



Ministry of the Interior and  
Kingdom Relations

# National Action Plan on Human Rights

*The protection and promotion of human rights within the Netherlands*

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### **Colophon**

The National Action Plan on Human Rights is a publication by the Dutch Ministry of the Interior and Kingdom Relations.

### **Contact**

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## Foreword

I hereby present the Netherlands' first National Action Plan on Human Rights. The National Action Plan sets out the ways in which the government fulfils its responsibility to protect and promote human rights in the Netherlands, the specific objectives and priorities it defines in this regard, and the role of other bodies and individuals in ensuring respect for human rights in the Netherlands. The aim is to place the protection and promotion of human rights in the Netherlands on a more systematic footing.



The Netherlands has an extensive, professional infrastructure of rules, services, institutions and accountability procedures that have given this country a high standard of human rights protection. Together, and in combination with good education and public information, they help to sustain an enduring human rights culture in which human rights are not merely defined on paper, but are protected and promoted in practice as well. This is one of the reasons why people enjoy living in the Netherlands, why Dutch society is vibrant, why companies like to base themselves here, and why the government can function as befits a democracy governed by the rule of law.

It should be added that individuals and corporate enterprises also have responsibilities in this area, in particular for ensuring that human rights are observed among individuals, as well as between individuals and corporate enterprises. This comes into play primarily in the areas of non-discrimination, privacy, and the interpretation of social and economic fundamental rights.

The credibility of the Netherlands' external human rights policy is well served by ensuring a high level of protection in the domestic context and by a willingness to engage in dialogue with external supervisory bodies. What is more, with its culture of respect for human rights, the Netherlands is helping to ensure that the European Union functions as a community of shared values and to enhance satisfactory cooperation in various areas, such as the free internal market and judicial cooperation in criminal matters.

In short, the importance of human rights in the Netherlands is beyond dispute; these rights are inextricably bound up with the country's status as a democracy governed by the rule of law, which is in the interests of a great many people. Indeed, the Netherlands is in a good position as regards the observance and promotion of human rights, certainly within a global and European perspective.

The high standard of human rights protection in the Netherlands does not mean that there is no need to pay attention to the way human rights are protected in practice. It is important to live up to this standard again and again. We should heed Lucebert's words, that 'Everything of value is vulnerable'; human rights protection therefore requires constant maintenance and – where possible or necessary – improvement.

Being vigilant about maintaining human rights protection, and at times improving it, is necessary from a different vantage point. Society is constantly developing; it is influenced by, and interacts with, long-term processes such as the growing role of the internet and telecommunications, the development and application of other new technologies (for instance in medicine), people's increased mobility, and changes in flows of asylum seekers and other aliens entering the country. Furthermore, demographic trends (such as the ageing population) and economic developments are of great importance. Short-lived events can also have an impact on society, such as is the case with terrorist and cybercrime attacks

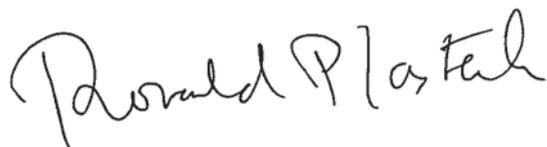
These trends and events frequently give rise to new dilemmas, which call for the protection of human rights to be weighed against other public interests that might justify some restriction to or infringement of these rights. The government and legislature must weigh these interests when making policy and legislation.

Other impulses for updating and improving human rights protections are often provided in the form of court rulings, recommendations from supervisory bodies set up under human rights treaties, and recommendations made by High Councils of State or specialist bodies such as the Netherlands Institute for Human Rights.

Viewed against this background, there are numerous trends that have a positive impact on the protection and promotion of human rights in the Netherlands, as the enclosed Action Plan will make clear. In this plan, the government singles out five main areas of concern for special attention.

The National Action Plan on Human Rights has been prepared in consultation with various institutions, advisory bodies and civil society organisations. The dialogue with these parties will be continued.

The Minister of the Interior and Kingdom Relations,

A handwritten signature in black ink that reads "Donald P. Plasterk". The signature is written in a cursive, flowing style.

Dr R.H.A. Plasterk

Chapter 1

# Introduction

## 1.1 Background information

This National Action Plan describes the protection of human rights in the Netherlands. It is the first time a national action plan on this issue has been presented in the Netherlands. Around thirty such action plans have been adopted worldwide, in countries including Spain, Sweden and Finland.<sup>1</sup> National Action Plans on Human Rights have their roots in the World Conference on Human Rights in 1993 and the Vienna Declaration and related Programme of Action that grew out of it. In the Declaration, the World Conference recommends that ‘each State consider the desirability of drawing up a national action plan identifying steps whereby that State would improve the promotion and protection of human rights’.<sup>2</sup> In 2002 the UN High Commissioner for Human Rights published a Handbook on National Human Rights Plans of Action.<sup>3</sup> In addition, in 2009 the Commissioner for Human Rights of the Council of Europe issued a ‘Recommendation on systematic work for implementing human rights at the national level’.<sup>4</sup>

With this National Action Plan on Human Rights, the government seeks to respond more specifically to recommendations urging the Netherlands to develop a plan of this kind. These originate from the UN Human Rights Committee as part of its Universal Periodic Review (UPR) in 2012,<sup>5</sup> and from a number of committees set up to monitor compliance with the relevant human rights conventions.<sup>6</sup> The Commissioner for Human Rights of the Council of Europe also issued a specific recommendation to the Netherlands on the drafting of an action plan on this subject in 2009.<sup>7</sup> Past experience has shown that the monitoring bodies keep a sharp eye on compliance with international recommendations, and that these recommendations are constantly repeated if they are not followed.

Responding to MPs’ questions about the UPR recommendations, the Dutch government stated that the usefulness and added value of a National Action Plan on this subject were being studied in the light of the development of the working relationship with the Netherlands Institute for Human Rights.<sup>8</sup> The government recognises this added value.

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<sup>1</sup> Many of these National Action Plans can be found on the website of the Office of the United Nations High Commissioner for Human Rights: <http://www.ohchr.org/EN/Issues/PlansActions/Pages/PlansofActionIndex.aspx>.

<sup>2</sup> Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights in Vienna on 25 June, part II, para. 71, <http://www.ohchr.org/Documents/ProfessionalInterest/vienna.pdf>.

<sup>3</sup> Office of the United Nations High Commissioner for Human Rights, Handbook on National Human Rights Plans of Action, 2002, <http://www.ohchr.org/Documents/Publications/training10en.pdf>.

<sup>4</sup> Recommendation of the Commissioner for Human Rights on Systematic Work for Implementing Human Rights at the National Level, 18 February 2009, CommDH(2009)3; Viewpoint 3, ‘Concrete and comprehensive action plans are needed to ensure implementation of human rights’, 3 November 2008.

<sup>5</sup> Parliamentary Papers, House of Representatives 2012/13, 26150, no. 127 (UPR recommendations 27-30).

<sup>6</sup> UN Doc E/C.12/NLD/CO4-5 of 9 December 2010, para. 7.

<sup>7</sup> Report by the Commissioner for Human Rights on his visit to the Netherlands 21-25 September 2008, COMDH(2009) 2, 11 March 2009, p. 41, Recommendation 6. For the government’s response, see Parliamentary Papers, House of Representatives 2008/09 31700 V, no. 95, pp. 4 and 48-49.

<sup>8</sup> See also House of Representatives, session 2012-2013, Annexe (Answers to MPs’ questions).

It therefore pledged to launch a National Action Plan on Human Rights in the policy letter Respect and Justice for All of 14 June 2013<sup>9</sup> and in the government's reaction to the annual report of the Netherlands Institute for Human Rights,<sup>10</sup> in which the Institute acknowledged the added value of a government-initiated Action Plan in this area and recommended that such a plan be published.

## 1.2 Objective, function, scope and follow-up

The National Action Plan sets out to provide insight into the wide-ranging responsibilities of the state, and in particular those of the government, for upholding and promoting respect for human rights within its borders. With this in mind, the Action Plan sets out the main features of the human rights protection infrastructure in the Netherlands and the government's role in this respect. It also gives an overview of measures (or types of measures) that have been, or are being, initiated to improve the protection of human rights in the Netherlands.

In clarifying the aforementioned responsibilities, the Action Plan is devised in part as an informative document. It will also serve as a frame of reference for national, European and international policy development and monitoring bodies in the sphere of fundamental rights and human rights in the Netherlands. At national level, the government's Action Plan is distinct, both in objective and function, from the annual report issued by the Institute for Human Rights.<sup>11</sup> At international level, it may serve as a source document for the individual government reports to committees set up to monitor compliance with human rights conventions and for contributions to the UN's four-yearly examination of human rights known as the Universal Periodic Review. This can enhance the effectiveness and cohesiveness of the various reporting cycles, and clarify the relationship between national policy and obligations under international law in a more visible way.

Partly because of the way it was developed, the Action Plan has another important function and kind of added value: it provides a platform for dialogue and monitoring. This gives the government an additional opportunity for timely intervention to protect human rights when and where it is needed or called for. This also means that the work of the Action Plan is not completed with its publication. There is an ongoing dialogue both internationally, in the framework of the report cycles, and nationally, for instance in debate with parliament and with diverse stakeholders such as civil society organisations and a range of advisory bodies (see section 1.4 below).

<sup>9</sup> Parliamentary Papers, House of Representatives 2012/13, 32 735, no. 78, p. 11.

<sup>10</sup> Parliamentary Papers, House of Representatives 2012/13, 33 400 VII, no. 83.

<sup>11</sup> At national level, the Action Plan can provide reference points enabling bodies including the Netherlands Institute for Human Rights to monitor national human rights policy, for instance through its annual reports. According to the UN's Handbook on National Human Rights Plans of Action, and the Recommendation issued by the Commissioner for Human Rights of the Council of Europe, this is also pre-eminently a task to be performed by an independent human rights body.

- The process that led to the plan's development and the results will be evaluated in a meeting with stakeholders at the Ministry of the Interior and Kingdom Relations in the first quarter of 2014.
- The Minister of the Interior and Kingdom Relations will inform parliament regarding the implementation of the Action Plan at the end of 2014, and possibly in an interim communication before then.

The outcome of the debate and the evaluation can be used to develop a subsequent Action Plan. By that time, it can be assessed whether other organisations or institutions (e.g. research institutes) can be involved in developing the next National Action Plan.

### 1.3 The Caribbean Netherlands

This National Action Plan also applies to the islands of Bonaire, St Eustatius and Saba. Since 10 October 2010 these islands have been part of the Netherlands and are governed by the Dutch Constitution. For these islands, different rules can be devised compared to the European Netherlands with a view to their economic and social conditions, the great distance between these islands and the European part of the Netherlands, their nature as islands, as well as their small surface areas and population sizes, geographical conditions, climate, and other factors that distinguish these islands fundamentally from the European part of the Netherlands (Article 1, paragraph 2, of the Charter for the Kingdom). This provision defines the factors whereby differentiation can take place, within the framework of Article 1 of the Constitution and attuned to the islands' conditions. This makes it possible to develop specific policy for the islands.

The major changes that took place in 2010 placed heavy demands on the islands' adaptability. It has been agreed that wherever possible, the legislation of the Netherlands Antilles will remain in force, and that this will gradually be replaced by Dutch legislation. In addition, there will be a period of legislative quiescence until 2015. This means that only the most pressing legislation will be introduced, such as that relating to technical maintenance and essential measures urgently required by the islands themselves. In relation to all this, essential standards of human rights must be safeguarded. The standard of public services in the Caribbean Netherlands, in view of the regional and socioeconomic conditions there, has not been equated with that in the European part of the Netherlands. It has been raised, however, to a level that is acceptable within the Netherlands.

The Caribbean countries of the Kingdom – Aruba, Curaçao and St Maarten – fall outside the scope of this National Action Plan.

## 1.4 Themes and development

The National Action Plan is not exhaustive; it focuses on selected themes. These themes were drawn from those discussed (to some extent) in the Coalition Agreement, the 2012 annual report issued by the Netherlands Institute for Human Rights, the Universal Periodic Review, the annual report of the EU Agency for Fundamental Rights, the points of concern raised by the Secretary-General of the Council of Europe in the wide-ranging monitoring debate, and themes put forward by NGOs and institutions during the preparation of this Action Plan and themes relating to current conditions.

The Action Plan was developed in part through interministerial talks and consultations with NGOs. These consultations consisted of exchanges of views regarding the objective and the details of an Action Plan during a plenary assembly on 28 May 2013. In addition, NGOs were sent an e-mail inviting them to list seven themes or action points that they felt needed to be addressed in the Action Plan. Eleven NGOs replied. On 1 October they were notified regarding the themes addressed in the Action Plan.

Separate consultations were held with the Netherlands Institute for Human Rights (on 26 September and other occasions), the National Ombudsman (3 September), the Children's Ombudsman (26 August), Amnesty International Nederland (26 August) and the Netherlands Institute for Social Research (11 September). These talks showed that there is strong support for periodic National Action Plans to be issued by the government. It was deemed extremely important for the first Action Plan to focus on the principles of national policy and the human rights infrastructure, and this recommendation has been heeded (chapter 3).



Chapter 2

# Human rights in a democracy governed by the rule of law

## 2.1 Why human rights?

Human rights are protected because of their fundamental nature for human beings. As far back as in 1948, the Universal Declaration of Human Rights declared it ‘essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law’.

The Preamble to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) of 1951 adds inter alia that ‘justice and peace. . . are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend’. According to Article 2 of the Treaty on European Union, the Union is ‘founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the member states in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.’ The Netherlands Institute for Human Rights expresses itself in similar words: fundamental rights guarantee liberty, equality before the law, participation, social security and cohesiveness; all components of human dignity as the foundation on which human rights are based. The government endorses this.<sup>12</sup>

In a democracy governed by the rule of law, human rights should be respected, protected and achieved in practice. This is done by the adoption of constitutional standards, the promotion of and respect for human rights in practice, and by monitoring compliance. To achieve this, at least three other elements of the constitutional state are crucial:<sup>13</sup> the principle of *nullum crimen sine lege*, that is, the requirement that the government can only exercise power on the basis of statutory laws and within the limits laid down by the law, the separation of powers (or a system of checks and balances), and the independence of the judiciary. In addition, the democratic aspect of the constitutional state is also important to ensuring respect for human rights. This aspect is expressed, for instance, in constitutional provisions on the States-General, including those relating to the right to vote and stand for election, and provisions on legislation and public administration.

Ensuring that human rights are respected, protected and implemented serves not only interests of individuals and their confidence in the government, but also the interests of society as a whole. This includes the interests of the business community, since ensuring observance of human rights helps to promote a stable and attractive climate for entrepreneurs to base and operate their businesses. Ordinary members of the public and businesses have responsibilities of their own, in particular to ensure observance of human rights among

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<sup>12</sup> Cf. Parliamentary Papers, House of Representatives 2012/13, 33 400 VII, no. 83 (government’s response to the annual report of the Netherlands Institute for Human Rights).

<sup>13</sup> For a detailed discussion, see Parliamentary Papers I 2012/13, 31 570, no. G; Parliamentary Papers I 2012/13, 33 400, T.

individuals and between individuals and businesses. This is primarily at issue in the areas of non-discrimination, privacy, and the details of socioeconomic human rights, and applies all the more at a time when central government is downsizing. The transfer of tasks from central government to municipal authorities will also give the latter a more important role in promoting and observing human rights.

More widely, the promotion and observance of human rights, and monitoring compliance with these rights, also enhances the legitimacy and hence the effectiveness of government action, especially from a long-term perspective. This is also a condition for the European Union to work satisfactorily as a legal community and for cooperation in various areas, such as the free internal market and cooperation in criminal affairs. Finally, this also enhances the credibility of the Netherlands' external human rights policy.<sup>14</sup> In short, a great many people derive benefit from the effective protection and observance of human rights in the Netherlands.

## 2.2 The government and the enforcement of human rights: basic principles

Classical human rights, such as freedom of expression, primarily serve to protect individuals from the government. Social human rights define government's responsibilities in creating conditions that enable individuals to function well in society, such as its responsibility to protect the living environment. To an increasing degree, however, classical human rights too require active government intervention to ensure their implementation. For instance, the state has an obligation to ensure that demonstrators are given active police protection from hostile members of the public. 'Positive obligations' of this kind also exist in relation to other classical human rights. Some human rights, such as freedom of education, have a mixed character. Aside from classical and social human rights, a distinction is also made between rights relating to political participation (the right to vote and to stand for election, free elections and secret ballots), norms of equality, and the human right to legal protection.

Most classical human rights are not absolute, but can be restricted by imposing certain limitations. There is good reason for this. Classical human rights impose on government obligations of result and obligations to abstain from active involvement. It is frequently necessary to limit them on account of compelling public interests, such as the need to investigate criminal offences and prosecute offenders. However, such limitations must fulfil a number of preconditions, to ensure that classical human rights actually fulfil their protective function. Any limitation must have a statutory basis and a legitimate objective (one recognised by the human right), and must comply with the criteria of proportionality

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<sup>14</sup> Cf. Parliamentary Papers, House of Representatives 2012/13, 32 735, no. 78, p. 9-10 (Policy letter Respect and Justice for All); AIV Advisory Letter, Full Speed Ahead: response by the Advisory Council on International Affairs to the Policy Letter 'Respect and Justice for All', September 2013, pp. 4-5.

and subsidiarity. In practice, the latter two criteria, in particular, call for what is sometimes a complex weighing of interests. The European Court of Human Rights regards this, indeed, as the most important requirement for the legitimacy of restrictions imposed on human rights. The Court has emphasised that the quest for a fair balance between the public interest and the protection of the individual's human rights is at the heart of the European Convention on Human Rights. 'The search for this balance is inherent in the whole of the Convention and is also reflected in the structure of Article 1 [which imposes on member states the general obligation to secure human rights to everyone within their jurisdiction]'<sup>15</sup> There is seldom any ready-made solution to hand, and this balance must be struck in each case afresh.

Other issues too are of great importance to the observance of human rights, such as the scope, validity, and concurrence of human rights, and conflicting rights. These subjects are discussed at length in the policy document 'Fundamental Rights in a Plural Society',<sup>16</sup> which examined the question of whether different classical fundamental rights are still proportionate to one another in today's plural society. It concluded that the equality of human rights is beyond all doubt, although more weight may or will be attached to one than another in certain specific cases. There is no question of the existence of any abstract hierarchy.

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<sup>15</sup> ECtHR, 23 September 1982, *Sporrong and Lönnroth v. Sweden*.

<sup>16</sup> Parliamentary Papers, House of Representatives 2003/04, 29 614, no. 2.

Chapter 3

# National human rights policy and infrastructure

## 3.1 Multi-faceted task: legislation, compliance, promotion and monitoring

Human rights need to be respected, protected and implemented. At national level, the responsibility for these tasks rests primarily on the shoulders of the state, in particular those of the legislature, administrative bodies and the judiciary. This responsibility has many facets, also for the government, which has both legislative and administrative tasks.<sup>17</sup> These facets relate to (1) the shared competence for developing human rights norms, (2) the obligation to observe and promote human rights, and (3) the obligation to organise and implement a monitoring procedure. Each of these tasks is addressed briefly below (subsections 3.1.1.-3.1.3); in these passages distinctions are drawn between duties to be exercised at national, international and EU level. The aim is to shed light on the tiered infrastructure of human rights protection that exists in the Netherlands.

### 3.1.1 Development of human rights norms

#### **National: Constitution and implementing legislation**

The legislature develops and maintains the norms for the protection of fundamental rights in accordance with the special revision procedure laid down in the Constitution (article 137). In 2010 a government committee, which had been appointed to issue recommendations on the Constitution, proposed amendments to several articles.

- The recommendation to amend article 13 of the Constitution, on the privacy of correspondence, telephone and telegraph communications, has been adopted. The proposed amendment to the Constitution ensures that Article 13 is not a dead letter, but will provide – supplemental to human rights conventions – real constitutional protection for the private nature of communications. The Bill will be introduced into parliament in the first half of 2014.
- The government is preparing a proposal to amend the Constitution, partly to implement a motion to this effect originating from the Senate of the States General, to enshrine the right to a fair trial before an independent and impartial court in the Constitution. The Minister of the Interior and Kingdom Relations will subject the proposal to an online consultation procedure in the spring of 2014.<sup>18</sup>

In the Netherlands, several of the fundamental rights enshrined in the Constitution are elaborated in specific acts of parliament. For instance, the Equal Treatment Act (AWGB) implements the principle of equality, partly in relation to other fundamental rights. The Personal Data Protection Act (WBP) implements the right to respect for privacy and the right

<sup>17</sup> P.B.C.D.F. van Sasse van Ysselt, 'Grondrechten en de regering als medewetgever' (preliminary advice), in R. de Lange (ed.), *Wetgever en grondrechten*, Nijmegen: Wolf Legal Publishers 2008, pp. 31-60.

<sup>18</sup> See Parliamentary Papers, Senate 2012/13, 31 570, G and H.

to protection of personal data. Other examples include the Public Assemblies Act and the Elections Act. Frequent amendments are made to these pieces of legislation in response to social and/or political developments.

### **International: human rights conventions**

The government has the constitutional task of promoting the development of the international legal order (article 90 of the Constitution). One of the ways in which the government fulfils this obligation is by acceding to human rights conventions. The implementation of international obligations in the Dutch legal order is regulated by articles 93 and 94 of the Constitution.<sup>19</sup>

The human rights conventions that are of greatest importance for the Netherlands are those concluded in the Council of Europe and the United Nations. Within the Council of Europe – an important guardian of human rights, democracy and the rule of law throughout Europe – these are primarily the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and supplementary protocols, which primarily covers classical rights; the revised European Social Charter (ESC), which, as indicated by its title, covers social rights; the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; and the Framework Convention for the Protection of National Minorities.

Within the United Nations, the main instruments are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). In addition, there are separate conventions within the United Nations against racial discrimination; discrimination against women; torture and other cruel, inhuman or degrading forms of treatment or punishment; and enforced disappearances. Another important instrument is the UN Convention on the Rights of the Child.

There are several conventions that the Netherlands has signed but not yet ratified. These include the UN conventions on the rights of migrant workers and the rights of persons with disabilities. They also include the Council of Europe conventions on biomedicine and on violence against women, as well as one of the supplementary protocols to the ECHR.

The Netherlands signed the UN Convention on the rights of persons with disabilities in 2007. Steps were taken in the course of the past year to achieve its ratification. In the summer of 2013 those working in the field were consulted regarding the acts approving and implementing the Convention's ratification. The consultations made it clear that the ratification of this Convention will be welcomed and supported. Client organisations, in particular, are pleased that this government is continuing down the path to ratifying the Convention, as stated in the Coalition Agreement.

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<sup>19</sup> Policy memorandum issued by the government in response to the Visser motion tabled on 31 October 2006 (Parliamentary Papers, House of Representatives 2006/07, 29 861, no. 11), 21 September 2007.

- The government expects to be able to introduce into parliament a Bill approving the ratification of the Convention preventing and combating violence against women and domestic violence in the course of 2014.
- The draft legislation for the Acts approving and implementing the ratification of the Convention on the rights of persons with disabilities will be sent to the Council of State for recommendations before the end of 2013, after which it will be introduced into the House of Representatives to be debated there.
- After the aforementioned Bills have been submitted, the government will determine its position on accession to the Optional Protocol to the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention on the Rights of the Child.
- The government will study the consequences of ratifying the Optional Protocol to the ICESCR.<sup>20</sup>

### **European Union**

Finally, human rights norms are also defined within the EU. The Dutch government and parliament have helped to define these norms. The European Union is at its core a community of shared values. It is crucial that the Union propagate its values: they are part of the European identity. Provisions in EU regulations and provisions of EU law that lend themselves to it have direct effect within the national legal order of the member states; this is not dependent on the system of applicability as laid down in Articles 93 and 94 of the Constitution. The EU Charter of Fundamental Rights (EU CFR) contains both classical and social fundamental rights, and is legally binding both on EU institutions and bodies and on the member states, when they are implementing EU law (Article 6, para. 1 of the Treaty on European Union (TEU); Article 51 of the EU CFR)). Pursuant to Article 6, para. 3 of the TEU, fundamental rights enshrined in the ECHR and arising from the constitutional traditions that the member states have in common are part of EU law. The European conventions contain numerous other provisions that elaborate the details of specific fundamental rights. For instance, Article 157 of the Treaty on the Functioning of the European Union (TFEU) provides for equal pay for male and female employees. Secondary legislation such as the Anti-Discrimination Directive and the Data Protection Directive also elaborate details of the protection of specific human rights within the EU.

### **Tiered legal order**

Frequently, the same human right is laid down both in the Constitution (in which case it is called a fundamental right) and in one or more international or EU instruments. However, there may be differences of scope and possible limitations between human rights enshrined in national and international law. Different rules exist to make it possible to interpret such coinciding norms in different instruments as much as possible in the interests of individual citizens. Thus, the greatest value is attached to the human right that provides the largest measure of protection. In addition, Article 53 of the ECHR, for instance, provides that the ECHR's provisions may not be used as an argument for restricting the force of a national fundamental right.

<sup>20</sup> Cf. Netherlands Institute for Human Rights, Annual Report for 2012, p. 24.

### 3.1.2 Observance of human rights

#### National level

Besides its responsibility for developing human rights norms, the government is also responsible for ensuring its own observance of these norms. As part of policy development and the drafting of legislation, an integrated Impact Assessment Framework (IAK) was created to provide guidelines for policy initiatives and draft legislation. Part of this framework is a checklist for examining new proposals for compatibility with fundamental rights. The emphasis here lies on classical fundamental rights, because of the special conditions that must be met if such rights are restricted to serve other legitimate interests. The Legislative Drafting Instructions also devote attention to the importance of examining draft legislation for compatibility with the ECHR.<sup>21</sup> In addition, a Privacy Impact Assessment has been developed and made accessible since 1 September 2013. To add to these, the following two auxiliary instruments are being developed:

- To safeguard the observance of socioeconomic rights in policy and legislation, a checklist for these human rights will be developed in 2014.<sup>22</sup>
- To safeguard compliance with the European Charter of Fundamental Rights, a guide will be prepared on the conditions relating to its application in the first quarter of 2014.

The Ministry of the Interior and Kingdom Relations is responsible for examining the constitutionality of draft legislation, which includes examining compatibility with fundamental and human rights. It always does so in collaboration with line ministries. The Ministry of Security and Justice, which bears special responsibility for the quality of legislation, examines legislative proposals originating from all ministries. Before any bill is put before the cabinet, it is examined to determine inter alia to whether human rights aspects receive sufficient attention in the accompanying explanatory memorandum. To ensure that fundamental and human rights receive the attention they deserve, this subject is included in the curriculum of the Academy for Government Lawyers.

In addition, an interministerial human rights consultative committee has been set up.<sup>23</sup> It serves as a platform for ministries to help ensure the proper observance and promotion of human rights in the development of legislation and policy, and to ensure that the accountability procedures – such as drafting the mandatory reports prescribed by human rights conventions and for the UPR – are conducted properly. This consultative committee does not

<sup>21</sup> See Instruction 18.

<sup>22</sup> This in response to a point made by the Netherlands Institute for Human Rights, which urges the importance of examining proposals from the specific vantage point of human rights, in particular economic and social rights, Annual Report for 2012, pp. 22-23.

<sup>23</sup> The interministerial human rights consultative committee was created partly in response to an indirect recommendation to this effect stemming from the Netherlands Institute for Human Rights; see the Institute's Annual Report for 2012, p. 22.

take the place of ministerial and interministerial consultative bodies in which human rights also play an important role. However, the interministerial human rights consultative committee provides an opportunity to collect the results arising from these bodies and discuss them. This Action Plan provides parameters for doing so.

- Over the next few years, the interministerial human rights consultative committee will continue its work and its responsibilities will be further defined. The implementation of the Action Plan at issue here is one of the new subjects it will be addressing.
- Partly for the purposes of the Action Plan and the interministerial consultative committee, a list is being compiled of all the international recommendations that have been made to the Netherlands and the ways in which the Netherlands is complying with them. This work will be completed at the beginning of 2014.

### **European Union**

Within the framework of the EU, too, instruments have been developed to promote the observance of human rights. The Commission has published a strategy to promote compliance with the Charter of Fundamental Rights of the European Union (the Charter).<sup>24</sup> This includes a checklist of fundamental rights that is intended to enshrine the culture of the Charter in the EU's institutions. The Council has developed methodological guidelines to check compliance with the Charter in relation to legislation in which the Council is involved,<sup>25</sup> including for amendments proposed by the member states.<sup>26</sup> By incorporating a specific article on respect for the Charter in its Rules of Procedure (Rule 36), the European Parliament has created its own mechanism for assessing compliance with the Charter.<sup>27</sup>

### **Observance in practice**

For the public, the government's actions are seen and felt most keenly in the practical dealings of everyday life. These practical dealings must therefore be compatible with human rights norms. Examples that come to mind include the actions of professionals dealing with privacy-sensitive data relating to individuals, or who have direct contact with the public in the course of investigations and prosecution, such as police officers and the Royal Military and Border Police, as well as custodial and care institutions. In this context, it is important to ensure that professional educational courses provide instruction on human rights, as well as on the normative and corrective function of supervisory mechanisms. These are dealt with in the following subsection.

<sup>24</sup> Commission Communication (2010) 573, 'Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union', 19 October 2010.

<sup>25</sup> Coreper, 'Guidelines on methodological steps to be taken to check fundamental rights compatibility at the Council's preparatory bodies', Council document 10140/11, 18 May 2011.

<sup>26</sup> Ibid.

<sup>27</sup> Rules of Procedure of the European Parliament, July 2013, at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+RULES-EP+20130701+RULE-036+DOC+XML+Vo//ENandlanguage=ENandnavigationBar=YES>.

### 3.1.3 Monitoring and promoting observance of human rights

In order to protect human rights, observance must be monitored. This takes place first and foremost at national level. In principle, the role of international systems is supplementary. They only enter the picture when national authorities fail to fulfil their responsibilities in this regard, or fail to do so adequately. This primary role of national oversight is laid down in the ECHR and other human rights conventions, and in the case law of bodies such as the European Court of Human Rights (ECtHR).

National human rights institutes have significant added value in the protection and strengthening of human rights at national level. The Netherlands therefore set up a national Institute for Human Rights ([www.mensenrechten.nl](http://www.mensenrechten.nl)), which came into operation on 1 October 2012. In addition, there are numerous other bodies and institutions with a wide range of tasks and powers that are active in the realm of promoting fundamental rights and monitoring their observance, both nationally and internationally, and within the EU.

#### **National level**

The government and parliament, as legislators, are responsible for setting up major national institutions, which have different roles and powers in guaranteeing the observance of fundamental and human rights from an external vantage point.

#### *The administration of justice*

The judiciary is one of the three classic powers of the state, and is responsible for overseeing the observance of fundamental and human rights in specific situations. Certain international studies have concluded that the administration of justice in the Netherlands is efficient and functions well.<sup>28</sup> The scale expansion arising from the revision of the judicial map effected in 2013 has improved the quality of the justice system and the Public Prosecution Service. This scale expansion reduces the risk of delays and case attrition, and creates better conditions for acceptable case processing times. This means that individuals seeking justice can expect their cases to be concluded within a reasonable period of time.

The right to legal representation is enshrined in article 6 of the ECHR and article 18 of the Constitution. In criminal law, every arrested suspect has the right to speak to a lawyer before being questioned by the police (Salduz judgment of the ECtHR). The European Directive on issues including the right of access to a lawyer will be implemented with a provision in the Code of Criminal Procedure providing for the possibility of legal representation during as well as before police questioning. In addition, a bill will be introduced to anchor the right to legal representation in the Code of Criminal Procedure.

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<sup>28</sup> The Global Competitiveness Report, [www.weforum.org/issues/global-competitiveness](http://www.weforum.org/issues/global-competitiveness), p. 393 and [www.worldjusticeproject.org/country/Netherlands](http://www.worldjusticeproject.org/country/Netherlands).

- Both legislative proposals are expected to be introduced into the House of Representatives in 2014.

In addition, there are High Councils of State, such as the Council of State as the independent advisor on legislation and governance and the highest court of general administrative law in the Netherlands ([www.raadvanstate.nl](http://www.raadvanstate.nl)), as well as the States-General as co-legislator and as the body that exercises oversight over the government ([www.eerstekamer.nl](http://www.eerstekamer.nl) and [www.tweedekamer.nl](http://www.tweedekamer.nl)) and the National Ombudsman. The latter carries out investigations and issues its findings on whether or not administrative authorities have acted properly, which includes examining their observance of fundamental and human rights ([www.nationaleombudsman.nl](http://www.nationaleombudsman.nl)). The Children's Ombudsman, which has been part of the Office of the National Ombudsman since 2011, monitors the observance of children's rights in the Netherlands by the government and private organisations ([www.kinderombudsman.nl](http://www.kinderombudsman.nl)).

In addition, there are several advisory bodies. The Netherlands Institute for Human Rights promotes the observance of human rights in practice, policy and legislation, and boosts public awareness of human rights in the Netherlands. It is also mandated to make assessments in the realm of equal treatment legislation. This role previously belonged to the Equal Treatment Commission, which was subsumed into the Institute ([www.mensenrechten.nl](http://www.mensenrechten.nl)). The Electoral Council is a central electoral committee, advisory body and information centre on voting rights and elections ([www.kiesraad.nl](http://www.kiesraad.nl)). The Data Protection Authority monitors the careful, secure use of personal data. It makes recommendations, exercises oversight, and educates the public ([www.cbppweb.nl](http://www.cbppweb.nl)). Other bodies that play a crucial role in monitoring the observance of human rights in practice are the numerous inspectorates and supervisory bodies, such as the inspectorates of Security and Justice, Social Affairs and Employment (SZW), Education and Health Care, the Council for the Administration of Criminal Justice, the Dutch Safety Board, supervisory committees of custodial institutions and police cells, police complaints committees, and so on.

The government itself also monitors the observance and promotion of fundamental and human rights. However, this oversight does not take place from an independent and external perspective, such as the work of the organisations listed above. The government's task is therefore discussed separately in section 3.1.2 on the observance of human rights.

## **International level**

### *Council of Europe*

The European Court of Human Rights (ECtHR; 'the Court') monitors compliance with the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) by the member states of the Council of Europe. Individuals can present their grievances against the member states in applications to the Court if they believe that they have been the victim of a violation of the ECHR. Since the Netherlands became party to the ECHR, the Court has ruled in 141 cases involving the Netherlands. In 82 of these, the Court ruled that the ECHR had been violated. Since 1996, the government has reported to parlia-

ment annually on the Court's rulings in cases involving the Netherlands over the past year. In 2012 the Court ruled that the Netherlands had violated the ECHR six times, which is a fairly average number for the Netherlands. Judgments that go against the Netherlands are binding. Judgments that go against other countries are not binding on the Netherlands, but they are incorporated into the *acquis* and the interpretation of the ECHR. In this sense, they too are of great significance to the Netherlands when it comes to compliance with the ECHR. Every state party to the ECHR supplies one judge to the Court. The Committee of Ministers, the highest decision-making body of the Council of Europe, monitors compliance with the Court's judgments.

The European Committee of Social Rights monitors compliance by member states of the Council of Europe with the revised European Social Charter. The Committee has two sources of information at its disposal for this purpose. First, the states are required to report on the national implementation of the rights laid down in the Charter. Second, a select number of non-governmental organisations can submit 'collective complaints' to the Committee if they believe that a state has failed to comply with the Charter. The Committee's decisions are not legally binding. The task of monitoring is vested in the Committee of Ministers of the Council of Europe.

The Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) monitors compliance with the European convention of the same name and investigates the member states' detention facilities (including prisons and psychiatric institutions) for compatibility with the convention's requirements. After each visit to a state, the CPT submits a report with its findings and recommendations to the member state concerned, sometimes accompanied by requests for information, and invites it to respond. In addition, the European Commission against Racism and Intolerance (ECRI) and the Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC) serve as authoritative external supervisory bodies.

The Parliamentary Assembly has a number of committees that deal specifically with the situation of the rule of law, human rights, and democracy in the member states of the Council of Europe. One of these is the Committee on the Honouring of Obligations and Commitments by member states, which monitors compliance with the obligations undertaken by member states in the framework of the Council of Europe. This committee can propose to the Parliamentary Assembly that a monitoring procedure be launched or resumed, if a member state has failed to honour its obligations or abide by its commitments. The Assembly can impose sanctions on member states that have failed in their obligations for a long period of time (article 8, Statute of the Council of Europe). For the rest, 'monitoring' and/or advisory work is carried out by the Commissioner for Human Rights of the Council of Europe, the European Commission for the Efficiency of Justice (CEPEJ) and the European Commission for Democracy through Law (Venice Commission).

### *United Nations*

The UN human rights conventions have their own supervisory treaty bodies. These consist of independent experts, and given the number of member states of the United Nations, it is impossible for each member state to be represented in a committee. The human rights committee monitors compliance with the International Covenant on Civil and Political Rights. Other bodies, insofar as relevant for the Netherlands, are the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women, the Committee against Torture, the Committee against Racial Discrimination, the Committee on the Rights of the Child and the Committee on Enforced Disappearances. States are obliged to report to the Committees, generally on a periodic basis, on the national implementation of the conventions. The Committees study these reports and may issue related recommendations to the state. In addition, individuals can submit complaints to most of these Committees if they believe that their rights as enshrined in these conventions have been violated. Thus far, the Committees have concluded that twelve such complaints of this kind against the Netherlands were well founded. These decisions are not legally binding.

The Universal Periodic Review (UPR) is a relatively new instrument with which the UN Human Rights Council investigates the human rights situation in all member states every four years on the basis of the applicable human rights conventions and other obligations. Unlike the treaty committees, this is a form of peer review, making its context far more political. On 31 May 2012, the second official session on the Netherlands took place. The Human Rights Council issued several recommendations and requests for additional information to the government. The government sent the Dutch translation of the report with its reactions to the recommendations to the UN and the House of Representatives (Parliamentary Papers, House of Representatives 2012/13, 26150, no. 127). The report of this session can be consulted e.g. at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/NLSession13.aspx>.

- In 2014 the Netherlands will send the UN a voluntary interim report on action taken in response to the UPR recommendations. It will notify the House of Representatives of this report.

### **European Union**

Within the EU, too, various actors have a supervisory role in relation to the protection of human rights.<sup>29</sup> They fulfil this role on the basis of diverse tasks and responsibilities.

The actors that can be named here are the Court of Justice, and more recently the European Data Protection Supervisor (2001, [www.edps.europa.eu/EDPSWEB](http://www.edps.europa.eu/EDPSWEB)), the European Institute for Gender Equality (2006, <http://eige.europa.eu>) and the EU Agency for Fundamental Rights

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<sup>29</sup> For a detailed discussion of this and of the international human rights infrastructure of the EU Member States, see the annual report for 2012 of the EU Agency for Fundamental Rights.

(2007, [www.fra.europa.eu](http://www.fra.europa.eu)). Unlike the Court, the Supervisor and Agencies focus specifically on the protection of human rights.

The European Commission possesses the power to launch infringement proceedings against a member state that it fails to comply with obligations under the Treaties or the EU's secondary legislation, or to do so within the set time (Article 258 of the Treaty on the Functioning of the European Union). In 2010 the Commission announced in its 'Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union' that it would pursue a 'zero tolerance' policy on human rights violations, using the Charter as a 'compass' in this regard.<sup>30</sup> Since then, the Commission has issued annual reports on compliance with the Charter to take stock of progress in the observance of fundamental rights in a transparent, continuous and coherent manner.<sup>31</sup> In this context, it also engages in frequent exchanges of views with the other EU institutions. Thus, the Council of Ministers has stated that it will ensure that its legislative products are worthy of a 'fundamental rights label'.<sup>32</sup> It also established that all findings of investigations conducted by the EU Agency for Fundamental Rights will be discussed within the Council as a matter of course.<sup>33</sup> It may be added that if a member state has been found to have breached the values on which the Union is based, the Council has the power to suspend certain of its rights (article 7, TEU): this is such a far-reaching political instrument that it has never been used to date. For the rest, the European Parliament plays an active role in monitoring the observance of human rights within the EU. Under rule 36 of its Rules of Procedure, it has created its own mechanism for assessing the effects of the Charter.<sup>34</sup>

Finally, it is important to note here that – in accordance with Article 6, para. 2 of the TEU – the EU will accede to the ECHR, which means that the actions of all EU institutions and agencies will be subjected to external legal oversight by the European Court of Human Rights. The Netherlands is actively exerting itself to prepare this accession.

## 3.2 Human rights at local and regional level

Members of the public have dealings with different tiers of government. Each of these tiers bears responsibility, both separately and conjointly, for the protection and promotion of human rights. Examples include the implementation of the Social Support Act (WMO) and

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<sup>30</sup> See also V. Reding, 'Towards a European Area of Fundamental Rights: The EU's Charter of Fundamental Rights and Accession to the European Convention of Human Rights', Speech for High Level Conference on the Future of the European Court of Human Rights, 18 February 2010.

<sup>31</sup> [http://ec.europa.eu/justice/fundamental-rights/charter/application/index\\_en.htm](http://ec.europa.eu/justice/fundamental-rights/charter/application/index_en.htm)

<sup>32</sup> Council conclusions on the role of the Council of the European Union in ensuring the effective implementation of the Charter of Fundamental Rights of the European Union, 24-25 February 2011. The most recent Council conclusions are Council conclusions on fundamental rights and the rule of law and on the Commission 2012 Report on the Application of the Charter of Fundamental Rights of the European Union, Doc. 10168/13, 29 May 2013, at: <http://register.consilium.europa.eu/pdf/en/13/st10/st10168.en13.pdf>.

<sup>33</sup> Council conclusions, February 2011, para. 19.

<sup>34</sup> European Parliament, Resolution on the situation of fundamental rights in the European Union (2009): effective implementation after the entry into force of the Treaty of Lisbon, 15 December 2010, para. 26.

the Municipal Anti-Discrimination Services Act. There are also numerous other tasks and powers in the context of which subnational authorities are concerned with the promotion and observance of human rights. This applies all the more with the growing trend towards decentralisation. As youth care, long-term care (WMO) and employment support (Participation Act) are transferred to municipalities, local authorities are acquiring new tasks and responsibilities, a process that calls for constant vigilance regarding the observance of human rights.<sup>35</sup>

We might mention, for instance, the study announced in the Coalition Agreement of the scope for an integrated approach to families with multiple problems at municipal level,<sup>36</sup> and a more targeted approach designed to eliminate the common situation in which care services helping families with multiple problems end up working at cross purposes. This will probably be done by arranging for more extensive exchanges of personal data. The processing of these privacy-sensitive data must comply with the requirements laid down by the Personal Data Protection Act. The most natural tier of government to achieve this is that of municipal authorities, which can tailor solutions to individual situations and are in a better position to involve the social networks of those concerned.<sup>37</sup> This intention is part of the 'One family, one plan, one case manager' principle in relation to the decentralisation process in the wider social domain.

Local expertise on the application of human rights is fairly limited.<sup>38</sup> In consequence, there is a growing need to raise awareness on this issue within municipal authorities.<sup>39</sup> To ensure that people invoke their human rights and to encourage the application of the human rights framework to municipal policy, the Association of Netherlands Municipalities, the Municipality of Utrecht, University College Roosevelt, the Netherlands Institute for Human Rights and Amnesty Netherlands have set up a special network. Within this network, a range of activities are devised to enhance awareness and application of human rights at local level. These partners have also invested in various ways of highlighting and raising public awareness of this issue since 2011. To increase the effectiveness of the independent network, it was decided to continue it under the name 'Local Human Rights Network'. Since the spring of 2013, support for the network has enabled its gradual expansion to include more municipalities and other civil society partners.<sup>40</sup> In addition, a website has been developed

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<sup>35</sup> Cf. Netherlands Institute for Human Rights, Annual Report for 2012, pp. 23-24. The Data Protection Authority also drew attention to this point, in relation to the protection of personal data, in its letter of 30 October 2013 to the Minister of the Interior and Kingdom Relations.

<sup>36</sup> Coalition Agreement, p. 24.

<sup>37</sup> Letter of 19 February 2013 ('Letter on Decentralisation') from the Minister of the Interior and Kingdom Relations to the House of Representatives.

<sup>38</sup> Netherlands Institute for Human Rights (2013) Human Rights in the Netherlands: Annual Report for 2012, pp. 16 and 26.

<sup>39</sup> The Congress of Local and Regional Authorities of the Council of Europe is also increasingly proactive in encouraging the observance of human rights. Oomen, B. and M. Baumgärtel (2012) Human Rights Cities. Overview for the Sage Handbook on Human Rights.

<sup>40</sup> Municipality of Middelburg, Defence for Children and the organisation Coalitie voor Inclusie ('Coalition for Inclusion') have already signed up, and several other municipal authorities and civil society organisations have expressed interest.

([www.mensenrechtenlokaal.nl](http://www.mensenrechtenlokaal.nl)) and a start made on widening the human rights perspective to embrace local policy themes. The various civil society partners will also continue their individual work on this theme. The government applauds these initiatives.

- In consultation with the Local Human Rights Network, the Ministry of the Interior and Kingdom Relations is exploring ways of continuing and supporting the Network in order to increase the impact and coherence of its activities.

### 3.3 Dialogue with civil society

Cooperation with civil society is also key to improving the human rights situation. The government keeps civil society organisations actively involved in the development of its policy. This involvement takes the form of round-table talks, expert meetings and written consultations. The government has introduced an online consultation procedure for legislation. In the human rights conventions reporting cycle, meetings are organised for NGOs and other relevant organisations, for them to express their views and advise the government on the subjects to be included in the national report. It is also useful for the government to keep itself well informed about current developments within civil society organisations – and society at large – and vice versa.

- The government encourages NGOs and other organisations to contribute to the Broad Consultation on Human Rights (BMO) and demonstrates its readiness to make substantive contributions of its own.

### 3.4 Corporate social responsibility

Besides the role played by the government, corporate enterprises too play an important part in the observance of human rights. More and more companies are aware of the importance of corporate social responsibility (CSR). CSR is based on the premise that the right balance must be struck between the three Ps – people, planet and profit – and that companies must be transparent and conduct a dialogue with stakeholders about their deliberations. An important part of the first P – people – is paying due attention to human rights. At national level, CSR is about the contribution that companies make to sustainable development in addition to their statutory obligations in this regard.<sup>41</sup>

- The Minister of Foreign Affairs and the Minister for Foreign Trade and Development plan to issue a National Action Plan for Human Rights and Business at the end of 2013.<sup>42</sup>

<sup>41</sup> Parliamentary Papers, House of Representatives 2012/13, 26 485, no. 164 (policy letter on Corporate Social Responsibility from the Minister for Foreign Trade and Development Cooperation and the Minister of Economic Affairs, July 2013).

The National Action Plan for Human Rights and Business is based on the UN Guiding Principles on Business and Human Rights. These principles, also known as the Ruggie policy framework, are divided into three pillars: the duty of governments to provide protection from human rights violations in the private sector; the responsibility of corporate enterprises to respect human rights; and the provision of efficient remedies in the event of human rights violations. These pillars apply to all states and all companies, including multinationals, regardless of size, sector, location, and of shareholder and organisational structure.

Although an important part of the human rights dimension of CSR policy in the Netherlands focuses on the responsibilities of companies through their supply chain in other countries, the international guidelines also apply in the domestic context. The Netherlands should protect people from human rights violations committed by companies in its territory, for instance by enforcing legislation that regulates – whether directly or indirectly – the observance of human rights by the private sector. This includes areas such as non-discrimination, working conditions, and property rights.

#### Knowledge and raising public awareness

For human rights to be invoked, observed and enforced, it is important that people have a sound knowledge of them. The government therefore considers it essential to provide information and education about human rights and to raise awareness of this issue. This applies to government bodies as well as to the public at large. This Action Plan sets out to contribute to this, in particular in relation to coordination, methods and organisational parameters within government bodies, the responsibilities of different ministries, and the role of municipal authorities.

General information about fundamental and human rights can also be found on the website [www.rijksoverheid.nl](http://www.rijksoverheid.nl) under the heading of ‘overheid, bestuur en koninkrijk’ (government bodies, administrative authorities and Kingdom). This classification appears to be too inaccessible.<sup>43</sup>

- Information about human rights in the Netherlands on the website [www.rijksoverheid.nl](http://www.rijksoverheid.nl) will be made easier to consult.
- The grant provided by the Ministry of the Interior and Kingdom Relations for the website [www.nederlandrechtsstaat.nl](http://www.nederlandrechtsstaat.nl) will continue to be allocated for the years 2014-2015.

The Netherlands Institute for Human Rights also plays an important part in disseminating knowledge and raising awareness. Other more specialised or more generic advisory bodies, institutes and NGOs also provide information about human rights.

<sup>42</sup> Cf. Annual Report of the Netherlands Institute for Human Rights, p. 24.

<sup>43</sup> Cf. Netherlands Institute for Human Rights, Annual Report for 2012, p. 21.

Chapter 4  
**Specific policy  
themes**

## 4.1 Non-discrimination and equal treatment

### *Non-discrimination*

Discrimination strikes at the core of an individual's being, impedes active involvement in society, and discourages people from participating and investing in their community. Discrimination is a deeply entrenched social phenomenon and makes itself felt in many areas of life. This calls for constant vigilance on the part of all participants in society: individuals, businesses, social partners, institutions and government.<sup>44</sup> All people should have the same opportunity to fulfil their own potential and to take part in society. The ban on discrimination and the right to equal treatment are enshrined in article 1 of the Constitution and other statutory instruments.

#### **Letter on discrimination and fact-finding study in preparation for a campaign**

Every year the government sends the House of Representatives a letter on action taken to combat discrimination. This letter describes the progress of the measures taken by the government to combat discrimination and to gain a better understanding of the problems involved.

- The progress letter sent out in 2013 discusses issues such as the nature and extent of discrimination, and measures taken to strengthen local anti-discrimination efforts, to improve the system for registering reports made to the police and other bodies, and to improve victims' willingness to report incidents.
- To encourage victims of discrimination on the basis of sexual orientation to report incidents to the police, a public information campaign is being conducted in late 2013 and early 2014.
- The Ministry of the Interior and Kingdom Relations and the Ministry of Social Affairs are considering the idea of launching another campaign in 2014 to encourage victims of discrimination to report incidents to anti-discrimination centres and to raise awareness on this issue.

#### **Improving reports of discrimination and the registration of these reports**

The introduction of the Municipal Anti-Discrimination Services Act in 2009 made it possible for virtually anyone in the Netherlands to report discrimination to an anti-discrimination service, and if necessary to receive professional support. However, the evaluation of this Act has revealed that not all municipalities have an anti-discrimination policy, and that the available services are not sufficiently well-known to the public.

- The government is conducting talks with the municipal authorities to explore ways of developing their own anti-discrimination policy and of publicising the existence of anti-discrimination services.

<sup>44</sup> Cf. Parliamentary Papers, House of Representatives 2013/14, 30 950, no. 62 (government response to the ECRI report).

### **Discrimination in the labour market**

Discrimination in the labour market is very common. Those affected include non-Western immigrants,<sup>45</sup> women and transgender people. It is reflected, for instance, in hiring policies, different levels of pay between men and women, and other distinctions made on the basis of gender. The Social and Economic Council (SER) was asked to recommend ways of preventing and combating discrimination in the labour market and boosting participation in employment.

- In response to the advisory report that the Social and Economic Council is expected to publish in 2014, the Ministry of Social Affairs will see whether follow-up actions are needed to combat discrimination in the labour market, and if so, what form they should take.

### **The police and ethnic profiling**

Both the ECRI and Amnesty International have expressed concerns about ethnic profiling by the Dutch police. The basic principle is that the Dutch police are not permitted to treat people differently on the basis of their ethnic background. Given the great importance that the government attaches to combating racial profiling, measures that combat ethnic or racial profiling are discussed as part of the multi-year training course at the Dutch Police College. In addition, afternoon seminars are organised on this theme. The police is dedicated to the principle of equality and takes action against discrimination, whether it is external (that is, in the form of incidents reported to the police or another body), or internal (within its own organisation). In response to the concerns that have been expressed, a further investigation is under way on ethnic profiling within the police. Any member of the public who feels that he has been treated improperly by the police can lodge a complaint with an independent complaints committee, the National Ombudsman or the Netherlands Institute for Human Rights.

### *Equal opportunities for women*

The government attaches great importance to assuring equal opportunities for women. It issues periodic 'equal opportunities letters', setting out its policy in this area.

- The Equal Opportunities Letter of 10 May 2013, covering the period 2013-2016, elaborated the government's policy on equal opportunities for women for the next few years (Parliamentary Papers, House of Representatives 2012/13, 30 420). The main points of this policy include efforts to increase women's participation in the workforce so that more women acquire economic independence, and improving the safety of women and girls. In addition, policy is being developed in the areas of health, media, and the position of girls and boys in education.

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<sup>45</sup> Study carried out by the Netherlands Institute for Social Research in November 2012 on discrimination against non-Western immigrants in the labour market, commissioned by the Ministry of Social Affairs and Employment, [http://www.scp.nl/Publicaties/Alle\\_publicaties/Publicaties\\_2012/Op\\_achterstand](http://www.scp.nl/Publicaties/Alle_publicaties/Publicaties_2012/Op_achterstand).

## LGBT rights

In its letter outlining policy on equal rights for the period 2013-2016, the government also discusses diverse measures to improve the safety and rights of women and of gay and transgender people, such as the right to actual protection from violence and the right to engage in relationships with other people.

- The Gender Identity Recognition Bill (Ministry of Security and Justice) was submitted to the House of Representatives. This bill will remove the sterilisation requirement in relation to the official registration of gender designation from the statute books. The bill was passed by the House of Representatives in April 2013, and is currently awaiting debate in the Senate.
- The Lesbian Parenthood Bill (Ministry of Security and Justice) was passed by the Senate on 19 November 2013. The new act provides that as from 1 April 2014, the mother's female partner, the 'co-mother', can become the legal parent of her partner's child without the need for a court order.

On 17 November 2012, the Netherlands Institute for Social Research (SCP) published a research report on the experiences of transgender people living in the Netherlands ('Worden wie je bent: Het leven van transgenders in Nederland'). The report reveals that transgender people experience numerous problems in the areas of safety, employment, equal rights and health care. The inclusion of gender identity in the Equal Treatment Act can help to improve the legal protection of transgender people in the Netherlands.

- The government is considering whether to incorporate the ban on discrimination on the basis of gender identity and gender expression into the Equal Treatment Act, and if so in what form.

## Intersex people

Recent publications and human rights declarations also express the need to combat discrimination against intersex people and to protect their physical integrity and self-determination, since such persons may be subjected to unnecessary surgical intervention.

- The Minister of Education, Culture and Science will conduct a fact-finding study to ascertain whether there are any social problems in this area, and if so of what nature, so that any necessary conclusions may be drawn.

## Children's rights

Children are vulnerable in all societies. The government is actively engaged in devising ways of systematically improving the position and rights of children. It is a fundamental principle in this regard that children's voices must be heard, so that they can enjoy a safe, healthy and

pleasant childhood, with good prospects for the future. The basic document establishing children's rights is the International Convention on the Rights of the Child. The Netherlands will submit its fourth periodic report on the implementation of this Convention to the UN Committee on the Rights of the Child in Geneva.

Children's rights is a subject that receives a great deal of attention in the Netherlands. Every year UNICEF and Defence for Children issue an annual report on children's rights, in which they outline the situation of children in the Netherlands in several areas. In April 2013, UNICEF published its report on the well-being of children in twenty-nine developed countries, which concluded that children in the Netherlands were the happiest. The Netherlands scored highest on education and well-being. It also emerged from the report, however, that the Netherlands has a high level of infant mortality and that Dutch children suffer a great deal of bullying. Action has been taken in both areas. Thus, the Ministry of Education, Culture and Science and the Children's Ombudsman devised a joint plan to combat bullying, and the progress report on pregnancy and childbirth includes measures designed to reduce perinatal mortality.<sup>46</sup>

The Children's Ombudsman issues a Children's Monitor every year which reports in considerable detail on the situation regarding children's rights in the Netherlands and makes a range of recommendations. The government's response to the last Children's Monitor was sent to the House of Representatives in September 2013.<sup>47</sup>

The government also engages in a National Youth Debate with children and young people in the House of Representatives every year. In September 2013, UNICEF collaborated with the Ministry of Health, Welfare and Sport to organise the annual event at which the elected 'king' of children and young people gives a speech on children's rights in the Knights' Hall (Ridderzaal).

- The annual award of the International Children's Peace Prize by the organisation KidsRights will continue to take place in the Ridderzaal over the next few years.
- On the Universal Children's Day, 20 November, many Dutch municipalities have activities focusing on the issue of children's rights, such as those in the Children's Rights House in Leiden.

For the Caribbean part of the Kingdom, much remains to be done in the area of children's rights. In its policy reaction of 19 June 2013 to UNICEF's report on 'Kingdom children', the government set out the efforts being made by the Netherlands, together with the special municipalities or 'public bodies', to improve the position of children in the Caribbean Netherlands.<sup>48</sup>

<sup>46</sup> Parliamentary Papers, House of Representatives 2012/13, 29 240, no. 51 and no. 52, and Parliamentary Papers, House of Representatives 2012/13, 32 279, no. 54, respectively.

<sup>47</sup> Parliamentary Papers, House of Representatives 2012/13, 31 839 no. 314.

<sup>48</sup> Parliamentary Papers I 2012/13, 33 400, IV, Y.

The State Secretary for Health, Welfare and Sport later summarised the government's priorities for youth policy in the Caribbean Netherlands as follows: to continue developing and expanding infrastructure/services, collect data making it possible to measure and monitor the effectiveness of policy, and evaluate the overall strategy. To this end, a brainstorming session about youth policy in the Netherlands in the Caribbean took place on Bonaire on 23 and 24 September. Those present discussed the situation as viewed by the Youth Care and Family Supervision Agency for the Caribbean Netherlands and considered whether the interventions in this part of the Kingdom needed any adjustment. The meeting confirmed existing views that it is crucial to develop a cohesive approach, which includes the participation of the Youth Care and Family Supervision Agency. Partly on the basis of the meeting's conclusions, it was agreed with the three islands during the Caribbean Netherlands week, at the end of October 2013, that the relevant ministries and the three public bodies would collaborate on developing and expanding this approach. This will take effect over the next few months.

- The Minister of the Interior and Kingdom Relations will include the situation surrounding children's rights in the Netherlands in the Caribbean in the preparations for the next Kingdom-wide Conference in March 2014, at which this subject is on the agenda.

## 4.2 Information society

The ongoing digitisation of information is generating new opportunities, within government and elsewhere, to perform tasks more effectively, efficiently and cheaply. Government services and law enforcement are ever more reliant on the computerised processing and exchange of personal data. Online purchasing is growing more and more common, and newspapers are increasingly read on the internet. The information society presents government with a dilemma. On the one hand, government is expected to act with due respect for privacy, the confidentiality of communications, and the right to freedom of expression enjoyed by journalists and members of the public. On the other hand, the public expects government to protect it effectively from new dangers and risks such as identity fraud, to watch over internet safety, and to update legislation and policy containing obsolete concepts. The rights relating to information in the digital society are interconnected. For instance, the confidentiality of communications is preserved partly in the service of public debate. Freedom of expression may be muted if individuals are no longer free to decide whether to communicate something confidentially or in public, and lack confidence that this choice will be respected by the government. Commercial enterprises that provide communications services within the statutory frameworks are not liable for the behaviour of individual users of these services.

## Privacy and the protection of personal data

The right to protection of privacy and the right to protection of personal data are enshrined in article 10 of the Constitution, article 8 of the ECHR, and articles 7 and 8 of the EU Charter of Fundamental Rights. In the Netherlands, the conditions that apply to the processing of personal data are elaborated most notably in the Personal Data Protection Act. One important development is that both in the EU and in the Council of Europe, negotiations are ongoing, or starting up, respectively, on new rules for the protection of data. In addition, a variety of initiatives have been announced both in the realm of government services and in relation to enforcement.

### **General Data Protection Regulation and the Data Protection Treaty of the Council of Europe**

The data protection legislation of the European Union is being revised. The General Data Protection Regulation is part of the new legislation.<sup>49</sup> The draft text of the Regulation strengthens the rights of individuals, most notably the 'right to erasure' and the right to data portability. The monitoring mechanism for the observance and enforcement of the rules governing data protection will be established at EU level in the draft text. In addition, negotiations will be conducted in the framework of European legislation from November 2013 onwards on revising the Data Protection Convention of the Council of Europe. This convention is to be strengthened and updated to reflect new technologies and the related risks to privacy. The State Secretary for Security and Justice bears primary responsibility for the Dutch position in these negotiations.<sup>50</sup>

- The government will send the House of Representatives and the Senate progress reports on these negotiations every three months.

### **Directive on data protection in investigation and prosecution**

This Directive is part of the revision of the data protection law of the European Union. The proposed Directive is intended to replace the current framework decision on data protection,<sup>51</sup> and contains rules for the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data. The standardisation of rules governing the processing of data in the member states and the provision of personal data to third countries will help to ensure a high level of data protection. This will benefit the exchange of personal data in the context of police and judicial cooperation in criminal cases.

<sup>49</sup> Regulation of the European Parliament and the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation), COM (2012) 11, 25 January 2012.

<sup>50</sup> General position of the government: Working Group for the Assessment of New Commission Proposals (BNC fiche), Parliamentary Papers, House of Representatives 2011/12, 22 112, no. 1372.

<sup>51</sup> Framework decision 2008/977/JHA of the Council of 27 November 2008.

### **Amendments to the Personal Data Protection Act (WBP)**

In the Coalition Agreement, the government announced plans to step up the enforcement of personal data protection laws. In June 2013 the government submitted a draft amendment of the WBP to the House of Representatives, introducing an obligation to report data leaks. This reporting obligation not only requires a notification to be sent to the Data Protection Authority; the person whose details have been leaked must also be informed. In addition, the Data Protection Authority will acquire wider powers to impose sanctions, such as the power to impose administrative fines for violations of the WBP's provisions.<sup>52</sup> The object is to strengthen compliance with the WBP.

- The government expects to be able to submit the memorandum of amendment expanding the powers of the Data Protection Authority to the House of Representatives at the end of 2013.

### *Digitisation of government services and law enforcement*

#### **Digital government 2017**

The government is characterised within the information society as an entity that sets up information flows and networks and is increasingly reliant on them, for instance in the provision of services.<sup>53</sup> This digitisation of the government has been going on for some time and is proceeding rapidly (e.g. tax return forms filled in in advance, online parking permit applications, and the secure authentication system DigiD). The use of new digital technologies for government services will continue to expand.<sup>54</sup> The primary aim is to improve the quality of online government information and services and to reduce the administrative burden on individuals. In the research to discover the best options, it is essential to take account of the demands arising from the Personal Data Protection Act. The existence of secure online communication between members of the public and the government means that individuals can access the portal [mijn.overheid.nl](http://mijn.overheid.nl) to correct errors. This implements the right to access and correct one's own personal information. In May 2013, the Minister of the Interior and Kingdom Relations, in conjunction with the Minister for Housing and the Central Government Sector, issued a letter outlining his vision of Digital Government in 2017,<sup>55</sup> further elaborating the plans relating to digital government 2017.

<sup>52</sup> Coalition Agreement, p. 28. It is anticipated that the power to impose heavier fines will also be incorporated into the General Data Protection Regulation.

<sup>53</sup> Advisory Council on Government Policy report on iGovernment (March 2011), Government's response to the Advisory Council on Government Policy report on iGovernment, Parliamentary Papers, House of Representatives 2011/12, 26 643, no. 211.

<sup>54</sup> Coalition Agreement, p. 10.

<sup>55</sup> Letter of 23 May 2013 from the Minister of the Interior to the House of Representatives outlining the minister's vision of digital government in 2017 ('Visiebrief digitale overheid 2017'), Parliamentary Papers, House of Representatives 2012/13, 26 643, no. 280.

- By the end of 2014 at the latest, the Governance and iServices Task Force, together with relevant actors in public administration, will devise a form of mandatory self-regulation in relation to information security: within the limits defined (at national level and at the level of umbrella organisations), each government organisation must fulfil certain minimum standards and guarantee an annual cycle.
- The government will take the initiative to amend the General Administrative Law Act to enable members of the public to conduct their dealings with government online, if they so desire, in the future.

### **The use of biometric data on travel documents**

On 13 October 2012 the government introduced into the House of Representatives a bill to amend the Passport Act, partly to regulate the status of Dutch identity cards and to extend the period of validity of these cards and of travel documents.<sup>56</sup> The bill provides inter alia for the discontinuation of the practice of fingerprinting applicants for Dutch identity cards. In the case of an application for a passport or travel document, fingerprints are taken but they are kept only until the document's issue has been registered, or until the moment at which it has been registered that the document applied for will not be issued. In accordance with EU legislation, two of the applicant's fingerprints are saved in the chip in the person's national passport or other travel document.<sup>57</sup> This bill will enshrine the current period for saving fingerprints, which has been laid down in the Passport Implementation Regulations since 23 June 2011, at the level of statutory law. Before then, the retention period for fingerprints was eleven years.

- Provided the bill is passed by the Senate, the practice of taking fingerprints from persons applying for Dutch identity cards can be discontinued in January 2014.

The government is also awaiting the judgment of the European Court of Justice (ECJ) in response to a request for a preliminary ruling, submitted by the Judicial Division of the Council of State, in appeal cases relating to the obligation enshrined in EU law to take fingerprints from passport applicants.<sup>58</sup> Also of relevance to these cases is the ECJ's recent judgment in response to similar requests for preliminary rulings submitted by a German court.<sup>59</sup> In this judgment, the ECJ ruled that the EU regulation requiring fingerprints in passports in order to determine the document's authenticity or the holder's identity did not constitute a violation of citizens' right to privacy.<sup>60</sup> In the light of this judgment, the ECJ will probably be able to dispose of the Dutch cases rapidly too.

### **Quality and Innovation Programme**

<sup>56</sup> Parliamentary Papers, House of Representatives 2012/13, 33 440 (R 1990), no. 1

<sup>57</sup> Parliamentary Papers, House of Representatives 2012/13, 33 440 (R 1990), no. 1, p. 11.

<sup>58</sup> C-446/12 (W.P. Willems/mayor of Nuth), C-447/12 (H.J. Kooistra/mayor of Skarsterlân), C-448/12 (M. Roest/mayor of Amsterdam), C-449/12 (L.J.A. van Luijk / mayor of The Hague).

<sup>59</sup> C-291/12 (Administrative Court of Gelsenkirchen, Michael Schwartz v. Stadt Bochum)

<sup>60</sup> C-291/12 (Administrative Court of Gelsenkirchen, Michael Schwartz v. Stadt Bochum)

The administration of justice in the Netherlands is of a high standard, and always scores well in international comparisons. A similar picture emerges from client satisfaction surveys.<sup>61</sup> At the heart of the vision arising from the judiciary's mission statement is the goal of strengthening the judiciary's core values of independence, impartiality, integrity, expertise and professionalism. Sustaining and consolidating the quality of the judiciary and the confidence vested in it call for constant maintenance and a process of continuous innovation.

- The Minister of Security and Justice will put forward proposals to amend the laws of civil and administrative procedure to simplify and digitise civil proceedings, and make it possible to institute administrative proceedings online<sup>62</sup>. The changes are expected to be introduced in mid-2015. The new procedural law and digitisation will be phased in gradually, with the final release being scheduled for mid-2017. The intention is for the administration of civil and administrative law to be fully digitised by 2018.
- The judiciary is focusing on further procedural innovations, the digitisation of proceedings, and efficient working procedures.

### Cyber security

Where cyber security is concerned, the recent series of cyber-attacks on vital parts of Dutch society show the crucial importance of increasing the country's digital defences. With the recent adoption of the National Cyber security Strategy II (NCSS2), the Netherlands seeks to create a safe and open cyber-domain, in which the opportunities that digitisation offers to today's society are exploited to the full, threats are kept at bay, and fundamental rights and values are protected. The NCSS2 contains a range of ambitions, some of which are related to the protection of privacy. For instance, the government seeks to encourage the Dutch business and research communities to be in the vanguard of the movement towards 'security and privacy by design'. The NCSS2's programme of action includes the following points for action, some of which focus specifically on protecting privacy:<sup>63</sup>

- Stimulating privacy and security by design in the tendering procedures relating to products and services for the government
- Tackling cybercrime by updating and strengthening current legislation (e.g. Computer Crime Act III)
- Developing standards, wherever possible in an international context, that can be used to promote the security and privacy of IT products and services
- Raising awareness of information security and privacy among the public, the business community, organisations and government bodies, for instance by conducting awareness campaigns such as Alert Online.

<sup>61</sup> Letter of 21 March 2012 from the Minister of Security and Justice, Parliamentary Papers, House of Representatives 2012/13, 29 279, no. 160.

<sup>62</sup> Parliamentary Papers, House of Representatives 2012/13, 29 279, no. 164. This contains a reference to the agenda for innovation entitled 'Quality and Innovation' published by the Council for the Judiciary.

<sup>63</sup> Parliamentary Papers, House of Representatives 2013/14, 26 643, no. 291.

### *Freedom of expression and the protection of journalists' sources*

Freedom of expression is one of the cornerstones of a democratic, plural society such as the Netherlands. In the information society, public debate is increasingly conducted online. This means that the government's obligation to protect freedom of expression must be extended to include the new media. At the same time, the government must be able to intervene quickly and effectively if, for instance, information that poses a danger to the state or incites hatred is disseminated, or there is a real risk of such information being disseminated. In such cases, given the importance of freedom of expression, it is always essential to weigh the interests involved carefully.<sup>64</sup> In recent years, the European Court of Human Rights (ECtHR) has ruled against the Netherlands in several cases for violations of the protection of journalistic sources by the intelligence services and the justice system. According to the ECtHR, the Netherlands does not yet have a careful procedure for the use of special powers by the General Intelligence and Security Service (AIVD) against journalists who refuse to name their sources, or a clear statutory basis for the application of coercive measures, which can be subjected to judicial review, against journalists in criminal proceedings.

- In the light of these observations, the government announced in December 2012<sup>65</sup> that it would strive to amend both the Intelligence and Security Services Act 2002 (WIV2002) and the Code of Criminal Procedure. Both legislative proposals were sent to the Council of State for an advisory opinion. The Council has since issued these opinions and the government will respond to them. The legislative proposals will be submitted to the House of Representatives by the beginning of 2014 at the latest.

## 4.3 Immigration and asylum

Immigration and asylum are perennial issues. People leave their home countries for a variety of reasons, whether voluntarily or from sheer necessity, to find a better life elsewhere. The growing trend towards internationalisation and prolonged conflicts and poverty in some parts of the world stimulate emigration. When migrants come to the Netherlands, the government's task is to take due account of the interests of individual asylum seekers and other aliens (in terms of their human rights) while weighing their individual interests against compelling public interests. In asylum proceedings, those concerned frequently invoke articles 3 and 8 of the ECHR. Article 3 of the ECHR prohibits the expulsion of an alien if there is a real risk of torture or inhuman treatment in the region to which he would be expelled. This ban on refoulement has been incorporated into Dutch immigration law. Article 8 of the ECHR protects the right to privacy and family life and is mainly invoked in family reunifica-

<sup>64</sup> Cf. Parliamentary Papers, House of Representatives 2011/12, 29 614, no. 31 (Letter on fundamental rights in a plural society).

<sup>65</sup> Government position on the ECtHR's judgment in the case involving De Telegraaf, 7 December 2012, Parliamentary Papers, House of Representatives 2012/13, 30 977, no. 49.

tion cases. The margin for national policy is primarily determined by EU directives and regulations.<sup>66</sup>

### *Asylum procedure*

The Netherlands made a careful assessment of the various interests at stake in shaping the asylum procedure. On the one hand, it was important to ensure a swift procedure, and on the other hand, it was important to give each alien a good opportunity to present his case, so enabling conditions and safeguards were created. Before the asylum procedure begins, the asylum seeker is given a period of at least six days to rest and prepare for the procedure. In this period, the asylum seeker is also assigned a legal representative to assist him throughout the asylum procedure. He is also offered an opportunity to undergo a medical examination to see if there are any factors that might diminish his ability to tell his story. After the asylum seeker has given his account, a decision is made on whether he is in need of protection. The aim is to communicate a clear decision to the asylum seeker as quickly as possible. Most of the aliens who apply for asylum in the Netherlands receive clear information on the prospect of their being allowed to stay here within eight days. Asylum seekers who do not require protection and who are not entitled to stay in the Netherlands are required to leave the Netherlands. Where the alien is to return to the country of origin, the alien himself bears primary responsibility for organising his return.

- The Dutch government provides support to those who are returning.
- The Dutch government subsidises projects run by NGOs that try to help aliens return to their country and that may also provide support in kind, such as short-term training courses to enhance the alien's prospects after his return.

### **Reception of asylum seekers**

Aliens who apply for asylum in the Netherlands are entitled to stay at a state-run reception centre during the asylum procedure, if they are without any means of subsistence. This reception is provided by the Central Agency for the Reception of Asylum Seekers (COA). The COA's task is both facilitating and humanitarian: it is responsible for providing a safe, stable environment in which the asylum seeker can prepare for the next stage in the procedure. The basic principle is that conditions at reception centres should be 'sober but humane'. This means that asylum seekers are offered a level of services that is minimal but acceptable. The COA also supervises asylum seekers. This supervision is geared towards getting to know them, building a relationship of trust with them, and helping them to develop a realistic view of their future prospects. This help is divided into three pillars: the provision of

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<sup>66</sup> The most important EU instruments for asylum law are the Qualification Directive, the Asylum Procedures Directive, the Reception Directive, the Dublin Regulation and the Return Directive. For applications for regular residence permits and the safeguards enshrined in article 8 of the ECHR, the following items of EU legislation are relevant: the EU Directive on Freedom of Movement, the EU Directive on Family Reunification, and the EU Directive on the long-term residence of third-country nationals.

accommodation in the form of 'bed, bath and bread'; guaranteeing safety and liveability in the reception centres; and assisting them in their everyday lives at the centre and helping them to prepare for the future. Legal counsel/advisors and representatives of the UNHCR and other recognised NGOs have access to the reception centres, so as to be able to assist the asylum seeker. This access may be limited for reasons related to security at the reception centre or the asylum seeker's safety.

### **Work and study**

Under the terms of the Foreign Nationals (Employment) Act, (WAV), adult asylum seekers can work, under certain conditions, for an employer who possesses an employment permit. Adult asylum seekers who are lawfully resident in the Netherlands can also enrol for government-funded education. If they wish to attend a course of vocational or higher education, they must pay the set tuition fees.

### *Children in the asylum procedure*

The asylum procedure revolves around the question of whether the alien (and consequently his/her children) is eligible for protection or will have to return. However, given the vulnerability of children, the rights and best interests of children must be taken into account in aliens policy and legislation. The child's best interests are given a clear place in the asylum procedure and are expressed in many areas of aliens policy, such as the right to be interviewed in a child-friendly manner, the assignment of guardians to unaccompanied minor aliens, and the child's right to live with his or her parents. During both the admission and return procedures, the implementing organisations watch over the child's best interests with care. For instance, children who are unlawfully resident in the Netherlands nonetheless have the right to education and are provided with accommodation. In addition, unaccompanied minor aliens are allowed a longer period of rest and preparation before submitting an asylum application. In addition, it is a general principle that minors will not be placed in aliens' detention, unless certain special situations apply (as laid down in an exhaustive list). In admission policy too, those concerned pay special attention to child-specific situations and the child's best interests. This is reflected, for instance, in the policy on child soldiers and the policy in relation to girls who are at threat from female genital mutilation.

### **Kinderpardon (amnesty scheme for minor asylum seekers who are long-term residents of the Netherlands)**

The Coalition Agreement holds out the prospect of an amnesty scheme for children who have lived in the Netherlands for a long period of time. This scheme entered into force on 1 February 2013. It also included transitional regulations, which applied until 1 May 2013 and contained more lenient conditions than the final scheme.

## Aliens' detention

### Statutory amendment to aliens' detention

Aliens' detention is imposed as a last resort. The possibility of adopting some less stringent instrument is always considered first. The number of places in aliens' detention facilities has been cut from almost 2,500 to fewer than 1,000. The government wishes to make it clearer that aliens' detention is a measure adopted under administrative law rather than a punitive measure.

- Before the end of 2013, the government will be embarking on an online consultation procedure in relation to a statutory amendment introducing a separate framework for aliens' detention under administrative law. The draft amendment is expected to be submitted to the House of Representatives in 2014.

### Alternatives to aliens' detention

Four pilot schemes were launched as alternatives to aliens' detention in 2012.<sup>67</sup> The House of Representatives was informed about them by letter of 22 December 2011.<sup>68</sup> After the pilot schemes were concluded, the State Secretary for Security and Justice informed the House of Representatives of the results by letter of 13 September 2013. Also under discussion is the possibility of putting in place supervisory measures surrounding an alien's return. In each individual case, it is considered whether a less coercive measure can be adopted in relation to an alien who has failed to leave the Netherlands of his own accord. The various measures that exist are proportional and effective for different groups of aliens. Vulnerability receives special attention when considering which measure to adopt.

- A sum of €1 million is being made available on a permanent basis for grants to NGOs involved in local projects that support persons returning to their countries.

## 4.4 Physical integrity and personal liberty

The right to physical integrity embraces a wide range of subjects. Especially when a relationship of dependency is involved – for instance within a family, in the care services, or in a custodial institution – the physical integrity of people may be at stake. The reference here is to cases involving coercion or the use of violence. But questions of physical integrity may be involved outside situations of this kind.

<sup>67</sup> The obligation to report regularly to the authorities, the payment of a deposit, offering restrictive accommodation to former unaccompanied minor aliens who had participated in the experimental Perspectief programme, and the provision of help to fund repatriation projects run by NGOs.

<sup>68</sup> Parliamentary Papers, House of Representatives 2011/12, 19 637, no. 1483.

The right to physical integrity is enshrined in article 11 of the Constitution, article 8 of the ECHR, and article 3 of the EU Charter of Fundamental Rights. Restrictions to this right are possible if they are provided for by law, serve a legitimate purpose, and are necessary in a democratic society. There is an absolute ban, however, on torture and other cruel, inhuman or degrading forms of treatment or punishment, which ban is also seen as part of the protection of physical integrity. This chapter deals with four subjects that are important in relation to the Netherlands, which have been mentioned more than once in national and international recommendations. These are domestic violence, human trafficking, physical integrity in the health care services, and conditions in detention facilities.

### *Domestic violence*

Violence in the home is an enormous problem. Every year, some 220,000 adults suffer serious, systematic violence within their own homes, while another approximately one million adults are victims of incidental violence in the home.<sup>69</sup> It been estimated that 119,000 children suffer from abuse each year.<sup>70</sup>

Since 2002, numerous measures have been taken to combat domestic violence. Since 2011, the Kingdom-wide efforts to tackle violence in relations of dependency have been based on three pillars: (1) strengthening the position of victims (and potential victims) by taking preventive measures, reporting signs of violence, offering shelter, help and aftercare; (2) a targeted approach to perpetrators; (3) efforts to break the transfer of violence from one generation to the next.<sup>71</sup> The approach is geared towards combating all forms of violence in relationships of dependency, such as child abuse, violence against partners, sexual violence, abuse of the elderly, female genital mutilation, honour-based violence and forced marriages. At the heart of this policy is strengthening the supervisory role of municipal authorities. The Ministry of Health, Welfare and Sport is responsible for coordination.

Although much has done to combat domestic violence, the policy needs to be tightened up further to reduce the extent of this problem. The government plans to take action in several areas over the next few years in this connection.

<sup>69</sup> Veen, H.C.J. van der, Bogaerts, S. (2010), *Geweld in huiselijke kring in Nederland. Overkoepelend syntheserapport van het vangst-hervangst- slachtoffer- en daderonderzoek 2007-2010*. The Hague: Research and Documentation Centre (WODC). This does not include the figures for victims of forced marriage, abandonment and honour-based violence; these figures are unknown.

<sup>70</sup> Alink, L., IJzendoorn, R. van, Bakermans-Kranenburg, M., Pannebakker, F., Vogels, T., Euser, S. (August 2011), *Kindermishandeling in Nederland anno 2010. De Tweede Nationale Prevalentiestudie Mishandeling van Kinderen en Jeugdigen (NPM-2010)*, Leiden attachment research program and TNO child health, Leiden: Casimir Publishers.

<sup>71</sup> See Parliamentary Papers, House of Representatives 2012/13, 33 400 XVI, no. 56 (most recent progress report).

- A legislative procedure is currently under way to ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). The government expects to be able to introduce the bill to approve the Convention into parliament in the course of 2014.
- An action plan to tackle child abuse has been adopted for the period 2012-2016 (Ministry of Health, Welfare and Sport / Ministry of Security and Justice).. Children are particularly vulnerable in their relationships with those caring for and educating them, and are less capable of standing up for themselves than adults. The measures focus on preventing, reporting and stopping child abuse, and on damage limitation by ensuring that children receive adequate help. The action plan also focuses on measures to guarantee children's physical safety and tackle child sex abuse.
- The new Youth Act makes municipal authorities responsible for all forms of assistance to young people and for implementing child protection measures and juvenile probation. This responsibility also includes providing for measures to prevent child abuse. In addition, the act imposes on municipal authorities an obligation to establish an advisory and reporting centre for domestic violence and child abuse (AMHK). These centres are organised at the supra-local level.
- Quality safeguards that are important to the efforts to combat child abuse will be built into the legislation providing for decentralisation.
- The criminal-law measures to combat child abuse are being tightened up. In addition, the government is intensifying the care and protection provided for victims, and tightening up the supervision of convicted sex offenders to prevent them from reoffending.
- On 6 June 2013, the Minister of Social Affairs and Employment, in conjunction with four other ministers, sent a letter to the House of Representatives on the way in which the government intends to step up the chain approach to forced marriage<sup>72</sup>, announcing measures to strengthen the approach to forced marriages and abandonment.
- In relation to abuse of the elderly, the State Secretary for Health, Welfare and Sport has drawn up the Action Plan 'The Elderly in Safe Hands', in conjunction with the Ministry of Security and Justice, which was sent to the House of Representatives on 30 March 2011.<sup>73</sup> It sets out ten specific measures to combat abuse of the elderly. The action plan focuses on prevention, ensuring that warning signs are passed on, abuse is reported, and support to victims improved. It also seeks to ensure that vigorous action is taken against the perpetrators.

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<sup>72</sup> Parliamentary Papers, House of Representatives 2012/13, 32 175, no. 50.

<sup>73</sup> Parliamentary Papers, House of Representatives 2010/11, 29 389, no. 30.

- The project 'Tackling violence in the home' is being implemented primarily by the Association of Netherlands Municipalities (VNG) and the Dutch Federation of Shelters, in conjunction with the Ministry of Health, Welfare and Sport, with the involvement of other parties such as the Social Entrepreneurs Group, The Association of Community Health Services in the Netherlands and the Dutch youth care service. The project focuses on all forms of violence in the home, including domestic violence, honour-based violence, and child abuse. The goal is to strengthen the policy-based approach to violence in the home as pursued by municipal authorities, inter alia through the drafting of regional policy plans, which will include the municipal policy on tackling problems such as child abuse and domestic abuse. This will help to improve the cohesiveness of the approach at the local level.
- On 1 July 2013, the Domestic Violence and Child Abuse Protocol Act entered into force. This act obliges organisations in certain sectors to have a phased plan for responding to signs of domestic violence and child abuse. It also imposes an obligation on organisations to publicise the protocol's existence and to promote its use. This essentially amounts to a kind of compulsory training, including on ways of detecting child abuse. The responsibility for training professionals lies with the organisations that employ them. Given the importance of training, the Ministry of Health, Welfare and Sport supports organisations in this respect. The Ministry has commissioned a basic training course on 'Working with a protocol' and e-learning modules for various occupational groups. These and other training courses can be found in the database of additional and in-service training course on the use of the protocol, which was developed with a grant from the Ministry of Health, Welfare and Sport. The inspectorates exercise oversight to check that professionals in the sectors covered by the Domestic Violence and Child Abuse Protocol Act are trained in using the protocol.

### **Compulsory contraception for women who have proven to be unfit as mothers**

Compulsory contraception for women who have proven to be unfit as mothers is a complex social issue with important ethical and human rights aspects (which emphatically include aspects relating to children's rights). The question arises to what extent a parent's reproductive rights may be allowed to take precedence over the rights of a possible future child. Is it morally acceptable to impose compulsory contraception in certain specific cases, to prevent a pregnancy from arising, in order to protect a child who would thus be prevented from being born? Conversely, is it morally acceptable not to prevent a child being born into a situation in which his or her safety is not guaranteed? In mid-2010, Marjo van Dijken of the parliamentary Labour Party (PvdA) drafted a private member's bill seeking to place compulsory contraception for women who have proven unfit as mothers on the agenda for debate. The former State Secretary for Health, Welfare and Sport stated on 17 April 2012 that she intended to seek the advice of a High Council of State on this matter. On 1 July 2013, the State Secretary for Health, Welfare and Sport informed the House of Representatives that the Netherlands Institute for Human Rights has expressed its willingness to engage in consultations on this theme.

- The Ministry of Health, Welfare and Sport will set up a committee on compulsory contraception for women who have proven unfit as mothers in the foreseeable future, in which the Netherlands Institute for Human Rights, among others, will take part.

### *Human trafficking and exploitation*

Combating human trafficking is one of the government's priorities. The Minister of Security and Justice is responsible for coordinating the Kingdom-wide effort to combat human trafficking. In the Netherlands, this term is understood to embrace the recruitment, transport, transfer, reception or accommodation of a person, with the use of coercion and with the aim of exploiting that person. The intended exploitation may be in the sex industry, for instance if someone works as a prostitute under duress, but it may be in a different economic sector. Such individuals work under such deplorable terms of employment and working conditions that their human rights are at stake. Recruiting or transporting etc. a person with the aim of removing organs from that person's body is also a criminal offence under the heading of human trafficking.

#### **Anti-trafficking task force**

The Task Force on Human Trafficking is engaged in implementing the Human Trafficking Action Plan for the period 2011-2014. Its main objective is to promote an integrated effort to combat this crime, with the active collaboration of all partners who could contribute in one way or another, e.g. by taking preventive action, by being alert to signs of this crime, and by erecting barriers to systematically impede would-be offenders. The task force also has an important task in caring for victims. Since the task force includes representatives of the Ministry of Health, Welfare and Sport, the National Rapporteur on Trafficking in Human Beings and Sexual Violence Against Children (NRMSGK) and CoMensha (a Dutch organisation specialised in combating human trafficking), problems and preferences relating to the care and reception of victims can be presented effectively. These efforts are bearing fruit: courts hearing cases at first instance disposed of most cases (153) involving trafficking in human beings in 2012. The proportion of convictions for this offence – which had fallen by 25% in the period 2004–2009 – rose again sharply both in 2010 and in 2012 (to 71%).<sup>74</sup>

#### **Shelter and care for victims of human trafficking**

The Netherlands is dedicated to improving the situation of the victims of human trafficking.

Persons suspected of being victims of human trafficking are given a maximum of three months' time for reflection under section 8 (k) of the Aliens Act, to decide whether they wish to press charges. This is sometimes referred to as the 'B8 reflection period'.

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<sup>74</sup> 'Mensenhandel in en uit beeld: Cijfers vervolging en berechting 2008-2012', National Rapporteur on Trafficking in Human Beings and Sexual Violence Against Children, 2013.

- For foreign victims of human trafficking during the so-called 'B8 reflection period', a pilot project for specialist care (COSM) was set up in June 2010 and extended in June 2012 until the end of 2014. The number of places in this project was increased from 50 to 70 as from June 2012.

During this initial period of care, the victim can reflect on whether he or she wishes to press charges; the initial diagnosis of the victim's condition is also made in this period.

The National Referral Mechanism (NRM) (NRM) is a guide or framework that will indicate the way in which the different partners, both in government systems<sup>75</sup> and in the systems of civil society organisations (women's shelters, CoMensha etc.) go about identifying, supporting and where necessary caring for victims of human trafficking.

- In the autumn of 2013, an interministerial working group was launched, which will work out the details of an NRM in the period until the end of March 2014.

Relevant implementing organisations, NGOs and the National Rapporteur on Trafficking in Human Beings are involved in preparing the detailed proposals. The NRM will bring all the agencies involved in providing shelter and care for victims of human trafficking together in a single system.

### **Operational EU cooperation, Action Plan on Cooperation with Hungary, and EU Conference**

- The Netherlands and the UK jointly lead the EMPACT<sup>76</sup> anti-trafficking project, which was set up to strengthen cooperation in investigations of human trafficking in the EU. The participants in EMPACT include 25 EU member states, Europol, Eurojust and Frontex.
- In addition, the Netherlands and Hungary have drafted a bilateral action plan to strengthen their cooperation in the prevention, investigation and prosecution of human trafficking.

Since the Netherlands views efforts to tackle human trafficking as a priority, the Ministry of Security and Justice, together with the anti-trafficking task force, was the driving force behind the EU Conference 'Putting Rantsev into Practice: Strengthening multidisciplinary operational cooperation to fight trafficking in human beings', which took place in

<sup>75</sup> Public Prosecution Service, police, local government, Royal Military and Border Police, the Inspection and Information Service of the Ministry of Social Affairs and Employment (I-SZW), the Immigration and Naturalisation Service, the Central Agency for the Reception of Asylum Seekers, youth care services, the Employee Insurance Agency, Victim Support Netherlands, Regional Information and Expertise Centres, community safety partnerships etc.

<sup>76</sup> European Multidisciplinary Platform against Crime Threats.

Amsterdam in mid-April. This conference discussed the implementation by EU member states of their positive obligations under the Rantsev judgment of the ECtHR, and more generally the multidisciplinary cooperation in combating human trafficking.

### **Bill to regulate prostitution and to combat abuses in the sex industry**

This bill provides for the age of legal prostitution to be raised to twenty-one, the introduction of a licensing system for all types of businesses in the sex industry, and an obligation for those running prostitution operations to submit a business plan when applying for a licence, which must include measures to protect the right of prostitutes to self-determination.<sup>77</sup> The stricter regulations are aimed at improving the sector's transparency, getting a better grip on it, and helping to tackle abuses. Once the new legislation has been published, municipal authorities will need several months at least to amend their own legislation.

- Efforts are geared towards trying to ensure that the new act can enter into force as from 1 July 2014.

### **Education and raising awareness**

Diverse projects are taking place to alert the public to the risks of human trafficking and to raise awareness in relation to this issue.

- The film *De mooiste chick van het Web* ('The best-looking chick on the web') was commissioned by the Ministry of Security and Justice. The purpose of this film is to alert children, parents, friends and teachers to the risks of social media. The film can be seen on [www.mediawijzer.net](http://www.mediawijzer.net). The ministry also commissioned a teaching package to be used with this film from the organisation Codename Future, with materials enabling schools to develop an active approach to this issue. The target group consists of students attending the first two years of secondary education. The schools were informed about the teaching package in September 2013. The 'loverboy' problem is also discussed on the website of the Centre for Safety at School ([www.schoolenveiligheid.nl](http://www.schoolenveiligheid.nl)).
- To inform victims of human trafficking about their rights and about the procedures that are important for them, the NGO CoMensha prepared a leaflet *Hoe nu verder?* ('What now?') at the request of the Ministry of Security and Justice and launched a website to accompany it; see <http://www.hoenuverder.info/>.

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<sup>77</sup> Parliamentary Papers 32 211. Rules on the regulation of prostitution and on combating abuses in the sex industry (Regulation of Prostitution and Combating Abuses in the Sex Industry Act).

- Information is also being distributed to occupational groups that may come into contact with victims of human trafficking, to increase the likelihood of tell-tale signs of this offence being reported. Examples include the ‘Human Trafficking Bulletin’ drawn up by the Royal Military and Border Police and CoMensha, designed to inform aviation personnel about signs suggestive of human trafficking, and the film Please disturb, developed by the Public Prosecution Service, the National Police Force and the hotel sector, which was written for hotel personnel. At the request of the anti-trafficking task force, the Centre for Crime Prevention and Safety (CCV) held special meetings in recent years to raise awareness of this issue among municipal officials. The Regional Information and Expertise Centres (RIECs) also organise campaigns to raise awareness among partners working in different parts of the system.
- Where labour exploitation is concerned, too, information is provided for potential victims and occupational groups, and campaigns are organised to raise awareness. Thus, leaflets and information cards have been produced in several languages with information for victims, and in 2013 activities will be carried out, together with the CCV, to raise awareness and promote expertise in relation to labour exploitation among municipal authorities.

### **Investigation of the scale of trade in human organs**

In the autumn of 2012, the study on ‘Human trafficking with a view to organ removal and forced commercial surrogacy’ was completed. The Minister of Health, Welfare and Sport is considering the recommendations that emerged from its conclusions.

- The Minister of Health, Welfare and Sport asked the Dutch Transplantation Foundation (NTS) to propose a method that could generate regular information on the scale of the organ trade in the Netherlands. In December 2012 the NTS proposed issuing periodic reports on the basis of the Dutch results of the research carried out by the Erasmus Medical Centre on human trafficking. At the same time, it will further investigate, together with the Eurotransplant Foundation, why patients sometimes vanish from the waiting list for no clear reason. Depending on the reports and the findings, it will be decided whether measures need to be taken to suppress the trade in human organs.

The National Rapporteur on Trafficking in Human Beings sees the introduction of financial incentives for organ donation as a possible solution to the organ shortage, but also warns that it could create a market for organs that would also increase the risk of human trafficking. This risk might be avoided by exempting organ donors from health insurance contributions instead of paying them directly. This recommendation was not adopted, because the government considered that it was in breach of national and EU legislation and regulations. Both the Organ Donation Act and Directive 2010/53/EU on standards of quality and safety of human organs intended for transplantation state that donors may not receive any payment in excess of the costs (including loss of income) that are a direct consequence of the organ’s

removal. For payments to cover costs that result directly from the removal of an organ, the Minister of Health, Welfare and Sport created the Living Donor Expense Reimbursement Programme.

### **Measures to tackle the sexual abuse and exploitation of children**

The Netherlands attaches high priority to combating child abuse and child pornography. Up to the present day, there has been a lack of clear and unambiguous figures on the incidence of child sex abuse in the Netherlands. The National Rapporteur on Trafficking in Human Beings and Sexual Violence Against Children (NRM), whose reporting responsibilities now embrace the wider policy area of sexual violence against children, will investigate the scale of this problem.

- At the end of 2013 the National Rapporteur on Trafficking in Human Beings and Sexual Violence Against Children expects to issue his report on the incidence of child sex abuse in the Netherlands.

In response to recent events in the Netherlands, policy development in this area has accelerated and intensified. At the heart of the changes is a marked focus on the victims, more so than in the past.

- This approach means that the emphasis will be placed on an integrated approach to sexual exploitation and sexual abuse. The Action Plan on Child Abuse for 2012-2016,<sup>78</sup> which also focuses specifically on ways of tackling sexual exploitation and child sex abuse, provides the main policy framework for this issue for the next few years.

The task force on child abuse and sexual abuse will act as the driving force behind the implementation of the Action Plan and monitor its concretisation. Its members include representatives of the Public Prosecution Service, the relevant investigation services, the judiciary, municipal authorities, and youth and health care institutions.

This subject is also receiving attention at European level. Following an initiative by the European Parliament and the Council of Europe, a Directive was adopted in 2011 to combat child pornography and the sexual abuse of children.

- The Bill to implement this EU Directive 2011/93/EU (Combating the sexual abuse and the sexual exploitation of children and child pornography)<sup>79</sup> passed through the House of Representatives on 19 September 2013 and is now awaiting debate in the Senate.

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<sup>78</sup> Action Plan on Child Abuse 'Children Safe at Home'; Parliamentary Papers, House of Representatives 2011/12, 31 015, no. 69

<sup>79</sup> Parliamentary Papers, House of Representatives 2012/13, 33 580, no. 2

Since the Netherlands is already legally bound by the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the implications of implementing this Directive are relatively minor. Compared to international legislation and regulations, those in the Netherlands may be described as ‘state of the art’. The Dutch Public Prosecution Service plays an important role in the uniform implementation of this Directive in everyday practice. The ‘Instructions on the investigation and prosecution of child sexual abuse’<sup>80</sup> and the ‘Instructions on child pornography’<sup>81</sup> describe the working procedures for investigation and prosecution in relation to cases involving sexual abuse. The Directive focuses heavily on the aftercare of victims. The Instructions on child pornography repeat certain important obligations from the Instructions on victims’ rights.<sup>82</sup>

Efforts to combat child sex tourism have been stepped up in recent years. Police capacity for combating child pornography and child sex tourism was doubled in 2012 to 150 FTE.

- On 10 October 2013 a multi-year plan on combating child sex tourism was sent to the House of Representatives.<sup>83</sup> The input for this plan came from the police’s description of the phenomenon. Erecting barriers to frustrate travelling child sex tourists is a priority in this plan. Cooperation with the destination countries is also accorded a prominent role.

### Health care

Article 22 of the Constitution provides that the government must take steps to promote the health of the population. Other articles of the Constitution play a role in determining how this is done. These include article 1 (equal treatment), article 10 (respect for privacy) and article 11 (inviolability of a person’s body).

In international law, too, the ‘right to care for public health’ is enshrined in numerous conventions: the International Covenant on Economic, Social and Cultural Rights (ICESCR), the European Social Charter (ESC) and the Charter of Fundamental Rights of the European Union. These treaty obligations impose on the Dutch state a best-efforts obligation to provide its citizens with a good health care system.

The Biomedicine Convention (Convention on Human Rights and Biomedicine) was concluded in 1997. Its ratification was suspended at some point because legislative proposals were being debated that would necessitate reservations being entered to certain of the Convention’s provisions, and reservations can only be entered on the basis of existing national legislation. A similar situation applies at the present time. The bill providing for a

<sup>80</sup> Government Gazette 2010, 19 123.

<sup>81</sup> Government Gazette 2010, 19 121.

<sup>82</sup> Government Gazette 2010, 20 476.

<sup>83</sup> Parliamentary Papers, House of Representatives 2013/14, 31 015, no. 93.

widening of the scope for medical research involving minors and adults who are incapable of making an informed decision means that ratification cannot be addressed until this bill has passed through parliament. In view of the incompatibilities between the current and proposed Dutch legislation on the one hand, and the provisions of the Biomedicine Convention on the other, including in areas other than medical research, the government is considering the desirability of ratifying the convention. The issue calls for a careful assessment, which is taking place at the present time.

A positive point is the existence of an ongoing political and public debate on the quality, accessibility, availability and acceptability of health care. The health care system is shaped by diverse statutory laws. These laws deal with themes of great importance, also internationally, such as privacy, physical integrity, sexual and reproductive rights and the ban on discrimination.

### **Care and compulsion**

Someone who poses a danger to himself or his surroundings on account of senile dementia, an intellectual disability, or some other mental disorder, may be subjected to compulsory care. At present, compulsory care is regulated by the Psychiatric Hospitals (Committals) Act (BOPZ Act). This Act applies not only to psychiatric hospitals, but throughout the regular mental health care system, as well as in care services for people suffering from senile dementia and people with intellectual disabilities.

New legislation is needed to replace the current compulsory care regimes. Instead of the current BOPZ Act, two separate regimes will be introduced, provided parliament approves the proposals: a) the Compulsory Mental Healthcare Act for individuals in need of mental health care because of psychiatric disorders and b) the Care and Compulsion Act for those suffering from intellectual disabilities or dementia.

The purpose of splitting up the BOPZ Act into two separate regimes is to ensure that the legislation is as well attuned as possible to the different problems of the client groups. Although the acts differ in terms of specific details, the principles underlying both are the same. These include, for instance, arranging for care where possible at home or close to home, the right of patients and their loved ones to have a say in decisions involving compulsory care and to indicate their own preferences, the right to appeal against the court's decisions, and the right to be assisted by an independent confidential adviser.

The aim of both bills is to avoid compulsory care wherever possible and ensure that patients are first offered alternative forms of care. Coercive measures become an option only when there is really no alternative that the person will accept voluntarily. In such cases, it is always essential to opt for the mildest possible form of coercion. In the autumn of 2013, the Care and Compulsion Act was discussed in the House of Representatives, where it was passed by a large majority.

- The Care and Compulsion Act is now (at the end of 2013) awaiting debate in the Senate.
- The Compulsory Mental Healthcare Act was introduced into the House of Representatives in the autumn of 2013.

### **Thematic evaluation of the legislation on ‘compulsory care for young people and adults’**

At the end of 2012, the State Secretary for Security and Justice and the Minister of Health, Welfare and Sport commissioned a thematic evaluation of the legislation on compulsory care for young people and adults. The statutory basis for compulsory care may be in both criminal and civil law. Stakeholders and the House of Representatives have for some time been pushing for a comparison and if possible the harmonisation of legal status in cases of compulsory care. The questions being investigated include the extent to which statutory regulations in mental health care, young offenders’ institutions and secure youth care and forensic care institutions together constitute a consistent and efficient statutory framework for compulsory care, and where there is scope for improvement. The evaluation is taking place partly in the light of the obligations arising from the diverse human rights conventions and other international guidelines. The report is expected in June 2014, after which both ministries will consider to what extent the statutory frameworks are in need of modification and the legal status of persons receiving compulsory care can be harmonised.

### *Detention: supervision to prevent violence between detainees and suicide*

The Custodial Institutions Agency (DJI) is responsible for executing custodial sentences and other forms of deprivation of liberty. In this context, the DJI also bears responsibility for ensuring safe living conditions within the different institutions and hence the safety of each detainee. An active policy is pursued to prevent violence between detainees and suicide.

Violence between detainees is prevented in different ways. First, detainees are selected and placed with care, so that they end up in the right regime with the right level of safety and care. Second, there is a focus on preventive measures, so that de-escalating behaviour is promoted from the start. These measures are particularly effective in reducing the risk of immediate danger. They include building security and checks, the number of personnel with specific skills in conflict management and de-escalation, and rules governing the daily regime. Finally, there is the policy on adopting a motivational approach to detainees, which is the guiding principle at custodial institutions. Communication with detainees must always be geared towards helping them to change, stabilise or moderate their behaviour and thought patterns so as to reduce resistance. In young offenders’ institutions and forensic psychiatric centres (FPCs), the staff work on the basis of special principles that are appropriate to the objectives and environment of these institutions. The same applies to aliens’ detention, which is geared towards a brief stay in a detention or removal centre aimed at preparing those concerned to return to their own country. This places certain demands on those charged with the task of supervising aliens, and calls for certain skills on the part of front-line staff, for instance in the realm of intercultural communication.

The following table lists the number of violent incidents that took place between detainees in 2011 and 2012,<sup>84</sup> classified by sector.

Violent incidents between detainees in 2011 and 2012

Year Sector	2011	2012
Custodial institutions	840 7.6 per 100 places occupied	876 8.0 per 100 places occupied
Young offenders' institutions	344 57.1 per 100 places occupied	334 56.8 per 100 places occupied
Forensic psychiatric centres	34 1.8 per 100 places occupied	24 1.3 per 100 places occupied
Detention and removal centres	97 8 per 100 places occupied	48 4 per 100 places occupied
<b>Total</b>	<b>1,315</b>	<b>1,282</b>

Source: Custodial Institutions Agency

To guard against suicides, preventive policy is essential. This policy has three components. In the context of primary prevention, conditions that might foster suicidal behaviour in detainees must be avoided as much as possible. Ensuring that such conditions are avoided calls for tailored care, educating personnel about suicide, and preventing social isolation. Secondary prevention focuses on detainees who are suspected of being suicidal. To identify them, the Custodial Institutions Agency has incorporated a special screening method into the intake procedure which all detainees go through upon arrival. Tertiary prevention focuses on detainees who have attempted suicide in the past. When a suicide attempt is discovered, the personnel alert the institution's medical service, the psychologist, and the governor in charge. After this, consultations are held about the measures to be taken, and it is decided whether a psychiatrist needs to be called in.

Unfortunately, these precautions are not always successful. A total of 18 and 13 detainees committed suicide in 2011 and 2012, respectively, in the various institutions. It should be noted here that there were no cases of suicide in young offenders' institutions. The following table classifies suicides by type of institution and year.

<sup>84</sup> The number of incidents in which a detainee used physical force against one or more fellow detainees, insofar as this prompted the imposition of a disciplinary measure and/or punishment.

## Suicides in 2011 and 2012

Year Sector	2011	2012
Custodial institutions	15 1.3 per 1,000 places occupied	10 0.9 per 1,000 places occupied
Young offenders' institutions	0 0 per 1,000 places occupied	0 0 per 1,000 places occupied
Forensic psychiatric centres	1 0.5 per 1,000 places occupied	3 1.7 per 1,000 places occupied
Detention and removal centres*	2 1.6 per 1,000 places occupied	0 0 per 1,000 places occupied
<b>Total</b>	<b>18</b>	<b>13</b>

Source: Custodial Institutions Agency

\* In the detention and removal centres, which are run under the auspices of the Special Facilities Directorate (DBV), one alien being detained under administrative law and one being detained under criminal law committed suicide in 2011?

## 4.5 Education, employment and culture

### Education

The right to education, as enshrined in international conventions, is safeguarded in the Netherlands inter alia by the fact that primary and secondary education are provided free of charge to all young people living in the Netherlands who are of compulsory school age and to 16 and 17-year-olds who are obliged to remain in education until they have obtained a basic qualification. The obligation to remain in education ends at age 18. Even if a minor alien is residing in the Netherlands unlawfully, he or she attends school under the same conditions as all other young people in the Netherlands: everyone has equal access to education. In the case of people who are not lawfully resident in the Netherlands, the Benefit Entitlement (Residence Status) Act of 1998 provides that they may not begin a new course of education or training after turning 18. They may, however, complete a course that they started before their 18th birthday. The legislature deemed this a justifiable restriction on the right to education, because it served an important social objective, namely to discourage aliens from illegal residence in the Netherlands.

### Compensatory policy in education

In primary and secondary education, equal opportunities for all pupils are guaranteed by the allocation of additional resources to schools with disadvantaged pupils. Schools can use these resources to provide extra language lessons, for instance. These additional resources are substantial, and may mean that certain primary schools receive almost double the funds allocated to schools without disadvantaged pupils. There is a statutory basis for consultations between municipal authorities and school governing bodies to achieve a more balanced

distribution of disadvantaged pupils among schools.

### **Citizenship and human rights education**

The legislation on primary and secondary education provides inter alia that education promotes active citizenship and social integration. Schools are free to interpret this objective in their own way. In practice, many schools do so, for instance, by teaching pupils the principles of a democracy governed by the rule of law, and by teaching them ways of contributing actively to society.

- The Ministry of Education, Culture and Science is considering the proposal that human rights, including children's rights, be mentioned explicitly in the attainment targets defined for primary and secondary education.

### **Bullying at school / promoting a safe environment**

Every child has a right to a safe school environment. A safe environment is a prerequisite for creating ideal learning conditions. Children must be safe so that they can learn and develop.<sup>85</sup>

- The State Secretary for Education, Culture and Science and the Children's Ombudsman sent a joint action plan on bullying to the House of Representatives in March 2013.<sup>86</sup> The action plan has three primary features: (1) normative guidelines and awareness-raising, (2) instruments, and (3) formal framework. The goal is to ensure that bullying is no longer treated as a taboo and can no longer be ignored. The government, schools, teachers and children are all responsible for promoting a safe school environment.

## **Employment**

The government helps to produce balanced labour relations and terms and conditions of employment by putting place a statutory framework for the functioning of the labour market, which protects employees and safeguards their interests, while striking a balance between these and the company's interests. To this end, the government provides for a minimum level of protection under labour law that takes into account employers' and employees' own responsibilities.

<sup>85</sup> In 2009 the Committee on the Rights of the Child of the United Nations advised the Dutch government to ensure that all children have access to safe schools (Committee on the Rights of the Child, Concluding Observations of the Committee on the Rights of the Child: The Kingdom of the Netherlands, CRC/C.NLD/CO/3, 30 January 2009).

<sup>86</sup> Parliamentary Papers, House of Representatives 2012/13, 29 240, no. 52.

### **The right to free collective negotiations on terms and conditions of employment**

The government supports the formation of collective terms and conditions of employment in the Netherlands with the statutory framework as laid down in the Collective Agreements Act and the Collective Agreements (Declaration of Universally Binding and Non-Binding Status) Act (AVV Act). Collective agreements promote balanced labour relations and industrial peace and hence constitute a major prerequisite for positive socioeconomic development. The core objective of a regulation declaring provisions of collective agreements binding (AVV) is to support and protect the exercise of that responsibility (by concluding collective bargaining agreements or CAOs) by the social partners. Such regulations are designed to prevent competition in terms and conditions of employment through undercutting on the part of employers and employees who have not signed up to a CAO. At the government's request, the Social and Economic Council (SER) issued an advisory report on support for collective labour agreements on 23 August 2013. The report focuses on the question of whether the current initiatives to strengthen support will suffice, or whether there is a need to consider ways of restructuring the CAO and AVV system, partly in the light of labour market trends. The main point made in the SER report is that it is essential for the social partners to sustain their efforts to strengthen support for CAO agreements, both at central level and in decentralised contexts, and that they continue the activities already started and where possible intensify them, drawing on the experience gained thus far. The government issued its response to the SER advisory report on 18 November 2013.<sup>87</sup>

### **Right to the free choice of employment**

Labour exploitation is a situation in which someone is exploited by another party by being required to perform forced or compulsory labour, or to perform services that greatly curtail his or her freedom of choice. This goes beyond mere bad employment practices. It consists of a combination of serious and frequently inhumane situations in the workplace, such as underpayment, physical and/or psychological pressure, coercion, deception, lack of freedom, and multiple dependency. Labour exploitation outside prostitution (for prostitution, see theme 4.4, 'Physical integrity and personal liberty') has been defined in the Criminal Code as a criminal offence since 1 January 2005 and comes under the broad heading of 'Trafficking in human beings'. Labour exploitation is not always identified and recognised as such, however.

Labour exploitation is common in domestic service, agriculture and horticulture, and in the Chinese catering sector. The Minister of Social Affairs and Employment is taking action (under the heading of preventive and reactive measures in the framework of the anti-trafficking task force (see theme 4.4, 'Physical integrity and personal liberty'), involving cooperation with numerous organisations to tackle problems that have been identified in relation to human trafficking, including labour exploitation. The measures relate to the following themes: (1) quality of enforcement, (2) strengthening cooperation, (3) public information, and (4) caring for victims of labour exploitation.

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<sup>87</sup> Parliamentary Papers, House of Representatives 2013/14, 29 544, no. 490.

The Inspectorate of Social Affairs and Employment is responsible for identifying suspected cases of labour exploitation, as part of its administrative role in monitoring compliance with labour legislation. Such signals may prompt the launch of a criminal investigation.

- Since 2012, the Investigation Department of the Inspectorate of Social Affairs and Employment has dedicated 35% of its capacity to investigating cases of labour exploitation.

## Culture

Participation in culture is a universal right. The Minister of Education, Culture and Science is responsible for sustaining and developing expressions of culture and ensuring their social and geographical dissemination. The government has a role to play wherever market forces lead to poor financial or geographical accessibility, less fertile ground for talent, and lagging innovation and experimentation,. Government support helps keep cultural expressions accessible and affordable and helps to preserve quality. The government has set in motion a number of specific activities, as listed below.

- The government launched the programme Aiming High in Cultural Education to improve the quality of cultural education in primary schools. It focuses on:
  - promoting expertise among teaching staff and educational assistants;
  - encouraging staff to work with a cohesive curriculum (learning continuity pathway);
  - promoting assessments of students' academic performance;
  - promoting long-term cooperation between schools and cultural institutions.
- Collaboration is being stepped up between the National Archives, the Cultural Heritage Agency, the National Library of the Netherlands, the Netherlands Institute for Sound and Vision, the Data Archiving and Networked Services (DANS), the DEN Foundation (the Dutch knowledge centre for digital heritage) and other heritage institutions. The goal is to make cultural expressions readily accessible to a large public and to promote the digital accessibility of cultural content.
- The cultural pass for secondary school pupils will be retained, for an annual sum of €5 million, enabling young people to visit museums, performances and other events as part of their cultural education. All secondary school pupils will be issued with a cultural pass, giving them easy access to cultural events and institutions.
- On 18 June 2013, a voluntary agreement was signed between the Ministry of Education, Culture and Science, the Ministry of Health, Welfare and Sport and diverse donor-advised funds that is geared towards expanding the supply of cultural events specifically for the elderly. The voluntary agreement focuses on encouraging cultural institutions to provide a broader, more varied and more challenging offering of educational programmes for the elderly, so that elderly people can continue to develop artistically and in other ways, thus enhancing their welfare and well-being.





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