



European Network Against Racism
Réseau européen contre le racisme

ENAR Shadow Report 2012-2013

ENAR SHADOW REPORT

Racism and related discriminatory practices in employment in the Netherlands

Eefje de Kroon

Racism is a reality in the lives of many ethnic and religious minorities in the EU. However, the extent and manifestations of this reality are often unknown and undocumented, especially in official data sources, meaning that it can be difficult to analyse the situation and to establish solutions to it.

The ENAR Shadow Reports are produced to fill the gaps in the official and academic data, to offer an alternative to that data and to offer an NGO perspective on the realities of racism in the EU and its Member States. NGO reports are, by their nature, based on many sources of data - official, unofficial, academic and experiential. This allows access to information which, while sometimes not backed up by the rigours of academic standards, provides the vital perspective of those that either are or work directly with those affected by racism. It is this that gives NGO reports their added value, complementing academic and official reporting.

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Executive summary

Aim of the report

This report aims to document how racial discrimination manifests itself, and impacts the daily lives of ethnic and religious minorities in the Netherlands, specifically in the field of employment. Expressions of racism in recruitment procedures, as well as in the workplace are described, together with the legal remedies available and the civil society initiatives taken to address the unequal position of ethnic minorities in the Netherlands. This report is based on desk research supplemented with information provided by experts in this particular field.

Key findings

Even though the situation of ethnic minorities with a non-Western immigration background in the labour market generally has statistically improved over the last decades, their overall labour participation rate is still twice as low as the ethnically Dutch population. This mainly affects Dutch people originally descending from Surinam, the Dutch Antilles and Aruba, Morocco and Turkey.

For youth, the employment situation is even worse. Less than 10% of the ethnically Dutch youth are unemployed, which is in stark contrast to the unemployment rate of 28% among non-western youth, and a shocking 39% among Moroccan youth. Several academic and governmental studies have proven that the high unemployment rates among the population with a non-Western immigrant background are for an important part caused by racial discrimination by employment agencies, which function as a gatekeeper to the labour market. Discrimination in the field of labour is a chain in a vicious circle of racial discrimination and unequal opportunities, which starts at the youngest age, most apparently in the field of education, and has an impact on all phases of life.

Also in the workplace, ethnic minorities experience bullying and negative referencing to their ethnic background. A study showed that often such expressions are unmistakably inspired by statements made by the Freedom Party leader, Geert Wilders, and other populists.

As the influx of Central and Eastern Europeans has accelerated over the last few years since the enlargement of the European Union in 2004, so has xenophobia and racial discrimination against these groups. This shift has been instigated by politicians and not sufficiently rebutted by others. Polish, Romanian and Bulgarian labour migrants face discrimination in recruitment procedures, poor working conditions, and physical and emotional abuse in the labour market.

Refugees have a much lower participation rate in the labour market than all other groups, which is in particular true for Somali refugees. While the number of refugees is rising, there are no sufficient policies in place to ensure their access to the labour market.

It is a worrying matter that while racism is experienced by ethnic minorities in the employment sector, incidences are rarely reported. And those cases that are reported, are generally very difficult to prove, also because the burden of proof is principally on the side of the person claiming discrimination. The underreporting of cases is not due to a gap in legislation, as the Dutch laws in theory offer sufficient legal protection from racial discrimination. Rather, it is a problem of awareness; of what discrimination and racism – legally - constitutes and how it can be recognised and addressed, by victims, perpetrators and other parties involved, such as employers.

The low numbers of complaints are also due to a cultural disincentive; in the Netherlands the freedoms of thought and speech have increasingly been interpreted as the freedom to insult. The victims of such insults are expected to accept racially discriminatory remarks and actions. A minimal amount of court cases can be described. This is also because of the work of the national equality body (the National Human Rights Institute, previously the Equal Treatment Commission), and the local anti-discrimination bureaus. Particularly the anti-discrimination bureaus handle many complaints about discrimination in the field of employment.

The government has introduced a generic policy in which it no longer targets its policies at the benefit of specific groups. Civil Society warns that this generic policy will have unfavourable effects on vulnerable groups such as ethnic minorities, which have not been assessed by the government. The alarming rise of unemployment rates among non-Western (Surinamese, Antillean, Turkish and Moroccan) youth and the effects it will have on this group, and the social and economic situation of the Netherlands as a whole, show the importance of policies addressing the specific problems certain groups face.

Based on the information collected, but also the recommendations made by the interviewed experts, insufficient progress has been made by the national and local government, and civil society as a whole, to combat structural inequality and disadvantages that ethnic minorities and migrants continue to experience in the labour market. There is still much to improve upon if the government would stimulate bottom up initiatives by minority representatives and minorities themselves, trade unions, employers and employers' organisations, and schools, particularly higher education facilities.

Recommendations

Interviewees generally expressed concerns about the future outlook of discrimination on the labour market. As noted, attention for racial discrimination against minorities has decreased and few policies are in place to improve the situation. The following recommendations outline how discrimination in employment could be addressed. These recommendations are further explained in section 5.2.

- The government and employers should openly acknowledge that racial and ethnic discrimination is a problem that needs to be mainstreamed and addressed constructively.
- The government should address the disproportionately high unemployment rate among ethnic minorities, particularly youth, as a priority. Policies should be better targeted towards the problems facing specific minority groups. The government should develop policies to prevent discrimination, promote equality and condemn and punish discrimination where it occurs. The government should also lead the private sector by example by promoting equality through its own employment and procurement policies.
- The government should ensure it carries out a thorough impact assessment when developing policies and conducts an evaluation after their implementation in order to monitor their effectiveness and take corrective measures where necessary.
- The government should adopt a multi-stakeholder approach supporting action and participation by minority groups, employers, trade unions and schools.
- With the support of the Institute for Human Rights and the local anti-discrimination bureaus, the national and local authorities should increase awareness of anti-discrimination legislation and complaints procedures among employers and employees, ensure rigorous training for recruiters and reform recruitment processes to minimise the effect of prejudices and stereotyping.

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1. Introduction

Demography in the Netherlands has changed over the course of time. For the first time in history, people of Dutch origin are a few thousand people away from being a minority in Amsterdam.¹ Half to two thirds of people under 18 years old has a migrant background.² It is subsequently easy to see why labour participation of ethnic minorities is important. 'Cities that succeed in harnessing the potential of these young people will have a tremendous competitive edge over the cities which fail to do so. The future of cities is therefore closely linked to the socio-economic emancipation of the second and third generation. In the next few years, the baby boom generation – born immediately after the Second World War – will be retiring from the employment market in massive numbers. The second generation will take over a significant proportion of their jobs, especially in the large cities'.³

Aim of the report

Racism is a reality in the lives of ethnic and religious minorities in the Netherlands. The extent and manifestations of this fact are often unknown and undocumented, especially with regard to official data sources. As a consequence, it can be difficult to analyse the situation and to establish solutions. NGOs offer a vital alternative data source which comes directly from the experiences of individuals and communities experiencing racism on a daily basis. The ENAR Shadow Reports have become a major tool for monitoring the situation of racism and xenophobia in EU Member States. Both ENAR's national and European Shadow Reports have proved to be an invaluable documented starting point for strategic and coordinated action, particularly for anti-racist civil society advocacy towards national governments, the European institutions, bodies and the media.

The aim of this report, therefore, is to contribute to knowledge and to provide insight from activists and professionals on the ground working to combat racism and discrimination in the Netherlands as an advocacy tool by which to influence policy. This report takes on a more narrow focus than previous reports, by exploring the situation of racism and discrimination in the field of employment the Netherlands for the period of March 2012 to March 2013. The results will be used at national level to influence policy developments and will be further compiled into a European comparative report to influence European policies. With improved statistical and comparative data, the Shadow Reports will have a demonstrable impact for changing policy and bringing about necessary policy reforms.

1.1 Definitions

The prohibition of discrimination finds its origin in Article 1 of the Dutch constitution, which states 'all who are in the Netherlands shall be treated equal in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race, sex or on any other ground shall be prohibited'. This principle is elaborated in subsequent pieces of legislation (see section 2.2).

¹ In 2012, on a total population of 790.044, 394.645 people were native Dutch. See Gemeente Amsterdam Bureau Onderzoek en Statistiek, 'Amsterdam in figures 2013. 2.1.7. Population by ethnic origin, 1 January 2009-2013' , See <http://www.os.amsterdam.nl/english/>, accessed 15 December 2013.

² Crul M., Schneider J., Lelie F., *Super-diversity. A new perspective on integration*, VU University Press, Amsterdam, 2013, p.54.

³ Ibid.

The government describes discrimination as the unjustified differential in treatment between people.⁴ The anti-discrimination bureaux add that this unjustified differential treatment is on the basis of characteristics which, in a specific situation, are not of relevance.⁵

The Netherlands Institute for Social Research (Social Cultureel Planbureau, or SCP) defines discrimination as the unfavourable treatment of persons because they belong to a certain group, or are considered to be part of a certain group.⁶

The Act to Stimulate the Employment of Minorities, or Act SAMEN, which was introduced in 1998 to stimulate ethnic minorities on the labour market, defined minorities very narrowly to persons born in Turkey, Morocco, Surinam, the Netherlands Antilles, Aruba and former Yugoslavia or in countries in South or Central America, Africa or Asia, with the exception of Japan and the former Dutch East Indies; the Moluccan population, and the children of the above mentioned.⁷ The Act obliged companies to keep track of the amount of ethnic minorities working for them.⁸

The Act SAMEN was abolished in 2004. According to the Minister it had reached its aim of increasing awareness.

When the Netherlands ratified the Council of Europe's Framework Convention for the Protection of National Minorities (which itself does not provide a definition of the term 'national minorities') in 2005 it determined that the Frisians are the only national minority in the Netherlands, and therefore are protected by this Convention.⁹

Otherwise, Dutch legislation does not provide for a definition of ethnic minorities. Government reports refer to persons with a –specific- migrant background as 'allochtoon'. This is a policy, and not a legal term. Section 3.1 discusses the problematic use of this term.

The Netherlands does not systematically collect disaggregated data on the basis of ethnicity. Official reports often use the term 'origin' (by which national origin is meant) as a proxy for ethnicity. With ethnically Dutch, reports generally refer to the Dutch, white majority population.

⁴ See <http://www.rijksoverheid.nl/onderwerpen/discriminatie/vraag-en-antwoord/wat-is-discriminatie.html>, accessed 15 December 2013.

⁵ Coenders M., et al, *Kerncijfers 2011. Overzicht van discriminatieklachten en -meldingen geregistreerd bij antidiscriminatievoorzieningen*, LBA and SAN, Leeuwarden/Nijmegen, 2012, p. 46. The report over 2012 will be published next year, together with the report over 2013.

⁶ 'Het nadelig behandelen van personen omdat zij behoren tot een bepaalde groepering of tot een bepaalde groepering worden gerekend' Sociaal Cultureel Planbureau, *Liever Mark dan Mohammed? Discriminatie op de arbeidsmarkt*, Sociaal Cultureel Planbureau, The Hague, 2010, p. 11.

⁷ European Monitoring Centre on Racism and Xenophobia, *Migrants, Minorities and Employment in the Netherlands*, Fundamental Rights Agency, 2002, p. 13.

⁸ Article 4, Wet Stimulering Arbeidsdeelname Minderheden (Wet Samen), 9 April 1998, identificationnummer BWBR0006670.

⁹ Tractatenblad van het Koninkrijk der Nederlanden, 'Kaderverdrag inzake de bescherming van nationale minderheden. Straatsburg, 1 februari 1995', 23 March 2005. See also the explanatory letter from the Minister of Integration and Immigration, 'Goedkeuring van het op 1 februari 1995 te Straatsburg tot stand gekomen Kaderverdrag inzake de bescherming van nationale minderheden', Kamerstuk 26389, nr. 8, The Hague, 16 December 2003. <https://zoek.officielebekendmakingen.nl/dossier/26389/kst-26389-8?resultIndex=9&sorttype=1&sortorder=4>, accessed 15 December 2013.

1.2 Statistical overview

Statistics Netherlands (Centraal Bureau voor de Statistiek) is the autonomous national bureau responsible for collecting statistics on the population. Information is available on the composition of the population on 1 January 2013 on the basis of migration background/nationality, sex and age. The most relevant extract is included below. For the full chart, the website can be consulted.¹⁰

Population; origin and generation, all sexes and ages, 1 January 2013

| Origin | Total | Total first generation | Total second generation |
|--|----------|------------------------|-------------------------|
| | | | |
| Total population | 16779575 | 1793189 | 1749892 |
| Dutch background | 13236494 | | |
| Non-western background | 1966095 | 1086677 | 879418 |
| Western background (excluding Dutch) | 1576986 | 706512 | 870474 |
| Afghanistan | 42348 | 32820 | 9528 |
| Bulgaria | 20754 | 18139 | 2615 |
| China | 61890 | 43487 | 18403 |
| Iraq | 53731 | 40509 | 13222 |
| Iran | 35395 | 27754 | 7641 |
| Morocco | 368838 | 168117 | 200721 |
| (former) Netherlands Antilles and Aruba | 145499 | 82476 | 63023 |
| Poland | 111121 | 85928 | 25193 |
| Romania | 17807 | 13547 | 4260 |
| Somalia | 34631 | 24597 | 10034 |
| - Turkmenistan | 16 | 16 | - |
| Suriname | 347631 | 182342 | 165289 |
| Togo | 1835 | 1164 | 671 |
| Turkey | 395302 | 196203 | 199099 |

Source: CBS

¹⁰ <http://statline.cbs.nl/StatWeb/publication/?VW=T&DM=SLEN&PA=37325eng&D1=0-2&D2=0&D3=0,121-130&D4=0&D5=0-1,3-4,11,39,50,103-104,139,145,169,176,192,210,216,225,231&D6=I&HD=130809-1434&LA=EN&HDR=G3,T&STB=G5,G1,G2,G4>, accessed 15 December 2013.

2. The context: labour market and legal framework

2.1 Outlook of the labour market

This section will analyse the available reports and statistics regarding the labour participation of non-Western migrants, Central and Eastern Europeans, refugees, Roma and Sinti. The first three categories are used by government reports and this Report is structured according to these official categories in order to make optimal use of the available data. The category 'non-Western migrants' is a constructed classification comprised of four groups of people who have settled in the Netherlands over the last few decades, and who are Dutch nationals, being people from Suriname, the Dutch Antilles Morocco and Turkey. It should be noted, however, that most of these groups, historically, have very little in common. Furthermore, in the public discourse, these fabricated classifications are also used in a stereotyping and denouncing manner, which reverberates in the employment sector (see section 3.1 about 'allochtoon').

Also, as the Netherlands does not systematically collect disaggregated ethnic data, it is important to realise that when Statistics Netherlands mentions ethnicity, it in fact means origin (see section 1.2).

Statistics from Statistics Netherlands and FORUM

Statistics Netherlands has published an overview of employment according to ethnicity for the first quarter of 2013. This overview takes into account the gender, national origin (Dutch, foreign, from a Western country, from Central or Eastern Europe, from a non-Western country, Suriname, Netherlands Antilles or Aruba, Morocco, non-Western other, and unknown), hours of employment (more/less than 12 hours a week), position on the labour market (permanent job, flexible, temporary, self-employed), the sector of employment (agriculture, industry, commercial services, non-commercial services and unknown), and how many people are registered at an employment office.¹¹ The Netherlands does not collect disaggregated data on the basis of ethnicity.

In 2012 Statistics Netherlands published its annual 'Integration report', in which it analyses the available numbers of, among others, labour participation of ethnic minorities. In chart 4.1.2, Statistics Netherlands shows labour participation in percentages, in which takes into account generation and education levels, in addition to ethnicity, gender and age.¹²

¹¹ CBS Statline, <http://statline.cbs.nl/StatWeb/publication/?DM=LEN&PA=71958eng&D1=0-3,6-28,74&D2=a&D3=16-27&D4=I&LA=EN&HDR=T&STB=G1,G2,G3&VW=T>, accessed 1 September 2013.

Labour market participation in the Netherlands is divided in 4 subcategories: not active in the labour force, minimal 12 hours a week active, unemployed and going to school.

¹² Centraal Bureau voor de Statistiek, *Jaarrapport Integratie*, CBS, The Hague, 2012, chart 4.1.2 'Netto arbeidsparticipatie naar achtergrondkenmerken, 2011, p. 96.

| | Ethnically Dutch | Western Foreign | Total non-Western foreign | Turkish | Moroccan | Surinamese | Antillean | Other non-Western |
|--|------------------|-----------------|---------------------------|---------|----------|------------|-----------|-------------------|
| Total | 70 | 65 | 54 | 54 | 50 | 62 | 52 | 50 |
| Man | 77 | 71 | 61 | 65 | 62 | 64 | 53 | 58 |
| Woman | 62 | 59 | 46 | 43 | 38 | 60 | 50 | 43 |
| 15-25 years | 41 | 33 | 27 | 28 | 28 | 29 | 22 | 25 |
| 25-45 years | 86 | 79 | 65 | 66 | 61 | 76 | 66 | 60 |
| 45-65 years | 67 | 63 | 56 | 51 | 43 | 64 | 60 | 57 |
| First generation | / | 63 | 55 | 58 | 51 | 66 | 52 | 52 |
| Second generation | / | 66 | 49 | 49 | 49 | 53 | 51 | 45 |
| Primary education | 41 | 42 | 33 | 36 | 28 | 40 | / | 33 |
| Preparatory vocational education | 53 | 50 | 44 | 46 | 43 | 51 | 39 | 39 |
| Higher general continued education, pre-university, vocational education | 73 | 67 | 60 | 67 | 61 | 66 | 55 | 53 |
| University, University of Applied Science | 85 | 78 | 73 | 77 | 78 | 82 | 74 | 67 |

Source: EBB.

The following sub-sections will give an overview of the general labour market situation of the groups considered (non-Western immigrants, Central and Eastern Europeans and refugees). This section is predominantly based on Statistics Netherlands' reports, and completed by reports from other national and international organisations, as well as interviews conducted on the issue.

Non-Western migrants

Statistics Netherlands focuses on the four main non-Western migrant groups, being Surinamese, Dutch Antilles and Aruba, Moroccan and Turkish. According to Statistic Netherlands' annual report 2012 (covering the year 2011), unemployment among non-Western migrants is higher than among the ethnically Dutch population, both in economically bad and good periods.¹³ Nevertheless, it is apparent that the economic crisis has affected ethnic minorities much more than the majority population. As ECRI noted,

¹³ Centraal Bureau voor de Statistiek, *Jaarrapport Integratie*, CBS, The Hague, 2012, p. 98.

‘unemployment has increased noticeably for ethnic minorities, especially Moroccans, Turks and Antilleans. Although a middle-class is reported to be slowly emerging from among ethnic minority groups, the members of these groups are still seriously overrepresented among unemployed youth and the long-term unemployed’.¹⁴

Moroccans have the highest unemployment rates and first generation Moroccans are the least represented in the labour market. Non-Western adults between 45-55 years old are compared with adults of the majority population of the same age category and are two to three times more likely to be unemployed.¹⁵ Turkish and Moroccan adults between 50-65 are in particular often unemployed: 64% of the Turkish and 57% of Moroccan adults between 50-65, while 35% of the majority population in this age group are unemployed.¹⁶ This has led to a high dependence on social benefits for this group. While 3% of the majority population between 50-65 years old were receiving social benefits (‘uitkering’), this was the case for 21% of the non-Western population in this age group, with Moroccans in particular at 29%. On a positive note, a study of the participation of non-Western minorities on the Dutch labour market by FORUM showed that Surinamese elderly people continue to work the longest, even exceeding the ethnic Dutch elderly population.¹⁷

Generally, Surinamese people have the highest labour participation rates among minority groups. According to Statistics Netherlands this is because Surinamese women are very active in the labour market; almost as much as majority women. A different study by the Netherlands Institute for Social Research in 2011 on the relation between the health and labour participation of non-Western migrant women showed that 12% of the Turkish women describe their own health as bad or very bad.¹⁸ This is very high when compared to Turkish men (1%), Moroccan women (9%) and Surinamese women (6%). The Institute concluded that health problems play an important role in the relatively low labour participation of women of Turkish and Moroccan descent.¹⁹

Statistics Netherlands, along with other organisations and interviewees, reported an alarming trend of high youth unemployment among ethnic minorities. Youth unemployment is equally as high among Surinamese, Antillean, Moroccan and Turkish youth.²⁰ Unemployment among these groups is, shockingly, three times higher than among the majority youth.²¹ According to recent statistics, this discrepancy is increasing. While unemployment among the majority youth is 9,8%, among non-Western youth it stands at 28,4%. According to FORUM, unemployment among youth from Moroccan descent in particular was even higher at 39%.²² The increase among the non-Western youth is in comparison to previous years much bigger.²³

Youth unemployment among ethnic minorities is of serious concern to civil society actors. The present generation finds itself with very little hope and few opportunities. It is feared

¹⁴ ECRI, *Third report on the Netherlands*, Council of Europe, Strasbourg, 2008, par. 65.

¹⁵ FORUM, *Arbeidsmarktparticipatie niet-westerse ouderen*. FORUM Factsheet, Utrecht, 2012, p.1.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Sociaal Cultureel Planbureau (SCP), *Moeilijk werken. Gezondheid en de arbeidsdeelname van migrantenvrouwen*, Sociaal Cultureel Planbureau, The Hague, 2011.

¹⁹ Sociaal Cultureel Planbureau (SCP), *Moeilijk werken. Gezondheid en de arbeidsdeelname van migrantenvrouwen*, Sociaal Cultureel Planbureau, The Hague, 2011.

²⁰ Centraal Bureau voor de Statistiek, *Jaarrapport Integratie*, CBS, The Hague, 2012, p. 9.

²¹ Centraal Bureau voor de Statistiek, *Jaarrapport Integratie*, CBS, The Hague, 2012, p. 16.

²² FORUM, *Allochtonen op de arbeidsmarkt 1e kwartaal 2012. 10e monitor effecten van de economische crisis*, FORUM, Utrecht, 2012.

²³ CBS, “Werkloosheid niet-westerse allochtonen in 2012 verder opgelopen”, 8 February 2013.

that while in the last few years crime rates have declined among Moroccan youth – generally considered the most problematic group in this respect -, the very high unemployment rates and discouraging perspectives for the future will reverse this trend and could contribute to the rise of crime rates among these groups.²⁴

These concerns are amplified by the striking fact that the CBS report shows that non-Western boys drop out relatively frequently of all levels of high school and that almost 25% of Turkish and Moroccan young men drop out of high school, lacking therefore a start qualification.²⁵ It is asserted that the ‘family situation’ plays a significant role in the education back-drop. In fact, the CBS concluded that in situations in which non-Western and majority parents have similar education levels, labour participation and incomes, the children of the non-Western parents attain start qualifications more often than the children of the majority population.²⁶

Central and Eastern Europeans

Since 2007, the number of Central and Eastern European labour migrants has risen strongly. Most of the migrants the Netherlands receive annually come from Poland, which numbered 58.853 in 2008, and 111.121 in 2013, which is almost a 100% rise in five years.²⁷ They typically work in agriculture and other industries through temporary employment agencies.²⁸ The situation of these groups could be more difficult to monitor as over half of Polish migrants are not registered as residents in the Dutch registry.²⁹ The income of these groups is lower than that of other Western migrants though they make less use of social welfare.³⁰ Statistics Netherlands indicates that while immigration of people from these countries is high, the emigration rate is also relatively high.³¹ A recent study by the Netherlands Institute for Human Rights shows that Polish labour migrants are exploited and experience discrimination (see section 3).³²

More information regarding issues such as social welfare and numbers of self-employed persons can be found in Statistic Netherlands’s 2012 year report.³³

²⁴ Interview with SMN. See also De Telegraaf, “Kabinet wil aanpak discriminatie arbeidsmarkt”, 15 February 2013.

²⁵ Centraal Bureau voor de Statistiek, *Jaarrapport Integratie*, CBS, The Hague, 2012, p. 15. One is considered to have obtained a start qualification by successfully finishing high school (preparatory vocational level 2 and higher, higher general continued education (HAVO) or pre-university).

²⁶ Centraal Bureau voor de Statistiek, *Jaarrapport Integratie*, CBS, The Hague, 2012, p. 15. See also CBS, “Niet behalen startkwalificatie hangt samen met Gezinssituatie”, *Social Economische trends eerste kwartaar 2012*, 2012.

²⁷ CBS statline. <http://statline.cbs.nl/StatWeb/publication/?DM=SLEN&PA=37325eng&D1=0-2&D2=a&D3=0,121-130&D4=0&D5=39,169,176&D6=12,15,I&LA=EN&HDR=G3,T&STB=G5,G1,G2,G4&VW=T>, accessed 1 September 2013.

²⁸ Centraal Bureau voor de Statistiek, *Jaarrapport Integratie*, CBS, The Hague, 2012, p. 16.

²⁹ Ibid, p. 13.

³⁰ Ibid, p.40-41, 134. 4% of the Bulgarians, 6% of the Romanians and 7% of the Polish migrants receive social welfare, against 11% of the majority population.

³¹ Ibid.

³² College voor de Rechten van de Mens, *Poolse arbeidsmigranten in mensenrechtenperspectief*, College voor de Rechten van de Mens, Utrecht, 2013.

³³ Centraal Bureau voor de Statistiek, *Jaarrapport Integratie*, CBS, The Hague, 2012, p. 110-116, 140-142,

Refugees

Refugees have a much lower labour participation rate in the labour market than all other groups, particularly in the least urban regions of the Randstad and outside of the Randstad.³⁴ Statistics Netherlands asserts that this is because a relatively high number of refugees live in these areas, most of whom are recent arrivals.³⁵ Labour participation rises the longer refugees reside in the Netherlands.³⁶ Statistics Netherlands notes a socio-economic difference between the groups: Iranian and Afghan refugees are twice as likely to be employed as Somali refugees.³⁷ Statistics Netherlands indicates that Somalis are the least integrated with respect to socioeconomic and socio-cultural aspects because, among other reasons, Somalis are the youngest group on average and have been living in the Netherlands for the shortest period. Iranians have fewer difficulties learning the Dutch language, read Dutch newspapers more often, and spend social time with the majority population. Somali refugees have less contact with the majority population and in comparison to other refugee groups, identify most with other Somalis, and are most often suspected of a criminal offence, which could also be related to the practice of racial profiling.

Roma and Sinti

While the available information concentrates on the three mentioned groups, it should be noted that a group that has been systematically excluded from employment opportunities in the Netherlands are the Roma and Sinti. There are 10.000 to 40.000 Roma and Sinti residing in the Netherlands.³⁸ It has been reported that educated and ambitious Roma and Sinti are discriminated in recruitment procedures, and have difficulties receiving financial support to start up a business.³⁹ Unfortunately, Roma and Sinti are generally not included in official reports about racism in the Netherlands. Also, as indicated by the European Commission Country Factsheet in which it assesses the National Roma Integration Strategy, no specific measures are in place or foreseen for the Roma, who are covered by general measures. Measuring the impact of the equal treatment approach on the situation of Roma people would be useful, in order to ensure that their needs are met.⁴⁰

Explanations for differences in employment positions

At times, Statistics Netherlands gives explanations for the disadvantaged position of migrants on the Dutch labour market. However, it is extremely difficult to understand why the term discrimination is not mentioned once in the annual report. This is particularly striking as the SCP, who highly contributed to the year report, published several studies proving discrimination on the labour market in previous years as discussed above.⁴¹ Discrimination and other factors in low participation rates of certain groups are discussed in the following sections.

³⁴ The cities, and areas around, Amsterdam, Almere, Utrecht, Rotterdam, Leiden, Den Haag, Amersfoort, Dordrecht, Hilversum en Haarlem.

³⁵ Centraal Bureau voor de Statistiek, *Jaarrapport Integratie*, CBS, The Hague, 2012, p. 12.

³⁶ Ibid, p. 16.

³⁷ Ibid, p. 11.

³⁸ CBS, *De Nederlandse migratiekaart. Achtergronden en ontwikkelingen van verschillende internationale migratietypen*, CBS, The Hague 2012, p.104.

³⁹ Anonymous interview.

⁴⁰ The European Commission, 'The European Union and Roma. Country Factsheet. The Netherlands', 2013,

http://ec.europa.eu/justice/discrimination/files/roma_country_factsheets_2013/netherlands_en.pdf, accessed on 15 December 2013.

⁴¹ See for example Sociaal Cultureel Planbureau (SCP), *Op Achterstand. Discriminatie van niet-westerse migranten op de arbeidsmarkt*, Sociaal Cultureel Planbureau, The Hague, 2012.

International Monitoring bodies

In its Concluding Observations of 2010, the UN CERD Committee recommended that the Dutch government improve the 'rates of unemployment in ethnic minority groups, particularly women' which are 'significantly higher than average'. The Committee also expressed its concern about the 'under-representation of ethnic minorities in senior positions in the public and private sectors.'⁴²

2.2 Legal framework

The Netherlands has an extensive set of laws addressing discrimination in employment. The most relevant laws and provisions are discussed here.⁴³

Firstly, Article 1 of the Constitution (1983) provides that 'all who are in the Netherlands shall be treated equal in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race, sex or on any other ground shall be prohibited'.⁴⁴ The Constitution applies to every person who is physically in the country.

Secondly, the Equal Treatment legislation, which expands on Article 1 of the Constitution. The General Equal Treatment Act is the most important piece of legislation and specifically protects people from discrimination on the basis of race and ethnicity, in the area of labour.⁴⁵ The law states that distinction (on the basis of race or ethnicity) is prohibited in recruitment procedures, dismissal, labour conditions and promotion.⁴⁶ The provisions apply to employees, applicants, volunteers, temporary employees and interns.⁴⁷

Third is the Labour Law.⁴⁸ It provides that every company should map the risks of discrimination in the workplace and, when necessary, develop a preventative plan. The Labour inspectorate can demand the employer to do so and will act accordingly. On basis of the Labour law, the Labour Inspectorate can fine the company if it does not comply with this requirement.⁴⁹

⁴² Committee on the Elimination of Racial Discrimination (CERD), 'Concluding observations', CERD/C/NLD/CO/17-18, 2010, par 12.

⁴³ There are also laws protecting specific groups, such as the Disability Discrimination Act (DDA), the Age Discrimination Act (ADA) and the Equal Treatment Act for Men and Women in Employment. See for a general overview of anti-discrimination legislation the website of Art.1. <http://www.art1.nl/artikel/6443-Nederlandse-wet-en-regelgeving-tegen-discriminatie>, accessed 15 December 2013.

⁴⁴ "Allen die zich in Nederland bevinden, worden in gelijke gevallen gelijk behandeld. Discriminatie wegens godsdienst, levensovertuiging, politieke gezindheid, ras, geslacht of op welke grond dan ook, is niet toegestaan." Article 1 of the Dutch Constitution, 24 August 1815, identificationnumber BWBR0001840.

⁴⁵ Article 1.1.b jo article 5 of the Algemene Wet Gelijke Behandeling (AWGB) of 1 September 1994. Identificationnumber BWBR0006502.

⁴⁶ Ibid, article 5.

⁴⁷ According to the Institute for Human Rights. College voor de Rechten van de Mens, *Gelijke Behandelingswetgeving*, <http://www.mensenrechten.nl/gelijkebehandelingswetgeving#WGB>, accessed 1 September 2013.

⁴⁸ Arbeidsomstandighedenwet (Arbowet), 18 March 1999, identificationnumber BWBR0010346.

⁴⁹ Relevant articles in this respect are article 10, 28, 32. See also the internal instruction for inspectors, 'Handhavingbeleid arbeidsomstandighedenwet. Interne instructie voor inspecteurs bij handhaving van de wet', July 2010, http://www.inspectieszw.nl/images/handhavingbeleid_tcm335-

Fourthly, the Foreigners Labour Act sets out rules about employing migrants.⁵⁰ According to the website of the government, the Act aims to regulate the inflow of labour migrants on the basis of the needs of the labour market and also combat the ‘illegal’ employment of foreigners.⁵¹ The act and the accompanying letter from the Minister to the amending legislation indicate that the labour migration policies are primarily about protecting the labour market. The accompanying letter, for example, states that the goal of the policies is to prevent labour migrants from applying for social benefits.⁵² The labour inspectorate monitors compliance with this legislation.

Fifthly, the Dutch Penal Code contains a general prohibition of discrimination. It makes punishable, among others: insult with discriminatory intent, inciting discrimination or hatred, spreading materials with discriminatory content, and discriminating in the execution of a profession or business.⁵³ If a person feels like he/she is discriminated against under legislation, he/she will need to report it to the police, after which the public prosecutor will decide whether to prosecute. In the ‘Aanwijzing Discriminatie’ (Instruction Discrimination) the Public Prosecutor’s office sets out rules about the investigation and prosecution of discrimination. It directs the police regarding when and how to register discrimination complaints and cooperation procedures between the prosecutor’s office, police, local governments and anti-discrimination bureaux. It states nothing specifically about labour issues.⁵⁴

This legislative framework is compliant with the standards of the EU Employment Directive requiring equal treatment in employment (2000/78/EC). There is general consensus that the existing legal framework provides for sufficient legal protection from racial discrimination in the labour market. As stated by the Institute for Human Rights; ‘we have all legislation we need, but institutional discrimination can’t be beaten with laws’.⁵⁵

[312459.pdf](#), accessed 15 December 2013 and Arboportaal, *Discriminatie*, <http://www.arboportaal.nl/onderwerpen/psychosociale-belasting/discriminatie.html>, accessed 1 September 2013.

⁵⁰ Wet Arbeid Vreemdelingen, 21 December 1994, identificationnumber BWBR0007149. This law was reviewed in September 2009. See the explanatory letter from the Minister of Social Affairs Donner J.P., “Herziening Wet arbeid vreemdelingen”, referencenumber AV/SDA/2009/17859, The Hague, 18 September 2009.

See also the website of the Labour inspectorate Inspectie SZW, *Controles door arbeidsinspectie*, http://www.inspectieszw.nl/onderwerpen/arbeidsverhoudingen/toezicht_en_handhaving/controles_door_de_arbeidsinspectie/, accessed 1 September 2013.

⁵¹ Rijksoverheid, *Tewerkstellingsvergunning voor buitenlandse werknemers*.

<http://www.rijksoverheid.nl/onderwerpen/buitenlandse-werknemers/tewerkstellingsvergunning-voor-buitenlandse-werknemers>, accessed 1 September 2013.

⁵² Minister of Social Affairs Donner J.P., “Herziening Wet arbeid vreemdelingen”, referencenumber AV/SDA/2009/17859, The Hague, 18 September 2009, p.3.

⁵³ Article 127c – 127g and 429quater of the Dutch Penal Code, 3 March 1881, identificationnumber BWBR0001854.

⁵⁴ College van procureurs-generaal, *Aanwijzing discriminatie*, reference number 2007A010, See also Art.1, *Uitleg Aanwijzing Discriminatie*.

http://www.art1.nl/artikel/6561-Uitleg_Aanwijzing_Discriminatie, accessed 1 September 2013.

⁵⁵ Interview with the Institute for Human Rights.

3. Manifestations of racism and structural discrimination in employment

3.1 Perceptions of discrimination in employment

Over the past few years an alarming change in policy has taken place, moving from specific to generic. While in the past the government used to take measures to improve the situation of specific minority groups, now measures are aimed at improving the position of all persons in a vulnerable position, without distinction on the basis of ethnicity or background. This, according to many interviewees, shows how the government fails to acknowledge and address the specific problems certain groups face.⁵⁶ The research organisation TNO notes 'in the Dutch situation, the current government believes that work in itself will help unemployed or vulnerable groups'.⁵⁷

In the report for the UN Universal Periodic Review of 2012, the Equal Treatment Commission, together with the Ombudsman and others, stated that the Dutch Government 'has played down discrimination as the cause for unemployment amongst foreign nationals with a non-Western background' and that it still has not taken recommended action following studies proving discrimination in the labour market.⁵⁸

Indeed, various studies this report has analysed have been commissioned by the government. Despite extensive research and undeniable proof that discrimination in the labour market is taking place, the national and local governments, education sector and employers have paid little attention to the issue of racial discrimination in the labour market, and very little concrete follow up action has been taken.⁵⁹ Indeed, all interviewees, including a Member of Parliament of the ruling Labour Party,⁶⁰ agreed that even though decision-makers are well aware of racial discrimination in the labour market, it is not on the political agenda. Arguably, discrimination against ethnic and religious minorities is not a political priority because it does not appeal to voters.⁶¹ The ethnic groups themselves are not considered important enough, and are not sufficiently vocal to attract political attention or alter the public opinion.⁶²

In the run-up to the Parliamentary elections in September 2012, the political debates were dominated by discussions about Europe and European migration. A shift was noticeable away from anti-Muslim rhetoric to xenophobic expressions towards Central and Eastern European labour migrants.⁶³ In February 2012, when Geert Wilders was still official partner to the governing coalition of the People's Party for Freedom and Democracy (VVD) and Christian Democratic Appeal (CDA) he launched his campaign against Central and Eastern Europeans, including the launch of a hotline to complain about these persons (in Dutch Meldpunt Midden- en Oost-Europeanen). Despite pressure from the European Union, the governing parties and in particular the Prime Minister and VVD party leader, Mark Rutte, did not dissociate themselves from the initiatives. Also the Minister of Social

⁵⁶ In, among others, the interview with Art.1, knowledge centre on discrimination, SMN and OCAN.

⁵⁷ Dhondt S., "The Netherlands: Evolution of Wages during the Crisis. Trends and relations with other working conditions", Organisation for Applied Sciences (TNO), 2012. Available on the website of Eurofound. <http://www.eurofound.europa.eu/ewco/studies/tn1203015s/nl1203019q.htm>, accessed 1 September 2013.

⁵⁸ Commissie Gelijke Behandeling, de Nationale Ombudsman, de Kinderombudsman, College Bescherming Persoonsgegevens, "Rapport Consortium Universal Periodic Review", 2012, pp. 7-8.

⁵⁹ Interview with FORUM.

⁶⁰ Interview with Mei Li Vos, Member of Parliament (Labour Party, Partij van de Arbeid).

⁶¹ Interview with SMN and OCAN, and Art.1.

⁶² Interview with SMN, OCAN and FORUM.

⁶³ Also noticed in the interview with the Institute for Human Rights. See also Siebers H., "Nieuw politiek offensief tegen discriminatie is nodig", *Sociale vraagstukken*, 2012.

Affairs and Employment (labour party) recently stated in a letter to the House of Representatives that there are limits to the inflow of lowly educated, and poorly equipped, migrants that a society can handle. In order to prevent uncontrolled immigration, there is a need for a restrictive migration policy.⁶⁴

It is discouraging that racial discrimination on the labour market does not seem to be prioritized by civil society organisations. Also worrying is that some interviewees indicated that many people, including ethnic minorities themselves, but also colleagues and employers, do not recognize the existence of discrimination as such, particularly because they –mistakenly– believe that one needs to have the *intention* to discriminate.⁶⁵ Often they find the exclusion logical and understandable. And even when people do experience discrimination, they rarely file an official complaint.⁶⁶

‘Allochtoon’

One term is crucial as it is exemplary of the type of language that is used to describe a group of Dutch citizens: ‘allochtoon’. This particular term contributes to the stereotyping of a group of citizens who are, or are perceived to be, part of a group.

While the Netherlands does not systematically collect ethnically desegregated data, an attempt is made to categorise the ethnic background of migrants by the term ‘allochtoon’, which is specific to the Dutch language. According to Statistics Netherlands (Centraal Bureau voor de Statistiek, hereinafter CBS), the (wide) definition of an ‘allochtoon’ is a person who has at least one parent born abroad. In order to be regarded as an allochtoon, it is irrelevant whether this person is a Dutch national. In addition, an official difference is made between a Western and non-Western allochtoon. A Western allochtoon comes from Europe (but explicitly excludes Turkey, North America, Oceania, Japan and Indonesia). A non-Western allochtoon comes from all other countries in Africa, Latin-America and Asia. The CBS explains that this difference is made due to the socio-economic and cultural positions of these two groups. It adds that when a group strongly resembles the Dutch population in socio-economic or cultural terms, it is considered Western allochtoon.⁶⁷ This can be seen as a very subjective way of categorizing people as it lacks an objective basis, it is imprecise and it is not useful for combatting discrimination. According to the NUC it is also a clear expression of everyday institutional racism.⁶⁸

On May 8 2012, without being requested to do so, the Raad voor de Maatschappelijke Ontwikkeling (RMO) (Council for Social Development) an official advisory body to the government on social matters, presented a spontaneous report containing a plea to the Minister to stop using the word allochtoon. Also, the categories ‘first and second generation’ were urged to no longer be employed. In February 2013, however the Minister announced that there will be no policy change in this respect.⁶⁹

⁶⁴ ‘Er zijn grenzen aan de instroom van laagopgeleide en slecht toegeruste migranten die een samenleving kan verwerken. Om ongecontroleerde immigratie te voorkomen, is een restrictief migratiebeleid nodig, ook ten aanzien van toekomstige toetredingen tot de EU.’ Minister of Social Affairs and Employment Asscher L., “Agenda integratie”, referencenumber 2013-0000015514, 19 February 2013, p.4.

⁶⁵ Interview with the Institute for Human Rights.

⁶⁶ See section 3.4.

⁶⁷ Centraal bureau voor de Statistiek (CBS), “Hoe doet het CBS dat nou? Standaarddefinitie Alochtonen”, CBS Index, no 10, November 2000.

⁶⁸ Interview with New Urban Collective. See also the excerpt of the New Urban Collective’s President Mitchell Esajas ‘Whatever happened to Racism in the Netherlands on December 12 2012, to be found here <http://the-nuc.nl/whatever-happened-to-racism-in-the-netherlands/>, accessed 15 December 2013.

⁶⁹ Minister of Social Affairs and Employment Asscher L.F., “Integratiebeleid”, nr 8, 32 824, 21 February 2013.

By contrast, the municipality of Amsterdam announced in February 2013 that it will not use the word any longer, as the use of the term 'creates a dichotomy'. In future, the Municipality will be referring to 'Polish-Amsterdammers' or 'Moroccan Amsterdammers'. Nevertheless, it is asserted that civil servants can still use the word when it is relevant, for example in research about health care, education and criminality.⁷⁰

One of the interviews formulates the following position about the use of the word 'allochtoon'. First, he acknowledges that the word itself is strongly politicized, has a negative connotation and often used in a belittling manner, contributing to a stereotype. Furthermore, it does not respect the right to self-identification which would allow people to classify themselves. Many people who are considered allochtoon were born and raised in the Netherlands and might have no connection to the country of birth of one or both of his/her parents. Nonetheless, it is acknowledged that the collection of ethnic data is crucial to monitor the situation effectively and in particular the position of ethnic minorities in the labour market in order to modify public policies for the benefit of these groups. As a prerequisite, the collection of ethnic data should only be done in order to pursue and meet these set goals. Since the Dutch government has officially changed its policy from a group-specific to a generic policy, there is no objective purpose the collection of this data is serving. Therefore, it cannot be justified that this information is collected, other than contributing to the stereotype.⁷¹

International Monitoring bodies

ECRI has recommended that Dutch authorities ensure companies above a certain size have a greater representation of ethnic minorities. Also, as the government has discontinued measures aiming at improving the labour situation of ethnic minorities, ECRI notes that 'these developments reflect a more general trend since ECRI's second report in the Netherlands to relinquish labour market policies specifically targeted at ethnic minority groups.'⁷²

3.2 Incidence of discrimination in employment

Affected groups

As described in section 2.1, those groups suffering most severely from discrimination and racism in the labour market in the Netherlands are generally divided in three groups. . The first groups are those who have settled in the Netherlands over the last few decades (and are Dutch nationals) from Morocco, Turkey, Suriname, Dutch-Antilles. In official reports, these groups are usually referred to as non-Western immigrants or foreigners. The second group are labour migrants from Central and Eastern Europe, predominantly Polish, but also Bulgarian and Romanian people. Third group are refugees, of which most come from Afghanistan, Iraq, Iran and Somalia.

Statistics anti-discrimination bureaux

The local anti-discrimination bureaux (antidiscriminatievoorzieningen or ADV) collectively publish information about the number and nature of all complaints registered and handled on an annual basis.⁷³ The 2012 report shows that the number of complaints has been constantly rising from 4.808

⁷⁰ An 'Amsterdammer' is a person citizen of Amsterdam. Nu.nl, "Amsterdam stopt met gebruik woord allochtoon", 13 February 2013, <http://www.nu.nl/binnenland/3198003/amsterdam-stopt-met-gebruik-woord-allochtoon.html>, accessed 15 December 2013.

⁷¹ Interview with FORUM.

⁷² ECRI, *Third report on the Netherlands*, Council of Europe, Strasbourg, 2008, par 63.

⁷³ These are the bureaux affiliated with the branche organisations Landelijke Brancheorganisatie van Antidiscriminatiebureaux (LBA) en Samenwerkende Antidiscriminatievoorzieningen Nederland (SAN).

in 2008 to 6.391 in 2011.⁷⁴ Of these 6.391 complaints, 45,7% concern racial discrimination.⁷⁵ Religion, nationality and anti-Semitism are separate categories and count for respectively 5,5%, 4% and 2% of all complaints.⁷⁶ 29,9% of all complaints relate to discrimination in the labour market.⁷⁷ A distinction is made between discrimination in the labour market in recruitment processes (52,2%) and discrimination in the workplace, such as bullying and exclusion (16,8%). Other settings include labour conditions, such as salary, responsibilities and working hours (7%), actual or threatened dismissal (7,3%) and mediation by employment agencies (6,1%).⁷⁸ Complaints of discrimination based on a combination of the grounds of race, anti-Semitism, nationality and religion, and the field of employment has resulted in a total of 622 complaints.⁷⁹

Several reasons for this rise in complaints could be offered. According to the anti-discrimination bureaux, the rise in recent years is mostly due to the fact that civilians can access a local ADV, as municipalities should provide access to these services⁸⁰. Also, national campaigns by the Ministry of Interior have managed to raise awareness among victims, for example the 'Moet jij jezelf thuislaten als je naar buiten gaat' (do you have to leave yourself/your identity home when you go out?) campaign.⁸¹ In addition, according to an interviewee, the national hotline and the possibility of reporting a complaint online have contributed to this rise in complaints.⁸² According to the report, in 2010, 99% of all inhabitants in the Netherlands had access to an ADV.⁸³ In comparison to all national ADVs, the ADV for the region of Amsterdam (Meldpunt Discriminatie Regio Amsterdam) processes by far most of the complaints (17,3%), followed by Rotterdam and its surrounding areas (13,2%). The entire province of Drenthe with two ADVs provides the smallest proportion of complaints (0,9%).⁸⁴

According to the Centre for Information and Documentation about Israel (CIDI), Jewish people in the Netherlands experience discrimination in the labour market, mainly through anti-Semitic expressions on the workplace. CIDI, however, does not receive many complaints on this basis. Of the 14 complaints received in 2011, 8 occurred in the workplace, and in 2012 this ground for discrimination constituted 3 out of 16 complaints.⁸⁵

Reasons for low labour participation, scope and causes of discrimination

Labour market participation and activity can be distinguished in three categories: the employed work force, the unutilized labour supply ('onbenut arbeidsaanbod') and the group that cannot, or does not

⁷⁴ Coenders M., et al, *Kerncijfers 2011. Overzicht van discriminatieklachten en -meldingen geregistreerd bij antidiscriminatievoorzieningen*, LBA and SAN, Leeuwarden/Nijmegen, 2012, p. 5.

⁷⁵ Ibid, p. 7.

⁷⁶ Ibid, p. 10.

⁷⁷ Ibid, p. 16.

⁷⁸ Ibid, p. 15.

⁷⁹ Race: 439, anti-Semitism : 34, nationality : 48, religion : 101. Ibid, p. 18.

⁸⁰ The preamble to the ADV law states *Alzo Wij in overweging genomen hebben, dat het wenselijk is dat een ieder toegang heeft tot een laagdrempelige gemeentelijke voorziening ter behandeling van klachten over discriminatie*. Wet Gemeentelijke antidiscriminatievoorzieningen (Municipal Anti-Discrimination Services Act), 2009, identificationnumber BWBR0026168.

⁸¹ The positive effect of this campaign on the number of complaints was confirmed in the interview with Art.1.

⁸² Interview with Art.1, knowledge centre on discrimination.

⁸³ Coenders M., et al, *Kerncijfers 2011. Overzicht van discriminatieklachten en -meldingen geregistreerd bij antidiscriminatievoorzieningen*, LBA and SAN, Leeuwarden/Nijmegen, 2012, p. 5.

⁸⁴ Ibid, p. 36.

⁸⁵ Muller G., and Friedman E., *Monitor antisemitische incidenten in Nederland 2012*, Centrum Informatie en Documentatie Israel, Den Haag, 2013.

want to work, also referred to as non-participation ('non-participatie').⁸⁶ The first group are people who have indicated that they are unwilling or unable to work twelve hours or more a week. The second group are people who want to work, but do not. As explained in the report 'The labour position of non-western immigrants', which was commissioned by the Dutch Ministry of Social affairs and Employment in 2010, 24,5% of the majority population fell within the category non-participation compared with 31,5% of the non-Western population.⁸⁷ Statistics Netherlands Survey of the Labour force (Enquete Beroepsbevolking) clarifies that from this non-participating non-Western group, 50% are studying and 25% indicates they are suffering from health problems. For almost 10% of this group there is not a clear reason why they do not actively participate in the labour market. According to Suzanne Bouma who is one of the researchers of the study by Research voor Beleid, the study showed that de-motivation is a possible reason.⁸⁸

In the category of unutilized labour potential this difference is much greater: 6,1% of the majority population belonged to this group, versus 15,6% of the non-Western population.⁸⁹ Thus, non-Western employment seekers are 2,5 times less likely to find a job. Bouma offers the following reasons for this.

Non-Western youth explain that they feel a lack of control over their own future and that they depend on external factors beyond their control. They also lack work experience through extracurricular activities, and also because of this they have insufficient knowledge of social codes. Furthermore, they do not have access to networks and mediums which would expose them to potential employers.⁹⁰ Also, non-Western youngsters relatively often choose an educational path that is less likely to lead to employment, such as in the economic and legal sector, instead of the technical and healthcare sectors, where job vacancies are more plentiful. According to the report and several interviewees, this is also due to cultural and family pressure to choose professions which would bring high status.⁹¹

Another important factor is that non-Western youngsters are often insecure about their own abilities and have more difficulties 'selling' themselves to employers. For example, in many cultures, looking someone in the eyes for a longer time is considered rude and talking about yourself and your capacities is not encouraged either.⁹² Employers often do not recognize these cultural differences and interpret these people as introvert, shy, rude, lacking intelligence and skills.⁹³

Similarly, FORUM advances eight reasons for the position of ethnic minorities who fall behind in the labour market: a lower educational level, too little relevant work experience, lack of mediation and mentoring, prejudices and discrimination, a limited social network, lack of cultural capital, linguistic

⁸⁶ This distinction is for example made in Centraal bureau voor de Statistiek (CBS), "Hoe doet het CBS dat nou? Het onbenut arbeidsaanbod", CBS Index, no 7, August 2000.

⁸⁷ Research voor Beleid, *Arbeidsmarktpositie van niet-westerse allochtonen*, Research voor Beleid, Zoetermeer, 2011.

⁸⁸ Bouma S., 'Één Gouden Kalf maakt nog geen zomer. Een inhaalslag op de arbeidsmarkt van niet-westerse allochtonen', S&D number 9/10, 2011, p. 106.

⁸⁹ Bouma S., Coenen L., Kerckhaert A., 'Arbeidsmarktpositie van niet-westerse allochtonen. De stand van zaken', *Research voor Beleid*, 2011. See also Bouma S., 'Één Gouden Kalf maakt nog geen zomer. Een inhaalslag op de arbeidsmarkt van niet-westerse allochtonen', S&D 9/10, 2011.

⁹⁰ Bouma S., 'Één Gouden Kalf maakt nog geen zomer. Een inhaalslag op de arbeidsmarkt van niet-westerse allochtonen', S&D 9/10, 2011, p. 107.

⁹¹ Bouma S., 'Één Gouden Kalf maakt nog geen zomer. Een inhaalslag op de arbeidsmarkt van niet-westerse allochtonen', S&D 9/10, 2011, p. 107. This was confirmed in the interview with FORUM.

⁹² Interview with New Urban Collective.

⁹³ Interview New Urban Collective, and OCAN. See also Bouma S., 'Één Gouden Kalf maakt nog geen zomer. Een inhaalslag op de arbeidsmarkt van niet-westerse allochtonen', S&D 9/10, 2011, p. 107.

disadvantage, health, and work related stress. While prejudice and discrimination are cited as one of eight causes, they clearly play a significant role in the other seven reasons.⁹⁴

Education

Low chances of success for ethnic minorities on the labour market are connected to problems in education. Even though the number of highly educated ethnic minority members are rising,⁹⁵ various interviewees have noted the comparatively (very) low educational level of ethnic minorities which has an important effect on employment.⁹⁶ Art.1Dutch Knowledge Centre Discrimination notes that, 'the educational level of ethnic minorities falls behind that of native Dutch pupils'.⁹⁷ Also, there are accounts of parents having difficulties getting their children into predominantly 'white' schools, which generally have better standards.⁹⁸

Several studies have shown how unequal treatment at a very young age impacts the rest of the lives of ethnic minorities, in particular their potential success in the labour market.⁹⁹ Furthermore, research shows that teachers have lower expectations from children from ethnic minorities which has an effect on the study results of these children. The most important test, which is made by all children in their final year of primary school, resulted in lower scores for children whose teachers held a more negative attitude towards children from migrants.¹⁰⁰ The New Urban Collective confirmed that stereotyping and cultural insensitivity leads these teachers to grade children from ethnic minorities lower than ethnically Dutch children.¹⁰¹

Professor Krul also provides an example which shows how success in the education sector and labour sector are connected. One of the persons interviewed in the book is Miriyam Aouragh, 39 years old, who has a PhD in Anthropology and works in Oxford, England. She explains:

*'I did not follow a straight path from primary school to academic track secondary school to university. I took what used to be called a step-by-step route. So I worked my way up from the very lowest level of secondary education. After primary school, I went from lower vocational track secondary school, to middle vocational education, progressing on to higher vocational education before finally reaching university. I then explored the academic world. This journey took at least 10, 15 years. This is a common experience for many children of migrants. Language deficiencies are often mistaken for a lack of intelligence. I had to find out and explore a lot more for myself.'*¹⁰²

⁹⁴ Interview with FORUM.

⁹⁵ The number of registered non-Western pupils went from 77.000 in 2007/2008 to 95.000 in 2012/2013. For an overview of all registered non-Western and ethnically Dutch students at higher education facilities see Statline, "Hoger onderwijs, ingeschrevenen naar herkomstgroepering", <http://statline.cbs.nl/StatWeb/publication/?VW=T&DM=SLNL&PA=71037NED&D1=0&D2=0&D3=0&D4=0&D5=0-2,5&D6=0&D7=12,I&HD=130910-1128&HDR=T,G6,G5,G2,G4&STB=G1,G3>, accessed 1 September 2010.

⁹⁶ Also Dutch Professor Maurice Krul in the book 'Super Diversity' signals that 'clearly, the likelihood of an optimistic scenario in the employment market is strongly related to the educational opportunities offered to the second generation'. Crul M., Schneider J., Lelie F., *Super-diversity. A new perspective on integration*, VU University Press, Amsterdam, 2013, p. 54.

⁹⁷ Art.1, *Contribution to AR 2012 The Netherlands*, Fundamental Rights Agency, 2013, pp. 65-66.

⁹⁸ FORUM, "Afkomst belemmert schoolkeuze", *PAOO courant*, number 11, 2003, p. 7.

⁹⁹ See for example Van Schilt-Mol T., "Onbedoelde moeilijkheden in toetsen leiden tot ongelijke kansen", *PAOO courant*, number 11, 2003, p. 4.

¹⁰⁰ Van den Bergh, L., Denessen, E, Voeten, M, Hornstra, L., & Holland, R. "The implicit prejudiced attitudes of teachers: Relations to teacher expectations and the ethnic achievement gap", *American Educational Research Journal*, number 47, 2010 497-527.

¹⁰¹ Interview with New Urban Collective. See also Mitchell Esajas's Msc Master Dissertation, Esajas, M., *Roses from the Concrete. Stories of Successful Educational Achievement of Migrant Youths from Amsterdam Southeast*, VU University, 18 June 2013.

¹⁰² See for example the interview with Miriyam Aouragh. Crul M., Schneider J., & Lelie, F., VU University Press, 2013, pp. 35-36.

It is further explained that school success is also determined by knowledge of the school system. The Dutch secondary school system is one of the most complicated in Europe.¹⁰³ Indeed, as also signalled by the New Urban Collective and FORUM, children from ethnic minorities are often not familiar with the educational system and the options they have.¹⁰⁴

Otherwise, as noted in section 2.1, in a situation in which non-Western migrant youths have parents with similar education levels, labour participation and income as ethnically Dutch youths, the non-Western migrant attains a start qualification more often than the ethnically Dutch youngster.¹⁰⁵ This also indicated how socio-economic disadvantages play an important role in success in education in the labour field. Socio-economic positions and associated disadvantages are also closely related to discrimination in all aspects of life, including education.

It is evident that in order to reach the top segment of the education system and labour market, youngsters from ethnic minorities have to counter and overcome cultural insensitivities, stereotyping and discrimination. In later stages of education discrimination also forms a serious obstacle, which hinders ethnic minorities from reaching the highest educational levels. Discrimination faced by ethnic minorities in access to apprenticeships is described below as an example. Together with all the other factors mentioned, this leads to only a very small proportion of children reaching top positions, and also provides an explanation for the high unemployment rates. All in all this provides for a vicious circle which needs to be addressed by a comprehensive approach.

3.3 Discrimination in access to employment

In the political discourse, as well as in society, unemployment among non-Western migrants is explained to be as high as it is because of, for example, laziness, not being dressed appropriately and for having a lack of work ethic.¹⁰⁶ This section explains that an important cause of high unemployment rates is actually discrimination in the recruitment phase.

Discrimination in recruitment and selection procedures

Over the last few years, extensive research has been done on the scope and causes of racial discrimination in recruitment and selection procedures. From the two most recent reports from the Netherlands Institute for Social Research (SCP) it became clear that even when two applicants are equal in every respect, except their ethnic background, employers invite (and consequently, employ) more majority candidates than those from an ethnic minority. This is considered to be due to employers' prejudices.¹⁰⁷ In fact, a study by the SCP showed that an applicant with a name associated with a certain ethnic minority had a 37% chance of being invited for an interview, compared to 44% for someone with a Dutch-sounding name.¹⁰⁸ This is particularly the case in the

¹⁰³ Crul M., Schneider J., Lelie F., *Super-diversity. A new perspective on integration*, VU University Press, Amsterdam, 2013, p. 51.

¹⁰⁴ Interview with New Urban Collective and FORUM.

¹⁰⁵ Centraal Bureau voor de Statistiek, *Jaarrapport Integratie*, CBS, The Hague, 2012, p. 15. See also Jol, Mars and Van der Mooren 'Niet behalen startkwalificatie hangt samen met Gezinsituatie', in *Social Economische trends eerste kwartaar 2012*, CBS, 2012.

¹⁰⁶ Interview with OCAN and SMN.

¹⁰⁷ Sociaal Cultureel Planbureau, *Liever Mark dan Mohammed? Discriminatie op de arbeidsmarkt*, Sociaal Cultureel Planbureau, The Hague, 2010.

¹⁰⁸ Art.1. explains the methodology and further results of the study. 'For this study, two fictitious job candidates – equal in all respects but their ethnic backgrounds – apply for the same job vacancy. There were no specific minority and majority candidates; their CVs were randomly assigned, with only the name being changed. The study explored whether employers make a distinction between these candidates. Both written and telephone applications were tested. Based on a large number of tests (1,342), the researchers were able to analyse more

lower and middle labour segments, and in positions in which the employee will be in contact with customers, such as telecommunications, catering industry and retail. Also, male ethnic minorities are even more disadvantaged than female ethnic minorities.¹⁰⁹ At the same time, the Council of Europe Commissioner for Human Rights reported that discrimination is one of the reasons why the participation of migrant women is lagging behind. Several reports have expressed that employers select trainees and job applicants on ethnic origin and that in particular Muslim women wearing a headscarf suffer from discrimination.¹¹⁰

A significant body of evidence proves that recruitment agencies systematically discriminate against minorities. These studies showed that 56,7% of recruitment agencies complied with a request from an employer not to introduce Moroccan, Turkish or Surinamese candidates. On most occasions, the recruiters even expressed their understanding for this request.¹¹¹

Subsequent research by the SCP showed that of non-Western applicants who personally visited an employment agency only 28% was offered a job. In contrast, 46% of applicants of the majority population, who had identical CVs was offered a job. According to the SCP, this discrimination affects non-Western men more than women. An interesting result of the study was that they have not found discrimination by recruitment agencies in the first phase of online applications.¹¹² This has, however,

fine-grained distinctions: discrimination appears to play a larger role for migrant men than for migrant women; highly-educated migrants suffer less discrimination than those in the lower segments of the labour market; and discrimination more often occurs in jobs that involve customer contact. Specifically, ethnic minority applicants had a 37% chance of being invited for a job interview, compared with 44% for the majority population. The difference was greater for jobs that involve customer contact (9 percentage points) than for others (five percentage points). It was higher among men (9 percentage points) than among women (five percentage points). While the different ethnic groups cannot be compared to one another due to the set-up of the research, the difference in chances between the individual ethnic group and the majority group can be compared. This shows that the difference is highest among applicants with a Surinamese background (8%), lowest among applicants with a Moroccan background (5%), with applicants with Antillian and Turkish backgrounds in between (7%).' Art.1, *Contribution to AR 2012 The Netherlands*, Fundamental Rights Agency, 2013, pp. 63-64.

¹⁰⁹ The difference in chances between ethnic Dutch and non-Western men is 9%, and between ethnic Dutch and non-Western Dutch women is 5%. SCP, *Op Achterstand. Discriminatie van niet-westerse migranten op de arbeidsmarkt*, Sociaal Cultureel Planbureau, The Hague, 2012.

¹¹⁰ Council of Europe Commissioner for Human Rights, 2008, par 136.

¹¹¹ Art.1. explains the methodology and further results of the study: 'The theses were based on a study whereby 187 agencies were contacted by a fictitious employer with a request for candidates, specifically asking not to be provided with Moroccan, Turkish or Surinamese candidates. The students categorised the answers from the employment agencies, defining whether the agents went along with the request, showed doubt, expressed anger and/or actively expressed their understanding and support for the discriminatory request. According to the results of the study, 56.7% of employment agents agreed to meet the request and expressed their understanding; another 16% expressed doubt, but went along with the request nonetheless. 12.3% of agents rejected the request with recourse to legal arguments and 2.7% of agents rejected the request by expressing their own anti-discriminatory attitude. 7% of agents proposed that the employer make the selection himself, and 5.3% did not make a decision. The studies did not report the results differentiated by ethnic groups.' Art.1, *Contribution to AR 2012 The Netherlands*, Fundamental Rights Agency, 2013, pp. 63-64.

¹¹² SCP, *Op Achterstand. Discriminatie van niet-westerse migranten op de arbeidsmarkt*, Sociaal Cultureel Planbureau, The Hague, 2012. A debate followed in Parliament. See the letter from Secretary of State of Social Affairs and Employment Klijnsma J., "Overleg Uitzendbranche over het SCP onderzoek op achterstand", referencenummer 2013-0000019265, 12 March 2013. Otherwise, Art.1 explains that 'These conclusions are based on situation testing experiments in which actors with different ethnic backgrounds approached recruitment agencies looking for jobs. In total, 460 tests were carried out, with 20 different actors.' Art.1, *Contribution to AR 2012 The Netherlands*, Fundamental Rights Agency, 2013, p. 64.

been contested by further research. It was found that CVs by a Dutch sounding name candidate have on average 50% more chances of being noticed by recruitment agencies than those with an Arabic sounding name.¹¹³ This study showed that discrimination in CV screening may depend upon the particular intersection of applicant, job and recruiter characteristics.¹¹⁴ According to interviewees, this form of discrimination is also due to lack of knowledge of anti-discrimination legislation, as well as the prejudice of employees working for recruitment agencies.¹¹⁵

Following these studies, the Federation of Private Employment Agencies (*Algemene Bond Uitzendondernemingen*, ABU) conducted its own study which showed that 42, 9% of recruitment agencies complied with a discriminatory request.¹¹⁶ The ABU took this as proof that recruitment agencies are doing more against discrimination. However, since the recruitment agencies knew this study would take place, the methodology and reliability of the results are questionable.

The government has taken no remedial action and instead, the Minister stated that the responsibility for follow up action with regard to these studies is with the recruitment branch itself.¹¹⁷ Furthermore, although the government has commissioned a study by the Social Economic Council (SER) about discrimination on the labour market, this will not focus specifically on minorities.¹¹⁸

Concluding, discrimination by recruitment agencies forms a major problem for ethnic minorities when attempting to access the labour market and at the same time, it is extremely difficult to prove. The SCP notes that the fact that these groups are more often unemployed and dependent on temporary work than the majority is partially the consequence of excluding mechanisms in the labour market.¹¹⁹

Burqa ban

The recently adopted law banning the wearing of the burqa in public constitutes a serious interference by the government with the rights of a very select group of Muslim women. The law, adopted on 27 January 2012, prohibits the wearing of clothes which cover the face, leaving only the

Overleg in Tweede Kamer nav op achterstand <http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2013/03/12/overleg-uitzendbranche-over-het-scp-onderzoek-op-achterstand.html>, accessed 15 December 2013.

¹¹³ Blommaert L., Van Tubergen F., Coenders M., "Implicit and explicit interethnic attitudes and ethnic discrimination in hiring", *Social Science Research*, Volume 41, Issue 1, 2012, pp. 61–73. Also, In 2006 and 2007 the municipality of Nijmegen experimented with anonymous applications. It was concluded that there were no demonstrable effects of anonymous applications. Nevertheless, some civil society actors believe that anonymously applying for jobs could help to remedy discrimination at the recruitment phase. However, it would not address the underlying issues, and could even give these minorities the impression that they have to hide their identity. Also, in practice it is often still possible to deduce the background of the applicant. Art.1. "Anoniem solliciteren Nijmegen", <http://www.databank-antidiscriminatie.nl/nl/praktijkvoorbeeld/anoniem-solliciteren-nijmegen>, accessed 15 December 2013. This was also referred to in the interview with SMN and OCAN, and Colourful People.

¹¹⁴ Interview with Art.1, knowledge centre on discrimination.

¹¹⁵ Interview with Art.1, knowledge centre on discrimination and Anti-discrimination bureau region Amsterdam.

¹¹⁶ Mobius, 'Mystery Calling', *Algemene Bond Uitzendondernemingen* 14 December 2012,

¹¹⁷ Interviews with OCAN and Colourful People.

¹¹⁸ See Secretary of State of Social Affairs and Employment Klijnsma J., 'Adviesaanvraag discriminatie op de arbeidsmarkt', 18 February 2013, reference number 2013-000001550. The report is expected to be finished end 2013.

¹¹⁹ 'Samenvattend toont deze studie aan dat discriminatie de achterstand van niet-westerse migranten op de arbeidsmarkt beïnvloedt. Dat zij vaker werkloos zijn en vaker afhankelijk zijn van tijdelijk werk dan autochtone Nederlanders is deels het gevolg van uitsluitingsmechanismen op de arbeidsmarkt.' Sociaal Cultureel Planbureau, *Liever Mark dan Mohammed? Discriminatie op de arbeidsmarkt*, Sociaal Cultureel Planbureau, The Hague, 2010.

eyes visible, or making a person unrecognisable, in public places, publicly accessible buildings, educational institutions and non-residential areas with health facilities.¹²⁰ As a consequence, going outside in a burqa or nikab is a criminal offence, penalized with a fine of €390. This new law was adopted despite serious criticism from the Council of State (Raad van State), the police and politicians.¹²¹ While this rule is applicable to all garments covering the entire face, it was clear from the initial proposal (introduced by Geert Wilder's Freedom Party (Partij voor de Vrijheid)) that it mainly targeted this small group of Muslim women – approximately 150-200 in total. It has been perceived as a symbolic law, not aimed at benefiting society, but more as a discriminatory statement against Islam. This is further proven by the fact that while the law was adopted in order to increase public safety, the Council of State asserts that this is merely based on a subjective feeling of insecurity, which does not justify this complete ban.¹²² The Council of State concluded that this ban constitutes an unjustified restriction to the freedom of religion.¹²³

In addition, the coalition agreement between the Labour Party (PvdA) and the Liberals (VVD) of 29 October 2012, states that wearing this garment excludes these women from the right to social welfare.¹²⁴ The effect of this rule on this group of women has not been further studied. In 2010, the CERD already warned that 'in practice, the discussions around the proposed ban have opened new opportunities for further discrimination or exclusion of Muslim women generally in everyday life'.¹²⁵ Moreover, after the adoption of the law, several civil society organisations, including the official representative organisation for Turks (Inspraakorgaan Turken in Nederland) and Muslim women's organisation Al Nisa, have warned that due to this law many of these women will not be able to leave their homes.¹²⁶ The government has, in effect, completely isolated these women from society, denying them access to public education and almost all sectors of the labour market.

Actors

It has been reported that in some sectors, such as theatre and television, actors from ethnic minorities have difficulties finding jobs. Directors of productions would inform applicants they do not have a part for a black actor.¹²⁷ It appears that in this sector a role is often allocated on the basis of skin colour, or by the same token, on the basis of ethnicity. The number of actors from an ethnic minority on television is considered very low.¹²⁸

¹²⁰ Het is verboden voor een ieder om op een openbare plaats, in een voor publiek toegankelijk gebouw, in het openbaar vervoer, alsmede in gebouwen en bijbehorende erven van onderwijsinstellingen en van niet-residentiële delen van zorginstellingen kleding te dragen die het gezicht geheel bedekt of zodanig bedekt dat alleen de ogen onbedekt zijn, dan wel onherkenbaar maakt (...) art.1. Algemeen verbod gelaatsbedekkende kleding <http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2012/02/06/wetsvoorstel-algemeen-verbod-op-gelaatsbedekkende-kleding.html>, accessed 15 December 2013.

¹²¹ <http://www.nrc.nl/nieuws/2012/02/06/kritiek-raad-van-state-op-boerkaverbod/>
<http://www.volkskrant.nl/vk/nl/2824/Politiek/article/detail/3135681/2012/01/24/Zware-kritiek-Raad-van-State-op-voorstel-boerkaverbod.dhtml>, accessed 15 December 2013.

¹²² Raad van State, 'advies wetsvoorstel algemeen verbod gelaatsbedekkende kleding', February 2012. <http://www.raadvanstate.nl/adviezen/zoeken-in-adviezen/tekst-advies.html?id=10095>, accessed 15 December 2013.

¹²³ Ibid.

¹²⁴ 'Wie deze kleding draagt, voldoet niet aan de eisen voor een bijstandsuitkering.' 'Bruggen slaan. Regeerakkoord VVD – PvdA', 29 oktober 2012, p. 32

¹²⁵ Committee on the Elimination of Racial Discrimination (CERD), 'Concluding observations', CERD/C/NLD/CO/17-18, 2010, par 139.

¹²⁶ <http://www.trouw.nl/tr/nl/4500/Politiek/article/detail/3140960/2012/01/27/Nederland-reageert-op-boerkaverbod.dhtml>, accessed 15 December 2013.

¹²⁷ Interview OCAN. See also the theater play by Raymi Sambo, 'Op zoek naar Oom Tom'. <http://www.theaterkrant.nl/recensie/op-zoek-naar-oom-tom/>, accessed 15 December 2013.

¹²⁸ Ibid.

Civic integration course and language requirements

The coalition agreement of October 2012 between the Labour and Liberal party announced several measures that have an impact on the access to the labour market by migrants. First of all, preparing for the obligatory civic integration test will be the (financial) responsibility of the migrant.¹²⁹ Those 'who do not work hard enough to integrate' will lose their residence permits.¹³⁰ This criterion is not further elaborated in the agreement. Asylum seekers are exempted from this rule, though they also may lose their right to social benefits if they fail to eliminate certain obstacles to finding employment, such as mastering the Dutch language.¹³¹ In fact, mastering the language will be a prerequisite for receiving social benefits and applies to EU and non-Western immigrants, but also Dutch nationals.¹³²

This creates an unfair system. Those without the means to receive help preparing for the test are generally those most in need of assistance and social benefits. And yet, access to this assistance is conditional on language proficiency.

Adding to this, it has been reported that employers require applicants to speak Dutch without having an accent – even when they master the language perfectly, such as people from the (former) Dutch Caribbean.¹³³

It should be borne in mind that on the basis of the Equal Treatment legislation, a language requirement can amount to racial discrimination, as also decided by the Institute for Human Rights.¹³⁴ According to the Institute for Human Rights many employers, managers and recruiters are unaware that an unjustified strict language requirement can be discriminatory.¹³⁵

Apprenticeship

In 2012 considerable attention was paid to the fact that children without a residence permit were not allowed to undertake an apprenticeship even though they were going to school legally. Most vocational education courses in the Netherlands require pupils to complete one or more apprenticeships in order to receive their diploma. The District Court of The Hague ruled this unlawful for breaching the right to education.¹³⁶ In general, Art.1. Knowledge centre on Discrimination indicated that some students from ethnic minorities have difficulties finding apprenticeships, or are even advised against doing a certain study as it would be very difficult to find an apprenticeship.¹³⁷

3.4 Discrimination in the workplace

The focus of racial discrimination in the field of labour is on access to the labour market, as appears from the amount and quality of reliable sources, as well as on what had been indicated by the interviewees. The fact that there are fewer complaints about discrimination in the workplace is also due to the fact that once someone reports discrimination by their colleagues or superiors, the relations are often seriously impaired, and generally irreparable. Also, complaining about discrimination is often dismissed as being an affectation. Together with a culture in the Netherlands

¹²⁹ Regeerakkoord VVD – PvdA', 29 oktober 2012, p. 30.

¹³⁰ *Ibid*, p. 31

¹³¹ *Ibid*.

¹³² *Ibid*.

¹³³ Interview Art.1 and Anti-discrimination bureau Amsterdam.

¹³⁴ See section 4.2.2.

¹³⁵ Interview with the Institute for Human Rights.

¹³⁶ Rechtbank 's-Gravenhage, ECLI:NL:RBSGR:2012:BW4736, 2 May 2012.

¹³⁷ Interview with Art.1, knowledge centre on discrimination.

in which freedoms of thought and speech are interpreted as the freedom to insult, people are hesitant to complain about discrimination in the workplace.¹³⁸ Nevertheless, there are several developments and situations which need to be mentioned concerning discrimination in the workplace.

General

There is little reliable data available concerning discrimination in the workplace. In 2011, the National Survey Working Conditions reported that 5.7% of interviewed people experienced discrimination during the preceding twelve months and 1% of working people experienced racial discrimination.¹³⁹ Unfortunately, the question whether someone was personally discriminated against in the workplace has been removed from the subsequent 2012 questionnaire.¹⁴⁰

While there is no statistical evidence, interviewees reported that most minorities at times will experience negative references about their –visible- ethnic or religious background or affiliation in the workplace. Minorities are often perceived as ‘ambassador’ of their religion or ethnicity¹⁴¹, and thus are rebuked for actions of another individual of that ethnic or religious community, the shared background or country of origin. This is also true for Jewish people who are sometimes held accountable for the situation in Israel. Interviewees repeatedly made the point that individuals do not realise that some of the statements they make towards their colleagues from ethnic minorities can be considered racist. Recipients of these remarks may also fail to recognise their racist content. Also, managers and supervisors frequently fail to recognize or acknowledge the discriminatory aspects of employees’ remarks. Such expressions are often brushed off as a joke, not to be taken seriously.¹⁴² In this way, employees from ethnic minorities need to accept often extremely inappropriate and even racist ‘jokes’. In these situations, the responsibility to ‘choose not to be offended’ is with the minority.¹⁴³ As indicated in the interview with the Netherlands Institute for Human Rights, the discriminatory nature of these remarks is, due to lack of evidence, extremely difficult to prove.¹⁴⁴ The CIDI noticed that complaints they receive in this regard can often not be followed up for this reason.¹⁴⁵ Colleagues are often afraid, or for another reason not prepared, to testify against the employer or another colleague that made the discriminatory statement.¹⁴⁶ In these cases, as an alternative, the Netherlands Institute for Human Rights often scrutinizes whether the company has followed the complaints procedure correctly and whether it has taken the complaints seriously.¹⁴⁷

Interviewees have indicated that cases such as these, where employers fail to respond adequately are due to a lack of awareness of anti-discrimination legislation, prejudices and stereotypes.¹⁴⁸

¹³⁸ Interview with Art.1, knowledge centre on discrimination.

¹³⁹ TNO, *Nationale enquête arbeidsomstandigheden 2012. Methodologie en globale resultaten*, TNO, Hoofddorp, 2013. See also Art.1, *Contribution to AR 2012 The Netherlands*, Fundamental Rights Agency, 2013, p. 64.

¹⁴⁰ TNO, *Nationale enquête arbeidsomstandigheden 2012. Methodologie en globale resultaten*, TNO, Hoofddorp, 2013, p. 185.

¹⁴¹ Interview with CIDI.

¹⁴² Interview with the Institute for Human Rights.

¹⁴³ This was expressed by Professor Philomena Essed, at the Colonial Legacy Conference, organised from 21-22 June by the Centre of Humanities of the University of Utrecht, in Utrecht.

¹⁴⁴ Interview with the Institute for Human Rights, Art.1 and anti-discrimination bureau region Amsterdam.

¹⁴⁵ Interview with CIDI.

¹⁴⁶ Interview with CIDI.

¹⁴⁷ Interview with the Institute for Human Rights.

¹⁴⁸ Interview with the Institute for Human Rights and Art.1.

International monitoring bodies

The European Commission against Race and Intolerance (ECRI) has noted that racial discrimination in the Dutch labour market is increasing and notes that provisions protecting people from racial harassment are not fully applied and protected.¹⁴⁹

On a positive note, ECRI also remarks that the representation of ethnic minorities in the police force is gradually improving.¹⁵⁰ However, 'a disproportionate number of ethnic minority officers are still leaving the service and mention among the reasons for this the prevailing police culture and the standards of behaviour that characterise it, together with perceptions about inadequate career prospects.'¹⁵¹ However, ECRI notes 'persisting reports according to which ethnic minority officers are still sometimes faced with racist attitudes in their work environment.'¹⁵² ECRI also recommends the further implementation of trainings to make the police forces more aware of their own prejudices and stereotypes.¹⁵³

The effects of populist speech on relations between colleagues

While Geert Wilders was acquitted of inciting hate and discrimination by the court in June 2011, a study published in 2010 indicated that the speeches of populists, and in particular Wilders himself, have an impact on relations between ethnic groups in society, particularly in the workplace.¹⁵⁴ The same study showed that while workers were reasonably satisfied with the way colleagues from different backgrounds interacted, conflicts arose when colleagues discussed issues about which Wilders was vocal in the political domain, such as terrorism, criminal behaviour of youngsters, repression of women, arranged marriages and religious clothing. As Professor Siebers recalls, when these issues are discussed, colleagues from the majority use arguments and statements by Wilders to approach their Moroccan and Islamic colleagues. According to Professor Siebers, people from Moroccan and Islamic backgrounds feel like they are forced to take responsibility for the actions of every individual Moroccan and Islamic person. This study demonstrates that these incidents create serious tensions in the workplace and, according to one of the respondents in the study, had even led to the resignation of individual victims.¹⁵⁵

Central and Eastern Europeans, and European migrants in general

As indicated in earlier sections, Central and Eastern Europeans (from Poland, Romania and Bulgaria) are a vulnerable group experiencing serious problems in the labour market. According to a recent SCP study, 70% to 75% of Polish and Bulgarian migrants believe that when they did not get a

¹⁴⁹ ECRI, *Third report on the Netherlands*, Council of Europe, Strasbourg, 2008, par 64. See also Hermanin C., De Kroon E., *The Race Equality Directive. A shadow report. Lessons learnt from the implementation in nine EU member states*, Open Society Foundations, 2013, pp. 141-143.

¹⁵⁰ See section 3.3 and ECRI, *Third report on the Netherlands*, Council of Europe, Strasbourg, 2008, par 101. See also Hermanin C., De Kroon E., *The Race Equality Directive. A shadow report. Lessons learnt from the implementation in nine EU member states*, Open Society Foundations, 2013, pp. 141-143.

¹⁵¹ ECRI, *Third report on the Netherlands*, Council of Europe, Strasbourg, 2008, par 102. See also Hermanin C., De Kroon E., *The Race Equality Directive. A shadow report. Lessons learnt from the implementation in nine EU member states*, Open Society Foundations, 2013, pp. 141-143.

¹⁵² Ibid.

¹⁵³ ECRI, *Third report on the Netherlands*, Council of Europe, Strasbourg, 2008, par 103. See also Hermanin C., De Kroon E., *The Race Equality Directive. A shadow report. Lessons learnt from the implementation in nine EU member states. Annex II & III*, Open Society Foundations, 2013, pp. 141-143.

¹⁵⁴ Mutsaers P., and Siebers H., 'Low Intensity Ethnic Cleansing in the Netherlands', *Tilburg Papers in Culture Studies*, number 38, 2012.

¹⁵⁵ Siebers H., "The Impact of Migrant-Hostile Discourse in the Media and Politics on Racioethnic Closure in Career Development in the Netherlands", *International Sociology* number 25, issue 4, 2010, pp. 475-500.

particular job it was due to their ethnicity, nationality or language.¹⁵⁶ Another study by the SCP in 2011 showed that Polish immigrant workers are often exploited in the labour market by employment agencies and employers.¹⁵⁷ In their submission to the UN Human Rights Council for the Universal Periodic Review, the Equal Treatment Commission reported that ‘consistently poor working conditions and mala fide labour mediation threaten the right to work and to non-discrimination. Violation of human rights is evident where these employees are locked up and their passports are seized by their employers’.¹⁵⁸

While low skilled migrants have generally been met with discrimination and exploitation, the Netherlands has developed specific policies to attract highly skilled migrants.¹⁵⁹

An example

A most upsetting concrete example of direct discrimination in the workplace was provided by the President of the New Urban Collective.¹⁶⁰ He reported an occurrence in which a black, Surinamese young woman had an evaluation at the close of her internship with her supervisor. She was in the final phase of her Master’s degree in fiscal law and was completing an internship with a big consulting firm. Her previous evaluations had always been positive and she had hoped for a permanent appointment. In the conversation, the supervisor announced that the company already had a ‘token-negro’ and a ‘cuddly Moroccan’.¹⁶¹ Therefore, the company’s diversity policy has been fulfilled and there was no need to employ her. Her qualities and activities were not assessed in this decision. The woman did not report the incident to any authority. Evidently, some people are not convinced that a diverse pool of employees is beneficial to the company, but merely see it as an obligation which needs to be fulfilled.

3.5 Economic sectors

In its study of 2009, the SCP found that discrimination is an important factor in the disadvantaged position of, and high unemployment rates among ethnic minorities. Through the use of situation testing they were able to show differences in chances of being invited for a job interview between non-Western immigrant and majority (‘native-Dutch’) applicants, but also other relevant factors, such as the sector the applicant is applying to. The following statistics show in percentage points how much less often non-Western migrants were invited for a job, in comparison to the majority population.

Difference in percentage of non-Western migrants and native Dutch who were invited for a job interview, total and by a number of background and job characteristics, 2009 (in percentage points).

¹⁵⁶ SCP, *Nieuw in Nederland. Het leven van recent gemigreerde Bulgaren en Polen*, Sociaal Cultureel Planbureau, The Hague, 2013, p. 141.

¹⁵⁷ SCP, *Poolse migranten. De positie van Polen die vanaf 2004 in Nederland zijn komen wonen*, Sociaal Cultureel Planbureau, The Hague, 2011.

¹⁵⁸ Commissie Gelijke Behandeling, de Nationale Ombudsman, de Kinderombudsman, College Bescherming Persoonsgegevens, “Rapport Consortium Universal Periodic Review”, 2012, pp. 7-8.

¹⁵⁹ ‘A two-year pilot project was launched on 1 January 2012 to encourage mobility for highly skilled migrants. For those coming to the Netherlands for periods shorter than three months, the labour supply no longer needs to be verified. This shortens procedures for short-stay skilled migrants and creates more alignment with existing procedures for skilled migrants staying in the country for periods longer than three months. The pilot project applies to highly skilled migrants who do not need visas, are in possession of short-term visas, or have obtained long-term visas for other Schengen countries.’ Art.1, *Contribution to AR 2012 The Netherlands*, Fundamental Rights Agency, 2013, p. 15.

¹⁶⁰ Interview with New Urban Collective.

¹⁶¹ In Dutch ‘excuus neger’ and ‘knuffel Marokkaan’. Interview with New Urban Collective.

Percentage of non-Western migrants invited for interview less percentage of native Dutch applicants invited.¹⁶²

| | Difference non-Western migrants and native Dutch |
|----------------------------------|--|
| Total | |
| men | -9 |
| women | -5 |
| job level: low | -8 |
| job level: middle | -9 |
| job level: high | -3 |
| sector: (health)care | -6 |
| sector: financial services | -6 |
| sector: hospitality industry | -11 |
| sector: local authority | -3 (difference is not significant) |
| sector: retail | -10 |
| work experience: starter | -4 |
| work experience: more experience | -6 |
| work experience: most experience | -9 |
| jobs without customer contact | -5 |
| jobs with customer contact | -9 |

Source: SCP

The SCP explains the statistics in the employment sectors. ‘The hospitality industry and retail sector – which account for large parts of the service sector – are most likely to reject non-Western job applicants; the difference between the percentage of native Dutch and non-Western applicants being invited for interviews is no less than 11 and 10 percentage points, respectively, in the two sectors. This is not because these sectors have a higher proportion of jobs involving customer contact: this was statistically controlled for in the analyses. When it comes to local government jobs, the difference between native Dutch and non-Western applicants is not statistically significant. The scores for the financial services and (health) care sectors are nearly the same; in these sectors, too, non-Western job applicants are at a disadvantage, with a statistically significant difference of 6 percentage points compared with native Dutch applicants’.¹⁶³

And as ‘many non-Western migrants rely mostly on lower-skilled jobs because of their lower average educational level and ‘discrimination manifests itself more in lower and middle-ranking jobs’.¹⁶⁴

¹⁶² Sociaal Cultureel Planbureau (SCP), *Do employers prefer Mark over Mohammed? A study of labour market discrimination against non-Western migrants using situation testing*, Sociaal Cultureel Planbureau, The Hague, 2009, p. 4.

¹⁶³ Ibid.

¹⁶⁴ Ibid.

Because non-Western migrants are highly represented in those sectors which are most sensitive to economic instabilities, they are affected disproportionately hard in times of economic downturn.¹⁶⁵

The study found that in jobs with customer contact non-Western migrants are invited for interviews less often than majority applicants.¹⁶⁶

In its subsequent report of 2010 the SCP explains that particularly recognisable Muslims are prone to discrimination. The SCP states that it is clear that 'religiously marked characteristics often have a direct or indirect influence on the selection process. Wearing a headscarf or beard is regarded as a problem particularly for jobs involving customer contact, but even in jobs where there is no such contact recruitment officers express a preference for candidates without these characteristics'.¹⁶⁷

Bodily contact is considered important for positions in several sectors, and in particular (health) care. As some employers have had 'negative experiences with employees with a non-Western background that are related to their (Islamic) culture or religion. Examples include withdrawal from social activities, not being willing to shake the hand of someone of the opposite sex, not being prepared to wash members of the opposite sex (care sector) and/or dressing in an ever more traditional way',¹⁶⁸ some employers or recruitment bureaus are hesitant or refuse to work with non-Western migrants.¹⁶⁹

The SCP concluded that non-Western migrants avoid applying for jobs at certain companies and sectors because they expect to be discriminated.¹⁷⁰

4. Tackling the challenges

4.1 Public policies

At the national level, there are a few public policies addressing discrimination in the labour market, and those which have been implemented do not appear to have made a particularly big impact. There is, however, increasing attention being paid to the labour position of Central and Eastern Europeans and other migrant workers. Some strategies have been developed to improve their labour situations. As explained by Art.1.

'The Netherlands uses, for example, the European Social Fund (ESF) to increase overall employment by focusing on groups that are at the margins of the labour market. These groups include women, people over the age of 55, youngsters and other vulnerable groups, such as non-Western migrants and persons with disabilities. One of the measures to improve the participation in the labour market

¹⁶⁵ 'Waardoor zij onevenredig hard getroffen worden wanneer het economische slechter gaat'. Sociaal Cultureel Planbureau (SCP), *Discriminatiemonitor niet-westerse migranten op de arbeidsmarkt*, Sociaal Cultureel Planbureau, The Hague, 2010, p. 49.

¹⁶⁶ Sociaal Cultureel Planbureau (SCP), *Do employers prefer Mark over Mohammed? A study of labour market discrimination against non-Western migrants using situation testing*, Sociaal Cultureel Planbureau, The Hague, 2009, p. 5.

¹⁶⁷ Sociaal Cultureel Planbureau (SCP), *Discriminatiemonitor niet-westerse migranten op de arbeidsmarkt*, Sociaal Cultureel Planbureau, The Hague, 2010, p. 125

¹⁶⁸ *Ibid*, p. 126.

¹⁶⁹ *Ibid*, p. 70.

¹⁷⁰ *Ibid*, p. 24.

of vulnerable groups is the 'Action plan for functional illiteracy 2012-2015' ('Actieplan Laaggelettertheid 2012-2015'). Regional Teaching Centres (Regionale opleidingscentra) could apply for subsidies in cooperation with municipalities to initiate projects to tackle functional illiteracy of adults.¹⁷¹

The scope of these measures is very limited and their effects on unemployment and discrimination against ethnic minorities on the labour market are arguably marginal.

Local governments have significant discretion to allocate resources to combat discrimination. However, Art.1. reports that 'due to austerity measures targeting education and labour market reintegration, local governments will have fewer resources to guide newcomers to find work.'¹⁷² As it has not been possible to interview city Council Members responsible for employment in the major cities, no public policies on the regional level are described.

A commendable initiative was taken by the Immigration and Naturalisation Service (Immigratie en Naturalisatie Dienst, IND), which is a central government authority. In 2012 this authority requested an advisory opinion of the Equal Treatment Commission,¹⁷³ by which it asked the Commission to review its internal code of conduct, where rules about clothes and appearances are laid down. It asked the Commission whether this code sufficiently protects against differential treatment on the basis of religion in recruitment procedures. The Commission made various general and specific recommendations for certain functions within the IND. According to the Institute for Human Rights, the IND complied with this (non-binding) opinion and adjusted its policies.¹⁷⁴

Several interviewees have expressed concern at the passivity of civil society in relation to discrimination in general and in particular in the labour market.¹⁷⁵ In the past, anti-discrimination organisations were organised in several consultation structures, among themselves and with the government. It is generally felt that in the past, civil society was more effective in monitoring, putting issues on the political agenda, and instigating change.¹⁷⁶

4.2 Access to effective remedies

4.2.1 Judicial remedies

Criminal cases

The following information is provided based on a search of the databank of the Dutch judiciary. All cases have been published.¹⁷⁷ Between March 2010 and March 2013 there have been two relevant criminal cases to note.

In the first case, three store managers of a supermarket chain (AH to Go) were prosecuted and found guilty of racial discrimination. They had requested the human recourses department to no longer

¹⁷¹ Art.1, Contribution to AR 2012 The Netherlands, Fundamental Rights Agency, 2013, p. 41.

¹⁷² Art.1, Contribution to AR 2012 The Netherlands, Fundamental Rights Agency, 2013, p. 9

¹⁷³ Commissie Gelijke Behandeling, Advies 2012/01 inzake kledingvoorschriften in gedragscode van de Immigratie- en Naturalisatiedienst (IND). Neutraliteit, gezag en zichtbare geloofsuitingen bij de IND: een kwestie van maatwerk, CGB-advies 2012/01, 2012.

¹⁷⁴ Interview with the Institute for Human Rights.

¹⁷⁵ Interview with the Anti-discrimination bureau region Amsterdam.

¹⁷⁶ Interview with the Anti-discrimination bureau region Amsterdam.

¹⁷⁷ Searched on the keyword 'discrimination' in the different proceedings (criminal, civil and administrative). The results have been reviewed, and the cases relating to labour have been hand-selected. De Rechtspraak, <http://uitspraken.rechtspraak.nl/>, accessed 1 September 2013.

refer Moroccan candidates. The human resources employee in question complied with this request.¹⁷⁸ In the case against the human resources employee, the court considered that the employee had received only minimal support from her employer to deal with specific problems in the company's employment policies. The three store managers and human resources employee together received conditional fines of €1250.

The second case concerned discrimination against a police officer in service. A civilian was found guilty of insult with discriminatory intent of a police officer of Moroccan descent. The culprit was fined €150.¹⁷⁹

Civil cases

The following information is provided by Art.1, on the basis of their database. All cases are published and can also be found in the databank of the Dutch judiciary.¹⁸⁰

On the basis of racial discrimination, three cases were found, and one on the basis of religion.¹⁸¹

One case concerned discrimination in the workplace against KLM Royal Dutch Airlines. The judge found that KLM had not sufficiently dealt with complaints made by an employee about racial discrimination by colleagues. KLM promised the victim a permanent contract, on condition that she would speak to the colleague who racially discriminated her. When she refused to do so, she was not given the permanent contract. The court ruled that KLM was guilty of victimisation as it had not properly addressed the complaints made by a flight attendant of racial discrimination by a colleague. The plaintiff was rewarded compensation.¹⁸²

In another case, a man applied several times for a job at a microelectronics company, using the name X, but was not invited for a job interview. A year later, this same person applied again with an identical CV, but now using the name Y. This time he was invited for an interview. He asserted that he had been discriminated on the basis of his race. The Court decided that the company had not violated the prohibition of racial discrimination because a position for someone with his theoretical profile only became available a year later and the man with name Y matched this profile.¹⁸³

Administrative cases

The following information is provided by Art.1 on the basis of their database. All cases are published and can also be found in the databank of the Dutch judiciary.¹⁸⁴

On the basis of racial discrimination three cases were found, three on nationality and one on religion.¹⁸⁵

Most striking were two cases against the Minister of Asylum and Integration, in which two African migrants were arrested by the aliens police on suspicion of illegal residence in the Netherlands. At the time of the arrest, the victims were working respectively as a gardener and a cleaner. In both

¹⁷⁸ Rechtbank 's-Gravenhage, ECLI:NL:RBSGR:2010:BN9971, 15 June 2010. Rechtbank 's-Gravenhage, ECLI:NL:RBSGR:2010:BN9983, 11 October 2010. Rechtbank 's-Gravenhage, ECLI:NL:RBSGR:2010:BO0019, 11 October 2010. Rechtbank 's-Gravenhage, ECLI:NL:RBSGR:2010:BO0022, 11 October 2010.

¹⁷⁹ Rechtbank Amsterdam, ECLI:NL:RBAMS:2010:BO6384. 6 December 2012.

¹⁸⁰ Art1, *Jurisprudentiedatabank*, <http://194.0.234.18/csp/art1web/Vubis.csp?Profile=Profile3>, accessed 1 September 2013. De Rechtspraak, <http://uitspraken.rechtspraak.nl/>, accessed 1 September 2013.

¹⁸¹ In addition to the cases described below, see Rechtbank Arnhem, ECLI:NL:RBARN:2012:BW2006, 11 April 2012. And Gerechtshof Amsterdam, ECLI:NL:GHAMS:2010:BM7410, 15 June 2010.

¹⁸² Rechtbank Haarlem, ECLI:NL:RBHAA:2010:BM5906, 27 April 2010.

¹⁸³ Gerechtshof's-Hertogenbosch, ECLI:NL:GHSHE:2010:BM9137, 15 June 2010.

¹⁸⁴ Art1, *Jurisprudentiedatabank*, <http://194.0.234.18/csp/art1web/Vubis.csp?Profile=Profile3>, accessed 1 September 2013. De Rechtspraak, <http://uitspraken.rechtspraak.nl/>, accessed 1 September 2013.

¹⁸⁵ In addition to the cases described below, see Rechtbank 's-Gravenhage, ECLI:NL:RBSGR:2012:BW4736, 2 May 2012. And Centrale Raad van Beroep, ECLI:NL:CRVB:2013:BZ7299, 11 April 2013.

cases, the court ruled that the aliens police's decision to stop, ask for identification, and (in one case) detain, should be made on a reasonable suspicion of illegal residence. In these cases the decision was merely based on the men's appearances and therefore illegitimate.¹⁸⁶

Concerning nationality, one case revolved around the question whether visa requirements for work permits for Turkish people were justified or not.¹⁸⁷ Another case was brought forward by Turkish migrants who became disabled while legally working in the Netherlands. As they were currently living in Turkey, the government announced that their additional allowance would be phased out. The court ruled this unlawful.¹⁸⁸

A case which received societal and political attention was a case brought forward by Mr. Enait, a Sunni Muslim, against the Municipality of Rotterdam. In an interview for the position of customer manager at the department of Social Affairs and Employment, Mr. Enait refused to shake hands with the female head of human resources whereupon the applicant was rejected for the position. The Court dismissed Mr. Enait's complaint, considering that shaking hands, as a generally accepted way of greeting in the Netherlands, can be expected from a customer manager who will be in personal contact with customers of the municipality. Also, the municipality, as a governmental organ, is expected to appear neutral to all citizens. The Court continues that refusing to shake the hand of a female customer is all the more unacceptable since that refusal could be interpreted as a denial of equality between men and women.¹⁸⁹

According to interviewees, the low number of court cases could, to a large extent, be explained by the fact that many people turn to the local anti-discrimination bureaux or the Netherlands Institute for Human Rights for redress. Most, if not all, of the court cases have previously been handled by one of the bureaux or the Institute. It is believed that the level of evidence required by the courts, combined with the risk of a case failing, acts as a deterrent to victims and their lawyers. Only cases that are highly likely to succeed are brought before the court.¹⁹⁰

4.2.2 Non-judicial remedies

4.2.2.1 The equality body and local anti-discrimination bureaux

The Netherlands has a special system of gathering and processing anti-discrimination complaints. In addition to the national equality body, there are numerous local anti-discrimination bodies which have been created since 2009 where individuals can file a complaint.¹⁹¹

In October 2012 the Netherlands Institute for Human Rights was established and subsumed by the former equality body ('Equal Treatment Commission' or ECB). A recent report on the implementation of the Race Equality Directive assesses the functioning of this body. 'Responsibilities of the Board include issuing advice and recommendations (upon request and also at its own initiative), providing

¹⁸⁶ Rechtbank's-Gravenhage, ECLI:NL:RBSGR:2012:BX9993, 8 October 2012. And Raad van State, ECLI:NL:RVS:2011:BR2059, 13 July 2011.

¹⁸⁷ Rechtbank's-Gravenhage, ECLI:NL:RBSGR:2011:BP4784, 14 February 2011.

¹⁸⁸ Centrale Raad van Beroep, ECLI:NL:CRVB:2011:BU3180, 11 November 2011.

¹⁸⁹ Gerechtshof 's-Gravenhage, ECLI:NL:GHSGR:2012:BW1270, 10 April 2012, par 13-15.

¹⁹⁰ Interview with Art.1, knowledge centre on discrimination, and Anti-discrimination bureau region Amsterdam.

¹⁹¹ Wet Gemeentelijke antidiscrimatievoorzieningen (Municipal Anti-Discrimination Services Act), 2009, identificationnumber BWBR0026168.

information, rendering opinions on the basis of equal treatment legislation.¹⁹² In addition, the local anti-discrimination bureaux 'are responsible for providing help and advice to individuals upon request and for providing the municipalities with annual figures on reports of discrimination at local level.'¹⁹³

In 2011, the Equal Treatment Commission delivered 210 opinions. Out of a total of 221 Equal Treatment Commission decisions, 10% of cases concerned race, and 8% religion¹⁹⁴ and 66% concerned labour relations, mainly recruitment or labour conditions.¹⁹⁵ Thirteen cases concerned discrimination on the basis of race or nationality in the field of labour relations.¹⁹⁶ Of these thirteen cases, twelve concerned recruitment and in two of these, the Commission found unjustified differential treatment. One case concerned payment and promotion, and one dismissal. As noted, the Commission has difficulties finding proof of unjustified differential treatment.¹⁹⁷ Demands regarding language proficiency, selection (or exclusion) on the basis of name, were common among the grounds of complaints filed.¹⁹⁸ The rejection of an applicant on the basis of language is also considered by the Institute for Human Rights as constituting discrimination on the basis of race.¹⁹⁹

The way racial discrimination can reveal itself in the form of a language requirement is illustrated by a case in 2011. In this case the Institute for Human Rights decided that a Sierra Leonean man, who applied for a job as taxi driver should not have been rejected for the position on the basis that he did not master the Dutch language perfectly. This amounted to –indirect- racial discrimination because the employer should have accepted a lower command of the Dutch language, which would have been sufficient for the candidate's performance in the position.²⁰⁰ However, claims of racial discrimination on the basis of a language requirement at the Institute for Human Rights are not always successful.²⁰¹

The fact that only in roughly 30% of the cases before the Institute for Human Rights, discrimination is found indicates that also the Institute for Human Rights grapples with the difficulties in proving –a suspicion- of racial discrimination. The Institute is currently examining the causes of this predicament, but already stated that there is no easy solution for this.²⁰²

¹⁹² Hermanin C., De Kroon E., *The Race Equality Directive. A shadow report. Lessons learnt from the implementation in nine EU member states. Annex I country Summary of the Netherlands*, Open Society Foundations, 2013, p. 46.

¹⁹³ Ibid.

¹⁹⁴ In 2010 this was respectively 14% and 6%. Commissie Gelijke Behandeling, *Gelijke behandeling. Oordelen en commentaar 2011*, Commissie Gelijke Behandeling, Utrecht, 2012, p. 11.

¹⁹⁵ In 2010 this was 61% of the cases. Ibid.

¹⁹⁶ In the interview with the Institute for Human Rights, it was indicated that even though in the registration, a strict division is kept between the different groups for discrimination, it does monitor intersectionality as well. It was stated that sixteen cases concerned discrimination on the basis of race in the field of employment, six of which it involved a language requirement.

¹⁹⁷ 'Net als in voorgaande jaren valt op dat de CGB in veel gevallen geen vermoeden van onderscheid kan constateren doordat partijen elkaar tegenspreken, terwijl de klager onvoldoende ondersteunend bewijs kan leveren. Onderscheid op grond van ras of nationaliteit blijkt niet makkelijk aan te tonen door, de verschillende manieren waarop het zich kan uiten en door de verschillende aspecten die deze vorm van onderscheid kent. Het valt daardoor niet mee om een dergelijk vorm van onderscheid te bewijzen terwijl communicatieproblemen, die juist een aspect kunnen vormen van het (vermeend) onderscheid, de bewijsrechtelijke problemen verder kunnen compliceren.' P. 53.

¹⁹⁸ Ibid.

¹⁹⁹ Interview with the Institute for Human Rights.

²⁰⁰ Commissie Gelijke Behandeling, opinion 2011-201, file 2011-0228, 16 December 2011. See also section 3.4.

²⁰¹ See for example Commissie Gelijke Behandeling, opinion 2012-124, file 2011-0678, 19 July 2012.

²⁰² Interview with the Institute for Human Rights.

Civil society organisations are generally positive about the functioning of the equality body in terms of professionalism and effectiveness.²⁰³ However, cases usually take very long to be processed which makes it an unfit body to present urgent cases to, such as threatening dismissals.²⁰⁴

Because the Institute for Human Rights deals with potentially sensitive issues, topics of research are chosen strategically in order not to provoke unnecessary resistance from government and employers. For that reason the findings are also presented using carefully chosen language.²⁰⁵

It has been reported that 'while the opinions of the CGB are not legally enforceable, on average 70 per cent of the cases in which discrimination was found have been followed up with the implementation of positive measures' and 'when the case is brought before the courts, the latter refer to the CGB's decision in 81% of the cases and follow such decisions in 61% of the cases'.²⁰⁶ It has been stated that due to the effectiveness and comprehensiveness of the Equality Body and anti-discrimination bureaux, the number of court procedures is low.²⁰⁷

Unfortunately, as noted by ECRI in 2008, 'the CGB and its decisions have not always enjoyed public support by the Dutch authorities. (...) For instance, ECRI notes that in March 2006, following a CGB decision which found that a school was wrong to dismiss a Muslim female teacher from its classes for refusing to shake hands with men, the then Minister for Immigration and Integration called the very existence of the CGB into question.'²⁰⁸

4.2.2.2 Labour Inspectorate

As described in section 2.2, the labour inspectorate supervises the Labour Act and Foreigners Labour Act. Legislation regulating employment conditions of migrants is primarily designed to protect companies from unfair competition, for example caused by lowered labour costs.

In general, the Labour Inspectorate monitors compliance with legislation, detects and combats illegal labour and ensures that companies pay minimum wages. They also start investigations in response to employees' complaints about labour hours or conditions.²⁰⁹ Where individuals wish to claim compensation they are required to start civil proceedings themselves.²¹⁰

According to the website of the government, people can file complaints at the Labour Inspectorate regarding the Foreigners Labour Act when they suspect illegal employment, exploitation and 'other forms of fraud and abuse which would cause unfair competition on the labour market'.²¹¹

²⁰³ Interview with Art.1, knowledge centre on discrimination, and the Anti-discrimination bureau region Amsterdam.

²⁰⁴ Interview with the Anti-discrimination bureau region Amsterdam.

²⁰⁵ Interview with the Institute for Human Rights.

²⁰⁶ ECRI, *Third report on the Netherlands*, Council of Europe, Strasbourg, 2008, p. 13.

²⁰⁷ Interview with Art.1, knowledge centre on discrimination. ECRI, *Third report on the Netherlands*, Council of Europe, Strasbourg, 2008.

²⁰⁸ ECRI, *Third report on the Netherlands*, Council of Europe, Strasbourg, 2008, p. 13.

²⁰⁹ Arboportaal, *Inspectie SZW*, <http://www.arboportaal.nl/onderwerpen/arbowed--en--regelgeving/arbowed/inspectie-szw.html>, accessed 1 September 2013.

²¹⁰ *Inspectie SZW, Klachten melden*, http://www.inspectieszw.nl/contact/melden_en_aanvragen/klachtenmeldenwanneerhoeendepcedurevooraarbeidsomstandighedenarbeidsvoorwaardenarbeidstijden.aspx, accessed 1 September 2013.

²¹¹ Rijksoverheid, *Wanneer kan ik een klacht indienen bij de inspectie SZW*, <http://www.rijksoverheid.nl/onderwerpen/arbeidsomstandigheden/vraag-en-antwoord/wanneer-kan-ik-een-klacht-indienen-bij-de-inspectie-szw.html>, accessed 1 September 2013.

The Labour Inspectorate has been increasingly reviewing situations regarding the exploitation of migrants and even created a special hotline for abuses by dishonest recruitment agencies.²¹² It has also been instigating several initiatives to raise awareness of labour rights among European migrants.²¹³

The Labour Inspectorate has the authority to order that work be halted, demand compliance with the law, impose a fine, impose a non-compliance penalty and start a criminal case. Criminal cases are only commenced in cases of severe and large scaled fraud. It is unclear which of these enforcement powers is used to remedy cases of discrimination.²¹⁴

The lack of public cases instigated by the Labour Inspectorate in the field of discrimination in the employment sector indicates that the Labour Inspectorate is not as active as it could be in monitoring and ensuring a discrimination-free workplace.

4.3 Civil society initiatives

4.3.1 Trade Unions

Unfortunately, no good practices by trade unions specifically tackling discrimination in employment were found. This is particularly disappointing as trade unions have the significant potential to raise awareness of discrimination in the labour market.²¹⁵

4.3.2 NGOs activities

The LOM alliances, which include the SMN and OCAN, and other minority representative bodies, have recently set up an initiative in which organisations are invited to join the 'DIV Charter'.²¹⁶ The DIV(-ersity) charter, based on a French example, allows companies to commit to anti-discrimination and diversity policies in their company. In many European countries this initiative has been a success, but difficulties have been encountered in the Netherlands. Companies are generally not convinced that the initiative will advantage their business. Rather, they are concerned that the initiative will have the opposite effect: that more people from different cultures and backgrounds in the workplace would actually increase tensions.²¹⁷ The State Secretary of Social Affairs and Employment commended the initiative and agreed to follow it up once ten companies commit to it.²¹⁸ Government support is crucial in order to increase momentum behind the initiative.

Recently, the SMN created its own discrimination hotline where people with a Moroccan background can file an official complaint. SMN indicated that their supporters find it easier to file a complaint

²¹² Inspectie SZW, *Misbruiken kennismigrantenregeling steeds beter opgespoord*, <http://www.inspectieszw.nl/actueel/nieuwsberichten/misbruikkennismigrantenregelingsteedsbeteropgespoord.aspx>, 1 September 2013.

²¹³ See for example Inspectie SZW, *Brochure Nieuw in Nederland. Europese arbeidsmigranten*, Ministerie van Sociale Zaken en Werkgelegenheid, 2012.

²¹⁴ Arboportaal, *Inspectie SZW*, <http://www.arboportaal.nl/onderwerpen/arboret--en--regelgeving/arboret/inspectie-szw.html>, accessed 1 September 2013.

²¹⁵ This is mentioned by several interviewees, such as FORUM, SMN, OCAN and Colourful People.

²¹⁶ The LOM (Landelijk Overleg Minderheden) is a cooperative structure of seven minority organisations, which is official consultative partner to the government. It includes representative organisations for people from Molukkan, Chinese, Turkish, Southern-European, Moroccan, Caribbean (Antillean), Surinamese descent and refugees.

²¹⁷ Interview with SMN and OCAN.

²¹⁸ Ibid.

using this hotline than with the official anti-discrimination bureaux. Their complaints are then passed on to the authorities.²¹⁹

4.3.3 Employers' organisations

Following the reports that showed discrimination by recruitment agencies,²²⁰ the Federation of Private Employment Agencies developed and a brochure by which employees can test themselves on discriminatory behaviour, as well as an instruction what recruiters should do when they receive a request from an employer not to introduce certain ethnic groups.²²¹ They were published by the Dutch government.

No other concrete examples of good practices by employers' organisations were discovered during the research carried out for this report. Nevertheless, the SCP did investigate how important employers find labour discrimination.²²² In a survey companies were asked which measures they would like to see the government take. One of the options was more government action against discrimination in the labour market. In 2010, 47% of the companies involved said they would like to see the government take measures against discrimination in the labour market.²²³ This measure was ranked 9th out of 20 proposed measures by the survey (followed by measures regarding investing in education and training, changing laws regulating dismissals, and lowering taxes). The report does not clarify what kind of measures these companies would like, in which sector or which specific groups. The same companies were asked which measures taken by government during the preceding year were the most relevant. Here only 1% of the companies answered this to be anti-discrimination measures.²²⁴

Thus, while companies seem to find anti-discrimination measures important, the government has not been able to take effective measures in this respect.

4.3.4 Other civil society initiatives

While fully funded and created by the government, some anti-discrimination bureaux provide services similar to civil society, such as drafting or assisting with drafting of codes of conduct for private companies.²²⁵

Another commendable initiative comes from certain employment agencies that highlight the value of diversity in a company, such as Colourful People.²²⁶ The director, Melek Usta, having a Turkish

²¹⁹ Interview with SMN.

²²⁰ See section 3.4.

²²¹ See ABU, 'Introductie in gelijke behandeling voor de uitzendbranche. Discrimineer jij onbewust? Test het zelf!', 2013, <http://www.rijksoverheid.nl/ministeries/szw/documenten-en-publicaties/brochures/2013/03/12/zelftest-discrimineer-jij-zelf.html>, accessed 15 December 2013. and ABU, 'Wat te doen bij een discriminerend verzoek?', 2013. <http://www.rijksoverheid.nl/ministeries/szw/documenten-en-publicaties/brochures/2013/03/12/instructie-wat-te-doen-bij-een-discriminerend-verzoek.html>, accessed 15 December 2013.

²²² Sociaal Cultureel Planbureau (SCP), *Vraag naar arbeid 2011*, Sociaal Cultureel Planbureau, The Hague, 2012.

²²³ In comparison to 44% in 2003, 29% in 2006 and 44% in 2008. More government investment in education and training was number one with 78% and lower minimum wage was on number 20 with 13%. See graph 3.6, Sociaal Cultureel Planbureau (SCP), *Vraag naar arbeid 2011*, Sociaal Cultureel Planbureau, The Hague, 2012, p. 53.

²²⁴ See graph 3.7, Sociaal Cultureel Planbureau (SCP), *Vraag naar arbeid 2011*, Sociaal Cultureel Planbureau, The Hague, 2012, p. 55.

²²⁵ Interview with the Anti-discrimination bureau region Amsterdam.

²²⁶ See <http://www.colourfulpeople.nl/>

background herself, saw the positive contributions of ethnic minorities in society and their absence in key positions in the labour market. In order to contribute to closing the gap, Ms. Usta founded Colourful People to provide the link between these fields.²²⁷ Colourful People is a national bureau, mediating between job seeking minorities and employers, and it also provides pragmatic training and advice on diversity policies, culture and leadership development, labour market strategy, internal and external communication, and management. Colourful People is now well-known for its services to increase diversity in companies. It has had many small, but also very big, clients (see section 4.4 for two examples).

FORUM has initiated a project called K!X.²²⁸ K!X aims to improve the chances of youth in prevocational and vocational education (which is relatively highly attended by ethnic minorities) in the labour market. The teams that visit the schools engage in the following activities: introducing the pupils to companies, building a professional network, and helping them build on their skills. Pupils are encouraged to join this initiative in exchange for study credits. The working group of the Social Economic Council (Sociaal Economische Raad or SER) on Utilizing Labour Potential of Migrant youth (werkgroep Benutting Arbeidspotentieel Migrantenjongeren) has recently praised this initiative and decided to provide financial support to help it expand and professionalize its activities.²²⁹ K!X is meant to empower youth, neutralise discriminatory practices and help overcome the obstacles to entering the labour market, described in section 3.1. This is an example of a simple, inexpensive, potentially far-reaching, initiative which could create a great impact.²³⁰

4.4 Individual employers' initiatives

An interesting initiative has been taken by the Dutch Tax Authority.²³¹ As the Dutch Tax Authority will be hiring 6000 new employees over the next few years, it decided that its workforce must be much more diverse than it is now. They have asked for the services of Colourful People in this endeavour. By developing an inclusive communication and recruitment policy, the Dutch Tax Authority hopes to attract more diverse candidates. The Authority wants the employees to be a reflection of the diverse Dutch society which would help them to understand their clients better. Concretely, the recruitment campaign uses scientific studies in order to establish which kind of message, but also what kind of language, would best attract these candidates. The recruitment team will be trained to be aware of their prejudices and receive guidance on how to be able to select without bias. On a management level, the Authority has publicly committed itself to an inclusive organisation.²³²

Another good practice, although on a much smaller scale, is the transformation of a real estate corporation.²³³ One member of its Board of Commissioners wanted to elevate the diversity of the Board in order to match the diverse backgrounds of their tenants. For this purpose, the Board contracted Colourful People. On the Board, which has seven members, there are three women, two

²²⁷ Interview with Colourful People.

²²⁸ FORUM, *K !X wordt ondersteund door de SER*, www.forum.nl/kix/Nieuwsbericht/NewsListId/1/NewsItemId/2658, accessed 1 September 2013.

²²⁹ FORUM, *K !X wordt ondersteund door de SER*, www.forum.nl/kix/Nieuwsbericht/NewsListId/1/NewsItemId/2658, accessed 1 September 2013.

²³⁰ Interview with FORUM.

²³¹ Interview with Colourful People.

²³² Interview with Colourful People.

²³³ Interview with Colourful People. See also Talent naar de top, *Woningcorporatie Vivare. Talent en diversiteit in RvC*, http://www.talentnaardetop.nl/Home_NL/article/258/Woningcorporatie_Vivare_Talent_%C3%A9n_diversiteit_in_RvC, accessed 1 September 2013.

members with a migrant background, and two young persons (some have more than one of these characteristics).²³⁴

5. Conclusions and recommendations

5.1 Political and societal developments related to racism and discrimination

A few years ago, the government decided to introduce a policy change from specific policies reaching out to ethnic minority groups to a generic policy. This is mentioned by most interviewees as damaging the efforts to integrate and improve the situation of specific groups in the context of employment. Generic policies are generally not beneficial to ethnic minorities. The CERD noted that:

*'This may result in indirect discrimination and insufficient attention being paid to the needs and concerns of groups which may, at different periods of time, be particularly susceptible to direct or indirect discrimination. (...) The Committee encourages the State party to maintain a flexible approach to addressing discrimination.'*²³⁵

As a result of parliamentary elections in September 2012, the Labour (Partij van de Arbeid, PvdA) and Liberal parties (Volkspartij voor Vrijheid en Democratie, VVD) agreed to form a coalition. In October 2012 they presented their agreement, which contains several issues relevant to racial and ethnic discrimination.²³⁶ Notably, a specific commitment to combat racism or discrimination had not been made. Regrettably, racism and discrimination are not even mentioned in the agreement. Rather, the agreement reaffirms the generic policy that was introduced a few years ago. According to the agreement, integration has become the full responsibility of the minorities and migrants themselves, instead of being a shared responsibility with the government. The agreement states that 'everyone should be able to make something of his or her life', regardless of gender, sexual orientation, origin, religion, belief, or disability.²³⁷ It also mentions that the government can only be convincing if she herself gives the right example.²³⁸ The coalition agreement commits to improve the position of women, elderly and disabled people on the labour market, but makes no reference to ethnic minorities in this regard.²³⁹

5.2 Conclusions and recommendations

Interviewees generally expressed concerns about the future outlook of discrimination in the labour market. As noted, attention to racial discrimination against minorities has decreased and few policies are in place to improve the situation. The following recommendations outline how discrimination in employment could be addressed.

²³⁴ Ibid.

²³⁵ CERD, 'Concluding observations', CERD/C/NLD/CO/17-18, 2010, par. 6.

²³⁶ PvdA and VVD, *Bruggen Slaan. Regeerakkoord VVD-PvdA*, 2012.

²³⁷ 'Iedereen moet iets van zijn of haar leven kunnen maken, ongeacht geslacht, seksuele geaardheid, afkomst, religie, levensovertuiging of handicap. Dat vraagt van iedereen een bijdrage: van individuen zelf, sociale partners, overheden, levensbeschouwelijke groepen en etnische gemeenschappen. De overheid kan anderen alleen met overtuiging aanspreken als zij zelf het goede voorbeeld geeft.' PvdA and VVD, *Bruggen Slaan. Regeerakkoord VVD-PvdA*, 2012, p. 19.

²³⁸ Ibid.

²³⁹ Ibid., p. 19, p.35, and p.7.

Government and employers should openly acknowledge that racial and ethnic discrimination is a problem that needs to be mainstreamed, and addressed constructively.

Policy makers and employers need to openly acknowledge that racial discrimination is a real and growing problem that needs to be discussed and addressed constructively, rather than simply placing responsibility on minorities to integrate. As Krul notes, ‘discussion of discrimination in the employment market is peculiarly half-hearted. The very final taboo in the integration debate would appear to be the discussion of discrimination and racism’.²⁴⁰ The Government should comprehend that discrimination against these groups is a vicious circle: it starts at the youngest age and has an impact on all phases of life. There should be particular attention to the effects of education on the position of ethnic minorities in the employment market. Instead of Parliament having a plenary debate about ‘the Problem with Moroccans’ (Marokkanenprobleem)²⁴¹, or any other debate which focuses on situations in which individuals within a minority posed controversy, which could be highly stigmatising, it would be more constructive if the government aimed at mainstreaming the issue of discrimination and racism. The problems ethnic minorities encounter, and the fact that these are not stand-alone incidents, but rather part of a vicious circle of racial discrimination and unequal opportunities in the Netherlands, should be brought to the attention in any debate regarding employment, education, healthcare, housing, access to other goods and services and justice.

The government should address the disproportionately high unemployment rate among ethnic minorities, particularly youth, as a priority. Policies should be better targeted towards the problems facing specific minority groups. The government should develop policies to prevent discrimination, promote equality and condemn and punish discrimination where it occurs. The government should also lead the private sector by example by promoting equality through its own employment and procurement policies.

The issue of discrimination against ethnic minorities in the context of employment and the disproportionately high unemployment rates among these groups should become a priority on the political agenda. The government should publicly and systematically condemn racial discrimination in the field of labour. Civil society actors and organisations working to promote the rights of specific minorities should also be more vocal in raising awareness and applying pressure on the government to address the problem.

The situation of ethnic minorities in the labour market should be mapped. Currently, for several groups, there is no awareness of the extent of the problem of racial discrimination in the labour market. Even when information is available, it is not used or even discussed with a view to developing policies to promote equality. For example, while politicians and the general public are discussing the worrying rise in youth unemployment, it should be pointed out that the problem is even more acute among ethnic minority youth. Unemployment among these groups is, shockingly, three times higher than among the same age group in the majority Dutch population, and continues to rise faster than among majority Dutch youth. The government should acknowledge the negative impact this has on the social and economic situation in the Netherlands. This situation shows that the

²⁴⁰ Crul M., Schneider J., Lelie F., *Super-diversity. A new perspective on integration*, VU University Press, Amsterdam, 2013, p 65.

²⁴¹ A debate, about the problems Moroccans are allegedly responsible for in the Netherlands, requested by Geert Wilders’ Freedom Party (PVV) and supported by 61 Members of Parliament took place on 4 April 2013. For the vote on the two –both rejected– motions see Officiële bekendmakingen, ‘Stemmingen. Het Marokkanenprobleem’, TK 2012-2013, number 72, 6 June 2013. <https://zoek.officielebekendmakingen.nl/dossier/32824/h-tk-20122013-72-35?resultIndex=15&sorttype=1&sortorder=4>, accessed 15 December 2013. See also NOS, ‘Marokkanendebat in 1 minuut’, 5 April 2013, <http://nos.nl/op3/audio/492306-marokkanendebat-in-1-minuut.html>, accessed on 15 December 2013.

current generic policy should be changed in favour of policies adapted to the challenges faced by minority groups. A further issue of concern is the situation of Central and Eastern Europeans in the labour market. The increasing government attention on these groups is generally negative in nature and policies addressed to them usually revolve around protecting the Dutch labour market and its workforce. Worryingly, the government expects these groups to return to their countries of origin, despite signs that many of them in fact plan to stay in the Netherlands. Because of this assumption, the government is not taking specific measures needed to integrate them into society and prevent segregation.

There are several concrete steps the government should take to improve the employment situation of certain groups.

- The government should be proactive and publicly and systematically condemn cases of discrimination in the field of employment. It should also continue to monitor the situation on the ground, and adjust its policies accordingly. The government should engage all its bodies in fighting discrimination in this sector, and provide these bodies with the resources and powers required to promote equality effectively. In particular, the Labour Inspectorate should be encouraged to use its mandate and powers to monitor and discipline discrimination on the work floor. In order for the Labour Inspectorate and other bodies to be effective, the government should make the public aware of their powers and responsibilities.
- Many victims of discrimination fail to report incidents and take cases to court. In part, this is because discrimination is difficult to prove. One way to encourage people to report discrimination, and increase the chances of successful legal challenges is to provide for the burden of proof to be shared in cases of discrimination, as required by Article 8 of the Racial Equality Directive.²⁴² Currently, the Dutch legal system allows individual judges discretion over whether to share the burden of proof between the parties. This arguably offers less protection to claimants than a rule requiring that the burden be shared once a prima facie case of discrimination has been made out. An official and independent study should be launched into the effectiveness of concerning legislation, and the way the burden of proof and the possibility to share the burden of proof has been applied by relevant institutions, and whether improvements in light of the Racial Equality Directive would be required.
- Many victims of discrimination fail to report incidents and take cases to court. In part, this is because discrimination is difficult to prove. One way to encourage people to report discrimination, and increase the chances of successful legal challenges is to provide for the burden of proof to be shared in cases of discrimination, as required by Article 8 of the Racial Equality Directive. Currently, the Dutch legal system allows individual judges discretion over whether to share the burden of proof between the parties. This arguably offers less protection to claimants than a rule requiring that the burden be shared once a prima facie case of discrimination has been made out. An official and independent study should be launched into the practices of national courts and the Institute for Human Rights to verify whether improvements can be made in light of the requirements of article 8 of the Racial Equality Directive.
- The government should adopt specific policies, including awareness-raising campaigns to increase understanding among employers, the public and policy makers of the precarious labour situation of ethnic minorities, combat the negative effects of discrimination and actively better the situation of these groups on the labour market. While taking into account the input of all relevant stakeholders, the government should design policies to stimulate companies to adopt effective diversity policies towards its employees. This should include diversity training and

²⁴² Council Directive 2000/43/EC of 29 June 2000. See also Hermanin C., De Kroon E., *The Race Equality Directive. A shadow report. Lessons learnt from the implementation in nine EU member states*, Open Society Foundations, 2013.

support for victims of discrimination in the workplace. The government should also include a requirement that companies and their sub-contractors have diversity policies in place as a condition of eligibility for bidding for public tenders.²⁴³

- The government should increase its cooperation with the business world, for example by drawing on the Charter for women in management positions that was developed by the government and business leaders. The government should formulate a similar Charter committing itself and employers to ensure that ethnic minorities are represented in all employment sectors and in all positions, particularly highly educated professionals in leadership positions. In this regard, the government could encourage employers to report annually on the proportion of employees with an ethnic minority background and award certificates to those meeting particular benchmarks.
- The government should lead by example. It should adopt diversity policies and promote equality among publicly employed staff so that the ethnic make-up of the civil service reflects the diversity of Dutch society.

The government should ensure it carries out a thorough and specific impact assessment when developing policies and conducts an evaluation after their implementation in order to monitor their effectiveness and take corrective measures where necessary.

The government should monitor and evaluate new and existing policies to measure their effectiveness in promoting equality. It should focus on the impact it can have, or has, on specific ethnic minorities and migrant communities. It should also consider if and how these policies counter the disadvantages and discrimination these groups face, as described in this report. For example, the recently applied generic policy has not been assessed on its effects on specific vulnerable groups, such as ethnic minorities. In addition to impact assessments prior to adoption, the government should also evaluate the practical effects of policies, and modify these when they turn out to be unfavourable for particular groups. Civil society actors could be more vocal in urging the government to take these steps. For example, as noted, youth unemployment among ethnic minorities suggests that more targeted policies addressing the specific needs of particular groups should replace the current generic policy. In this vein, ECRI 'strongly recommends that the Dutch authorities strengthen their efforts to improve the position of ethnic minority groups in the labour market. It encourages the Dutch authorities in their efforts to combat discrimination. However, it considers that positive measures in the field of employment aimed specifically at the ethnic minority population should be used more widely than is the case at present. In so doing, it recommends that the Dutch authorities target these measures to those groups that appear to be most disadvantaged, particularly Moroccans, Turks and Antilleans.'²⁴⁴ ECRI further recommends that 'the Dutch authorities monitor the implementation of the legal provisions in force against racial discrimination in employment. In particular, it recommends that they monitor the effectiveness of the provisions prohibiting racial harassment in the workplace and take any necessary corrective action.'²⁴⁵

The government should adopt a multi-stakeholder approach, supporting action and participation by minority groups, employers, trade unions and schools.

The following initiatives should be supported by national as well as local governments, which are responsible for developing their own anti-discrimination policies:

- Minorities themselves and associations representing their interests should be supported by the government, employers and other actors forming part of civil society, to play a greater role in the development of policy, claiming and enforcing ethnic minority rights, and raising awareness

²⁴³ See for example a Swedish practice, as reported in the EU Fundamental Rights Agency's Toolkit for local, regional and national public officials. <http://fra.europa.eu/en/joinedup/tools/understanding-fundamental-rights/respecting-legal-frameworks/mainstreaming>, accessed 15 December 2013.

²⁴⁴ ECRI, *Third report on the Netherlands*, Council of Europe, Strasbourg, 2008, par 66.

²⁴⁵ Ibid, pars 62-67.

about discrimination and the challenges they face. More particularly, minority representative bodies could set up a Commission for equal opportunities and employment in which they can involve the groups they represent in the process of combating discrimination in employment.

- Trade unions should be encouraged to fulfil their responsibility to play a leading and proactive role in promoting equality in the employment market.
- Employers should adopt and implement diversity policies in good faith, with the support and guidance from employers' organisations. Companies should be strongly encouraged to join the DIV-charter as a means of promoting diversity in companies.
- Schools should play a much more prominent role in improving the chances of non-Western students on the labour market. The ethnic make-up of the school population has changed dramatically over the preceding decades, but school policies have not adapted accordingly. Higher educational facilities should provide support by, for example, introducing students to different employment sectors and business cultures, provide assistance in establishing professional networks by stimulating extra-curricular activities and organising meetings with employers and companies. Creation of a supplementary course prior to the beginning of the school year to introduce new students to the school system and available opportunities could help to kick-start their academic careers.²⁴⁶

The national and local authorities should increase awareness of anti-discrimination legislation and complaints procedures among employers and employees, ensure rigorous training for recruiters, and reform recruitment processes to minimise the negative effects of prejudice and stereotyping. This could be done with the support of the Institute for Human Rights and local anti-discrimination bureaux.

As noted, individuals frequently fail to recognise both when they are a perpetrator or a victim of racial discrimination. Employers and employees should be made aware of anti-discrimination legislation; the way discrimination manifests itself, and the means available to address it – both internally in a company through its complaints procedures, as well as with the assistance of authorities, such as the anti-discrimination bureaux and the courts. Recruiters and recruitment agencies are of particular importance because they act as the point of entry to the labour market. Particular efforts should be made to train personnel with recruitment responsibilities to address their own prejudice, given their impact on the unemployment of ethnic minorities.²⁴⁷ To reduce the effects of stereotypes in recruitment procedures, the Institute for Human Rights has recommended: reviewing the role of the management, training recruitment personnel, the formulation of very concrete job requirements, a set format for job interviews, new recruitment procedures such as 'speed dating', group interviews, video interviews, and peer reviews of recruitment decisions.²⁴⁸ The government, together with civil society, should make employers aware of these natural biases in recruitment procedures, and of their responsibility to select candidates in an ethnically neutral way.

²⁴⁶ The VU University provides such a 'Summer Course', based on the example of the University of California, Los Angeles. The Summer Course aims to facilitate the transition to University, give extra support and preparation and reduce the risk of drop-outs and delays. The students are introduced to academic writing, giving presentations and methods to study effectively. See VU, *Summercourse*, <http://www.vu.nl/nl/opleidingen/overig-onderwijs/summercourse/index.asp>, accessed 1 September 2013. And Breedveld P, "Hoe diverser hoe beter", VU Magazine, number 2, 2010, pp. 12-13.

²⁴⁷ 'Samenvattend toont deze studie aan dat discriminatie de achterstand van niet-westerse migranten op de arbeidsmarkt beïnvloedt. Dat zij vaker werkloos zijn en vaker afhankelijk zijn van tijdelijk werk dan autochtone Nederlanders is deels het gevolg van uitsluitingsmechanismen op de arbeidsmarkt.' Sociaal Cultureel Planbureau, *Liever Mark dan Mohammed? Discriminatie op de arbeidsmarkt*, Sociaal Cultureel Planbureau, The Hague, 2010.

²⁴⁸ College voor de Rechten van de Mens, *De juiste persoon op de juiste plaats. De rol van stereotypering bij de toegang tot de arbeidsmarkt*, College voor de rechten van de Mens, 2013.

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European Network Against Racism
Réseau européen contre le racisme

ENAR Shadow Report 2012-2013