



Permanent Representation of
the Kingdom of the Netherlands
to the United Nations Office and
other International Organizations
in Geneva

NV: GEV-MR 84-2024

The Permanent Mission of the Kingdom of the Netherlands to the United Nations and other international organisations in Geneva presents its compliments to United Nations Economic Commission for Europe and, with reference to the Communication of 14 February 2024 (ACSR/C/2023/16 (Netherlands)) of the UN Special Rapporteur on Environmental Defenders under the Aarhus Convention, has the honour to inform the Secretariat as follows.

The Government of the Kingdom of the Netherlands ('the Government') first wishes to reiterate its full support and appreciation for the mandates of UN Special Rapporteurs and Working Groups. It gives serious consideration to their views. The Government will always seek to respond to and actively engage with UN mandate holders.. The Government is open to dialogue with its international partners on the protection of human rights in the Netherlands, in a spirit of self-reflection and with a view to improving the implementation of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).¹

In this context, the Government appreciates the opportunity provided by the Special Rapporteur to respond to his concerns and questions regarding the alleged persecution, penalisation and harassment of Extinction Rebellion Netherlands and seven individuals. The Government would note that domestic judicial proceedings are still pending, as acknowledged by the Special Rapporteur, and that the Government therefore cannot comment on all aspects and questions raised by the Special Rapporteur. The Government does wish, however, to address a number of issues in response to the Special Rapporteur's questions. In doing so, the Government wishes to emphasise that it is willing to discuss with the Special Rapporteur any further questions about the implementation of article 3, paragraph 8 of the Aarhus Convention.

The Permanent Mission of the Kingdom of the Netherlands to the United Nations and other international organisations in Geneva avails itself of the opportunity to renew to the United Nations Economic Commission for Europe the assurances of its highest consideration.

Geneva, 17 April 2024



¹ Although the Kingdom of the Netherlands is party to the Aarhus Convention, the Aarhus Convention has only entered into force for the European part of the Netherlands and therefore does not apply to the Caribbean part of the Netherlands, nor to the autonomous countries within the Kingdom of the Netherlands (Aruba, Curaçao and St Maarten).

Response by the Government of the Kingdom of the Netherlands to the letter from the Aarhus Special Representative concerning Extinction Rebellion (article 3, paragraph 8 of the Aarhus Convention)

1. General context

On numerous occasions in 2022 and 2023, Extinction Rebellion held various kinds of demonstrations in the Netherlands, including on the public highway (Utrechtsebaan/A12) in The Hague, blocking that road dozens of times.² Utrechtsebaan is a section of the A12 motorway where the speed limit is 70 kph. This section of road is prohibited for pedestrians. Utrechtsebaan is one of the main routes in to and out of The Hague city centre. According to Extinction Rebellion, the demonstrations (titled 'Stop Fossiele Subsidies' [Stop Fossil Fuel Subsidies]) would be held for an indefinite period of time, in order to force the Dutch government to end all fossil fuel subsidies. Extinction Rebellion chose this location because it is within sight and earshot of the Ministry of Economic Affairs and Climate Policy and the building of the House of Representatives of the States General. Extinction Rebellion rejected all proposals to consult with the municipality about choosing a different location or type of demonstration.

In the Netherlands, most demonstrations take place in The Hague – around 2,000 per year. The mayor endeavours to facilitate all demonstrations, even those not announced beforehand. In this municipality, demonstrations are almost never banned, although sometimes certain restrictions are imposed in accordance with national legislation. These restrictions may concern, for instance, the location where the demonstration is to take place, the security requirements that must be observed, or the route that a dynamic demonstration must follow. The above-mentioned demonstrations by Extinction Rebellion in The Hague were not banned. Extinction Rebellion is welcome to demonstrate in The Hague and the mayor is willing wherever possible to accommodate the demonstrators. At the same time, in this case the mayor decided, giving reasons, that blocking a motorway indefinitely as a coercive measure to achieve a particular goal is not permitted, because it leads to unacceptable risks to public order, health and traffic. Despite that decision, the Extinction Rebellion protesters blocked the A12/Utrechtsebaan. Extinction Rebellion did not lodge an objection and/or application for judicial review against the mayor's decision. The mayor's decision was therefore legally valid at the time of the demonstrations. Below, the Government will set out the legal framework and the proceedings concerning Extinction Rebellion and the Dutch State.

2. Legal framework

In the Government's view it is important to describe the legal and administrative context of the matters in question before responding to the Special Rapporteur's questions. Before

² The demonstrations were held on the following dates: 6 July 2022, 21 September 2022, 15 October 2022, 26 November 2022, 21 December 2022, 28 January 2023, 11 March 2023 and every day from 9 September 2023 until 10 October 2023.

doing so, the Government would emphasise that it holds the right to freedom of peaceful assembly in high regard and protects this right in accordance with its international and domestic obligations, and would stress that, under Dutch law, restrictions of this right are allowed only where strictly necessary to protect health, in the interest of traffic and to combat or prevent disorder.

The Government will explain this below, where it will discuss the legal framework applicable to demonstrations, i.e. the legal parameters laid down in administrative law and criminal law.

A. Administrative law framework

Freedom of peaceful assembly

Freedom of peaceful assembly is one of the cornerstones of a democratic state governed by the rule of law. In the Netherlands, it is guaranteed under article 21 of the International Covenant on Civil and Political Rights (ICCPR), article 11, paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), article 12 of the Charter of Fundamental Rights of the European Union and article 9, paragraph 1 of the Constitution. The Government holds this fundamental right in high regard and believes it is important to endeavour to facilitate everyone's right to freedom of peaceful assembly, regardless of their message, because the Kingdom of the Netherlands considers demonstrations to be an important way for people to make themselves heard and draw attention to certain issues, even if those issues concern unpopular or minority opinions. In the Netherlands, restrictions can therefore never be imposed with respect to a demonstration due to the specific topic of a demonstration, which is in line with the obligations of the Kingdom of the Netherlands under the Aarhus Convention. The right to demonstrate also applies to demonstrations concerning climate change or the environment. The Netherlands has therefore committed itself to the rights and obligations laid down in article 3, paragraph 8 of the Aarhus Convention.

A restriction of the right to freedom of peaceful assembly may be imposed only if it is necessary, and must meet the requirements of article 9 of the Constitution and article 11, paragraph 2 of the ECHR. Article 11 of the ECHR stipulates that restrictions may be aimed at, *inter alia*, the prevention of disorder or crime. Under paragraph 2 of this article, the right to freedom of peaceful assembly may be subject to restrictions if those restrictions are prescribed by law, are necessary in a democratic society and serve a legitimate purpose, for instance in the interests of public safety or for the prevention of disorder or crime. One possible justified restriction is compliance with Dutch law, including criminal law. This follows from article 9 of the Constitution, which says that the right of assembly and demonstration applies 'without prejudice to the responsibility of everyone under the law'.

As regards the question of whether the restriction is necessary in a democratic society, there must be a pressing need for the restriction,³ and the restriction must be proportionate to the intended purpose.⁴ In any case, it is important that the nature of the intervention by the authorities is not such that it has an unacceptable 'chilling effect' on the future exercise of the right to freedom of peaceful assembly.⁵ One factor to bear in mind in this respect is the nature and severity of any penalties imposed.⁶

In so far as the regulation of public demonstrations is permitted under the ECHR, in the Netherlands this is governed by the Public Assemblies Act (*Wet openbare manifestaties; WOM*). This legislation applies to all demonstrations in public spaces, regardless of the subject of the demonstration, and therefore it also applies to climate-related and environmental demonstrations. The mayor of the municipality where the demonstration is to be held is responsible for enforcing this legislation, and for facilitating and if necessary imposing restrictions on demonstrations. The mayor is politically accountable to the municipal council in question. Facilitating and protecting demonstrations is thus the responsibility of the municipal authorities. For further details on this matter, see the section below on 'Enforcement by local authorities'. The mayor's decisions may be reviewed by an interim relief judge.

Enforcement by local authorities

In the Netherlands, mayors are responsible for facilitating demonstrations and maintaining public order. Under the WOM, the mayor of the municipality where a demonstration is to be held has the authority to impose restrictions on the demonstration or to ban the demonstration. During the demonstration, the police operate under the authority of the mayor in so far as maintaining public order is concerned.

If one or more protesters commit criminal offences during a demonstration, that in itself does not mean that the demonstration ceases to fall within the scope of the right to freedom of peaceful assembly. However, criminal proceedings may be brought against the individuals who have committed offences. Given the protection afforded by the right to freedom of peaceful assembly, the scope for bringing criminal proceedings against individual demonstrators depends on, *inter alia*, the severity of the offence. If the police intervene under criminal law to maintain public order, this is done under the authority of the (Chief) Public Prosecutor. Decisions on police operations are made within the tripartite consultations that take place between the mayor, the Public Prosecution Service and the police. Central government can only assess what the local authorities need in order to

³ See, for instance, European Court of Human Rights 31 March 2009, no. 33482/06 (*Hyde Park and Others v. Moldova*).

⁴ See, for instance, European Court of Human Rights 15 October 2015, no. 37553/05 (*Kudrevičius and Others and Others v. Lithuania*).

⁵ See, for instance, European Court of Human Rights 14 February 2006, no. 28793/02 (*Christian Democratic People's Party v. Moldova*), 3 May 2007, no. 1543/06 (*Bączkowski and others v. Poland*) and 29 November 2007, no. 25/02 (*Balçık and others v. Turkey*).

⁶ See, for instance, European Court of Human Rights 15 October 2015, no. 37553/05 (*Kudrevičius and Others and Others v. Lithuania*).

enforce the law during demonstrations, within the scope of its responsibility for, say, the police, the Public Prosecution Service and their powers in terms of security matters. In that sense the national authorities play a supporting role.

B. Criminal law framework

Taking of DNA samples

The DNA Testing (Convicted Persons) Act (*Wet DNA-onderzoek bij veroordeelden*) stipulates that anyone who is convicted of an offence for which pre-trial detention is permitted must submit a DNA sample. Pursuant to article 67 of the Code of Criminal Procedure (*Wetboek van Strafvordering*) pre-trial detention is permitted for, *inter alia*, offences punishable by a prison term of four years or more. In respect of offences punishable by a prison term of less than six years, the DNA profile may be retained for up to 20 years. The maximum retention period is 30 years for offences that carry a more severe penalty. The DNA Testing (Convicted Persons) Act is intended to contribute to the prevention, investigation, prosecution and trial of offences committed by individuals convicted of previous offences. According to the explanatory memorandum accompanying the Act, the Act was specifically assessed against fundamental rights and general principles of law, and the conclusion was that it did not contravene them.

Water cannon use

The Netherlands is a state governed by the rule of law, where the use of force by the police is regulated by legislation. The use of force is a last resort and no-one may be subjected to inhuman, degrading or cruel treatment. The ICCPR (articles 6 and 7), the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment and the ECHR (articles 2 and 3) constitute the main human rights frameworks governing the proportionate use of force by police officers. In accordance with the requirements set out in these instruments, rules for the proportionate use of force by police officers are laid down in national legislation and regulations, including the Code of Conduct for the Police, Royal Military and Border Police and other Investigating Officers (*Ambtsinstructie voor de politie, de Koninklijke Marechaussee en andere opsporingsambtenaren*). This Code of Conduct stipulates that police officers are permitted to use force only when the objective justifies that use (proportionality) and cannot be achieved in any other way (subsidiarity). If possible, a warning must be given before force is used. In addition, the force used must be reasonable and measured in relation to the objective. In training and in practice, the guiding and decisive principles are proportionality, subsidiarity, reasonableness and moderation.

If the police take action to maintain public order, they do so under the mayor's authority. If the mayor has given permission to use a water cannon, the police may do so, within the limits of the above-mentioned principles. The legislature left the practical considerations in this respect up to the professional assessment of the police. After receiving permission from the mayor, a general commander can order the use of a water cannon. The on-site water cannon commander makes the tactical decisions on how the water cannon should be

deployed. This individual has received specific training for this purpose. The training teaches skills regarding the angle and water stream, and the way in which the direction and water pressure can be varied. It also gives police insight into how they can ensure that the deployment of the water cannon meets the requirements of proportionality, subsidiarity, reasonableness and moderation.

Answers to the questions

- 1. Please provide any information and/or comments you may have on the allegations set out in the present letter.**
- 2. Please explain the actions taken, if any, in response to this letter to ensure that:**
 - a. The convictions and sentences of Mr. de Graaf, Mr. Hendriksen, Ms. Hofstede, Mr. Sloot and Mr. Winnips allegedly handed down by The Hague District Court on 2 August 2023 are overturned on appeal;**
 - b. The DNA samples of these five named individuals taken as a result of the Court's order of 2 August 2023 are removed from the authorities' database and destroyed; and**
 - c. Any possible criminal charges against Mr. Burger, Mr. van der Wansem and Mr. Sloot for "blocking a road" are promptly dropped.**
- 5. Please describe the actions taken, if any, in response to this letter to ensure that Extinction Rebellion Netherlands and the seven named individuals are in the future able to exercise their right to engage in peaceful protest to protect the climate, in accordance with their rights of freedom of expression, assembly and association, without being subject to penalization, persecution or harassment for doing so.**

The Government believes it is important to provide further information on the allegations with respect to the facts and the legal framework that applies in the context of demonstrations. That information is given below. For the sake of completeness and in order to present the information clearly, the Government will respond to questions 1, 2 and 5 simultaneously. The Government first wishes to reiterate that, because domestic judicial proceedings are still pending, it cannot comment on all aspects and questions raised by the Special Rapporteur.

Furthermore, the Government would note that only the Public Prosecution Service has the authority to decide independently whether to institute criminal proceedings. This is due to the Public Prosecution Service's position in the judicial system and its ensuing role in protecting fundamental rights and principles of due process. Given the Public Prosecution Service's position, the national authorities must maintain a considerable distance from individual decisions made by the Public Prosecution Service. In view of the independence of the courts, to which great importance is attached in the Netherlands as a democratic state under the rule of law, it is not for the executive branch of government to pass judgment on criminal convictions, let alone to take action of their own accord to ensure that

such convictions are 'overturned on appeal' or that charges are 'promptly dropped'. Given the foregoing, the Government cannot consider this specific request, and respectfully asks to observe the independency of its judiciary.

The mayor of The Hague imposed restrictions on the demonstrations held by Extinction Rebellion on Utrechtsebaan/A12, because the demonstrations posed unacceptable risks to public order, health and traffic as the Utrechtsebaan/A12 is, for example, an important traffic route that emergency services must be able to use. An alternative location for the demonstrations was designated near Utrechtsebaan. Each instance of blocking Utrechtsebaan/A12 was therefore in breach of the conditions imposed by the mayor, and each instance thus constituted a violation of section 11 of the WOM.

Within the framework of freedom of assembly set out above, the scope for legitimately instituting criminal proceedings depends, *inter alia*, on the severity of the offence. The Dutch Criminal Code (*Wetboek van Strafrecht*) makes a distinction between minor offences (*overtreding*) and more serious offences (*misdrif*). If a minor offence is committed, generally the arrest and removal of the person or persons will be a justified response with a view to halting the commission of the offence. In the event that criminal proceedings are instituted for such a minor offence, the public prosecutor – and in the event of prosecution, the court – will have to consider more explicitly whether prosecution under criminal law is justified. An important factor in this respect is that the resulting criminal proceedings, including sentencing, must not be so severe as to have a chilling effect on those who wish to exercise their right to freedom of peaceful assembly. That also means that the Public Prosecution Service will not often prosecute an individual merely for a single violation of the WOM, such as participating in a demonstration at a location that has been prohibited by the mayor.

However, if a serious offence is committed during a demonstration, the prosecution and conviction of such an offence will generally be a justified restriction of the right to freedom of peaceful assembly. The five judgments handed down by The Hague District Court on 2 August 2023 concerned the serious offence of incitement (referred to in the Special Rapporteur's letter as 'sedition'). The defendants were convicted of inciting others to block the A12. Incitement is punishable by a prison sentence of up to five years.⁷ The purpose of criminalising such an act is to protect public order. In these five cases, both an independent public prosecutor and the court held, with due regard for the right to freedom of peaceful assembly, that the criminal proceedings were justified. The court considered that 'the actions of the authorities have not been of such a nature that there is a *chilling effect* that could lead to an unjustified restriction of articles 10 and 11 of the ECHR'.⁸ The court imposed alternative sanctions (community service, *taakstraf*), ranging from 30 to 60 hours. On the

⁷ Article 131 of the Dutch Criminal Code.

⁸ See, for instance, District Court of The Hague, 2 August 2023, ECLI:NL:RBDHA:2023:11442, para. 6.3.2.

basis of these convictions, the individuals were required to give DNA samples, as the DNA Testing (Convicted Persons) Act stipulates that a DNA sample must be taken from anyone who is convicted of a serious offence punishable by a prison sentence of four years or more.

The Special Rapporteur's letter also refers to three individuals being arrested and interrogated for blocking a motorway while there was reason to fear that this would present a danger to traffic safety. This constitutes a serious criminal offence, for which the maximum statutory penalty in the Netherlands is nine years' imprisonment.⁹ During demonstrations by Extinction Rebellion, only a few of the many demonstrators were arrested for this serious offence. A requirement in regard to this serious offence is that the individual must have caused danger on the motorway, which may for instance be the case if they have moved on to the motorway before it has been closed. The police may arrest an individual and question them at the police station on suspicion of an offence. It is then up to the Public Prosecution Service to decide whether or not to prosecute. The government plays no role in this process.

3. In light of the findings of the District Court of The Hague on 13 October 2023 regarding the disproportionate use of water cannons against peaceful protesters in relation to the Utrechtsebaan protests and the lack of clear guidance on such use, please explain the actions taken, if any, to ensure that water cannons will not be used to disperse peaceful protestors in the future, including whether any concrete guidelines on the use of water cannons have been adopted to prevent future disproportionate use of water cannons by law enforcement officers.

The statutory requirements and the multi-level decision-making framework that is applied in specific cases provide clear rules on the use of a water cannon, ensuring that demonstrators always have sufficient opportunity to leave the public highway in time.

During various Extinction Rebellion demonstrations the mayor gave permission for the use of the water cannon. On each occasion the purpose was to end the prohibited situation and the disruption of public order. In the cases where the water cannon was used, it was always the least severe means to compel the demonstrators to move. Alternative means, such as riot-police charges, possibly with horses or dogs, or the use of tear gas, were considered too severe by the mayor.

Before the water cannon was used, the demonstrators were always warned first and given the opportunity to leave the public highway. Vulnerable people were addressed individually. After that, they were *ordered* to leave. Then, in some cases, the mayor gave permission for the use of the water cannon. When the commander did give the order to use the water cannon, it was mostly deployed at low velocity, in other words a low-pressure stream was

⁹ Article 162 of the Dutch Criminal Code.

directed upwards, not directly at the crowd, with the intention of dousing the demonstrators. Dousing/soaking the crowd is often enough to encourage people to go home. Unfortunately, one incident has come to light in which the water cannon was mistakenly used by directing a high-pressure stream not via the road surface but directly at several demonstrators, which had a disproportionate effect on a number of demonstrators. All instances of the use of force by the police are registered and reviewed, so that lessons can be learned from such use and from any possible mistakes made, and transparency can be provided with regard to police action.

4. Please provide any information on available trainings, guidelines or other guidance documents for law enforcement officers, public prosecutors and judges in responding to acts of civil disobedience, in line with international legal standards, including article 3 (8) of the Aarhus Convention and international human rights instruments.

The Government treats every demonstration in accordance with the applicable legal framework, regardless of the content, and does not recognise 'civil disobedience' as a legal term applicable under Dutch law.

As stated previously, the Government holds the right to freedom of peaceful assembly in high regard and protects this right in accordance with article 21 of the ICCPR, article 11 of the ECHR, article 9 of the Constitution and also article 3, paragraph 8 of the Aarhus Convention, regardless of their message, because the Kingdom of the Netherlands considers demonstrations to be an important way for people to make themselves heard and draw attention to certain issues, even if those issues concern unpopular or minority opinions. Further rules that serve to regulate restrictions to demonstrations are formulated in the WOM. Restrictions of this right, based on the WOM, are allowed only when strictly necessary to protect health, in the interest of traffic and to combat or prevent disorder. Restrictions, imposed on the WOM and in conformity with international law and the obligations flowing therefrom, can never be imposed on the basis of the specific content of the demonstration. Restrictions of this right are never related to the fact that a person is involved in a demonstration, whether that demonstration is concerned with environmental protection issues (including climate change) or with any other legitimate cause.

All authorities must abide by this legal framework. Law enforcement officers, for instance, attend several training courses on how to act during demonstrations.

The constitutional protection of the right to freedom of peaceful assembly obliges the authorities to permit a great deal with regard to demonstrations. The police are a neutral party, and the subject of the demonstration plays no role in their actions. At the same time, the police may – by order of the competent authority – take action if criminal offences are being committed. In that respect too, there is no scope for allowing the views of the persons

breaching the law or their reasons for doing so to play any role. Blocking a road and committing offences do not necessarily fall within the concept of 'demonstrating'. Nevertheless, the actions of the Dutch police are always aimed at de-escalation. Any use of force should go no further than is necessary to end the criminal conduct, and the effect on the demonstration (and thus on the right to freedom of peaceful assembly) must be kept to a minimum. As stated above, all instances of the use of force are registered, so that clear frameworks can be developed for proportionate use of force, and to enable continuous reflection on police action and allow lessons to be learned.