Dutch NGOs contribution pertaining to Fifth Periodic Report by the Kingdom of the Netherlands to the UN Human Rights Committee

This report is submitted on behalf of the following NGOs and platforms:

- Dutch section of the International Commission of Jurists (NJCM)
- ASKV/Steunpunt Vluchtelingen
- Dokters van de Wereld
- Emancipator
- FairWork
- Johannes Wier Stichting
- Kinderrechtencollectief
- Meldpunt Vreemdelingendetentie
- Milieudefensie
- Netwerk VN-Vrouwenverdrag / Dutch CEDAW Network
- RADAR/Art. 1
- Stichting Landelijk Ongedocumenteerden Steunpunt (Stichting LOS)
- TIYE International

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INTRODUCTION

This document contains comments, concerns, and questions pertaining to the Fifth Periodic Report by the Kingdom of the Netherlands to the UN Human Rights Committee (hereafter: the Committee). It was created with input and effort of a variety of organizations (hereafter: the NGOs).

The NGOs aim to provide the Committee with information for an effective dialogue with the Dutch government. Since the NGOs are all based in the European part of the Kingdom, this document mainly deals with the situation in the European part of the Kingdom, although some concerns with regard to the Caribbean part of the Kingdom are also raised in this report.

The NGOs are grateful to the members of the Committee for the opportunity to contribute to the Committee's work and to voice their concerns.

Article 2

Human rights violations by corporations

There is increasing recognition of the impact that corporations have on the enjoyment of human rights.[1] Recent research has shown that the Dutch government is linked to this troubling trend by hosting companies that are involved with human rights violations all over the world.[2] However, the Dutch government has yet to take proper action and is oftentimes passive regarding this subject.[3] With respect to remedy for victims of human rights violations by corporations there is currently too much focus on non-legal remedies.[4] Further steps need to be taken by the government to remove the practical obstacles faced by victims of human rights violations by corporations who require access to justice, including satisfaction and reparations for the damage they have suffered.[5]

The NGOs are concerned about the lack of judicial remedies for victims of human rights violations by corporations.

The NGOs express their concern regarding the passive stance of the government in monitoring the human rights compliance by corporations on Dutch territory.

Access to legal aid

Budget cuts to legal aid imposed by the Dutch government continue to affect access to justice. This is problematic as 60% of all legal aid is provided for litigation against state agencies.[6] Income related contribution for legal aid as well as legal fees have been substantially raised affecting legal protection of the most vulnerable in society.[7]

In 2017, a government-installed committee concluded that the current system of remuneration of lawyers who provide government-funded legal aid is inadequate.[8] As a result, specialized

[1] See: United Nations, *Guiding Principles on Business and Human Rights*, New York and Geneva, 2011; Organization for Economic Co-operation and Development, *Guidelines for Multinational Enterprises.*

[2] For examples see: The Centre for Research on Multinational Corporation (SOMO), *Private Gain – Public Loss: Mailbox Companies, Tax Avoidance and Human Rights*, July 2013, Chapter 4 (*available at:* somo.nl/private-gain-public-loss/).

[3] The Centre for Research on Multinational Corporation (SOMO), *Private Gain – Public Loss: Mailbox Companies, Tax Avoidance and Human Rights*, July 2013, p. 97.

[4] The Netherlands Institute for Human Rights, *Response to the National Action Plan on Business and Human Rights "Knowing and Showing",* February 2014, p. 11. (*available at:* mensenrechten.nl/nl/publicatie/34673).

[5] European Union Agency for Fundamental Rights, *Improving access to remedy in the area of business and human rights at the EU level*, 10 April 2017, p. 24 & 39 (*available at*: fra.europa.eu/sites/default/files/fra_uploads/fra-2017-opinion-01-2017-business-human-rights_en.pdf)

[6] Nederlandse Orde van Advocaten, *Rechtzoekende is de dupe van bezuinigingen op rechtsbijstand*, 23 January 2018 (*available at*: advocatenorde.nl/nieuws/rechtzoekende-is-de-dupe-van-bezuinigingen-op-rechtsbijstand).

[7] S. Droogleever Fortuyn, *Eigen bijdrage rechtsbijstand, vrees voor extra drempels*, 16 December 2016, *Advocatenblad* (*available at*: advocatenblad.nl/2016/12/16/eigen-bijdrage-rechtsbijstand-vrees-voor-extra-drempels/).

[8] Commissie van der Meer, *Andere Tijden, 'Evaluatie puntentoekenning in het stelsel van gesubsidieerde rechtsbijstand*, 25 October 2017 p. 161-162 (*available at*: rijksoverheid.nl/documenten/rapporten/2017/10/25/tk-eindrapport-andere-tijden).

lawyers for no- and low-income groups are no longer able to continue to offer good quality legal help or keep their legal practice afloat.[9]

Despite all this, the government plans to implement further cuts, which will apply to areas of civil and administrative law (with the exception of asylum law). In addition, there are plans to implement a more systemic change to the system of legal aid. As a consequence people will no longer be entitled to legal aid automatically, for so-called gatekeepers will be introduced: legal aid professionals who are not qualified to practice as attorneys but who will assess whether or not a person is entitled to legal aid.[10] The Dutch bar association has organized nationwide protests against these developments.[11]

The NGOs warn for further deterioration of access to justice and effective legal aid for no/low income groups.

Prosecutorial sentences

Since 2006, it is possible for a prosecutor to impose sentences in the form of fines and community service, instead of bringing a case before a judge, via the so-called '*strafbeschikkingen*' (prosecutorial sentences). By 2014, Dutch prosecutors had issued 70.000 of these prosecutorial sentences a year.[12] Recent research shows that the rights of defendants are not effectively protected in these procedures and this has led to severe criticism of these sentences.[13] For example, in over 16.000 cases, concerning certain crimes and violations for which the Public Prosecutor's Office has set a fixed fine rate, prosecutorial sentences have been handed out without an individual assessment of the case.[14] Additionally prosecutorial sentences rarely mention the official who signed them, making it difficult to deduct whether it was issued by an official with the proper authorization.[15] After receiving a parliamentary motion expressing concerns with this practice, the Dutch Minister of Justice and Security has

[9] Nieuwsuur, *Meer werkdruk, minder geld: de sociale advocatuur wankelt*, 24 August 2018 (*available at*: nos.nl/nieuwsuur/artikel/2247354-meer-werkdruk-minder-geld-de-sociale-advocatuur-wankelt.html).

[10] Ministery of Justice and Security, *Kamerbrief: 'Contouren herziening stelsel gesubsidieerde rechtsbijstand*', 9 November 2018, p. 7(*availabe at*: rijksoverheid.nl/documenten/kamerstukken/2018/11/09/tk-contouren-herziening-stelsel-gesubsidieerde-rechtsbijstand-9-november-2018)

[11] NOS, *Advocaten staken tegen bezuinigingen sociale advocatuur*, 16 January 2019 (*available at*: nos.nl/artikel/2267696-advocaten-staken-tegen-bezuinigingen-sociale-advocatuur.html).

[12] Procureur Generaal bij de Hoge Raad der Nederlanden, '*Beschikt en Gewogen, over de naleving van de wet door het openbaar ministerie bij het uitvaardigen van strafbeschikkingen*', 13 January 2015, p. 5 (*available at:* rechtspraak.nl/Organisatie-en-contact/Organisatie/Hoge-Raad-der-Nederlanden/Nieuws/Paginas/Rapport-PG-strafbeschikkingen-moeten-beter.aspx).

[13] NRC Handelsblad, *Hoe de kritiek op onterechte straffen werd weggepoetst*, 12 March 2019 (*available at*: nrc.nl/nieuws/2019/03/12/hoe-de-kritiek-op-onterechte-straffen-werd-weggepoetst-a3953013).

[14] Procureur Generaal bij de Hoge Raad der Nederlanden, '*Beschikt en Gewogen, over de naleving van de wet door het openbaar ministerie bij het uitvaardigen van strafbeschikkingen*', 13 January 2015, p. 19.

[15] Procureur Generaal bij de Hoge Raad der Nederlanden, '*Beschikt en Gewogen, over de naleving van de wet door het openbaar ministerie bij het uitvaardigen van strafbeschikkingen*', 13 January 2015, p. 41.

agreed, in April 2019, to introduce mandatory legal advice for persons who will receive a prosecutorial sentence as of 1 October 2019.[16]

The NGOs are concerned about the lack of safeguards for suspects regarding prosecutorial sentences,

Article 4

Temporary Powers Act

On 1 March 2017 the Temporary Administrative Powers Counter Terrorism Act (hereafter: Temporary Powers Act) was enacted.[17] The Act targets persons the government claims can be associated with terrorist activities or the support thereof. It provides for far reaching administrative control orders on those individuals that would restrict a person's access to certain places and areas.[18] The Act also provides for the use of ankle tags to ensure compliance.[19] Through this act local administrative authorities are also authorized to reject or revoke subsidies, permits and exemptions to those individuals when there is an alleged, serious risk that these would be used to commit or support terrorism related activities.[20] The Temporary Powers Act does not define or list which actions might bring a person under suspicion and thus subject them to the application of a control measure.

An administrative order banning travel outside the Schengen Area is a key feature of the Temporary Powers Act. If the government has "well-founded suspicion" that a person plans to leave the Schengen area, with the purpose of joining a group deemed to be engaged in acts threatening national security, a travel ban can be imposed. This would automatically lead to the confiscation and revocation of a person's passport.[21] The Act contains no requirement for judicial authorization prior to the application of the administrative control measure, consolidating power to issue and apply an order solely by the executive authorities, nor does it prescribe ongoing judicial or other independent supervision of the measures.

An affected person would be able to directly file an appeal to the Ministerial order with an administrative court, which would be able to consider any facts and circumstances that would

[16] Advocatenblad, '*Standaard advocaat bij ZSM-afdoening'*, (*available at*: advocatenblad.nl/2019/04/10/standaard-advocaat-bij-zsm-afdoening/).

[17] Tweede Kamer der Staten-Generaal, *Parliamentary Papers I (Kamerstukken I)*, Vergaderjaar 2015 - 2016, no. 34359, A, 17 May 2016. It passed the Parliament on 17 May 2016.

[18] Articles 2 and 3 of the Temporary Powers Act.

[19] Article 2a of the Temporary Powers Act.

[20] Article 6 of the Temporary Powers Act. Subsidies for local youth associations, for example, can be temporarily withheld and stopped all together if there is a suspicion that the association's directors can be linked to specified groups and if subsequently there is a risk that the association might use government subsidies to organize or support terrorism-related activities. Also, government subsidies for education or research can be withheld from groups and organizations for the same reason.

[21] Tweede Kamer der Staten-Generaal, *Parliamentary Papers I (Kamerstukken I)*, Vergaderjaar 2015 - 2016, no. 34359, A, 17 May 2016, p. 10.

have become relevant after the date of the order.[22] This is contrary to the regular proceedings in Dutch administrative law were an appeal is first lodged with the authority issuing the decision before filing an appeal with an administrative court. Moreover, the judicial review under the Temporary Powers Act only takes place on procedural grounds and not on the substance of the matter, and does not suspend the Ministerial order. As a consequence there is no actual review of the merits of the decision, and the effects of the Ministerial order still take place while an affected person awaits their appeal.

This procedure is in clear violation of the European Convention on Human Rights. In *Klass and others v Germany*, the European Court of Human Rights (ECtHR) observed that "interference by the executive authorities with an individual's rights should be subject to an effective control which should normally be assured by judiciary, at least in the last resort, judicial control offering the best guarantees of independence, impartiality and proper procedure".[23]

With respect to the Temporary Powers Act, the NGOs are concerned about the lack of judicial authorization, the inadequate judicial review system, and the unclarity pertaining to what constitutes a well-founded suspicion under the Act

Nationality stripping

As of January 2019, fifteen persons have been stripped, or are on the list to be stripped, of their Dutch nationality.[24]

Within the Dutch Nationality Act, a person can appeal against a stripping order, but the bill fails to expressly provide for suspensive effect of the order while an appeal is pending.[25] Administrative courts typically review only on procedural grounds, not on substance. It is important to note that Ministerial decisions to strip a person of their Dutch nationality are often based on secret information from the intelligence and security services, which is generally not accessible to the affected person or its representative, raising concerns about "equality of arms" in the course of the appeal. An affected person should have access to sufficient information to effectively challenge the stripping of their Dutch nationality.[26]

[22] B. van Gestel, J.J. van Berkel, R.F. Kouwenberg, *Bestuurlijke vrijheidsbeperking van Jihadisten: Het gebruik van de 'Tijdelijk wet bestuurlijke maatregelen terrorismebestrijding' inde eerste periode na inwerkingtreding van de wet'*, 2019, p. 25 (*available at*: wodc.nl/binaries/Cahier%202019-4_2863%20Volledige%20tekst_tcm28-381606.pdf).

[23] *Klass and others v Germany*, no. 5029/71, European Court of Human Rights, 6 September 1978.

[24] NOS, *Vijftien jihadisten verliezen het Nederlanderschap*, 8 January 2019 (*available at:* nos.nl/artikel/2266575-vijftien-jihadisten-verliezen-nederlanderschap.html)

[25] Article 22a Dutch Nationality Act.

[26] B. van Gestel, J.J. van Berkel, R.F. Kouwenberg, *Bestuurlijke vrijheidsbeperking van Jihadisten: Het gebruik van de 'Tijdelijk wet bestuurlijke maatregelen terrorismebestrijding' inde eerste periode na inwerkingtreding van de wet'*, 2019, p. 26.

Stripping of nationality is viewed negatively and as detrimental to the de-radicalization process within the broader anti-terrorism framework.[27] Municipalities and police, amongst others, have expressed their discontent with this measure according to a report by *NRC Handelsblad*.[28] According to the same report the mayors of the four largest cities in the Netherlands have petitioned the Minister of Justice and Security with the request to expeditiously evaluate this measure because of its counter-productive effects.

Another point of concern is that these measures only apply to people with dual nationalities and this could prove to be divisive. The ultimate risk is that these measures fuel stereotypes of who is a "terrorist", and it helps to create a climate in which certain groups of immigrants and others of certain national origins may find themselves victims of discrimination.[29]

The NGOs are concerned regarding the effectiveness of this measure and the risk it poses for stereotyping and consequent discriminatory effects.

Article 6

Air pollution

Environmental degradation, climate change and unsustainable development can threaten the right to life.[30] One of the causes of environmental degradation is air pollution. Therefore, the World Health Organisation (WHO) has developed guidelines to ensure the quality of air. States must consider those guidelines as legally binding national standards.[31] In the Netherlands the law *Milieubeheer* regulates air pollution, but it allows for much higher norms than set out by the WHO. Where the Dutch law has the norm for fine dust PM10 set at 40 $\mu g/m^3$, the WHO maintains the stricter norm of 20 $\mu g/m^3$. With respect to fine dust PM2.5 the norm in the Netherlands is set at 25 $\mu g/m^3$, while the WHO norm is 10 $\mu g/m^3$.[32]

As a consequence, between 9,800 and 12,000 people a year, die prematurely from air pollution.[33] In addition, Dutch people on average lose about four months of their life

[27] NRC Handelsblad, *Een jihadist uitzetten gaat nog niet zo makkelijk*, 7 March 2019 (*available at:* nrc.nl/nieuws/2019/03/07/een-jihadist-uitzetten-gaat-nog-niet-zo-makkelijk-a3952524).

[28] NRC Handelsblad ,*Niet meer als terrorist gezien, wel je Nederlanderschap kwijt*, 7 January 2019. (*available at*: nrc.nl/nieuws/2019/01/07/niet-meer-als-terrorist-gezien-wel-je-nederlanderschap-kwijt-a3128192)

[29] NRC Handelsblad ,*Niet meer als terrorist gezien, wel je Nederlanderschap kwijt*, 7 January 2019; See also Amnesty International–the Netherlands webpage on these counter-terrorism measures (*available at*: amnesty.nl/wat-we-doen/themas/veiligheid-en-mensenrechten/contraterrorisme)

[30] Human Right Committee, General Comment 36, para. 62.

[31] WHO, *Air quality guidelines for particulate matter, ozone, nitrogen dioxide and sulfur dioxide*,(*available at*: apps.who.int/iris/bitstream/handle/10665/69477/WHO_SDE_PHE_OEH_06.02_eng.pdf;jsessionid=72A27D662CFC919F1533D8622C548041?sequence=1);Special Rapporteur on Human Rights and the Environment, '*Issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*', 8 January 2019, UN Human Rights Council, A/HRC/40/55, p. 12 (*available at*: ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/40/55).

[32] The comparison is made between provision 4.1 (PM10) and 4.4 (PM2,5) of the Dutch law '*Wet milieubeheer'* and WHO, *Air quality guidelines for particulate matter, ozone, nitrogen dioxide and sulfur dioxide*, p. 11.

[33] Gezondheidsraad, *Gezondheidswinst door schonere lucht*, 21 January 2018, No. 2018/01, p. 15-17. (*available at:* gezondheidsraad.nl/documenten/adviezen/2018/01/23/gezondheidswinst-door-schonere-lucht; European

expectancy as a consequence of exposure to nitrogen dioxide, and nine months as a consequence of exposure to fine dust.[34] While the government has the duty to prevent and control exposure to toxic air pollution, it has not taken action to bring air pollution norms in line with the WHO guidelines.[35] This is worrisome since research has shown that if the Netherlands would comply with WHO guidelines the health of people would significantly improve.[36]

The NGOs are concerned with the high norms set out by the Dutch government and urge the government to bring the norms in line with the WHO guidelines.

Earthquakes Groningen

In the Northern Province of Groningen, the government extracts natural gas. This practice has caused many earthquakes, leading to approximately 170,000 inhabitants with damaged houses in 2016.[37] The consequences of the earthquakes show many similarities with a disaster in which a state has the obligation to ensure that core human rights, like the right to family, are protected.[38]

The earthquakes in Groningen have a big impact on the inhabitants; people feel less safe in their own homes, they have mental problems due to stress, and they feel that they have lost control over their lives.[39] The earthquakes also bring instability to families. There are for example more conflicts and arguments in families and parents have less time and attention for their children, since the process of damage claiming is time-consuming.[40] In addition,

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Environmental Agency, *Air quality in Europe — 2018 report*, No. 12/2018, p. 64 (*available at:* eea.europa.eu/publications/air-quality-in-europe-2018).

[34] National Institute for Public Health and the Environment, *Luchtkwaliteit en gezondheidswinst,* 21 April 2015, p. 3 (*available at:* rivm.nl/sites/default/files/2018-11/RIVM%20nota%20Luchtkwaliteit%20en%20gezondheidswinst_REV20170317.pdf).

[35] Special Rapporteur on Human Rights and the Environment, '*Issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*', 8 January 2019, UN Human Rights Council, A/HRC/40/55, p. 10.

[36] Gezondheidsraad, *Gezondheidswinst door schonere lucht*, 21 January 2018, No. 2018/01, p. 26; Special Rapporteur on Human Rights and the Environment, '*Issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*', 8 January 2019, UN Human Rights Council, A/HRC/40/55, p. 18.

[37] University of Groningen, *Gevolgen van bodembeweging voor Groningers*, 2018, p. 20 (*available at:* groningsperspectief.nl/wp-content/uploads/2018/01/Eindrapport-Gronings-Perspectief-definitief.pdf).

[38] M. Hesselman, & L. Lane, *Disaster and Non-State Actors: Human Rights-Based Approaches*, 2017 (Disaster Prevention and Management 26(5)) p. 528; GGD Groningen, *Aanpak Gezondheidsgevolgen aardbevingen Eindrapport*, 12 March 2019, p. 4 (*available at*: ggd.groningen.nl/app/uploads/2019/03/Eindrapport-Aanpak-gezondheidsgevolgen-aardbevingen.pdf)

[39] Gronings perspectief, *De sociale impact van gaswinning in Groningen*, 8 November 2018, p. 4-6 (*available at:* groningsperspectief.nl/wp-content/uploads/2018/11/De-sociale-impact-van-de-gaswinning-in-Groningen-SVZ-08-11-2018.pdf)

[40] University of Groningen, *Een veilig huis, een veilig thuis? Een kwalitatief onderzoek naar het welbevinden en de leefomgeving van kinderen en jongeren in het Gronings gaswinningsgebied*, March 2019, p. 9, 12, 55, 57, 59 (*available at:* rug.nl/about-us/news-and-events/news/archief2019/nieuwsberichten/038-rapport-veilig-huis-veilig-thuis-rug.pdf)

professionals observed that children are exposed to the concerns of their parents about the earthquakes, and in response to this the children show signs of distress, including a general sense of fear, bedwetting, homesickness, and even signs of children starting to take care of their own parents.[41] Children are also facing difficulties with concentration and sleeping, and they do not feel safe in their own home.[42] This impact of the earthquakes on families lowers their quality of living, and puts a disproportionate burden on the family life of the victims in relation to the interest of the community to extract gas.[43]

Furthermore, the government has failed to act in accordance with the due-diligence principle. It did not involve inhabitants and children sufficiently in the decision-making process, and it failed to communicate with them in an effective manner.[44] Also, the government did not pay sufficient attention to the safety of people and the rights of the child in its decision-making process.[45] This made the families feel unheard and insecure, and ultimately lose their trust in the authorities.

The government has announced that the gas extraction will be gradually decreased, and that it will stop completely in 2030. However, many inhabitants have little faith in this new policy, as 85% says they do not feel safer by this announcement.[46]

The NGOs are concerned with respect to the detrimental effect that the earthquakes caused by gas extraction have on families in Groningen. and urge the government to create a safe and secure environment for the families to rebuild from.

The NGOs are concerned with respect to the lack of faith the inhabitants have in the government and urge the government to take the proper measures to address this.

The NGOs urge the government to repair all the damages to the houses and provide the victims with proper compensation.

[41] University of Groningen, *Een veilig huis, een veilig thuis? Een kwalitatief onderzoek naar het welbevinden en de leefomgeving van kinderen en jongeren in het Gronings gaswinningsgebied*, March 2019, p. 9, 66

[42] University of Groningen, *Een veilig huis, een veilig thuis? Een kwalitatief onderzoek naar het welbevinden en de leefomgeving van kinderen en jongeren in het Gronings gaswinningsgebied*, March 2019, p. 64-70

[43] See also: Deés vs. Hungary, App no 2345/06 (ECtHR, 9 November 2010) para 23.

[44] Research Council for Safety, *Aardbevingsrisico's in Groningen Onderzoek naar de rol van veiligheid van burgers in de besluitvorming over de gaswinning (1959-2014)*, February 2015, p. 6-7 (*available at*: onderzoeksraad.nl/nl/page/3190/aardbevingsrisico-s-in-groningen); Nationale Ombudsman, *Betreft: Opbrengsten bezoek Appingedam van 19 oktober*, 20 November 2018 (*available at*: nationaleombudsman.nl/system/files/bijlage/Brief%20van%20de%20KOM%20en%20de%20No%20aan%20Minister%20Wiebes%20inzake%20opbrengsten%20Appingedam.pdf).

[45] Research Council for Safety, *Aardbevingsrisico's in Groningen Onderzoek naar de rol van veiligheid van burgers in de besluitvorming over de gaswinning (1959-2014)*, February 2015, p. 6-7; Kinderombudsman, *Vaste grond gezocht Kinderen en jongeren in het aardbevingsgebied*, 18 October 2017, No KOM010/2017, p. 41-46 (*available at*: dekinderombudsman.nl/ul/cms/fck-uploaded/2017.KOM010Vastegrondgezocht.pdf).

[46] Gronings perspectief, *De sociale impact van gaswinning in Groningen*, 8 November 2018, p. 24.

Article 7

Life Imprisonment

Until recently life imprisonment in the Netherlands meant a de jure and de facto life sentence. A person sentenced to life imprisonment could only be released through a Royal Pardon. On 5 July 2016, the Supreme Court of the Netherlands held that the lack of possibility of review of life imprisonment violated the prohibition of torture and inhuman or degrading treatment or punishment.[47] Following this judgment, the government has amended its policy and put in place a review mechanism.[48] After the person serving a life sentence has been detained for 25 years, an independent body will advise on whether the person is ready to begin activities aimed at re-integration.

However, it is questionable whether this review mechanism meets international human rights standards. The ECtHR states that after 25 years there must be a possibility of review with regard to the possible release of the detained person. Central to that review should be the question whether the prisoner has changed to such an extent, and that such progress towards rehabilitation has been made in the course of the sentence, that continued detention can not longer be justified on legitimate punitive grounds.[49]

Thus, for the new review mechanism to have actual meaning for the prisoner and to be in accordance with ECtHR jurisprudence, it is necessary that the detained person is offered the opportunity to prepare for a possible re-integration into society from the beginning of their sentence.[50] As it stands however, it is unclear which activities are being offered during the 25 years of detention prior to the review, but it has been noted that there is a severe lack of activities on offer.[51]

The NGOs are concerned by the fact that the current mechanism does not provide a real possibility of review, since there are no activities aimed at re-integration before the period of review starts actually starts after 25 years.

[47] Hoge Raad 5 July 2016, ECLI:NL:HR:2016:1325, NJ 2016/348.

[48] *Besluit Adviescollege Levenslanggestraften*. introduced 1 March 2017, Stcrt. 2016, 65365, amended 1 July 2017, Stcrt. 2017, 32577. See also: State Secretary for Security and Justice, *Parliamentary papers (Kamerstukken) II*, 2016/17, nr. 29.279-354, 25 October 2016.

[49] See *Murray v. the Netherlands*, no. 10511/10, European Court of Human Rights, Judgement of 26 April 2016 and *Vinter et al. v. the United Kingdom*, nos. 66069/09, 130/10 and 3896/10, European Court of Human Rights, Judgment of 9 July 2013.

[50] Raad voor Strafrechtstoepassing en Jeugdbescherming, *Advies inzake voornemens tot wijziging van de tenuitvoerlegging van de levenslange gevangenisstraf*, 28 June 2016, p. 5.

[51] W.F. Van Hattum, *De Hoge Raad en het reviewmechanisme. Een misplaatste uitnodiging aan levenslanggestraften om re-integratieactiviteiten te ontplooien*, NJB 2018/691; see also J.A.A.C. Claessen, *De levenslange gevangenisstraf in Nederland anno 2018*, TPWS 2018/22.

Domestic violence

The government of the Netherlands recognizes that domestic violence is a big problem and it has therefore decided to open three centres for victims of domestic violence and child abuse.[52] This is a positive development, but there is still a lot of progress to be made, as yearly 220,000 adults and 18,000 children, predominantly women and girls, are victims of domestic violence.[53]

The Dutch Social Support Act (hereafter: WMO) contains provisions on domestic violence and lays the responsibility to protect and support victims with the municipalities. This results in major differences in the protection of victims and in shelter and aftercare services, which is problematic as the quality of services should be equal to all victims.[54] In addition, the WMO does not contain gender sensitive policies, which results in a lack of attention for and protection of the specific vulnerable position of women.[55] The WMO also lacks an effective monitoring and reviewing mechanism, because it does not monitor policies in a gender-sensitive way. This makes it impossible to determine which policies work effectively.

Although an estimated 40% of victims of domestic violence are men, there is still a stigma surrounding this issue.[56] Many men are ashamed of what has happened to them and are afraid of certain prejudice, which prevents them from reporting their accounts of domestic violence to the police.[57] This could be avoided by training the police, doctors and social workers to recognize the symptoms of domestic violence against men.[58] Special attention should also be given to children as recent research has shown that the impact of violence on children is bigger than expected: 29% of the children that face child abuse or witness partner violence suffer from clinical trauma.[59]

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[52] Ministry of Health, Welfare and Sport, *3 miljoen voor centra huiselijk geweld en kindermishandeling*, 21 December 2018, (*available at*: huiselijkgeweld.nl/nieuws/2018/211218_3-miljoen-voor-centra-huiselijk-geweld-en-kindermishandeling)

[53] H.C.J. van der Veen & S. Bogaerts, *Huiselijk geweld in Nederland, Overkoepelend syntheserapport van het vangst-hervangst-, slachtoffer- en daderonderzoek 2007-2010,*2010, p. 126-127 (*available at*: wodc.nl/binaries/ob288-volledige-tekst_tcm28-69804.pdf).

[54] Dutch CEDAW Network, *Joining forces to break the circle of violence against women (Alternative report to Istanbul Convention*), October 2018, p. 5-6 (*available at*: vn-vrouwenverdrag.nl/wp-content/uploads/Dutch-NGO-Shadow-report-Istanbul-Convention_15-dec-2018-DEF.pdf).

[55] Dutch CEDAW Network, *Joining forces to break the circle of violence against women (Alternative report to Istanbul Convention*), October 2018, p. 4.

[56] H.C.J. van der Veen & S. Bogaerts, *Huiselijk geweld in Nederland, Overkoepelend syntheserapport van het vangst-hervangst-, slachtoffer- en daderonderzoek 2007-2010,* 2010, p. 126-127; Trouw, *Huiselijk geweld tegen mannen is onderbelicht*, 20 November 2018 (*available at*: trouw.nl/samenleving/huiselijk-geweld-tegen-mannen-is-onderbelicht~a05d8a64/).

[57] Huiselijkgeweld.nl, '*Mannelijke slachtoffers van huiselijk geweld: "Wat heb ik ermee te maken?!"*(*available at*: huiselijkgeweld.nl/doc/feiten/thuis_in_je_huis_brochure.pdf).

[58] B.C. Drijber & U.J.L. Reijnders & M. Ceelen, *Male Victims of Domestic Violence*, Journal on Family Violence, 2013, nr. 28:173–178, p.177.

[59] Verwey Jonker Instituut & Augeo Foundation, *Werkt de aanpak van kindermishandeling en partnergeweld?***,** 2018, p.10 (*available at*: verwey-jonker.nl/doc/2018/216037_Werkt_aanpak_kindermishandeling.pdf).

Another vulnerable group concerns undocumented migrants. Currently female undocumented migrants who are victims of domestic abuse do not have access to social services for victims and do not have access to shelters.[60]

Furthermore, the provisions on sexual violence in the Dutch criminal code do not include non-consensual sexual acts, which is not in accordance with the Istanbul Convention. Article 242 of the Criminal Code states that a person is raped when they are *forced* to undergo actions that consist of, or partly consist of, the sexual penetration of the body, while article 264 of the Criminal Code criminalizes an act of a person who *forces* someone to commit or tolerate abusive acts. Article 36 of the Istanbul Convention however criminalises any non-consensual sexual act.[61]

As stated in the Government's report, domestic violence is a common occurrence in the Caribbean Netherlands.[62] As reported by the government, a community safety partnership was launched on Bonaire. The government has indicated that this partnership will be evaluated and, if proven successful, implemented in Sint Eustatius and Saba.

In order to further ensure that the issue of domestic violence is safeguarded in the same way in the entire Kingdom, the government of the Netherlands has indicated that the Istanbul Convention will apply in the Caribbean Netherlands in due course.[63] For now, an administrative agreement covering the period 2017 to 2020 has been signed with the goal to strengthen the policy on combating domestic violence.[64] Concrete plans of action based on the agreement however are still being developed.[65] The Netherlands Institute for Human Rights has stated that steps should be taken to implement the Convention of Istanbul in the Caribbean part of the Netherlands, reiterating, as the Dutch Advisory Council on International Affairs has stated in the past, that a divergent system of human rights within the constitutional order of the Kingdom cannot be justified.[66]

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[60] Nationale Ombudsman, *Vrouwen in de knel,een onderzoek naar knelpunten in de vrouwenopvang,* 6 July 2017, p. 13 (*available at*: nationaleombudsman.nl/system/files/onderzoek/Rapport%202017075%20Vrouwen%20in%20de%20knel.pdf.).

[61] Art, 36 Council of Europe Convention on preventing and combating violence against women and domestic violence.

[62] Human Rights Committee, *Fifth periodic report submitted by the Netherlands under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2018*, 8 November 2018, para. 36.

[63] Human Rights Committee, *Fifth periodic report submitted by the Netherlands under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2018*, 8 November 2018, para. 37.

[64] Rijksoverheid, *Bestuursakkoord Aanpak Huiselijk geweld en Kindermishndeling Caribisch Nederland 2017-2020*, 28 June 2017 (*available at*: rijksoverheid.nl/documenten/convenanten/2017/06/28/bestuursakkoord-bes-huiselijk-geweld).

[65] Human Rights Committee, *Fifth periodic report submitted by the Netherlands under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2018*, 8 November 2018, para. 37.

[66] The Netherlands Institute for Human Rights, *Written contribution to the Group of Experts on Action against Violence against Women and Domestic Violence*, November 2018, p. 6 (*available at*: publicaties.mensenrechten.nl/file/7c4685f9-6600-4445-bdc5-54d4876eb631.pdf); Advisory Council on International Relations, *Fundamental Rights in the Kingdom of the Netherlands: Equivalent protection in all parts of the Kingdom*, p. 34 (*available at*: aiv-advies.nl/download/06d8f6fe-f4db-460b-9fd2-62a87956f178.pdf).

The NGOs are concerned by the fact that male victims often do not receive proper support. Professionals should be trained to recognise the symptoms of domestic abuse with male victims.

The NGOs are concerned by the fact that undocumented migrants do not have access to social service and shelters.

The NGOs urge the government to put in place gender sensitive policies, and to monitor and review these on a systematic basis, including data that justify the policy decisions of the government.

The NGOs are concerned by the fact that the provisions with respect to sexual violence are not in accordance with the Istanbul Convention.

The NGOs urge the government to evaluate the safety partnership on Bonaire and to publish the results.

The NGOs are concerned with how the victims of domestic violence, especially women and children, are currently protected on Saba and St. Eustatius in absence of a community safety partnership similar to the one in Bonaire.

The NGOs urge the government to implement concrete plans to ensure that the Istanbul convention will apply to the entirety of the Kingdom.

Juveniles and the criminal system in the Caribbean Netherlands & Sint Maarten

When the islands of Sint Eustasius, Saba, and Bonaire were added to the state structure of the Netherlands in 2010, the Dutch Parliament chose not to apply the juvenile criminal law system to the Caribbean Netherlands due to lack of necessary resources.[67] Recently, the Minister for Legal Protection committed the Kingdom to the implementation of a separate youth justice system, to be finalized in the fall of 2019.[68] It is unclear what the exact progress is with respect to the implementation.

Much like the Caribbean Netherlands, Sint Maarten does not have a separate system to process juvenile crime.[69]Additionally, due to hurricane Irma, the single facility where juvenile delinquents were held (the Miss Lalie Center), has been closed. Consequently, juvenile detainees are forced to stay in the same facility as adult criminal offenders, the Point Blanche penitentiary facility in Sint Maarten, which has been heavily critiqued by the press, national

[67] Koninkrijksrelaties.nu, *Caribisch Nederland krijgt nog dit jaar jeugdstrafrecht*, 8 January 2019 (*available at:* koninkrijksrelaties.nu/2019/01/08/caribisch-nederland-krijgt-nog-dit-jaar-jeugdstrafrecht/).

[68] Minister for Legal Protection, *Kamerbrief over voortgang jeugdstrafrecht CN*, 8 January 2019, p. 1 (*available at*: rijksoverheid.nl/documenten/kamerstukken/2019/01/08/tk-voortgang-implementatie-jeugdstrafrecht-cn).

[69] Saint Maarten News, *Public Prosecutor's Office calls on government to provide a juvenile detention centre for boys and girls*, 7 November 2018 (*available at:* stmaartennews.com/judicial/public-prosecutors-office-calls-government-provide-juvenile-detention-centre-boys-girls/).

organizations, and international organizations.[70] It is constantly overcrowded and has such a lack of resources that the Law Enforcement Council (*Raad voor de Rechtshandhaving*) has deemed the detention climate inhumane.[71] The Netherlands Institute for Human Rights has underlined this in a letter to the Council of Europe in which it stated that the Pointe Blanche penitentiary facility suffers from systemic deficiencies which limit the possibilities of guaranteeing adequate detention facilities that meet international human rights standards.[72]

The NGOs are concerned about the absence of a proper juvenile criminal law system in the Caribbean Netherlands and Sint Maarten.

The NGOs are concerned about the fact that there are currently no specific detention centers for juveniles in Sint Maarten.

The NGOs are alarmed about the circumstances in the Pointe Blanche penitentiary facility and call for swift action

Article 9

Pre-trial detention

The Dutch criminal justice system has been criticized for its number of detained persons who are in pre-trial detention. Generally speaking this number is perceived as high. Although the total number of detained persons per capita in The Netherlands is quite low compared to most other (European) countries, the number of persons in pre-trial detention as part of the overall population of imprisoned persons is high (43% in 2016).[73]

Over the last decade this high percentage of pre-trial detentions has been the aim of much criticism, as is the alleged routine application of pre-trial detention by judges, which is oftentimes said to lack a proper motivation based on the merits of the individual case.[74]

[70] Saint Martin News Network, *Pointe Blanche Prison cells in deplorable conditions*, 19 April 2019 (*available at*: smn-news.com/st-maarten-st-martin-news/31710-pointe-blanche-prison-cells-in-deplorable-conditions.html); NRC Handelsblad, *Gevangene is niet veilig in Point Blanche*, 28 February 2019 (*available at*: nrc.nl/nieuws/2019/02/28/gevangene-is-niet-veilig-in-point-blanche-a3745000); See also: Council of Europe, *Report to the Government of the Netherlands on the visit to the Caribbean part of the Kingdom of the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 12 to 22 May 2014*, 25 August 2015, CPT/Inf (2015) 27 (*available at:* rm.coe.int/1680697831).

[71] Law Enforcement Council, *Penitentiaire Inrichting Sint Maarten: Vervolgonderzoek naar de interne veiligheid en maatschappijbeveiling*, October 2018, p. 12 (*available at*: raadrechtshandhaving.com/wp-content/uploads/2018/10/Eindversie-10-oktober-2018-Review-DO-2-rapport-PI-SXM-JVL-3.pdf).

[72] The Netherlands Human Rights Institute, *Communication with regard to the execution of the judgment of the European Court of Human Rights in the case of Corallo v. The Netherlands (29593/17)*, 14 February 2019, p. 3 (*available at*: publicaties.mensenrechten.nl/file/e636b266-d95b-4841-b81c-83a435a4a157.pdf)

[73] M. Boone, P. Jacobs & J. Lindeman, *Detour. Towards Pre-trial Detention as Ultima Ratio*, 2nd Dutch National Report on Expert Interviews, Utrecht 2017, p. 19.

[74] J.H. Crijns, B.J.G. Leeuw en H.T. Wermink, '*De voorlopige hechtenis in Nederland. Juridische uitgangspunten versus praktische realiteit*', Strafblad 2016/32.

In the Dutch criminal law system application of pre-trial detention is formally a prerequisite for alternatives to that detention, which can only be imposed after pre-trial detention has been conditionally suspended.[75] Specifically for juveniles, the law prescribes that the judge who orders pre-trial detention also has to consider conditional suspension.[76] Regarding adults, the decision to conditionally suspend pre-trial detention is left to the initiative of the judge, prosecutor and/or defence attorney.[77] Some studies found a decrease in the application of pre-trial detention in recent years, but it is not clear whether this is the result of a changed approach by these actors or a consequence of the general decrease of crime.[78] There does not seem to be a nationally coordinated effort to reduce the application of pre-trial detention however.

The Minister of Justice and Security has introduced a draft bill concerning a new Code of Criminal Procedure, in which alternatives for pre-trial detention can be applied without first formally applying pre-trial detention.[79] It introduces an order of 'preliminary restriction of freedom', which is supposed to emphasize the status of pre-trial detention as 'ultimum remedium', only to be applied if other measures are found to be insufficient.[80] At the same time however, this draft bill aims to expand the grounds for pre-trial detention to all crimes with a maximum prison sentence of at least two years, whereas it is currently limited to crimes with a maximum prison sentence of at least four years.

Other than the draft bill mentioned above and the fact that quite a few (critical) articles and reports have been publicized concerning pre-trial detention, there have been no known (nationally coordinated) efforts to increase the use of non-custodial alternatives for pre-trial detention.

A study in 2017 by The Netherlands Institute for Human Rights concluded that motivation of judicial decisions concerning pre-trial detention varies greatly from court to court.[81] Although some courts stood out in a positive way, the researchers concluded that overall the required written motivation is not always properly provided.[82] Sometimes courts fall back on standardised texts or suffice with referring to the motivation provided in a previous decision. In some cases the researchers found courts using forms on which judges merely needed to

[75] Article 80 *Wetboek van Strafvordering* (Criminal procedure act).
[76] Article 493 *Wetboek van Strafvordering* (Criminal procedure act).
[77] Article 80 *Wetboek van Strafvordering* (Criminal procedure act).
[78] B. Berghuis, P. Linckens en A. Aanstoot, *De voorlopige hechtenis een halt toegeroepen?*, Trema 2016/3. See also: Algemene Rekenkamer (Court of Audit of The Netherlands), *Voorarrest: verdachten in de cel. Een kwantitatieve analyse van inverzekeringstelling en voorlopige hechtenis*, 23 October 2017, p. 18.
[79] Draft Criminal procedure act, *Wetsvoorstel tot vaststelling van Boek 2 van het nieuwe Wetboek van Strafvordering*, (*available at:* rijksoverheid.nl/documenten/kamerstukken/2017/02/07/wetsvoorstel-tot-vaststelling-van-boek-2-van-het-nieuwe-wetboek-van-strafvordering).
[80] Article 2.5.4.1.1Draft Criminal procedure act.
[81] The Netherlands Institute for Human Rights, *Tekst en uitleg. Onderzoek naar de motivering van voorlopige hechtenis*, March 2017.
[82] The Netherlands Institute for Human Rights, *Tekst en uitleg. Onderzoek naar de motivering van voorlopige hechtenis*, March 2017, p. 51.

check certain boxes to indicate which grounds they considered applicable in the present case, without having to add any written motivation themselves.[83]

The NGOs call for a concerted national effort to ensure that pre-trial detention is actually a measure of last resort, and that less intrusive alternatives to pre-trial detention become more prevalent.

The NGOs state that the use of pre-trial detention should be critically assessed in every case and applied only when strictly necessary.

Migration detention

In the Netherlands undocumented migrants can be detained as a matter of last resort. However, the requirements to place an undocumented migrant in detention are very broad and as a result undocumented migrants can be placed in detention for a broad variety of reasons.[84] The Dutch Alien act is therefore not proportionate to its aim, namely keeping an alien available for its deportation, and it cannot be considered as *ultimum remedium*, due to the complexity of the regulations and the lack of alternatives.[85]

A positive trend had been set in decreasing the number of undocumented migrants in detention between 2013 and 2015. However, between 2015 and 2017 this number has risen again.[86] Although the number of undocumented migrants in detention was lower in 2017 than it was in 2013, it is important that the government finds a way to continue the trend from 2013-2015.[87] Particularly because in the first half of 2018 there were more undocumented migrants detained than over the same period in 2017.[88] Of these migrants, 230 were detained for 3 to 6 months and 60 migrants for 6 months or longer. In 2018 unaccompanied minors were detained for an average period of 21 days, exceeding the legal limit of 14 days.[89] The

[83] The Netherlands Institute for Human Rights, *Tekst en uitleg. Onderzoek naar de motivering van voorlopige hechtenis*, March 2017, p. 52

[84] Amnesty International-the Netherlands, *Het recht op vrijheid. Vreemdelingendetentie: het ultimum redium-beginsel*, February 2018, p. 11 (*available at*: amnesty.nl/content/uploads/2018/02/AMN_18_08_Rapport-het-recht-op-vrijheid_DEF_web.pdf?x73404).

[85] W.J. van der Spek, E. Flikweert, A.B. Terlouw, *Detentie van asielzoekers: Een onderzoek naar de toepassing van artikel 59b Vw*, 2018 (Centre for migration law, Radboud University Nijmegen), p. XXIII and 148 (*available at*: repository.ubn.ru.nl/bitstream/handle/2066/183453/183453.pdf?sequence=1); Nationale Ombudsman, *'Medische zorg vreemdelingen, Over toegang en continuïteit van medische zorg voor asielzoekers en uitgeprocedeerde asielzoekers*, 3 October 2013, p. 32 (*available at:* nationaleombudsman.nl/uploads/2013-125_rapport_medische_zorg_vreemdelingen_webversie_0.pdf)

[86] Dienst Justitiële Inrichtingen, *DJI in* getal, August 2018, p. 47 (*available at*: dji.nl/binaries/DJI%20in%20getal%202013-2017%20definitief_tcm41-350484.pdf)

[87] In 2013 3.668 undocumented migrants were in detention as opposed to 3.181 in 2017. The lowest number in this period was 2.176 in 2015.

[88] In the first half of 2018 1.740 migrants were detained versus 1.540 in the first half of 2017. Ministry of Justice and Security, *Rapportage Vreemdelingenketen Periode januari-juni 2018*, October 2018, p. 37 (*available at:* rijksoverheid.nl/documenten/rapporten/2018/10/17/tk-bijlage-rapportage-vreemdelingenketen).

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

government gives no clear explanation of why this is the case, other than that various factors are weighed in determining the length of detention, the most important being that the expulsion of migrant children requires 'proper preparation.[90]

The detention of undocumented migrants can last for six months in first instance. This may be extended for another 12 months. In practice, this maximum of 18 months is regularly exceeded, while this is an absolute boundary that the Netherlands may not cross.[91] This mostly happens as a consequence of repeated periods of detention.[92] Research has shown though, that if an undocumented migrant has been detained five times or more their willingness to cooperate with their deportation does not increase.[93]

The NGOs are concerned by the lack of alternatives for migration detention. Migration detention is and should be an *ultimum remedium*. The upward trend in detained migrants must be combated, with special attention for unaccompanied minors in detention.

Article 10

Treatment in migration detention

The government of the Netherlands has proposed a new law on the issue of migration detention: '*Wet terugkeer en vreemdelingenbewaring*'.[94] This new law aims to take the detention of undocumented migrants and people awaiting their expulsion (after their asylum claim has been rejected) out of the punitive law realm into the administrative law realm.

The government is under the obligation to provide extra protection for vulnerable groups of detained undocumented migrants. This obligation is not reflected properly by the proposed law.[95] For example, solitary confinement of children from the age of 12can still take place.[96] It is also still possible to put migrants in solitary confinement as a disciplinary measure; and to renew solitary confinement every week as a measure to ensure order and safety, which is contradictory to the notion of it being a measure of last resort.[97]

[90] State Secretary of Justice and Security, *Kamerstukken II* 2018/19, nr. 19637-2473, p. 2.

[91] Article 15(6) EU Directive 2008/115/EC ("the Return Directive").

[92] Amnesty International-the Netherlands, *Het recht op vrijheid. Vreemdelingendetentie: het ultimum redium-beginsel*, February 2018, p. 22

[93] Wetenschappelijk Onderzoek- en Documentatiecentrum, *Van bejegening tot vertrek: een onderzoek naar de werking van Vreemdelingenbewaring*, 2018, p. 136 (*available at*: wodc.nl/binaries/ob308-volledige-tekst_tcm28-72891.pdf)

[94] *Regels met betrekking tot de terugkeer van vreemdelingen en vreemdelingenbewaring (Wet terugkeer en vreemdelingenbewaring)*, proposed on 30 september 2015. Status: draft (*available at*: zoek.officielebekendmakingen.nl/kst-34309-A.html).

[95] These persons can be placed in psychiatric departments (PPC's) of ordinary prisons used for punishment of criminal offences, albeit in a special wing reserved for detention of irregular migrants.

[96] Article 62 of the draft law does not include an exception for minors.

[97] Amnesty International-the Netherlands, Dokters van de Wereld, Stichting LOS & Meldpunt Vreemdelingendetentie, *Een ongezonde wet: Gezondheidszorgen & Wet terugkeer en vreemdelingenbewaring*, 11 December 2018, p. 12 (*available at:* doktersvandewereld.org/wp-content/uploads/2018/12/Notitie-een-ongezonde-wet-11-december-2018.pdf).

Placing vulnerable groups, such as people in need of health care or psychiatric services, in detention centres regularly leads to an aggravation of their situation. For these people, detention is by definition disproportionate.[98] According to the proposed law, the decision whether or not to detain vulnerable undocumented migrants will be based on one question, namely whether the detention centre can provide the necessary care for the migrant.[99] This is problematic for four reasons. First, there are no fixed and clear criteria on which decisions pertaining to the detention of vulnerable groups will be made, and this could lead to arbitrary detention.[100] Second, the decision will be made on a case-by-case basis, which means that particular vulnerable groups are not excluded on a priori basis.[101] Third, according to the proposed law, mental disorders and physical handicaps are in themselves not sufficient enough reasons to not place an immigrant in detention. Additionally, the decisions do not pay sufficient attention to personal circumstances, which could make placement in detention disproportionate.[102] In this regard it is also questionable if the detention centres can provide the necessary medical care for migrants, especially those with psychiatric problems.[103] Finally, the decision will not take negative long-term consequences of detention into account, while health problems could emerge or worsen in detention.[104]

In 2017 the number of migrants in solitary confinement increased to 412 (from 245in 2016).[105] This is a negative development, as solitary confinement has a harmful impact on the psychological and physical condition of undocumented migrants and it can cause or

[98] Amnesty International-the Netherlands, Dokters van de Wereld, Stichting LOS & Meldpunt Vreemdelingendetentie, *Opsluiten of beschermen? Kwetsbare mensen in vreemdelingendetentie*, 25 April 2016, p.13. (*available at*: doktersvandewereld.org/wp-content/uploads/2018/06/201604_Opsluiten_of_beschermen.pdf).

[99] Tweede Kamer der Staten-Generaal, *Memorie van Toelichting, Regels met betrekking tot de terugkeer van vreemdelingen en vreemdelingenbewaring (Wet terugkeer en vreemdelingenbewaring)*, Vergaderjaar 2015-2016, nr. 34309-3, p. 95 (*available at:* zoek.officielebekendmakingen.nl/kst-34309-3.html).

[100] Tweede Kamer der Staten-Generaal, *Memorie van Toelichting, Regels met betrekking tot de terugkeer van vreemdelingen en vreemdelingenbewaring (Wet terugkeer en vreemdelingenbewaring)*, Vergaderjaar 2015-2016, nr. 34309-3, p. 98.

[101] Tweede Kamer der Staten-Generaal, *Memorie van Toelichting, Regels met betrekking tot de terugkeer van vreemdelingen en vreemdelingenbewaring (Wet terugkeer en vreemdelingenbewaring)*, Vergaderjaar 2015-2016, nr. 34309-3, p. 97.

[102] Amnesty International-the Netherlands, *Het recht op vrijheid. Vreemdelingendetentie: het ultimum redium-beginsel*, February 2018, p. 31.

[103] See: Amnesty International-the Netherlands, Dokters van de Wereld, Stichting LOS & Meldpunt Vreemdelingendetentie, *Opsluiten of beschermen? Kwetsbare mensen in vreemdelingendetentie*, 25 April 2016 p. 26; Nationale Ombudsman, *Medische zorg vreemdelingen. Over toegang en continuïteit van medische zorg voor asielzoekers en uitgeprocedeerde asielzoekers*, 3 October 2013, p. 42; Inspectie voor Gezondheidszorg, *Verantwoorde medische zorg in detentie- en uitzetcentra. Signaleren van psychische kwetsbaarheid moet systematischer*, February 2014, p. 7.

[104] Amnesty International-the Netherlands, Dokters van de Wereld, Stichting LOS & Meldpunt Vreemdelingendetentie, *Opsluiten of beschermen? Kwetsbare mensen in vreemdelingendetentie*, 25 April 2016, p. 7; Nationale Ombudsman, *Medische zorg vreemdelingen. Over toegang en continuïteit van medische zorg voor asielzoekers en uitgeprocedeerde asielzoekers*, 3 October 2013, p. 18-20

[105]Eerste Kamer der Staten-General, *Parliamentary paper(Kamerstukken)*, Vergaderjaar 2017-2018 no. 34 390, p. 36 (*available at*: eerstekamer.nl/behandeling/20181213/memorie_van_antwoord_2/document3/f=/vku9lek5p0ki_opgemaakt.pdf)

exacerbate psychiatric disorders.[106] The government should ensure that solitary confinement only takes place in exceptional cases and for the shortest time possible.

The NGOs are concerned by the detention regime with respect to undocumented migrants and persons awaiting their expulsion. The proposed law does not meet all the necessary human rights standards and should be amended accordingly.

The NGOs urge the government to put adequate safeguards in place with regard to punitive measures and measures to ensure order and safety that are taken in migration detention.

Article 21

Right to peaceful assembly

Recently there has been an evaluation of the *Wet Openbare Manifestaties* (Law on Public Manifestation, hereafter: WOM) and the report suggested that certain authorizations be removed from the WOM, such as the authority to end a demonstration on the grounds that there was no prior notification.[107] The National Ombudsman has previously shown support for this particular amendment and has also drafted a report with their own recommendations to the Government.[108] As a consequence of the evaluation the cabinet suggested the WOM should be amended and that a code of practice should be drafted to create more clarity for the municipalities and police.[109] A code has since been drafted by the municipality of Amsterdam.[110] The Minister of the Interior and Kingdom Relations has indicated that it will be reviewed whether this code can be implemented at national level, however no steps have been taken towards amending the WOM yet.[111]

The NGOs are of the opinion that the proposed amendments remain necessary, particularly because most of the issues relating to the right to peaceful assembly revolve around the authorizations highlighted in the report. Examples of this are the demonstrations against the figure of '*Zwarte Piet*' (Black Pete), where peaceful demonstrations were disrupted. In

[106] Amnesty International-the Netherlands, Dokters van de Wereld, Stichting LOS & Meldpunt Vreemdelingendetentie, *Isolatie in vreemdelingen detentie*, March 2015, p. 9 (*available at*: amnesty.nl/content/uploads/2015/03/rapport_isolatie_in_vreemdelingen_detentie19mrt.pdf?x68065)

[107] B. Roorda, J.G. Brouwe, A.E. Schilder, *Evaluatie Wet openbare manifestaties*, 3 July 2015, p. 289.

[108] De Nationale Ombudsman, *Demonstreren staat vrij*, 13 December 2007, p. 45 (*available at:* nationaleombudsman.nl/uploads/rapport2007-290.pdf) & De Nationale Ombudsman, *Demonstreren, een Schurend Grondrecht?*, 14 March 2018 (*available at:* nationaleombudsman.nl/system/files/bijlage/2018%20015%20RAP%20Demonstraties.pdf).

[109] Minister of the Interior and Kingdom Relations, *Betreft: Reactie op de evluatie van de Wet openbare manifestaties*, 17 January 2017, p. 3 (*available at:* rijksoverheid.nl/documenten/kamerstukken/2017/01/17/kamerbrief-met-reactie-op-de-evaluatie-van-de-wet-openbare-manifestaties).

[110] Gemeente Amsterdam, Politie, Openbaar Ministerie, *Demonstreren 'Bijkans heilig'*, October 2018 (*available at:* amsterdam.nl/wonen-leefomgeving/veiligheid/demonstratierecht).

[111] Minister of the Interior and Kingdom Relations, *Betreft: Wet openbare manifestaties*, 13 July 2018, p. 5&6 (*available at:* rijksoverheid.nl/documenten/kamerstukken/2018/07/13/kamerbrief-over-de-wet-openbare-manifestaties).

Eindhoven for example, peaceful anti-*Zwarte Piet* demonstrators were subjected to insults, intimidating behaviour and had eggs thrown at them by an unannounced group, which caused the demonstrators to stop their demonstration.[112] In other cities the demonstrations were prohibited by the local municipalities out of fear that there might be hostile reactions to the demonstration.[113] In situations where demonstrations pertain to topics that are sensitive and subject to lively debate, the Government has shown a tendency to choose the side of risk avoidance rather than safeguarding protestors' right to peaceful assembly.[114]

The NGOs are also concerned about the video and photo surveillance, and the excessive ID-checks at peaceful demonstrations. In combination with disproportional police force that is often present, this can have a stigmatizing effect and create the image that these peaceful protestors are engaging in criminal activities. An additional concern of the NGOs is the practice of certain municipalities of demanding that protestors provide for certified security.[115] A positive sign however is the denouncement by the Minister of this practice.[116]

The NGOs are concerned about the friction between the right to peaceful assembly and the municipalities tendency to prohibit or end demonstrations in the name of public safety.

The NGOs urge the government to safeguard the rights of peaceful protestors.

Article 23

Family reunification procedure

In the Netherlands applications for family reunification can only be made by migrants who have received a residence permit.[117] Due to the Immigration and Naturalisation Service's lack of capacity, and the consequent delays in the asylum procedure, it can take up to a year to even submit an application.[118] According to article 2r(1) of the Alien Act 2000 the period in which a decision has to be made on an application for family reunification is 90 days, which can be extended by another 90 days. Where in 2014 92% of applicants got their decision

[112] Eindhovens Dagblad, *Grimmige sfeer tijdens Zwarte Piet demonstratie in Eindhoven: Zes mensen aangehouden*, 17 November 2018 (*available at:* ed.nl/eindhoven/grimmige-sfeer-tijdens-zwarte-piet-demonstratie-in-eindhoven-zes-mensen-aangehouden~a217f67e0/).

[113] RTL Nieuws, *Sinterklaas is weer in het land: 21 aanhoudingen bij intochten*, 17 November 2018 (*available at:* rtlnieuws.nl/nieuws/nederland/artikel/4488676/17-aanhoudingen-bij-intochten-sinterklaas). A video report was made of protestors on their way to Den Helder in which they were stopped by the police twice and advised not to proceed. See: https://www.youtube.com/watch?v=e4DfYcYLhYY.

[114] De Nationale Ombudsman, *Demonstreren, een Schurend Grondrecht?*, 14 March 2018, p.4.

[115] B. Roorda, *Het recht om te demonstreren: Een vergelijkende studie naar de betogingsvrijheid inNederland, Duitsland en Engeland vanuit internationaalrechtelijk perspectief*, 2016 (Groningen: Rijksuniversiteit Groningen) p. 305-306.

[116] Tweede Kamer der Staten-Generaal, *Aanhangsel van de handelingen*, Vergaderjaar 2018-2019, nr. 1956, p. 2 (*available at*: tweedekamer.nl/kamerstukken/kamervragen/detail?id=2019D11491&did=2019D11491).

[117] Article 29(2) Alien Act 2000.

[118] De Volkskrant, *Trage procedures kosten IND miljoenen aan dwangsommen*, 13 november 2018 (*available at*: volkskrant.nl/nieuws-achtergrond/trage-procedures-kosten-ind-miljoenen-aan-dwangsommen~b0967ce3/)

within the legal time limit, this number has dropped to 14% in 2017 with an average waiting time of 330 days.[119]

Family reunification is essential for the wellbeing and the health of refugees and the absence of their families forms a barrier in rebuilding their lives in the host country.[120] As a consequence of the long periods of separation with their families refugees in the Netherlands have shown signs of stress and depression which has impacted their ability to integrate into Dutch society.[121] Additionally there have been signals of the long waiting periods and the lack of transparency in the procedure impacting the relation within the families.[122]

The NGOs are concerned about the consequences the long waiting times have on the refugees and the families awaiting reunification.

The NGOs urge the government to ensure family reunification will take place within the legal time limit.

Article 24

Child abuse on Sint Maarten

On the island of Sint Maarten domestic violence affects many children but it is generally invisible and underreported.[123] Although a comprehensive child protection system is still lacking, an initial child protection system has been set up which includes a six-step protocol on detection and intervention in cases of child abuse, violence, neglect and mistreatment.[124]

The system utilizes the direct environment of the child as detection points, after which the Child Services and Public Prosecutors Office or the Court of Guardianship refer them to the proper agency. This has been described as a crucial first step to prevent and address child protection violations, however there are still many problems. For example, due to a lack of funds, the foster care institutions that are in place are faced with a severe budget shortage. Additionally, children have to leave foster care the day they turn 18 and are left to fend for themselves.[125] Though the government of Sint Maarten is working to address these concerns, improve its systems, and has explicitly put it on their political agenda, it remains to be seen which changes will be implemented and when.[126]

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[119] Trouw, *Vluchteling moet te lang wachten op hereniging met zijn gezin*, 1 mei 2018 (*available at*: trouw.nl/home/vluchteling-moet-te-lang-wachten-op-hereniging-met-zijn-gezin~a302e8fc9/)

[120] Pharos, *Welzijn en gezondheid van gezinsherenigers: een verkenning*, April 2018, p. 23 (*available at*: pharos.nl/wp-content/uploads/2018/09/Welzijn_en_gezondheid_van_gezinsherenigers_verkenning_Pharos.pdf).

[121] Pharos, *Welzijn en gezondheid van gezinsherenigers: een verkenning*, April 2018, p. 28.

[122] Pharos, *Welzijn en gezondheid van gezinsherenigers: een verkenning*, April 2018, p. 28.

[123] UNICEF, *The Situation of Children and Adolescents in Sint Maarten*, 2013, p. 52 (*available at*: unicef.nl/media/1359112/sint_maarten_sitan_public_version__28english_29.pdf).

[124] UNICEF, *The Situation of Children and Adolescents in Sint Maarten*, 2013, p. 52&53.

[125] Caribbean Network, *Weeshuizen op Sint Maarten slaan alarm*, 20 May 2015 (*available at*: caribischnetwerk.ntr.nl/2015/05/20/weeshuizen-op-sint-maarten-slaan-alarm/).

[126] Minister of Youth, *Protect our Children – Address from the Minister of Youth*, 24 January 2019 (*available at*: sintmaartengov.org/PRESSRELEASES/PAGES/PROTECT-OUR-CHILDREN-ADDRESS-FROM-THE-

The NGOs are concerned with the current child protection system on Sint Maarten and call for a system that is in line with international standards such as the UN Guidelines on the Alternative Care of Children.

Statelessness

The Netherlands is a party to the UN Conventions on Statelessness. Everyone who resides legally in the Netherlands for an extended period of time should therefore get registered in the population database through the local municipality. This database, the BRP, contains a number of obligatory entries, and nationality is one of them.

However, if individuals do not have documents indicating their nationality, they are registered with a status 'nationality unknown' rather than stateless.[127] The category 'stateless' is used in a very restrictive way and must be proven via documents.[128] Individuals with the status 'nationality unknown' are effectively blocked from exercising basic rights available to persons with a nationality. An example is the fact that they oftentimes do not possess identifying documents which enable them to buy a house, marry before the law, or even pass down a nationality to their children.[129] One cannot become a Dutch citizen by virtue of being born in the Netherlands, therefore the status 'nationality unknown' has been passed on to children who are born in the Netherlands, while these children are unable to 'return' to another country.[130]

In cases where a stateless person has no right of residence, the fact that they are stateless is no ground for a right to residence.[131] The government refers to the no-fault procedure as a viable alternative.[132] This procedure used to be open only to stateless people but can now be used by people with a nationality as well.[133] The government has indicated that whether or not the person in question is actually stateless is not a relevant criterion in obtaining a residence

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MINISTER-OF-YOUTH.ASPX?FBCLID=IWAR3RV4ZXYJXBG_A6KZGJLX18UJPF_ND76ZKW0TFJW5MZXWBUTMB69UUNDKK).

[127] Government information on statelessness: rijksoverheid.nl/onderwerpen/nederlandse-nationaliteit/staatloosheid.

[128] Rijksdienst voor Identiteitsgegevens, *Handleiding Uitvoeringsprocedures BRP versie 3.0*, 19 June 2018, p. 135.

[129] M. van Dael, J. Klaas, L. Vaars, *Staatloosheid als moderne vorm van uitsluiting*, Justitiële Verkenningen, jrg. 44, nr.2, 2018, p. 103 (*available at*: wodc.nl/binaries/JV1802_Volledige%20tekst_tcm28-327814.pdf).

[130] Dutch nationality law follows *ius sanguine* rather than *ius soli.*

[131] Adviescommissie voor Vreemdelingenzaken, *Geen land te bekennen: een advies over de verdragsrechtelijke bescherming van staatlozen in Nederland*, 4 December 2013, p.73 (*available at*: acvz.org/wp-content/uploads/2015/05/04-12-2013_GeenLandTeBekennen.pdf.

[132] Adviescommissie voor Vreemdelingenzaken, *Geen land te bekennen: een advies over de verdragsrechtelijke bescherming van staatlozen in Nederland*, 4 December 2013, p. 56.;

[133] Adviescommissie voor Vreemdelingenzaken, *Waar een wil is maar geen weg: advies over de toepassing van het beleid voor vreemdelingen die buiten hun schuld niet zelfstandig uit Nederland kunnen vertrekken* , July 2013, p. 22 (*available at*: acvz.org/wp-content/uploads/2015/05/01-07-2013_Advies38-ACVZweb1.pdf)

permit through the no-fault procedure.[134] Since the no-fault procedure does not consider the particular needs and issues faced by stateless persons it is questionable whether it provides an adequate legal remedy for them.[135] Additionally stateless persons or persons with the status 'nationality unknown' who do not have a right of residence are often detained. Based on article 59 of the *Vreemdelingenwet 2000* (Aliens act 2000) detention can be used when there is a realistic chance of expulsion from the Netherlands. Since these persons are not nationals of another country however, in practice this can lead to arbitrary detention for long periods of time.[136]

A new law on determining statelessness is forthcoming.[137] A draft version of the law puts the burden of proof to establish statelessness solely on the stateless person.[138] This is quite contradictory, as it requires a person to prove the absence of a nationality through documentation.[139] With respect to stateless children or children with the status 'nationality unknown' there are some positive signs within this new law. For example, it will no longer be required for children to have legally resided in the Netherlands in order for them to apply for the Dutch nationality. However, children that have not resided in the Netherlands legally are required to have lived in the Netherlands for five years, as opposed to three years for children that did reside here legally.[140] In addition, some of the criteria in the new law with respect to this procedure need to be defined more clearly. The criterion of having a stable main residence' seems to envelop an obligation for the parents of stateless children to cooperate with their expulsion and not to avoid surveillance by the authorities.[141] As a consequence children will be held accountable for their parents' acts and the purpose of the procedure will be undermined.[142]

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[134] K. Hendriks, J. Klaas, & M. van Dael, *Gebrekkig wetsvoorstel vaststellingsprocedure Staatloosheid*, Asiel & Migrantenrecht 2017, nr. 2, p. 76 (*available at*: pilpnjcm.nl/wp-content/uploads/2015/04/ve17000392-2017-02-28-AsielMigrantenrecht-2017-nr.-2-Jurdische-spoken-verdwijnen-nog-niet.-Gebrekkig-wetsvoorstel-vaststellingsprocedure-voor-staatlozen-K.-Hen.pdf).

[135] C.A. Goudsmit, *Bescherming van staatlozen in Nederland vraagt om een aparte vaststellingsprocedure*, Nederlands Juristenblad 2014/362, afl. 4, p. 464. (*available at*: njb.nl/blog/bescherming-van-staatlozen-in-nederland-vraagt-om.11434.lynkx).

[136] M. van Dael, J. Klaas, L. Vaars, *Staatloosheid als moderne vorm van uitsluiting*, Justitiële Verkenningen, jrg. 44, nr.2, 2018, p. 111.

[137] Rijkswet Vaststellingsprocedure Staatloosheid. See for draft bill: *internetconsultatie.nl/staatloosheid/document/2492*.

[138] *Ontwerp Memorie van Toelichting voorstel Rijkswet Vaststellingsprocedure Staatloosheid*, p. 7.

[139] Adviescommissie voor Vreemdelingenzaken, *Geen land te bekennen: een advies over de verdragsrechtelijke bescherming van staatlozen in Nederland*, 4 December 2013, p.72.

[140] K. Hendriks, J. Klaas, & M. van Dael, *Gebrekkig wetsvoorstel vaststellingsprocedure Staatloosheid*, Asiel & Migrantenrecht 2017, nr. 2, p. 80.

[141] M. van Dael, J. Klaas, L. Vaars, *Staatloosheid als moderne vorm van uitsluiting*, Justitiële Verkenningen, jrg. 44, nr.2, 2018, p. 112.

[142] K. Hendriks, J. Klaas, & M. van Dael, *Gebrekkig wetsvoorstel vaststellingsprocedure Staatloosheid*, Asiel & Migrantenrecht 2017, nr. 2, p. 80.

The NGOs are concerned with the fact that there is still no adequate procedure for determining statelessness and hope the draft bill will be enacted soon – provided that the government shares the burden of proof and helps individuals to deal with foreign authorities in the determination of statelessness.

With respect to stateless people without a right to residence, the NGOs feel the no-fault procedure should take in to consideration the specific needs and issues faced by stateless persons.

The NGOs stress the unique and difficult situation that stateless persons find themselves in, and ask to see this reflected properly in the new law on determining statelessness.

Undocumented migrant children in family locations

A recent study has shown that migrant children who live in so-called family locations live under more negative circumstances than those in a regular asylum seekers centre (hereafter: AZCs). Family locations are meant for undocumented migrants awaiting their expulsion from the Netherlands and are more basic in their facilities than the AZCs. Children in these locations feel less safe, and receive less attention to their mental health in comparison to their counterparts in AZCs.[143] Young girls in particular feel less safe, as there is a lack of specific attention for them in these locations.[144] It is not clear that the best interest of the children is a prominent part of policy making by the government.[145] In June a manifest specifying ten areas of improvement was offered to parliament by seven NGOs requesting i.a. the closing of these family locations.[146] There has been little progress made on these points however.

The NGOs are concerned about the welfare of children in family locations; particularly the fact that they feel unsafe and lack attention for their mental health.

The NGOs call for consideration (of implementation) of the points brought forward in the manifest as a means to improve the current situation of undocumented migrant children in family locations.

[143] Centraal orgaan opvang asielzoekers & Werkgroep Kind in AZC, *Leefomstandigheden van kinderen in asielzoekerscentra en gezinslocaties*, 2018, p. 39 (*available at*: kind-in-azc.nl/wp-content/uploads/2018/06/1-en-2_online-002.pdf)

[144] Centraal orgaan opvang asielzoekers, Avance, Werkgroep Kind in AZC, *Leefomstandigheden van kinderen in asielzoekerscentra en gezinslocaties*, 2018, p.31.

[145] Centraal orgaan opvang asielzoekers, Avance, Werkgroep Kind in AZC, *Leefomstandigheden van kinderen in asielzoekerscentra en gezinslocaties*, 2018, p. 40

[146] Werkgroep Kind in AZC, War Child, VluchtelingenWerk Nederland, Stichting De Vrolijkheid, UNICEF Nederland, Kerk in Actie, Defence for Children and Save the Children, *Manifest #DitMoetBeter*¸ June 2018 (*available at:* defenceforchildren.nl/media/3183/manifest-azc.pdf)

Kinderpardon

On 29 January 2019 an agreement was reached amongst the coalition parties concerning a regulation for children who are rooted in the Netherlands, the so-called '*Kinderpardon*'.[147] This Kinderpardon had been in place since 2013, but in the wake of a recent controversial case - where two children aged 12 and 13 were threatened with expulsion from the Netherlands after living here for 10 years - it became the centre of public debate.[148]

Though the new agreement contains positive points, such as the re-evaluation of circa 700 applications and more favorable criteria, there are some points of concern as well. For example, there is uncertainty about children whose asylum applications have previously been rejected and do not live in a government appointed family location at the moment. They had two weeks to file an application under the new Kinderpardon and there is concern whether this was sufficient time and whether or not they have missed their window.[149] Additionally, after the re-evaluation of these applications, the Kinderpardon and the discretionary authority of the State secretary of Justice and Security, which was used to prevent the expulsion of the two children mentioned above, will be abolished.[150] Instead, the Immigration and Naturalisation Service will take into consideration any special and personal circumstances a migrant may bring forward in their first application for a residence permit on either regular or asylum grounds.[151]

As of now it is unclear what will happen with the children who do not fall within the ambit of the Kinderpardon.[152] This is worrisome since research has shown that expulsion from a country after having lived there for longer than five years brings unacceptable risks to damaging a child's development.[153]

The NGOs are concerned about the fate of the children who do not fall within the reach of the final regulation regarding the Kinderpardon. Steps need to be taken towards a viable solution for them with their best interest taken into account.

[147] NOS, *Akkoord over kinderpardon, 700 kinderen opnieuw beoordeeld*, 29 January 2019 (*available at:* nos.nl/artikel/2269669-akkoord-over-kinderpardon-700-kinderen-opnieuw-beoordeeld.html*).*

[148] NOS, *Crisissfeer rondom kinderpardon, waar gaat het om?*, 29 January 2019 (*available at:* nos.nl/artikel/2269608-crisissfeer-rondom-kinderpardon-waar-gaat-het-om.html).

[149] Defence for Children, *Kinderpardon nog niet in lijn met kinderrechten van alle gewortelde kinderen*, 11 February 2019 (*available at:* https://www.defenceforchildren.nl/actueel/nieuws/migratie/2019/kinderpardon-nog-niet-in-lijn-met-kinderrechten-van-alle-gewortelde-kinderen).

[150] Unicef – the Netherlands, *De regeringspartijen hebben een akkoord bereikt over het kinderpardon*, 31 January 2019 (*available at:* unicef.nl/nieuws/2019-01-31-de-regeringspartijen-hebben-een-akkoord-bereikt-over-het-kinderpardon).

[151] Information considering this new process is available at: https://ind.nl/en/news/Pages/Policy-rules-published-for-assessment-of-distressing-situation.aspx

[152] Defence for Children, *Kinderpardon nog niet in lijn met kinderrechten van alle gewortelde kinderen*, 11 February 2019.

[153] E. Scherder, C. van Os, E. Zijlstra, *Schaderisico bij uitzetting langdurig verblijvende kinderen*, December 2018 (Rijksuniversiteit Groningen; Vrije Universiteit Amsterdam), p.8 (*available at:* rug.nl/news/2018/nieuwsberichten/1206-schadenota-geworteldekinderen-def.pdf).

Article 26

Ethnic profiling

In 2013 Amnesty International-the Netherlands published a report on pro-active police action in relation to human rights, stating that:

'Proactive policing is a risk for human rights in the Netherlands. In particular, it can lead to ethnic profiling: the use of criteria or considerations about ethnicity or ethnicity in tracing and law enforcement while there is no objective justification for this. Ethnical minorities, for example, are more often subjected to proactive police checks without them being a suspect or without there being an individualized indication for the police check. It is a form of discrimination that contributes to stigmatization and negative perception of ethnic minorities.'[154]

Persons over the age of 14 are required to provide proof of identification if requested by the police in the execution of police tasks.[155] Identification checks mostly take place in connection with minor infringements and these checks, as well as other forms of stops and searches, often happen in public places.[156] The people subjected to these checks are aware of the fact that they are being watched by passers-by and these experiences can oftentimes be very humiliating for them.[157]

Both government and police authorities have recently recognized the problem of ethnic profiling. They have taken initial measures, e.g. through the programme 'The power of difference' and the publication of a so-called 'Handelingskader proactief controleren' ('Action Frame for Pro-Active Police Checks).[158] For one, police authorities now use a broader definition of ethnic profiling. Under the old definition only police checks that were solely based on race could constitute ethnic profiling, while in practice it is often a combination of factors. Currently the police follows the broader definition, as recommended by ECRI: 'The use by the police, with no objective and reasonable justification, of grounds such as race, colour, language, religion, nationality or national or ethnic origin in control, surveillance or investigation activities'.[159] Nonetheless, there has been little

[154] Amnesty International – the Netherlands, *Proactief politieoptreden vormt een risico voor mensenrechten: Etnisch profileren onderkennen en aanpakken*, October 2013.

[155] Open Society Justice Initiative & Amnesty International – the Netherlands, *Equality under pressure: the impact of ethnic profiling*, November 2013, p. 6.

[156] Open Society Justice Initiative & Amnesty International – the Netherlands, *Equality under pressure: the impact of ethnic profiling*, November 2013, p. 6 & 11.

[157] Open Society Justice Initiative & Amnesty International – the Netherlands, *Equality under pressure: the impact of ethnic profiling*, November 2013, p. 11. Several interviews in this report detail experiences of people subjected to these checks as a consequence of ethnic profiling.

[158] A pro-active police check is a police check of a selected citizen without detection of a violation or criminal offense. Police The Netherlands, *Handelingskader proactief controleren* (version 1.9), 27 October 2017.

[159] See a report by Controle Alt Delete, *Kies een kant*, December 2017, Chapter 6: controlealtdelete.nl/blog/politie-kiest-een-kant-tegen-etnisch-profileren. ECRI General Policy Recommendation N° 11, *On combating racism and racial discrimination in policing*, 29 June 2007.

progress beyond these first steps and there is no data available on the effect of these measures.[160]

A recent incident showcased that the new broader definition of ethnic profiling is not used by all organizations that are tasked with police duties. On 30 April 2018 a former city council member for the city of Eindhoven, of Congolese descent, and two other people of colour were singled out for additional checks at Eindhoven Airport after a flight back from Rome. The Royal Netherlands Marechaussee, who performs military and civil police tasks, explained to the people in question that this is the law and this way of working helps stopping terrorists and criminals.[161] Replying to questions from parliament, the Minister of Defence, who is responsible for the Marechaussee, has stated multiple times that profiling is an important tool for the Marechaussee and that the profiles are based on historical experiences, data, information, intelligence and risk-indicators. A person's external appearance, including ethnicity can be part of this but always in combination with other objective indicators and information.[162] This practice has been criticized and the National Ombudsman has suggested that the Marechaussee puts in place objective criteria to avoid the illusion of discrimination.[163]

The NGOs urge the government to ensure that police stops are systematically monitored so that the effect of the measures which the police are currently undertaking to counter ethnic profiling can be properly determined.

The NGOs are concerned with the fact that the Royal Netherlands Marechaussee still uses the old definition of ethnic profiling, allowing ethnicity to be part of a risk profile.

[160] Controle Alt Delete, *Kies een kant*, December 2017, p. 45.
[161] Controle Alt Delete, '*Flying while black'*, 4 June 2018: controlealtdelete.nl/blog/flying-while-black.
[162] See: Tweede Kamer der Staten-Generaal, *Aanhangsel van de handelingen*, Vergaderjaar 2016-2017, nr. 1900, p. 2 & Tweede Kamer der Staten-Generaal, *Aanhangsel van de handelingen*, vergaderjaar 2017-2018, nr. 2340, p, 3.
[163] Nationale Ombudsman, *Uit de rij gehaald*, nr. 2017/044, dictum aanbeveling, 29 maart 2017, p. 9.