On behalf of the Netherlands Institute of Human Rights (*College voor de Rechten van de Mens*), we welcome the opportunity to make a submission to your study on “soft law” instruments in the context of combating terrorism. The Institute would like to direct your attention to two issues related to the Netherlands, which may be relevant to your upcoming report. The first concerns the proliferation of ‘soft’ approaches to radicalization and extremism as a part of person-specific interventions, the second concerns instruments governing anti-terrorism detention regimes. Both these issues involve soft law instruments – or the notable absence thereof – and may inform your further studies.

I

In the Netherlands, the Institute observes an increase of person-specific interventions to combat radicalization and violent extremism.[[1]](#footnote-1) This based on the so-called “broad approach” consisting of a combination of preventive and reactive measures to deal with (violent) extremists.[[2]](#footnote-2) These strategies are geared towards prevention, protection, pursuit, and re­sponse, and are intended to constitute an integrated approach to counter­ing the threat of terrorism. In the Dutch context it involves a combination of preventive and reactive measures. The former are geared towards promoting social cohesiveness, integration of minorities, as well as tackling discrimina­tion, whereas the latter are geared toward identifying, monitoring and com­bating terrorism and extremism, especially ideologically inspired extremism. One of the characteristic features of the Dutch policy on countering extrem­ism is its focus on the role of the municipal authorities

Municipal officials are particularly important in dealing with (violent) extremism in society, as well as in preventing and/or altering of the actions, and sometimes ideas, of known or potential extremists. They are also re­sponsible for implementing person-specific interventions. Local professionals play a central role here. The plan of action builds on, and is part of, the Netherlands’ “broad approach” to coun­terterrorism. Certain specific measures target the risk posed by certain indi­viduals or groups. These person-specific – or group actions are coordinated by the municipal authority, while the administrative decisions and policies are implemented by different (local) partners that participate in the so-called multidisciplinary consultative body. This consists of professionals working for the municipal authority, the police, the Public Prosecution Service, the mental health care providers, and other partners in the social domain.

Person-specific interventions can be a mix of different measures, both ‘harder’ and ‘softer’ measures. In general, the harder measures are geared towards identifying, monitoring and combating (potential) extremists, either through criminal law and procedure or through the intelligence services. The “soft” or “preventive” measures are geared towards promoting social cohe­siveness, the integration of minorities or tackling discrimination. For instance, in addition to social measures, including welfare, housing, care or education benefits, mental health-care may be offered in the framework of a criminal-law interference, through the Youth Care – or Proba­tion Services.[[3]](#footnote-3)

Person-specific interventions are not based on a single specific act of parlia­ment or area of law, but on a range of existing legislation and regulations, in­cluding the Municipalities Act, the Passport Act, the Aliens Act, social security legislation, the Student Finance Act 2000, the Fees and Educational Expenses (Allowances) Act, the General Income-Dependent Schemes Act, and the Urban Areas (Special Measures) Act in connection with selective housing allocation on the basis of criminal or nuisance behaviour. Sometimes the action taken is based on voluntary agreements between the municipal authority and the person concerned. Generally, the Public Prosecution Service coordinates criminal based person-specific – or group actions, while the administrative and social interferences are implemented by individual professionals who often partici­pate in a (local) multidisciplinary consultative body organized on a local level. This framework consists of professionals working for the municipal authority, the police services, the Public Prosecution Service, the mental health care services, and other partners in the social domain.

Apart from the question whether these measures are effective in practice, they come with human rights risks: in particular concerning the right to privacy and the right to family life of those targeted. Moreover, access to justice for those affected by person-specific measures can be problematic. Paradoxically, the softer measures are often subject to far less legal protection than harder measures based in criminal law and procedure. Whereas measures based in criminal law or surveillance law generally require that they are approved by a judge, no such approval is needed for measures based in the social domain. If information is shared between the consultative bodies concerning particular persons, they may not necessarily be informed of the fact that they are being discussed by local authorities.

Moreover, even if legal protection against such measures is available, the question has been raised to what extent it is actually effective. Especially when measures are based in administrative law, a court may only be competent to review the procedure that was followed, but not the content of the measure. This problem for example exists with regard to the revocation of passports to prevent someone from travelling abroad, which is a measure that cannot be reviewed as to its reasonableness by the court. Another such issue is the possibility to revoke the nationality of persons suspected to have travelled abroad pursuant to an amendment to the Netherlands Nationality Act, over which the NHRI has expressed its concerns as to the whether such measures do not unduly encroach on the right to family life.

Lastly, there is a significant risk of arbitrariness in deciding on particular interventions.[[4]](#footnote-4) As these person-specific interventions are in principle municipal affairs, certain municipalities can adopt stricter approaches than others. It can also be unclear why particular persons are singled out for certain ‘softer’ measures, whereas other persons are deemed higher risks and selected for more invasive action. It is also difficult to assess whether biases with regard to certain ethinicities or religions influence the decision to resort to particular interventions. As the underlying agreements that govern the integrated approach can generally not be reviewed by courts, their human rights compliance can also not be independently assessed.

II

A second, much more brief point that may be interesting for your further studies concerns the development of a soft law framework on individual risk assessments for prospective detainees in special anti-terrorism detention regimes. Currently, there are two Dutch prisons in De Schie and Vught that contain special ‘terrorist units’ (*Terrorisme Afdeling,* or TA). Detainees placed in such units are subjected to high-security measures more stringent than those experienced in regular detention. This includes conditions potentially amounting to prolonged solitary confinement, severe restrictions to visitors and regular full-nudity body searches. Placement in these units used to be based on the offence alone: both persons suspected of certain terrorism-related offences, and persons convicted of such offences, would automatically be placed in a TA. Moreover, this placement could not be legally challenged. A 2017 report by Amnesty International and the Open Society Justice Initiative flagged this automatic placement, together with the regime in the TAs itself as a possible human rights violation.[[5]](#footnote-5)

In response, the government announced the introduction of individual risk assessments to determine whether persons should be placed on a TA. That risk assessment is based on an observation of maximum 10 weeks and individual conversations with the detainee, resulting in a risk assessment report by the Dutch Probation Services. Moreover, the report is also used as a basis for determining which specific security measures should be adopted with regard to a certain individual; not just in the interests of respecting the rights of detainees, but also to ensure that persons who have not yet fully radicalized are not brought under the influence of other, much more radical detainees.[[6]](#footnote-6)

Individual risk assessments are an improvement over automatic placement in a high-security regime with significant restrictions to personal life and bodily autonomy. However, the question remains to what extent the underlying risk assessment tools incorporate human rights, next to the security risks posed by a particular detainee. Secondly, neither the risk assessment itself, nor the underlying tools can be challenged before a court, as determination of whether someone is placed in a TA based on that assessment is not done by a judicial body but by the administratieve body of the TA itself. Any complaints should be directed to the review commissioner (*selectiecommissaris*), with an appeal possibility to the appeals board (*Beroepscommissie van de Raad voor de Strafrechtstoepassing en Jeugdbescherming*, or RSJ). Similarly, complaints regarding the individual regime should be directed to the director of the TA, with a possibility to appeal to the appeals board of the RSJ.

1. Quirine Eijkman and Josien Roodnat, “Beware of Branding Some­one a Terrorist!: Local Professionals on Person-Specific Interventions to Counter Extremism”, 2017 *Journal for Deradicalisation*, no. 10, pp. 23–50, and Quirine Eijkman and Josien Roodnat, “Access to Justice 4 Known or Potential Extremists? Local Professionals on Legal Remedies Against Person-Specific Interventions”, 2016 *Security and Human Rights*, no. 27, pp. 94-115. [↑](#footnote-ref-1)
2. National Coordinator for Counterterrorism and Security (NCTV), National Counterterrorismstrategy (*Nationale Contraterrorismestrategie*) 2016–2020, The Hague, NCTV, 2016. [↑](#footnote-ref-2)
3. Liesbeth van der Heide and Bart Schuurman (2018), ‘Reintegrating violent extremist offenders: evaluating the Dutch approach’, *ISGA Report*. [↑](#footnote-ref-3)
4. See Eijkman & Roodnat, p. 113. [↑](#footnote-ref-4)
5. Amnesty International, *Inhuman and unnecessary: Human rights violations in Dutch high-security prisons in the context of counterterrorism*, 2017 [↑](#footnote-ref-5)
6. *Kamerstukken II*, 2017-2018, 29 754, Nr. 438. [↑](#footnote-ref-6)