

Questionnaire on National Human Rights Institutions and human rights defenders
Submission by the Netherlands Institute for Human Rights
- 19 October 2012 -

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| 1. | a) Please provide a brief overview of the legislative framework adopted to establish a National Human Rights Institution (hereafter 'the Institution') in your country. Please cite the names of any such laws or regulations in full. |
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The Netherlands Institute for Human Rights Act (Wet van 24 november 2011, houdende de oprichting van het College voor de rechten van de mens) entered into force on 1 October 2012. The Act and the Explanatory Memorandum (Memorie van Toelichting bij de Oprichting van het College voor de rechten van de mens) can be found in the attachment.

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| | b) Please indicate how these laws and regulations comply with international human rights standards, and in particular, the Paris Principles ¹ . |
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The Netherlands Institute for Human Rights (hereafter 'the Institute') was established by the Dutch government in 2012 to protect human rights, including the right to equal treatment, in the Netherlands, to increase awareness of these rights and to promote their observance. The Institute is the national human rights institution referred to in Resolution A/RES/48/134 of the General Assembly of the United Nations of 20 December 1993 concerning national institutions for the promotion and protection of human rights (section 1 of the Netherlands Institute for Human Rights Act, hereinafter 'the Act'). The laws and regulations of the Institute comply with the Paris Principles:

1. Mandate, competence and adequate powers of investigation

The Institute has a broad mandate, based on Universal human rights norms and standards. Section 3 of the Act lists the duties of the Institute:

- (a) to conduct investigations into the protection of human rights, including investigating whether discrimination has taken or is taking place and publishing its findings on this as referred to in section 10;
- (b) to report on and make recommendations about the protection of human rights, including annual reporting on the human rights situation in the Netherlands;
- (c) to provide advice as referred to in section 5;
- (d) to provide information and encourage and coordinate education about human rights;
- (e) to encourage research into the protection of human rights;
- (f) to cooperate on a systematic basis with civil society organisations and with national, European and other international institutions engaged in the protection of one or more human rights, for example by organising activities in partnership with civil society organisations;
- (g) to press for the ratification, implementation and observance of human rights treaties and for the withdrawal of reservations to such treaties;
- (h) to press for the implementation and observance of binding resolutions of international organisations on human rights;
- (i) to press for observance of European or international recommendations on human rights.

The Institute and persons designated by it for this purpose may demand all information and documents that may reasonably be considered necessary for the performance of its duties. Everyone is obliged to provide the information and documents demanded pursuant to

subsection 1 in full and in accordance with the truth, and to do so in such manner and within such time limit as may be specified by or on behalf of the Institute (section 6 of the Act).

The Institute incorporated the tasks of the Dutch Equal Treatment Commission (ETC). The ETC was established by the Dutch government in 1994 to promote compliance of the right to equal treatment as set forth in the Equal Treatment Act (Algemene Wet Gelijke Behandeling) and other specific non discrimination laws. The Institute supervises the observance of non discrimination laws by assessing complaints submitted to it by people who consider themselves the victim of discrimination on the basis of gender, race, nationality, religion, sexual orientation, civil status, political opinion, personal beliefs, term of employment, employment contract with a definite or indefinite term, handicap or chronic illness, and age.

2. Autonomy from Government and Independence

The Institute is an independent public body (section 4 of the Act). It receives no instructions from the Government. It has no accountability (in law nor in practice) with regard to its judgment on complaints or in investigations, its advisory opinions or its recommendations. Neither is there any obligation to account for its policy in making choices for investigations or enquiries. The accountability is restricted to the budget and the obligation to publish its annual report.

The members and alternate member of the Institute are, on the proposal of an advisory council, appointed by the Minister of Justice and Security. The council consists of the National Ombudsman, the chair of the Data Protection Agency, the chair of the Council for the Judiciary and a minimum of four and a maximum of eight members drawn from civil society organisations concerned with the protection of one or more human rights, from organisations of employers and employees and from academia. In the selection procedure, the council takes account of the need for an expert and independent Institute and of the wish to ensure diversity in its membership. A vacancy for a member or alternate member and the selection procedure to be followed must be published by the Institute. The Institute and the council must also draw the vacancy to the attention of civil society organisations concerned with the protection of one or more human rights (section 16 of the Act).

Section 17 of the Act also provides for the members and alternate members of the Institute the same protection against dismissal as judges enjoy: they can only be dismissed on specific grounds by the Supreme Court. Any disciplinary measure can be inflicted only by the chair of the Institute.

Although the members of the Institute are appointed by the Minister of Justice and Security and although the Government is involved in agreeing and contributing to the Institute's budget, neither the Government nor any Ministry has the power to give instructions to the Institute.

The members of the Institute are no civil servants. The Institute as a whole constitutes the board of the public body and is therefore not liable for actions taken within their duties. The members of the Institute act only in personal capacity, without formal duty of consultation.

3. Pluralism

As has been elaborated upon in paragraph 2, the advisory council is pluralistic and in the selection procedure they take the need for a diversity of the members of the Institute into account.

4. Adequate Resources

The Ministry of Justice has the main responsibility for the Institute's budget. The Institute's total budget will consist of the budget of the Equal Treatment Commission (5.27 million Euro in 2009) plus 900,000 euros for the first three years of its existence. From the fourth year onwards, the budget of the Equal Treatment Commission will be permanently increased by 600,000 euros.

In keeping with the Paris Principles the Institute must also be able to manage its own funding by means of agreed allocations from the central government budget. The Institute is financed by central government. For this purpose the Institute must submit an annual budget that requires the approval of the Minister of Justice. The present Bill does not contain any provision about the budget: the funding is instead regulated in the annual Budget Acts. The Institute's budget will be shown in chapter 10 of the budget of the Ministry of Justice, in the section on autonomous administrative authorities and legal persons with statutory duties.

As the draft budget submitted by the Institute will be public it will be clear how much the Institute itself thinks its operations will cost in a subsequent year, based on its own information, expectations and experience. If the Institute's budget differs from its draft budget as shown in the budget of the Ministry of Justice, this will be stated in the explanatory memorandum to the Ministry's budget. In this way the legislator will be in a position to make a sound and informed decision on the budget see explanatory memorandum paragraph 4).

The budget is stable and during recent years has not been subject to any cuts other than general efficiency reduction on the same level as all other governmental and other public bodies e.g. the judiciary.

The Institute has financial autonomy within the limits of complying with normal financial and accountancy standards. The chair and the director are accountable to the Minister of Justice for the lawfulness of the expenditure of the budget. The Institute receives a letter of discharge every year.

The Institute is not donor funded but occasionally has income from other sources like a European or national subsidy for a specific purpose like e.g. a twinning project with another country.

- c) Please indicate the current accreditation status of the Institution with the International Coordination Committee (ICC) and what measures, if any, have been taken to implement the recommendations highlighted at the most recent ICC Sub Committee on Accreditation meeting² with a view to strengthening NHRI's compliance with the Paris Principles.

The current accreditation status of the Institute with the ICC is a B-Status. In 2009 the Dutch Equal Treatment Commission, the predecessor of the Institute, applied for an A-Status but this request has been denied. Since the application for the B-status the Institute has taken various measures to strengthen the NHRI's compliance with the Paris Principles

the result of which is amongst others the establishment of and entry into force of the Netherlands Institute for Human Right Act on 1 October 2012.

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| 2. | a) Please provide details outlining the mandate adopted by the Institution in relation to the protection and promotion of human rights in accordance with the range of competencies and responsibilities specified in the Paris Principles. |
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See the answer to 1b.

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| b) Please indicate whether the Institution is mandated to consider and/or adjudicate individual complaints of human rights violations. |
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The Institute is mandated to consider and adjudicate individual complaints of victims of discrimination (see 1b). Victims of other human rights violations will be referred to the Institution assigned to consider and/or adjudicate individual complaints.

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| c) If relevant, please indicate whether the mandate is limited to specific rights or whether complaints against the Government, the police and/or the military are permitted and how they are dealt with. |
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The mandate is limited to non-discrimination, see for more information 1b. The Equal Treatment Act (Algemene Wet Gelijke Behandeling) does not cover the application of specific public powers by civil servants.

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| d) In this regard, please indicate whether the Institution is empowered to carry out protection related functions including providing remedies to victims of human rights violations, witness protection mechanisms and conducting visits to detention facilities. |
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The Institute is not empowered to carry out protection related functions including providing remedies to victims of human rights violations, witness protection mechanisms and conducting visits to detention facilities.

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| 3. | a) Please indicate what mechanisms, if any, are in place within the Institution to ensure that human rights defenders at risk are protected (e.g. through protection programmes, early warning systems or by submitting complaints to regional bodies on specific cases). |
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None. Our chair, Ms Laurien Koster, did attend the ceremony of the human rights defenders tulip, the Dutch government's human rights award.