



Impact of Counter-Terrorism on Communities: Netherlands Background Report

QUIRINE EIJKMAN, DOUTJE LETTINGA AND GIJS VERBOSSEN

Executive Summary

This country report sets the context for research on the impact of counter-terrorism legislation and policies on racial, ethnic and religious minority communities in the Netherlands. Despite the fact that over the last decade various security measures have been assessed, there are few studies on their context-specific effect. This report discusses the Dutch population and community situation, the counter-terrorism legal framework, its policy and policing background as well as security and political perspectives. It concludes that, in the years since 9/11, the Madrid and London terror attacks, and the murder of filmmaker and Islam-critic Theo van Gogh, fear of terrorism has decreased. Furthermore, the general public appears more concerned about the effect that security measures have on their civil rights and liberties. Public security and crime-prevention remain high on the political agenda and various trends, including the emergence of anticipatory criminal justice, the use and availability of ethnic data and the strength of populist parties mobilising around (cr)immigration and integration, have made the risk of side-effects of security measures for minority communities more pertinent. The apparently decreased political and public support for the anti-discrimination framework and the weak socio-economic position and institutional representation of ethnic minorities and migrants, contribute to the necessity of sound empirical research on the impact of security measures on minority, especially Muslim, communities in the Netherlands.

Introduction

The impact of counter-terrorism legislation and policies on minority communities has received little attention in the Netherlands. Even though over the last decade counter-terrorism measures have been assessed, empirical research on their context-specific effect is scarce. This paper provides a background for studying the impact of contemporary security measures, in particular counter-terrorism and counter-radicalisation legislation and policies, on racial, ethnic and/or religious groups. After discussing the population and community context, the counter-terrorism legal framework is introduced. This is followed

by a review of the policy and policing context. Finally, both the security and the political perspectives are discussed. Even though the background paper focuses on counter-terrorism measures, the context is broader. Currently, public and political discourse on countering terrorism includes debates about anticipatory justice, radicalisation, integration, (cr)immigration and public security.

Part One: Population and Community Context

This section provides background information on ethnic, racial or religious groups that could be the focus of counter-terrorism policing in the Netherlands. It commences with an outline of demographic data, focusing on the number, migration and settlement histories and socio-economic characteristics of the ethnic and religious groups that are the focus of Dutch counter-terrorism measures. Then it elaborates upon the response of civil society to counter-terrorism and counter-radicalisation policies and policing, while discussing data on public perceptions towards such measures. This section also discusses data on levels or perceptions of discrimination on the base of ethnicity, religion or ‘race’ and ends with an analysis of existing mechanisms for cooperation between governments and minority groups. Yet, in order to understand Dutch policy discourse on ethnic and ‘race’ relations, this section begins with a short introduction on the use and collection of ethnic data in the Netherlands.

The Personal Data Protection Act (WBP)¹ prohibits the gathering and processing of ethnic data, except for purposes of identification or in response to an application for a temporary exemption in order to reverse structural disadvantages among ethnic or cultural minorities. Nonetheless, data on the ethnic or national origin of individuals is widely available and utilised in the Netherlands. The Dutch Municipal Personal Records Database (GBA), for instance, stores information on a person’s country of birth and citizenship, as well as on the country of birth of both parents. Data from the GBA is not public, but is available to a wide range of institutions, including the Statistics Netherlands (CBS), tax companies, pension funds, social services, health inspectorates, or police and justice.

Since 1999, the CBS differentiates in its national statistics between ‘*autochtoon*’ (of Dutch heritage, in English ‘autochthon’) and ‘*allochtoon*’ (of non-Dutch birth or ancestry, in English ‘allochthon’). The latter category is further broken down to demarcate between ‘Western’ *allochthonen* and ‘non-Western’ *allochthonen*, although geographically speaking the continents and countries listed as ‘non-Western’ are not uniformly found to the East of the Netherlands (Morocco, Latin America, Aruba and Surinam) and vice versa (Japan and Indonesia are considered ‘Western’ but lie to the east of the Netherlands). The latter category is then further subdivided into first and second generation and recently also third generation. This means that, officially, any person with at least one foreign-born parent (and recently even grand-parent) is considered an *allochtoon*, regardless of whether he or she was foreign-born or born and raised in the Netherlands (Yanow & van der Haar, 2012).

¹ Section 16 and 18, Data Protection Act, Stb. 2000, 302, entered into force 6 July 2000 (amended on 26 January 2012).

In practice, these terms have gained meaning far beyond their initial intention to measure and tackle socio-economic disadvantages. With ‘race’ terminology being a public taboo in mainland Europe, the terms *allochtoon* and *autochtoon* shape present-day discourses about migrant integration in the Netherlands, functionally setting apart ‘non-integrated’ (i.e. culturally and socio-economically backward) *allochthonen* from the native white, ‘Western’ Dutch population (Essed & Trienekens, 2008). As the sociologist Frank de Zwart (2012, 314-315) aptly summarises: “This custom [ethnic classification in policy making] entrenches ethnic boundaries, pictures minorities as dependent recipients of benefits and in the present political climate serves repressive ethnic policies.”

In 2010, the Dutch government abandoned ‘categorical’ policies that had hitherto enabled exemptions on the base of ethnicity to address social inequalities. Subsequently, the initial goal of collecting and registering ethnic origin no longer existed and, therefore, the Dutch Council for Societal Development (RMO) recently recommended discontinuing the use of ethnic categorisations in Dutch public policy. It argued that the potential risks of ethnic profiling and stigmatisation of minorities outweighed the benefit of such registration, especially because ethnic data is increasingly linked to crime prevention and security policies (RMO, 2012). Nonetheless, this policy advice caused so much public and scientific opposition that ethnic categorisation in the Netherlands is likely to continue.

In this report, the concept of *allochthonen* or *autochthonen* is not used, but instead it refers to ‘migrants’ and ‘ethnic minorities’ (including second and third generations migrants) and to the ‘native Dutch population’.

OUTLINE OF DEMOGRAPHIC DATA OF MINORITY GROUPS

A 2006 survey among 10,000 persons, the latest figures available, estimates the Muslim population at 857,000, or 5.2 percent of the overall Dutch population. Figures are based on self-identification as adherents of Islam (CBS, 2007, 51; FORUM, 2010, 7). Taking the general population growth into account, individuals identifying themselves as Muslims would account for approximately 6 percent of the entire total population of 16.7 million people in 2012.

The Muslim population in the Netherlands has diverse national or cultural origins. The large majority of Dutch Muslims (73 percent) are of Turkish (329,000) or Moroccan descent (314,000). The remaining 27 percent of so-called ‘non-Western Muslim groups’ immigrated from the former Dutch colony of Suriname (34,000) and more recently from Afghanistan (32,000), Iraq (31,000), Somalia (21,000), Pakistan (19,000), Iran (13,000) and other countries including the former Yugoslavia. The large majority hold Dutch citizenship, many with dual nationality. There are approximately 6,000 converted Muslims, of native Dutch descent (FORUM, 2010, 7).

Finally, the average age of Dutch Turkish and Dutch Moroccan minorities and migrants is lower than that of the native Dutch population. This is due to the ageing of the native Dutch population, which is

furthermore characterised by low fertility rates and the young age of migrants in general. Approximately 40 to 50 percent of “non-Western” immigrants (including people of Turkish and Moroccan descent) belong to the ‘second’ generation, born in the Netherlands with (at least) one parent who immigrated to the Netherlands. The ‘first’ generation is decreasing in numbers, partly as a result of re-migration, while the third generation is still rather small (Open Society Foundations, 2010, 33).

DETAILS OF MIGRATION AND SETTLEMENT PATTERNS

The Dutch ‘Muslim community’ is not only characterised by various ethnic and national origins but also by different immigration histories. The two largest minority groups, the Dutch Turks and Dutch Moroccans, are primarily descendants of so-called ‘guest workers’, migrants who arrived in the Netherlands in the early 1960s to seek temporary labour in industry or agriculture. They were later joined by their families, particularly when the Netherlands, in the mid-1970s, officially ended labour recruitment from Turkey, Morocco and other South European countries. Most of these immigrants have settled in the urban areas in the Randstad (a region in the west of the Netherlands comprising the four largest cities and a number of other cities and towns). A substantial number has settled in the south-eastern part of the country, where they could find work in the mining industry or agriculture.

A substantial part of the Dutch Muslim population arrived as post-colonial immigrants from Suriname, particularly after its independence in 1975. Other postcolonial immigrants, among whom a significant number is Muslim, had already immigrated (or “repatriated”) to the Netherlands after the former Dutch East Indies became independent (1949-1962).

Since the mid-1990s, Muslim minorities have emigrated from countries like Afghanistan, Iraq, Somalia, Pakistan, or the former Yugoslavia. These groups mostly came as asylum-seekers or refugees, followed by their relatives. Typical for these more recent migrants from Islamic countries is that many do not identify with Islam, in part because many have fled religious wars or prosecution by religious zealots. For example, a 2003 survey among ‘non-Western Muslim groups’ suggests that only 40 percent of Dutch Iranians perceive themselves as adherents of Islam, in contrast to 98 percent of people in Iran (CBS, 2007, 2). Similar surveys have been conducted among refugees from Somalia, Iraq, Pakistan or the former Yugoslavia and show variation between different groups. Refugees from Afghanistan and Somalia, for instance, identify more strongly with Islam; in 2009, respectively, 90 percent and 95 percent considered themselves a believer, most adherents of Islam, while the percentage had decreased to 33 percent for Iranians (FORUM, 2012; SCP, 2011).

SOCIO-ECONOMIC DATA

In general, Muslim minorities have a weaker socio-economic position than the native Dutch population. Net labour market participation of people of Turkish and Moroccan descent is 52 percent and 48 percent respectively, much lower than the native Dutch population, of whom two-thirds have paid work (Huijnk, 2012). The lack of (recognised) academic degrees, poor Dutch language skills, in combination with a generally weak health situation and, in the case of refugees, interrupted careers, explain most differences in labour market participation between majorities and Muslim minorities. Yet differences exist between nationalities, generations and genders. In comparison to Dutch Turks and Dutch Moroccans, immigrants from countries like Iraq, Iran and Pakistan generally have a stronger position in the labour-market. This is due to the fact that most are considerably higher educated (FORUM, 2010, 13).

Unemployment rates are also higher among Muslim minorities than among the native Dutch population. In 2010, 4.5 percent of native Dutch were unemployed, compared to 14.6 percent of the Dutch Moroccan minorities and 11.3 percent of Dutch Turkish minorities (Huijnk, 2012, 132). Youth unemployment is particularly high among 'non-Western' ethnic minorities; one in four Dutch Moroccans and one out of five of Dutch Turkish youths aged between 15 and 25 is unemployed. The corresponding figure among native Dutch people of this age group is one in ten. In general, ethnic minorities face more obstacles to find paid work; they have less work experience, have more often been long-term unemployed, lack relevant social networks and face discrimination in the labour-market (Huijnk, 2012, 128-149).

Since the economic recession of 2009, unemployment figures have increased more steeply among ethnic minorities than among the majority population. This is, in part, related to the over representation of ethnic minorities in labour-market sectors that have mostly suffered from the economic crisis (industry, transport, construction) (Huijnk, 2012, 134-135). Unemployment has particularly increased among young people and women. In early 2012, 39 percent of Dutch Moroccan and 33 percent of Dutch Turkish youth was unemployed. In comparison to the native Dutch youngsters, of whom 9 percent are unemployed, this is approximately four times higher (FORUM, 2012, 1).

Research indicates that two-thirds of practicing Dutch Muslims of Turkish and Moroccan descent have more contact with their own ethnic group than with the majority population. Non-practicing Muslims have more contact with the native Dutch and also feel more at home in the Netherlands than orthodox Muslims do (FORUM, 2010, 30). Higher educated and 'second generation' Muslims feel more at home and identify less with their parents' country of origin than lower educated and 'first generation' Muslim migrants, yet also feel less accepted by Dutch society. This phenomenon is also referred to as 'the integration paradox': The higher the level of education of a migrant or an ethnic minority the more likely it is that this person participates in mainstream society and, henceforth, the more he or she is repeatedly confronted with societal exclusion and discrimination (Buijs, Demant & Hamdy, 2006). No matter

whether someone is born and raised in the Netherlands, participates fully in Dutch society and identifies with the country, one is likely to be considered an *allochtoon*, someone whose ‘original’ country is elsewhere and who (still) needs to ‘integrate’.

MECHANISM FOR COOPERATION AND DIALOGUE

The Dutch political system is characterised by relatively high levels of consensus-seeking and civil society involvement in policy making is used as a strategy to depoliticise social conflicts (Kriesi et al., 1995). Formal and informal mechanisms of consultation exist at various levels of authority, and for minority groups and communities. Nonetheless, organisations representing ethnic minority, refugee and migrant groups have not gained a strong position and, as they are largely dependent on state subsidies, are suffering from serious budget cuts. Moreover, there is no strong tradition of strategic litigation and the civil rights movement is small.

The Dutch political system and consensus-seeking culture (*polderen*) is influenced by the history of pillarisation (1913-1960), when Dutch society was organised along confessional and ideological lines. Members of different groups (Catholics, Reformed Protestants, Socialists and Liberals) went to different schools, sports clubs, social welfare organisations or hospitals and had their own political parties, trade unions and media networks. The elites of the respective pillars came together to govern the country and forge compromises, forming a typical consensus democracy that helped overcome religious cleavages.

Even though the pillarisation system started to crumble in the 1960s, the government copied the model to integrate labour-migrants and their families as they became settled residents. State subsidies stimulated the establishment of migrant minority organisations along ethnic lines. These organisations were considered to be powerful tools to stimulate the integration and emancipation of migrant groups. In 1985, an advisory and consultation structure was developed to enhance minorities’ political voice and to maintain social peace in a de-facto multicultural society. In 1997 the Act on the Consultation on Minority Policy (WOM) was adopted. On both a national and a local level, organisations of officially recognised minority groups (Surinamese, Antilleans, Turks, Moroccans and Southern Europeans) received substantial subsidies in order to represent and support their communities and facilitate their socio-economic participation in Dutch society (Entzinger, 2003; Open Society Foundations, 2010, 36-37).

During the mid-1990s, authorities gradually departed from this policy framework. While some argued that the organisations no longer represented the hybrid migrant communities, others warned that multicultural policies could lead to more segregation and isolation of ethnic minorities (Maussen, 2006; Open Society Foundations, 2010, 36-37; Vermeulen & Bovenkerk, 2012, 114). Consequently, advisory bodies and subsidies for migrant and minority organisations were abolished.

Nonetheless, the Minister of Integration continues to consult officially recognised ethnic minority representative bodies organised in the National Dialogue Structure with Minorities (LOM). Moreover, a new consultation structure has been established to specifically target the Muslim population in the Netherlands; in 2004 the government officially recognised the National Contact Body for Muslims (CMO) as a consultation partner (representing mainly Sunni Muslims) and one year later the smaller Contact Group Islam (CGI) (representing non-Sunni groups, including Alevite, Ahmadyia and Shia Muslims). Also, at a local level, representative and advisory bodies continue to exist. Both bodies receive state funding and regularly meet with state officials to discuss issues related to Islam and integration.

The extent to which these organisations can influence the political agenda remains open to question. Particularly after the so-called Fortuyn Revolt - the rise in prominence on the Dutch political spectrum of the late Pim Fortuyn - multiculturalism has been discredited (see Part 5). The official position of the former government (2010-2012) was that multiculturalism and the multicultural society has failed. Government policies rejected specific measures for ethnic minority groups (or for women) and have planned to abolish the existing consultation structure with representative bodies of minority groups (Coalition Agreement, 2010, 26).

DETAILS OF COMMUNITY GROUP OR CIVIL SOCIETY INITIATIVES OR CAMPAIGNS

Dutch human rights and minority organisations have not strongly mobilised on the issue of discrimination in relation to counter-terrorism or counter-radicalisation (Eijkman & Schuurman, 2011, 20). Only recently have civil society groups begun to raise their voices about the issue of potential side-effects. Since 2008, for instance, organisations like Privacy First and Vrijbit, as well as several individuals, have litigated against the storage of biometrical data in a central database under the new Passport Act² and by means of the social media, events, petitions and public debates raise awareness about the emergence of a ‘surveillance society’ in the Netherlands.³

Non-governmental organisation (NGOs), including the Dutch section of the International Commission of Jurists (NJCM), the Anne Frank Foundation, the Humanist Committee on Human Rights/AIM for Human Rights (HOM) and Buro Jansen & Janssen, have assessed the impact of counter-terrorism measures on human rights (Buro Jansen & Janssen, 2006; Van Donselaar & Rodrigues, 2008; Talsma & Ouchan, 2007; Vermeulen & Altena, 2005: see Annex Three). Concerns have been expressed, particularly within the academic community, about the risk that preventive stop-and-searches are enforced selectively (see Part Two). Critics have also stressed the potential discriminatory use of the legal obligation, introduced in 2005, to permanently carry ID documentation, as well as the expanded powers of law

² The Data Protection Act, Stb 1991, 498, entered into force September 26th 1991 (amended on October 14th 2011).

³ Some examples are the Privacybarometer (www.privacybarometer.nl); the annual Big Brother Awards (www.bigbrotherawards.nl); the annual national privacy debate (www.nationaalprivacydebat.nl); the congress ‘16 Miljoen BN’ers’ [16 million famous Duchies] (www.njcm.nl); or the petition against the storage of fingerprints in a national database (www.hetnieuwerijk.nl/petitie.php).

enforcement officials under the 2000 Aliens Act (Bovenkerk, 2009; Buro Jansen & Janssen, 2009; Eijkman, 2010; Van der Leun & Van der Woude, 2011; Walsum, 2009: see Part Two and Annex Three).

Partly due to these concerns, the Dutch National and Municipal Ombudsmen recently investigated the power of law enforcement officials to subject individuals to a ‘preventive search’ in specially designated ‘security risk zones’ (see Part Two and Annex Three). They concluded that, even though such measures may yield subjective feelings of security and therefore enjoy public and political support, they fundamentally challenge human rights including the right to privacy, bodily integrity and non-discrimination, and infringe on the assumption of innocence. The Ombudsmen expressed concerns about the lack of strict guidelines concerning when and on which basis preventive searches can be applied legitimately, warning of arbitrariness, lack of transparency and possibly discriminatory. They stated that “[t]here are criteria where the advantages of selection can never reasonably counterbalance their possible stigmatising effects. We [National Ombudsmen] believe that selection criteria based on race, religion or crime data are not permissible” (National Ombudsman, 2011, 41).

In 2011, the National Dialogue Structure with Minorities (LOM) raised the issue of ethnic profiling⁴ by Dutch law enforcement officials in their submission to the United Nations (UN) Human Rights Council and one year later this was echoed by the Dutch section of Amnesty International in the UN Universal Periodic Review (Amnesty International, 2011; LOM, 2011). The LOM also criticised the link that is increasing made between ethnicity and crime as well as nuisance, referring to the registration of ethnicity in the Reference Index for Youth at Risk (VRJ), a shared database for health and justice professionals and institutions for youth (see Part Three).

In general, however, Dutch minority organisations have not (yet) been visible stakeholders in the emerging opposition to counter-terrorism and counter-radicalisation measures or law enforcement. This is because they mostly rely on volunteers and if subsidised, usually through government-funded projects, they tend to focus on local counter-radicalisation efforts. Inter-ethnic mobilisation hardly exists and cooperation with mainstream civil society platforms such as Amnesty International is marginal. Moreover, the impact of security measures on - minority - communities is not common or much debated or researched (see Part Five).

KEY FINDINGS FROM DATA OR STUDIES ON GENERAL PUBLIC ATTITUDES TOWARDS COUNTER-TERRORISM MEASURES

Non-discrimination concerns in relation to counter-terrorism and counter-radicalisation legislation and policies are not addressed frequently in Dutch political and public discourse. In general, these measures are deemed necessary to prevent crime and extremist violence (Bovenkerk, 2009, 16-17; Eijkman &

⁴ The Anne Frank Foundation was the first civil society organization that raised awareness about the issue (see their Monitors on Racism and Extremism, which are published in cooperation with Leiden University).

Schuurman, 2011). Preventive stop-and-searches, for instance, are generally accepted by the public, yet probably unpopular among minority youth. Between 2002 and 2004 an evaluation study into the effectiveness of preventive stop-and-search operations was conducted in ten municipalities including Rotterdam and Amsterdam. The study also considered the impact on public opinion. Only four percent of respondents were negative about the instrument and half said that their sense of security had improved. However, the outcome differs for ethnic minorities; almost one in four respondents of minority descent in Rotterdam disagreed or strongly disagreed with the statement that preventive searches increased public safety. Minorities also felt that they were subjected to such searches more frequently than the general population (Open Society Foundations, 2009, 53, 153, fn. 240; Van der Torre & Ferwerda, 2005).

The study in Amsterdam yielded similar results. More than two-thirds of all respondents believed that the police would select on the base of race, ethnicity, gender and age when using the measure of preventive searches. This perception was higher among minorities than among majorities (Van der Torre et al., 2006, 46).

The majority population in the Netherlands, like in other European Union (EU) Member States, may not be aware of or concerned with the impact of security measures on minority communities. Little systematic evaluation of the effect of counter-terrorism and counter-radicalisation measures exists either in terms of effectiveness in preventing terrorist crimes or the impact on human rights such as perceived or real discrimination. There are only some ex-post evaluations of the implementation of counter-terrorism measures, without a critical analysis of the theoretical assumptions underlying the measures or their actual effect (Nelen, Leeuw & Bogaerts, 2010; see Annex Three).

Moreover, mobilisation in relation to the infringement of privacy or data protection rights as a side-effect of counter-terrorism or counter-radicalisation measures remains rather low in the Netherlands. In general the average Dutch citizen feels he or she has nothing to hide and, therefore, nothing to fear from security measures that may infringe upon the right to privacy (Eijkman, 2010). Compared to other EU Member States, Dutch citizens have a high level of public trust in national authorities; the 2011 special Eurobarometer, Attitudes on Data Protection and Electronic Identity in the European Union, for instance, shows that the level of trust in data collection and use by public and private institutions in the Netherlands is, together with Sweden and Finland, the highest of Europe (Eurobarometer, 2011, 139, 149).

Remarkably, in contrast to other EU citizens, the Dutch have become less - instead of more - concerned about their privacy rights. While in 1996, 47 percent of Dutch citizens were 'concerned' or 'very concerned' about their right to privacy, this decreased to 32 percent in 2008. The corresponding figures for Germany are 49 percent in 1996 and 86 percent in 2008 (Eurobarometer, 2008, 7-8).

Relatively high levels of public trust in state authorities, low levels of grass-roots mobilisation on the side-effects of counter-terrorism or counter-radicalisation measures and the absence of studies on the indiscriminate use of these measures may explain why a majority of the Dutch appear to endorse counter-terrorism and counter-radicalisation measures.

KEY FINDINGS FROM DATA OR STUDIES ON PERCEPTIONS OF LEVELS OR EXPERIENCES OF DISCRIMINATION

On 12 February 2008, the European Commission against Racism and Intolerance (ECRI, 2008) published a detailed report on the human rights situation in the Netherlands. It noted the negative shift in public discourse on immigrants and Islam, causing a ‘worrying’ societal polarisation and ‘substantial’ increase of Islamophobia. This outcome is corroborated by national and international research, which stresses that the perception of faith-based discrimination by Dutch Muslims is strongly related to political and social developments, which has increased since the publication of the ECRI report.

The 2009 European Union Minorities and Discrimination Survey (EU-MIDIS) revealed that almost one out of three Dutch Muslims of North African and Turkish descent had experienced discrimination on the basis of their faith and/or ethnic background at least once in the past 12 months, figures that respectively increase to 49 percent and 47 percent when looking at the past five years (EU-MIDIS, 2009, 138, 202). These figures correspond to the European average but, in contrast to other EU Member States, Dutch Muslims of Moroccan descent believe that discrimination on the base of religion or belief occurs more frequently than discrimination on the base of ethnicity or immigrant status (EU-MIDIS, 2009, 135).

The EU-MIDIS research also indicates that one in three persons of North African decent in the Netherlands has been a victim of a crime, with almost half of them considering the latest assault or threat to be motivated by racism (EU-MIDIS, 2009, 135). The corresponding figures among Dutch Muslims of Turkish descent are one in five, with one in ten considering a racist motivation to be a factor in the crimes experienced. Only one in five reported the incident to the police (EU-MIDIS, 2009, 197).

A survey conducted in 2009 as part of the annual ‘Monitor Race Discrimination’ showed that half of all Dutch Muslims of Moroccan descent had experienced discrimination in the previous year, an even higher rate than that in the EU-MIDIS survey. Dutch Moroccan appeared to be the most discriminated minority group in the Netherlands and also reported more serious racist incidents than Turkish minorities (Van Bon, Boog & Dinsbach, 2009, 9-10).

In addition, reports of discrimination to the Dutch police, antidiscrimination offices (ADVs), the Equal Treatment Commission (CGB)⁵ and the online Internet Discrimination Office (MDI) show structural patterns of discrimination against Muslim minorities. In 2008, the first time when faith-based complaints

⁵ As of 2012 the Netherlands Institute of Human Rights.

were disaggregated according to different denominations, 79 percent of all incoming faith-based complaints at ADVs concerned Islam. Likewise, the majority of cases dealt by the CGB in the period between 2004 and 2008 concerned unequal treatment on the grounds of Islam (Dinsbach & Walz, 2009, 188-193).

As few people actually report discrimination. Complaints issued to the police, ADVs or CGB are only the tip of the iceberg; in the EU-MIDIS research only 14 percent of all cases of discrimination experienced by Dutch Muslims of North African descent were reported to an office or authority or at the place where the incident occurred. This is lower than the overall reporting rate of 21 percent among European Muslims. Rates were higher among Dutch Muslims of Turkish origin (22 percent) (EU-MIDIS, 2009, 135, 197).⁶

Complaints of discrimination, violence and hate speech increased in periods of heated debates about Islam or after events like the 9/11 terror attacks (Dinsbach & Walz, 2009, 193). In a similar vein, perceptions of faith-based discrimination decreased once the political climate calmed down. In 2005, for instance, shortly after the murder of Theo van Gogh and after death threats against Ayaan Hirsi Ali were issued, 26 percent and 36 percent of Dutch Muslims of, respectively Turkish and Moroccan descent, said that were discriminated against. The corresponding figures for 2009 were 17 percent and 25 percent, respectively (Van Bon, Boog & Dinsbach, 2009, 9-10).

When focusing on the nature of the experience of discrimination, it becomes clear that Dutch minorities of Turkish or Moroccan descent experience most discrimination in work-related circumstances: In the EU-MIDIS survey three out of four North African Muslims and four out of five Turkish Muslims in the Netherlands felt that ethnic or faith-based discrimination impeded their workplace advancement (recruitment, training, promotion) (EU-MIDIS, 2009, 135, 200). Over a period of five years, 28 percent of the interviewed people of North African descent and 22 percent of Turkish descent had personally experienced discrimination when looking for a job and 23 percent of both groups when at work. The corresponding figures for the European average are, respectively, 38 percent and 30 percent (EU-MIDIS, 2009, 137, 204).

National situation testing suggests that employers are most likely to discriminate during the first stage of the selection procedure (phone calls and application letters) and particularly in lower and medium skilled jobs and against minority men (Andriessen, Nievers, Faulk & Dagevos, 2010).

⁶ Scepticism that anything would happen was mentioned as the main reason for not reporting discrimination. Another reason may be the low awareness of anti-discrimination bodies among Dutch Muslims. But the data to support this claim is ambivalent. The EU survey showed that 84 to 85 percent of Dutch respondents of Turkish or Moroccan descent were unable to mention an anti-discrimination office or authority and that 52 to 59 percent had never heard from them when they were mentioned to them. The Dutch survey, in contrast, showed that 70 percent of ethnic minorities were aware of the existence of the anti-discrimination offices or the Equal Treatment Commission. Remarkably, however, only 29 percent knew that they could also report discrimination to the police.

POLICY TARGETS OF DUTCH COUNTER-TERRORISM AND SECURITY POLICY

The primary target group of Dutch counter-terrorism policy is “people or groups that commit serious violence based on ideological motives or that prepare, or threaten to carry out, such violent acts - that are targeted at people, or acts which are aimed at causing serious, socially-disruptive material damage” (National Coordinator for Counter-terrorism and Security (hereafter: NCTV), 2011, 22).

As Dutch counter-terrorism policy has evolved, the target group has developed over time, but a constant factor is the link to international and ‘home-grown’ jihadist networks. According to the NCTV jihadism is a “political ideology aimed at fulfilling the perceived God-given mission to conquer the world with Islam, by means of a ‘holy war’ against all infidels”.⁷ While Dutch counter-terrorism policy clearly states that it does not specifically focus on a certain group or ideology, policy documents make clear that the terrorist threat is primarily seen as deriving from radical or extremist Islamist groups and individuals (General Intelligence and Security Service (hereafter: AIVD) 2011; AIVD, 2010; NCTV, 2011). No religious extremist groups other than jihadists are considered key policy targets. Other non-religious extremist groups including animal rights extremists, anti-Islamic groups, anti- or alterglobalist groups or extreme right-wing or left-wing groups, are also monitored by Dutch authorities, but they are not the main focus of the national counter-terrorism strategy 2011-2015 (AIVD, 2011; NCTV, 2011; Tanja, 2008; see Part Three).

In mid-2005, Dutch counter-terrorism policy focused on radical or extremist Muslims such as Mohammed B., the convicted murderer of the filmmaker and Islam-critic Theo van Gogh (see Parts Four and Five). Dutch-born descendants of Turkish and Moroccan immigrants, the ‘second generation Islamic immigrants’ thereby became the primacy focus of counter-terrorism measures (Vermeulen & Bovenkerk, 2012, 23, 36). Dutch authorities have developed their traditional ‘comprehensive or broad approach’ to fight post-9/11 terrorism. This means that, on the one hand, counter-terrorism measures focus on identifying, monitoring and de-radicalising potential violent jihadists (the hard or repressive approach) and, on the other hand, on fighting discrimination, fostering social cohesion and stimulating the socio-economic integration of (Muslim) minorities (the soft or preventive approach) (De Graaf, 2011; De Graaf & De Graaff, 2008; NCTV, 2011; NCTV, 2012a). This diagnosis - that feelings of exclusion and unattainable integration can contribute to the radicalisation of Muslim youngsters who may, in turn, be attracted to violent Islamist ideologies - is also referred to in the 2008 Monitor Racism and Extremism of the Anne Frank Foundation and Leiden University (De Graaff, 2008, 130).

From March 2008 onwards, the focus has shifted from ‘homegrown’ groups to international jihadist support networks, in Pakistan and Afghanistan, ‘failed’ or ‘failing’ states such as Yemen and Somalia, and,

⁷ NCTV, ‘Jihadisme en jihadistisch terrorisme’ [Jihadism and jihadist terrorism], NCTV website: http://www.nctv.nl/onderwerpen/terrorismebestrijding/wat_is_terrorisme/jihadisme_en_jihadistisch_terrorisme.aspx (accessed August 15, 2012).

to a lesser extent, the Maghreb and Sahel regions, and their appeal to radicalised Muslim youngsters from migrant communities in the Netherlands. The Dutch military involvement in Afghanistan at that time, the government's (continuing) support for a military presence in Iraq, and the polarised domestic debate concerning Islam and integration in society were all seen as breeding grounds for jihadists to plot terrorist attacks on Dutch soil and to recruit supporters among radicalised Dutch Muslims (AIVD, 2010; NCTV, 2012b).

Policy attention has also shifted to detecting and countering patterns of violent radicalisation among individuals, so-called 'lone wolves', who are defined as "people posing a threat to Dutch society or to persons from the standpoint of a clear political or religious motivation" (NCTV, 2011, 48; see also Bakker & De Graaf, 2011). Since the attacks in Norway by Anders Behring Breivik on 22 July 2011, there is an increasing awareness that terrorism may also derive from other, non-Islamist, sources, yet the main focus continues to lie with the perceived threats posed by jihadists (NCTV, 2012b). For instance, in 2011, the AIVD stated "even though a development towards terrorist violence is not foreseen from other extremist groups than jihadists, one can never exclude an action by a radical individual, a 'lone wolf'" (AIVD, 2011, 12). And in 2011, the NCTV wrote that, "[t]hey [jihadists] constitute the most acute and probable future terrorist threat against the Netherlands and Dutch interests abroad" (NCTV, 2011, 23; see also AIVD, 2010).

The vast majority of Dutch Muslims (82 percent) rejects violence. Some seven percent of Dutch Muslims believe that violence is, in specific circumstances, a legitimate tool to attain a political ideal. Sensitivity to radicalism and extremism is slightly higher among orthodox Dutch Muslims, who, more than other groups, believe that violence is sometimes a legitimate means for religious goals (Roex et al., 2010, 249). An estimated eight percent of Dutch Muslims are (strong) orthodox or Salafist Muslims; for Dutch Moroccan Muslims this percentage is 15 percent and, for Dutch Turkish Muslims, five percent (Roex, Van Stiphout & Tillie, 2010, vii). The mainstream Dutch Muslim population is increasingly taking a stand against radical Salafism and Salafist centres have distanced themselves from the use of violence. The AIVD talks about a 'self-cleansing' process in Dutch Muslim communities (AIVD, 2010, see 1.4.2).

Part Two: Legal Context

This section discusses the legal context of counter-terrorism powers. The Dutch government's counter-terrorism approach has led to several important legal reforms. Some of these reforms were undertaken in order to implement EU Framework decisions⁸ while others were the products of national legislation. Such laws have predominately viewed terrorism as a criminal justice concern, consequently strengthening the ability of law enforcement and public prosecutors to deal with it. There are only two 'real' new counter-

⁸ EU Framework Decision 2002/475/JHA; Framework Decision 2008/919/JHA.

terrorism laws: The 2004 Crimes of Terrorism Act⁹ and the 2006 Act on Expanding the Scope for Investigating and Prosecuting Terrorist Crimes.¹⁰ Just like the majority of counter-terrorism legislation, which mostly entailed criminal (procedural) and - to a lesser extent - administrative (procedural) and civil law, these laws reformed existing acts (see Annex One). Additionally the legal justification for other terrorism-related measures is based on, but not limited to, the Municipal Act, the Alien Act, the General Administrative Law Act, the Civil Act, the Sanctions Act, the Compulsory Identification Act, the Access to Data Act, the Dual Nationality Act, the Football Hooligan and Serious Nuisance Act and the Draft Preventive Searches Act.

The 2004 Crimes of Terrorism Act is of particular interest. Enacted to implement a 2002 EU Framework decision that would make suspects of terrorism-related crimes eligible for heftier sentences, this act serves predominately to amend existing criminal offences. These now include the same crime, but added "...for the aim of terrorism", which entails an aggravated level of punishment (e.g. an increase in prison sentence by a maximum of 50 percent). Key sections included threatening to commit a terrorist crime and the membership of a terrorist organisation (see Part Four, the Hofstad Group and Piranha cases).¹¹ Additionally, the jurisdiction to try terrorist crimes was broadened.¹² For example, the Public Prosecution Services may now prosecute persons against whom a request for extradition has been made in relation to terror allegations, but who cannot be extradited. Furthermore, the Crimes of Terrorism Act modified the criminal code beyond the original EU requirements to incorporate terrorist recruitment and conspiracy to commit terrorist acts as distinct offences (see Part Four; for terrorist recruitment, the Piranha case, and, for conspiracy, the Sunny O. case).¹³

The 2006 Act on Expanding the Scope for Investigating and Prosecuting Terrorist Crimes amended the criminal procedural code (see Annex One). This act allows law enforcement officials to search suspects without requiring concrete suspicion of a crime, broadened their ability to utilise 'special investigative powers', take people into custody and delay access to the case file. A key concept of the amendments to the criminal procedural code was that the police no longer required 'suspicion' of a terrorist crime but could act upon 'indications' of a terrorist crime, a considerably lower threshold regarding standards of evidence than 'suspicion' (see Annex Three).¹⁴ However, monitoring suggests that these kinds of criminal investigations are more the exception than the rule. Of the 17 criminal investigations initiated between February 2010 and February 2011, only two were based on the indications of a terrorist crime threshold (WODC, 2012, 17-21).

⁹ Council of Ministers Act, Stb. 2004, 1296, entered into force 10 August 2004.

¹¹ Sections 285 and 140(a) Criminal Code.

¹² Jurisdiction (sections 4(14/15/16) and 4a Criminal Code).

¹³ Terrorist recruitment (section 205) and terrorist conspiracy (sections 80(3), 114b, 120b, 176b, 282c, 289a, 304b, 415b).

¹⁴ Title IVa, Title Vb, section 126zq-zs Criminal Procedural Code, Investigation and Prosecution of Terrorist Offences (Extension of Powers) Act, Stb. 2006, 580, entered into force 1 February 2007.

Other relevant counter-terrorism legislation has either been revoked or has so far not been used. The draft administrative act, the ‘National Security (Administrative Measures) Act¹⁵’, was withdrawn after a governmental evaluation of counter-terrorism measures (see Annex One and Three). Furthermore, an extension of the Intelligence and Security Services Act 2002¹⁶ was revoked in 2008 by the Minister of Security and Justice after the Senate expressed privacy concerns (see Annex One and Three). The Protected Witnesses Act¹⁷, which broadens the courts’ abilities to hear intelligence officers as witnesses and thereby increasing public prosecutors’ ability to use intelligence reports as evidence against suspects, has never been used. Nonetheless, the use of intelligence information in criminal cases has, to some extent been allowed (see Part Four, Jihad and Piranha cases).

LEGAL DEFINITION OF TERRORISM

A legal definition of terrorism was part of the 2004 Crimes of Terrorism Act. As described in article 83a of the Criminal Code, it states¹⁸ (see Part Four, the Hofstad and the Piranha cases):

“A terrorist objective is understood to mean the objective to cause serious fear in/ the population (or part of the population) in a country and/or to unlawfully force a government or international organisation to do something, not to do something and/or to tolerate certain actions and/or to seriously disrupt or destroy the fundamental political, constitutional, economic or social structures of a country or an international organisation”.

What is remarkable is that the Dutch legal definition of terrorism appears to be broader than the EU definition¹⁹, which only refers to seriously intimidating the population and not *part/of*. Furthermore, the Dutch definition includes *all* actions that could destroy the political, constitutional, economic and social order in the Netherlands, rather than the more limited EU focus on only those acts that pose a *serious* threat.

STOP-AND-SEARCH POWERS IN THE STREETS AND AT AIRPORTS

Any person, vehicle or object within a designated ‘security risk zone’ during a set period of time may be subjected to a ‘preventive search’ in a public area by law enforcement officials. This instrument was introduced at a municipal level in 2002 as an additional means of maintaining public order or searching

¹⁵ National Security (Administrative Measures) Act, Parliamentary Papers II 2005/06, 30566, no. 1-5, Parliamentary Papers II 2006/07, 30566, no. 6-13 and Parliamentary Papers I 2006/07, 30566, no. A-B, passed House of Representatives in March 2007, withdrawn in June 2011 while pending before Senate.

¹⁶ Extension of the Intelligence and Security Services Act 2002, Stb. 2002, 148, entered into force 7 February 2002. Parliamentary Papers II 2005/06, 30553, no. 2 and Parliamentary Papers I 2008/09, 30553, no. E, passed House of Representatives in October 2007, withdrawn in March 2011 while pending before Senate.

¹⁷ Protected Witnesses Act, Stb. 2006, 460, entered into force on 28 September 2006. Amended the Criminal Procedural Code.

¹⁸ Article 83a Criminal Code.

¹⁹ Terrorist offences "include intentional acts, by their nature and context, which may be seriously damaging to a country or to an international organisation, as defined under national law, where committed with the aim of: (i) seriously intimidating a population, or (ii) unduly compelling a Government or international organisation to perform or to abstain from performing any act, or (iii) destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or international organisation" (EU Framework Decision 2002/475/JHA).

for weapons.²⁰ These powers are vested in the mayor by means of a by-law,²¹ which is passed by the municipal council after consultations between the mayor and the public prosecutor. When these rules apply, the police are empowered, by authority of the mayor or the public prosecutor, to search any individual as well as goods and vehicles, without having any grounds for suspicion.²² Those affected have six weeks to submit a written objection and/or request a judicial review of this decision on the basis of the General Administrative Law Act. Since 2007, a number of permanent security risk zones have been designated by the ‘Degree Investigation of Terrorist Crimes’.²³ This is meant to facilitate terrorism-related investigations: All airports, the train stations of the four major cities, the Media Park in Hilversum and the nuclear power station in Borssele, the Houses of Parliament (*‘Binnenhof’*).²⁴ As these are semi-permanent, there are no options for citizens to object or request a judicial review. If there is an indication of a terrorist crime and depending upon the particular circumstance, law enforcement officials have the authority to search anyone (WODC, 2012, 4).

POWERS TO DETAIN PEOPLE

The 2006 Act on Expanding the Scope for Investigating and Prosecuting Terrorist Crimes also made it possible for subjects of an indication-based investigation to be held in custody for up to 27 months (for other crimes this is 104 days).²⁵ Furthermore, due to the alleged complexity of police investigations into terrorist crimes, their case file may be withheld for a period from 90 days to two years. Monitor research that includes interviews with investigating judges and defence counsel suggests that this is more the exception than the rule (WODC, 2012; see Annex III). Criminal justice actors justify the necessity of the broad powers on the basis of urgency in threatening situations, whereas the defence counsel feel that they are too broad (WODC, 2012, 9).

INCITEMENT TO TERRORISM

The criminal offence of public provocation and incitement was part of the aforementioned 2004 Crimes of Terrorism Act. Several sections of the Criminal Code now penalise incitement to terrorism. Incitement to any criminal offence or act of violence against the public authorities, which also covers incitement to terrorist crimes, can be punished with a prison sentence of up to five years and/or a fine.²⁶ For incitement to occur, the criminal offence does not need to take place. Furthermore, the possession of inflammatory

²⁰ Section 151b Municipalities Act and section 50-52(3) Weapons and Munitions Act. Note for general safety and security purposes these powers may be extended a draft Act ‘Extension of Preventive Searches, which amends the Municipalities Act, the Police Act and the Weapons and Munitions Act’ Parliamentary Papers 2011-2012, 25112, by 14 December 2011, is pending in Parliament.

²² Section 14 Police Act, articles 126 zq and 141 Criminal Procedural Act and section 50(3), 51(3) and 52 Weapons and Munitions Act.

²³ The Investigation of Crimes of Terrorism Decree, entered into force on 21 December 2006. A decree is a government decision to the effect that statutory regulations may be elaborated further (Amvb).

²⁴ The Investigation of Crimes of Terrorism Decree, entered into force on 21 December 2006.

²⁵ Usually the person is charged during this period. Nonetheless, in case the suspect is charged with a terror crime this period could be extended. See section 67(4)v Criminal Procedural Code, the Investigation and Prosecution of Terrorist Offences (Extension of Powers) Act, Stb. 2006, 580, entered into force 1 February 2007.

²⁶ Section 131(2) Criminal Code.

literature is prohibited.²⁷ Even though the glamorisation, extenuation, trivialisation or denial of certain - international - crimes is prohibited, this does not apply only to terrorist crimes. A draft proposal to criminalise this was revoked after criticism by members of Parliament.

OFFENCES FOR SUPPORTING TERRORISM

There are several offences for supporting terrorism within the Dutch legal framework. These can be divided between punishments for being a member of a terrorist group and punishments aimed at those who support terrorist organisations²⁸. Being a member or supporter of a terrorist organisation has led to jurisprudence in the Hofstad Group and Piranha cases (see Part Four). Financial counter-terrorism measures²⁹ are based on international law, which is directly applicable in the Netherlands, and domestic law. Most focus on the prevention of money-laundering and terrorist financing. Subsequently, the personal assets of an individual can be frozen or a civil society organization may be banned. Henceforth, this is either the consequence of a decision by the UN Security Council, the EU or the Dutch Minister of Foreign Affairs. Dutch financial counter-terrorism measures have been evaluated thoroughly and have been amended on several occasions (see Annex III). Between 2001 and 2011, approximately 20 persons and five organisations were subjected to domestic sanctions or referred by the Netherlands to the UN or EU sanctions regimes.³⁰

Even though in 2011 several dozen persons travelled abroad to take part in ‘jihad’ and the 2009 Criminalisation of Training in a Terrorist Camp Act has been implemented, nobody has yet been convicted for this criminal offence (AIVD, 2011, 11).³¹

POWERS TO DEPORT INDIVIDUALS IN RELATION TO TERRORISM

According to a special provision of the Aliens Act, foreign nationals posing a threat to national security or public order may be declared ‘undesirable aliens’ and subjected to a prohibition to enter the territory for an unlimited period of time.³² A permit may be denied or revoked if the foreigner concerned is regarded as posing a threat to national security or public order (specific grounds must be present for this conclusion). This could be used in cases of alleged involvement in terrorism and possibly in addition or instead of the criminal justice track (see Part Four, the Eik, Jihad, Hofstad Group and Piranha cases). An assessment that an individual poses a threat to the national security is made on the basis of an individual report from the AIVD. This report is not shared with the person whom the report concerns or with his or her lawyer. Only the immigration judge assigned to the case may review the file. This judge may request

²⁷ Section 132(3) Criminal Code.

²⁸ Section 140(a) Criminal Code.

²⁹ Among others: the Money Laundering and Terrorist Financing (Prevention) Act, Stb. 303, entered into force 15 July 2008 / 1977 Sanction Act, Stb. 93, entered into force 21 April 1980 (amended Stb. 196, entered into force 13 April 2000) / Sanctions Terrorism 2007-II Decree, entered into force 30 October 2007.

³⁰ For an overview see the National Government Report, 2011, 69-75.

³¹ Act on Criminalisation of Training in a Terrorist Training Camp, Stb. 2009, 245, entered into force 12 June 2009. This was added to the criminal code.

³² Section 14 Alien Act, Stb. 2000, 0324, entered into force 23 November 2000 / Chapter 4.4, Aliens Act Implementation Guidelines 2000.

further information from the intelligence officer or others and the review takes place behind closed doors at the AIVD headquarters. It is not known how much of the dossier is made available to the judge, or for that matter, how often judges have requested further background information on the file.

LEGAL FRAMEWORK FOR CHECKS AND BALANCES

A special legal framework to address checks and balances on the operation of counter-terrorism laws and policies has, for most counter-terrorism laws, not been introduced. In general, existing accountability mechanisms apply (see Part Three). To illustrate, Parliament held the government accountable for the integral effect of counter-terrorism legislation and measures by the Pechthold motion, which led to a preliminary enquiry (Suyver Committee) and then later an official governmental evaluation (Committee on the Evaluation of Counter-terrorism Policy (Suyver Committee) (2009); National Government Report (2011); see Annex Three).³³ Another example is accountability exercised through the criminal courts, who have acquitted 97.5 percent of the persons charged with terror offences (Onjo, 2011). Also, appeals and cassations have led to reconsiderations in relation to implementing counter-terrorism legislation (see Part Four, the Hofstad Group and Piranha cases). Some legal reforms were passed under the condition that they would be reviewed. For instance, the 2006 Act on Expanding the Scope for Investigating and Prosecuting Terrorist Crimes, which amended the criminal procedural code, is annually monitored and evaluated after a period of five years (WODC 2008/2009/2010/2012, see also Part Four and Annex Three).³⁴ Last but not least, law enforcement officials who search people in permanent security risk zones are obliged to inform people on paper about the legal basis for the search and how to issue a complaint.³⁵

MAIN HUMAN RIGHTS AND ANTI-DISCRIMINATION LEGISLATION IN RELATION TO TERRORISM

In relation to terrorism, general human rights and anti-discrimination legislation applies. Discrimination between individuals on the basis of race, ethnicity, religion, sex, nationality, language etc. is prohibited by international law that is directly applicable in the Kingdom of the Netherlands,³⁶ as well as by the Dutch Constitution, the Equal Treatment Act and a number of provisions of criminal and administrative law. Some of these statutory provisions relate to institutional policy and the actions of police, security, immigration and customs officials. Section 1 of the Dutch Constitution enshrines both a principle of universal equality and a ban on discrimination. The principle of equality means that everyone must be treated equally in equal circumstances and that even though opinion may be divided on this point, there is

³³ Pechthold Motion, Parliamentary Papers 2007-2008, 31 2000, VI, nr.79, 15 November 2007. See also Committee on the Evaluation of Counter-terrorism Policy (Suyver Committee) (2009); National Government Report (2011).

³⁴ Investigation and Prosecution of Terrorist Offences (Extension of Powers) Act, Stb. 2006, 580, entered into force 1 February 2007.

³⁵ Section 3, Investigation of Crimes of Terrorism Decree, entered into force 21 December 2006.

³⁶ As the Netherlands adheres to a monistic system in which international conventions and the decisions of organisations established under international law are self-executing, international laws do not have to be transposed into national legislation. See articles 93 and 94, Constitution of the Kingdom of the Netherlands, 12 September 1840 (Bulletin of Acts and Decrees 1840, 54).

no justification for making distinctions, even if this is done on reasonable and objective grounds.³⁷ The Netherlands is also a state party to almost all UN human rights conventions, including the UN Convention on the Elimination of Racial Discrimination.

Furthermore, as a state party and member of the Council of Europe and the EU, the Netherlands has an obligation to comply with international conventions and EU legislation; regulations, directives and decisions. The most important of these are the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), especially Article 14,³⁸ the Twelfth Protocol to the ECHR,³⁹ the EU Race Directive, especially Article 2, and the EU Antidiscrimination Directive,⁴⁰ the Lisbon Treaty and the EU Charter of Fundamental Rights.⁴¹ Where the ECHR is concerned, it should be noted that section 14 provides protection from discrimination only in combination with one of the other rights. This situation was remedied by the ratification of the Twelfth Protocol to the ECHR in 2005, since this Protocol provides for the general prohibition of discrimination in all *de facto* and *de jure* acts by the government (that is, including acts by law enforcement officials).

Since it is widely held by legal experts that section 1 of the Dutch Constitution prohibits discrimination in a vertical sense - that is, between the state and its inhabitants - supplementary equal treatment legislation exists, which is applicable in a horizontal sense, among citizens. Dutch equal treatment legislation derives from a variety of international conventions and from article 1 of the Dutch Constitution. The Equal Treatment Act (AWGB)⁴² prohibits discrimination on the basis of religion and belief, political opinions, race, sex, nationality, heterosexual or homosexual orientation or marital status. This act distinguishes between direct and indirect forms of discrimination, whereby some forms of indirect discrimination may be justified on objective or legal grounds (section 2, AWGB). Complaints may be submitted to the Equal Treatment Commission⁴³, whose conclusions are authoritative but not binding.

In consonance with the UN Convention on the Elimination of Racial Discrimination, discrimination is a criminal offence in the Netherlands. Section 90 of the Criminal Code gives the following definition: “Discrimination shall be defined as any form of distinction, any exclusion, restriction or preference, the purpose or effect of which is to nullify or infringe upon the recognition, enjoyment or exercise on an equal footing of human rights and fundamental freedoms in the political, economic, social or cultural fields or any other field of public life”.

³⁷ Senate / House of Representatives of the States General, Ratification of Protocol 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in Rome on 4 November 2000 (Dutch Treaties Series 2001, 18 and 173); Recommendations and additional report, Parliamentary Papers 2001-2002, 28100 (R1705), no. 129a/A, 5 November 2000.

³⁸ For more information, read Senate / House of Representatives of the States General, Ratification of Protocol 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in Rome on 4 November 2000 (Dutch Treaties Series 2001, 18 and 173); Recommendations and additional report, Parliamentary Papers 2001-2002, 28100 (R1705), no. 129a/A, 5 November 2000.

³⁹ Section 1, paragraph 2 of the Twelfth Protocol to the ECHR prohibits discrimination by any public authority. The Netherlands ratified this Protocol on 1 April 2005 (Bulletin of Acts and Decrees 2004, 302).

⁴⁰ The EU Equal Treatment Directive (2008) on the Equal Treatment of Persons Irrespective of Religion or Belief, Disability, Age or Sexual Orientation, no COM(2008)0426-C6-0291/2008-2008/0140 (CNS) supplements earlier directives, including the EU Race Directive (2000), Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin, no 2000/43/EC, 29 June 2000.

⁴¹ The Charter of Fundamental Rights of the European Union (7 December 2000, amended 12 December 2007 Strasbourg).

⁴² The Equal Treatment Act, Stb. 1994, 230, entered into force 2 March 1994 (amended on 7 November 2011).

⁴³ As of 2012 the Netherlands Institute of Human Rights.

In addition, specific forms of discrimination are regarded as criminal offences in the Netherlands. Aside from offences with a discriminatory element, such as intimidation, incitement, dissemination and support in relation to activities geared towards discrimination, discrimination in the exercise of public office and in one's occupation or business activities is also a criminal offence.⁴⁴

The Dutch public authorities are obliged to adhere to the above-mentioned prohibitions on discrimination and the principle of equality. According to the definition used by the Ombudsman, these are also requirements of good governance (based on human rights and substantive good governance), which must be observed by municipal authorities and other administrative authorities (National Ombudsman, 2009). Administrative courts are involved in maintaining public order, supervisory officials monitor compliance with regulations under administrative law, and administrative bodies impose sanctions. In a general sense, administrative courts rule on the basis of the General Administrative Law Act.⁴⁵ Additionally, there is legislation governing specific areas of administrative law, such as the 2000 Aliens Act. Neither the Aliens Act nor the Aliens Act Implementation Guidelines 2000 refer explicitly to the prohibition of discrimination. However, the Aliens Act does include a guarantee of non-discrimination in the control of aliens. Law enforcement officials are under an obligation to perform 'stop and check' activities in a non-discriminatory way. Law enforcement officials responsible for border and alien control are not permitted to stop someone unless there is good reason to suspect, on the basis of objective facts and circumstances, that the person is an illegal resident. Even so, a 2004 evaluation of the Aliens Act revealed inconsistencies in practice (Boekhoorn, 2004).⁴⁶

There is also a specific Police Code of Conduct: The 2007 General Discrimination Directive,⁴⁷ which relates to passing on information, pre-investigation, investigation and prosecution of those charged with discrimination (see Part Three). Special public prosecutors attached to regional Public Prosecutor's Offices and liaison officers in the police service are responsible for bringing offenders to justice. The basic point of departure is that the police are obliged to send official reports to the Public Prosecution Service.

Part Three: Policy and Policing Context

This section covers the policy context for counter-terrorism and law enforcement. While elaborating upon the roles and responsibilities of the different actors involved in counter-terrorism policy and policing, as well as existing accountability mechanisms, it focuses on key counter-terrorism policies that exist in the Netherlands and changes that have occurred since 2001. The second part of this section discusses the wider policing context, discussing data on levels of public trust in law enforcement agencies and of perceptions of ethnic profiling by ethnic and religious minority groups that are affected by Dutch

⁴⁴ Sections 37c-f and 429s quater, Criminal Code.

⁴⁵ General Administrative Law Act, Stb. 1992, 315, entered into force 4 June 1992 (amended on 24 May 2012).

⁴⁶ This evaluation is part of the advisory report issued by the Aliens Act 2000 Evaluation Committee.

⁴⁷ Board of Procurators-General, General Discrimination Directive, no 2007A010, 12 October 2009.

counter-terrorism policing. It also concentrates on several key events and issues that have influenced the relationship between minority groups and the police. The section ends with an overview of existing policies and guidelines on non-discrimination for Dutch law enforcement and security officials and with an analysis of mechanisms that exist for cooperation between minority groups and government officials in relation to law enforcement in general and counter-terrorism in particular.

KEY POLICIES IN RELATION TO COUNTER-TERRORISM INCLUDING COUNTER-RADICALISATION POLICIES

On the national level, the key policy in relation to counter-terrorism and counter-radicalisation is the ‘National Counter-terrorism Strategy 2011-2015’ (NCTV, 2011). It was developed on the basis of the recommendations contained in the national government’s report on the evaluation of counter-terrorism measures, which built upon the earlier Suyver Committee report (See Annex Three).⁴⁸ The National Counter-terrorism Strategy reflects upon and further develops earlier action plans, policy documents, letters to parliament, reports and public policies that have been developed under the auspices of the Ministry of Security and Justice, the Ministry of the Interior and Kingdom Relations and other governmental institutions (NCTV, 2011; see Annex Two).

Because in the philosophy of the Dutch so-called ‘comprehensive approach’ the process of radicalisation precedes the decision to use violence for political or ideological purposes, the national counter-terrorism strategy focuses both on counter-terrorism and counter-radicalisation. Henceforth, this ‘grand strategy’ is the Dutch comprehensive framework to integrate all public policies in relation to terrorism and radicalisation (Crenshaw, 2011). Obviously, other public policies exist at the national and local level. Both in the development phase as well as in the implementation phase of counter-terrorism and counter-radicalisation policies, there are many other actors, who carry responsibility. In 2007, for example, the Ministry of the Interior and Kingdom Relations established the Action Plan Polarisation and Radicalisation 2007-2011 (see Annex Two). Furthermore, as in other European countries, there are a considerable number of Dutch municipalities who have developed their own anti-violent extremism or radicalisation polices (Vermeulen & Bovenkerk, 2012; De Graaff, 2008; Zannoni 2011).

To some extent Dutch counter-terrorism and counter-radicalisation policies have suffered from competing interests between government agencies. For instance, only in 2011⁴⁹ did key actors, including the AIVD and the NCTV, begin to use the aforementioned ‘working definition’ of terrorism: “[T]errorism is the threat of, or the committing of, serious violence based on ideological motives against, people, or deeds aimed at causing socially-disruptive material damage with the goal to cause social change, to instil fear among the population or to influence political decision-making” (NCTV, 2011, 20). Even

⁴⁸ Pechthold Motion, Parliamentary Papers 2007-2008, 31 2000, VI, nr.79, 15 November 2007; Committee on the Evaluation of Counter-terrorism Policy (Suyver Committee) (2009); National Government Report (2011).

⁴⁹ Parliamentary Papers II 2009/2010, 29574, no. 172, 15 December 2009/Parliamentary Papers I 2009/2010, 30164, no. H, 18 August 2012.

though this could be explained by different perspectives and needs of national policy makers, intelligence officials, law enforcement officials or local municipal representatives, it also illustrates the reason why more streamlining was deemed necessary by the national government. In 2011, for example, the Minister of Justice and Security became the coordinating authority for counter-terrorism and counter-radicalisation.

OVERVIEW OF THE CHANGES IN POLICIES SINCE 2001

As most of the counter-terrorism policies, including counter-radicalisation policies, were drafted after 2001, the overview of the changes in policies since 2001 is provided in the aforementioned paragraph (see also Annex Two).

KEY INSTITUTIONAL STRUCTURES FOR COUNTER-TERRORISM POLICY AND POLICING

In the Netherlands there are approximately 20 governmental institutions involved in counter-terrorism. The Minister of Security and Justice coordinates all counter-terrorism efforts. However, the Minister of the Interior and Kingdom Relations, who is politically responsible for the AIVD, is an important actor as well (National Government, 2012). By using its resources to map ‘trends’ in radicalisation and identify individuals and organisations that could pose a threat to national security, the AIVD fulfils a central role in the comprehensive Dutch counter-terrorism strategy. The NCTV, which was established in 2005, is primarily concerned with streamlining Dutch counter-terrorism measures and developing policy. It also conducts threat level assessments (Abels, 2008; see also Part Four). In addition to the AIVD and the NCTV, other important actors are the Public Prosecution Service (OM) the National Police Services Agency (KLPD), the Military Intelligence and Security Service (MIVD), the Fiscal Information and Investigation Service (FIOD), the Royal Military Constabulary (KMar), and the Immigration and Naturalisation Service (IND) as well as municipal councils. These different actors cooperate in exchanging information on networks and individuals who could pose a threat to national security, thereby enabling a timely response by the institution best suited to that task.

Furthermore, because intelligence plays an important role in counter-terrorism, the AIVD, the NCTV, the MIVD, the OM, the IND, the KLPD, the FIOD and the KMar collaborate in the Counter-Terrorism Information box (CT-Infobox). The CT-Infobox centralises information collected by its members in order to assess individuals and networks that are believed to be associated with terrorism or related radicalisation. The outcome is analysed drawing upon the expertise of the aforementioned agencies. The centralised collection of data may reveal trends and relationships. As such, the CT-Infobox can advise

responsible authorities on how to best deal with specific terrorist threats. The CT-Infobox is hosted by the AIVD and therefore falls under the 2002 Intelligence and Security Services Act.⁵⁰

THE DISTRIBUTION OF ROLES AND RESPONSIBILITIES ACROSS GOVERNMENT DEPARTMENTS AND AGENCIES

Even though counter-terrorism policing is carried out by the ten police regions individually, specialised support units exist at the national level as well. Within the National Police Services Agency (KLPD), which is a separate police region, there is a Special Intervention Unit (DSI) and a Criminal Investigation Unit (NR), which has specialised counter-terrorism detectives. These detectives conduct independent investigation under the supervision of the National Prosecution Services or support their colleagues within the police regions, who may not have the requisite expertise on terrorism or radicalisation. The AIVD and the MIVD are supported by the Regional Intelligence Services of the police regions (RID). The AIVD gathers and supplies information and personal data, conducts research and prepares threat and risk analyses in relation to individuals, groups and organisations that are associated with terrorism in order to help other government bodies to protect national security, while the MIVD does so for the benefit of the armed forces.⁵¹ The AIVD operates under the political responsibility of the Minister of the Interior and Kingdom Relations, while the MIVD is accountable to the Minister of Defence. AIVD and MIVD officials are not classified as law enforcement officers with investigative powers.⁵² Instead, they provide information about possible threats and risks relating to state security to other bodies such as the police, which in turn take security measures. Every regional police force has a RID, which performs some of its responsibilities for the AIVD.

The DSI, which is a coordinating as well as an executive unit, was established in 2006 for cases of terrorism or serious violence and other special circumstances (De Weger, 2008). Its legal basis is a Ministerial Regulation and several decrees (*Amb*), as well as a government decision to the effect that statutory regulations may be elaborated further on. They regulate the implementation of existing acts, including the Police Act and the Weapons and Munitions Act.⁵³ The Minister of Security and Justice is politically responsible for the Special Intervention Unit (DSI). In case of a national situation, the Minister of Security and Justice determines its deployment. This is done while consulting with the NCTV and the Ministers of General Affairs, Interior and Kingdom Relations and Defence are informed about the decision. The OM has authority over the operation itself. However, in regular situations, which are more common, the Prosecutor General of the National Office of the Public Prosecution Service determines whether DSI deployment is required. The DSI consists of the Regional Arrest and Support Units (AEO), the Intervention Unit (military and police) and the Marine Intervention Unit (military), which are

⁵⁰ Intelligence and Security Services Act 2002, Stb. 2002, 148, entered into force February 7th 2002.

⁵¹ Sections 6, 6a, 7 and 7a, Intelligence and Security Services Act 2002, Stb. 2002, 148, entered into force 7 February 2002.

⁵² Section 9, Intelligence and Security Services Act 2002, Stb. 2002, 148, entered into force 7 February 2002.

⁵³ The Special Intervention Unit Regulation, entered into force 21 December 2006; The Special Intervention Unit Decree, entered into force 21 December 2006.

responsible for high-risk interventions involving explosives or heavy firearms and the Expertise and Intervention Unit that consists of sharpshooters (military and police) (NCTV, 2009).

Within the OM there is a special counter-terrorism public prosecutor stationed at the National Office of the Public Prosecution Service in Rotterdam. This public prosecutor functions as a liaison officer at the AIVD and therefore receives and reviews official notifications.⁵⁴ The reason for the establishment of this specialised counter-terrorism prosecutor is that terrorism cases are frequently triggered by intelligence or this information is used as evidence (Eijkman & Van Ginkel, 2011). As traditionally there is a distinction between collecting intelligence to fight terrorism and gathering evidence for criminal investigation, these boundaries are protected by the special counter-terrorism public prosecutor. Furthermore, the special counter-terrorism public prosecutor presides over inter-agency counter-terrorism consultation, counter-terrorism intelligence meetings and advises the prosecutor-general of the National Office of the Public Prosecution Service about deploying the DSI. The special counter-terrorism public prosecutor is not necessarily in charge of prosecuting a terror suspect. Instead the case public prosecutor is responsible for the collection of evidence, hearing witnesses, authorising and supervising coercive measures and special powers of investigation such as surveillance.⁵⁵ He or she has the discretion to determine whether someone is charged or not.

Anyone involved in the case has the right to appeal the decision at the Court of Appeal. The Court of Appeal may order the Public Prosecutor's Office to press charges.⁵⁶ This has happened, for example, in the case against the Member of Parliament Geert Wilders, who allegedly gave utterances (in the media) that led to discrimination and/or incitement to hatred (against Muslims).⁵⁷ In this sensitive case, which was essentially about freedom of expression - which is held in high esteem in the Netherlands - versus the right not to be discriminated against and the freedom of religion, plaintiffs (individuals and ethnic minority organisations) filed for a criminal complaints procedure (Oomen, 2011). Even though the public prosecutor charged Geert Wilders, he also requested an acquittal. In 2011, after a retrial, the first trial was discontinued after a request of Wilders' counsel to challenge the court⁵⁸; the Member of Parliament was acquitted. As this decision cannot be appealed, the plaintiffs are currently appealing to the UN Human Rights Committee (Oomen, 2011; Volkskrant, 2011).

ACCOUNTABILITY MECHANISMS FOR COUNTER-TERRORISM POLICING AND POLICY

Even though accountability mechanisms for actors involved in counter-terrorism exist in the Netherlands, they do not specifically apply to counter-terrorism policing and policy as such. The reason for this is that

⁵⁴ Article 61(2) the Intelligence and Security Services Act 2002, Stb. 2002, 148, entered into force 7 February 2002.

⁵⁵ Special Power of Investigation Act 2002, Stb. 2000, 245, entered into force 1 February 2000.

⁵⁶ Section 12 Criminal Procedural Code.

⁵⁷ Section 137 (c/d) Criminal I Code; LJN: BQ9001, Amsterdam District Court, 23 June 2011 (final ruling).

⁵⁸ Due to the alleged influencing of a witness. Section 512 Criminal Procedural Code.

counter-terrorism measures have mostly been integrated in existing structures. Specialised counter-terrorism agencies, including the NCTV, which is part of the Ministry of Security and Justice, and the DSI, which - depending on the unit - falls under the regional police forces, the Minister of Defence, or the Ministry of Security and Justice, are subjected to pre-existing external and internal accountability mechanisms. In relation to law enforcement, this entails that someone who wants to file a complaint has to turn to the respective police region, whose police chief is mandated by the Minister of Security and Justice (police regions) or Defence (KMar) to deal with formal complaints.⁵⁹ Police regions have their own complaint procedures usually with special complaint committees. If the outcome is unsatisfactory the individual who lodged the complaint may turn to the Ombudsman's Office, which is an external accountability mechanism responsible for handling complaints against the government.⁶⁰ In case the complainant wants to file a criminal report against a law enforcement official, he or she has to turn to the police or directly to the OM. If the decision is made not to follow up on the criminal charges, the complainant may turn to the Court of Appeal.⁶¹ When law enforcement officials are subject of a criminal investigation, this is always conducted by the National Police Internal Investigation Unit.

Due to the inter-agency cooperation and exchange of information there could, to some extent, be an accountability gap in relation to counter-terrorism in the Netherlands. This is caused by the fact that for the general public it is often unclear which counter-terrorism actor is responsible for what. For example, where do you file a complaint after you have been arrested by the DSI: The regional police unit, the KMar, the OM, Parliament, in a media report or at the Mayor's Office? In December 2010, this became an issue after the DSI arrested twelve Somalians who were allegedly planning terrorist attacks on Dutch soil (COT/CTC, 2012, 7-8; Volkskrant, 2010; see below for more information on this case). As these allegations turned out to be unfounded, some of these men have received financial compensation from the OM, who had authorised the arrests, and some implicated filed a complaint against the AIVD at the Intelligence and Security Services Regulatory Committee (CTIVD) (Argos, 2011; OM, 2011).

The CTIVD is an external accountability mechanism, which assesses the legitimacy of actions of the AIVD and the MIVD (Fijnaut, 2012). It has access to classified information, may hear staff of the services and may provide the Minister of the Interior and Kingdom Relations and Defence with solicited or unsolicited information about their findings.⁶² In case a person wants to file a complaint, he or she has to turn to the responsible minister. This particular minister has to request the CTIVD for advice on the matter, but the decision is made by the minister, who if he or she does not take the CTIVD's advice into

⁵⁹ Sections 67a-72 Police Act 2012, Stb. 2012, 315, entered into force 16 July 2012.

⁶⁰ Under General Administrative Act a complainant is always required to first file a complaint to the competent administrative authority, Part 6, sections 6:1 to 6: 24 General Administrative Act, Stb. 1992, 315, entered into force 4 June 1992 (amended Stb. 2002, 53, entered into force 24 January 2002); Section 12 National Ombudsman Act, Stb. 1981, 35, entered into force 4 February 1981 (amended Stb. 1999, 214, entered into force 12 May 1999).

⁶¹ Section 12 Criminal Procedural Code.

⁶² Sections 73 to 77, Intelligence and Security Services Act 2002, Stb. 2002, 148, entered into force 7 February 2002.

account has to explain this in writing and send the advice to the complainant.⁶³ If the complainant is dissatisfied with the decision of the minister, he or she may turn to the Ombudsman's Office.

DATA AND STUDIES ON LEVELS OF GENERAL TRUST AND CONFIDENCE IN THE POLICE

Several national and international studies show that ethnic minorities in the Netherlands generally have considerable confidence in the police, yet simultaneously are less satisfied about actual police behaviour than ethnic majorities. The 2009 EU-MIDIS report showed that two in five respondents of North African descent in the Netherlands have confidence in the police while 35 percent say they do not, one of the highest rates in Europe (EU-MIDIS, 2009, 148). Muslims in the Netherlands have, of all EU Member States, also most often reported an outright negative attitude towards the police. For instance, 31 percent of Dutch Muslims of Turkish descent expressed an explicitly negative attitude towards the police, which contrasts with the average of 17 percent of Turkish respondents in all EU countries together (EU-MIDIS, 2009, 213-214).⁶⁴

The national 'Integral Security Monitor' of 2011, a collaborative initiative of the Dutch Ministry of Justice and Security, Statistics Netherlands (CBS), local police regions and municipalities, found that between 2008 and 2012 'non-Western' minorities were less satisfied about their latest police contact than 'Western' minorities and majorities. Conversely, the former were, as a group, more positive than the latter about police availability and police conduct in their neighbourhood. People's latest experiences with the police proved more important in determining their overall satisfaction about the police than demographic factors like age, gender and ethnic origin (Akkermans, 2012, 35-38).

Remarkably, an earlier Integral Security Monitor indicated that between 2005 and 2008 confidence in the police was higher among 'non-Western' minorities than among majorities; 54 percent of Dutch citizens of Moroccan descent said they 'tend to trust' their neighbourhood police, compared to 40 percent of native Dutch people. These differences disappeared, however, for the second generation, who expressed less confidence in police service and protection than the first generation (Noije, Lonke & Wittebrood, 2009, 15-18).

In order to measure police confidence and perceptions of differential treatment among Dutch youth of minority descent, two surveys were conducted among persons aged between 12 and 22 by the University of Twente, in collaboration with the Police Science & Research Programme (Svensson, Sollie & Saharso, 2011). One of these surveys, conducted among 452 pupils of four secondary schools in three different municipalities, showed that a large majority of youngsters have confidence in the police (almost 68 percent) but that only 25 percent to 31 percent believed that the police is fair and interacts non-

⁶³ Sections 83a, Intelligence and Security Services Act 2002, Stb. 2002, 148, entered into force 7 February 2002.

⁶⁴ The conference edition of the main results report on the EU-MIDIS survey does not provide any information about general levels of confidence in the police by the Dutch majority population, making it impossible to compare between ethnic groups.

discriminatorily with people. Levels of police legitimacy (including levels of general trust and confidence) decreased if respondents previously had had a negative experience with the police. The researchers could not establish any significant relationship between levels of police legitimacy and the ethnic origin of respondents (Svensson et al. 2011, 42-46). The other survey, conducted among 202 teenagers recruited on the street or in youth centres in four different cities, showed that youngsters who identified themselves as ethnic minorities were less positive about the police as an institution than youngsters with an ‘ethnically Dutch’ appearance. Again, no direct relationship between the (self-identified) ethnic origin and levels of police legitimacy could be established. The researchers did find a clear connection between, on the one hand, frequency of police contact and perceptions of unfair or discriminatory treatment during that contact and, on the other hand, overall levels of police legitimacy (Svensson et al., 2011, 62).

ISSUES THAT HAVE AFFECTED THE RELATIONSHIP BETWEEN MINORITY GROUPS AND THE POLICE

In contrast to some European countries, no large-scale riots and clashes with the police have occurred in migrant-populated city districts in the Netherlands. Nonetheless, crime and nuisance, particularly among younger generations of immigrants, have become contentious political issues and are linked to ethnicity and migration (Eijkman, 2010). This merging of migration policy and crime control is also referred to as a process of ‘cimmigration’, in which minority groups are increasingly seen and addressed as ‘dangerous others’ comparable to criminals or even terrorists (Van der Leun & van der Woude, 2011, 445). Populist tough-on-crime rhetoric is dominant in public and political debate on combating nuisance, crime and (irregular) migration, worsening relationships between minority and majority groups in general and minority youth and the police in particular.

One of the first ‘mediatised’ incidents occurred on 23 April 1998 when a local police officer arrested a teenage boy of Moroccan descent who was mistakenly suspected of setting fire to a garbage can on the August Allebé Square in Amsterdam. The violence escalated when hundreds of young men of migrant origin mobilised and clashed with the police until midnight. The incident led to the emergence of so-called ‘neighbourhood fathers’ who interact with rebellious youngsters as an alternative to the local police. These are older men of migrant descent who engage on a voluntary basis with youngsters on the street and their parents, with the aim of reducing crime and other social problems. Similar initiatives have taken place on an ad-hoc basis and can therefore not be considered as official forms of cooperation and dialogue. Another incident occurred in Amsterdam on 6 August 2003 when Driss Arbib, a 33-year-old man of Dutch Moroccan descent, was killed by the police during a riot in a restaurant in Mercatorplein. The incident sparked protests, especially from the local Moroccan community. The Amsterdam Court of Appeal, where his family had disputed the initial dismissal of the case, ordered a reconstruction and an investigation of the event. In December 2004, after the findings were published, the court confirmed the

position of the Public Prosecutor's Office that the police officer involved had acted in self-defence (ICCR, 2007, 24-25).

An incident in October 2007 illustrates the extent to which youth crime and nuisance are linked to migration, radicalisation and even terrorism. Bilal Bajaka was a young Dutch man of Moroccan descent who entered a police station in Amsterdam and randomly stabbed two police officers. He died when one policewoman shot the man in self-defence. Although it soon became clear that Bilal had mental problems, media debates speculated about potential terrorist motivations; Bilal had been acquainted with Mohammed B., the murderer of Theo van Gogh (Digital Journal, 2007; see Part Four). The incident triggered riots in Mohammed B.'s neighbourhood of 'Slotervaart' in Amsterdam, where youth of Moroccan descent felt stigmatised at that time by Dutch media linking crime problems, disorder and terrorism to ethnicity and Islam (Groen & Kranenburg, 2006).

Politicians have fuelled tense relations between minority youth and law enforcement agencies with statements including calls for the deportation of 'criminal *allochthonen*' and/or 'convicted Moroccans' (Elsevier, 2008). When Gouda, a town in the western part of the Netherlands, experienced significant unrest in 2008 and 2011, caused by youngsters of Moroccan descent, politicians responded by calling the troublemakers 'district hooligans' (PVDA, Social Democratic Party) and 'street terrorists' (VVD, Liberal Party; PVV, Freedom Party). Gouda's police chief, however, distanced himself from this discourse and publicly denounced it as contributing to further polarisation (NRC Next, 2008).

Countless policy measures have been initiated to deal specifically with crime and disorder amongst youngsters of ethnic minority backgrounds. One example is the proposal of the Dutch government in 2008 to register, in a database, the ethnic background of 'problem youth' of Antillean background. The proposal for an 'Antillean index' was finally rejected in favour of a registry of all youngsters until 23 years old who are vulnerable for crime in the Reference Index for Youth at Risk (VRJ), a shared database for youth health and justice professionals and institutions (Eijkman, 2010). On 2 February 2012 the majority of the Senate accepted the draft act, which included the registration of ethnicity in the database, but was criticised by the Council of State (RvS) (RvS, 2009). The database was condemned by ethnic minority organisations, including the National Dialogue Structure with Minorities (LOM) in its recent submission to the UN Human Rights Council in 2012 (LOM, 2011; see Part One).

Politicians have also spoken out in favour of using profiling to prevent (youth) crime. Recently the mayor of Rotterdam has started a pilot in one city district that enables the police to only stop and search persons who fulfil certain criteria, including age, sex, or driving scooters, but not nationality, ethnicity, religion or race (RTV Rijnmond, 2012). Preventive searches are unpopular among ethnic minorities, many of whom believe to be disproportionately subjected to the instrument (see Part One).

Finally, some arrests of alleged terrorists have affected the relationship between minorities and law enforcement officials. On 24 December 2010, after receiving an official notification of the AIVD, the DSI arrested twelve Somali men for planning terrorist attacks on Dutch soil. They invaded two houses, two telecommunication shops and a motel room, and confiscated eleven computers, but could not find any weapons or explosives (COT/CTC, 2012, 7-8; Volkskrant, 2010). The men were released, as a result of insufficient evidence of terrorist involvement. Nine of the twelve individuals involved, those who were not subjected to further criminal investigation, received financial compensation and official letters signed by the Public Prosecutors Office, which stated that they were not in any way associated with terrorism (Argos 2011; OM, 2011). The incident sparked some protest in the Somali community but did not extend beyond this relatively small community in the Netherlands, estimated in 2011 between 35,000 and 40,000 persons (FORUM, 2012).

In a similar vein, on 12 March 2009 seven men of Moroccan descent were arrested for allegedly plotting a terrorist attack on IKEA and another shopping mall in Amsterdam (COT/CTC, 2012, 6; Telegraph, 2009). An anonymous phone call had alerted the police about the plans of three of the suspects. When one of those involved appeared to have family ties with one of the terrorists from the Madrid bombings of 2004, the area in the vicinity of the malls was closed off, a pop concert was cancelled and the houses of the suspects searched. The next day, however, the men were released when the anonymous phone call turned out to be false. This incident fuelled resentment in the Moroccan community and media debates erupted about the legitimacy of the arrests (NRC, 2009). The Dutch umbrella organisation for Moroccans (SMN) publicly responded to the incident, criticising the Pavlov effect of Dutch police and justice officials to mention the ethnic descent of the suspects in the press conference and thereby stigmatising the Dutch Moroccan community (Volkskrant, 2009).

Last but not least, in 2011 the Dual Nationality Act was amended. Now naturalised foreigners who have been convicted of particular - terrorist - crimes can, on the basis of a Ministerial decision by the Minister of Security and Justice, lose their Dutch nationality.⁶⁵

KEY FINDINGS FROM DATA OR STUDIES ON DISCRIMINATION BY THE POLICE

According to the European Commission against Intolerance and Racism (ECRI), ethnic/racial profiling is not uncommon in the Netherlands (ECRI, 2008, 11-12, 36-40). In its third country report it noted: "Racial profiling is reported to take place in the framework of police activities aimed at countering crime generally. In this context Dutch Antilleans and Dutch Moroccans are, for instance, reported to be particularly vulnerable groups. However, concern has been expressed that racial profiling practices have particularly intensified in the context of activities carried out to prevent and counter terrorist crimes. In

⁶⁵ Until now this has never happened. The Dutch Nationality Act, Stb.1984, 628, entered into force 19 December 1984 (amended 17 June 2010).

this context, it is the Muslim population of the Netherlands that is reported to have been especially targeted” (ECRI, 2008, 12). ECRI recommended that the Dutch government carries out in-depth research on ethnic/racial profiling practices as well as the ethnic monitoring of activities by both law enforcement and intelligence and security services.

So far, the Dutch government has yet to respond. No national data is available on possible ethnic profiling by Dutch law enforcement officials. Nonetheless, anecdotal evidence of civil society organisations and high rates of perceived profiling by ethnic minorities themselves suggest that ethnic or racial discrimination by the Dutch police and other law enforcement bodies does take place in the Netherlands (Bovenkerk, 2009; ECRI, 2008; Eijkman, 2010; EU-MIDIS, 2009; National Ombudsman, 2011; Open Society Foundations, 2009; Rodrigues, 2009; Svensson et al., 2011; Van der Leun & van der Woude, 2011). While these figures do not in themselves prove the existence of ethnic profiling, detailed information about the extent, frequency, nature and circumstances of stops can serve to highlight patterns of potential discriminatory treatment by law enforcement officials.

The 2009 European Union Minorities and Discrimination Survey (EU-MIDIS), for instance, revealed that 26 percent of Dutch Muslims of North African descent had been stopped by the police at least once in the 12 months prior to the survey. 39 percent of those interviewed attributed ethnic profiling for their most recent or a previous police stop and 34 percent indicated they had been treated very or fairly disrespectfully during the stop (EU-MIDIS, 2009, 148-149). The corresponding figures for Dutch Muslims of Turkish descent were 27 percent, 25 percent and 19 percent, respectively (EU-MIDIS, 2009, 214-215). These figures largely correspond with the European average; on average in all EU Member States 25 percent of Muslims interviewed had been stopped by the police at least once in the last 12 months prior to the survey and 40 percent of these had the impression that ethnic profiling was involved (EU-FRA, 2009, 13-14).

Dutch Muslim minorities also experience ethnic profiling by other law enforcement agencies. For example, 31 percent of the Turkish respondents and 35 percent of North African respondents in the 2009 EU-MIDIS survey had the impression that they were singled out because of their ethnicity when stopped by border control officers (EU-MIDIS, 2009, 216). This is slightly below the European average of 37 percent (EU-FRA, 2009, 14).

The aforementioned research conducted by the University of Twente among youngsters likewise shows that Dutch minorities perceive ethnic profiling by the police. The research involved two surveys and in-depth interviews with youngsters aged between 12 and 22, as well as a participatory observation study of actual police conduct in a police district known for problems with youngsters of ethnic minority background (Svensson et al., 2011). One of the surveys was conducted among 452 students of four secondary schools in three different municipalities, including in the ‘problem’ zone. Almost 55 percent of all secondary school students had been in contact with the police at least once in the twelve months

preceding the survey, mostly as a result of preventive measures (including ID checks, warnings, and body searches). Percentages were higher among boys, particularly of older ages. One in four to five had experienced unfair, bad or discriminatory treatment by the police. Students of ethnic minority background were not stopped more frequently by the police than their native Dutch peers, yet were more negative about the latest police contact (Svensson et al., 2011, 41-45).

The other survey, which was conducted on the street or in youth centres among 202 teenagers in four different cities, showed different results; youngsters who - in their own opinion - were seen as ethnic minorities reported much higher rates of police contact than youngsters with a 'ethnic Dutch' appearance (19.6 percent versus 8.9 per cent, respectively); were much more often unjustly believed to be involved in a crime (24.1 percent versus 7.8 percent); more often experienced preventive measures including identity checks (twice as often) and body searches (3.8 times more often); and were again more negative about their last police encounter (giving an overall mark of 4.8 versus 6.6 out of 10) (Svensson et al., 2011, 58-59).

The authors of these two surveys and the observation study could not establish any structural pattern of ethnic profiling by the Dutch police. Although youngsters from ethnic minorities reported higher stop-and-search rates by the police, they explained this by, firstly, the amount of time youngsters spent on the street; secondly, the extent to which the youngsters had, in their own opinion, actually displayed criminal behaviour; and, thirdly, their stated levels of interaction with alleged members of delinquent groups. The fact that minority youths were less positive about police behaviour than majority youth was linked to the extent to which they were said to have cooperated during an actual stop. According to the researchers, these are legitimate criteria for differential treatment by the police and therefore comprise legitimate forms of indirect discrimination (Svensson et al., 2011, 56, 60-61). The study nonetheless concludes that those youngsters relate patterns or incidents of differential treatment to ethnic profiling, even when caused by one negative incident, which in itself undermines police legitimacy among minority youth.

This finding is corroborated by qualitative interviews with youngsters of minority descent. In an assessment of stop-and-search powers of law enforcement officials the National Ombudsman (2011) held focus group interviews about 'preventive searches' with youngsters from southeast Amsterdam (the Bijlmer district), some parts of which have been designated almost permanently as security risk zones (Eijkman, 2011, 17). The youngsters considered such searches to take place too frequently in their borough and said they often involved blatant displays of power and rudeness by the police. They were of the opinion that the police particularly stopped and searched them in the hope of finding weapons, drugs, or unpaid fines, instead of fighting real crime (National Ombudsman, 2011, 31-32).

Finally, a Dutch survey that was conducted in 2009 among 393 respondents of Turkish and Moroccan descent showed that 3.8 percent of Dutch Moroccan respondents had experienced discrimination on the base of race, ethnicity, nationality or religion by the police. This was significantly higher than response

rates among all other ethnic (minority and majority) groups (Rodrigues, 2009, 127-203, 249). In 2008, the ADVs registered 190 complaints about discrimination on the base of race, ethnicity, nationality or religion by the police (161), public prosecutor and immigration officials (15) and justice or prison personnel (14), which together amounted to 4 percent of all incoming complaints. People mostly experienced discrimination when they were stopped by the police and then also complained about the use of violence by law enforcement officials (Rodrigues, 2009, 127-129). These figures, however, illustrate only the tip of the iceberg; only 5.5 percent of Dutch respondents of Turkish or Moroccan descent who experienced any sort of discrimination had filed a complaint with an anti-discrimination office (ADV).

POLICIES AND GUIDELINES ON NON-DISCRIMINATION AND HUMAN RIGHTS

Policies and guidelines on non-discrimination and equality do not specifically exist within the Dutch counter-terrorism agencies. Currently, this is also the case for other issues in relation to non-discrimination and equality, which are perceived as part of the aforementioned ‘multicultural professionalism’ approach (Police Academy, 2012). Ethnic profiling by law enforcement agencies, for example, has not yet received much attention from policy makers. With regard to the police, guidelines and policies have mainly focused on enhancing multicultural and gender diversity within the police regions. More recently, policies have also included improving the reception and registration of complaints of discrimination on multiple grounds with the police.

Already in the 1980s the Dutch police attempted to recruit more staff from ethnic minorities, among others, through positive discrimination policies.⁶⁶ In 2000, the Ministry of Interior and Kingdom Relations stimulated the realisation of the first ‘Diversity Action Plan 2001-2005’. The plan obliged the then-25 existing police regions to design and implement diversity policies. Subsequently, in 2001, the National Expertise Centre Diversity (LECD) was established with the aim to advise and to support the police regions on diversity, discrimination and ‘multicultural professionalism’, as well as the Police Academy and the Provision for Cooperation Police Netherlands (Çankaya, 2011, 14-17; Police Academy, 2012).

In 2007, the Minister of the Interior and Kingdom Relations and the Chiefs of Police together signed a non-binding covenant which entailed that, by 2011, half of all key police positions had to be occupied by women and/or by ethnic minorities. Nonetheless, a 2009 evaluation by the Inspectorate Public Order and Security revealed that many police regions had not yet developed any diversity policies or disregarded the targets (Inspectorate Public Order and Security, 2009).

⁶⁶ The police experience with a positive discrimination policy called ‘*Positieve Actie Plan Politie en Allochtonen*’ (PAPPA) between 1989 and 1994, which received much internal and external criticism and was soon dropped.

In addition to stimulating equal opportunities within the police ('internal multiculturalism') and improving professionalism of the police vis-à-vis a de facto multicultural society ('external multiculturalism'), the LECD has undertaken several important steps to improve the registration of discrimination complaints by police officials, including the appointment of a special case officer for discrimination in each police region and the introduction of a national registration system ('Poldis'). Since 2008, the Public Prosecutor Services have their own national registration system for discrimination complaints, which is coordinated by the National Expertise Centre Discrimination (LECD-OM). Eleven public prosecutor's units have special public prosecutors who are in charge of discrimination cases, in combination with advocate-generals and one procurator-general.

Nevertheless, research shows that differences exist between the police regions in the actual registration of complaints and prioritisation of non-discrimination as well as in the time, resources and level of expertise of the case managers appointed for discrimination work. A discrepancy was noted between the number of discrimination complaints registered by the police and that by public prosecutors, suggesting an issue of referral by police officers and the need for training (Davidovic, 2010, 126). Furthermore, discrimination by police or justice officials has received only scant policy attention; the large majority of the annual police reports of 2009, for instance, did not address the number or nature of incoming complaints about discrimination or unfair treatment by the police with their grievance committees (Rodrigues, 2009, 130). Furthermore, research reveals the existence of persistent prejudices and stereotypes among police officers and discrimination on the work floor (Çankaya, 2011, Police Region Amsterdam-Amstelland, 2009, 8).

Moreover, the high point of interest in non-discrimination policies within the Dutch police appears to have passed. The former government officially abandoned diversity policies and no longer allows specific measures on the base of ethnicity/culture to reduce structural inequalities (see Part One). The Dutch section of Amnesty International has found a lack of implementation of non-discrimination policies at the municipal level and has criticised the Dutch government for its failure to address indications of ethnic profiling by law enforcement officials (Amnesty International, 2012). The reorganisation of the Dutch police, which is currently being centralised, may provide an opportunity for a new focus on non-discrimination and equality policies.⁶⁷

MECHANISM FOR COOPERATION AND DIALOGUE

On behalf of the Minister of Security and Justice, the NCTV, which is responsible for streamlining Dutch counter-terrorism policies and efforts, has stated that municipalities and police regions are together responsible for security by signalling, preventing and fighting radicalisation in their municipality. How this task is executed exactly is left to the discretion of the respective municipalities (Grunenberg & Schriemer, 2008). Local differences therefore exist, especially regarding the extent to which authorities cooperate

⁶⁷ Police Act 2012, Stb. 2012, 315, entered into force 16 July 2012.

with minority communities in relation to policing and counter-terrorism. They largely depend on variations in local power constellations (Vermeulen & Bovenkerk, 2012).

Since radicalism and violent Islamic extremism are partly understood as an integration issue, local governments have initiated projects that aim to increase minorities' participation in broader society, tackle discrimination, foster social cohesion and diminish societal polarisation (Vermeulen & Bovenkerk, 2012, 103). Minority organisations, both religious and non-religious, are generally involved in the implementation of public policy yet not actively consulted in policy design. This can result in a lack of public support for state policies among minorities, and even cause counter-productive effects. One example are the so-called 'Islam debates', which were set up by the municipality of Rotterdam in 2005 to discuss a plethora of problems related to Islam and the ostensibly failed integration of Muslims in Dutch society (Open Society Foundations, Muslims in Rotterdam, 2010, 52). Various Muslim and non-Muslim inhabitants perceived the debates as highly stigmatising, causing probably more instead of less polarisation (Maussen, 2006). Moreover, by framing violent Islamic extremism as an integration issue and focusing on the local Muslim population as problem holders, authorities run the risk of stigmatising Muslim minorities in the Netherlands (Vermeulen & Bovenkerk, 2012, 103, 188-189).

Dutch authorities tend to be reluctant to directly engage with religious organisations in the implementation of policies, as this is increasingly seen as infringing upon the principle of separation between state and church. In order to deal with this dilemma, the municipality of Amsterdam, for instance, prefers to work with religious individuals instead of mosques to gain access to the wider Muslim community, some of whom have experimented with Islamic radicalism in the past. The few remaining projects in which the municipality engages mosque organisations are more the exception than the rule. The question remains, however, to what extent these individuals provide access to extremists and potentially violent jihadists. Moreover, the exclusion of religious organisations can yield feelings of frustration and contribute to further marginalisation and segregation of migrant minority communities (Vermeulen & Bovenkerk, 2012, 104-120, 193).

State officials are also somewhat selective concerning whom they engage with in counter-radicalisation initiatives: The municipality of Amsterdam, for instance, does not engage in dialogue with extremist or ultra-orthodox organisations and individuals, even though these may actually provide important information about worrisome patterns of radicalisation (Vermeulen & Bovenkerk, 2012, 118-119, 193). In addition, public authorities attempt to determine the implementation of state policies through state subsidies (Grunenberg & Schriemer, 2008, 145). Organisations or individuals that object to follow (certain elements of) state instructions risk losing subsidies or being excluded from policy-making procedures.⁶⁸

⁶⁸ This was the case when the conservative board of the Wester Mosque, a prestigious and symbolic mosque-building project of the Turkish Milli Görüş organisation and the municipality of Amsterdam, refused to sign a declaration that it would follow a 'moderate' form of Islam (Vermeulen & Bovenkerk, 2012, 110, 118). Another example is that the municipality of Rotterdam, for instance, initially hired Muslim scholar Tariq Ramadan as a policy advisor and intermediary to engage with young Muslims in debates about citizenship, identity and the status of Islam in Dutch society. When Ramadan expressed conservative ideas about gender and sexuality, media and populist politicians criticised the municipality government for cooperating with an Islamic radical. When Ramadan appeared to work for a media outlet sponsored by Iran, the municipality fired him for violating his contractual obligations.

By only engaging with ‘moderate’ organisations and determining the (secular) parameters of the debate, Dutch state authorities do not enter in a genuine democratic debate with groups and individuals holding conflicting views and, moreover, risk alienating the most difficult of the presumed extremists (Vermeulen & Bovenkerk, 2012, 193-194).

Finally, although the Dutch police cooperate in crime prevention with professional organisations and sometimes with other stakeholders too, these forms of collaboration are neither national nor municipality policy. In certain districts known for high rates of youth crime, for instance, local police officers sometimes work together with the aforementioned ‘neighbourhood fathers’, but all on an ad-hoc basis.

Part Four: Security Context

Research on the impact of counter-terrorism measures needs to be understood in the context of assessments and perceptions of the threat posed by terrorism in the Netherlands. Therefore this section reviews the number of terror arrest and convictions, high profile arrest and policing actions, the discourse on the level of threat from terrorism, and the public or minority group perception of particular counter-terrorism measures or policies.

NUMBER OF ARRESTS AND CONVICTIONS

Public access to information about the number of terror arrests and criminal convictions is challenging in the Netherlands. This also applies to case figures and statistics on the number of files pursued to the indictment phase and afterwards. Even though the organisation of the Dutch police has been centralised, the collection of information on arrests or investigations is still decentralised.⁶⁹ Records often do not include, or at least not uniformly, the registration of individuals who were brought in for questioning and subsequently released. Also, they would not necessarily include terror charges or counter-terrorism measures such as ‘personal disturbance’, or ongoing police - and certainly not AIVD - investigations. The NCTV could probably have access, but it is not easily obtained. In relation to alien deportation on national security grounds, including indications of terrorism, the NCTV (2012a) recently communicated that, between 2006 and 2012, 50 individuals were declared an undesirable alien and of those, 31 were associated with terrorist activities, radicalisation or jihadism (see Part Two).

Media reports provide some indications about the number of terror arrests and convictions. For example, on the basis of an investigative journalism publication, it was established that, between September 2001 and December 2010, 274 people had been arrested in relation to terror offences and, of those, 97.5 percent were not convicted for terrorism (Onjo, 2011). Another paper concluded that, of the 156 people

⁶⁹ Police Act 2012, Stb. 2012, 315, entered into force 16 July 2012.

arrested in relation to jihadist terrorism between 2001 and 2009, 20 were indefinitely convicted and two-thirds were released without charge (NRC, 2009).

HIGH PROFILE ARRESTS / POLICING ACTIONS

Arrests and policing action in relation to terrorism have been reported on frequently in governmental and media reports. However, very few of these reports are based on information collected by the Public Prosecution Services or law enforcement agencies. One exceptional study, which focused on the nature of jihadi terrorism in the Netherlands, reviewed 12 (large-scale) criminal investigations conducted between July 2001 and July 2005. It concluded that out of the 113 respondents, with extremely different background and motives, some basic groups could be categorised: 1) illegal immigrants 2) former or current drug addicts and people with criminal backgrounds 3) so-called ‘seekers’, individuals with existential or identity questions, and 4) idealists and political activists (Poot & Sonnenschein *et al.*, 2011, 135-146). Only in the cases of idealists and political activists was there some reference to being motivated by indirect personal experiences with discrimination (Poot & Sonnenschein *et al.*, 2011, 141).

High-profile arrests or police action in response to terrorism is usually the result of an official notification of the AIVD, police information, an international request for information or a tip from a member of the public. It is becoming common that allegations or elements of the case serve to mask the ‘terrorist’ elements.

In 2011, for example, Sunny O., a Nigerian human rights activist living in Rotterdam and founder of the Hope for the Niger Delta Campaign, was charged with forgery and supporting human trafficking when, just one day before the beginning of his trial, the public prosecutor added a terror charge to the indictment, notably conspiracy to commit a terrorist crime (RNW, 2011a; Washington Post, 2011).⁷⁰ The trial began on 5 September 2011 and has, since December 2011, been suspended indefinitely (RNW, 2011b). The evidence that Sunny O. was plotting to blow up a pipeline in Nigeria is primarily based on tapped phone conversations. These three tapped phone calls, which according to the defence counsel have been translated inaccurately, have led to the formal accusation of the state falsifying evidence (RNW, 2012; NRC, 2012).⁷¹

In addition to the aforementioned Somalia and Ikea terror plot arrests (see Part Three on key issues and events) some high-profile terror cases are introduced below.

⁷⁰ Public Prosecution Services, case no.10/963055-10 (Rotterdam District Court).

⁷¹ Section 225 (1 jo. 2) Criminal Code,

HIGH-PROFILE CRIMINAL CASES

The Eik case⁷² (2001-2004)

During the first Dutch terrorism case, four persons were tried for preparing an attack on the American embassy in Paris and/or an American military base in Belgium, and for identification-documents forgery. Information provided by the AIVD⁷³ formed the basis for the suspicion that led to the arrest of the suspects in Rotterdam on 13 September 2001. It was the first time that information collected by an intelligence agency was permitted as the basis for a suspicion. After being acquitted at the first instance by the Rotterdam District Court, one person was again acquitted on appeal (Saad I.) and the two main suspects were found guilty.⁷⁴ The Frenchman Jérôme C. was sentenced to six years' imprisonment and the Algerian Abdelghabi R.⁷⁵ to four years' imprisonment for participation in a criminal organisation whose purpose was preparing explosions and murder or manslaughter.⁷⁶ The latter person had been deported as an undesirable alien in January 2003. Currently he is, according to his lawyer, living in Algeria. There was too little evidence against one person to prosecute him. This person, Nordine B., was put in alien detention pending deportation. Later he was released due to a procedural error (he probably lives in Algeria now).⁷⁷ This case was important because it formed an impulse for legislation in the field of canvassing and recruiting for 'jihad'. Preparatory acts for criminal offences were punishable at the time, but not within the context of terror crimes ('terrorist intent' has only been punishable since the implementation of the 2004 Crimes of Terrorist Act (see Part Two).

The Jihad case⁷⁸ (2002-2004)

On the basis of an AIVD notification, twelve persons were arrested in the summer of 2002. A number of them were regular visitors of the Al-Fourkaan-Mosque, Eindhoven. At the time, the mosque was thought to be partially linked to Muslim extremism (NRC, 2003). The suspects were prosecuted because they allegedly belonged to a criminal organisation whose objectives, among other things, were to recruit Muslims for armed struggle ('jihad'). All were acquitted by the Rotterdam District Court of being a member of a criminal organisation and of canvassing (and probably) recruiting for armed struggle (currently a crime under Section 205 of the Criminal Code).⁷⁹ The appeal was cancelled for a lack of evidence. As it was believed they posed a threat to the national security interest of the state, some of the suspects were later monitored by the AIVD. As 'terrorist intent' has only been punishable since the amendment of the Criminal Code in 2004, these criminal offences were punishable at the time, but not within the context of terrorist crimes.

⁷² LJN (National Case-Law Number): AF2141, Rotterdam District Court, no.10/150080-01, 18 December 2002.

⁷³ At the time the secret service was called the Internal Security Service ('BVD').

⁷⁴ LJN: AP3601, The Hague Court of Appeal, no.2200071203, 21 June 2004, section.7.

⁷⁵ Also known as Mohamed B. and Abdelkader R.

⁷⁶ LJN: AP3601, The Hague Court of Appeal, no.2200071203, 21 June 2004/ LJN: AV4122, Supreme Court, no.0412205, 5 September 2006.

⁷⁷ Also known as Rachid A.Z.

⁷⁸ LJN: AF9546, Rotterdam District Court, no.10/000063-02, 5 June 2003.

⁷⁹ LJN: AF9546, Rotterdam District Court, no. 10/000063-02, 5 June 2003.

The Hofstad Group case⁸⁰ (2006-ongoing)

In 2005, for the first time since the 2004 Crimes of Terrorism Act, 14 suspects were prosecuted in the so-called ‘Hofstad Group’ case.⁸¹ Most suspects were arrested shortly after the murder of Theo van Gogh on 2 November 2004.⁸² All these persons were thought to be linked to Mohammed. B., Theo van Gogh’s murderer. The AIVD, which had already monitored them since 2002, had labelled the network the ‘Hofstad Group’. Even before December 2001, the AIVD monitored the radical Salafist El Tawheed mosque in the north of Amsterdam because of alleged Saudi and Egyptian connections (the mosque had financial relations to a Saudi NGO, ‘Al Haramain International’) (NCTV, 2008, 25). In the summer of 2002, the intelligence services identified a group of Dutch Muslim youngsters, mostly of Moroccan decent, who met in and around the mosque and gathered around Redouan al-Issa⁸³, who had ties to radical Muslims in Spain and Belgium. Abu Khaled was an illegal immigrant from Syria, a former member of the Syrian Muslim Brotherhood, who came to the Netherlands in 1995. For a number of radical Muslims, he became a mentor.⁸⁴

In the first instance, nine persons were convicted of various criminal offences and five persons were acquitted by the Rotterdam District Court. After being found guilty of membership of a terrorist and criminal organisation, the suspects who appealed the decision were acquitted of this charge by The Hague Court of Appeal.⁸⁵ After appeal in cassation, the Supreme Court ruled that the proceedings against seven of the suspects had to be partially retried, partly because the Court of Appeal had been too stringent in its demands for the existence and the structure of the terrorist or criminal organisation and had incorrectly construed the legal concept of ‘inciting hatred’.

In the second appeal to the Amsterdam Court of Appeal, seven suspects were convicted for the membership of a terrorist and criminal organisation.⁸⁶ This organisation was aimed at agitation, instigation to hatred and violence and threats of a terrorist crime, among other things. Five suspects were sentenced to 15 months’ imprisonment, whereas the two who had had four hand grenades in their possession, one of which had been used against a special police arrest squad, were sentenced to 38 months’ and 13 years’ non-suspended imprisonment respectively. According to the verdict, not only religious discussions were held during the ‘living room meetings’, but also teaching and structured activities were organised to prepare the minds of the participants for jihad. The proof was based in particular on a number of documents written by Mohammed B. These had been found in the suspects’ computers, USB sticks and document files. ‘To Catch a Wolf’, ‘Open Letter to the Dutch Nation’ and other documents incited the violent jihadi struggle against the unbelievers and the Dutch nation.

⁸⁰ The Jason W. case, LJN: BC2576, The Hague Court of Appeal, no. 2200189706, 23 Jan 2008/ LJN: BK5193, Supreme Court, no. 08/00695, 2 February 2010 / LJN: BO7690, Amsterdam Court of Appeal, no. 2300075110, 17 December 2010 / LJN: BW5136, Supreme Court, no. 11/00043, 3 July 2012.

⁸¹ The case is also known as ‘Arles’.

⁸² Samir A. was considered a leading figure in the Hofstad Group, but he was detained at that time.

⁸³ Also known as ‘Abu Khaled’.

⁸⁴ *Feitenrelas* [Facts of the case], attachment to the Letter to Parliament (Ministers of the Interior and Kingdom Relation and Security and Justice), 10 November 2004, Parliamentary Papers II, no. 29854.

⁸⁵ LJN: AV5108, Rotterdam District Court, 10 March 2006 (compilation of verdicts concerning the Hofstad Group); LJN: Case against Jason W. LJN: BC2576, The Hague Court of Appeal, no. 2200189706, 28 January 2008.

⁸⁶ Case against Jason W. LJN: BO7690, Amsterdam Court of Appeal, no. 2300075110, 17 December 2010.

After a second appeal in cassation in 2012, the Supreme Court ruled that two of the suspects have to be partially retried, because it is not clear whether the two who had participated in the living room meetings had actually done so as members who had had the intent to commit terrorist crimes.⁸⁷ The Appeals Court in Den Bosch will have to determine this. Five have been convicted indefinitely. Five of the seven convicted persons who have been released since then have been deported as undesirable aliens to Morocco (four) and Qatar (one) (NRC, 2011).

The Piranha case⁸⁸ (2006-ongoing)

This case is actually a continuation of the Hofstad Group case, because the people involved were suspected of forming part of the Hofstad Group network. In addition, it was a third attempt by the judicial authorities to prosecute Samir A., who first had not been prosecuted and was later acquitted on some charges.⁸⁹ The objective this time was to carry out terrorist attacks on a number of politicians and government buildings. In the end, various persons were convicted for terrorist crimes and membership of a terrorist organisation. One person was indefinitely convicted (Mohammed C., six years) and a number appealed in cassation (Samir A., nine years, Soumaya S., four years and Nourridin el F., eight years). The Hague Court of Appeal found four suspects guilty of preparatory acts and the furtherance of a terrorist crime, including the preparation of an attack on Dutch politicians. One person was found guilty of illegal possession of arms without terrorist intent (Mohammed H., three months). All except for Soumaya S. have been convicted indefinitely.

In previous criminal proceedings in 2003/2004, Samir A. was first acquitted and afterwards sentenced to four years' imprisonment for preparing murder and intentional arson and/or exploding buildings.⁹⁰ The Supreme Court referred the case back to the Amsterdam Court of Appeal because The Hague Court of Appeal had given the concept of preparatory acts (Section 46 of the (former) Criminal Code) too limited an interpretation and used an incorrect definition. The suspect had objects, information carriers and substances in his house, which, viewed together, were 'apparently intended' for carrying out an attack. So, it was Samir A.'s objective that mattered.

What is remarkable in this case is that intelligence information constituted the hard core of the evidence presented by the public prosecutor. One of the most convincing and vivid pieces of evidence was a CD-ROM, collected by the AIVD, on which Samir A. had videotaped several versions of a farewell message. Furthermore, among other things, the Supreme Court ruled that Soumaya S. should be retried. This was because the Appeals Court should have motivated why the defence counsel was not able to receive more transcripts of partially-released AIVD-wiretap, the so-called 'Pharmacist conversation', or question

⁸⁷ Mohamed F.B. and Yousef E. LjN: BW5132, Supreme Court, no. 11/00041, 3 July 2012 / LjN: BW5161, Supreme Court, no. 11/00284, 3 July 2012.

⁸⁸ The second case against Samir and others. LjN: AZ3589, Rotterdam District Court, 10/600052-05, 10/600108-05, 10/600134-05, 10/600109-05, 10/600122-05, 10/600023-06, 10/600100-06, 1 December 2006/ LjN: BF3987, The Hague Court of Appeal, no.2200734906, 2 October 2008/ LjN: BF5225, The Hague Court of Appeal, no.2200735006, 2 October 2008/ LjN: BF4814, The Hague Court of Appeal, no.2200735106, 2 October 2008/ LjN: BF5180, The Hague Court of Appeal, no.2200738406, 2 October 2008.

⁸⁹ The first Samir A. case, LjN: AT3315, Rotterdam District Court, no.10 030075-04, 6 April 2005/ LjN: AU6181, The Hague Court of Appeal, no.2200347805, 18 November 2005/ LjN: AZ0213, Supreme Court, no. 00447 06, 20 February 2007 / LjN: BB 3756, Amsterdam Court of Appeal, 23 001907 07, 17 September 2007.

⁹⁰ The first Samir A. case, LjN: AT3315, Rotterdam District Court, no.10 030075-04, 6 April 2005/ LjN: AU6181, The Hague Court of Appeal, no.2200347805, 18 November 2005/ LjN: AZ0213, Supreme Court, no. 00447 06, 20 February 2007 / LjN: BB 3756, Amsterdam Court of Appeal, 23 001907 07, 17 September 2007.

intelligence officers.⁹¹ Two of the three convicted persons who were released have been deported to Morocco (NRC, 2011; Volkskrant, 2010).

DISCOURSE-LEVEL OF THREAT FROM TERRORISM

On behalf of the Minister of Security and Justice, the NCTV, four times a year, draws up a Terrorist Threat Assessment for the Netherlands. It is intended to inform the Cabinet's Committee on the Intelligence and Security Services, but is also discussed with the House's Intelligence and Security Services Committee. A summary is published. These reports communicate the current threat level from terrorism: 1) minimal 2) limited 3) substantial and 4) critical. Since 2005, the threat level has been either substantial or limited (Sargasso, 2011). These reports seldom affect the political or public discourse on terrorism. Nonetheless, since 2004, political and public discourse on the threat of terrorism has been intense. Especially after the murder of filmmaker and Islam-critic Theo van Gogh, polarising statements were issued.

From the murder of Theo van Gogh onwards, in 2004 and 2005, the nature and character of the terrorist threat captured the political and public debate. Of course 9/11 had already shocked the Dutch government and sensitised the public, which had been rather indifferent to international terrorism. The murder of Van Gogh, however, triggered vigilance about the threat of terrorism within Dutch society. For example, the vice-Prime Minister, Gerrit Zalm, declared "war" on Muslim terrorists (Parool, 2004; Trouw 2004). At the time, one of the concerns was that politicians, experts or journalists used concepts such as 'terrorism', 'radicalisation' or 'jihad' inconsistently, without properly defining them (Buro Jansen & Janssen, 2006, 168-171).

After 2006, political discourse no longer primarily concerned the threat of terrorism (Van der Woude, 2010, 310; see Part Five). As a result of the side-effects of counter-terrorism measures, as well as the process of securitisation which entails that, increasingly, more policy issues have become national security concerns, the terror threat discourse has evolved to include other threats such as 'Islamisation', 'immigration' and 'integration' (De Graaf & Eijkman, 2011, 2-3 and 36; see Parts One and Five).

ESTIMATES OF THE NUMBER OF PEOPLE UNDER SURVEILLANCE

This is unknown.

⁹¹ LJN: BP7544, Supreme Court, no. 08/04418, 15 November 2011.

PUBLIC OR MINORITY GROUP PERCEPTION OF THE THREAT FROM TERRORISM

A 2005 study by the American Pew Research Center showed that 32 percent of the Dutch population worried about Islamic extremism in the Netherlands and 46 percent about Islamic extremism around the world (PEW Research Center, 2005). National surveys suggest that, among the general public, fears of terror attacks have decreased over time from 52 percent in 2005 to 10 percent in 2009. The same survey indicates that public fears about radicalism have augmented, particularly among the elderly (10 percent), and that the Dutch believe that radicalisation mostly occurs among Muslims minorities (NCTV, 2009).

PUBLIC OR MINORITY GROUP PERCEPTION OF PARTICULAR COUNTER-TERRORISM MEASURES OR POLICIES

Public or minority group perception of particular counter-terrorism measures or policies has not been measured as such. Stop-and-search powers (‘preventive searches’) have been assessed, but not specifically in the context of counter-terrorism (Van der Torre et al. 2006; Van der Torre & Ferwerda, 2005; 2006, National Ombudsman, 2011; also see Parts One, Two and Three).

Part Five: Political and Wider Context

With the emergence of a security culture in the 1980s, the breeding-ground for an anticipatory approach to criminal justice developed in the Netherlands (Beck, 1986; Feeley & Simon, 1992, 449; Hirsch Ballin 2012; Van der Woude, 2010). After the turn of the century, several social and political developments and (inter)national events have accelerated the increasing securitisation of Dutch society, influencing, among other things, the expansion of powers for security and intelligence agencies to fight terrorism. Legislation and policies are increasingly focused on the early detection and prevention of potential crime threats and security risks, including terrorism, while restrictions on individual rights and liberties are considered inevitable and legitimate to achieve that aim (De Graaf & Eijkman, 2011; Hirsch Ballin 2012; Leun & van der Woude, 2011; Moerings, 2003, 6; Van der Woude, 2010). The counter-terrorism measures that the Netherlands has developed over time include counter- and de-radicalisation policies, automatic border control, passenger name records data, alien deportation on the grounds of national security or public order, surveillance cameras, stop-and-search practices and administrative measures including control orders (Eijkman & Schuurman, 2011; see Part Two).

After the so-called Fortuyn revolt in 2001 and 2002 and the terror attacks on 9/11, crime prevention in general - and from 2004 onwards counter-terrorism in particular - began to dominate Dutch political discourse. This led to emphasising more strongly a culture of control and is, among other things, reflected by the fact that in 2010 the Ministry of Justice became the Ministry of Security and Justice. Partly as a result of the rise of new populist parties including the List Pim Fortuyn (LPF) and later Geert Wilders’

Freedom Party (PVV) - that mobilised around crime and immigration - the political elite was forced to reposition itself and has subsequently taken up these issues as a policy concern to regain public confidence. The terror attacks in Madrid (2004) and London (2005) but especially the murder of Theo Van Gogh in 2004 further augmented the concern with public security and the threat of terrorism, resulting in several important legal and policy reforms (see Part Two). National and international surveys show that in this period, between 2002 and 2005, Dutch citizens were most anxious about an impending terrorist threat (NCTV, 2009; PEW Research Center, 2004).

On the morning of 2 November 2004, filmmaker and Islam-critic Theo van Gogh was shot by Mohammed B., a young radical Muslim born and raised in Amsterdam, of Moroccan descent. Mohammed B. left a letter attached to the knife inside the corpse of Van Gogh that contained a death threat to politicians, including the Islam-critic Hirsi Ali, who had made the movie *Submission* together with Van Gogh. This movie was broadcasted on Dutch television in the summer preceding the murder and contained images that were perceived as insulting by both practicing and non-practicing Muslims (Buruma, 2006). Hirsi Ali, who then was a Member of Parliament for the People's Party for Freedom and Democracy (VVD), has lived under police and private protection ever since, similar to the leader of the PVV, Geert Wilders, who, in 2008, released a short Islam-critical movie *Fitna* (Fennema, 2010). Shortly after the murder of Van Gogh, the police arrested several members of the so-called Hofstad Group, a loose network of radical Muslims of North African descent connected to Mohammed B. Some of its members were later convicted for terrorist crimes and membership of a terrorist organisation (see Part Four). An evaluation of the CTIVD concluded that the AIVD, which had monitored certain radical Salafist mosques and radicals long before the murder of Van Gogh, including Mohammed B., had insufficiently identified him as potentially violent (CTIVD, 2008; see Annex Three).

These events were a turning-point in the debate about and development of counter-terrorism measures in the Netherlands. Unlike politicians in the United States of America who initially viewed terrorism as an external threat linked to Al Qaeda, the murder of Van Gogh made Dutch politicians aware of a new form of terrorism, carried out by 'home-grown' jihadist terrorists of migrant descent. Policy discourses around this time were fierce, and polarising statements were issued, despite earlier warnings by the AIVD (2002, 13, 34-38) that patterns of polarisation may feed processes of marginalisation, alienation and radicalisation among Dutch Muslims that jihadist recruiters may exploit. The debate hardened when the AIVD concluded, in a letter by the Minister of the Interior and Kingdom Relations to Parliament in March 2004, that "a growing number of Muslims are offended by public statements of opinion makers and opinion leaders (...) Particularly youngsters of the second and third generation appear alienated by the ostensible polarisation between [Dutch] society and Muslims. These groups of offended youngsters form a potential pool of people who are susceptible for radicalisation and recruitment" (Minister of the Interior and Kingdom Relations, 2004). Several prominent politicians rejected the AIVD observation that their persistent critique of Islam and ethnic minorities estranged even moderate Muslims - and thereby possibly

contributed to their radicalisation - defending their liberal rights to freedom of expression (Buro Jansen & Janssen, 2006, 143, 149-153; Minister of the Interior and Kingdom Relations, 2004). National and international surveys show that in this period, between 2002 and 2005, Dutch citizens were most anxious about an impending terrorist threat (PEW Research Center, 2004; NCTV, 2009).

Dutch authorities responded to the threat of terrorism with the aforementioned comprehensive approach aimed at addressing both the effects of terrorist violence and preventing such incidents from occurring by early intervention and countering violent radicalisation (see Part One). It consists of both a hard approach (repression) and a soft approach (prevention). Nevertheless, one can raise the question whether preventive measures can be considered 'soft' as they entail many extended and intrusive powers for law enforcement officials to control individual citizens (De Graaff, 2008, 125). The 'hard' approach aims to target, isolate and prosecute potentially violent extremists, including harsher penalties for those who support or plan to commit terrorist acts as well as laws that make it easier to search suspects without concrete suspicions of a crime, prosecute suspect individuals or groups for terrorist activities, and keep them in custody longer if necessary. The 'soft' approach aims to reduce the breeding-ground for radicalisation by promoting social cohesion, combating discrimination and fostering socio-economic integration, while simultaneously increasing the 'resilience' among Muslim minorities to reduce the appeal of extremist ideologies (Vermeulen & Bovenkerk, 2012, 104-120).

While Dutch counter-terrorism policy states that it does not specifically focus on a certain group or ideology, policy documents suggest that the terrorist threat is primarily seen as deriving from radical or extremist Islamist groups and individuals (AIVD, 2011; AIVD, 2010; NCTV, 2011; see Parts One and Three). Identifying and intervening early in the process of radicalisation is understood as the focal point in combating terrorism. Consequently, security concerns resulting from terrorism have broadened to include the threat of radicalisation or extremism (De Graaf & Eijkman, 2011). This is illustrated by sections in the consecutive reports on terrorism between 2004 and 2007 by the AIVD (AIVD, 2004; 2006a; 2006b; 2007). The latest Terrorist Threat Assessment report of the NCTV also includes a risk-assessment of the level of societal polarisation (NCTV, 2012c). In light of its role to detect and give an early warning about radicalising, extremist and potentially violent individuals or groups, the AIVD has gained a central role in Dutch counter-terrorism policies, in addition to the NCTV, who coordinate terrorism measures and efforts (see Part Three).

After 2006, the terror threat discourse has stopped dominating the political agenda and, furthermore, has evolved to include other threats such as 'Islamisation', 'immigration' and 'integration', causing the merging of crime control and migrant integration policy (De Graaf & Eijkman, 2011, 2-3, 36; Van der Leun & Van der Woude, 2011, 445; Van der Woude, 2010, 310). Politicians on both the left and the (populist) right have come to understand the radicalisation of certain Muslims of migrant descent as an integration problem. They merely differ in the degree to which they link the presumed failed integration to migrants' cultural values and Islam, or to structural patterns of discrimination, societal polarisation and

marginalisation of migrants (Vermeulen & Vermeulen, 2012, 95-120; Buro Jansen & Janssen, 2006, 143-145). Consequently, the civic integration duty (*inburgeringsplicht*) that applies for new immigrants has been extended to all foreign imams (and other religious leaders) who want to practice in the Netherlands. Furthermore, the 2000 Alien Act has been used to deport several radical imams on the basis of them posing a threat to national security or public order. Deported individuals included three imams from the Al Fourqan mosque in Eindhoven in 2005 who, on the basis of AIVD information, were said to radicalise Muslims and to tolerate recruitment for jihad.⁹² Authorities have also organised training programmes for imams, board members of mosques and key figures from the Muslim community, to teach them to recognise and deal with extremism, and developed programmes to increase the ‘resilience’ among Muslim minorities to reduce the appeal of extremist ideologies (Vermeulen & Vermeulen, 2012; Grunenberg & Schriemer, 2008). Anecdotal evidence suggests that some Muslims perceive this presumed relationship between violent Islamic extremism and the perceived lack of integration of Muslim minorities as stigmatising, including those considered to be ‘moderate’ and ‘integrated’ (Open Society Foundations, 2009, 94-95, 106-103; Vermeulen & Bovenkerk, 2012, 103-120; 188-189).

Moreover, in public and political discourse and practice, the allegedly failed integration of ethnic minorities is linked to other social problems including youth delinquency and public nuisance (Martineau, 2006, chapter 6; Schinkel, 2008, 98-105, 118). Telling are the annual reports on minorities’ integration by the SCP that frame relatively high levels of youth delinquency among certain groups of ethnic minorities as an integration problem (NRC, 2012; Van Noije & Kessels, 2012). There is also government-funded research on the causal relationship between ethnicity and criminal or disruptive behaviour (Brons, Hilhorst & Willemsen, 2008; Jennissen, 2009; Laan et al., 2007; Van Noije & Kessels, 2012; Willemsen, 2008).⁹³ The populist tough-on-crime rhetoric has resulted in several specific extended powers for law enforcement officials to protect public order, which may have repercussions in areas such as ethnic profiling (Eijkman, 2010; Van der Leun & Van der Woude, 2011). Broader security measures that have been introduced outside the context of counter-terrorism include administrative court orders and decisions by administrative bodies such as exclusion and restraining orders, a requirement to report to the police at set times, compulsory identification and preventive body searches. Tentative research results indicate that persons of ethnic minority background perceive profiling by police officers applying preventive stop-and-searches (Van der Torre & Ferwerda, 2005; OSJI, 2009, 53, 153, fn. 240).

The prevailing public mood in relation to these security measures is largely one of indifference. The danger of a selective use of law enforcement powers has occasionally been addressed in parliamentary debates about stop-and-search powers, but overall is not highly disputed in Parliament (Van der Leun & Van der Woude, 2011, 451). Civil society and academics have increasingly expressed concerns about the side-effects of counter-terrorism efforts, particularly in relation to fundamental human and constitutional

⁹² Website for legal news: <http://rechtennieuws.nl/3469/beschikkingen-uitgereikt-aan-drie-radicale-imams.html> (accessed 20 July 2012).

⁹³ These studies do critically reflect upon the causal relationship. The issue is that no government commissioned research on the impact of security measures on ethnic minorities is commissioned.

rights to privacy, bodily integrity and non-discrimination (Bovenkerk, 2009; Buro Jansen & Janssen, 2009; Eijkman, 2010; Eijkman & Schuurman, 2011; Kempen, 2005; Van der Leun & Van der Woude, 2011). Several NGOs as well as the National Ombudsman have made human rights' impact assessments of counter-terrorism and other preventive measures, pointing among other things at the danger of ethnic and religious profiling in relation to stop-and-search powers (National Ombudsman, 2011; Talsma & Ouchan, 2007; Vermeulen & Altena, 2005; see Parts One and Six). Nonetheless, so far this topic remains somewhat under-researched and politicians tend to down-play the risk of the impact of security measures on ethnic minorities. When asked about the risk during a parliamentary debate about the Compulsory Identification Act, the then-Minister of Justice Piet Hein Donner, for instance, would argue that the act contained sufficient safeguards and refer to the professionalism and objective expert opinion of law enforcement officials, thereby ignoring critics' fears that the instrument may cause further stigmatisation among marginalised groups (Eijkman, 2010, 15; Van der Leun & Van der Woude, 2011, 451).

The lack of empirical research in the practice and effects of security measures on ethnic minorities, particularly compared to the large amount of research on the over-representation of ethnic minorities in crime statistics (Brons, Hilhorst & Willemsen, 2008; Jennissen, 2009; Laan et al., 2007; Van Noije & Kessels, 2012; Willemsen, 2008), may partly explain why preventive security measures, and the instrument of preventive searches in particular, enjoy, relatively, much public and political support in the Netherlands (Van der Torre & Ferwerda, 2005). Recently, a few NGOs have started to address the danger of ethnic profiling, mostly as a result of international studies pointing at perceptions of profiling on the basis of 'race' or ethnicity among Dutch minorities (Amnesty International, 2011; Open Society Foundations, 2009; LOM, 2011). However, so far, only scant inter-ethnic coalition-building and grass-root mobilisation exists in the Netherlands. Some awareness-raising and advocacy has been conducted in relation to data collection, storage and data-mining, also with regard to ethnic profiling (see Part One). Yet here, too, the general mood in the Netherlands is that 'if one has nothing to hide, one nothing to fear from the state'.

Conclusion

Public fear of terrorism has decreased in the Netherlands. A decade after 9/11 and almost eight years after the murder of filmmaker and Islam-critic Theo Van Gogh, the general public appears less willing to accept counter-terrorism measures at all costs. Considering the increasing mobilisation against state intrusion into their private lives, Dutch citizens seem more wary of setting aside their civil rights and liberties for security concerns. At the same time, however, public security and crime prevention is high on the political agenda and various trends, including the emergence of anticipatory criminal justice, the use and availability of ethnic data, and the strength of populist parties mobilising around (cr)immigration and integration, have made the risk of (side)effects of security measures on minority communities more pertinent. Additionally, the apparently decreased political and public support for the Dutch anti-discrimination framework and the weak socio-economic position and institutional representation of

ethnic minorities and migrants in the Netherlands, contribute to the need for sound empirical research on the impact of security measures on ethnic, racial and religious, especially Muslim, minorities.

This paper was written by Quirine Eijkman Phd, Doutje Lettinga Phd and Gijs Verbossen MSc, Centre for Terrorism and Counter-terrorism (CTC), University of Leiden – Campus The Hague, The Netherlands (the authors would like to thank their research assistant Jelle Bosch)

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Annex One: Key Counter-terrorism Legislation

Act name	Focus	Year	Status	Key sections
Primary Legislation				
Crimes of Terrorism Act	Bringing the Criminal Code into compliance with EU legislation	2004	In effect	<ul style="list-style-type: none"> - extends jurisdiction - adds conspiracy - definition of ‘terrorism’ (section 83a), goes beyond EU standards - aggravates punishment for crimes committed ‘with terrorist intent’
Act to Broaden the Scope for Investigating and Prosecuting Terrorist Crimes	Amendments to the Criminal Procedural Code further empowering the intelligence service and the police to investigate CT cases	2006	In effect, use of indications has been utilised, but not uniformly	<ul style="list-style-type: none"> - change from reasonable suspicion to ‘indications’ for justification of special investigative powers; ‘reasonable suspicion’ enough for detention - detention and withholding access to file lengthened - increase in preventative frisking powers
Amendment of Protected Witnesses Act	Extends protection to secret service officers in special process	2006	In effect, never been used	- brings in intelligence reports and intelligence officer’s testimony as evidence in criminal proceedings
National Security (Administrative Measures) Act	Codifies collection of municipal level association and freedom of movement restrictions in the name of national security	2008	Act revoked in 2011 by the Minister of Security and Justice	<ul style="list-style-type: none"> - also ‘indications’ threshold - judicial oversight only once measures imposed and if someone were to file a complaint

Extension of the Intelligence and Security Services Act 2002	Proposed extensions of investigative powers, especially re-access to data	2008	Amendment revoked in 2011 by the Minister of Security and Justice	
Act concerning Criminalisation of Training in a Terrorist Training Camp	Amends the Criminal Code	2010	In effect, not yet used	- criminalises attendance or support of terrorist training activities
Related Legislation				
Protected Witnesses Act	Amends the Criminal Procedural Code	1993	In effect	
Special Investigative Police Powers Act	Codified judicial authorisation issues	2000	In effect	
Intelligence and Security Services Act 2002	Regulates relation (sharing) between secret and military services and expands on their powers	2002	In effect	- defines separate relation between police and secret service to prevent misuse of secret service information (more easily obtained) in criminal investigations
(Investigative) Powers to Request Information Act	Expands possibilities to claim data	2005	In effect	
Compulsory Identification Act	Extension of the requirement to identify oneself in public order situations, as compared with the situation before 1 January 2005. It consists of amendments and additions to the Compulsory	2005	In effect	- brought in post 9/11 as CT measure - concern that disparate impact; not used for c-t reasons at this time

	Identification Act in force from 1 June 1994 and a number of associated acts.			
Dual Nationality Act	Enables revocation of Dutch nationality to dual nationality holders if convicted of e.g. terrorism charges	2010	Passed, not yet used	<ul style="list-style-type: none"> - indirectly affects citizens with double nationality such as Dutch Moroccans, who cannot give up their Moroccan nationality under Moroccan law - an amendment to the Nationality Act, not counter-terrorism specific
Football Hooligan & Serious Nuisance Act	Targets unruly football supporters and other groups believed to create a public nuisance	2010	Just passed, first used late August 2010	<ul style="list-style-type: none"> - codifies number of administrative measures to curb public order concerns (contact etc. restrictions) - could potentially be used for 'terrorism' categories - under purview of mayors

Annex Two: Key Counter-terrorism and Counter-radicalisation Policies

Policy name	Focus	Year	Relevant authority	Key sections
Action Plan on Counter-terrorism and Security	Elaboration of post 9/11 measures explained	2001	Ministry of General Affairs (Prime Minister's office), Ministry of Security and Justice, the Interior and Kingdom Relations, Finance and Defence	<ul style="list-style-type: none"> - extra measures for protection civil aviation - expands intelligence and security services - improves cooperation national intelligence and security services and police intelligence services - develops biometric identification-possibilities - increases personal protection capacities national police agency - intensifies border checks
Memorandum Terrorism and the Protection of Society	Integrated view on counter-terrorism. Introducing the Comprehensive approach	2003	Ministry of Security and Justice	<ul style="list-style-type: none"> - measures against breeding grounds for terrorism - offensive counter-terrorism measures to identify, prosecute and deter possible terrorists - establishes counter-terrorism-unit within the Netherlands Police Agency - calls for better cooperation within the government between agencies concerned with combating terrorism
Memorandum New System Surveillance and Protection	Integral, professional system for personal protection	2003	Ministry of the Interior and Kingdom Relations and Security and Justice	<ul style="list-style-type: none"> - threat assessment responsibility intelligence and security services - new director personal protection and crisis control - improving cooperation local and national agencies involved in personal

				protection
Policy Document on International Terrorism	Intensification of previous measures and introduction of new instruments	2004		<ul style="list-style-type: none"> - introduced new CT-instrument, Counter-terrorism Alert System - introduced new CT-instrument, the Analytical Cell (later to be converted into the CT-Information Box)
Letter Combating Terrorism	Introducing new measures after the Madrid bombings	2004	Ministry of the Interior and Kingdom Relations Security and Justice	<ul style="list-style-type: none"> - integrating intelligence, policymaking and coordination in relation to CT in one organisation (NCTb, now NCTV) - expanding government-powers to act in case of preparation for a terrorist attack
Letter Counter-terrorism: Coherent system of measures and policies	First letter of the newly established NCTb to Dutch Parliament	2005	NCTV	<ul style="list-style-type: none"> - informs Parliament about efforts undertaken to counter-terrorism - calls for extension of capacities for analysis in the national and regional intelligence services - calls for extension of special counter-terrorism units of the police, public prosecution, military police and Immigration and Naturalisation Service
Action Plan Polarisation and Radicalisation 2007-2011	Comprehensive approach for counter-radicalisation and counter-polarisation policies	2007	Ministry of the Interior and Kingdom Relations	<ul style="list-style-type: none"> - prevents processes of radicalisation, isolation and polarisation by increasing participation in society of individuals in danger of radicalising - early detection of radicalisation-processes - excludes radicalised individuals from social structures
National Counter-terrorism Strategy 2011-	Further elaboration on the comprehensive approach	2011	NCTV	<ul style="list-style-type: none"> - Dutch government 'working definition' of terrorism: "Terrorism is the threat of, or the committing of, serious violence based on ideological motives against,

2015				<p>people, or deeds aimed at causing socially-disruptive material damage with the goal to cause social change, to instil fear among the population or to influence political decision-making”.</p> <ul style="list-style-type: none"> - pillars of comprehensive ‘broad’ approach to counter-terrorism (procure; prevent; protect; prepare and prosecute); - focus: International jihadism; migration and travel movements; technology and innovation and continued development of the ‘surveillance and protection’ system.
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Annex Three: Overview Evaluation Reports

Studies about the impact of counter-terrorism or counter-radicalisation measures in the Netherlands refer modestly to the impact on ethnic, racial or religious communities. They do not include empirical research about the perception of security legislation or policies among affected communities. Dutch counter-terrorism evaluations focus on legislation and policy implementation, accumulative judicial effects and legality with regards to international human rights standards. The reports summarised are conducted by governmental- or semi-governmental agencies, NGOs and think tanks as well as international organisations.

Report		Author, Year	Initiator: Executor
1	<i>Towards an Integrated Evaluation of Counter-terrorism Policies</i>	Committee on the Evaluation of Counter-terrorism Policy, Suyver, 2009	Parliament: Suyver Committee
2	<i>Counter-terrorism Measures in the Netherlands in the First Decade of the 21st Century</i>	National Government, Minister of Security and Justice, 2011	Ministry of Security and Justice
3	<i>Review Report CTIVD Regarding the 'Counter-terrorism Infobox'</i>	Intelligence and Security Services Regulatory Committee (CTIVD), 2007	CTIVD: CTIVD
4	<i>Review Report CTIVD Regarding the AIVD Considerations in the Case of Mohammed B.</i>	Intelligence and Security Services Regulatory Committee (CTIVD), 2008	Parliament: CTIVD
5	<i>Review Report CTIVD Regarding the AIVD Investigation of Radicalisation Processes within the Islamic Community</i>	Intelligence and Security Services Regulatory Committee (CTIVD), 2004	CTIVD: CTIVD
6	<i>Scope for Investigation Expanded: One Year's Experience with the 'Crimes of Terrorism Investigation and Prosecution Act' – Cahiers 2008-09, no 1629</i>	De Poot, C.J.; Bokhorst, R.J.; Smeenk, W.H. & Kouwenberg, R.F., 2008 - Research and Documentation Centre (WODC)	Ministry of Security and Justice: WODC
7	<i>Indications of Terrorism and Investigation in Practice: Two Years Experience with the 'Crimes of Terrorism Investigation and Prosecution Act' – Cahiers 2009-10, no 1880</i>	Van Gestel, B.; De Poot, C.J.; Bokhorst, R.J. & Kouwenberg, R.F., 2009 - Research and Documentation Centre (WODC)	Ministry of Security and Justice: WODC
8	<i>The 'Crimes of Terrorism Investigation and Prosecution Act' Three Years in Effect –</i>	Van Gestel, B.; De Poot, C.J. & Kouwenberg, R.F., 2010 -	Ministry of Security and

	<i>Memorandum 2010-03, no 1953</i>	Research and Documentation Centre (WODC)	Justice: WODC
9	<i>Criminal Investigation of Terrorism in Practice: 'The Act on the Extension of the Powers of Investigation and Prosecution of Terrorist Crimes', Four Years in Effect – Cahiers 2012-04, no 2078</i>	Van Gestel, B.; De Poot, C.J.; Bokhorst, R.J. & Kouwenberg, R.F., 2012 - Research and Documentation Centre (WODC)	Ministry of Security and Justice: WODC
10	<i>Counter-terrorism Policy and Evaluation Research: Framework, Applications and Examples</i>	Nelen, H.; Leeuw, F & Boogaerts S., 2010 – Research and Documentation Centre (WODC)	Ministry of Security and Justice: WODC
11	<i>Safeguards with Preventive Searches: About the Tension between Security, Privacy and Selection</i>	Bijl, N. van der, et.al, 2011	National Ombudsman: National Ombudsmen
12	<i>Fourth Periodic Report – Netherlands: Consideration of Reports Submitted by States Parties under Article 40 of the ICCPR – CCPR/C/NET/4</i>	National Government, 2008	United Nations, article 40 ICCPR: National Government
13	<i>Addendum to the Commentary on the 4th periodic report of the Netherlands on the International Covenant on Civil and Political Rights (ICCPR)</i>	Dutch Section of the International Commission of Jurists (NJCM) – 2009	NJCM: NJCM
14	<i>Legal Rights under Strain: Antiterrorism Legislation Effects Reviewed</i>	Vermeulen, M.L. & Altena, E., 2005 – Humanist Committee on Human Rights (HOM)	HOM: HOM
15	<i>Terrorism, Counter-terrorism Measures and Human Rights in The Netherlands</i>	Talsma, L. & Ouchan, S., 2007 - Dutch Section of the International Commission of Jurists (NJCM)	NJCM: NJCM
16	<i>Under Pressure: Counter-terrorism in the Netherlands</i>	Amersfoort, R.; Van Buuren, J.; Kalkman, K. & Van der Schans, W., 2006 - Buro Jansen & Janssen	Buro Jansen & Janssen: Buro Jansen & Janssen
17	<i>Engaging with Violent Islamic Extremism: Local Policies in Western European Cities</i>	Vermeulen, F. & Bovenkerk, F., 2012 – FORUM, Inst. for Multicultural Affairs	FORUM: FORUM

18	<i>The Commissioner for Human Rights Mr. Thomas Hammarberg on his Visit to the Netherlands – CommDH (2009) 2</i>	Hammarberg, A., 2009 – Council of Europe Commissioner for Human Rights	Council of Europe: Commissioner for Human Rights
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SUMMARY ONE

Towards an Integrated Evaluation of Counter-terrorism Policies***[Committee on the Evaluation of Counter-terrorism Policy, Suyver, 2009]***

The Suyver Committee focused on the integral effect of counter-terrorism legislation and measures. It was established on request by Parliament, subsequent to the Pechthold motion⁹⁴. This preliminary enquiry, the Suyver Committee report, led to an official government evaluation (see Summary Two). The Committee, consisting of four independent members chaired by Jan J.H. Suyver, focused on the following: In what way can the cohesion among existing counter-terrorism measures be assessed?; in what way may this cohesion contribute to the preparation of new policy?; and what are the key points for defining the position of the government in relation to the evaluations of terrorism-related legislation and regulations? The Committee evaluated specific counter-terrorism measures on the basis of the criteria of cohesion, legitimacy and effectiveness.

Concerning cohesion, the Suyver Committee found that there is considerable overlap between counter-terrorism measures. Firstly, between criminal law and criminal procedural law a cumulative overlap exists⁹⁵, which may result in lowering the threshold for investigative powers, the possibility of superfluous new legislation compared to the efficacy of old legislation, and intersecting action by criminal justice actors, administrative authorities and intelligence and security services. Secondly, except in the case of direct terrorist threat or attack, there is no clear coordination in the implementation of separate counter-terrorism efforts; specifically there is no explicit legal basis for the person-specific approach, also known as person-specific intervention or harassment. Thirdly, there is a need for a more adequate integration of international and national counter-terrorism measures. The Dutch modestly contribute to the UN and EU financial sanctions regimes, intended to disrupt terrorist activities. The Suyver Committee recommends that the official evaluation of counter-terrorism measures should take into account individual counter-terrorist measures as well as their cumulative effect and emphasised that the Counter-Terrorism Information Box (CT-Infobox) would provide an excellent case study.⁹⁶

Then, concerning the legitimacy of counter-terrorism measures, the Committee recommends periodically evaluating their necessity, while considering up-to-date threat assessments. Secondly, the integral package

⁹⁵ Case in point is the cumulative effect of the 'Crimes of terrorism act' and the 'Act to broaden the possibilities for detecting and prosecuting terrorist crimes' (see Part Two and Annex One).

⁹⁶ See Summary Two.

of counter-terrorism measures should be assessed on the basis of conformity with the jurisprudence of the European Court of Human Rights (ECtHR) with particular attention to the cumulative effect of provisions under the Criminal Code and the Criminal Procedural Code. Thirdly, the purpose limitation of counter-terrorism measures should be evaluated systematically to assess to what extent its side effects or possible misuse is tolerated. Fourthly, the Committee recommends that an evaluation should include national and international judicial rulings on government counter-terrorism measures. This specifically applies to the legal basis for the person-specific approach. Furthermore, the Suyver Committee report recommends that public support for counter-terrorism measures should be explicitly evaluated, in particular among minorities. Finally, the Committee recommends evaluating the chain of command and coordination of the counter-terrorism executive branches. Particularly, the expectations of the executive branches of counter-terrorism efforts should be specifically reviewed.

In terms of effectiveness, the Suyver Committee stresses that Dutch counter-terrorism measures have a clear preventative goal, but the efficacy of this approach cannot be assessed properly. Nonetheless, it concludes that this does not alleviate the obligation to evaluate the effectiveness of law and policy, as specific case studies do allow for a procedural efficiency assessment. The Committee added that the frequency of application of a certain measure does not reveal its efficacy. Efficiency should in any case be evaluated and weighed against the desirability and acceptability of its side effects. Evidently, the chain of command and coordination at the operational level should be evaluated in terms of integral efficiency.

The Committee Suyver mentions explicitly, although modestly, that an evaluation of Dutch counter-terrorism measures should include an assessment of its support among minorities. Public support is an important consideration in terms of legitimacy -especially the support of minorities is crucial- because they are more likely to being disproportionately affected by counter-terrorism measures.

SUMMARY TWO

Counter-terrorism Measures in the Netherlands in the First Decade of the 21st Century [National Government, Minister of Security and Justice, 2011]

The Dutch government, represented by the Minister of Security and Justice, conducted this counter-terrorism evaluation upon Parliament's request. It incorporated some of the Suyver Committee report recommendations.⁹⁷ The report focusses on the origin, application, assessment and amendment of specific counter-terrorism measures.

Firstly, Dutch counter-terrorism measures between 2001 and 2010 were nearly all reactive. Whereas international terror attacks directly led to new legislation and policies, national terrorist attacks and threats were covered by investigations on the basis of the pre-existing framework. Initially, measures emphasised

⁹⁷ See Summary One.

repression, while the Netherlands advocates a comprehensive approach to counter-terrorism. The Dutch government acknowledges that a lack of a formally adopted strategy to implement this comprehensive approach led to an emphasis on repressive counter-terrorism measures (National Government, 2011). Nonetheless, it emphasises that responsible security agencies demonstrates restraint and to adjust repressive counter-terrorism measures in to preventive ones.

Secondly, the report evaluates five specific counter-terrorism measures, focusing on cause, application, assessment and amendment. The measures concerned the ‘financial sanctions regime’, the ‘CT-Infobox’, the ‘system of special units’, the ‘person-specific approach’ and the draft National Security (Administrative Measures) Act. After reviewing these measures, the evaluation concludes that counter-terrorism measures in the Netherlands were initially reactive. The implementation of the five measures corresponded to specific situations and incidents. Furthermore, the evaluation states that court rulings, reports, independent evaluation committees and civil society advocacy led to the reform of all five counter-terrorism measures. In case of the ‘National Security (Administrative Measures) Act’, which was pending in Parliament at the time, assessments of an independent committee led to the recommendation that the draft act should be withdrawn (see Part Two).

Thirdly, a ‘case-based analysis’ is provided while focusing on the chain of command and cooperation, the cohesion between local and national counter-terrorism powers and the cumulative effect of counter-terrorism measures. In terms of inter-agency cooperation, the report pays special attention to the integration of terrorist threat assessments. The case of the CT-Infobox illustrates more inter-agency cooperation. Also, the Minister of Security and Justice argues that the Immigration and Naturalisation Service (IND) should be included in the coordination of counter-terrorism efforts. There are challenges in the coordination between local and national counter-terrorism efforts. Ineffective communication between local and national counter-terrorism agencies delays preventive and repressive actions. This could lead to confusing messages to the public. Finally, the case-based analysis showed that the theoretical possibility of a negative cumulative effect of counter-terrorism measures has in practice not been observed.

Additionally, six counter-terrorism measures were assessed from a human rights perspective. The measures concern the Crimes of Terrorism Act, the Training for Terrorism Act, the Investigation and Prosecution of Crimes of Terrorism Act, the Protected Witnesses Act, the draft National Security (Administrative Measures) Act and the ‘person-specific approach’ (see Annex One). So far, Dutch courts have, for a variety of reasons, have hardly reviewed these measures for compatibility with human rights, i.e. the European Convention on Human Rights (ECHR) or the jurisprudence of ECtHR.

In summary, Dutch counter-terrorism measures are according to this report considered proportionate, effective, legitimate and cohesive. Where this is not concluded, the report argues that there is an ability to learn from judicial, academic and civil society feedback and it emphasises the need to continuously update

counter-terrorism measures. Finally, the report does not mention the impact of counter-terrorism measures on minorities, nor does it take into account the possible necessity of such an assessment.

SUMMARY THREE

***Review Report CTIVD Regarding the ‘Counter-terrorism Information Box’
[Intelligence and Security Services Regulatory Committee (CTIVD), 2007]***

The CT-Infobox is a cooperative information-sharing platform for agencies engaged in counter-terrorism. In 2006, the CTIVD in accordance with its mandate and provisioned by the Intelligence and Security Service Act 2002⁹⁸ to independently initiate evaluations of the intelligence and security services, initiated an investigation of the CT-Infobox.

The CTIVD raises several concerns in this review. Firstly, it criticises the ‘leading’ role of the AIVD. Except for being the host agency, the AIVD should not take the lead in the CT-Infobox: This jeopardises the cooperation between all members. Therefore, the Committee advises to further embed the CT-Infobox in legislation and determine the role of the National Coordinator Terrorism and Security (NCTV)⁹⁹ should be specified. Secondly, the Committee stresses a more strict compliance with the provisions of the Intelligence and Security Service Act 2002¹⁰⁰, especially regarding individuals who are under review. Thirdly, in light of the ECHR and jurisprudence of the ECtHR the Committee questions the legality of the ‘person-specific approach’, a measure that is executed on the basis of information as provided by the CT-Infobox. The Committee advises that if the government and Parliament desire this measure to continue, specific legislation should be initiated. This critique is raised in several evaluation reports.

SUMMARY FOUR

***Review Report CTIVD Regarding the AIVD Considerations in the Case of Mohammed B.
[Intelligence and Security Services Regulatory Committee (CTIVD), 2008]***

After it became public knowledge that Mohammed B. was known by the AIVD before he murdered Theo Van Gogh on 2 November 2004, Parliament requested an independent CTIVD enquiry into the role of the AIVD in the case of Mohammed B.

The CTIVD concluded that before the murder the AIVD had not filed the available information about Mohammed B. in a single dossier. Pieces of intelligence were separately assessed or falsely disregarded.

⁹⁸ The Intelligence and Security Service Act 2002 Stb. 2002, 148, entered into force 7 February 2002.

⁹⁹ Before known the National Coordinator Counter-terrorism (NCTB).

¹⁰⁰ The Intelligence and Security Service Act 2002 Stb. 2002, 148, entered into force 7 February 2002.

Yet, the Committee has not found evidence that suggests that the AIVD could or should have known on reasonable grounds of the imminent attack. Still, the AIVD had underestimated the role of Mohammed B. as an active and potentially violent member of the Hofstad Group as a result of a lack of a personal dossier and insufficient use of the RID (see Part Five). Furthermore, Mohammed B. would have been eligible to be monitored by the CT-Infobox, which did not exist at the time.

SUMMARY FIVE

Review Report CTIVD Regarding the AIVD Investigation of Radicalisation Processes in the Islamic Community

[Intelligence and Security Services Regulatory Committee (CTIVD), 2004]

After 9/11 the Democratic Law and Order Unit (DRO)¹⁰¹ of the AIVD shifted its focus to monitoring radical individuals or groups, specifically within the Dutch Islamic community. The CTIVD initiated a review of the legitimacy of AIVD research into radicalisation processes in the Islamic community.¹⁰²

The Committee reviewed all AIVD activities in relation to Islamic radicalisation investigations on legality, necessity, proportionality and subsidiarity. Activities were considered to be in line with relevant legislation. Yet, to prevent future legal complications, the Committee advises to structurally include the AIVD's legal department in all activities related to the investigation of radicalisation. Exceptional interventions, such as the use of informants, were considered to be necessary and proportional and in compliance with the mandate under the 2002 Intelligence and Security Service Act. Focus points concerned the extension of exceptional powers -the use of this procedure does not always comply with the 2002 Intelligence and Security Service Act- and the lack of a standard format for dossier filing. Then, in terms of subsidiarity, the Committee concludes that monitoring the Internet is a broad task that should have a clear purpose. The Minister of the Interior and Kingdom Relations responded to the CTIVD report by stating that the recommendations would be taken into consideration.

SUMMARIES SIX, SEVEN, EIGHT AND NINE

Monitoring the 'Crimes of Terrorism Investigation and Prosecution Act'

[Research and Documentation Centre (WODC), 2008/2009/2010/2012]

On 1 February 2007, the 2006 Act on the Extension of the Scope for Investigation and Prosecution of Terrorist Crimes entered into force (see Part Two). Following parliamentary discussions of the act, the Minister of Security and Justice requested the Research and Documentation Centre (WODC), which is

¹⁰¹ The unit DRO no longer exists. Its tasks are now part of the AIVD unit 'National Security'.

¹⁰² The Intelligence and Security Service Act 2002 Stb. 2002, 148, entered into force 7 February 2002.

affiliated to the Ministry of Security and Justice, to monitor the act and has published reviews in 2008, 2009, 2010 and 2012. The reports focus on the use of the new act by the Public Prosecution Services and law enforcement agencies; the role of the Criminal Intelligence Unit (CIE) of the police; and, in case indications of a terrorist crime do not lead to an investigation, the nature of police terrorism investigations. Few terrorist crimes occurred in the first two years since the act, so the conclusion of this report are preliminary. After the first year the interviewed public officials of the intelligence agencies, the Public Prosecution Services and law enforcement agencies welcomed the extended powers to act in case of a terrorist threat, especially as this would create more independence for the latter two to initiate terrorism investigations. However, no such independent investigations have been initiated and the AIVD has not shared information to the OM or law enforcement agencies. The AIVD feared that sharing information with law enforcement agencies would undermine their intelligence position.

In the second year, 29 terrorism investigations were conducted, of which three were on the basis of the ‘indications’ threshold (see Part Two). None of the 29 investigations resulted in formal terror charges. Upon closer evaluation of these investigations, the report has found that there is no actual difference between the intelligence that lead to ‘suspicion’ and the intelligence that prompted ‘indications’. As such, the report concludes that the counter-terrorism agencies were not fully aware of the new extended powers. There are also instances when no criminal investigation was initiated. Interviewees for this report stated that investigative powers based on ‘indications’ do not contribute substantially to existing investigative powers.

In the third and fourth year after the implementation the act was only used in a limited number of cases. 31 terrorism-related investigations were initiated in the third year: In four cases the new act was used, three of which involved the use of special investigative powers based on terrorism ‘indications’ threshold. In the fourth year, 17 terrorism investigations were initiated, of which in two cases ‘indications’ of terrorism provided special investigative powers. The powers employed are limited to the use of preventive searches in a designated security risk area and the detention of a person associated with terrorism. In total only one case led to the prosecution of a terrorism suspect. This case concerned a Dutch army veteran, who, to support his demand for financial compensation for personal suffering as a result of his military service, intended to blow up a government building.

According to the report, no trends in the implementation of the act can be established. During the first four years only limited experience was gained with the act. The only preliminary conclusion is that the terrorist threat in the Netherlands is low.

In the fourth report, the focus is on the implementation of the new act, more specifically the use of preventive searches in designated security risk areas (see Part Two). It concludes that the executive law enforcement officials have little to no knowledge of the new powers provisioned by the act and in general draw on existing legislation to justify investigative powers. This is the result of a lack of knowledge of the

act. But, more interestingly, the Committee questions whether, in practice, the act would be at all applicable: circumstances make it hard to distinguish a terrorist threat from any other threat. The intrinsic question to this dilemma is what definition of terrorism is used and how this definition evolves over time.

SUMMARY TEN

Counter-terrorism Policy and Evaluation Research: Framework, Application and Examples [Scientific Research and Documentation Centre (WODC), 2010]

This NCTV-subsidised report is a literature review of the methodological approaches to evaluating counter-terrorism policies and the assessment of the impact of counter-terrorism measures. The report's main conclusion is the distinction between academic publications and policies that focus on the nature of terrorism as well as the impact of counter-terrorism measures. The implementation of counter-terrorism legislation is reviewed, while focusing on specific measures. In the literature hardly any attention is paid to the theoretical basis underlying counter-terrorism policy, or to the related question of if the absence of terrorism in the Netherlands could be attributed to counter-terrorism measures. The report acknowledges the difficulty of evaluating policies on such a fluid and vague phenomenon as terrorism, but emphasises that a range of interventions and activities can and should be evaluated by a 'custom-made' methodological approach.

In an effort to propose an evaluation framework for counter-terrorism policy, three central questions are addressed. Firstly, different ways to reconstruct theories underpinning counter-terrorism policy are considered. Secondly, possible methods for efficiency assessment of policy execution are reviewed. And, thirdly, performance indicators for the evaluation of counter-terrorism policy are proposed. This results in the following framework for evaluation:

Step 1: Identify the intervention, programme or policy that is to be evaluated and describe its specific context and define the essence of the evaluation problem and formulate central research questions;

Step 2: Describe the counter-terrorism interventions, programmes, and policies and determine their underlying theory;

Step 3: Engage and consult stakeholders;

Step 4: Develop a tailor-made research design;

Step 5: Collect relevant, reliable, timely and valid data; 'browse for evidence' of counter-terrorism measures' performance. Build on existing knowledge relevant to the impact of counter-terrorism measures;

Step 6: Link the impact of counter-terrorism measures to the underlying theory and justify the outcome of the evaluation on the basis of that;

Step 7: Disseminate the results of the evaluation to the relevant actors and articulate ‘lessons learned’ and ‘lessons to be learned’.

Particular preconditions for a successful evaluation are emphasised: Resources, time, supervision and academic independence. The authors stress that a standardised ‘one-size fits all’ format for the evaluation of counter-terrorism is not effective. A multi-method evaluation approach, tailored to the intervention, programme or policy at hand, is required to substantially contribute to the improvement and development of counter-terrorism policy evaluations.

SUMMARY ELEVEN

Safeguards with Preventive Body Searches: About the Tension between Security, Privacy and Selection

[The National Ombudsman, Rotterdam Ombudsman, Amsterdam Ombudsman, 2011]

The National Ombudsman and the Ombudsmen of the cities of Rotterdam and Amsterdam initiated an evaluation of the potential infringement on human rights in the implementation of preventive body searches. According to the report there is a shift from the intended preventive use of body searches to the use of preventive body searches for broader criminal investigation purposes. As in practise the measure has evolved, this requires a new evaluation of the measure, especially focusing on the continuity of the safeguards originally entrenched.

The report concludes that human rights standards such as proportionality and subsidiarity are at risk, because preventive searches are not always used indiscriminately and their deployment may lack a clear goal or criteria. In other words, when there are no clear guidelines, stigmatisation or discrimination may occur. Also, fair trial criteria, such as the presumption of innocence, are under pressure.

The Ombudsmen recommend that the decision to deploy preventive body searches on the basis of a clear and singular goal. Subsequently, the proportionality and subsidiarity principles will be protected. Simultaneously, each preventive search deployment should be evaluated on the basis of these two aforementioned principles.

SUMMARY TWELVE

Fourth Periodic Report – Netherlands: Consideration of Reports Submitted by States Parties under Article 40 of the International Covenant on Civil and Political Rights (ICCPR) – CCPR/C/NET/4***[National Government, 2008]***

In the fourth Dutch periodic report on the implementation of the rights provisioned by the ICCPR, the Dutch government does not refer to the judicial impact of the counter-terrorism measures.

SUMMARY THIRTEEN

Addendum to the Commentary on the 4th periodic report of the Netherlands on the International Covenant on Civil and Political Rights (ICCPR)***[Dutch Section of the International Committee of Jurists (NJCM), 2009]***

By submitting a shadow report to the United Nations (UN) Human Rights Committee in 2009¹⁰³, several civil society organisations, represented by the Dutch Section of the International Commission of Jurists (NJCM), raised the issue of counter-terrorism and respect for fundamental rights. However, this shadow report, a response to the original report submitted by the government, does not refer to the side-effects of specific counter-terrorism measures.

SUMMARY FOURTEEN

Legal Rights under Strain: Antiterrorism Legislation Effects Reviewed***[Humanist Committee on Human Rights (HOM), 2005]***

The NGO Humanist Committee on Human Rights (HOM, or AIM for Human Rights) reviews Dutch (draft) acts, in light of human rights conventions. With regards to Dutch counter-terrorism legislation, HOM argues that counter-terrorism legislation has a negative cumulative effect on human rights. They have reviewed five specific (proposed) counter-terrorism acts for their cumulative effect on human rights. The relevant findings are summarised in the table below.¹⁰⁴

¹⁰³ Dutch Section International Commission of Jurists (NJCM)/, “Addendum to the Commentary on the 4th Periodic report of the Netherlands on the International Covenant on Civil and Political Rights,” (accessed on 24 July 2012, http://www.njcm.nl/site/treaty_reports/list_all).

¹⁰⁴ The red cells in the table refer to a direct violation of a human right, with a number referring to the variety of ways in which the act affects this right. Orange represents the possibility of negative side effects occurring.

Table 1 Cumulative Effect		Fundamental Human Rights						
		Privacy	Fair Trial	Freedom of Movement	Freedom of Opinion	Freedom of Religion	Freedom from Discrimination	Safeguards Freedom
(Proposed)	Dispossession of Personal Data Act	1						
	Protected Witness Act		2					
	Act to Broaden Detection and Prosecution Terrorist Crimes	3					1	2
	National Security (Administrative Measures) Act	2	1	3		3		
	Apology Act				4			

Besides evaluating the cumulative effects of Dutch counter-terrorism measures, the report also reviews the (proposed) counter-terrorism legislation on the basis of compatibility with law; foreseeability (for civilians); purpose limitation; necessity; proportionality; and adequate judicial review. It concludes, first of all, that because of broad criteria the legislation could be applied too broadly. Secondly, the information position of the defendant is limited. This impedes on the right to a fair trial. Thirdly, because judges have limited access to particular evidence, a balanced judgement is complicated. Fourthly, the purpose of the legislation is not proportionate in relation to the potential human rights violation. And lastly, the necessity of the (proposed) counter-terrorism legislation is not indisputably proven.

HOM raises several possible risks in relation to the implementation of the (proposed) legislation. Broad criteria may lead to random and broad application of the legislation and, as such, its purpose limitation cannot be guaranteed. Part of this risk is that implementation could lead to discrimination. There are no

strict criteria for applying the envisaged investigative powers. Thus, a breach of fundamental rights might be the (cumulative) result of the (proposed) legislation.

The report concludes that counter-terrorism legislation is detrimental to the country's rule of law. Legitimacy is undermined when judges have restricted access to evidence and do not have clear and objective criteria, especially in cases of balancing public interest against human right of individuals.

SUMMARY FIFTEEN

Terrorism, Counter-terrorism Measures and Human Rights in the Netherlands ***[Dutch Section of the International Committee of Jurists (NJCM), 2007]***

According to the NJCM, counter-terrorism legislation that was implemented after 9/11 “balance(d) on the edge of violating and not violating human rights”. Since then, some of these legal reforms have been adjusted or revoked.¹⁰⁵

After the introduction in 2006 of the Act on Expanding the Scope for Investigating and Prosecuting Terrorist Crimes, the criteria of ‘indications’ of a terrorist threat suffices for the expansion of investigative powers. ‘Reasonable suspicion’ is no longer required in order to appropriate personal data or to use special investigative powers -such as observation, infiltration, wire-tapping, undercover purchase and preventive frisking- or to extend pre-trial detention for more than two years and delaying access to the case file. The NJCM stresses that the precondition ‘indication’ is too vague to meet the foreseeability requirement for any infraction of the right to privacy, fair trial and liberty and security, as stipulated by articles 5, 6 and 8 ECHR. Moreover, the NJCM questions the necessity and proportionality of lowering the threshold for the deployment of investigative powers. This may lead to a disproportionate use of special powers.

Secondly, as rules of evidence have changed to allow intelligence information to be brought up as evidence in criminal proceedings, the legal position of the defendant has become less strong. The judge can hear an intelligence official as an anonymous witness, with the official having decisive say as to whether his or her statements can be submitted to the case file. As such, NJCM questions whether to guarantee equality of arms the suspect enjoys sufficient checks and balances.

Thirdly, under the *non-refoulement* prohibition of Article 3 of the ECHR, expulsion of an alien is unlawful when the subject is at risk of torture or other inhuman or degrading treatment in the country they are deported to. Yet the Immigration and Naturalisation Service (IND) is authorised to revoke the residence permit of an alien, when he or she is considered a threat to national security by the AIVD (see Part Two).

¹⁰⁵ For an updated overview of currently effective counter-terrorism legislation see Annex I.

Subsequently the Dutch authorities might infringe on the absolute character of the prohibition on torture. Moreover, the legal redresses available to an alien without a (temporary) residence permit are significantly lower than standards applicable the criminal justice system.

Fourthly, the NJCM questions the aptness of legal remedies afforded to a defendant of frozen assets, consequent to placement on the EU or UN sanctions list. Organisations and persons placed on such a list are automatically declared terrorists without interference by a court that actually issues a verdict. The NJCM welcomes Dutch efforts to improve this lack of effective legal remedy, but emphasises that so far no real improvements have been made. Additionally, the NJCM questions the effectiveness of freezing assets as a counter-terrorism measure in the Dutch context. Freezing a small bank account of a terrorism suspect who is not financing terrorist activities might not contribute to the overall fight against terrorism.

The report then considers the Draft National Security (Administrative Measures) Act. This draft act has now been revoked (see Part Two). As mentioned earlier, these reasons constitute the legal requirements of foreseeability, necessity and proportionality in light of human rights such as the freedom of movement and the right to privacy.

SUMMARY SIXTEEN

Under Pressure: Counter-terrorism in the Netherlands

[Buro Jansen en Janssen, 2006]

Buro Jansen en Janssen is a civil society organisation, which critically reviews legislation and activities of law enforcement and security services. This book reviews five years of Dutch anti-terrorism legislation. During a period characterised by law and policy makers who are attempting to come to terms with Al Qaeda's 9/11 attacks, it analyses the evolving relationship between law enforcement and intelligence services and their powers.

As the electoral pressure on politicians to deal with a supposed terrorist threat increased, pressure on the judiciary to deal with alleged terrorists grew. During this process the threshold for the use of special investigative powers and criminal prosecution was lowered. 'Indication' instead of 'reasonable suspicion' became the legal requirement for law enforcement agencies to use special investigative powers. 'Intention' became the vaguely definable requirement for arresting alleged terrorists.

According to Buro Jansen & Janssen, who cite a considerable number of academics and professionals, acts, policies and legal reforms have steadily encroached upon the democratic rule of law. Legal remedies for alleged terrorists are flouted, and vaguely defined counter-terrorism legislation has had a knock-on effect on criminal law. The main problem is the blurring of the boundaries between law enforcement and intelligence services. To prevent rather than repress terrorism, intelligence-gathering powers, as well as

information supplied by intelligence agencies, have increasingly become part of law enforcement. The Public Prosecution Services and the police are allowed to use intelligence information, while terror suspects who are in pre-trial detention can be denied access to their case file two years or more.

Distinguishing itself from most other impact assessments and evaluations, this book not only reviews the legal impact or effective implementation of counter-terrorism measures; the authors also argue for an approach to counter-terrorism and its evaluation that is broader than just the criminal perspective. An understanding of individual and social processes of radicalisation should be acquired. Legislators should pay attention to the socio-political environment in which extreme or radical ideologies and an attraction to violence develops, with critical self-reflection on the role of politics and the media. Instead, there seems to be consensus that radicalisation stems from an inability to connect to the modern globalised world, pushing, particularly, young people towards extreme ideologies, condoning terrorism. In contrast to evidence-based research, criminal law is preferred by public authorities. As such, the role of politicians in this process, specifically regarding counter-terrorism, remains off the radar.

SUMMARY SEVENTEEN

Engaging with Violent Islamic Extremism: Local Policies in Western European Cities [FORUM, Institute for Multicultural Affairs, 2012]

The Dutch Institute for Multicultural Affairs (FORUM) engages in debate on multiculturalism. Violent Islamic extremism among European Muslims and their potential interest in terrorism is part of this. The use of both repressive legal action as well as grass-roots social initiatives in the effort to combat Islamic 'home-grown' terrorism is studied comparatively. In London, Berlin, Paris, Amsterdam and Antwerp a particular administrative unit was analysed. The authors' main finding is that the underlying policy problem with regards to countering violent Islamic extremism is the same across Europe. Violent Islamic extremism is seen as a problem with the "incorporation of Islam and/or the integration of the Muslim population in European societies" (188). Every city targets factors that seemingly marginalise the Muslim community. Strategic policies are developed to engage with the Muslim community, either on the basis of a value-based approach to make (religious) values compliant to the national norm, or by a means-based approach that does not seek value complacency but collaborative engagement.

In Antwerp and Paris, violent Islamic extremism is seen as an erroneous religious interpretation inherent to Islam and by definition incompatible with Western values, while in London, Berlin and Amsterdam the same phenomenon is interpreted as the result of social marginalisation. The first perspective is compatible with a value-based approach and the latter with a means-based approach. In Antwerp and Paris, only moderate Islamic organisations are approached as partners in the pacification of extremism; others are seen as the enemy. In London, Berlin and Amsterdam orthodox organisations and/or individuals are

included. In a means-based approach, there is a greater risk that public opinion turns against cooperation between authorities and extremist organisations and/or individuals.

In Berlin such cooperation commonly takes place behind closed doors, denying orthodox organisations a public platform and an opportunity to influence public opinion. In London orthodox groups are given a public platform, confronting them with moderate Islamic organisations, too. Amsterdam chooses to engage with Muslim individuals, to circumvent public criticism that the principle of secularism is being undermined, and in the hope that these individuals will have a pacifying effect on small groups of radical Muslims. A negative side-effect of this engagement strategy, regardless of the underlying conceptual approach, is the stigmatised targeting of the Muslim community. The Muslim community is targeted as a problem and this stigmatisation, in itself, might have a counter-productive effect. This potential effect has not been studied by FORUM.

Why are there differences between the cities' approaches to engagement with the Muslim community? This could be explained by the varying political contexts found within the cities.

The study concludes with the following recommendations:

- Analyse the level of threat as accurately as possible and design a proportionate policy response;
- To prevent stigmatisation, critically review the assumed relations between violent Islamic extremism and the marginalisation of Islam and or the Muslim community;
- To prevent stigmatisation, develop distinct policies against violent Islamic extremism and general integration policies;
- Do not fear engaging with extreme Islamic organisations apologetic for violence, as not reaching out to this group is even more inefficient;
- Do not single out persons before engaging with them;
- Realise that the Muslim community, as well as Muslim organisations, are diverse and do not have one representative;
- To challenge extreme points of view, engagement between local politicians and/or officials and Islamic extremists is the best option.

SUMMARY EIGHTEEN

The Commissioner for Human Rights Thomas Hammarberg on his Visit to the Netherlands [Council of Europe Commissioner for Human Rights, 2009]

The Council of Europe's Commissioner for Human Rights Thomas Hammarberg, on his visit to the Netherlands, found that Dutch counter-terrorism measures are in need of a review "to ensure their full compliance with international human rights standards and principles". Like other critical reviews,

Hammarberg notes with concern the use of broad and vague concepts in the Dutch effort to embed counter-terrorism in criminal and administrative legislation. Furthermore, the Commissioner stresses the need for judicial authorisation of all special investigative powers and other human rights-restricting counter-terrorism measures. Also, individuals suspected of activities with a terrorist aim, subjected to an investigation with far-reaching powers, should always be granted effective legal redress, in the form of procedural guarantees. However legality, proportionality and equality of arms in terrorism investigations are not indisputably guaranteed in the Netherlands.