

Nederlands Juristen Comité voor de Mensenrechten

Dutch Section of the International Commission of Jurists



Joint parallel report to the nineteenth to twenty-first Periodic Reports of the Netherlands on the International Convention on the Elimination of all Forms of Racial Discrimination (CERD)

The Netherlands, July 2015

Contact details:

Nederlands Juristen Comité voor de Mensenrechten (NJCM)

(Dutch section of the International Commission of Jurists)

P.O. Box 778

2300 AT Leiden

The Netherlands

+31 (0)71 527 7748

NJCM@law.leidenuniv.nl

www.njcm.nl

This report has been drafted by Eefje de Kroon, Fraukje Panis and Marianne Tas with the support of Nadja Groot, on behalf of the Dutch section of the International Commission of Jurists (NJCM), with written contributions from the following NGOs and other civil society actors:

- Antidiscriminatievoorzieningen Nederland (*The collective of Anti-Discrimination Facilities in the Netherlands*)
- Art.1 (*Dutch knowledge centre on discrimination*)
- Federatie van Nederlandse Verenigingen tot Integratie van Homoseksualiteit – COC Nederland (*Federation of Dutch Associations for Integration of Homosexuality - COC Netherlands*)
- Defence for Children - ECPAT
- Dutch section of the International Commission of Jurists (NJCM)
- Fischer Attorneys
- Johannes Wier Stichting (*Foundation for Health and Human Rights*)
- Kenniscentrum Gemengde Scholen (*Knowledge Centre Mixed Schools*)
- Meldpunt Discriminatie Internet (MDI, *The Dutch Complaints Bureau For Discrimination on the Internet*)
- New Urban Collective
- Privacy First
- Professor Peter Rodrigues (Leiden University), and Marija Davidovic (PhD candidate Radboud University Nijmegen) in their personal capacities
- Peter Jorna Drs., Consultancy Social Inclusion Roma & Sinti Issues, in his personal capacity
- Stichting LOS (*Foundation for undocumented migrants*)
- TIYE International (*Platform of 21 national organizations of black, migrant and refugee women in the Netherlands*)
- VluchtelingenWerk Nederland (*The Dutch Council for Refugees*)

And with the support of:

- Artria Institute on Gender Equality and Women's History
- Dutch Coalition for Disability and Development (DCDD)
- Femmes for Freedom
- Humanity in Action's Senior Fellow Network (SFN) the Netherlands
- International Federation of Health and Human Rights Organizations (IFHHRO)
- Movisie, kennis en aanpak van sociale vraagstukken (*Movisie, Netherlands centre for social development*)
- Overlegorgaan Caribische Nederlanders (OCaN, *Dutch Caribbean Consultative Body relating to the integration of Dutch Caribbean citizens in the Netherlands*)
- Republiek Allochtonië
- RESPECT Network Europe (Migrant Domestic Workers)
- Samenwerkingsverband Marokkaanse Nederlanders (SMN, *Dutch-Moroccan Alliance*)
- Stichting Kezban (*Foundation to prevent domestic violence within ethnic minorities*)
- Vluchtelingenorganisaties Nederland (VON, *Refugee organisations the Netherlands*)

TABLE OF CONTENTS

1. Introduction	4
2. General Remarks	5
3. Commentary in the light of the provisions of the CERD	7
ARTICLE 2 (1):	7
1. <i>Public debate on racism and state responses</i>	7
2. <i>Ethnic profiling</i>	9
3. <i>Lacking government efforts to monitor and address racial discrimination</i>	10
4. <i>Fostering expertise and independence of Anti-Discrimination Facilities</i>	12
ARTICLE 2 (2):	12
1. <i>Examination abroad for ‘non-Western’ state nationals</i>	12
2. <i>Immigration detention</i>	13
3. <i>Border detention of asylum seekers</i>	15
4. <i>Treatment of LGBTI asylum seekers</i>	16
5. <i>Special protection for child victims of trafficking</i>	17
6. <i>Absent policies regarding the protection and inclusion of Roma, Sinti and Travelers</i>	18
ARTICLE 4:	19
1. <i>Subsidy cuts and abolishment of major anti-racism organizations</i>	20
ARTICLE 4 (A):	21
1. <i>Legal recourse</i>	21
2. <i>Improving police registration and the Regional Discrimination Deliberation</i>	22
3. <i>The Wilders Court Case</i>	23
ARTICLE 5 (A)	25
1. <i>Racial discrimination by judges and forensic psychiatrists</i>	25
ARTICLE 5 (D) (I):	26
1. <i>@MIGO-BORAS (automatic border control)</i>	26
ARTICLE 5 (D) (III)	27
1. <i>Statelessness</i>	27
ARTICLE 5 (E) (I):	27
1. <i>Data and causes for unemployment</i>	27
2. <i>Policies regarding discrimination on the labor market</i>	30
3. <i>Roma and Sinti</i>	32
ARTICLE 5 (E) (III):	32
1. <i>Rejected asylum seekers</i>	32
2. <i>Roma, Sinti and Travelers</i>	33
ARTICLE 5 (E) (IV):	34
1. <i>Basic human rights and protection for undocumented migrants</i>	34
2. <i>Abolishment of subsidy for interpreter-translators in public health care services</i>	36
ARTICLE 5 (E) (V):	38
1. <i>Equal opportunities</i>	38
2. <i>Lacking anti-segregation policies in educational facilities</i>	39
4. List of recommendations	42

1 INTRODUCTION

This document contains the comments of twenty-seven Dutch NGOs on the nineteenth to twenty-first periodic reports of the Kingdom of the Netherlands on the implementation of the International Convention on the Elimination of all forms of Racial Discrimination. These periodic reports of the Netherlands cover the period up to December 2014. This parallel report contains the comments of a number of Dutch NGOs and other actors in civil society (hereinafter the authors or the Dutch NGOs) on the abovementioned periodic reports of the Netherlands on the implementation of the Convention.

The Dutch NGOs welcome the opportunity provided by the Committee on the Elimination of Racial Discrimination (hereinafter the CERD Committee, or Committee) to submit their shadow report for consideration during the upcoming session. This report predominantly focuses on the European part of the Kingdom of the Netherlands. It will make a number of general observations, followed by comments and recommendations on an article-by-article basis, which will be repeated at the end of the report. The Dutch NGOs sincerely hope that the findings presented in this report will contribute to an open debate, and a fruitful dialogue between the Committee members and the government delegation.

This parallel report is based on the joint expertise of the submitting parties. Therefore, as part of the scope of the Convention may be outside the direct expertise of the submitting parties, the authors have opted not to address every provision of the Convention, or relevant occurrence in the Netherlands. It should be noted that this does not necessarily mean that the authors acquiesce or agree with certain developments or (in-)actions by the Dutch government.

2 GENERAL REMARKS

From the 2013 Kingdom's report to the CERD, in which the government responds to the Committee's concluding observations of 2009, the Dutch NGOs understand that the government has made some effort to address the Committee's concerns regarding racial discrimination in the Netherlands. We welcome the government's affirmation that 'it is very important for every citizen to have equal opportunities to develop and succeed' (part I, par 4). The government has taken some steps towards this realization, such as the implementation of the EU Framework decision on racism and xenophobia, the establishment of the Netherlands Institute for Human Rights and other anti-discrimination bodies, various studies about discrimination, and some concrete measures to counter discrimination in specific sectors, such as the labor market. However, these developments are largely surpassed by the government's adoption of a mainstreaming approach to integration and discrimination in which no particular measures are taken with respect to specific groups – which has severe implications for racial discrimination in the Netherlands. The current government has shown an unwillingness to develop an effective structural approach to combat discrimination and a disinclination to rebuke racism in general and specific occurrences in particular.

The developments signaled in our parallel report to the CERD of 2009 have taken a very worrisome path. The last couple of years, the debate about racism was brought to a society-wide and national level, propelled by a heated discussion about the controversial figure of Black Pete (see 2 (1) section 1); as well as occurrences relating to discrimination on the labor market (see 5 (E) (I)); ethnic profiling by the police (see 2 (1) section 2); and public figures such as politician Geert Wilders who continuously target racial minorities in public debate (see 4(A) section 4). While society, and especially the victims of the racism in this discussion, was in need of a vocal government, denouncing racism, the government instead remained largely quiet and inept to deal with the situation. In some situations it even defied the efforts of anti-racism activists. For example, Prime-Minister Mark Rutte stated in November 2014, at the height of the minority-led campaign against Black Pete and racism that according to him Black Pete could stay.¹ Although it was a personal statement, nevertheless such statements contribute to the impression that the government had already taken sides in this public discussion.

Indeed, while the government introduced an action program to combat discrimination in 2010 –which by no means should be called an Action Plan considering its lack of commitment–, very little explicit attention is given to how the government plans to counter discrimination on the grounds of race and ethnicity. Without a commitment to clear goals and measures, there is very little hope that the action program will have a positive impact. While the NGOs welcome that the government has expressed its commitment to combat several forms of (racial-) discrimination such as gender and sexual orientation,, it is notable that discrimination on the base of race and ethnic background does not receive much attention. This despite the fact that race and ethnic background are the most frequently mentioned grounds for discrimination in relevant reports by antidiscrimination facilities² and the police.³ As also noted by the government's report to the CERD Committee, racial discrimination is on the rise.⁴ Therefore, the government should focus more on combating discrimination on the basis of race and ethnicity.

Several government commissioned reports have indicated the reality for ethnic minorities with respect to racial discrimination in the Netherlands. In 2014, the Netherlands Institute for Social Research (SCP) demonstrated that up to 50% of ethnic minorities (Turkish, Moroccan, Surinamese, Antillean and migrants from Central and Eastern Europe) experienced discrimination in the public space in the last twelvemonths. In comparison, only 10% of all inhabitants of the Netherlands experienced discrimination in the public space during that same period.⁵ It should be kept in mind, that

¹ See: hpdetijd.nl/2014-11-14/mark-rutte-zwarte-piet-mag-zwart-blijven/.

² M. Coenders, J. Kik, E. Schaap, J. Silversmith & R. Schriemer, *Kerncijfers 2011: Overzicht van discriminatieklachten en -meldingen geregistreerd bij antidiscriminatievoorzieningen*, Leeuwarden/Nijmegen: Landelijke Brancheorganisatie van Antidiscriminatiebureaus (LBA)/Samenwerkende Antidiscriminatievoorzieningen Nederland (SAN) 2012.

³ B. Tierolf, N. Hermens, L. Drost & L. van der Vos, *Poldis rapportage 2012, met themarapportage antisemitisme*, Utrecht: Verwey-Jonker Instituut 2013.

⁴ See part II para. 6 of this report.

⁵ Sociaal Cultureel Planbureau, *Ervaren discriminatie in Nederland*, The Hague: Sociaal Cultureel Planbureau 2014.

official statistics only show the tip of the iceberg of the real problem of racial discrimination in the Netherlands. This, among other reasons, has to do with the fact that willingness of victims to report a case of racial discrimination is very low. Although the government made a priority of improving the (digital) accessibility of local antidiscrimination bureaus, and reforming the complaints- and registration procedure, there is no evidence that this policy has been effective and has led victims of discrimination to turn to the authorities more frequently. In fact, the NGOs report that minorities increasingly distrust that authorities will effectively address their complaint. Meanwhile, since 2013 the antidiscrimination bureaus receive less (financial) support and are undergoing major changes, which makes it difficult for them to accommodate victims (see (2(1) section 4).

Although these findings underline the urgency to tackle the problem of racial discrimination in the Netherlands, the government fails to acknowledge and address the problems highlighted by international bodies (including the CERD Committee and ECRI), its own institutes (including the Netherlands Human Rights Institute and the National Ombudsman) as well as various civil society actors (including the Dutch NGOs). An integral government policy on the subject of racism, engaging multiple policy areas and policy makers has yet to be developed. There is also no single protocol for regional anti-discrimination deliberation, and policies on the local level are severely lacking.

The Netherlands has increasingly put the responsibility for minorities' participation in society on the shoulders of the minorities themselves, and shown an unwillingness or inability to genuinely and effectively engage with problems ethnic minorities face in reality. This expresses itself in many ways described in this report, for example the abolishment of subsidies for interpreter-translators in public health care services. As the government expects migrants to attain a very high level of Dutch by themselves upon arrival, this leads these persons to have diminished access to health care and right to privacy, as described in section 5 (E) (IV) section 3.

The societal tensions and erroneous government's policies render in particular children from ethnic minorities vulnerable. They get lower chances to develop in the field of education and therefore employment (see 5 (E) (V) section 1); often go to de facto segregated schools (see 5 (E) section 2); undocumented children are denied social services (5 (E) (IV) section 2),; and child victims of trafficking do not receive the protection they need (see 2 (2) section 4).

We are concerned that a particularly vulnerable group, undocumented migrants, is overlooked or ignored by the government, also in its reporting to the CERD Committee. The treatment of undocumented migrants can amount to racially discriminatory and possibly inhuman treatment, as further explained in the rest of this report (see for example 5 (E) (IV)). Their detention is characterized by very harsh conditions, and, despite a judgment of the European Committee of Social Rights, they are denied the most basic services when they cannot be deported (see 5 (E) (III) section 1 and 5 (E)(IV) section 1). There are other groups whose situation is not adequately addressed by the government, including stateless persons, Roma, Sinti and Travelers, and citizens of the Dutch Kingdom living in Bonaire, St Eustatius and Saba – the Caribbean Netherlands.

The described developments are lamentably paired with radically decreasing support to civil society actors that fight racial discrimination. As set out under article 4, most anti-discrimination organizations and state funded minority representative bodies have faced severe subsidy cuts, leading to some of them having to close their doors, or fight for their existence. Whereas the Dutch government, through its subsidy policies, used to stimulate the development of an independent NGO structure, the latest trend seems to be to allocate money to governmental organizations and to divert funds from the NGO sector (see 4 (1)). There are increasingly fewer independent organizations that monitor current and especially new developments, such as increasing security measures –with respect to intelligence gathering and law enforcement – and existing signs that these affect ethnic minorities disproportionately. It is understandable that the financial crisis has negative consequences for the size of the government budget, but there seems to be a political development to cut funds and give preference to governmental institutions to carry out human rights tasks, including countering racism, which should really be executed by independent civil society actors. While ethnic minorities already experience the effects of the economic crisis more severely than other groups, such as on the labor market (see 5 (E) (I)), decreasing these subsidies could lead to a downward spiral of racism and diminished chances for ethnic minorities as their positions are less monitored, their voices will be less heard, and even less efforts will be taken to improve their situation.

3 COMMENTARY IN THE LIGHT OF THE PROVISIONS OF THE CERD

ARTICLE 2 (1)

In the Concluding Observations of the Committee (paragraph 4) of 16 March 2010, the Committee recommends that the Dutch government proceeds with the preparation and implementation of a plan of action to address discrimination in all areas covered by the Convention. The Dutch NGOs welcome the National Action Plan to combat discrimination that the Dutch government presented in 2010. However, this plan does not provide sufficient action to address discrimination on the basis of race. Furthermore, while a second action plan – the National Action Plan on Human Rights (2013)–listed countering discrimination as one of five priorities, concrete and effective measures to protect vulnerable groups from discrimination continue to be lacking. The NGOs are disappointed that the Dutch government’s policies to counter discrimination (at national and local level) prove insufficient to combat discrimination on the grounds of race.

1. *Public debate on racism and state responses*

Since 2012 the debate about whether the figure of Black Pete in the tradition of Sinterklaas (Sint Nicolaas) is racist has triggered fierce debate. A group of anti-black racism activists argue that the annual gift-giving celebration that takes place in December is an offensive caricature of black people.⁶ Black Pete is a person black-faced through make-up, with red lips, a wig with frizzy black hair, and a colonial page outfit. Black Pete takes an assistant position next to a white man called ‘Sinterklaas’.⁷ In 2013, twenty-one people lodged a formal complaint with the Municipality of Amsterdam, demanding cancellation of the Sinterklaas parade in Amsterdam. After the Netherlands’ own watchdog, the Netherlands Human Rights Institute, had declared the figure of Black Pete to be a racist component in the Sinterklaas celebrations,⁹ the District Administrative Court of Amsterdam concluded Black Pete to be a negative stereotype of black people, to be offensive to black people, and to violate their right to a private life. Consequently, the Court stated that the mayor of Amsterdam, Eberhard van der Laan, should have deliberated whether to allow Black Petes in their current form at the Sinterklaas parade. However, the appeal that was subsequently lodged by the Mayor and pro-Black Pete activists was successful. The Council of State, which is the highest administrative court in the Netherlands, overturned the lower court decision stating that the mayor is not authorized to judge the content of festivities in the process of granting a permit. The mayor may only consider whether public order and safety are at stake, not whether stigmatization, unequal treatment or discrimination might result as a consequence of the decision. It is now up to the legislative authorities how this judgment will be implemented.

On the day of the arrival of Sinterklaas and his Black Petes in November 2014, the mayor of Gouda prohibited a non-violent silent protest against Black Pete and racism near the site of the parade. Citing the need to preserve public order, the protestors were allowed to instead gather in designated zones away from the main event and public attention. Despite the mayor’s decision, many protesters decided to enter the city center and continue their silent and peaceful protest there. Subsequently, eighty people were arrested by the police, in one case violence was used. The arrests were made by

⁶ M. Esajas, ‘Black Pete. The Dutch tradition continues to polarize a nation’, 22 November 2014, *Afropean*, afropean.com/black-pete-the-dutch-tradition-continues-to-polarize-a-nation/.

⁷ Ibid.

⁸ See: interview with Verene Shephard on Dutch public broadcaster, available here: eenvandaag.nl/binnenland/47551/zwarte-piet-terugkeer-naar-slavernij-en-moet-stoppen; United Nations, Office of the High Commissioner for Human Rights (2013), Letter of the Chair-Rapporteur of the Working Group on people of African descent; the Special Rapporteur in the field of cultural rights; the Independent Expert on minority issues; and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, 17 January 2013, available at: [spdb.ohchr.org/hrdb/23rd/public_-_AL_Netherlands_17.01.13_\(1.2013\).pdf](http://spdb.ohchr.org/hrdb/23rd/public_-_AL_Netherlands_17.01.13_(1.2013).pdf). The letter from the Dutch government in response to the letter of the UN working group is available at: scribd.com/doc/177304035/Het-Nederlandse-antwoord-op-de-VN-brief. See also: N. Groot & E. de Kroon, ‘Black Pete’ and the legacy of racism in the Netherlands’, 14 November 2013, *Open Society Foundations*, opensocietyfoundations.org/voices/black-pete-and-legacy-racism-netherlands.

⁹ See: mensenrechten.nl/toegelicht/zwarte-piet.

police on foot and horseback. People of color in the crowd who were not participating in the demonstration were approached by officers who questioned their presence at the event – and some were reportedly arrested. The protesters were released after a few hours of imprisonment.

Only a week before these arrests, the National Ombudsman had ruled that the arrest of anti-racism demonstrators and artists Quinsy Gario and Jerry Afriyie during the Sinterklaas parade in 2011 was excessively violent and illegal, because it violated their human rights –including the freedom of expression.¹⁰ In Gouda, Jerry Afriyie was violently arrested for the exact same opinion.

The freedom to express one's opinions – even when the majority of the population may not agree with that viewpoint – is a crucial feature of a democracy in which minorities are protected. Maintaining public order is paramount, but for interference by law enforcement agencies, the threat to safety must be real and one that the police would be incapable of containing. Instead, in a silent and peaceful protest such as in Gouda, the police and law enforcement presence should have been deployed to preserve the right to peaceful protest and freedom of expression.

The repression of protest seen in Gouda underlines that many people within the Dutch government and public in general are reluctant to enter into dialogue with black citizens who have dissenting opinions over a cultural tradition. They generally see the tradition as an innocent children's holiday, which has been a long held cherished Dutch tradition. That said, the Black Pete debate is about more than whether cultural traditions amount to racism. It is about democratic debate and dialogue about racism and discrimination between citizens. The Netherlands continues to neglect its colonial past as well as problems with discrimination against minorities in the present. As will be explained in the following section, the annual slavery commemoration receives extremely little attention and subsidy and the funds are not secured and structural (see 4). Slavery also takes a very minor place in the Dutch school curriculum, leading to many Dutch people to know very little of this dark part of history and its current impact (see 5 (E) (V)). According to many researchers, the figure of Black Pete was produced while the Netherlands was involved in slavery and represents 20th century racist ideologies used to justify the enslavement of African people and encourage colonial expansion and segregation. It has been argued that 'long-entrenched racialised and gendered systems of inequality and political power'¹¹ were never entirely finished and appropriately dealt with. Such collective memory gaps make it difficult for many Dutch people to understand the parts of the slavery past that have not been dealt with, and could still affect black people in the Netherlands today.¹² Without understanding the roots of racism, it remains very difficult to counter it in its current form.

We witnessed that public debate regarding Black Pete triggered many racial slurs on (social) media, as well as in private circles. The MDI's annual report of 2014 shows that the debate about Black Pete has led to a record amount of complaints of racism, mainly on social media, predominantly filed by Dutch people of Surinamese, Antillean and African descent.¹³ The polarization of opinions about Black Pete reached a point where a sincere and balanced public conversation about racial equality would seem almost impossible. The government has an obligation to counter explicit racism, like the racism that was brought forward by the Black Pete debate, and it has a central role to play in fostering public understanding and awareness of structural racism. It should work to create a society in which all its citizens have equal opportunities for development and success. Unfortunately, the Dutch government has neglected these responsibilities.

In recent years, important national and international organizations criticized the Netherlands for discrimination and racism within its borders, as well as for taking insufficient measures to counter these practices. The European Network Against Racism (ENAR) demonstrated that racism and discrimination – particularly in education and employment – continue to reproduce structural inequalities.¹⁴ The Council of Europe's Commission Against Racism and Intolerance (ECRI) expressed concerns about racism in the field of *inter alia* education and employment. It called on the

¹⁰ See: prakkendoliveira.nl/en/news/dutch-ombudsman-arrest-of-protesters-against-zwarte-piet-in-violation-of-human-rights/.

¹¹ K. Nimako & G. Willemsen, *The Dutch Atlantic. Slavery, Abolition and Emancipation*, London: Pluto Books, 2011.

¹² See: stopblackface.com/beyond-blackface-emancipation-through-the-struggle-against-black-pete-and-dutch-racism/.

¹³ Stichting Magenta, Afdeling Meldpunt Discriminatie Internet, *Meldpunt Discriminatie Internet Jaarverslag 2014*, Amsterdam: Stichting Magenta, MDI 2015, meldpunt.nl/site/documents-oud/MDI%20Jaarverslag%202014.pdf.

¹⁴ E. de Kroon, *ENAR shadow report. Racism and related discriminatory practices in employment in the Netherlands*, ENAR 2014. See also Esajas 2014 (*supra* note 6).

Dutch government to develop a national strategy and policy against racism.¹⁵ Moreover, in a public statement, the National Ombudsman condemned the discriminatory nature of the political climate in the Netherlands.¹⁶

The NGOs request the Committee to recommend the government to acknowledge that racism is a problem in Dutch society. The freedom of speech and assembly, especially with respect to anti-racism should be respected.

The government should design an effective Action Plan in consultation with civil society, and develop and implement concrete projects aimed at awareness raising, as well as support such projects by third parties.

The government should also ensure adequate slavery commemoration (as well as other racism related issues) and address the link between this past and contemporary issues related to racial discrimination.

2. Ethnic profiling

In the last couple of years it has become increasingly apparent that the Dutch police uses ethnic profiling in its work as it applies stop and search measures on ethnic minorities without having an objective justification for such.¹⁷ This behavior amounts to racial discrimination and is prohibited under Dutch law and international conventions, among which the CERD. Human rights bodies have recommended states to gather data on the use of stop and search powers in order to detect practices of ethnic profiling and ensure that only objective information and behavior is used as a basis for police initiated action, with a view to preventing and tackling ethnic profiling. In spite of these recommendations, and the fact that the government has been confronted with the practice of ethnic profiling through civil society reports, the Netherlands continues to pay little special attention to this form of racial discrimination.¹⁸ It should be clear that ethnic profiling has a detrimental impact on the lives of ethnic minorities, their trust in the Dutch authorities, and society as a whole.

There are indicators that ethnic profiling has increased over the last two decades in the Netherlands. In 2012, the Dutch research institute SCP found that of the non-western minorities that have been in contact with the police in the last year, a third of them with a Turkish or Moroccan background felt discriminated.¹⁹ The same goes for 25% of Surinamese decent, and 20% of Antillean Dutch citizens.²⁰ This has to do with, among other things, a changing political discourse, in which it is no longer taboo to address minority groups as 'dangerous others'.²¹ Some even suggest that ethnic profiling is now seen as part of the solution in fighting certain types of crime.²² Furthermore, there has been a policy shift towards a focus on the prevention of crime, as an answer to a perceived increase in crime.²³ As a consequence of this shift, the discretionary powers for the police have expanded significantly, while at the same time recent research showed that police officers on the streets lack knowledge about the limits of these powers.²⁴ This in its turn has led to more risk of ethnic profiling.²⁵

¹⁵ European Commission against Racism and Intolerance (ECRI), *Fourth report on the Netherlands*, Strasbourg: Council of Europe 2013.

¹⁶ TV stations AVRO, VPRO and VARA, 'Interview with Alex Brenninkmeijer', *Buitenhof*, 20 October 2013.

¹⁷ For example among the Amsterdam police force. See: S. Çankaya, 'Welkom' in Politie: een antropologisch onderzoek naar in- en uitsluiting van etnische minderheden binnen de Politie Amsterdam-Amstelland, Amsterdam: Elco Drukkerij 2008. See also S. Çankaya, *De controle van marsmannetjes en ander schorriemorrie. Het beslissingsproces tijdens proactief politiewerk*, Den Haag: Boom Lemma 2012.

¹⁸ CERD Report of the Netherlands' government 2013, p. 3. See Amnesty International, 'Proactief politieoptreden vormt risico voor mensenrechten. Etnisch profileren onderkennen en aanpakken', Amnesty International: 2013, p. 21.

¹⁹ Sociaal Cultureel Planbureau, *Ervaren discriminatie in Nederland*, The Hague: Sociaal Cultureel Planbureau, 2014.

²⁰ Ibid.

²¹ J.P. van der Leun & M.A.H. van der Woude, 'Ethnic profiling in the Netherlands? A reflection on expending preventive powers, ethnic profiling and a changing social and political context', *Policing and Society: an International Journal of Research and Policy* 2011, pp. 444-455.

²² Q. Eijkman, 'Has the Genie Been Let out of the Bottle? Ethnic Profiling in the Netherlands', *Public Space: the Journal of Law and Social Justice* 2010 (5), pp. 1-21.

²³ Van der Leun & Van der Woude 2011 (*supra* note 21), p. 448.

²⁴ Inspectie Veiligheid en Politie, *Parate kennis. Bevoegdheden politie*, December 2014.

²⁵ Amnesty International 2013 (*supra* note 18), p. 17.

The effects of these policy changes on ethnic minorities have hardly been studied: there is insufficient information available regarding the choices that police officers make while exercising their (increased) discretionary powers, and quantitative data on police initiated actions is largely unavailable. Stop and search actions are only registered if they lead to a report or an arrest, but in most cases the person being stopped is let go without any charge.²⁶ The police itself does not keep record of its own actions in this respect either.

Another reason for the difficulty in mapping ethnic profiling is that complaints of ethnic profiling are very infrequently launched. However, this should not be accepted as a signal that there is no problem. As stated elsewhere in this report, the willingness and ability to report complaints regarding racial discrimination at the police is very low in general, and even lower in case of discrimination by the police.²⁷ For years now the complaint procedure of the police has been criticized for being too bureaucratic, non-transparent and not independent: the police itself assesses the initial complaint against their own colleague(s) as well as the possible solutions, procedures are lengthy (26 weeks on average), annual reports of the independent complaint commissions are not always publicly available²⁸, contact information of these commissions are hard to find or missing, it is unclear who is on the commissions, whether they are entirely independent, and how they handle complaints, and feedback of taken measures to the complainer is often lacking.²⁹

Police officers themselves are poorly prepared to deal with the Netherlands ethnically diverse society. This is illustrated by the fact that police officers from ethnic minorities feel discriminated by their own colleagues and less secure in the police organization.³⁰ In 2012, only 7 % of police officers had a migrant background and there are no indicators that this is improving.³¹ In (non-committal) internal police trainings that are meant to prepare officers to deal with a multicultural society and combating discrimination, no special attention is being paid to ethnic profiling.³² The National Expertise Center for Diversity of the police³³ that was providing this knowledge has recently been abolished and no efforts have been made to structurally include expertise on the multicultural society within the new police organization. This makes police officers little aware and capable of addressing racial discrimination. Research on the police's choices and data on the ethnicity of the people who have been subject to police initiated actions could help to indicate and combat patterns of ethnic profiling.

The NGOs request the Committee to urge the government to combat ethnic profiling, starting with a proper collection of data and information about police's stop and search practices. This should be done by the police itself, as well as independent organizations. Based on this information and in consultation with civil society and minority representatives, the government should design effective policies and make sufficient resources available. The police should be encouraged to devote structural attention to the issue of racial discrimination and ethnic profiling in its policing, by addressing it as an integral part of police trainings and internal monitoring of police action.

3. *Lacking government efforts to monitor and address racial discrimination*

In 2009, the *Municipal Anti-Discrimination Facilities Act* (Wet Gemeentelijke Antidiscriminatievoorzieningen) took effect.³⁴ The law determines that all persons in the Netherlands should have access to a facility that handles complaints about discrimination on a local level. The

²⁶ Idem, p. 45. See also Van der Leun & Van der Woude 2011 (*supra* note 21), p. 123.

²⁷ Amnesty International 2103 (*supra* note 18).

²⁸ Idem, p. 42.

²⁹ See: amnesty.nl/nieuwsportaal/nieuws/etnisch-profileren-in-de-melkweg.

³⁰ J. Broekhuizen, J. Raven & F.M.H.M. Driessen, *Positie en expertise van de allochtone politiemedewerker. Op weg naar een volwaardige plaats binnen de politie*, Utrecht: Bureau Driessen, Sociaal Wetenschappelijk Onderzoek 2006, bureaudriessen.nl/publicaties/Positie%20en%20expertise%20allochtone%20politiemedewerker.pdf.

³¹ Ministry of Security and Justice, *Jaarverslag Nederlandse Politie 2012* (annual report police), 2013. See also http://www.parool.nl/parool/nl/224/BINNENLAND/article/detail/3943247/2015/04/02/Niet-altijd-gastvrije-omgeving-bij-Nationale-Politie-voor-allochtone-agenten.dhtml?cw_agreed=1

³² Amnesty International 2013 (*supra* note 18), p. 25.

³³ Landelijk Expertisecentrum Diversiteit (LECD).

³⁴ See: government.nl/issues/discrimination/government-measures.

facility serves to register complaints, give support and advice to the complainer, contact the person/organization that is accused of acting in a discriminating manner and, if necessary, point the complainer to the appropriate authorities such as the police. Since 2009, the facilities together receive an average of 6,000 complaints per year.³⁵

The evaluation of the Municipal Anti-Discrimination Facilities Act demonstrated that 98% of the municipalities established such a facility. Furthermore, most of the municipalities have only implemented the parts of the Act that are mandatory, being individual complaints handling and registration. They do not organize additional activities, such as raising awareness about discrimination or taking measures when companies discriminate (for example, the withdrawal of subsidies). This is caused mainly by the fact that most municipalities (84%) still do not have an anti-discrimination policy. When they do have such a policy it is often not integrated in the work of other departments (for example, departments involved with the withdrawal of licenses or involved with education).³⁶

Furthermore, the Municipal Anti-Discrimination Facilities Act stipulates that local governments should report to the national government annually on the number and nature of the reports of discrimination in their municipality. The evaluation of the Act in 2012 concluded that the reporting format was very limited and does not provide the national government with useful information regarding trends and developments in registered complaints of discrimination. For example, the reports do not provide information regarding the (self-declared) ethnicity of the complainant.

Much more needs to be done to create a more coherent, sustainable government policy regarding racial discrimination. The Dutch NGOs appreciate that the Ministry of the Interior and Kingdom Relations has now taken the lead in coordinating government policy with respect to combating racism. However, more effort needs to be made to consolidate existing policies and knowledge within the various Ministries that have been involved in dealing with racial discrimination in the past, with the information available at regional and municipal level. At the moment, the Municipal Anti-Discrimination Facilities reports are not analyzed in light of other documents on the discrimination of ethnic minorities, such as police reports, records of the public prosecutor and judiciary, opinions by the Netherlands Institute on Human Rights and local and national surveys. The combination of available data would give a more accurate picture of racial discrimination in the Netherlands. The lack of such efforts is contrary to the Committee's Concluding Observations (number 10) of 16 March 2010 in which it requests more detailed information of racism related crimes.

Since Bonaire, St Eustatius and Saba are special municipalities within the Kingdom of the Netherlands, the Municipal Anti-Discrimination Facilities Act also took effect on these islands. However, no Antidiscrimination-Facility or any other government supported independent agency has been established where people can submit complaints about racial discrimination. As there is no official data on racial discrimination in the Dutch Caribbean, these realities are ignored by the Dutch government. As long as the government does not make a genuine effort to monitor discrimination of ethnic minorities everywhere on its territory, it will not be capable of formulating appropriate policies to protect them.

The NGOs request the Committee to recommend the government to develop an effective strategy to monitor racial discrimination, in which it takes into account all relevant information, as is required in order to develop effective anti-discrimination policies to protect ethnic minorities. The Ministries should develop an integrated policy and working structure to combat racial discrimination with clear points of action. The government should produce reports on discrimination that combine the data and analysis that is available at the local, regional and national level. Reports should provide combined analyses and put the data into context, with experts on the different data sources providing clear recommendations to the government.

All municipalities should formulate (integral) discrimination policies, which are necessary to counter discrimination at the local level.

³⁵ RADAR, *Kerncijfers 2011. Overzicht van discriminatieklachten en –meldingen geregistreerd bij antidiscriminatievoorzieningen*, Leeuwarden/ Nijmegen: LBA & SAN 2012, radar.nl/sites/radar/files/20120813111656_1_Kerncijfers-2011.pdf.

³⁶ Partners+Pröpper, *Definitief Rapport, Evaluatie van de Wet Gemeentelijke Antidiscriminatievoorzieningen*, Vught: 22 October 2012, radar.nl/file/2820888/evaluatie-van-de-wet-gemeentelijke-antidiscriminatievoorzieningen.pdf.

Finally, the NGOs urge the government to establish independent agencies on the Caribbean Islands to handle discrimination complaints and assist victims.

4. *Fostering expertise and independence of Anti-Discrimination facilities*

Under the *Municipal Anti-Discrimination Facilities Act*, the Anti-Discrimination Facilities are financed by local governments, for which it receives funds from the national government. As this budget is not earmarked solely for the Anti-Discrimination Facility, some municipalities have merged their complaints facilities with other municipalities.³⁷ Furthermore, some municipalities are outsourcing their anti-discrimination responsibilities to non-specialized service providers. Anti-discrimination facilities themselves have expressed concerns about this development, as the expertise and independence of those complaints bureaus might be jeopardized.³⁸ Furthermore, the collaboration between the non-specialized service providers and other regional partners such as the police and public prosecutor are rendered less effective. This all results in weaker oversight and monitoring of regional discrimination trends. Furthermore, the fact that the national government does not earmark its budgets for the Anti-Discrimination Facilities, and that the municipalities are not spending it on the Facilities, goes contrary to the recommendation of the European Commission against Racism and Intolerance (ECRI) to increase funding of local Anti-Discrimination Facilities.³⁹ In a letter to Parliament, the government stated that it will not intervene, because according to the law it is the municipalities' responsibility to finance Anti-Discrimination Facilities.⁴⁰

The NGOs request the Committee to recommend that the government guarantees that every Anti-Discrimination Facility is independent and has the expertise to support local citizens who report discrimination by ensuring that municipalities are monitored on the correct implementation of their obligations under the Act, and sanctioned where necessary.

ARTICLE 2 (2):

1. *Examination abroad for 'non-Western' nationals*

In 2006, the Dutch Civic Integration Abroad Act entered into force.⁴¹ The Dutch government indicates the purpose of this law is to give immigrants a better chance to be included into society. People from specified 'Non-Western' countries outside the EU⁴² who plan to stay in the Netherlands for longer than three months for purposes of e.g. family formation or reunification need an MVV visa.⁴³ The MVV is a Provisional Residence Permit or 'Machtiging tot Voorlopig Verblijf'. The Dutch Civic Integration Abroad Act stipulated that 'Non-Western' immigrants need to pass a Dutch language and integration

³⁷ E.g. in the province of Brabant.

³⁸ 'Zonde, dat geld voor meldpunten', *NRC Next*, 26 October 2013.

³⁹ ECRI 2013 (*supra* note 15).

⁴⁰ Ministry of the Interior and Kingdom Relations, 'Voortgangsbrief discriminatie 2012', Letter to Parliament, No. 2013-0000773268, 23 December 2013.

⁴¹ Art. 16.1h Vreemdelingenwet 2000: Een aanvraag tot het verlenen van een verblijfsvergunning voor bepaalde tijd als bedoeld in artikel 14 kan worden afgewezen indien ... (h) de vreemdeling, die niet behoort tot een der categorieën, bedoeld in artikel 17, eerste lid, na verkrijging van rechtmatig verblijf in Nederland inburgeringsplichtig zou zijn op grond van de artikelen 3 en 5 van de Wet inburgering en niet beschikt over kennis op basisniveau van de Nederlandse taal en de Nederlandse maatschappij; article 16.3 Vreemdelingenwet 2000: Het eerste lid, onder h, is niet van toepassing op de vreemdeling die de Surinaamse nationaliteit bezit en die met bij ministeriële regeling vastgestelde bescheiden heeft aangetoond in Suriname of Nederland lager onderwijs in de Nederlandse taal te hebben gevolgd.

⁴² 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. See: ind.nl/EN/individuals/residence-wizard/Procedure and rijksoverheid.nl/onderwerpen/immigratie/immigratie-vreemdelingen.

⁴³ An 'MVV' (Provisional Residence Permit) is a visa that is required for a stay of more than 90 days in the Netherlands, ind.nl/EN/individuals/residence-wizard/procedure.

exam – the Civic Integration Examination Abroad – before they can be granted an MVV.⁴⁴ ‘Non-Western’ nationals are required to pass this test from their home country, prior to coming to the Netherlands. The number of MVV applications sharply decreased immediately after the introduction of the Civic Integration Examination Abroad. Though the number of applications has gone up again in last years, it has not reached the level of applications prior to the examination policy.⁴⁵

In 2010, the Advisory Committee on Migration Affairs (Adviescommissie voor Vreemdelingenzaken, ACVZ) recommended the Dutch government to review its legislation with a view to abolish the discriminatory application of the Civic Integration Examination Abroad to non-Western state nationals. Contrary to this recommendation, the Dutch government raised the required level of language proficiency in 2011, from A- to A1. In addition, the examination was expanded with a literacy test.⁴⁶ The ACVZ advised against this expansion of examination criteria arguing that there is too much uncertainty about the potential exclusionary effects on specific groups.⁴⁷ Since the exam increased in difficulty, the pass rate declined from 90% in 2010 to 80% in the first six months of 2013. The 2013 statistics show that 20% of the migrants do not pass the pre-entry exam.⁴⁸ The revised examination criteria disproportionately affect certain groups. Highly educated migrants are 24% more likely to pass the exam than lower educated candidates.⁴⁹ Lower-educated candidates from countries with a non-Latin alphabet such as Chinese and Arabic have a lower chance of passing the test.⁵⁰ In war-torn countries it is particularly difficult to prepare for the exam. While there are no statistics, the NGOs consider that such situations create an unfair system of pre-selection of who stands chance to pass the test and consequently may be reunited with family members in the Netherlands.

The NGOs request the Committee to urge the government to ensure that no policy aimed at inclusion of immigrants has discriminatory effects, and encourage the government to allow immigrants to take the Civic Integration Examination Abroad in the Netherlands.

2. Immigration detention

The Aliens Act (2000) laid down the most important norms regarding immigration detention. Grounds for immigration detention – legally referred to as administrative detention – are established in Sections 6 and 59 of the Aliens Act. Section 6 concerns detention to prevent illegal entry. Section 59 addresses detention for purposes of deportation of people who unlawfully reside in the Netherlands, including rejected asylum seekers.

Immigration detention is an administrative measure that aims to keep migrants under surveillance until they can be expelled. In general, it is considered legitimate for a government to restrict people's freedom pending their deportation. However, the way the restriction of freedoms occurs under the current Dutch immigration detention regime impairs that legitimacy and violates human rights. Human rights law contains a clear presumption against immigration detention and considers it to be a measure of last resort.⁵¹ All migrants have the right to liberty from arbitrary

⁴⁴ Immigration and Naturalisation Service, Ministry of Security and Justice, Civic Integration, see:

ind.nl/EN/individuals/residence-wizard/other-information/civic-integration.

⁴⁵ PROSINT, *Integration from abroad? Perception and impacts of pre-entry tests for third country nationals*, 6 October 2011, see: peterscholten.files.wordpress.com/2011/12/integration-from-abroad-prosint-wp4-comparative-report.pdf.

⁴⁶ *Sib.* 2010: 679.

⁴⁷ Advisory Committee on Migration Affairs, *Briefadvies huwelijks- en gezinsmigratie*, The Hague, 19 February 2010.

⁴⁸ Ministry of Social Affairs and Employment, *Monitor Inburgeringsexamen buitenland eerste helft van 2013*, 14 October 2013, *Kamerstukken II (Dutch Parliamentary Documents) 2012/13*, 32 824, no. 6: ‘Waar het slagingspercentage voor de eerste poging in het eerste kwartaal van 2011 (voor de aanpassing van de exameneisen) op 91% lag, is dit slagingspercentage in het tweede kwartaal van 2011 gezakt naar 68% (Kamerstukken II, 2011–2012, 32 175, no. 32). Dit percentage is vervolgens gestaag gestegen tot 78% in de eerste helft van 2012. Het slagingspercentage zal in de rest van 2012 waarschijnlijk stabiel blijven. De volgende monitor over geheel 2012 zal naar verwachting in het voorjaar van 2013 aan uw Kamer worden verzonden.’

⁴⁹ Ministry of the Interior and Kingdom Relations, *Monitor inburgeringsexamen buitenland, eerste helft van 2012*, 3 October 2012.

⁵⁰ *Ibid.*

⁵¹ Article 9, paragraph 1, International Covenant on Civil and Political Rights: ‘Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.’ Article 5, paragraph 1, under f, European

detention. The NGO's are concerned about the increased use of detention as a tool to prevent irregular migration and would like to draw the Committee's attention to three specific points of concern: the duration of immigration detention, the degrading detention regime, and the fact that detention is not used as a measure of last resort.

As for the first point, the legal limit for the duration of administrative detention of irregular migrants is 18 months. However, Amnesty International expressed concern about the frequent use of repeated detention. Repeated detention refers to a situation in which people are released and subsequently detained again. This is technically allowed under the Aliens Act, but leaves the cumulative duration of detention regularly exceeding 18 months.⁵² Research has demonstrated a connection between the duration of detention and the success of deportation. The majority of deportations are accomplished within the first few months. Of those migrants who were detained for more than six months only 17 percent demonstrably left.⁵³ Thus, in addition to (long periods of) detention being unacceptable on grounds of human dignity, it is also ineffective as a policy measure to encourage deportation.

With regard to the second point – the degrading detention regime – national and international organizations have criticized the Dutch immigration detention regime repeatedly. The National Ombudsman, the Advisory Committee on Migration Affairs (ACVZ), the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and Amnesty International published critical reports on (the implementation of) immigration detention in the Netherlands.⁵⁴ Grassroots human rights organizations including Defence for Children, the Dutch Council for Refugees, and the Foundation for Undocumented Migrants (Stichting LOS), as well as church authorities also expressed their criticism on the regime.⁵⁵ Living conditions for people held in immigration detention centers are often worse than those for criminal detainees. They are subject to the same security measures and disciplinary punishments as convicted criminals.⁵⁶ Moreover, people in immigration detention centers are not allowed to work or gain any form of income. They have no right to any form of education. They are allowed a mere two hours of visits a week and are hardly ever considered for special leave, for example to attend funerals or births of close relatives.⁵⁷ Denying people in immigrant detention centers these rights for such long periods of time amounts to unfair treatment. It obstructs their personal and professional development and limits their opportunities for reintegration into society. These obstructions and limitations are even more salient for most migrants are given no knowledge of the length of their detention period.

Finally, detention is still not always applied as a measure of last resort. This goes against paragraph 11 of the Committee's Concluding Observations of 2010, in which it recommended the Dutch government to 'effectively implement its stated policy of using detention as a measure of last resort and redouble its efforts to establish alternative living arrangements for families and children in such situations'. While the number of persons in immigration detention has decreased, the Council for the Administration of Criminal Justice and Protection of Juveniles (RSJ) – an advisory body to the

Convention for the Protection of Human Rights and Fundamental Freedoms: 'Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: (...) the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.' Article 31, paragraph 2, Convention relating to the Status of Refugees: 'The Contracting States shall not apply to the movements of such refugees' restrictions other than those that are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.'

⁵² Netherlands Institute for Human Rights, *Advies aan het VN-Comité tegen Foltering*, April 2013.

⁵³ Advisory Committee on Migration Affairs, *Vreemdelingebewaring of een lichter middel?*, 2013 and Amnesty International, *Vreemdelingendetentie in Nederland: Mensenrechten als maatstaf*, 2013.

⁵⁴ Nationale Ombudsman, *Immigration Detention: penal regime or step towards deportation? About respecting human rights in immigration detention*, 7 August 2012; Advisory Committee on Migration Affairs 2013 (*supra* note 53); European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Report to the authorities of the Kingdom of the Netherlands on the visits carried out to the Kingdom in Europe, Aruba, and the Netherlands Antilles by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)*, June 2007.

⁵⁵ Raad van Kerken in Nederland, *Vreemdelingendetentie lange weg*, December 2013.

⁵⁶ Nationale Ombudsman 2012 (*supra* note 54).

⁵⁷ *Ibid.* See also the farewell speech by Prof. Dr. A.M. van Kalmthout, Universiteit van Tilburg, 1 July 2010 and Amnesty International 2013 (*supra* note 53).

Minister and the State Secretary of Security and Justice –is of the opinion that the Dutch government could do more to avoid detention.⁵⁸ Alternative policies for immigration detention have been tested by the government, but the results are inaccessible for the NGOs.⁵⁹

Fortunately, the use of detention for children has been reduced.⁶⁰ For families with children, the GezinsLocatie ('Family Location') is now available (see article 5(e)(iii), point 1.a) However, at times even children from families in these GezinsLocaties are put in detention facilities, although often there is no possibility to deport them.⁶¹

The NGOs request the Committee to recommend to the government to bring actual improvements in legislation and policies concerning immigration detention, allowing immigration detention only as a measure of last resort. Furthermore, systems should be put into place to respect the rights of persons in immigration detention such as to education, regular visits, and leave.

3. Border detention of asylum seekers

As per the Concluding Observations of the Committee, the Dutch NGOs stress that detention of irregular migrants should only be used as a measure of last resort. In the Netherlands, however, (closed) immigration detention at the border is used much more widely – particularly for those arriving at the Dutch border by ship or airplane. The Dutch government finds basis for this practice in a combination of legal provisions. Based on Article 3 of the Aliens Act (2000) and Article 13 of the Schengen Border Code, a person who does not fulfill the visa criteria and who arrives by ship or by airplane can be refused formal entry at the border. In addition, asylum seekers can be detained on the basis of Article 6 of the Aliens Act (on detention to prevent illegal entry). In practice these provisions lead to the detention of all asylum seekers who arrive at the Dutch border through the international airport (Schiphol Airport) or a harbour.⁶² The 'gesloten verlengde asielpprocedure' or 'GVA' which was introduced in 2010,⁶³ applies to asylum seekers who arrive in the Netherlands without the required documentation and whose asylum claims are estimated to take more than eight days but less than six weeks to investigate by the Immigration and Naturalization Service.⁶⁴ In that case, the asylum seeker has to submit the documentation to apply for asylum at the closed reception center at Schiphol Airport and will be detained immediately to await the outcome of the procedure. Border detention is applied to all asylum seekers; an individual evaluation is not made.⁶⁵ The only exception is children: since 1 September 2014 the Netherlands no longer detains families with children, apart from some exceptional situations.⁶⁶ The Dutch Council for Refugees is of the opinion that the Dutch government cannot detain any person solely because of being an asylum seeker.⁶⁷ This policy is in outright contrast with the procedures maintained for asylum seekers who arrive via land as they await their procedure in open housing units.⁶⁸ The Dutch NGOs stress that border detention should only be used under specific, concrete circumstances which indicate a serious risk for public safety or national security.

The former State Secretary for Security and Justice stated that border detention is necessary. Firstly, because of the surveillance of the external borders of the Schengen area. Secondly, to

⁵⁸ Recommendation from the Council for the Administration of Criminal Justice and the Protection of Juveniles, *Detention of foreign nationals*, 16 June 2008.

⁵⁹ *Kamerstukken II* 2012/13, 33 480-VII, no. 2.

⁶⁰ *Kamerstukken II* 2014/15, 19 637, no. 1721.

⁶¹ *Kamerstukken II* 2012/13, 29 344, no. 107: from the 25 families (70 persons) who were taken in detention, 15 could be deported (50 persons) and 10 not (20 persons).

⁶² Netherlands Institute for Human Rights, *Advice: crossing the border*, May 2014.

⁶³ Vreemdelingen-circulaire from July 1, 2010 adapted 'gesloten verlengde asielpprocedure' (GVA) to limit possibilities to start a GVA procedure.

⁶⁴ Article 12/5.3 Vreemdelingen-circulaire 2000 (C).

⁶⁵ UNHCR, The UN Refugee Agency & Dutch Council for Refugees, *Pas nu weet ik: vrijheid is het hoogste goed. Gesloten Verlengde Asielpprocedure 2010-2012*, Aranea Grafimedia 2013; Meldpunt Vreemdelingendetentie, *Reactie Meldpunt Vreemdelingendetentie op het wetsvoorstel Wet terugkeer en Vreemdelingenbewaring*, 20 February 2014; Netherlands Institute for Human Rights 2014 (*supra* note 62).

⁶⁶ *Stcrt.* 2014, 25182.

⁶⁷ Dutch Council for Refugees, *Standpunt: grensdetentie*, 2014, <http://www.vluchtelingenwerk.nl/wat-wij-doen/standpunten/standpunt-grensdetentie>.

⁶⁸ Netherlands Institute for Human Rights 2014 (*supra* note 62).

safeguard (financial) costs with respect to the transport that would need to be financed for the return of rejected asylum seekers.⁶⁹ Figures show, however, that the current practice of border detention hardly contributes to these objectives. The majority of asylum seekers are nonetheless permitted to reside in the Netherlands after the expiry of the period in border detention. Of the 780 asylum seekers who were detained in 2013, 600 were eventually granted access.⁷⁰

The NGOs request the Committee to urge the government to abolish (closed) detention of asylum seekers at the border.

4. Treatment of LGBTI asylum seekers

The NGOs would like to draw the Committee's attention to the particular vulnerability of Lesbian, Gay Bisexual, Transgender and Intersex (LGBTI) asylum seekers to discrimination, especially during the asylum procedure.

Due to experiences in their country of origin, LGBTI's are oftentimes afraid to be open about their sexual orientation. While this should call for sensitivity on the side of the interviewing officer, LGBTI asylum seekers are sometimes confronted with homo-, bi- and transphobic behavior and prejudices of translators and civil servants working for the authority responsible for the asylum procedure, the Dutch Immigration and Naturalization Service, IND.⁷¹ Although officially prohibited, applicants have reported that they have sometimes been required to answer detailed and intimate questions about sexual acts.⁷² A failure to give satisfying answers has an adverse impact on the determination on the need of international protection. Another reported problem is prejudiced questions that presuppose a common interest among all LGBTI, such as knowledge of gay clubs or gay-themed literature.⁷³ As a consequence, the person may not be believed, even though this ignores the diversity in how individuals, especially from different cultures, experience their sexuality.

Moreover, there is complicated case-law on the question to what extent LGBTI are required to conceal their sexual orientation or gender identity. In effect, different standards of sexual freedom apply to asylum seekers and national citizens. In its decision ABC against the Netherlands, the Court of Justice of the European Union (CJEU) banned this practice and Dutch courts have generally followed through with this. It should be understood that stereotypes do not suffice in determining a person's individual and personal situation.⁷⁴ Dutch LGBT organization, COC, agrees that information based on stereotypes is highly unreliable for the assessment of the validity of asylum claims.

However, although the issue of stereotyping has been addressed by the CJEU as well, and policy makers are mindful of the issue, more training of migration officers is necessary. In addition to a few reported cases on discrimination by migration officers, there were also some reports of asylum applicants being approached by the staff at asylum facilities (*Asielzoekerscentrum* or AZC) with negative and discriminatory attitudes.⁷⁵ In addition, incidents of verbal and physical violence of fellow asylum seekers are also common.⁷⁶ Even though the Central Agency for the Reception of Asylum Seekers (COA) has been receptive to the problems and did pay attention to this issue, more has to be done to counter discrimination of LGBTI asylum seekers. Three small scale master classes organized in conjunction with LGBT organization COC could be considered as a positive start. However, COC also reiterates that additional suitable training programs need to be developed and more widely implemented to ensure that all relevant staff is competent and sensitive to work with this group.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ COC Netherlands, *Pink Solutions. Inventarisatie situatie LHBT asielzoekers* 2013.

⁷² Raad van State, 20 March 2013, 201210441/1/T1/V2 (Afghanistan)

⁷³ Raad van State, 20 March 2013, 201208850/1/T1/V2 (Gambia) and 201110141/1/T1/V2 (Uganda).

⁷⁴ CJEU 2 December 2014, *A, B and C vs Secretary of State for Safety and Justice*, C-148/13, C-149/13 en C-150/13, JV 2015/3.

⁷⁵ COC Netherland 2013 (*supra* note 71).

⁷⁶ Ibid.

The NGOs request the Committee to recommend the government to develop procedures to better respect and protect LGBTI asylum seekers. The government should guarantee that all IND personnel is sensitive to LGBTI-issues and does not operate and base its assessments on prejudices regarding race, sexual orientation and gender identity. To this extent it should train all its personnel. Furthermore, the government should protect LGBTI asylum seekers from any form of discrimination, intimidation and violence in its facilities.

5. *Special protection for child victims of trafficking*

There has been much improvement in signaling child trafficking since 2005. Unfortunately, a complete picture of the extent of the problem in the Netherlands is still lacking. The Coordination Centre for Trafficking, CoMensha, registers child victims of trafficking, but depends on reports of investigative authorities and care organizations in order to do so. The latter has no obligation to notify CoMensha of the cases it deals with and its reports are often incomplete.⁷⁷ The current data indicates an increase from 104 victims in 2006 to 223 victims in 2012.⁷⁸

Registered unaccompanied minor foreigners generally stay in the reception centers of the Central Agency for the Reception of Asylum seekers (COA). The COA is an independent administrative body under the political responsibility of the Ministry of Security and Justice. It is responsible for the reception, supervision and departure of asylum seekers. COA indicates it does so i.a. through the provision of “safe accommodation”. However, relatively many unaccompanied minors are disappearing from the large scale reception facilities. In 2011, strikingly, almost 20% of the unaccompanied minor foreigners (140 out of 717) who stayed in COA reception centers – under the political responsibility of the Minister of Security and Justice – disappeared.⁷⁹ The fear exists that some of these unaccompanied minors have become victims of (international) trafficking.⁸⁰

The Committee on the Rights of the Child, the Dutch Section of the International Commission of Jurists (NJCM) and Defence for Children expressed their concern about these disappearances of children from the COA-locations.⁸¹ It is the duty of the authorities to know where these children are and to protect them.

The National Rapporteur Human Trafficking expressed its concerns about the reception of and assistance to child victims of trafficking. They end up in various care institutions most of which are not specialized in the care of these victims.⁸² In relation to the victims of cross-border trafficking another concern arises. Because most of the victims of cross-border trafficking do not have the right to reside in the Netherlands permanently, they can only get a temporary residence permit based on the B8/3 regulation.⁸³ Chapter B8/3 of the Aliens Act defines the right of residence and access to care for victims of human trafficking. This rule also applies to child victims. However, under B8/3, the right to residence and care is linked to cooperation in the criminal investigation around the victim’s trafficking case. The duration of the stay is linked to the length of the criminal investigation.⁸⁴ If a criminal investigation is not pursued, the victim’s rights under the B8/3 regulation end; hence the residence permit is discontinued. Making safety dependent on assistance to criminal investigation, this regulation severely impedes the protection of child victims of trafficking.

⁷⁷ Nationaal Rapporteur Mensenhandel en Seksueel Geweld tegen Kinderen, *Mensenhandel in en uit beeld. Cijfermatige rapportage 2007-2011*, 2012.

⁷⁸ M. Kaandorp & M. Blaak, *Child Trafficking in the Netherlands, Combating child trafficking and protecting child victims in the Netherlands*, 2013.

⁷⁹ Defence for Children & Unicef, *Bescherming alleenstaande minderjarige vreemdelingen in de knel. (Protection for unaccompanied minors in distress)*, April 2013.

⁸⁰ M. R. Bruning et. al., *Kinderrechtenmonitor 2012, Adviezen aan de Kinderombudsman*, Leiden University, February 2012.

⁸¹ Dutch Section of the International Commission of Jurists, *Commentary on the first periodic report submitted by the Kingdom of the Netherlands on the implementation of the UN International Convention for the Protection of All Persons from Enforced Disappearance* (CED/C/NLD/1), 28 February 2014; Committee on the Rights of the Child, Fiftieth session (27 March 2009), UN Doc. CRC/C/NLD/CO/3, par. 6.7; Defence for Children & Unicef 2013 (*supra* note 79).

⁸² National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children, *Trafficking in human beings, Ninth Report of the Dutch National Rapporteur*, 2013.

⁸³ Kaandorp & Blaak 2013 (*supra* note 78).

⁸⁴ *Ibid.*

A child victim should first and foremost be treated as a child, only thereafter as a victim of human trafficking. This follows from the UN Convention on the Rights of the Child (UNCRC) which states that a child always has the right to special protection and care on account of its being a child, and not just on the basis of a recognized status as a victim of human trafficking.⁸⁵

The NGOs request the Committee to urge the Minister of Security and Justice to guarantee safe accommodation and protection in the reception centers. At all efforts and costs, it should be prevented that children that fall under the government's care and responsibility disappear and become victims of trafficking. Furthermore, the Dutch government should give minors who are victims of trafficking specialized care and assistance needed for their full recovery and rehabilitation into society for which a residence permit in the Netherlands may be necessary.

6. Absent policies regarding the protection and inclusion of Roma, Sinti and Travelers

As signaled in our previous report, Roma, Sinti and Travelers are not recognized as national minorities in the Netherlands.⁸⁶ In the absence of an official status, there has been a lack of recent official data about these communities.⁸⁷ Depending on the source consulted, estimates of Roma and Sinti residing in the Netherlands vary between 2,000 to 20,000.⁸⁸ When Travelers are included, estimates rise to 30,000 to 40,000 persons belonging to these communities.⁸⁹

In 2010, the Netherlands Institute for Sinti and Roma (NISR) was established to address the faltering inclusion of the Roma and Sinti communities. Supported with post war compensation, the NISR supported local projects aimed at education and employment.⁹⁰ However, due to poor performance the NISR was closed again quickly.⁹¹

In June 2011, the Rutte I Administration announced its mainstreaming approach to integration.⁹² Consequently, policies aimed at benefiting disadvantaged groups in society were terminated. Emancipation of minority groups is now to be pursued through general policies. For Roma and Sinti in the Netherlands, this approach means that tailored projects were discontinued. This has considerable implications for the social participation of Roma and Sinti and aggravates their already disadvantaged position in Dutch society.⁹³ Considering their vulnerable position, greater efforts are required to create equal opportunities.⁹⁴ In addition, the government's current integration strategy⁹⁵ emphasizes the obligations of the Roma, Sinti and Travelers communities with regard to reducing criminality among their own ethnic groups.⁹⁶ The reference to a specific ethnicity in a document aims

⁸⁵ Ibid.

⁸⁶ Dutch section of the International Commission of Jurists, *Commentary on the Seventeenth and Eighteenth Period Reports of the Netherlands on the International Convention on the Elimination of all Forms of Racial Discrimination (CERD)*, 5 October 2009. See also Art.1, *Netherlands FRANET National Focal Point, Social Thematic Study, The Situation of Roma*, 2012.

⁸⁷ Art.1 2012 (*supra* note 86), p. 8 and ECRI 2013 (*supra* note 15).

⁸⁸ J. Dagevos & M. Gijsberts (ed.), *Jaarrapport Integratie 2009*, The Hague: Netherlands Institute for Social Research 2010.

⁸⁹ C. Cahn & E. Guild, *Recent Migration of Roma in Europe*, second edition, Strasbourg / The Hague: Council of Europe Commissioner for Human Rights & OSCE High Commissioner on National Minorities 2010.

⁹⁰ ECRI 2013 (*supra* note 15), paras. 162-163.

⁹¹ See: trouw.nl/tr/nl/4492/Nederland/article/detail/3248943/2012/05/01/Roma-instituut-is-alweer-verleden-tijd.dhtml.

⁹² Rijksoverheid, *Nota Integratie, binding en burgerschap*, 2011, rijksoverheid.nl/documenten-en-publicaties/notas/2011/06/16/integratienota.html.

⁹³ Commissioned by the government, Movisie published a report regarding the social inclusion of Roma and Sinti in the Netherlands, *Monitor Inclusie: Nulmeting*, Movisie, 2013.

movisie.nl/sites/default/files/alfresco_files/Rapport%20Monitor%20Inclusie%20Nulmeting%20MOV-1863262-0.1.pdf. The reduced social-economic position of Roma was already acknowledged by the government, for example in its policy letter *Kamerbrief over de Nederlandse inbreng ten behoeve van de sociale inclusie van Roma*, December 2012, rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2011/12/21/kamerbrief-over-de-nederlandse-inbreng-ten-behoeve-van-de-sociale-inclusie-van-roma.html. This policy letter is criticized by for example Amnesty International Netherlands for not being specific, accurate and committal enough, and too much focused on Roma in crime, see: amnesty.nl/sites/default/files/public/pol-2012-06_ao_integratie_-_roma_inclusie.pdf.

⁹⁴ P.R. Rodrigues & M. Davidovic, 'Antiziganisme', in: P.R. Rodrigues & J. van Donselaar (red.), *Monitor Racisme & Extremisme. Negende rapportage*, Amsterdam: Amsterdam University Press 2010, p. 153-159.

⁹⁵ National implementation of the EU framework for national Roma integration strategies (OJ C 2011, 258/6 and No 2011 / C 258/04).

⁹⁶ *Kamerstukken II 2011/12, 1934 (aanhangel)*.

to promote inclusion through mainstreaming, appears to justify repressive policies towards the Roma, Sinti and Travelers communities.

Several local and regional projects aimed at these communities have been developed. For instance, the municipality of Nieuwegein adopted a project called ‘Wisselgeld’ (small change) in 2009.⁹⁷ This policy is aimed at intensive coaching for multi-problem Roma families. Whilst in itself such a policy can cater for inclusion of Roma and Sinti, it is questionable whether the approaches taken do not lead to structural deprivation and stigmatization due to the coercive means aimed at Roma families.⁹⁸

An example with regard to the Travelers community is the suppressive policy of the municipality of Hoorn of 2013 relating to building permits.⁹⁹ Whilst the policy, which includes heavy measures for the privacy of the applicant and other involved parties, normally only requires constructions that meet the financial lower limit of EUR 250,000,- to need an environmental permit, the municipality has discarded this limit for Travelers community making also relatively small investment of this community require such a permit.¹⁰⁰ According to the municipality this is justified, as the Travelers community is ‘both at national and regional level regarded as a risk category for money laundering’ therewith justifying also the monitoring of small investments. This approach seems to lead to stigmatization of Travelers.

The described one sided approach of the national and local authorities is focused solely on the obligations of the Roma, Sinti and Travelers communities. It contributes to prejudices that harm these groups, which is contrary to the obligation the Netherlands has to take measures to combat prejudices and to promote understanding, tolerance and friendship among racial or ethnical groups (Article 7 ICERD). The Dutch government should therefore adopt policies that aim to foster inclusion of these communities.

The Dutch NGOs request the Committee to recommend the Dutch government to recognize Roma, Sinti and Travelers as ethnic minorities and to urge the Dutch government to develop and implement a national inclusion strategy to improve the socio-economic disadvantaged position of Roma, Sinti and Travelers in the Netherlands. This strategy should be developed in partnership with representatives of the Roma, Sinti and Travelers community and with the relevant NGOs.

ARTICLE 4

In the Concluding Observations of the Committee of 16 March 2010 (paragraph 9), the Committee recommended that the Dutch Government intensified its efforts to combat the dissemination of ideas based on racial superiority through the internet. Unfortunately, the NGOs note that open discrimination on the internet has mainstreamed and moved to social media. Since 2001, the Dutch Complaints Bureau for Online Discrimination (*Meldpunt Discrimination Internet*, MDI) has recorded fewer complaints about right-wing extremist and Neo-Nazi sites, but more about expressions on ‘normal’ sites, blogs and webpages, which indicates that online hate is becoming mainstream.¹⁰¹ The following section will focus on the damaging effects the recently imposed subsidy cuts and abolishment of organizations such as MDI, have on efforts to combat racial discrimination in the Netherlands.

⁹⁷ See: <http://www.nieuwnieuwegein.nl/infotype/news/newsitem/view.asp?objectID=11546>.

⁹⁸ Rodrigues & Davidovic 2010 (*supra* note 94), p. 166-171.

⁹⁹ The policy discussed here concerns the ‘Beleidsregel van de gemeente Hoorn voor de bouw, horeca-, prostitutie- en speelautomatenbranche in het kader van de Wet Bibob 2013’ [policy of the municipality Hoorn relating to the building, catering, prostitution and games machines sector of 2013 in the light of the Bibob Law], decentrale.regelgeving.overheid.nl/cvdr/xhtmloutput/Actueel/Hoorn/296500.html

¹⁰⁰ *Idem*, see the explanation [‘toelichting’] in para. 6.6.e.

¹⁰¹ See for the annual report data-overviews from 2001: www.meldpunt.nl/publicaties.

1. Subsidy cuts and abolishment of major anti-racism organizations

Since the last CERD report, the Dutch government decreased support for civil society organizations working to counter discrimination in the Netherlands substantially. The few organizations working on (racial) discrimination that received structural support from the government to combat discrimination received substantial cuts in funding in recent years. For some organizations this implied they had to close their doors; for others it diminished their effectiveness, or forced a change in approach or focus. This, as described below, weakens civil society and leaves ethnic minorities vulnerable as their problems and interests are insufficiently monitored and voiced.

The government's change of approach to integration policy also has a detrimental effect on civil society organizations in the field of diversity and anti-discrimination. Since 2011, integration is no longer seen as a responsibility of the government, but instead as a responsibility of the individual citizen. The government's new integration policy signaled a move away from a multicultural to – what is often called – a mainstreaming approach.¹⁰² One of the central components of this 'mainstreaming approach' has been the repeal of the law on the consultation of minorities (*Wet Overleg Minderheden*). Under this law, the National Consultation of Minorities (*Landelijk Overleg Minderheden*, LOM) was a statutory dialogue partner of the national government.¹⁰³ This meant that the LOM – an umbrella organization that united eight organizations representing the eight largest (ethnic) minority communities in the Netherlands – was consulted on all policies that affect minority communities. The repeal of the law implied that, per 1 January 2015, the National Consultation of Minorities and its member organizations lost both public funding and their status as a statutory dialogue partner of the national government. The continued existence of most of these representative bodies has not been ensured. Since no appropriate alternatives have been put in place to ensure representation of minorities at governmental level, it can be feared that their voices and problems will be attended to even less than before.

The government's mainstreaming approach also became visible in other policy areas. In 2011, the Minister of Education, Culture and Science stopped the ministry's so-called 'minority programming', which aimed to encourage public broadcasters to reflect the multicultural society better in its programming.¹⁰⁴ This had a detrimental effect on important multicultural media players. Abolishing platforms popular with ethnic minorities contributes to creating a homogenous entertainment landscape which takes away the possibility for people to learn about other people and cultures in the Netherlands, and thus the potential for mutual understanding.

In similar vein, the government decreased or terminated government funding for several organizations specialized in issues related to racial discrimination. For some, the ministry argued that other existing institutions (not specialized in anti-racism matters) were better equipped to assume this role. While subsidies should be withdrawn if the organization does not function as may be expected, suitable alternative civil society organizations should be sought. This does not appear to have happened. In one case, for example, the replacing institutes are not suitable in terms of expertise and network functions, as they are, for example, research institutes made up of predominantly ethnically Dutch and white researchers, and focused on mainly welfare issues. They thus lack the infrastructure and insights for signaling concerns among minority communities and political agenda-setting on that basis. Investments to strengthen these networks with minority community networks have been lacking. It is feared that this development will further contribute to decreasing monitoring and handling of the problems ethnic minorities face.

Per January 1, 2013, the Ministry of Education, Culture and Science stopped structural funding for awareness and fostering commemoration of the history and legacy of slavery. Consequently, there is no guarantee that the commemoration of slavery will be held every year, or that the knowledge on the history and legacy of slavery will be preserved. This is unacceptable in a country

¹⁰² Rijksoverheid 2011 (*supra* note 92).

¹⁰³ See: <http://www.republiekallochtonie.nl/de-zin-en-onzin-van-minderhedenbeleid>

¹⁰⁴ Public radio and TV broadcasters were required to devote a minimum of, respectively, 25% and 20% of air time to minority programming. See the policy letter from the Minister of Education, Culture and Science of 17 June 2011, *Uitwerking regeerakkoord onderdeel media*, p. 39, rijksoverheid.nl/bestanden/documenten-en-publicaties/kamerstukken/2011/06/17/uitwerking-regeerakkoord-onderdeel-media/uitwerking-regeerakkoord-onderdeel-media.pdf.

that has a deep history of slavery and colonialism, and still substantial levels of racism and discrimination today.¹⁰⁵ The government should make sufficient funds available to address its slavery past, and ensure an annual commemoration, with structural, multi-annual support.¹⁰⁶ This would only be appropriate considering WWII and the National Committee 4 and 5 May do receive this support, in order to ensure that past atrocities are not forgotten.

Taken together, the effects of the government's mainstreaming approach are worrying: a loss of expertise and continuity, and a lack of consultation with ethnic minority communities that are most discriminated. Simultaneously, many of the responsibilities of the organizations that have lost funding are not supplanted to other civil society actors, and in some cases the government itself has taken control over these activities without the necessary expertise and rootedness in the communities. In line with the conclusions of the previous CERD rapport, this leaves the Dutch NGOs concerned that the government's mainstreaming approach results in insufficient attention being paid to the needs and concerns of ethnic minority groups as their representative bodies, platforms and monitoring systems are being corroded. This while, as we demonstrate in this report, these groups are particularly susceptible to direct or indirect discrimination.

The NGOs request the Committee to urge the government to base its next Action Plan to combat Discrimination – expected in autumn 2015 – on a comprehensive vision and strategy to combat discrimination, which includes acknowledgement of and consultation with civil society organizations that represent minority communities, as well as structural funding and support for their work.¹⁰⁷

In order to guarantee the unchallenged existence and continuation of civil society and prevent loss of expertise and experience, the government needs to (re-)build and sustain durable relations with experienced civil society organizations and minority communities and ensure structural dialogue to improve monitoring of policies and signaling of problems.

Furthermore, the government needs to show genuine preparedness to deal with the country's history of slavery and colonialism, and address the continuing effects of this past on contemporary issues related to racial discrimination. The NGOs recommend the Committee to urge the Dutch government to ensure an adequate organizational infrastructure and protracted institutional funding for the commemoration of the history of slavery – similar to the funds and organizational infrastructure ensured for the commemoration of WWII.

ARTICLE 4 (A)

In the Committee's Concluding Observations of 16 March 2010, the Committee stated paragraph nine that the government should intensify its efforts to prevent and suppress manifestations of racial discrimination on (social) media, in particular from political parties. However, as is has been noted earlier and below in this report, public expressions of racism seem to have increased. Moreover, several watchdog organizations underwent, or are facing subsidy stops, cuts and changes which diminish the protection against hate speech.

1. *Legal recourse*

Dutch Criminal law defines different crimes related to race. A racial motive for a crime is not a separate aggravating factor in Dutch law. This is contrary to ECRI's recommendation to the Netherlands.¹⁰⁸ The Public Prosecution's service did, however, issue detailed instructions obliging prosecutors to increase proposed punishment by 50 to 100% in case of racist motivation or discrimination. ECRI reports that these instructions have not been complied with.¹⁰⁹

¹⁰⁵ See: nrc.nl/handelsblad/van/2015/maart/20/frustrerend-dat-slavernijherdenkers-telkens-om-sub-1479849.

¹⁰⁶ See: nrc.nl/handelsblad/van/2015/maart/20/frustrerend-dat-slavernijherdenkers-telkens-om-sub-1479849.

¹⁰⁷ See: rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2015/02/12/kamerbrief-bij-jaarlijkse-rapportage-discriminatie.html.

¹⁰⁸ ECRI 2013 (*supra* note 15), p.13.

¹⁰⁹ *Ibid.*

The NGOs request the Committee to ensure that the government effectively tackles hate crime, by making a racial motive a separate aggravating factor, and that the government oversees that the instructions for punishment are respected.

2. *Improving police registration and the Regional Discrimination Deliberation*

According to the Public Prosecution's Discrimination Instruction (*Aanwijzing Discriminatie*), the police is obliged to register and handle every complaint of discrimination.¹¹⁰ While only the Public Prosecutor is allowed to dismiss a complaint, it is known to occur (particularly among communities and expressed on social media) that police officers decide independently not to register and/or handle a report of discrimination or an incident with a discriminatory character.¹¹¹ In 2012 the police registered 3292 discrimination incidents, while the public prosecutor's office registered a mere 114. The difference, according to a letter from the Minister of Security and Justice to the parliament in 2014, has to do with the filtering and sorting by the public prosecutor.¹¹² Another reason for the discrepancy is that not all incidents that are brought to the police's attention are actually forwarded to the public prosecutor's office.¹¹³ In general, registration and handling of reports involving discrimination is not given equal priority in every police unit, and in general resources are lacking. The NGOs welcome the prospect of a national police policy regarding the registration and handling of incidents involving discrimination. However, for the police to combat hate crime effectively (whether on racial or other grounds), continuous attention for the subject throughout the organization is essential for which sufficient financial resources are required.

For the registration and labeling of cases of discrimination, the national police has no uniform system in which all police units use the same codes. This makes the data on discrimination incomplete and hard to compare, and consequently, an unreliable source for government policy. The lack of information also makes other forums on discrimination less effective, such as the Regional Deliberation on Discrimination (*Regionaal Discriminatie Overleg*, RDO) in which the police, Public Prosecutor and (local) Anti-Discrimination Facilities discuss complaints and cases regarding discrimination.¹¹⁴

The Regional Deliberation on Discrimination is required under the provisions of the abovementioned Discrimination Instruction. This deliberation could be very valuable in enabling operational cooperation between different (semi)public entities working on discrimination. However, several factors impair the productivity of these meetings. Firstly, there are no central instructions from the Discrimination Instruction regarding the rules for the meeting and the agreements between the three partners are generally executed inconsistently. Secondly, data protection laws prevent the parties from exchanging elementary information about victims and perpetrators. Only in a few regions did the partners reach an agreement to exchange this information confidentially. Thirdly, for budgetary reasons, some municipalities created alternative complaint facilities instead of working with established Anti-Discrimination Facilities. Consequently, there are more parties that should take part in the deliberation, which is problematic because of the confidential nature of the consultation and the data being exchanged.

The NGOs request the Committee to recommend that the Dutch government ensures that the national police gives priority to combatting discrimination and to allocate more resources to the realization of a uniform and correct registration and handling procedure of incidents. Moreover, the NGOs request the Committee to urge the government to ensure that the national police trains all its police officers regularly in recognizing discrimination and dealing with (reported) incidents of discrimination correctly – particularly those policy officers who are in regular contact with civilians, including front office personnel.

¹¹⁰ http://wetten.overheid.nl/BWBR0022927/geldigheidsdatum_20-09-2012

¹¹¹ See for example dichtbij.nl/almere/regionaal-nieuws/artikel/3873298/kamerlid-marcouch-aangifte-van-discriminatie-serieus-nemen.aspx and volkskrant.nl/binnenland/uitgescholden-voor-kutmoslim-enkel-vanwege-eeen-hoofddoek~a3812800/.

¹¹² *Kamerstukken II* 2013/14, 30 950, no. 70, p.3.

¹¹³ *Ibid.*

¹¹⁴ http://wetten.overheid.nl/BWBR0022927/geldigheidsdatum_20-09-2012

The NGOs request the Committee to recommend that the Dutch government counters the fragmentation of Anti-Discrimination Facilities, in order for the Regional Discrimination Consultation to remain workable and become a valuable instrument in combating discrimination. In order for the Regional Deliberation on Discrimination to become effective in all regions, the NGOs request the Committee to recommend the government to introduce one single working-method for performing the deliberation. The government should also promote a covenant which would enable the participating parties to exchange personal information during the deliberation.

3. *The Wilders Court Case*

When the Dutch NGOs submitted their last CERD shadow rapport, the Amsterdam appeals court had just ordered the public prosecutor to prosecute Dutch Member of Parliament Geert Wilders for (amongst other things) incitement to hatred and discrimination on grounds of religion or race (article 137d of the Dutch Criminal Code).¹¹⁵ At the time, Geert Wilder's Freedom Party (*Partij voor de Vrijheid*, PVV) was the official supporting partner of the center-right minority government.

Initially, the public prosecutor's office had concluded that there was insufficient legal basis to try Wilders as his statements did not amount to incitement to hatred or discrimination (or group defamation) on the grounds of either religion or race.¹¹⁶ Following this decision, eight individual citizens and organizations complained with the Amsterdam appeals court through a so-called Article 12 procedure.¹¹⁷ Their attempt to have the Amsterdam appeals court force the public prosecutor to commence a criminal case succeeded. The public prosecutor initiated proceedings as ordered, but – in line with its earlier assessment – asked for acquittal on all charges.¹¹⁸ This created a situation in which both the public prosecutor and the defense adopted a similar position.

On 23 June 2011, the Amsterdam district court acquitted Wilders of all charges, concluding that his statements were within the boundaries of the law. The court held that, in any case, Wilders' statements could not be considered incitement to hatred or discrimination against Moroccans and/or non-Western immigrants on the grounds of *race*. This charge included statements such as 'the borders will close for non-Western immigrants' (answering a journalist's question what would happen if he would come to power) and 'one in five Moroccan youngsters is registered as a suspect of a criminal offence. Their behavior flows from their religion and culture.' The court did not further explain this point, but the prosecutor's argumentation was that in the context of the said expressions as a whole, Wilders' expressions about non-Western immigrants and Moroccans could be said to apply only to Muslims on the grounds of their religion and not to non-Western immigrants and Moroccans in general. Such an interpretation of incitement to hatred and discrimination on the grounds of race is difficult to reconcile with article 4, however. Moreover, there have been several instances where

¹¹⁵ Utterances that were considered liable by the Amsterdam appeals court, included: 'A moderate Islam does not exist. It does not exist because there is no distinction between Good Islam and Bad Islam. There is Islam and that's it. Islam is the Koran and nothing but the Quran. And the Koran is the Mein Kampf of a religion that seeks to eliminate others, who calls other non-Muslims infidel dogs and inferior creatures. Read the Koran, that Mein Kampf, again. In whatever version, you will see that all the evil that the sons of Allah commit against us and themselves, is coming from that book.', opinion article by Wilders, *de Volkskrant*, 8 August 2007; 'We must stop the tsunami of Islamization.' and 'From that tsunami of an alien culture that is becoming increasingly dominant here. That should be stopped.', interview with Geert Wilders, *de Volkskrant*, 7 October 2006; 'The Netherlands as Islamic mission country. Terrorist Mohammed B. was already unstoppable, the tactics of penetration, propaganda, conversion and demographic change will indeed prove successful if the cowardly political elite from VVD to PvdA and SP to CDA and its European Allies remain silent and denounce and demonize those who do not. There is enough Islam in Europe and the Netherlands. The PVV will fight with all its efforts against this third Islamic invasion.', column on the website of *GeenStijl* and the website of the PVV, 6 February 2007; 'In the film I illustrate texts from verses from the Quran with images from documentaries that show that the Quran is not a dead letter, but that Islam could cost us our freedom if we do not take any measures.', interview in *De Limburger*, 9 February 2008). See also the ruling from Amsterdam Appeals Court ordering the Public Prosecutor's Office to prosecute Wilders, 21 January 2009: uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHAMS:2009:BH0496.

¹¹⁶ Decision of the Public Prosecutor's Office not to prosecute Wilders, 30 June 2008: [om.nl/vaste-onderdelen/zoeken/@25772/wilders-vervolgd/](https://onderdelen/zoeken/@25772/wilders-vervolgd/).

¹¹⁷ Citizens who find themselves victims of a crime have no right to have the supposed perpetrator prosecuted; they depend on the decision of the public prosecutor. However, through an article 12-procedure, a citizen who has a direct interest in prosecution can lodge a complaint against a decision not to prosecute with the Court of Appeal.

¹¹⁸ See the English version of the prosecutor's closing speech: [om.nl/vaste-onderdelen/zoeken/@24439/summary-public/](https://onderdelen/zoeken/@24439/summary-public/).

Wilders identified Muslims not as adherents of a religious belief which he criticizes, but as a social minority.¹¹⁹

As regards incitement to hatred and discrimination against Muslims on the grounds of religion, the court's judgement stated that Wilders' statements were blunt and humiliating. But it considered them legally permissible because (amongst other things) the expressions did not have a 'power-strengthening element', which is required for incitement to hatred (this is the first time a court explicitly sets such a requirement for this criminal offence); and (b) the statements do not amount to incitement to discrimination or incitement to hatred since they were made as political proposals by Wilders in his role as a politician, in a heated public debate about multiculturalism and immigration.¹²⁰ As was argued by three Dutch-Moroccan citizens who submitted a complaint against the Netherlands to the United Nations Human Rights Committee, this verdict is based on a very narrow interpretation of Dutch law that prohibits incitement to hatred and discrimination (article 137d). Existing jurisprudence shows that article 137d has been interpreted more broadly in the past. Utterances similar to those made by Wilders have been punished; even when made by politicians in the context of the public debate.¹²¹ ¹²² Though Dutch courts rightly consider freedom of speech as particularly important for expressions in the context of public debate, they usually also assess whether an expression - even when considered within this context of public debate - is not excessive. The Amsterdam district court applied this test as well, but its conclusion that Wilders' expressions are not excessive leaves one to question what kinds of expressions could still be covered by article 137d.

At the time of writing for this report, Wilders is awaiting a second trial following his anti-Moroccan statements during the municipal elections campaign in March 2014. On 12 March 2014, Wilders said that The Hague should become "a city with less charges and, if possible, less Moroccans". On 19 March 2014, during elections night, Wilders led a chant, asking his supporters whether they would like more or less Moroccans in The Hague. When supporters chanted 'less' in response, Wilders said he would take care of that. These statements fueled broad public outrage. In the weeks after the statements, more than 6,400 individuals submitted an official report to the police and more than 15,000 reports of discrimination were submitted online through websites of the police and anti-discrimination bureaus.¹²³ A number of organizations, including the *Landelijk Beraad Marokkanen* (National Council of Moroccans), Platform Stop Racism, and *Nederland Bekent Kleur* (the Netherlands Confesses Colour), filed a request for prosecution, stating that Wilders' statements habitually exceed legal boundaries.¹²⁴ The public prosecutor investigated the complaints. On 9 October 2014, it announced that it would prosecute Wilders on charges of group defamation on grounds of race, and incitement to hatred and discrimination. The Dutch NGOs welcome the public prosecutor's decision and will follow the proceedings with great interest.¹²⁵

It should be noted that, while much attention is focused on Wilders' expressions, other politicians (including those of mainstream parties such as the Labour Party, which currently takes part in the Dutch government) have also expressed themselves in ways that may aggravate negative stereotypes about Dutch Moroccans. Since a decade or so these stereotypes have become mainstream in Dutch public debate as a whole, and politicians of various strands show a tendency to go along with this development to increase their popularity. In view of the NGOs, the Dutch government should do much more to denounce such expressions and to set the right example.

¹¹⁹ See: http://www-old.sant.ox.ac.uk/esc/docs/Dahrendorf_R.Kaputessay.pdf

¹²⁰ Verdict of the Amsterdam District Court in first Wilders trial, 23 June 2011:

rechtspraak.nl/SiteCollectionDocuments/Wilder%2023062011%20vertaling.pdf.

¹²¹ *16th Periodic Report to the CERD by the government of the Netherlands*, CERD/C/452/Add3, 13 October 2003, pp 17-22, tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2FC%2F452%2FAdd.3&Lang=en;

17th and 18th periodic reports to the CERD by the government of the Netherlands, CERD/C/NLD/18, 3 March 2008, pp 23-28, <http://www2.ohchr.org/english/bodies/cerd/docs/AdvanceVersions/CERD-C-NLD-18.doc>.

¹²² *Communication submitted by Böhler Advocaten on behalf of three Dutch-Moroccan citizens to the UN Court on Human Rights*, 15 November 2011:

content1.d.omroep.nl/b4bd70d880c0174db8fd8a0ebe3365ec/4ec53cfe/nos/docs/171111_klacht_wilders.pdf.

¹²³ See: om.nl/actueel/nieuwsberichten/@87558/vervolgt-wilders/; om.nl/actueel/nieuwsberichten/@85833/ruim-vijfduizend/.

¹²⁴ Supplementary report ("aanvullende aangifte") against Geert Wilders on behalf of the Landelijk Beraad Marokkanen (National Council of Moroccans), Platform Stop Racisme (Platform Stop Racism), Nederland Bekent Kleur (the Netherlands Confesses Colour), 2 May 2014, prakkendoliveira.nl/nl/nieuws/verzoek-om-vervolging-geert-wilders/

¹²⁵ Announcement of the decision to prosecute Wilders by the Public Prosecutor's Office, 18 December 2014, om.nl/actueel/nieuwsberichten/@87558/vervolgt-wilders/.

The NGOs request the Committee to prompt the Dutch government to take all appropriate measures to counter incitement to hatred and discrimination on the grounds of race. Amongst other things, the government should set the right example and clearly denounce hate speech when this is expressed by influential public figures.

ARTICLE 5 (A)

1. Racial discrimination by judges and forensic psychiatrists

Research from 2012 showed that people who do not look Dutch and appear to be foreign are five times more likely to be held accountable for suspected crimes and to be found guilty by judges than native Dutch suspects.¹²⁶ Suspects with a 'foreign' appearance who do not master the Dutch language were twenty times more likely to be held accountable and found guilty by judges than native Dutch suspects.¹²⁷ This discriminatory treatment violates the principles of equality enshrined in the Dutch Constitution and justice system.

Following the 2012 study, the Dutch Council for the Judiciary commissioned further research from the University of Leiden on ethnically-related differences in judicial decisions. The study confirmed that ethnic minorities are sentenced to longer imprisonment than ethnically white suspects. In addition, it found that ethnic minorities serve longer sentences than native Dutch offenders. It particularly concerns people originating from the Dutch Antilles, Suriname and Morocco.¹²⁸ The report also examined the reasons for the discrepancies in sentencing.¹²⁹ It is argued that prejudices and stereotypes that judges have of ethnic minorities leads to higher punishments. The research found that courts look at factors such as the criminal history of the suspect or whether the suspect is employed, which they weigh in their decisions on whether to order imprisonment or rather labor punishment.¹³⁰ Consequently, courts reproduce cycles of inequality: ethnic minorities are more likely to be unemployed due to several reasons connected to discrimination and inequality and subsequently they are also punished harder with imprisonment, further diminishing their chances to a successful future.

Ethnic minorities accused of crime are also four times more likely than their white Dutch counterparts to be involuntarily admitted to a psychiatric hospital.¹³¹ 19% of ethnic minorities were considered mentally liable ('toerekeningsvatbaar') for their actions, versus 13% of white Dutch suspects.¹³² In addition to the influence of judges' prejudices, forensic psychiatrists stated in a national newspaper that this reality is said to also be caused by unconscious prejudice and discrimination by forensic psychiatrists, who play an important role in the psychological assessment and sentencing of suspects.¹³³

The NGOs request the Committee to recommend the government to guarantee that judges and forensic psychiatrists are trained to increase their awareness of prejudice in order to prevent (unconscious) racial judgments.

¹²⁶ H. Wermink, et al., 'Verschillen in straftoemeting in soortgelijke zaken. Een kwantitatief onderzoek naar de rol van specifieke kenmerken van de dader', *Nederlands Juristenblad* 2012 pp. 726-733.

¹²⁷ Ibid.

¹²⁸ H. Wermink, et al., *Etnisch gerelateerde verschillen in de straftoemeting*, Raad voor de Rechtspraak, Den Haag: Sdu Uitgevers BV 2015, p. 30.

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ D.J. Vinkers, M. Barendregt, E. Beurs, H.W. de Hoek & T. Rinne, 'Etnische verschillen tussen pro Justitia gerapporteerde verdachten', *Tijdschrift voor Psychiatrie* 2011, pp. 801-811, http://www.tijdschriftvoorpsychiatrie.nl/assets/articles/TvP11-11_p801-811.pdf.

¹³² Ibid.

¹³³ Idem. See for the newspaper article: spitsnieuws.nl/binnenland/2012/10/allochtoon-veel-snelser-opgenomen.

ARTICLE 5 (D) (I)

1. @MIGO-BORAS (automatic border control)

In 2011, it became clear that the Dutch government had been planning to implement a highly privacy-invasive system of border control for years.¹³⁴ The new high-tech camera surveillance system, called @MIGO-BORAS, was due to become operational from January 1, 2012.¹³⁵ @MIGO-BORAS intended to photograph, screen and profile every vehicle crossing the Dutch-German or Dutch-Belgian border with the help of various (unknown) databases. In October 2011, the European Commission – under German pressure – started an investigation to assess whether @MIGO-BORAS complied with European Schengen and privacy regulations.¹³⁶ Consequently, the Dutch government scaled back the planned operational use of the system: instead of @MIGO-BORAS being operational 24/7, it was made operational up to six hours per day or 90 hours per month. After the European Commission provisionally concluded that the system did not contravene the rules that govern the EU's Schengen area in June 2012, @MIGO-BORAS was launched officially on August 1, 2012.¹³⁷

The primary goals of the project are the detection of illegal immigration, human trafficking, identity fraud and narcotics control through camera surveillance and profiling. Critical profiling factors include the type and color of the vehicle, the number plate and country or region of origin.¹³⁸ Since April 2013, the @MIGO-BORAS camera system is also being used for law enforcement and criminal investigation purposes (including counter-terrorism) through Automatic Number Plate Recognition (ANPR).¹³⁹ However, many details of @MIGO-BORAS still remain confidential. No specific legislation around its implementation has been drafted and the Dutch Parliament asked relatively few questions about the project. As far as the Dutch NGOs are currently aware, participating organizations include the Royal Military and Border Police (*Koninklijke Marechaussee*), the Dutch National Police, the Public Prosecution Service, the General Intelligence and Security Service (*Algemene Inlichtingen- en Veiligheidsdienst* or AIVD) and the Netherlands Organization for Applied Scientific Research ('TNO').

Reports show that the (effect of the) use of @MIGO-BORAS is likely to be discriminatory, as nationality seems to be a primary profiling criterion and most vehicles being stopped and searched originate from Eastern Europe.¹⁴⁰

The NGOs request the Committee to urge the Netherlands to clarify the mandate, use and effects of the @MIGO-BORAS surveillance system and to introduce adequate legislation or guidelines to prevent the system from being used in a discriminatory manner or having discriminatory effects.

¹³⁴ See D. Tokmetzis, *Staat bouwt digitale hekken aan de grenzen*, *Sargasso*, 19 January 2011, sargasso.nl/archief/2011/01/19/staat-bouwt-digitale-hekken-aan-de-grenzen/; see also a summary of B. de Konings' subsequent speech at the CPDP Conference in Brussels, 26 January 2011, nijcm.nl/site/newsposts/show/273.

¹³⁵ The Dutch/English acronym @MIGO-BORAS stands for 'Automatisch Mobiel Informatie Gestuurd Optreden (Automatic Mobile Information-Driven Action) - Better Operational Results and Advanced Security.

¹³⁶ See e.g. 'Nut van nieuw camerasysteem langs de grenzen niet bewezen', *NRC Handelsblad*, 31 October 2011, nrc.nl/nieuws/2011/10/31/nut-van-nieuw-camerasysteem-langs-de-grenzen-niet-bewezen/; 'Duitsland kwaad over grenscameras', *NOS*, 30 November 2011, nos.nl/artikel/318196-duitsland-kwaad-over-grenscameras.html.

¹³⁷ See *Kamerstukken II* 2011/12, 32 317, no. 128; *Kamerstukken II*, 2012/13, 33 400-VII, no. 4, para. 247. See also 'Brussels defends Dutch border control project', *EU Observer*, 5 July 2012, euobserver.com/justice/116881.

¹³⁸ See e.g. Ministry of Security and Justice, *Factsheet on the use of the @MIGO-BORAS system*, 7 July 2012, government.nl/documents-and-publications/leaflets/2012/07/11/factsheet-on-the-use-of-the-amigo-boras-system.html.

¹³⁹ *Kamerstukken II* 2012/13, 19 637, no. 1647; *Kamerstukken II*, 2012/13, 29 754, no. 232; *Kamerstukken II*, 2013/14, 19 637, no. 1760; *Kamerstukken II*, 2013/14, 28 684, no. 411.

¹⁴⁰ See e.g. 'Een Roemeense Volvo voor jou', *de Volkskrant*, 24 August 2012; volkskrant.nl/vk/nl/2844/Archief/archief/article/detail/3305474/2012/08/24/Een-Roemeense-Volvo-voor-jou.dhtml; 'Leers: grensbewaking voorbeeld voor Europa', *De Telegraaf*, 23 August 2012, telegraaf.nl/binnenland/article20960146.ece; 'Geen grensbewaking, maar toezicht', *De Senator*, 24 August 2012, destentor.nl/2.2545/binnenland/geen-grensbewaking-maar-toezicht-1.900394; 'Camerasysteem @migoboras maakt controles efficiënter', *De Gelderlander*, 16 March 2013; 'Grenzpolizei!', *Reformatorsch Dagblad*, 30 August 2014. See also Meijers Committee (standing committee of experts on international immigration, refugee and criminal law), *Note on the Dutch surveillance system @migoboras* (CM1208), 2 April 2012, p. 4, commissie-meijers.nl/commissiemeijers/pagina.asp?pagkey=149205.

ARTICLE 5 (D) (III)

1. *Statelessness*

In the Netherlands there are over 2,000 recognized stateless persons, but many more non-registered stateless persons are located within its borders. Currently, there are approximately 80,000 people who are registered with an unknown nationality, which implies that they lack the formal status of statelessness. People without statelessness recognition are often denied or only provided with very limited access to employment, education, housing and public services. It is also almost impossible for these persons to travel (see section 1 under article 5 (E)(IV)).

Statelessness in the Netherlands is primarily caused by the lack of a procedure to assess and establish statelessness in Dutch legislation. The Convention on the Reduction of Statelessness leaves countries free to decide how to assess statelessness. The procedures in the Netherlands are unclear and un-unified, but essentially depart from a 'no-fault procedure' ('buitenschuldprocedure'). The no-fault procedure lays a heavy burden of proof on the stateless person. The person needs to demonstrate that (s)he has no nationality, by using official means and forms. This leaves stateless people in the Netherlands in a legal limbo: they cannot prove that they are stateless, because proving that one has no nationality is often impossible through formal means and forms. In addition, statelessness of parents is transferred to children born in the Netherlands and the right of option ('optie recht'), a way of acquiring citizenship,¹⁴¹ is often not available to them – creating generations of stateless citizens in the Netherlands.

The Statelessness Conventions were meant to ensure that stateless people would receive the same legal protection as refugees do on the basis of special provisions. However, because they are not recognized as stateless, stateless refugees are not protected to the same degree as refugees who fall under the refugee convention. The recognition of statelessness is also of paramount importance to guarantee economic, social and cultural rights more broadly – as protected by the CERD (article 2.2). As long as stateless persons are not recognized as being stateless, they cannot derive any protection from the Conventions on Statelessness. Since stateless persons have no nationality, formally there is also no home country that they can derive rights and protection from. Consequently, stateless persons are particularly vulnerable to unequal treatment and protection.

For long, the Netherlands failed to make legal reforms that would contribute to the eradication of statelessness. However, after initial denial of the problems, the Dutch Secretary of State acknowledged that the no-fault procedure makes it practically impossible to assess and register statelessness. He announced a new law,¹⁴² which could be a first small step in strengthening the social, economic and cultural protection of stateless persons.

The NGOs request the Committee to urge the government to prevent statelessness, and to implement a clear, unified and realistic legal procedure to determine statelessness which includes possibilities to obtain nationality. Moreover, statelessness should no longer be transferred to children born in the Netherlands.

ARTICLE 5 (E) (I)

1. *Data and causes for unemployment*

The CERD Committee recommended the Dutch government in paragraph 10 of its Concluding Observations of 2010 to improve the “rates of unemployment in ethnic minority groups, particularly women of ethnic minority background as unemployment rates in this group are ‘significantly higher than average’” (par 12). In paragraph 12, the CERD Committee added concern about the ‘under-representation of ethnic minorities in senior positions in the public and private sectors’. Despite these

¹⁴¹ According to article 6, section 1, under b, Rijkswet op het Nederlanderschap.

¹⁴² See: rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2014/11/13/tk-brief-aan-vz-tk-inzake-reactie-kabinet-op-het-acvz-advies-inzake-staatloosheid.html.

recommendations, recent research and complaints data show that racial discrimination on the labor market persists. The government has proven incapable of effectively countering this inequality.¹⁴³

Research demonstrated that labor participation rates of Dutch people of Surinamese, Dutch Antillean, Dutch Aruban, Moroccan and Turkish descent are much lower than of their native Dutch counterparts. These groups are unequally hit hard by the economic crisis. The unemployment rate among so called ‘non-Western migrants’ is currently three times higher than among native Dutch job-seekers in 2013 (16% vs 5%).¹⁴⁴ The unemployment rate among young people aged 15-24 in different migrants groups rose to between 25% and 29% in 2012.¹⁴⁵ Unemployment rates are highest among youngsters with Moroccan roots aged 15-24: a shocking 37%.¹⁴⁶ In addition to youngsters, older people are also specifically vulnerable on the labor market: non-Western people between 45 and 55 years are two to three times more likely to be unemployed than native Dutch people.¹⁴⁷ This is particularly true for people from Turkish (64%) and Moroccan (57%) descent, who are far more often unemployed than the ethnically Dutch population (35%) in the same age group.¹⁴⁸ This has led to high dependence on social benefits for these groups.¹⁴⁹ While 3% of the ethnically Dutch population between 50 and 65 years old received social benefits (‘uitkering’), this was the case for 21% of the non-Western population in the same age group. For people with a Moroccan background (who are included in the ‘non-Western’ category) this was even 29%.¹⁵⁰ While of course it is a welcome fact that all people can rely on state assistance in case of unemployment, the reasons for the discrepancy in unemployment and benefit dependence between certain groups should be scrutinized.

Of all European Union member states, the Netherlands has the largest difference in unemployment rates between native Dutch and non-Western job-seekers.¹⁵¹ While racism occurs, and is experienced by (almost) all ethnic minority groups in the employment sector, incidents are rarely reported. The sections below describe some of the causes of and explanations for the above described situation.¹⁵²

An important factor in the higher unemployment rates is the practice of racial discrimination that takes place in recruitment and selection procedures. Two recent reports from the Netherlands Institute for Social Research (SCP) showed that even when two applicants are equal in every respect except their ethnic background, employers invite (and consequently, employ) more ethnically Dutch candidates than those from an ethnic minority. This is considered to be due to employers’ prejudices.¹⁵³ At the same time, the Council of Europe Commissioner for Human Rights reported that discrimination is one of the reasons for participation of migrant women to lag behind. Several reports have expressed that employers select trainees and job applicants on ethnic origin and that in particular Muslim women wearing a headscarf suffer from discrimination.¹⁵⁴

Research in 2011 showed that 76% of the Dutch temporary employment agencies honored a request from an employer not to introduce candidates with certain ethnicities, mainly of Moroccan, Surinamese and Turkish descent.¹⁵⁵ Subsequent research by the SCP showed that of non-Western

¹⁴³ See e.g. I. Andriessen, E. Nievers & J. Dagevos, *Op achterstand: Discriminatie van niet-westerse migranten op de arbeidsmarkt*, Den Haag: SCP 2012; Netherlands Institute for Human Rights, *Annual report 2013*, Utrecht: Netherlands Institute for Human Rights 2014.

¹⁴⁴ I. Andriessen, E. Nievers & J. Dagevos, *Op achterstand: Discriminatie van niet-westerse migranten op de arbeidsmarkt*, Den Haag: SCP 2012. With non-western migrants is understood, migrants born in Africa, Asia or Latin-America or at least one of the parents born in those continents.

¹⁴⁵ Turkish background (26%), Surinam background (27%), Antillean background (29%), other non-Western background (25%).

¹⁴⁶ W. Huijk, M. Gijsberts, J. Dagevos, *Jaarrapport Integratie 2013*, The Hague: Centraal Cultureel Planbureau 2014.

¹⁴⁷ FORUM, *Arbeidsmarktparticipatie niet-westerse ouderen*. Factsheet, Utrecht, 2012, p.1.

¹⁴⁸ *Ibid.*

¹⁴⁹ De Kroon 2014 (*supra* note 14), pp. 2 and 8.

¹⁵⁰ FORUM 2012 (*supra* note 147), p. 1.

¹⁵¹ See research done by OECD/Eurostat concerning unemployment rates in the Netherlands: stats.oecd.org/.

¹⁵² See: <http://www.garanziaiovani.gov.it/Documentazione/Documents/piano%20di%20implementazione%20Paesi%20Bassi.pdf>.

¹⁵³ Sociaal Cultureel Planbureau, *Liever Mark dan Mohammed? Discriminatie op de arbeidsmarkt*, The Hague: SCP 2010.

¹⁵⁴ Council of Europe Commissioner for Human Rights, *Report on his visit to the Netherlands 21-25 September 2008*, Strasbourg, 11 March 2009, par. 134.

¹⁵⁵ E. Loeters, *De klant is koning. Een onderzoek naar het honoreren van discriminerende verzoeken van werkgevers door intercedenten van uitzendbureaus in Nederland* (master’s thesis Sociologie van Mondialisering en Diversiteit, Vrije Universiteit), Augustus 2011; A. Backer, *Uitzendbureaus, gekleurde doorgelieven? Passieve discriminatie bij uitzendbureaus* (master’s thesis: Sociologie van Mondialisering en Diversiteit, Vrije Universiteit), September 2011.

applicants who personally visit an employment agency has a 28% chance of being offered a job. Dutch applicants with identical CVs had 46% chance. According to ENAR, this form of discrimination is 'due to lack of knowledge of anti-discrimination legislation, as well as the prejudices of employees of recruitment agencies'.¹⁵⁶ As also noted by the SCP, the fact that ethnic minorities are more often unemployed than ethnically Dutch people, is partially the consequence of excluding mechanisms on the labor market.¹⁵⁷

Other explanations that could be given for the lagging employment situation of ethnic minorities are too low educational levels; too little relevant work experience; lacking mediation and mentoring; a limited social network; lacking cultural capital; linguistic disadvantage; health problems; and a greater susceptibility for work related stress.¹⁵⁸ These causes are all interlinked and particularly influenced by prejudices and discrimination. As is explained in the section on education, the comparatively (very) low educational levels of ethnic minorities have a particularly negative impact. In some cases, there is also a mismatch between the skills and qualifications of ethnic minorities with what is currently needed on the labor market. First generation migrants still have difficulties with the Dutch language and the education they might have followed in their home country does not match job requirements in the Netherlands.¹⁵⁹ Non-Western youngsters relatively often do not choose an educational path that is likely to lead to employment, such as the technical and healthcare sector, where job vacancies are more plentiful.¹⁶⁰ This is also due to cultural and family pressure to choose professions which would bring high status.¹⁶¹

Finally, (non-Western) job-seekers usually have less extracurricular experience, are less familiar with certain social codes, and have less access to the social networks that are often used by the native Dutch jobseekers to find employment.¹⁶² In sum, non-Western employment seekers are 2,5 times less likely to find a job than native Dutch candidates.¹⁶³ Once they find a job, they receive a flexible employment contract disproportionately often, which makes it easier for an employer to dismiss them.¹⁶⁴ In addition, they earn 8% less wages than their native Dutch peers with the same job and educational background.¹⁶⁵

Other groups facing difficulties on the Dutch labor market, include Central and Eastern Europeans. As more people from Central and Eastern Europe arrived over the past few years, racial antagonism has been instigated against them, to an important degree by certain politicians, and not sufficiently rebutted by others. For example, in February 2012, when Geert Wilders' Freedom Party (PVV) was still a minority partner of the governing coalition, Wilders launched a smear campaign against Central and Eastern Europeans, including the launch of a hotline to complain about these persons (*Meldpunt Midden- en Oost-Europeaanen*). Despite pressure from the European Union, the governing parties did not dissociate themselves from the initiative. Prime Minister Mark Rutte argued this was an initiative of the PVV and not of the Dutch government.¹⁶⁶ Beyond hateful rhetoric, Polish, Romanian and Bulgarian labor migrants face discrimination in recruitment procedures, poor working conditions, as well as physical and emotional abuse in the labor market.¹⁶⁷

¹⁵⁶ De Kroon 2014 (*supra* note 14), p.17.

¹⁵⁷ Sociaal Cultureel Planbureau 2010 (*supra* note 153).

¹⁵⁸ De Kroon 2014 (*supra* note 14), p.17.

¹⁵⁹ S. Bouma, L. Coenen & A. Kerckhaert, *Arbeidsmarktpositie van niet-westerse allochtonen. De stand van zaken*, research conducted for the Ministry of Social Affairs and Employment, 2011.

¹⁶⁰ De Kroon 2014 (*supra* note 14), p.17.

¹⁶¹ S. Bouma, 'Één Gouden Kalf maakt nog geen zomer. Een inhaalslag op de arbeidsmarkt van niet-westerse allochtonen', *S&D* 2011 (9/10), p.107. This was confirmed in the interview with FORUM.

¹⁶² De Kroon 2014 (*supra* note 14), p.17; T. Bennink, 'Schakel tussen school en werk', *SER Magazine*, 2014.

¹⁶³ Bouma 2011 (*supra* note 161); Bouma 2011 (*supra* note 159).

¹⁶⁴ M. Kremer, M. Bovens, E. Schrijvers & R. Went (red.), *Hoe ongelijk is Nederland? Een verkenning van de ontwikkeling en gevolgen van economische ongelijkheid*, Amsterdam: Amsterdam University Press 2014.

¹⁶⁵ Netherlands Institute for Human Rights, et al., *Rapport consortium Universal Periodic Review*, The Netherlands, Second cycle, 2012, mensenrechten.nl/publicaties/detail/17483; see also 'Lager loon tweede generatie niet-westerse allochtoon volledig te verklaren', *CBS Webmagazine*, 29 November 2010, cbs.nl/nl-NL/menu/themas/arbeid-sociale-zekerheid/publicaties/artikelen/archief/2010/2010-3267-wm.htm.

¹⁶⁶ De Kroon 2014 (*supra* note 14), pp. 2 and 10.

¹⁶⁷ Centraal Bureau voor de Statistiek, *Jaarrapport Integratie*, The Hague: CBS 2012, p.10.

Finally, refugees are also particularly vulnerable on the Dutch labor market. They have a much lower participation rate than all other groups, which is particularly true for Somali refugees.¹⁶⁸ While the number of refugees is rising, there are insufficient policies in place to ensure their access to the labor market.

The NGOs request the Committee to urge the government to systematically monitor discrimination on the labor market and to design effective policies on the basis of the results. In particular, the NGOs urge for the Dutch government to take measures that support non-Western migrants in finding employment, e.g. by preventing discrimination in the application phase and by assisting non-Western migrants in their career path.

2. Policies regarding discrimination on the labor market

In its Concluding Observations of 2010 (paragraph 12), the CERD Committee recommended that the Dutch government took more effective measures to eliminate discrimination in access to employment, for example through awareness raising campaigns. Consequently, the government commissioned various studies into the labor position of vulnerable groups, which added to the extensive research and undeniable proof that discrimination in the labor market is taking place. However, very little concrete follow up action has been taken since: the national and local governments, education sector and employers have paid little attention to the issue of racial discrimination in the labor market.¹⁶⁹ In the report for the UN Universal Periodic Review of 2012, the Equal Treatment Commission together with the Ombudsman and others stated that the Dutch Government ‘played down discrimination as the cause for unemployment amongst foreign nationals with a non-Western background’. They also criticized the government for not having taken the action recommended following the studies proved discrimination to be a big problem in the labor market.¹⁷⁰ This section will discuss what employers, the government and other stakeholders have done since the last CERD report.

Upon request of the Ministry of Social Affairs and Employment, the Social and Economic Council of the Netherlands (SER), published an advisory report on the subject of discrimination in employment in 2014. The SER confirmed that stereotyping and prejudices have a negative impact on the labor position of certain ethnic minorities. The SER urged employers to acknowledge the existence of discrimination in employment, which would precede effective measures to tackle this phenomenon.¹⁷¹ The Working Conditions Act legally obliges employers to list and assess all the risks, including discrimination, posed by the working conditions. Based on this act, the employer has to take all necessary actions to eliminate the identified risks. However, there are no specific measures to counter racism stipulated by the Working Conditions Act. The SER insisted that employers should foster knowledge of rights and regulations regarding discrimination and educate employees in recognizing discrimination – in particular regarding stereotyping and prejudice. Employees who complain about discrimination may even be confronted with an unsympathetic response or dismissal of their complaint.¹⁷² Possible further preventive measures that employers could take to combat discrimination could include the development of a code of conduct; a description of the types of behavior that will be treated as discriminatory; trainings; periodical reports on the company’s statistics on discrimination. Possible curative policy measures could include: complaint registration procedures; appointment of a trusted person for handling discrimination cases; counseling victims of discrimination.

¹⁶⁸ Ibid. See also Dutch Council for Refugees, *IntegratieBarometer 2014. Een onderzoek naar de integratie van vluchtelingen in Nederland*, October 2014.

¹⁶⁹ De Kroon 2014 (*supra* note 14).

¹⁷⁰ Netherlands Institute for Human Rights 2012 (*supra* note 165).

¹⁷¹ Sociaal-Economische Raad, *Discriminatie werkt niet! Advies over het tegengaan van discriminatie bij de arbeid*, Den Haag: SER 2014.

¹⁷² M. van Genugten & J. Svensson, *Dubbel de dupe?: Een studie naar de benadeling van werknemers die gelijke behandeling aan de orde stellen*, Enschede : Universiteit Twente 2010.

Shortly after the SER report was published, the Ministry of Social Affairs and Employment presented an Action plan on Discrimination on the Labor Market.¹⁷³ The plan suggested measures to prevent and cure discrimination. The NGOs welcome that the Action plan, unlike the SER advisory report, also presented more repressive measures such as ‘naming and shaming’ of employers who have been found to discriminate by the Netherlands Institute for Human Rights. The national government will also exclude companies who were found guilty of discrimination by a criminal court from public procurement procedures. However, criminal prosecution regarding discrimination on the labor market is very rare and the NGOs doubt this measure will have much impact on countering daily occurrences of racism. In 2010-2014 only one penal discrimination case, related to employment, was filed in (criminal) court.¹⁷⁴ From 2010-2014, only twenty cases were dealt by the (civil) court.¹⁷⁵ Employees are generally reluctant to file a discrimination case in (civil) court. Most employees fear that the potential private benefits from starting a court case do not outweigh the expected private costs and they rather file a complaint at the Netherlands Institute for Human Rights. In the period 2010- 2014, the Institute issued approximately 600 decisions about discrimination at the workplace.¹⁷⁶ Most complaints (35%) concerned discrimination on grounds of race. The Committee’s rulings, however, are not legally binding so employers are not bound to act on the Committee’s ruling.

Furthermore, trade unions, employers’ organizations and the Health and Safety Service (‘Arbodienst’/’bedrijfsarts’) in general also lack the expertise to assess the validity of complaints about discrimination. Therefore, the government should address the subject of adjudication of discrimination complaints to offer guidance to those organizations and educate involved professionals how to approach (discriminated) employees. For example, the Health and Safety Service should be provided a clear guideline how to handle discrimination cases.¹⁷⁷

The Anti-Discrimination Agencies (see section 2(1)) would also like the municipalities to have a more sustainable role in preventing discrimination in employment.¹⁷⁸ One of their recommendations is to examine how anti-discrimination policy is implemented by subsidized companies and to withdraw subsidies when anti-discrimination policies are implemented insufficiently. Another recommendation is to engage employers, employees and the (local) Chamber of Commerce in a platform to discuss discrimination cases and to develop solutions jointly with the Anti-Discrimination Agencies.¹⁷⁹

In order to improve the unemployment rate among (non-Western) migrants, actions should be taken by several parties, including the government, employers and other stakeholders. Each has a role to play in strengthening the labor position of ethnic minorities, through education and soft skills (e.g. presentation during job interviews, assistance in writing job application letters)¹⁸⁰ but most importantly also need to take the fact that racial discrimination takes place seriously, and counter it with genuine and effective measures. Several specific steps in this respect should be made.

Firstly, the government and other stakeholders should (continue to) acknowledge that racial and ethnic discrimination is a problem that needs to be addressed constructively and policies should be targeted towards the specific groups that face difficulties more effectively. Those measures that are taken should be monitored, evaluated and adapted where necessary.

Secondly, the government should play an active role in encouraging employers to make such a budget available within their organization. The NGOs fear that without tools and assistance,

¹⁷³ Ministry of Sociale Affairs and Employment, *Actieplan arbeidsmarktdiscriminatie en kabinetreactie SER advies ‘Discriminatie werkt niet!’*, The Hague, 16 May 2014, ser.nl/~media/files/internet/kabinets%20reactie/2014/discriminatie-werkt-niet.ashx.

¹⁷⁴ *Cijfers in Beeld: Discriminatiecijfers 2013. Overzicht discriminatiecijfers Openbaar Ministerie 2008 –2012*, Amsterdam: Landelijk Expertise Centrum Discriminatie (LECD-OM) 2013.

¹⁷⁵ *Kerncijfers 2012-2014: Landelijk overzicht van klachten en meldingen over discriminatie, geregistreerd bij de antidiscriminatievoorzieningen*, Landelijke Brancheorganisatie van Antidiscriminatiebureaus (LBA) en Samenwerkende Antidiscriminatievoorzieningen Nederland (SAN), 21 March 2015./ research: www.rechtspraak.nl.

¹⁷⁶ Netherlands Institute for Human Rights, annual reports 2011, 2012, 2013, and 2014: [mensenrechten.nl/publicaties/zoek?categorie\[0\]=434555](http://mensenrechten.nl/publicaties/zoek?categorie[0]=434555).

¹⁷⁷ Sociaal-Economische Raad 2014 (*supra* note 171).

¹⁷⁸ Five Anti Discriminatie Bureau’s in North-Holland, *Kadernota, Gemeentelijk Antidiscriminatiebeleid, bureaudiscriminatiezaken.nl/knalcarte10.pdf*, December 2010.

¹⁷⁹ Five Anti Discriminatie Bureau’s in North-Holland, *Kadernota, Gemeentelijk Antidiscriminatiebeleid, bureaudiscriminatiezaken.nl/knalcarte10.pdf*, December 2010.

¹⁸⁰ Bennink 2014 (*supra* note 162).

many employers will remain reluctant to take effective action to protect their employees against discrimination, in particular since (discriminated) employees are reluctant to go to court. Employers, therefore, do not fear (public) court cases.

Thirdly, the NGOs suggest that the national government excludes companies who were convicted of discrimination by a criminal court/civil court or by the Netherlands Institute of Human Rights from public procurement procedures. Additionally, the NGOs suggests that the national government “names and shames” more publically, for example through publishing a list of companies convicted of discrimination on a public website.

Fourthly, the NGOs suggest that a budget is made available in order to improve certain skills and to give educational guidance to ethnic minorities. For example, training courses could be given to improve language skills, network skills, soft skills etc. Moreover, more attention should, in an earlier stage, be paid to for example educational guidance and career opportunities.

The NGOs request the Committee to encourage the government to improve the effectiveness of the Action plan on Discrimination on the Labor Market by allocating funds for employers to protect (future) employees against discrimination.

All municipalities should formulate (integral) anti-discrimination policies that make it possible to influence/be involved with discrimination in employment. A budget should also be made available to, for example, NGOs in order to improve certain skills and to give educational guidance to (non-Western) migrants.

In addition, it is recommended to exclude companies that do not take sufficient measures to prevent and tackle discrimination from public procurement and to reinforce the “naming and shaming” policy towards these companies.

Finally, the NGOs recommend that the government addresses the subject of adjudication of discrimination complaints with the Health and Safety Service (*Arbodienst*), trade unions and employers' organizations.

3. *Roma and Sinti*

While official statistics are lacking, it is apparent that one of the groups that has for centuries been systematically excluded from employment opportunities in the Netherlands are the Roma and Sinti. In consonance with European numbers, Roma and Sinti belong to the groups with the highest unemployment rates.¹⁸¹ Roma representatives report that due to discrimination on the basis of their ethnicity it is very difficult for Roma to get opportunities on the labor market or to get financial support in starting up a business.¹⁸²

The Dutch NGOs request the Committee to urge the Dutch government to map out the position of Roma and Sinti in the labor market and evaluate whether adoption of national and local affirmative action policies and measures could be useful to support the inclusion of Roma and Sinti in the labor market.

ARTICLE 5 (E) (III)

1. *Rejected asylum seekers*

In addition to what is stated under articles 2 (2) and 5 (E) (IV) about the vulnerable position of irregular migrants in the Netherlands, the NGOs would like to draw the Committee's attention to the specific worrying living circumstances of children in irregular situations.

¹⁸¹ While no recent data is available, '[o]fficial statistics from 2000 show that 17% of Roma were registered as unemployed, but qualitative information published in 2004 claimed that an estimated 90% of Roma received unemployment benefits', in Art.1 2012 (*supra* note 86), pp. 4, 20-21.

¹⁸² Art.1 2012 (*supra* note 86), pp. 18-22.

In 2011, the Dutch Supreme Court ruled that children with parents who are irregular migrants should always be offered adequate shelter and care.¹⁸³ Subsequently, the government opened accommodation centers for refugees with children, called ‘GezinsLocaties’ (‘Family locations’). By mid-2014 there were seven of these *GezinsLocaties* offering accommodation to a total of 1,100 children for an average stay of 940 days.¹⁸⁴ And the number of *GezinsLocaties* still increases, meanwhile the Netherlands counts eight *GezinsLocaties*.¹⁸⁵ These facilities created a new set of difficulties for these children. As the *GezinsLocaties* are focused on return to the country of origin they only offer bare necessities. The forced move to the *GezinsLocaties* obstructs the continuation of children’s development and education.¹⁸⁶ No proper education is offered and educational materials are lacking.¹⁸⁷ Children’s freedom of movement is very limited, and the facilities are often lacking playgrounds. Because of the daily duty to report, visits to family, doctors or lawyers are nearly impossible. Failure to report can be sanctioned by a fine; a very big cost for people generally already living below the poverty-line. Access to (mental) health care is not sufficiently safeguarded.¹⁸⁸ With these shortcomings, the *GezinsLocaties* are a long-term measure that seriously hampers the freedom and development of (young) children. This is a situation which is particularly unjustified as only 7% of people in *GezinsLocaties* actually return to their home countries.¹⁸⁹

The Dutch NGOs request the Committee to urge the Dutch government to guarantee dignified living conditions in the *GezinsLocaties* which are in line with human rights for all children in the Netherlands, including rejected asylum seekers. Treatment in the *GezinsLocaties* should prioritise children’s development and therefore ensure access to education and health care, as well as adequate room for movement and play.

2. Roma, Sinti and Travelers

Roma, Sinti and Travelers with the Dutch nationality often wish to live amongst family and in caravans.¹⁹⁰ On 15 August 2014 the caravan culture (‘woonwagencultuur’) in the Netherlands has been recognized as Immaterial Heritage by UNESCO.¹⁹¹ Since the abolishment of the *Caravan Act* in 1999 the primary responsibility for caravan sites has been with the local authorities. It is estimated that 80% of the Dutch municipalities have one or more caravan sites.¹⁹² The government encourages Roma to live in regular housing as living at caravan sites would hamper their integration.¹⁹³

Due to their disadvantaged socioeconomic position, and the lack of national inclusion policy, a number of Roma live on sites segregated from the rest of society, in houses of lower standards – which has health implications –and with less access to employment opportunities.¹⁹⁴ The European Court for Human Rights stated that living in a caravan is an integral part of some Traveler’s identity and may therefore not be hindered if people choose to live there.¹⁹⁵

¹⁸³ HR 21 September 2012, LJN BW5328.

¹⁸⁴ *Kamerstukken II* 2013/14, Aanhangselnummer 1721, zoek.officielebekendmakingen.nl/ah-tk-20132014-1721.html.

¹⁸⁵ Werkgroep Kind in azc, ‘Het is hier in één woord gewoon... stom!’. *Onderzoek naar het welzijn en perspectief van kinderen en jongeren in gezinslocaties*, October 2014.

¹⁸⁶ *Ibid.*

¹⁸⁷ W.G. Fischer & J.H. Kruseman (lawyers), *Surviving under the bread line*, Haarlem, 7 February 2012, p. 6.

¹⁸⁸ Bruning et al. 2012 (*supra* note 80).

¹⁸⁹ Defence for Children, *Gezinslocaties voor uitgeprocedeerde gezinnen schadelijk en nutteloos*, 21 december 2012, defenceforchildren.nl/p/21/2606/mo89-mc21/mo8-cg%7Ctxt=*gezinslocaties*/mo45-mc52.

¹⁹⁰ R. Schriemer, *Housing Conditions of Roma and Travellers*, The Netherlands RAXEN National Focal Point, Thematic Study for the European Union Agency for Fundamental Rights, March 2009, para. 1.2.10.

¹⁹¹ ‘De woonwagencultuur wordt erkend als Immaterieel Erfgoed Nederland’, *ANP Pers Support*, 15 July 2014, perssupport.nl/apssite/persberichten/full/2014/07/15/De+woonwagencultuur+wordt+erkend+als+Immaterieel+Erfgoed+Nederland.

¹⁹² Schriemer 2009 (*supra* note 190), para. 1.2.10.

¹⁹³ E.g. the municipality of Utrecht offered a Roma family regular housing on thirteen occasions, nrc.nl/nieuws/2012/05/19/utrecht-bood-romafamilie-dertien-keer-huisvesting-aan/.

¹⁹⁴ Art.1 2012 (*supra* note 86), pp. 23-27.

¹⁹⁵ ECHR 18 January 2001, appl.no. 27238/95 (Chapman/UK).

Some local governments pursue a so-called ‘extinction policy’. This means that local authorities remove designated ‘released sites’ or actively offer alternative housing to residents.¹⁹⁶ Other municipalities reduce the number of sites and caravans by changing the plan for land allocation, whilst continuing to allow one or more sites (‘reduction policy’).¹⁹⁷ Both policy strategies are supported by the national government in a 2010 directive from the former-ministry of Housing, Land planning and the Environment (VROM).¹⁹⁸ With these policies municipalities disregard the needs of the caravan culture, as they do not take into account the interests of Travelers in general policy or in individual decisions on eviction. The absence of dialogue between the municipalities and the Roma, Sinti and Travelers communities intensified distrust of these communities towards the government and civil society.¹⁹⁹

Already in 2009 there was a shortage of 3,000 caravan sites.²⁰⁰ Shortages have increased and will continue to do so in the future, as the number of sites reduces while the demand remains unchanged.²⁰¹ Furthermore, caravan dwellers hold a disadvantaged financial position as it is often impossible for them to obtain mortgages. The grounds used by banks to reject such loans have been criticized by the Netherlands Institute for Human Rights for being indirectly discriminatory.²⁰² These problems have also been noticed by ECRI, which recommended the Dutch government to ‘make an assessment of the needs of Roma, Sinti and Travelers who live in caravans and ensure that sufficient caravan sites are made available so that they can live according to their traditions and culture’.²⁰³

The Dutch NGOs request the Committee to urge the Dutch government to enter into dialogue with Roma, Sinti and Travelers communities about their housing needs and to ensure that there are sufficient caravan sites. Moreover, the Committee is requested to call on the Dutch government to improve the housing conditions of Roma living in regular housing.

ARTICLE 5 (E) (IV)

1. *Basic human rights and protection for undocumented migrants*

In its General Recommendation 30, the Committee stated that differential treatment between citizens and non-citizens is allowed but should be legitimate and proportionate and that states should respect the right of non-citizens to an adequate standard of physical and mental health.²⁰⁴ In the Netherlands, this standard is not upheld for migrants without a residence status, referred to as undocumented or irregular migrants. Departing from a law stating that ‘undocumented migrants are responsible for their

¹⁹⁶ For example, the mayor of Waalre argued in October 2012 that the government should seriously reconsider the right to existence of caravan sites and argued for the removal of these sites. See nu.nl/binnenland/2940049/burgemeester-waalre-wil-af-van-woonwagenkampen.html. Alternatively, e.g. the municipality of Utrecht offered a Roma family regular housing on thirteen occasions, nrc.nl/nieuws/2012/05/19/utrecht-bood-romafamilie-dertien-keer-huisvesting-aan/.

¹⁹⁷ E.g. the municipality of Tiel. This has led to a judgment of the administrative law section of the State Council (ABRvS) in 2014. The Council did not find that changing the plans for the use of land from caravan sites to ‘green’ after being released was unreasonable. See ABRvS 3 September 2014, 201400103/1/R2.

¹⁹⁸ Ministry of Housing, Spatial Planning and the Environment (VROM), *Werken aan woonwagenlocaties: Handreiking voor gemeenten over beleid en handhaven*, 2010, p. 6.

¹⁹⁹ P.R. Rodrigues & M. Matelski, *Monitor racisme en extreem-rechts, Cahier nr. 3 Roma en Sinti*, Amsterdam/Leiden: Anne Frank Stichting/Universiteit Leiden 2004, p. 26.

²⁰⁰ Schriemer 2009 (*supra* note 193), para. 1.2.10.

²⁰¹ Art.1 2012 (*supra* note 86), p. 9.

²⁰² The Netherlands Institute for Human Rights found in 2013 that there was indirect discrimination by the mortgage lender which refused to give a mortgage to caravan dwellers based solely on the location and area, Oordeel 2013-111, para. 3.11 and 3.19.

²⁰³ ECRI 2013 (*supra* note 15), paras. 162-163.

²⁰⁴ See: General Recommendation 30, 4 (CERD/C/64/Misc.11/rev.3 (2004): ‘Under the Convention, differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim. Differentiation within the scope of article 1, paragraph 4, of the Convention relating to special measures is not considered discriminatory’; General Recommendation 30, 36: ‘Ensure that States parties respect the right of non-citizens to an adequate standard of physical and mental health by, inter alia, refraining from denying or limiting their access to preventive, curative and palliative health services’.

own return-process' and the intention 'to avoid the appearance of [undocumented or irregular migrants'] legality', the state excludes them from all social services (except basic medical care, education for minors and some legal support).²⁰⁵ This law makes also children vulnerable. Many undocumented children and their parents are unaware of the fact that they have a right to basic medical care. The same goes for many staff members of health facilities: undocumented people, including children, are still frequently turned away at hospital reception desks because they cannot provide identification. Furthermore, Defence for Children has received complaints on their helpdesk that undocumented children have been asked to provide documents which they (can) not possess to register for a school. Children should always be protected, and the first to be excluded from laws that deny them basic human rights. This was also advised to the government by the Advisory Committee on Migration Affairs (*Adviescommissie voor Vreemdelingenzaken*, ACVZ), an independent Committee that advises the Dutch government and Parliament on immigration law and policy.

Moreover, the laws are creating a legal, inhuman limbo for asylum seekers and other undocumented migrants. After a certain period, rejected asylum seekers are forced to leave the asylum center without the right to work or stay at other shelters and without access to social benefits. This policy has rendered many people homeless and destitute. Since a decision by the European Committee of Social Rights (ECSR) in 2009 – which was confirmed by the Dutch Supreme Court in 2012 – undocumented families with children who are in need can get (very) basic food and shelter in family shelter facilities.²⁰⁶ In 2012, the Netherlands saw 13.170 asylum applications, mainly from people originating from Somalia, Iraq, Afghanistan and Iran.²⁰⁷ Over half of these applications were declined (5.930).²⁰⁸ In 2014 35% of all first applications were rejected.²⁰⁹ In most cases, rejected asylum seekers cannot or will not return, for example because the situation in the country of origin is too unsafe.²¹⁰

The Dutch government only provides shelter to those asylum seekers who cooperate with their own deportation. From 2011 onwards, a group of undocumented migrants who cannot be deported – mainly from Somalia, Ethiopia, Eritrea, Sudan, Libya, Afghanistan and Western-Africa – organized themselves in the 'We Are Here' -collective.²¹¹ One of their first protest camps grew to become a refugee camp of between 300 and 400 people in front of one of the asylum- and deportation centers in the North of the Netherlands. They were evicted and dispersed by government officials. Eventually a large group arrived in Amsterdam and moved from tent camp to squatted church to squatted offices.

In response to a complaint launched by the Conference of European Churches at the ESCR, the ESCR stated that '[h]uman dignity is the fundamental value and the core also of European human rights'. It said that this fundamental value also applies to undocumented migrants and that the Netherlands – by not helping people who are destitute or making help conditional upon collaboration with deportation – violated article 13 and 31 of the Social Charter. The ESCR ordered an immediate measure in which it said that the state and municipalities have to provide food, shelter and clothing to everyone in a desperate situation.²¹² The EU Commissioner on Human Rights and the Dutch Institute for Human Rights asked the Netherlands to do as the Committee proposed.²¹³ The municipality of Amsterdam started offering food and shelter to 159 people from the 'We Are Here'-group, partly

²⁰⁵ Wet van 26 maart 1998, *Stb.* 1998, 203, tot wijziging van de Vreemdelingenwet en enige andere wetten teneinde de aanspraak van vreemdelingen jegens bestuursorganen op verstrekkingen, voorzieningen, uitkeringen, ontheffingen en vergunningen te koppelen aan het rechtmatig verblijf van de vreemdeling in Nederland. Inwerkingtreding: 1 juli 1998, *Stb.* 1998, 204.

²⁰⁶ See: ECSR 20 October 2009, *DCI vs The Netherlands*:

coe.int/t/dghl/monitoring/socialcharter/Complaints/CC47SummaryMerits_en.pdf; HR 21 September 2012: deepink.rechtspraak.nl/uitspraak?id=ECLI:NL:HR:2012:BW5328

²⁰⁷ Dutch Council for Refugees, *Vluchtelingen in getallen 2013*, 2013, p. 8.

²⁰⁸ *Idem*, p. 9.

²⁰⁹ IND Annual Report 2014, ind.nl/Documents/web_Jaarresultaat14.pdf.

²¹⁰ Only 48% of undocumented migrants that are apprehended by the authorities are deported, see *Kamerstukken II* 2012/13, 19 637, no. 1578.

²¹¹ See: wijzijnhier.org/.

²¹² See: coe.int/t/dghl/monitoring/socialcharter/complaints/CC90CaseDoc1_en.pdf;

coe.int/t/dghl/monitoring/socialcharter/Complaints/CC90DecisionImmediateMeasures_en.pdf;

coe.int/t/dghl/monitoring/socialcharter/Complaints/CC90CaseDoc2_en.pdf.

²¹³ See: humanrightseurope.org/2014/10/nils-muiznieks-migrants-and-childrens-rights-need-better-protection-in-the-netherlands/ and mensenrechten.nl/berichten/onmiddellijke-actie-vluchtgarage-nodig.

based on the immediate measure.²¹⁴ After visiting one of the squatted locations, the Dutch Institute for Human Rights concluded that other undocumented persons remained in ‘inhumane conditions’.²¹⁵ After six months, the Amsterdam Municipality terminated the shelter arrangements it had offered and put the persons on the streets again.²¹⁶ The cities of Amsterdam and The Hague have stated they will make permanent shelters and facilities available in the future.

Some Dutch courts seemed to reject that the verdict by the European Committee of Social Rights (ECSR) could be used directly to claim a right to shelter for an individual plaintiff.²¹⁷ In December 2014 the Administrative High Court²¹⁸ decided otherwise in a preliminary judgment that the municipality of Amsterdam needs to provide undocumented migrants at least shelter for the night, a shower, breakfast and evening meal. Whether the existing verdicts need to be adjusted in line with the ECSR decision is to be answered during the proceedings on the merits of the case.²¹⁹ While the majority of Dutch Members of Parliament has expressed the wish for the government to uphold the ECSR verdict, the government continues to deny undocumented migrants (and other people in destitute situations) shelter, food and clothing, leaving thousands of people in inhumane conditions.²²⁰

Finally, it should also be noted that since January 2014, undocumented migrants can only get their medicines if they pay five Euros per recipe. For some migrants, this is an insurmountable obstacle. A study by *ZorgInstituut Nederland* showed that this was the case for 20% of the 7500 undocumented migrants who were not able to pay their medicines themselves.²²¹ This situation makes undocumented migrants even more vulnerable.

The Dutch NGOs request the Committee to urge the government to guarantee basic rights for everybody, including undocumented migrants, and first of all children, and to provide at a minimum shelter, food and clothing in line with General Recommendation 30 and the decision by the European Committee of Social Rights.

The Dutch NGOs request the committee to recommend the government to abolish the €5,- rule to pay for medicines.

2. Abolishment of subsidy for interpreter-translators in public health care services

Per January 1, 2012, the Dutch Ministry of Health, Welfare and Sport (VWS) abolished subsidies for interpreter-translators in public health care services.²²² People who do not master the Dutch language sufficiently are denied the right to clear communication about their medical issues and to proper medical care. It is very difficult to guarantee that patients give informed consent if they do not fully understand the information being given and cannot ask questions freely. Healthcare providers will often not be able to obtain people’s full medical history and give instructions without the help of a professional interpreter. The measure also has a particularly negative impact on the accessibility of health care for refugees. While there is a translator service available in the reception centers, refugees are denied the right to assistance as soon as they move to another location in the municipality.

The government’s main argument that was used to justify these cuts is that patients (or their representatives) are responsible for their own command of the Dutch language.²²³ It is difficult to understand this reasoning. Research shows that it is often not merely out of unwillingness that people

²¹⁴ See: amsterdam.nl/publish/pages/576647/overeenkomst_voor_verblijf_in_de_vluchthaven.pdf.

²¹⁵ See: mensenrechten.nl/berichten/situatie-vluchtgarage-mensonwaardig.

²¹⁶ See: telegraaf.nl/binnenland/22691956/_Amsterdam_wil_Vluchthaven_ontruimen_.html.

²¹⁷ deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBNHO:2013:11318.

²¹⁸ Centrale Raad van Beroep, 17 December 2014, 14/5507 WMO/VV, 14/5453 WMO/VV, 14/5444 WMO/VV, ECLI:NL:CRVB:2014:4178.

²¹⁹ Centrale Raad van Beroep, 'Uitgeprocedeerde asielzoekers krijgen komende maanden bed, bad, brood', Press release, Utrecht, 17 December 2014, rechtspraak.nl/Organisatie/CRvB/Nieuws/Pages/Uitgeprocedeerde-asielzoekers-krijgen-komende-maanden-bed,-bad,-brood.aspx.

²²⁰ See: nrc.nl/nieuws/2014/11/20/teeven-wil-gemeenten-geen-geld-geven-voor-opvang-illegalen/.

²²¹ See: <https://www.zorginstituutnederland.nl/binaries/content/documents/zinl-www/documenten/publicaties/rapporten-en-standpunten/2014/1408-8e-monitor-regeling-financiering-zorg-onverzekerbare-vreemdelingen>

²²² Except for asylum seekers in a shelter home, victims of human trafficking and women in a social care home.

²²³ Minister of Health, Welfare and Sport (VWS), *Policy letter on interpreter-translators (inzet tolken)*, 119322-104128-MC, 28 May 2013.

are unable to speak Dutch at a high level. Ethnic minorities might not have been in the Netherlands long enough to have acquired sufficient command of the language (such is usually the case with refugees who arrived recently) or might lack the ability to do so. Furthermore, some may not be able to afford language lessons.²²⁴

In May 2013, the Ministry evaluated this decision and concluded that the abolishment of support for interpreter-translators had not deteriorated the quality of health care. The evaluation demonstrated that patients relied more on informal translators such as family and friends. Additionally health care institutions themselves yearly contributed on average €15,000 to translation services.²²⁵ The government considered the conclusions of this evaluation to support the decision to abolish the subsidy. It should be noted that this study was not done by an independent body, but by the government itself, and therefore might be less critical of the (impact of) the government's decision. Moreover, other actors, including the Royal Dutch Medical Association (KNMG) have indicated that healthcare providers encounter all kinds of problems due to the Ministry's decision to abolish subsidy for these services.²²⁶

Firstly, on penalty of disciplinary proceedings, health care providers are obliged to inform their patients properly. Medical encounters are often complex and stressful. In order to fulfil their duty, health care providers need to ensure that the patient's level of understanding is sufficient. Therefore, the KNMG drafted a guide to help health care providers to examine whether an interpreter-translator is required in a specific situation. When the health care provider decides this assistance is required, a translator will be called, which often leads to postponement of the appointment, which would not be necessary if interpreter-translator support is there from the beginning.

Secondly, despite the KNMG guide to support decision-making on engagement of an interpreter-translator, every health care institution has its own policy regarding engagement and compensation for the costs of an interpreter-translator. This results in differing quality of health care services.

Thirdly, the KNMG has witnessed that the use of informal interpreters-translators – which increased as a result of the Ministry's decision – involves another type of risk. It has been reported that – whether intentional or not – some interpreter-translators do not to translate everything or give wrongful information to the patient/health care provider. This is in particular a risk in the psychiatric health care. Moreover, the use of informal interpreter-translators affects patients' rights to confidentiality and privacy because they have no choice but to tell others about their health problems. Parents, for example, may be reluctant to discuss certain problems in the presence of their children, which could lead them to not seek medical help.

Fourthly, the KNMG experiences that health care providers are more inclined to send patients to a specialist who speaks the language of the patient instead of to the specialist best qualified for their health care problems.

Finally, the requirement that patients should pay for the costs of interpretation themselves is likely to restrict access to health care for those who are least able to pay such fees – including ethnic minorities and (undocumented) migrants. As these groups already experience inequalities in health (care), this will add to their burden. Acute illness and health crises are not clinically safe or appropriate times to promote language acquisition. It is unethical to punish people medically for not having worked hard enough on their Dutch language proficiency by denying them adequate health care. It should be remembered that it is not only the patient who is being disadvantaged, but also the health care providers who cannot do their job properly and the health facility which is to be held accountable for ineffective care.

The NGOs recommend that the Dutch Government safeguards the right to medical care and privacy for everyone residing in the Netherlands by reintroducing subsidies for interpretation and translation in health care.

²²⁴ Experts in the field of health care for migrants and ethnic minorities, *Open letter to the Minister for Health, Welfare and Sport*, 31 May 2011, mighealth.net/nl/index.php/Letter.

²²⁵ *Kamerbrief over inzet tolken*, 28 mei 2013, minister Schippers, kenmerk 119322-104128-MC.

²²⁶ S. Broersen, 'Artsen in de knoop zonder tolkenvergoeding', *Arts & Patiënt* 2014, pp. 582-583, medischcontact.artsennet.nl/archief-6/Tijdschriftartikel/142987/Artsen-in-de-knoop-zonder-tolkenvergoeding.htm.

ARTICLE 5 (E) (V)

1. Equal opportunities

Education is the key to emancipation and social mobility of migrant groups. However, in the Netherlands, structural barriers in the educational system reproduce social inequality. Despite the number of highly educated people with a migrant background rising, a considerable gap in educational achievement between ethnic minority youths and their Dutch native peers continues to exist.²²⁷ Research shows that ‘unequal treatment at a very young age impacts the rest of the lives of ethnic minorities and particularly affects their potential success in the labor market’.²²⁸ For example, when children with a migrant background take the RAKIT IQ-test – which is used in many Dutch primary schools – they are likely to score lower than their native Dutch peers.²²⁹ This is partially due to language and cultural biases in the questions and mode of questioning. Supposedly colorblind IQ tests generally do not take into account how cultural factors such as culture and language – as well as the performance of the teacher preparing the children for the test – can influence children’s test outcomes.²³⁰ Furthermore, it should be taken into account that children from lower socioeconomic backgrounds with low educated parents commonly attend lower quality schools where they are less well prepared for the test.²³¹ The IQ tests in primary school plays an important role in assessing and deciding the starting level of education in high school. Once started at a certain level, it proves very difficult to climb-up to a next level. Consequently, the IQ tests play a decisive role in fulfilling the potential educational success of (ethnic minority) children. Such structural educational disadvantages result in disadvantaged and vulnerable positions on the labor market.

The impact becomes markedly clear when looking at the case of Amsterdam, where both neighborhoods and schools are very segregated. Youth in Amsterdam Southeast – an area with a high percentage of citizens with ethnic minority backgrounds – obtain some of the lowest average test scores in the Netherlands. As a result, only 34 percent of this youth attend the higher levels of education in secondary school (i.e. HAVO and VWO) which prepare them for higher vocational education or university. In comparison, in the upper middle class ‘white’ neighborhoods of Amsterdam South and the center of Amsterdam, 71 to 73 percent of youth obtain test scores that allow them to attend the higher levels of secondary education (*Dienst Onderzoek en Statistiek*, 2013).²³² This data indicates how ethnicity, segregated living conditions, and school results are interrelated. In addition, research by the national Central Bureau for Statistics (*Centraal Bureau voor de Statistiek*, CBS) demonstrated that ‘non-Western’ boys attending secondary education drop-out relatively frequently. This means that as much as 25 percent of Turkish and Moroccan young men lack the starting qualifications that are generally required for a skilled job.²³³ Research shows that migrant youth face structural barriers, including insufficient command of the Dutch language, poor quality of schools, low teacher expectations, negative peer pressure, parents who are ‘willing but not able’ to

²²⁷ The number of registered non-Western pupils went from 77,000 in 2007/2008 to 95,000 in 2012/2013. For an overview of all registered non-Western and ethnically Dutch students at higher education facilities see StatLine, *Hoger onderwijs, ingeschreven en naar herkomstgroepering*, Centraal Bureau voor de Statistiek, statline.cbs.nl/StatWeb/publication/?VW=T&DM=SLNL&PA=71037NED&D1=0&D2=0&D3=0&D4=0&D5=0-2,5&D6=0&D7=12,1&HD=130910-1128&HDR=T,G6,G5,G2,G4&STB=G1,G3 (accessed 1 September 2010). See E. de Kroon, *Racism and related discriminatory practices in employment in the Netherlands*, European Network Against Racism, 2013, p. 20.

²²⁸ See De Kroon 2013 (*supra* note 227), p.20; T. van Schilt-Mol, ‘Onbedoelde moeilijkheden in toetsen leiden tot ongelijke kansen’, *PAOO courant* 2003, no. 11, p. 4.

²²⁹ See L. van den Bergh, E. Denessen, M. Voeten, L. Hornstra & R. Holland, ‘The implicit prejudiced attitudes of teachers: Relations to teacher expectations and the ethnic achievement gap’, *American Educational Research Journal* 2010, pp. 497-527.

²³⁰ Blog from M. Esajas, chair New Urban Collective, 11 February 2014: nucnet.nl/roses-concrete-een-antropologische-reflectie-op-cito-toetsfetisjisme1-onderwijsapartheid-en-prestaties-van-leerlingen-van-diverse-achtergronden-amsterdam.

²³¹ Idem.

²³² Dienst Onderzoek Statistiek, *Stadsdelen in cijfers 2013*, Amsterdam: Gemeente Amsterdam 2013.

²³³ Centraal Bureau voor de Statistiek 2012 (*supra* note 167), p. 15. One is considered to have obtained a start qualification by successfully finishing high school (preparatory vocational level 2 and higher, higher general continued education (HAVO) or pre-university). See De Kroon 2013 (*supra* note 227), p.11.

help and a school system that does not recognize their intellectual abilities.²³⁴ Children who are most in need of good quality education – those from lower socioeconomic backgrounds with low educated parents – attend low-quality schools which perpetuate inequality.

The lack of knowledge and understanding of Dutch history and culture were highlighted above already as important elements in the current public debate about racism in the Netherlands. Despite the government's explicit commitment to intensify education about racism as part of the school curriculum, (social) media reported examples of racist images and texts in school books in 2013.²³⁵ Identities and understandings are strongly shaped and transferred from generation to generation through the Dutch educational system. In a study that scrutinized school text books, Melissa Weiner found that most of the books fully ignore or distort the Dutch involvement in slavery and colonialism.²³⁶ According to the New Urban Collective, '[t]his narrative serves the construction of a Dutch national identity based on whiteness, innocence and 'being good' and makes it hard to have a meaningful discussion about racism and the legacy of slavery and colonialism in the Netherlands'.²³⁷

Another disconnect between education and access to employment is reported by the European Network Against Racism (ENAR), which concluded that 'some students from ethnic minorities have difficulties finding apprenticeships or are even advised against doing a certain study as it would be very difficult to find an apprenticeship'.²³⁸

While the government sees the lower educational successes of migrant youth as an achievement gap and emphasizes test results and deficits on the side of the migrant youth, it should rather be seen and confronted as an opportunity gap, which puts emphasis on the government's proactive responsibilities to combat inequalities.²³⁹

The NGOs request the Committee to recommend the Dutch government to develop educational policies which limit structural barriers in the educational system such as early pre-selection and standardized tests. Training for teachers and staff to effectively guide and teach on multi-cultural, ethnic and religious schools is recommended. The Ministry of Education, Culture and Science should ensure that all racist content in educational materials – e.g. in games, children's songs, holiday traditions and performances – is replaced by images, references, names and opinions that convey the message of the inherent dignity and equality of all human beings, in line with CERD/C/GC/34 para. 6118. The material should also pay due consideration to the Netherlands' colonial and slavery past.

2. Lacking anti-segregation policies in educational facilities

The NGOs express their continuing concern that the national government does not take positive action to prevent and combat *de facto* ethnic and social-economic segregation in the field of education. There are schools that are attended predominantly by either ethnically white children or children from ethnic minorities.²⁴⁰ The overall results of many schools with predominantly children of ethnic minority background are generally below average. This means the children leave these schools with disadvantaged starting positions compared to their white peers from other schools,²⁴¹ which reproduces socio-economic differences in society.

The ethnically and socio-economically segregated schools are in part the result of residential segregation of ethnic groups.²⁴² Other causes are related to the freedom of education – which is a constitutional right in the Netherlands – and consequently, schooling preferences of different groups of

²³⁴ M. Crul, J. Schneider & F. Lelie, *The European Second Generation Compared. Does the Integration Context Matter?*, Amsterdam: Amsterdam University Press 2012.

²³⁵ See for example: joop.nl/leven/detail/artikel/26230_schoolboek_bevat_racistische_grap/.

²³⁶ M. Weiner, *(E)racing slavery. Racial Neoliberalism, Social Forgetting, and Scientific Colonialism in Dutch Primary School History Textbooks*, College of the Holy Cross, 2014.

²³⁷ See: nucnet.nl/beyond-blackface-emancipation-struggle-black-pete-dutch-racism-afrophia.

²³⁸ De Kroon 2014 (*supra* note 14), p. 25.

²³⁹ M. Esajas, *Roses from the Concrete*, Amsterdam: Vrije Universiteit Amsterdam 2013, p. 69.

²⁴⁰ P. Wolfram, *Basisscholen in hun buurt*, Rotterdam: Kenniscentrum Gemengde Scholen 2009.

²⁴¹ See: volkskrant.nl/dossier-onderwijs/zwarte-school-ook-negatief-voor-autochtoon-a3787411/.

²⁴² OECD, *Reviews of Migrant Education: Netherlands*, Paris, 2010, p. 36.

parents.²⁴³ Some parents of native Dutch background prefer ‘white’ majority schools and are willing to take their children to schools outside their neighborhood (commonly referred to as ‘white flight’). It has been demonstrated that free school choice leads to segregation, which suggests that state intervention is required to prevent and challenge segregation.²⁴⁴

The NGO's agree with the Committee's Concluding Observation 7 that segregation in schools is undesirable as it has negative effects on the social inclusion of children. Mixed schools offer better opportunities for the inclusion of different ethnic and socio-economic groups and countering prejudices.²⁴⁵ Even though segregated schools are decreasing, their presence is still problematic.²⁴⁶

Between 2008 and 2012, field experiments in twelve cities explored ways of reducing school segregation. Some of these experiments show that it is possible to change the process of school selection. Important to note is that this can be done without violating any existing laws, rules or regulations.²⁴⁷ Not even the freedom of education, which is a constitutional right and a crucial part of the Dutch (primary) school system, would be impaired. The field experiments included interventions that informed parents better about school choice. They also introduced forms of ‘controlled choice’ which aimed at creating a ‘level playing field’ for all parents, so all parents have equal amount of chance of getting their child in the school of their preference. In the cities of Nijmegen and Deventer a city-wide form of controlled choice policy was developed and implemented. Evaluation shows that more than 95% of the children went to the school of the first choice of the parents, indicating the effectiveness of the level playing field policy.²⁴⁸

Apart from interventions that involved school boards and city governments, there were also so-called ‘parent initiatives’. These are groups of mainly highly educated and high socio-economic status (SES) parents who decide to send their children to a school with a vast majority of children from parents with low SES and educational levels. Experiences in Rotterdam show that cities can do a lot to stimulate and nurture such parent initiatives.

The evaluation of the field experiments showed that adequate policy instruments exist to reduce segregation and its effects in primary schools.²⁴⁹ In 2014, it became clear that segregation in primary schools had dropped as a result of these pilots.²⁵⁰ In two thirds of the twelve pilots the policies aimed at combatting segregation had been effective. The independent Dutch National Knowledge Centre on Mixed Schools has developed state of the art materials that empower local actors to take effective action against school segregation.²⁵¹ However, while 70% of primary school boards finds segregation undesirable, they are weary of interfering with the status quo, stating that the free choice of parents for schools prevails.²⁵²

The NGOs agree with the OECD that the government should seek a balance between parents’ free choice of schools and equity.²⁵³ The experiments show that this is very well possible. However, up to this moment, the government remains passive in repairing this balance, which makes the CERD Committee's recommendation to prevent and abolish segregation as relevant as in 2010. In fact, the government indicated it has no intention to create an active policy to counter school segregation. Long before the field experiments were finished and an evaluation report was launched, then Minister of Education Van Bijsterveldt stated that the emphasis on the overall quality of education in the ministry's education policy made it unnecessary to take specific actions against segregation. The assumption underlying the policy is that general improvement of the quality of education will

²⁴³ H. Ladd, E. Fiske & N. Ruijs, *Parental choice in the Netherlands: growing concerns about segregation*. Durham: Duke University 2009.

²⁴⁴ OECD, *Equity and Quality in Education: Supporting Disadvantaged Students and Schools*, Paris, 2011.

²⁴⁵ G.H. Allport, *The nature of prejudice*, Cambridge, MA: Perseus Books, 1954.

²⁴⁶ FORUM, *Basisscholen en hun buurt: ontwikkeling van afspiegeling en segregatie*, 2014.

²⁴⁷ D. Peters & G. Walraven, ‘*The Netherlands: interventions to counteract school segregation*’, in J. Bakker, E. Denessen, D. Peters, & G. Walraven (eds.), *International Perspectives on Countering school segregation*. Antwerpen/Apeldoorn, Garant Publishers, 2011.

²⁴⁸ M. Brink, drs. C.T.A. van Bergen, *Tegenaan segregatie in het basisonderwijs. Monitoring van de ocv-pilots*, 2012.

²⁴⁹ M. Brink, dr. M.C. Paulussen-Hoogbeem, drs. C.T.A. van Bergen, *Tegenaan segregatie in het basisonderwijs: monitoring van de ocv-pilots (tussenmeting)*, 2010.

²⁵⁰ FORUM, *Basisscholen en hun buurt: ontwikkeling van afspiegeling en segregatie*, 2014.

²⁵¹ See www.gemengdescholen.nl for a toolkit.

²⁵² See: trouw.nl/tr/nl/4556/Onderwijs/article/detail/3657535/2014/05/19/Minder-segregatie-scholen-maar-winst-fragiel.dhtml. See FORUM 2014.

²⁵³ OECD 2011 (*supra* note 242).

contribute to better outcomes for all students – regardless of ethnic background. In line with this logic, no specific measures against segregation of students with migrant backgrounds are considered to be needed. Few doubt that general improvements would benefit all students. However, these efforts should not stop the government from taking measures to counter segregation.

Dutch laws and regulations have set over 50 educational attainment goals. These also cover the social domain, with goals such as learning how to work and live together. These goals should be considered integral to the government’s definition of ‘quality’ education. Such an interpretation would make segregated schools undesired. The NGOs argue that countering segregated schools is not only a moral obligation of the government; it is also an internationally legal responsibility, as well as a domestic commitment. If the government does not interfere, the NGOs fear that schools, and by effect society at large, will become even more segregated in the near future.

The Dutch NGOs recommend the Committee to urge the Netherlands to assess the issue of segregation in the field of education and to use the lessons learned from the field experiments to design and implement policy measures to reduce ethnic and social-economic school segregation. More specifically, the NGOs recommend the Committee to urge the Dutch government to task local governments and encourage school boards to discuss segregation and social cohesion more seriously and to come to binding agreements in the context of the local educational agenda. The government should also stimulate and facilitate appropriate local interventions that are supported by (international) evaluation literature. For example, the government could introduce local campaigns informing parents about school choice in general and school options in their neighborhood in particular. Forms of ‘controlled choice’ policies like the ones in Nijmegen and Deventer and stimulation of parent initiatives are also desirable.

4 LIST OF RECOMMENDATIONS

ARTICLE 2 (1):

1. Public debate on racism and state responses

The NGOs request the Committee to recommend the government to acknowledge that racism is a problem in Dutch society. The freedom of speech and assembly, especially with respect to anti-racism should be respected.

The government should design an effective Action Plan in consultation with civil society, and develop and implement concrete projects aimed at awareness raising, as well as support such projects by third parties.

The government should also ensure adequate slavery commemoration (as well as other racism related issues) and address the link between this past and contemporary issues related to racial discrimination.

2. Ethnic profiling

The NGOs request the Committee to urge the government to combat ethnic profiling, STARTING WITH A PROPER COLLECTION OF data and information about police's stop and search practices. This should be done by the police itself, as well as independent organizations. Based on this information and in consultation with civil society and minority representatives, the government should design effective policies and make sufficient resources available. The police should be encouraged to devote structural attention to the issue of racial discrimination and ethnic profiling in its policing, by addressing it as an integral part of police trainings and internal monitoring of police action.

3. Lacking government efforts to monitor and address racial discrimination

The NGOs request the Committee to recommend the government to develop an effective strategy to monitor racial discrimination, in which it takes into account all relevant information, as is required in order to develop effective anti-discrimination policies to protect ethnic minorities. The Ministries should develop an integrated policy and working structure to combat racial discrimination with clear points of action. The government should produce reports on discrimination that combine the data and analysis that is available at the local, regional and national level. Reports should provide combined analyses and put the data into context, with experts on the different data sources providing clear recommendations to the government.

All municipalities should formulate (integral) discrimination policies, which are necessary to counter discrimination at the local level.

Finally, the NGOs urge the government to establish independent agencies on the Caribbean Islands to handle discrimination complaints and assist victims.

4. Fostering expertise and independence of Anti-Discrimination Facilities

The NGOs request the Committee to recommend that the government guarantees that every Anti-Discrimination Facility is independent and has the expertise to support local citizens who report discrimination by ensuring that municipalities are monitored on the correct implementation of their obligations under the Act, and sanctioned where necessary.

ARTICLE 2 (2):

1. Examination abroad for 'non-Western' state nationals

The NGOs request the Committee to urge the government to ensure that no policy aimed at inclusion of immigrants has discriminatory effects, and encourage the government to allow immigrants to take the Civic Integration Examination Abroad in the Netherlands.

2. Immigration detention

The NGOs request the Committee to recommend to the government to bring actual improvements in legislation and policies concerning immigration detention, allowing immigration detention only as a

measure of last resort. Furthermore, systems should be put into place to respect the rights of persons in immigration detention such as to education, regular visits, and leave.

3. Border detention of asylum seekers

The NGOs request the Committee to urge the government to abolish (closed) detention of asylum seekers at the border.

4. Treatment of LGBTI asylum seekers

The NGOs request the Committee to recommend the government to develop procedures to better respect and protect LGBTI asylum seekers. The government should guarantee that all IND personnel is sensitive to LGBTI-issues and does not operate and base its assessments on prejudices regarding race, sexual orientation and gender identity. To this extent it should train all its personnel. Furthermore, the government should protect LGBTI asylum seekers from any form of discrimination, intimidation and violence in its facilities.

5. Special protection for child victims of trafficking

The NGOs request the Committee to urge the Minister of Security and Justice to guarantee safe accommodation and protection in the reception centers. At all efforts and costs, it should be prevented that children that fall under the government's care and responsibility disappear and become victims of trafficking. Furthermore, the Dutch government should give minors who are victims of trafficking specialized care and assistance needed for their full recovery and rehabilitation into society for which a residence permit in the Netherlands may be necessary.

6. Absent policies regarding the protection and inclusion of Roma, Sinti and Travelers

The Dutch NGOs request the Committee to recommend the Dutch government to recognize Roma, Sinti and Travelers as ethnic minorities and to urge the Dutch government to develop and implement a national inclusion strategy to improve the socio-economic disadvantaged position of Roma, Sinti and Travelers in the Netherlands. This strategy should be developed in partnership with representatives of the Roma, Sinti and Travelers community and with the relevant NGOs.

ARTICLE 4:

1. Subsidy cuts and abolishment of major anti-racism organizations

The NGOs request the Committee to urge the government to base its next Action Plan to combat Discrimination – expected in autumn 2015 – on a comprehensive vision and strategy to combat discrimination, which includes acknowledgement of and consultation with civil society organizations that represent minority communities, as well as structural funding and support for their work.²⁵⁴

In order to guarantee the unchallenged existence and continuation of civil society and prevent loss of expertise and experience, the government needs to (re-)build and sustain durable relations with experienced civil society organizations and minority communities and ensure structural dialogue to improve monitoring of policies and signaling of problems.

Furthermore, the government needs to show genuine preparedness to deal with the country's history of slavery and colonialism, and address the continuing effects of this past on contemporary issues related to racial discrimination. The NGOs recommend the Committee to urge the Dutch government to ensure an adequate organizational infrastructure and protracted institutional funding for the commemoration of the history of slavery – similar to the funds and organizational infrastructure ensured for the commemoration of WWII.

²⁵⁴ See: <http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2015/02/12/kamerbrief-bij-jaarlijkse-rapportage-discriminatie.html>.

ARTICLE 4 (A):

1. Legal recourse

The NGOs request the Committee to ensure that the government effectively tackles hate crime, by making a racial motive a separate aggravating factor, and that the government oversees that the instructions for punishment are respected.

2. Improving police registration and the Regional Discrimination Deliberation

The NGOs request the Committee to recommend that the Dutch government ensures that the national police gives priority to combatting discrimination and to allocate more resources to the realization of a uniform and correct registration and handling procedure of incidents. Moreover, the NGOs request the Committee to urge the government to ensure that the national police trains all its police officers regularly in recognizing discrimination and dealing with (reported) incidents of discrimination correctly – particularly those police officers who are in regular contact with civilians, including front office personnel.

The NGOs request the Committee to recommend that the Dutch government counters the fragmentation of Anti-Discrimination Facilities, in order for the Regional Discrimination Consultation to remain workable and become a valuable instrument in combating discrimination. In order for the Regional Deliberation on Discrimination to become effective in all regions, the NGOs request the Committee to recommend the government to introduce one single working-method for performing the deliberation. The government should also promote a covenant which would enable the participating parties to exchange personal information during the deliberation.

3. The Wilders court case

The NGOs request the Committee to prompt the Dutch government to take all appropriate measures to counter incitement to hatred and discrimination on the grounds of race. Amongst other things, the government should set the right example and clearly denounce hate speech when this is expressed by influential public figures.

ARTICLE 5 (A)

1. Racial discrimination by judges and forensic psychiatrists

The NGOs request the Committee to recommend the government to guarantee that judges and forensic psychiatrists are trained to increase their awareness of prejudice in order to prevent (unconscious) racial judgments.

ARTICLE 5 (D) (I):

1. @MIGO-BORAS (automatic border control)

The NGOs request the Committee to urge the Netherlands to clarify the mandate, use and effects of the @MIGO-BORAS surveillance system and to introduce adequate legislation or guidelines to prevent the system from being used in a discriminatory manner or having discriminatory effects.

ARTICLE 5 (D) (III)

1. Statelessness

The NGOs request the Committee to urge the government to prevent statelessness, and to implement a clear, unified and realistic legal procedure to determine statelessness which includes possibilities to obtain nationality. Moreover, statelessness should no longer be transferred to children born in the Netherlands.

ARTICLE 5 (E) (I):

1. Data and causes for unemployment

The NGOs request the Committee to urge the government to systematically monitor discrimination on the labor market and to design effective policies on the basis of the results. In particular, the NGOs urge for the Dutch government to take measures that support non-Western migrants in finding employment, e.g. by preventing discrimination in the application phase and by assisting non-Western migrants in their career path.

2. Policies regarding discrimination on the labor market

The NGOs request the Committee to encourage the government to improve the effectiveness of the Action plan on Discrimination on the Labor Market by allocating funds for employers to protect (future) employees against discrimination.

All municipalities should formulate (integral) anti-discrimination policies that make it possible to influence/be involved with discrimination in employment. A budget should also be made available to, for example, NGOs in order to improve certain skills and to give educational guidance to (non-Western) migrants.

In addition, it is recommended to exclude companies that do not take sufficient measures to prevent and tackle discrimination from public procurement and to reinforce the “naming and shaming” policy towards these companies.

Finally, the NGOs recommend that the government addresses the subject of adjudication of discrimination complaints with the Health and Safety Service (*Arbodienst*), trade unions and employers' organizations.

3. Roma and Sinti

The Dutch NGOs request the Committee to urge the Dutch government to map out the position of Roma and Sinti in the labor market and evaluate whether adoption of national and local affirmative action policies and measures could be useful to support the inclusion of Roma and Sinti in the labor market.

ARTICLE 5 (E) (II):

1. Rejected asylum seekers

The Dutch NGOs request the Committee to urge the Dutch government to guarantee dignified living conditions in the *GezinsLocaties* which are in line with human rights for all children in the Netherlands, including rejected asylum seekers. Treatment in the *GezinsLocaties* should prioritise children's development and therefore ensure access to education and health care, as well as adequate room for movement and play.

Roma, Sinti and Travelers

The Dutch NGOs request the Committee to urge the Dutch government to enter into dialogue with Roma, Sinti and Travelers communities about their housing needs and to ensure that there are sufficient caravan sites. Moreover, the Committee is requested to call on the Dutch government to improve the housing conditions of Roma living in regular housing.

ARTICLE 5 (E) (III):

1. Basic human rights and protection for undocumented migrants

The Dutch NGOs request the Committee to urge the government to guarantee basic rights for everybody, including undocumented migrants, and first of all children, and to provide at a minimum shelter, food and clothing in line with General Recommendation 30 and the decision by the European Committee of Social Rights.

The Dutch NGOs request the committee to recommend the government to abolish the €,- rule to pay for medicines.

2. Abolishment of subsidy for interpreter-translators in public health care services

The NGOs recommend that the Dutch Government safeguards the right to medical care and privacy for everyone residing in the Netherlands by reintroducing subsidies for interpretation and translation in health care.

ARTICLE 5 (E) (V):

1. Equal opportunities

The NGOs request the Committee to recommend the Dutch government to develop educational policies which limit structural barriers in the educational system such as early pre-selection and standardized tests. Training for teachers and staff to effectively guide and teach on multi-cultural, ethnic and religious schools is recommended. The Ministry of Education, Culture and Science should ensure that all racist content in educational materials – e.g. in games, children’s songs, holiday traditions and performances – is replaced by images, references, names and opinions that convey the message of the inherent dignity and equality of all human beings, in line with CERD/C/GC/34 para. 6118. The material should also pay due consideration to the Netherlands’ colonial and slavery past.

2. Lacking anti-segregation policies in educational facilities

The Dutch NGOs recommend the Committee to urge the Netherlands to assess the issue of segregation in the field of education and to use the lessons learned from the field experiments to design and implement policy measures to reduce ethnic and social-economic school segregation. More specifically, the NGOs recommend the Committee to urge the Dutch government to task local governments and encourage school boards to discuss segregation and social cohesion more seriously and to come to binding agreements in the context of the local educational agenda. The government should also stimulate and facilitate appropriate local interventions that are supported by (international) evaluation literature. For example, the government could introduce local campaigns informing parents about school choice in general and school options in their neighborhood in particular. Forms of ‘controlled choice’ policies like the ones in Nijmegen and Deventer and stimulation of parent initiatives are also desirable.