



European Network of
National Human Rights Institutions

Implementing the Council of Europe Recommendation on National Human Rights Institutions: The State of Play

The situation in Netherlands



Netherlands Country Report

Overview

Name of NHRI and mandate:

- The Netherlands Institute for Human Rights (NIHR)
- Multi-mandate NHRI: NMM, Equality body

Sources:

- NHRI: [ENNHRI, State of the Rule of Law Report in Europe in 2022, Netherlands Country Report](#)
- Sub-Committee on Accreditation (SCA): [SCA Report December 2020](#)
- CoE Independent Bodies: [ECRI Country Report on the Netherlands \(2019\)](#)

Good practices and improvements:

- **CM Principle 1:** The Netherlands Institute for Human Rights (NIHR), is a national human rights institution in compliance with the UN Paris Principles accredited with **A-status**.
- **CM Principle 6: enhanced resources:** While the SCA (2020) indicated the NIHR budget to be at the minimum to carry out its mandate, the NIHR reports having received additional resources in 2022, as part of a government initiative to strengthen independent external supervisors.
- **CM Principle 3§3: Fully address all human rights violations:** The NIHR has a broad human rights mandate and reports having strong engagement with national authorities. In line with the SCA (2020) recommendations, In January 2023, the Minister of Internal Affairs

and Kingdom Affairs announced that the Equal Treatment Act would be extended to the Caribbean parts of the Netherlands, where the NIHR will also function as an equality body.

- **CM Principle 3§5 and 3§4 access to information:** the NIHR reports being continuously involved **in legislative processes** through reporting and advising the government, both as regards new law proposals and existing laws and policies. Moreover, its mandate to access documents has been followed-up by relevant authorities, including the tax authority.

Key areas where improvement is needed:

- **CM Principle 11: prevention of conflicts of interest:** In line with the SCA's recommendation (2020), the enabling legislation or other binding instruments governing the NIHR should be amended to include clearer provisions regulating members' conflict of interest.
- **CM Principle 3§6: contribute to an effective justice system:** although the NIHR in its mandate as equality body receives and decides on individual complaints of discrimination, the Institute cannot decide on individual complaints on alleged discrimination relating to unilateral government action and has called upon the government to extend the scope of the Equal Treatment Act to include amendments in this respect.
- **CM Principle 3§7: encourage treaty ratification, including for Caribbean parts of the Netherlands:** the institute has repeatedly called upon the government to take appropriate steps to ensure that the CRPD and the Istanbul convention are ratified also for the Caribbean parts of the Netherlands, as well as on the need to ensure to not hold off the ratification of these instruments until the islands are in full compliance with the obligations stemming from these instruments.

Specific findings per Principle

The tables below include data on the assessment of the implementation of each Principle (i.e. the individual parts) within the Recommendation from three sources: the National Human Rights Institutions, the Sub-Committee on Accreditation of GANHRI and the Council of Europe independent bodies. Overall, the findings are considered in four overall groups: the establishment of NHRIs; the strengthening of NHRIs; a safe and enabling environment for NHRIs; and cooperation with and support for NHRIs.

I. Establishment of NHRIs

Principle 1	Member States should ensure that NHRIs are in place and that they are established, accredited and function in full compliance with the Paris Principles
Assessment of implementation by Sub-Committee on Accreditation (SCA) of GANHRI	<i>SCA report December 2020, p. 24</i> ‘The SCA recommends that the NIHR be re-accredited with A status.’
Principle 2	Member States should provide a firm legal basis for NHRIs, preferably at the constitutional level, and/or in a law which defines the mandates and functions of such institutions, guarantees their independence and provides them with the means necessary to accomplish their functions effectively, both at national and international levels, bearing in mind existing standards and recommendations on NHRIs, in particular the Paris Principles and their interpretation developed by GANHRI’s Sub-Committee on Accreditation.

Assessment of implementation by the NHRI	<p><i>Information provided by the NHRI in 2023.</i></p> <p>The Netherlands Institute of Human Rights is established by law (Wet College voor de Rechten van de Mens/Law on the Netherlands Institute of Human Rights): This law defines the mandate, tasks and functions of the Institute and guarantees its independence. In its article 1, this law references Resolution A/RES/48/134 of the UN General Assembly on national institutions for the promotion and protection of human rights as well as Recommendation R (97) 14 by the Committee of Ministers of the Council of Europe on the establishment of independent national institutions for the promotion and protection of human rights.</p>
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II. Strengthening of NHRIs

<p>Principle 3.1</p>	<p>Member States should ensure that the mandate given to NHRIs to protect and promote human rights is as broad as possible and in full compliance with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> - monitor and analyse the human rights situation in the country, publish reports on these findings and address recommendations to public authorities at national, regional and local levels and, when applicable, to private entities, and present an annual report to the relevant authorities, including before parliament, for its consideration.
<p>Assessment of implementation by the NHRI</p>	<p><i>ENNHRI, State of the Rule of Law in Europe in 2022, p. 5</i></p> <p>'The Dutch NHRI has taken various actions by providing information and advising the government on Acts to be enforced.'</p> <p><i>Article 3 of the Law on the Netherlands Institute of Human Rights: this article grants the Institute a very broad mandate to report on the human rights situation in the Netherlands and issue recommendations in this regard, including through the publication of a yearly report.</i></p>

<p>Principle 3.2</p>	<p>Member States should ensure that the mandate given to NHRIs to protect and promote human rights is as broad as possible and in full compliance with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> - freely address public opinion, raise public awareness on human rights and carry out education and training programmes;
<p>Assessment of implementation by the NHRI</p>	<p><i>Information provided by the NHRI in 2023.</i></p> <p>Article 3 sub d of the Law on the Netherlands Institute of Human Rights specifies as one of the Institute’s tasks informing the public about human rights and carrying out human rights education.</p>
<p>Principle 3.3</p>	<p>Member States should ensure that the mandate given to NHRIs to protect and promote human rights is as broad as possible and in full compliance with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> - fully address all alleged human rights violations by all administrative authorities, other relevant State entities and, when applicable, private entities
<p>Assessment of implementation by the NHRI</p>	<p><i>Information provided by the NHRI in 2023.</i></p> <p>The Institute is completely independent and sets its own agenda and priorities. In its capacity as national equality body, however, the Institute cannot rule on complaints involving alleged discrimination by State authorities insofar as the alleged discrimination occurred in the context of <u>unilateral government action</u>, except when it comes to discrimination on the basis of race in the</p>

	<p>context of social security. This means that the Institute cannot receive complaints from individuals and render a decision on, for example, ethnic profiling by the police.</p> <p>In March 2023, the NIHR, together with the National Coordinator Against Discrimination and Racism and State Commission against Discrimination and Racism, advised the Minister of Internal Affairs and Kingdom Affairs to bring unilateral government action within the scope of the Equal Treatment Act. This would strengthen the legal protection against discrimination, as it would allow the NIHR to render decisions on complaints about discriminatory government actions, including e.g. racial profiling by the police*¹.</p>
<p>Principle 3.4</p>	<p>Member States should ensure that the mandate given to NHRIs to protect and promote human rights is as broad as possible and in full compliance with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> - have unfettered access to all relevant premises, including places of deprivation of liberty, and to all relevant individuals, in order to be able to carry out a credible examination of all issues covered by their mandate and to all relevant information, subject to possible restrictions stemming from the protection of other rights and legitimate interests and with due respect for the confidentiality of information obtained;
<p>Assessment of implementation by the NHRI</p>	<p><i>Information provided by the NHRI in 2023.</i></p> <p>Article 6 and 7 of the Law on the Netherlands Institute of Human Rights prescribes that the Institute has unrestricted access to all relevant documents and premises that they need in order to fulfil their mandate. Some exceptions apply, e.g. the obligation to provide information does not extend to state secret information or information that would threaten national security. The law also recognises a right to non-disclosure when disclosure would expose the person providing the information or one</p>

	<p>of their close family members or spouse to the risk of a criminal prosecution. Lastly, the Institute cannot claim access to private houses, except with the permission of the inhabitant.</p> <p>Good example: in 2020-2021 the Institute received a large number of individual complaints alleging discrimination by the Tax Authority in the Child Allowance Scandal. The Institute started a preliminary investigation to determine whether there were indications that people with a non-Dutch background were targeted disproportionately by the Tax Authority. To this end, the Institute gained access to the systems and data-sets of the Tax Authority.</p>
<p>Principle 3.5</p>	<p>Member States should ensure that the mandate given to NHRIs to protect and promote human rights is as broad as possible and in full compliance with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> - monitor existing and draft policies and legislation with human rights implications before, during and after their adoption in order to advise the State about the impact of such policies and legislation on human rights and on the activities of human rights defenders, including by making relevant and concrete recommendations.
<p>Assessment of implementation by the NHRI</p>	<p><i>ENNHRI, State of the Rule of Law in Europe in 2022, p. 4</i></p> <p>‘Moreover, the Institute is continuously involved in legislative processes through reporting and advising the government, both as regards new law proposals and existing laws and policies.’</p> <p>In January 2023, the Minister of Internal Affairs and Kingdom Affairs announced that the Equal Treatment Act would be extended to the Caribbean parts of the Netherlands (Bonaire, St. Eustatius and Saba). The NIHR will also function as an equality body in these parts.</p>

	<p>Furthermore, in March 2023, the NIHR, together with the National Coordinator Against Discrimination and Racism and State Commission against Discrimination and Racism, advised the Minister of Internal Affairs and Kingdom Affairs to bring unilateral government action within the scope of the Equal Treatment Act. This would strengthen the legal protection against discrimination, as it would allow the NIHR to render decisions on complaints about discriminatory government actions, including e.g. racial profiling by the police.</p>
<p>Assessment of implementation by Sub-Committee on Accreditation (SCA) of GANHRI</p>	<p><i>SCA report December 2020, p. 24</i></p> <p>'The SCA understands that the NIHR's jurisdiction includes Caribbean territories of the Netherlands. However, the Dutch Equal Treatment Act is not applicable in these territories and therefore the NIHR, which is also an equality body, cannot discharge the full breath of its mandate in these territories. The SCA encourages the NIHR to advocate for the extension of the applicability of the Equal Treatment Act to the Caribbean territories of the Netherlands.'</p> <p><i>[Please note additional information provided by the NHRI with regards the implementation of the SCA recommendation.]</i></p>
<p>Principle 3.6</p>	<p>Member States should ensure that the mandate given to NHRIs to protect and promote human rights is as broad as possible and in full compliance with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> - contribute to an effective justice system for all, through awareness-raising measures and facilitating access to rights and remedies and, as applicable, by providing legal assistance, being a party before the courts or, when applicable, receiving individual complaints;

<p>Assessment of implementation by the NHRI</p>	<p><i>Information provided by the NHRI in 2023.</i></p> <p>In its capacity as national equality body, The Netherlands Institute of Human Rights, receives and decides on individual complaints of discrimination. However, the Institute cannot decide on individual complaints on alleged discrimination relating to unilateral government action. As mentioned above under 3.3, the NIHR has now called upon the government to extend the scope of the Equal Treatment Act to include unilateral governmental action</p>
<p>Assessment of implementation by CoE independent bodies</p>	<p><i>ECRI Report on the Netherlands 2019, p. 14 (Para.17)</i></p> <p>'It decides on complaints of discrimination by decisions through non-binding recommendations and carries out research.'</p> <p><i>ECRI Report on the Netherlands 2019, pp. 14-15 (Para.17)</i></p> <p>'ECRI takes positive note of the NIHR's intention to make use of its power to bring strategic litigation cases before the judiciary.</p>
<p>Principle 3.7</p>	<p>Member States should ensure that the mandate given to NHRIs to protect and promote human rights is as broad as possible and in full compliance with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> - encourage the signature, ratification of and accession to international human rights treaties and contribute to the effective implementation of such treaties, as well as related judgments, decisions and recommendations as well as to monitor States' compliance with them.

<p>Assessment of implementation by the NHRI</p>	<p><i>Information provided by the NHRI in 2023 (see sources linked to this below)</i></p> <p>Article 3 sub g of the Law on the Netherlands Institute of Human Rights specifies as one of the Institute’s task encouraging the signature, ratification of and accession to international human rights treaties and encouraging the removal of any reservations made thereby.</p> <p>At the same time, while the Institute has a broad mandate to address human rights violations, including in the Caribbean parts of the Netherlands (Bonaire, St. Eustatius and Saba), not all human rights treaties have been ratified for these parts of the Netherlands. This includes the CRPD and the Istanbul Convention. The Institute has repeatedly called upon the government to take steps in this regard, but progress is slow. For example, in 2022, it was announced that the Istanbul Convention will not enter into force for Bonaire, Saba and St. Eustatius before 2025. The Institute has expressed its concern about this approach and has urged the government to not delay the ratification and full implementation of the Istanbul Convention (and the CRPD) any further. In particular, the Institute urged the government to not hold off the ratification/entry into force of the Istanbul Convention and the CRPD until the islands are in full compliance with the obligations stemming from these instruments.¹²³</p> <p>¹ <i>Wetgevingsadvies Besluit maatschappelijke ondersteuning en bestrijding huiselijk geweld en kindermishandeling BES College voor de Rechten van de Mens (mensenrechten.nl), p. 1.</i></p> <p>² <i>NHRI Submission on the reporting form submitted by the Kingdom of the Netherlands College voor de Rechten van de Mens (mensenrechten.nl) p. 6.</i></p> <p>³ <i>Monitor VN-verdrag handicap 2022 College voor de Rechten van de Mens (mensenrechten.nl), p. 65.</i></p>
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<p>Principle 4</p>	<p>The process of selection and appointment of the leadership of a NHRI should be competence based, transparent and participatory, in order to guarantee the independence and pluralist representation of these institutions. It should also be based on clear, predetermined, objective and publicly accessible criteria.</p> <p>The duration of the appointment should be clearly set out in the founding legislation, so that the leadership posts of the NHRI do not stay vacant for any significant period of time.</p>
<p>Assessment of implementation by the NHRI</p>	<p><i>Information provided by the NHRI in 2023.</i></p> <p>Article 14 of the Law on the Netherlands Institute of Human Rights specifies how many Commissioners the Institute should have (minimum 9, maximum 12). Article 16 specifies that the Commissioners are appointed by Royal Decree, on the recommendation of the Minister of Justice and Security. The Advisory Council and the Institute will advise the Minister, taking into consideration the need for an independent and knowledgeable Institute as well as the desire to be for a diverse Institute. This article also specifies that a job vacancy and the procedure to be followed will be made public and disseminated under human rights organisations within civil society.</p>
<p>Principle 5</p>	<p>To ensure independence, the enabling legislation of a NHRI should contain an objective dismissal process for the NHRI leadership, with clearly defined terms in a constitutional or legislative text. The dismissal process should be fair and ensure objectivity and impartiality and should be confined to only those actions which impact adversely on the capacity of the leaders of NHRIs to fulfil their mandate.</p>

<p>Assessment of implementation by the NHRI</p>	<p><i>Information provided by the NHRI in 2023.</i></p> <p>Article 17 of the Law on the Netherlands Institute of Human Rights contains the rules in this regard, which are largely similar to the rules that apply to judges.</p>
<p>Principle 6</p>	<p>Member States should provide NHRIs with adequate, sufficient and sustainable resources to allow them to carry out their mandate, including to engage with all relevant stakeholders in a fully independent manner and freely determine their priorities and activities.</p>
<p>Assessment of implementation by the NHRI</p>	<p><i>ENNHRI, State of the Rule of Law in Europe in 2022, pp. 2-3</i></p> <p>'In the meantime, the new governmental pact, in a push to strengthen various 3 different independent external supervisors, has systematically raised the NHRI's budget by about 10% as of 2022.'</p> <p><i>ENNHRI, State of the Rule of Law in Europe in 2022, p. 4</i></p> <p>'The NHRI received significant incidental additional funding to deal with equality cases stemming from this problem, as well as to develop and provide specific trainings to personnel working in administrative agencies.'</p>
<p>Assessment of implementation by Sub-Committee on Accreditation (SCA) of GANHRI</p>	<p><i>SCA report December 2020, p. 25</i></p> <p>'The NIHR reported that the budget of the Institute is at the minimum necessary to carry out its mandate and that, accordingly, it is required to prioritize a limited number of issues. [...]The SCA encourages the NIHR to continue to advocate for adequate funding necessary to allow it to address</p>

	a broader range of priorities, including, for example, the rights of migrants and of the LGBTI community.'
Principle 7	NHRIs should have the authority to determine their staffing profile and recruit their own staff , as well as sufficient resources available, in order to fulfil their mandate, so as to permit the employment and retention of staff and to ensure that they receive adequate training.
Assessment of implementation by the NHRI	<i>Information provided by the NHRI in 2023.</i> <i>Article 18 of the Law on the Netherlands Institute of Human Rights specifies that the Institute recruits and appoints their own staff.</i>
Principle 8	Member States should ensure that NHRIs enjoy adequate access to information and to policy makers and legislators , including timely consultations on the human rights implications of draft legislation and policy strategies.
Assessment of implementation by the NHRI	<i>ENNHRI, State of the Rule of Law in Europe in 2022, p. 1</i> <i>See further information under Principle 3§1.</i>

<p>Principle 9</p>	<p>Member States should implement the recommendations of NHRIs and are encouraged:</p> <ul style="list-style-type: none"> - to make it a legal obligation for all addressees of NHRI recommendations to provide a reasoned reply within an appropriate time frame, - to develop processes to facilitate effective follow-up of NHRI recommendations, in a timely fashion and - include information thereon in their relevant documents and reports.
<p>Assessment of implementation by the NHRI</p>	<p><i>Information provided by the NHRI in 2023.</i></p> <p>When the Law on the Netherlands Institute of Human Rights was passed, the Parliament passed a motion that the cabinet should always present a formal and reasoned reply to the yearly report that the Institute writes on the human rights situation in the Netherlands. A formal reply to other reports and recommendations only follows if the Parliament specifically requests it.</p>
<p>Assessment of implementation by CoE independent bodies</p>	<p><i>ECRI Report on the Netherlands 2019, p. 14 (Para.17)</i></p> <p>'About three quarters of its [NIHR] recommendations are followed'</p>

<p>Principle 10</p>	<p>When member States grant NHRIs additional competences to perform functions foreseen by international conventions in the field of human rights, such as the United Nations Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Convention on the Rights of Persons with Disabilities, the NHRI should have access to sufficient resources to develop the capacity to effectively discharge its functions, including having appropriately qualified and trained staff.</p>
<p>Assessment of implementation by the NHRI</p>	<p><i>Information provided by the NHRI in 2023.</i></p> <p>The Netherlands Institute of Human Rights is the designated monitoring body for the implementation of the CRPD and receives funding for this purpose. The Institute is also exploring the possibility to be designated NPM under OPCAT.</p>
<p>Assessment of implementation by CoE independent bodies</p>	<p><i>ECRI Report on the Netherlands 2019, p. 15 (Para.17)</i></p> <p>ECRI therefore considers that the authorities should clearly assign each of the different competences listed in § 13 of GPR No. 2 either to the NIHR or to the ADVs and provide them with the necessary human and financial resources to entirely fulfil also this function (§ 28 of GPR No. 2), which is crucial for achieving equality and sustainably preventing and eliminating racism and intolerance.</p>

III. Safe and Enabling Environment

<p>Principle 11</p>	<p>Member States should ensure that NHRIs can operate independently, in an environment which is conducive to them carrying out their mandate in an effective manner and in a climate of impartiality, integrity, transparency and fairness.</p>
<p>Assessment of implementation by Sub-Committee on Accreditation (SCA) of GANHRI</p>	<p><i>SCA report December 2020, pp. 24-25</i></p> <p>‘The part-time members of the governing body as well as staff of the NIHR can engage in other paid and unpaid activities. The NIHR reports that, where a member wishes to engage in such activities, an internal discussion occurs and a decision is made by the governing body of the institution. Further, as it relates to staff, the NIHR reports that relevant details relating to other such activities are made publicly available on its website. However, there do not appear to be additional provisions – in legislation, regulation, or another binding administrative guideline – that provide further guidance on what types of activities constitute a conflict of interest or the process by which a determination would be made about the existence of such a conflict.</p> <p>[...]The SCA encourages the NIHR to advocate for the development of further binding guidance with respect to what constitutes a conflict of interest and the process by which a determination would be made about the existence of such a conflict.</p>
<p>Principle 12</p>	<p>Member States should foster awareness and the co-operation of all relevant public authorities in relation to the mandate, independence and role of NHRIs, including through training and awareness-raising activities.</p>

<p>Assessment of implementation by the NHRI</p>	<p><i>ENNHRI, State of the Rule of Law in Europe in 2022,p. 4</i></p> <p>The Netherlands Institute of Human Rights continues to be engaged in awareness-raising and trainings for public authorities’</p>
<p>Principle 13</p>	<p>Member States should take all measures necessary to protect and support NHRIs against threats and harassment and any other forms of intimidation, including through ensuring functional immunity. Any cases of alleged reprisals or intimidation against NHRIs, their membership and staff, or against those who co-operate or seek to co-operate with them, should be promptly and thoroughly investigated and the perpetrators brought to justice.</p>
<p>Assessment of implementation by the NHRI</p>	<p><i>Information provided by the NHRI in 2023.</i></p> <p>Members of the governing body enjoy sufficient immunity with regard to their actions taken in their official capacity. This can be derived from the legal framework and the jurisprudence as will be explained in the following. Members of the governing body are no ordinary civil servants; they have a specific legal status that is in many ways comparable to that of judges (section 17 of the NIHR Act*)(except for the fact that they are appointed for a 6-year term instead of for life). Judges do not enjoy formal immunity in the Netherlands. Though there is no explicit legal provision concerning functional immunity of the members, this does not mean that the members do not enjoy functional immunity. It follows from the current law and jurisprudence that the State as a legal person has sovereign immunity. Since the Institute does not have its own legal personality, it is an organ of State and therefore derives its immunity from the State.</p>

<p>Principle 14</p>	<p>Member States should ensure that confidential information collected by NHRIs in the context of their mandate is privileged and is not unduly made public.</p>
<p>Assessment of implementation by the NHRI</p>	<p><i>Information provided by the NHRI in 2023.</i></p> <p><i>Article 20 of the Law on the Netherlands Institute of Human Rights provides that the Institute does not have to provide access to information or documents to the Minister of Internal Affairs and the Minister of Justice and Security.</i></p>

IV. Co-operation and Support

<p>Principle 15</p>	<p>Member States should take effective measures to enable NHRIs to communicate and co-operate with, in addition to the various levels of administration in the member States, in particular:</p> <ul style="list-style-type: none"> a. counterpart institutions, where appropriate through networking and exchange of information and practices, as well as through regular meetings such as those taking place within the framework of ENNHRI and GANHRI; b. civil society stakeholders, in particular non-governmental organisations and human rights defenders, who should enjoy easy and safe access to NHRIs as part of an enabling environment; c. other human rights structures, including regional, local and/or specialised institutions, notably Ombudsman institutions and equality bodies and their respective networks, where appropriate through jointly organised activities; d. international and regional organisations working in related or similar fields.
<p>Assessment of implementation by the NHRI</p>	<p><i>ENNHRI, State of the Rule of Law in Europe in 2022, p. 1</i></p> <p>'Given the assumption that a bottom-up approach is most effective, the Dutch NHRI works together with a national alliance of Dutch NGOs, that help amplify the message [on rule of law] to the NL and other governments and parliaments that a critical mass is to be built to change the political dynamic at EU level.'</p>

