

Dutch NGOs contribution pertaining the Twenty-second to Twenty-fourth Periodic Report on the Kingdom of the Netherlands to the UN Committee on the Elimination of Racial Discrimination

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Executive summary

This report is a joint submission by 10 NGOs on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination by the Kingdom of the Netherlands. In the last few years government's awareness of racial discrimination has increased. This awareness is visible through the introduction of several reforms, such as new policy of the police in which ethnicity is no longer a ground for police checks, a new action plan on labour discrimination and a new policy framework on travellers camps. However, this alternative report shows that racial discrimination remains visible in all kind of areas in the Kingdom. During the writing of this report, three overarching issues on racial discrimination were observed.

First, racial discrimination continues to be an obstacle to participation in Dutch society. This is especially visible in the labour markets' application procedures, as persons with non-migration backgrounds have a 30% greater chance to receive a positive response after an application and 40% of the employment agencies are willing to accept discriminatory requests of potential clients'. In education, performance gaps between migrant and native Dutch students persist even up to the third generation. Moreover, the Kingdom's constitutional framework provides the European Netherlands with a greater distribution of power in the Kingdom government. This results in a situation where the view of the elected governments of Aruba, Curaçao and St Maarten on Kingdom issues is considered to be less important. In addition, it is hard for persons with the nationality unknown to participate in Dutch society, as there is no statelessness determination procedure.

Second, in the Netherlands there is a climate in which minorities often are discriminated. Persons belonging to minorities feel excluded within Dutch society, as politicians frequently use xenophobic, fear fuelled, rhetoric and hate speech. Also 30% of Dutch Muslims have encountered religious discrimination in the last five years and the introduction of the ban on face-covering clothing has led to more conflicts and instances of harassment against Muslim women who wear a burqa or niqab. Furthermore, persons originating from Morocco and Turkey - the biggest group in the Netherlands with a dual nationality – are particularly affected by a new Act, that allows the Minister for Justice and Security to withdraw the Dutch nationality of those who both have a dual nationality and who have subsequently participated in a terroristic organisation. Another minority that endures discrimination is LGBTI asylum-seekers. The current asylum procedure in practice still allows the use of terms such as the process of awareness and of self-acceptance. These terms are based on stereotypes and do not have a scientific basis, which might lead to the rejection of asylum requests, based on prejudice. In addition, it is not required for Reception Centres to place LGBTI persons who wish to be placed in separate housing separately, which often makes them feel unsafe.

Third, there is a severe lack of research and statistics on discrimination in the Netherlands, which prevents the recognition and resolution of pertinent issues. For example there is little known about intersectionality. Without adequate knowledge about the complexity of intersectional issues and multiple forms of discrimination, policies can easily fail to address the needs and rights of individuals. There is also little research be done on the efficacy of the integration conditions of the Civic Integration Examination. It is therefore difficult to analyse the impact of these conditions on specific groups. In addition, there is a lack of research on the role of languages, dialects and accents in deepening racial and ethnic inequalities including discrimination and bullying in education on the basis of language, which can have long lasting

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negative effects on the education performance of minority students. Lastly, there is a lack of research on the effects of climate change – especially in the Caribbean Netherlands, which makes it difficult to ensure that persons living in the Kingdom have the necessary capacity to adapt to the climate crisis.

Introduction

This joint alternative report is written by academic experts and civil society organisations and coordinated by the Dutch Section of the International Commission of Jurists (hereinafter ‘NJCM’). The issues that are discussed in this report represent the main concerns of the involved organisations up until February 2020. The report does not intend to be comprehensive in its nature.

The report is structured in the following way. The first two sections will discuss the general prohibition on discrimination in the Netherlands and the general discrimination of Caribbean citizens in the Kingdom. The third and fourth sections will discuss the anti-discrimination facilities and the freedom of expression respectively. The fifth to the sixteenth sections address issues that target specific minority groups: civic integration and language requirements, ethnic profiling, profiling by algorithms, discrimination against Muslims, the face-covering clothing ban, nationality stripping, the treatment of LGBTI asylum-seekers, immigration detention, statelessness and the traveller camp policy. The seventeenth to twenty-first sections discuss more general themes on discrimination: the labour market, education, health and social care, sports, the multiple forms of discrimination, climate change, and foreign companies. The report will finish with a conclusion, summarizing the main concerns of the contributing organisations.

Before the ICERD-related issues are discussed in more depth, it is important to explain the structure of the Kingdom. The Kingdom consists of four constituent parts, namely Aruba, Curaçao, St Maarten and the Netherlands. All four countries have their own constitution, government and parliament. In addition, the Bonaire, Saba and Sint Eustatius islands (hereinafter ‘BES islands’) are also located in the Caribbean. They became special municipalities of the Netherlands in 2010. Therefore, the BES islands fall within the constitutional framework of the Netherlands. In this document the terms, ‘Caribbean Netherlands’ or ‘Dutch Caribbean’ refer to all the islands in the Dutch Kingdom in the Caribbean, not merely the special municipalities of the European part of the Netherlands.

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I. The general prohibition on discrimination in the Netherlands

Article 1 of the Constitution¹ and the General Equal Treatment Act contain provisions on the prohibition on discrimination. There are currently discussions in parliament on how to strengthen this legal framework,² but no improvements have been made since the last Concluding Observations of the Committee in 2015.³ This means that the current definition on discrimination still does not contain the grounds of colour, descent or ethnic origin, and therefore, is not compliant with article 1 of ICERD.

Furthermore, the government has not implemented the recommendation of the Committee to make racial motive an aggravating factor for criminal offences. While it is possible for a prosecutor to increase the penalty called for when a racial motive is involved, but this is simply referred to in instructions and is not included in the Criminal Code. The government should consider changing this, as an explicit provision in the Criminal Code to provide more guidance for judges and to send a stronger message to the public.⁴ In this regard it is welcomed that the Minister for Justice has commissioned an academic study to identify the advantages and disadvantages of adding discriminatory motivation as an aggravating circumstance.⁵ This study has not yet been completed.

In addition, the European Commission against Racism and Intolerance (hereinafter ‘ECRI’) analysed the Kingdom’s legal framework in 2019 and recommended the government to improve the General Equal Treatment Act. The ECRI argued that the Act ‘does not explicitly provide that the acts of segregation, discrimination by association, the announced intention to discriminate, or inciting others to discriminate are considered as discrimination’.⁶ In the absence of such a provision the government should increase its efforts to strengthen the current legal framework.

II. Discrimination of Caribbean citizens of the Kingdom

Democratic Deficit

The constitutional framework of the Kingdom creates lopsided distribution of power between the Caribbean Netherlands and the European Netherlands. This imbalance is evident in the distinction that is made between Kingdom matters⁷ and autonomous matters.⁸ Kingdom matters are governed by Kingdom institutions and

¹ All persons in the Netherlands shall be treated equally in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race or sex or on any other grounds whatsoever shall not be permitted.

² Recently a debate in parliament was held on a law proposal that includes discrimination on sexual orientation and disability; Initiatiefwetsvoorstel toevoeging handicap en seksuele gerichtheid als non-discriminatiegrond in Grondwet, 5 December 2019 [Initiative Act to add disability and sexual orientation as a non-discrimination basis in the Constitution] (available at: https://www.tweedekamer.nl/kamerstukken/plenaire_verslagen/kamer_in_het_kort/initiatiefwetsvoorstel-toevoeging-handicap-en).

³ CERD, *Concluding observations on the nineteenth to twenty-first periodic reports of the Netherlands*, 25 September 2015 (U.N. Doc. CERD/C/NLD/CO/19-20).

⁴ European Commission against Racism and Intolerance, ECRI Report on the Netherlands, 4 June 2019 para 5-7 (available at: <https://rm.coe.int/fifth-report-on-the-netherlands/168094c577>).

⁵ Minister for Justice and Security, *Letter to parliament*, 19 June 2018, 2017/18, 29 279, no. 442 (available at: <https://zoek.officielebekendmakingen.nl/kst-29279-442.html>).

⁶ European Commission against Racism and Intolerance 2019 (n 5) para 8.

⁷ Charter of the Kingdom of the Netherlands most notably art. 3 and art. 43.

⁸ Charter of the Kingdom of The Netherlands art. 41.

autonomous matters are governed by the four countries respectively. Under certain circumstances, the Kingdom government, which is composed of all of the ministers of the European Netherlands and a minister plenipotentiary for each of the Caribbean states,⁹ can also involve itself in autonomous matters.¹⁰ The European Netherlands are a majority in the Kingdom government and therefore are always able to overrule the ministers plenipotentiary of Aruba, Curaçao and St Maarten.¹¹ Furthermore, due to the fact that there is no Kingdom parliament, the Dutch parliament acts as the Kingdom parliament without the other countries having a right to vote.¹² Scholars have referred to this as the *democratic deficit*¹³ or colonialism.¹⁴ Consequently, this historically grown constitutional imbalance upholds racialized discourses and practices.

With this in mind, it can be said that Kingdom interference in the autonomous matters of the Caribbean countries are in fact interference by the Netherlands. There is no such thing as Kingdom interference in autonomous matters of the Netherlands. Moreover, although the government in the Netherlands is able to interfere in the Caribbean Netherlands, it appears to have deliberately shifted some responsibilities to the Caribbean Netherlands. This function became apparent in the *Murray case*, in which the European Court of Human Rights found that Curaçao violated the prohibition on torture, as the convicted Mr Murray did not have a prospect of release.¹⁵ The Dutch government found this ruling to only apply to Curaçao, even though this problem also exists in the European part of the Netherlands.¹⁶

Inhabitants of the BES islands

A discriminatory treatment has been observed of the inhabitants of the BES islands, compared to the inhabitants of municipalities in the European Netherlands, as the Dutch legislature has a discretion to differentiate between the BES islands and the European Netherlands when the size of the islands, geographical circumstances, climate or other factors permit.¹⁷ The legislature uses this discretion to justify unequal rights to social welfare,¹⁸ which has led to (social) disparities between the BES islands and the European Netherlands.¹⁹ Such disparities have especially affected residents of these islands who, because of enduring racism, are often thought to be essentially distinct peoples from Dutch Europeans. In this regard, larger populations of the BES islands believe that they live under worse economic and political

⁹ Charter of The Kingdom of the Netherlands art. 7.

¹⁰ For example, if the realisation of fundamental human rights and freedoms, legal certainty and good governance are in danger; Charter of the Kingdom of the Netherlands art. 43.

¹¹ Charter of The Kingdom of the Netherlands art. 12.

¹² Charter of The Kingdom of the Netherlands art. 12.

¹³ See e.g.: Arjen van Rijn, *Handboek Caribisch Staatsrecht*, 2019 [Handbook Caribbean Constitutional Law] The Hague: Boom juridisch p. 158-159.

¹⁴ For a now historical document see e.g. Da Costa Gomez who primarily argued for voting rights for Caribbean Dutch citizens for the Dutch parliament, which was in 1935 still explicitly the legislator of all the territories within the Kingdom; Moises Frumencio da Costa Gómez (dissertation), *Het wetgevend orgaan van Curaçao. Samenstelling en bevoegdheid bezien in het kader van de Nederlandsche koloniale politiek*, 1935, [The legislative body of Curaçao. Composition and competence viewed in the context of Dutch colonial politics] Amsterdam: H.J. Paris.

¹⁵ European Court of Human Rights, Case of Murray v. the Netherlands (Application no. 10511/10), 26 April 2016, Grand Chamber, para 21.

¹⁶ Dutch section of the International Commission of Jurists, Forum Humane Execution of Life Penalties and the Netherlands Helsinki Committee, *NGOs' communication with regard to the execution of judgement of the European Court of Human Rights in the case of Murray v the Netherlands no. 10511/10, 26th April 2016 (GC)* Letter of 16 July 2019 p.8 (available at: <https://njcm.nl/wp-content/uploads/2019/10/Rule-9.2-submission-Murray-v-NL.pdf>).

¹⁷ The Constitution of the Netherlands, art. 132a.

¹⁸ This for instance concerns the amount of benefits, minimum wage and pension.

¹⁹ Netherlands Institute for Human Rights, *Naar een mensenrechtelijk aanvaardbaar voorzieningenniveau voor Caribisch Nederland*, 2016 [Towards an acceptable level of human rights in the Caribbean Netherlands] (available at: <https://mensenrechten.nl/publicatie/5b46fcee748c2212a545183c>); Commissie Evaluatie uitwerking van de nieuwe staatkundige structuur Caribisch Nederland, *Vijf jaar verbonden: Bonaire, Sint Eustatius, Saba en Europees Nederland*, 2015 [Commission Evaluation on the new constitutional structure in the Caribbean Netherlands, Five years connected: Bonaire, Sint Eustatius, Saba and European Netherlands] (available at: <https://kennisopenbaarbestuur.nl/media/210276/Rapport-Evaluatiecommissie-Caribisch-Nederland-Vijf-jaar-verbonden.pdf>).

circumstances compared to the citizens of the European Netherlands and compared to the situation before 2010. This is partly due to the introduction of the dollar in 2011.²⁰

Differentiation between citizens born in the European Netherlands and the Caribbean Netherlands

Within the European territory of the Kingdom, the Dutch legislature and local governments differentiate between Dutch citizens born in the European Netherlands, and those born in or migrating from the Dutch Caribbean. The following two examples illustrate this differential treatment.

First, in 2012, a bill entitled ‘Bosman-wet’ was proposed to regulate the migration of citizens from the Dutch Caribbean. The bill required those citizens migrating to the European Netherlands to meet an additional set of requirements, such as not posing a threat to public order or public interest and possessing a basic qualification of competence in the Dutch labour market. These requirements do not apply to citizens from the European Netherlands who want to migrate to the Dutch Caribbean.²¹ Fortunately, the parliament has rejected the bill in October 2016. However, this bill was one of several bills²² that prompted discussions inside and outside of parliament about discrimination, racism and citizenship.²³

Second, in December 2018 the Council of Leeuwarden²⁴ presented its safety policy for 2019-2023 (Veiligheidsagenda), which aims to address challenges for the quality of life in the city. This policy includes a paragraph explaining its plan to discourage ‘hopeless’²⁵ or underprivileged people of Dutch Caribbean background from moving to Leeuwarden from Rotterdam or from the Dutch Caribbean islands.²⁶ After engagements with NGOs representing Dutch Caribbean populations, the Council removed this paragraph from its policy. In 2019, the Council also committed itself to developing policies that would improve the social disposition of Dutch Caribbean populations in Leeuwarden.²⁷

In order to eliminate, the resulting racial discrimination and inequality, it is important for the Dutch government to fully implement article 1 of the Dutch Constitution to treat all Dutch citizens equally, regardless of heritage, Caribbean or other. The Dutch government should also be more aware of the fact that Dutch Caribbean communities have a right to be included in decision-making processes, directly affecting them, in accordance with internationally established democratic values, and voting and representational rights. The government should increase its efforts to ensure meaningful participation and representation of all communities in all government fora.

²⁰ Netherlands Institute for Human Rights, *Naar een mensenrechtelijk aanvaardbaar voorzieningenniveau voor Caribisch Nederland* (n 17) p. 15.

²¹ Proposal by Member of Parliament Bosman for the regulation of the establishment of Dutch nationals from Aruba, Curaçao and St Maarten in the Netherlands, 3 July 2012 (available at: https://www.eerstekamer.nl/wetsvoorstel/33325_initiatiefvoorstel_bosman).

²² In 2018 the parliament also voted against a law, which would send Dutch Caribbean people to their island of heritage if convicted of a crime.

See: Proposal by Members of Parliament Fritsma and De Graaf on the Return of Criminal Antilleans, 1 October 2014 (available at: https://www.eerstekamer.nl/wetsvoorstel/34044_initiatiefvoorstel_fritsma).

²³ See e.g. De Volkskrant, ‘Discriminerende’ VVD-wet over vestiging Antillianen kansloos ten onder in Kamer, 28 September 2016 [‘Discriminatory’ VVD law on Antillean settlement did had no chance in Parliament] (available at: <https://www.volkskrant.nl/nieuws-achtergrond/discriminerende-vvd-wet-over-vestiging-antillianen-kansloos-ten-onder-in-kamer~b9fb48d1/>); NOS, *Geen steun voor PVV-wet criminele Antillianen in ruzieachtig Kamerdebat*, 7 June 2018 [No support for PVV law for criminal Antilleans in a brawly parliamentary debate] (available at: <https://nos.nl/artikel/2235459-geen-steun-voor-pvv-wet-criminele-antillianen-in-ruzieachtig-kamerdebat.html>).

²⁴ Leeuwarden is a city up north in the Netherlands with a population of 122,293.

²⁵ Dutch word used: kansloos.

²⁶ Leeuwarder Courant, *Leeuwarden wil komst van meer Antillianen voorkomen*, 20 December 2018 [Leeuwarden wants to prevent the arrival of more Antilleans] (available at: <https://www.lc.nl/friesland/Leeuwarden-wil-komst-van-meer-Antillianen-voorkomen-23971596.html>).

²⁷ Caribisch Nederland, *Comité in Leeuwarden dient plan in om positie Caribische Nederlanders te verbeteren*, 2 December 2019 [Committee in Leeuwarden submits plan to improve position of Dutch Caribbean] (available at: <https://caribischnetwork.ntr.nl/2019/12/02/comite-in-leeuwarden-dient-plan-in-om-positie-caribische-nederlanders-te-verbeteren/>).

III. Anti-discrimination facilities

In the Netherlands, since 2009, municipalities are responsible for providing access to independent anti-discrimination facilities (in Dutch *antidiscriminatievoorzieningen* hereinafter ‘ADV’s’).²⁸ The Act on Municipal Antidiscrimination Services (hereinafter ‘GBA’), provides a legal basis for ADVs and sets out the two goals: ADVs should assist persons filling reports of discrimination and ADVs should register discrimination complaints.²⁹ Aruba, Curaçao and St Maarten do not have a law similar to the GBA, which is a missed opportunity.

The GBA contains several legal gaps, which should be improved by the government. For instance, the GBA, does not contain a national supervisory body, that could monitor the municipalities’ implementation of the law. Consequently, municipalities are able to formally conform to the law, without implementing it in practice, as intended. There are no official statistics on how many municipalities have failed to properly implement the Act, but it is estimated that the number amounts to approximately a few dozen of the 350 municipalities in the Netherlands. This lack of monitoring contributes to cyclical issues, as it is difficult for municipalities to gain insight into the functioning and operation of the ADVs and at the same time to guarantee their independence and the quality of work.³⁰

Furthermore, the GBA has a narrow scope, as municipalities are not required to develop a preventive policy against discrimination. The government should consider broadening the scope of the Act, as prevention might increase public awareness and it is likely to decrease the number of complaints. The government could further improve the GBA in regards to the registration of complaints. The Act currently provides for an annual report with data on discrimination-related complaints that is based on the victim's place of residence³¹ and the police who register discrimination on the basis of the place where the discriminatory act took place (crime scene). This disjointed approach makes the ADV-data difficult or even not comparable with the police. It would be more efficient if the Regulation were amended, so that ADVs would (also) publish the data on the location of the incidents.

Next to the concerns towards the legal gaps it is important to look at the implementation of the law. It is difficult to organize the work of the ADVs, particularly in smaller municipalities. For example, ADVs in small municipalities have a very limited budget, as local councils do not want to invest a lot in a facility that receives one or two complaints each year.³² In such circumstances there are also concerns about the absence of specialized employees and the lack of clarity in task allocation.³³ In this regard, a 2017 policy study on the ADVs concluded that it would be better if the local anti-discrimination provisions were implemented on

²⁸ Act on municipal antidiscrimination services (available at: <https://wetten.overheid.nl/BWBR0026168/2020-01-010>).

²⁹ Act on municipal antidiscrimination services (n 27) art. 1.

³⁰ G. Walz, *Local anti-discrimination policy: The perspective of Dutch municipalities*, 2018, Utrecht: Movisie p. 40-41 [Local anti-discrimination policy: The perspective of Dutch municipalities] (available at: <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2018/04/26/bijlage-6-lokaal-antidiscriminatiebeleid/bijlage-6-lokaal-antidiscriminatiebeleid.pdf>).

³¹ Regulation on registration form for anti-discrimination services, art. 2.1a, 2.4 (available at: <https://wetten.overheid.nl/BWBR0027116/2016-11-02>).

³² Smit, W., Klaver, J. and Krop, M., *Onderzoek naar de werking van de adv's in de praktijk*, 2017, Amsterdam: Regioplan p V-VI [Research on the functioning of the ADVs in practice] (available at: <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2017/03/01/onderzoek-naar-de-werking-van-de-adv's-in-de-praktijk/onderzoek-naar-de-werking-van-de-adv's-in-de-praktijk.pdf>).

³³ Ibid. p. 47.

a regional scale instead of a municipal scale.³⁴ According to the staff at most ADVs, implementation on a regional scale would be a positive development. Therefore, the government should consider this change. Furthermore, municipalities are not obligated to spend the state provided funds on the ADVs, since the funds are not labelled for specific expenses.³⁵ Although the current method of financing through municipal funds does not allow for specially earmarking the budget, such a reform would be ideal for the implementation of ADVs.

The functioning of the ADVs has been frequently discussed in parliament. In 2017 some political parties criticised the proliferation of ADVs. An inventory revealed that, at the end of 2017, the Netherlands had more than 55 separate anti-discrimination facilities.³⁶ To ensure that individuals are able to find, the facilities there is an urgent need for a central portal and more guidance to the ADVs. At the same time, the freedom of association obviously must be respected. Moreover, the Minister of the Interior and Kingdom Relations recently outlined her policy intentions concerning ADVs.³⁷ In a letter, the Minister considered the current role and position of antidiscrimination bureaus, but did not formulate new policies that would strengthen them, despite the title of the letter ‘Strengthening local anti-discrimination facilities’. For these reasons there appears to be a gap between politicians’ perspectives and the actual implementation of the Act. It is, important for the government and the implementers of the GBA to engage a dialogue on the possibilities for optimizing the implementation of the Act.

IV. Freedom of expression and hate speech

Freedom of expression and political speech

In the Netherlands there are double standards regarding the freedom of expression.³⁸ On the one hand, populist politicians have claimed to be the victims of ‘political correctness’ when they receive criticism for biased or even discriminatory expressions. On the other hand, persons who criticize such discriminatory expressions are often intimidated and attacked. In a 2018 report by the Netherlands Institute for Human Rights (hereinafter ‘NIHR’), the NIHR concluded that many Dutch citizens believe that politicians should take their responsibility for what they say, but that they should also have the space to offend.³⁹ Yet at the same time there is little room for unpopular views and minority views.⁴⁰ Another study by the Netherlands Institute for Social Research, confirmed that support amongst individuals for the freedom to say and write

³⁴ Ibid p. V-VI.

³⁵ Ibid p. 13-14.

³⁶ Minister of Interior and Kingdom Relations, Letter to the House of Representatives 22 June 2017 [Response to motions AO discrimination] (available at: <https://zoek.officielebekendmakingen.nl/kst-30950-141.html>).

³⁷ Minister of Interior and Kingdom Relations *Versterking lokale antidiscriminatie Voorzieningen*, Letter to the House of Representatives, 16 October 2019 [Strengthening local anti-discrimination facilities] (available at: <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2019/10/16/kamerbrief-over-versterking-lokale-antidiscriminatie-voorzieningen/Kamerbrief+over+versterking+lokale+antidiscriminatie+voorzieningen.pdf>).

³⁸ For example, party leader Baudet of FvD denies that this tweet (latter mentioned) is racist: see e.g. Trouw, *Het onvervalste racisme van Baudet staat niet op zichzelf* 5 February 2020 [Baudet’s genuine racism does not stand on its own] (available at: <https://www.trouw.nl/opinie/het-onvervalste-racisme-van-baudet-staat-niet-op-zichzelf-bb113996/>) and black columnists receive often hate mail with insults and (death) threats: De Volkskrant, *Hoe openlijk racistisch is Nederland geworden?*, 7 December 2018 [How openly racist has the Netherlands become?] (available at: <https://www.volkskrant.nl/columns-opinie/hoe-openlijk-racistisch-is-nederland-geworden~b5d4a978/>).

³⁹ Netherlands Institute for Human Rights, *Zolang we het maar eens zijn; Nederlanders over de vrijheid van meningsuiting en demonstratievrijheid*, September 2018, p. 43 [As long as we agree; Dutch people about freedom of expression and freedom of demonstration].

⁴⁰ Ibid p. 44.

anything in public has declined in the Netherlands.⁴¹ This lack of support will likely weaken efforts to both the freedom of expression and for the prohibition on discrimination.

According to the current government coalition Rutte III ‘[t]here is no room in Dutch society for homophobia, anti-Semitism, Islamophobia, [...] hate speech or violence against minorities or people whose beliefs are different from our own’.⁴² Although the government is aware of abuses of the freedom of expression thus exists, the Dutch mainstream political discourse still includes xenophobic, fear-fuelled rhetoric and hate speech.⁴³ Reported examples include: an open letter from the Prime Minister in 2017, published in the context of the upcoming election campaign, in which he told immigrants to ‘act normal or go away’;⁴⁴ the statement of a politician from the populist political party Forum voor Democratie (hereinafter FvD), on the ‘proven relationship between IQ and race’ in the biggest Dutch newspaper *De Telegraaf*;⁴⁵ and a remark by the current Dutch Minister of Foreign Affairs that a peaceful multicultural society does not exist.⁴⁶ Moreover, the campaign for municipal elections, held on March 21st 2018, was conducted on the razor’s edge.⁴⁷ Tackling discrimination was on the political agenda, while at the same time a discussion arose on the expressions of politicians and political parties themselves.⁴⁸ The populist party Partij voor de Vrijheid (hereinafter PVV), for example, started its campaign with a demonstration against the ‘discrimination of Dutch people’ and against Islamization.⁴⁹ The PVV also broadcasted a campaign spot that caused commotion, as the commercial displayed, amongst other things, ‘The Islam is deadly’ in bloodshot red letters.⁵⁰ This led to many procedures against the PVV and party leader Geert Wilders, for discriminatory insult of Muslims and incitement to hatred. Nevertheless, the public prosecutor decided that the PVV’s discriminatory expressions were not punishable by law because the commercial spot was addressed to a belief and not necessarily to a group of persons. This decision was upheld on appeal.⁵¹ Furthermore, in 2018 the FvD raised discussion about racism and discrimination when some media publications publicized party leader Thierry Baudet’s foreign right-wing extremists contacts.⁵² More recently last February, a tweet of

⁴¹ Netherlands Institute for Social Research, *De sociale staat van Nederland 2017*, [The social status of the Netherlands] December 2017.

⁴² People’s Party for Freedom and Democracy (VVD), Christian Democratic Alliance (CDA), Democrats ‘66 (D66) and Christian Union (CU), *Confidence in the Future 2017-2021 Coalition Agreement*, 10 October 2017 (available at: <https://www.government.nl/documents/publications/2017/10/10/coalition-agreement-confidence-in-the-future>).

⁴³ European Commission against Racism and Intolerance, 2019 (n 3) p. 6, 16.

⁴⁴ Mark Rutte, *Open Letter*, 22 January 2017 (available at: <https://www.vvd.nl/nieuws/lees-hier-de-brief-van-mark/>); see for reactions from across the world e.g. The Washington Post, *Dutch PM tells immigrants: ‘act normal or go away’*, 23 January 2017 (available at: https://www.washingtonpost.com/gdpr-consent/?next_url=https%3a%2f%2fwww.washingtonpost.com%2fnews%2fworldviews%2fwp%2f2017%2f01%2f23%2fdutch-pm-tells-immigrants-act-normal-or-go-away%2f).

⁴⁵ DutchNews.nl, *Forum for Democracy under fire over race/IQ debate and democracy itself*, 7 February 2018, (available at: <https://www.dutchnews.nl/news/2018/02/forum-for-democracy-under-fire-over-raceiq-debate-and-democracy-itself/>).

⁴⁶ Trouw, *Commotie over uitspraken minister Blok: ‘Een vreedzame multiculturele samenleving? Ik ken het niet’*, 18 July 2018 [Commotion about statements by Minister Blok: ‘A peaceful multicultural society? I do not know one.’] (available at: <https://www.trouw.nl/nieuws/commotie-over-uitspraken-minister-blok-een-vreedzame-multiculturele-samenleving-ik-ken-het-niet-b7268f77/>).

⁴⁷ There were for example more political parties than last elections that are focussing on discrimination and migration issues, such as DENK, BIJ1 and FvD.

⁴⁸ Ministry on the Interior and Kingdom Relations, Police & Art. 1, *Discriminatiecijfers in 2018*, April 2019 p. 10 [Discrimination numbers in 2018] (available at: <https://www.discriminatie.nl/files/2019-04/landelijke-rapportage-discriminatiecijfers-2018-2-16.4.2019.pdf>).

⁴⁹ RTL, *Wilders start campagne in voor PVV belangrijkste stad Rotterdam*, 20 January 2018 [Wilders starts campaign in Rotterdam, the most important city for the PVV] (available at: <https://www.rtlnieuws.nl/nederland/politiek/artikel/3821471/wilders-start-campagne-voor-pvv-belangrijke-stad-rotterdam>).

⁵⁰ PVVpers Youtube Channel, *Nieuwe video PVV Zentijd Politieke Partijen*, 15 March 2018 [New video PVV Radio Time Political Parties] (available at: https://www.youtube.com/watch?time_continue=2&v=NoBeCQhWFFY); See for reactions in newspapers e.g. Telegraaf, *Felle reacties op anti-islamspot PVV*, 16 March 2018 [Strong reactions to anti-Islam spot PVV] (available at: <https://www.telegraaf.nl/nieuws/1798141/felle-reacties-op-anti-islamspot-pvv>).

⁵¹ Ministry on the Interior and Kingdom Relations, Police, Art 1., 2019 (n 47) p. 10.

⁵² Ibid.

politician Baudet posted a false accusation that claimed Moroccans harassed his friends.⁵³ These examples illustrate how minorities are attacked and made to feel excluded. This could result in (more) division within Dutch society.⁵⁴

Media, Internet Service Providers

Concerning the Dutch media, it is remarkable that the Dutch Press Council has not received complaints of hate speech over the last years.⁵⁵ This does not mean that there have not been controversial issues in the Dutch media. Last year hosts of the popular television show *Voetbal Inside* ridiculed a transgender journalist.⁵⁶ Also in the television program *Bubbles & Gloss*, while discussing the straightening of frizzy (afro) hair, one host commented that persons with such hair would not want to walk around looking like a *bosneger* (a derogatory term for ‘Maroon’) all the time. In response to the latter broadcast, ADVs received a considerable number of complaints from persons who felt offended and discriminated against.⁵⁷ The interaction between television programmes that include comments such as those illustrated here, and comments on social media regularly causes social upheaval,⁵⁸ contribute to the exclusion of minorities in Dutch society.⁵⁹

In 2018, MiND, an online discrimination hotline, received 583 notifications of online discrimination, which was considerably fewer than the previous year’s 1.367. MiND noted an especially sharp decrease in the number of reports of statements on Social Media.⁶⁰ According to the Dutch government, this decrease might be explained by the ‘Code of conduct on countering illegal hate speech online’ that was agreed upon by the European Commission and companies such as Facebook, Twitter, Youtube, Google+, Instagram and many more.⁶¹ However, as Facebook pursues a policy to remove such messages, some right-wing extremists moved their statements from Facebook to VK (short for Vkontakte), which is a Russian counterpart of Facebook.⁶² In this regard, the Dutch government should create a policy on how to identify the users with extreme statements and on how to deal with discriminatory messages on Vkontakte in order to actively remove such messages.

⁵³ AD, *Baudet onder vuur na opruiende tweet over lastiggevallen vriendinnen in trein*, 2 February 2020 [Baudet under fire after inflammatory tweet about harassed girlfriends in train] (available at: <https://www.ad.nl/politiek/baudet-onder-vuur-na-opruiende-tweet-over-lastiggevallen-vriendinnen-in-trein-a88abcc0/>).

⁵⁴ European Commission against Racism and Intolerance, 2019 (n 3) p 18.

⁵⁵ Ibid p 16.

⁵⁶ Ministry of the Interior and Kingdom Relations, Police, Art 1., 2019 (n 47) p. 13. See also, NOS, RTL in gesprek met programmamakers Voetbal Inside over transgendergrap, 4 February 2018 [RTL in conversation with program makers Voetbal Inside about transgender joke] (available at: <https://nos.nl/artikel/2215328-rtl-in-gesprek-met-programmamakers-voetbal-inside-over-transgendergrap.html>); Trouw, Boze reacties op transgendergrap bij Voetbal Inside, 4 February 2018 [Angry reactions to transgender joke at Voetbal Inside] (available at: <https://www.trouw.nl/nieuws/boze-reacties-op-transgendergrap-bij-voetbal-inside~b86ca68a/>).

⁵⁷ Ministry of the Interior and Kingdom Relations, Police, Art 1., 2019 (n 47) p. 13. See also Trouw, TV-kapper onder vuur om ‘bosneger’-opmerking, 7 May 2018 [TV hairdresser under fire for ‘bosneger’ comment] (see at: <https://www.telegraaf.nl/nieuws/2007514/tv-kapper-onder-vuur-om-bosneger-opmerking>); Metronieuws, *RTL-programma onder vuur door uitspraak ‘bosneger’*, 7 May 2018 [RTL program under fire by saying ‘bosneger’] (available at: <https://www.metronieuws.nl/consent.html?return=%2Fin-het-nieuws%2F2018%2F05%2Frtl-programma-onder-vuur-door-uitspraak-bosneger>).

⁵⁸ Ministry of the Interior and Kingdom Relations, Police, Art 1., 2019 p. 13.

⁵⁹ European Commission against Racism and Intolerance, ECRI Report on the Netherlands, 2019 (n 3) p. 19- 20.

⁶⁰ Meldpunt Internet Discriminatie (MiND), *Jaarcijfers 2018*, p. 2.

⁶¹ Ministry of the Interior and Kingdom Relations, Police, Art 1., 2019 (n 47) p. 19.

⁶² General Intelligence and Security Service (AIVD), *Rechts-extremisme in Nederland: Een fenomeen in beweging*, 2 October 2018 p. 11 [Right-wing extremism in the Netherlands: A phenomenon in motion] (available at: <https://www.aivd.nl/documenten/publicaties/2018/10/02/rechts-extremisme-in-nederland-een-fenomeen-in-beweging>). See also: Trouw, *Nederlandse rechts-extremisten wijken uit naar Vkontakte het Russische Facebook*, 4 October 2018 [Dutch right-wing extremists move to Vkontakte the Russian Facebook] (available at: <https://www.trouw.nl/nieuws/nederlandse-rechts-extremisten-wijken-uitnaar-vkontakte-het-russische-facebook~b115c950/w>).

Furthermore, the ECRI has indicated that in the Netherlands, ‘the existing system for preventing and combating hate speech is not robust enough, as large amounts of hate speech remain online over weeks, months and years and contribute to nourishing hatred’.⁶³ There was for example an increase monitored in right-wing extremist expressions online, including ‘hate posts’ between 2014/2015 and October 2018.⁶⁴ Such hate posts frequently directed death-wishes to Muslims. For this reason, media companies must be in line with the ECRI ‘enforce the existing codes of conduct and remove hate speech quickly’. Besides this, it is also important to monitor online hate speech. Currently no organisation compiles data about the waves of online hate speech.⁶⁵ The government could close this gap by providing sufficient funding to monitoring organisations.

V. Civic integration and language requirements

Civic integration examination abroad for ‘non-western’ nationals

In the Netherlands, persons from specified countries outside the EU who plan to remain in the Netherlands for longer than three months, for purposes of e.g. family formation or reunification, must obtain a Provisional Residence Permit (hereinafter ‘MVV visa’).⁶⁶ Before granting a MVV migrants need to pass a Dutch language and integration exam - the Civic Integration Examination.⁶⁷ However, nationals from countries that are considered ‘developed’ and ‘western (-oriented)’ are exempted from this requirement.⁶⁸ This consequently results in discriminatory distinctions between ‘western’ and ‘non-western’, or ‘developed’ and ‘less developed’ nations.

According to the government nationals of the ‘non-western’ nations are in need of a MVV as it presumed that this will not ‘lead’ to ‘unwanted and unbridled migration flows’ and substantial integration problems.⁶⁹ This statement can be understood in the context of underlying aims of the Integration Abroad Act which is to counter the on going migration of marriage partners with ‘unfavourable characteristics’ in combination with hampering integration of, in particular, second and third generation sponsors with a Moroccan or Turkish background.⁷⁰ The spouses of members of these particular groups were deemed ‘unfavourable’ after their arrival in the Netherlands for reasons such as their educational and socio-economic backgrounds.⁷¹ In this context, attention must be drawn to the ECtHR’s position in *Biao v Denmark* in which the court

⁶³ Ibid.

⁶⁴ European Commission against Racism and Intolerance, 2019 (n 3) p 21.

⁶⁵ Ibid.

⁶⁶ An ‘MVV’ (Provisional Residence Permit) is a visa that is required for a stay of more than 90 days in the Netherlands, Alien Act, art. 16.1h

⁶⁷ Immigration and Naturalisation Service, *Integration in the Netherlands* (available at: <https://ind.nl/en/Pages/Integration-in-the-netherlands.aspx>).

⁶⁸ Nationals from ‘Western’ countries for which an MVV is not required are exempted from the MVV and Civic Integration Examination Abroad requirement. These countries comprise the EU Member States and EEA states, Australia, Canada, Japan, Monaco, New Zealand, South Korea, Switzerland, the Vatican, and the US. Surinamese migrants who have had at least primary education are also excluded from the exam; IND, *EU/EEA Countries* (available at: <https://ind.nl/en/Pages/eu-eea-countries.aspx>).

⁶⁹ Parliament, *Kamerstukken II, Memorie van toelichting*, 2016-2017, 34584 no. 3.

⁷⁰ ‘An important part of this group of migrants has characteristics that are unfavourable for a good integration into Dutch society. The most prominent - also in size - is the group of *family educators* from Turkey and Morocco. Almost half of the family migrants are coming from Morocco and Turkey. These migrants have a poor starting position in Dutch society’; Parliament, *Kamerstukken II*, 2003-2004, 29700 no. 4.

⁷¹ About 40% of Turkish and nearly 60% of Moroccan family migrants have a maximum level of primary education. The unemployment of Turkish and Moroccan marriage migrants in this period is 12% for both nationalities and 3% for the native Dutch labour force; Parliament, *Kamerstukken II*, 2003-2004, 29700 no. 4.

considered that general biased assumptions or prevailing social prejudices with regard to ‘marriage patterns’ of nationals with a different ethnic background do not provide sufficient justification for a difference in treatment on the grounds of ethnic origin.⁷² In light of this ruling and the critics by Human Rights Watch⁷³ and this Committee,⁷⁴ it must be concluded that the distinction made - on both grounds of ethnicity and nationality - in the Civic Integration Abroad Act is insufficiently justified.

Lack of monitoring

The monitoring of the Civic Integration Examination abroad primarily consists of biannually published reports that contain statistics on the number of persons who took the exam, on their background and on their characteristics.⁷⁵ These reports illustrate that due to the stricter requirements over the last few years, the required language level has increased, a literacy test was added⁷⁶ and the examination system changed from telephone-based to computer-based,⁷⁷ the number of persons who passed the exam on their first attempt has decreased from 90% in 2006 to 73% in 2018.

The reports also show that certain groups are at risk of being disproportionately affected. For example, the number of Afghans⁷⁸, Iraqis⁷⁹, Moroccans⁸⁰ and Sri-Lankans⁸¹ who pass on their first attempt are - rather consistently and significantly below the average percentage.⁸² Together, they make up approximately 22% of the candidates. The reports also show that each year hundreds of candidates take some sections of the exam for the third time or more and that pass rates for the speaking and writing sections at that point have dropped below 50%.⁸³ Little research, however, has been conducted into the efficacy of the integration conditions and into their (possibly disproportionate) impact on specific groups.⁸⁴ Therefore the government must ensure that no policies aimed at the inclusion of immigrants have discriminatory effects. In doing so, effective monitoring systems must be put in place.

Civic integration examinations after arrival in the Netherlands and the sanction system

Newcomers are made individually and fully responsible for obtaining the necessary skills and knowledge to pass the mandatory exam within three years after their arrival. Both family migrants and refugee status

⁷² Biao v. Denmark - 38590/10 - Chamber Judgment ECHR 304 (25 March 2014).

⁷³ Human Rights Watch, *The Netherlands: Discrimination in the Name of Integration Migrants' Rights under the Integration Abroad Act*, May 2008.

⁷⁴ The Committee recommends that the State party review this legislation with a view to abolishing the discriminatory application of the civic integration examination abroad to ‘non-Western’ state nationals. The Committee, furthermore, urges the State party to ensure the systematic review of its immigration laws to ensure compatibility with the Convention CERD, *Concluding observations on the nineteenth to twenty-first periodic reports of the Netherlands*, 25 September 2015 (U.N. Doc. CERD/C/NLD/CO/19-20).

⁷⁵ Every six months a ‘Monitor civic integration exam abroad’ is published by Significant.

⁷⁶ Decree of 31 August 2010, amending the Aliens Decree of 2000 with the monition of the civic integration examination abroad.

⁷⁷ As a consequence, the three exam parts can be taken separate from one another (i.e. without necessarily having to take the whole exam). As of July 2015, the costs of the exam and the preparatory self-study package went down after a CJEU judgment. The exam went down from 350 euro to 150 euro and the package costs 25 euros instead of 99.50 euros.

⁷⁸ Afghan nationals: 2015: 41%; 2016: 53%; 2017: 49%; 2018: 59%.

⁷⁹ Iraqi nationals: 2015: 32%; 2016: 28%; 2017: 48%; 2018: 50%.

⁸⁰ Moroccan nationals: 2015: 50%; 2016: 60%; 2017: 58%; 2018: 65%.

⁸¹ Sri-Lankan nationals: 2015: 38%; 2016: 67%; 2017: 42%; 2018: 30%.

⁸² Significant, *Monitor basisexamen inburgering buitenland 2016*, 27 March 2017 [Monitor civic integration exam abroad 2016]; Significant, *Monitor basisexamen inburgering buitenland 2018-heel*, 21 March 2019 [Monitor civic integration exam abroad 2018].

⁸³ Each year around 900 people failed to pass speaking and/or writing after three attempts or more. It is not clear how these figures relate to the around 200 people that are granted an exemption from the requirement each year; see e.g. Significant, *Monitor basisexamen inburgering buitenland 2018-heel*, 21 March 2019 [Monitor civic integration exam abroad 2018].

⁸⁴ Two evaluations have been conducted so far: Regioplan, *De wet inburgering buitenland: Een onderzoek naar de werking, de resultaten en de eerste effecten*, July 2009 [The Civic Integration Abroad Act: A study into the operation, the results and the first effects]; Regioplan, *Evaluatie wet Inburgering Buitenland (WIB)*, September 2014 [Evaluation of the Civic Integration Abroad Act (WIB)] These evaluations offer little insight into the impact of the condition on specific groups.

holders have the option to obtain a loan of 10.000 euros to fund the necessary courses and the exams. However, only refugees' loans are forgiven after they pass the exam or are granted an exemption. Certain circumstances such as illnesses or having given birth can lead to exemptions or extra time being granted.⁸⁵ An extension of two years is given to any person with an integration obligation who has followed 300 course hours and who has attempted to pass the remaining, failed exam sections at least twice. Exemptions are also granted after achieving 600 hours of lessons and four failed attempts to pass the remain exam sections or due to medical reasons. When persons do not pass the full exam within the set time period, their failure is presumed attributable to the individual and a fine of a maximum of 1.250 euros is subsequently imposed. When a fine is imposed, a new time limit of two years is set. Fines can be imposed indefinitely until the exam is passed or an exemption is granted.

When a refugee status holder does not pass the required exams within the set time limit, his or her loan is only forgiven if it is proven to be entirely not attributable to the integration candidate.⁸⁶ It is assumed that the reasons for surpassing the time limit can be entirely attributed to the person concerned until proven otherwise, rather than that it must be established that the person concerned is entirely to blame. The loan can only be fully forgiven or must be fully repaid; there is no possibility for partial forgiveness. Consequently, when a person has passed four or five exams, the fine is reduced, but the loan must still be repaid in its entirety.⁸⁷ While there is limited information, the figures indicate that 2.487 refugee status holders must repay their loans.⁸⁸ Information on the height of the loans is not made public and there is no system in place that monitors how such debts affect refugee status holders.

As mentioned, persons who are residing on family life related grounds can take out a loan in order to finance integration courses. These loans cannot be forgiven. The costs may vary, as it depends per person, on how many lessons are needed in order to reach the necessary language level to pass the integration examination. How much these lessons cost depend on the schools.⁸⁹ The number of integration course hours needed to obtain an extension (without being given a fine) or an exemption will in any case cost thousands of euros.⁹⁰ It will cost at least 440 euros to attempt to pass all the required exam sections.⁹¹

Out of those who began their integration trajectory in 2013, 19.6% were fined. This percentage dropped to 15.1% for those who began in 2015 and rose to 18.4% with regard to the 2015.⁹² Out of those who began in 2013 and who were imposed a fine, 22.1% received a second fine.⁹³ There is no information available that gives insight into the height of these fines. Nor is there research available that seeks to explain these

⁸⁵ DUO, *Geen examen doen of extra tijd* [Not making an exam or extra time] (available at: <https://www.inburgeren.nl/geen-examen-doen/>).

⁸⁶ Official legal decision on integration, art. 4.13.

⁸⁷ The height of a fine is determined on the basis of the number of lessons that were followed at a school which holds the required quality mark (*blik op werk*) and the number of exam attempts. Subsequently, the fine is reduced with 20% per exam part that was passed. DUO, *U gaat inburgeren* [You are going to integrate] (available at: <https://www.inburgeren.nl/u-gaat-inburgeren/boete.jsp>).

⁸⁸ DUO *Voortgangscijfers Totaal Nederland*, 1 January 2020 [progress figures, total of the Netherlands]

⁸⁹ The Minister of Social Affairs and Employment has acknowledged that the availability of loans has led the prices of language courses to go up; Parliament, *Kamerstukken II*, 2017-2018, 32824 no. 223.

⁹⁰ 300 and 600 hours respectively; DUO, *Geen examen doen of extra tijd* [no exam or extra time] (available at: <https://www.inburgeren.nl/geen-examen-doen/>).

⁹¹ The parts writing listening and reading cost 50 euros, speaking costs 60 euros, 'Knowledge of Dutch society' and 'Orientation on the Dutch labour market' cost 40 euro each and the so-called "Declaration of Participation costs 150 euros; DUO, *inburgeren betalen* [Paying for integration] (available at: <https://www.inburgeren.nl/inburgeren-betalen/>).

⁹² The available figures contain the number of fines that has become definite. Of the people who started in 2016, fines imposed after three years may still be in the stage of appeal. Furthermore, 25% of these family migrants are still in the process of meeting the requirements. 60% over the total number of people that started in 2016 received an extension. It is unknown for what reasons and for how many month the extensions were given. The figures as of 2015 thus do not give sufficient information yet on the total number of fines; *Dienst Uitvoering Onderwijs, Voortgangscijfers Totaal Nederland*, 1 January 2020 [progress figures, total of the Netherlands].

⁹³ *Ibid.*

particular numbers. Three observations can be made however. First, the fine system does not seem to correspond with family migrant's realities and experiences.⁹⁴ In order to avoid substantial debt, family migrants may choose more informal ways to learn the Dutch language rather than spend money on an expensive language course.⁹⁵ Second, migrant families may be unaware of how the integration system functions, as they do not receive any support in navigating it. Research has shown that in practice it has been too difficult for newcomers to navigate the various language courses on offer and to select one that fits the particular individual's needs.⁹⁶ This task was also complicated by the fact that many language schools were offering courses of poor quality or were even engaged in fraudulent activities.⁹⁷ Third, research on the number of fines is not broken down by sex. It is therefore not possible to indicate potential gender-specific consequences of the fines.

Future concerns about civic integration

The government plans to enact new integration legislation by 2021. While this legislation will not later the exams or fines currently in place⁹⁸ refugee status holders will no longer have to take out loans in order to finance their integration courses. Instead municipalities will be tasked with providing refugees with the necessary support. Additionally, this legislation will raise the required language level from A2 to B1 for as many newcomers as possible. While much remains unclear on the new legislation, the known components raise concern that the financial burdens on family migrants will become even higher than is presently the case.

The legal possibility of reducing social assistance by 100% when recipients have insufficient knowledge of the Dutch Language

Since Article 18b of the Participation Act entered in 2016, it has been possible to reduce social assistance (in Dutch *bijstand*) by 100% when the recipient does not have sufficient knowledge of the Dutch language.⁹⁹ When sufficient language knowledge is deemed absent social assistance must be reduced with 20% during the first six months, 40% during the next six months and by 100% after one year if insufficient progress has been made. Given that persons who have followed eight years of schooling in the Dutch language are exempted, the language condition is likely to have a disproportionate impact on newcomers – particularly refugee status holders - and Dutch citizens with a migration background.¹⁰⁰ Consequently a discriminatory distinction is made between persons who were born in the Netherlands and who migrated to the Netherlands. This is contrary to the Convention and therefore the government should amend the Act.

⁹⁴ Significant, *Inburgering: systeemwereld versus leefwereld. Evaluatie Wet inburgering 2013*, 13 June 2018 [Integration: system world versus environment. Evaluation of the Civic Integration Act 2013].

⁹⁵ Only language courses that have been granted the quality mark given by *Blik op Werk* are taken into account when examining whether a fine ought to be lowered or when examining whether a newcomer qualifies for an extension.

⁹⁶ Significant, *Inburgering: systeemwereld versus leefwereld. Evaluatie Wet inburgering 2013* (n 93).

⁹⁷ Apart from the available figures on fraud; 25% of the total number of language schools of the language schools lost their quality mark in 2017 and 2018 after monitoring was expanded and intensified; *Blik op Werk, Persbericht: blik op werk onderzoekt nog meer fraude bij inburgeringscholen*, 19 December 2018 [Press release: *Blik op werk* investigates more fraud at integration schools] (available at: <https://www.blikopwerk.nl/nieuws/persbericht-blik-op-werk-onderzoekt-nog-meer-fraude-bij-inburgeringsscholen>).

⁹⁸ Parliament, *Kamerstukken II*, 32 824, no. 223.

⁹⁹ The required level matches the level that children are at a minim expected to have when they finish primary school with regard to speaking, reading, writing and listening. The language level is measured by means of a language test.

¹⁰⁰ Groenendijk, C.A. & Minderhoud, P.E., *Taalreis in de bijstand. Discriminerend, disproportioneel en onnodig*, Nederlands Juristenblad, vol. 91, iss. 3 (2016) p. 183-189 [Language requirement in the assistance. Discriminating, disproportionate and unnecessary].

VI. Ethnic profiling

Ethnic profiling by the police mainly occurs while carrying out identity- and traffic checks, stop and search operations and illegal residence checks. The number of checks is not systematically registered by the police, but research based on interviews and observations have shown that ethnic minorities are checked by the police more often than others.¹⁰¹ In response to this research and following recommendations made by civil society organisations, the police adjusted their policy concerning ethnic profiling to prohibit using ethnicity as a ground for police checks.¹⁰² Although this is an improvement to the previous situation, questions remain about the efficacy of the new policy. Interview-based research shows that many police officers are not even aware of the new policy and do not see why ethnic profiling is an issue.¹⁰³

While the national police has at least taken action against ethnic profiling in their policy and practices, the Royal Marechaussee (in Dutch: *Koninklijke Marechaussee*) has not shown the same willingness. Ethnic profiling by the Royal Marechaussee occurs amongst others during Mobile Monitoring Security-checks on legal residences.¹⁰⁴ During MTV-checks, the Royal Marechaussee investigates the identity, nationality and status of residence of the persons that cross the Dutch borders from other European countries. This is a different type of check than the typical border checks, in which everyone has to show their passport. However, the Royal Marechaussee has broad discretion in deciding whether to use this power and in deciding who to check, since clear directives do not exist.¹⁰⁵ Besides, a reasonable suspicion of illegal activities or illegal residence of the individual is no requisite to use this power.¹⁰⁶

The Minister for Defence and the Minister for Migration have argued that appearances, opposed to non-discriminatory factors is the starting point for the Royal Marechaussee's decision-making. Appearance, in combination with different objective indicators or information, can be an indicator in risk profiles and a ground for selecting decisions for MTV-checks by the Royal Marechaussee.¹⁰⁷ According to civil society organisations, international human rights law and Dutch national law, using ethnicity as an indicator *is* ethnic profiling, even when used in combination with objective indicators. For this reason, the Royal Marechaussee should amend its selection criteria to ensure that discrimination will no longer be part of their policy.

¹⁰¹ Amnesty International, *Proactief politieoptreden vormt risico voor mensenrechten. Etnisch profileren onderkennen en aanpakken*, 28 October 2013 p. 17 [Proactive police action poses a risk to human rights. Recognize and tackle ethnic profiling] (available at: https://www.amnesty.nl/content/uploads/2016/11/rapport_etnisch_profileren_ainl_28_okt_2013.pdf?x92076).

¹⁰² Politie, *Handelingskader proactief controleren*, version 1.9, 27 October 2017 [Action Framework proactively checking] (available at: <https://www.politie.nl/binaries/content/assets/politie/nieuws/2017/00-km/handelingskader-proactief-controleren-versie-1.9.1-dd-27-oktober2017.pdf>).

¹⁰³ Kuppens and Ferwerda, *De politieaanpak van etnisch profileren in Amsterdam. Een onderzoek naar effecten, criteria en meetbare indicatoren*, 2019 p. 48-52 [The police approach to ethnic profiling in Amsterdam. A study of effects, criteria and measurable indicators] (available at: <https://bureaubeke.nl/publicaties/de-politieaanpak-van-etnisch-profileren-in-amsterdam/>).

¹⁰⁴ The legal basis for the MTV-checks is article 50 of the Alien Act 2000.

¹⁰⁵ Brouwer, Van der Woude en Van der Leun, *Op de grens van het vreemdelingtoezicht. Discretionaire beslissingen binnen het Mobiel Toezicht Veiligheid*, 2017 p. 77-78 [On the border of immigration control. Discretionary decisions within the Mobile Supervision Security] (available at:

https://openaccess.leidenuniv.nl/bitstream/handle/1887/54714/Op_de_grens_van_het_vreemdelingtoezicht_discretionaire_beslissingen_binnen_het_Mobiel_Toezicht_Veiligheid_Veiligheid.pdf?sequence=1).

¹⁰⁶ Brouwer, Van der Woude en Van der Leun, 2017 (n 104) p. 73.

¹⁰⁷ Parliament Annex to Reports (*Aanhangsel van de Handelingen*), 2016-2017, nr. 1900, p. 2 (available at: <https://zoek.officielebekendmakingen.nl/ah-tk-20162017-1900.pdf>); Parliament Annex to Reports (*Aanhangsel van de Handelingen*), 2017-2018, nr. 2340, p. 3 (available at: <https://zoek.officielebekendmakingen.nl/ah-tk-20172018-2340.pdf>).

The Dutch government and the Royal Marechaussee appear not willing to stop using ethnicity in risk profiles and for selection decisions. In response, a coalition of civil society organisations¹⁰⁸ and two individual citizens who were victims of ethnic profiling by the Royal Marechaussee, have initiated a civil procuring against the State in order to end discriminatory border activities by the Royal Marechaussee.¹⁰⁹

VII. Profiling by algorithms

The Dutch government uses a digital system called the *Systeem Risico Indicatie* (hereinafter ‘SyRI’) to predict and anticipate criminal activity. SyRI creates risk profiles of individuals that are included in a Register of Risk Reports, which is accessible to a large number of government bodies.¹¹⁰ This system uses an algorithm and there is a risk that the data of this algorithm is biased, which will lead to discriminatory outcomes.

Algorithms are ‘encoded procedures for transforming certain input data into a desired output, based on specified calculations’.¹¹¹ They link citizens’ personal data from public and corporate databases on a large scale to make predictions. While algorithmic decision-making may seem infallible and objective, it carries a great risk of discrimination.¹¹² The most crucial risk of algorithm is the use of biased data, which will lead to unfair and discriminatory outcomes. A bias occurs when the collected data is not an accurate reflection of reality, as a result of over- or underrepresentation of a certain group.¹¹³ For example, if SyRI uses data provided by the police in which certain ethnic groups are overrepresented – as a result of the police’s ethnic profiling practices – SyRI will give a biased and discriminatory outcome; the algorithm will show that these ethnic groups have a higher risk of violating the law only because of this overrepresentation.

Several fundamental human rights are at stake when SyRI is used in decision-making procedures. First, the use, retention and the sharing of personal data on a large scale without the knowledge and consent of the persons concerned may violate their right to respect for private life. Second, if SyRI is used to facilitate criminal prosecution, the presumption of innocence will be negated, as suspects will be indicated by an automated system without concrete facts of reasonable suspicion. Third, the practice is discriminatory when certain (minority) groups are unfairly distinguished by the system. The devastating result will be social inequality, amplified by technology and artificial intelligence.

In the strategic litigation proceedings against SyRI the court found that SyRI is in violation of Article 8 of the ECHR, the right to private and family life in its first instance judgment of 5 February 2020.¹¹⁴ Unfortunately, the request to order the government to disclose SyRI’s algorithms was not granted by the

¹⁰⁸ Amnesty International, Control Alt Delete, Public Interest Litigation Project of the Dutch section of the International Commission of Jurists and RADAR.

¹⁰⁹ PILP, *Koninklijke Marechaussee voor de rechter vanwege etnisch profileren*, 26 February 2020 [Royal Marechaussee in court for ethnic profiling] (available at: <https://pilpnjcm.nl/koninklijke-marechaussee-voor-de-rechter-vanwege-etnisch-profileren/>).

¹¹⁰ PILP-NJCM, *Rechtszitting tegen risicoprofilering Nederlandse burgers door SyRI*, 15 October 2019 [Court hearing against risk profiling of Dutch citizens by SyRI] (available at: <https://pilpnjcm.nl/rechtszitting-tegen-risicoprofilering-nederlandse-burgers-door-syri/>).

¹¹¹ Gillespie, *The relevance of algorithms* in: T. Gillespie, P.J. Bozowski & K.A. Foot (red.), *Media technologies: Essays on communication, materiality and society*, Cambridge: MIT Press 2014, p. 167.

¹¹² Borgesius, *Discrimination, artificial intelligence, and algorithmic decision-making*, 2018, p. 8 (available at: <https://rm.coe.int/discrimination-artificial-intelligence-and-algorithmic-decision-making/1680925d73>).

¹¹³ Srivastava and Rossi, *Towards Composable Bias Rating of AI Services*, 2018, p. 284-286 (available at <https://dl.acm.org/doi/abs/10.1145/3278721.3278744>).

¹¹⁴ PILP-NJCM, *Rechtszitting tegen risicoprofilering Nederlandse burgers door SyRI* (n 109).

court and it is therefore not possible to check how and to what extent the algorithm works. However, the court's broader judgment is a positive step forward in deterring discriminatory algorithms and to raise awareness of the use of discriminatory algorithms. Hopefully this will set an example for other controversial algorithmic decision-making by the government.¹¹⁵

VIII. Discrimination against Muslims

During the last few years, several studies have shown that Muslims in the Netherlands encounter discrimination in all areas of life. An extensive 2017 survey by the European Union Agency for Fundamental Rights found that in five years, 30% of Dutch Muslims experienced discrimination because of their religion¹¹⁶ and 65% of Dutch Muslims from North African countries experienced discrimination because of their ethnic roots.¹¹⁷ The same study found that Dutch Muslims encounter discrimination in the housing and labour markets, in healthcare and other social services, and in cafes and clubs. The study also found that trust in the police is the lowest among Dutch Muslims.¹¹⁸

Another study, conducted between the period 2013 and 2018, showed that Muslims often encounter islamophobia verbally during daily life and in the workplace.¹¹⁹ The study also found that 63% of respondents believe islamophobia to be a social problem in the Netherlands and that the media and politics have the most influence on its rise. That anti-Muslim feelings are prevalent among the Dutch population is further shown by a study in which 21% of the respondents want to close all mosques.¹²⁰

In recognizing the issue of islamophobia, the government conducted a study on the factors that leads to a negative view of Muslims in the Netherlands.¹²¹ This study confirmed the importance of interaction between persons of different cultural or religious backgrounds in order to invalidate unfounded prejudices. Without those contacts young people base their image of Muslims on primarily media coverage, which might lead to a more negative image than that of young people who have personal contacts with persons with an Islamic background. As a result of this report, the Ministry of Social Affairs and Employment and the municipality of The Hague organized a meeting in March 2018 on the topics of connection and image formation.¹²² In

¹¹⁵ See e.g. the *Criminaliteit Anticipatie Systeem* (CAS), a predictive policing system which uses an algorithm; Police, *Criminaliteits Anticipatie Systeem verder uitgerold bij Nationale Politie*, 16 May 2017 [Crime Prevention System rolled out further at National Police] (available at: <https://www.politie.nl/nieuws/2017/mei/15/05-cas.html>).

¹¹⁶ European Union Agency for Fundamental Rights, *Second European Union Minorities and Discrimination Survey, Muslims-selected findings*, 2017 p.27 (available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-eu-minorities-survey-muslims-selected-findings_en.pdf).

¹¹⁷ *Ibid*, p. 29.

¹¹⁸ *Ibid*, p. 55.

¹¹⁹ Unal, Y. *Ervaringen met moslim discriminatie in de Turkse gemeenschap*, 2019, in: Van der Valk (ed.), *Mikpunt Moskee*, Leiden, Islamic Institute Netherlands for Education and Research. [Experiences with Muslim discrimination in the Turkish community].

¹²⁰ I&O Research, *Politieke peiling I&O Research* September 2016, Amsterdam, I&O Research [Political Poll] (available at: <http://www.ioresearch.nl/Portals/0/1%26O%20Research%20politieke%20peiling%20september%202016%20v3.pdf>).

¹²¹ Verwey Jonker Institute, *Onderzoek oorzaken en triggerfactoren moslimdiscriminatie*, 2017 [Research Causes and trigger factors for Muslim discrimination in the Netherlands] (available at: <https://www.rijksoverheid.nl/documenten/kamerstukken/2017/06/30/rapport-oorzaken-en-triggerfactoren-moslimdiscriminatie-in-nederland>); Minister of Social Affairs and Employment, *Kamerbrief aanbidding onderzoek oorzaken en triggerfactoren moslimdiscriminatie*, June 2017 [Letter to the Parliament Research causes and trigger factors for Muslim discrimination in the Netherlands] (available at: <https://www.rijksoverheid.nl/documenten/kamerstukken/2017/06/30/kamerbrief-aanbidding-onderzoek-oorzaken-en-triggerfactoren-moslimdiscriminatie-in-nederland>).

¹²² Minister on the Interior and Kingdom Relations, *Voortgang specifieke maatregelen uit het Nationaal actieprogramma tegen discriminatie*, April 2018 (Annex to a Letter to Parliament) [Progress of specific measures from the National Action Programme against discrimination] (available at: <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2018/04/26/bijlage-2-voortgang-specifieke-maatregelen-uit-het-nationaal-actieprogramma-tegen-discriminatie/bijlage-2-voortgang-specifieke-maatregelen-uit-het-nationaal-actieprogramma-tegen-discriminatie.pdf>).

2017, there were also five meetings organised in which representatives of Muslim communities, municipalities, police and ADVs united to discuss the local concerns and how to strengthen mutual cooperation.¹²³ These meetings have contributed to greater mutual awareness and they have already led to further cooperation between the parties.¹²⁴ Therefore, the government should continue to facilitate these meetings and to organise joint activities between different groups that include Muslims in order to create more understanding. The government should also continue to invest in increasing the population's knowledge and awareness about prejudice and Muslim stereotypes. This could be done by raising awareness in schools, among employers and within the media.

IX. Ban on face-covering clothing

On 1 August 2019 the Act that partially bans face-covering clothing (*Wet gedeeltelijk verbod gezichtsbedekkende kleding*) took its effect.¹²⁵ This Act bans wearing 'face-covering clothing' in public settings, like in public transport and in and around governmental, healthcare and educational buildings. This includes 'face-covering clothing' like burqas and niqabs as worn by some Muslims, but also ski-masks and full-face helmets. Any person who violates the ban faces a fine of 150 euros. Although the Act appears to have neutral intent, its impact clearly targets Muslim women who wear face-covering veils. For this reason, the Act sparked major public debate and has been criticized for oppressing the very women who the Act purports to protect.¹²⁶

Since the introduction of the Act, public transportation companies have reported a definitive decline in the number of persons who wear burqas on buses. In August 2019 there were 45 reports, in September 34, in October 26, in November 9 and in December 9. Thus far, the ban has also resulted in 3 reported incidents in public transit.¹²⁷ Although no fines have been imposed yet, Muslims reportedly feel as though the Act has led to more conflicts and instances of harassment and has resulted in isolation instead of integration.¹²⁸ However, as the Act has only been recently implemented, the scope of its impact is yet to be seen.

¹²³ Ibid.

¹²⁴ Ibid.

¹²⁵ Bulletin of Acts, Orders and Decrees of the Kingdom of the Netherlands. *Besluit van 10 april 2019, houdende vaststelling van het tijdstip van inwerkingtreding van de Wet gedeeltelijk verbod gezichtsbedekkende kleding*, Vol. 2019, No. 165 [Decree of 10 April 2019, determining the time of entry into force of the law partially prohibiting face-covering clothing] (available at: <https://zoek.officielebekendmakingen.nl/stb-2019-1651.html>).

¹²⁶ See e.g.: De Volkskrant, *Praktische problemen of pestwet? Over het boerkaverbod is het laatste woord nog niet gezegd*, 26 September 2019 [Practical problems or bullying law? The last word has not yet been said about the burqa ban] (available at: <https://www.volkskrant.nl/nieuws-achtergrond/praktische-problemen-of-pestwet-over-het-boerkaverbod-is-het-laatste-woord-nog-niet-gezegd~bb6c2adb/>); Nieuwsuur *'Boerkaverbod is oplossing voor probleem dat er niet is'* [*'Burka ban is a solution for a problem that is not there'*] 27 July 2019 (available at: <https://nos.nl/nieuwsuur/artikel/2295385-boerkaverbod-is-oplossing-voor-probleem-dat-er-niet-is.html>).

¹²⁷ AD, *Half jaar boerkaverbod: ov-bedrijven tellen nauwelijks nog boerka's in de bus*, 7 February 2020 [Half-year burqa ban: public transport companies hardly ever count burkas on the bus] (available at: <https://www.ad.nl/binnenland/half-jaar-boerkaverbod-ov-bedrijven-tellen-nauwelijks-nog-boerka-s-in-de-bus-ae67b456/>).

¹²⁸ RTL Nieuws, *Nog geen boetes boerkaverbod, wél meer agressie tegen moslima's*, 26 September 2019 [No fines burqa ban yet, more aggression against Muslim women] Available at <https://www.rtlnieuws.nl/nieuws/politiek/artikel/4861516/boerkaverbod-nikab-burka-boete-discriminatie>.

X. Nationality-stripping

Since 2016, the Minister for Justice and Security is legally permitted to withdraw the Dutch nationality of persons who have participated in a terroristic organisation without any prior conviction.¹²⁹ This law discriminatorily distinguishes those with dual nationality, as the law only applies to individuals with a dual nationality. The government has argued that this distinction is necessary, as depriving the nationality of a person with a mono nationality would lead to statelessness.¹³⁰ However, in this argument the government ignores the fact that differentiating between groups on the basis of nationality undermines the principle of equal human rights for all.¹³¹ After all, the law favours people with a mono nationality and it treats persons with a dual nationality as second-class citizens.¹³² As a consequence, the rights of persons with a dual nationality are less secure, due to the potential of them to lose their Dutch nationality. This discriminatory distinction could also lead to fuel stereotypes and to a climate in which certain groups of immigrants and others of certain national origins may find themselves victims of discrimination.¹³³ Furthermore, the law will in particular lead to stigmatisation of persons with an Islamic migrant background, as the majority of Dutch persons with a dual nationality have their roots in Islamic orientated countries.

There are no recent data available on the number of citizens with a dual nationality, as the Dutch government has decided to stop gathering those data since 2015.¹³⁴ This makes it difficult to analyse the current climate.¹³⁵ However, as of 2014, there were 1.3 million people in the Netherlands who had more than one nationality. One quarter of them had the Moroccan nationality, next to the Dutch nationality, and another quarter had the Turkish nationality.¹³⁶ Consequently, the 2016 nationality-stripping law disproportionately affects Dutch citizens from Morocco and Turkey, especially because they are not able to renounce the citizenship that they inherited at birth.

In order to stop this discriminatory distinction, the Dutch government should revise the 2016 nationality-stripping law. Such a revision would protect the human rights of Dutch citizens and ultimately put an end to discrimination on the basis of their national origin and descent.

¹²⁹ National law that amends the National Act on Dutch Nationality to broaden the possibilities for depriving Dutch nationality of terrorist crimes, 5 March 2016.

¹³⁰ Ibid, art. 14.8.

¹³¹ UN Special Rapporteur on contemporary forms of Racism, racial discrimination, xenophobia, and related intolerance, *Amicus Brief before the Dutch Immigration and Naturalisation Service*, 23 October 2018, paras 8, 25 (available at: https://www.ohchr.org/Documents/Issues/Racism/SR/Amicus/DutchImmigration_Amicus.pdf).

¹³² UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, *End of Mission Statement of the the Kingdom of the Netherlands*, The Hague, 7 October 2019, para 39.

¹³³ Amnesty International, *Paspoortmaatregel en uitreisverbod*, September 2017, p. 8. [Passport measure and exit ban] (available at: https://www.amnesty.nl/content/uploads/2017/09/AMN_17_13_Rapport-paspoortmaatregel-en-uitreisverbod_web.pdf?x92184).

¹³⁴ In 2015 the new Basic Registration of Persons Act (BRP) came into force and this law does not register the second nationality of persons anymore.

¹³⁵ UN Special Rapporteur on contemporary forms of Racism, racial discrimination, xenophobia, and related intolerance, 2018 (n 130) para 45.

¹³⁶ National Statistical Office, *Aantal Nederlanders met dubbele nationaliteit gestegen naar 1,3 miljoen*, 4 August 2015 [Number of Dutch nationals with dual nationality increased to 1.3 million] (available at: <https://www.cbs.nl/nl-nl/nieuws/2015/32/aantal-nederlanders-met-dubbele-nationaliteit-gestegen-naar-1-3-miljoen>).

XI. Treatment of LGBTI asylum-seekers

Asylum procedures

In asylum procedures, lesbian, gay, bisexual, trans, and intersex (hereinafter ‘LGBTI’) persons are particularly vulnerable to discrimination. A 2018 study by COC Netherlands showed that the Immigration and Naturalisation Service (hereinafter ‘IND’) uses unsound stereotypes to assess asylum claims based on sexual orientation.¹³⁷ Two of the main criteria used are the so called ‘processes of awareness’ and ‘self-acceptance’; becoming aware of one’s sexual orientation, and struggling to accept oneself. These criteria have no scientific basis and, therefore, many LGBTI asylum-seekers do not conform to this stereotype. Instead, they never underwent a process of awareness or of self-acceptance; they do not understand what these terms mean, or they cannot relate to or elaborate on them. By not meeting this stereotyping criteria LGBTI asylum-seekers face the risk of having their asylum applications rejected, because their sexual orientation is deemed ‘not credible’ by the IND’s criteria.¹³⁸ Out of the rejected cases studied by COC research 85% of the LGBTI cases were rejected, because the immigration authorities did not believe the veracity of the applicant’s stated sexual orientation.¹³⁹

As a result of this study, the government changed its work instruction on LGBTI asylum claims, removing its contentious in 2018.¹⁴⁰ While the terminology has changed, in practice these stereotypes are still applied by immigration officials, made evident in a 2019 letter COC Netherlands to the State Secretary on Asylum. The letter details 17 cases in which the processes of awareness and self-acceptance, and similar stereotypes, were used to argue that the claimant’s sexual orientation was not credible, and to reject the asylum claim for this reason.¹⁴¹ In response to both COC Netherlands’ letter and questions from Dutch Parliament, the State Secretary stated that, although they were removed as criteria from the policy, terms such as ‘process of awareness’ and ‘process of self-acceptance’ can still be used. The Secretary used the example of asylum-seekers that use these terms themselves. In this example the State Secretary ignores the fact that it is not the asylum-seeker who first mentions these terms, but the IND officers who reject LGBTI asylum-seekers based on the stereotypes that these terms reflect.¹⁴²

¹³⁷ Sabine Jansen, COC Netherlands, *Pride or Shame? Assessing LGBTI asylum applications in the Netherlands after the judgments XYZ and ABC*, June 2018 (available at: <https://www.coc.nl/wp-content/uploads/2019/01/Pride-or-Shame-LGBTI-asylum-in-the-Netherlands.pdf>); WODC, *Memorandum 2019-02 Onderzoek geloofwaardigheid verzoeken bekeerlingen en LHBT-ers*, 2019, p. 14 [Memorandum 2019-02 Verification of the credibility of requests for converts and LGBT people] (available at: <https://www.wodc.nl/onderzoeksdatabase/2968-onderzoek-geloofwaardigheid-verzoeken-bekeerlingen-en-lhbt-ers.aspx>).

¹³⁸ The Nation, *Europe Is Telling Gay Asylum Seekers They Are Not Gay Enough*, 3 January 2020, (available at: <https://www.thenation.com/article/gay-asylum-netherlands-ind/>); PRI, *‘Not gay enough’: Dutch authorities challenge asylum-seekers to prove their sexuality*, 9 November 2017 (available at: <https://www.pri.org/stories/2017-11-09/not-gay-enough-dutch-authorities-challenge-asylum-seekers-prove-their-sexuality>).

¹³⁹ Sabine Jansen, 2018 (n 136) p 41.

¹⁴⁰ Rijksoverheid, *Harbers: Nadruk op authentiek verhaal lhbtis en bekeerlingen*, 4 July 2018 [Harbers: Emphasis on the authentic story of LGBTIs and converts] (available at: <https://www.rijksoverheid.nl/actueel/nieuws/2018/07/04/harbers-%E2%80%9Cnadruk-op-authentiek-verhaal-lhbtis-en-bekeerlingen%E2%80%9D>); De Volkskrant, *IND gaat lhbt-asielzoekers anders beoordelen: wat gaat er veranderen?*, 5 July 2018 [IND will assess lgbt asylum-seekers differently: what will change?] (available at: <https://www.volkskrant.nl/nieuws-achtergrond/ind-gaat-lhbt-asielzoekers-anders-beoordelen-wat-gaat-er-veranderen-bb700a36/?referer=https%3A%2F%2Fwww.google.com%2F>).

¹⁴¹ COC Netherlands, *IND voert het nieuwe LHBT-asielbeleid slecht uit*, 29 June 2019 [IND poorly implements the new LGBTI asylum policy] (available at: <https://www.coc.nl/homepage/ind-voert-het-nieuwe-lhbt-asielbeleid-slecht-uit>).

¹⁴² Rijksoverheid, *Beantwoording Kamervragen over toepassing van nieuwe werkinstructie voor beoordeling lhbtis en bekeerlingen*, 6 September 2019 [Answering parliamentary questions about the application of new work instruction for the assessment of LGBTs and converts] (available at: <https://www.rijksoverheid.nl/ministeries/ministerie-van-justitie-en-veiligheid/documenten/kamerstukken/2019/09/06/antwoorden-kamervragen-over-de-toepassing-van-de-nieuwe-werkinstructie-voor-de-beoordeling-van-lhbtis-en-bekeerlingen>).

In order to solve this problem the government should rely on self-identification as criteria to assess LGBTI asylum claims. In doing so, the government should clarify that not having experienced the ‘process of awareness’ or the ‘process of self-acceptance’ cannot be a basis for rejecting an asylum claim. This clarification should be included in the procedural instructions in education and workshops for immigration IND officials.

Reception Centres

LGBTI asylum-seekers in the Netherlands have long struggled with safety in Dutch reception centres, as the government is not required to place in a separate section.¹⁴³ Parliament aimed to fix this problem in 2016 when it adopted a resolution requesting the government to make separate and secure housing available to LGBTI and other groups of vulnerable asylum-seekers,¹⁴⁴ a solution often suggested by LGBTI asylum seekers themselves.¹⁴⁵ While the government stated that the Central Agency for the Reception of Asylum Seekers (hereinafter “COA”) aims to offer a tailored approach to vulnerable groups, this approach did not include a commitment to separate housing. The government ultimately claimed that introducing separate housing would send the wrong message, as all asylum-seekers are vulnerable.¹⁴⁶

Since 2016, the tailored approach often means that LGBTI persons are housed together in one room or wing in reception centres.¹⁴⁷ However, as the number of persons in the reception centres increased in 2019,¹⁴⁸ one reception centre decided it could not maintain separate housing for the LGBTI community.¹⁴⁹ This raised the concern that the separate housing relied too heavily on the operational capacity of the COA, and that any changes in this regard will put this practice under pressure. The government should continue to take measures to protect LGBTI persons in reception centres and it should ensure that separate and secure housing is available for LGBTI asylum-seekers.

¹⁴³ Deloitte, *Rapport inzake een kwalitatief onderzoek onder (oud) bewoners van asielzoekerscentra, naar mogelijkheden ter verhoging van de meldingsbereidheid van incidenten op gebied van geloofsovertuiging en seksuele geaardheid*, 20 December 2011 [Report on a qualitative investigation among (former) residents of asylum seekers' centres, into possibilities for increasing the willingness to report incidents in the field of religion and sexual orientation] (available at: <https://zoek.officielebekendmakingen.nl/blg-164408.pdf>); COC Netherlands, *Pink Solutions, inventarisatie situatie LHBT asielzoekers*, May 2013 [Pink Solutions, inventory of the situation of LGBT asylum seekers] (available at: <https://www.coc.nl/wp-content/uploads/2013/05/PinkSolutionsCOC.pdf>).

¹⁴⁴ Parliament, *Motion 30420-238*, 17 February 2016 (available at: <https://www.tweedekamer.nl/downloads/document?id=b8c97b15-5226-4b3a-89b6-39d57bb68ec9&title=Motie%20van%20het%20lid%20Bergkamp%20c.s.%20over%20een%20veilige%20opvang%20voor%20lhbq%20en%20andere%20kwetsbare%20groepen.pdf>); De Volkskrant, *LHBT-vluchteling heeft toch recht op speciale opvang*, 1 March 2016 [LGBT refugees still have the right to special reception] (available at: <https://www.volkskrant.nl/nieuws-achtergrond/lhbt-vluchteling-heeft-toch-recht-op-speciale-opvang-b92645d8/>).

¹⁴⁵ Deloitte, 2011 (n 142); COC Netherlands, 2013 (n 142).

¹⁴⁶ Rijksoverheid, *Aangescherpte aanpak overlastgevende asielzoeker*, 31 March 2016 [Tightened approach to nuisance-seeking asylum seekers] (available at: <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2016/03/31/tk-aangescherpte-aanpak-overlastgevende-asielzoekers/tk-aangescherpteaanpakoverlastgevendehetzoekers.pdf>).

¹⁴⁷ Rijksoverheid, *Antwoorden Kamervragen over het bericht dat COA lijkt te stoppen met consequente beschermde opvang LHBTQ asielzoekers*, 3 December 2019 [Answers to parliamentary questions about the report that COA seems to stop consistently protected reception of LHBTQ asylum seekers] (available at: <https://www.rijksoverheid.nl/documenten/kamerstukken/2019/12/03/antwoorden-kamervragen-over-het-bericht-coa-likt-te-stoppen-met-consequente-beschermde-opvang-lhbq-asielzoekers>); De Stentor, *Homoseksuele vluchteling vindt veilig huis in deze regio*, 10 December 2019 [Homosexual refugee finds a safe home in this region] (available at: <https://www.destentor.nl/harderwijk/homoseksuele-vluchteling-vindt-veilig-huis-in-deze-regio-aaaa800b/?referrer=https://www.google.com/>).

¹⁴⁸ In 2018, 22.498 persons were housed in reception centres. This number grew to 27.381 in 2019; COA, *Historisch overzicht opvang* [Historical overview reception] (available at: <https://coa.nl/nl/over-coa/bezetting/historisch-overzicht-opvang>).

¹⁴⁹ Nu.nl, *Azc Ter Apel laat hetero's toe in lhbt-unit, homo's voelen zich onveilig*, 23 October 2019 [Azc Ter Apel allows heterosexuals in lhbt unit, gays feel unsafe] (available at: <https://www.nu.nl/binnenland/6006084/azc-ter-apel-laat-heteros-toe-in-lhbt-unit-homos-voelen-zich-onveilig.html>).

XII. Immigration detention

As a matter of last resort, the Dutch government can detain undocumented migrants to ensure that they are available for their departure to the country of origin.¹⁵⁰ The government can only use this measure as a matter of last resort. The current legal framework allows detention when at least two of the thirteen ‘heavy conditions’ and six of the ‘light conditions’ are met.¹⁵¹ These broad criteria make it possible to detain almost all undocumented migrants based on various conditions.¹⁵² Consequently, it can be concluded that the current framework cannot be considered as *ultimum remedium*.

The recent data on the numbers in immigration detention shows a worrisome trend. In 2018, 3.510 persons were detained, which is a large increase in comparison to the 2.180 persons detained in 2015.¹⁵³ The number of persons who remained in detention for longer than six months has also increased, from 45 persons in 2016 to 110 persons in 2018, while research shows that longer detention does not contribute to deportation.¹⁵⁴ It is important to note that these numbers do not reflect how many times persons were detained. In other words, the period that undocumented migrants are actually held in detention could be longer. For example, between January 2013 and September 2017, 1.160 persons were held in detention at least twice.¹⁵⁵ Overall, these increases demonstrate the need for sufficient alternatives to detention.

Treatment in detention

The Dutch government has proposed a new law that addresses the detention of undocumented migrants: ‘*Wet terugkeer en vreemdelingenbewing*’.¹⁵⁶ This new law aims to remove the detention of undocumented migrants and the expulsion of those whose asylum claims have been rejected out of the realm of punitive law and into the administrative law realm. This proposed law poses various concerns regarding vulnerable persons, especially those with mental and psychical health issues in conjunction with their migration history that often leads to traumatic experiences.¹⁵⁷

According to the proposed law, the decision whether or not to detain vulnerable undocumented migrants will be based on one question - whether the detention center can provide the necessary care for the migrant.¹⁵⁸ This is problematic for four reasons. First, there are no fixed and clear criteria to guide decisions pertaining to the detention of vulnerable groups.¹⁵⁹ This could lead to arbitrary detention. Second, the decision will be made on a case-by-case basis, which means that particular vulnerable groups are not excluded on a priori basis. This will not lead to a better protection of those groups.¹⁶⁰ Third, mental disorders

¹⁵⁰ Alien Act 2000, art. 59.

¹⁵¹ Alien Act 2000, art 5.1.

¹⁵² Annemarie Busser, Revijara Oosterhuis and Tineke Strik, *Gronden getoetst aan wetsvoorstel en aan Europees en internationaal recht* A&MR 2019 p. 376 [Grounds assessed against the law proposal and European and International Law (available at: http://www.stichtinglos.nl/sites/default/files/los/vreemdelingendetentie_ii_brusser_oosterhuis_strik.pdf).

¹⁵³ Ministry for Justice and Security, *Rapportage Vreemdelingenketen*, May 2019 p. 44-48 [report migrantchain] (available at: <https://www.rijksoverheid.nl/documenten/rapporten/2019/05/14/tk-rapportage-vreemdelingenketen-2018-2>).

¹⁵⁴ Annemarie Busser, Revijara Oosterhuis and Tineke Strik 2019 (n 151) p.377

¹⁵⁵ Annemarie Busser, Revijara Oosterhuis and Tineke Strik 2019, (n 151) p.377

¹⁵⁶ Proposed law departure and migration detention proposed on 30 September 2015. Status: draft (available at: <http://www.zoek.officielebekendmakingen.nl/kst-34309-A.html>).

¹⁵⁷ Annemarie Busser, Revijara Oosterhuis and Tineke Strick 2019, (n 151) p.378-379

¹⁵⁸ Parliament, *Memorie van Toelichting proposed law on departure and migration detention* 2015-2016, nr. 34309-3, p. 95 (available at: <https://www.zoek.officielebekendmakingen.nl/kst-34309-3.html>).

¹⁵⁹ *Ibid* p. 98.

¹⁶⁰ *Ibid* p. 97.

and physical handicaps are alone insufficient reason to not place an immigrant in detention. However, this decision does not pay sufficient attention to personal circumstances, which could make placement in detention disproportionate.¹⁶¹ It is also questionable whether the detention centres are able to provide the necessary medical care for migrants, especially those with psychiatric problems.¹⁶² Fourth, the decision to place a person in detention does not take negative long-term consequences of detention into account, while health problems could emerge or worsen in detention. The government could tackle these problems by acknowledging vulnerable persons early on and consequently making appropriate decisions in which all interests are proportionally weighted.¹⁶³

Furthermore, the treatment in detention centres should be improved, as it currently has too many similarities with detention under criminal law. For example, undocumented migrants must often deal with handcuffed transportation between detention centres, courts and hospitals, which is humiliating and unjust. Also undocumented migrants must often reside in a cell, which limits their freedom.¹⁶⁴ In addition, solitary confinement as a disciplinary measure is often used. In 2017, the number of migrants in solitary confinement increased to 412 from 245 in 2016.¹⁶⁵ This increase is a negative and worrisome development, as solitary confinement has a harmful impact on the psychological and physical conditions of undocumented migrants and can cause or exacerbate psychiatric disorders.¹⁶⁶ As solitary confinement is often used as a disciplinary measure, the government should ensure that solitary confinement only takes place in exceptional cases and for the shortest time possible. The government should also further amend the new proposal to ensure that children from the age of 12 years old cannot be placed in solitary confinement¹⁶⁷ and to remove the possibility of collective punishment of the entire detention centre in case of incidents.¹⁶⁸

Families and (unaccompanied) children

In 2018 the government detained 210 children in detention centres, which is a lot in comparison to similar countries like the United Kingdom, Sweden and Germany.¹⁶⁹ The maximum legal length of this detention for children is 14 days, while unaccompanied minors were detained for 21 days on average, clearly

¹⁶¹ Amnesty International-the Netherlands, *Het recht op vrijheid. Vreemdelingendetentie: het ultimatum redium- beginsel*, February 2018, p. 31 [The right to freedom, Migration detention: the ultimatum redium- principle]

¹⁶² See: Amnesty International-the Netherlands, *Dokters van de Wereld, Stichting LOS & Meldpunt Vreemdelingendetentie, Opsluiten of beschermen? Kwetsbare mensen in vreemdelingendetentie*, 25 April 2016 p. 26 [Detaining or protecting? Vulnerable persons in migration detention]; Nationale Ombudsman, *Medische zorg vreemdelingen. Over toegang en continuïteit van medische zorg voor asielzoekers en uitgeprocedeerde asielzoekers*, 3 October 2013, p. 42 [Medical care migrants: access and continuity of medical care of asylum seekers and those who have exhausted all legal remedies]; Health and Youth Care Inspectorate, *Verantwoorde medische zorg in detentie- en uitzetcentra. Signaleren van psychische kwetsbaarheid moet systematischer*, February 2014, p. 7 [Responsible medical care in detention and deportation centers. The signaling of psychological vulnerability must be done more systematic].

¹⁶³ Amnesty International, *Dokters van de Wereld, Stichting LOS & Meldpunt Vreemdelingendetentie*, 2016 (n 161) p. 7; Nationale Ombudsman, 2013 (n 161) p. 18-20¹¹_{SEP}.

¹⁶⁴ Amnesty International, *Geen cellen en handboeien*, February 2018 p. 8-9 [No cells and handcuffs]

¹⁶⁵ Parliament, *Kamerstukken I, 2017-2018 no. 34 390*, p. 36 (available at: https://www.eerstekamer.nl/behandeling/20181213/memoriede_van_antwoord_2/document3/f=/vku9lek5p0ki_opgemaakt.pdf).

¹⁶⁶ Amnesty International, *Dokters van de Wereld, Stichting LOS & Meldpunt Vreemdelingendetentie, Isolatie in vreemdelingen detentie*, March 2015, p. 9 [Solitary confinement in migration detention] (available at: https://amnesty.nl/content/uploads/2015/03/rapport_isolatie_in_vreemdelingen_detentie19mrt.pdf?x68065).

¹⁶⁷ Article 62 of the draft law does not include an exception for minors.

¹⁶⁸ Trouw, *Hou scherp toezicht op detentie van vreemdelingen en gedwongen terugkeer*, 18 December 2019 [Keep a close eye on detention of migrants and forced return] (available at: <https://www.trouw.nl/opinie/hou-scherp-toezicht-op-detentie-van-vreemdelingen-en-gedwongen-terugkeer-b854054f/>).

¹⁶⁹ UNICEF, *Nederland koploper in opsluiten kinderen in vreemdelingendetentie*, 6 November 2019 [Netherlands is the leader of detaining children in migration detention] (available at: <https://www.unicef.nl/pers/2019-11-06-nederland-koploper-in-opsluiten-kinderen-in-vreemdelingendetentie>); Unicef, *Kinderen horen niet in een cel* 4 July 2019 [children do not belong in a cell] (available at: <https://www.unicef.nl/nieuws/2019-07-04-kinderen-horen-niet-in-de-cel>).

exceeding the legal limit.¹⁷⁰ The government needs to take more action to prevent the placement of children in detention centres, since it has harmful effects on children (depression or anxiety) even if detained for a relatively short period of time.¹⁷¹ Children of parents whom asylum requests is rejected are placed in a family location. Although these locations have child friendly facilities, still 1 in 3 children feels unsafe in this location.¹⁷² In particular, young girls feel unsafe, because of the lack of specific attention on them in these locations.¹⁷³ For these reasons, it is not clear if the government is adequately prioritizing the best interest of the children in its policy-making.¹⁷⁴

There are also concerns about the increase in numbers of unaccompanied minors who are disappearing. During the last 10 years, over 2.500 asylum-seeking children ran away from reception centres. These children are especially vulnerable to exploitation and trafficking.¹⁷⁵ At this moment the government does not adequately follow up on the disappeared children and it should therefore increase its efforts to uphold its duty to take care of the children in its custody.¹⁷⁶

Curaçao

Curaçao's current detention of Venezuelan refugees is problematic.¹⁷⁷ After the arrival of the Venezuelan asylum-seekers, the migrants are automatically placed in detention in poor conditions.¹⁷⁸ There are overcrowding cells and there is a lack of privacy, poor hygiene and an insufficient amount of beds.¹⁷⁹ Furthermore, it is almost impossible for these refugees to request asylum, as there is no formal procedure that will process a request for protection.¹⁸⁰ Curaçao also violates the rules of non-refoulement by sending home Venezuelans who risk inhumane treatment in their country.¹⁸¹ Therefore, the Netherlands should assist Curaçao in providing more humane conditions for and treatment of asylum-seekers as fundamental rights in the Kingdom are at stake.

¹⁷⁰ State Secretary for Justice and Security, *Kamerstukken II* 2018/19, nr. 19637-2473, p.1 (available at: tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2019Z03721&did=2019D07929).

¹⁷¹ UNICEF 2019 (n 168).

¹⁷² Kinderrechtencollectief, *Childeren's Rights in The Netherlands* (input to the list of issues to the UNCRC) 2019 p. 36 (available at: https://www.kinderrechten.nl/assets/2019/07/Input_LOIPR_NGO_Netherlands.pdf).

¹⁷³ COA, Avance, Werkgroep Kind in AZC, *Leefomstandigheden van kinderen in asielzoekerscentra en gezinslocaties*, 2018 p.31 [Living conditions of children in reception centres and closed family locations].

¹⁷⁴ *Ibid.* p. 40

¹⁷⁵ NRC, *2.500 jonge alleenstaande asielzoekers verdwenen*, 13 January 2020 [2.500 unaccompanied minors disappeared (available at: <https://www.nrc.nl/nieuws/2020/01/13/2500-kwetsbare-jonge-asielzoekers-verdwenen-a3986602>).

¹⁷⁶ Kinderrechtencollectief, 2019 (n 171) p. 39.

¹⁷⁷ See e.g. Concluding Observations from UN Human Rights Committee, 2019 and UN Committee against Torture 2018; De Correspondent *Op Curaçao voltrekt zich een humanitair drama (en Nederland verdraait zijn nek bij het wegkijken)*, 27 August 2018 [On Curaçao there is a humanitarian drama (and the Netherlands is turning its back when it looks away) (available at: <https://decorrespondent.nl/8622/op-curaçao-voltrekt-zich-een-humanitair-drama-en-nederland-verdraait-zijn-nek-bij-het-wegkijken/3901545229230-b7bd7849>); Trouw, *Curaçao jaagt op vluchtelingen Venezuela*, 27 February 2019 [Curaçao hunts on refugees from Venezuela] (available at: <https://www.trouw.nl/nieuws/curaçao-jaagt-op-vluchtelingen-uit-venezuela-bee9596a/>).

¹⁷⁸ Amnesty International, *Gevluchte Venezolanen krijgen geen bescherming op Curaçao*, 10 September 2018 [Refugees from Venezuela do not receive protection in Curaçao] (available at: <https://www.amnesty.nl/actueel/gevluchte-venezolanen-krijgen-geen-bescherming-op-curaçao>).

¹⁷⁹ *Ibid.*

¹⁸⁰ Amnesty International, 2018.

¹⁸¹ Ombudsman Curaçao, *Onderzoek naar de rol van de Minister van Justitie in het kader van het Curacaose vluchtelingbeleid*, 28 June 2018 [Research on the role of the Minister for Justice in the context of the refugee policy] (available at: <https://www.ombudsman-curaçao.cw/document.php?m=10&fileid=1903&f=c43cee23cff9099763afef54cee2aa52&attachment=0&c=1081>); 'Foreign Policy, *For Venezuelan Refugees, There's No Safe Haven in Curaçao*, 28 January 2019 (available at: <https://foreignpolicy.com/2019/01/28/for-venezuelan-refugees-theres-no-safe-haven-in-curaçao-asylum-maduro-netherlands-kingdom-nederland/>); Amnesty International, *Detained and Deported: Venezuelans denied protection in Curaçao*, September 2018 (available at https://www.amnestyusa.org/wp-content/uploads/2018/09/AMN_18_45_rapport-Curaçao.pdf).

XIII. Statelessness

The Dutch government is failing to take effective action to identify and protect stateless persons and to reduce statelessness. Official data reflects the lack the government’s inadequate efforts. In the Netherlands there are approximately 4.000 persons registered as being stateless, and approximately 80.000 persons registered with the remark ‘nationality unknown’.¹⁸² Most of those in the latter registered category are barred from a way forward as the Netherlands lacks a procedure to determine and establish statelessness. This effectively leaves thousands of persons without access to protection which international law grants.

According to the government the solution lies within the confines of immigration law’s ‘no-fault procedure’. This procedure grants individuals, who are unable to leave the country by no fault of their own, a residency permit for five years.¹⁸³ To obtain residency through this process it is not sufficient to be stateless, because all individuals need to prove that their country of origin or of previous residence will not accept him or her back. The burden of proof rests solely on the applicant. Since it is extremely difficult to collect documentation providing that they do *not* belong to any state, it is, in practice almost impossible to fulfil the requirements of the no-fault procedure.¹⁸⁴

The government has not published any recent data on the number of requests made through the no-fault procedure. The last available data from 2016 shows that only 50 persons submitted a request and that only 10 of the requests were granted.¹⁸⁵ Due to the low number of applicants and granted requests, the no-fault procedure does not provide a genuine alternative to determining statelessness.

By pointing to procedures to obtain a residence permit the Netherlands erroneously equates statelessness with residency permits. In doing so restrictive immigration policy choices interferes with proper legal protection of stateless persons. This dynamic is reflected in the 2016 proposal for new legislation on statelessness, which includes a statelessness determination procedure.¹⁸⁶ Although this is a positive development, the proposal has been criticized for not being in accordance with international law. This report calls attention to the three main issues.

First, the draft law discriminatorily impacts children and their right to a nationality. Children who legally reside in the Netherlands can obtain Dutch nationality after three years, while children without legal residency can only obtain the Dutch nationality after five years.¹⁸⁷ The requirements differ too, as children without a residency permit need proof of a main residence before they can obtain the Dutch nationality. It is not clear what constitutes a ‘stable main residence’.¹⁸⁸

¹⁸² Rijksoverheid, *Staatloosheid* [Statelessness] (available at: <https://www.rijksoverheid.nl/onderwerpen/nederlandse-nationaliteit/staatloosheid>).

¹⁸³ Vreemdelingen­circulatie 2000 (B) B8/4 (available at: <https://wetten.overheid.nl/BWBR0012289/2019-12-03#Circulaire.divisieB8>).

¹⁸⁴ Marlotte van Dael, Jelle Klaas and Lois Vaars, *Staatloosheid als moderne vorm van uitsluiting, naar een duurzame oplossing voor staatlozen in Nederland*, Justitiële verkenningen (44 (2)) 2018 p. 106-108 [Statelessness as a modern form of exclusion, towards a sustainable solution for stateless persons in the Netherlands] (available at: https://www.wodc.nl/binaries/JV1802_Volledige%20tekst_tcm28-327814.pdf#page=100).

¹⁸⁵ Letter from the State Secretary for Justice and Security on questions from Sjoerdsma on the message that “the bed, bath and bread” consultation has been folded (submitted 23 November 2016) (2016Z21957).

¹⁸⁶ Proposal of Law determination procedure statelessness, 28 September 2016.

¹⁸⁷ Proposal of Law determination procedure statelessness, article 6 B; Van Dael, Klaas and Vaars (n 194) p. 112-113.

¹⁸⁸ Karel Hendriks, Jelle Klaas and Marlotte van Dael, *Gebrekkig wetsvoorstel vaststellingsprocedure voor staatlozen, juridische spoken verdwijnen nog niet*, *Asiel en Migratierecht* 2, 2017 p. 80 [Defective bill establishing procedure for stateless persons, legal ghosts are not disappeared] (available at: <https://pilpnjcm.nl/wp-content/uploads/2015/04/ve17000392-2017-02-28-AsielMigrantenrecht-2017-nr.-2-Juridische-spoken-verdwijnen-nog-niet.-Gebrekkig-wetsvoorstel-vaststellingsprocedure-voor-staatlozen-K.-Hen.pdf>).

Second, as the draft law would not automatically grant a residency permit to a stateless person, it is unclear how stateless persons would be granted protection in terms of rights and obligations.¹⁸⁹ This proposed determination procedure would not serve a fair purpose, as it still would leave stateless persons in a legal vacuum and without sufficient economic and social resources to move forward with their lives.

Third, there is a concern about the proposed procedure's burden of proof. The burden rests entirely on the applicant, contrary to the *opinion juris* standard that calls for a shared burden of proof between the state and the individual in order to guarantee a fair and effective process.¹⁹⁰

Overall, since the 2016 publication of the draft law, the government has not taken action to reduce statelessness. Initially the government's goal was to pass the proposal into laws by 2018. In the summer 2019, parliament was informed that the State Secretary for Justice and Security was unable to indicate when the proposed legislation would be presented.¹⁹¹ This lack of action by the government is worrisome. It seems that the government is unwilling to take any positive measures to identify and to protect stateless persons, which is contrary to the General Recommendation 30 of the Committee.¹⁹²

XIV. Travellers camp policy

On 12 July 2018, the Dutch government introduced a new policy framework regarding traveller¹⁹³ camps in the Netherlands.¹⁹⁴ This policy framework was adopted after various national and international organisations and institutions had criticised the former policy for many years.¹⁹⁵ The criticism was primarily directed at the infamous 'phase-out policy' of traveller camps, also known as the 'extinction policy' (*uitsterfbeleid*), which aimed to abolish traveller camps, either by offering regular housing or by dismantling caravan plots once the previous residents had left.¹⁹⁶ The new policy framework has overturned the 'extinction policy' and aims to 'provide protection of travellers against discrimination, safeguard their human rights and offer legal certainty and clarity in relation to their housing situation'.¹⁹⁷ Indeed, the policy framework recognises

¹⁸⁹ Dael, Klaas and Vaars, 2018 (n 194) p. 108-110.

¹⁹⁰ Hendriks, Klaas and Van Dael, 2017 (n 198) p. 78.

¹⁹¹ Answer from State Secretary Broekers-Knol (Justice and Security) (received on 22 July 2019) (available at: <https://zoek.officielebekendmakingen.nl/ah-tk-20182019-3521.html>).

¹⁹² Committee on the Elimination of Racial Discrimination, *General Recommendation 30 Discrimination Against non-citizens*, 2004, CERD/C/64/Misc.11/rev.3, 16.

¹⁹³ In the Netherlands, *woonwagenbewoners* is often used as an umbrella term to refer to Roma, Sinti and travellers who live or would like to live in caravans on traveller camps as part of their cultural identity and tradition. For the sake of brevity, it is chosen to use the English term 'travellers' when is referred to the Dutch notion of *woonwagenbewoners*.

¹⁹⁴ Ministry of the Interior and Kingdom Relations, *Beleidskader gemeentelijk woonwagen- en standplaatsenbeleid*, July 2018, [Policy Framework – Municipal Caravan and Pitch Policy] (available at: <https://www.rijksoverheid.nl/documenten/rapporten/2018/07/02/beleidskader-gemeentelijk-woonwagen-en-standplaatsenbeleid>).

¹⁹⁵ For international criticism see e.g.: ECRI 2013, Report on the Netherlands (Fourth Monitoring Cycle), CRI(2013)39; UN CERD 2015, Concluding observations on the nineteenth to twenty-first periodic reports of the Netherlands, CERD/C/NLD/CO/19-21. For national criticism see e.g.: National Ombudsman 2017, *Woonwagenbewoner zoekt standplaats: een onderzoek naar de betrouwbaarheid van de overheid voor woonwagenbewoners* [Travellers in search of caravan plots: research into the reliability of the government for travellers], report no. 2017/060; various decisions of the Netherlands Institute for Human Rights, for example, 1 May 2017, no. 2017-55 (Central Government). For an overview see also: Huijbers, L.M. and Loven, C.M.S., *Pushing for political and legal change: protecting the cultural identity of travellers in the Netherlands*, 2019, Journal of Human Rights Practice.

¹⁹⁶ The phase-out policy was not developed by local authorities themselves, but was proposed as a policy option by the Dutch central government in the Guide to Municipalities of 2006 (VROM (former Ministry of Public Housing, Spatial Planning, Environment and Infrastructure), *Werken aan woonwagenlocaties, Handreiking voor gemeenten: over beleid en handhaven*, 2006, [Working on traveller camps, guide to municipalities: concerning policy and enforcement].

¹⁹⁷ Ministry of the Interior and Kingdom Relations, *Beleidskader gemeentelijk woonwagen- en standplaatsenbeleid*, (n 204), p. 7.

the rights of travellers in the Netherlands and sets out the fundamental rights standards for local traveller camp policies.¹⁹⁸ However, political and legal change on paper does not necessarily lead to change in practice.

The Ministry of the Interior and Kingdom Relations has asked Platform31, an independent knowledge and network organisation, to set up a ‘knowledge- and learning program’ to help municipalities implement the policy framework.¹⁹⁹ According to Platform31, some municipalities have taken important steps in implementing the policy framework by making an inventory of the demand for caravan plots, by involving travellers in the decision-making process, and/or by exploring the possibilities of increasing the amount of caravan plots. This inventory is important in order to ensure that the housing policy is adequate and that travellers have a genuine opportunity to live in caravans on traveller camps. While some municipalities have taken positive steps, Platform31 indicates that there are still a lot of municipalities that have not begun to implement the framework.²⁰⁰ The national Ombudsman also concluded in 2018 that some municipalities had inadequate, or even incorrect, knowledge of the relevant human rights standards.²⁰¹

Three months after the promulgation of the new policy framework, three regional mayors, who represent 108 out of the 355 Dutch municipalities,²⁰² sent a letter to the Minister of the Interior and Kingdom Relations in response to the framework.²⁰³ This letter gave reason for concern, as the mayors expressed their doubts regarding the policy’s implementation. More specifically, they argued that the policy framework was difficult to implement, because it posed a barrier to combating crime. The link between the policy framework and the alleged criminal behaviour of travellers gave the NJCM reason to publish a responsive statement. The NJCM’s statement, expressed the concern that the regional mayors seemed to consider all travellers as criminals and to imply that the travellers’ culture should be respected less because criminal behaviour exists within the community. Moreover, the NJCM has encouraged the central government to make clear to local governments that they must treat the housing of travellers and the combating of crime separately.²⁰⁴

¹⁹⁸ For a positive reception of the policy framework see e.g.: NRC, *Minister: eind aan uitsterfbeeld woonwagens* 12 July 2018 [Minister says: end of the phasing out of traveller camps] (available at: <https://www.nrc.nl/nieuws/2018/07/12/minister-eind-aan-uitsterfbeeld-woonwagens-a1609773>); Het Wiel, *Ministerie van BZK presenteert nieuw beleidskader voor gemeentelijk woonwagenebeleid*, 12 July 2018 [Ministry presents new policy framework] (available at: <https://www.hetwiel.info/ministerie-van-bzk-presenteert-nieuw-beleidskader-voor-gemeentelijk-woonwagenebeleid/>); Public Interest Litigation Project, *Regering presenteert nieuw beleidskader voor woonwagene en standplaatsenbeleid* 2018 [Government presents new policy framework] (available at: <https://pilpnjcm.nl/regering-presenteert-nieuw-beleidskader-voor-woonwagene-en-standplaatsenbeleid/>); For a human rights analysis of the policy framework see also Loven, C.M.S. and Huijbers, L.M., *Woonwagencultuur mag toch blijven: Nederlandse overheid neemt officieel afscheid van het uitsterfbeeld*, NJB 2018 (93:38), p. 2888-2892 [Travellers’ culture allowed to stay: central government officially ends phasing out policy for traveller camps].

¹⁹⁹ This program will run from 1 February 2019 to 30 June 2020.

²⁰⁰ Platform31, *Omdenken en doen: gemeenten gaan voor mensenrechten-proof woonwagenebeleid*, 9 January 2020 [Municipalities aiming for a fundamental rights proof traveller camps policy] (available at: <https://www.platform31.nl/nieuws/omdenken-en-doen-gemeenten-gaan-voor-mensenrechten-proof-woonwagenebeleid>).

²⁰¹ National Ombudsman, *Opvolging van de aanbevelingen uit het rapport Woonwagenebewoner zoekt standplaats*, 23 April 2018 [Letter to the Minister of the Interior and Kingdom Relations: follow-up on the Report] (available at: <https://www.nationaleombudsman.nl/system/files/bijlage/Brief%20aan%20minister%20BZK%20inzake%20opvolging%20aanbevelingen%20standplaatsenbeleid%20woonwagens%2023%20april%202018.pdf>).

²⁰² The mayors of the southern provinces Limburg, Zeeland-West-Brabant, Oost-Brabant; Regional Mayors, *Regions* (available at: <https://www.regioburgemeesters.nl/regio-s/>).

²⁰³ Regional mayors of the southern provinces, *Landelijk beleidskader gemeentelijk woonwagene- en standplaatsenbeleid*, 17 October 2018 [Letter to the Minister of the Interior and Kingdom Relations: response to new policy framework] (available at: <https://woonwagenewijzer.nl/download/Brief-gemeente-Eindhoven-aan-Ministerie-van-BZK-over-gemeentelijk-woonwagene-en-standplaatsenbeleid-17-oktober-2018.pdf>).

²⁰⁴ Response of the Dutch Section of the International Commission of Jurists (NJCM) to the letter, *Burgemeesters: werk stigmatisering woonwagenebewoners niet in de hand*, 13 December 2018 [Mayors: do not encourage the stigmatization of travellers] (available at: <https://njcm.nl/actueel/persbericht-njcm-burgemeesters-werk-stigmatisering-woonwagenebewoners-niet-in-de-hand/>).

The Minister also responded to the mayors’ letter, in a general letter to all municipalities, in which she ultimately reinforced the NJCM’s recommendation. She stressed that the policy framework is only about the human rights of travellers in relation to housing and should therefore be treated as a separate issue from that of municipalities’ task of combating crime. Nevertheless, this statement was weakened when the Minister acknowledged the regional mayors’ concerns by reasoning that a balance should be found between protecting the travellers’ human rights and effectively combating crime.²⁰⁵

Most recently, on 2 December 2019, the NIHR found that the municipality of Nijmegen discriminated against travellers by carrying out a housing policy that did not provide for a comparable supply of caravan plots and social housing (as far as possible).²⁰⁶ Despite a serious shortage of caravan plots, the municipality refused to increase the number of caravan plots. The NIHR also found that the municipality did not consider the new policy framework as reason to change its traveller camps policy.

Although several municipalities have implemented, or are in the process of implementing, the human rights proof policy framework, there is still a long way to go before travellers’ rights are fully protected throughout the Netherlands. Therefore, it is important that the municipalities’ implementation of the new policy framework is carefully monitored and evaluated by the central government to ensure that travellers have a genuine opportunity to live in caravan camps. A first step in this regard was a baseline measurement in 2018, that found that there are 7.723 traveller camps spread across 262 municipalities.²⁰⁷ The central government has agreed to, periodically, monitor the development of caravan plots throughout the Netherlands.²⁰⁸

XV. Labour Market

During the last few years, the Dutch government has created various initiatives to prevent and to combat labour discrimination.²⁰⁹ This is a positive development, but discrimination remains a big issue on the Dutch labour market. For example, persons with migration backgrounds are still more often unemployed,²¹⁰ have

²⁰⁵ Letter of the Minister of the Interior and Kingdom Relations, *Toelichting op het Beleidskader gemeentelijk woonwagen- en standplaatsenbeleid*, 18 December 2018 p.4. [Explanation of the policy framework] (available at: https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2018Z24162&did=2018D60561).

²⁰⁶ Netherlands Institute for Human Rights 2 December 2019, no. 2019-126 (Municipality of Nijmegen discriminates against travellers). The NIHR renders non-legally binding, yet authoritative, decisions on the compatibility of governmental authorities with the Equal Treatment Act. Until the new policy framework, it had delivered 37 decisions relating to traveller camps policy, and in 21 of them it found that there had been a violation (see Huijbers and Loven 2019 (n 205), p. 8).

²⁰⁷ Companen, *Traveller camps in the Netherlands, as of January 2018*, 10 October 2018 (commissioned by the government).

²⁰⁸ Letter of the Minister of the Interior and Kingdom Relations, *Aanbieding beleidskader voor gemeentelijk standplaatsenbeleid* 18 December 2018, p. 2. [Presentation of the new policy framework] (available at: <https://www.rijksoverheid.nl/documenten/kamerstukken/2018/07/12/aanbiedingsbrief-bij-het-rapport--beleidskader-voor-gemeentelijk-standplaatsenbeleid-en-het-advies-inzake-woonwagen-en-standplaatsenbeleid>).

²⁰⁹ Action Plan on Labour Market Discrimination, 19 June 2018 (available at: <https://www.rijksoverheid.nl/documenten/kamerstukken/2018/06/19/hoofdlijnenbrief-actieplan-arbeidsmarktdiscriminatie-2018-%E2%80%93-2021>); Implementation Plan on Labour Market Discrimination, 22 November 2018 (available at: <https://www.rijksoverheid.nl/documenten/kamerstukken/2018/11/22/kamerbrief-implementatieplan-arbeidsmarktdiscriminatie-2018-2021>); Progress report on Labour Market Discrimination, 11 July 2019 (available at: <https://www.rijksoverheid.nl/documenten/kamerstukken/2019/07/11/kamerbrief-voortgangsrapportage-actieplan-arbeidsmarktdiscriminatie-2018-2021>); Law proposal, *Supervision on non-discrimination in recruitment and selection*, 7 October 2019 (available at: https://www.internetconsultatie.nl/wet_toezicht_discriminatievrije_werving_en_selectie).

²¹⁰ 70,2% of the total population are employed, against 68,4% of persons with a western-migration background and 62,1% of persons with non-western background; National Statistical Office, *Arbeidsparticipatie naar migratieachtergrond*, third quarter 2019 [Labour participation by

a lower income²¹¹ and have lower schooled jobs than persons with non-migration backgrounds.²¹² This difference is especially visible amongst women with a migration background. Only 54% per cent of women with a migration background work, while 77% of the total population works. Although this participation of women with a migration background in the workforce has increased in the last years, the percentage remains lower than the 2007 participation level.²¹³ The government should therefore continue to invest in programs that strengthen the position of persons, especially of women with a migrant background, in the labour market.

Discrimination in the Dutch labour market is particularly evident in the application process. Recent research shows that persons with non-migrant backgrounds have a 30% greater chance of receiving a positive response after submitting a job application than persons with a migration background.²¹⁴ More so, there is a 40% difference between persons with a non-western migration background and non-migrant background.²¹⁵ That ethnic background is an important factor in application procedures is also perceived by Dutch people; 64% of the persons in the Netherlands have the perception that ethnic origin could have a negative effect on job applications and 56% believes that skin colour could have a negative effect. These percentages are much higher than in other European countries.²¹⁶ The government must help increase employers' awareness of the importance of preventing discrimination and their role in doing so.

Furthermore, employment agencies responsible for carrying out application procedures must make changes, as discrimination in those agencies is common. In the summer of 2019 the Labour Inspectorate set up a pilot that had mystery callers contact employment agencies. This pilot showed that 40% of the agencies were willing to accept discriminatory prospective clients that requested only candidates with a non-migrant background.²¹⁷ The government has recognized that this discrimination is problematic and in response drafted a law on non-discrimination in job recruitment and selection. This proposed law, requires employers and intermediaries to draft a policy that outlines how they will prevent discrimination in job recruitment and selection processes.²¹⁸ The Labour Inspectorate will be authorized to check if such a policy has been drafted. However, this proposed law, neither prescribes the contents of the anti-discrimination policies nor requires regular updates from employers. The Labour Inspectorate only monitors whether employers have an anti-discrimination policy and whether this policy is put into practice; it does not judge itself if an employer discriminates or not. This means that as long as the situation is fine on paper, no action will be taken.

migration background] (available at: <https://www.cbs.nl/nl-nl/visualisaties/dashboard-arbeidsmarkt/werkenden/arbeidsparticipatie-naar-migratieachtergrond>).

²¹¹ On average people from Morocco have a 31% lower income, people from Turkey 26%, People from Surinamese 16% and people from Antilleans 21%; Netherlands Bureau for Economic Policy Analysis, Inkomensongelijkheid naar migratieachtergrond in kaart, June 2019 [Mapping income inequality by migration background] (available at: <https://www.cpb.nl/sites/default/files/omnidownload/cpb-achtergronddocument-inkomensongelijkheid-naar-migratieachtergrond-in-kaart.pdf>).

²¹² Netherlands Institute for Social Research, *Integratie inzicht*, December 2016, p. 90 [Integration insights].

²¹³ Netherlands Institute for Social Research, *Steeds minder verschil tussen vrouwen van Nederlandse en niet-westerse herkomst?*, 2018 [Less differences between women of Dutch and non-Western origin?] (available at: <https://digital.scp.nl/emancipatiemonitor2018/steeds-minder-verschil-tussen-vrouwen-van-nederlandse-en-niet-westerse-herkomst/> <https://longreads.cbs.nl/integratie-2018/sociaaleconomische-positie/>).

²¹⁴ Lex Thijssen, Marcel Coenders and Bram Lancee, *Etnische discriminatie op de Nederlandse arbeidsmarkt. Verschillen tussen etnische groepen en de rol van beschikbare informatie over sollicitanten* Vol 94 (2) 2019 p. 167 [Ethnic discrimination on the Dutch labour market, differences between ethnic groups and the role of available information about applicants] (available at: <https://www.bramlancee.eu/wp-content/uploads/2019/07/ThijssenCoendersLancee2019.pdf>).

²¹⁵ Ibid.

²¹⁶ Special Eurobarometer 493, *Discrimination in the European Union*, October 2019 p. 164 (available at: https://data.europa.eu/euodp/en/data/dataset/S2251_91_4_493_ENG).

²¹⁷ Labour Inspectorate, *Rapport Mystery calling-onderzoek arbeidsmarktdiscriminatie*, 11 July 2019 [Mystery calling investigation into labour market discrimination report] (available at: <https://www.inspectieszw.nl/publicaties/rapporten/2019/07/11/rapport-mystery-calling-onderzoek-arbeidsmarktdiscriminatie>).

²¹⁸ Law proposal, *Supervision on non-discrimination in recruitment and selection* 2019 (n 218).

Consequently, the law proposal runs the risk of becoming a one-off paper exercise.²¹⁹ It would be better to increase the authority of the Labour Inspectorate, so as to include monitoring whether discrimination takes place in practice. In this way the government could also ensure that discrimination is sanctioned in a more adequate and effective way than at present.

In 2015 the Committee has recommended that the Dutch government should implement policies that rely on anonymised curricula vitae in job application and selection processes.²²⁰ The government does not seem to prioritize the use of anonymised curricula vitae, as it did not mention this either in the 2018 Action- and Implementations Plans on Labour Market Discrimination. In the past few years the six large municipalities, including Utrecht, Groningen and The Hague, have experimented with anonymised applications.²²¹ Only The Hague has actually made this practice part of its recruitment policy. The other five municipalities concluded that anonymised applications did not really increase the number of successful candidates of a different cultural or ethnic background. Since the municipalities reported that anonymised applications increased awareness of labour discrimination, it is possible that the experiments were stopped too early.²²² The government should therefore pay more serious attention to implement the recommendation of the Committee.

According to inside information from the Labour Inspectorate it happened once that an employer was fined for not having an anti-discrimination policy in 2017. This also occurred two or three times in 2018. This low number is unlikely representative, particularly taking into account that research of the Netherlands Institute for Social Research found that only 13% of employers in 2017 and 2018 considered hiring personnel from a non-western background. This means that only a few employers made a diverse workforce one of their priorities.²²³ Therefore the government should increase its efforts to encourage employers to adopt an anti-discrimination policy and to increase the tasks of the Labour Inspectorate, so that they are able to monitor the implementation of municipal policies.

XVI. Education

Educational performance

There are significant gaps in educational performance between native Dutch pupils and pupils with a migrant background. A quarter of the Dutch school population has a migrant background.²²⁴ Research shows that up until the third generation, students with a migrant background obtain lower scores at the final exam of

²¹⁹ Netherlands Institute for Human Rights, *Arbeidsmarktdiscriminatie: een hardnekkig probleem vereist een grondige aanpak*, 9 October 2019 [Labour market discrimination: a persistent problem requires a thorough approach] (available at: <https://www.mensenrechten.nl/nl/toegelijk/arbeidsmarktdiscriminatie-een-hardnekkig-probleem-vereist-een-grondige-aanpak>).

²²⁰ CERD, *Concluding observations on the nineteenth to twenty-first periodic reports of the Netherlands*, 25 September 2015, para 24a (U.N. Doc. CERD/C/NLD/CO/19-20).

²²¹ Trouw, *Anoniem solliciteren geen succes: gemeenten stoppen alweer*, 15 June 2018 [Anonymized applications not succesful: municipalities are already stopping with it] (available at: <https://www.trouw.nl/nieuws/anoniem-solliciteren-geen-succes-gemeenten-stoppen-alweer-b44245fc/>).

²²² Ibid.

²²³ Netherlands Institute for Social Research, *Inclusieve arbeidsmarkt geen hoge prioriteit voor werkgevers, ondanks economische groei*, 9 October 2019 [Inclusive labour market not a high priority for employers, despite economic growth] (available at: https://www.scp.nl/Nieuws/Inclusieve_arbeidsmarkt_geen_hoge_prioriteit_voor_werkgevers_ondanks_economische_groei).

²²⁴ Education Inspectorate, Ministry of Education, Culture and Science (2019). *De Staat van het Onderwijs 2019* [The State of Education 2019], pg. 54. (available at: <https://www.onderwijsinspectie.nl/onderwerpen/staat-van-het-onderwijs/documenten/rapporten/2019/04/10/rapport-de-staat-van-het-onderwijs-2019>).

primary school than native Dutch pupils.²²⁵ The result of this exam combined with the teacher's advice decides which secondary school track the pupil will follow. According to the Dutch Education Inspectorate, the level of schooling of the parents and their socio-economic background plays an important role in the advice given by the teacher: students with the same exam score and with parents from a lower socio-economic background are given a lower track-advice than those with parents from higher socio-economic backgrounds.²²⁶ This disproportionately affects migrant students who are overrepresented in this group. After this decision, on which school track to be followed, it is very difficult to change to a different track.²²⁷

The ethnic and racial discrimination in the Dutch labour market, outlined before in this report, does not only results in more migrant children living in families with lower socio-economic status, but also limits the opportunities for migrant families to improve their status through education. For newly arrived migrant pupils, the gap is even more significant: they are given a lower school advice eight times more often than native pupils.²²⁸ There is also concern about the overrepresentation of pupils with a non-migrant background (from non western countries) in segregated special schools for children with disabilities. The proportion of migrant children in regular education is 18% while the proportion of migrant children in special schools is 22%.²²⁹

Language

It is estimated that 2 million persons in the Netherlands grew up with another language than Dutch.²³⁰ The exact numbers are missing as data has never been collected on language in the Netherlands.²³¹ In some cities such as Amsterdam, more than 50% of pupils are multilingual, yet the Dutch school system is geared exclusively towards students who speak Dutch as their mother tongue and teachers are insufficiently prepared for teaching in multilingual classrooms.²³² Multilingualism and Dutch as a second language are not part of the basic requirements of teacher training.²³³ It takes 5-7 years for multilingual students to

²²⁵ National Statistical Office, *Jaarrapport Integratie* (2016), p. 151 [Annual report Integration 2016] (available at: <https://www.cbs.nl/nl-nl/publicatie/2016/47/jaarrapport-integratie-2016>); Trouw, *Derde generatie migrantenkinderen blijft achter in groep 8*, 21 November 2016 [Third generation migrant children remains behind in group 8] (available at: <https://www.trouw.nl/nieuws/derde-generatie-migrantenkinderen-blijft-achter-in-groep-8~b0ecc65c/>).

²²⁶ Education Inspectorate, Ministry of Education, Culture and Science, *De Staat van het Onderwijs 2019* [The State of Education 2019], p. 63. (available at: <https://www.onderwijsinspectie.nl/onderwerpen/staat-van-het-onderwijs/documenten/rapporten/2019/04/10/rapport-de-staat-van-het-onderwijs-2019>).

²²⁷ Elffers, L., *Het is het stelsel, Stupid*, 13 June 2019 [It's the system, Stupid] (available at: <https://www.wbs.nl/publicaties/het-het-stelsel-stupid>).

²²⁸ Education Inspectorate, Ministry of Education, Culture and Science, *De Staat van het Onderwijs 2019* [The State of Education 2019] p. 76. (available at: <https://www.onderwijsinspectie.nl/onderwerpen/staat-van-het-onderwijs/documenten/rapporten/2019/04/10/rapport-de-staat-van-het-onderwijs-2019>).

²²⁹ National Statistical Office, *Tabel Leerlingen op speciale scholen, migratieachtergrond, woonregio* 31 January 2020 [Table pupils on special schools; migrant background and living region] (available at: <https://opendata.cbs.nl/statline/#/CBS/nl/dataset/83296NED/table?ts=1584529956076>).

²³⁰ Royal Dutch Academy for Science (KNAW), *Talen voor Nederland* 2018 p. 6 [Languages for the Netherlands]. Amsterdam: Koninklijke Nederlandse Akademie van Wetenschappen (available at: <https://www.knaw.nl/nl/actueel/publicaties/talen-voornederland>).

²³¹ The Netherlands should carry out such data gathering also in light of the Sustainable Development Goals: SDG Thematic Indicator 4.5.18 calls on states to report on the percentage of primary school pupils who speak the school's language of instruction as their first language or mother tongue (UNESCO Institute for Statistics, *Laying the Foundation to Measure Sustainable Development Goal 4*. Montreal: UNESCO, 2016. (available at: <http://uis.unesco.org/sites/default/files/documents/laying-the-foundation-to-measure-sdg4-sustainable-development-data-digest-2016-en.pdf>).

²³² National Center for Expertise in Curriculum Development (SLO), *Meertaligheid in primair en voortgezet Onderwijs. Een stand van zaken en curriculaire aanbevelingen* 2018, p. 5 Multilingualism in primary and secondary education. A state of affairs and curricular recommendations] (available at: <https://slo.nl/publicaties/@4625/meertaligheid/>).

²³³ National Center for Expertise in Curriculum Development (SLO), *Meertaligheid in primair en voortgezet Onderwijs. Een stand van zaken en curriculaire aanbevelingen* [Multilingualism in primary and secondary education. A state of affairs and curricular recommendations], 2018, p. 7 (available at: <https://slo.nl/publicaties/@4625/meertaligheid/>).

develop academic competence in the new language.²³⁴ In the Netherlands however, students are separated at the age of 12, long before multilingual pupils have reached the required level of Dutch. This may partly explain their lower scores at the final primary school exam. The Dutch education inspectorate recommended in 2019 that all primary schools have a plan for newly arrived migrant students which should take into account the four years required to learn a new language, and not limited to one year only as is the case now.²³⁵ In fact, such a plan should be developed for *all* multilingual students with a migrant background, including first, second and third generation students. Considering that a good command of the mother tongue is beneficial for students' cognitive, emotional and social development, the plan should include provisions to allow students to develop their full linguistic repertoire and not just be limited to learning Dutch.

In addition, bullying on the basis of language, dialect and accent needs to receive more attention by the government. According to the European Commission's Eurydice Report (2019), the Netherlands is among the few countries where students who do not speak the language of instruction at home experience more bullying than their peers who do.²³⁶ Research should be done on whether 'language', 'dialect' and 'accent' are part of anti-bullying protocols at schools and to what extent teachers are aware of the negative consequences that exclusion and discrimination based on language can have on children.²³⁷

Schoolbooks

A national study showed that 9% of history schoolbooks are dedicated to colonialism and 4% to slavery.²³⁸ Another study by the municipality of Amsterdam indicated that most emphasis, when dealing with slavery and colonisation, is on the slave trade and enslavement that occurred in the Western Hemisphere and not so much on the Eastern Hemisphere.²³⁹ In the same research, teachers in Amsterdam found that Dutch involvement in slavery and its colonialism is mainly taught through a European perspective. This perspective is superficial, fragmented and a potential breeding ground for racism.²⁴⁰ Moreover, teachers in Amsterdam mentioned that the current teaching methods are not comprehensive²⁴¹ and that even one-third of the respondents said that they were regularly confronted with stereotypes related to ethnicity and/or gender.²⁴² National research also found that about 1 out of 10 secondary school teachers who participated in a survey on segregation indicated that it is not possible to discuss sensitive topics such as the 'Zwarte

²³⁴ Cummins, J. et al., *Affirming identity in multilingual classrooms by welcoming a student's home language into the classroom, schools actively engage English language learners in literacy*; Educational leadership, vol. 63, 1, 2005, p.38-43 (available at: <http://www.researchgate.net/publication/237695556>).

²³⁵ Education Inspectorate, Ministry of Education, Culture and Science. (n 238) 2019, p. 76.

²³⁶ European Commission/EACEA/Eurydice, *Integrating Students from Migrant Backgrounds into Schools in Europe: National Policies and Measures*. Eurydice Report. Luxembourg: Publications, Office of the European Union, 2019, p. 44. (available at: https://eacea.ec.europa.eu/national-policies/eurydice/content/integrating-students-migrant-backgrounds-schools-europe-national-policies-and-measures_en.)

²³⁷ Agirdag, O., *Het straffen van meertaligheid op school: De schaamte voorbij* 2017, p. 44-52. [Punishing multilingualism in school. Beyond the shame]. In O.Agirdag & E. R. Kambel (Eds.), *Meertaligheid en onderwijs [Multilingualism and Education*, Amsterdam: Boom Uitgevers/Rutu Foundation.

²³⁸ NOS, 'Veel aandacht voor slavernij en kolonialisme in schoolboeken' 28 February 2020 [Much attention given to slavery and colonism in schoolbooks] (available at: <https://nos.nl/artikel/2324943-veel-aandacht-voor-slavernij-en-kolonialisme-in-schoolboeken.html>).

²³⁹ Regioplan beleidsonderzoek, *Lessen over slavernij verleden in het Amsterdamse onderwijs*, 4 June 2019, p. 1-3, 39-42 [Lessons about slavery past in Amsterdam education].

²⁴⁰ NRC, *Is het lesmateriaal over slavernij te oppervlakkig?*, 11 September 2017 [Is the teaching material about slavery too superficial?] (available at: <https://www.nrc.nl/nieuws/2017/09/11/moeilijke-lessen-over-de-slavernij-12953606-a1573068>)

²⁴¹ Teachers are depending on additional and self-developed teaching methods.

²⁴² Regioplan beleidsonderzoek, 2019 (n 249) p. 39.

Piet'.²⁴³ At this moment a Dutch government-appointed, is reviewing the 'Dutch History Canon', which is especially used in secondary schools.²⁴⁴ The revision of the Canon is an opportunity for the government to ensure that representative information on the slave trade, enslavement and colonisation is included and to provide teachers with ideas on how to discuss these topics.

Moreover, a study on characters in schoolbooks found that characters with a non-Western backgrounds are less visible in the text of the schoolbooks, disproportionate to the percent of the Dutch population they represent. The study also found that most of the characters' names in schoolbooks are typical 'white' names and that characters with non-western backgrounds were of lower social-economic status.²⁴⁵ As children are sensitive to stereotypes it is important for the government to encourage publishers to ensure that schoolbooks are eliminate stereotypes and include a representative view of society.

XVII. Health and social care

Discontinuation of compensation for interpretation and translation services

In 2011 the Dutch government decided to discontinue compensation for interpretation and translation services in health care despite strong protests by organisations representing health professionals and patients²⁴⁶ and a motion in the House of Representatives.²⁴⁷ The government is only continuing compensation for three groups: victims of human trafficking, asylum seekers, and women in societal care.²⁴⁸

Under the current policy individuals with low Dutch language proficiency are required to rely on informal translation by friends or relatives to receive the necessary health care if they cannot afford to procure a translator themselves. Not only does this pose a risk given the lack of quality assurance, it threatens confidentiality of the doctor-patient relationship, which poses risks to both patients, professionals and organisations in health and social care.²⁴⁹

Analysis of legal and human rights aspects

The policy disproportionately affects individuals of low Dutch proficiency, which can be argued to amount to a prohibited form of indirect discrimination under the General Equal Treatment Act, and the right to non-discrimination under international law.²⁵⁰ Art. 12(1) ICESCR recognizes the right of all to 'the enjoyment of the highest attainable standard of physical and mental health.'²⁵¹ In General Comment No. 14, the UN

²⁴³ DUO, *Rapportage Integratie op school Meningen, observaties en ideeën vanuit het onderwijs zelf*, February 2017 p. 28 [Report Integration at school Opinions, observations and ideas from the education itself] (available at: <https://www.duo-onderwijsonderzoek.nl/wp-content/uploads/2017/01/Rapportage-Integratie-op-school-1-februari-2017.pdf>).

²⁴⁴ Trouw, Canon van de vaderlandse geschiedenis moet volgens James Kennedy ook schaduwkanten belichten, 2 June 2019 [Canon of national history must, according to James Kennedy, also highlight shadows] (available at: <https://www.trouw.nl/nieuws/canon-van-de-vaderlandse-geschiedenis-moet-volgens-james-kennedy-ook-schaduwkanten-belichten-b42a5318/>).

²⁴⁵ Judi Mesman et al, *Etniciteit in Schoolboeken voor de Brugklas: representatie en stereotypering*, 2019 p. 26-29 [Ethnicity in School Books for Brugklas: representation and stereotyping] (available at: <https://jimdo-storage.global.ssl.fastly.net/file/bd2347d2-ab6c-4fc9-9b4d-49b5adf746e2/mesman%20-%20final%20rapport%20schoolboeken%20etniciteit.pdf>).

²⁴⁶ KNMG *Letter to the Minister of Health, Welfare and Sport by The Royal Dutch Medical Association* (2011) (available at: <https://www.knmg.nl/advies-richtlijnen/dossiers/tolken-in-de-zorg-2.htm>).

²⁴⁷ Parliament, *Kamerstukken 33 000 XVI*, nr. 53, 2011-2012, (available at: <https://zoek.officielebekendmakingen.nl/kst-33000-XVI-53.pdf>)

²⁴⁸ Ibid.

²⁴⁹ KNMG (n 256).

²⁵⁰ Public International Law and Policy Group, *Legal Implications of the Discontinuation of Compensation for Translation and Interpretation Services in the Dutch Health Care System*. (2016) (available at: <https://pilpnjcm.nl/wp-content/uploads/2016/11/PILPG-Legal-Implications-Discontinuation-Compensation-of-Interpretation-in-Dutch-Health-Care-12.08.2016.pdf>)

²⁵¹ UN International Covenant on Economic, Social and Cultural Rights, art. 12(1), Dec. 16, 1966, 993 U.N.T.S. 3 (available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>).

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Committee on Economic, Social and Cultural Rights determines that the right the health contains the following essential and interrelated elements: (i) availability; (ii) accessibility; (iii) acceptability; and (iv) quality.²⁵²

The element of “accessibility” requires all health care facilities, as well as the services and products they offer, to be equally accessible to every person in the jurisdiction of the respective state. Accessibility can be broken down into the following four overlapping principles: (i) non-discrimination; (ii) physical accessibility; (iii) economic accessibility, and (iv) information accessibility.²⁵³

Under the first principle, everyone should have indiscriminate access to health care, especially marginalized and vulnerable groups. There must be no discrimination on any of the prohibited grounds enumerated in Art. 2(2) ICESCR, which include, inter alia, language.²⁵⁴ In addition, the General Assembly of the World Health Organization (hereinafter ‘WHO’) adopted, with reference to ICESCR, the Global Action Plan 2019-2023 ‘Promoting the health of refugees and migrants’. Member States of the WHO, including the Netherlands, are requested to reduce communication barriers in health care.²⁵⁵

On going protest by organisations

In 2014 seven organisations of healthcare professionals and knowledge institution Pharos developed a national quality standard on the use of interpreters in healthcare.²⁵⁶ The government states since then that health and social care professionals are to adhere to this quality standard. This quality standard, healthcare laws²⁵⁷ and a legal case show that health and social care professionals are responsible for communication with their patients.²⁵⁸ The government sticks, however, to the policy that patients are responsible for bridging the language barrier and therefore have to pay for professional interpreter services despite on going protests and questions in parliament.²⁵⁹

The Johannes Wier Stichting²⁶⁰ (JWS) launched in 2019 a petition to the Quality Board of the Dutch National Health Care Institute for the development of a quality standard on language barriers in health and social care that is sustainable with respect to medical ethical legal and financial aspects.²⁶¹ The petition has since then been signed by 35 national organisations, 40 professors and more than 130 other experts. More

²⁵² Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14, The Right to the Highest Attainable Standard of Health*, para. 12, UN Doc. E/C.12/2000/4, (Aug. 11, 2000) (available at: <https://www.refworld.org/docid/4538838d0.html>)

²⁵³ Ibid.

²⁵⁴ Ibid.

²⁵⁵ World Health Organization, *Global Action Plan for Refugee and Migrant Health 2019-2023*, 2019 (available at: https://www.who.int/health-topics/refugee-and-migrant-health#tab=tab_2)

²⁵⁶ KNMG, Pharos et al. *Kwaliteitsnorm tolgebruik anderstaligen in de zorg*, 2014. (available at <https://www.knmg.nl/advies-richtlijnen/knmg-publicaties/tolken-in-de-zorg-2.htm>)

²⁵⁷ Medical Treatment Contracts Act, WGBO (available at: https://www.eerstekamer.nl/behandeling/20190624/publicatie_wet/document3/f=/vklzn7jc5tvf.pdf); Quality of care act Wkkgz (available at: <https://zoek.officielebekendmakingen.nl/stb-2015-407.html>).

²⁵⁸ ECLI:NL:RBLIM:2017:9987 - Rechtbank Limburg, 18-10-2017 / C/03/229341 / HA ZA 16-720 (Available at: <https://linkeddata.overheid.nl/front/portal/document-viewer?ext-id=ECLI:NL:RBLIM:2017:9987>)

²⁵⁹ Questions regarding the quality standard and financial policies for professional interpreters by L Voortman, Member of the House of Representatives and answers by the Minister of Health 4 April 2014 (available at: <https://zoek.officielebekendmakingen.nl/ah-tk-20132014-1626.html>); During the debate on the budget of the Ministry of Health, Welfare and Sport Kuzu, member of the House of Representatives asked for a solution for the interpreter costs, 30 October 2019 (available at <https://zoek.officielebekendmakingen.nl/h-tk-20182019-14-11.pdf>); Answers by the Minister of Health ref 195505-116940-CZ to Platform Zelfstandig Ondernemers in de Zorg, 11 March 2014 (available at: <https://zoek.officielebekendmakingen.nl/blg-302307.pdf>).

²⁶⁰ An independent human rights organization by and for health care professionals

²⁶¹ Appeal letter by Johannes Wier Stichting to the Quality Board of the National Health Care Institute, December 10, 2019 (available at: <https://www.johannes-wier.nl/wp/wp-content/uploads/2019/12/De-brief-met-de-actuele-lijst-ondertekenaars.pdf>)

than 3000 individuals signed the public campaign.²⁶² JWS has sent the petition to the Minister of Health, Welfare and Sports on February 20, 2020.²⁶³

The government is encouraged to quickly respond to this petition appeal and reconsider its current policy, and ensure that all individuals and all health and social care professionals have access to professional interpreters.

Obstacles of access to medical services for undocumented migrants

There are no official statistics on how many persons are undocumented in the European and Caribbean part of the Netherlands, but according to estimations there are 35.000 undocumented migrants in the European Netherlands and in St Maarten it is estimated that 20% of the population is undocumented.²⁶⁴ Many undocumented migrants cannot access medical and psychological support, as they do not have the option to take out health insurance. Such access is currently granted by a ‘reimbursement system’ for medical professionals and pharmacies. This system does not grant the individuals access to medical care, but reimburses the medical professionals if the patient cannot pay the bill. In this way undocumented migrants have the right to medically necessary care.²⁶⁵

Many undocumented persons as well as medical professionals are often unaware of the reimbursement scheme or think it is only for emergency care. As a result undocumented persons, including children, often experience difficulties in accessing health care, are even turned away at hospitals for lack of insurance or cannot provide for the proper documentation.²⁶⁶ Also undocumented migrants have no entitlement, and thus no access to care that falls under the social support law. Furthermore, the option to request a contribution for the medical costs does not extend to the Caribbean Netherlands. The access to necessary health care is especially limited in Aruba, Curaçao and St Maarten.²⁶⁷ The Committee’s concerns expressed in 2015 on the lack of access to basic health care in Curaçao and Aruba are not elaborated on in the 2019 State Report. Without presenting data about important issues in these countries, it is difficult to know the appropriate measures that are needed to ensure access to medical care.

Obstacles to shelter and food for undocumented migrants

The lack of access to shelter is problematic for most of the undocumented migrants, as they are (temporarily) unable to return to their country of origin.²⁶⁸ Several complain with regard to the destitute situation of

²⁶² Public campaign Johannes Wier Stichting at platform DeGoedeZaak (available at: <https://actie.degoedezaak.org/petitions/taalbarrieres-in-de-zorg-maak-ze-bespreekbaar>)

²⁶³ Letter to the Minister of Health, Welfare and Sport, February 20, 2020 (available at: <https://www.johannes-wier.nl/wp/wp-content/uploads/2020/03/brief.pdf>)

²⁶⁴ Van der Heijden a.o., *Schatting illegaal in Nederland verblijvende vreemdelingen 2012-2013*, 1 September 2015, p. 17 [Estimation of illegally staying aliens in 2012-2013] (available at: https://www.wodc.nl/binaries/2402-volledige-tekst_tcm28-73349.pdf).

²⁶⁵ Dutch Alien Act 2000, art 10.

²⁶⁶ Report Dokters van de Wereld, *De deur naar zorg*, July 2019, p. 47 [The door to care] (available at: <https://doktersvanderwereld.org/wp-content/uploads/2018/08/De-deur-naar-zorg.-Rapport-Zorgrecht-DvdW-juli-2018.pdf>).

²⁶⁷ Health(e) Foundation, *Refugee Care in the Caribbean*, May 2019 (available at: https://www.healthefoundation.eu/website_page/629/refugee-care-in-the-caribbean).

²⁶⁸ A research report shows that in the Netherlands, 44% of the rejected asylum seekers return to their country of origin. The 56% that does not return can amongst others be explained by the fact that the country of origin refuses to cooperate with the return: Report Onderzoekscommissie *Langdurig verblijvende vreemdelingen zonder bestendig verblijfsrecht*, 3 June 2019 [Foreign nationals who are long-term residents without a permanent right of residence] (available at: <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2019/06/04/onderzoekscommissie-langdurig-verblijvende-vreemdelingen-zonder-bestendig-verblijfsrecht/Onderzoeksrapport+langdurig+verblijf+vreemdelingen+definitief+3+juni+2019+%282%29.pdf>); NOS, *Broekers: pogingen om ongewenste vreemdelingen uit te zetten mislukken te vaak*, 18 June 2019 [Broekers: attempts to deport unwanted strangers fail too often] (available at: <https://nos.nl/artikel/2289566-broekers-pogingen-om-ongewenste-vreemdelingen-uit-te-zetten-mislukken-te-vaak.html>); Telegraaf, *Schokkende cijfers: uitzetbeleid liep in vijf jaar 10.000 keer spaak*, 16 June 2019 [Shocking figures: deportation policy

irregular migrants have been lodged with the European Committee of Social Rights.²⁶⁹ In all of those complaints the Committee has concluded that the Netherlands violated the right to social and medical assistance, and emergency shelter. In response to these conclusions and due to persistent criticism by civil society organisations, the Dutch government has started a pilot program offering shelter and food to undocumented migrants. This program started in 2019 and will be running for three years. While a positive step, this initiative, fails to provide unconditional access to shelter and food, as migrants still need to cooperate with a durable solution, which in practice often means departure. This conditional support is not in accordance with international law.²⁷⁰

Furthermore, the government should pay more attention to vulnerable undocumented migrants in a vulnerable position. Examples could be women and children. At this moment undocumented female migrants who are victims of domestic violence do not have access to shelters and social services, if they did not start a procedure for a residence permit based on domestic violence or honor-related violence.²⁷¹ As a result the access to protection and support is dependent on the migration status of women, which is problematic.

Obstacles of access to education and social services

Undocumented migrants have limited access to and options for education and social services. Children's rights NGOs have observed that the number of children who attend school has decreased. Possible causes of this decrease might include the opening and closing of asylum centres, inadequate coordination between the COA and school boards and the failure to arrange child transportation to schools in time.²⁷² The government must guarantee that all children have an equal access to education.

XVIII. Sports

In the Dutch sports sector, discrimination based on gender, handicap, religion, skin colour, homosexuality and culture remains a problem. A 2018 study showed that approximately 8% of athletes have faced or witnessed discrimination on the basis of skin colour, 9% on the basis of culture or religion and 4% on the basis of homosexuality.²⁷³ These numbers are reflecting a stable picture since 2014, but it is important to note that on average only 1 in 8 experiences of discrimination are being reported.²⁷⁴ Victims and witnesses may not report discrimination for various reasons: the belief that reporting does not help; limited awareness

went down 10,000 times in five years] (available at: <https://www.telegraaf.nl/nieuws/139207395/schokkende-cijfers-uitzetbeleid-liep-in-vijf-jaar-10-000-keer-spaak>).

²⁶⁹ *Conference of European Churches (CEC) v the Netherlands*, complaint no. 90/2013, 1 July 2014; *European Federation of National Organizations working with the Homeless (FEANTSA) v the Netherlands*, complaint no. 86/2012, 2 July 2014.

²⁷⁰ Rijksoverheid, *Akkoord over landelijke vreemdelingenvoorzieningen*, 29 November 2018 [Agreement on national aliens provisions] (available at: <https://www.rijksoverheid.nl/actueel/nieuws/2018/11/29/akkoord-over-landelijke-vreemdelingenvoorzieningen-lvv%E2%80%99s>).

²⁷¹ National Ombudsman, *Vrouwen in de knel, een onderzoek naar knelpunten in de vrouwenopvang*, 6 July 2017, p. 13 [Women in trouble, an investigation into problems in women's shelter] (available at: <https://www.nationaleombudsman.nl/system/files/onderzoek/Rapport%202017075%20Vrouwen%20in%20de%20knel.pdf>).

²⁷² Kinderrechtencollectief (171) p. 35.

²⁷³ Kenniscentrum Sporten en Bewegen, *Factsheet discriminatie en sport*, 2018 p. 45 [Factsheet Discrimination and Sport] (available at: <https://www.kennisbanksportenbewegen.nl/?file=9234&m=1542276813&action=file.download>).

²⁷⁴ Athletes are able to file at for example an antidiscrimination facility (ADV). Netherlands Institute for Social Research, *Ervaren discriminatie in Nederland*, 24 January 2014, p.60 [Discrimination experienced in the Netherlands] (available at: https://www.scp.nl/Publicaties/Alle_publicaties/Publicaties_2014/Ervaren_discriminatie_in_Nederland).

of the option to make a report; doubts about whether discrimination is punishable; and fear of the possible consequences of the reporting.²⁷⁵

In 2018, 122 cases were filed at ADVs most of which concerned verbal abuse on the sports field and the accessibility of sports clubs for certain groups.²⁷⁶ According to figures from the National Police, there were a total of 47 incidents involving abusive chants in the 2017-2018 season.²⁷⁷ This is only the tip of the iceberg, as research shows that discriminatory and abusive chants are a common practice amongst supporters of professional football.²⁷⁸ For this reason, it is important that the government, in cooperation with sports associations, improve and stimulate the possibilities of reporting discrimination in sports. For example, the government could implement a reporting app and promote its use through communication campaigns.

Furthermore, a recent study showed that football players experience discrimination and racism in different ways even though they play in the same team and have largely enjoyed the youth training at the same club. Some professional players said that they speak openly about discrimination, but the majority of the players described a certain ‘social cramp’ regarding this topic. The accumulation of painful, disappointing experiences or moments of misunderstanding between white people and players (of colour) with a migration background can damage the relationship of trust between them and (white) staff to be damaged, which in turn can lead to feelings of distrust, despair, fear or disempowerment.²⁷⁹ The study also shows that acknowledging the existence of discrimination and racism through conversation and visual material can generate positive impacts among young athletes. The recent efforts by the government and the Royal Dutch Football Union to invest 14 million euros to combating discrimination and racism in football are a positive step forward.²⁸⁰ The government should also consider introducing the Rooney Rule, the requirement to ‘interview a Black, Asian and Minority Ethnic applicant when recruiting for senior coaching positions’ in order to increase the confidence of athletes with a migration background in management.²⁸¹ Furthermore, the government should, in cooperation with sports associations, set up a policy that will stimulate a dialogue on themes related to diversity, inclusion and discrimination within the sports sector. This could ultimately create an atmosphere in which players, trainers, and referees can openly talk about the subjects related to discrimination.

²⁷⁵ A. Ens, *Discriminatie melden bij de politie? : een onderzoek naar de meldingsbereidheid van slachtoffers van moslimdiscriminatie*, 2016 [Report discrimination to the police? A study on willingness to report among victims of muslim discrimination] (available at: <https://www.politieacademie.nl/kennisonderzoek/kennis/mediatheek/PDF/92930.PDF>).

²⁷⁶ Ministry of Interior and Kingdom Relations, National Police & Art. 1, 2019, (n 55) p. 6, 48.

²⁷⁷ *Ibid*, p. 48

²⁷⁸ Meesters, Gielisse, Barlagen & Ohler, *Van scheldkoren naar spreekkoren: onderzoek naar spreekkoren in het Nederlandse betaald voetbal*. 2014 [From swearing choirs to speaking choirs: research into racists chants in Dutch professional football] (available at: <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2014/04/10/van-scheldkoren-naar-sprekkoren/van-scheldkoren-naar-sprekkoren.pdf>); Ministry of the Interior, Police & Art. 2019 (n 55).

²⁷⁹ Harmsen, Elling & Van Sterkenburg, *Racisme, sociale kramp en innerlijke drijfkrachten in het betaald voetbal*, October 2019 [Racism, social cramp and inner driving forces in professional football] (available at: <https://www.kennisbanksportenbewegen.nl/?file=9708&m=1571231919&action=file.download>).

²⁸⁰ NOS, *14 miljoen voor bestrijding racisme en discriminatie in voetbal*, 8 February 2020 [14 million for combating racism and discrimination in football] (available at: <https://nos.nl/artikel/2322127-14-miljoen-voor-bestrijding-racisme-en-discriminatie-in-voetbal.html>).

²⁸¹ Independent, *Rooney Rule: What is it, how does it work and how will it affect English football?*, 9 January 2018 (available at: <https://www.independent.co.uk/sport/football/news-and-comment/rooney-rule-what-is-how-nfl-england-football-managers-pick-bame-coach-fa-martin-glenn-a8150056.html>).

XIX. Intersectional challenges of multiple forms of discrimination

LGBTI persons, persons with a disability, migrants, women and other minorities are likely to experience more social challenges and discrimination if they have multiple background characteristics that bright them in a vulnerable position - such as their origin, beliefs, skin colour, physical or mental disability, doing sex work, etc.

In the Netherlands, relatively little is known about intersectionality - the way in which characteristics influence each other. In its 2018 ‘emancipation letter’, the Dutch government has recognized the importance of paying attention to intersectionality. The government is taking measures to protect a number of groups for which two grounds for discrimination coincide, such as being LGBTI with a bicultural background.²⁸² However, little is known about the root causes of intersectional forms of discrimination and the impact they have on a diversity of affected communities in the Netherlands.

In 2017, the Committee on Economic, Social and Cultural Rights recommended ‘that the State party continue to assess the root causes of systemic and structural discrimination against minority groups’. The Committee also recommended that the Netherlands should ‘benefit from available findings in studies on discrimination in order to develop policies and programmes with specific goals and targets aimed at combating prejudice.’²⁸³ The government can do more to meet these recommendations. Without proper knowledge on the complexity of intersectional issues and multiple forms of discrimination, policies can easily be created that overlook the very needs and rights of individuals. Therefore the government should conduct more research on intersectional issues that affect minorities with diverse backgrounds and in the process take targeted measures on the basis of the Sustainable Development Goals to leave no one behind.

XX. Climate change

Dutch Caribbean

Awareness of states’ human rights obligations in the context of climate change has increased in the last few years.²⁸⁴ The OHCHR concluded in 2015 that ‘states (duty-bearers) have an affirmative obligation to take effective measures to prevent and redress climate impacts, and therefore, to mitigate climate change, and to ensure that all human beings (rights-holders) have the necessary capacity to adapt to the climate crisis.’²⁸⁵ The OHCHR has also called upon states to take specific measures to protect the rights of persons living in

²⁸² Rijksoverheid, *Emancipatienota 2018-2021 Principes in praktijk*, 29 March 2018, p. 2 [Emancipation note 2018-2021, Principles in practice] (available at: <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2018/03/29/emancipatienota-2018-2021/1336594+Kamerbrief+-+Emancipatienota+2018+-+2021+-+Principes+in+praktijk.pdf>).

²⁸³ Committee on Economic, Social and Cultural Rights, *Concluding observations on the sixth periodic report of the Netherlands*, art.19, 6 July 2017 (available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fNLD%2fCO%2f6&Lang=en).

²⁸⁴ Committee on the Elimination of Discrimination against Women, *Concluding observations on the ninth periodic report of Norway*, 17 November 2017 para 15 (CEDAW/C/NOR/CO/9); OHCHR, *Five UN human rights treaty bodies issue a joint statement on human rights and climate change*, 16 September 2019 (available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E>).

²⁸⁵ OHCHR, *Key Messages on Human Rights and Climate Change*, 2015 (available at: https://www.ohchr.org/Documents/Issues/ClimateChange/KeyMessages_on_HR_CC.pdf).

vulnerable areas (e.g. small islands, riparian and low-lying coastal zones, arid regions, and the poles), like the Caribbean Netherlands.²⁸⁶

Consequently, this means that the Kingdom of the Netherlands also has the responsibility to study the climate crisis. This is especially important for the Dutch Caribbean, as they are part of the small island developing states of the Caribbean region and are among the most vulnerable to negative climate change impacts.²⁸⁷ The Dutch government also has the responsibility to study the risks of climate change in the Dutch Caribbean in order to ensure that all persons in the Kingdom are able to adapt to the climate crisis, as the fundamental protection of human rights is a shared responsibility of all the four countries.²⁸⁸

Climate change will impact the Caribbean islands in slightly different ways: ‘Aruba, Bonaire and Curaçao are located in the Southern Caribbean, an area that is predicted to become warmer and drier, with longer seasonal dry periods. Saba, St Eustatius and St Maarten, which are located in the Northeast Caribbean and therefore within the Caribbean hurricane belt, are predicted to experience an increase in rainfall during the wet season (November–January) as well as more frequent and violent tropical hurricanes’.²⁸⁹ The effects of this climate change will threaten a plethora of human rights, like work, health and housing²⁹⁰ and will likely disproportionately impact vulnerable groups such as ‘the poor, women, indigenous, elderly, and children in rural and coastal communities’.²⁹¹ These effects are already palpable in some of the Dutch Caribbean islands like St Maarten, as the result of the climate change-related Hurricane Irma.²⁹² Considering the urgency and devastating effects of climate change on the Dutch overseas territories, dominantly inhabited by people of colour, the Kingdom needs to study what the effects of climate change will be on all Dutch territories, including those overseas ones, which it currently seemingly has not, or does not recognise the gravity of the situation.

Poverty

International studies have demonstrated that disadvantaged persons, such as often people of colour and with migration backgrounds, suffer more from environmental damage than other groups.²⁹³ The UN Department of Social and Economic Affairs concluded in this regard that the link between climate change and ‘within-

²⁸⁶ Ibid.

²⁸⁷ Ian Fry, *Small Island Developing States: Becalmed in a Sea of Soft Law*, 14 Rev. Eur. Comp. & Int'l Envtl. L., 2005 (available at: https://heinonline.org/HOL/LandingPage?handle=hein_journals/reel14&div=16&id=&page=); Mertz et al., *Adaptation to Climate Change in Developing Countries*, Environmental Management, 2009 (available at:

https://backend.orbit.dtu.dk/ws/portalfiles/portal/4024541/obit_postprint.pdf); Baptiste & Rhiney, *Climate justice and the Caribbean*, 73 Geoforum, 2016 (available at: <https://www.sciencedirect.com/science/article/pii/S0016718516301403?via%3DIihub>).

²⁸⁸ Charter of the Kingdom of the Netherlands, art 43.

²⁸⁹ DNCA, *Climate change impacts within the Dutch Caribbean*, 2016 (available at: <https://www.dcnanature.org/climate-change-impacts-within-the-dutch-caribbean/>).

²⁹⁰ Such as civil and political rights and economic, social, and cultural rights, including rights to life, access to safe food and water, health, security, shelter, and culture. Levy & Patz, *Climate Change, Human Rights, and Social Justice*, Annuals of Global Health, 2015 (available at: <https://www.sciencedirect.com/science/article/pii/S2214999615012242>); Amnesty International, *UN landmark case for people displaced by climate change, 20 January 2020* (available at: <https://www.amnesty.org/en/latest/news/2020/01/un-landmark-case-for-people-displaced-by-climate-change/>).

²⁹¹ Dulal, Shah & Ahmad, *Social Equity Considerations in the Implementation of Caribbean Climate Change Adaptation Policies*, Sustainability, 2009 (available at: <https://www.mdpi.com/2071-1050/1/3/363/pdf>).

²⁹² Real GDP contracted by nearly 5% after Irma and 90% of all buildings were destroyed. To date, only about 10% have been rebuilt; Buiren & Ernst, *Kerncijfers Caribisch deel Koninkrijk*, SEO, 2019 [Key figures Caribbean Kingdom] (available at: https://www.tweedekamer.nl/sites/default/files/atoms/files/kerncijfers_koninkrijk_definitief_19022019.pdf).

²⁹³ Olsson et al, *Livelihoods and poverty* In: *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Field, C.B., et al eds.] (2014 Cambridge University Press), 796. (available at: https://www.ipcc.ch/site/assets/uploads/2018/02/WGIIAR5-Chap13_FINAL.pdf).

country inequalities’ constitutes a vicious cycle.²⁹⁴ The Minority Rights Group International stated that ‘climate change further reinforces inequalities and disproportionately affects minorities and indigenous peoples’.²⁹⁵ The Human Rights Council also stated that climate change ‘will be felt most acutely by those segments of the population who are already in a vulnerable position’.²⁹⁶

While the Kingdom of the Netherlands has yet to study the concrete effects of climate change on persons with migration backgrounds, it can be assumed that such a link exists, as there is great overlap between Dutch communities that have lower levels of education and income, and migrant communities. The latter disproportionately falls within the first category.²⁹⁷ In 2017, more than one quarter of the Dutch households with a non-Western migration background had a low income²⁹⁸ and in 2018, about half of refugee households risked serious poverty.²⁹⁹ This is important because persons with lower educational levels are generally, known to have lower life expectancy,³⁰⁰ and persons with a low socio-economic statuses are generally less healthy. These negative associations could be an indirect effect of the lack of nature in their neighbourhood and more traffic in their direct surroundings.³⁰¹ Other study shows that older persons with a non-Western migration background live less healthy years than Dutch people of the same age.³⁰² There are various underlying reasons for this.

First, most persons with a migration background live in the western part of the Netherlands, in cities that suffer the most from air and sound pollution.³⁰³ Second, approximately 11.000 people in the Netherlands die prematurely every year due to air pollution.³⁰⁴ This is mainly due to living close to motorways and industrial areas. While this data has not been disaggregated on the basis of ethnicity (as the Netherlands does not collect ethnic data), based on research mentioned, it can be assumed that persons with migrant backgrounds are disproportionately represented among those affected by premature mortality rates. Third, schools in marginalized communities, populated mainly (and often only) by persons with migration backgrounds, have much worse air quality than schools in white and highly-educated communities.³⁰⁵

²⁹⁴ S. Nazrul Islam and John Winkel, *DESA Working Paper no. 152: Climate Change and Social Inequality*, October 2017 (ST/ESA/2017/DWP/152).

²⁹⁵ Minority Rights Group, *Climate change further reinforces inequalities and disproportionately affects minorities and indigenous peoples, according to MRG’s annual trends report*, 27 June 2019 (available at: <https://minorityrights.org/2019/06/27/climate-change-further-reinforces-inequalities-and-disproportionately-affects-minorities-and-indigenous-peoples-according-to-mrgs-annual-trends-report/>).

²⁹⁶ Human Rights Council, *Human rights and Climate Change*, 25 March 2009 (UNRES/HRC/10/4).

²⁹⁷ Netherlands Institute for Social Research, *Arme migranten en autochtonen*, 27 September 2016 [Poor people with a migrant background] (available at: https://digitaal.scp.nl/armoedein kaart2016/arme_migranten_en_autochtonen/).

²⁹⁸ National Statistical Office, *Statistische trends: Armoederisico in 2017 toegenomen*, (13 February 2019), 19 [Statistical trends: Poverty risk increased in 2017] (available at: <https://www.cbs.nl/nl-nl/achtergrond/2019/07/armoederisico-in-2017-toegenomen>).

²⁹⁹ National Statistical Office, *Helpt vluchtelingenhuishoudens loopt risico op armoede*, 17 January 2018 [Half of refugee households are at risk of poverty] (available at: <https://www.cbs.nl/nl-nl/nieuws/2018/03/helpt-vluchtelingenhuishoudens-loopt-risico-op-armoede>).

³⁰⁰ Trouw, *De kloof groeit: de levensverwachting van hoogopgeleiden stijgt het snelst*, 16 August 2019 [The gap is growing: the life expectancy of highly educated people is rising the fastest] (available at: <https://www.trouw.nl/binnenland/de-kloof-groeit-de-levensverwachting-van-hoogopgeleiden-stijgt-het-snelst~b3d52e3b/?referer=https%3A%2F%2Fwww.google.com%2F>).

³⁰¹ National Institute for Public Health and the Environment, *Gezonde leefomgeving, gezonde mensen*, 2017 [Health living environment, healthy people] (available at: <https://www.rivm.nl/bibliotheek/rapporten/2016-0172.pdf>).

³⁰² Janssen, et al. *Gezonde levensverwachting op oudere leeftijd: een vergelijking van migranten en niet-migranten in drie Europese landen over tijd*, Tijdschr Gerontol Geriatr 49(6) 2018, p. 232 [Healthy life expectancy of older persons: a comparison of migrants and non-migrants in three European countries over time] (available at: <https://doi.org/10.1007/s12439-018-0267-3>).

³⁰³ RTL Nieuws, *Gezondheidsrisico vieze lucht en herrie* [Health risk of polluted air and noise] (available at: <https://www.rtlnieuws.nl/redactie/research/mgrkaart/mgrkaart.html>); Netherlands Environmental Assessment Agency, *Regionale bevolkings- en allochtonenprognose 2005-2025*, 2006, from page 60 onwards [Regional population and immigrant prognosis 2005-2025] (available at: https://www.pbl.nl/sites/default/files/downloads/Regionale_bevolkings-en_allochtonenprognoses_2005-2025.pdf).

³⁰⁴ European Environmental Agency, *Air quality in Europe 2019*, 16 October 2019, p. 68 (available at: <https://www.eea.europa.eu/publications/air-quality-in-europe-2019>).

³⁰⁵ One World, *Onderzoek: de lucht is vuiler op achterstandscholen*, 13 January 2020 [Research: the air is more pollute at schools of marginalized communities] (available at: <https://www.oneworld.nl/lezen/politiek/onderzoek-de-lucht-is-vuiler-op-achterstandsscholen/>).

The Dutch government has not yet studied the direct links between migration backgrounds and environmental changes. In order to have a better grasp on this relationship the government should carry out a research on the intersectionality between poverty, educational levels, migration background and environmental and climate change impacts.

XXI. Companies abroad

Transnational corporations registered in the Netherlands play a disproportionate role in climate change and related disasters in other nations, specifically in developing nations.³⁰⁶ The Dutch government has acknowledged responsibility for preventing involvement of any Dutch company in human rights abuses. Despite recommendations and concerns expressed by various institutions,³⁰⁷ the Netherlands has not taken appropriate actions to fulfil its obligations as laid out in the Convention. For example, the government has not implemented appropriate legislative and administrative measures to regulate corporations in order to ensure their activity abroad does not discriminate against indigenous peoples and ethnic minority communities. Moreover, there is evidence that suggests that the Netherlands support extractive industry companies - including companies accused of human rights abuses such as the Royal Dutch Shell and Unilever.

One example is Shell's conduct in Nigeria. The company is both the operator and a major shareholder of the largest joint venture in Nigeria, and has been extracting oil in the country since 1958. Shell's practices in Nigeria have led to many adverse environmental and human rights impacts, most pressingly, the rights of minorities, indigenous peoples and local communities. Shell has failed to address this situation on all accounts, leading to various court cases.³⁰⁸ A similar instance with shell occurred in the Philippines where more than 6.300 persons died after Typhoon Haiyan hit. The Filipino Human Rights Commission concluded that the Carbon Majors, of which Shell is one of the most important, could be held accountable for violating the rights of Filipino's for the damage caused by global warming.³⁰⁹

³⁰⁶ The UN Guiding Principles [or 'Ruggie principles'] assert a State's duty to: 'protect against human rights abuses by non-State actors, including by business, affecting persons within their territory or jurisdiction'. They clarify and elaborate on the implications of relevant provisions of existing international human rights standards, and provide guidance on how to put them into operation. The Guiding Principles refer to and derive from States' existing obligations under international law. The principles (UN Guiding Principles [2011] Principle 1); Guiding Principle 3 further explains State obligations, e.g. that a State is obliged to enforce laws, provide guidance and encourage businesses to respect human rights; OHCHR, *Frequently asked questions about the Guiding Principles on Business and Human Rights*, 2014 (available at: https://www.ohchr.org/Documents/Publications/FAQ_PrinciplesBusinessHR.pdf).

³⁰⁷ CERD, *Concluding observations on the nineteenth to twenty-first periodic reports of the Netherlands*, 25 September 2015, paras 37-18 (U.N. Doc. CERD/C/NLD/CO/19-20) UNHRC, *Report of the Working Group on the Universal Periodic Review Netherlands*, 18 July 2017, particularly Recommendation 131.108, Recommendation 131.109, Recommendation 131.110; (UN Doc A/HRC/36/15), UNCHR, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, 2019 (UN Doc A/HRC/41/54) (strong arguments were brought forward on p. 2, 19).

³⁰⁸ See e.g. African Commission on Human and People's Rights, *Social and Economic Rights Action Center & the Center for Economic and Social Rights v. Nigeria* (Communication No. 155/96, 27 May 2002; Greenpeace, *Seeking justice: the rising tide of court cases against Shell*, May 2018 (available at: http://www.greenpeace.nl/Global/nederland/report/2018/klimaat_en_energie/Investor%20Briefing%20Seeking%20justice%20the%20rising%20tide%20of%20court%20cases%20against%20Shell.pdf).

³⁰⁹ Kyla Mandel, *It May Have Just Gotten A Lot Easier To Sue Exxon And Shell For Climate Change Devastation*, 12 December 2019 (available at: https://www.huffpost.com/entry/philippines-commission-on-human-rights-fossil-fuel-companies-liable-climate-change_n_5df1698de4b01e0f29597ad8?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xILmNvbS8&guce_referrer_sig=AQAAAM0q_fpUqZCTjoBaNdxh5Vq38xudnydswCH0GjDDCfzjFWSRyJuEgy-x-tvTxTGZ_h-XIyIlevu9uG4cc-laLtxAJzoP_U9DyWIPsj4O--u9V8KQyGSGtgmlPj2fDlinHF_gIhtN7Pz2z-Hr-oh8Xe4ZRLNrX2FvOONnPfntCkQM6);

Isabella Kaminski, *Carbon Majors Can Be Held Liable for Human Rights Violations, Philippines Commission Rules*, 9 December 2019 (available at: <https://www.climate-liabilitynews.org/2019/12/09/philippines-human-rights-climate-change-2/>).

A second example is the Anglo-Dutch company Unilever, which continues to be one of the principal beneficiaries of the former colonisation of Africa.³¹⁰ Unilever has been held responsible for exploitative behaviour in former Dutch colonies such as Indonesia.³¹¹ In 2019, for example, a study showed that Unilever was structurally involved with palm oil suppliers who intentionally caused forest fires in Indonesia. These fires had detrimental health consequences for the local population.³¹² According to various reports 900.000 Indonesians suffered acute respiratory infections caused by the smoke arising from the forest fires.³¹³ Despite these gross human rights violations, and more specifically rights ensured under the ICERD, the Netherlands fails to take measures that address this corporate conduct.

Considering these examples and various similar examples not mentioned in this report,³¹⁴ the Netherlands has failed to take serious action after the 2015 Concluding Observations of this Committee. As a consequence of the Netherlands not upholding their obligations, and failing to properly regulate Dutch companies, these companies continue to ignore and abuse human rights. This inaction leads to violations of the obligations of the Netherlands under this Convention. For this reason the government must adopt appropriate legislative and administrative measures to regulate corporations to ensure their activity abroad does not discriminate against indigenous peoples and ethnic minority communities.³¹⁵

³¹⁰ Alexander Reid Ross, *Biofuels, Land Grabs, Revolution* in: 'Grabbing Back, essays against global land grab; Alexander Reid Ross (ed.), (AK Press 2014).

³¹¹ Independent, *Nestle and Unilever 'linked to Indonesian forest fires engulfing southeast Asia in noxious haze*, 9 November 2019 (available at: <https://www.independent.co.uk/environment/indonesia-forest-fires-palm-oil-nestle-unilever-pg-deforestation-slash-burn-a9195716.html>).

³¹² Greenpeace International, *Burning down the house: how Unilever and other global brands continue to fuel Indonesia's fires*, 12 September 2019 (available at: <https://storage.googleapis.com/planet4-netherlands-stateless/2019/11/431ae3ba-burning-down-the-house-greenpeace-indonesia-fires-briefing.pdf>).

³¹³ Greenpeace, *Unilever: mooie beloftes en toch betrokken bij Indonesische bosbranden voor palmolie*, 4 November 2019 [Unilever: nice promises and yet involved in Indonesian forest fires for palm oil] (available at: <https://www.greenpeace.org/nl/natuur/26136/unilever-mooie-beloftes-en-toch-betrokken-bij-indonesische-bosbranden-voor-palmolie/>).

³¹⁴ See e.g. RTL, *'Baggerbedrijf Van Oord betrokken bij mensenrechtenschendingen Angola'* 20 January 2020 ['Dredging company Van Oord involved in human rights violations in Angola'] (available at: <https://www.rtlnieuws.nl/nieuws/buitenland/artikel/4991441/baggerbedrijf-van-oord-mensenrechtenschendingen-angola-ing>).

³¹⁵ In 2014, the Netherlands has adopted a National Action Plan on Business and Human Rights, this document, however, does not include any concrete steps to ensure corporate responsibility or to enforce national legislation includes corporate duties to respect the rights established under the Convention (available at: <https://www.rijksoverheid.nl/documenten/brochures/2014/05/28/nationaal-actieplan-bedrijfsleven-en-mensenrechten>).

Conclusion

The experts and NGOs that have contributed to this report submit that the below concerns are the most important concerns on racial discrimination in the Kingdom of the Netherlands.

General prohibition on discrimination in the Netherlands:

- The current definition of discrimination is not in line with article 1 of the Convention.
- A racial motive is not considered to be an aggravating factor for criminal offences.

Discrimination of Caribbean citizens of the Kingdom:

- The constitutional imbalance and the lack of responsibility by the Dutch government maintains racialized discourses and practice.
- The Dutch legislature uses a discriminatory treatment of the inhabitants of the BES islands.
- The Dutch legislature and local government make a discriminatory differentiation between Dutch citizens born in the European Netherlands and those born in or migrating from the Dutch Caribbean.

Anti-discrimination facilities:

- Aruba, Curaçao and St Maarten all do not have a municipal anti-discrimination service.
- There is no national supervisory body to assess the quality and the impact of the ADVs.
- The scope of the GBA is too narrow, as it does not require a preventive policy.
- The registration of data by the ADVs is different than the registration procedure of the police, which makes it difficult to compare the data with each other.
- Municipalities are not obligated to spend the state-provided fund on the ADVs.

Freedom of expression and hate speech:

- The Dutch mainstream political discourse includes xenophobic, fear-fuelled rhetoric and hate speech.
- There is no organisation that compiles data about online hate speech.

Civic integration and language requirements:

- A discriminatory distinction between ‘western’ and ‘non-western’ nations is made in granting a MVV visa.
- There is a lack of effective monitoring and research conducted on the effectiveness of the integration conditions and into their impact on specific groups.
- A discriminatory distinction is made between persons who are born in the Netherlands and who migrated to the Netherlands in the context of access to social assistance.

Ethnic Profiling:

- Many police officers are not aware of the new policy in which ethnicity is not a ground for police checks and many officers do not understand why ethnic profiling is an issue.
- The Royal Marechaussee uses ethnicity as in risk profiles and as a ground for selecting the selection of whom to check.

Profiling by algorithms:

- The government uses an algorithm that risks biased and discriminatory profiling outcomes.

Discrimination against Muslims:

- Muslims often experience discrimination in all areas of life.
- Muslims feel that Islamophobia is present across the Netherlands.

Ban on face-covering clothing:

- The ban on face-covering clothing targets Muslim women who have faced more conflicts and instances of harassments since the ban's introduction. This leads to isolation instead of integration.

Nationality-Stripping:

- The Act that enables the withdraw of the Dutch nationality of persons who have participated in a terrorist organisation is discriminatory, as it only applies to persons with dual nationality.
- The Act especially affects Dutch persons from Morocco and Turkey, because they are the largest groups in the Netherlands with dual nationality.

Treatment of LGBTI asylum-seekers:

- In practice the IND still often uses the non-scientific criteria such as a 'process of awareness' and of 'self-acceptance' and because of this LGBTI-asylum seekers face the risk that their asylum requests are unfairly denied.
- LGBTI persons are concerned about their safety when placed in reception centres, because the authorities do not in all cases ensure separate and secure housing or sections.

Immigration Detention:

- The principle of ultimum remedium is not used properly used.
- The amount of undocumented migrants in detention has increased.
- There is not enough protection for vulnerable persons under the new law on migrant detention.
- Children, especially girls, do not feel safe in family locations.
- Too many unaccompanied minors are disappearing.
- The situation in Curacao's detention centres with Venezuelan asylum-seekers is problematic.

Statelessness:

- There is no statelessness determination procedure in place.

Travellers camp policy:

- Several municipalities are not implementing the new policy framework in order to provide travellers with a genuine opportunity to live in a caravan camp.

Labour Market:

- Persons with a migrant background are more often unemployed, have a lower income and have jobs requiring fewer skills than persons with a Dutch background.
- Women with a migrant background are participating less in the labour market.

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- It is harder for persons with a migrant background, especially with a non-Western background, to find a job.
- Discrimination in application procedures and by employment agencies is a common problem.
- The authority of the Labour Inspectorate is inadequate as it is not able to monitor discrimination policies.
- The recommendation on anonymised curricula vitae is sufficiently followed.

Education:

- Students with a migrant background perform lower at schools and receive a lower secondary school level advice by teachers than native Dutch students
- Pupils who speak an additional language at home, end up in lower educational tracks than their cognitive abilities require
- The current ‘Dutch History Canon’ is not representative enough on the reality of the slave trade, enslavement and colonisation.
- Schoolbooks frequently contain stereotypical characters and there is a lack of characters with non-Western backgrounds.

Health and social care:

- Individuals with low Dutch language proficiency do not have equal access to health care, as there is no compensation for the use of interpreters or translators in healthcare.
- Undocumented persons are frequently turned away at hospitals due to lack of insurance or because they cannot prove that they have proper documentation.
- Access to food and shelter is not offered unconditionally to undocumented migrants.

Sports:

- Discrimination and racism in the football sector are a common practice.

Intersectional challenges of multiple forms of discrimination:

- There is a lack of research on intersectional issues that affect minorities with diverse backgrounds.

Climate change:

- There is a lack of research on how the climate crisis will impact the Dutch Caribbean.
- There is a lack of research on the links between migrant backgrounds and environmental changes.

Companies abroad:

- Transnational corporations registered in the Netherlands play a disproportionate role in climate change in other nations.