as common in 2010 as they did in 2009. Noteworthy, is the number of incidents in the category of 'dark (not white) skin colour'. This category was used for the first time in 2010 and a significant number of incidents previously categorised as 'other or unspecified' could be specified according to colour in 2010".^{iv}

It is typical of the arbitrariness in this case that the Netherlands in the *UN International Year of People of African Descent 2011* did not pay any attention to discrimination based on race. We are of the opinion that the Netherlands is inadequate in its implementation of the points of action arising from the UN World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR, Durban, 2001).

We recommend that the Human Rights Committee urges the Netherlands to, within its Action Plan against Discrimination, take specific tightening measures against discrimination based on race, due to the fact that this form of discrimination remains the most persistent and common form of discrimination in the Netherlands, and that it more actively executes the action points arising from the Durban WCAR 2001.

4. Labour market

Research has shown the presence of discrimination against ethnic minorities within the Dutch labour market (SCP report on discrimination against non-Western migrants in the labour market, 2010^v; Racial Discrimination Monitor, 2009^{vi}). Recent studies indicate that 76% of employment recruitment agencies in the Netherlands responded to a "discriminatory application" by employers. Young people from ethnic minority groups in particular, make use of these agencies. Discrimination is an important reason for the structural difference in unemployment between indigenous people and ethnic minorities. According to the Labour Inspectorate, an 'unexplained salary difference' (adjusted by age and experience) exists between indigenous people and ethnic minorities.^{vii} This "statistical discrimination" leads to a self-fulfilling prophecy.

We recommend that the Human Rights Committee urges the Netherlands to eliminate discrimination in the labour market, including imposing heavier penalties on labour organisations which discriminate on the basis of race or religion in the recruitment of personnel. Currently, companies still get away with a warning.^{viii}

5. Education

Ethnic segregation in schools in 'mixed' cities has a negative effect on the development of the self-image of children and parents. We need to highlight the fact that pupils from ethnic minority groups often score lower in IQ tests (with the possible consequence: inadequate guidance) and that a disproportionately large number of students from ethnic minority groups is referred to special education, partly because of behavioural and psychological problems.^{ix} It is our view that the discriminatory mechanisms which lead to ethnic segregation in education have to be contested.

We recommend to the Human Rights Committee to:

- *Bring to the attention of the Netherlands the importance of introducing culturally sensitive IQ tests since it has become apparent that the current IQ tests have disadvantaged immigrant students for many years.^x*
- *Advise the Netherlands concerning the importance of transparency in admission criteria (lot drawing in cases of over-registration) in schools; for example, some schools in the Netherlands use quotas for students from ethnic minority groups.*
- *Advise the Netherlands to increase its capacity to improve the quality of schools with low Cito-scores.*
- *Request the Netherlands to conduct research into the mechanisms that cause a disproportionate share of pupils from ethnic minority groups to be referred to special education.*

6. Poverty and unhealthy pregnancy outcomes

It is supported by research that women from ethnic minority groups - especially in the poor neighbourhoods of big cities, compared to the indigenous group, more frequently experience adverse pregnancy outcomes, such as premature births, lower birth weight, or even perinatal mortality. In addition, the use of dietary supplements in pregnancy, such as folic acid, is diminished.^{xi} This is partly due to their socio-economic situation. Such children are in fact already at a disadvantage in the world, with consequences for further growth, development and opportunities. In fact, one could relate these practices to discrimination at birth: one child comes into the world with more opportunities than the other child.

We recommend that the Human Rights Committee requests the Netherlands to accelerate the introduction of plans to promote healthy pregnancy and reduce perinatal mortality, especially among ethnic minority groups.

7. Naturalisation

The number of non-Dutch people who have acquired Dutch nationality through naturalisation has fallen dramatically since 2002, and remains around 20,000 since then. The low number of naturalisations has resulted in an increase in the number of non-Dutch nationals permanently residing in the Netherlands over the last few years. Until the turn of the century, the number of persons granted permanent residence dropped to just over 650,000 persons, but in 2010 this has increased to 735,000 people. It is clear from research that the requirements imposed by the Dutch government to grant Dutch citizenship, has become an impregnable barrier for a large group of people.

In addition, barriers are created by the high fees (798 euros), the naturalisation test/integration requirements and the distance requirement. People who are unable to gain Dutch citizenship, are deprived of suffrage, the right to perform certain offices and a number of other basic rights. Former Minister of Justice Hirsch Ballin^{xii} refers in this context to the human right to acquire and exercise civil rights. A series of stricter measures were recently proposed to the Second House, including measures concerning the right to options for young people.

We recommend that the Human Rights Committee insists that the Netherlands brings its nationality laws more in line with Article 6 and Article 13 of the European Convention on Nationality.^{xiii}

8. Fees for family reunification

We are of the opinion that the *Integration Abroad Act (Wet Inburgering in het Buitenland)* (WIB) is at odds with the right to family life as set forth in the *European Convention on Human Rights* (ECHR). Moreover, reunification is hindered by the repeated increase in fees for residence permits. Currently, it costs 1,250 euros for a temporary residence permit (MVV) and 375 euros for the extension of a residence permit. The obligation to protect the family and respect family life is recognised in many international legal instruments, specifically in Article 8 of the ECHR. The European Commission has determined that the Dutch fees are the highest in the European Union [COM (2011) 585 and COM (2008) 610/3], and are at odds with the directive on family reunification.

We recommend the Human Rights Committee to urge the Netherlands to set the fees for residence permits in accordance with what is socially and legally acceptable.

9. Discrimination in juvenile justice

Some years ago, an investigation by the Willem Pompe Institute (Utrecht University) revealed that Justice Officials discriminated against immigrant juvenile suspects. The Public Prosecutor (Openbaar Ministerie) sends ethnic minorities more than two (2.3) times as often to the juvenile court for similar offences. It also appears that the selective action of the police towards young people from ethnic minority groups leads to their over-representation in crime statistics (ethnic profiling).^{xiv} Despite the obvious discrimination in juvenile justice figures, the Minister does not believe that youth from ethnic minorities should appear proportionally more before a juvenile court.^{xv}

We recommend that the Human Rights Committee requests that the Netherlands makes every effort to prevent discrimination in the juvenile justice system and combats the selective action of police against young people from ethnic minority groups.

10. Privacy

In Article 2j.1. of the *Reference Index for Youth at Risk* (Verwijsindex Risico's Jeugd) (VIR), information exchange system between care and justice institutions, it is reported that: "Youth are exposed to risks which occur with disproportionate frequency in certain ethnic groups."

We are of the opinion that, since the general statutory provisions in Articles 2a to 2i (reports to the Reference Index) already cover all risks, ethnicity is not a necessary ground for reporting and constitutes a violation of privacy.^{xvi} Moreover, the *College Bescherming Persoonsgegevens* (Board for the Protection of Personal Data) (CBP) has, in response to the proposed draft law, criticised "the mandatory registration of ethnicity in their own records" as being without any legal basis. The CBP

also alerted to the danger of the "advance indiscriminate disclosure of personal data to a potentially large number of organisations from different institutions".^{xvii}

Finally, the CBP saw a danger in the reporting the police would be able to do through the Bureau for Youth Care (Bureau Jeugdzorg) to the VIR; the CBP writes that the latter is not necessary for the coordination of services. The Council of State also found that the cabinet had not indicated the necessity of ethnic registration (February 2009): "Every young person is unique. Ethnicity is only a statistical indication that the young person is at increased risk of certain problems. A statistical probability is not important when examining individual cases. Registering ethnicity has no added value."^{xviii}

We recommend that the Human Rights Committee urgently requests the Netherlands to repeal Article 2j.I VIR, because it is unnecessary, has a stigmatizing effect and violates the privacy (ethnicity is understood as part of someone's 'special personal data') of young people from ethnic minority groups.

11. Law on the Movement of Persons

The Dutch government is working on a Bill that controls the admission and return of Dutch descendants from the Caribbean countries of the Kingdom (Aruba, Curaçao, Sint Maarten). The measure is aimed at discouraging disadvantaged people and repelling nuisance and crime. Since this Bill is not applicable to other Dutch descendants from outside the European part of the Netherlands, we believe that this constitutes a direct form of discrimination based on race.

We recommend that the Human Rights Committee requests that the Netherlands tests the Bill on the Movement of Persons against national, European and international human rights treaties and takes it into reconsideration.

12. Caribbean Netherlands

Since 10 October 2010 new constitutional arrangements exist in the Kingdom of the Netherlands. The Netherlands is responsible for guaranteeing the human rights situation in the Caribbean part of the Kingdom. This is especially true for the islands of Bonaire, Sint Eustatius and Saba, which have formed part of the public body of the Netherlands since '10-10-10'. There is however concern about the situation of the rights of children, particularly in the areas of education and health.

We recommend that the Human Rights Committee urges the Netherlands to prioritise the situation of children on the islands of Bonaire, Sint Eustatius and Saba, and to actively cooperate with the countries, i.e. Aruba,^{xix} Curaçao and Sint Maarten, to improve the overall human rights situation.

13. Mandatory registration of a child's father

In the Netherlands it is possible that "father unknown" is printed on a birth certificate. On the other hand, "Mother unknown" is impossible. This gender inequality is in principle discriminatory. Moreover, "father unknown" can contribute to anxiety in a child about their origin and give the child a sense of being unwanted. A child has the right to know who his father or mother is. This is a child's basic right. The Second House has already requested in a motion that the government investigates the possibility of mandatory registration of a child's father.^{xx}

We recommend that the Human Rights Committee urges the Netherlands to hasten the mandatory registration of a child's father, so that this important right of the child can be given effect to and to remove the gender inequality between fathers and mothers.

14. Asylum seekers

We frequently receive reports that law enforcement officials provide unaccompanied young asylum seekers with incomplete information about their rights and obligations. This can, in some cases, lead to a wrongful eviction, even if a young person is assigned medication.

We recommend that the Human Rights Committee requests that the Netherlands acknowledges and investigates the signs that incomplete information is provided to young unaccompanied asylum seekers, and that it puts measures in place to guide institutions which take decisions about the residence of these young people.

ⁱ Second House, 2009-2010, 32 123 VII nr. 74.

ⁱⁱ See [http://www.bureaugelijkebehandeling.nl/assets/files/Kerncijfers%20LBA%202010%20\(2\).pdf](http://www.bureaugelijkebehandeling.nl/assets/files/Kerncijfers%20LBA%202010%20(2).pdf), p7.

ⁱⁱⁱ <http://www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2010/07/20/poldis-2009-het-landelijk-criminaliteitsbeeld-discriminatie-van-de-politie.html>.

^{iv} See <http://www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2011/07/08/poldis-2010-criminaliteitsbeeld-discriminatie.html>, July 2011.

^v The SCP indicates that this inequality is partly related to the degree to which it is socially acceptable to stereotype and express prejudices towards migrants, and to put this in action (p. 14). This indicates the importance of a standard setting normative government, both in words and deeds. We see from the SCP report that employers in the workplace see no real difference in the competence and quality of work done between non-Western immigrants and indigenous Dutch. The report *Uit de Armoede werken* (Working out of Poverty) (SCP, 2010) further concluded that non-Western immigrants have five times less opportunity to escape persistent poverty compared to indigenous Dutch citizens. Attitudes and motives, for example, about the value of work or the responsibilities of men and women in the workplace and family, is not a major factor (p. 14). The same report concludes that "the work ethic is weaker among youth and highly educated, while non-Western migrants - often less promising in the labour market - have a relatively stronger ethos. Moreover, previous studies found similar relationships between work ethics, labour market position and individual characteristics." That the unemployment gap is attributed to a lower work ethic of non-Western immigrants, as some claim, is thus belied by the SCP. Not a lower work ethic, but discrimination in employment is a major cause of the unemployment differential.

^{vi} *Monitor Rassendiscriminatie 2009* (July 2010) downloaded at http://www.art1.nl/artikel/10223-Rassendiscriminatie_vaak_niet_gemeld.

^{vii} Refer to the Labour Market position of employees in 2006. *Een onderzoek naar de verschillen in beloning en mobiliteit tussen groepen werknemers*, Arbeidsinspectie, November 2008, p40, http://www.arbeidsinspectie.nl/Images/De%20arbeidsmarktpositie%20van%20werknemers%20in%202006_tcm290-262585.pdf

^{viii} See the judgment of the CGB based on the claims of Moroccan job seekers in AH-to-Go shops. <http://www.parool.nl/parool/nl/4/AMSTERDAM/article/detail/287196/2010/04/02/AH-to-Go-liet-discriminatie-toe-van-Marokkanen-en-ouderen.dhtml>, or the report of the library that discriminated on the basis of religion through requirements on the manner in which a headscarf should be tied, see http://www.cgb.nl/oordelen/oordeel/214664/bibliotheek_maakt_onderscheid_op_grond_van_godsdienst_door_eis_en_te_stellen_aan_de_wijze_waarop_een_hoofddoek_moet_worden_geknoopt_

^{ix} See the investigation *Allochtone leerlingen en speciale onderwijsvoorzieningen. Evaluatie en Adviescommissie Passend Onderwijs (EPCO), ITS (Radboud), Ed Smeets e.a. 2009* in the CBS Jaarrapport Integratie 2010, p180: <http://www.cbs.nl/NR/rdonlyres/E564B557-93DC-492E-8EBD-00B3ECA10FA3/0/2010b61pub.pdf>.

^x *IQ-test benadeelt allochtone kinderen*, Bart Hinke, NRC, 30 November 2010, http://www.nrc.nl/nieuws/2010/11/30/iq-test-benadeelde-allochtone-kinderen/?utm_campaign=rss&utm_source=syndication.

^{xi} See the dissertation of Ernst-Jan Troe, *Generation R., Ethnic differences in fetal growth, birth weight and infant mortality* <http://www.generationr.nl/images/stories/Researchers/ernst-jan%20troe%20bw.pdf>. ABCD (Amsterdam Born Children and their Development) = http://www.abcd-studie.nl/?page_id=12 About the dissertations of Manon van Eijsden: 'Ethnicity, nutrition, and pregnancy: food for thought'. en Geertje Goedhart – de Wolf : 'Perinatal health epidemiology in multi-ethnic Amsterdam: psychobiological processes'; Generation R study Rotterdam = <http://www.generationr.nl/>

^{xii} Hirsch Ballin, prof. dr. E.M.H., *Citizenship Rights*, Inauguration speech delivered at the acceptance of the position of professor in Human Rights at the University of Amsterdam on 9 September 2011.

^{xiii} Trb. 1998 149.

^{xiv} CBS Jaarrapport Integratie 2010, p155.

^{xv} Responses to the House questions of Minister Hirsch Ballin: <http://m.europa-nu.nl/9353000/1/j9vviaekvp0oeyh/vi37leztbczf>.

^{xvi} § 4 Notification to the reference index
Article 2j

A person who is competent to make such a notification, can, without the consent of the youth or legal representative and, if necessary, by breaking of the professional duty of confidentiality applicable, notify the reference index if he reasonably suspects that the youth's health and safe development to adulthood is threatened by the presence of one or more of the following risks:

- a. The youth is exposed to psychological, physical or sexual violence, any other degrading treatment or neglect;
- b. The youth has more mental problems, including addiction to alcohol, drugs or gambling, than is common in that particular age group;
- c. The youth has more serious growing-up or behavioral problems than is common for that particular age group;
- d. The youth is a minor and a mother or pregnant;
- e. The youth frequently fails to attend school or another educational institution, or has dropped out of school or threatens to leave school early;
- f. The youth is not motivated to legal employment for a livelihood;
- g. The youth has more financial problems than is common for that particular age group;
- h. The youth has no fixed place of residence;
- i. The youth is a danger to others through physically or mentally violent or threatening behavior;
- j. The youth is involved in any activity constituting an offence;
- k. The parents or other guardians of the youth are seriously deficit in the care or education of the youth;
- l. The youth is exposed to risks which are disproportionately frequent in certain ethnic groups.

^{xvii} Refer to http://www.cbpreweb.nl/Pages/adv_z2009-00970.aspx, 25 January 2010.

^{xviii} Refer to http://www.raadvanstate.nl/adviezen/zoeken_in_adviezen/zoekresultaat/?advicepub_id=8436.

^{xix} See also the dissertation of dr. Hellen van der Wal, in which she pleads for the implementation of the UN Convention on the Rights of the Child: *Jeugdigen in Aruba: hoe worden ze (niet-) delinquent? Empirisch gebaseerde voorstellen voor de aanpak van jeugddelinquentie in overeenstemming met het IVRK*. Academic dissertation, 2011. ISBN-nummer 978 90 8850 242 2 / NUR 821. <http://www.caribpublishing.com/>.

^{xx} See Second House, 30512, # 9. The Chamber, after hearing the discussion in opposition, notes that the option "Father unknown" can be completed when the birth is registered; noting that relatively more problems in the development of especially boys, are caused by the absence of the father in the family, for example, in the sphere of crime and behaviour on the street and at school; further noting that the Consultative Caribbean Dutch (OCaN) called for a *Vaderschapswet* that provides for mandatory registration of the father; requests that the Government examines the right of children to know their biological father is implemented sufficiently in practice, and urges the Government to investigate how father registration could be strengthened.