

The Netherlands¹

IHF FOCUS: security of person; prison conditions; death penalty; asylum seekers and immigrants; religious intolerance; discrimination and hate speech; trafficking in human beings and prostitution; international humanitarian law (accountability for past abuses); national and ethnic minorities (the Framework Convention for the Protection of National Minorities).

The cabinet of Prime Minister Wim Kok's government tendered its resignation in April 2002 as a result of the report from the Netherlands Institute for War Documentation (NIOD) on the partial responsibility of Dutch peace-keeping forces for the failure to prevent the genocide in Srebrenica in 1995. During the following election campaign, the immigration and integration were among the main topics of public and political discussion. The elections were also dramatically marked by the political assassination of Pim Fortuyn, the leader of the political party List Pim Fortuyn.

In July, the new cabinet led by Jan Peter Balkenende was formed, which, as a result of infighting within one of the coalition parties and between two ministers, was short-lived.

As a result of the arrests of numerous drugs couriers, the parliament enacted an emergency law which allowed the holding of several detained drugs couriers in one cell and also otherwise restricted the legal rights of drugs couriers in detention.

Another topic in focus was people trafficking: the National Rapporteur on Trafficking in Human Beings appointed by the Kok government published his first report on the theme and issued recommendations for tackling the problem.

Security of Person

The assassination of Pim Fortuyn, the leader of the party that carried his own name, gave rise to political and public discussion about the responsibility of the government to protect politicians against possible attacks.

Pim Fortuyn was assassinated on May 6 as he was leaving a radio studio in the city of Hilversum. He had been expected to win the forthcoming elections on May 15. He had expressed radical views on subjects such as Islam, immigration, and the state of confusion the out-going Kok government had left behind. Due to his opinions and debating talents, he had attracted both left- and right-wing voters. A controversial personality, Fortuyn had also received threatening letters, bomb threats and a barrage of verbal assaults by e-mail.² The assassination suspect was arrested on the same day as the killing and in November he confessed to the crime, saying that "he was concerned about Fortuyn's generally stigmatizing political conceptions, which would have adverse consequences for certain vulnerable groups in society."³

Pim Fortuyn did not receive protection from the authorities. On the day of the murder, he was accompanied by a private personal bodyguard, who, however, could not prevent the murder. The Kok government set up an independent committee – the Van den Haak Committee – to investigate the matter. The committee published its report in December⁴ into the security situation prior to the murder, the activities of the governmental institutions concerned and whether Fortuyn had requested protection. The report concluded that Fortuyn should have been provided with protection and criticized the failure of the Justice and Interior Ministers to do so. According to the committee, the General Intelligence and Security Service had also failed in its activities because it had not carried out a proper security analysis, despite a request from the Minister of the Interior that it do so. The minister himself had assumed that the Security Service would investigate the case thoroughly and believed its statement that there had been no threats against Fortuyn. In addition, Fortuyn himself had disliked the idea of protection because he had felt it would limit his personal freedom.

The committee furthermore concluded that the system for providing protection to politicians in the Netherlands was unclear. The committee noted that personal protection would only slightly reduce the chances of attacks against politicians. In addition to these conclusions, the committee made several recommendations, most of which dealt with the organization of personal protection.

During the short period of time in which Pim Fortuyn was active as party leader, the political scene was characterized by fierce debate and an atmosphere of political dissatisfaction. With Fortuyn's murder, threats against politicians did not end: after his assassination, leaders of the parties that had opposed him also received serious threats, including bullets sent by post. At the time of writing, the police were still investigating some 20 to 30 cases of threats against various politicians. Only two possible perpetrators have been arrested.⁵

- A female Dutch politician of Somali-Muslim background went into hiding after receiving several threats. She had criticized Islam by stating that Muslims deny the fact that relationships between men and women are perceived in a completely distorted way in the Muslim community.

The Balkenende government took measures to improve the personal protection of political leaders ahead of the campaign for the January 2003 elections.⁶

Prison Conditions

Drugs Couriers

Since 2001, the Dutch authorities have paid special attention to couriers trafficking drugs into the Netherlands by swallowing small capsules containing drugs. Many arrests have taken place at Schiphol Airport, and the problem has led to insufficient capacity in Dutch prisons.

In order to solve this problem, the Temporary Act on the Emergency Capacity Relating to Drugs Couriers (*Tijdelijke Wet Noodcapaciteit Drugskoeriers*) was enacted in March 2002, which made it possible to place several prisoners in one cell where before prisoners had been held in individual cells. The Emergency Act only applies to persons over 15 years of age who have been convicted or suspected of transporting illicit drugs – listed under the Dutch Opium Act – within or outside the Netherlands. In addition, the public prosecutor has to order imprisonment or preventive custody in such cases.

Since January 2002, the Emergency Act has replaced the Prisons Act (*Penitentiare Beginselenwet*), as far as drugs couriers are concerned. For minors, the Emergency Act has replaced the Juvenile Detention Centers Act (*Beginnselenwet Justitiële Jeugdinrichtingen*).

The Emergency Act provides for fewer rights and opportunities for those treated under it than the Prisons and the Juvenile Detention Centers Acts: for example, it omits rules or requirements on issues such as a committee to supervise whether the institutions operate in conformity with the relevant standards, and it does not provide for labor and educational opportunities, social care or complaint and appeal procedures.⁷

In 2002, on the basis of the Emergency Law, drugs couriers were held in captivity in former prisons and in a former airforce base. By order of the Minister of Justice, a report was compiled by an investigation agency on conditions in these prisons. The report concluded that the imprisonment of drugs couriers in these emergency prisons led to explosive and dangerous situations. In addition, the safety of both the staff and the prisoners was at risk due to inexperienced staff and the detention of more prisoners in one cell.⁸

In January 2003, the Second Chamber of the Netherlands parliament was expected to decide whether the implementation of the law would be extended by another two years.

A group of detained drugs couriers commenced legal proceedings against the state in order to obtain equal treatment to prisoners in the ordinary prisons.⁹ However, the court in The Hague on August 14 ruled in favor of the state. According to the court, the emergency situation at Schiphol Airport justified radical measures, since the other option would have been to allow drugs couriers to freely enter the country.¹⁰

Death Penalty

During a heated discussion on immigration (see below), the Minister for Immigration proposed that the death penalty be reintroduced in the Netherlands.

The death penalty was abolished in the Netherlands in 1870, except for during emergency situations. The statements of the minister were in contradiction with Protocol 6 (which condemns the death penalty, except in time of war) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which the Netherlands has ratified. The Netherlands Constitution also prohibits the death penalty. The cabinet, parliament and the political party List Pim Fortuyn, to which the minister belonged, explicitly stated their objection to his proposals. The minister later made a public apology during a press conference, stating that he had been speaking as a private person and not in an official capacity.¹¹

Asylum Seekers and Immigrants

The New Aliens Act

The Aliens Act 2000 (*Vreemdelingenwet 2000*) was adopted to introduce a more restrictive aliens policy. The core of the legislation is to provide for a short status determination procedure. In practice, the new law has led to a substantial decrease in the number of asylum seekers.¹²

In addition to the restrictions already brought about by the new Aliens Act, applicable since April 2001, the Balkenende government planned to tighten the asylum policy further. It proposed, for example, that asylum seekers entering the Netherlands without identity documents should be detained or denied access to the asylum procedure.

Furthermore, the government proposed that family reunification of all aliens in the Netherlands should take place within six months of their arrival in the country. A parent could request family reunification only if he/she was aged 21 years or over (previously: 18 years or over). The child at issue should not be over the age of 17. Moreover, a spouse may only come to the Netherlands when his/her Dutch spouse has an income of at least 130% percent (previously: 100%) of the minimum wage.

The Dutch Refugee Council (*VluchtelingenWerk Nederland*) found the proposals to be unfeasible and harsh from a humanitarian point of view and emphasized that also children aged 17 should be able to live with their parents. In addition, the Dutch Refugee Council noted that the proposals were in conflict with the ECHR and the UN Convention on the Rights of the Child. Moreover, according to international standards, refugees cannot be deported on the grounds that they cannot produce identity documents if they live in fear of persecution in the state of origin. Moreover, the Dutch Refugee Council said, deprivation of liberty should not be hastily applied in asylum cases.¹³

Single Minor Asylum Seekers

According to the Netherlands Refugees Organization (*Vluchtelingen Organisatie Nederland*) and Defence for Children, the Dutch aliens policy violated the rights of the child. Children whose parents had been expelled from the Netherlands ended up on the streets, a fact which showed that the asylum procedure did not take into account the best interests of the child: it failed to see that an expulsion decision inevitably has an impact on the children as well.

According to Dutch policy, the Ministry of Justice determined whether the single minor asylum seeker was entitled to a residence permit. If not, the ministry investigated whether the asylum seeker was capable of looking after him/herself in the country of origin. When this was not the case either, the ministry would investigate whether appropriate shelter could be provided in the country of origin. If staying in the Netherlands was the only alternative, the child would be given a temporary residence permit. However, should the situation in the country of origin change, the child might lose this permit. Moreover, should the child turn 18 years of age within three years of his/her arrival in the Netherlands, the child was to return to his/her country of origin. S/he would be able to remain in the Netherlands only if aged, upon arrival, under 15 years and already owning a residence permit for more than three years.¹⁴

The Dutch Refugee Council voiced its criticism regarding the pilot project in a campus for underage refugees in the town of Vught.¹⁵ The project focused on preparing the refugees for return to their country of origin and not on their integration into Dutch society. A number of children had decided to leave the project saying that they felt like prisoners since they were not allowed to leave the area during the project. Another project was scheduled to commence at the beginning of 2003. The Ministry of Justice regularly evaluated both projects.

Immigrants

During 2002, there were approximately 1.6 million non-Western immigrants in the Netherlands, equal to ten percent of the total population.¹⁶

Due to the assumed high crime rate and problems amongst juvenile Moroccans and Turks, a political discussion arose about the necessity of measures to be taken towards better integration of these groups into Dutch society. Several politicians and their supporters found that the current policy of integration was inadequate.

The Balkenende government, which was installed in July, stated that it intended to both strengthen and improve the Dutch integration policy. Several controversial proposals were made, mainly by the Minister for Immigration and Integration, to this end. One of these was to investigate the legal possibilities of deporting Moroccan habitual criminals who held both a Dutch and a Moroccan passport as well as foreign criminals with a residence permit if they had broken Dutch law. Other political parties and ministers, including the prime minister, rejected this idea as a violation of the principles of equal treatment and non-discrimination guaranteed by article 1 of the Netherlands Constitution.¹⁷

Another proposal by the minister was that only Dutch should be spoken in mosques. In addition, the minister said, "Muslim clerics have a duty to convince their fellow believers that they should be loyal to the values and norms of Dutch society." Moreover, according to the minister, a new integration course was needed: apart from lessons in the Dutch language, the course should include lessons on Dutch society and should be mandatory for all new foreigners. If, for instance, a religious leader failed the course he would be denied a residence permit.

In the face of these proposals, a spokesman for an immigrant group stated that young Muslims in the Netherlands felt themselves to be victims of a new anti-Islamic political culture.¹⁸

Past Human Rights Abuses

Accountability

In 1995, during the Bosnian civil war, several thousand Muslims were murdered when Bosnian Serb forces attacked the enclave in Srebrenica, a UN “safe area”, and killed approximately 8,000 Muslim men and boys. The genocide in Srebrenica was the largest massacre in Europe since World War II.¹⁹ At that time, a battalion of lightly armed Dutch soldiers (Dutchbat) was stationed in Srebrenica and assigned by the UN to protect the town's refugees and residents.

In 1996, the Netherlands government asked the Netherlands Institute for War Documentation (NIOD) to investigate the events prior to, during and following the downfall of the enclave in Srebrenica. The NIOD was asked to collect relevant facts and to provide, from a historical perspective and in both a national and an international context an insight into the causes leading up to the fall of Srebrenica. The actions of all parties involved was included in the investigation.²⁰

The NIOD report was published in April 2002. It concluded that the Netherlands government, the senior military officials and the UN had failed to prevent the massacre. However, the task given to the Dutch battalion was, according to the NIOD report, a “mission impossible.”²¹

The entire cabinet of Prime Minister Kok’s government resigned in recognition of the gravity of the findings. The prime minister said that the international community had failed to provide sufficient protection to the people in the “safe areas,” and in that respect, the Netherlands government as a member of the international community had failed as well. According to the prime minister, the resignation was the consequence of an accumulation of failures during several cabinet terms and not a result of one specific act. By resigning, the government took responsibility for the policy carried out.²²

The report was criticized by organizations representing the relatives of the Srebrenica victims and the survivors of the massacre for not taking a clear stand on who was responsible for the failure to save the people in Srebrenica, including who was responsible for sending the people away from the safe base. In addition, the organization “Women of Srebrenica” suggested that the Dutchbat and the Netherlands government should have known what would happen to the Muslim men should they be captured by the Bosnian Serbs.²³

Shortly after the publication of the NIOD report, the Netherlands Parliament decided to establish a parliamentary committee to investigate the events leading to the fall of the Srebrenica enclave. The aim was to provide the Second Chamber with sufficient information to draw definitive political conclusions on the performance of the government and the Second Chamber itself regarding the Srebrenica incident, and to determine which Dutch authorities were responsible for military and administrative failings. The committee was to present its conclusions at the beginning of 2003.

National and Ethnic Minorities

The Framework Convention for the Protection of National Minorities

The Framework Convention for the Protection of National Minorities was signed by the Netherlands in 1995. The Kok government submitted the Convention to the First and Second Chambers for approval. The Netherlands has not, however, yet ratified the convention.

In its commentary on the convention, the Netherlands government provided a broad interpretation of the definition of a “national minority” which can be applied also to minorities whose members are inhabitants, but not always citizens, of the state. This means in practice that, for example, the Friesian

people fall under the scope of the convention as well as Moroccans, Malaccans, people from Surinam, the Netherlands Antilles, Turkey, refugees and people entitled to refugee status.

Upon ratification of the convention, the state must incorporate its principles into the national policy and legislation. The bill was passed by the Second Chamber but met with significant resistance in the First Chamber: several politicians believed that, due to wide interpretation of the convention, the obligations deriving from it could not be met. Due to the lack of support in the First Chamber, the Minister for Integration requested that the process be adjourned in order to consult the cabinet and to avoid the bill being repealed.²⁴

Trafficking in and Smuggling of Human Beings and Prostitution

The Kok government appointed a National Rapporteur on Trafficking in Human Beings (NRM) whose main task was to provide the authorities with recommendations on how best to tackle the problem of trafficking in human beings. In March, the NRM's office published its first report on this issue.²⁵ The Balkenende government nominated this problem as one of the main topics for the Netherlands OSCE chairmanship, starting in 2003.²⁶

According to the report published by the NRM,²⁷ the total number of women and children subjected to trafficking globally each year is between 700,000 and two million. Approximately 175,000 to 200,000 people are traded from Central and Eastern Europe into Western Europe, mainly to be forced to work in the sex industry.

It has turned out to be extremely difficult to get victims of human trafficking to file a complaint with the police and to provide them with sufficient information, since victims feared retaliation from their pimps. In 2001, only five percent of the foreign women who came to the Netherlands as a result of trafficking and were forced to work in the sex industry had reported the crime to the police. Another reason for not filing a complaint was the fact that they were staying in the Netherlands illegally and were afraid of facing charges under migration or labor legislation.

Under Dutch law, trafficking in human beings is understood to mean "to keep or to bring people under pressure to prostitution." In the same year, police completed investigations into 48 cases, which was almost double the number of investigations completed in 2000. In 2001, 86 traffickers were brought before the courts, most of whom were convicted.²⁸

Both people trafficking and smuggling are punishable in the Netherlands when motivated by the pursuit of financial gain.

The NRM made several recommendations concerning the law and regulations, information on and prevention of trafficking in human beings, the criminal approach to trafficking, its victims and alien labor. It encouraged the Netherlands government to take measures to make possible the ratification of the United Nations Convention against Transnational Organised Crime, including the Protocol on the Prevention, the Combating and the Punishment of Trafficking in Human Beings.²⁹

As far as the protocol is concerned, its implementation has commenced in the Netherlands, which is expected to result in legal changes. A new article will most probably be added to the Dutch Criminal Code to bring other forms of exploitation in the socioeconomic field within the scope of the Dutch Criminal Code. For instance, the amendment is expected to cover the subject of "removal of organs in order to obtain financial means."

The NRM also noted that there is a need for information on (new) regulations governing organizations working in the field of human trafficking and smuggling. The government granted a subsidy to an NGO called the "Rode Draad" ("Red Thread") to make an inventory of information

amongst people and organizations working in the field of human trafficking and smuggling, with the aim of better coordinating their work.

The NRM also recommended that the police and judicial authorities tackle the problem of human trafficking and illegal prostitution more actively and more directly.³⁰ In addition, closer cooperation between the public prosecutor, the Aliens Department and the Immigration and Naturalization Service was required. While in 2000 the Kok government legalized brothels in order to control the prostitution sector, the NRM was of the opinion that it was not possible to assess the impact of this measure, since prior to the legalization, municipalities had in practice already tolerated brothels.³¹

People from outside the EU were banned from working in prostitution in the Netherlands in 2002.³² However, the NRM reported a tendency that the demand for prostitutes from non-EU countries was on the rise, a fact the government should take into account in its policies. The NRM advised the government to develop a clearer and more uniform policy on prostitution.³³

¹ Based on the report by the Netherlands Helsinki Committee to the IHF. The Netherlands Helsinki Committee does not systematically monitor human rights developments in the Netherlands, but mainly organizes projects aimed at strengthening democracy in Central and Eastern European countries. Furthermore, the Netherlands Helsinki Committee monitors and promotes the OSCE process through various publications, such as the *Helsinki Monitor*. This chapter is primarily based on reports by prominent international and national human rights organizations.

² *NRC Handelsblad*, "Plan voor bewaking Fortuyn was klaar," May 25, 2002.

³ Openbaar Ministerie, press release, November 23, 2002.

⁴ Commissie Van den Haak, "De veiligheid en de beveiliging van Pim Fortuyn. Feiten en verantwoordelijkheden," December 17, 2002.

⁵ *Algemeen Dagblad*, "Onderzoek naar kogelbrieven stukt," November 22, 2002.

⁶ *Algemeen Dagblad*, "Defensie alert op aanslagen," November 11, 2002.

⁷ *Memorie van Toelichting op de Tijdelijke wet voor de penitentiaire noodcapaciteit ten behoeve van drugskoeriers*.

⁸ *De Volkskrant*, "Noodopvang drugskoeriers ondermaats," December 20, 2002.

⁹ *Staatscourant*, "Gelijkheidsbeginsel centraal in kort geding bolletjesslikkers tegen Staat," August 6, 2002.

¹⁰ *Rechtbank 's-Gravenhage*, summary judgment, KG 02/953, August 14, 2002.

¹¹ Second Chamber of Parliament, "Brief van de minister voor vreemdelingenzaken en integratie," November 19, 2002.

¹² For a summary of the law, see IHF, *Human Rights in the OSCE Region: the Balkans, the Caucasus, Europe and North America, Report 2000, (Events of 1999)* and *Human Rights in the OSCE Region: the Balkans, the Caucasus, Europe and North America, Report 2001, (Events of 2000)*, at www.ihf-hr.org

¹³ VluchtelingenWerk Nederland, "VluchtelingenWerk Nederland hekelt voorstellen asielbeleid van CDA, LPF en VVD," June 6, 2002, at www.vluchtelingenwerk.nl

¹⁴ VluchtelingenWerk Nederland, "Ama's: een kwetsbare groep."

¹⁵ VluchtelingenWerk Nederland, "Twijfelt over aanpak ama-campus," August 11, 2002.

¹⁶ Centraal Bureau voor de Statistiek, *Allochtonen in Nederland 2002*.

¹⁷ ANP, "Nawijn wil criminele Marokkanen uitwijzen," August 23, 2002.

¹⁸ BBC Online, "Dutch should be spoken in mosques," at www.news.bbc.co.uk.

¹⁹ United Nations, "'Srebrenica' tragedy will forever haunt United Nations history", says Secretary-General on fifth anniversary of city fall," press release, SG/SM/7489, July 10, 2000, at www.un.org

²⁰ Second Chamber of Parliament, *Vergaderjaar 1996-1997*, 25 069, No. 1, "Onderzoeksopdracht aan het Rijksinstituut voor oorlogsdocumentatie."

²¹ NIOD, "Srebrenica, een 'veilig' gebied," press summary, April 2002.

²² Second Chamber, *86^{ste} vergadering*, April 16, 2002.

²³ "Overlevenden en IKV teleurgesteld over rapport Srebrenica," April 10, 2002, at www.ikv.nl and www.planet.nl

²⁴ First Chamber, *31^e vergadering*, May 29, 2001.

²⁵ Second Chamber, "Mensenhandel," *Vergaderjaar 2002-2003*, 28 638, Nr. 1.

²⁶ Second Chamber, *Vergaderjaar 2002-2003*, 28 687, No. 1; "Nederlands voorzitterschap van de OVSE in 2003, brief van de Minister van Buitenlandse Zaken," November 21, 2002.

²⁷ NMR, *Mensenhandel, Eerste rapportage van de Nationaal Rapporteur*, The Hague, March 2002.

²⁸ NMR, *Mensenhandel, Tweede rapportage van de Nationaal Rapporteur*, The Hague, January 2003.

²⁹ Second Chamber, *Vergaderjaar 2002-2003*, 28 638, No. 1, "Mensenhandel."

³⁰ Ibid.

³¹ For more information on the legalisation of brothels, see *Human Rights in the OSCE Region: the Balkans, the Caucasus, Europe and North America, Report 2002, (Events of 2001)*, at www.ihf-hr.org

³² *Uitvoeringsbesluit van de Wet arbeid vreemdelingen*.

³³ Second Chamber, *Vergaderjaar 2002-2003*, 28 638, No. 1, “Mensenhandel,” October 15, 2002.