

TARGETED STAKEHOLDER CONSULTATION 2021 RULE OF LAW REPORT UN HUMAN RIGHTS REGIONAL OFFICE FOR EUROPE (OHCHR)

This document presents the UN Human Rights Office's contribution to the targeted stakeholder consultation held by the European Commission in 2021 in the context of the second annual rule of law report.

It is a compilation of information related to the Netherlands, included in reports and documents of United Nations Treaty Bodies, Special Procedures and the Universal Periodic Review of the UN Human Rights Council, presented in a summarized manner. It also refers to statements and reports of the UN High Commissioner for Human Rights and her Office. The cited material covers the period 2018-2020.

It mentions both positive developments and challenges to the rule of law in the Netherlands, as well as recommendations issued by the UN Mechanisms on how these challenges can be addressed and how the rule of law can be further strengthened.

In light of the methodology proposed by the European Commission the submission is divided in four pillars: national justice systems, anti-corruption frameworks, media pluralism and freedom and other institutional issues related to the checks and balances essential to an effective system of democratic governance.

THE NETHERLANDS REVIEW

Justice System

➤ *Independence*

In 2019, the UN High Commissioner for Human Rights welcomed a landmark decision by the Supreme Court of the Netherlands which requires to take more ambitious climate action in order to protect human rights from the adverse effects of climate change. She noted the Court's acceptance that human rights obligations are central to the response to the climate change, available at

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25450>.

In 2020, the UN Special Rapporteur on extreme poverty and human rights welcomed a landmark ruling by the District Court of the Hague in the Netherlands. The court ordered the immediate halt to a digital benefit fraud detection tool targeted at poor neighborhoods in the Netherlands because it violated human rights norms. The Special Rapporteur stated that this is a clear victory for all those who are justifiably concerned about the serious threats digital welfare systems pose for human rights. He noted that this decision sets a strong legal precedent for other courts to follow because for the first times a court anywhere has stopped the use of digital technologies and abundant digital information by welfare authorities on human rights grounds, available at

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25522>.

➤ **Quality of justice**

In its 2018 concluding observations, the UN Committee against Torture took note of efforts made by the Netherlands to strengthen the right to legal counsel, including by adopting legislative measures to implement the European directive on the right of access to a lawyer (directive 2013/48/EU) and amending the Code of Criminal Procedure to provide legal aid to persons suspected of category C (minor) offences. In addition, while noting the procedural safeguards in domestic legislation, the Committee raised concern about the information that in practice, persons under police custody are often denied the right to notify a person of their own choosing about their detention. The Committee also regretted the reservation made by the Netherlands concerning article 40 of the Convention on the Rights of the Child, thereby allowing children to be interviewed or interrogated in the absence of a lawyer or their parents, in cases involving minor offences. Concerns were also expressed that unaccompanied children asylum seekers do not receive sufficient assistance, including legal aid, throughout the asylum procedure ([CAT/C/NLD/CO/7](#), para 9, 18, 36).

In its 2019 concluding observations, the UN Human Rights Committee appreciated the continued efforts of the Netherlands to deal with asylum seekers, including a family reunification policy that allows family reunification for persons granted subsidiary protection and the provision of free legal aid to asylum seekers at all stages of the asylum procedure. However, the UN Committee was concerned about the limited access of victims of domestic violence to free legal aid. The Committee recommended that the Netherlands ensure that free legal aid is provided to all victims of domestic violence. The Committee was also concerned that the interests of the investigation provided for in section 62 (2) of the Dutch Criminal Procedure Code concerning the right of notification of custody is unduly vague and that the exceptions and safeguards are not clearly specified. The Committee was also concerned about reports that the right of notification of custody of persons deprived of liberty, who are not subject to the regime of section 62 (2), is not always respected in practice. The Committee remained concerned about allegations of the lack of a clear rule on the role of lawyers during questioning, which may unduly hinder their assistance to their clients. The Committee recommended to review the Dutch Criminal Procedure Code with a view to ensuring that provisions on the right of persons deprived of liberty of notification of custody are clearly defined in line with the Covenant on Civil and Political Rights, and ensure that this right is respected in practice. It should also provide clear guidance on the role of lawyers during interrogation, in line with the Covenant ([CCPR/C/NLD/CO/5](#), para 17, 32 c, 33a, 38, 39).

In its 2019 concluding observations, the UN Human Rights Committee noted the efforts to reform the legal aid system, however the Committee was concerned at the decrease in funding allocated in the legal aid sector and about the measures that the State party is contemplating, including a competitive tendering system for subsidized legal aid and an advisory body that can decide which cases qualify for subsidized legal aid and legal aid packages (rechtshulp pakket), which may have significant adverse effects on persons in a vulnerable position who are in most need. The Committee recommended that the Netherlands review the ongoing reform measures in the legal aid system, with a view to

ensuring that people, including the most vulnerable in all constituent countries, can benefit from the new system on an equal footing and to enhancing access to justice for all ([CCPR/C/NLD/CO/5](#), para 46).

In its 2019 concluding observations, the UN Human Rights Committee recommended to provide adequate training to law enforcement officials, judges and prosecutors on the promotion of racial, ethnic and religious diversity and to judges, prosecutors, law enforcement officials, immigration officers and staff working in all reception facilities, including on procedures for identifying victims of human trafficking ([CCPR/C/NLD/CO/5](#), para 16d, 27d).

➤ ***Efficiency of the justice system***

In its 2019 concluding observations, the UN Human Rights Committee was concerned by the substantial numbers of asylum cases and family reunification cases pending decisions and by long delay in judicial reviews of immigration detention decisions. The Committee recommended to intensify efforts to reduce the backlogs in the asylum application process and the family reunification process and to facilitate prompt judicial review of immigration detention decisions ([CCPR/C/NLD/CO/5](#), para 17, 19e, 24, 25d).

➤ ***Other***

In its 2018 Concluding Observations, the UN Committee against Torture raised concern that pursuant to the Adolescent Criminal Law and section 77 (b) of the Dutch Penal Code, minors aged 16 and 17 may be tried as adults under ordinary criminal law in cases of grave offences (for example homicide) and may be sent to serve their sentence in adult penitentiary institutions ([CAT/C/NLD/CO/7](#), para 36).

In its 2019 concluding observations, the UN Human Rights Committee regretted the lack of information on the prosecution of hate crimes in recent years. The Committee recommended to investigate hate crimes and cases of trafficking and labour exploitation thoroughly, prosecute suspected perpetrators where appropriate and, if they are convicted, punish them and provide victims with adequate remedies. The Committee was also concerned by the insufficient reasoning provided in judicial decisions ordering pretrial detention and recommended to strengthen the reasoning ([CCPR/C/NLD/CO/5](#), para 15, 16c, 27b, 44, 45).

In the 2020 report of her visit to the Netherlands, the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance noted that, although much work remained to be done to ensure accountability, the Government had commendably taken action to prosecute those responsible for discriminatory crimes and speech. The Special Rapporteur was encouraged to learn of prosecutions of high-ranking politicians. As noted by the European Commission against Racism and Intolerance, however, sanctions for those who were convicted of discrimination remained disproportionately low relative to their severity, undercutting the deterrent effect of the punishments. For example, the District Court of The Hague convicted a right-wing politician who had sung an anti-Moroccan chant during a political rally for inciting discrimination and insult. Because the defendant was a democratically elected member of parliament, the Court considered the case exceptional. The Court decided that it need not follow sentencing for other cases inciting discrimination and insult; in the Court's eyes, declaring a politician guilty without imposing a

punishment was sufficient. The Special Rapporteur was concerned, moreover, that those prosecuted for racist violence and disorderly conduct for attacking people peacefully protesting against racism have received minimal sanctions. For example, those convicted of attacking peaceful anti Black Piet protesters in 2018 received fines and community service. According to the Special Rapporteur, such sentences did not send a message that was sufficiently strong to deter others from engaging in similarly offensive behaviour. She recommended that the Netherlands ensure that racial and ethnic minorities enjoy effective protection from and access to remedies for racial discrimination ([A/HRC/44/57/Add.2](#), para 48, 49, 98b).

Other institutional issues related to checks and balances

➤ *The process for preparing and enacting laws*

In its 2019 concluding observations, the UN Human Rights Committee recommended that the Netherlands review its counter-terrorism legislative measures, with a view to assessing their human rights impact and bringing those measures and judicial safeguards on their manner of application into line with international due process standards and the provisions of the Covenant on Civil and Political Rights and ensure meaningful participation of civil society in the process. In particular, it should revise the Dutch Nationality Act with a view to ensuring effective safeguards against arbitrary loss of nationality and discriminatory effects as well as the effective exercise of the right to appeal ([CCPR/C/NLD/CO/5](#), para 51).

The UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance in her 2020 report of her visit to the Netherlands noted that racial and ethnic minority members serving on national and local legislative bodies have reported experiencing different treatment from their colleagues. These individuals face considerable opposition in pursuing reform to secure racial equality and non-discrimination. In addition, they have recounted enduring personal indignities as a result of the pervasive racist political discourse. Some have even reported threats and intimidation from the public, including death threats. The Special Rapporteur recommended that the Netherlands encourage open debate about the definition of Dutch values to ensure that these standards are reflective of Dutch society as a whole, and to prevent discriminatory perspectives from informing policies that are integral to fostering social cohesion. In addition, she recommended to adopt participative approaches to policymaking to ensure the participation of affected and vulnerable groups and adopt policymaking approaches that centre on the needs and voices of these groups. Moreover, the Government must consult vulnerable communities on the issues they confront. The Special Rapporteur recommended engaging with other communities facing threats, including Muslims and human rights defenders such as anti-Black Piet activists ([A/HRC/44/57/Add.2](#), para 41, 75, 79e).

➤ *Independent authorities*

In its 2018 concluding observations, the UN Committee against Torture was concerned about consistent reports on the lack of both resources and independence of the national preventive mechanism. It was also concerned about information that the mechanism does not effectively

monitor detention facilities leased to foreign countries and military detention facilities, including those managed overseas ([CAT/C/NLD/CO/7](#), para 22, 24).

In December 2020, the Global Alliance for National Human Rights Institutions (GANHRI) Sub-Committee on Accreditation (SCA) recommended that the Netherlands Institute for Human Rights (NIHR) be re-accredited with A status. The SCA highlighted that NHRIs with A status should take reasonable steps to enhance their effectiveness and independence, in line with the Paris Principles and the recommendations made by the SCA during the review, available at <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Pages/SCA-Reports.aspx>

➤ ***Accessibility and judicial review of administrative decisions***

In its 2018 concluding observations, the UN Committee against Torture raised concern at information that the application of article 20 (a) of the regulation on classification, placement and transfer of detainees leads to an automatic placement of a person suspected or convicted of terrorism in high security units designated for terrorists, known as “TA”, without any individual assessment and where detainees are routinely subjected to very restrictive regimes. It is further concerned at the reported lack of effective complaint mechanisms in the TA units and the absence of statistical data on the number of complaints filed by detainees in the TA units and the nature and outcome thereof ([CAT/C/NLD/CO/7](#), para 28).

The UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance in her 2020 report of her visit to the Netherlands noted that the Temporary Administrative Counter-terrorism Measures Act, enacted on 1 March 2017, provides administrative authorities with far-reaching administrative control measures to reject or revoke subsidies, permits or exemptions to individuals whom the Government suspects of being associated with terrorist activities. The Act does not forest out clear and reasonable grounds for suspicion or require judicial supervision or authorization prior to the application of the administrative control orders. The Special Rapporteur received reports that the Act had only been applied a few times, with the authorities applying administrative measures in just 6 of 40 cases. In the other cases, the administrative authorities concluded that the evidence was insufficient to link the individual to terrorist activities. The Special Rapporteur was also concerned by citizenship-stripping legislation, policies and procedures. It has been reported to the Special Rapporteur that a handful of cases have resulted in nationality stripping. Although being neutral on the face of it, the Netherlands citizenship-stripping legislation, policies and procedures apply only to citizens with dual nationality and therefore disproportionately affects Netherlanders of Moroccan and Turkish descent. Because of its limited applicability, citizenship-stripping legislation in the Netherlands aggravates stereotypes of terrorism by associating terrorism with people of certain ethnic and national origins. The associated policies and their effects are incompatible with international human rights principles of equality and nondiscrimination. Furthermore, the Special Rapporteur was concerned that citizenship-stripping orders are based primarily on information gathered by the security services and that the individuals affected only have recourse through an appeal to administrative courts on procedural grounds. Such a limited review prevents access to an effective remedy. Those facing a citizenship-stripping order

should have access to sufficient information and appeals processes to challenge the order ([A/HRC/44/57/Add.2](#), para 59, 60)

➤ ***The enabling framework for civil society***

In his 2020 country visit report, the UN Special Rapporteur on freedom of religion or belief expressed concern about several draft laws and policies that may negatively impact on civil society and appeared to target certain religious and belief communities. This included draft legislation attempting to limit funding from “unfree countries” used to “buy undesirable influence” and “abuse Dutch liberties”. A transparency law may also require all organizations to declare income amounts and their country of origin, which some kerkgenootschappen and other organizations were concerned would deter funders. Discussions were under way on drafting an additional “funding from unfree countries” law in 2019, which might further prohibit Dutch organizations from obtaining funding from specific countries. A “problematic behaviour bill”, which would seek to limit so-called undesirable acts stemming from religiously or ideologically motivated behaviour deemed contrary to Dutch values and the rule of law, was also under consideration. The Special Rapporteur noted that many organizations worried that these bills were being drafted within the context of increasing discrimination against Muslims and that some aspects of freedom of religion or belief were being undermined. The Special Rapporteur asserted that all government measures must be fully compliant with international law and the obligation not to discriminate in intent or in effect against any persons or groups in the enjoyment of their fundamental rights, except on the basis of objective and reasonable criteria and in conformity with the requirements of proportionality, necessity and legality ([A/HRC/43/48/Add.1](#), para 39, 40).

The UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance in her 2020 report of her visit to the Netherlands found the treatment of human rights defenders working to combat racism, discrimination and intolerance of great concern. Consultations with antiracism activists highlighted they were frequently targets of insults, violence and threats, especially by extreme right-wing actors. On some occasions, local politicians had supported such targeting. The seeming failure of law enforcement and judicial authorities to extend equal protection of the law to anti-racism activists was worrying. The Special Rapporteur especially emphasized the need to ensure effective protection for anti-racism protesters and organizers ([A/HRC/44/57/Add.2](#), para 61, 62, 78b).

In her February 2021 global update to the UN Human Rights Council, the UN High Commissioner for Human Rights expressed concern about measures in several EU countries restricting the work of organizations that protect migrants’ rights and deliver life-saving assistance. She noted that criminal or administrative proceedings had been initiated in the Netherlands against humanitarian actors involved in search and rescue in the Mediterranean (<https://bit.ly/3qf0tyD>).

➤ **Other**

In its 2019 concluding observations, the UN Human Rights Committee, while recognizing the efforts by the Netherlands to curb racial profiling in law enforcement, remained concerned about the disproportionate use of stop-and search powers by law enforcement officials targeting persons belonging to ethnic minority groups (racial profiling). It was particularly concerned about the use of a person's external appearance, including ethnicity, and of information and communications technology (ICT), such as mobile applications, which may further such practice if applied without precaution. The Committee also expressed concern about the absence of a mechanism to monitor the use of stop-and-search powers by law enforcement officials and the lack of record on the use of such powers. The Committee recommended that the Netherlands continue its efforts to provide all law enforcement personnel with effective training and sensitization in order to curb racial profiling, including the use of ICT in stop-and-search operations and set up a mechanism to monitor and collect data on the use of stop-and search powers by law enforcement officials ([CCPR/C/NLD/CO/5](#), para, 48, 49).

In its 2019 concluding observations, the UN Human Rights Committee was concerned about the Intelligence and Security Services Act 2017. The Committee was also concerned by the limited practical possibilities for complaining, in the absence of a comprehensive notification regime, to the Review Committee on the Intelligence and Security Services (art. 17). The Committee recommended to review the Act with a view to strengthen the independence and effectiveness of the two new bodies established by the Act, the Evaluation Committee on the Use of Powers and the Review Committee on the Intelligence and Security Services ([CCPR/C/NLD/CO/5](#), para, 54, 55).