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## **National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21\***

**Netherlands**

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## **I. Introduction**

1. As democratic states governed by the rule of law, the countries of the Kingdom attach great importance to the observance and promotion of internationally recognised fundamental rights. Promoting the observance of human rights is a never-ending task. It merits, and receives, constant attention within the national sphere, with a view to improving the human rights situation. The countries of the Kingdom are aware that while the institutional protection of human rights is essential, it is not sufficient as a means of ensuring respect for fundamental rights. What matters is that these rights are observed in practice.

2. The countries of the Kingdom endorse the UPR unreservedly. The UPR does much to improve the human rights situation worldwide, ensuring that every country belonging to the United Nations is looked at once every four years, also meaning that human rights become a subject of political debate. The Netherlands sees the UPR as an ongoing process. For this reason it took the initiative to submit an interim report in 2010 on the recommendations issued in 2008. It intends to continue doing so in the future, and to remain in dialogue with the relevant human rights organisations. The Netherlands also contributes actively to the UPR hearings on other countries.

## **II. Methodology and consultation**

3. This report issued by the Kingdom of the Netherlands was drafted in accordance with the guidelines laid down by the Human Rights Council (A/HRC/DEC/17/119). As a national report, it reflects the human rights situation in all four countries of the Kingdom of the Netherlands: Aruba, Curaçao, St Maarten and the Netherlands. Unless stated otherwise, the text applies to the entire Kingdom of the Netherlands. During the preparation of this report, two consultative meetings were held with non-governmental organisations and agencies set up to protect human rights in the Netherlands: the Equal Treatment Commission, the National Ombudsman, the Children's Ombudsman, and the Data Protection Authority.

4. The first meeting (December 2011) was attended by twenty representatives of different organisations. There was a constructive exchange of views on the various subjects that those present felt should be addressed in the national report. The draft report was then worked out in more detail, taking the views expressed into account. The second meeting (January 2012) led to a constructive dialogue between the officials present and the representatives of organisations regarding the content of the country report and the shadow reports.

## **III. New constitutional relations**

5. Since the previous report, the Kingdom of the Netherlands has undergone constitutional reforms. The reforms relate to the former country of the Netherlands Antilles, which consisted of the islands of Curaçao, St Maarten, Bonaire, St Eustatius and Saba. The changes were based on referendums. On 10 October 2010, the Netherlands Antilles ceased to exist as a country.

6. The new structure means that the islands of Curaçao and St Maarten now possess the status of countries within the Kingdom, a status comparable to that of Aruba. Aruba retains the status of country within the Kingdom that it has possessed since 1986. Since 10 October 2010, the Kingdom of The Netherlands consists of four, rather than three, countries of equal

status: the Netherlands, Aruba, Curaçao and St Maarten. The other three islands, Bonaire, St Eustatius and Saba have become part of the Netherlands. The Netherlands is now divided into two parts: the European part of the Netherlands and the Caribbean part of the Netherlands (the islands of Bonaire, St Eustatius and Saba).

## **IV. Achievements and best practices**

### **Netherlands Institute for Human Rights**

7. The Netherlands has passed legislation providing for the establishment of a national Institute for Human Rights, which will open in 2012. The Institute will operate in accordance with the Paris Principles. Its objective is to protect human rights, to increase awareness of these rights, and to promote their observance. To achieve these goals it will conduct investigations, report on the human rights situation, and cooperate systematically with civil society organisations and with national, European and other international institutions engaged in the protection of human rights. The Institute will press for:

- ratification, implementation and observance of human rights treaties and the withdrawal of reservations to such treaties;
- implementation and observance of binding resolutions of international organisations on human rights;
- observance of European and other international recommendations on human rights.

8. The Institute will also carry out its responsibilities, with the exception of arriving at findings in the sphere of equal treatment, on Bonaire, St Eustatius and Saba.

9. The Foreign Relations Department of Curaçao is currently preparing the ground for the appointment of a committee to advise the government of Curaçao on the establishment of a human rights institute.

### **Children's Ombudsman in the Netherlands**

10. Since 1 April 2011 the country of the Netherlands has had an Ombudsman specifically for children. The Children's Ombudsman is a new, national institution, which operates independently to promote the observance of the rights of children and young people (up to 18 years of age). It is part of the organisational structure of the National Ombudsman. On 1 April 2011, the House of Representatives installed Mr Marc Dullaert as the first Children's Ombudsman in the Netherlands.

11. The Children's Ombudsman advises Parliament and organisations, and is also responsible for raising the consciousness of children and young people regarding children's rights.

12. The work of the Children's Ombudsman is based on the International Convention on the Rights of the Child, and his responsibilities are defined in the Children's Ombudsman Act:

- to promote respect for the rights of young people on the part of administrative authorities and organisations established under private law;
- to make recommendations, upon request and of his or her own accord, on legislation that impacts on young people's rights;
- to play an active role in informing the public about children's rights;

- to deal with complaints, not only about administrative authorities, but also about other organisations that are in any way responsible for young people, such as schools, child care and youth care services and hospitals;
- to investigate possible violations of children's rights in the Netherlands.

### **Municipal anti-discrimination services (ADVs) in the Netherlands**

13. An important development within the country of the Netherlands is the advent of municipal anti-discrimination services (ADVs), which became operational in 2009. Every member of the public can now apply to an ADV to report a case of alleged discrimination or ask for help and advice. The act of parliament establishing the ADVs is to be evaluated in 2012.

14. For discrimination to be combated effectively, it is essential that members of the public report cases of alleged discrimination, either to an ADV or to the police. Two large-scale, national public information campaigns were organised in 2009 and 2010, to encourage the public to report such cases. The subject of discrimination is discussed in more detail in section 7.

### **Country Ordinance on Compulsory Education in Aruba**

15. In December 2011, Parliament passed the Country Ordinance on Compulsory Education. Compulsory education applies to all children aged over 4 and under 17. The underlying principle is that in order for a child to be properly prepared for personal and social responsibilities that are attached to reaching adulthood, he or she needs to have attended school in the form of approximately two years' kindergarten followed by six years of primary education and at least three years of secondary education.

### **Country Ordinance on Criminal Procedure in Aruba**

16. In recent years, a concerted effort has been made to rapidly modernise legislation on criminal law where necessary, particularly in the area of criminal procedure and detention. As a result, Aruba now has modern legislation based on the human rights conventions, and a number of legislative projects are nearly complete.

17. The Aruban Code of Criminal Procedure has been redrafted and is currently being reviewed by the Advisory Council of Aruba prior to its presentation to the country's parliament in the near future. This legislation will shorten the length of pre-trial detention. Under this new Code a suspect will have the right to be brought before a court within one or two days of his arrest.

### **Criminal Code for the country of Curaçao**

18. With the entry into force on 15 November 2011 of the new Criminal Code of Curaçao, progress has been made on several fronts in the promotion and protection of human rights on Curaçao. One major step forward is the criminalisation of trafficking in human beings. The new Criminal Code makes it possible to impose heavy sentences on those found guilty of this crime. In addition, the death penalty has been abolished. Juvenile criminal law has also been modernised, *inter alia* in the sense that milder penalties apply to young offenders under 16 years of age. Where a young person has committed an indictable offence, the law now provides for them to be sentenced to youth detention, an alternative

sanction, or a fine, while in the case of a minor offence, an alternative sanction or a fine can be imposed. The new mould in which punishment has been cast makes it possible to offer young offenders some form of supervision and training. On the basis of the new Criminal Code, criminals serving life sentences can now be released after serving 20 years in prison if the Joint Court of Justice considers that prolonging the prison sentence would have no added value, either for the detainee or for society at large. In addition, the new Criminal Code restricts pornography and prohibits child pornography altogether, and has introduced heavier sentences for perpetrators of sexual offences against minors.

### **Ombudsman for St Maarten**

19. The Ombudsman is a new institution that was created with St Maarten's change in constitutional status; the first person to occupy this office is Dr Nilda Arduin. It is one of the High Councils of State and is anchored in the Constitution. The Ombudsman is responsible for promoting good governance, and acts as the guardian of St Maarten's Constitution. The Ombudsman's main task is to investigate (non-) actions by the government and other public authorities, in response to complaints from members of the public or on his or her own initiative.

### **Constitutional Court of St Maarten**

20. The Constitutional Court is a unique institution within the Kingdom. Its task is to establish whether statutory regulations that have been ratified but have not yet come into effect are compatible with the Constitution. A case can only be brought before the Court by means of a written petition submitted by the Ombudsman alleging incompatibility with the Constitution. The President of the Constitutional Court is the Honourable Jacob Wit.

## **Best practices**

### **The Netherlands**

21. For the country of the Netherlands, 'trendsetter agreements' have been concluded between the central government and municipalities to improve the safety of gay, lesbian and transgender people, to help them stand up for their rights, and to promote the social acceptance of homosexuality. They encourage local authorities to place this theme on their agendas. For the period 2011–2014, municipalities are focusing on improving safety in the streets and in neighbourhoods.

### **Aruba**

22. The government of Aruba strongly believes in consensus building on key national issues, and in June 2010 it invited all social partners in the public and private sectors to embark on a 'National Social Dialogue'. The aim of this dialogue is to address key national issues such as pension reform, health care, the tax structure, and other public and private policies. The results have been positive thus far, and key decisions have been implemented in several areas: the public servants' pension system was restructured for reasons of solvency, measures were implemented to reduce the excessive, structural cost increases of the universal health care system, a mandatory pension was introduced for private-sector employees, and the General Old Age Pension was reformed. Discussions on other issues are now in progress.

23. At the invitation of the Organisation of American States (OAS), the National Coordinator on Human Trafficking and Human Smuggling gave a total of two

presentations; one to the Committee on Hemispheric Security in Washington DC and one at a multidisciplinary training course in Antigua and Barbuda. The OAS is very interested in Aruba's approach to tackling human trafficking and smuggling and would like it to serve as an example of best practice for the region.

24. On 27 June 2011, the latest Trafficking in Persons (TIP) report was released by the United States State Department. It referred favourably to Aruba's efforts to combat trafficking in human beings and to establish international cooperation in the region.

#### **Curacao**

25. Where best practices are concerned, reference may be made for the country of Curaçao to the Public Prosecution Service's consultations with its diverse partners, e.g. in the criminal justice system and social services: namely, officials from the Public Prosecution Service, the police, the probation service, the child protection service, psychiatric care services, and a number of NGOs that perform good work in taking care of victims of violence within relationships or referring them to other services. The success of this cooperative structure stems largely from the excellent communication between those concerned, which makes it possible to take effective, efficient action when specific cases arise.

26. Another example is the Youth Care Team set up in 2009: this is a government-led, multidisciplinary team, which coordinates youth care and youth services. The team does not provide care itself, but makes proposals on the best approach and the best place for care to be given. It also monitors the implementation of its recommendations.

#### **St Maarten**

27. The Integrated Neighbourhood Development Programme (INDP) is designed to enhance the quality of life of the citizens of St Maarten. It is an initiative of the government in collaboration with the private sector and civil society. The programme seeks to use social, cultural, economic and environmental planning to build community commitment and capacity. Its projects are designed to help the community by forging the initial contact between members of the public and government organisations. The wider aim is to bring social services to the people in a central, easily accessible location. Services will be provided in the community.

## **V. Challenges and constraints**

### **Privacy**

28. The right to privacy to protection of personal data are protected by article 10 of the Constitution. The Netherlands faces challenges in continuing to protect these rights in this era of increasing digitisation and computerisation. On the one hand, there are many ways of performing existing functions arising from the exercise of public authority more effectively and at lower cost. For instance, the use of a digital, single-window portal ('DigID') facilitates matters such as the online filing of tax returns and applications to municipal authorities for specific services. Digitisation also creates numerous opportunities for public administration and law enforcement, such as the use of fingerprints in passport registration (including law enforcement applications), and installation of roadside cameras as a law-enforcement measure (e.g. Automatic Number Plate Recognition or ANPR). On the other hand, new technologies also present new challenges to ensuring respect for human rights, in terms of ensuring that only relevant personal data are processed, for predetermined and justifiable purposes, and in terms of securing the systems effectively.

29. The need to strike a balance between different interests in these new contexts has been hotly debated in the Dutch political arena. The 2010 Coalition Agreement contained a specific paragraph about improving information security and personal data protection, including closer supervision of large-scale computerisation projects. The Advisory Council on Government Policy, an independent advisory think-tank, published an important report on the subject at the beginning of 2011. This report on 'iGovernment' stressed the importance of public authorities being aware of the new realities and challenges created by new technologies.

30. In fleshing out the Coalition Agreement and in reaction to the iGovernment report, the government has put in place various measures to promote privacy-enhancing technologies and to ensure a consistently coherent and transparent balancing of the various interests involved in the future. A letter to Parliament (April 2011) included a list of concrete measures, such as encouraging the use of equipment with built-in privacy (Privacy-by-Design) and making privacy impact assessments (PIAs), describing the modalities for the planned processing of personal data, compulsory. A recent PIA was prepared in connection with draft legislation to use ANPR for a limited number of law enforcement purposes. The government also announced, in a letter to Parliament, October 2011, that legislative measures involving the digital processing of personal data would need to include a passage in the explanatory memorandum justifying the way the various interests of the individual are balanced. The challenge will now be to ensure that all these measures are implemented. In addition, partly in response to concerns expressed in Parliament, certain policy measures that impact on privacy are currently being modified, as for example the discontinuation of the storage of fingerprint data on national ID cards and within the passport database.

### **Electronic Patient Records (EPR)**

31. The resumption of the introduction of EPRs, which had been stalled, is now being undertaken under the auspices of private parties. The Minister of Health, Welfare and Sport of the Netherlands will continue to award a government grant – for a contact point answering enquiries from the public – during a transitional period of one year, but is otherwise not involved in the details of this initiative, which will naturally be implemented in accordance with existing legislation. It is up to the private parties to work out these details. It should be noted that the parties concerned stated that they intended to adhere to an 'opt-in' model. They are talking with the Data Protection Authority on the precise details.

### **Constitutional change**

32. As noted above, Curaçao's constitutional position changed as from 10 October 2010. The island became an autonomous country within the Kingdom. In the five years preceding this event, the then government of the Netherlands Antilles devoted a great deal of time and energy to completing the process of constitutional reform. As things now stand, Curacao is a new country which is still in the process of development. Its administrative apparatus has not yet acquired its final form. The embryonic state of the country's institutions is undoubtedly a problem when it comes to implementing the various recommendations that have been made in the area of human rights.

33. St Maarten also dealt with a great deal of constitutional reforms. The country has had to start from scratch, with limited human resources, and with new institutions and departments that have only been in place since 10 October 2010. These developments have

hampered efforts to respond adequately to the challenges that exist in the realm of human rights.

### **Public information Aruba**

34. The Foreign Relations Department of Aruba has defined the task of informing the public about human rights as a point to be tackled with priority in the short term. Plans exist to give Aruba's Human Rights Committee and its Children's Rights Committee a new lease of life. The committees have the task of reporting on the situation regarding human rights conventions as applicable to Aruba, advising the government on its human rights policy, and carrying out a consciousness-raising process on human rights throughout society.

## **VI. International conventions**

### **Ratification**

35. Since the UPR in 2008, the Kingdom of the Netherlands has ratified the following international conventions, cited in the recommendations:

- The International Convention on the Protection of All Persons from Enforced Disappearance was ratified on 23 March 2011.
- The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was ratified on 28 September 2010.
- The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict was ratified on 24 September 2009.

36. Regarding the UN Convention on the Rights of Persons with Disabilities, the Kingdom of the Netherlands is currently preparing an Act of Parliament for its approval. Preparations are also being made for the optional protocol to be signed.

37. The Netherlands maintains its position, as previously stated, that it will not accede to International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. On the grounds of its national policy regarding social provision, the Netherlands objects to the section of this convention stating that provision should be equally accessible to migrants who are not lawfully present within the territory of the country of their destination and/or are unlawfully employed there, whereas since their stay is unlawful, such persons pay neither taxes nor the contributions used to fund these services, besides which they are not insured. The Netherlands takes the view that persons who are unlawfully resident and/or employed in this country should not in principle be granted the same socioeconomic rights in the Netherlands as those who are lawfully resident and/or employed there. Exceptions are made for the education of children who are of compulsory school age, assistance in acute medical emergencies, and legal assistance.

### **Reservations**

#### **CRC**

38. In the interim UPR report in 2010, the Kingdom stated that it was considering withdrawing its reservations to the UN Convention on the Rights of the Child. After studying the matter further, and in view of certain developments relating to the reservation to article 37 (c) of this Convention, it decided not to withdraw the reservations. By letter of 25 June 2011 to the House of Representatives, the State Secretary for Security and Justice



discussed the planned introduction of special provisions in the criminal code for adolescents in the age group of 15 to 23. The object of this adolescent criminal code is to make it possible, when imposing a penalty or non-punitive order, to choose an approach that is tailored more closely to the particular developmental stage of the young person concerned, by giving personalised advice and supervision by behavioural experts. The provisions in the criminal code sldo provide for sanctions appropriate to this specific stage of development. Dutch law now provides for the possibility of imposing sanctions from the education-oriented juvenile criminal law on young adults up to the age of 21 (article 77c of the Criminal Code). Thus, it will be possible to impose sanctions from the pedagogically-oriented juvenile criminal law on young adults up to 23 years of age. The possibility of imposing a sanction from the regular criminal law on someone who committed a crime at the age of 16 or 17 years of age will also remain in place under the new system. It will always be particularly the young person's stage of development that may lead the court to impose a penalty or non-punitive order from the regular criminal law. The government sees this as an important means of preventing any necessity to introduce disproportionately heavier sentences across the board in the mild juvenile criminal law. It is against this background that the Kingdom of the Netherlands has decided to maintain its reservation to article 37 (c) of the UN Convention on the Rights of the Child. In such cases, the minor concerned will continue to be tried by a children's judge. The reservation will be discussed at greater length in the Netherlands' fourth periodic report on the implementation of the Convention on the Rights of the Child.

#### **International Covenant on Economic, Social and Cultural Rights**

39. In December 2011 the Council of Ministers of Curaçao decided to withdraw the existing reservation to article 8 of the International Covenant on Economic, Social and Cultural Rights. The Kingdom of the Netherlands will in due course initiate the necessary constitutional procedures to effect this withdrawal.

#### **Reports**

40. Where reports on the implementation of conventions are concerned, the Kingdom of the Netherlands will endeavour to ensure that the four constituent countries issue their reports jointly.

## **VII. Non-discrimination**

41. Everyone in the Netherlands is protected by law from discrimination. The ban on discrimination is enshrined in article 1 of the Dutch Constitution. The government rejects every form of discrimination, on the basis of race, religion, belief, sex, sexual orientation, or on any other grounds whatsoever. Discrimination is at odds with the notion of citizenship: it creates obstacles to people's involvement in society, and impedes them from taking part in, and investing in, their community.

### **A. Non-discrimination (including racial discrimination)**

42. The House of Representatives is kept regularly informed about the progress of efforts to tackle discrimination. On 13 September 2010, the government of the Netherlands sent an anti-discrimination action programme to the House of Representatives. On 7 July 2011, the current government sent plans to tighten up the measures in this action programme to the House of Representatives.

43. The Dutch government attaches importance to a good information system, to help monitor developments in discrimination on a regular basis. Periodic ‘Monitors’ are published, on racial and other kinds of discrimination in broad terms, and on more specific subjects. The Dutch government has recently invested in upgrading its information system.

44. Letters to parliament on discrimination also include preventive measures, such as measures to combat discrimination in education, guidelines for website moderators to keep their websites free from discriminatory content that constitutes a criminal offence, and support from central government to local anti-discrimination policy.

45. The letters describe a range of methods for tracking down and prosecuting those who are discriminating. When someone is prosecuted for an offence which also involves discrimination, the Public Prosecution Service counts the discriminatory aspect as an aggravating factor when deciding what sentence to demand. Since 2009, discrimination is defined as an aggravating factor warranting a 50% increase in the sentence. This figure previously was 25%. As from May 2011, another aggravating factor has been incorporated for such offences, warranting a 100% increase in the sentence demanded. The public prosecutor can apply for this latter increased sentence in case of serious criminal offences motivated by discriminatory factors.

46. From the autumn of 2012 onwards, an annual letter on discrimination will be published, in which the government will report on the progress.

47. In October 2011, the Parliament of Curaçao adopted a country ordinance to amend Book I of the Civil Code, making it possible to establish legal paternity through the courts in cases of children born outside marriage who have not been recognised by their father. This eliminated the unequal treatment that had existed – in matters including inheritance law – between children born outside marriage whose fathers had not recognised them and those who were either born within marriage or whose fathers had recognised them.

#### **‘Declaration of Paternity’ Ordinance for St Maarten**

48. The ‘Declaration of Paternity’ Ordinance has been passed by the parliament of St Maarten, and is awaiting publication. The ordinance will make it possible for a child, his or her mother, or the Court of Guardianship, on request, to apply for the father’s name to be formally established. Children born out of wedlock will have the same legal status as those born within a marriage.

#### **Situation assessment of children and women in Aruba**

49. UNICEF carried out a situation assessment and analysis of women and children in Aruba in 2011. It adopted a human rights approach, along with qualitative and quantitative methods, to conduct this study. Its preliminary findings will be presented to the government and stakeholders in February 2012. The government will then use the final conclusions and recommendations to formulate and evaluate social policies focusing on children, adolescents and women.

#### **Other recommendations**

50. With regard to tackling any ‘racist or xenophobic programmes’ of political parties, the Netherlands would emphasise that in this regard, the description ‘racist and xenophobic’ speech entails the designation of a criminal offence. Such a conclusion can be drawn only after the courts have ruled that a political party has committed such an offence. To date, this has not been the case. Furthermore, freedom of speech is a mainstay of any democracy, which precludes prior restraint.

51. For the recommendation to adopt all the recommendations of the CERD Committee on tackling racial discrimination, the government would refer to the interim report that the Permanent Representative submitted to the CERD Committee on 20 July 2010.

#### **Criminal Code on incitement to hatred**

52. Articles 137c to 137e of the Dutch Criminal Code deal with a wide range of criminal offences involving incitement to hatred of, and publicly expressing views that are insulting to, a group of individuals on account of their race, religion or belief, sexual orientation, or disability. These provisions enable the government to actively pursue obligations under the leading international conventions in the fields of anti-discrimination and anti-racism, within the existing international framework for the protection of civil and political rights. The Kingdom of the Netherlands believes that it is not necessary to implement additional measures.

53. The Kingdom of the Netherlands acceded to the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (Strasbourg, 28 January 2003) on 1 November 2010.

54. Besides raising public awareness of discrimination and encouraging victims to report offences – and making it easier for them to do so – the Dutch government considers it important to impose effective, proportionate and deterrent sanctions on those who commit acts of discrimination and racism. The Public Prosecution Service has accordingly issued instructions to all public prosecutors to increase the penalty they demand from the court by 100% in cases in which the offence was motivated by any kind of discrimination.

## **B. Gender, gender identity, and sexual orientation**

55. The government sent a letter outlining its equal opportunities policy for the period 2011-2015 to the House of Representatives, on the basis of a number of lines of action. In the context of the low literacy action plan, extra attention will be paid to tackling poor literacy among women. The Dutch government considers women's independence and more specifically the dependency of many of the young women who come to the Netherlands in the context of family formation and family reunification an extremely important issue. A lack of language skills and education, combined with ignorance about Dutch institutions, poses risks for these immigrants in terms of equal opportunities and their wider prospects for the future. In this context, the civic integration examination abroad and the new admission requirements for family migrants will help to promote the self-reliance of this group.

56. In the area of gender identity and sexual orientation, the Netherlands' approach focuses on tackling discrimination, promoting equal treatment, and standing up for the human rights of the vulnerable group of homosexual and transgender people. Since 2008, the Netherlands has organised an annual 'National Coming Out Day' on 11 October. To gain a better picture of the frequently vulnerable position of transgender people, the Netherlands has asked its Institute for Social Research to conduct a study into the specific problems that exist in the areas of employment and health care. Draft legislation to provide for the recognition of gender identity is currently in preparation, now that a preliminary round of field consultations on the internet has been completed.

57. The attainment targets for education will be clarified. Sexuality and sexual diversity will be included in the attainment targets for primary (no. 38), secondary (no. 43) and special education (no. 53).

58. The government applies the principles of gender mainstreaming. This means that in formulating policy, possible differences in impact between men and women are taken into account. The Netherlands incorporates gender considerations into policy by ensuring that the implications of line ministries' policy for women are as transparent and verifiable as possible and by increasing expertise on equal opportunities in general and gender equality in particular.

#### **Centre for the Development of Women in Aruba**

59. The *Centro pa Desaroyo di Hende Muher* (the Centre for the Development of Women; CEDEHM), was established by Country Decree in 2010. CEDEHM, officially opened on 8 March 2011, is a government agency with its own budget. It operates on the principles of gender equality and gender mainstreaming. Its primary focus is on promoting equal rights and equal opportunities for both women and men in Aruban society. CEDEHM also tries to improve the position of women, both in the public sector and the private domain. Its underlying goal is to make groups that are in a disadvantaged position, such as divorced women and single mothers, more self-reliant. It seeks to achieve this by making them aware of their rights, and offering them guidance and support.

60. In January 2012, CEDEHM launched the pilot project 'Big Sister Little Sister Mentorship program'. This project collaborates with the children's helpline *Stichting Kindertelefoon* and the Catholic educational organisation *Stichting Katholieke Onderwijs Aruba*. The aim is to provide guidance and support to girls between 10 and 14 years of age who are exposed to risk factors in their immediate surroundings, and encouraging them to stay out of trouble.

### **C. Employment**

61. Women experience discrimination in employment in different ways. Sometimes there is discrimination because of pregnancy, besides which there are inequalities of pay, and an imbalance between men and women in the most senior positions within the private and public sectors.

62. Various instruments are used to encourage the appointment of more women to high-ranking or senior positions, including networks, recruitment agencies, and action programmes to recruit, train, and retain women candidates. With a view to setting a good example, government advisory bodies in the Netherlands are required to ensure that equal numbers of men and women are employed. Since 2007, the percentage of women occupying top positions in the public sector has increased from 23% to 26%. In Curaçao, 50% of the top positions in the civil service (at the level of Director and Permanent Secretary) are currently held by women (recommendation 27). The proportion of women employed by the Dutch government has risen by two percentage points since 2007, to 52%. Women accounted for 59% of those who entered employment in the public sector in 2010. According to Aruba's 2010 population census, 43.8% of public officials were women (1,987 women in total). Of these women, 26% occupied senior posts. Women occupy 51.6% of all senior posts in Aruba's public sector as a whole.

63. By the end of 2011, almost 200 organisations, businesses and public sector institutions had signed the Talent to the Top charter, declaring their commitment to developing or continuing a strategy to increase the intake of women in management positions. Signatories set their own quantitative targets, review their progress, and report to a monitoring committee. Each year, the charter's monitoring commission reports and publishes the results achieved by the signatories.

64. To encourage women's economic independence, support has been withdrawn from women who are financially dependent on a breadwinner. The policy programme *Eigen kracht* ('Standing on Your Own Feet') focuses on poorly educated women (many of whom are migrants), without a job and not receiving benefit. Twenty-one large and medium-sized municipal authorities have signed declarations of intent to encourage poorly educated women to take steps towards employment or training. The activities focus in part on women's social environment. The government's aim, with this programme, is to achieve a cultural shift, so that all women, and those around them, take it for granted that they should take paid employment.

#### **Discrimination against ethnic minorities in the labour market**

65. The Netherlands considers it important to promote the participation of immigrants in the labour market. The government tries to achieve this by putting in place general measures and by trying to remove the barriers experienced by jobseekers to provide an efficient personal service that is not based on a person's origins. This means using regular measures and instruments that take account of the individual situation of each jobseeker. This applies in equal measure to all jobseekers, whether or not they originate from non-Western countries. The local authority plays a pioneering role in this regard. The government supports municipal authorities with programmes such as *Impuls Vakmanschap* ('Boosting Expertise') to improve the effectiveness and efficiency of the work done within the social services and to improve the quality of service provided.

66. The government continues to appeal to young people to take responsibility for finding jobs or training opportunities. They must be active in taking advantage of opportunities on the labour market. The tightening up of conditions and sanctions for young people in the Work and Social Assistance Act will help further this aim. The regional approach launched by the Youth Unemployment Action Plan will remain at the heart of regular policy.

67. For those young people not immediately able to get a foothold on the labour market by their own efforts, it is essential to ensure good cooperation between the care sector, education and reintegration.

68. Decentralisation (e.g. of supervision, the Employment Capacity Act, youth care and client support) gave municipal authorities greater control over devising an integrated approach to helping young people enter employment.

69. In 2006, the relatively high level of unemployment among former refugees led to the decision to launch a project for this group. The object of this employment drive was to help an additional 2,500 former refugees get jobs within the space of three years. In 2009, it became clear that this objective had almost been achieved (at 90% of the target). A new employment drive was launched in 2010, which is set to run until 2013.

70. Finally, something should be said about the participation of ethnic minorities in the public sector. For the supply of jobs is not only shrinking, it is also becoming more diverse. The Dutch government deems it essential that personnel employed by the public sector should be diverse, to develop a better response to the Netherlands' plural society.

71. The Dutch government monitors the development of diversity in terms of sex, age, and ethnicity on an annual basis. To help different branches of the public sector with their policy on diversity, a diversity index has been devised. This gives public-sector organisations a clear picture of the composition of their personnel. In 2010, ethnic minorities accounted for 7.9% of employees within the public sector.

## VIII. Integration and society

### The Netherlands

72. Integration is a long-term process. In many respects, later-generation immigrants are better integrated than their parents or grandparents. Nonetheless, there are still concerns about certain groups of immigrants who are not managing to lead independent lives in the Netherlands, as well as tensions within Dutch society.

73. Integration requires commitment on the part of both immigrants and the Dutch government. It is essential for immigrants to acquire the skills to participate as fully-fledged members of Dutch society. The Dutch government seeks to ensure that the needs of everyone in the Netherlands, regardless of their origins, religions or beliefs, are addressed by mainstream policy in fields such as education, employment and health care. For instance, schools with large immigrant populations are supported to safeguard the quality of the education provided. Better education promotes integration and prevents social segregation. Integration policy is seen as part of a broader policy promoting personal responsibility on the part of *all* citizens and stronger social cohesion. For migrants to assert their rights effectively, they must have a good command of the Dutch language. Dutch integration policy equips immigrants to participate fully in Dutch society.

74. Acceptance of diversity and pluralism is a value of Dutch society and is enshrined in the constitution. Harmonious coexistence in the face of increasing plurality and individualism requires commitment, determined effort, and a sense of community. The government sees a need for an attitude of good citizenship that includes respect for differences and a belief in individual and collective responsibility. To that end, it is developing a common agenda for contemporary citizenship in partnership with municipal authorities, civil society and members of the public. This new agenda will empower citizens to take responsibility and initiative, and to strengthen social cohesion. By such means, the government seeks to encourage tolerance and mutual understanding.

75. Social and political debate are important aspects of citizenship and democracy, and should be viewed against the backdrop of the fundamental right to freedom of expression. Public authorities in the Netherlands safeguard the necessary conditions for debate by upholding the fundamental rights of those taking part. In addition, their policies and communications express the values on which Dutch society and the rule of law are founded: freedom, equality, tolerance and solidarity.

76. The Dutch government also values the work and commitment of immigrant communities. For public authorities, maintaining close ties with prominent individuals and organisations with knowledge of migrant communities and large networks in those communities is a crucial way of keeping in touch with social currents and determining whether mainstream policy is sufficiently effective (see section 13).

### Curaçao

77. The Curaçao authorities are currently working with the University of Curaçao on a study of migration and integration focusing on various new immigrant communities (from Colombia, the Dominican Republic, Haiti, Jamaica and Venezuela) on the island, to get a better picture of the demands on social services resulting from their presence. The results will ultimately be used to make policy focused specifically on the integration of new groups into society.

## Aruba

78. Aruba's many immigrants have made it a highly diverse society, with almost 100 different nationalities. Government policy aims to increase civic participation by generating a stronger sense of community. In 2011 the government invited international experts to share their views about the way society functions with the Aruban public at the Happy Community Conference.

79. Citizen participation and public initiative are central to the major renovation project *Bo Bario* ('your neighbourhood'), a project set up to improve the quality of life in the various neighbourhoods.

80. In October 2011, an act of parliament was passed that aims at training young male residents aged 18 to 24 who are not in education or employment and have no qualifications. A group of twenty young men has embarked on the first stage of the programme. For four months, they undergo physical training and they are taught discipline, behavioural norms and values. This basic training is followed by a eight-month course in which they are taught a trade. They are offered specialised vocational training to maximise their chances on the job market. They also follow a wider-ranging study programme, including English, job application training and general education.

81. The Prisma programme was developed to help non-Dutch-speaking children improve their command of Dutch as a foreign language. Local children who have difficulty with Dutch are also allowed to take part in the programme. A separate secondary-school programme offers pupils one year of Dutch, designed to prepare them for regular secondary education.

## IX. Domestic violence

### Violence in the domestic circle

82. An effort is being made to tackle violence in the domestic circle. This is an umbrella term for various kinds of violence: domestic violence, child abuse, honour-based violence and abuse of the elderly. The key elements of this approach are supporting the victims, a specific approach to tackle the perpetrators, and action designed to break the pattern of violence being passed on from one generation to the next.

83. On Curaçao, victims of violence within a relationship can apply to the civil court for a restraining order forbidding the perpetrator to enter their street. The new Criminal Code that entered into effect on 15 November 2011 also gives the court scope to impose a slightly different restraining order forbidding the perpetrator to enter a specified area.

### Gender-specific approach

84. Domestic violence affects women disproportionately and is mostly inflicted by men, usually their partners or ex-partners. However, although the numbers involved are smaller, men too are sometimes the victims of domestic violence. For this reason, the Dutch policy on combating domestic violence seeks to support all victims of domestic violence, and to target all the different kinds of violence.

85. As part of a country-wide policy to tackle domestic violence, the ministries involved will develop an approach that seeks consciously to find ways of involving gender issues in policy development. This will be done, for instance, in a special policy that is being devised

to tackle ‘intimate terrorists’, those who perpetrate the most serious offences in the sphere of domestic violence.

### **Child abuse**

86. A new action plan ‘Children Safe’ is being launched in January 2012. Children are particularly vulnerable in their relationships with those who are raising and taking care of them, and are less capable of standing up for themselves than adults. Recent research reveals that 119,000 children suffered child abuse in 2010. The new action plan presents supplementary measures for the next few years. These measures focus on preventing, identifying and stopping child abuse, and on limiting the damage by giving the children whatever treatment they need. In addition, the new policy highlights the importance of guaranteeing the physical safety of children and tackling sexual abuse.

### **Temporary Domestic Exclusion Order Act**

87. The Temporary Domestic Exclusion Order Act empowers mayors to impose a temporary domestic exclusion order for up to ten days on perpetrators of domestic violence where there is an acute threat. During this time, assistance programmes are developed for the parties concerned. Thanks to this measure, victims of domestic violence (often women and children) do not need to flee their homes; instead, the person who forms the threat is removed. This strengthens victims and encourages them to change their situation. Domestic exclusion orders are issued quite frequently and, on the whole, professionals working in the field see this option as a positive development. Domestic exclusion orders have a definite added value in tackling domestic violence.

88. The government of Curaçao is working together with non-governmental organisations (‘the Alliance’) on the island to develop a national plan to stop domestic violence and child abuse. The draft national plan has recently been discussed with parliament. A public debate on the plan involving all relevant stakeholders is scheduled to start in January 2012.

89. Several of the modules at Aruba’s police academy raise the subject of dealing with victims of domestic violence. Starting in 2012, trainee police officers will be given more specific information on domestic violence in the modules ‘Crime’ and ‘Public order and social care’. These modules will be supported by interactive lectures by the *Bureau Sostememi* (‘Support Me’ Bureau) the *Fundacion Respetami* (the ‘Respect Me’ Foundation), the Children’s Helpline and the Department of Social Affairs.

### **The elderly**

90. In the coalition agreement, the Dutch government calls for affirmative action to stamp out abuse of the elderly. In the action plan ‘The Elderly in Safe Hands’, ten measures have been presented to eradicate abuse of the elderly. They relate to prevention, risk identification, the action to be taken in actual instances of abuse of the elderly, and improved victim support. The action plan entails 2011 to 2014. A structural budget of €10 million per year is reserved for its implementation. The plan deals with abuse in professional settings as well as in the home.



## X. Trafficking in persons

91. Eradicating trafficking in human beings (THB) is one of the priorities of the Dutch government, and a wide range of measures and activities have been initiated to tackle this problem effectively.

92. The mandate of the Task Force on Human Trafficking, established in 2008, was renewed until 2014 and its membership expanded. It consists of representatives of five ministries, the Public Prosecution Service, the police, the Immigration and Naturalisation Service (IND), the Royal Netherlands Marechaussee (KMar), three mayors (Alkmaar, Utrecht, The Hague; Amsterdam is to join in the near future), one deputy mayor (Rotterdam), the judiciary, the National Rapporteur on THB, and the NGO Comensha. The Netherlands is a strong believer in the power of a multidisciplinary approach to combating crime, including THB. A traditional law enforcement response to THB is not enough. In order to tackle THB effectively, organisations such as the KMar, IND and local governments must also play their part. The Task Force has approved a new Action Plan for the period 2011-2014. One of the aims of the Action Plan is to involve even more organisations in the fight against THB.

93. On 9 June 2009, Parliament passed a bill which increases the maximum penalties for trafficking in human beings. The change increased the maximum penalty for the basic crime from 6 to 8 years imprisonment; 10 years if two or more persons are acting in concert; 15 years in case of serious bodily injury; 18 years if the offence resulted in a person's death. A bill to raise the maximum penalties for THB further will be submitted to parliament in 2012.

94. The government has submitted a bill to parliament that will tighten the regulation of prostitution, in particular the licensing requirements for brothels and other sex establishments, and improve government oversight. Employers who do not comply with licensing requirements can be prosecuted. Clients who circumvent the new system can also be prosecuted. The stricter regulations are expected to have a strong deterrent effect on traffickers and help prevent exploitative practices. This approach is also likely to reduce demand. In addition, the bill increases the required minimum age for legal prostitution from 18 to 21. The bill has been passed by the House of Representatives and currently awaits approval by the Senate.

95. In December 2011 a comprehensive action plan was launched to address the issue of young men, referred to in Dutch by the term 'loverboys', who use persuasive techniques to force vulnerable girls into prostitution. The action plan focuses on raising awareness, empowering girls, stepping up action to combat the 'loverboy' phenomenon across the board, and improving the system of care and shelter for victims.

96. In 2005 the article on trafficking in human beings in the Dutch Criminal Code was broadened to incorporate the definition of the Palermo protocol, which refers to both sexual and labour exploitation as well as the removal of organs. Since then, the number of cases of labour exploitation has increased yearly: from 26 victims in 2007 to 135 in 2010; and more male victims have been identified: over 100 in both 2009 and 2010.

97. In 2010 a campaign was held to draw the attention of the general public, unions, employers and civil servants to labour exploitation, through advertisements on for example websites connected with farming and the construction industry, and articles in free local papers. This led to several reports of suspicious situations.

98. The Netherlands cooperates closely with the main source countries of victims of trafficking, such as Nigeria. In response to information received that Nigerian minors were disappearing from refugee centres, a major investigation was launched in October 2006.

The investigation established that traffickers were temporarily housing underage Nigerian women in refugee shelters in the Netherlands (by forcing them to claim asylum) in order to take them to Southern Europe and force them to work as prostitutes. Ten other countries were involved in the investigation, which led to 32 arrests and searches in eight countries in November 2007 and a further 51 arrests in Italy in January 2008.

99. A pilot project on 'protected reception' for unaccompanied minor asylum seekers at risk of trafficking was started on 1 January 2008, and last year these protected reception centres became the norm. Potential victims are placed in different small-scale locations, with extra security measures and personnel.

100. The new Criminal Code of Curaçao that entered into effect in November 2011 makes trafficking in human beings a criminal offence. A public information campaign was conducted to inform the general public about the changes in the new Criminal Code, both in general and specifically in relation to trafficking in human beings. A campaign to alert the general public to the existence of this trade has been going on for several years. Since 2007, Curaçao has had a multidisciplinary working group on the subject, which conducts activities such as organising public information campaigns. In 2009, for instance, a campaign was held to make teenage mothers aware of the dangers of so-called 'loverboys'; there were lessons at vocational secondary schools (VSBO schools) and television programmes. In 2011 a documentary was broadcast on the subject, and a leaflet on trafficking in human beings was made available to the general public. Since 2008, there has been a Memorandum of Understanding between the justice ministers in the Kingdom of the Netherlands under which they combine their efforts to combat the smuggling and trafficking of human beings.

### **Child pornography, trafficking in children, and child sex tourism**

101. The mandate of the National Rapporteur on Trafficking in Human Beings has been expanded to include child pornography. The first report on this issue was published in October 2011. The National Rapporteur concludes that child pornography is almost always a one-on-one situation involving sexual violence against children and cannot be detached from this crime. She recommends developing an integrated approach to sexual violence against children, including child pornography. The Dutch government is working out the details of her recommendations as part of its action plan against child abuse for the period 2012–2016.

102. In her seventh report on trafficking in human beings, the National Rapporteur again devoted attention to the trafficking of children. The number of underage victims of trafficking fell from 199 in 2007 to 169 in 2008, and to 111 in 2009.

103. In January 2010 the Minister of Justice launched a child sex tourism awareness campaign 'Break the silence' informing Dutch tourists that child sex abuse is a criminal offence, and that they can report suspect situations to a special website ([www.meldkinderseksstoerisme.nl](http://www.meldkinderseksstoerisme.nl)). The Minister of Justice and the Dutch association for the tourism industry (ANVR) also agreed to cooperate more closely to prevent child sex tourism. Since 2007 the Dutch authorities have organised national action days at Schiphol Airport, during which passengers arriving from source countries of child sex tourism are checked for child pornography. The Netherlands also took part in an international action day in March 2011 coordinated by Europol, together with the UK, Germany and Sweden.

## **XI. Refugees and asylum seekers**

### **Asylum procedure**

104. A quick and carefully considered decision on an asylum application is in the best interests of the asylum seeker. In July 2010 the 48-hour accelerated procedure was replaced by a general procedure lasting eight days. Before the eight-day procedure starts, there is a rest and preparation period of six days, during which asylum seekers can rest and are prepared (and can prepare themselves) for the asylum procedure. During this period there is no contact between the Immigration and Naturalisation Service (IND) and the asylum seeker. In this period, all asylum seekers are informed on their rights and what they can expect by the Dutch Refugee Council. Matters such as asking for a female interpreter and the importance of not omitting anything that might be relevant are all dealt with. The asylum seekers also have free legal assistance and their legal adviser, who stays with them throughout the procedure, also has time to prepare. A health check before the general asylum procedure starts ensures that the IND takes any medical problems, including psychological, into account.

105. The revised asylum procedure does not result in all asylum claims being settled within 8 days. If there is a need for further examinations or investigation, the asylum application will be dealt with in the extended procedure. Within the revised asylum procedure, the court can take into account new facts and circumstances such as a change in the conditions of the country of origin, even if these changes postdate the IND's decision. Asylum seekers also have the possibility of appeal, and can subsequently go to the European Court of Human Rights. Asylum seekers whose initial asylum applications have been refused at the reception centre and in the extended procedure are accommodated for a period of four weeks. The court will generally rule on their appeals within this period. The Netherlands therefore takes the view that the revised asylum procedure contains sufficient safeguards to guarantee a meticulous, full and fair determination, and due process.

106. The revised asylum procedure will be evaluated three years after implementation (in 2013). In this evaluation, all aspects of the procedure, including 'full and fair determination and due process' will be examined. The evaluation will also include the views of the parties involved, including the Dutch refugee council and the legal profession.

107. The Netherlands wishes to emphasise that numerous safeguards apply to exceptional situations in which the use of limited and proportional force in the expulsion of aliens is permissible. An independent committee supervises the return process, including forced expulsions and the use of force. Every year it concludes that there is no systematic use of excessive force in the expulsion process. The committee also makes recommendations to further limit the need for the use of force in individual cases. These recommendations are always used to continue improving the process of return and forced expulsions.

### **Criminalisation of illegal residence**

108. Criminalising illegal residence is not an end in itself. It is expected to have a deterrent effect on illegal immigrants or people planning to bring immigrants to the Netherlands illegally.

109. Illegal residence is defined as a minor offence. Providing humanitarian assistance or support to illegal residents is not defined as a criminal offence in the form of complicity. Children who are illegally resident in the Netherlands can continue to attend school, and illegal residents can continue to receive any necessary medical care. Nothing has changed in this respect. The criminalisation of illegal residence is aimed at aliens who are adults.

Clearly, minor children, who are subject to their parents' authority, cannot be criminally liable for their illegal residence.

110. It is envisaged that those convicted of illegal residence will be sentenced to pay a second-category fine, which is a maximum of €3,800 but generally much less (more likely a few hundred euros) or a maximum period of four months detention. Departure takes precedence over punishment. A sentence imposed solely for illegal residence must never impede or delay a person's departure. The principle is that illegal residence will be punished with a fine. When detention is imposed instead of payment, expulsion – where possible – will take precedence.

## **XII. Education**

111. The previous reports noted that since 2006 primary and secondary schools in the Netherlands are required by law to promote good citizenship and social integration. This obligation is general in character, and implicitly includes human rights. A number of fundamental values and basic human rights principles are incorporated into the education inspectorate's supervisory framework for good citizenship and integration.

112. Objectives such as good citizenship, human rights and children's rights education are inherent in the attainment targets for primary and secondary education without being explicitly listed as such. Attainment target 47 for secondary education states that pupils should learn to put current global tensions and conflicts in context, and should learn about their repercussions at all levels, the importance of human rights and the significance of international cooperation. Schools are expected to strive towards the attainment targets in educational curricula at all levels. How they do this is the responsibility of the school. To support schools, a curriculum proposal has been developed that incorporates human rights education into a model curriculum for teaching good citizenship.

113. The Dutch government supports the Alliance of School Citizenship Education Panels, through which researchers, curriculum developers, schools and the inspectorate help educational institutions offer programmes concerning identity. The statutory introduction on 1 August 2011 of a system providing for secondary pupils to undertake placements at non-profit or voluntary organisations is another way to engage in citizenship education.

114. The education inspectorate's annual reports have observed that schools are fulfilling their responsibility to offer citizenship education, but that few of them have developed clear plans in this area. Extra measures will be needed to achieve the ambitions. The Education Council of the Netherlands has been asked to issue an advisory report to the government on additional ways of helping schools to meet their responsibilities in citizenship education. It will also address the relationship between citizenship education and human rights education in this report, which is expected in the spring of 2012.

### **Human rights education and awareness promotion in Aruba**

115. The government of Aruba is striving to prevent stereotyping and to encourage teaching about equality, in all curricula from nursery level to secondary vocational education. In primary schools they are grouped under 'movement and health', in general secondary education they are part of 'social studies', and in secondary vocational education they are taught under the heading of 'personal and social education'. Aruba has developed its own teaching material for each of these courses, so that the content is appropriate to the Aruban context and ties in as closely as possible with the pupils' perception of their environment.

116. A subject specifically covered during the training for cadets at the Police Training Institute is the significance of human rights in relation to the work of the Aruban police force. Human rights define the standard of conduct that police officers must observe when performing their duties. This standard applies both directly (through case law) and indirectly (the spirit of the provisions).

117. The government, in cooperation with a group of citizens, took the initiative to establish the 'Fundacion Respeta Bida...semper corda' (Foundation Respect Life ..always remember), which aims to promote tolerance, solidarity, freedom and equality for all and to combat racism, anti-Semitism and xenophobia. The first major project of the Foundation was the unveiling in June 2011 of a statue of Anne Frank to commemorate the victims of the Second World War. With this unveiling, the government also wishes to transmit a message for the future – a message of love and courage, and of the dangers of discrimination and exclusion. It is intended that schools should incorporate this message into their teaching programme, and a visit to the statue would be an appropriate part of this. The Anne Frank House in the Netherlands will be helping schools to develop these teaching packages. In addition, an exhibition on the life of Anne Frank was held in the autumn of 2011.

### **Compulsory education on St Maarten**

118. In September 2009, St Maarten started implementing the compulsory education ordinance. Under this legislation, all children residing in St Maarten between the ages of four and eighteen must attend school. The ordinance has introduced a change for the better for undocumented children residing in St Maarten. St Maarten chose to implement the law in stages. Stage 3 is currently in progress. This means that the government must ensure that all children residing in St. Maarten, who are aged from four to twelve years of age and who should be attending school, are in fact given access to formal education. In the next two school years, stages 4 and 5 will be implemented, covering the ages thirteen to fifteen, and sixteen to eighteen, respectively.

## **XIII. Other recommendations**

### **Evaluation of anti-terrorism measures**

119. In the Netherlands, draft legislation, including proposed counterterrorism measures, must be scrutinised for compatibility with *inter alia* fundamental rights enshrined in national and international law. The explanatory memorandum accompanying draft legislation includes a report on this scrutiny. In addition, the application of measures may in practice be reviewed by an independent court or other institutions, such as the National Ombudsman. Partly in response to a request from the House of Representatives, the Netherlands – as one of only a handful of countries worldwide – completed an evaluation of its counterterrorism measures in 2011 and sent the findings to Parliament. From this evaluation, including the examination by legal scholars conducted as part of it, the conclusion emerged that the Netherlands' counterterrorism measures are compatible with human rights. The Netherlands will repeat this evaluation every five years.

### **Scope of freedom of expression**

120. Everyone has the right to exercise their constitutional rights. However, most constitutional rights are not absolute. One person's fundamental freedom – such as the right

to freedom of expression – is limited where it encroaches on the freedoms of others. This is a classic conflict between constitutional rights. The right to freedom of expression frequently clashes with religious freedom. Most statutory restrictions limiting the right to freedom of expression are laid down in the Criminal Code. Freedom of expression does not protect utterances that are insulting, incite hatred or discrimination, or propagate violence.

### **Prosecution of the author of the film *Fitna***

121. Geert Wilders, who produced the film *Fitna*, is the political leader of the PVV (Freedom Party) and a member of the House of Representatives. In a judgment of 23 June 2011, Amsterdam District Court acquitted him of all charges brought against him regarding incitement to hatred and discrimination, as well as the charges of insulting a group of persons on discriminatory grounds. The Public Prosecution Service decided not to appeal against this verdict, so the criminal proceedings have come to an end.

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